

And Now, to-wit, Wednesday, February 27, 1974, beginning at 9:00 A.M., EDT, 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 the Defendant was present with his Counsel and the following proceedings were had:

By Mr. Ertel:

May we approach Side Bar, your Honor?

By The Court:

Yes.

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

By The Court:

Proceed, Mr. Fierro.

TERRY ANDREWS, SR., being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your full name?

A. Terry Andrews, Sr.

Q. Where do you live?

A. Linden, R.D. #1.

Q. Where do you work?

A. Stroeckmann Brothers Roll Plant on Lycoming Creek Road.

Q. What is your position?

Terry Andrews.

A. Production Supervisor.

Q. What shift?

A. Second shift.

Q. What is that, four to about twelve?

A. Four to twelve, five to one, it varies an hour or so.

Q. Was that your position and your shift last October 24th?

A. Yes.

Q. Look at Kim Hubbard, do you recognize him?

A. Yes, I recall Kim.

Q. Do you know if he ever went to work on your shift?

A. Yes, he started on my shift.

Q. Do you remember when?

A. I remember the night he started, the day, I don't recall the night, but he started.

Q. Well, somebody else testified about the date, you remember the night he started?

A. Right.

Q. Now, Mr. Andrews, whenever a man comes to work on your shift, what do you do concerning equipment?

By Mr. Ertel:

Objection.

By The Court:

Yes, limit it to this Defendant.

Terry Andrews.

By Mr. Fierro:

Q. Well, do you recall this man coming to work?

A. Yes, I do.

Q. Do you remember if you gave him anything?

A. Yes, I recall giving him a uniform.

Q. Do you know what the Company policy is and what your duties are with reference to issuing equipment?

A. Well, the day they start they get it.

Q. You say "they get it", do you mean equipment?

A. Yes.

Q. Cross examination.

By The Court:

Mr. Ertel?

CROSS EXAMINATION

By Mr. Ertel:

No, I have no questions.

(Excused from witness stand.).

By Mr. Fierro:

May he be excused?

By Mr. Ertel:

As far as I am concerned.

RICKY KOCH, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Ricky Koch.

Terry Andrews.

By Mr. Fierro:

Q. Well, do you recall this man coming to work?

A. Yes, I do.

Q. Do you remember if you gave him anything?

A. Yes, I recall giving him a uniform.

Q. Do you know what the Company policy is and what your duties are with reference to issuing equipment?

A. Well, the day they start they get it.

Q. You say "they get it", do you mean equipment?

A. Yes.

Q. Cross examination.

By The Court:

Mr. Ertel?

CROSS EXAMINATION

By Mr. Ertel:

No, I have no questions.

(Excused from witness stand.).

By Mr. Fierro:

May he be excused?

By Mr. Ertel:

As far as I am concerned.

RICKY KOCH, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Ricky Koch.

Ricky Koch.

Q. How old are you?

A. 17.

Q. Where do you live?

A. 721 Howard Street, South Williamsport.

Q. Do you know Kim Hubbard?

A. Yes.

Q. Last October were you familiar with his automobile?

A. Yes.

Q. What kind of car did he have?

A. Green Oldsmobile.

Q. Was there anything unusual about it?

A. Yes, it had a smashed in fender.

Q. Do you know which fender?

A. The driver's side.

Q. Coming to October 19th, Rick, on that day were you ever on West Central Avenue?

A. Yes.

Q. When, do you know?

A. About five after four.

Q. Did you see anybody on West Central Avenue that you knew?

A. Yes, Phil Grimes.

Q. Yesterday I was telling this Jury I called him "Mike", is that the same person?

A. Yes, Mike Grimes.

Q. What was he doing when you saw him?

A. Working underneath his car.

Q. What time do you say this was?

Ricky Koch.

A. Five after four.

Q. Which way were you travelling, like towards Maynard or towards Market?

A. Towards Maynard.

Q. Now, did you stop and talk to Mike?

A. No, because I had to get to work.

Q. Where do you work?

A. Cobbler's, on Reach Road.

Q. What time do you have to be to work?

A. 4:20.

Q. Now, when you saw Mike working on his car, you have already said you were familiar with Kim's car, did you see anyother vehicle parked near or in front of the Hubbard house?

A. Yes, there were two.

Q. Can you tell us whether or not you saw Kim Hubbard's car?

A. Yes, his was the second one.

Q. And are you sure?

A. Positive.

Q. That you saw his car?

A. Yes.

Q. I would like to ask you, Rick, why you say it was five after four?

A. Because I go that way ever day and I leave the house at about 4:00 and by the time I get down there it is in between four and five after.

Q. I am going to show you marked for identification

Ricky Koch.

as Commonwealth's Exhibit No. 115, as you can see it is a hard type, plastic helmet?

A. Yes.

Q. With reference to this Exhibit, did you ever see this before in your life?

A. No.

Q. Did you ever see any type of hard hat type helmet in Kim Hubbard's car at any time?

A. No.

Q. Are you sure?

A. Positive.

Q. Cross examination.

By The Court:

Mr. Ertel?

CROSS EXAMINATION

By Mr. Ertel:

Q. Are you a good friend of Kim Hubbard's?

A. Yes.

Q. How long have you been a friend of his?

A. Since 11th grade, two years.

Q. You run around with him all of the time?

A. Well, most of the time.

Q. You go by his house every day?

A. Yes.

Q. And when were you first subpoenaed to come in here?

A. Monday after school.

Q. Just this last Monday?

A. Yes.

Q. The first time anybody asked you about this incident on this particular day, isn't that true, you recall it all from October 19th, that far back?

A. Yes.

Q. Did you talk to Mike Grimes?

A. Well, I am in school with him.

Q. Did Mike Grimes approach you?

A. No.

Q. Who approached you?

A. As to what?

Q. As to what your testimony would be here today?

A. Well, I just talked to Mr. Fierro.

Q. Did you talk to Mike Grimes also?

A. No.

Q. Mike Grimes didn't talk to you at all?

A. No.

Q. Are you sure of that?

A. Yes.

Q. You never spoke to Mike even though you went to school with him and you knew he was over here?

By Mr. Fierro:

I object, this is the fifth time he asked that questions.

By The Court:

The objection is over ruled, you may proceed. Do you expect to follow it up?



Ricky Koch.

By Mr. Ertel:

I am asking questions.

By Mr. Fierro:

That is five times.

By The Court:

Let's not be so repetitious.

By Mr. Ertel:

Q. When was the car damaged?

A. I don't know, a couple, I am not sure when.

It was awhile before that.

Q. Two weeks?

A. I am not sure.

Q. Three weeks?

A. I don't remember.

Q. Is all you drove by on that day?

A. Yes.

Q. You drive by there every day in the week?

A. Yes.

Q. No further questions.

By Mr. Fierro:

You may step down. May he be excused?

By Mr. Ertel:

Yes, I have no further questions.

By Mr. Fierro:

That means you can go, you don't have to wait around. Thank you.

(Excused from witness stand.).

Howard Kisner.

By Mr. Fierro:

Howard Kisner.

By Mr. Ertel:

May we have an offer?

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

HOWARD W. KISNER, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Howard W. Kisner.

Q. Where do you live?

A. Montoursville, 311 North Montour Street.

Q. Mr. Kisner, do you have a present occupation?

A. Yes, I am a Private Detective.

Q. What did you do before you became a Private  
Detective?

A. Immediately prior I was in the Sheriff's Office  
of Lycoming County.

Q. Before that?

A. County Detective of Lycoming County.

Q. Before that?

A. Pennsylvania State Policeman.

Q. For how long?

A. 27 years.

Q. Mr. Kisner, at my request I asked you to undertake  
a certain journey, didn't I?

Howard Kisner.

A. Yes, Sir.

Q. When did you do this journey?

A. This morning.

Q. Please tell the Jury, without any further questioning on my part where you started from and go through your entire journey and give us the mileage and time and what you did?

A. Well...

Q. Where you started from to your return and place of return?

A. This morning at fourteen minutes after eight, A.M., I left in front of Mrs. Nevel's house, proceeded south to Sixth Avenue, crossed Market Street, I got the greenlight, went to Hastings, turned left, Central Avenue, turned right to Main Street, turned left on Main, proceeded to Second Avenue, turned right at Second Avenue, went down where Second Avenue goes straight ahead and you turn left and cross the railroad tracks to Sylvan Dell Road, proceeded down the Sylvan Dell Road to the scene, drove in the lane, parked, waited six minutes, back out onto the highway, came back, up Second Avenue, continued on Second Avenue to Curtin Street, turned left on Curtin, proceeded on a jog across West Central Avenue and continued on Curtin to West Central Avenue, turned right to the Hubbard home and stopped.

Q. Mr. Kisner, what elapsed time did that take?

A. 21 minutes.

Q. At what speed were you driving?

A. 35 miles an hour with the exception of coming back on West Central Avenue there was a couple of cars ahead of

Howard Kisner.

me for a half block and I was about 30 miles an hour.

Q. This, you say, took 21 minutes?

A. Yes, Sir.

Q. Did you time it precisely?

A. Yes, Sir.

Q. Cross examination.

CROSS EXAMINATION

By Mr. Ertel:

Q. Mr. Kisner, you drove at a conservative speed, you didn't break any speed limits?

A. No. 35 as near as I could stay.

Q. You slowed down through town, didn't you?

A. At the stop signs and lights, yes, Sir.

Q. In town you didn't go 35 miles an hour, you couldn't?

A. No, coming up Curtin, from Second Avenue up to Curtin and from Curtin up I had to stop at the stop signs and so forth and then I didn't get to 35, there was some traffic at 30 miles an hour.

Q. Are you familiar with Kim Hubbard's driving habits?

A. No, Sir.

Q. Incidentally, you stayed down there six minutes, is that right?

A. Yes.

Q. How long did it take you to get down there, did you measure the time down?

A. No, I didn't, I took the overall time.

Howard Kisner.

Q. You never took times down and back?

A. No, Sir, I took the overall time.

Q. You didn't measure the distance, I take it?

A. Yes, seven and six-tenth miles round trip.

Q. No, I mean the distance down?

A. No, I took the overall miles.

Q. Incidentally, you are familiar with the South Williamsport area?

A. Quite familiar.

Q. As you go from Mrs. Nevel's you go towards the mountain, right?

A. Yes, Sir.

Q. That gets into a wild area?

A. No, I only went as far as Sixth Avenue.

Q. If you went straight up?

A. Yes, you would go right up to the foot of the mountain.

Q. It is a wooded area?

A. Yes.

Q. Are you familiar with the old quarry there?

A. No, I never was up there.

Q. You don't know where the old quarry is?

A. No, I never was up there.

Q. You were not supposed, not asked to go to the old quarry at all?

A. No, Sir.

Q. Well, are you familiar with where Mountain Beach use to be?

Howard Kisner.

A. Yes.

Q. You are familiar with that, the road up behind Mountain Beach?

A. Yes, I was not up it for awhile.

Q. You would be surprised if I told you it was two minutes from the old quarry from Mrs. Nevel's house?

A. I would not know, I would not have any idea.

Q. Well, if you stayed there six minutes, it is a little shorter from Mrs. Nevel's house down than it is back to the Hubbard house?

A. Yes.

Q. So it would take you what, about six minutes from Mrs. Nevel's house down, that would give you about nine minutes to get back to the Hubbard house?

A. Somewhere around there, I am not sure, I just took the overall time.

Q. But that allowed six minutes down there?

A. Yes, Sir, I stayed down six minutes.

Q. Thank you.

By Mr. Fierro:

Is that all, may he be excused?

By Mr. Ertel:

Yes.

(Excused from witness stand.)

William E. Henry.

WILLIAM E. HENRY, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. State your name?

A. William E. Henry.

Q. Where do you live?

A. 626 Howard Street, South Williamsport.

Q. Mr. Henry, October 20th last year in the afternoon,  
where were you, what were you doing?

A. I was at the Citizens' Fire Company, South  
Williamsport, aiding in the search for Jennifer Hill.

Q. On that afternoon did you see Kim Hubbard?

A. Yes, I did.

Q. Did you talk to him?

A. Yes, I did.

Q. How close were you to him?

A. About from myself to this Gentleman away.

Q. You mean the Court Reporter?

A. Yes.

Q. Were you able to see his hands and face?

A. Yes, I was.

Q. Did you notice any marks on his hands and face?

A. No, I did not.

Q. In talking to him and in observing him, were you  
able to observe his behaviour, his conduct?

A. Yes.

Q. How did he behave?

William E. Henry.

A. Normal.

Q. Cross examination.

CROSS EXAMINATION

By Mr. Ertel:

Q. Did you know Kim Hubbard from before?

A. Yes.

Q. Did you know his behaviour from before?

A. Yes.

Q. Do you know his driving habits?

A. No, No, I can't say that I know them very well except for with the ambulance service, the American Legion.

Q. Is he a fast driver?

A. He was not with the ambulance.

Q. You don't know anything else about him?

A. No, I don't.

Q. Did you find anything when you were searching?

A. No.

Q. Were you at the scene at all?

A. No, I was not at the scene.

Q. No further questions.

By Mr. Fierro:

May he be excused?

By Mr. Ertel:

Yes.

(Excused from witness stand.).



Jeffrey Cole.

JEFFREY COLE, being duly sworn according to law,  
testified as follows:

DIRECT EXAMINATION

By Mr. Pierro:

Q. What is your name?

A. Jeffrey Cole.

Q. Where do you live?

A. 428 Charlotte Avenue, South Williamsport.

Q. Mr. Cole, last October 20th was Saturday afternoon,  
can you tell us where you were and what you were doing?

A. I was at the Citizens' Fire Company No. 2, and I  
was part of a search party hunting for Jennifer Hill, and before  
I was sent out on the search I was in the office of the Citizens'  
Fire Company.

Q. Did you see Kim Hubbard that afternoon?

A. Yes.

Q. Did you talk to him?

A. No.

Q. Did you observe him?

A. Yes.

Q. How close were you to him?

A. Maybe six foot.

Q. Were you clearly able to observe his behaviour,  
his demeanor?

A. Yes.

Q. Could you clearly see his hands and face?

A. Yes.

Q. Were there any markings on his hands and face?

Jeffrey Cole.

A. No.

Q. Since you say you observed his demeanor, what did you notice about his demeanor?

A. He was very calm. He didn't seem like anything was wrong.

Q. Cross examination.

By The Court:

Mr. Ertel?

CROSS EXAMINATION

By Mr. Ertel:

Q. Mr. Cole, you said you lived where?

A. 428 Charlotte Avenue.

Q. Is that up close to Mountain Avenue?

A. Yes.

Q. If you continue on up Howard Street, where do you

A. You go up to Mountain Avenue, you turn right, go on up Mountain to Clark, it is the next one up from Clark.

Q. So you live pretty close to the Defendant?

A. Maybe three or four blocks.

Q. Did you ever see him driving his vehicle?

A. I seen him drive it once, a white one, but I don't know if it was his personal car or not.

Q. Do you know his driving habits?

A. No.

Q. Incidentally, do you know where the old quarry is out the road?

Jeffrey Cole. \_ Harold Wilson.

A. Yes.

Q. How far would that be from, about two minutes from Mrs. Nevel's house on Howard Street?

A. About that.

Q. In fact, you can get right in the woods very close from Howard Street, can you not?

A. Yes.

Q. Thank you, no further questions.

By Mr. Fierro:

Step down. May he be excused?

By Mr. Ertel:

Yes.

(Excused from witness stand.).

HAROLD WILSON, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Harold Wilson.

Q. Where do you live, Harold?

A. 1801 Riverside Drive.

Q. Harold, last October 20th was a Saturday, during that afternoon do you know where you were and what you were doing?

A. Yes, earlier in the evening I had just came in off of the road from driving truck and I was visiting a friend of mine, and he was out, he is on fire call, and he was asked to come to

Jeffrey Cole. \_ Harold Wilson.

A. Yes.

Q. How far would that be from, about two minutes from Mrs. Nevel's house on Howard Street?

A. About that.

Q. In fact, you can get right in the woods very close from Howard Street, can you not?

A. Yes.

Q. Thank you, no further questions.

By Mr. Fierro:

Step down. May he be excused?

By Mr. Ertel:

Yes.

(Excused from witness stand.).

HAROLD WILSON, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. Harold Wilson.

Q. Where do you live, Harold?

A. 1801 Riverside Drive.

Q. Harold, last October 20th was a Saturday, during that afternoon do you know where you were and what you were doing?

A. Yes, earlier in the evening I had just came in off of the road from driving truck and I was visiting a friend of mine, and he was out, he is on fire call, and he was asked to come to

Harold Wilson.

help go on a search party, so I took his call and went in his place.

Q. Where were you that Saturday afternoon?

A. I went down to the Independent Fire Hall, I think that is the name of it. I don't know the names of the three, because I am new in this part of the country, but I went to the Fire Hall, I was told to go to, to be organized into a search party to search for a missing girl.

Q. While you were at this fire hall, whichever one it may have been, did you see Kim Hubbard?

A. Yes, he came in and was introduced to me by his Father.

Q. Did you exchange greetings with him or have any conversation with him?

A. Just to speak to him and say "Glad to meet you.", and he had his girl with him at the time.

Q. How close were you to Kim?

A. Oh, I would say the closest was four feet.

Q. Did you have an opportunity to observe his hands and face?

A. Yes, Sir, I did.

Q. Did you see any marks on his hands or face?

A. No, Sir, I did not.

Q. Did he speak to you when you were introduced to each other?

A. Yes, he said, I don't remember the exact first words he said, but he either said, "Howdy" or "Hello" and he said, "I am

Harold Wilson.

glad to meet you."

Q. Did you observe his behaviour, his demeanor?

A. Yes, I would say in my own opinion I hope my boy when he grows up to be this age is as nice as he is.

By Mr. Ertel :

Objection.

By The Court:

Sustained.

By Mr. Pierro:

Q. How did he behave?

A. Very calm and very respectable, a very decent boy.

Q. Cross examination.

By The Court:

Mr. Ertel?

CROSS EXAMINATION

By Mr. Ertel:

Q. Did you know Kim Hubbard before this time?

A. No.

Q. Did you know him since?

A. I seen him a couple of times to sit down and talk with him, no, sir.

Q. You saw him to sit down and talk with him?

A. I have saw him, but not to sit down and talk with him.

Q. Have you seen him drive his vehicle?

A. No.

Q. Never saw his driving habits?

A. No, Sir.

Q. That is all.

By Mr. Fierro:

That is all.

(Excused from witness stand.).

By Mr. Fierro:

I will go out and see if this man is here.

By The Court:

The Defendant is excused. Now, we will start at 10:00 regardless of whether he is here or not, is that agreeable?

By Mr. Fierro:

Yes.

By The Court:

The Defendant is excused and the Jury is excused. We will recess for 20 minutes.

(Recessed at 9:40 A.M. and reconvened at 10:10 A.M.).

By The Court:

Mr. Fierro?

By Mr. Fierro:

I call Kim Lee Hubbard.

KIM LEE HUBBARD, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. My name is Kim Lee Hubbard.

Q. How old are you, Kim?

A. 20 years of age, Sir.

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Q. That is all.

By Mr. Fierro:

That is all.

(Excused from witness stand.).

By Mr. Fierro:

I will go out and see if this man is here.

By The Court:

The Defendant is excused. Now, we will start at 10:00 regardless of whether he is here or not, is that agreeable?

By Mr. Fierro:

Yes.

By The Court:

The Defendant is excused and the Jury is excused. We will recess for 20 minutes.

(Recessed at 9:40 A.M. and reconvened at 10:10 A.M.).

By The Court:

Mr. Fierro?

By Mr. Fierro:

I call Kim Lee Hubbard.

KIM LEE HUBBARD, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Fierro:

Q. What is your name?

A. My name is Kim Lee Hubbard.

Q. How old are you, Kim?

A. 20 years of age, Sir.

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Kim Lee Hubbard.

Q. When is your next birthday?

A. April 28th, Sir.

Q. You will be 21 then?

A. Yes, Sir.

Q. How long have you known Colleen Whitenight?

A. I don't know exactly, but for a long time, Sir.

Q. What are your Parents' name and where do they live?

A. My Parents are Dorisann Hubbard and Joseph R. Hubbard,  
and Ruth Marie Hubbard, 1030 West Centfal Avenue, South Williamsport.

Q. Is that where you live?

A. Yes.

Q. On October 19th of last year, what kind of car  
did you own?

A. I owned an Oldsmobile Cutlass, Sir, '67 Oldsmobile  
Cutlass.

Q. Was there anything wrong with it that you could see?

A. Yes, there was extensive damage to the front of the  
car, Sir.

Q. What part of the front, left or right?

A. It was the left front, Sir.

Q. Left front?

A. Yes, Sir.

Q. Do you know who caused that damage?

A. Yes, Sir.

Q. Who?

A. My girlfriend, Sir.

Q. Is that Colleen?

Kim Lee Hubbard.

A. Yes.

Q. Do you know when that damage was caused, approximately, if you don't know exactly?

A. Three to four weeks before Jennifer Hill was reported missing.

Q. Do you remember when you went to work for Stroehmann's?

A. I do, Sir.

Q. When was that?

A. October 24th.

Q. What time did you report?

A. I reported at 4:00, but was not put to work until 4:30, Sir.

Q. What did you do between 4:00 and 4:30?

A. I sat and watched everybody.

Q. Was anything given to you?

A. At that time, no, Sir.

Q. Well, what time?

A. Well, it was about quarter of five, Sir, when the man that testified last, took me back and gave me a pair of pants, shirt and an extra helmet he had.

Q. Before October 24th, at any time during that month, October or even before that, did you have any hard hat type helmet at home?

A. No, Sir, I did not.

Q. This Exhibit No. 115, Kim, take a look at it and if you wish you may remove it from the bag, because I would like to have you testify as to whether this was your helmet or not?

A. Yes, Sir, it was until it, it got dough on it from the Plant.

Q. Where do you see dough on it from the Plant?

A. Right there, that sticky.....

Q. That is on the front part?

A. Yes.

Q. Is this the helmet that was issued to you?

A. Yes.

Q. On what day?

A. October 25th.

Q. There were certain Policemen who testified that they asked you certain questions about the driving of your car, and I don't know who the Policeman was, and I think these questions took place at Borough Hall, would you relate to us whatever questions were asked of you concerning the driving of your car at Borough Hall? I think that would have been October 31st, if I am not mistaken?

A. Yes, Sir. These questions cannot be remembered exact.

Q. What did they ask you about driving of your car?

A. They asked me, as everybody heard here, "Did you ever let anyone drive your car?", or some effect to that, that was not the question I was asked in Borough Hall. I don't remember the other two, but they did not sound like it either, Sir.

Q. Well, what questions do you remember were asked you at the Borough Hall? First, about the car, if anything?

A. Sir, I was asked so many questions about my car that

Kim Lee Hubbard.

I can't recollect unless they are read to me, too many of them.

Q. Were you asked about the damage to your car?

A. I was, Sir.

Q. Were you asked if anybody else drove it?

A. I was, Sir.

Q. How did you answer that one?

A. Well, it wasn't asked, I don't know how, you see they asked "Did anybody ever.", well, yes, people drove my car, but on October 19th, Sir, I, Kim Hubbard, drove my own car.

Q. Somebody made a statement, a Police Officer that when you, when he asked you a question about going to this particular cornfield that you got up and walked out, was that correct?

A. That, Sir, is an incorrect statement.

Q. What happened? In what context did it happen?

A. Sir, I had been questioned extensively the whole day, Sir, for most of the time there, and badgering, and I just, I just says, "It is not true." got up, and I just said that I didn't want to hear any more of it and left.

Q. This was where?

A. This was at the Borough Hall and the State Police Barracks in Montoursville, I don't know which one it was, but I told them in both places.

Q. How long were you questioned at the State Police Barracks?

A. Precisely four and one-half hours, Sir.

Q. Were you given any food and drink during that time?

A. No, nor offered any. Drink, yes, I asked for some.

Kim Lee Hubbard.

Q. What did you get?

A. A glass of water.

Q. How many Officers questioned you?

A. That cannot be answered in number, I think I met half the State Police in Montoursville.

Q. Was the District Attorney also one of the persons who questioned you?

A. Yes, Sir, quite a few times.

Q. On how many separate occasions, that is days, on how many separate days were you questioned?

A. My recollection, Sir, I cannot remember, I mean there was a few.

Q. Did you have a Lawyer present at any time that you were questioned?

A. Well, as you know, I did get Mr. Bonner, but not at first, Sir, this is when they bodily came out and accused me, then I decided, "I think it is time to get a Lawyer."

Q. Well, before you got a Lawyer, how many times were you questioned?

A. As I said before, I cannot give a correct statement on that.

Q. Well, the Police testified they read you your rights and you signed a statement to that affect, and that is true, isn't it?

A. Yes.

Q. Did you voluntarily submit to questioning?

A. I did, Sir.

Q. You were asked to turn over, and the Police

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testified that you turned over certain personal property, correct?

A. Correct, Sir.

Q. What did you turn over?

A. Well, Sir, they come to my house one evening, I was called home from school, I then come home, straight home, parked my car on the other side of the street, walked in the house, I don't know if it was Mr. Ertel, I get him mixed up with some State Policeman, and Lieutenant Hynick, and I don't remember the other guy, but I was told to wait my turn, so to speak. When I come back in they said, "Sit down.", there is three of them, they questioned me for roughly a half hour to 45 minutes, somewhere in that locale, and, Sir, as it was stated in the newspapers.....

Q. Just tell us what happened?

A. I was specifically asked if I owned a pair of boots, specifically asked, I replied, "Yes, I own a pair of boots.". They were laying right inside of the door.

Q. What happened about the boots?

A. I give the boots to them and I even drove Lieutenant Hynick, drove him in my car down to Borough Hall.

Q. Did you leave your car there?

A. Yes, I did, Sir.

Q. What was the condition of the interior of your car,

Kim?

A. Gross.

Q. What?

A. Gross.

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Q. It, what does that mean?

A. It was bad off, I mean everything in my car imaginable, it has not been cleaned, I give an estimate to them, I don't know whether they took it down or not, but for roughly three weeks to a month.

Q. That you had not cleaned the inside of it?

A. That is correct, Sir.

Q. Well, now that helmet that I showed you that you admit belongs to you, was that in your car on October 31st?

A. That is a correct statement, Sir.

Q. Where was it?

A. It was on the floor, Lieutenant Hynick stepped on it as he was getting in the car.

Q. He stepped on it?

A. That is correct, Sir.

Q. From looking at it, it is not damaged?

A. He bumped it, he didn't squash it, he bumped it as he was getting in.

Q. Where was it when he stepped on it?

A. My right passenger side, where you put your feet, Sir, along with a bunch of other stuff.

Q. When you say "bunch of other stuff", give the jury an idea of what stuff you had in your car?

A. Clothes, dirt, I had a sheath of a bayonet in there. I had all sorts of things, I can't sit here even too long for me to....

Q. All right, were your fingerprints taken at any time?

A. Yes, they were, I believe on two separate occasions,

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I believe, I can't quote me on that. They were taken quite well.

Q. Did anybody scrape your fingernails?

A. At no time, Sir.

Q. Did anybody look at your hands?

A. At no time, Sir.

Q. Of course, you knew Jennifer Hill?

A. Of course I did know Jennifer Hill.

Q. How did you know here, how did you come to know her?

A. She was one of my sister's friends.

Q. That is how you know her?

A. That is how I knew her.

Q. About how long had you been keeping company with Colleen, either off or on or steady?

By Mr. Ertel:

I object now, they are leading at this point.

By The Court:

You may answer.

A. Like I told you, I cannot exactly estimate, but before I went in the service, Sir, I dated Colleen Whitenight and when I came back out of the service I resumed to date Colleen Whitenight.

By Mr. Fierro:

Q. By the way, you are a single man?

A. Yes.

Q. Were you ever married?

A. No, Sir.

Q. Can you tell us whether you had a date with Colleen pre-arranged for October 19th?



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A. You mean plans, made plans the same, the same day, Sir?

Q. Yes?

A. That is correct.

Q. What time was your date to be for?

A. With her there is no exact date, I mean exact time, but it was in the vicinity of 7:00, but later changed again.

Q. Well, let's go to October 19th, Kim, let's start from the time you got up and tell us what time you think it was when you got out of bed?

A. As I told the State Police.....

Q. No, you tell us now, not what you told the State Police?

A. What you are asking for is my daily events?

Q. That day, start from when you got up, what time do you think it was?

A. I got up somewhere in the neighborhood, I looked at no clock, but it was somewhere in the neighborhood between 12:30 and 1:00, Sir.

Q. Now, when you got up, what did you do?

A. Well, the reason for getting up, my Mother got me up to go down to the store and get her some cigarettes.

Q. What did you do?

A. Went down to the store, got two packs of cigarettes for her and one pack for me.

Q. What store?

A. Super-Duper in South Williamsport, Penna.

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Q. How far is that from where you live, approximately?

A. Three to four blocks, Sir.

Q. Did you walk or drive?

A. I drove.

Q. When you got to Super-Duper, from there where did you go?

A. I then returned home.

Q. What did you do when you got home?

A. Well, I got home, my Mother had quite some list of chores, things for me to do, and she asked me if in the course of the day if I would help her shine and buff her floors, and I agreed. Then she said, "Well, you might as well go and get the buffer then.", so I went down to Rental-All....

Q. When you say that you went down, how did you go down?

A. I went over.

Q. Well.....

A. I drove.

Q. Whose car?

A. My own, Sir.

Q. This Rentall, where is that?

A. It is in Williamsport, Sir. I know where it is, I can't explain where. I have the receipt.

Q. Well, there is one here too, you say you went to Rent-All?

A. Yes.

Q. What did you get?

A. One buffer, two of those little pads you put on the

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bottom and one thing to shine, if I am not correct.

Q. From this Rent-All, as you call it, where did you go?

A. I then returned home, Sir.

Q. What did you do when you got home?

A. When I got home, I can't be quoted on this, but I am pretty sure my Mother give me a check, because I don't think she gave me raw cash, she gave me a Government check, I then drove my car to the Super-Duper to cash this Government check, and paid bills.

Q. Where did you go from Super-Duper?

A. Over to Strouse's and paid \$101.00 on my car insurance.

Q. From Strouse's, where did you go?

A. I came back over to South Williamsport to the Hum-Dinger in South Side.

Q. What did you do at the Hum-Dinger?

A. I had another debt to pay off and the only reason I was stopping, I knew the person was there, I paid him \$5.00.

Q. Who is that person?

A. Bruce Shaffer.

Q. Did you do anything else at the Hum-Dinger while you were there?

A. I talked to a couple of people.

Q. Well, from the Hum-Dinger, where did you go?

A. I went down to Poole's, I believe it is Sunoco, or something like that. to complain about four Kelly-Springfield

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tires, which were only at the time I believe seven months old and look like that now, and I went down and I was sort of, in a sense, complaining.

Q. Now, from Poole's where did you go?

A. Well, Sir, I just finished my conversation or in the, how do you say it, I was almost done when I seen one of my friends come around the corner, Tom Wilt, and he has a passenger in his car, I saw these people, but by the time I got in my car, started it and pursued Tom Wilt, he already had three to four, possibly five minutes lead on me, so I searched for Tom Wilt.

Q. Where did you go in looking for Tom?

A. I went everywhere.

Q. Particularly?

A. I went up past his house, Sir, checked around the Hum-Dinger, South Side, I then drove down the Sylvan Dell to the Old Look-Out, I believe it is 15, where we hang out a lot, I then come back down, seeing he was not there, come back down the same way hoping I would catch him going up and went home.

Q. Now, when you went home, what did you do?

A. If I remember correctly, Sir, I went home, I went in the house and the floors were not ready to do yet, buff that is, and I then said to my Mother "Well, if the floors are not ready, I will be down back.". I then took my car down back and commenced to do a little work on it.

Q. How long did you work on your car?

A. Roughly a half hour to 45 minutes, which was stated to the State Police.

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Q. Just tell us what you are going to testify to today. After you got through working on your car, what did you next do?

A. I walked back up and said to my Mom that I was going to be gone for awhile. I took my car and went to the 5th Avenue Car Wash, using seventy-five cents, I washed my car.

Q. After you got through washing your car, where did you go?

A. Back over to the Hum-Dinger, South Side.

Q. What did you do in there?

A. Just bought a coke, I was thirsty by that time.

Q. From the Hum-Dinger, where did you go?

A. To Mr. Blackburn's Office and paid a \$10.00 traffic fine.

Q. From Blackburn's office, where did you go?

A. I went to a Mike and Bill Barr's in South Side.

Q. When you went to Mike and Bill Barr's, who did you see there?

A. Well, I didn't see, my main object was going to see Bill, but I saw Mike and Ricky DeVito working on a car, they were doing some kind of stuff in the back, and I asked if Bill was home and he said, "Yes, he is in the house.", I went up and knocked on the door and had a conversation with Bill concerning a tape which he lent me which somebody stole.

Q. By "tape"....

A. I had some explaining to do, in other words.

Q. By "tape", you mean what?

A. A tape, an 8-track tape you slip into your car.

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Q. A music cartridge of some sort?

A. Yes.

Q. Were you in Billy's house?

A. Sir, I can't remember whether I went in the house or stood on the porch and talked.

Q. Now, do you know, or did you learn what time it was while you were at Billy Barr's?

A. Well, Sir, in my, whatever you call it, I got there around between twenty of and quarter of, and I know exactly, Sir, the precise time I left the Barr residence.

Q. How do you know the precise time?

A. Bill and me were standing there and was getting sick of me talking about somebody "ripping off" his tape, so he went in the house, he went in the house for some reason or other, and he came back out and he said, "Kim, I have to "split" now.", and I said, "Where are you going?", and he said, "Work. I have two minutes to get there.". That is when I left.

Q. When you left, where did you go?

A. I went home, Sir.

Q. What did you do with your car when you went home?

A. Parked it.

Q. Facing what direction?

A. As I am setting, up this way.

Q. Towards Maynard or Market?

A. Market Street, whatever is up that way.

Q. Which way was your car headed when you parked it,

Kim?

A. Towards....

Q. Towards Maynard or Market?

A. Towards Maynard Street.

Q. On which side of the street?

A. My own side, Sir, this side of the street.

On my side.

Q. Your side?

A. Yes.

Q. Who did you see, if anybody, was there anybody outthere when you parked your car?

A. I really can't remember, Sir. I was not looking for anybody.

Q. When you parked your car, where did you go?

A. I got out of my car and walked into the house.

A. What did you do while you were there?

A. I had went in and I had not had anything to eat prior to this, this day, I had walked into the house and my Mom, she was hard at work, she was doing the floors down on her hands and knees, and all that kind of stuff, and I says, "Is there anything that I can get or you can make me without making a mess?", and she said, "No, not without cooking, would you like me to cook you something?", and I said, "No, if there is no cold meat or anything I would go down to the Hum-Dinger and buy me a Cosmo and coke.", which would be sufficient for the rest of the day.

Q. Where did you go?

A. I walked out the back door and walked to the Hum-Dinger, which is about two and a half blocks away.

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Q. When you got to the Hum-Dinger, did you see anybody that you knew?

A. I did see one person, a brief exchange of "Hiya" I don't remember exactly what I said to him, walked in the Hum-Dinger, made an order of one-half of Cosmo and one coke, and made precisely two phone calls.

Q. Who did you make those calls to?

A. A friend, Mike Murray in Montoursville.

Q. This boy that you said that you said there and said, "Hello", do you know his name?

A. Meaning what, Sir, you mean do I know who I was talking to?

Q. Yes, and it was not Mike Murray the first time, it was his Father.

Q. No, the person you saw in the Hum-Dinger?

A. You are talking about Bob Fries.

Q. Did you see Bob Fries?

A. Yes, I talked to him.

Q. Now, who left the Hum-Dinger first, you or Bob Fries?

A. I don't recall, I just left.

Q. About how long do you think you were at the Hum-Dinger?

A. In the neighborhood of 15 - 20 - 25, I don't know.

Q. Where did you go from the Hum-Dinger?

A. I walked back home, Sir.

Q. When you got home, who was there?

A. My best recollection, my Mother waiting for me.



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Q. What did you do when you got home?

A. Well, Sir, like I promised I was going to buff the floor, so I started getting everything hooked up and had just cranked it over when I was interrupted, Sir.

Q. By what?

A. A phone call, Sir.

Q. Do you know who the phone call was from?

A. I do now, but I didn't then.

Q. After you got through with that phone call, what did you do?

A. Commenced buffing again.

Q. How long do you think, did that....

A. Well, I just my sister had just got done talking and I justed picked up the buffer when I got another phone call.

Q. Do you know who called you?

A. Yes, Sir, I do.

Q. What, after you got through with that telephone conversation, what did you do?

A. Picked the buffer up again and started to buff again when I received another phone call, Sir.

Q. Do you know who that call was from?

A. It was just somebody for my Father. My Father was not home, so I hung up.

Q. What did you do after that telephone call?

A. Well, before the next phone call I got a chance to start buffing a little bit, and I got pretty well into it when I received another phone call, Sir.

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Q. Do you know who made that call?

A. I do, Sir.

Q. Who, Sir?

A. Jack Hill.

Q. What was that conversation about?

A. Mr. Hill had called, the phone rang, I picked it up and Mr. Hill said, I can quote the words if you wish?

Q. Go ahead?

A. "Hello, Kim, did Jennifer leave yet?", and I says, "Mom, did Jennifer leave yet?", and she said, "Well, Kim, she left over an hour ago.", and then she then walked to the phone and took the phone and had the conversation with Jack Hill.

Q. Did your Mother in conversing with Jack Hill over the phone, mention any time?

By Mr. Ertel:

Well, I object to the leading at this point.

By The Court:

Refrain from leading your witness.

By Mr. Fierro:

Q. I said did she mention any time, I didn't suggest a time.

By The Court:

You may answer, but refrain from leading the witness.

A. Well, you see, when she said she left over "an hour ago", I glanced at the clock, it was exactly quarter of five, exactly. When I handed the phone to my Mother, I then resumed buffing.

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Q. How long do you think you buffed then, that is while or after your Mother got through talking with Jack?

A. Roughly ten minutes, Sir.

Q. What happened after that ten minutes?

A. Well, she had asked me to ride down Central Avenue and see if I could see Jennifer, if she stopped off to play with some of her friends or "shooting" with somebody, or something like that.

Q. Well, what did you do?

A. I did precisely, I went down, I drove down Central Avenue, checked the Catholic Parking Lot where the kids usually play at, there was nobody there, you could see it plainly from both sides, I then drove further down the street looking at both sides down to the Humpty-Dumpty in South Side, I got down to the Humpty-Dumpty in South Side and I didn't see her thus far, I figured, "Well, if she got that far she was already home.", and I backed up, and as people from South Side know, there is an alley there, I turned around in the alley and went back up Central Avenue until, I don't, I think it might have been Bayard Street, or some street like that, and I then turned the corner and went down to the Hum-Dinger, and circled the Hum-Dinger and she was not there, and went back home.

Q. When you got back home, did you see anybody outside that you knew?

A. Well, Sir, I parked the car out front, there was a little girl out there, and I walked in the house and my Mother and

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in the kitchen, I can't be precise on that, I know my Mother was, I don't know where my sister was at this time that I can say for absolutely 100%.

Q. At any time that day did you see Mike Grimes?

A. Yes, Sir.

Q. About when or how often?

A. Right before I went to, which I got, which I forgot to mention, right before I went to search for Jennifer Hill, I got out to the street, and there was traffic on the street, I stopped and before I got in my car he said, "Hiya, Kim, where are you going?", and I don't know if he wanted me to help him work on his car or not, but he asked me where I was going, briefly told him and left.

Q. When you came back from looking for Jennifer, did you see anybody outside?

A. To my recollection, no, Sir.

Q. When you got in the house, you say you know you saw your Mother, but you were not sure about your sister, so what did you do when you got back into the house?

A. I resumed buffing, Sir, I worked for a little while and then made another phone call.

Q. Who did you make the call to?

A. Colleen Whitenight.

Q. Do you have any idea what time that was?

A. Yes, Sir, it was 6:00 when I called Colleen Whitenight.

Q. How do you know it was 6:00?

A. Well, whenever I make plans with Colleen I always have

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to give her a half hour overtime so she can make, and I knew exactly what time it was, I am always time conscious when I am talking to Colleen Whitenight.

Q. You say you spoke to her at 6:00 by phone?

A. Yes, Sir.

Q. After you spoke to her by phone, what did you do?

A. Well, I started buffing, Sir, and it gets a little faint so to speak, because I was buffing, and during this time my Mother and my Sister, I didn't know exactly where they were, because I was standing there buffing and stuff, and when I walked out front they were down on the corner of, I think it is Clinton and Central Avenue, Sir, with a Mr. and Mrs. Jack Hill.

Q. How do you know that Mr. and Mrs. Jack Hill were there?

A. Well, Sir, I had during this time, I had picked my bike out and I motioned, I said, "Hiya Jack.", and Jack Hill did reply "Hiya, Kim", and he walked down the street and my Mother and sister started walking back up.

Q. What were you doing with the bike?

A. Riding in circles in the street, just riding around.

Q. When you got through riding, what did you do?

A. Went back in the house, Sir, parked the bike and went back in the house.

Q. Did you know anything, did you, I mean, do anything while you were in the house?

A. Yes, I did a little more buffing, but it was getting to that time where my date was supposed to have started,

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which she was supposed to come down.

Q. When you got through buffing, what did you do?

A. Well, I never really finished buffing, Sir, around quarter after seven I walked out the front door and walked down around to where Colleen parks her car, and by the time I got to the corner she was already coming around the corner and then we both walked up to my house.

Q. Now, when you and Colleen got to your house, what did both of you do?

A. We both come in and started playing around with the buffer, seeing who could run it the best and stuff.

Q. After you folks got through fooling around with this buffer, what were your next activities?

A. Well, I finished the kitchen up and we went to the living room, we moved all of the furniture and my Mother was putting on some more wax on the floor, and then Colleen and me then went into the front room and were sitting, Sir when Captain Ross of the South Williamsport Police Department knocked on our door.

Q. Go ahead? Did he come in and talk, tell us?

A. This is not the first time that night that he saw me either, he saw me around 6:00 too, Sir, not 6:00, he saw me earlier that day, put it that way. He had come to the door and he described a person which he told us a story about some guy and anyhow it made my family and me really suspicious because of the way that Mr. Ross put it to us, it sounded awful funny, so we were all curious, we all went out and got in my car and drove down to this man's residence. I got out of the

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car and walked up to the house.

Q. Don't give us any conversation.

A. Okey, I am sorry, I walked up to this man's house, and saw what I wanted and walked back to my car and got in my car and went back.

Q. When you got home, what did you and Colleen and your Mother do?

A. We all went in the house, discussed what we saw and Colleen and me left for the evening.

Q. Where did you go?

A. Parking.

Q. Where did you go?

A. We stopped at the Hum-Dinger, and got a couple of cokes, saw a couple of people, I can't remember all of them.

Q. Where did you go from the Hum-Dinger?

A. We went parking.

Q. Where?

A. Sylvan Dell, where we park quite often.

Q. How long were you out parking, give us an idea?

A. I can't say exactly, but I know what time I got home, because we were going home to watch a movie that night.

Q. What time did you get home?

A. We got home precisely 10:00.

Q. Okey, what movie was it you were watching, if you remember, do you remember what it was about?

A. I can't even remember what it was about, it was over four months ago.

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Q. All right, you got home around 10:00, was Colleen with you in the house?

A. Yes.

Q. You started watching television, now how long did you and Colleen stay in the house?

A. Well, Sir, when we first got home she had said, "There is no sense me having my car here, let's take it home?", so I took her in my car, took her down to her car and followed her home. When I got her to her house, she parked her car, and I swung around and started to come down and park above her house, turned off my lights and waited for her to walk out front. Just as I seen her walk out front of her house I drove down the street and that is when the DuBoistown Police Department, I had parked right in front of them without knowing it, and he turned on his lights and pulled down behind me, well then I just kept going there because Mr. Whitenight and the Police Department....

Q. Just tell us, did you bring Colleen back home again?

A. Yes, I brought her back home eventually.

Q. Now, you got back to your house with Colleen, now how long did you and she stay in your house?

A. Well, Sir, we watched the movie that I said we were going to watch and it got to be around 12:30 and she said, "Well, it is getting a little late.", and I agreed, and I took Colleen home.

Q. When you took Colleen home, where did you go from



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there?

A. I went back home, Sir.

Q. When you got home, did you leave anymore that evening?

A. No, and she made sure of it, Sir.

Q. Well....

A. Yes, Sir, I did not leave.

Q. You got some calls from somebody?

A. Yes.

Q. Who?

A. She called me ten minutes after I got home, she called me five minutes after the movie was over and ten minutes after that to make sure I stayed home.

Q. You are talking about Colleen?

A. Yes, Sir.

Q. Have you now described to the best of your ability all of the events concerning you that took place on October 19th?

A. That is a correct statement, Sir.

Q. Did you ever see Jennifer that day?

A. I saw her once, Sir.

Q. Where?

A. When I went to the store for a pack of cigarettes, as the statements were already given that they were incorrect, I did not wave to them, my little sister waved and said "Hi, Kim.", and that is the only reason I even saw the kids playing

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football and then I returned the wave to my sister and went on. Coming back up, I don't even remember seeing them there. That is the only time during that day that I saw Jennifer Hill.

Q. The next day, Saturday, October 20th, did you have any occasion to go to the Hill house?

A. Yes, Sir, we took them food down.

Q. Who is "we"?

A. My Mother, Colleen and I, and I couldn't tell you if my little sister was with me or not.

Q. Did you enter the house?

A. Yes, Sir, we did.

Q. How long were you in that house?

A. It was not very long, Miss Whitenight and I carried food in, set it down, Norma came out and actually she started crying, you know, she started talking to my Mom and I said to Colleen, "Come on, we better leave now." and so we left.

Q. Did you have the occasion to see the Hills anyother time that day?

A. I believe they came up and had coffee and coke that day, Sir. I remember them being at our house, but I don't remember if it was that day exactly.

Q. Are you the same height now that you, as far as you know, last October?

A. Without my shoes, yes, Sir.

Q. How tall are you?

A. I couldn't correctly say, around five feet nine.

Q. Do you know what you weigh?

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A. Yes, Sir, the scales read precisely around between 140 and 145 when I was admitted to the Lycoming County Prison.

Q. That was how long ago?

A. A long time ago, put it that way.

Q. You have been there ever since?

A. Yes, Sir.

Q. Can you tell the Jury what you had on, including footwear on October 19th?

A. Well, I had my sneakers on, I know that for a fact.

Q. Why?

A. Just had my sneakers on and the State Police made a big issue out of it.

Q. Just tell us why you had your sneakers on?

A. Because it was just, if you ever seen my sneakers you could probably slip your foot into the holes, they are just comfortable you could kick them on and kick them off like bedroom slippers. They have a bunch of holes in it and everything, I was dressed normal.

Q. What does that mean?

A. Pair of dirty jeans, or something like that, and old "T" shirt.

Q. When you were buffing, at any time during that day or evening, what did you have on your feet?

A. Sneakers, Sir. There is one thing that comeup, they said that I did not have my boots on the whole day, Sir. In

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the morning when I first got up I do not recollect what I had on, but during that buffing it only stands to reason if you.....

Q. Not "stands to reason", why you know what you had on?

A. I know I didn't have those on while I was buffing at all that day, because it would scuff the floor too bad.

Q. You say "those", you pointed to what?

A. My combat boots.

Q. Kim, did you write certain letters to Colleen while you were in jail?

A. I did, I wrote a lot of them.

Q. Did you cooperate with the Police?

A. I did, 100%, Sir.

Q. Were you fearful of anything during that investigation?

A. No, Sir, I was not fearful of anything.

Q. Why not?

A. It only stands to reason, Sir, if you didn't do something you don't have to be scared of it.

Q. You know what you are charged with, don't you?

A. Yes, Sir, I do, First Degree Murder.

Q. Of Jennifer Hill?

A. Yes, Sir.

Q. You are sure about the only time you saw her that day is as you testified?

A. That is a fact.

Q. And you have sworn to tell the truth....

Kim Lee Hubbard.

By Mr. Ertel:

I object.

By Mr. Fierro:

Q. Have you told this jury, under oath, to the best of your ability your activities of that day?

A. I have.

Q. Cross examination.

By The Court:

Mr. Ertel.

CROSS EXAMINATION

By Mr. Ertel:

Q. Mr. Hubbard, on the date you were first questioned by the State Police in my presence, that was at your home?

A. Correct, Sir.

Q. You were asked to come home from school by your Mother?

A. Yes, Sir, you had her ask though.

Q. And when you arrived home, we were sitting around the kitchen table having a cup of coffee?

A. Incorrect, Sir.

Q. Where were we?

A. You were in the front room, if you remember, Sir.

Q. We asked you to leave while we talked to your Parents so we could get everybody's specific recollection of this day, did we not?

A. That is correct.

Q. You went over to your Grandmother's next door at the

Kim Lee Hubbard.

Grimes' home?

A. That is correct.

Q. You stayed over there for a period of time?

A. Correct, Sir.

Q. And we spoke with your Parents, at least as far as you know?

A. As far as I know.

Q. Then you came back and sat down at the kitchen table while we were drinking coffee?

A. Incorrect, Sir.

Q. You didn't set?

A. Sir, you were not in the kitchen, if you remember you were in the living room, Sir.

Q. We were having a cup of coffee?

A. I don't know what you were drinking.

Q. Your Parents were around the house, were they not, they were in and out of the room?

A. Correct, Sir.

Q. And we asked you for your specific recollection of what you did that day, and when you saw Jennifer Hill, isn't that true?

A. To the best of my knowledge, Sir.

Q. At that time we just asked you, we were trying to find out what happened to Jennifer Hill?

A. That is correct, Sir, in a way.

Q. And at that time....

Kim Lee Hubbard.

By Mr. Fierro:

I want to object, if this witness has anything to answer by way of qualification he should know that he has a right to do so.

By The Court:

That is correct, Sir.

By Mr. Fierro:

Like he said, "...in a way....", if he has any qualifications he may do so.

By The Court:

Q. Do you wish to add things to your answer?

A. Yes, Sir. When you asked me about that day you said, "To the best of your memory, tell us about October 19th?", and I said to you, Lieutenant Hynick was taking notes, you asked me to, in my best, you know, they didn't have to be in order, just tell you where I was that day. To the best of my ability I did.

By Mr. Ertel:

Q. You told us exactly what happened that day, did you not?

A. Not exactly, to the best of my ability.

Q. You told us you got up at 1:00 P.M. on the day Jennie was missing?

A. Incorrect, Sir, that is a wrong statement.

Q. That is incorrect?

A. Yes, Sir, I said between 12:30 and 1:00 to you, Sir, you were asking the questions.

Kim Lee Hubbard.

Q. And you then said you went to the store to get three packs of cigarettes, isn't that correct?

A. That is correct.

Q. Then you went and rented a buffer so you could buff the floors your Mother was going to wax, you thought the name was on the ticket and you thought it was Rent-All, isn't that true?

A. I believe it is correct, Sir.

Q. Then you said you went over to the Hum-Dinger and got a Cosmo, isn't that true?

A. I did do that that day, yes, Sir.

Q. You said "I talked to some of my friends and left about maybe 25 minutes later."?

A. Sir, the only ones that made any times in this while you were talking to me were you three, you estimated the times, not me.

Q. I asked you for how much time you were there, did I not?

A. I don't recollect, Sir, it is over four months ago.

Q. You said your Mother was still working on the floor "...so I went out to work on my car.", did you say that?

A. I might have, Sir, I can't remember exactly four months ago what I said to you.

Q. Then you said, "I worked on the car about an hour and a half.", didn't you?

A. That is incorrect, Sir.

Q. So if the Police Officers testify to that, they are incorrect, is that correct?



Kim Lee Hubbard.

A. That is incorrect 100%.

Q. You said, "I finished this about 3:45, quarter of four, I went back into the house for a few minutes and then went to get my car washed, that was over at the Fifth Avenue Car Wash."?

A. That is incorrect, Sir, you stated the time, Sir, not me. I said, "I own no watch and wear no watch."

Q. Now....

A. It was just a normal day, what did I want to keep time for, I don't look at the watch everywhere I go.

Q. You didn't say you went over at quarter of four to the car wash?

A. I said I went to the car wash.

Q. Did you say you went over about quarter of four?

A. No, Sir, I don't remember, I might have, Sir, in my best of recollection, but I don't remember stating any time.

Q. Then you said it took you about 20 to 25 minutes to wash the car, isn't that correct?

A. That is precise, Sir.

Q. And you got three quarters in the machine, and each quarter was good for five minutes?

A. Whom am I to sit here and tell you how long, that is about what I thought, Sir.

Q. And you said "It took me approximately 10 minutes to drive over to the car wash and back.", isn't that correct?

A. You estimated that time, Sir, I don't know exactly how long it takes me to go from one place to another place.

Q. Where is the Fifth Avenue Car Wash?

A. Over in Williamsport. Sir.

Kim Lee Hubbard.

Q. Then you said you went over to the Hum-Dinger and got a soft drink?

A. That is correct, I did do that.

Q. "While I was there I spoke with a guy by the name of Stetts."?

A. I said I seen Ard Stetts that day, I don't recall saying that I seen him at the Hum-Dinger, Sir.

Q. You said, "We talked for just a minute and I told him I would see him later that night.", isn't that true?

A. It is sometime during that day, I thought I did, Sir.

Q. Then you went back home and a few minutes the phone rang and Jack Hill wanted to know where Jennie was?

A. That is a correct, I believe a correct statement.

Q. And after that the Police did not speak to you anymore, did they, until November 3rd when you came down?

A. Dates, Sir, I do not know.

Q. Well, the next day you voluntarily went to the Barracks, isn't that true? *Captain Smith said we had to clear up*

A. I don't remember in sequence, Sir, but I do remember the day at the Barracks.

Q. Captain Smith took you and your Mother down to the Barracks, isn't that true?

A. That is correct, Sir.

Q. And your Mother accompanied you there?

A. That is correct.

Q. And if you were being pressed there, did you ask to

Kim Lee Hubbard.

see your Mother?

A. I had asked once.

Q. Did they let you see her?

A. They said, "Well, she is sitting right in the next room, it is okay."

Q. And you never got to see your Mother then?

A. No, Sir.

Q. They browbeat you down there?

A. What?

Q. Did they browbeat you?

A. Define what you mean?

Q. Did they pressure you?

A. They badgered me, yes, Sir.

Q. They constantly, is that right?

A. Not constantly, Sir.

Q. Did they tell you that you could leave any time you wanted to go?

A. Yes, Sir, but that would look funny me get up and say "To heck with you people.", and leave.

Q. And you were not forced to stay home when we were talking to you, were you?

A. I didn't know I had a choice at the time. *He didn't say I had a choice.*

Q. Your Parents were in the house, you didn't say anything to them that you were getting browbeaten by anybody?

A. They were not in the same room with me, as you call it brow beating.

*Kim Lee Hubbard. Told them I wanted to stay at his home. Mother said they talked to me then said to stay in the station with them. Talked to them with the same about between me.*

Kim Lee Hubbard.

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Q. Didn't your Mother and Father walk in the room, and didn't I walk out and speak with your Parents?

A. To my recollection, I was in the room with three Police Officers most of the time, they might have walked in and might have walked out.

Q. Were you, you were browbeaten for this half hour?

A. I can't say "browbeaten", I was questioned.

Q. Wasn't it true we asked you, after you gave your statement at the end, if you had a pair of boots?

A. Sir, you specifically asked for a pair of boots.

Q. And isn't it true that you first produced a pair of sneakers?

A. That is incorrect, Sir.

Q. Then you produced a pair of slippers that your Father said, or loafers which were your Father's?

A. Sir, I give you the boots plus every pair of shoes I owned.

Q. Didn't you next produce a pair of loafers?

A. That is incorrect, Sir.

Q. Didn't your Father say, "They are my loafers."?

A. My Father gave them to you.

Q. Didn't you go upstairs and get a pair of boots after your Father said you had a pair of boots?

A. Incorrect, Sir, they were laying right there in the front room in plain view.

Q. After we looked at the boots we said, "May we look at your car?"

Kim Lee Hubbard.

A. That is correct.

Q. We went out and looked at your car and asked to take it to Borough Hall?

A. Correct, Sir.

Q. Now, after that didn't your Mother return on November 3rd, didn't you have a conversation with your Mother when I told, and she told you that I could place you at the scene? *Chief Smith told me (Mother) for day's, that is why we called the Borough Hall.*

A. Sir, I have no recollection of that.

Q. Well, you called the Borough, or your Mother called the Borough Hall, did she not?

A. No, Sir, I called and asked to speak specifically with you.

Q. You asked me to come to your home?

A. Yes, Sir, you told me, Sir, if I remembered anything from October 19th, to get in contact with you right away, and I did so, Sir.

Q. You asked me to come to your home and I said I would not speak to you at your home any further, isn't that true?

A. That is correct.

Q. You appeared at the South Williamsport Borough Hall on your own?

A. That is correct, Sir.

Q. And you came into the Borough Council Chambers where there were Police Officers having a conference?

A. That is correct.

Q. At that time is when you were advised of your rights

Kim Lee Hubbard.

by Trooper Houser, wasn't it?

A. Could have been.

Q. Well, I specifically ordered Trooper Houser to give you your rights, did I not?

A. Well, I guess it was there, wasn't it, Sir, I don't....

Q. You signed the car before anybody would even talk to you, isn't that true?

A. I don't remember when I signed that card, it was there, I have to agree it was there during that day, put it that way.

Q. Everybody refused to talk to you unless you signed a rights card and we told you that you could have a Lawyer, didn't we?

A. I remember you telling me I could have a Lawyer any time I wanted. *Charles L. Smith told us "we didn't need a Lawyer," it would cost more than*

Q. We told you, you could leave any time you wanted, *we* we were not asking you to come in? *how*

A. That is correct.

Q. You came in, you said "I want to clear up my activities on that day."?

A. You told me whenever I remembered something I should come and tell.

Q. At that time you told us for the first time that you were in the Sylvan Dell area, isn't that true? *Charles L. Smith said "no"*

A. I told you that I had been riding that day, to whereabouts, where I was riding I did not know at the time, but as

Kim Lee Hubbard.

I said, you told me whatever I remembered to come and tell you and I did so, Sir.

Q. You told us on October 31st you were riding and didn't remember where you were riding?

A. Sir, I don't remember any dates, October 31st or anything.

Q. Let's say in your household.....

By Mr. Fierro:

Let him finish his answer.

By The Court:

Finish your answer.

A. I forgot.

By Mr. Ertel:

Q. At your house did you at any time tell us you were riding and you didn't remember where you were?

A. Sir, I told you a lot of things that day that I did do and I told you quite a few things that I did not do, which I could not remember. There were three of you and one of me, and you people were all firing questions at one time.

Q. Sir, did you tell us on that day at your home that you had been riding somewhere and didn't remember at all?

A. I don't remember, Sir.

Q. Isn't it true you accounted for every minute of your day either in your house or at the car wash?

A. That is an incorrect statement, Sir.

Q. Except for the time you saw Ard Stetts at the Hum-Dinger?

Kim Lee Hubbard.

A. Incorrect statement too, Sir. Sir, you were taking notes the whole time, were you not, Sir?

Q. Now, you, when you came to the Borough Hall after Houser warned you of your rights, didn't he ask you if you would have been driving your car at all times between the 19th of October and until the time we questioned you?

A. It was not asked in that manner, Sir.

Q. You don't remember that specific question?

A. I remember to the question that I had stated earlier, the three questions that were read the other day were reworded, that was not the way they were worded when they asked.

Q. So the Police Officer reworded all of those questions?

A. If I remember correctly, he was not reading them off a paper, he was reading them, just making them up as he was going.

Q. You were here when he looked at his report, were you not and read them specifically?

A. I saw it, but he didn't have no paper, he was not reading off nothing when he asked me.

Q. You saw the paper handed to Mr. Fierro?

A. Yes, I saw a lot of things here.

Q. Now, the night you were picked up, were you with Diane Fisher?

A. I date a lot of girls, yes.

Q. Were you with Diane Fisher?

A. I was, Sir.

Q. Now did you tell her on that night that you were with



Kim Lee Hubbard.

happens to your mind that snaps and you do things that you don't remember?

A. Incorrect statement, Sir.

Q. What did you tell her?

A. I talked to her a lot that night.

Q. Did you tell her anything like what I said?

By Mr. Fierro:

I object, I would like to come to side bar.

By The Court:

Side Bar, Gentlemen.

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

By The Court:

It has been called to the Court's attention that there some comments and statements made by members in the Court Room and if it happens again the Court will have to clear those responsible. Proceed, Mr. Ertel.

By Mr. Ertel:

Q. Did you make that comment?

By Mr. Fierro:

What comment?

By The Court:

Read the question.

(Official Reporter read questions as follows: "Q. Now, the night you were picked up, were you with Diane Fisher? I date a lot of girls, yes. Q. Were you with Diane Fisher? A. I was, Sir. Q. Now, did you tell her on that night that something happens to your mind that snaps and you do things that you

Kim Lee Hubbard.

don't remember? A. Incorrect statement, Sir. Q. What did you tell her? A. I talked to her a lot that night. Q. Did you tell her anything like what I said?")

By Mr. Fierro:

I object to the last question, it is ambiguous.

By The Court:

You may answer.

A. I never made a statement like that, your mind just does not snap like that.

By Mr. Ertel:

Q. Did you tell her you had gone to a Hospital to have it checked?

A. No, Sir, I never said any such thing.

Q. Did she ask you if Jennifer Hill was cute?

A. A lot of people have asked me that, Sir. She is just a little girl.

Q. Did you tell her she was cute?

A. I said, if the question was asked in the way, the manner that you presented it, Sir, I would have said that she was just one of my sister's girlfriends, just a little girl.

Q. And did she ask you if she had much?

A. No, Sir, at no time did she ever ask that question.

Q. Did you answer, "No, she didn't."?

A. Sir, as I stated before, if that question was asked to me, she was just one of my sister's girlfriends, that is all, Sir.

Q. Now, do you know Jeanne Helm?

A. Yes.

Kim Lee Hubbard.

Q. Did you have occasion to call her between the time of Jennifer Hill's disappearance and the time Jennifer Hill's body was found?

A. That is correct, Sir, I did.

Q. Did you tell her you were in trouble?

A. You know I did, Sir.

Q. And you would not even discuss it with her on the telephone?

A. That is correct, Sir.

Q. And the Police had not even interrogated you yet, isn't that true?

A. That is correct. There is an explanation that goes with that, if you care to hear it.

By Mr. Pierro:

I would like to have the Court and Jury hear it, they are entitled to hear it.

By The Court:

Proceed, sir.

A. Well, the story behind this, Sir, there was two men come to our home, this was late, it was late that night, and the Police were called. They set and bodily accused me of putting Jennifer Hill's body in a red car. They saw, what they said they saw me put her body in a trunk, close this trunk and tear off in this red car, and these drunks were sitting there and they, they are bodily accusing me of something that I didn't do, had nothing to do with, and knew anything about it, Sir. That scared me.

Kim Lee Hubbard.

scared me.

By Mr. Ertel:

Q. Those drunks, this was late at night when this occurred, was it not, around 3:00 in the morning?

A. I don't remember exactly.

Q. When you called Jeanne Helm, it was in the early evening?

A. I don't recall that, Sir. I know that I called Jeanne Helm on a number of times.

Q. When she asked you what was the problem, you said, "I can't talk about it on the telephone.", didn't you?

A. That is correct, Sir. I didn't want to tell her about it, it was not anything of her business, was it, Sir?

Q. Now, when you were arrested, it was not until October 16th, is that correct?

A. I don't even remember the correct date I was arrested.

By Mr. Fierro:

Wait a minute, did you say October 16th?

By Mr. Ertel:

Q. I will correct that, November 16th?

A. I don't even remember the date, Sir.

Q. Well, your fingernails were not scraped on November 16th?

A. They were scraped at no time up until now, Sir.

Q. And Jennifer Hill disappeared on October 19th, didn't she?

Kim Lee Hubbard.

A. That is a correct statement, Sir.

Q. Now, your hard hat here, you say you never had a hard hat like this other than Stroehmann's?

A. A long time ago, Sir, I worked at a place, but not like that, Sir, no.

Q. It is true you worked at Eastern Wood Products and got a helmet identical to this helmet, isn't that true?

A. Somewhat, Sir, but that was a long time ago, Sir.

Q. You worked there from March to May?

A. Well, whenever I worked there the helmet was returned, Sir.

Q. You walked off of the job and never even picked up your paycheck at Eastern Wood, isn't that true?

A. That is correct and never picked my helmet up either.

Q. You had your helmet and never gave it back, isn't that true?

A. That is an incorrect statement.

By Mr. Fierro:

Does the District Attorney intend to follow this up?

By Mr. Ertel:

I do.

By The Court:

When you get a breaking spot, we will take a 15 minute recess.

Kim Lee Hubbard.

By Mr. Ertel:

That is as good as any.

By The Court:

The Defendant is excused for 15 minutes and the Jury is excused for 15 minutes. The Court stands in recess.

(Recessed at 11:10 A.M. and reconvened at 11:30 A.M.).

By Mr. Ertel:

May we approach Side Bar before the witness stakes the stand?

By The Court:

Yes.

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

(Kim Lee Hubbard returned to witness stand.).

By Mr. Ertel:

Q. Mr. Hubbard, you would not fool around with Jennifer Hill, would you?

By Mr. Fierro:

I object to that question.

By The Court:

Be specific.

By Mr. Ertel:

Q. Did you take her bra and pull it up across her breast on the day in question?

A. No, Sir.

Q. You never approached Jennifer Hill to take her in a car anywhere, have you?

A. I have not, Sir.

Kim Lee Hubbard.

Q. Have you approached any of your sister's friends.....

By Mr. Pierro:

I object to that, that is vague and ambiguous.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Have you taken any girls of Jennifer's age on a ride in your car?

By Mr. Pierro:

I object to that, that is immaterial. Just taking somebody for a ride is not illegal. It is not even immoral.

By The Court:

The objection is sustained. You may ask specifically as far as Jennifer Hill, whether or not she was in the car, Sir.

By Mr. Ertel:

Q. Now, you saw Bruce Shaffer down at the Hum-Dinger, didn't you?

A. That is a correct statement.

Q. He is a good friend of your's, isn't he?

A. I have a lot of friends, Sir, I can't make one better than the other, I have a lot of friends.

Q. Is he a friend of your's?

A. He is a friend.

Q. And he is still in South Williamsport?

A. Correct, Sir.

Q. And he could verify your whereabouts on that day,

Kim Lee Hubbard.

could he not, because he saw you there?

By Mr. Fierro:

I object to asking him for a conclusion of another person.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Did Bruce Shaffer give you the sneakers that you supposedly had on that day?

A. That is correct, a long time before, Sir, if I might add.

Q. Now, you don't deny they are your combat boots?

A. No, Sir, they are my combat boots.

Q. You got those in the service?

A. That is correct, Sir.

Q. How did you get them in the service?

A. Well, Sir, I served with the 82nd Airborne Division.

Q. Did you get them issued or buy them through a "PX"?

A. Buy them through a "PX", but some points they are issued.

Q. You bought them through a "PX"?

A. Yes, Sir.

Q. Did you buy them, what station?

A. Sir, I cannot truthfully sit here and say what station I bought them, Fort Bragg or Fort Benning.

Q. Other people don't wear your boots, do they?



Kim Lee Hubbard.

A. No, Sir.

Q. Now, on October 19th at 4:30, did you get a phone call from Colleen?

A. It wasn't at 4:30, no, Sir.

Q. What time did you get the phone call? That is from Colleen?

A. Between 4:30 and 4:35.

Q. You are sure of that, Sir?

A. Positive, Sir. I can't say 100%, but in that locale I did.

Q. You spoke to Colleen?

A. That is correct, Sir.

Q. Now, Captain Ross came to your house and you, what did Captain Ross tell you?

A. He didn't tell me nothing, Sir.

Q. Well, you talked with him, did you not?

A. I listened, I don't remember if I conversed between us two, he talked to my Mother, he asked her some questions.

Q. Were you there?

A. That is correct, Sir.

Q. What happened?

A. Well, he just drove off, and I mean drove up and was talking to my Mom, he said, "What time did Jennifer leave? What was Jennifer wearing? Did something happen to make her mad or something that day?", and things of that nature, Sir.

Kim Lee Hubbard.

Q. Did your Mother say nothing made her mad?

A. That is incorrect.

Q. What did she say?

A. Well, I know this now, but I didn't know it then.

Q. What did your Mother say then?

A. It was something about they, the Hill girl wanted to go to a football game that evening, Sir, and she got sore.

Q. What else did he say to you or to your Mother in your presence?

A. Just asked what clothes she was wearing, and I can't set here.....

Q. Is that the first time?

A. First time for what?

Q. That Ross came to your house?

A. That is correct, Sir, that I know of, Sir.

Q. What did he say on the second time he came to your house?

A. Captain Ross came the second time, would you like me to tell you what he told Colleen, my Mother and I?

Q. Yes, I am asking you?

A. He come and told us in a very, very, very suspicious way that he had found a man that, with a face that was all marred up and it was, and winded and he was picked up and he came up to our house, I say very suspiciously and told us where he lived and everything, Sir.

Q. You didn't know the individual?

A. No, I didn't know the individual, Sir.

Kim Lee Hubbard.

Q. Your Mother didn't know the individual?

A. No, Sir, to my knowledge, Sir.

Q. Did he tell you that man had been cut by a razor?

A. No, he did not, Sir.

Q. Did you go to that man's house?

A. Yes, I did, Sir.

Q. You knew where he lived?

A. Right after Captain Ross told us, Sir.

Q. I show you marked as Commonwealth's Exhibit No.

118, is that your handwriting?

A. Yes, Sir.

Q. You told Stroehmann's you were married?

A. Correct, Sir, I needed the job, Sir.

Q. You told them that you rented a house, did you

not?

A. That is correct, Sir, and it was correct at the time,

Sir.

Q. And you also when asked, "Please List Details Of Last Employment", you first put the U.S. Army?

A. That is so, I needed a job bad, I needed money.

Q. You didn't tell them you had worked at Eastern Wood, did you?

A. I lied.

Q. You didn't tell them you worked at Imperial Cleaners?

A. I lied, I needed a job.

Q. Well, if you would lie for a job...well, I have

Kim Lee Hubbard.

By Mr. Fierro:

I move that be stricken.

By Mr. Ertel:

I will withdraw the question.

By The Court:

It is stricken.

By The Court:

Anything further, Mr. Ertel?

By Mr. Ertel:

I have no further questions.

By The Court:

Mr. Fierro?

RE-DIRECT EXAMINATION

By Mr. Fierro:

Q. I want to ask you about these helmets at Eastern Wood Products that the District Attorney brought up, were you issued any equipment at all....let me withdraw that question, please. I don't know, somebody, I think it was you, said March to May, what year was that? Last year was 1973, you know that, did you work there last year?

A. I think I did, Sir. It was approximately six or seven months ago.

Q. Now, were you issued by anybody any equipment when you worked there?

A. No, Sir, not issued.

Q. Well, were there any of these type helmets known as Exhibit No. 115?

Kim Lee Hubbard.

Q. Where were they?

A. All over, you see...may I explain?

Q. Yes?

A. The first shift was all issued equipment. They left it at their stations where they worked during the day. When the night shift came in, which amounted to me and three or four other guys, we would just pick up a helmet, and like a couple of guys worked there two or three years, they had their own helmets, but like they couldn't hold help them, so when we would go in we would pick up a helmet and put it on, and most of the time we would not even wear helmets, Sir.

Q. Were you issued a helmet?

A. No, Sir, I was not issued at any time a helmet from Eastern Wood Parts.

Q. Did you take any equipment of any sort home when you left Eastern Wood?

A. You mean when I finished the job?

Q. I don't care what it was?

A. No, Sir.

Q. Concerning this helmet, Exhibit No. 115, that the Police found in your car, look over the entire helmet, you said that on the front you noticed some markings?

A. Yes, Sir, I distinctly know what they are.

Q. What are they?

A. It comes from sticky buns and that sort of stuff.

Q. Is that the only markings on the helmet? What is this? (Indicating to peak of helmet.)

Kim Lee Hubbard.

A. I don't know.

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

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

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

A. Yes, and still is.

Q. Nothing further.

By The Court:

Mr. Ertel?

By Mr. Ertel:

No further questions.

By Mr. Pierro:

You may step down.

(Excused from witness stand.).

By Mr. Pierro:

May we come to Side Bar?

By The Court:

Yes, Sir.

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

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

DIRECT EXAMINATION

By Mr. Pierro:

Q. What is your name?

A. Michael Rotman.

Q. Where do you live?

Gerald Brown. - Kim Lee Hubbard.

Q. Did you meet somebody then?

A. Yes, I met my Principal.

Q. Did you meet anybody else that brought you down here?

A. Yes, I came over with Bill Crofutt.

Q. Now, you didn't see any hub caps in the car during July and August, did you?

A. No.

Q. Nothing further.

By Mr. Pierro:

You may step down.

(Excused from witness stand.).

By Mr. Pierro:

I have one last witness, your Honor, on this point. It happens to be the Defendant, whatever the Court wishes.

By Mr. Ertel:

I object to that...well, let's approach Side Bar.

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

Recalled

KIM LEE HUBBARD, being previously sworn, recalled and testified as follows:

DIRECT EXAMINATION

By Mr. Pierro:

Q. You are Kim Lee Hubbard and you have previously been sworn?

A. Correct, Sir.

Q. Now, you were in Court when you heard testimony from a Shellhammer.....

By Mr. Ertel:

I object, he can ask a question.

Kim Lee Hubbard.

By Mr. Fierro:

I want to ask him if he heard the testimony.

By The Court:

The objection is over ruled.

By Mr. Fierro:

Q. Were you in Court when you heard Shellhammer (Shellmar and Kinney testify concerning helmets?

A. Yes, his name is Shellman.

Q. Is Kinney the other correct name?

A. Yes, Sir.

Q. Now, Kim, can you explain, if you can, why during July and August there was a possibility that someone saw a helmet in your car?

By Mr. Ertel:

I object.

By The Court:

The objection is sustained, reword your question.

By Mr. Fierro:

Q. While you were employed at this place, Eastern Wood, did you ever have any riders?

A. Yes, I did, Sir.

Q. Who were some of them?

A. Well, David Kinney, we switched off all of the time.

By Mr. Ertel:

I object, this is irrelevant.

By Mr. Fierro:

It is leading up to his riders.



Kim Lee Hubbard.

By The Court:

Proceed.

A. Well, we traded off riding back and forth to work, and I worked Saturdays and once in awhile I would take people downtown and drop them off.

By Mr. Fierro:

Q. Take them from where?

A. Eastern Wood, Sir.

Q. Would these people that you took from Eastern Wood ever have anything with them belonging to Eastern Wood?

A. Yes, Sir, the helmets. That is, naturally, they would walk right out of the place with them.

Q. Do you know whatever happened on any occasion with these people concerning their helmets in your car?

A. They forgot their helmets maybe once or twice, I give it back to them the next day. Might I explain something?

Q. No. When was the last that you, well as far as you can remember, that you worked at Eastern Wood?

A. May, Sir, of 1973.

Q. Did you have any helmets that you took with you?

By Mr. Ertel:

Objection is over ruled, although he has testified before.

A. Well, Sir, I know I did not take no helmet with me.

By Mr. Fierro:

Cross examination.

Kim Lee Hubbard.

CROSS EXAMINATION

By Mr. Ertel:

No questions.

(Excused from witness stand.).

By Mr. Fierro:

The defense rests.

By The Court: —

Now, are all of the Exhibits in evidence that the Commonwealth desires to have in evidence or the Defense?

By Mr. Ertel:

All of the Exhibits are in that the Court has admitted.

By The Court:

You have none you want to offer?

By Mr. Fierro:

No.

By The Court:

Do I understand sur-rebuttal is closed?

By Mr. Fierro:

Yes.

By The Court:

We will not reconvene until 1:30 today. The Defendant is excused. The Jury is excused.

(Recessed at 12:15 P.M., EDST.).

(Reconvened at 1:35 P.M., EDST.).

By The Court:

Mr. Fierro.

(Mr. Fierro began closing to Jury at 1:35 P.M., EDST.).

By Mr. Fierro:

Do you think a person was ever executed in this country and later proved he was innocent?

By Mr. Ertel:

Objection, your Honor.

By The Court:

Side Bar, please.

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

By The Court:

Proceed, Mr. Fierro.

(Mr. Fierro continued closing to Jury.).

(Mr. Fierro completed closing to Jury at 3:00 P.M., EDST.).

By The Court:

The Court will recess for fifteen minutes.

The Defendant is excused. The Jury is excused.

(Recessed at 3:02 P.M., EDST. and reconvened at 3:25 P.M., EDST.).

By The Court:

Mr. Ertel.

(Mr. Ertel began closing to Jury at 3:25 P.M., EDST.).

By Mr. Ertel:

Now, you say "What about Jack Hill's phone call?"

Well, Jack Hill said it was around 5:00. The Police Officer said he told him it was somewhere between quarter of five and five,

*NICKMAN STATED SHE LOOKED AT THE CLOCK AND IT*

Kim Lee Hubbard.

A. I don't know.

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

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

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

A. Yes, and still is.

Q. Nothing further.

By The Court:

Mr. Ertel?

By Mr. Ertel:

No further questions.

By Mr. Pierro:

You may step down.

(Excused from witness stand.).

By Mr. Pierro:

May we come to Side Bar?

By The Court:

Yes, Sir.

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

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

DIRECT EXAMINATION

By Mr. Pierro:

Q. What is your name?

A. Michael Rotman.

Q. Where do you live?

Rotman.

A. 305 Preston Road, Flourtown, Penna.

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

A. Private Investigator.

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

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

Q. In what capacity?

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

Q. Supervisor of what?

A. Of the District Attorney's Detectives.

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

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

Q. For about how long?

A. I think it was about nine months.

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

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

Q. What courses did you take?

A. Criminal Investigation, Homicide Investigation and Criminal Law.

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

Rotman.

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes, Sir.

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

A. Yes.

Q. But would it involve looking for evidence?

A. Yes.

Q. Making casts?

A. Yes.

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

A. Yes.

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

A. Well, they are called District Attorney Detectives.

Q. How many men did you supervise?

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

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

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

A. Not in the District Attorney's Office.

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

A. With the Police Department.

Q. How long were you with the Philadelphia Police?

A. From 1956 to 1968.

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

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

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

A. Yes.

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

A. Yes.

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

Rotman.

make them yourself personally?

A. Yes.

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

A. Yes.

By Mr. Ertel:

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

By Mr. Fierro:

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

By Mr. Ertel:

I would like to ask a few questions.

By Mr. Fierro:

Surely.

CROSS EXAMINATION

By Mr. Ertel:

Q. You are a Captain of Homicide?

A. I was a Lieutenant in the Homicide Unit.

Q. What were you a Captain of?

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

Q. That is a supervisory post?

A. Yes, Command Post.

Q. You administer the people under you and assign and

so on?

A. Yes.



Rotman.

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

A. I did.

Q. You did?

A. Yes.

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

A. Yes.

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

A. At one time it was.

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

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

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

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

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

A. Yes.

Q. That is picking up and collection of evidence?

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

Q. He had headed up the Crime Laboratory?

A. He did.

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

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

Q. He would testify as to the conclusion?

A. Yes.

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

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

Q. Who was the Tool Examiner at the Laboratory?

A. Doctor Burke.

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

A. PHD, Chemist.

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

A. Yes.

Q. Mark Examiner?

A. Yes.

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

A. At times he did, yes.

Q. Were there times when somebody else did?

A. Agnes Malatrak.

Q. Or his Assistant?

A. Yes.

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

A. Collection, preservation, transportation.

Rotman.

Q. That is it?

A. There were many responsibilities.

Q. I would like to approach Side Bar.

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

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

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

Q. Did Doctor Burke qualify as a Tool Examiner?

By Mr. Fierro:

We object to what anybody else qualified as.

By The Court:

Sustained.

By Mr. Ertel:

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

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

Q. Is that one of them?

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

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

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

Rotman.

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

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

A. Pretty much.

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

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

Q. You might get it in a lawn somewhere?

A. Yes.

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

A. Yes.

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

A. I am sorry.

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

By Mr. Fierro:

I object, he is not testing qualifications.

By Mr. Ertel:

I believe I am.

By Mr. Fierro:

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

Rotman.

By The Court:

Q. Do you understand the question?

A. Yes.

Q. You may answer.

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

By Mr. Ertel:

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

A. Yes.

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

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

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

A. Yes.

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

A. It was called the Crime Laboratory.

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

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

Rotman.

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

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

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

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

A. I am sorry.

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

A. Yes.

Q. The same thing?

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

Q. You have seen the Mobile Crime Unit here?

By Mr. Fierro:

I object to this, this does not test qualifications.

By The Court:

The objection is sustained.

Rotman.

By Mr. Ertel:

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

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

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

A. Countless, I would not know.

Q. You made them?

A. Personally I made a couple dozen.

Q. That means you laid the plaster?

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

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

A. This would include all of the casts.

Q. The total casts were a couple dozen?

A. Yes, that I personally prepared and made.

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

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

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

A. Various people.

Q. Not you?

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

Q. But not to the analyzation?

Rotman.

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

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

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

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

A. Yes.

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

A. Yes, in addition to analyzing.

Q. But you never testified to analyzation?

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

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

By The Court:

Anything further?

By Mr. Ertel:

Nothing further.

By The Court:

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

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

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

(Recessed at 12:00 Noon.).



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

(Michael Rotman returned to witness stand.)

DIRECT EXAMINATION

By Mr. Fierro:

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

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

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

A. Corporal Barto and Trooper Krebs.

Q. What articles did you examine?

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

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

A. Yes.

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

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

Q. There should be one on there?

A. Here it is.

Q. Read that Exhibit number?

A. Commonwealth's Exhibit No. 96.

Rotman.

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

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

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

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

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

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

Q. Any way that you want to do it.

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

Q. All right.

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

By Mr. Ertel:

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

By Mr. Fierro:

And that he examined them?

By Mr. Ertel:

I will stipulate he looked at them.

By Mr. Fierro:

Q. Continue, please?

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

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

A. Yes.

Q. Go ahead?

Rotman.

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

Q. Did you examine that?

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

Q. Did you examine that at the Barracks?

A. I did.

Q. All right.

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

Q. Did you examine that at the Barracks?

A. Yes.

Q. All right?

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

Q. Did you examine that at the Barracks?

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

Q. At the Barracks?

A. Yes.

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

Rotman.

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

Q. Please resume the stand.

A. (Witness returned to stand.).

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

A. Fingerprint evidence.

Q. What?

A. Fingerprint evidence would.

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

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

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

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

A. And Corporal Barto.

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

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

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

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

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

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

By The Court:

Q. The other number, please?

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

Rotman.

By Mr. Fierro:

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

A. I think it was.

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

A. (Witness returned to stand.).

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

A. Yes.

Q. You did?

A. Yes.

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

A. All right.

Q. L-2?

A. That is Exhibit No. 92.

Q. Is that also marked L-2?

A. Yes, the cast is.

Q. That is Exhibit No. 92?

A. Right.

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

By Mr. Ertel:

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

Rotman.

By The Court:

Q. Do you understand the question, Sir?

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

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

By Mr. Fierro:

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

A. Yes.

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

By Mr. Ertel:

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

By The Court:

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

By Mr. Fierro:

Q. Which tire?

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

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

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

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

Rotman.

identified?

A. I am sorry?

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

By Mr. Ertel:

I object to leading at this point.

By The Court:

Q. Do you understand what the question is?

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

By Mr. Pierro:

Q. You did?

A. Yes.

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

A. Differences in the way of omissions.

Q. Omissions?

A. Yes.

Q. What were they?

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



Rotman.

different places around the circumference of the tire.

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

A. No, I didn't see any.

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

A. That is Exhibit No. 94.

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

By Mr. Ertel:

I object, find what tire?

By Mr. Fierro:

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

By Mr. Ertel:

The tire he identified with that cast?

By Mr. Fierro:

He is going to find the tire.

A. This is Exhibit No. 88.

By Mr. Ertel:

I didn't get that.

By The Court:

No. 88.

By Mr. Fierro:

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

A. Yes, I believe it is.

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

Rotman.

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

Q. Can you show us that?

A. Here is the mark.

By Mr. Ertel:

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

A. Right.

By Mr. Fierro:

Q. You say "here is the mark"?

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

By Mr. Ertel:

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

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

By Mr. Fierro:

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

A. Right there.

By The Court:

Q. That is cast No. 94?

A. Yes, your Honor.

Rotman.

By Mr. Fierro:

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

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

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

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

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

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

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

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

Q. Please show the Jury down at this end?

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

By Mr. Ertel:

I object to that, that it should appear.

A. I am sorry.

By Mr. Fierro:

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

A. It does not appear.

Rotman.

Q. Take the stand.

A. (Witness returned to stand.).

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

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

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

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

Q. Did you examine those boots?

A. Yes.

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

A. Yes.

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

A. Well, there are more than one.

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

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

Q. All right?

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

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

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

Rotman.

By Mr. Ertel:

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

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

By Mr. Fierro:

Q. Now...

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

Q. You have already identified the right boot?

A. Yes.

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

A. Right.

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

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

Q. I didn't hear you?

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

Q. Poor quality, you say?

A. Yes.

By Mr. Ertel:

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

By Mr. Fierro:

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

Rotman.

By Mr. Ertel:

He said "somewhat of a poor quality".

By Mr. Fierro:

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

A. I would say they are somewhat poor.

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

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

Q. Now...

By The Court:

Q. Which one, Sir?

A. The right boot, Sir.

By Mr. Fierro:

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

A. Omissions, differences of omissions.

Q. What are they?

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

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

A. Yes.

Rotman.

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

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

Q. Let's take the right boot first?

A. These are the marks, three gouge marks.

Q. Point them out to the Jury?

A. One, two three.

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

A. One, two three.

Q. Now, come down here to the end?

A. One, two three.

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

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

Q. On any casts?

A. Not that I could find.

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

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

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

Rotman.

right boot?

A. Yes.

Q. Show them what it is?

A. It is this mark along here.

Q. About how long is that mark?

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

By Mr. Ertel:

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

By Mr. Fierro:

Here is one?

A. About two and a quarter inches, approximately.

Q. Show the Jury?

A. Yes, I think everyone saw it.

Q. Now, can you return to the stand.

A. (Witness returns to stand.).

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

A. No, Sir.

Q. You cannot?

A. No, Sir.

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

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

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

A. Yes .



Q. Both of which have been identified?

A. Yes.

Q. You did?

A. Yes.

By Mr. Ertel:

I am not sure the left boot cast was identified.

By Mr. Pierro:

We will do it?

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

By The Court:

Speak up?

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

By Mr. Pierro:

Q. 51 and 97?

A. Yes.

Q. That is which boot?

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

Q. Is that the boot you showed the Jury?

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

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

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

Rotman.

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

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

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

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

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

Q. Which boot is that?

A. The left boot.

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

A. No, that was the right boot.

Q. I don't want to be mistaken about that, okay.  
Well, then there is something else to this left boot besides two cut marks?

By Mr. Ertel:

I object, he is leading.

By Mr. Fierro:

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

By The Court:

Q. Do you understand the question?

A. Yes, I do.

Q. You may answer?

A. The gouge mark in the sole

Rotman.

By Mr. Fierro:

Q. Does that appear on the corresponding cast?

A. It doesn't appear.

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

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

Q. Known as?

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

Q. Point to those marks with the flashlight.

By Mr. Ertel:

I object to the "should have".

A. They do not appear.

By Mr. Fierro:

Q. Where would they appear on the cast?

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

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

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

Q. Exhibit No. 97?

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

Q. That is Exhibit No. 51?

A. 51.

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

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

Rotman.

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

Q. That is Exhibit No. 51?

A. Yes.

Q. Take the stand.

A. (Witness returned to stand.).

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

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

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

By Mr. Ertel:

Objection.

By The Court:

I will permit the answer.

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

By Mr. Ertel:

Objection.

By Mr. Fierro:

He is expressing an opinion.

By The Court:

This is an opinion.

By Mr. Ertel:

This man is not qualified.

Rotman.

By The Court:

The objection is over ruled, you may answer.

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

By Mr. Pierro:

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

A. Yes.

Q. Did you come to any opinion?

A. Yes.

Q. What was your opinion?

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

Q. Any number you say?

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

Q. Cross examination.

CROSS EXAMINATION

By Mr. Ertel:

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

Rotman.

By Mr. Fierro:

I object to that.

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

By The Court:

The objection is sustained.

By Mr. Ertel:

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

A. At the Barracks?

Q. Yes?

A. About two hours.

Q. About two hours, that is all?

A. That is all.

Q. Did you bring any special equipment?

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

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

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

A. Yes.

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

A. I described what Trooper Krebs pointed out.

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

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

A. Yes.

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

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

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

Rotman.

seen as much as I wanted to see."

Q. You seen enough?

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

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

A. Right, I examined the tires first.

Q. Then you looked at the boots?

A. Yes.

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

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

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

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

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

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

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

A. I don't remember saying that.

Rotman.

Q. You would not deny saying that?

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

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

A. No.

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

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

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

A. Yes.

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

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

Q. With the tire?

A. Yes.

Q. Cut marks?

A. No.

Q. Break marks?

A. Not accidental marks, marks of factory marks.

Q. You don't consider....

A. Manufacturing marks.

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



Rotman.

A. I didn't say that.

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

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

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

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

Q. That is an accidental marking?

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

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

A. That is correct.

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

Rotman.

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

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

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

A. Yes.

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

A. Yes.

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

A. Not necessarily.

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

A. That is exactly right.

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

A. In fingerprints I would say that is right.

Q. In tool marks?

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

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

A. Certainly is probabilities.

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

Rotman.

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

A. Sure.

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

A. Yes.

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

A. I will accept that.

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

A. All right.

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

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

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

A. I did no further investigation.

Q. You never went back to the factory?

A. I did no investigation.

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

A. Yes.

Q. Now, you know what these are called?

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

Q. The cracks, the wider grooves

A. No, I don't.

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

Rotman.

a tread pattern?

A. Yes.

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

A. I would say numerous.

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

A. Yes.

Q. Do you know if they change those periodically?

A. I think that they did.

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

A. Yes.

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

A. Right.

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

A. Yes, at the tread, yes.

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

A. Yes.

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

A. Once again I would say numerous.

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

A. The identifying mark on the sidewall?

Rotman.

Q. Yes.

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

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

A. Yes.

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

A. Right.

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

A. Yes.

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

A. Yes, sure.

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

A. Yes.

Q. That is even more limitation?

A. Yes.

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

Rotman.

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

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

Q. Did you make notes of your examination?

A. Yes.

Q. Do you have them with you?

A. No.

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

A. No, I never testify with notes.

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

A. No.

Q. You didn't review them at all?

A. I didn't say that.

Q. When did you review them?

A. Last night.

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

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

Q. Right, front tire.

A. Right front tire.

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

A. Yes.

Q. Did that compare favorably?

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

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

Rotman.

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

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

A. Yes.

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

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

Q. Only one?

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

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

A. I would like to, yes.

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

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

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

A. Not at all, they were extremely courteous.

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

Rotman.

By Mr. Fierro:

I object to his helping.

By Mr. Ertel:

I will be glad to point the things out.

By Mr. Fierro:

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

By The Court:

Q. Do you understand the question?

A. I understand.

Q. You may proceed.

By Mr. Ertel:

Q. Can you do it?

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

By Mr. Fierro:

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

By The Court:

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

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



Rotman.

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

By Mr. Ertel:

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

A. Yes.

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

A. Same difference.

Q. Same difference?

A. As long as it is locked.

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

By Mr. Fierro:

I object to what Trooper Krebs said.

A. I am not familiar with what he said.

By Mr. Ertel:

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

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

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

A. Yes.

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

Rotman.

A. Now, I don't know.

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

A. Yes, right front tire.

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

A. Yes.

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

A. Yes.

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

A. Right.

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

A. Sure. (Witness leaves stand.).

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

By The Court:

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

By Mr. Ertel:

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

By The Court:

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

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

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

Rotman.

(Michael Rotman returned to witness stand.).

By The Court:

Proceed, Mr. Ertel.

By Mr. Ertel:

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

A. (Witness leaves stand.).

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

A. Yes, manufacturer's.

Q. What we call class manufacturer's?

A. Yes.

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

A. Right.

Q. Two of them right there?

A. Yes.

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

A. No, I want the edge.

Q. You want the edge?

A. Yes.

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

A. Right.

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

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

Rotman.

because of the weight of the plaster.

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

A. Well.....

Q. It is right there?

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

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

By The Court:

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

By Mr. Ertel:

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

A. Yes.

Q. There is another.....

By The Court:

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

By Mr. Ertel:

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

A. That is, yes, Sir.

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

Rotman.

Is that correct?

A. Well, let me see that again here?

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

A. Right about 4.

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

By Mr. Fierro:

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

By The Court:

Be specific as far as the record.

By Mr. Ertel:

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

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

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

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

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

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

Rotman.

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

Q. Let me show....

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

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

A. What you showed, I agree is true.

Q. All right....

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

Q. You are just not sure of that?

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

Q. They lay in the same distance?

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

By The Court:

Speak up.

By Mr. Fierro:

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

By The Court:

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

By Mr. Ertel:

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

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

A. Yes.

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

A. They lay at the same distance.

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

A. Yes.

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

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

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

By Mr. Fierro:

What is a fair distance, what is it?

By The Court:

For the record, Mr. Ertel.

By Mr. Ertel:

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

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

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

Q. Does that compare favorably, in your opinion?

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

Q. But it does compare for tool work?

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

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

A. Okey, yes.

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

A. Yes.

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

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

By Mr. Fierro:

Did the Court Reporter get that?

By The Court Reporter:

Yes.

By The Court:

Anything said, would you speak loud enough?

By Mr. Ertel:

Q. Let's measure it again?

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

appear.



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Q. Should it be there?

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

Q. Marks of omission can fill in?

By Mr. Fierro:

I object, this is argumentative.

By Mr. Ertel:

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

By Mr. Fierro:

What is Point 4?

By Mr. Ertel:

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

By Mr. Fierro:

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

By The Court:

Is it marked on the Exhibit?

By Mr. Ertel:

Yes.

By The Court:

Refer to the mark.

By Mr. Ertel:

Q. Can you find Point 4 on 108?

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

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not sure which one.

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

A. Yes.

Q. Are they there?

A. Something appears in the photograph.

Q. Does it appear to be a crack?

A. It can be, yes.

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

A. Right.

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

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

Q. Would you measure it please?

A. The photographs are not accurate.

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

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

Q. You are the Examiner here....

By Mr. Fierro:

I object to the argument again.

Rotman.

By The Court:

Refrain from arguing, ask questions.

By Mr. Ertel:

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

A. Let me see what you are talking about?

Q. Can you observe it?

A. Yes.

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

A. What?

Q. What does it appear to be?

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

Q. Okay, you got it now?

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

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

A. Yes.

Q. Did you find it?

A. Yes.

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

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

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

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

A. Yes.

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

A. Yes.

Q. About the same length?

A. Yes.

Q. By the naked eye you could see that?

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

Q. Do you want to measure it?

A. No.

Q. Why don't we measure it?

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

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

A. Okay.

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

A. A crack.

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

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

Rotman.

Q. Please, would you?

A. To the "D"?

Q. That would be fine?

A. Okey.

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

A. Okey.

Q. Did you find it?

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

Q. That compares favorably for tool analysis?

A. Yes, not an exact distance.

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

A. Exactly.

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

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

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

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

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

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correct, or as close as one would expect?

A. Yes.

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

A. Yes, I would say they are.

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

A. No.

Q. You didn't examine it that closely?

A. No, Sir.

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

A. Are they of the same tire?

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

A. Yes.

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

A. Yes.

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

A. Right here.

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

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

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

A. Inch and a half.

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

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

Rotman.

somewhat covered.

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

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

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

A. What are you speaking of?

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

A. From the crack to the point of reference?

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

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

Q. You did see that?

A. Yes.

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

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

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

By Mr. Fierro:

I object to that statement.

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

By Mr. Fierro:

I would like to have a ruling on that.

Rotman.

By The Court:

The objection is sustained.

Ask questions, Mr. Ertel, no statements.

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

By Mr. Ertel:

Q. That is close enough for tool work?

A. Yes, that would be.

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

A. Yes.

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

A. Uh-huh.

Q. What is it?

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

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

A. No, it does not appear here.

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

A. On the cast?

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

A. Okay.

Q. Found it?

A. Right.

Q. What does it look like?

A. A cut mark.

Q. How long is it?



Rotman.

A. About a half inch.

Q. Can you find that also on the cast?

A. Okey.

Q. The same length?

A. Approximately.

Q. Lying in the same angle?

A. Approximately.

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

A. Yes.

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

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

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

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

Q. They are accidentals?

A. Yes, they are.

Q. And they are peculiar to one type tire?

A. That is debatable.

Q. That is what you look for?

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

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

A. Yes.

Rotman.

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

A. Not thoroughly, no.

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

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

Q. The same comparisons?

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

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

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

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

A. Well, I am not adverse to trying.

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

A. Yes, I believe I did.

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

A. Yes.

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

A. Yes.

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

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on the tire as No. 1?

A. Yes.

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

A. Yes.

Q. Did you find it?

A. Yes.

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

A. Yes, I can.

Q. Can you point it out to the Jury?

A. Here it is here.

Q. Is this what we are looking at?

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

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

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

These are the marks, they give you oblique lighting.

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

A. Yes.

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

A. All right.

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

By Mr. Fierro:

Wait, please. I object to one of the casts.

Rotman.

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

By The Court:

Yes, and Mr. Ertel is doing the questioning.

By Mr. Ertel:

Q. Can you find it, Mr. Rotman?

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

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

A. Yes.

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

A. Yes.

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

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

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

A. Yes.

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

A. Yes.

Q. And do they look the same?

A. Yes.

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

Rotman.

A. Okey, yes.

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

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

Q. Unusual?

A. Unusual.

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

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

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

A. Okey.

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

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

Q. Would that be in the second ribbing?

A. Yes.

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

A. I am sorry?

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

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

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

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

Rotman.

Q. Same location?

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

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

A. Okay.

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

A. Yes.

Q. Now, would you measure?

A. Okay.

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

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

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

A. Yes.

Q. Same angle?

A. Approximately, yes.

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

A. Yes.

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

A. Yes.

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

Rotman.

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

Okey.

Q. Did you find it on the cast?

A. Yes.

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

A. Yes.

Q. Did you observe it on the tire?

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

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

cast?

A. Approximately.

Q. Is it the same angle?

A. Approximately.

Q. Is it an accidental marking?

A. Yes.

Q. Does it compare favorable for tool mark analysis?

A. Yes.

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

A. I didn't hear you?

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

A. Yes, approximately.

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

A. Approximately.

Rotman.

Q. Now, can you find Point 6?

A. I have.

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

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

Q. Is that a long scratch mark?

A. A long scratch mark.

Q. Can you observe that on the tire?

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

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

A. Yes.

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

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

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

A. Approximately.

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

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

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

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

Q. That is an accidental flaw?

A. By the manufacturer.

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



Rotman.

A. Okay, yes.

Q. That compares again favorably, does it not?

A. Yes.

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

A. Yes.

Q. On the photograph, what is it?

A. It looks like a nail hole.

Q. That is an accidental?

A. Yes.

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

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

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

A. Yes.

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

A. Yes, approximately.

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

A. Yes.

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

A. Yes.

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

Rotman.

A. Yes.

Q. Can you find it also in the photograph?

A. Yes.

Q. What is it?

A. It looks like a scratch mark.

Q. What tread or rib is it in?

A. Approximately the center rib.

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

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

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

A. Yes....7 or 8?

Q. If I said 7, I mean 8?

A. Thank you. Yes.

Q. See it?

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

Q. Does that compare favorably with the tire mark?

A. Yes.

Q. At the same location?

A. Yes.

Q. Same angle?

A. Uh-huh.

Q. Same rib?

A. Approximately.

Q. Favorable comparison for tool mark analysis?

A. Yes.

Q. Accidental mark?

Rotman.

A. Uh-huh.

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

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

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

A. Imperfections.

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

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

Q. Possibly part of a cornstalk?

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

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

A. Exactly.

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

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

Rotman.

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

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

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

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

A. Yes, at the lower edge.

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

A. On the photograph?

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

A. Yes, there is a termination point.

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

A. Yes.

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

A. All right.

Q. Have you got them measured on the tire?

A. Yes.

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

A. We are at No. 9?

Q. Yes?

A. Uh-huh.

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

Rotman.

does it end in the same place?

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

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

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

Q. I can't answer your question.

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

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

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

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

A. Okey, approximately 17½ inches.

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

A. The cast appears somewhat smaller.

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

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

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

Rotman.

A. Yes.

Q. That is an accidental?

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

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

A. I would hope not.

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

A. No, not really.

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

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

Q. Now, can you locate that nail mark?

A. Yes.

Q. Where is it located?

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

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

Rotman.

A. This is the wing we are looking at.

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

By Mr. Fierro:

There is an unanswered question on the record.

A. I don't see it.

By The Court:

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

By Mr. Ertel:

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

By The Court:

Do it outside of the hearing of the Jury.

By Mr. Fierro:

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

By The Court:

I agree, Sir.

By Mr. Ertel:

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

A. Difficult to see, isn't it?

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

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

Rotman.

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

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

By Mr. Fierro:

He didn't say it was a nail mark.

By Mr. Ertel:

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

By The Court:

Reword your question.

By Mr. Ertel:

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

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

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

A. Which nail mark?

Q. Right there?

By Mr. Fierro:

I insist that he has to make a good record.

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

By The Court:

Be specific.



Rotman.

By Mr. Ertel:

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

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

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

A. Right.

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

By Mr. Fierro:

He did not identify a nail mark on the boot.

By The Court:

Reword your question.

By Mr. Ertel:

Q. Is there a nail?

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

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

A. Yes, it is a round spot.

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

A. Measure the round spot?

Q. Yes?

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

Rotman.

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

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

Q. Does it measure favorably?

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

Q. It....

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

Q. But.....

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

Q. Wait a minute....

By Mr. Fierro:

Let him finish.

By Mr. Ertel:

Will you sit down?

By Mr. Fierro:

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

By The Court:

Finish your answer, Sir.

By Mr. Fierro:

He was going around the boot.

Rotman.

By The Court:

Finish your answer.

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

By Mr. Ertel:

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

A. Yes.

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

A. We did.

Q. That measures favorably, doesn't it?

A. Yes.

Rotman.

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

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

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

A. Yes.

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

A. Yes.

Q. To the closest point in the second indentation?

A. Okey.

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

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

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

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

Q. Is that the same one?

A. Yes.

Q. Does it measure favorably to the second point?

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

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

A. Yes.

Rotman.

Q. Can you do that on the cast also?

A. Is this where you measured to?

Q. I can't answer your questions.

A. All right.

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

A. I think it slipped off. Okey.

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

A. No, I think it is the same.

Q. Is it the same?

A. Yes.

Q. It measures favorably, does it not?

A. Yes.

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

A. Yes.

Q. Did you find any comparison points there?

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

Q. Yes, I would.

A. What do you want me to measure?

Q. Measure to anyother reference point?

A. To the nail?

Q. Do you see a nail on there?

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

Q. Is that a nail?

Rotman.

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

Q. Is a nail?

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

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

A. Yes.

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

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

Q. They appear to you to be nail marks?

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

Q. Which are you measuring between on the boot?

A. Well, there are.....

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

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

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

A. Is that more pronounced, not really.

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

A. Yes.

Q. They compare favorably, do they not?

A. Yes.

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

Rotman.

A. Okey.

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

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

Q. Yes, Sir, now this one here?

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

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

A. I just measured it from the boot.

Q. It is the same?

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

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

A. Yes.

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

A. Yes.

Q. And angles?

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

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

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

Rotman.

Q. Many tool examiners?

A. Yes.

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

A. Yes.

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

A. I think so.

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

A. Yes, and 6.

Q. Did you locate 6 also?

A. Yes.

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

A. If that is what 6 represents, yes.

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

A. Yes.

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

A. Yes.

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

A. The thread mark?

Q. Yes?

A. There are many thread marks around the shoe.

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

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



Rotman.

somewhat of an indentation here.

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

A. Okey.

Q. Measure that on the boot please?

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

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

A. Okey.

Q. Measures favorably?

A. Yes.

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

A. Yes.

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

A. Okey.

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

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

Q. Can you locate that on the cast?

A. Well, not really.

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

Rotman.

locate.....

By Mr. Fierro:

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

By The Court:

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

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

By Mr. Ertel:

Q. Does it measure favorably?

A. It measures favorably.

Q. It measures almost exactly from the nail hole?

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

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

A. I would hope so.

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

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

Rotman.

talking about millimeters.

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

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

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

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

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

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

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

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

Q. You say it does anyway?

A. It would have to.

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

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

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

A. All right.

Rotman.

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

A. No, Sir.

Q. Who tagged those, do you know?

A. No, Sir.

Q. I am sorry, Mr. Rotman.

A. (Witness returns to stand.).

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

A. I am not sure I understand your question.

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

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

Q. Sure?

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

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

A. They are not necessarily on one car.

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

Rotman.

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

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

Q. We don't need to repeat.

By Mr. Pierro:

Please let him answer, I object.

By The Court:

You may finish your answer.

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

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

A. No.

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

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

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

Rotman.

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

Q. That was conclusive in your mind?

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

Q. That is one tire?

Rotman.

A. That could be a thousand tires.

Q. Let's add another tire to that?

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

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

A. All right.

Q. I have no further questions.

By The Court:

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

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

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

By The Court:

The witness will take the stand.

By Mr. Fierro:

The witness was excused.

By The Court:

I thought you had re-direct.

By Mr. Fierro:

No.

By The Court:

Proceed, Mr. Fierro.

By Mr. Fierro:

The Defense rests.

By The Court:

Mr. Ertel, rebuttal, if any.

By Mr. Ertel:

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

Richard DeVito.

anticipate anything this soon.

By The Court:

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

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

By Mr. Fierro:

I would like to have an offer on the record.

(AT SIDE BAR.).

By Mr. Ertel:

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

By The Court:

The other time agrees exactly with his time.

By Mr. Fierro:

Did he observe it on that day?

By Mr. Ertel:

He can't specify the day.

By Mr. Fierro:

Then it is not rebutting.

By Mr. Ertel:

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

By The Court:

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



Richard DeVito.

anticipate anything this soon.

By The Court:

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By The Court:

The other time agrees exactly with his time.

By Mr. Fierro:

Did he observe it on that day?

By Mr. Ertel:

He can't specify the day.

By Mr. Fierro:

Then it is not rebutting.

By Mr. Ertel:

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

By The Court:

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

Richard DeVito.

on the ledge. Can he fix the time at all?

By Mr. Ertel:

He can't.

By Mr. Fierro:

If he can't fix it, it is not proper rebuttal.

By The Court:

It is really not, because that is exactly the time you have him leaving the Barr's.

By Mr. Ertel:

The point is he observed the white helmet on the ledge, and can't specify the time.

By Mr. Fierro:

The rebuttal should be for October 19th.

By Mr. Ertel:

They said never, they had witnesses that said never.

By Mr. Fierro:

The Defendant said he had this in his car.

By The Court:

The witnesses said they never saw it on the back ledge.

By Mr. Fierro:

You are going to leave it in whether he says it is October 19th?

By The Court:

I hesitate if you can't tie it down.

Richard DeVito. - John Goertz.

By Mr. Ertel:

I can't tie it down.

By The Court:

Put the specific offer?

By Mr. Ertel:

I told you.

By The Court:

Refused.

(END OF SIDE BAR.).

By Mr. Ertel:

Step down, Richard.

(Excused from witness stand.).

JOHN GOERTZ, being duly sworn according to law,  
testified as follows:

By Mr. Fierro:

I would like an offer on the record.

By The Court:

Side Bar.

(AT SIDE BAR.).

By Mr. Ertel:

He is in charge of records of Rishel Furniture.  
He has Keith Sampsell's time card for the time in question.  
Keith Sampsell checked in at approximately 3:58, we think, it is  
either 3:51, 3:58 or 3:59, he stamped over the time record.  
He said he got there late that day. They spent 20 minutes at  
the Bubb home and then he went straight to work. He said he got  
there late and saw the Defendant at five minutes of four and he

Richard DeVito. - John Goertz.

By Mr. Ertel:

I can't tie it down.

By The Court:

Put the specific offer?

By Mr. Ertel:

I told you.

By The Court:

Refused.

(END OF SIDE BAR.).

By Mr. Ertel:

Step down, Richard.

(Excused from witness stand.).

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He said he got there late that day. They spent 20 minutes at  
the Bubb home and then he went straight to work. He said he got  
there late and saw the Defendant at five minutes of four and he

John Goertz.

saw Mike Grime's car.

By The Court:

Any objection?

By Mr. Fierro:

Yes. Keith Sampsell did testify he saw the car at five minutes of four.

By The Court:

And he tied it down going to work.

By Mr. Fierro:

Yes.

By The Court:

He corroborated Bubb and Bubb says they saw the car at 3:55, saw Mike Grimes.

By Mr. Fierro:

Not the car, saw Mike Grimes.

By The Court:

Keith and Jeffrey Sampsell was with him in his car at 3:55, they saw Mike Grimes' car, now what you are saying it could be later.

By Mr. Ertel:

Or earlier.

By The Court:

What time did he come to work?

By Mr. Ertel:

He stamped over it, it is in the 3:50's, we don't know if it is 3:51, 3:58 or 3:59.

By The Court:

This is in front of the Grimes' home?

John Goertz.

By Mr. Ertel:

He testified they went for 20 minutes to Bubb's home before he went to work, one of them did.

By Mr. Fierro:

I agree that this man can testify what a time card, if he is in charge of it, says, that is all.

(END OF SIDE BAR.)

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. John Goertz.

Q. Where do you live, John?

A. 1201 West Third Street, Williamsport.

Q. Where are you employed?

A. Rishel's Furniture.

Q. What is your occupation?

A. I am in the Personnel Department.

Q. Do you have custody of, one of the persons having custody of the time cards there?

A. Yes.

Q. Do you know Keith Sampsell?

A. I hired him, yes.

Q. And do you know his employee number?

A. 004170.

(Commonwealth's Exhibit No. 121 marked.).

By Mr. Ertel:

Q. You brought his time card with you today?

A. Yes.

John Goertz.

Q. This is his time card?

A. Yes.

Q. I show you marked as Commonwealth's Exhibit No. 121, is that correct?

A. Yes.

Q. That has the name "Keith" at the top, whose card is that?

A. Keith Sampsell.

Q. The time card may mean something to a lot of people, but would you explain it to us so we understand about it, it says "Pay period ending October 20, 1973:", is that correct?

A. Yes.

Q. Is there a way you can determine October 19th on the card?

A. Yes, the clock stamps moreorless a character for the day, such as Monday is "M", Tuesday is "Tu", and also the position on that card indicates what day it is, for the 19th would be "Fr" for Friday, and it would also be on line six as it is on this case.

Q. Can you tell us the time Keith Sampsell clocked in that day?

A. We took it for 3:59. He punched his lunch period over the top when he punched in, which moreorless marked it out, it was 3:58 or 3:59, I would say.

Q. It is definitely 3:50 something?

A. Right.

Q. You can't tell the last digit?

A. That is correct.

John Goertz.

(Commonwealth's Exhibit No. 122 and 123 marked.).

Q. I show you Commonwealth's Exhibits Nos. 122 and 123, are these photographic enlargements of that time stamp?

A. Yes, Sir.

Q. Does that make it clearer so you can read it?

A. I would say so.

Q. Does it show the time he punched in as 3:50 something?

A. Yes.

Q. What is punched over the top of it?

A. It looks like 6:01, and 6:01 also appears, which would be the next in-punch at his lunchtime, so when we originally we went over it, we assumed 6:01 was, what had happened he punched his lunch period over when he originally came in, and it showed up to be 3:58 or 3:59, which would count as 4:00.

Q. There is no question this is Keith's time card?

A. There is no question.

Q. Cross examination.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Ertel:

We offer into evidence Commonwealth's Exhibits Nos. 121, 122 and 123.

By Mr. Fierro:

No objection.



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?

Barto.

By The Court:

They are admitted without objection.

(Commonwealth's Exhibits Nos. 121, 122 and 123 admitted into evidence.).

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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.

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.

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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.

Trooper Richard Reitz.

(Off-the-record discussion.).

By Mr. Fierro:

It is not true rebuttal.

By The Court:

No, but I will permit it.

(END OF SIDE BAR.)

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. Richard A. Reitz.

Q. Your occupation?

A. Pennsylvania State Policeman.

Q. How long have you been a State Trooper?

A. Approximately eight years.

Q. Trooper Reitz, did you have the occasion to make the search, or be a party to a search of the Hubbard home?

A. Yes.

Q. Did you have the occasion to locate a blue shirt in the atticway?

A. Yes, I did.

Q. Would you describe the circumstances of that in your relationship with Mrs. Hubbard at that point?

A. As I recall, I went into Kim's room, Kim Hubbard's, along with Trooper Fama, and searched the room and adjacent atticway.....

By Mr. Fierro:

I object.



Trooper Richard Reitz.

By The Court:

Would you limit it to that one specific item, Sir?

By Mr. Fierro:

I object to the shirt in question, this is not the shirt discussed at Side Bar.

By The Court:

I assumed it was.

By Mr. Ertel:

I assume it is too.

By Mr. Fierro:

I am assuming it was not.

By The Court:

May I see Counsel?

By Mr. Ertel:

I will represent it is.

By The Court:

May I see Counsel?

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

By The Court:

The offer is limited to the shirt, Sir.

A. Would you repeat the last question?

(Official Reporter read question as follows: "Q. Would you describe the circumstances of that in your relationship with Mrs. Hubbard at that point?")

By Mr. Ertel:

Q. Referring.....well, let's have this marked.

(Commonwealth's Exhibit No. 124 marked.).

Trooper Richard Reitz.

Q. I show you marked as Commonwealth's Exhibit No. 124, can you identify that?

A. Yes, I can.

Q. What is it?

A. It is a blue shirt which I found in the atticway adjacent to Kim Hubbard's room.

Q. In the Hubbard home?

A. Yes.

Q. Will you describe the circumstances and what happened in relation to Mrs. Hubbard when you got that shirt?

A. I looked at the shirt, which was hanging on a bar, and I asked Mrs. Hubbard if this was Kim's shirt, and she said that it was, but that he didn't wear it. The reason I got the shirt off of the rack was because.....

By Mr. Fierro:

We object to this.

By The Court:

Sustained.

By Mr. Ertel:

Q. Was there markings on the shirt?

A. Yes.

Q. Are they still on it?

A. Yes.

Q. Will you show it to the Jury, please?

A. I point to this particular marking, which is red, or sort of bronze-red in color, and it is the reason why I grabbed the shirt off of the rack.

Trooper Richard Reitz.

Q. Did you let Mrs. Hubbard see it or do anything with it?

A. Yes, I showed the shirt to Mrs. Hubbard and she said it was Kim's shirt.

Q. What did you do with the shirt then?

A. I took it and gave it to Trooper Fama who was helping me in the search, he marked the bag and put it in this particular bag.

Q. Is that your total relationship as far as that shirt with Mrs. Hubbard?

A. Yes, the only thing else she had stated was that Kim didn't wear this shirt, that he only wore the "T" shirts in the drawer, which we had already searched.

Q. No further questions.

CROSS EXAMINATION

By Mr. Fierro:

Q. Well, Trooper Reitz, let's not leave the Jury with any wrong impression about this mark on the shirt, you don't want them to believe that it is somebody's blood, do you?

By Mr. Ertel:

We will stipulate it is paint, and we are prepared to put our Chemist on the stand to show it is, and he is here to be cross examined.

By Mr. Fierro:

No further questions.

(Excused from stand.).

Trooper Richard Reitz. - Trooper Charles Fama.

TROOPER CHARLES FAMA, being duly sworn according to law, testified as follows:

By Mr. Fierro:

Mr. Ertel, is this the Chemist?

By Mr. Ertel:

The Chemist you have already seen, he is Mr. Miller, he is out in the hall. This is Trooper Fama.

By Mr. Fierro:

Make an offer at Side Bar.

(AT SIDE BAR.).

By Mr. Ertel:

The same thing as before, except he put the label on the shirt.

By Mr. Fierro:

What I would like to know what rebuttal is this if he just testifies he put the label on the shirt?

(Off-the-record discussion.).

By Mr. Fierro:

What difference does it make if the Chemist takes the stand and says it looks like blood, she didn't say it was. We don't need him for identification, if you think the Chemist is important, let's take the missing link out and move along.

By The Court:

What do you object to?

(Off-the-record discussion.).

(END OF SIDE BAR.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name?

A. Charles A. Fama.

Q. Your occupation?

A. I am with the State Police stationed in Montoursville.

Q. Trooper Fama, were you a party of the search of the Hubbard home?

A. Yes, Sir, I was.

Q. Did you have the occasion to be in the upstairs bedroom of Kim Hubbard when the blue shirt was confiscated?

A. Yes, I was there.

Q. Describe the circumstances?

A. We were conducting a search in Kim Hubbard's bedroom...

By Mr. Fierro:

I object, I thought the offer was for identification of the object.

By The Court:

The offer is limited to that.

By Mr. Ertel:

Q. Did you find the object, or was it handed to you?

A. It was handed to me.

Q. I show you marked as Commonwealth's Exhibit No. 124?

A. Yes, Sir, this item was handed to me.

Q. Did you label it?

A. Yes, I did, I placed it in this bag and labeled it.

Q. What did you label it?

Trooper Charles Fama.

A. "Blue Shirt. Possible Blood stains. Found in atticway 31 October, 1973, at 2:51 P.M.".

Q. Were you present when Mrs. Hubbard was asked about the shirt?

By Mr. Fierro:

I object, this is not part of the offer.

By The Court:

The objection is sustained.

By Mr. Ertel:

No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

By Mr. Ertel:

Do you want to stipulate to the paint stains, or do you want me to put the man on?

By Mr. Fierro:

No, we would be happy to stipulate to that.

By The Court:

Make the statement for the record.

By Mr. Ertel:

It is stipulated the Chemist analyzed this and it was transmitted to him and it was determined it was paint.

By Mr. Fierro:

And there is no other relevancy concerning that paint to this case, otherwise I want to ask him, if you know that, say so.

By Mr. Ertel:

I don't see any relevancy.

By Mr. Fierro:

I don't either, why even introduce it if it is not relevant.

By Mr. Ertel:

Because Mrs. Hubbard made a big deal of it.

By The Court:

Let's proceed, Gentlemen, make those remarks at Side Bar.

By Mr. Fierro:

We object to its' introduction.

By The Court:

It was not offered as yet.

By Mr. Ertel:

May we have a few minutes recess to line up the rest of our witnesses?

By The Court:

Do you have some you can call today?

By Mr. Fierro:

Do you?

By Mr. Ertel:

Yes.

By The Court:

The Defendant is excused. The Jury is excused.  
We will recess for 15 minutes.  
(Recessed at 5:00 P.M., EDST.).

(END OF SIDE BAR.).

By The Court:

The objection is sustained.

By Mr. Ertel:

That is all, Officer.

By Mr. Fierro:

No questions.

Recalled

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.



Trooper Fama.

By Mr. Ertel:

He will establish what the conversation with Grimes was.

By The Court:

You can do that, the same as the other, but the other rebuttal was a question, that is no statement.

By Mr. Ertel:

He made the statement it was done.

By The Court:

Who, Mr. Fierro?

By Mr. Ertel:

Sure he did.

(Off-the-record discussion.)

(END OF SIDE BAR.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your name?

A. Charles A. Fama, Penna. State Police.

Q. Did you accompany Officer Barto in the interview with Mike Grimes?

A. Yes, Sir, I did.

Q. When was that?

A. That interview took place January 15th, I believe.

Q. Would you state what Mike Grimes said he was doing at the time that allegedly the Hubbard car pulled up?

A. He was working on his car.

Trooper Fama. - Lieutenant Hynick.

Q. Where was he?

A. In front of his home underneath the car.

Q. Did he tell you what, if anything, he saw allegedly of Kim Hubbard?

A. He said he could see Kim Hubbard from the waist down.

Q. Did he tell you what he was wearing, if anything?

A. Jeans and boots or sneakers.

Q. No further questions.

By Mr. Fierro:

No questions.

(Excused from witness stand.).

LIEUTENANT STEVEN HYNICK, being duly sworn according to law, testified as follows:

By Mr. Fierro:

I want a Side Bar offer.

(AT SIDE BAR.).

By Mr. Ertel:

He will testify about being at the Hubbard home on the 31st, his questions to Mrs. Hubbard, her responses, what she said as related to where Kim was during the day. The dress of the victim, she was wearing ear rings when she left, and she had the coat zippered up to her neck. He will also say he questioned Kim, but when they questioned Kim it was done in the kitchen or kitchen table over coffee and he did not step on a helmet when he got in Kim's car.

Clair J. Kiper.

(Reconvened at 5:15 P.M., EDST.).

CLAIR J. KIPER, being duly sworn according to law,  
testified as follows:

By Mr. Fierro:

Make me an offer at Side Bar.

By Mr. Ertel:

Yes.

(AT SIDE BAR.).

By Mr. Ertel:

The man was Foreman at Eastern Wood Products. He issued him a white helmet identical to this case. He never returned it when he left. He left the middle of the shift, basically. That he worked from March, I can't give you the exact date, until mid-May, and he left with the white helmet and he has one here to identify, which is identical to the one.

By Mr. Fierro:

Did he say he saw him take it?

By Mr. Ertel:

He is going to say he never gave it back.

By Mr. Fierro:

Objection.

By The Court:

Over ruled.

(END OF SIDE BAR.)

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full and occupation?

Clair J. Kiper.

A. Clair J. Kiper.

Q. Your occupation?

A. Foreman at Eastern Wood.

Q. Do you know the Defendant, Kim Hubbard?

A. I do.

Q. Were you his Foreman there?

A. I was.

Q. Do you recall when he came to work?

A. Yes, Sir.

Q. What date was it?

A. March 13, 1973.

Q. At that time did you issue him anything?

A. Yes, Sir.

Q. What did you issue him?

A. A white helmet.

(Commonwealth's Exhibit No. 125 marked.).

Q. I show you marked as Commonwealth's Exhibit No. 125, can you identify that?

A. Yes, Sir.

Q. What is it?

A. It is a helmet similar to the ones we issue.

Q. And did that come from Eastern Wood?

A. Yes, Sir.

Q. Have you had the same type helmets?

A. Yes.

Q. Is that a Scalp Helmet?

A. It is.

Clair J. Kiper.

Q. I show you marked as Commonwealth's Exhibit No. 115, and ask you if that is a Scalp Cap Helmet?

A. The same thing.

Q. Now, when did Kim Hubbard leave Eastern Wood, if you know?

A. May 21, 1973.

Q. How did he leave, would you explain?

By Mr. Fierro:

We object to how he left, this was not the purpose of the offer.

By Mr. Ertel:

I think that it is relevant.

By The Court:

The objection is sustained at this time.

By Mr. Ertel:

Q. Did he leave at the end of a shift or what?

A. No, Sir.

Q. When did he leave?

A. He left during a shift.

Q. Did he ever turn in his helmet?

A. No, Sir.

Q. You are sure of that?

A. Positive.

Q. Cross examination.

CROSS EXAMINATION

By Mr. Fierro:

Q. Well, when you say he never turned in his helmet, did you watch him walk off of the job?

Clair J. Kiper.

A. No, Sir.

Q. You didn't?

A. No, Sir.

Q. Well, then you don't know whether he was wearing this helmet when he walked off the job or not, you don't know, you didn't see him?

A. No, Sir, but it was not turned into me.

Q. I don't care if it was turned into you or not, I am asking you whether you with your own eyes saw Kim leave that plant, or whatever it is called, with that helmet on his head, did you or didn't you?

A. No, Sir.

Q. You did not see him, did you?

A. No, Sir.

Q. Does that helmet that is like Kim's, does that have dough on it or anything that is cake or dough or roll on it?

A. Pardon.

Q. Where you work, does that have any substance where you work that is like bread or cake or icing or anything else?

A. Yes, Sir.

Q. What?

A. We have a wax stain that is red.

Q. A wax stain?

A. Yes, Sir.

Q. Well, you mean that is like a cake substance?

A. No, Sir, it is wax.

Q. Okey, that is all.

Clair J. Kiper.

RE-DIRECT EXAMINATION

By Mr. Ertel:

Q. Would the helmet be turned into you as his Foreman?

A. Yes, Sir.

By Mr. Fierro:

I object to that, it calls for his conclusion.

By Mr. Ertel:

Q. What color is that?

By Mr. Fierro:

Just a minute, are you withdrawing that last question. I objected on the grounds it would be his conclusion, he knows it was turned into him or he doesn't know.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Is it your policy to turn into the helmet to the Foreman?

A. Yes, Sir.

By Mr. Fierro:

I object, I would like to know what was done in this case.

By Mr. Ertel:

Q. What color is that red wax you have?

A. Red wax.

Q. Is it bright, or white or medium?

A. It could be brought, it could be very light.

Q. I show you marked as Commonwealth's Exhibit No. 115, and ask you to look at that?

Clair J. Kiper.

By Mr. Fierro:

I don't want you to remove any of the substance on that Exhibit. I don't want the witness to remove any substance off that exhibit.

By Mr. Ertel:

Q. Can you identify it?

A. It could be red wax, it is red.

Q. You don't know?

A. No, I am not sure.

Q. That is all.

RE-CROSS EXAMINATION

By Mr. Fierro:

Q. Did you smell it?

A. Wax has no smell.

Q. Did you smell the stuff on Exhibit No. 115?

A. No, Sir.

Q. You don't know what is on that Exhibit, do you?

A. No, Sir.

By Mr. Ertel:

Q. Do you want to smell it?

A. No, Sir.

By Mr. Fierro:

Q. You don't want to smell it?

A. No, Sir.

Q. Step down.

(Excused from witness stand.).



David E. Kinney.

DAVID E. KINNEY, being duly sworn according to law, testified as follows:

By Mr. Fierro:

I would like an offer on the record.

(AT SIDE BAR.)

By Mr. Fierro:

Q. I move that the Court strike all of the testimony on the last witness on the grounds that it didn't conform to the offer of proof.

By The Court:

Refused.

By Mr. Ertel:

This chap will testify that he worked with Kim, he left with the white helmet, he saw the white helmet in his car. He had numerous white helmets in his car that he took from Eastern Wood. There was a controversy at Eastern Wood about the helmets disappearing and Kim was told to bring them back, and he never did.

By Mr. Fierro:

This is hearsay.

By The Court:

The hearsay I will not leave in.

By Mr. Fierro:

Is he going to say he kept any of these helmets?

By Mr. Ertel:

Yes, two or three to be exact, he just saw them many times.

David E. Kinney.

By Mr. Fierro:

Does he know if he brought them back or not?

By Mr. Ertel:

He knows he had them into July.

By Mr. Fierro:

Will this man say he kept one and he never returned  
one?

By Mr. Ertel:

Yes.

(END OF SIDE BAR.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name?

A. David E. Kinney.

Q. Where do you live?

A. South Williamsport.

Q. Do you know the Defendant in this case, Kim Hubbard?

A. Yes.

Q. Did you work with him at Eastern Wood Products?

A. Yes.

Q. Were you with, were you there the day he left?

A. Yes.

Q. What happened on that occasion?

By Mr. Fierro:

I object to what happened.

*Check  
Kinney's answer  
on next page*

David E. Kinney.

By The Court:

Q. Do you understand the question?

A. Yes, Sir.

Q. You may answer.

A. We were just working.

Q. Speak up?

A. We were just working and he decided to quit.

By Mr. Ertel:

Q. Did he take anything with him when he left?

A. No.

Q. Did you ever see any white helmets like.....

By Mr. Fierro:

I object to his leading the witness.

By The Court:

Refrain from leading the witness.

By Mr. Ertel:

Q. What kind of helmets did you use at Eastern Wood?

A. Regular white plastic helmet.

Q. Is that an example of one sitting in front of you?

A. Yes.

Q. Did you ever see any of those in Kim's car?

A. Yes.

Q. How many did you see there?

A. I know he had a couple, two.

Q. How long into the Summer did you see those in his car?

By Mr. Fierro:

I object to his leading.

David E. Kinney.

By The Court:

You may answer.

A. Well, it was a few months before school started.

By Mr. Ertel:

Q. Can you give an approximation if it was summertime or not?

A. It was around July.

Q. You saw them there at that time?

A. Yes.

Q. Did you ever have a conversation with Kim about White helmets?

A. No.

Q. Do you recall anything about re turning white helmets to.....

By Mr. Fierro:

I object to his leading.

By The Court:

Refrain from leading the witness.

By Mr. Ertel:

Q. Did somebody else have a conversation with Kim about white helmets?

By Mr. Fierro:

He is leading, and I object.

By The Court:

Q. Do you understand the question?

A. Yes.

Q. You may answer?

David E. Kinney.

A. He told me that he was told about having too many helmets.

By Mr. Ertel:

Q. Did he have helmets after that?

A. Yes.

Q. No further questions.

CROSS EXAMINATION

By Mr. Pierro:

Q. Mr. Kinney, do you know whether or not Kim took back the helmet, or don't you know? *He never mentioned that*

A. That, I don't know. *Kim took more with him than the spirit*

Q. Well, what you do know the day he left the job you say he took nothing with him?

A. Right.

Q. Is that correct?

A. Right.

Q. That means he didn't even take a helmet, is that correct?

A. Right.

Q. Mr. Kinney, were you ever in Kim's car like August or September or October of last year?

A. Yes.

Q. All right, did you ever see any white helmets in the car then?

A. Yes.

Q. How many?

A. Well, I can't be exact, but I know I seen them sitting

David E. Kinney. - David J. Shellman.

on the window ledge.

Q. On the window ledge?

A. Yes.

Q. One ore more than one?

A. That, I can't be sure of, I don't know.

Q. When was the last time you were in his car?

A. I don't know.

Q. You don't know?

A. No, I think it would be, the last time would be around August.

Q. Around August?

A. Yes.

Q. We are talking about 1973?

A. Right.

Q. No further questions.

(Excused from witness stand.).

DAVID J. SHELLMAN, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name and address?

A. David J. Shellman, 809 Main Street, South Williamsport

Q. Your sister, I believe, testified in this case?

A. Yes.

Q. Mr. Shellman, where do you work?

A. Capitol Finance.

Q. Do you know the Defendant, Kim Hubbard?

David J. Shellman. - Linda K. Ranck.

CROSS EXAMINATION

By Mr. Fierro:

Q. You say that you saw last July, in Kim's car, a white helmet similar to the one you are looking at and it was on the floor of the car?

A. Right.

Q. Thank you, that is all.

(Excused from witness stand.).

LINDA K. RANCK, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Linda K. Ranck.

Q. Where do you live?

A. 221 West Central Avenue.

Q. South Williamsport?

A. Yes.

Q. Do you know the Defendant, Kim Hubbard?

A. Yes.

Q. Do you know Ruthie Hubbard?

A. Yes.

Q. Going back to the day you had off school, that is the 19th of October, did you have the occasion to call Ruthie at that time?

A. Yes.

Q. Would you tell us what time it was?

Linda K. Ranck.

A. It was around 4:00.

Q. Well, how do you place the time?

A. Well, I was watching Match Game, and my Mother leaves at ten of four to go to work.

Q. Was your Mother home while you called?

A. No.

Q. Well, how soon after she left did you call?

A. A few minutes after she left.

Q. What time does Match Game go off?

A. 4:00.

Q. Now, who answered the phone when you called the Hubbards'?

A. Mrs. Hubbard.

Q. Did you talk to Ruthie then?

A. Yes.

Q. Did Mrs. Hubbard give the phone to Ruthie?

A. Yes.

Q. What did you talk to Ruthie about?

By Mr. Fierro:

We object.

By The Court:

The objection is sustained.

By Mr. Ertel:

Q. Did you call the home again after that?

A. Yes.

Q. What is the next time you talked to anyone at the Hubbard home?



Linda K. Ranck.

A. 6:00.

Q. How do you place that time?

A. Well, while I was talking I looked at the clock.

Q. Why did you look at the clock?

A. I don't know, I just always look at the clock when I talk on the phone.

Q. Where were you going that night?

A. Football game.

Q. Did you get a call from the Hubbard home?

A. Yes.

Q. Who called you, if you know?

A. Mrs. Hubbard called and my sister answered.

Q. Did you talk to Mrs. Hubbard?

A. No.

Q. Do you know what time that call was?

A. Between 5:00 and 5:30.

Q. Did you go that night to the football game with Ruthie?

A. Yes.

Q. What time, do you remember?

A. We picked her up around quarter of seven, seven o'clock.

Q. No further questions.

CROSS EXAMINATION

By Mr. Fierro:

Q. Do you know how many times that afternoon and evening you called the Hubbard house?

Linda K. Ranck. - Kenneth Whitenight.

A. Twice.

Q. And that was 4:00 and 6:00?

A. Right.

Q. That is all.

(Excused from witness stand.).

KENNETH WHITENIGHT, being duly sworn according to law testified as follows:

By Mr. Fierro:

I would like an offer on the record.

(AT SIDE BAR.).

By Mr. Ertel:

To establish that he went back to the store at approximately twenty to quarter of four, his daughter was there, Colleen Whitenight, he stayed there until 5:20. She called no one between those hours.

By Mr. Fierro:

This rebuts nothing.

By The Court:

Yes, I think it does.

By Mr. Fierro:

This girl said she did not know what time that afternoon she called.

By Mr. Ertel:

Kim said he called Colleen at 4:30 and 4:35.

By Mr. Fierro:

He can't rebut Kim's testimony.

Linda K. Ranck. - Kenneth Whitenight.

A. Twice.

Q. And that was 4:00 and 6:00?

A. Right.

Q. That is all.

(Excused from witness stand.).

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By Mr. Ertel:

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By Mr. Fierro:

He can't rebut Kim's testimony.

Kenneth Whitenight.

112'

By The Court:

You will have to see if his daughter was there.

Kim said on October 19th he received a call from 4:30 to 4:35 from Colleen.

By Mr. Fierro:

He is not rebutting Kim's testimony.

By The Court:

If the daughter was there and he knows she was not making a phone call, it does.

By Mr. Fierro:

He is really rebutting his daughter's testimony, not Kim's. Kim said he received a call.

By The Court:

It can be, if she made no phone calls at that time, it is rebutting Kim's testimony.

(END OF SIDE BAR.).

DIRECT EXAMINATION

By Mr. Ertel:

Q. State your full name, please?

A. Kenneth Whitenight.

Q. Mr. Whitenight, where did, where do you live?

A. I live at 237 Spring Street in DuBoistown.

Q. What is your occupation?

A. I own Clearview Television Company at 1134 West Third Street.

Q. Your daughter, Colleen, testified in this case?

A. Yes.

Q. Now, Mr. Whitenight, returning to the 19th of October.

Kenneth Whitenight.

1973, did you have the occasion to go back to your place of employment?

A. Yes, I did.

Q. What time did you go back that day?

A. I got a call from my daughter around quarter to four, and said that.....

By Mr. Fierro:

I object to that.

By The Court:

Sustained. Just answer the questions.

A. I got back to the store sometime before 4:00.

By Mr. Ertel:

Q. How long were you there?

A. I was there until about 20 minutes of five.

Q. At any time did your daughter call Kim Hubbard?

A. No, She didn't.

By Mr. Fierro:

I object to whether she called Kim Hubbard.

By The Court:

Reword your question.

By Mr. Ertel:

Q. Did she call the Hubbard home?

By Mr. Fierro:

I object to that.

By The Court:

Reword your question.

Kenneth Whitenight.

By Mr. Ertel:

Q. Were you in the store and around Colleen all during that period of time?

A. Yes, I was.

Q. Did she make any calls at that time?

A. No, she didn't.

Q. You are sure of that?

A. Yes.

Q. Cross examination.

CROSS EXAMINATION

By Mr. Fierro:

Q. You say you were around the store and watching whether your daughter was going to make a phone call or not?

A. I didn't say that.

Q. Well, what were you doing, let's say from the time you went to the store until you left it, 4:00 to 5:20, what were you doing?

A. I was in the store talking to a customer.

Q. Just to one customer?

A. I recall it was one customer.

Q. Did you talk to that customer from 4:00 to 5:20?

A. No.

Q. What else did you do?

A. The usual thing around the store, as a store owner would do.

Q. What were you doing that day, that time, besides talking to a customer once?

Kenneth Whitenight.

A. I don't recall exactly what I was doing, but I was in the store.

Q. You don't recall exactly what you were doing, but you recall exactly what your daughter was doing, don't you?

A. I didn't say I recall what my daughter was doing, I said I was in the store doing my usual business as a store owner.

Q. What were you doing in your usual business as a store owner at that time?

A. Probably waiting for business.

Q. Probably waiting for business?

A. The same as anyother store owner would do.

Q. While you were waiting for business, you were watching whether Colleen was going to make a phone call or not?

A. I didn't say I was watching Colleen making a phone call.

Q. But you know she didn't, don't you?

A. Yes, I do.

Q. Because if she made it, you would have seen it?

A. If she made it, I would have heard her make a phone call.

Q. Is the room that small?

A. If somebody is talking on the phone you can hear them.

Q. Is there only one room in the store room?

A. No, three or four rooms.

Q. You have long opposed your daughter going with

Kenneth Whitenight.

Kim, haven't you, just answer the question "Yes" or "No"?

A. If I answered this question, your Honor, I would like to have a chance to explain myself if I answer this question.

By Mr. Ertel:

I believe the man is entitled to do that.

By Mr. Fierro:

I don't think he is entitled to do that, I only want to know whether he is opposed to their keeping company?

By The Court:

Mr. Fierro desires an answer, "Yes" or "No", but then the Court will give you an opportunity to explain. Mr. Fierro, I will see you at Side Bar if you care to argue it.

By Mr. Fierro:

All right.

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

By Mr. Fierro:

Q. Mr. Whitenight, isn't it true that on that particular night that you were anxious to get out of there, you were in a hurry to go home and pack because you had to pick up some people, you were going out of town?

A. We have a motorhome, and the motorhome was already packed before I went back to the store.

Q. I asked you weren't you in a hurry to leave the store that night because you were going to make a trip?

A. Not when I went back to the store, no.

Q. You were in no hurry?

A. No.



Kenneth Whitenight.

Q. But you were going to make a trip that night, weren't you?

A. Yes, that is right.

Q. You did make a trip that night, didn't you?

A. Yes.

Q. What time did you leave your house, not the store, what time did you leave your house?

A. You mean on the trip?

Q. Yes?

A. Oh, I would say approximately twenty-five minutes of six, time to get over to the next block to pick up the people.

Q. Well, you left the store about what time?

A. I would say about approximately twenty, twenty-five after five.

Q. And you had to go home, eat your supper?

A. I didn't eat supper.

Q. You just went home and got your wife and whatever, and jumped in your car and picked up these people?

A. Jumped in the motorhome.

Q. And you think you left your house at around what time?

A. Well, I would say around about, we had to drive over the next block, I could tell you better the time when we left their place.

Q. What time did you leave their place?

A. Quarter to six.

Q. That is all.

Trooper Leon Krebs.

By Mr. Ertel:

Thank you, nothing further.

(Excused from witness stand.).

TROOPER LEON KREBS, previously sworn, recalled and testified as follows:

DIRECT EXAMINATION

By Mr. Ertel:

Q. Trooper Krebs, were you present when Mr. Rotman, the expert for the Defendant, examined the casts at the State Police Barracks in Montoursville?

A. Yes, I was.

Q. Would you explain what happened there and the comments of Mr. Rotman?

By Mr. Fierro:

I object, this is not rebuttal.

By The Court:

May I see Counsel at Side Bar?

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

By Mr. Ertel:

Q. Do you recall the question?

A. Yes, I do.

Q. Would you answer it, please?

A. Yes.

By Mr. Fierro:

That question is not specific.

By The Court:

Be specific on it.

Trooper Leon Krebs.

By Mr. Ertel:

Thank you, nothing further.

(Excused from witness stand.).

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By Mr. Ertel:

Q. Do you recall the question?

A. Yes, I do.

Q. Would you answer it, please?

A. Yes.

By Mr. Fierro:

That question is not specific.

By The Court:

Be specific on it.

Leon Krebs.

By Mr. Ertel:

Q. When Mr. Rotman was examining the tire casts or the footprints, did he make some comment?

A. Yes, he did.

Q. What comment did he make?

A. In the course of examining the plaster casts, Mr. Rotman made a statement that he had seen enough, and in examination of the shoe comparison with the plaster cast he made the statement, "Some guys never get a break.", and it went on into, "When you got them, you got them.". Now, whether he said "them" or "him", just what it was, it was kind of slurred, "When you got them, you got them.".

Q. What was he examining at that time?

A. At that point he was examining the shoe.

Q. Was he measuring anything?

A. Yes, he made a measurement between two nail points, and this was the only measurement that I observed him make, and he made the measurement on the shoe and also the plaster cast.

Q. Is that when the comments were made?

A. Yes.

Q. No further questions.

By Mr. Pierro:

I move it be stricken, it does not meet the offer, the Court said it should be in context to and relative to this cast, and unless it can be so associated, it should not be permitted.

By The Court:

The objection is over ruled.

Leon Krebs.

By Mr. Pierro:

No questions.

(Excused from witness stand.).

By The Court:

May I see Counsel?

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

By The Court:

The Court is going to adjourn for today. Everybody remain seated. The Defendant is excused. The Jury is excused. Court will be 9:00 tomorrow morning.

(Adjourned at 5:55 P.M., EDST.).

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