

10

IN THE PRIVY COUNCIL

No. 2 of 1973

ON APPEAL

FROM THE FULL COURT OF THE SUPREME COURT OF THE STATE OF
VICTORIA SITTING AS A COURT OF CRIMINAL APPEAL

B E T W E E N :

CHRISTOPHER RUSSELL LOWERY Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

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(i)

IN THE PRIVY COUNCIL

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O N A P P E A L

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1.

No. 1

PARTICULARS OF OFFENCE

In the
Supreme Court
of the State
of Victoria

No. 1

Particulars
of Offence
1st June 1971

SUPREME COURT
STATE OF VICTORIA
TO WIT

THE Attorney-General of our Lady the Queen presents
that CHRISTOPHER RUSSELL LOWERY and CHARLES IAN
KING at MT. NAPIER in the said State on the 31st
day of January One thousand nine hundred and
seventy one murdered ROSALYN MARY NOLTE.

10

(Sgd) G.M.Byrne

Prosecutor for the Queen

C.S. No. 40

At what Court : 1st June 1971
Supreme Court Supreme Court BALLARAT

Where holden: THE QUEEN
Ballarat against

When begun: CHRISTOPHER RUSSELL LOWERY
1/6/71 and

20 Before whom: CHARLES IAN KING
Smith J.

Plea: PRESENTMENT
Both Not Guilty STATEMENT OF OFFENCE

Verdict: Murder

Judgment: contrary to Common Law.
3/6/71

30 Jury discharged owing to illness
of Juror. Both accused remanded
for re-trial commencing
Tuesday 8.6.71

Recognizances of witnesses accordingly
WITNESSES
Herbert SCHNERRING
David William RICHARDSON
Ivan Gallagher NOLTE
Dennis John DAWSON
John Chesterton DICK
John Barrie O'BRIEN
James Henry McNAMARA
Alan Keith JACKSON
June Audrey NOLTE
Roderick McCALLUM
Raymond John HARKNESS
Eugene Anthony KENNY
Paul Vincent KENNY

40

In the
Supreme Court
of the State
of Victoria

No. 1

Particulars
of Offence
1st June 1971
(continued)

Witnesses (Continued):

Alexsey ERMOLOV
Nick KIPREOU
Jeffrey Charles PECH
Merilyn Ann COOPER
Douglas Gerald Hope JOHNSTONE
John Lochlan Garth BARR
Norman Charles MENGLER
Henry Gregory HUGGINS
Kenneth Alan CHAMBERLAIN
Thomas RIPPON
Vivian Owen WOMERSLEY
Graham James DAVIDSON

Additional:

Kelvin GLARE
Alan MIDDLETON
Malcolm Arthur HYDE
Lynne Margaret OVEREND
JOHNSON
Harry MORRISON
Kevin John CARTON
Roy Henry WARNE
Robert George ABRAHAMS
Garry Peter BAILEY
Peter John Henry SMITS
Kevine Merrilyn BUTTERWORTH
Peter Frank GREED
Douglas Charles BLOOMFIELD

At what Court
Supreme Court

When begun 8/6/71

Where holden Ballarat

Before whom:

Mr. Justice Smith

Plea both Not Guilty 10

Verdict. Both Guilty

Judgment Sentence
of death
pronounced in
respect of both.

20

TRANSCRIPT OF THE EVIDENCE BEFORE HIS HONOUR
MR. JUSTICE SMITH AND JURY

In the
Supreme Court
of the State
of Victoria

No. 2

IN THE SUPREME COURT
OF VICTORIA

Transcript of
the evidence
before His
Honor Mr.
Justice Smith
and Jury
8th to 21st
June 1971

BETWEEN:

THE QUEEN

and

CHRISTOPHER RUSSELL LOWERY

and

CHARLES IAN KING

10

BEFORE THE HONOURABLE MR. JUSTICE SMITH
AND A JURY OF TWELVE

AT BALLARAT ON TUESDAY, 8TH JUNE 1971 at 9.35 a.m.

APPEARANCES:

MR. G. BYRNE

(instructed by the Crown
Solicitor) appeared on
behalf of the Crown

MR. R. J. DAVERN WRIGHT Q.C.

with MR. P. D. CUMMINS
(instructed by the Public
Solicitor) appeared on
behalf of the Accused
LOWERY.

20

MR. H. G. OGDEN Q.C.

with MR. P. A. DUNN
(instructed by the Public
Solicitor) appeared on
behalf of the Accused
KING.

.

Transcription by:

30

Court Recording Services Pty.Ltd.,
63 King's Way,
South Melbourne. 3205

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In the
Supreme Court
of the State
of Victoria

No. 2

Transcript of
the evidence
before His
Honor Mr.
Justice Smith
and Jury
8th to 21st
June 1971

(continued)

JURY CALLED AND SWORN.

BOTH ACCUSED ARRAIGNED.

ACCUSED LOWERY PLEADED NOT GUILTY.

ACCUSED KING PLEADED NOT GUILTY.

APPEARANCES ANNOUNCED.

APPLICATION FOR SOLICITORS TO ASSIST ACCUSED WITH
CHALLENGES - GRANTED.

JURY EMPANELLED.

JURY SENT OUT TO ELECT FOREMAN AT 10.53 a.m.

COURT ADJOURNED AT 10.56 a.m.

10

COURT RESUMED AT 11.25 a.m.

- - - - -

Evidence for
the
Prosecution
Constable
Malcolm Arthur
Hyde

Examination
9th June 1971

MALCOLM ARTHUR HYDE, sworn and examined

WITNESS TO MR. BYRNE: My full name is Malcolm
Arthur Hyde. I am a constable of police
stationed at Hamilton.

MR. BYRNE: Mr. Hyde, on 3rd February of this year
in the evening of that date were you at the
Hamilton police station? ---Yes, I was.
And did you see the accused man Lowery there?
--- Yes.

20

MR. BYRNE: Under what circumstances?--- I was
instructed by Detective Mengler to take a
witness statement from this person.

Did you see Lowery arrive at the police station
yourself?--- No, I did not see him arrive.

About what time was it that you saw the accused
there?---It would have been about 9.30 p.m.

What occurred then?---I took a statement off him,
and the statement was concluded at about 10.15 p.m.

Do you mean by that that Lowery dictated the
statement which you typed out?---That's correct.

30

After you had typed out the statement what
happened?---He read it through and signed it.

Would you look at this, please?---That is the statement.

I tender that, if your Honour pleases.

EXHIBIT EXHIBIT "BB" Statement dated 3 February by the accused Lowery.

10 MR. BYRNE: Would you read the Exhibit please Constable?--- "Christopher Russell Lowery states: "I am a brick layer. . . . I have not seen her since that time."

MR. WRIGHT AND MR. OGDEN DID NOT WISH TO CROSS-EXAMINE. WITNESS WITHDREW & EXCUSED.

In the Supreme Court of the State of Victoria

No. 2

Evidence for the prosecution Constable Malcolm Arthur Hyde

Examination 9th June 1971 (continued)

VIVIAN OWEN WOMERSLEY sworn and examined.

WITNESS TO MR. BYRNE: My full name is Vivian Owen Womersley.

DET. INSP. CARTON & DET. SGT. MORRISON CALLED INTO COURT DURING EVIDENCE IN CHIEF AS CORROBORATING WITNESSES.

Detective First Constable Vivian Owen Womersley

Examination 9th June 1971

20 MR. BYRNE: Mr. Womersley, is your name Vivian Owen Womersley?---Yes it is.

Are you a Detective First Constable of Police attached to the Homicide Squad at Russell Street, Melbourne?---Yes, I am.

About 9.30 p.m. on Wednesday, 3 February of this year did you speak to the accused man King at the Hamilton Police Station?---Yes I did.

Did you take a witness statement from King on that occasion?---I did, sir.

30 Would you look at this please?---Yes, this is that statement.

How did you go about taking the statement from the accused King?---I asked King several questions and when he replied his replies were then recorded in the statement.

When did you make the notes?—At the time.

Did you accurately record the conversation in your notes?—Yes, sir.

May the witness use the notes please to refresh his memory?

HIS HONOUR: Very well.—Rippon said to Lowery, "How long have you had this lead on your car?" Lowery said, "I don't know, what is it?"

10 MR. WRIGHT: Sir, this witness was present in Court during this — we have got no objection to you leading.

HIS HONOUR: Yes.

20 WITNESS: Rippon said, "It's a jumper lead from the battery to the coil, used for starting a car without a key. When did you put that on?" There was a long pause. Rippon said, "Well?" Lowery said, "I've never seen it before. I can't understand how it got there." Rippon said, "Have you got any similar coloured flex at home?" 30 Lowery said, "Yes. I took it out of my old car." Rippon said, "And do you still say you have never seen this jumper lead before?" Lowery said, "I've never seen it before". Rippon, Lowery and myself then returned to the policewomen's office, where I completed taking the statement from Lowery. At the completion of taking the statement Rippon said to Lowery, "The jumper lead on your car is the same colour and size as that used to bind Rosalyn Nolte. You were the last one so far to see her alive. Did you kill her " Lowery said, "Do you think I'm a fucking madman? No, I didn't kill her".

MR. BYRNE: About 12.15 p.m. on Saturday, 6th February, in company with Senior Detective Carton and Detective Sergeant Morrison, did you go to 3 Shakespeare Street, Hamilton?—Yes, sir.

40 What occurred when you went there?—We arrived outside the premises. As we were sitting in the vehicle outside that address I saw the accused Lowery drive his panel van into the driveway of the house. The accused King was also seated in the panel van. Detective Sergeant Morrison then approached Lowery as he alighted from the van and

In the
Supreme Court
of the State
of Victoria

No. 2

Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley

Examination
9th June 1971

(continued)

In the
Supreme Court
of the State
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No. 2

Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley
Examination
9th June 1971
(continued)

said, "We would like to have another talk to you and King at the police station. Are you prepared to come to the police station?" Lowery said, "Yes". I then accompanied Detective Inspector Carton and King to the Hamilton police station and Detective Sergeant Morrison and Lowery followed in Lowery's van.

Who was driving Lowery's van, did you see?---
Lowery was driving the van.

How long did it take you approximately to go 10
from 3 Shakespeare Street to the Hamilton police
station?--- Between 2 and 3 minutes.

Was there any conversation in the car on the way?
--- No, sir, there was no conversation in the car.

At the police station what happened?---At the
police station I accompanied Detective Sergeant
Morrison to the Superintendent's clerk's office
where he interviewed the accused King.

Did you do anything during the time the interview
was occurring?---I recorded notes of the 20
conversation.

What was said?---My memory is once again
exhausted. I would have to refer to those notes.

Did you accurately write down what was being said
as it was said?---I did.

WITNESS GIVEN LEAVE TO REFER TO NOTES

WITNESS: Morrison said to King, "I want to have a
talk to you about this murder. Are you prepared
to answer my questions?" King said, "Yes".
Morrison said, "I have read a statement you made 30
previously in which you tell of the girl Nolte
being with you and Lowery in Lowery's vehicle
the night she disappeared. Do you recall making
that statement?" King said, "Yes". Morrison
said, "There is scientific evidence which
suggests that you and Lowery were concerned in
the death of this girl. Have you anything to
say about that?" King said, "No". Morrison
said, "Electrical lead similar to that used to
bind the girl was found in Lowery's panel van. 40
Do you have anything to say about that?" King
said, "No". Morrison said, "There is other

evidence to suggest that you two men were concerned in this girl's death. Do you have anything to say?" King then bent forward, he put his head and hands on his knees and began to cry. He then said, "It happened out at Mt. Napier..".

In the
Supreme Court
of the State
of Victoria

—
No. 2

Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley
Examination
9th June 1971
(continued)

10 MR. BYRNE: For how long did he cry?—Oh he cried for approximately 2 minutes, 2 to 3 minutes. And then said, "It happened out at Mt. Napier, it was awful". Morrison said, "Were you involved in the murder of this girl?" King said, "Yes". Morrison said, "Was Lowery with you?" King said, "Yes". King said, "Could I see the policewoman?" Morrison said, "Why do you want to see her?" King said, "I want to talk to her". Morrison said, "I will see if she is available". Morrison then left the office and later returned. Morrison said, "The policewoman is not on duty but a car has been sent to bring her here. In the meantime do you feel well enough to go on with the interview?" King said, "Yes". Morrison said, "What will happen is this, as I ask you a question Detective Womersley will type it. Any answer you make will also be typed. At the completion you will be given an opportunity to read it over, if you wish. I will have more to say about that later. Do you follow the procedure?" King said "Yes". Morrison said, "Are you prepared to answer my question?" King said, "Yes". At 12.40 p.m. I was present when Detective Sergeant Morrison interviewed the accused Lowery (? King) in the form of a record of interview. As Morrison asked the question I typed it down, and - Morrison asked the question, which I typed down. He then asked King a question, I then typed King's reply beneath that question. At the beginning and completion of the record of interview he was cautioned and invited to read the notes. He read the record of interview aloud.

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30

40

MR. BYRNE: You mean the typewritten record, when you say the notes?— Yes. He read it aloud, agreed it was true and correct and signed it.

Would you look at this, please? What do you have there?—I have that record of interview.

Do you see signatures that you saw the accused King make?—Yes, sir.

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Evidence for
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Detective
First
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Vivian Owen
Womersley

Examination
9th June 1971

(continued)

Where are they?---They are at the bottom of each page and at the completion of the record of interview.

Was King given anything about the time he signed that?---Yes, sir, he was given a copy of the record of interview.

What do you mean, a carbon copy?---A carbon copy.

I tender the record of interview, if Your Honour pleases.

EXHIBIT EXHIBIT "HH" Statement of accused 10
King of 6th February
1971.

MR. BYRNE: Mr. Womersley, apart from the signature that he put on it, did he mark it or initial it in any other place?---Yes, sir, he initialled alterations

Are they apparent in the body of the document?---
They are.

Would you read the exhibit, please?

MR. WRIGHT: May it please Your Honour, in view of the fact that the accused Lowery was not present when this interview was conducted and this statement was made, would Your Honour remind the jury of the use which they may make of it in relation to Lowery? 20

HIS HONOUR: Yes, I will. Mr. Foreman and members of the jury, you may remember that Mr. Byrne when he was opening this case to you on behalf of the Crown told you that there was a separate case made against each of these two accused men, and that one of the important reasons for considering each case separately is that statements made by each of the accused out of court can only be used against the particular man who made the statement. If in such a statement the accused who made it says something adverse to the other accused you need to bear in mind that statements of that kind made by one of the accused is not evidence against the man on whom they reflect. This is what is called admission evidence that is tendered to you in these statements, and 30
40

admission evidence is in law evidence only against the man who made the admission. You need therefore to be on your guard at all times against making the mistake of thinking that something that one accused said out of court about the other is some evidence against that other, it is not. You will look at each man's statements only for the purpose of considering the Crown case against him.

In the
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of Victoria

No. 2

Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley

Examination
9th June 1971

(continued)

10 WITNESS: Record of interview between Detective Sergeant Morrison and Charles Ian King at the Hamilton police station on Saturday 6th February 1971. Sergeant Morrison asking the questions and Detective Womersley present and typing. Interview commenced 12.40 pm..

Q. "Earlier this morning you were brought here for an interview in relation to the death of the girl named Nolte. A short time ago you told me that you were concerned in her death."

20 MR. BYRNE: What does it say, "A short time ago as you told me" or what does it say?---I made a mistake.

What does it say?---"It says here, "As" it should be "A". "As short time ago you told me that you were concerned in her death with Chris Lowery." At 12.41 p.m. Policewoman Overend entered the room, King said, "I'm sorry." and began to sob.

30 Policewoman Overend did not speak to King but merely comforted him while he was crying. At 12.45 p.m. King handed Policewoman Overend a letter and said, "Write to her". Miss Overend looked at the letter and said, "It's a girl-friend's letter, she lives in Sydney". Sergeant Morrison said, "Do you feel well enough to go on with the interview now?" King said, "Yes."

40 At 12.48p.m. Miss Overend left the room. The interview re-commenced: Q. "Just before the Policewoman came in I had said that you had admitted being concerned with the death of this girl Nolte. Do you agree with that?" A. "Yes." Q. "Before we go any further I want to explain to you your position, that is, that you do not have to answer any questions unless you wish to do so. Anything you do say will be taken down in writing and may be used in evidence. Do you clearly understand your position?" A. "Yes." Q. "Are you prepared to answer the questions I put to you?" A. "Yes." Q. "As you can see what will happen is

In the
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Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley
Examination
9th June 1971
(continued)

that as I ask the questions Detective Womersley will record it, any answer you choose to make to the question will also be recorded. Do you follow the procedure?" A. "Yes." Q. "What is your full name?" A. "Charles Ian King." Q. "How old are you?" A. "Eighteen". Q. "What is your date of birth?" A. "22/1/53" Q. "Where do you live?" A. "46 Stephen Street, Hamilton." Q. "Are you married or single?" A. "Single." Q. "What sort of work do you do?" 10 A. "Shop assistant." Q. "When you said that you were concerned in the death of this girl did you mean that you were present when she was killed?" A. "I was present, yes." Q. "Where did the incident take place?" A. "On a track off Mount Napier." Q. "When did it take place?" A. "Sunday night." Q. "Was Chris Lowery present when the girl was killed?" A. "Yes." At 1 p.m. Inspector Carton entered the room and said to King, "Is everything all right?" King said, 20 "Yes." Inspector Carton then left the room. Q. "When you answered 'Sunday night' did you mean last Sunday 31st January?" A. "Yes." Q. "How long have you known the girl Nolte?" A. "About two months." Q. "Where did you meet her first?" A. "I don't remember." Q. "Had you ever been out in her company prior to last Sunday night?" A. "Once." Q. "Do you recall when that was?" A. "Can I have a look at a calendar?" He reached for a small desk calendar. "The 2nd of January, 30 1971. It may have been the 3rd." Q. "Do you know if it was a Saturday or Sunday?" A. "It was a Sunday." Q. "Well will you tell me what occurred on that occasion?" A. "Roselyn and her girl-friend, Diane Wilson went to Port Fairy with Chris and myself." Q. "Did you go in Chris' panel van?" A. "Yes." Q. "Why did you go to Port Fairy?" A. "Just for a drive for the day." Q. "Is that the only occasion you had been away with her?" A. "Yes." Q. "Did you know how old 40 the girl Nolte was?" A. "Only approximately." Q. "Coming back to Sunday, 31st January last, can you tell me where you first met her on that day?" A. "In Gray Street, Sunday night." Q. "What time of night?" A. "Approximately 8 p.m." Q. "Who were you with when you met her?" A. "Chris Lowery." Q. "Were you in Chris Lowery's panel van?" A. "Yes." Q. "Would you tell me in your own words what happened Sunday night?" A. - Long pause - "The only thing I can remember 50

is about Mount Napier, I don't remember going out there."

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Supreme Court
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No. 2

Evidence for
the
Prosecution
Detective
First
Constable
Vivian Owen
Womersley

Examination
9th June 1971

(continued)

MR. BYRNE: How long was the pause?---Twenty, thirty seconds. About 20 seconds. Q. "Will you tell me what you do remember?" A. "Chris was kicking her on the ground." Q. "Why was he kicking her?" A. "I don't know, he went mad." Q. "Why did you go out to Mount Napier?" A. "I don't know, I can't remember it all." Q. "Had you been drinking?" A. "Yes." Q. "How much drink had you had?" A. "We had about one and a half dozen small cans between us during the day." Q. "Do you want a cigarette?" A. "Yes, please." He was given a cigarette. Q. "You said Chris went mad, what did you mean by that?" A. "He just kicked and kicked, he seemed to enjoy doing it." Q. "Did he do anything else to the girl?" A. "I don't remember at that time." Q. "Whereabouts at Mount Napier did this kicking take place?" A. "About 60 yards from where the car was parked on the track." Q. "Were you still on the made road?" A. "No, it wasn't made." Q. "When Chris and the girl were 60 yards away from the car were you with them?" A. "Yes, I was with them. I can remember about what you asked me before. He had hold of her arm and she complained that it hurt. I remember her words, I think she said 'It's broken'. I think Chris said 'Stiff shit' or something like that." Q. "Why did he have hold of her arm?" A. "I don't know." Q. "Why did you leave the vehicle and walk back 60 yards?" A. "I don't know." Q. "What else did Chris --"

Did he say "I don't know" or "I don't remember?" "Why did you leave the vehicle and walk back 60 yards?"---I am sorry, the answer is "I don't remember". Q. "What else did Chris do to the girl?" A. "I can remember Rosalyn lying on the ground and Chris on top of her trying to strangle her with his fingers." Q. "Was this before or after he had been kicking her?" A. "Afterwards" Q. "And was it after she had complained about hurting her arm?" A. "Yes." Q. "What else do you remember about the events on that Sunday night?" A. "Chris walked back to the car and Rosalyn stayed there with me. She put her arms around me and asked if Chris - and asked 'Is Chris going to kill me?' I said 'I don't know, he's gone mad.'"

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Evidence for
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Detective
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Womersley

Examination
9th June 1971

(continued)

WITNESS: Q. "It is now 1.36 p.m. would you like to stop now and have a meal and a cup of tea?"
A. "Yes, I'd love a cup of tea and I'll have a salad roll." Interview ceased at 1.37 p.m. King was given a cup of tea, a salad roll and a packet of cigarettes. Interview re-commenced at 1.53 p.m.
Q. "Prior to breaking off for lunch you said that Chris had gone back to the car and Rosalyn stayed with you, is that correct?" A. "That's correct."
Q. "What happened next?" A. "Chris came back with something, I don't know what it was, I forget." 10
Q. "What did he do?" A. "I think he started hitting her again." Q. "What was he hitting her with?" A. "His hand I believe." Q. "How many times did he hit her?" A. "I couldn't tell you."
Q. "What happened next?" A. "I walked off, I felt sick." Q. "Where did you walk to?" A. "Up to the car." King said, "Excuse me, I want to go to the toilet." At 1.56 p.m. Sergeant Morrison and King left the room. At 1.59 p.m. Sergeant Morrison and King returned to the room 20
Q. "What happened next?" A. "I vomited."
Q. "Well after you vomited what did you do?"
A. "I got my smokes out of the car, I started to walk back down to Chris and on the way down I thought I would stop him doing what he was and take the consequences of what had happened so far during the night. When I got back down there Rosalyn was on the ground moaning and I asked Chris what happened and he said 'I hit her'." 30
Q. "What did you do then?" A. "I asked him what he intended doing now. Chris said 'I'll have to kill her'. I asked him how, he said 'I don't know'. I don't remember exactly .. I don't remember what exactly happened after that, but he had a piece of brown two-cord flex and had it around her neck. She was trying to scream or talk or something. She couldn't get her breath, there was a sort of whine coming from her mouth, her chest then stopped moving." Q. "What happened next?" A. "He put the two flex around her neck about six times and pulled it tight, and dragged her off the track into the ferns alongside the road. He was just pulling her by the piece of flex." At 2.08 p.m. Assistant Commissioner McLaren entered the room. Morrison said, "This is the Assistant Commissioner Mr. McLaren from headquarters." McLaren said, "Is everything all right, son?" King said "Yes, sir." Mr. McLaren then left the room. 50

MR. BYRNE: Incidentally, Mr. Womersley, do you know how long - that is the Assistant Commissioner of Police you..? ---Yes, sir.

Do you know how long he had been at the Hamilton Police Station at that time?---I'm not sure whether he arrived on the Saturday morning or the Friday night. I'm not sure, sir.

10 Do you know anything as to the duration of his presence on this particular Saturday?---At the Police Station?

Yes.

MR. OGDEN: Your Honour, I do not know what the point of these questions is, and it seems to me that they are not relevant so far as my knowledge of the case is.

HIS HONOUR: What is it directed to, Mr. Prosecutor?

20 MR. BYRNE: It is directed, really, to the case against the accused Lowery, Your Honour, and I had in mind questions that were addressed by my learned friend Mr. Cummins to the witness Rippon to particular conduct attributed to Rippon during that questioning. That is the only matter I directed the questions to.

HIS HONOUR: I think in view of that you are probably entitled to find out what senior officers were at the station at the time covered by the cross-examination.

30 MR. BYRNE: Are you able to say one way or the other on that? I do not want you to guess about it?---No, sir, I couldn't say.

Well, Assistant Commissioner McLaren left the room?---Yes.

40 What happened next?--A.What happened next? She was on her stomach and he pulled her legs back up and tied the end of the cord around her legs and her arms. He turned her over so I could see her face, and lit a match, and vomit came from her mouth. It was horrible. He then grabbed her shoulders and pulled them back and I heard this horrible crack. We then went back

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to the car"

"What did you do then?"-- A. "Tried to get the dog out of the back. It snapped at Chris and he asked me to try and get it out, and I said I wouldn't". We left the tail gate of the van down and he tried to turn around but we couldn't, so he backed it down the road and found a place big enough to turn around in. We drove out onto the sealed surface and stopped the car about a mile or so up and he said, "We've got to get this dog out". So I went around to the back of the car, called the dog, it wouldn't come out, so I grabbed hold of its leash and called it at the same time. It jumped out of the back of the van and sat on the edge of the road. Then we drove back into Hamilton, and the rest of it is what I said in my statement, that we drove around the town and went to the sports centre and then up to my mother-in-law's place". Q. "You described what Chris did to the girl, what part did you play in it?" A. "I think I might have helped to tie her up". Q. "Why did you do this?" A. "I don't know". Q. "Did either of you have sexual intercourse with the girl that night?" A. "No". Q. "Did either of you try to have sexual intercourse with her and meet with a refusal?" A. "I don't remember". Q. "Why did you go out to this spot that night at all?" A. "I don't remember that either". Q. "Did the girl travel out there quite willingly?" A. "I don't remember going out there". Q. "But you remember being there with her, though?" A. "Yes". Q. "Did she at any time ask to be taken back to Hamilton?" A. "I think she did when I was alone with her when Chris was back to the car". Q. "What did she say?" A. "She said, 'Will you please take me home' or something like that". Q. "Did you make any effort to get Chris to take her home?" A. "I was too scared to ask him". Q. "Why did you help him tie her up?" A. "I don't know". Q. "When the girls body was found it was naked. Who undressed her?" A. "I don't remember. I think she must have been undressed before Chris started hitting her, because after he was hitting her I seem to forget what happened before that". Q. "Did you see her clothing on the ground out there?" A. "I think so, yes. Chris tried to strangle her with her bra." Q. "Was this before

he returned with the flex?" A. "It was after he kicked her several times at the start. As I said earlier in my statement, I remember seeing him with the flex but I don't remember how he got it." Q. "Had you seen the flex in the van at any other time?" A. "I don't think so".

Q. "What was the girl doing when he tried to strangle her with the bra?" A. "I don't remember, I couldn't watch". Q. "Whilst this was going on was Chris saying anything?" A. "I don't remember". Q. "What was Chris' condition at the time he was killing the girl? Was he calm or agitated?" A. "He was calm, he seemed to be enjoying it." Q. "What was your condition?" A. "Shaking, I couldn't watch him doing it".

Q. "Did you make any effort to stop him?" A. "No, I was scared to". Q. "What were you scared of?" A. "I thought he might turn on me".

Q. "According to an earlier answer you did in fact help him tie the girl up, is that correct?" A. "Yes" Q. "Why did you help him tie the girl up with the flex?" A. "He might have asked me to help him, I don't remember". Q. "But you do in fact remember helping him tie the girl up with the flex, is that correct?" A. "Yes". Q. "While you were out at Mt. Napier with the girl and Chris that night did you drink any alcohol?" A. "I think Chris had a can of beer but I didn't".

Q. "Was that before or after you had killed the girl?" A. "Before". Q. "Well, after the girl was killed was there any discussion between Chris and you as to what you were going to do?" A. "Yes".

Q. "What was the conversation?" A. "Chris said if we get caught, deny everything. He said 'If they still get us then I'm going to plead temporary insanity'". Q. "Apart from leading the dog was the girl carrying anything?" A. "I didn't see anything, but after we got back into the car Chris said, 'I've got a transistor here' and I said, 'Where did you get that from?"

MR. BYRNE: "Where did that ...?"---"Where did that come from?" and Chris said, 'She had it with her'".

Q. "What did you do with the transistor?" A. "Chris put it under the dashboard and when we were back in town Chris drove up to Hensley Park Road and he passed it to me and said 'Throw it out of the window'. I threw it out of the window". Q. "What time did you get back into Hamilton that night?" A. "Approximately half past nine or a quarter to ten". Q. "Have you been back to the area where

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the girl was killed since Sunday night?"

A. "No". Q. "Have you discussed with Chris since leaving him on that Sunday night anything about the murder of the girl?" A. "Yes".

At 2.45 p.m. Superintendent Warne entered the room and said to King, "Is everything all right" King said, "Yes". Mr. Warne then left the room.

Q. "It is now about 2.46 p.m., would you like to have a break for a while and have a cup of coffee?" A. "If you're going to have one I'll

have one." Interview ceased at 2.47 p.m. King was given a cup of coffee. Interview re-

commenced at 3 p.m. after coffee supplied. Q. "What discussion did you have with Chris since Sunday about the murder of the girl?"

A. "I think I said it was a pretty cruel way for her to die. Chris said 'Bad luck. She's dead now anyway.'" Q. "When did this

conversation take place?" A. "I'm not sure, I don't know what day it was." Q. "Prior to

Sunday, January 31st, 1971 have you ever had a conversation with Chris Lowery about killing a girl?" A. "Yes. But I thought he was just

mucking around." Q. "Would you tell me when that conversation took place?" A. "I don't

remember." Q. "Can you tell me the text of the conversation?" A. "I think Chris said it would

be good to watch her struggling and something about dying slow." Q. "Was it in fact a

serious discussion about murdering a girl?"

A. "I didn't take it seriously but I think Chris was serious. I just played along with him.

I said to him, 'You are nothing but a damn sadist', I was serious about this but Chris thought I was joking. And he replied, 'So

what anyway?'" Q. "Was there any discussion along this line on Sunday, 31st January, 1971?

Before you murdered this girl?" A. "There might have been, but I don't remember. If there had

have been I wouldn't have taken much notice anyway." Q. "Is the position this, you were

present with Chris Lowery when he picked the girl up in Gray Street, Hamilton on Sunday, 31st

January, 1971 and also present with her when he murdered her and you assisted him in tying her

up with the flex cord?" A. "Yes." At 3.10 p.m. Morrison left the room and returned at 3.13 p.m.

with a box of exhibits. Q. "Is that the jumper Rosalyn was wearing on the night of Sunday, 31st

January, 1971?" (Shown purple jumper) A. "I

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don't remember."

MR. BYRNE: Was he in fact shown Exhibit "P" the purple jumper down there on the floor of the Court?---He was shown a purple jumper.

M.R BYRNE: Yes.---Yes, that is the jumper.

Q. "Is that the pair of jeans that she was wearing?" (Shown pair of jeans). A. "They are the same colour."

10 Are those Exhibit "R"? --- Yes, sir. Q. "Are they the pair of boots that she was wearing?" (Shown pair of boots.) A. "I don't remember". Exhibit "S"?---They are the boots, or the shoes, yes. Q. "Is that the pair of socks that she was wearing?" (Shown socks). A. "I couldn't say."

Well he was shown a pair of socks at that stage? ---He was. Q. "Is that the bra that Lowery was trying to strangle her with?" (Shown bra) A. "He used a bra the same as that. They all look the same."

20 Would you look at -?---That is the bra, sir. Q. "Is that the watch that the young girl was wearing on the Sunday night?" (Shown watch) A. "It might have been, I don't know." Q. "Is that the cord flex that Lowery used to strangle the girl?" (Shown brown flex) A. "Yes, it was the same type as that, it was fairly long.

30 Would you look at Exhibit "J" please? Is that the flex that was shown to the accused King at that stage?---Yes, sir. Q. "Have you ever seen that lead before Sunday 31st January last?" A. "I don't think so." Q. "Was the girl wearing this leather choker around her neck that night?" (Shown choker) A. "I don't remember." Q. "Were you wearing this leather jacket on Sunday night 31st January last?" (Shown jacket) A. "Yes."

Is that the jacket that the accused was shown?--- Yes, sir.

EXHIBIT EXHIBIT "JJ" King's jacket.

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WITNESS: Q. "Were you wearing either of these two jumpers, on the Sunday night?" (Shown two jumpers) A. "I was wearing one of them, but I don't remember which one."

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MR. BYRNE: Yes, would you look at these? Are these the two jumpers that he referred to at that stage?---Yes, sir.

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EXHIBIT EXHIBIT "LL" Two jumpers.

WITNESS: Q. "Were you wearing this pair of flying boots on that Sunday night?" (Shown a pair of flying boots.) A. "Yes." 10

MR. BYRNE: Are those the flying boots that were shown to the accused?---Yes, sir.

EXHIBIT EXHIBIT "MM" King's flying boots.

WITNESS: Q. "Do you remember whether the girl was wearing a ring on that Sunday night?" A. "I don't remember." Q. "Charles, Ian King, you are going to be charged with the murder of Rosalyn Mary Nolte at Mount Napier on Sunday, 31st January, 1971, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so. Anything you do say will be taken down in writing and may be used in evidence. Do you clearly understand that?" A. "Yes." Q. "Is there anything you wish to say?" A. "As far as I can remember I didn't help in the actual killing itself, but I was present at the time. That's all I want to say." Q. "During our interview here today you have seen Detective Womersley type.. record my questions to you and your replies to those questions, will you read through this record of interview and if it is a correct record of our interview sign it? You do not have to read it or sign it unless you wish. Do you understand that?" A. "I will read it and sign it." Q. "Will you read it aloud in order that we may follow you on the copy?" A. "Yes." Q. "As you go through the record of interview would you be good enough to initial typing errors?" A. "Yes." 40

Read back commenced at 3.45 p.m. This page removed from the typewriter and handed to King. The read back finished at 4.05 p.m. Q. "You have just read aloud the record of our interview here today, have you fully understood everything contained in it?" A. "Yes." Q. "Is it a true record of our interview here today?" A. "Yes." Q. "Bearing in mind what I have told you about not having to sign it, are you still willing to sign it?" A. "Yes." Q. "Would you also sign the carbon copies please?" A. "Yes." He then signed each page of the record of interview.

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COURT ADJOURNED AT 4.51 p.m. UNTIL THURSDAY, 10th JUNE, 1971 at 9.30 pm.

QUEEN V. C.R. LOWERY AND C.I. KING
(Third day)

COURT COMMENCED AT 9.30 a.m. ON THURSDAY 10th JUNE 1971

20

VIVIAN OWEN WOMERSLEY, recalled and warned

MR. BYRNE CONTINUED EXAMINATION-IN-CHIEF

MR. BYRNE: Mr. Womersley, on the following day, namely Sunday 7th February last, at about 5 to 10 that morning, did you see the accused man King at the Hamilton Police Station?---Yes, I did.

Was Detective Sergeant Morrison in your company at that time?---He was.

Did he speak to King in your presence?---He did, sir.

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What did he say?---I've made notes of the conversation. I am unable to recall that conversation.

Did you accurately note down the conversation?---I did.

HIS HONOUR: At the time?---Yes, Your Honour.

WITNESS GIVEN LEAVE TO REFER TO NOTES

WITNESS: Morrison said, "Mr. King, you were in custody overnight charged with the murder. Before

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we talk to you again I want to again explain the position. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down and given in evidence. Do you understand?" King said, "Yes". Morrison said, "It's become customary in homicide enquiries for those charged to indicate to the detectives what took place on the day of the murder, and while you do a movie film is made for production in court. Are you prepared to show us when you picked the girl up and where you went with her on Sunday, 31st January? It will be recorded on movie film. Are you agreeable to do that?" King said, "I think so. Could I ring my father first?" Morrison said, "Yes". At 10 a.m. King dialled a number on the telephone, did not speak to anyone, and said, "My father's not home".

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MR. BYRNE: Was there any pause after he dialled the number?---Yes, sir. Quite a lengthy pause

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MR. BYRNE: What was King doing then?---He was just standing there with the receiver to his ear. Morrison said, "Do you want to go on with the film?" King said, "Yes, I suppose it wouldn't hurt".

Yes, what happened next?

WITNESS: King then accompanied Morrison, Rippon and myself to a Police car which was parked at the front of the Police Station and at 10.05 a.m. we left the Police Station, Rippon was driving, Sergeant Morrison, King and myself were seated in the rear seat. King was sitting in the middle and I was behind the driver. We drove west in Thompson Street, right into Gray Street, and travelled north, and Morrison said, "Will you direct the driver to where you were parked on Sunday night, 31st January, 1971, where you picked the girl up?" King said, "Here, near litter bin". We stopped outside Thomsons Store on the west side of Gray Street facing south. Morrison said, "Mr. Rippon will play the part of the young girl." Morrison said, "What I want you to do is to indicate where the young lady was walking." King said, "Along here, from that direction."

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MR. BYRNE: To your observation did Mr. Richardson start to film what was happening?---He did, sir.

May the film be shown please, Your Honour?

HIS HONOUR: Yes, very well.

MR. WRIGHT: May it please Your Honour, would Your Honour take me as making the same objections to the showing of the film as I made on the previous occasion, sir, and the objections that are recorded in the notes of the previous trial. The passages to which I desire to refer, sir, are at pp. 34 to the middle of 36 of the previous trial notes, and pp. 90 to the middle of 94.

HIS HONOUR: Yes, well I will take you, Mr. Wright, as making those submissions. I considered them on that occasion and stated then the reasons why I was not prepared to give effect to the submissions and those reasons are in writing in the transcript of the previous proceedings and are available to counsel. Yes, very well.

MR. WRIGHT: If Your Honour pleases.

MR. OGDEN: Your Honour, I also formally object to the showing of the film, Your Honour, on the .. for the reasons which I put to Your Honour in the earlier trial and put again in summary way before Your Honour at an earlier stage at this trial.

HIS HONOUR: Yes, very well, well those submissions too are dealt with on the previous occasion, and the reasons for my conclusions are available here.

MR. BYRNE: Your Honour, may I interpose at this stage some evidence, sir, from First Constable Richardson by way of explanation of the earlier part of Exhibit "K", the part I refer to, sir, is the aerial photograph which was taken by this witness and the evidence I wish to lead, sir, is a description of what is shown in that aerial film. May the witness, if Your Honour accedes to the application, give the evidence from where he stands and while he is showing the film?

HIS HONOUR: Well I gather that what you want is that while the film is being run through and viewed by the jury this interposed witness being on oath should give evidence as to various things

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that were happening at stages shown in the film,
is that it?

MR. BYRNE: Yes, sir, the aerial film.

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HIS HONOUR: Then the aerial film I gather is now
attached to the other films, and what do you
propose to do when you have reached the end of
the section covered by the aerial film?

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MR. BYRNE: To resume leading evidence from
Mr. Womersley, sir, by way of describing the
further film on the same reel. I tendered the
aerial film at the time that the other film was
tendered as part of Exhibit "K".

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(continued)

HIS HONOUR: Yes, it is a single exhibit, Exhibit
"K", well then what is to be done - if we adopt
this course - what is to be done about giving
counsel for the accused their opportunity to
examine the interposed witness and the witness
whom you are going to recall?

MR. BYRNE: Well I would suggest, sir, that the
film may perhaps be stopped at the stage where
the aerial film concludes and such cross-
examination as my friends desire to make might
then happen, I do not know whether they do wish
to cross-examine about this film or not.

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MR. OGDEN: I cannot say until we hear what he says.

HIS HONOUR: Well Mr. Wright and Mr. Ogden, do you
wish to make any comment on the suggested
procedure?

MR. WRIGHT: Not if it is confined, sir, to the
mere aerial part of the film, we have seen this
before, and if it is the same as it was before
I do not anticipate I will be cross-examining
in any case, but I have no objection to the
procedure suggested, sir.

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HIS HONOUR: Yes.

MR. OGDEN: Your Honour, I do not know, I cannot say
whether I would want to cross-examine the
witness until I hear what he says. But
as to the procedure, Your Honour, of him
explaining as a kind of commentary on the film

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I do not object to that, Your Honour.

HIS HONOUR: Yes. And you do not object to the interposing of the witness and if necessary his cross-examination before the witness now in the box resumes?

MR. OGDEN: No, Your Honour.

HIS HONOUR: Very well. We can take that course I think then.

10 MR. BYRNE: If Your Honour pleases. I would ask leave of Your Honour to remain seated during the filming, I do not know I might be impeding the view of the jury if I stand.

HIS HONOUR: Yes.

WITNESS STOOD DOWN.

VIVIAN OWEN WOMERSLEY, recalled

20 MR. BYRNE: Well, you said a film was made, Mr. Womersley, would you describe, please - at least would you relate what was said during the making of the film from the time it commenced in Gray Street, Hamilton?--- (Film running) We drove north in Gray Street and parked outside Thomson's Store. I can be seen there taking notes. Sergeant Morrison is dressed in a suit. Senior Detective Rippon is in a short-sleeved white shirt, and the accused King. Morrison said to King, "What I want you to do is to indicate where the young lady was walking". King said, "Along here from that direction" and indicated towards Rippon. As Rippon was walking along Morrison said, "What did she do?" King said, "She came over to the passenger side door". Morrison said, "What did she do?" King did not reply. Morrison said, "What did you do?" King said, "I said hullo to her". Morrison said, "Do you remember her getting in the front seat? Did you let her in?" King said, "Yes". Morrison said, "Did you then drive away from here?" King said, "Yes". Morrison said, "How long were you sitting here with her?" King said, "About two minutes". Morrison said, "Which direction did you drive?" King said, "We drove up here". Morrison said, "Would you direct?" King said, "I don't know

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which way we went to Mt. Napier". We then drove to a small track and when we arrived Morrison said,...

That was the track at Mt. Napier, running south into the reserve, was it?---Yes, sir.

Morrison said, "What I want you to do now is to show us what took place on the night". King said, "Yes". Morrison said, "Mr. Rippon will play the part of the girl". Morrison said, "Start to show us what happened that night". King 10
said, "We walked up the track". We then got out of the vehicle and started to walk. Morrison said, "Where was the girl?" King said, "I wouldn't have a clue, when I got out of the car". We then walked for some distance. King said, "We must have drove up a bit further, I think". We then walked for some distance.

MR. BYRNE: What happened here at this stage, do you know?--- We stopped here because someone said that we thought we were running out of film, 20
but it was a false alarm. We continued to walk. Nothing was said as we walked along here. Rippon is now dressed in the white combination. King then said, "Where's the fence?" And we continued to walk for some distance. We then stopped and King said, "The car must have been parked down there, I remember we had to back up a hill. The car kept slipping, it's about the steepest hill here." We then walked further on. 30
Once again as we walked there was nothing said. We then stopped and we didn't show it but we changed films, King was given a cigarette. We started again, we've now started and King said, "I dropped the end of my cigarette", we stopped and looked for it, that's what we're doing now. King then said, "Does it matter if I take my shoes off?" Morrison said, "What for?" King said, "It's getting a bit hot." He then took off his shoes, and we continued to walk. King said, "This is about it." I don't know what this break 40
is, possibly a change of film. King said, "I think it's about here, or something - could be." We then walked a short distance and stopped. We then stopped and after a short time King pointed to the left and said "Can I have a look over here?" We then walked off the track and down a depression. King said - he paused for some time - King said, "This could be the spot where the

body was left." Morrison said, "Would you show us where she was kicked?" King said, "Up on the track." We then walked back up on to the track. King then moved forward, he looked around and then he pointed and said, "Somewhere between these two trees." Morrison said, "Demonstrate with Mr. Rippon what went on." King said, "I believe she was lying on the ground here." We then walked towards the trees, - to the forked tree. Morrison said, "Show us where". King said, "Lying this way, face down. Head on one side." Rippon then laid down, "Chris kicked her a couple of times.. Chris kicked her in the ribs a couple of times". King said, "I think he was standing this side, turned her" He is indicating how Lowery kicked, "Turned her, lifted foot and stamped down on back of head." King said, "Her head was turned around this way. I think Chris kicked her near the eyes somewhere." Morrison said, "What then?" King said, "I think he told her to stand up and he tried to strangle her with her bra". Morrison then handed King a handkerchief. Morrison said, "Do you want him (Mr. Rippon) to stand up?" King said, "Yes". Rippon stood up, King walked behind Rippon and placed handkerchief round his neck. King said, "He was around behind her, pulled back, shoulder in back. I couldn't watch, I turned away and walked to car." King said, "I came back, she was lying on the ground." Morrison said, "Put him in position." He then indicated and Rippon lay on the ground, King said, "She was on back, moaning. I asked Chris what happened he said he hit her, I remember about the brown cord. Morrison said, "Show us with this string." Morrison then gave King the string. King said, "He rolled her on stomach." He then rolled Rippon over, King said, "Sat on back, put cord around, grabbed and pulled back." Morrison said, "What then?" King said, "He wrapped it around her several times" (which he does) "Grabbed both ends like this, and pulled her into the area I showed you before. He dragged her like this." And then pointed. King said, "She was then lying on stomach." Morrison said, "Put Mr. Rippon in position." Morrison got up and was led off the track by King to the area where he first indicated. King then indicated the area and Rippon lay down. King said, "This was up, pulled back - pulled back, legs up, wrapped it around, then her arms were back, tied it around." King said, "Then

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grabbed elbows and wrenched it back."
Morrison said, "Where were you standing?"
King said, "Here." And pointed. Morrison said,
"You said he rolled her over and struck a match".
King said, "Rolled her over, yes". And he then
bent forward. Morrison said, "Where did you go
then?" King said, "Walked up here back to the
car". We then walked back up onto the track.
Morrison said, "Which direction did you walk?"
King pointed and said, "Up here to the car". 10
We then walked towards the car. We then drove
to Hensley Park Road and arrived there at 11.37a.m.
Morrison said, "Would you get out of the car and
show us where the radio is?" We then got out of the
car. King then searched for the radio. King then
said, "There it is" and indicated the radio.
Sergeant Morrison then spoke to First Constable
Richardson.

MR. BYRNE: What did Richardson do then?---
Richardson then climbed up the bank and took a 20
close-up shot of the transistor radio.

Would you look at Exhibit "O"? Is that the radio
shown in that film?---Yes, sir.

Mr. Womersley, on the way from the Mt. Napier
Reserve to Hensley Park Road did the accused King
give any directions to Sergeant Morrison as to
where...?---Yes, he did.

Do you remember what he said?---I recorded the
conversation between King and Morrison.

Did you do that accurately as it occurred?--- 30
I did.

Are you able to remember without looking at your
notes?---No, sir.

WITNESS GIVEN LEAVE TO REFER TO NOTES

WITNESS: After the filming at Mt. Napier we then
got back into the car at 11.03 a.m. - 11.10 a.m.
Rippon again drove and Morrison, King and myself
sat in the rear seat. We turned the car round
on the track, travelled along it. Morrison said,
"Now will you take us to where the transistor is?" 40
King said, "Yes". Morrison said, "We've got to
go back into Hamilton first, is that right?"

King said, "Yes". We drove along the track to unmade crossroad, over the unmade crossroad and then north along Muroa Lane. Morrison said, "Where did you throw the dog out?" King said, "Further along here". Morrison said, "How further?" King said, "Up here near a post, a marker post". Morrison said, "Which side of the road is it?" King said, "Left hand side". We then drove for some distance. Morrison said, "Have you sighted it yet?" King said, "Yes, it was one of those back there".

10

MR. BYRNE: Did he point out anything when he said that?---I beg your pardon?

Did he point to anything or indicate anything in any way when he said, "One of those back there?"--- No, sir, he just said, "One of those back there". We then turned right into Port Fairy Road and travelled towards Hamilton. We then turned right into the Henty Highway. Morrison said, "Where do we go now?" King said, "Backup to the main street". We drove along Monsdale Street, then right into Thomson Street. King said, "Go up into Gray Street, turn right at corner". We then turned right into Gray Street and travelled south. King said, "Went up to the end of street where those trees are and did a U-turn". We then made a U-turn at the intersection of Kennedy Street and Gray Street. King said, "To the place near the Spectator Office, the place where the green curtains are." Morrison said, "How long here?" King said, "A fair while". Morrison said, "Did you go in?" King said, "Yes".

20

30

What was that place, the place with the green curtains?---That was the Sports Centre. King said, "We didn't come back this way, we came in Coleraine or Portland Road". We then drove north in Gray Street and along Mill Road. King said, "Turn left here at roundabout". We turned into Hensley Park Road. Morrison said, "How far out here?" King said, "About another mile". Morrison said, "When we get there just indicate what you did." King said, "Yes." King said, "Just up here a bit, just after this white post". And we stopped at 11.37 a.m. and I have already given the rest of that evidence.

40

The rest of it was shown on the film?---

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Yes, sir.

Would you look at Exhibit "A", please, Mr. Womersley? Do you see on that exhibit the place where the accused King made the demonstration that has just been shown on film?—This is the first part of the film at Mt. Napier?

Yes, where he illustrated what happened?—Yes, sir, photograph No. 4. In the foreground in front of a tree. 10

Do you see on any of the photographs - do you see shown among those photographs the place where the accused King demonstrated the final tying up of the girl?—Yes, sir, photograph No. 8.

MR. WRIGHT DID NOT WISH TO CROSS-EXAMINE

MR. OGDEN COMMENCED CROSS-EXAMINATION

Cross-
examination

CROSS-EXAMINATION

MR. OGDEN: Mr. Womersley, when the interrogation of King at the Hamilton police station on the Saturday afternoon occurred, you have said that King was crying at a stage - for I think you said a couple of minutes - before he asked to see the policewoman Miss Overend? Is that right?—Yes, sir, that's right. 20

And the policewoman Miss Overend was brought to the police station after some delay, she was not there at the time, is that right?—I believe she wasn't there at the time.

Well, she was brought to the police station after some delay?—Yes. 30

And King was again crying and distressed when she was there?—King was crying only after Miss Overend came into the room.

Yes, well he was crying before she came and crying again after she came?—He was crying during the first portion of the interview, not the record of interview, when she wasn't there.

No, the record of interview was - well, the substantial part of it was after she left?---No, sir, the record of interview had commenced prior to Miss Overend coming into the room. When she came into the room King then began to cry for a short time. He was asked if he was well enough to continue, she left the room ..

Yes, well, he cried on two occasions before she came and then later when she did come?---Yes, sir.

10 It was put to him prior to his crying that, "There is scientific evidence that suggests that you and Lowery were concerned in this death?"---Yes, sir.

What scientific evidence was there that suggested that King was there?---Well, he admitted being with Lowery.

20 What scientific evidence was there that suggested that he was there, King? There was none, was there?---Only the fact that he was with Lowery and we knew that Lowery's fingerprint was found on the beer can, and King admitted being ...

There was no scientific evidence that directly connected King with the death in any way, was there?---Not at that stage, no, sir.

Do you agree that so far as a police officer is concerned, that it is a general rule a man has no right to be compelled to make self-incriminating statements?---Yes.

30 And the police standing orders require that a person being interrogated be acquainted and advised fully of these rights?---Yes, sir.

Well now so far as - and that of course would extend to not merely verbal statements, answers to questions that a person in such a position may make, but also demonstrations would it not?-- I don't follow the question, could you repeat it for me?

40 The duty of a Police Officer to fully explain to such a person his rights not to incriminate himself would include not only oral statements, but any re-enactment or depicting of anything?---Well it does not state that in our standing orders, it merely says that we must caution the suspect or

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offender.

And tell him of his right not to do anything to incriminate himself?---I don't think it says that.

Never mind about the precise words, that is the effect of it is it not?---It certainly does not say that he does not have to demonstrate anything if he does not wish to. It merely states that he does not have to say anything, to my knowledge.

Well do you as a policeman regard it as proper to warn a suspect that he is not obliged to do anything by way of demonstration?---Do I think it's proper?

10

Yes.---Would you repeat the question sir?

Yes. Do you think, as a Police officer, it is proper to advise a person in King's position, a person being interrogated, that he is not obliged to do anything by way of demonstration which may incriminate himself?---Yes, I do.

And in the case of a person who is under arrest and charged with murder do you agree that it is even more important that he be fully advised of his rights at that stage?---I agree, yes.

20

Because at that stage he is in Police custody is he not?---Yes, sir.

At that stage the Police have made up their mind obviously that he should be charged with the offence?---Yes, sir.

On the Sunday morning the accused King was asked whether he would - it was first of all said, let me withdraw that. It was first of all said to him "It has become customary in homicide inquiries for those charged to indicate to the detective what took place on the day of the murder. While you do, a movie film is made for production in Court." That was said was it not?---Yes, sir.

30

By Sergeant Morrison?---Yes.

Now the next -?---More than that was said to him though at that time.

The next thing I suggest was said was this,
 "Are you prepared to show us when you picked the
 girl up and where you went with her.---I'll just
 check my notes, sir.

That is according to your evidence.---Yes, that
 is correct.

10 I suggest to you that you made a mistake in your
 notes, Mr. Womersley, in fact what was said was
 "Are you prepared to show us where you picked the
 girl up and where you went with her?"---No, sir.
 that's not right. Sergeant Morrison said "when".
 And that is what I recorded.

20 I will just give you this opportunity to
 reconsider and say if you think that might have
 been a mistake that you wrote down "when" instead
 of "where"?---No, sir, I believe Sergeant
 Morrison said "when".

You think it was a slip of the tongue by him do
 you?--- It may have been, sir, but that's what
 he said and that's what I recorded.

It is impossible to point out by way of
 demonstration a moment of time is it not?---I
 agree.

It does not make sense does it, to say "I want
 you to point out when" does it?---No, sir.

30 I suggest to you again that what Morrison said
 is "Are you prepared to show us where you
 picked the girl up and where you went with her".
 ---I've already said in my opinion Morrison said
 "when" and I recorded "when".

And the accused at any rate said, he wanted to
 ring his father?---He said -

"Could I ring my father first" were your words
 I think.---He said, "I think so, could I ring
 my father first?"

And he did dial a number?---Yes, sir.

40 And I suggest to you he spoke to somebody at the
 other end, his younger brother. You may not have
 known who it was, but that he spoke to someone at
 the other end?---He did not speak to anyone.

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MR. OGDEN: At any rate, as a result of whatever he did by way of phoning he then reported that his father was not home?---Yes, he said "My father's not home."

And then I suggest he said, "I would like to get in touch with Mr. Lewis the solicitor"?---He definitely did not.

And he was told "Never mind about that, you have to do the film."---He did not, he was not told that.

Or "You are going to do the film"?---He was not told that.

When King was arrested and charged he was given a copy of his record of interview, was he not?---He was, sir.

And that was on the Saturday evening?---Yes, shortly after he signed them, yes.

Late afternoon or evening, I am not making any point about the time, but it was late Saturday afternoon or evening?---Yes, it was shortly after four o'clock, between 4 and half past.

Well the record of interview has a note on it that it was completed at ten minutes past four I think. Do not let us get too technical about time, but it is somewhere between 4 and 5.---Shortly after that, yes. Between ten past four and half past four, shortly after we finished.

And King's father came to the Police Station later that night did he not?---I don't know. I don't recall seeing Mr. King there that night.

Whether you saw him or not, is it not your belief that he did come to the police station that night?--- I don't know whether he did or not, sir.

I suggest to you that he also returned - came to the police station, at any rate, the father, on the Sunday morning?--- He could have, but I don't recall seeing him there.

Before King was asked about whether or not to do any filming?---I don't know about that, because I

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can't recall seeing him there.

All right, I may be mistaken about that myself. But in any event, I suggest to you that King said he wanted to get in touch with his solicitor - this is on the Sunday before - after his arrest and whilst he was in custody and before there was any departure from the police station to do any re-enactment?---He definitely did not say that, there was no mention of that.

10 After being told - or asked, "Are you prepared to show us when .." - you insist - ".. when you picked the girl up and where you went with her", and after his attempts to telephone etc., no further warning was given to King before the departure for the filming?---No, sir, only that he was asked did he want to go on with the film, but no further warning or caution was given.

Well, that is what I am asking you?---No.

20 And the party then set out to the main street of Hamilton to carry out the first part of the task, which was to show where - I suggest, not "when", show where the girl was picked up. In fact that is what happened, is it not?---Yes, sir.

And the party then set off to show where she was taken to?---Yes.

30 Now it was only during the drive to the Napier Park Reserve, or when you got there, that he was asked to do anything further, was it not?---He was asked in the car driving to Thomson Street - Gray Street, to show us where he picked the girl up. Later on...

You misunderstood me. We have got everybody - he has pointed out where the girl was picked up - where Rosalyn Nolte was picked up and put in the car?---Yes.

Then the party sets off towards Napier Park?---Yes.

To show where the girl had been taken to?---Yes.

40 I suggest to you that it was only either in the car on the way there or when the party got to Napier Park Reserve that he was asked to do anything

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else?---Yes, that's correct.

And no further warning was given to him, either in the car or at the reserve?---I'd have to check my notes.

Check your notes, Mr. Womersley.---No, sir, no further warning was given.

And then the re-enactment took place, walking along the track and going to the place where the events had occurred. And Sergeant Morrison in effect directing operations?---I disagree that he was directing operations. He was merely asking King questions. 10

And asking him to do things, was he not?---He did say a couple of times, "Put him in position", yes.

And no warnings given at that time?---No, sir.

And throughout the time that King was walking along the track he from time to time stopped and hesitated and looked around?---He did.

Trying to recall - remember his bearings?---It would appear so, yes. 20

And of course it was well known to the police where the body had been found at that stage, was it not?--- We had been there before, yes.

And he was then - after the whole of the re-enactment, he was then taken to the car - back to the car, and then asked to point out where the radio was found?---Yes, sir.

Sergeant Morrison apparently had come out equipped with some string to take the part of the cord?---Yes. 30

He had had that in his pocket before you left the police station, had he, or with him?---I would say so, yes.

As to the finding of the transistor, I put it to you that the film showed that King was looking in one area at one stage, and Detective Rippon was off film - off camera so to speak,

and in an area further towards the intersection of the two roads?---He was, yes.

At that stage, I suggest to you, Rippon found the transistor?---No, he did not.

And I suggest to you further that he said, "It's over here"?---He definitely did not.

All the time being off camera, so to speak?---He was in that position to prevent any escape which may have been attempted by King.

10 And that then King walked towards the corner and indicated the radio where Rippon had found it?---Rippon had not already found it.

Have you been out to Hensley Park Road or any of the other Police Officers as far as you know before this occasion?---I hadn't been and as far as I know no other Police officers were out there prior to going there with King. Because we didn't know where the radio was until the record of interview was being taken

20 MR. BYRNE COMMENCED RE-EXAMINATION.

RE-EXAMINATION

MR. BYRNE: Mr. Womersley, you were asked about the warning that Sergeant Morrison gave to the accused King before you set out on the filming expedition, would you give the full text of that warning please? All of what was said?---Including the caution sir?

30 Yes, please.---Morrison said, "Mr. King, you were in custody overnight charged with the murder, before we talk to you again I want to again explain the position. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down and given in evidence. Do you understand?" King said, "Yes." Morrison said, "It has become customary in homicide inquiries for those charged to indicate to the detectives what took place on the day of the murder and while you do, a movie film is made for production in Court. Are you

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prepared to show us when you picked the girl
up and where you went with her on Sunday,
31st January? It will be recorded on movie
film. Are you agreeable to do that?" King
said, "I think so. Could I ring my father
first?"

I have no other questions, thank you sir.

HIS HONOUR: Mr. Foreman and members of the jury,
I think that at this stage I should remind you
about the matter that I mentioned to you
yesterday, I told you then that what one of
the accused said out of Court against the other
is evidence only against himself and not
against that other. That applies also to
demonstrations by an accused out of Court.
What he demonstrates and what is recorded
on a film of his demonstration is evidence
against him but not evidence against the
other accused.

10

WITNESS WITHDREW.

- - - - -

GRAHAM JAMES DAVIDSON, sworn and examined

KEVIN JOHN CARTON CALLED INTO COURT DURING
EXAMINATION-in-CHIEF AS CORROBORATING WITNESS

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WITNESS TO MR. BYRNE: My full name is Graham James
Davidson. I am a detective first constable of
police attached to the Homicide Squad in
Melbourne.

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10 MR. BYRNE: On Thursday, 4th February of this year
did you speak to the accused man King at the
Hamilton police station?---Yes, sir, I did.

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Did you take a statement from him on that
occasion?---Yes, sir, I took a witness statement
from him.

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When the statement had been taken - when you say
you took a statement did you type out a
narrative of what King had to say to you in
answer to your questions?---That is so, yes,
I did.

20 And when you had completed doing that, what next
occurred?---At almost the completion of the
statement Senior Detective Rippon came into the
room and had a conversation with King whilst I
made notes of this conversation

Were you present in Court and did you hear the
evidence that Senior Detective Rippon gave about
that?---Yes, I was.

What do you say about the evidence that you
heard Mr. Rippon give?---It's true.

30 Did you go with Rippon and anybody from the room
at that stage or not?---No, sir.

You remained in the room?---I remained in the
room.

Would you look at this, please?---Yes, sir, that's
the statement that I took from King on that
occasion.

Do you see on it the signatures that you saw
the accused man make on each page?---Yes, sir,
at the bottom of p.1 and at the bottom of p.2.

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EXHIBIT

EXHIBIT "00"

Statement of
accused King
dated 4th
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MR. BYRNE: Mr. Davidson, would you read the
Exhibit, please?

WITNESS WAS HEARD TO READ EXHIBIT "00"

MR. BYRNE: On Saturday, 6th February, at or soon
after 12.15 p.m., did you see the accused man
Lowery at the Hamilton police station?

WITNESS: I did, sir, in company with Detective
Inspector Carton.

MR. BYRNE: Did Carton speak to the accused man on that
occasion?---Yes, sir, Carton had a conversation
with the accused Lowery whilst I made notes of
that conversation.

What did Carton say to Lowery?---Without
reference to my notes, sir, I cannot recall.

Did you make notes of the conversation at the
time that the conversation was occurring?---Yes,
sir, I did.

Did you get down the conversation accurately or
not?---Yes, I got what was said by Carton and
what was said in reply by Lowery.

20

May the witness use the notes to refresh his
memory of the conversation please?

HIS HONOUR: Very well. --- Carton said, "I am
Detective Inspector Carton and this is Detective
Davidson. You have already been interviewed by
detectives and have told them that you and King
were in her company for a short time on the
Sunday evening and you have not seen her since.
Is that correct?" Lowery said, "Yes." Carton
said, "Have you been to the Mount Napier area
recently?" Lowery said, "No." Carton said,
"How long since you have been there?" Lowery
said, "I can't remember, it would be some time."
Carton said, "How long? A matter of weeks or
months?" Lowery said, "It would be a matter of
months."

30

Carton said, "We have since received information which indicates that you could have been in the Mount Napier area quite recently, what do you say to that?" Lowery said, "No, not me." Carton said, "Are you quite certain about that?" Lowery said, "Yes." Carton said, "There is nothing further you wish to add to what you have already told us in connection with your movements on Sunday night last?" Lowery said, "No, I can't remember anything else, I think I have told you all I know." Carton said, "Senior Detective Rippon has a number of questions to put to you, so I will leave him with you." Carton then left the office and I remained with Lowery.

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MR. BYRNE: Approximately what time was it that Carton left?---Within 3 or 4 minutes I would say of 12.40 p.m. on that Saturday.

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MR. BYRNE: So that had taken approximately from 12.15 to 12.40 that conversation you read out rather rapidly, or at least to use the notes..? ---That's so, sir, it did take longer for the whole conversation to take place because I had to write out the notes in my - of what was said in longhand.

What happened when Mr. Rippon came in?---Rippon entered the room and had a conversation with Lowery whilst I again made notes of their conversation.

HIS HONOUR: I think the question of the right to refresh memory was gone into in relation to the conversation with Carton, but it may be necessary to lay a foundation for this conversation if the witness is to continue looking at these notes.

MR. BYRNE: Yes, Your Honour. What was said when Carton came in, do you know?---When Rippon came in.

When Rippon came in, I am sorry.---Without reference to my notes, sir, no, I cannot remember accurately.

You have said you made notes at the time, did you accurately record what was said to Lowery by Rippon and what Lowery said in reply?---Yes, sir, I did.

Did you do that at the time of the conversation?
---I did.

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May the witness refer to the notes please?

HIS HONOUR: Yes, very well.

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MR. BYRNE: I think you said that started about 12.40, is that right?---About 12.40 p.m. Rippon asked his first question. Yes. --- Rippon said, "On Thursday last you made a statement to Detective Womersley about picking up Rosalyn Nolte, that is correct is it not?" Lowery said, "Yes". Rippon said, "Is everything that happened on that night contained in this statement?" Lowery said, "Yes, I don't think I have left anything out." Rippon said, "Have you given any more thought as to how that jumper lead got on your car?" Lowery said, "I don't know how it got there." Rippon said, "You didn't bring in all the clothing you were wearing on Sunday did you?" Lowery said, "Yes, I did." Rippon said, "What about the sleeveless denim jacket that you had on that night?" Lowery said, "I had that on earlier in the day but not when we picked up Rosalyn." Rippon said, "Tell me this, when you took Rosalyn to the Commercial Hotel and dropped her off, why did you turn left around the corner and drive up to the car park before letting her out?" Lowery said, "It just happened like that." Rippon said, "If she was going to Sugar Bailey's place as you say, this would be off the direct line to his house would it not?" Lowery said, "Yes, I suppose so." Rippon said, "Then why didn't you drop her in Thompson Street or over on the Caledonian corner?" Lowery said, "I don't know. We just dropped her at the car park." Rippon said, "Tell me this, you told us earlier in your statement that you took a hitch hiker to Coleraine on Sunday night, is that right?" Lowery said, "That's right." Rippon said, "How is it that you're prepared to take a person that you don't know over 20 miles and return, but you are not prepared to take someone who you do know one mile?" Lowery said, "Like, I didn't know if Sugar Bailey would be home and I didn't know if he would want to see her anyway." Rippon said, "You have said that you dropped Rosalyn around the corner in Lonsdale Street, if you continue along this street this leads to the area where the girl was found murdered. You and King are the last ones to see her alive, you have similar electrical flex on your car to that

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which was found around the girl and I tell you now that we have scientific evidence which puts you at the scene, what do you say to that?" Lowery sat there for a short time blinking his eyes and twitching his nose and then he said, "Can I see the superintendent?" Rippon said, "Which one?" Lowery said, "The one that was in here a while back."

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10 MR. BYRNE: Approximately what time was it that that conversation that you have just related as between Rippon and the accused Lowery finished? ---That would have finished some moments before 1.20 p.m. on that Saturday afternoon. Carton left the room and Rippon entered and his first question was asked at 1.20.

MR. BYRNE: So it covered from 12.40 to 1.20?--- That's so.

Approximately?---Approximately, yes, sir.

20 What occurred next?---Rippon left the room and I remained in the room with Lowery and at 1.20 p.m. Detective Inspector Carton returned to the room.

Did he speak to the accused Lowery?---He did, sir.

What did he say, do - can you say without referring to notes?---Without referring to notes, no sir.

Did you make any notes of what was said?---Yes, sir, I continued to make notes of the conversations between Carton and Lowery at the time.

Were those accurate notes?---They are.

30 May the witness refer to those please sir?

HIS HONOUR: Yes, very well. --- Carton said, "I understand you wish to see me?" Lowery said, "Yes" Carton said, "What do you wish to say?" Lowery said, "It all started about last Christmas." Carton said, "Yes". Lowery said, "Charlie and I were at the bikes in Mount Gambier, we were boozed all weekend. We got this idea. Carton said, "What was the idea?" Lowery said, "To kill a chick."

40 MR. OGDEN: May I interpose at this stage, I should

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have thought of it earlier, but it went out of my mind, Your Honour. Your Honour gave a warning in regard to statements made by King in the absence of Lowery as being inadmissible against Lowery. Your Honour, I would ask that Your Honour do the same thing in regard to statements by Lowery in the absence of King.

HIS HONOUR: Yes, well the warning that - warnings that have been given first in the Crown's opening and then by me have been I think expressed in quite general terms about any accused and what he says out of Court, I think the jury will fully understand that it does not matter which is the accused man who is making the statement out of Court or giving the demonstration out of Court, what he says and does out of Court is evidence against him only and not against his co-accused.

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MR. OGDEN: Thank you, Your Honour.

MR. BYRNE: I think we had got to the stage where Carton said "What was the idea?" And Lowery said, "To kill a chick."

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WITNESS: Yes, sir. Carton said, "Yes?" Lowery said, "I'm not sure which one of us suggested it, but we decided to see what it would be like to kill a chick". Carton said, "Yes, what happened then?" Lowery said, "We were in the van on the Sunday night and Rosalyn came up and we decided it would be a chance". Carton said, "What happened then?" Lowery said, "Well, we did it". Carton said, "Are you telling me that you were concerned in the death of Rosalyn Nolte?" Lowery said, "Yes". Carton said, "You realise that you could be charged with a serious offence in connection with this death? And you need not say anything further unless you wish?" Lowery said, "I sent for you because I want to tell you about it". Carton said, "Well, go ahead then." Lowery said, "Rosalyn wanted to go and see Sugar Bailey. She got in the van and Charlie said he would be at a party. We drove out the Port Fairy Road and then Charlie showed me a turnoff to Mt. Napier". Carton said, "Yes, what happened then?" Lowery said, "We went into the Mt. Napier Reserve. We pulled up along a track. I held her and Charlie took her clothes off". Carton said, "What happened then?" Lowery said, "I can't remember. Charlie

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went away and came back with a cord." Carton said, "Who tied her up?" Lowery said, "Charlie". Carton said, "Did you have any part in tying her up?" Lowery said, "I just held it when Charlie asked me to hang to it". Carton said, "Are you prepared to tell us in detail what happened? Detective Davidson will take it down in question and answer form on the typewriter. I have already told you that you need not say anything further unless you wish". Lowery said, "I'll answer the questions". Carton said, "After it has been taken down on the typewriter I will ask you to read it over and if you agree that it is a true record, to sign it." Lowery said, "Yes, that's O.K. with me".

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MR. BYRNE: What happened then?---At 2.00 p.m...

Was there any delay after Lowery said, "Yes, that's O.K. with me"?

WITNESS: Yes, sir, there was, a brief delay whilst I left the room and walked to the C.I.B. Office across the corridor and obtained a typewriter and paper and carbon paper and returned to the room to set the paper in the typewriter.

MR. BYRNE: What happened then?---At about 2.00 p.m. the interview continued between Mr. Carton and Lowery. I typed the questions that Carton asked on the typewriter and I typed Lowery's answers to Carton's questions immediately underneath the questions asked. At the conclusion of the interview Lowery was cautioned and invited to read the record of the interview over aloud, which he did. He was then invited to sign the record of the interview, which he did, and also made a notation at the end in his own handwriting.

Would you look at this, please?---This is the record of the interview between Carton and Lowery taken on that Saturday afternoon.

The one that you typed as you have just described?---That's so, yes.

And do you see on it the handwriting of the accused man Lowery?---I do, his signature appears

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at the bottom of each page, with several
amendments, and at the completion there is a
notation in his own handwriting.

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EXHIBIT

EXHIBIT "PP"

Record of interview
of accused Lowery
dated 6th February
1971

MR. BYRNE: Would you read the exhibit, please,
Mr. Davidson?

WITNESS WAS HEARD TO READ EXHIBIT "PP" 10

WITNESS HANDED EXHIBIT "J"

MR. BYRNE: You said as you read "Will you have a
look at this piece of lead (shown lead)". Would
you look at Exhibit "J"?---Yes, sir, that is the
piece of lead that was shown to Lowery at that
stage.

WITNESS CONTINUED TO READ EXHIBIT "PP"

WITNESS IDENTIFIED EXHIBIT "R"

WITNESS: Yes, sir, they were the jeans that were
shown to Lowery. 20

MR. BYRNE: And what does the exhibit say that he
replied?---His answer when he was shown the jeans
was, "Yes, they were Rosalyn's, she always wore
those".

MR. BYRNE: What is the next question?---"Will you
have a look at this pullover?" and he was shown
a pullover.

EXHIBIT "P" HANDED TO WITNESS

WITNESS: Yes, sir, that is the pullover that was
shown. His answer was, "Yes, that's Rosalyn's". 30
The next question was, "Will you look at these
shoes" and he was shown shoes.

EXHIBIT "S" HANDED TO WITNESS

WITNESS IDENTIFIED EXHIBIT "S", "N", "M", "W"

WITNESS CONTINUED TO READ EXHIBIT "PP"

EXHIBIT

EXHIBIT "QQ"

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WITNESS CONTINUED TO READ EXHIBIT "PP"

MR. BYRNE: Was that in fact the case as the
record of interview describes the whereabouts
of the pages?---That's so, yes, sir.

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WITNESS CONTINUED TO READ EXHIBIT "PP"

MR. BYRNE: Was it in fact 3.10 p.m. at that time?
---It was, sir, yes.Detective
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COURT ADJOURNED FOR LUNCHEON AT 12.29 P.M.

10 COURT RESUMED AT 1.47 P.M.

GRAHAM JAMES DAVIDSON recalled and warned.

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MR. BYRNE CONTINUED EXAMINATION IN CHIEF.

MR. BYRNE: Mr. Davidson, on Sunday, 7th February
last were you present when the accused King was
spoken to by Detective Inspector Carton?---The
accused Lowery.

20 The accused Lowery I am sorry. Where was that?

---At the Hamilton Police Station. Carton had
a conversation with King which I again recorded
in note form.MR. BYRNE: What was said, to you? -- Without reference to my
notes, sir, I cannot recall exactly what was said.Did you note down the conversation as it occurred
and accurately?---I did, yes, sir.May the witness use the notes to refresh his
memory sir?30 HIS HONOUR: Very well. --- Carton said, "You're
in custody and it is my duty to warn you that you
are not obliged to say anything unless you wish,
do you understand that?" Lowery said, "Yes."
Carton said, "Well if you're prepared to, we want
you to re-enact what happened on the Sunday night.
Detective Moxham will take the part of Rosalyn."
Lowery said, "All right." Carton said, "Whilst
you are re-enacting it, we want to take a film of

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the re-enactment." Lowery said, "Yes, all right." We then, at 12.20 p.m. went to the Police car at the front of the Police Station, Detective Moxham drove, Detective Inspector Carton was in the front seat, Lowery sat in the rear seat behind Moxham who was driving and I sat in the rear seat behind Carton, I took notes the whole time. Carton said, "Now which way do we go?" Lowery said, "Along here to Thomsons." We drove north along Thompson Street, Lowery said, "Right." We turned east into Gray Street, Carton said, "Now where were you parked?" Lowery said, "We was driving along, came up Brown Street, around this corner, seen her there" (indicating Coles Store). "Yes, it wasn't Thomsons, it was here in front of the shoe shop, I made a blue." At 12.30 p.m. we all got out of the Police car outside the shoe shop, Lowery indicated the direction from which Rosalyn Nolte approached the car. Carton said, "Will you indicate to us the direction Rosalyn came from?" Lowery said, "Along here" and pointed east along Gray Street.

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Did you see Mr. Richardson commence to film at some stage?---Mr. Richardson was taking film I understand at that stage, I was taking notes and -

May the film be shown please Your Honour, Exhibit "K"?

HIS HONOUR: Very well.

FILM SHOWN.

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WITNESS: Moxham approached the car. Carton said, "Will you indicate to us the direction Rosalyn came from?" Lowery said, "Along here" and pointed east along Gray Street. Carton said, "What took place?" and Lowery said "Charlie jumped out and let her in". Carton said, "Was there any conversation?" and Lowery shrugged his shoulders. At this stage we were at a spot some distance along the track at Mt. Napier from where the girl's body was found. Carton said, "Does this locality help you at all?" Lowery said, "Well, it seems familiar, but all the bush around here looks alike". Carton said, "Well, what do you say as to the track, is it a similar track to the one where you drove Rosalyn to on the Sunday night?"

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Lowery said, "Yes". Carton said, "If I took you to where the body was found would it refresh your memory?" Lowery said, "It could do, but you've got to remember it was dark". We walked then some distance along the track, Lowery, Carton, Moxham and myself. We reached the spot where the body was found. Lowery said, "That could be it, I'm not certain", and walked into the scrub, and looked about down in the gully. Carton said, "Where was she tied up - at this spot, or was it on the track?" Lowery said, "On the track". Carton said, "Well, this is in fact where Rosalyn's body was found. Can you give a demonstration of how she was dragged?" Lowery said, "Yes". He then moved across the track and stood thinking and shrugging his shoulders for some time and brushing the flies away. Carton said, "I'll give you this piece of string, will you show us how it was tied around her neck, using Detective Moxham as Rosalyn?" Lowery said, "All I know is Charlie handed it to me". He then was handed the string and spent some moments untangling the string, and shaking his head. He then stood in front of Moxham and said, "Just like this". Carton said, "Was she standing up or lying down?" Lowery said, "Lying down". He then moved behind Moxham and put the cord around his neck. Carton said, "Can you show us how she was dragged?" Lowery said, "No, I can't remember". "Look, I don't want to do any more, I shouldn't have gone this far. Mr. Lewis told me not to tell you anything else. I didn't know there'd be so many questions when we came out today. I've got a bit of a headache - a bad headache". Carton said, "Would you like an aspirin or something?", And Lowery said, "No". We then stood there for some time before we all moved back to the police car, re-entering the police car about 1 p.m., and taking up the same positions in the car as we had on the trip out. We are now at Hensley Park Road. Carton said, "Well, will you show us where it is? Will you get out and show us, please?" Lowery said, "I'll get out. Look, this is the corner. I've brought you this far, you can find it, I don't want to go against legal advice". He walked north up the road towards the intersection, shrugged his shoulders, stood looking around with his arms folded and waved his hands at the camera. We then re-entered the car and returned to the Hamilton Police station.

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FILM CONCLUDED

MR. BYRNE: On the way to Mt. Napier Reserve from Gray Street, Hamilton, did the accused Lowery have anything to say?---After we had re-entered the car at Mt. Napier Reserve..

No, on the way from Hamilton to Mt. Napier Reserve?---I beg your pardon, sir. We re-entered the car, Carton said, "All right, which way now?" Lowery said, "Along here" and indicated west along Gray Street. "Right here" and we turned north into Thompson Street. "Left here" and we turned west into Lonsdale Street. Carton said "What's this? The Henty Highway?" Lowery said, "Yes, it's still Lonsdale Street here." And we drove along a bit further. Lowery said, "Scoresby Street I think we are now." Carton said, "Straight on?" Lowery said, "Yes." Carton said, "You know the way out all right?" Lowery said, "Yes." We then approached the Port Fairy turn off, Lowery said, "Port Fairy Road, left." Carton said, "You know your turn off all right, do you?" Lowery said, "No. I don't know how to get to Mount Napier this way, Charlie gave me directions how to get there. I'd go out the Mount Napier Road." Carton said, "But you came out this way did you not?" Lowery said, "Yes, but Charlie directed me." We drove on some more and approaching the Muroa turn off Carton said, "Which way do you go from here?" Lowery said, "I'm not sure." Carton said, "Well which way would you go from here to where the girl's body was found?" Lowery indicated Mount Napier to the left of the Police car, and said, "Well, that's it over there, left. We'd have to turn up here somewhere." We then turned off the main road into Muroa Road and drove on some - approximately 4 miles until we left the bitumen. Carton said, "If I directed you to the spot do you think you would recognise it?" Lowery said, "I don't know."

MR. BYRNE: And then you have given evidence of what was said after that during the showing of the film?---That's so, sir, yes.

On the journey from the Mount Napier Reserve to Hensley Park Road did the accused Lowery have anything to say?---He did, sir.

What was that?---Lowery entered the Police car

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and sat stretched across the back seat, we all re-entered the Police car and Lowery bent down, holding his head and sat upright again. Carton said, "How's your head now?" Lowery said, "It's still aching." Carton said, "Now there's only one more matter we'd like you to help us with, and that is the transistor radio." Lowery said, "That's up in Hensley Park Road." Carton said, "You told us it was in Hensley Park Road near a corner, can you direct us to the corner?"

10 Lowery said, "I'll take you to near the corner, but that's all. I'm going against legal advice now." He then directed us to Hensley Park Road. We drove via Hensley Park Road and as we crossed Flinders Street, Hamilton at 1.25 p.m. and arrived at the cross-road very shortly afterwards and then Carton said, "Well will you show us where it is? Will you get out and show us please?" Lowery said, "I'll get out. Look,

20 this is the corner. I've brought you this far you can find it. I don't want to go against legal advice." He then walked up the road, north towards the intersection and shrugged his shoulders as depicted on the film, folded his arms and then waved at the camera. We re-entered the Police car at 1.30 p.m. and returned to the Hamilton Police Station via Dinwoody Street and Hamilton Street past the railway station and arrived back at the Police Station at 1.35 p.m.

30 MR. BYRNE: Were you present earlier on the morning of 7th February during the re-enactment of - by the accused man King which was also filmed?--- I was present in the area of the Mount Napier Reserve, yes, sir.

Did you pay any particular attention to the re-enactment that King did at that time or not?--- Not really, sir I understood my function there was mainly as security reason.

MR. CUMMINS COMMENCED CROSS-EXAMINATION

Cross-
Examination

40 MR. CUMMINS: Mr. Davidson, from what you have told the jury you had taken written notes on a number of occasions during this investigation?---That's so, yes.

That was your function during this investigation in relation to these interviews was to take

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written notes as things went along?---That's
so, yes, sir.

You gave evidence that at the Hamilton Police
Station on Saturday, 6th February Rippon was
having a conversation with the accused Lowery and
you gave evidence of that conversation?---Yes, sir.

In that conversation Rippon put a number of
propositions and questions about Lowery's previous
statements to him?---That's so, yes, sir.

And he climaxed that series of
questions by putting to Lowery a series of
statements concluding with the proposition that
scientific evidence puts Lowery at the scene?---
That's right, yes, sir.

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And you then said that after Lowery asked to see
the superintendent Rippon left that room?---That's
so, yes, sir.

And you said that Carton came in at 1.20?---Yes,
sir.

And he remained in the room until two o'clock when
the typed interview started?---Yes, sir.

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And in that 40 minutes the sum total of your
evidence I suggest is fourteen answers by Lowery.
---I haven't counted them.

Of which I suggest four of them are one word.
Even if the figures are not exactly right, that
is in substance what you have said today is it not?
---Without counting the questions I can't agree or
disagree, sir.

Well it is in evidence, we will leave that just
for the moment. When you read the interview out
it took about three minutes to read out did it
not?---Yes, sir.

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Now we all appreciate, of course, that it takes a
lot longer to write things out than to read them
out?---That's so.

What I am suggesting to you is that those
fourteen odd answers would not have taken anything
like 40 minutes for you to write out?---That's not

so, sir.

And I suggest to you that none of the answers is particularly lengthy?---Again, without examining all the answers, I couldn't agree or disagree, sir.

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And I suggest to you, finally, that a number of the answers are particularly short? Will you look at your notes and see if you can follow what I have been putting to you. Now you may again refer to your notes, if you wish, there were in fact 14 answers by Lowery there, is that right, in that period of 40 minutes?---I didn't count them, sir.

Would you just check through, without wasting much time, just check through to ascertain that that figure is right?---yes, sir.

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And a number of the answers, I suggest, are these - I read them in turn: "Yes""Yes""Yes,""Well, we did it", "Yes", "Charlie", - well, those answers are short answers?---Are these, sir, the answers ...

Of Lowery?---Answers of Lowery to Rippon's questions?

No, to Mr. Carton?---I'm sorry, sir, I've been checking through Rippon's..

From 1.20 to 2 o'clock is the one I am asking you about, that is when Mr. Carton was in the room?---I see, yes. That is so, yes, sir.

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Now you have agreed that your task was to take down notes, and I take it from your evidence it is not the first time you have done that in your experience in Homicide, is that right?---That was the first occasion that I had taken notes in homicide investigations, yes.

Was it the first time you had taken written notes in a police investigation?---No, sir.

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Assuming you were reasonably adept at your own handwriting, I suggest to you that with that number of short answers I have put to you and read out, which you agreed to, and the balance of the fourteen answers, that it would not have taken

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anything like 40 minutes to conduct that part of the investigation, allowing for it being written down?---That's not so, sir, there were moments whilst Lowery pondered over his answers and there were also moments whilst Mr. Carton pondered over his next question.

Well, taking those in the reverse order, Mr. Carton is a particularly experienced policeman? Is that correct?---Yes, sir.

While you were writing down Lowery's answer he would have had a chance to think of the next question?---I don't know what he thought, sir.

And at no stage have you suggested in your evidence that there were any long pauses, until you mentioned it just then?---Not until just then, no, sir.

MR.CUMMINS: We have had evidence from police officers previously in this trial who have mentioned pauses where they occurred. You did not see fit to mention any, so I take it from that that none of them were very long?---They were short pauses, yes sir.

I suggest to you that part of that 40 minutes was in fact occupied with something you have not told the jury about?---That's not so, sir.

And what part of that 40 minutes was occupied by, I suggest, was a return to the room by Senior Rippon?---That's not so, sir, Rippon was in the room until - from 12.40 until 1.20, he left and did not return.

I suggest in fact he did return before 2 o'clock? ---That's not so.

And I suggest he returned after half-past 1, but before 2 o'clock?---No, sir.

And when he came in I suggest he said, "Listen, King's making a statement now, and he's said you kicked her and you've killed her. You're nothing but a dirty little murderer, you bastard. You start talking or I'll spread you all over the walls", that is what he said to Lowery, was it not?---He didn't come back into the room and he

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didn't say anything to Lowery

Well, your only explanation for this 40 minutes is that it was taken in writing down 14 answers including the short ones I have read?---14 questions and 14 answers.

14 answers and the questions attached to those answers?---Yes, sir, that's right.

10 Rippon was in fact in the immediate vicinity, was he not? --- I don't know where he was, sir. After he left the room I remained with Lowery the whole time.

And opposite this room where he was being interviewed there were other police offices. were there not?---That's so, yes.

Rippon has also denied he came back, but he has admitted that he was in that room opposite. Now that is only a few feet away, is it not?---The width of the corridor, sir, yes.

20 MR. CUMMINS: I suggest you also left something else out. I suggest what you have left out was a technique employed by Mr. Carton to Lowery that was exactly the opposite in method to that employed by Rippon; and I suggest what you have left out is a series of statements by Carton to Lowery which had the general tone of encouragement, assurance and consolation. And what Carton said to Lowery, I suggest, in ...

30 MR. BYRNE: Your Honour, the witness has not answered the question that was just put to him. My learned friend seems to be proceeding to another question.

HIS HONOUR: The question contains too many elements and makes it difficult for the witness to answer.

MR. CUMMINS: I thought if I stopped I might have been objected to because it was not specific enough, so I went on, Your Honour. (to witness): Could you answer that so far?---I'm sorry, sir, could you repeat it, please?

40 I suggest that what Mr. Carton was doing, was he was employing the soft sell technique to Lowery, whereas Rippon was employing the threats?---No,

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Mr. Carton's questions - the total questions
are as I have read to the Court today.
There were no other questions by Carton or by
Rippon.

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I suggest that the technique that was
being employed was a tried and tested technique
of pressure followed by encouragement?---No, sir,
I wouldn't agree with that.

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Softening up, followed by a few kind words?---No,
sir.

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(continued)

And what Carton said, I suggest, in contrast to
Rippon's performance was this, "Listen, son, I've
had years of experience in this game and I've seen
plenty of fellows and I've done psychology and I
can tell you you'll be a lot happier if you get
this off your chest." That is what he said to
Lowery was it not?---No, sir.

And he went on and he said to Lowery, "Don't worry,
I can tell, I can tell by your eyes you're not
telling the truth." He said that, did he not?---
No, sir.

20

And he went on and he said, "I can tell you now
that King's making a statement next door and he's
saying you killed this girl."---No, that's not
correct, sir.

"It will be best for you if you tell us." That
is what he said, was it not?---No, sir, he didn't
say anything like that.

And young Lowery said to him, "Let me see his
statement." And Carton left the room and he came
back and he said, "I can't he hasn't finished it
yet."---That's not so, sir.

30

Well in fact, as a matter of fact at the same time
in that adjoining room King was making a statement,
was he not?---In one of the other offices I now
know that King was making a statement, yes.

And the evidence has been given that at 1.00 p.m.
Mr. Carton went into that interview and said to
King -

MR. BYRNE: Your Honour, this seems to be comment

40

in effect sir, I submit that to recite the evidence that has been given can form no part of the question. What my learned friend is really doing is commenting in the form of questions.

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of the State
of Victoria

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HIS HONOUR: I would not be disposed to stop it at this stage, it may be a way of eliciting an answer from the witness.

Evidence for
the Prosecution

MR. BYRNE: If Your Honour pleases.

Detective
First
Constable
Graham James

10 MR. CUMMINS: If Your Honour pleases.

Evidence has been given that in fact at 1 p.m. Carton was in that adjoining room in which King was making a statement. Now do you still say that Carton did not come back in and tell Lowery King was making a statement -

Davidson
Cross-
Examination
10th June 1971

(continued)

HIS HONOUR: Just a moment, "Come back in"?

MR. CUMMINS: Come in, I am sorry sir, come in to Lowery's room and tell him what King was saying and that it would be better for Lowery if he went along with it?---No, sir, he didn't

20

Well in fact Lowery did go on to make a written statement did he not, a typed statement?---That's so, yes, a record of interview.

And in fact he did sign that statement did he not?---Yes, sir.

And he agreed with you that what you had put down was in fact what was said?---That's so.

By him?---Yes, sir.

And he was subsequently charged with this offence? ---That's so.

30

And was then lodged in the cells?---Yes.

In Police custody?---Yes.

Now the next day he partook in the making of a film, is that correct?---That's so, yes, sir.

And you saw that film on the screen just then, did you not?---Yes, sir.

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Evidence for
the Prosecution

Detective
First
Constable
Graham James
Davidson

Cross-
Examination
(continued)

And while it is not suggested that anyone physically forced Lowery to go out there and make that film, he was obviously unhappy to be making it, was he not?---He was at the Mount - appeared to be at the Mount Napier Reserve, the longer he was at the scene the more reluctant he seemed to be to continue, but he didn't -

It seemed pretty obvious to you, did it not, that he just didn't want to be there? And did not want to stay there?---Not until after he'd demonstrated with the string, he seemed to be - he got the headache and he seemed to be more reluctant to be there. He seemed to want to get away from the place. 10

It seemed to your observation, did it not, that it was getting a bit much for him and he wanted just to clear out of the area, is that right?---It did seem so, yes, sir.

It also appeared obvious on the screen, did it not, that Lowery spent quite a bit of time in that film shaking his shoulders? Like this (demonstrated)?---Yes, sir. 20

And what that was associated with, I suggest, was this that to a number of questions he said, "I don't know" or "I'm not sure" or words to that effect, shrugged his shoulders as an indication of his lack of knowledge?---He seems to - or seemed at the time to be doing a lot of shoulder shrugging and he also showed this facial mannerism of the twitch of the nose and the blinking of the eyes and it all seemed to be part of the one mannerism. It wasn't in answer to any questions. 30

Well, when he was asked to demonstrate how the deceased was strangled round the neck, he said to Mr. Carton, did he not, "I don't know"? And Mr. Carton said, "Well, show us how it might have happened", that is right, is it not?---Which question are you asking, sir?

I am asking you this question - that Mr. Carton said to him, "Well, show us how it might have happened"?---Carton said, I'll give you this piece of string, will you show us how it was tied around her neck, using Detective Moxham as Rosalyn". 40

Finally, the latter part of the film related to the scene at Hensley Park Road, is that correct?
 ---Yes, sir.

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 Supreme Court
 of the State
 of Victoria

The request, I suggest, for him to go out to Hensley Park Road was made by Carton in the main street of Hamilton outside Menzel's menswear store, not at the scene at Mt. Napier?---No, that's not so, sir.

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Evidence for
 the Prosecution

10

I suggest what happened was this, it was obvious to all of you - well, to you, I can only ask you about that, it was obvious to you, was it not, that Lowery did not want to go on with this film?
 ---At what stage?

Detective
 First
 Constable
 Graham James
 Davidson

Cross-
 Examination
 (continued)

At Mt. Napier?---After he'd demonstrated with the string he did show reluctance. However, he agreed to take us to the cross-roads in Hensley Park Road, and once he got there he said, "Look, I'll take you to near the corner, but that's all, I'm going against legal advice now".

20

I suggest he was not asked about going to Hensley Park Road until you got back into Hamilton?---
 That's not so, sir.

And I suggest that there was a period from leaving Mt. Napier into Hamilton to give him time to settle down again before the next question was asked, "Come and do the next bit"?---No, sir.

30

Well, would not that appear to you to be a sensible technique to be employed, that while he is pulling out of one section and not wanting to go on and obviously upset - you would let him settle down a bit before he then gets asked the next part of the film?---He did in fact settle down. He was asked, "How is your head now"? and he said, "It's still aching", and Carton then asked him if he was prepared to take us to where the transistor was.

You had to go through Hamilton to get the transistor from Mt. Napier, did you not?---Yes, sir.

40

All right, and you knew that you had to go back through Hamilton to get there?---Yes.

And I suggest that that reason, that you had to

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the Prosecution

Detective
First
Constable
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Davidson

Cross-
Examination
(continued)

go back through Hamilton anyway, plus the fact that he was upset out at Mt. Napier and did not want to go on with the film, appeals to you as a very good reason why he should not have been asked till you got back to Hamilton to keep going out the other side?---That's not so, sir.

Was Mr. Moxham driving the car that you and Lowery and Mr. Carton were in?---Yes, sir.

And what happened in Hamilton in the main street, I suggest, was that Lowery did not want to go out to Hensley Park Road and Inspector Carton said to Mr. Moxham the driver, "Follow the van", which was the forensic science van?---That's not so, sir. 10

There was such a van, was there not?---There is a forensic science van, yes.

It was there at the time?---I don't remember whether it was there or not.

At Hamilton?---At Hamilton, yes.

And Mr. Moxham was driving your car?---Yes.

And when you got out to Hensley Park Road Lowery kept protesting, I suggest, "I don't want to say any more, I'm acting against legal advice"?--- Lowery said, "I'll get out. Look, this is the corner. I've brought you this far, you can find it. I don't want to go against legal advice". 20

I suggest he did not want to even get out of the car?---He got out of the car and walked up the road towards the intersection with his arms folded and then turned round and waved at the camera. 30

And I suggest that Inspector Carton said to him, "Listen, come and help us find it anyway"?--- That's not so, sir.

Well, in fact, what Lowery said, according to you, was this, "I've brought you this far, you can find it"?---That's so.

I suggest to you that that statement, "You can find it" was said in answer to the question - the suggestion by Mr. Carton, "Come and help us

find it"?---Carton didn't ask him to come and help us find it. He said, "Well, will you show us where it is? Will you get out and show us, please".

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You had already found it, had you not?---Yes, that's so.

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Well, what you said Carton said was simply this, "Well, will you show us, please", right? Look at your notes.---Carton said, "Well, will you show us where it is? Will you get out and show us, please?"

Evidence for
the Prosecution

10

Detective
First
Constable
Graham James
Davidson

Could I have a look at those notes, please?---
Yes, sir.

Cross-
Examination

DOCUMENT HANDED TO MR. CUMMINS

(continued)

MR. CUMMINS: This is what your notes say, Mr. Davidson. "There's only one more matter we'd like to clear up to help..." - you had better read them out, p.5?---Where would you like me to read from?

20

From the introduction of this Hensley Park Road episode - "Well, there is only one matter..."?---
"Well now, will you show us where it is..."

No, start from the very top, Carton said, "Now there's only one more matter..."

HIS HONOUR: Let me interrupt. If you are going to have it, you might as well have it complete from the time where the conversation started, Lowery holding his head.

30

MR. CUMMINS: Mr. Carton said, "How is your head now?" Lowery said, it's still aching", at the bottom of p.4?---Carton said, How's your head now"? Lowery said, "It's still aching". Carton said, "Now there's only one more matter we'd like you to help us with and that is the transistor radio". Lowery said. "That's up in Hensley Park Road". We drove along the main road and turned right.

40

Just the conversations will do.--- Very good. Carton said, "You told us it was in Hensley Park Road near a corner, can you direct us to the corner?"
Lowery said, "I'll take you to near the corner,

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but that's all, I'm going against legal advice now.

And he then took you to this corner?---That's so. Carton said -

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the Prosecution
Detective
First
Constable
Graham James
Davidson

Now if we could just pause there for the moment. There is no suggestion to that stage, is there, that Carton wanted him to look for or to try and find the radio itself is there?---No, sir.

He simply wants him to find the corner?---That's so.

Which he found?---That's so.

Cross-
Examination
(continued)

Well now go on. ---Carton said, "Well, now will you show us where it is? Will you get out and show us please?" Lowery said, "I'll get out. Look, this is the corner, I've brought you this far, you can find it, I don't want to go against legal advice."

In fact when Mr. Carton said, "Well show us where it is" it was not even there, is that right?--- That's so, yes, sir.

You are in the homicide squad as a junior in rank to Mr. Rippon, is that right?---Yes, sir.

And junior also to Mr. Carton, is that right?--- Yes, sir.

MR. BYRNE DID NOT WISH TO RE-EXAMINE.

WITNESS WITHDREW.

Kevine
Merrilyn
Butterworth
Examination
11th June 1971

KEVINE MERRILYN BUTTERWORTH sworn and examined.

WITNESS TO MR. BYRNE: My full name is Kevine Merrilyn Butterworth.

MR. BYRNE: Are you a clerk by occupation?---I was, I'm unemployed at the moment.

Do you live at 44 Laidlaw Street, Hamilton?--- No, I did, I'm residing out at Branxholme now.

In January of this year did you live at 44 Laidlaw Street, Hamilton?---Yes, I did.

10

20

30

On Sunday evening, 31st January of this year did you see the accused men King and Lowery?---Yes, I did.

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of the State
of Victoria

Whereabouts was it that you first saw them on that evening?---I was walking along the street, just in front of Coles Store in Hamilton and Chris and Chas, came round the corner from Brown Street and pulled up in front of Coles in Chris' van and I went over and Chris asked me if I would like a ride up to Bray's.

—
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Evidence for
the Prosecution

10 About what time was that?---Near enough to 8 o'clock I guess.

Kevine
Merrilyn
Butterworth

What happened then?---I told Chris that I had to go and see my mother first.

Examination
11th June 1971
(continued)

You spoke to your mother and came back did you? ---I went and saw my mother at the Grand Central, she was working there, I came out and Chris and Chas. were pulled up opposite the Grand Central in front of Thomsons.

20 What happened then?---I got in the car behind the driving - behind

MR. BYRNE: What sort of car was it?---Chris' van. Chris was sitting on the bonnet talking to two young fellows, Chas was sitting in the passenger side in the front, I was talking to Chas for about 5 to 10 minutes and then Chris came and got in the car and -

Just stopping you there, Miss Butterworth, was King - you refer to him as Chas. do you?---Yes.

30 Did you notice anything about him when you were talking to him for about 5 or 10 minutes?---What do you mean "about him"?

Anything at all? Odd, or-?---Anything said or what he -

The way he was speaking, the way he was looking, behaving, anything at all?---No, he was - I didn't know him all that well, he was usually a quiet boy and we were just sort of talking.

For how long had you known him?---I couldn't really say, I didn't see all that much of him.

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Examination
11th June 1971

(continued)

After talking to him for 5 or 10 minutes Chris came and got into the car did he?---Yes.

What happened then?---We proceeded off down Gray Street and turned into Thompson Street, and went back up along Lonsdale Street up to Shakespeare Street.

Did you go to some address?---3 Shakespeare Street.

That is the address of Mr. and Mrs. Bray, Chris' in-laws, is that so?---That's right. 10

What did you do there?---I got out of the car, and went into the lounge. The boys came in, Chas and Chris came in and I sat down, they sort of only stayed there a couple of minutes and they were gone again. I read the "Sunday Mirror" -

About what time did they go?---About five minutes after they dropped me off there, five to ten minutes.

About what time when they dropped you off there? ---Between 8 and half-past. 20

What happened then?---I sat in the lounge and read the Sunday Mirror and then I went up to Marilyn's bedroom and went to sleep.

What time did you wake up?---Marilyn came in and woke me up I suppose about half-past 11, approximately, and said that Chris and Chas had been back ..

Well, we cannot have what she said, but what did you do when you woke up?---I got up and the boys weren't there. We waited there for about 5 or 10 minutes and then they came back, we were going to the drive-in show. 30

When they came back did you notice anything about them?---No.

Did they look any different than usual to you, either of them?---No.

What happened then?---We - Marilyn, Hazel, myself and the two boys - Chris and Chas, got into

Chris' van and then we went round to Chris' and Hazel's flat to get two pillows, and from there we went out to the drive-in.

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At the flat did anyone forget anything and go back for it, do you recollect?---No, I can't recollect.

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What is the name of the drive-in theatre, what do they call it?---The Village Drive-in, I think.

Evidence for
the Prosecution

10 How many were in the party at the drive-in?---
Five. Five of us in Chris' van.

Kevine
Merrilyn
Butterworth

What happened then?---We watched - there was a film on about the vampires, we watched that one, then it was half-time. Then we watched the second one, I didn't watch the second one, I went to sleep. Then after the drive-in finished Chris dropped Chas off at his home.

Examination
11th June 1971
(continued)

20 About what time would that be?---I can only roughly estimate, about 3 o'clock in the morning. And then Chas and Hazel dropped Marilyn and I off at Shakespeare Street.

Hazel is Mrs. Lowery, is that right?---Yes.

Merilyn is Merilyn Cooper?---Yes.

What time did they leave you at Shakespeare Street? Approximately?---Approximately 3 o'clock.

Did you see any more of the accused Lowery after that time that morning?---No.

Did you notice anything odd about either of them at the drive-in theatre?---No, they seemed the same.

30 Were you talking to them there or not?---Oh, I can't actually recall what was said, but something probably about the film, passed remarks on the film.

MR. WRIGHT DID NOT WISH TO CROSS-EXAMINE

MR. OGDEN COMMENCED CROSS-EXAMINATION

Cross-
Examination

MR. OGDEN: Miss Butterworth, who was living at 3 Shakespeare Street at this time?---Mr. and Mrs. Bray.

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Evidence for
the Prosecution

Kevine
Merrilyn
Butterworth

Cross-
Examination

11th June 1971

(continued)

Are they any relationship to Lowery or Mrs.Lowery?
---Chris' wife..

Mrs. Lowery you are speaking of?---It's her parents,
Mr. and Mrs. Bray.

They were living at this house at 3 Shakespeare
Street. Who else?---Merilyn Cooper.

And is she related in any way to Lowery or to Mrs.
Lowery?---No.

Anyone else living there?---Hazel has a brother,
but he's away most of the time. 10

And you sometimes stayed there, did you?---Yes.

Were you just friends of the family, a friend of
the family?---Yes, a closer friend to Merilyn, a
girl-friend of Merilyn. I used to stay there odd
nights during the week and sometimes of a weekend,
go up there.

And when Chris Lowery met you in the street on the
Sunday evening he asked you whether you would like
a lift home, did he?---Yes.

To Shakespeare Street, is that right?---That's
right. 20

What were the words he used? You have not told
us that, Miss Butterworth? What did he say to
you? "What is it worth to drive you to
Shakespeare Street"?---He said that after I got
in the car.

What did he say?---He just asked me what it was
worth for him to take me home and I just laughed
and passed it off as a joke more or less.

What happened then? What happened in the car
between then and dropping you at Shakespeare
Street?---We just were more or less mucking about. 30

What was he - did he say anything more to you or
do anything to you?---Something about hitting a
girl or something, and I passed the remark, "You
wouldn't hit me".

What did he say about hitting a girl, that is
what we want to hear?---I beg your pardon?

| | |
|--|---|
| <p>What did Chris Lowery say about hitting a girl? ---I don't know what brought this on.</p> | <p>In the Supreme Court of the State of Victoria</p> |
| <p>What did he say?---I said something about hitting, I said, "You wouldn't hit me".</p> | <p>----- No.2</p> |
| <p>Did he threaten to hit you?---Yes.</p> | <p>Evidence for the Prosecution</p> |
| <p>Yes, he did, did he not? Why?---I don't know.</p> | <p>Kevine Merrilyn Butterworth</p> |
| <p>Did he make any advance to you? You know what I mean by that?---No.</p> | <p>Cross- Examination</p> |
| <p>10 Did he ask you to have sexual intercourse with him?---No.</p> | <p>11th June 1971 (continued)</p> |
| <p>Well, why did he threaten to hit you?---I don't know.</p> | |
| <p>Was it because you said "no" to him? It was, was it not?---Well, Chris said what was it worth for him to take me home and I said ..</p> | |
| <p>And you knew what that meant, did you not? You knew what he meant by that?---I passed that off as a joke.</p> | |
| <p>But you knew what he meant by it?---Yes.</p> | |
| <p>20 And then later you say in the car he threatened to hit you. Now what I am asking you is why did he threaten to hit you?---It could have been because of something I said about hitting a girl. I don't know.</p> | |
| <p>Are you being frank about this, Miss Butterworth? Are you being frank about this? You know what went on in the car, do you not? You tell the gentlemen of the jury and His Honour?---When I got - after ...</p> | |
| <p>30 Yes, tell us the whole thing?---When I got in the car we started off. I don't know actually what was said, but Chris turned round and said what was it worth to him to take me home, and I said, "Nothing", and passed it off as a joke.</p> | |
| <p>Never mind about that, but you said, "Nothing". Go on, what happened then?---Then something came up about hitting a girl, I don't know what brought</p> | |

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Evidence for
the Prosecution

Kevine
Merrilyn
Butterworth

Cross-
Examination
11th June 1971

(Continued)

it on, I can't recall actually what was said,
and I said, "You wouldn't hit me".

He did threaten to hit you, did he not?---Yes.

Yes, go on? What happened as you were getting out
of the panel van, did anything happen then?---
I got out and he kicked me.

Did he hit you at all in the panel van?---
Yes.

Where did he hit you?---On the head, behind the
head.

10

On the head?---Or around - somewhere around here
(indicated).

Somewhere from the neck up?---Yes. It wasn't a
hard blow.

And then he kicked you as you got out of the panel
van?---He didn't really put force into it, but -
it didn't hurt, but I turned around to see if
there was a stain - I had white jeans on, to see
if there was an imprint on the jeans.

He hit you and he kicked you because, I suggest
to you, you refused his sexual advances. You
know what I mean, do you not?---Yes.

20

That is what happened is it not?---He didn't
come out and say it straight out though.

Never mind how he said it, but you understood
did you not?---Yes.

He wanted to have sex with you, you refused him
and he struck you and then later kicked you as
you got out of the car?---I think I even hit him
too.

30

He did kick you as you got out of the van did
he not?---Yes.

It was not the first time that he had made
sexual advances to you was it?---He'd never said
anything like that to me before.

Has he ever hit you before?---No.

Had he ever kicked you before?---No.

MR. CUMMINS: Would Your Honour grant leave for cross-examination?

HIS HONOUR: Yes.

MR. CUMMINS COMMENCED CROSS-EXAMINATION.

MR. CUMMINS: Miss Butterworth, this was a holiday weekend was it not?---Yes.

And you were staying with Chris Lowery's parents-in-law at Shakespeare Street?---No, I happened to stay there on the Saturday night.

And you were going back there when these incidents that Mr. Ogden has been putting to you occurred? You were going back to the Brays at Shakespeare Street, he was driving you out?---Yes.

In fact, what was going on in the car was mucking around, was it not, horseplay?---Yes.

And when he said to you "What's it worth" or something like that, you took it as a bit of a joke?---That's right.

And he was also, I suggest, - the bit of pushing and so on that went on was also, you treated it as horseplay or mucking around?---Yes, I hit him back.

Did you for a moment think that there was something sinister or malevolent or horrible about his approaches to you?---No.

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Evidence for
the Prosecution

Kevine
Merrilyn
Butterworth

Cross-
Examination
11th June 1971

(continued)

- - - - -

In the
Supreme Court
of the State
of Victoria

No. 2

Evidence for
the Prosecution

Kevine
Merrilyn
Butterworth

Re-
Examination
11th June 1971
(continued)

MR. BYRNE COMMENCED RE-EXAMINATION

MR. BYRNE: Where did you land the blow on him
when you hit him back in the car?---I could
have hit him on the arm. I can't recall.

WITNESS WITHDREW AND EXCUSED.

MR. WRIGHT WAS HEARD TO OPEN HIS CASE TO THE JURY.

CHRISTOPHER RUSSELL LOWERY, sworn and examined.

WITNESS TO MR. CUMMINS: My full name is Christopher Russell Lowery. I reside at 3 Shakespeare Street, Hamilton. I am an apprentice bricklayer by occupation.

MR. CUMMINS: Did you kill Roslyn Nolte?---No sir, I did not.

Did you take any part in her killing?---No sir.

10 At any time prior to her death did you plan to kill her or to kill a girl?---No sir.

Previous to this murder charge have you had any convictions of any sort against you apart from one conviction for driving an unroadworthy vehicle?---No sir.

Previous to that unroadworthy charge and this murder charge have you ever been charged with any criminal offences?---No sir.

How old are you now ---19 sir.

20 Were you married last year?---Yes sir.

And as at the long weekend, Australia Day weekend, January 1971, was your wife expecting your first child?---Yes sir.

And was she in fact eight months pregnant?---Yes sir.

And was the child in fact born a boy on 1st March?---Yes sir.

30 Well I wish to take you immediately to the incidents which occurred on the night of the murder. On Sunday 31st January 1971 did you go round and pick King up at about quarter past seven?---Yes sir.

In the evening. And did you intend spending the evening with him and ultimately you and your wife and King and his girlfriends all go off to the drive in?---Yes sir.

In the
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of the State
of Victoria

No. 2

Evidence for
the Appellant

Christopher
Russell Lowery
Examination
14th June 1971

In the
Supreme Court
of the State
of Victoria

No. 2

Evidence for
the Appellant

Christopher
Russell Lowery
Examination
14th June 1971

(continued)

Was that going to be the late show, what has been called the horror show?---Yes sir.

And in fact did you pick up King in your panel van?---Yes sir, I did.

And is that in fact your Father's van, but you have the use of it?---Yes sir.

And as you were leaving King's place in Stephens Street, Hamilton, what did he do?---He took an envelope from his pocket, took a tablet out of it. I asked him what it was. 10

What did he say?---Acid.

Will you keep your voice up?---Acid.

And did you understand by "acid" that he meant what is called L.S.D.?---Yes sir.

And what did you say to him and what did he do? ---I asked him what he was going to do with it.

Yes?---He put it in his mouth and said "that".

And said?---"That".

Had you taken acid or other drugs yourself?--- No sir. 20

Well in fact where did you both drive to?---To Gray Street, Hamilton.

And did you there see Kevine Butterworth?--- Yes sir.

Who gave evidence a couple of days ago - a few days ago?---Yes sir.

And what happened between yourself and Kevine Butterworth ---I'd spoken to Kevine earlier and I knew that she intended to go to 3 Shakespeare Street, so I pulled up and asked her if she wanted a lift up there, she said she had to see her mother first, so I gave her a ride to the Grand Central Hotel, I waited for her there, then I drove her to 3 Shakespeare Street. 30

Was she a girlfriend of your wife's?---Yes sir.

Well what was said to her about taking her up, can you remember?---Could you repeat the question please sir?

Did you ask her anything about what it was worth to take her up there?---Yes sir.

Well would you tell us what you said?

MR. OGDEN: Your Honour, I hate to interrupt at this stage, but it is very leading Your Honour, my learned friend has been very leading about this.

10 MR. CUMMINS: Well with respect, Your Honour, I apologise if I was leading, I was simply putting what Mr. Ogden put to Miss Butterworth, and I was not countermanding that, and in my submission I am entitled to direct his attention to a point by leading when he said he does not follow the question.

20 HIS HONOUR: Well the fact that he does not follow the question does not entitle you to lead of course. You have to exhaust his memory before you can lead.

MR. CUMMINS: Yes sir. I apologise sir. Well what was said between you and Kevine about going up to your parents-in-law's place?---I said to Kevine "What's it worth to give you a ride up there?"

And what was said between you both? You say in your own words what was said and what happened between you both until you dropped her off there?---Kevine said, "Oh, you can give me a ride up anyhow." I gave her a ride up there.

30 Did anything happen between you, physically, as you were going up or when you got there?---I just gave Kevine a tap on the shoulder, just a -

Did she do anything to you?---Yes, she hit me back.

In what sort of spirit were you doing this to her?---I was in a good mood at the time.

And in what sort of spirit did she seem to be reacting to you?---She seemed to be in a good mood too.

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Well what happened when she got out of the car?
Did you say something to her then?---Yes sir.

Well what did you say to her?---She stepped out
of the car and she was walking in and I just
said "Oh that's a good target", and I kicked her.

And what were you saying was a good target?---
Her behind.

And where did you kick her?---In the behind sir.

Was it a hard kick?---No sir.

And what was her reaction to that?---She looked
around and she seen that there was mud there and
she said, "Oh, you haven't dirtied my jeans,
have you?"

10

MR.CUMMINS: Did you then go inside with her?---
Yes sir,

Well did you then subsequently go off again with
King?---Yes, sir.

Where did you go to that time?---We returned to
Gray Street, Hamilton.

What was your purpose in going down there at
that stage?---I wanted to see a friend of mine.

20

Who was that?---Jamie McKenna.

When you go down to the main street of Hamilton,
on say, a Sunday evening or - what do you usually
find down in the main street?---There's not much
about on a Sunday night in Hamilton.

When you went down to the main street who did you
in fact see?---Rosalyn Nolte.

What did she do and what did you do?---She waved
to us. King asked me if I'd stop, I pulled up
and she came up to the car.

30

What happened from then on?---King asked her if
she knew that Garry Bailey was home, I'm not
exactly sure what she said, I couldn't be sure
what she said then, then King told her that he

was in fact in Hamilton and she asked if we'd take her out to see him.

Did you agree, or what happened?---No, King said that Garry would be at a party. So she asked us if we'd take her to the party and I thought we might as well go out and see what was going on.

In fact did she get into the car?---Yes sir.

10 How did that occur?---King stepped out, she put the dog in the back of the van then she got in and King got in after her.

Well where did you go?---King said when she got in the car that the party was at Toulong. I didn't know how to get there so I asked him how to get there and he said "Drive out the Port Fairy Road."

Did you in fact do that?---Yes, sir.

20 And where did you drive from then on and how did you take the route that you took?---We drove out the Port Fairy Road, drove along, King said "You turn off up here" so I turned off at the Muroa Lane I know it is now.

Did you know it at the time?---No, sir.

Where did you go from there?---I followed the road and went straight on through into the road that leads into Menzel's quarry.

Did it become evident to you that you were or you were not going to the party?---I didn't think we were going to a party then.

30 What did you believe King was up to at that stage?---I thought he wanted to have sex with her.

How did he and Miss Nolte appear to be getting on in the car?---All right, sir.

In fact when you got up to the road that leads towards the quarry what did you do?---There was a small track there, we turned off up that.

Did you stop?---We drove up the track a bit first then stopped.

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Did you then stop?---Yes, sir.

What happened after that?---King stepped out of the van and asked Rosalyn if she wanted to go for a walk with him.

What happened next?---They walked off up the track.

Where did you go?---I stopped in the van.

Why did you not go with them?---I thought they'd want to be alone.

Well what in fact did you do?---When she'd first hopped into the van I had the beer sitting on the seat beside me so I had to place that over the back, then I reached over the back to get it, I seen that there were a lot of old papers and so forth and they were well behind the seat so I thought I'd clean the van out while I was out there. 10

Well what did you do?---I sorted out what I wanted to keep and what I didn't want. What I wanted I sat on the seat or laid over the seat and threw some papers out. 20

Can you remember approximately or precisely what you did throw out ---Newspapers, bottle tops.

Well what did you keep in the car, can you recall that?---The jack, brown flex, a bag.

Well what happened while you were occupying yourself doing this chore?---What do you mean?

Well did you have anything to drink?---I just threw a few bits of rubbish out first then I opened the can.

What did you do with the can?---I was just drinking it. 30

What happened after you were cleaning out the car and having a beer - what next happened?---Well the things that I wanted to keep I had them sitting on the seat, King came back to the car and he opened up the door and I asked him if he wanted the beer.

You asked him?—Yes.

What did he say?—He looked in the van and he seen the flex and said "No, that'll do me."

Did you make any reply to that?—I said to him that "Did you have trouble drinking it?" or something like that.

What did he do?—He said he could have just as much fun with it.

10 What happened then?—He took the flex and walked back off.

Where did you go or stay at that stage?—I sat in the van.

What did you continue doing?—Sitting there drinking, smoking.

Did you continue doing that for a period of time?—Two or three minutes, yes.

What did you do then?—I wondered what he was doing with the flex so I thought I'd walk up and see.

20 What had you thought about after he had left with the flex, when you had those two or three minutes when you were drinking the can, what had you thought about?—One day up at Shakespeare Street King had shown me a few things that he said to do when you're on LSD I thought this might be something else like that.

Well you said that you decided - what did you decide to do?—Walk up and see what he was doing with it.

30 Do you know how far you walked, are you able to say approximately how far you walked?—About 60, 70 yards.

When Miss Nolte and King first had left the car and gone off up the track were you able to see where they had gone to or what they were doing?—No, it was getting on to dark, you couldn't see them.

As you were walking up the track this 60 or 70 yards

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what happened?—I sat the beer can down, I walked on and I seen them.

What did you see?—When I first seen them I couldn't work out what they were doing, the way he was holding her. I got a bit closer and I realised that he was trying to strangle her.

What did you see him doing when you got close enough to actually see him?—He was behind her and he just had the flex around her neck or something, something like that. 10

What did you do?—I ran at him and when I ran in he just brushed me away. He knocked me down and I got up again and went at him again and he let go of the girl, then knocked me down again.

How tall or heavy are you?—About 5 foot 4, about 9 stone.

What did you do when you had a go at him the second time, what happened from then on? Was anything said?—Yes.

What was said?—I was still laying down and he told me not to move, to stop there. And said "Well get up and pick up all her clothes", I picked up what I could see, I picked up all the clothes and he said "Bring them down here", he dragged her off the track. 20

Who did that?—King. I carried the clothes and he said "Throw them away" so I just threw them.

When he told you to stop there or not to do anything did he say anything further to you?—Yes. 30

What did he say?—He said "Stop there, or you'll be next".

What state did Miss Nolte appear to be in?—She was unconscious or she wasn't moving, she was just laying there when he let go of her.

Did you have any belief when King said to you "Stop there or you'll be next?—What do you mean sir?

Did you believe him?---Yes, sir.

What did he appear to have done to Miss Nolte at that stage?---I thought when he let go of her that she was dead, she just lay there.

Do you know what the clothes are that he told you to throw away?---Just what I seen laying on the ground, just what I picked up.

What happened after he had dragged the girl off the track?---Tied her up then -

10 Did she move at any stage after you first saw her?
---No, sir.

What happened from then on?---He tied her up and I'd thrown the clothes away. I don't know where I threw them. He said "We'll go back to the van" and we walked back.

MR. CUMMINS: What state were you in, mentally?---
Shocked.

20 What did you do when he said, "Walk back to the van"?---I walked back up there, I didn't know what to do.

Well what happened when you got back to the van?---
I walked back to the van and it is a very narrow track so I had to reverse until I could find a spot wide enough to turn around.

Yes?---I turned around, drove out. When we got back out onto the road we seen - the dog was there, - said, "Pull up we'll get it out."

Who said that?---King.

Who in fact got the dog out?---King did.

30 All right, well did you continue on?---Yes sir.

On the way back into Hamilton what was said between you and King about it?---King said to keep quiet about it don't tell anyone, and that we would have to work out a story, where we were.

After he told you to keep quiet about it and not to tell anyone, did he say anything further about it?---
Yes sir.

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What did he say?---I don't know what his exact words were.

No, well the substance?---That he'd get at Hazel if I didn't.

He said what?---He'd get at Hazel if I didn't.

Did you believe him?---Yes sir.

Well was anything said about what to say?---
Yes sir.

What was said and by whom?---King said, "We'll have to work out a good story", and worked out about the - going to Coleraine.

10

Who made those suggestions?---King did.

Well what happened about the transistor?---When we got back to Hamilton, said "Just act naturally", so we stopped outside the Sports Centre and said, "Go in there and see who was in there", we seen the bikes out the front, he said "We might as well go in there and see who is in there."

Who said that?---King did.

And what did he say to you you were meant to do?---
Just act naturally.

20

Well what happened?---He seen the transistor there and said "Hide this somewhere." And I put it underneath the dashboard. Then we went into the sports centre, stopped in there for a while, then we left again and he said, "We might as well get rid of this transistor somewhere."

MR. CUMMINS: Who said that?---King did.

And what happened?---We just - drive out the road to throw it out.

30

Well did you in fact drive out the road?---Yes sir.

And who threw the transistor out?---King did.
It was on his side.

And where was that?---Out Hensley Park Road.

Did you then return into the town?---Yes sir.

And where did you go then?---Back to 3 Shakespeare Street.

And what did you do once you arrived there?---Beg your pardon, sir?-- What did you do once you arrived there?--We went in and they asked us why we had'nt gone to the drive in and we said we'd taken a hitch-hiker to Coleraine.

Who said that?---I'm not sure sir.

Could you have said it?---I could have sir.

10 Well what did you do then after that?---Then drove to the drive in to see what time the late show started.

When had arrangements been made about going to this drive in?---In the afternoon.

By this stage at night after you had come back from Mt. Napier, did you still want to go to the drive in?---No sir.

20 Well why did you go?---Well he said to appear natural, act naturally, and I thought the arrangements had been made so -

Well did you all go out to the drive in?---Yes sir.

What happened at the interval of the drive in?---Hazel wanted something to eat.

That is your wife, is it?---Yes sir.

Yes?--- So I said I'd walk over to the cafeteria and buy it for her and I got out and King hopped out and walked over with me.

30 To your knowledge had King been asked to get anything for anyone?---No sir.

Well then later that night, after the end of the drive in, did you eventually drop everyone off and go back home?---Yes sir.

Did you tell your wife that Sunday night or it would have been early Monday morning, anything about

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what had happened?---No sir.

Well what happened on the Monday?---About
2 o'clock King and Garry Bailey came up, came
up to the flat in Stephens Street, -

Was that where you were living at the time?---
Yes sir.

And in fact at this stage, at about this long
weekend, were you in fact in the purchase of a
new home?---Yes sir.

Where was the new home to be?--- 4 Woodbridge Street. 10

4 Woodbridge Street?---Yes sir.

And was Stephens Street your previous address
that you were about to move out of?---Yes sir.

What stage had you got with the packing and so
on?---Well we had -

Had you started that?---Yes sir, we had
practically everything packed.

Was the proposal that after you moved out of
Stephens Street, you would stay at Shakespeare Street for a few days until you got things set
up in the new house?---Yes sir. 20

And did you in fact follow that procedure at least
as far as moving to Shakespeare Street for the
few days?---Yes sir.

And in fact before you got - ever got to your new
house, were you arrested?---Yes sir.

Well going back then to what happened round at
your flat that you were in the process of vacating.
You said that Bailey and King came round?---Yes, 30
sir.

Did King say anything to you that afternoon about
what had happened?---Yes, sir.

What happened between you both?---He asked me to
just go over the story again.

What did you do, both of you?---Just kept over it, just wanted to make sure that I was going to say the same thing as him.

On that night -- what happened on the night of that Monday?--- I started to tell Hazel -

Just before you go on - yes, all right, I should not have interrupted you. You started to tell Hazel what?---About what had happened, she said she thought there was something wrong.

- 10 Did she say wrong with what?---With me, the way I was acting. So then I started to tell her and then King came around.

What time was this?---Some time after seven. He came around and he sat there for a while till I went out to the toilet -

While King was there did you continue telling Hazel the truth?---No.

Were you present all the time while King was with Hazel or not?---No.

- 20 Where did you go?---I went to the toilet, sir.

After King left did you speak further to Hazel?---When we went to bed that night.

What happened between you both?---I told her then what had happened, on the Sunday night.

What was her reaction?---She said I should go to the Police.

What did you say to that?---I said I didn't want to after what King had said he'd do.

Did you discuss the matter fully?---Yes, sir.

- 30 What conclusion did you eventually reach?---I just didn't want to tell the Police about it because of Hazel.

Well then on the Wednesday, that is the 3rd, were you questioned by the Police?---Yes, sir.

And you have heard the evidence that the Police officers gave and the interview that they took?---Yes, sir.

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What do you say substantially about the evidence that they said?---That is what was said.

What story did you tell the Police then?--- About going to Coleraine.

Again on the Thursday were you further questioned by the Police?---Yes.

Did you make a fuller statement?---Yes sir.

Did you again tell them the Coleraine story?--- Yes, sir.

Is what the Police have said to the jury substantially correct about what was said between you all?---Yes, sir. 10

On the Friday were you further questioned and taken round for themattress and so on?---Yes, sir.

Well then come the Saturday you had been questioned on the previous three days, did you see King on the Saturday morning?---Yes, sir.

What was said between you both then?---He said they seem to be getting onto him, he said that if they ever look like they could prove that he done it to admit that I was in it with him. 20

Was anything specific said about what was to be said?---No, sir.

What can you remember King told you about what to say?---He just said to say that I was in it with him, just to admit that I was there and helped him do it.

Was anything further said about what might have happened before?---I don't understand the question, sir. 30

Was anything said by King to you about any plan?--- Yes, sir.

What was said?---He said to say that it was planned.

What were the words that he used, can you recall?--- "Just tell them we planned to kill a chick".

Whose words were they originally?---King's.

Apart from those two factors that you have mentioned, firstly to say that you were part of the killing and secondly to say you had planned it, was anything further discussed between you and King at that stage?---Yes, sir he said that if I didn't he'd get Hazel.

Did you believe him?---Yes, sir.

10 In fact, were both you and King intercepted and separated about noon on the Saturday?---Yes, sir.

Did you see him again between that time and the time you made the record of interview that has been produced, Exhibit "BB"? ("PP"?)--No sir.

Apart from those details that you have mentioned about being in the killing with him and having planned it and that he would get Hazel if you did not, was anything further said between you both about what to say specifically?---No, sir.

Did you know in detail what to say?---No, sir.

20 In fact were you taken down to the police station at about a quarter past twelve?---Yes, sir.

Have you heard the evidence of Mr. Carton and Mr. Rippon?---Yes, sir.

Did you hear the evidence given by Mr. Carton that he asked you a few questions first and then Mr. Rippon came along and asked you a number of questions about your previous story?---Yes, sir.

30 As far as that evidence goes what do you say about that, is that right or not?---No, sir.

You tell the Court actually what happened when you got taken down to the Hamilton Police Station from the time you got there?---We were taken down there and Mr. Carton came in and introduced himself more or less and then said that Mr. Rippon wanted to ask me some questions.

Can you remember whether or not Mr. Carton asked you a few preliminary questions himself?---Yes, sir.

40 And you heard him say what the preliminary questions were, the ones that he did say, did he ask those?---Yes, sir.

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And then what happened after he had asked those?—
He left then, left me with Detective -

And who came in?—Sir

Who came in after Mr. Carton?—Rippon.

And at that stage what story were you sticking
to throughout this?—That we'd taken a hitch-
hiker to Coleraine.

Well in fact you heard Mr. Rippon give evidence
that he asked you a number of questions after
Carton had left?—Yes sir. 10

And the actual questions that he said he asked
in court, did he ask those?—Yes sir.

And what was his general manner or attitude to
you?—Very aggressive, sir.

And throughout this series of questions that you
agreed he asked you, what story did you stick
to?—Going to Coleraine sir.

Well what happened after he had asked you those
questions that he has said in court he asked you,
what happened after that?—Well he was 20
aggressive when he said them, so I asked if I
could see the other Detective who had been
interviewing me.

What was the difference in the attitude of them
both as far as you could feel?—Mr. Carton seemed
to be nowhere near as aggressive.

Well did Mr. Carton come back at your request?—
Yes sir.

And did he ask you further questions?—Yes sir.

What was said from then on in your own words 30
between Mr. Carton and yourself?—He came back
in and he asked me why I wanted to see him and I
said to him "to get rid of that other pig" and
he asked me if I wanted to tell him anything and
I said "No, I just wanted to get away from Rippon."

And did Mr. Carton start speaking to you then about
the matter?—Yes sir.

What was he saying to you?---He was telling me that he'd had years of experience in the Homicide Squad and he'd studied psychology and psychiatry, he could tell that I was lying, that I'd feel a lot better if I got it off my chest and -

Did he say how he could tell you were lying?---
Yes sir.

Well how was that?---By my eyes.

10 Was there anything further said about anything by Mr. Carton?---Yes sir.

What was said?---He just - went over it again that I'd feel a lot better if I told him all about it and so forth.

Was anything said about King?---Yes sir, he said that King was making a statement.

Did he say about what?---Yes sir.

20 What was said?---He said "King's in there making a statement telling them all about how you were both in it", he said to me, "You'll look stupid standing up there, him telling them everything - all about it and you saying you weren't there. The jury is going to make - going to think you are guilty."

Well what happened then?---Rippon came back in.

30 What did he say?---He came back in and he said - he had a bit of a talk with Carton first, I didn't know what was said there and he said to me, "You're nothing but a dirty little murderer. King's in there telling us all about how you punched her and kicked her and how you killed her, you're just a murdering little bastard."

What sort of way did he say that to you?---Violently.

Did he say whether anything would happen to you?---
Yes sir.

What did he say?---He said if I didn't tell them what they wanted to know he'd spread me round the four walls.

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Yes, and did he stay in the room or did he leave?--
He left again sir.

Had you asked Mr. Carton for anything?---Yes sir.

What had you asked him for?---I said to him that
if King was making a statement could I see a copy
of it.

Why did you ask him that?---To see if he was
actually making one.

Well what happened? Did Mr. Carton return
eventually?---Yes Sir. 10

And what did he say?---He told me again that King
was making a statement and he asked - I asked him
if I could see a copy of it, he went off and he
came back again and he said to me, "Oh, I can't
get it yet, he hasn't finished with it yet, I'll
get you one as soon as I can."

Did you believe Mr. Carton?---Yes sir.

What was his attitude towards you like?---Much
more calm.

Well when you said you believed Mr. Carton after 20
he had come back, what did you actually believe
was happening in the next room?---I believed that
King was making a record of interview saying that
he was out there.

Well what did you decide you should do then?---
I thought that he'd said that - it looked like
they could prove he was there, to say that I was in
on it with him, so I made the record of
interview then.

What made you in fact change from the Coleraine 30
story to the second story, was it either the way
Rippon was speaking to you, was it that, or was
it the information that King was in fact making a
statement?---The information.

Well did you in fact proceed to make a record of
interview?---Yes sir.

And you have heard the record of interview read
out in court, Exhibit "PP"?---Yes sir.

Is that in fact what was said between you and the police?---Yes sir.

Well I will go through it in detail a little later, but I want to take you on to continue the evidence in relation to the other points first. At the end of the interview, did you write across the bottom of it?---Yes

Words to the effect - words "I've read it over and it is correct"?---Yes sir.

10 How did that come about ---Mr. Carton - when I'd finished, Mr. Carton said to me "Will you sign it"? And I signed it, and he said, "Would you write something on it in your own handwriting to say that it is right."

Were you forced in any way to write it or not?---No sir.

Well were you subsequently charged and locked up?---Yes sir.

20 And then were you asked, later on, rather, did your father come and see you?---Yes sir.

And was Mr. Dawson, the Constable, present?---Yes sir.

And you have heard the evidence that Mr. Dawson gave that your father said - well you heard the evidence that you?---Yes sir.

I will not get it wrong by mis-quoting it. Is that in fact correct what was said between you both?---Yes sir.

30 Why did you not tell your father the truth about it if he was - seeing he was your father?---The police were standing there, they could hear.

Were you also asked by a senior Police officer, Superintendent Warne whether you had any complaints about the way you had been treated??---Yes, sir.

Did you make any complaint to him?---No sir.

You said earlier on that Rippon had been speaking to you violently, why did you not complain about that?---I wasn't worried about that at the time.

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What were you worried about?---The fact that I'd been charged.

Did Mr. Rippon ever actually hit you or anything like that?---No, sir.

The next day did you make a film that has been shown in evidence?---Yes, sir.

How did that come about?---Mr. Carton came out to the cell.

Is this at the back of Hamilton Police Station?---
Yes, sir. Asked me if I'd like to go out with
them and make the..make a film. I'd seen
Mr. Lewis the night before.

10

Was he the local solicitor?---Yes, he's a solicitor.

Well then what did you say to Mr. Carton? In view of what you had been told by Mr. Lewis?---
I told him I didn't want to say anything. He said to me "I'll give you five minutes to think it over."

What happened then?---He walked out of the cell and
they locked the cell again, then they opened it
up again and he said "Come inside and think
about it". I went inside and he asked me if I
wanted to make it, I said "No." I didn't know
what to do about it. Then he said, "Well you
can come out anyhow". So I went out and made the
film.

20

Did you know as a matter of fact whether you had any right to refuse the film or not?---No, sir.

Apart from what Mr. Carton said to you were you
pressured in any other way or forced or was it
just that conversation?---It was just that
conversation, sir.

30

If, in fact you were going along with King's story because of fear for your pregnant wife why did you not willingly go and make the film to sort of help King further?---Well sitting in the office was all right just saying that I done this and done that, but when they wanted me to show them how it was done I just couldn't do it, I didn't know how.

Why not?---It was a lot easier to just talk about it, and just leave it up to their imagination what actually happened, the details. When I had to show them I thought that I might make a mistake somewhere.

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Why might you make a mistake?---Well I hadn't seen the record of interview so I didn't know what I'd said, I thought I could be confused.

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In fact did you go out to the scene?---Yes, sir.

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10 Was a film made?---Yes, sir.

Did you know how to get out there?---No, sir.

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Did the Police - as they have said in evidence - take you out there?---Yes, sir.

When you eventually got to the spot did Mr. Carton, as he said in evidence, say "This is the spot where the body was found"?---Yes.

Did you actually know the position yourself?---No, sir.

20 Well then what happened about the film, what actually did you say and what was said to you while the film was being made? From that stage where Mr. Carton said "This was where the body was found", from then on what happened?--- They asked me to show them what had happened and more or less as the film is and they were just telling me what to do at each stage.

30 Can you remember what was said, what you were asked to do or what you were told to do?---He took - someone took a piece of string out of their pocket and handed that to me and said to me "Just show us how it was tied around her neck" I said I didn't know, he said "Well just put it around the detective's neck how you think it could have been".

Did you do that?---Yes, sir.

What other things were asked of you?---Positions mainly, where she was and so forth.

Did you know those?---No, sir.

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What else was asked of you? Was anything asked of you about going down off the side of the track to where the body was?---Yes, sir.

What was said about that?--- "Just have a look down there and see if you think that's where it was left".

In fact did you think that was where it was?--- No, I didn't know, sir.

Why was your knowledge of it so limited in fact?--- The only time I'd been out there was when it was dark, I wasn't noticing the area much at the time. 10

In fact after you had been down the side of the track and come back up on to it again did you say anything about continuing the film?---Yes, sir.

What was said?---I said I didn't want to continue with it.

Did you say why or - ?---Yes, sir.

What did you say?---I said Mr. Lewis had told me not to tell them anything and I thought then that possibly it would cover this as well. 20

What did you do?---I started to walk back up to the Police car.

Did you actually get there?---No, sir.

What happened that stopped you getting that far?--- Detective Rippon came up and told me to get back up and -

What did he say?---"Get back up there and show them what happened or I'll give you a belting now", something like that.

What was his manner to you?---Aggressive again. 30

Did you go back up there?---Yes, sir.

What happened for the rest of the film up there, can you remember?---I just stood there.

Then did you all pack up and leave?---Yes, sir.

At one stage were you asked about the transistor?
 ---Yes, sir.

When was that?---When we got back to Hamilton.

Were you asked anything about it before you go back there?---I'm not sure, sir.

Where did the Police car stop?---In front of Menzel's Men's Wear.

What was said to you when you got in there?---
 "We just want to find this transistor now"

10 Who said that?---Carton.

What did he say?---"We just want you to help us find the transistor there, just tell us where it is and that'll be all for the day".

What did you say?---Mr. Lewis had told me the night before what to say and I just repeated his words.

What were the words?--- "Acting under legal advice I have nothing to say".

20 Was that the first time you had actually come up with that expression?---No, sir.

Where had you said it before?---Out at the scene.

When you were back in Hamilton and you were asked about the transistor was anything said about where it was or the location?---Yes, sir.

Who said what?---Carton said "Show us where it is out in this Densley Hill".

Are they the actual words he used?---Yes, sir, something like that.

30 Well the words "Densley Hill" I mean, was that the -?---Yes, sir.

In fact what happened about you going out there?--- Carton went back and spoke to the driver of the Forensic Science van, then he came back and he said to Moxham "Just follow the van".

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Was Moxham the driver of your car?---Yes, sir.

Did he in fact follow the van out there?---Yes, sir.

What happened when you got out to Hensley Park Road?---The van pulled up and Moxham pulled up in front of them, they asked me if I'd get out and help to find the transistor, I said I didn't want to do anything. Then Carton went back and was talking with them back at the Forensic Science van again and he came back up and asked me if I'd help them and I said 'no'. He said, "Well hop out anyhow and just look for it."

10

Did you do that?---Yes, sir.

After you started to do that did you decide something then?---Yes, sir.

What did you decide?---I walked up the track and I thought, well I couldn't see how..I thought then, well I couldn't really see how they could make me do it.

What did you physically do?---Just waved at the camera to stop.

20

Well you saw then on the film that the film then stopped at that stage is that right?---Yes sir.

Were you taken back into Hamilton Police Station?---Yes, sir.

After you got back in there, at a time later on did another senior officer speak to you, Inspector Abraham?---Yes, sir.

What did he say?---He asked me if I had any complaints about treatment.

30

Was it much the same inquiry as the previous one made the night before?---Yes, sir.

What did you say to Inspector Abraham?---I told him I did.

What was said?---He asked me what had happened and I told him.

What did you tell him?---I told him that Rippon had threatened me.

Did you say where?---Yes, sir.

Where did you say?---At Mount Napier.

What did Inspector Abraham say?---He asked me if he actually hit me. I said 'no'. He said, "Nothing much we can do about it then if he didn't really hit you." That was all there was to it.

10 What sort of attitude did he appear to take as far as you could see when you said you were not actually struck?---He just seemed to shake it off.

Did you take it any further or not?---No sir.

Why did you not go round complaining to someone else?---I thought from the Inspector's attitude if he didn't hit me I couldn't do anything about it.

Was the Inspector's attitude to you quite pleasant? ---Calm. Just official sort of.

Were you then lodged in the cells again?---Yes, sir.

20 Going over a variety of assorted points Mr. Lowery, after going through your evidence in outline, there are a number of small things I wish to ask you about. First of all, the Drive-In on the Sunday night of the long weekend, was apparently a horror show, is that correct?---Yes, sir.

What is the general feeling amongst the local youth about the midnight show on a holiday weekend?

MR. BYRNE: How can he say that?

30 MR. CUMMINS: Well from amongst - you have lived there all your life have you?---Yes, sir.

And you know lots of locals I suppose?---Yes, sir.

What sort of occasion is the midnight show on a long weekend?---It's something to do, most people go.

And was there any particular attraction in it to you that it was a horror show?---No sir.

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You said that you were in fact in the process, at the time that this murder was committed, of shifting home. What sort of a home was it that you were shifting to at Woodbridge Street?---
Commission House sir.

Were you happy with it?---Yes sir.

And what sort of terms were you getting it on?---
Good terms sir.

And were you happy with the arrangement that you had made financially to purchase it?---Yes sir. 10

Now there were - in the evidence given late last week there were a number of young civilian witnesses gave evidence. I want to ask you about two or three of them. Mr. Bailey gave evidence on Friday and this morning and you heard what he said about his not being sure which day who went where. Now can you say on the Saturday night, the Sunday morning and the Monday what were the movements amongst the various persons involved in this?---Yes sir. 20

What happened on the Saturday night? I do not want every detail, just the position - where the various people were?---All in the Grand Central Hotel.

Did you all go anywhere afterwards or what happened?---Yes sir.

Where did you go?--- My flat in Stephens Street.

And who was there?---Hazel and myself, King, Bailey and Bert Hill and a few other blokes came up. 30

Well then on the Sunday morning who went to whose places?---Garry came round to my place and we both went around to the shop.

That is King's shop?---Yes sir, we went up to his house first, no one answered so we thought he must have been working.

Yes?---And we went down to the shop.

Is the shop a seven day a week shop?---Yes sir.

And he was not there, is that right?---No sir.

Well then on the Monday morning who visited who?
---On the Monday morning I wouldn't know sir.

Well when - ?---They came up home, the two of them, on the Monday afternoon.

About what time, do you know?---About 2 o'clock.

How had you slept the night before, that is the early Monday morning in effect, the Sunday night to the Monday morning?---Not very well sir.

10 Well did you eventually get off to sleep?---Yes, sir.

Do you know roughly what time it was that you slept properly?---I think it was daylight before I got to sleep.

Well now Miss Cooper has given evidence that you made a statement to her and others in the kitchen at Shakespeare Street after the body had been in fact discovered, can you remember what was - who was in the kitchen and what was being said?---
20 There was Hazel, Merilyn, my mother-in-law and myself.

And what was the general topic of discussion?---Roslyn Nolte.

And had the body - had the news come out that the body had been found?---Yes sir.

And can you remember what you said, the exact words or the approximate words if you do not know the exact words?---Just that it could have been done as a joke, could have started off as a joke with someone.
30

Well why did you say that phrase?---King seemed to be treating it as a joke and I was feeling a bit more relaxed there.

Why was that?---Well I knew everyone there.

Were they close friends?---Yes, family more or less. It just slipped out.

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Now apart from telling your wife on the Monday night, and apart from the discussion you had and the two different views - she took one view and you took the other - did you tell anyone else about it?---No sir.

Did you have any belief as to whether if you had told the actual truth King could have got at your wife?---Yes sir.

What did you believe might have happened?---I thought he could get at... I thought even if he couldn't his friends possibly could have.

10

Well I would like you, if you would, to look at Exhibit "PP", that is your interview on the Saturday.---Yes sir.

Now that in fact is the interview that you made? Is it not?---Yes sir.

Well now I will not read out every word of this because the jury will have it as an exhibit, but I want to take you through the main parts of it. You have given at the start of the interview Mr. Lowery, your name and how old you are and that your occupation is bricklayer. When in fact did your apprenticeship - was it due to be completed?---About -

20

If this all had not happened, when would it have been completed?---In about three weeks time.

In about three weeks time from now?---M'mm.

Well then you were asked what was your true address and you said you have not got one at the moment I suppose?---Yes sir.

30

Why was that?---Well I'd moved out of Stephens Street, but am not into Woodbridge Street.

Were you in the process of moving?---Yes sir.

You were then asked a number of questions about the killing.---Yes sir.

And you told the police that it all started about Christmas time?---Yes sir.

And you told the police the idea was to kill a chick?---Yes sir.

And that you had talked it over and it sort of built up and up and up?---Yes sir.

Now you have already said that that was not in fact the truth?---Yes sir.

Why was it that you said it in that way?---What do you mean sir?

10 Well why did you say that to the police that plan?
---Said it was King's idea to say that it was planned.

Well then did you go on and describe how in fact Roslyn Nolte was picked up?---Yes sir.

And in relation to actually what she did, did you tell what - what you told about that, was that basically what actually happened?---Yes sir.

FOREMAN: Sir, may we retire for a few minutes?

HIS HONOUR: Yes, certainly, I will leave the Bench.

COURT ADJOURNED AT 11.20 a.m.

20 COURT RESUMED AT 11.31 a.m.

CHRISTOPHER RUSSELL LOWERY recalled and warned.

MR. CUMMINS CONTINUED EXAMINATION-IN-CHIEF.

MR. CUMMINS: You said, Mr. Lowery, before the adjournment that in the record of interview the actual facts about what Rosalyn said and how she was picked up were substantially correct. Is that right ---Yes, sir.

30 Then you went on in the interview, if you look at p.2 of the interview, down towards the bottom of the page there you say that how after you got down to Mount Napier you all went along the track and that you held her and Charlie took her clothes off?---Yes, sir.

Did that ever happen?---No, sir.

Well you went on and you said you can remember

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that Charlie had a go at scruffing her.---Yes, sir.

When asked to explain you meant by that
shagging her?---Yes, sir.

Do you know whether that ever happened?---No sir.

Why did you say that?---I thought that quite
possibly it did happen.

Well then you went on and you said that Charlie
came back and asked you to hold the deceased's
head up?---Yes, sir.

And later on you said, "I just held it behind
her"?---Yes, sir. 10

Did that ever happen?---No, sir.

Further down you said how you did some of the
tying and Charlie did the rest of the tying.---
Sir.

In fact did you both do the tying?---No, sir.

Later on in the interview on p.4 you said how
you stopped down the main road and "we got the
dog out"?---Yes, sir.

Well in fact the dog was got out, is that right?--- 20
Yes, sir.

Who got her out?---King.

Further on you said you had been drinking on the
occasion, you had had a few cans, is that right?--
Yes, sir.

Is that true?---Yes sir.

Then on p.5 of the interview you were asked these
question:

Q. "Amongst other injuries Rosalyn's left arm was
broken at the elbow." You were told that, is that 30
correct?---Yes, sir.

And then you were asked, "Can you explain how that
happened?"---Yes, sir.

Could you in fact explain how it happened?---
No, sir.

Did you tell the Police that?---Yes, sir.

You were then told another statement, Q. "There were also a number of bruises and cuts about the face and body." See that?---Yes.

And then you were asked, "Can you explain how that happened?" Did you actually observe that happening?---No, sir.

10 Could you explain it to the Police?---No, sir.

Did you tell them that?---Yes, sir.

And then you were asked, "Did you hit her with your hand, and did you kick on her or stamp her with your foot?" And to those questions you replied, "I don't know"?---Yes, sir.

Why did you make that reply?---I didn't know what King would be saying about it. I didn't know what to say to him.

20 Then did you tell the Police what sort of clothes you had on?---Yes.

Including flying boots, is that right?---Yes, sir.

Then you were asked, "What was Rosalyn wearing that night? Can you remember?" And you answered, "A pair of jeans and a jumper" is that right?---Yes, sir.

Could you recall that from seeing her when she was in the van?---Yes, sir.

30 Then you were asked about the flex in this case, is that right? Down the bottom of the page and up the next page?---Yes, sir.

In fact you did have a flex in the car, is that right?---Yes, sir.

And that was the one that King took with him down the track, is that right?---Yes, sir.

What was your purpose in having the actual flex, do you recall?---As I've put in the record of

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interview here, for the speaker on the radio.

Did King know about that?---Yes, sir.

What was, by the way, his occupation?--- A shop
assistant at the time.

What had he been for some considerable time prior
to that?---P.M.G. technician, a trainee
technician.

What was his work, do you know?---Installing
telephones and so forth.

Well then you were questioned again about some- 10
thing which you had been asked before, that under
the bonnet of your van they had found this piece
of flex attached one end to the coil and the other
end loose on top of the battery?---Yes, sir.

And you told the Police that you did not know how
that got there, did you tell them that?---Yes, sir.

Is that in fact the truth ---Yes, sir.

You see you have admitted to the Police, have you
not, that it was your flex?---Yes, sir.

Did you at any stage deny that the flex used was 20
your flex?---Yes, sir.

The flex in the car that was taken for the speaker,
did you ever deny that that was your flex?---
Yes, sir.

When was that?---When we were first charged. When
we were first interviewed.

I am taking you now through the stage when you are
in the record of interview, do you follow?---Yes.

After you had heard that King was saying that he 30
was there, right?---Yes, sir.

Well now did you deny in the interview at any time
that in fact that flex was yours, the flex that
was in the car behind the seat at..?---No, sir.

Well did you have any reason, any untrue reason
for denying the flex in the engine?---No, sir.

In fact just pausing there for the moment, I think we have all called it your car, in fact was it owned by your father?—Yes, sir.

Did you have exclusive use of it, or did other people sometimes use it too?—My father used it when he needed it.

Did you have keys to it?—Yes, sir.

Did you on any occasion have need to put a jump lead in to start it?—I didn't sir.

10 Might someone else have done so without you knowing about it?—Yes.

Well you then go on and you said to him - said to the police about how you went back to the sports centre and Shakespeare Street, and the drive in, is that right?—Further down p.6?—Yes, sir.

And you were then shown later in the interview a pair of panties, a bra and sockettes?—Yes, sir.

Do you see that down the bottom of p.6? And you were asked "What can you say about them"?—Yes, sir.

20 And did you reply to the police "No, I wouldn't have any idea about them"?—Yes, sir.

Was that the truth?—Yes sir.

In fact apart from Miss Nolte's exterior clothing, had you seen any other of the clothing on her that night?—No sir.

And apart from the clothing that you threw away, had you seen any other of her clothing at the scene?—No sir.

30 Did you at any stage at the scene notice a jumper hanging on the tree?—No sir.

Did you at any stage at the scene notice the choker, the kennel badge or the watch lying near the jumper?—No sir.

Or see those things being taken off?—No sir.

To your knowledge had King been taking drugs prior to this occasion?—Yes sir.

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And on the night in question, the night of Miss Nolte's murder, did you have anything of the stimulant nature apart from some cans of beer?---
No sir.

Did you take any part in her killing?---No sir.

You have mentioned Mr. Rippon's behaviour at the police station and Mr. Carton's behaviour, were you afraid of the police?---No sir.

Were you afraid of anyone?---Yes sir.

Who?---King.

10

Why was that?---I'd seen what he could do just mucking around, just for a joke.

Cross-
examination

MR. BYRNE COMMENCED CROSS-EXAMINATION.

MR. BYRNE: Mr. Lowery, you knew that King had been taking drugs, did you?---Yes sir.

When did you first learn that?---In September, last year.

And how did you find out about the fact that King had been taking drugs?---He told me.

What did he say?---I don't know what his words were now.

20

Well would you give us the substance of what he said, an idea of it?---It came into his conversation quite a lot.

Well would you tell the jury about the conversations?---It wasn't one particular conversation.

No, well would you just describe these conversations that you had with King about drugs? ---It wasn't about drugs, he'd be just talking about things he was doing when he was living in Melbourne and so forth and it come into the conversation that way.

30

Well what did he say?---That he'd taken acid, smoked hashish, marihuana.

Did he describe how the acid had affected him?---
Yes sir.

What did he say about that?---He said he enjoyed
it.

Apart from saying that he enjoyed it, did he say
anything else?---Yes, sir.

Well what was that?---That different times it
affected him different ways.

Yes, did he describe the effects?---No sir.

10 You say it came into the conversation between you
and King often?---Yes sir.

Were you curious about it?---Reasonably curious,
yes.

You were?---Yes sir.

Well did you not ask him what his experiences
were under the drugs?---Yes sir.

What did he tell you?---He said it was hard to
explain.

20 Is that all he told you, it was hard to explain?
---Yes sir.

Did not give you any more information than that?---
No sir.

Did he ever try to explain to you what his
experiences were?---He told me of things he'd done,
but he never tried to explain how it felt.

Did he ever tell you that events looked more
interesting under the influence of drugs?---Yes sir.

Well what did he say?---He said you could look at
things in different manners.

30 Exciting events seemed more exciting under the
influence of drugs, did he?---Never said anything
like that sir.

Well what did he say?---That he liked to just sit and
look at one object.

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Yes?---Yes sir.

The object that he was looking at became more interesting?---Yes sir.

Did you and King go to the bikes at Mt. Gambier about last Christmas time?---Yes sir.

Were you drinking all the weekend?---Yes sir.

You had no drugs yourself over there, did you?---No sir.

Did King have drugs?---Not that I knew of sir.

You saw no sign of him taking drugs that weekend? 10
---No sir.

Was anything mentioned during the weekend about killing a chick?---No sir.

Had you ever discussed that at any time with King?---No sir.

What it would be like to kill a girl?---No sir.

Never ever mentioned it between you?---No sir.

Well now after Rosalyn Nolte was killed, you and King went through the story that you were to tell the police carefully, did you not?---Yes sir. 20

This story about the trip to Coleraine?---Yes sir.

Got all the details so that they would match up? ---Yes sir.

How often did you discuss it together?---Several times.

After a while King said to you that it looked like the Police might be able to prove that it was him, something to that effect did he?---Yes sir.

Then he told you what you should say if the Police caught up with him in effect?---Yes, sir. 30

And he said that you should say that you were in it with him?---Yes.

He said that - to say that it was a plan?---Yes sir.

And he said, "Just tell them to say that we planned to kill a chick"?---Yes sir.

He said that if you did not well then he'd get at Hazel?---Yes, sir.

That was all he had to say about that, was it not?---Yes, sir.

He went into no more details or particulars?---No, sir.

10 When he got out of the car and walked away with Rosalyn Nolte were the headlights of the car on?---No, sir.

Who turned them off?---I did, sir.

Did you watch him walking away?---Yes, sir.

You believed he was going to have sexual intercourse with her did you?---Yes, sir.

When did you first think he might be going to do that?---When he got out there and he asked her to go for a walk.

20 Did you have a green mattress in the back?---Yes, sir.

Why did you carry that in your van?---It was put in there at Christmas when we went over to Mount Gambier. I hadn't got around to taking it out yet, I intended to take it out the weekend.

It rained that night, did it not?---A light mist sir.

It was a damp night, was it not?---Yes, sir.

Was it raining as King was talking away with the girl?---No, sir.

Are you sure?---It wasn't raining, sir.

30 Do you remember it raining when you were out on the track?---No, sir.

It had been raining before you went out there had it not?---I can't remember, sir.

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Well you could not see what was happening, could you?---No, sir.

So you decided to clean your car, is that right?
---Yes, sir.

Did you open the doors?---No, sir

You threw some rubbish out?---Yes, sir.

How much rubbish did you throw out?---Just a few newspapers and bottle tops and tops off cans.

Did you not open the doors to do that?---No, sir just threw it out the window. 10

Why did you keep the doors closed, was that to keep the dog in?---No.

Why did you not open the doors?---The track was very narrow and there wasn't room to leave them open.

How long was King away before he came back?---
Five or ten minutes.

Then he came back and what did he say?---I asked him if he wanted a beer and he looked at the flex and said "No, this will do." That's all he said. 20

Did that puzzle you when he said that?---Yes, sir.

What did you say to him again?---I told him he'd have trouble drinking it. He said he could have just as much fun with it.

Then you thought of something he had shown you with the flex did you?---Not with the flex, sir.

Well you thought of something he had shown you when he was under the influence of LSD, something to do at least while he was under the influence of LSD?---
Yes. 30

What was that?---Burning plastic in a darkened room and dropping it into water.

What, enjoying the sensation of seeing the smoke? Is that what it was?---Well what I seen of it he showed me how to do it, it seemed it just flared up brightly when it hit the water.

Did he say what that looked like under the influence of LSD when it flared up brightly?---
Yes sir.

What did he say?---He said it looked like a big explosion.

It was pretty dark out there, was it not?---Yes, sir, it was getting on for dark.

10 Did it surprise you - tell me this, let me be sure about it, Rosalyn Nolte did not come back with King did she ---No, sir

Did you think "Oh she's up there, all by herself in the dark"?---Yes.

Did that surprise you?---No, sir.

It was a pretty rugged place out there, was it not?---Not really, sir.

King walked away with the flex, he disappeared from your sight?---Yes.

Did you hear any cries or moans?---No, sir.

Not at any stage?---No, sir.

20 The sound of any blows?---No, sir.

Quiet out in the bush, is it not, at night?---
Not really, sir.

Could you hear any noise?---Yes, sir.

What could you hear?---Crickets, small animals like that.

Apart from that it was silent?---It was reasonably loud with all the sounds.

It was what?---It was reasonably loud with all the sounds of the bush.

30 Was it?---Yes, sir.

Well then did you think King was-might be using this piece of flex to set fire to it and drop it into water?---No, sir.

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Did you think he was going to do something of the sort that he described to you before with the flex?—I didn't really know what he was going to do with it.

But you were curious to find out, were you?—
Yes, sir.

So you set off up the track after him?—Yes, sir.

How long had he gone then?—Two or three minutes.

What distance did you walk before you found him?
—About 60-70 yards.

10

What was the first thing you saw?—I just seen their outlines at first

How far away from them were you then?—I couldn't be sure of the distance.

Well, approximately?—Ten, 20 yards.

What did you see when you -just describe what was before your eyes when you noticed the outlines—I just thought that they were in a strange position.

What position was that?—Well they seemed to be reasonably close together, it just seemed like a lump there more or less, just one solid mass.

20

Just describe it will you? You saw it.—I couldn't see all that much from that distance, I couldn't see them all that clearly.

Well you describe as much as you saw?—She seemed to be slumping, the girl seemed to be slumping and he seemed to be standing behind her.

Was she standing up or lying down or sitting down or what?—No sir, she was just slumping, looked like she was being held.

30

How were her feet?—Beg your pardon sir?

How were her feet?—What do you mean sir?

In what position?—They were on the ground.

Was she being - was she prone on the ground?—
No sir.

Well you describe - you saw it, you describe it?--
He was standing up and behind her, holding her
and her feet were on the ground, she was just -
bended the knees, just like he was just
supporting her there.

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Well you describe what you saw as you approached?--
When I got up closer I realised what was
happening.

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Well what did you see?---I could see then that he
had the flex around her neck.

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Could you see her face?---Yes sir.

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What did that look like?---As if she was
unconscious sir.

Well you describe the face?---Her eyes were
closed.

Yes, notice anything else about it?---No sir.

Did she seem to be unconscious, did she?---
Yes sir.

Her body was limp?---Yes sir.

20

What happened then?---When I realised what was
happening I tried to stop him.

What did you do?---I ran at him and grabbed him.

How did you grab him?---By the arm I think. Just
grabbed him on the arm.

Well you describe exactly what happened?---Ran
at him, grabbed his arm, tried to pull it away
and he just seemed to brush me off kind of.

Well describe it will you? This did happen,
did it not?---Yes sir.

30

Will you describe it please?---I ran at him and
I grabbed him by the arm, he just brushed me off,
flipped me away more or less.

Well how did he brush you off?---Just pushed his
arm out.

Yes, well go on?---He hit me in the chest and I

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staggered back - staggered back a bit and he
winded me.

With what did he hit you in the chest?---His
forearm.

Yes?---So then I ran at him again and he let go
of the girl and then knocked me down.

He let go of the girl and then what?---Knocked me
down.

And knocked you down?---Yes sir.

How did he do that?---He pushed me again sir.

10

Well you mean he pushed you down, do you?---Yes
sir.

What happened then?---Told me not to move, stop
there.

Where were you at that stage?---On the ground sir.

Well you describe what you saw, will you?---Then
he told me to get up and pick up all the clothes.

Well while you were on the ground obeying his
command not to move, did he do anything?---No
sir, he was just standing there, he told me not
to move and then he said "Get up and pick up the
clothes".

20

Where was the girl then?---Lying on the ground.

Was she making any noise?---No sir.

What happened next?---I started gathering up the
clothes and he said "Bring them down here and
throw them away."

Well you had noticed she was naked had you?---
Yes sir.

When did you first notice that?---When I got up
close and I could see what he was doing.

30

Yes, well what happened next?---I threw her clothes
away, and he tied her up and we went back to the
van.

You threw her clothes away and what?---He tied -

This is what you said, is it not, "I threw her clothes away and tied her up"?---No sir, I said "I threw her clothes away and he tied her up".

I suggest Mr. Lowery that you said "I threw her clothes away and tied her up "?---No sir.

M'mm?---No sir.

Do you say you did not say that?---I said "I threw her clothes away and he tied her up."

10 Well then you threw her clothes away and he tied her up?---Yes sir.

Yes, well would you describe that?---He just tied her up down the gully where she was found.

Where was she when you threw her clothes away?---In the gully.

Is that where she was found?---Yes sir.

Where was she when you first saw her with King as you walked up the track?---On the track sir.

How did she get into the gully?---I don't know sir.

20 Is there a gap in your memory here?---No sir.

Well do you remember how she got into the gully?---No sir.

Where was she when you were on the ground and King told you not to move?---Laying on the ground sir.

How far from you?---Two yards, possibly two and a half.

And were you then on the track that you had just walked up?---Yes sir.

30 And then the next thing that happened after that was that you threw her clothes away?---No sir.

M'mm?---No sir.

What was the next thing that happened after you

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were on the ground?---I gathered up her clothes.

And then you threw them away?---Yes sir.

And King tied her up?---Yes sir.

Do you say he tied her up at the spot where she
was found?---I don't know if it was the exact
spot sir, but I presume it was.

Well about the - that was not on the track was
it?--- No sir.

That was some yards away from the track was it?--
Yes sir. 10

Now would you describe to the jury - you were not
affected by any drugs, were you?---No sir.

Your head was clear was it not?---Yes sir.

Indeed, everything that was happening was
making a bit of an impact on you, was it not?---
Yes sir.

Well you describe to the jury how she got from
the track to the place where she was found?---
I don't know sir.

Why do you not know?---I was picking up her
clothes, while she was being taken down there. 20

And you say that you do not know because your
attention was on the picking up of the clothes?--
Yes sir.

Well you saw him tie her up, did you ?---Yes sir.

Where were you then?---I was down there where he
told me to throw the clothes.

How far away from him?---Fairly close at that
stage.

How far were you from him when you threw the
clothes away?---I don't know, sir. 30

Was he down where she was found then? When you
threw the last of the clothing away?---I threw
them all away in one bundle, sir.

All away in one bundle?---Yes, sir.

Then you looked up to see where King and the girl were did you?---I knew where they were, sir.

Where were they?---Down off the track.

Quite some yards from where you were?---I couldn't be sure of the distance, sir.

Were you frightened of King then?---Yes sir.

Why did you not run back to the car?---I don't know, sir.

10 You had a good start on him, did you not?---
Yes, sir.

He was busy tying up the girl?---Yes, sir.

You can give the jury no explanation as to why you did not run back to the car?---I was afraid. That's all there is to it.

You were afraid and you did not run away?---
Afraid and shocked.

How did he go about tying her up?---He was reasonably quick about it.

20 How long did he take?---Only about a minute.

Where were you while he was doing it?---Just standing there.

How far from him?---Two yards, maybe three.

Just watching him were you?---Yes sir.

Did you believe the girl was dead then?---Yes sir.

You believe he had murdered her?---Yes, sir.

He did not ask you to help him?---No, sir.

You did not strike a match so he could see what he was doing?---No, sir.

30 Could you see what he was doing?---Not clearly.

The weather was overcast that night, was it not?---
Yes, sir.

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It was quite dark?---Not quite dark sir.

What time do you say it was when you were out there?---I don't know.

What time was it when you picked up Rosalyn Nolte?---Between 8 and 8.15.

Were you in a hurry to get out to this party? You thought you were going to?---No, sir.

What speed did you travel at when you drove along the Port Fairy Road?---Fifty-five mile an hour.

Did you believe you were going to a party?--- 10
No, sir.

What did you believe about it?---I thought he just wanted to take her out and have sex with her.

There are plenty of places closer to Hamilton for that sort of conduct?---Yes, sir.

Did it puzzle you that he was directing you all this way?---No, sir.

Why did you drive so far up this track?---I didn't think I'd driven up such a long distance.

It is a very stony track is it not?---In places, 20
sir.

Plenty of bumps in it?---Yes, sir.

The terrain goes up and down, you go over rises and then down into hollows?---Yes, sir.

You cannot drive fast can you?---No, sir

Were you driving up the track in first gear?---
Yes, sir.

It took quite a while to get as far as you went into the track did it not?---No, sir.

Of course he could have just as well had sex 30
with the girl - you thought he was going up there for that purpose - if you had driven only a few yards into the track?---Yes, sir.

You were not frightened of King at that stage were you?---No, sir.

And you were not frightened of the police were you?---No, sir.

You did not address them as 'sir' did you?---No, sir.

You said to Inspector Carton, speaking of Mr. Rippon, "Get rid of that other pig" did you not?
---Yes, sir.

10 That is what you told us before in answer to my learned friend Mr. Cummins is it not?---Yes, sir.

When you said that - those words "Get rid of that other pig" you believed that you were a suspect for murder did you not?---Yes, sir.

You had not seen much of what King had done at all had you?---No, I hadn't.

But King asked you to say that you were in it with him?---Yes, he did.

20 You could not - and you thought he meant by that that you were in the killing of the girl with him?---Yes, sir.

But you were unable to give the Police any of the details of that at all, were you not?---That's correct.

Because you could not see how he had gone about it, could you?---No, sir, I couldn't

You did not hear anything of it did you?---No sir.

And he had not told you anything about the details?
---No, sir.

30 You thought that he said to you to say - well why did you think that he said to say that you were in it with him?---I don't know, sir.

That was an odd thing for him to say, was it not?--
Yes, sir.

You did not believe that would make him any the less guilty did you?---No, sir.

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As at that time you looked on King as a murderer?--
Yes sir.

Who might well murder you?---Yes, sir.

And murder your wife?---Yes, sir.

Or send his friends round to murder your wife?---
Yes, sir.

What friends of his did you have in mind?---The
friends he'd told me about in Melbourne.

What did he tell you about them?---They were
pretty rough. 10

What did he say "I've got some pretty rough
friends down in Melbourne"?---No, sir.

Well what did he say?---He told me about them at
different times.

Well what did he say?---That one of them has been
on a murder charge.

Did he acquaint you with the gentleman's name?--
I beg your pardon sir?

MR. OGDEN: Your Honour, it is very difficult at
this stage, Your Honour, but my submission is 20
that this line of cross-examination is
irrelevant, Your Honour.

HIS HONOUR : Yes. How is it justified?

MR. BYRNE: It is relevant, Your Honour, to the
defence, I would submit, of the accused man, it
goes to the testing of the facts that he has put
in issue this way. I do not desire to pursue this.

HIS HONOUR: It has some possible side effects that
may be undesirable. I do not think you should
pursue it. 30

MR. BYRNE: Yes, if Your Honour pleases.

Well at all events, Mr. Lowery, you say that you
really believed King when he said that he would
get at Hazel?---Yes, sir.

Did he tell you that he would get friends to get at Hazel?---He didn't come right out and say it sir.

That was your idea was it?---That was the idea - the impression I gained from what he said.

Well now it was your belief, was it, that it was better to go along with King than go to the police and tell them what you knew about it?---For my wife's sake, yes.

10 You thought it would be better to, in the first instance, to mislead the police about the identity of the murderer, did you not?---Yes sir.

For your wife's sake?---Yes sir.

As of at least by Tuesday the 2nd, you knew that there was a search on for Rosalyn Nolte, did you not?---No sir.

You did not?---No sir.

Heard no news about that?---I only heard that she'd been reported missing.

20 No talk in the town about it?---No sir.

Did not read anything in the papers?---No sir.

Did you believe that there might be a search on for her, having regard to what you yourself had seen?---Yes sir.

Did you believe that her parents might be concerned about her absence?---Yes sir.

But you thought the prudent thing to do was to keep silent, did you?---For my wife's sake, yes.

For your wife's sake?---Yes sir.

30 And when you went along to the police station after the girl had been found, at least at that stage there was a lot of talk in the town about the murder of this girl, was there not?---Yes sir.

A lot of gossip as to how it happened?-- ---Yes sir.

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Why it had happened?---Yes sir.

And did you hear talk as to how the girl
had been tied up?---I didn't hear much at all
about it really.

Well you had a bit of a joke about it at one
stage did you not?---No sir.

When all the friends were there that time?---
No sir.

Pardon?---No sir.

Well you said it might have been a joke?---
Yes sir.

10

On somebody's part to tie her up?---Yes sir.

And you said that at the time because King
seemed to be treating it as a joke?---Yes sir.

M'mm?---Yes sir.

And all the close - all close friends there
together at that time?---Yes sir.

And it just came out because King was treating
it as a joke, you said it might have been a
joke?---Yes, I was thinking of it at the time.

20

You told to the police this story that you had
worked out with King, did you not, about the
drive to Coleraine?---Yes sir.

M'mm?---Yes sir, yes.

And you did that in order to hide what you know
from the police?---Yes.

To, so far as you could, stop King being detected
as the murderer?---Yes sir. No sir.

Well you knew he was a murderer, did you not?---
Yes sir.

30

You knew the police were looking for the
murderer?---Yes sir.

And you were doing your best?---Yes sir.

For your wife's sake?---Yes sir.

To prevent him being found - found out? Is that right?---Could you repeat that please sir?

You were doing your best to stop the police discovering that King had committed this murder? ---Yes sir.

You believed that there was a dangerous murderer in the town?---Yes.

10 And a murderer that had some motive to get rid of you?---Yes sir.

You did not think he was a man to be trusted, did you? This man King?---Not after that sir.

And indeed, he was a threat to your wife, was he not?---Yes sir.

And you say, do you Mr. Lowery, that for your wife's sake you told this story to the police?---Yes sir.

M'mm?---Yes sir.

In order to prevent them finding King?---No sir.

20 M'mm?---No sir.

Well that was what you were doing, was it not?---To protect my wife sir.

Yes, it was to protect your wife, but you were misleading the police?---Yes sir.

Telling them untruths about it?---Yes sir.

Because that suited your purposes at that time?---Yes sir.

30 Well now on the Saturday morning 6th February you obeyed King's command, did you not, and told the police that you had planned to kill a chick?---Yes sir.

And that is all, as you told us before, that King had said to you, just to tell them - to say that "We planned to kill a chick"?---Yes sir.

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And when Mr. Carton - you sent for Mr. Carton to tell him this, did you?---No sir.

M'mm?---No sir.

This is after Rippon was misbehaving himself?---
Yes sir.

Did you not send for Mr. Carton?---Yes sir.

And you told him to "get rid of that other pig"?
---Yes sir.

What was your purpose in doing that?---Just to get rid of Rippon.

10

And that is what you sent for him, to tell him to get rid of Rippon?---Yes sir.

Well did Carton say to you "I understand you wish to see me"?---Yes sir.

And did you say "Yes"?---Yes sir.

And did he say "What do you wish to say"?---
Yes sir.

And did you say "It all started about last Christmas"?---No sir.

M'mm?---No sir.

20

Did not say that?---No sir, not at that stage.

Did you say "Charlie and I were at the bikes in Mount Gambier"?---Not at that stage sir.

Did you say "We were boozed all weekend"?---Not at that stage sir.

"We got this idea"?---Not at that stage.

What stage - did you say it at some stage?---
Yes sir.

At what stage did you say it?---About five minutes before the record of interview was commenced.

30

Well I will direct my question to a period about five minutes before the record of interview was

commenced.---Yes sir.

Did you say at that period "It all started at about last Christmas"?---Yes sir.

Carton said "Yes" and you said "Charlie and I were at the bikes in Mount Gambier"?---I'm not sure of the exact text of the conversation.

Well words to that effect?---Yes sir.

And did you say "We were boozed all the weekend"?-- Yes sir.

10 "We got this idea"?---Yes sir.

And Carton said "What was the idea?"---Yes sir.

And you said "To kill a chick"?---Yes sir.

Well of course no idea of the kind had been discussed at Mount Gambier at Christmas, had it?-- No sir.

And this was your way of telling Mr. Carton about it, was it?---Yes sir.

To make it originate at Mount Gambier at Christmas?---Yes sir.

20 Did you do - you invented that part, did you not?-- Yes sir.

You invented that to make it convincing did you?-- No sir.

M'mm?---No sir.

M'mm?---No sir.

Why did you invent that?---Because that was what I was told to say - to say that it was planned.

30 Yes, but that is all King, as you told us before, all King said to you was to say that you planned it?---Yes sir.

He did not go into any other particulars?---No sir.

Did not say to say where you planned it?---No sir.

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Or how you had planned it?---No sir.

Or what the content of the plan was?---No sir.

Gave you no particulars of any sort?---No sir.

Merely said to say to the police that you had
planned it?---Yes sir.

All right, well then why did you invent the fact
that the plan originated at Mount Gambier?---I
misunderstood the question before sir because
I thought we were away for the weekend then and
that it couldn't be disputed. 10

Well you wanted to make it more convincing?---
Yes sir.

Wanted to persuade Carton that you were in it?--
Yes sir.

In case he disbelieved you were in it?---Yes sir.

That is right, is it? Is that right?--Yes sir.

And so you invented the place where the plan
originated?---Yes sir.

And the time that it originated?---Yes sir.

M'mm?---Yes sir. 20

But you were in fact at the bikes at Mount
Gambier?---Yes sir.

And you were in fact boozed all the weekend?---
Yes sir.

Why did you add in the detail that you were boozed
all the weekend when you were inventing this?---
I don't know sir.

It did not have anything to do with it, did it?--
No sir.

You cannot explain why you added that detail into 30
it, you were boozed all the weekend?---I'd only
say sir, that where possible this record of
interview, I have - have been things what have
happened - based on things that have happened and
when I said that we were at Mount Gambier, well
we were drunk that weekend.

And Carton said to you "What was the idea?" did he not?---Yes sir.

And you said "To kill a chick"?---Yes sir.

Carton said "Yes?" M'mm? Is that the case?---
I don't know sir.

And did you say "I'm not sure which one of us suggested it but we decided to see what it would be like to kill a chick"?---I don't know the exact text of the conversation.

10 Yes, but you said something like that?---Yes sir, something like that.

And all Charlie had said to you was to tell Carton that it was planned?---Yes sir.

Well you did not really have any discussion which included your idea to see what it would be like to kill a chick, did you?--- No sir.

That was an invention of yours too?---Yes sir.

That was something you took out of your imagination was it not?---Yes sir.

20 "We decided to see what it would be like to kill a chick", you got that out of your imagination did you not?---No, sir, I think that might have been mentioned previously.

I suppose you say that might have been mentioned by King do you?---Yes, sir.

Well he did go into more particulars you say now do you?---No, sir.

Well did you in fact have a talk about seeing what it would be like to kill a chick?---No sir.

30 Are you sure of that?---Yes, sir.

Carton said, "Yes, what happened then?"---I don't know, sir.

Well did you say, "We were in the van on the Sunday night and Rosalyn came up and we decided it would be a chance"?---Yes, sir.

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As Rosalyn came up to the van you and King made no such decision did you?---No sir.

Because you never had this plan did you?---No sir

And that was another detail you invented was it not? "We decided it would be a chance"?---Yes, sir.

Were you doing your best to make it sound realistic to Carton ---Yes.

Pulling his leg were you?---Yes, sir.

Carton said, "What happened then?" You said, "Well we did it", is that right?---Yes, sir, something like that. 10

Carton said to you, "You realise.." I am sorry, he said to you, "Are you telling me that you were concerned in the death of Rosalyn Nolte?"--- Yes sir.

And you said, "Yes."---I did, yes.

You were telling a lie against yourself were you not?---Yes, sir.

That was to protect your wife, was it not?--- Yes, sir. 20

Did he say to you, "You realise that you could be charged with a serious offence in connection with this death, and you need not say anything further unless you wish."---Yes, sir.

....He said that to you, he was not telling you anything, was he, when he said - you knew that. ---Yes, sir.

You knew that what you were saying was being written down, did you not?---No, sir.

Did you not see anybody making notes?---No, sir. 30

Did you think it would be used in evidence against you what you were saying?---I didn't know sir.

Pardon?---I didn't know if it would or not.

Did you think that it might result in you being

charged with murder?---Yes sir.

In fact that is what you believed would happen?---
Yes, sir.

Are you still frightened of King?---Yes, sir.

You still believe he might get at Hazel?---I
don't know, sir.

You are telling the truth about it now, are you
not?---Yes, sir.

10 Did you say to Carton, "I sent for you because I
want to tell you about it"?---No, sir.

You did not say that?---No, sir.

And Carton said, "Well go ahead", something like
that?---No, sir.

Did you say "Rosalyn wanted to go and see Sugar
Bailey, she got in the van and Charlie said he'd
be at a party"?---Something like that, yes.

That is what was said, was it not?---Something
like that, it could be it.

20 You knew that King had no idea whether or not
Sugar Bailey was at a party did you not?---Yes, sir.

You had been with Sugar Bailey that afternoon?---
Yes, sir.

It was your belief that he was not at a party,
was it not?---Yes, sir.

You believed, did you not, that King was mis-
leading the girl at that time?---Yes, sir.

Doing that to entice her into the van, that was what
you thought was it not?---Yes, sir.

30 Did you think then that he was enticing her into
the van to take her away and have sex with her?---
Yes, sir.

And you were willing to help him by driving the
van, were you not?---Yes, sir.

Did you say "We drove out the Port Fairy Road and

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then Charlie showed me a turn off to Mount Napier"?
---Yes, sir.

Carton said, "Yes, what then"?---Something like that,
sir.

And you said, "We went into the Mount Napier
Reserve. We pulled up along a track, I held
her and Charlie took her clothes off"?---Yes,
sir, I said that.

Well it was true that you went into the Mount
Napier Reserve was it not?---Yes, sir. 10

It was true that you pulled up along a track?---
Yes, sir.

But you invented the part where you said "I held
her and Charlie took her clothes off"?---Yes, sir.

Carton said, "What happened then"?---I don't know,
sir. I suppose he could have.

You said you could not remember, "Charlie went
away and came back with the cord."---Yes, sir.

He said, "Who tied her up"?---Yes, sir.

You said, "Charlie"?---Yes, sir. 20

Did he say, "Did you have any part in tying her
up"?---I don't know if he did or not, sir.

Well did you say to him, "I just held it when
Charlie asked me to hang on to it"?---Yes, sir.

You invented that bit, did you not?---Yes, sir.

Did you invent that to put yourself into the crime
for Hazel's sake?---Yes, sir.

Did Carton say to you, "Are you prepared to tell
us in detail what happened?" Did he say that?---
Yes sir. 30

Did he say, "Detective Davidson will take it down
in question and answer form on the typewriter,
I've already told you you need not say anything
further unless you wish."---Yes, sir.

Did you say, "I'll answer the questions"?---

Something like that, sir.

And you were prepared to have a go at telling them in detail were you not?---Yes, sir.

Did you believe that King was telling them in detail in the other room?---Yes, sir.

Did you think that you might be able to match up your details with the details he was giving?--- I hoped I could sir.

10 Why did you hope you could?---So the - that - so that it looked right.

You did not think you might contradict him at all?--- I thought I could quite possibly contradict him.

With you - you had been at some pains to try and convince Carton that you were telling him the truth, had you not?---Yes sir.

20 Well why did you say you would answer the questions when he asked you if you were prepared to tell him in detail?---Because he said that he wanted a statement. I thought it would be more convincing if it was written down and signed.

Well then at 2 O'clock that day or thereabouts you dictated answers to questions that were put to you?---Yes sir.

And that was done quite slowly and carefully, was it not?---Yes sir.

With pauses for the typist to finish typing down the question?---Yes sir.

30 And then there were pauses for him to get down the answer before the next question was put?--- Yes sir.

And you were watching it all?---Yes sir.

Were you not? Had plenty of time to think?--- Yes sir.

And indeed you got a bit restless at some stages, got up and walked around the room, did you not?--- I'm not sure sir.

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It was a pretty slow and tedious business, was it not?---Yes sir.

And all through it you were doing your best to convince the police of the truth of what you were saying?---Yes sir.

You believed though that King was confessing to murder?---Yes sir.

You believed that he would be charged with murder?---Yes sir.

And perhaps be locked up?---I didn't know about that sir. 10

But you believed he was confessing to murder?---Yes sir.

Did you believe that might result in some removal of the threat to Hazel?---No sir.

M'mm?---No sir.

You did not. Did you believe that it was in your interests that King be convicted of murder?---Yes sir.

Could you see any merit in being convicted of murder yourself?---No sir. 20

M'mm?---No sir.

Well now would you look please at the record of interview?

HIS HONOUR: If you are going to details of the record of interview it might be a convenient stage to adjourn.

MR. BYRNE: Yes, if Your Honour pleases.

COURT ADJOURNED FOR LUNCHEON AT 12.37 p.m.

COURT RESUMED AT 1.49 p.m. 30

CHRISTOPHER RUSSELL LOWERY, recalled and warned.

MR. BYRNE CONTINUED CROSS-EXAMINATION.

MR. BYRNE: Now during this time when this

typewritten record of the questions and answers was being made did you say this, "We went to - we went into the Mount Napier Reserve and drove along the track and Charlie said to turn up another one"?---Yes sir.

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"So we went up there and he said 'Pull up. We'd better see if there's any spotlighters about'"?---
Yes sir.

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"We pulled up and we got out and we all walked along the track?" Did you say that?---Yes sir.

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Well now it was true for you to have said "We went into the Mount Napier Reserve", was it not?---
Yes sir.

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It was true to say that "We drove along the track"?---Yes sir.

And Charlie said to turn up another one?---Yes sir.

20

That was all true. Was it true for you to say "So we went up there and he said 'Pull up we'd better see if there's any spotlighters about'"?---
No sir.

You invented that bit, did you?---Yes sir.

And then your answer continued does it not? "We pulled up and got out and we all walked along the track"?---Yes sir, that's..

Was that true?---No sir.

You invented that too, did you?---Yes sir.

Were you asked during the interview this question "What did he do with the wire? How did he put it around her?"?---Yes sir.

30

Would you feel happier in answering if you had the exhibit with you? Would you like to see the exhibit "PP"?---Yes sir.

Would you look at p.3, about the middle of the page?---Yes sir, I've found it.

You are pretty familiar with that exhibit, are you not, that document?---Not actually sir.

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You have never had a copy of it?---I wasn't handed the copy when I was charged.

Were you not?---No sir.

Do you see the answer "Just wrapped it around her throat" Did you see him do that?---No sir.

"He then said to me 'Hang onto this' and I held it with one hand", did anything like that happen? ---No sir.

You are going into a bit of detail in your answer there, are you not?---I didn't think so sir. 10

Held it with one hand?---I didn't think I was adding too much detail there, sir.

But whatever you were doing you were making it up?---Yes.

"It was around her neck"?---Yes, sir.

"And I just held it behind her, Charlie said if she started to move pull it tight." Nothing like that happened, did it?---No, sir.

The next question, "What happened then?" "I just held on to it and Charlie disappeared again, I called out to him a couple of times, I called him 'Mother', that's his nickname." Take the last part of that first, did Charlie have a nickname at that time?---Yes, sir. 20

What was it?--- 'Mother'.

You did not call out to him a couple of times?---No, sir.

You did not call out to him once did you?---No, sir.

He did not disappear while you were holding onto the flex that was around the girl?---No, sir. 30

You had no reason to believe that he would be giving any description remotely like that to the police at the time you were talking to them had you?---No, sir.

But you were trying to convince the Police that you were actually describing something that had happened?---Yes, sir.

You see your next answer, "Charlie went off to the right and the next thing I knew he was behind me on the left, he said 'Bring her over here'." Again all your imagination that was it not?---Yes.

Nothing like it happened?---No, sir.

10 Next answer, "I suppose I must have dragged her over there." You did not drag her anywhere did you?---No, sir.

Q. "Did you pull the wire tight behind the neck?"
A. "It was tight when he gave it to me." You were asked that question, were you not?---Yes sir.

You made that answer?---Yes, sir.

Again, the answer was taken from your imagination?---Yes, sir.

Do you like using your imagination?---I had to at the time, sir.

20 The next answer - Q. "What happened then?" "I dragged her over to him, then both of us then dragged her down this gully thing. And Charlie said, 'Tie her up', I couldn't see properly." You did not assist Charlie to drag her down any gully thing at all, did you?---No, sir.

Did he ever invite you to tie her up?---No sir.

Q. "What do you mean by that?" Mr. Carton said that, did he not?---Yes, sir.

And you replied, "It was dark."?---Yes, sir.

30 Q. "Well was she tied up?" He said that did he not?---Yes, sir.

See the answer, "Charlie said he'd tie her up while I found something to tie her to. I couldn't find anything. Then Charlie said 'That'll do, lets' go'."---Yes, sir.

That is all made up by you, is it not?---In part, sir.

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What part is not made up?---The part where he said "That'll do, let's go."

Where were you when he said "That'll do, let's go?"
---Standing 2 or 3 yards from him.

What had he been doing up till then?---Tying her up.

Q. "Her hands and feet were tied". Who did that?"
You were asked that question, were you not?---
Yes sir.

Did you say, "I think I tied her feet"? Did you
say that?---Yes, sir. 10

"And Charlie told me to hang on to one end of the
cord so I held on to the cord. And he said, 'Now
give it to me' and he took it and he must have
tied her up with it." Did you say that?---Yes, sir.

Had you any clear idea of how the girl was tied up
when you made that answer?---The Police had
explained it, sir.

They had?---They said that she was tied hand and
foot and the cord was around her neck.

What policeman said that?---I wouldn't be sure, 20
sir, I think it was Detective Mengler.

At what stage did he do that?---On the Wednesday
night, sir.

Q. "Did the girl scream at any time?" And you
replied, "Once I think" ---Yes, sir.

Well you did not think she had screamed once at
all did you?---I didn't know, sir.

Mr. Lowery, was this girl - did this girl seem
frightened in your company that night?---No sir.

She did not seem terrified at any stage?--- 30
No, sir.

Do you see the question, "Did she say anything?"
---Yes, sir, I see it

A. "Yes." "What did she say?" A. "She kept on
getting our names confused." Did you make that
reply?---Yes, sir.

Did she keep on getting your names confused?—
She had quite often.

That night?—That night, other times also.

At what stage of the night was she getting your
names confused?—When she first got in the van.

Would you look at the last page of the record,
see where it says "You will be charged with the
murder of Rosalyn Mary Nolte"?—Yes, sir.

10 It says "Do you wish to say anything in answer to
the charge? You are not obliged to say anything
unless you wish, but whatever you say may be taken
down in writing and may be given in evidence, do
you understand that?"—Yes, I see it here.

And the answer set down is "No, you've made a
mistake there, you put 'No' and I answered 'Yes',
I do understand." Is that the answer you gave?
—I answered "Yes", and Mr. Davidson typed down
"No" instead. I've clarified it there.

You corrected it?—Yes sir.

20 And of course you did understand that what you
said would be used in evidence, did you not?—
Yes sir.

You understood that right through this interview
that took from 2 o'clock till 10 past four?—
Yes sir.

You expected it to be used as evidence on your
trial for murder?—Yes sir.

And it was with that knowledge that you signed it?
—Yes sir.

30 MR. OGDEN COMMENCED CROSS-EXAMINATION.

MR. OGDEN: Lowery, your story is that you had nothing
to do with the killing of this girl, is it not?—
Yes sir.

That the only reason that you admitted any
complicity at all is because of your being dead
scared of King?—Yes.

And as you have said you are still frightened of
him?—Yes.

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And your story is that you were prepared to place yourself in a position where you would be charged with her murder, is it not?—Yes.

With the consequences that would follow from a conviction if you were convicted?—Yes.

And for one reason only as I understand you, that you were dead scared of Charles King, commonly known as "Mother"? Is that right?—Not exactly sir.

Well did you have any other reason?—Yes sir. 10

What other reason?—I was afraid for my wife's sake.

But it was afraid of - you were afraid of what King might do to her?—Yes sir.

So that it was King that you were afraid of, was it not?—Yes sir.

But you knew, did you not, that the version you gave which you say you made up to the police, during the record of interview, would also seriously implicate King?—Yes sir. 20

So that the result of this made up story, so you say, is that King also would be charged with murder?—Yes sir.

What harm did you expect King could do whilst in custody and charged with murder?—I didn't know that he would be in custody, sir.

Where did you think he would be?—I thought he might have got bail or something.

Are - do you seriously say that?—Yes sir.

Have you ever heard of anyone in a situation like this getting bail on a murder trial?—Yes sir. 30

And did you think that you would - he would get bail and you would too?—I didn't think we'd get bail then sir.

When were you born Lowery?—May 5th, 1952.

And when were you married?---August 15th, 1970.

And you have lived in Hamilton all your life?---
Yes sir.

And you knew the Mount Napier area quite well,
did you not?---No sir.

How far is it from where you lived in Hamilton?
---About 10 miles I suppose sir.

And do you say that you have never been in the
area?---Only once before.

10 What for? For what purpose?---Spotlighting.

It is the nearest bush country to Hamilton is it
not?---Yes sir.

And you had been out there many times I suggest
to you?---No sir.

You are a bricklayer or a bricklayer's apprentice
by occupation?---Yes sir.

And you are a fit and agile person, are you not?---
Yes sir.

20 And it was your panel van that was used on this
night? When I say "yours", I mean under your
control?---Yes sir.

You previously had owned a Holden sedan?---Yes sir.

And the flex which was used to tie up the girl was
yours?---Yes sir.

And had originally been used in the Holden sedan that
you had?---No sir.

Had it been used for any purpose connected with the
Holden sedan?---No sir.

30 Had it been used for instance for a car radio?---
No sir.

What was the purpose of it being in the van?---I was
going to put a car radio in the panel van.

Did you have a car radio?---Yes sir.

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Was it fitted into the van?---No sir.

Where was it?---It was sitting at home.

On this day, 31st January, you were dressed in
bikie fashion, were you not?---Yes sir.

That is flying boots?---Yes sir.

Jeans?---Yes sir.

The expression you used for that is "originals",
is that right?---That's what I said there sir.

That means Jeans does it?---Yes sir.

Leather jacket?---No sir. 10

T-shirt?---Yes sir.

Long bushy hair?---No sir.

A good deal longer than the hair you are wearing
now?---Yes sir.

Long bushy hair I suggest?---Not long hair sir.

And you wore your hair normally in that long bushy
fashion, did you not?---It wasn't long hair sir.

Bushy?---Yes sir.

And you say that you are afraid of Lowery, is that
it - King?---Yes sir. 20

MR. OGDEN: Have a look at that photograph---Yes sir.

Is that a photograph of you?---No, sir.

In your youth had you been in the boy Scouts?---
For a short time, sir.

And you used cord regularly in the brick-laying
business, do you not?---No, sir.

Do you use cord to keep a straight line for
your bricks?---A string line, sir.

Yes.---Yes, sir.

Well I call it a cord, you call it string if you 30

like, but it is a kind of cord, is it not, fine cord?—Yes, sir.

Now on Boxing Day — and you are used to handling cord, are you not?—No, sir.

On Boxing Day you were at Mount Gambier with King were you not?—Yes, sir.

And it was you who said "I wonder what it would be like to kill a chick" was it not, on that occasion?—No, sir.

10 And not only do I suggest to you did you say it then, but you repeated it many times.—No, sir.

Did you keep talking about it later?—No, sir.

Did you work the idea over in your head?—No, sir.

Did it ever go through your mind?—No, sir.

Did you think about different clues, as to how you might do it?—No.

Were you looking for a chance to find out what it would be like?—No.

20 You said all those things in your record of interview did you not?—Yes, sir.

Why did you say all that in the record of interview?—That was the idea of it, that was how it was supposed to have been done.

30 Why did you say all those things? You see let me put them to you again. Working the idea over in your head, No. 1. "We were thinking of different clues. Looking for a chance to find out." Why did you say that to the Police if it was not the truth?—Because that's what I was told to do. To say that it was planned.

You know you have said earlier that King did not say anything of the kind to you about those details.—Yes sir.

Is this what you are asking the jury to believe, that King said to you, "You must say that you wondered what it would be like to kill a chick"?—No, sir.

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Are you saying that King said to you "You must say you worked the idea over in your mind"?—
No, sir.

Are you saying that King said to you, "I thought about different clues"?—No, sir.

Are you saying that King said to you "I was looking for a chance to find out"?—No, sir.

Then all of those things you say came out of your imagination?—They were prompted by the questions also, sir. 10

Were they?—Yes, sir.

We will see. You can look at the record of interview. "Are you prepared to start at the beginning?" A. "Yes." "Well would you go ahead?" "It all started about Christmas time. We went over to Mount Gambier for the bikes with Charlie and we were pretty boozed all weekend. Had a fair bit. I don't know exactly what he said, but we just come up with this idea." Now do you say all that was prompted by the question, "Well would you go ahead?"—Not all the questions are typed here, sir. 20

Well then what questions are missing?—Questions in between, they're just explained a bit more fully if you could, more or less along that line.

Well this is the first we have heard of any questions left out in your record of interview, Lowery, is it not?—Yes, sir.

What question do you say was left out there?—
I couldn't remember what the question was there, sir. 30

But you agree that all that that I have just read out is hardly invited by the question, "Well would you go ahead?" is it?—No, sir. It had also been said earlier.

Let me read to you the next question. "Yes, go ahead." And your answer "Kill a chick. Charlie might have suggested it, I'm not sure, but we decided to see what it would be like to kill a chick." Now do you say that all that that I have read as your answer is prompted or invited by the question, "Yes, go ahead?"—No, sir. 40

Or, are there some more questions left out there too?—No, sir, there is no questions left out there.

"What happened then?" is the next question is it not? Do you see that?—Yes, sir.

Now is there any question left out there?—No, sir, but the questioning earlier.

10 Well then we will just get the answer, "We just sort of worked the idea over, thought about it and thought of different clues about it. Talked it over and it just sort of built up and up and up." Now that answer is not invited by the question is it?—No, sir.

Lowery, it is true, is it not, that in your mind you wondered what it would be like to kill a chick?—No, sir.

In your mind you worked it over, the idea over?—No, sir.

Thought about it?—No, sir.

20 Thought of different clues about it?—No, sir.

And it built in your mind up and up and up did it not?—No, sir.

You are not the slightest bit afraid of King are you ?—Yes, I am sir.

You have never been afraid of him, have you?—Yes sir.

After this event on the Sunday you hardly let King out of your sight did you?—No, sir, that's not correct.

30 You were around to see his mother at the shop on the Monday morning?—No, sir.

On the Tuesday morning?—No, sir, not that I can remember.

Were you in his company on Monday?—Yes, sir.

What time?—Monday afternoon.

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Where did you see him then?---At my flat.

I suggest to you you went round to Mrs. King's shop on the Monday morning with your wife and Garry Bailey?---No, sir.

You asked where King was and Mrs. King told you that "He hasn't been down to the shop this morning, he must still be home" or words to that effect?---No, sir, that was on the Sunday morning.

10

I suggest to you it was on the Monday morning?---No, sir.

You were with him again in the afternoon?---Yes, sir.

That you had some beers?---Yes, sir.

And he was at your house, or your flat for about an hour or more?---Yes, sir.

And he was with you again in the afternoon helping you to pack for your move?---What day was this sir?

Monday?---He was only with me in the afternoon, sir. 20

Was he helping you to pack your goods?---No, sir.

And you went through your story with King?---Yes, sir.

And it was your story as to what you were going to say was it not?---No, sir.

What did you, on the Monday afternoon, say you were going to do?---I don't understand the question, sir.

When you went through this story on the Monday afternoon what was it that it was agreed should be said if you were asked by anybody?---About this trip to Coleraine. 30

Was it?---Yes, sir.

Or was it merely that you would .. that you dropped Rosalyn Nolte off at the hotel?---No, sir.

The Coleraine hitch-hiking story was made up

on the Monday was it?---No, sir.

Well that is what I am asking you about, you see, the Monday. What story did you go through on the Monday?---The one that was made up on the Sunday night.

What was that?---About the trip to Coleraine.

Doing what?---Taking a hitch-hiker over.

And that was your story was it not?---No, sir.

10 Do you say that was King's story do you?---
Yes, sir.

Did he say to you as to what you would .. how you would describe this man, was this discussed? ---Yes, sir.

What he looked like?---Yes, sir.

Anything else about the incident?---Yes, sir.

What?---Complete details.

You remember amaking a statement about this, do you not?---Yes, sir.

20 And saying in that statement what - giving a description of the hitch-hiker?---Yes, sir.

This is the statement, a three page statement, Exhibit "FF" which you made on 4th February to Detective Womersley, is that right?---Yes sir.

In other words you know what we are talking about?---Yes sir.

And this is your description, "The hitch-hiker was a man of about 18 to 24 years"?---Yes sir.

Correct? "5'10" to 6'"?---Yes sir.

Medium build?---Yes sir.

30 Yellow blonde almost shoulder length hair?---
Yes sir.

A full beard?---Yes sir.

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Ned Kelly Style?---That was added by the
Detective that part.

What do you mean? You did not say that?--- No
sir, he just asked me if it was a Ned Kelly
style beard to clear it up.

Well did you say "Yes"?---Yes sir.

Well you had not been in any agreement about
saying "Ned Kelly style beard"?---Well the way I
understood the way the question Detective
Womersley put it to me was that that was a full
beard. 10

Had there been any agreement about a Ned Kelly
Style Beard?---No sir, a full beard.

Do you suggest that Detective Womersley put the
suggestion of Ned Kelly style?---Yes sir.

The same colour as his hair?---Yes sir.

He had a pack on his back?---Yes sir.

It could have been khaki or dark green?---Yes sir.

A very full description, is it not?---Yes sir.

Do you say all of that was agreed upon between
you and King, do you?---Yes sir. 20

Ned Kelly style beard was agreed upon?---No sir.

Blonde shoulder length hair?---Yes sir.

Lowery, I put it to you again, this kitch-hiker
description was all yours, was it not?---No sir.

And a good deal fuller than the description given
by King as you asked him to give it?---No sir.

What I suggest to you is that when your imagination
runs loose, you really let it go, do you not?---
No sir. 30

Did you see King on Tuesday?---Yes sir.

When?---I can't remember, sir.

It was on the Tuesday that you said to Marilyn

Cooper, was it not, that probably someone would have tied her up as a joke and she could have strangled herself?—No sir.

When did you say that?—On the Wednesday sir.

Did you have in your mind that that might be some defence, that you might be able to take if you were apprehended about this?—No sir.

That you tied her up as a joke and that she accidentally strangled herself?—No sir.

10 What put that idea into your head Lowery?— King seemed to be treating it as a joke.

What put it into your head to say it to Cooper, Merilyn Cooper?—I couldn't say sir.

I put it to you again, were you thinking, in your mind, that if you were questioned by the police you might say that "I tied her up for a joke, but she somehow must have accidentally strangled herself"?—No sir.

20 Or "We tied her up as a joke and she somehow may have accidentally strangled herself"?—No sir.

That thought never entered your mind?—No sir.

Well why did you say this to Merilyn Cooper? Were you trying to get her to spread a rumour that that is what - had happened?—No sir.

Who else was present?—My mother-in-law and my wife.

Did you hope that they might spread that story around Hamilton?—No sir.

30 On that Tuesday at about 5.30 on the way home from work did you go to the shop, the King shop?— I don't know sir.

You were told that the dog had been found, were you not, on the Tuesday?—Yes sir.

And you knew that that would bring inquiries somewhere around about the area of the Stones, did you not?—Mount Napier area you mean?

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Yes?—Yes sir.

And then the next we know of - the next day at any rate you say, you are saying to Merilyn Cooper "She may have been tied up as a joke and strangled herself", that is true, is it not?— I can't remember exactly what was said that day sir.

And you went to the shop again on the Wednesday at about 5 o'clock and told those present that the body had been found, did you not?—No sir. 10

Did you see King at all on the Wednesday?— Yes sir.

Where?—At about quarter past five at the shop.

And you reported then, I suggest, that the body had been found?—No sir.

You called into the shop on your way home from work, did you not?—No sir.

You called in at the shop?—Yes sir.

You knew when you called in at the shop that the body had been found?—No sir. 20

Had you been listening to the wireless at all to see the news?—No sir.

This story was well known around Hamilton by midday was it not, on the day she was found, the Wednesday?—I didn't know of it sir.

Where were you working?—In Fyfe Street, Hamilton.

And do you say that you, a person who had been at the scene at Mount Napier on the Sunday night, did not learn that the body had been found?— Yes sir. 30

Did you see him any more on the Wednesday, King?— Yes sir.

Where did you see him?—On the Wednesday evening.

Where?—He came with me while I went to Tahara.

To where?—Tahara.

Tahara?—Yes sir.

And that was to - you got him to help you to move an item of furniture, did you not?—He came with me to get the table.

A table?—Yes sir.

At your request?—No, sir.

You wanted help, did you not, to carry the table?—No, sir.

10 Did you go over your story then?— It was gone over then, yes, sir.

And the situation is that you were trying to drill King into telling a consistent story, were you not?—It was the other way round, sir.

About the hitch-hiker?—It was the other way round.

Let me go back to the events of Sunday, you decided, I suggest, that it was a chance - to use your own words from your record of interview - when you saw Rosalyn Nolte walking along the street?—No sir.

20 You were in a violent mood that evening were you not?—No, sir.

You struck Kevine Butterworth and you kicked her shortly before you saw Rosalyn Nolte?—No sir.

You deny her evidence do you?—No, sir.

You asked her what it would be worth to drive her home?—Yes, sir.

And you intended by that to suggest to her that she have sexual intercourse with you obviously did you not?—No sir.

30 What did you mean then?—It was just a joke.

What did you mean by "What would it be worth?"— Well that was the joke, sir, yes.

You mean that the suggestion was that "If I drive you home will you have sexual intercourse with me?"—Yes, sir.

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That was only joking?---Yes, sir.

When she said nothing you then got a little
nasty with her?---No, sir.

You drove the panel van to the Mount Napier
Reserve?---Yes, sir.

And it was your flex in the car?---Yes, sir.

And it was you who tied her up was it not?---
No, sir.

The truth came out accidentally in your evidence
in chief did it not?---No, sir. 10

And it was you who killed her was it not?---
No, sir.

And it was you who was keeping King under your
wing?---No, sir.

Each day thereafter?---No, sir.

And it is you who have been trying to dictate to
King thereafter?---No, sir.

Look at that, is that your handwriting? Is that
your handwriting? You ought to be able to
recognise it by now?---I don't think so, sir. 20

Have another look at it and make sure---No, sir.

It is not your handwriting?---No, sir.

Do you swear that on your oath?---Yes, sir.

MR. CUMMINS: I object, MY FRIEND should not make
audible comments in front of the jury, sir.

MR. OGDEN: There were no audible comments.

MR. CUMMINS: It is not the first time this has
been made during the trial, sir, and in my
submission it is too serious a matter to be treated
in this way. 30

HIS HONOUR: Yes, well instructions should not be
given in a voice that is audible to the jury.

MR. OGDEN: I agree, Your Honour. Your Honour, -

Lowery did you hand this document to King in the holding cell here at Ballarat on 1 June of this year?---No, sir.

Have a look at it.

HIS HONOUR: It is written on both sides of this paper is it?

MR. OGDEN: It is Your Honour, yes.

I suggest to you that that was -

10 HIS HONOUR: I was going to suggest that if Lowery is looking at it he ought to have a look at both sides before the questioning proceeds further.

MR. OGDEN: I ask you again, is that a document in your handwriting?---No, sir.

I suggest to you it was handed to you.. handed by you to King in the holding yard at Ballarat on 1 June of this year?---No, sir.

And that it was a statement drafted by you as to what King should say at the trial?---No, sir.

20 HIS HONOUR: Do you know in whose writing it is?---
No, sir.

MR. OGDEN: You have never seen that handwriting before?---It is similar to mine, sir.

But you have not seen it before?---No, sir.

That handwriting I mean?---No, sir.

But it is similar to yours?---Yes, sir.

Have you got anything else in your handwriting in your possession Lowery?---My signature on these statements here.

30 No, anything in your hand - any document written by you?---No sir.

Could you get something that the jury could compare or a handwriting expert could compare with this?---I haven't got anything sir.

No, could you get it is the question?---I don't

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know sir.

Well are you prepared now to furnish a sample of your handwriting for analysis?---Yes sir.

Would Your Honour pardon me a moment?

HIS HONOUR: Perhaps if something further is to be done with this document that you have in your hand it should be marked for identification.

MR. OGDEN: Yes, Your Honour, I will tender it.

EXHIBIT Exhibit "K.1" Document shown to
(For the witness.
identification)

10

HIS HONOUR: Does it bear a date?

MR. OGDEN: No, Your Honour.

HIS HONOUR: Or a purported signature?

MR. OGDEN: No signature, Your Honour it is really a handwritten document.

HIS HONOUR: Well we will describe the exhibit simply as "document shown to the witness".

MR. OGDEN: Now could you - have you got anything to write there on? Is there any ledge?---Yes sir, there's a -

20

I do not know whether that is satisfactory, Your Honour.

HIS HONOUR: It is not very satisfactory to try to write in the witness box, if you wish he can be asked to come out of the witness box and sit at a desk or a table.

MR. OGDEN: Well perhaps he may be able to use the end of this table here, Your Honour.

HIS HONOUR: Yes, very well.

30

MR. OGDEN: Sit there - there is a chair there, could you go - could he leave the box Your Honour?

HIS HONOUR: Yes

WITNESS LEFT WITNESS BOX.

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10 MR. OGDEN: Would you like a Biro? Do you use a
Biro? Would you just write this "At 7.15
Christopher Lowery arrived at my parents house,
at 4.65 - at 46 Stephens Street. About five
minutes later." Full stop there. "About five
minutes later we left Stephens Street. At about
8 p.m. in the company of Lowery I saw Roslyn
Nolte leading her corgi dog along Gray Street."
Could I have a look at what you have written
please? Would you write the word "Garry Bailey",
underneath, leave a space for the - and would you
write the word "interfered", and would you write
the words "The next night I went to Lowery's
flat." Could I see what you have written please?

MR. OGDEN: I tender that for identification if
Your Honour pleases.

| | | |
|----------------|-----------------------|--------------|
| <u>EXHIBIT</u> | <u>EXHIBIT "K(2)"</u> | Specimen |
| | (For identification) | handwriting. |

20 MR. OGDEN: It is no use me asking you, Lowery, any
questions based on the events out at Mount Napier
that you describe in your record of interview
because as I understand your evidence that is all
imagination, is it not?---Yes, sir.

But one thing is not imagination, is it, you did
have a can of beer out there in your hands at one
time did you not?---Yes, sir.

The can of beer on which your fingerprints have
been shown to exist?---Yes, sir.

30 And there is no contest about that, that you did
have a beer can?---Yes, sir.

According to you you were drinking it in the van
and then you decided to get out of the van to see
what King and Rosalyn Nolte were doing?---Yes, sir.

And you had the can of beer in your hand immediately
after you got out of the van?---Yes, sir.

Why did you put it down alongside a tree?---
Because it was getting flat, sir.

40 How much of it had you consumed?---About three-
quarters of it I'd say.

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In what time?---About ten minutes.

You are quite used to drinking are you not?---
Yes, sir.

And you could consume a small can of beer in a
very short time could you not? If you wanted
to?---Yes, sir.

And you obviously were in the mood to drink beer
or you would not have opened it, that is so?---
Yes, sir.

You were in the mood to drink beer or you would
not have opened it, is that right?---Yes sir. 10

Why did you let it get flat?---I sat it down
on the -

Why did you let it get flat?---I wasn't thinking
of it, I forgot about it.

There was no need to put it down if all you were
doing was going to look for Rosalyn and King was
there?---I'd put it down though, sir, when I was
cleaning out the rubbish.

You put it down, you have said, when you got
out of the van to go and look for them?---Yes sir. 20

Is that right or is that wrong?---It's right, sir.

And it was some distance from where the van was
parked that you put it down, was it not?--- Yes
sir.

How far? Ten yards? Twenty yards or what?---
About 30 yards I'd say.

About 30 yards?---Thirty or 40 yards.

Standing upright against a trunk of a tree?---
Yes, sir. 30

Obviously you put it there intending to get it back
again, to collect it later did you not?---No sir.

It was put on the leeward side or the protected
side of the tree from the weather was it not?---
I don't know, sir.

What sort of a night was it?---Reasonably calm.

Was it raining ---No, sir, not at that time.

At times?---At times, yes, sir.

And some wind?---I couldn't remember now sir.

You heard the evidence, did you not, from - I think it was Detective Mengler - that the can was placed on the protected side of the tree, that is, protected from the weather?

10 MR. CUMMINS: With respect, Your Honour, the evidence I understood was that on the Wednesday it was on the protected side of the tree, the weather conditions being on the Wednesday, there is no evidence, as I understood it, of what the weather conditions were like on the Sunday night.

MR. OGDEN: Well that may be.

HIS HONOUR: I think that is so, yes, Mr. Ogden.

MR. OGDEN: Did you put it on the protected side of the tree, to protect it from the weather on the Sunday night?---I don't know what way the weather was coming from.

20 You intended to recover it and finish it off?---
No, sir.

There was no need to put it down if all you were going to do was to look for Rosalyn and King was there?---No, sir.

There was a need to put it down if you intended to do something else with your hands, was there not?---
Yes, sir.

Such as for instance take a cord and tie Rosalyn Nolte up with it?---No, sir.

30 It would be very difficult with a beer can in your hand would it not?---Yes, sir.

And that of course is why you put it down was it not?---No, sir.

What tools did you have in the car, Lowery?---
Just a jack and a socket set.

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Spanners?---No, sir, just socket set.

Any brick-layer's tools?---No, sir.

Where were the tools kept?---On the job, sir.

Where were the car tools kept?---In the back.

In the carrying part of the panel van, is that
what you mean?---Yes, sir.

Not under the seat?---No, sir.

Or behind the seat?---Yes, sir, behind the seat.

In the cabin, the driving cabin part?---Behind
the seat, sir, in the well that is formed there. 10

You had a lot of tools besides what you have told
us about did you not?---No, sir.

Spanners?---No, sir.

You say that you came across them and that King
was - to put it at its mildest - assaulting
Rosalyn Nolte?---Yes, sir.

Why did you not get away and get the Police?---
I thought I'd try and stop him, sir.

How far away were they when you came across them
from where the van was parked?---Fifty, 60 yards. 20

And you could have got to your van and got out and
got the Police assistance if you had wanted to
could you not?---Yes, sir.

Well why did you not?---I never thought of it
that way, sir.

Why did you not tear the flex out of his hand
and throw it into the bush?---I tried to stop him
sir.

Why did you not tear the flex out of his hand and
throw it into the bush?---I didn't get a chance 30
to, sir.

But according to your evidence all you have said
was that he pushed you a couple of times?---Yes sir.

Of course you have got to say 'push' have you not, you could not say he struck you with a fist could you?---He didn't sir.

No, but you could not say he did, could you?--- Well he didn't sir.

But you could not say he did even if you wanted to could you?---I couldn't say so, sir, because he didn't.

You could not if you wanted to could you?

10 MR. WRIGHT: If Your Honour pleases, these assertions to the contrary a number of times, in my submission, is not proper cross-examination, the same question being repeated.

HIS HONOUR: I think the question should be made clearer. What the implication is.

MR. OGDEN: You know very well, Lowery, that you had no visible bruise, abrasion or anything of the sort on any part of your body, your head at any rate?---Yes, sir.

20 You knew you could not say he punched you did you not? That occurred to you did it not?---No sir.

Well all you can say is that he - all you do say is that he pushed you twice?---Yes, sir.

And that was sufficient for you to take no further part in trying to prevent him?---Yes, sir.

And you just stood around and watched him from then on, is that it?---Yes, sir.

Did you think this was a terrible thing he was doing?---Yes, sir.

30 He had no weapon with him, did he, apart from the flex?---No, sir.

And if there was anything lying on the ground that he could have used, there were plenty of things lying on the ground that you could have used too?--- Yes, sir.

And you say that you just stood by, in fear,

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watching him do what you say he was doing?---
Yes, sir.

Made no attempt to get any tool from your car?---
No sir.

Made no attempt to get outside assistance?---
No sir.

Or no attempt to reason with him for that matter?
---No sir.

Is it your belief, Lowery, that taking of L.S.D.
makes a person violent?---I don't know sir. 10

Is it your belief that the taking of L.S.D.
makes a - heightens a person's sexual desires?
Do you think they - ?---I don't know about that
sir.

You say that you saw King take an L.S.D. tablet
do you not?---Yes sir.

That is completely untrue I suggest?---No sir.

I am not suggesting that it is untrue that he
took a tablet, I am suggesting it is quite untrue
that you saw him take a tablet?---No sir. 20

I suggest to you that he had already taken L.S.D.
before he got into your van?---I don't know if
he had or not sir.

Well on Saturday following the Sunday in question
you were arrested and charged and you got legal
advice?---Yes sir.

Mr. Lewis, a solicitor, gave you some advice?---
Yes sir.

And did you say one word to any police officer
between the time of your arrest on Saturday up
till the present time about what you say in truth
took place on this night?---No sir. 30

Was everything you said in the record of interview
lies, Lowery?---No sir.

Some of it was true, was it not?---Yes sir.

And indeed I think you said in your evidence here that where there was a basis of truth if it would fit in you used it, is that right?---Yes sir.

But you lied in your statement to the police also about whether you had had anything to drink, did you not, at the scene?---Where's that sir?

At p.4 of your statement, have a look at it, your record of interview.---Yes sir.

10 "Did you drink any liquor out at the place where the girl was left?" A. "No." That is a lie too, is it not?---Yes.

Why did you tell that lie?---I was confused sir.

Why, because you had told so many lies?---Yes sir.

And you got confused, is that it?---Yes.

And you did not know when to tell the truth and when to tell lies, is that it?---I was confused making the interview sir. I was quite upset about it.

20 You see you have said here that you had something to drink, have you not?---Yes sir.

What reason did you have for saying, at the record of interview, you did not have something to drink? ---I was confused.

Only confused?---Yes sir.

You read this record of interview through, did you not?---Yes sir.

Three questions down from that you were asked "Did you drink some on the way out there"?--- Yes sir.

30 And answer: "Yes, we opened a can when we first got there", that is as originally typed?---Yes sir.

You have altered that - you have crossed out the words "We first got there" so that it reads "Yes, we opened the can when she got in the van"?--- Yes sir.

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So you had your mind well on the subject of when you had a drink from the time that you were in Rosalyn Nolte's company, did you not?---No sir, that was a typographical error.

Well I do not care which version you take, the original typed - the version as originally typed or the second one - you had it well in mind as to what liquor you had whilst in her company
---No sir.

Because that question deals with that, does it not, 10 when she first - when she got in the van?---
Yes sir.

And that was only three questions down from the lie that you told "Did you drink any liquor out at the place where the girl was left", was it not?---Yes sir.

Do you still swear Lowery that that document that I handed up to you which had gone in for identification, Exhibit "K.1" is not in your handwriting?---Yes sir. 20

You say it is in handwriting similar to yours?--
Yes sir.

But not yours?---Yes sir.

It is very similar, is it not?---No sir.

Would you look at the two exhibits, that is the handwriting that is in the document that I handed to you and the handwriting you wrote out in the court.---Yes sir.

Do you still say that they are not the same handwriting?---Yes sir. 30

I put it to you that in the exhibit that you wrote out in the court, "K2" that is the one that you wrote out in the long slip of paper there, you deliberately tried to disguise your handwriting from its normal handwriting?---No sir.

By writing it a good deal more upright than in your normal style?---No sir.

How do you spell the word "Interfering"?---

WITNESS: Interfering?

MR. OGDEN: Yes?--- I.N.T.E.R.E.F.E.R.I.N.G.

Would you have a look at it on "K2", that is the document you wrote out?---Yes sir.

Do you see you have written the word "Interfering"?
---Interfered.

Interfered, how do you spell it?---
I.N.T.E.R.E.F.E.R.E.D.

10 Would you hand me "K1"? Would you have a look at Exhibit "K.1" for identification? On the second page about the middle where I am holding my thumb, do you see that position there?---Yes.

Do you see the word "interfered"?---Yes sir.

Would you read out how it is spelt?---
I.N.T.E.R.E.F.E.R.I.D.

.E.D. is it not?---I.D...

Badly written?---It is I.D. sir

I.D. is it? Did you say that because you grasped - you were grasping at straws there?---No sir.

20 In the spelling of that word?---No sir. To me it definitely looks like an "I".

Lowery, if your - if the version that you give to this jury and ask them to accept is true, how did you come to say what you did say to your father when he came to the Police Station on the Saturday night?---What was that sir?

Did you not hear the evidence from Constable Dawson?---Yes sir.

30 How did you come to say that to him?---Because there were police standing nearby sir. They could hear what was being said.

Why did you not say to him "I had nothing to do with it"?---I told him later sir, when there were no police around.

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Why not when you were there?---Because there were police there.

How would that do you any harm if the police were there and you said to your father "I had nothing to do with it"?---It would interfere with the record of interview I'd made - conflict with it.

But the record of interview you had made was signed in your own handwriting and had the words on it, did it not, at the bottom, "I've read it over and it is correct"?---Yes sir. 10

In your own printing, printed handwriting?---Yes sir.

How could a statement that you made to your father under those circumstances, if you told the truth to him and said, "Look, I had nothing to do with it Dad", how could that do you any harm?---I didn't know sir.

Where is this house that you live in in Woodbridge Street Hamilton from the road that leads to Mount Napier?---Quite a distance sir. 20

Well how far?---What do you mean the road that leads to Mount Napier?

Fyfe Street?---Fyfe Street.

Or its continuation?---There's no continuation of Fyfe Street sir.

Do you know the road that leads to Mount Napier from Hamilton?---There's two sir.

Well either of them, how close is your house from them, the street where you live?---Woodbridge Street would be about half a mile from Mount Napier Road. 30

On the same side of the town?---Yes, sir.

COURT ADJOURNED AT 3.17 p.m.

COURT RESUMED AT 3.25 p.m.

CHRISTOPHER RUSSELL LOWERY recalled and warned.

MR. CUMMINS COMMENCED RE-EXAMINATION.

MR. CUMMINS: Mr. Lowery, after a person is charged with murder as at the beginning of February of this year did you know whether that person got locked up automatically or not?---No, sir.

In fact, to your knowledge subsequent to the charge of murder did King apply for bail?---Yes, sir.

To the Supreme Court?---Yes, sir.

10 Now out at the scene you were questioned by Mr. Ogden about these pushes I think the word was. What effect when you first ran at King did his action have on you?---It winded me, sir.

And when you next tried to run at him what happened to you that time?---I was winded again and knocked down sir.

Where to?---The ground.

Did the girl at that stage appear to be motionless? ---Yes, sir.

20 What did King say to you?---"Don't move or you'll be next", something like that.

You mentioned - this is during the cross-examination - that there were some questions left out?---Yes sir.

Are you able to say whether those questions were left out of the record of interview or out of the conversation which preceded it?---Out of the record of interview, sir.

30 What sort of questions?---They were just to - I got the impression it was just to clarify it to make the record of interview look more - easier to the officer typing it.

Well questions to clarify things, is that right?--- Yes sir.

Now you were questioned about whether you feared King in view of what you had seen him do to

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No. 2

Evidence for
the Appellant

Christopher
Russell Lowery
Re-
examination
14th June 1971

(continued)

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No. 2

Evidence for
the Appellant

Christopher
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examination
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(continued)

Miss Nolte. Had King - was he a member to your knowledge of any organization?---Yes, sir.

What was that?---Hell's Angels.

Were you?---No, sir.

What chapter did he belong to?---Nomads, sir.

At the time of this murder how much were you earning a week approximately?--- About \$50.00 a week.

You said your apprenticeship was due to finish this month?---Yes sir.

10

Did you have any expectation about your father's business?---Yes, sir.

What was that?

MR. OGDEN: I do not know what cross-examination this arises out of, Your Honour, but in my submission it does not arise out of any.

HIS HONOUR: What does it arise out of Mr. Cummins?

MR. CUMMINS: It arises out of the suggestion, Your Honour, that this person had an interest in killing a girl for kicks and it is being led to establish that he had no motive whatsoever in that sort of bizarre behaviour.

20

HIS HONOUR: But I do not quite follow how a person's expectation of family benefits throws light one way or the other on the question of whether he would be interested in that form of excitement.

MR. CUMMINS: Well I was putting to the witness, Your Honour - I was in the course of putting to the witness a number of questions to elicit his present or his state of life at the time of this murder, in order to attempt to show the jury that he in fact was living happily and his prospects were just opening before him, and in those circumstances such an activity as is suggested to him would completely wreck those.

30

HIS HONOUR: Well in effect what you are putting this

to is not whether there were circumstances which would make him likely to be interested in such excitements but whether there were circumstances which would be likely to make him unwilling to risk it, is that it?

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Evidence for
the Appellant
Christopher
Russell Lowery
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(continued)

10 MR. CUMMINS: Well it is the other side of the coin perhaps, Your Honour, perhaps that is the correct way of putting it, but it is put, sir, in rebuttal of the suggestion that he was interested in this sort of behaviour or would wish to plan such a venture over a period of time or follow it through.

HIS HONOUR: Yes, well it seems that it is probably admissible re-examination. I will allow it to be put.

MR. CUMMINS: If Your Honour pleases.

(To witness); Well did you have an expectation about your father's business?---
Yes sir.

20 What was that?---My father has got a reasonably good business and I was under the impression that when he retired well a lot of the builders had told me that when he retired I could more or less take over doing their work for them.

Did you love your wife?---Yes sir.

What was her attitude to having a baby within the next month or so?---I was quite glad about it, sir.

30 Were you shifting into your first home?---
Yes sir.

Were you happy with that?---Yes sir.

Did you have any motive whatsoever to take a girl away and kill her?---No sir.

WITNESS WITHDREW & RETURNED TO DOCK

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of the State
of Victoria

No. 2

Evidence for
the Appellant

Hazel Lowery
Examination
14th June 1971

HAZEL LOWERY sworn and examined

WITNESS TO MR. CUMMINS: My full name is Hazel Lowery. I reside at 3 Shakespeare Street, Hamilton. I am a married woman.

MR. CUMMINS: Is the accused Christopher Russell Lowery your husband?---He is.

Did you have a child to him on 1st March, 1971?---
Yes, I did.

Were you married to him in 1970?---Yes.

As at the beginning of February of 1971 were you and he just about to move into your first home?---Yes. 10

How was the marriage between you?---It was very good, very happy.

What was Christopher's attitude to you having a baby?---He was very pleased about it.

And yours?---Yes, I was looking forward to it.

Was he working in his father's business?---Yes.

And he was just about to complete his apprenticeship?---He was. 20

On the night of Sunday, 31st January did you and your husband and a couple of your girl-friends and Charles King all go to the late show Drive-In?---Yes, we did.

Did you make any observation about your husband Christopher when he came in at about sometime after ten that night?---Yes, he was over-cheerful, he was too cheerful as if he was acting a part.

For the next few days how did he appear then?---
Very, very quiet. 30

Were either of those states his normal state?---
No, they weren't.

On the Monday night, that is 1st February, round
about tea time did Christopher start to tell
you something?---Yes, he did.

What was that?---He started to tell me -

10 I was putting this, Your Honour, not so much to
the - not at all to the truthfulness of it and
I cannot lead it as such, sir, but I was putting
it to the fact of it being said as relevant and
to this witness' state of mind when a subsequent
statement was made to her by the accused King.
And that is the only basis I ask to lead it.

HIS HONOUR: I am afraid I am not following the
connection. Perhaps I should have followed it
from something in the opening, but I do not at
present follow it.

20 MR. CUMMINS: I will not press, sir, in that event.
(To witness): Did your husband tell you
something?---Yes, he did.

As a result of that what state of mind did that
put you in?---I was very shocked.

What did you do? Do not tell us what you said,
but did you commence to ask him questions?---
Yes, I asked him a lot of questions.

And as you did so did someone arrive?---Yes,
King arrived.

After a short while did your husband leave the
room?---Yes, he went outside to the toilet.

30 Was anything said between you and King?---Yes.

What was said?---He said, "You're looking forward
to having this baby, aren't you?" He said it in
a very vicious tone.

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Evidence for
the Appellant

Hazel Lowery
Examination
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(continued)

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Evidence for
the Appellant
Hazel Lowery
Examination
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(continued)

Had he ever made any inquiry about your health
or the prospective baby of that type before?--
No.

MR. CUMMINS: Did your husband come back in the
room?---Yes.

And later that evening when you went to bed
did you have a further discussion with your
husband?---Yes.

And without going in to what he said, what
state of mind did that further discussion put
you into?--- Frightened as well as shocked. 10

MR. OGDEN: The state of mind of this witness,
surely is not material.

HIS HONOUR: I am not following what it is leading
to Mr. Cummins. What is the relevant factor
it bears on?

MR. CUMMINS: Your Honour, I was putting it, sir,
to this witness' appreciation of the
implication of what King said to her sir. Your
Honour will recall that in the opening my
friend - 20

HIS HONOUR: Well does her subsequent thinking
about it amount to relevant evidence?

MR. CUMMINS: Well in my submission, Your Honour,
it is relevant as to the question of whether or
not what King said was a threat.

HIS HONOUR: Well suppose that somebody - some
perfect stranger had been at the front door
and had overheard and then they had been told
something later and had then started to think
about it, would his thoughts be relevant? 30

MR. CUMMINS: I appreciate how Your Honour is
putting it. Your Honour, I cannot in that
event pursue it.

HIS HONOUR: Yes.

MR. CUMMINS: Well as the result of what your husband told you, and you appreciate that because of the Rules of Evidence we can not go into the content, did you and he come to any conclusion about what he should do?---Yes, we did.

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MR. OGDEN: Well again Your Honour, with respect, my submission is that this has no relevance, some joint conclusion. Your Honour this is clearly inadmissible in my submission and should not be -

Evidence for
the Appellant
Hazel Lowery
Examination
14th June 1971

10 HIS HONOUR: Well apparently Mr. Cummins concedes that now.

(continued)

MR. CUMMONS: Yes, well I will not ask this witness any further questions.

MR. BYRNE COMMENCED CROSS-EXAMINATION

Cross-
Examination

MR. BYRNE: Mrs. Lowery, on the night of 31st January when you were at the drive-in theatre did your husband go to sleep?---Yes, he did.

MR. OGDEN COMMENCED CROSS-EXAMINATION

20 MR. OGDEN: Mrs. Lowery, on Monday did you go with your husband and Bailey to the King's shop in the morning?---No, we did not.

Did you go on the Tuesday to the Kings' shop?---
I cannot remember that.

Did you go on either one day or the other looking for Charles King, in other words your husband was asking "Where's Charles"?---No.

Do you deny that?---I deny that I was looking for Charles King.

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Evidence for
the Appellant

Hazel Lowery

Cross-
examination
14th June 1971

(continued)

No, I was not asking you that. Did you and your husband go, you go in the company of your husband, your husband looking for Charles King?---Not that I recall.

Well you do not remember, is that it?---No.

Re-
examination

MR. CUMMINS COMMENCED RE-EXAMINATION

MR. CUMMINS: Mrs. Lowery, do you recall whether on the Sunday, that is the 31st, on that morning you and your husband or you or your husband went round to King's shop?---Yes, we did.

10

Do you know who you went with?---Garry Bailey.

WITNESS WITHDREW.

MR. CUMMINS: Your Honour, there are two character witnesses that I wish to adduce and they are present at court sir, and they both would be brief.

HIS HONOUR: Are they present in court -

MR. CUMMINS: Present outside the court sir, and I would ask to call them.

20

HIS HONOUR: Yes.

STANLEY JAMES NIDDRIE sworn and examined.

In the
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of the State
of Victoria

WITNESS TO MR. CUMMINS: My full name is Stanley James Niddrie. I reside at 12 Scoresby Street, Hamilton. I am a proprietor by occupation.

MR. CUMMINS: Have you known the accused Christopher Russell Lowery for about 15 years?---
That is correct, sir.

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Evidence for
the Appellant

Stanley James
Niddrie

Examination
14th June 1971

10

Over that time being resident in Hamilton do you consider you have come to know his reputation in Hamilton?---I would say so.

What, to your knowledge, is his reputation?---
I've known Chris for that length of time, I would say that it was the average of a youth of his age in the town.

Do you know of his marriage?---I do.

And his wife?---And his wife, yes.

In relation to that, what are you able to say about the reputation of their relationship?

MR. OGDEN: Your Honour, I object to that.

20

HIS HONOUR: What is this put as?

MR. CUMMINS: It is put, Your Honour, that part and parcel of a man's character is his family relationship and his relationship with his wife, and if that relationship is well regarded that is a relevant factor for the jury's consideration.

30

HIS HONOUR: I think that this stands in a different position from what you were asking earlier. What you were asking earlier was, as I understood it, evidence of facts, now you are asking about evidence of reputation, that is allowed in on the general question of good character, but not, I think, for the purpose of trying to establish facts directly relevant to the issues.

MR. CUMMINS: Yes, well it is a question to what use the material is to be put, Your Honour. It is my submission that if as part of a man's character, as an element in that his marital state is to be considered and the reputation of that state is relevant as to his character just as

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Evidence for
the Appellant

Stanley James
Niddrie

Examination
14th June 1971
(continued)

Cross-
Examination

Re-Examination

the reputation of his own individual behaviour
is relevant.

HIS HONOUR: I do not think that you can establish
what the state of his marriage was by calling
evidence as to the general reputation about it
and I do not think that the general reputation as
to whether his marriage is happy or otherwise is
relevant as reputation evidence as to character.

MR. CUMMINS: Very well, Your Honour, well I am
confined to the question of reputation, Your Honour, 10
I think I could take it no further.

HIS HONOUR: Yes, reputation as to character I think
is what is admissible.

MR. BYRNE DID NOT WISH TO CROSS-EXAMINE.

MR. OGDEN COMMENCED CROSS-EXAMINATION.

MR. OGDEN: Mr. Niddrie, you say you are a
proprietor, proprietor of what, Mr. Niddrie?---
Of a T.V. Antenna installation business.

Are you related in any way to Lowery?---Not
directly.

20

What is the relationship?---My daughter is
married to his brother.

MR. CUMMINS COMMENCED RE-EXAMINATION.

MR. CUMMINS: In fact, is that marriage - what is
the position in relation to that marriage?---
Although their marriage -

MR. OGDEN: I object, Your Honour.

HIS HONOUR: What are you seeking to establish now,
Mr. Cummins?

MR. CUMMINS: I apologise, Your Honour, the
situation is this, that I presume that the
relevance of my learned friend's question was
to establish that this witness had an interest
in giving a biased picture, there is no other -
as I can see it - no other purpose in the
question and my question was designed to elicit
whether that interest was a real interest in
being asked or whether there was in fact some
fact about that marriage which would not make

30

fact about that marriage which would not make him an interested party to be biased.

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HIS HONOUR: Do you want to try to show that the connection or relationship between the accused Lowery and the witness is more tenuous than it appears at first sight?

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MR. CUMMINS: That is so, sir.

Evidence for
the Appellant

HIS HONOUR: Yes, well I think you may do that.

Stanley James
Niddrie

10 MR. CUMMINS: Well what is the state of that marriage that links the families up?---Well my daughter is separated from her husband.

Re-Examination
14th June 1971

Might the witness be excused Your Honour?

(continued)

NO OBJECTION BY COUNSEL.

WITNESS WITHDREW - EXCUSED.

WALTER THOMAS KEANE, sworn and examined

Walter Thomas
Keane

WITNESS TO MR. CUMMINS: My full name is Walter Thomas Keane. I reside at 15 Tyers Street, Hamilton. I am a trade instructor by occupation, employed by the Education Department of Victoria.

Examination
14th June 1971

20 MR. CUMMINS: Does that also comprehend your being an Apprentice Master?---That's right.

For how long have you known the accused Christopher Russell Lowery?---Approximately nine years.

And did you know him as a student at the local school?---I did.

And have you known him since?---Yes.

30 Do you consider you have come to know of his general reputation in the community?---I would say I have, yes.

And what do you say as to his general reputation? ---I would say that he's a good general type of boy.

MR. BYRNE DID NOT WISH TO CROSS-EXAMINE.

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—
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Evidence for
the Appellant
Walter Thomas
Keane

Cross-
Examination

MR. OGDEN COMMENCED CROSS-EXAMINATION.

MR. OGDEN: Mr. Keane, is there any relationship between you and the accused man Lowery?---Not direct, my eldest son is the husband of the accused's sister.

What is the state of their marriage?---My son and his sister?

Yes?---Very good.

MR. CUMMINS DID NOT WISH TO RE-EXAMINE.

MR. CUMMINS: Might the witness be excused Your Honour?

10

HIS HONOUR: Yes, very well.

WITNESS WITHDREW - EXCUSED.

MR. WRIGHT: May it please Your Honour that is the case for the accused Lowery.

Evidence for
Charles Ian
King

Charles Ian
King

Examination
15th June 1971

CHARLES IAN KING sworn and examined.

WITNESS TO MR. OGDEN: My full name is Charles Ian King.

MR. OGDEN: Were you born on 22 January, 1953?---I was.

20

Did you attend school at the Hamilton Technical School?---Yes.

And you lived at 46 Stephen Street, Hamilton?---Yes.

Do you have an elder sister Lesley?---I do.

And a younger brother Stephen?---Yes.

That family, your mother and father and those - that sister and brother all reside with you together at Hamilton?---That's right.

In August, 1967 when you were 14 years of age was there a family break up?---Yes.

30

What happened? Where did the family split to so

to speak?---I stayed at home with dad at 46 Stephen Street; my mother, sister and brother went down to my grandmother's at 84 Coleraine Road.

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Did the family become re-united by your mother returning with your sister and younger brother about January 1968?---Yes, I think so.

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Evidence for
Charles Ian King

Did you leave school at the end of the 1968 year?
---Yes.

Charles Ian King

10 Had you reached then the fourth form or Intermediate Standard?---Yes.

Examination
15th June 1971

(continued)

How was your work at school in 1968 as compared with previous years?---Pretty poor really.

Why was that?---I seemed to lose interest.

What was your father's occupation?---Engine driver with the Railways.

And did he work regular shifts?---Yes.

Did your mother have employment?---Yes, she's the co-proprietor of a shop, mixed business.

20 Was that a business that she runs in conjunction with her father?---That's right, yes.

What were the hours that that mixed business shop was open?---Usually about 7 till 9 o'clock.

Did your mother work in the business at night on occasions?---Quite often she used to.

After 1968 what did you do in 1969 after you left Hamilton Technical School?---Started work with the P.M.G. in Ballarat, technician in training.

30 During that year, 1969, at Ballarat where were you living?---I went to three different boarding houses altogether.

Whilst there did you meet up with a group of people, that is here in Ballarat, who we can describe as bikies?---Yes.

Did you have a bike of your own at that stage?---

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No, I didn't.

That is, you did not have a bike in Ballarat?---
No.

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Evidence for
Charles Ian King
Charles Ian King

I suppose at that age you could not get a licence
to ride a motor bike?---That's right.

But did you have an old bike at home that you had
in the back yard of your house?---Yes, I sold it
about September that year.

Examination
15th June 1971
(continued)

Well you had always been interested in bikes, had
you?---Oh yes.

10

By the way Mr. King, what height are you?---About
5, 10 I think.

And what do you weigh?---About 12 stone.

Well now in December of 1969 or at the end of
1969 did you have exams - sit for exams that were
set by the P.M.G. for technician trainees?--Yes.

And did you pass or not?---No, I didn't.

Then in December of 1969 were you then transferred
by the P.M.G. to Melbourne?---Yes.

And where were you getting your training or
working in Melbourne?---I was working at Russell
Street Exchange for about a month.

20

And then where did you go after that?---Transferred
to Tooronga Training Centre.

And where were you living in Melbourne during
that year, that is 1970 - December '69 until
September 1970, where were you living?---Just
about everywhere really.

And who were you mixing with?---A lot of students,
University students.

30

Whereabouts - what sort of places were you meeting
these people?---Mainly the University Hotel,
Peter Poynton's Hotel in Carlton.

And what about discotheques, did you go to dance
- ?---Used to go to the Thumping Tum now and then.

Did you go home to Hamilton at all during the weekends during that period between December 1969 and September 1970?---Not very often, no.

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of Victoria

Did you get letters from your father during that period?---Only a couple.

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During that year did you - were you introduced to marijuana?---Yes, about March.

Evidence for
Charles Ian King

And did you smoke it thereafter?---Yes.

Charles Ian King

10 And was there an occasion when you had a spiked cigarette?---Yes, there was, twice I think.

Examination
15th June 1971

Twice?---Yes.

(continued)

Did you take any other drugs apart from smoking marijuana?---Smoked hashish now and then and L.S.D.

Hashish and L.S.D.?---Yes.

What is the vernacular name for L.S.D., what is the other name for it?---Acid.

20 Would you tell the gentlemen of the jury what effect the taking of the drugs had on you, for instance marijuana, what effect did it have upon you?---If you're depressed it seemed to bring you out of it, more or less make you more happy.

What about L.S.D. what effect did that have upon you?---Much the same as that, except you get hallucinatory effects and things like this, you appreciate music more, appreciate paintings more.

30 What sort of things did you do when you took a dosage of L.S.D.? What would you do thereafter to enjoy the full effects?---Play music, that was an introductory speech to go out to the Pentland Hills and watch the lights of Melbourne.

Did you do that?---Yes, several times.

And what was the - you can see the lights of Melbourne from Pentland Hills can you at night time?---Yes.

And what effect does L.S.D. have on that viewing?---

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Evidence for
Charles Ian King
Charles Ian King
Examination
15th June 1971
(continued)

Well the glow the lights give off it comes in different colours when you're on acid, it just looks, you know, great.

And what about - what effect does the listening to music have if you have had a dosage of L.S.D.? ---It makes you think you're part of the music, like, you know, a sort of a note of your own.

Approximately how many times prior to returning home to Hamilton had you had a dosage of L.S.D.? ---Approximately 15 times. 10

On any one of those occasions had the taking of L.S.D. had any tendency towards making you violent in any way?---No, not at all.

Did L.S.D. have the effect upon you of making you more desirous of having sexual intercourse?---No, no.

Well then you came home in September 1970, did you not, returned back to Hamilton I mean?---That's right, yes.

And why did you come back home?---I wasn't going too well in Melbourne, I couldn't sort of keep a flat anywhere and getting pretty bad financially sort - so I went back home for a while. 20

In 1970 were you before the Sunshine Court of Petty Sessions on a charge of larceny?---Yes.

And were you put on a bond to be of good behaviour for 12 months?---That's right.

Apart from that episode have you any convictions for violence at all?---No.

Have you ever been charged with any offence relating to violence or assault or anything of that nature?---No. 30

Now in September you have said you came back and you worked then in the shop with your mother, did you, as a shop assistant?---Yes.

Perhaps I should ask you, before that were there two occasions in 1970 when you had crashes off a bike?---Yes, that's right.

When was the first one?---I think it was about May, here in Ballarat.

Did you have any period of unconsciousness as a result of that?---Yes, I was unconscious for about 3 or 4 minutes I think.

Did you have another similar occasion when you had a crash off the bike later?---Yes.

When was that?---Approximately August I think, it could have been -

10 About a month before you came back to Hamilton was it?---Yes.

Were you unconscious on that occasion?---Yes.

For how long?---About the same time.

Now was Lowery a particular friend of yours?---Yes, he was.

Have you known him at school?---Yes.

And you of course met up with him again when you went home in September, 1970?---That's right.

20 Now I want you to come, King, to the events of - before we do, one event first, do you remember being down at .. were you down at Mount Gambier on Boxing Day, 1970?---Yes.

With Lowery?---That's right.

And a number of other people?---Yes, we met some other blokes over there.

What were you doing down there?---We went across to the motor bike races at McNamara Park.

Were you drinking?---Yes, quite a bit.

30 During that weekend or holiday period, including Boxing Day, did Lowery say anything to you?--- We were talking about - I don't know what we were talking about but he come up and said in the car as we were driving round the town of a night, he said, "I wonder what it'd be like to kill somebody" and then he sort of increased on it and said "I wonder what it would be like to

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Evidence for
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Evidence for
Charles Ian King
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Examination
15th June 1971
(continued)

kill a chick". I just laughed it off, I thought he was mucking around.

Did he ever repeat any such words or similar words to you between Boxing Day and 31 January?---Yes, a couple of times.

I want you to come now - well did you take him seriously?---No, not at all.

I want you to come now to Sunday, 31 January, 1971. In the afternoon did you go out on your motor bike to a dirt road at the back of Hamilton?---Yes, that's right. 10

What sort of a motor bike was it that you had?---A 1948 BSA 250.

Did you ride the bike out to the road?---Yes, that's right.

How did Lowery come out?---He came out, following me out in the van with Garry Bailey.

Had you had anything to drink that day?---Yes, we had a couple of cans.

You said "we had a couple of cans" do you mean you had a couple of cans before you went out or you had a couple of cans out there?---Before we left. 20

Did you have any.. did you take any liquor out there with you to the -?---Yes, I think we took about half a dozen cans, I'm not sure though.

Well did you take it in turns to ride the bike up and down this dirt road?---Yes, well Chris started riding when I hurt my ankle going out.

You hurt your ankle going out?---Yes.

How did that happen?---Changing gears, and I missed the gear lever and got my foot caught underneath the foot pedal. 30

You got your foot caught underneath the foot pedal?---Yes, foot rest.

Did it hurt your foot?---Yes, it started to swell up a little bit.

Did it have an effect on your ability to walk?---
Yes, quite a bit.

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What were you doing?---I was limping pretty
heavily sort of thing. And I couldn't ride for
a while.

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Well then when you got home from this bike
riding trip did you take anything when you got
home?---I took about 8 or 9 tablets of methedrine
and a little bit over a tablet of acid.

Evidence for
Charles Ian King
Charles Ian King

10 When did you take the - about what time I mean
did you take the nine tablets of methedrine?---
I couldn't put a definite time, I'd say it
would be somewhere between - in the two hours
between 3 and 5.

Examination
15th June 1971

(continued)

Why did you take it? Take them?---I was feeling
pretty depressed, I wanted to get back to Sydney
to work and I sort of couldn't get there.

Did you have friends in Sydney?---Yes.

20 When had you gone to Sydney?---I'd been up there
now and then during the year but when I came back
to Hamilton I'd been up there for about ten days
staying at my girl-friend's place.

You had earlier been to Sydney on occasions
during 1970?---Yes, that's right.

You felt depressed and you took these nine
tablets of Methedrine, is that right?---That's
right.

30 What effect did they have on you?---They made me
drowsy to start off with, they sort of brightened
me up a bit.

Where were you when you took these?---At home.

Did you take anything else after the Methedrine?
---Yes, I took a tablet of acid.

About approximately when did you take that?---It
was not long after I took the speed.

Speed is the word for Methedrine is it?---Yes.

What effect did that have on you and when did the

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effect start to come on you?---When you first take it you feel flush, heat in your arms and your legs and that. Then things just start to get distorted. It does with me, it varies with different people.

Well when did it on this day?---About 6 o'clock.

And what were you doing then?---Watching T.V.

And what effect did it have on you with your watching of T.V.?---It squashed the figures up in the T.V. set, made the T.V. set look thinner and bigger, waves around, the walls and the floors move up and down, waving. 10

Well after watching television at home what did you do?---Lowery came over in the panel van, picked me up, it was pre-arranged to go to the drive in.

You were going to go to the drive in were you?
---Yes.

He picked you up in the panel van and where did you go from there?---Down to his in-laws place in Shakespeare Street. 20

Yes?---There for a few minutes and went down to - up to Gray Street.

Well first of all at Shakespeare Street where his family is, were there other people there?---Yes, his wife Hazel was there, Mr. and Mrs. Bray and Merilyn Cooper.

Well after being there for a while did you leave there, Shakespeare Street?---Yes.

And as you have said left there, you thought at any rate, to go to the drive in theatre? Is that right?---I knew we were going, but not at that time. 30

Well where were you going?---We were just going down the street first, I don't know if it was arranged to pick up Kevine Butterworth, but we picked her up down the street.

Well you went down the street and you were going to the drive in later, is that what you understood?

---That's right, yes.

When you picked up Kevine Butterworth, you have heard her evidence, have you?---That's right.

That Lowery said to her "What's it worth to drive you home?"---Yes.

Did that happen?---Yes, it did.

And what was - and her answer "Nothing"?---Nothing.

10 And what happened thereafter?---I think Chris hit her, but I wasn't - not certain of it..

Yes, all right.---And I think she might have hit him back. When we got up to Brays' place he gave her a kick in the behind.

When you dropped her at Brays' place, that is Shakespeare Street, is it?---Yes.

Where did you go to then?---We went inside for a while.

20 Yes?---Then we left and I thought we were going to the drive in then. We went up Gray Street again and Rosalyn was walking along the footpath near Thompson's store.

Had you known her before?---Yes, for about two months I suppose.

Had she been to your house?---Yes, now and then.

To see whom?---My brother Stephen.

30 Well what happened? When you met her in the street?
---She waved and yelled out something, Lowery pulled the van over to the kerb and I think I was talking to her for a while, I'm not sure though. Chris said something about a chance or something, but I didn't gerry to what he meant, I was getting pretty stoned then and I remember getting out and she got into the car and things sort of blacked out for a while. I faintly remember going out this road, my eyes were closed, but I could hear the car going, I opened them once and I saw the trees and that all around us, then I don't remember

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the van stopping, but opened my eyes and we seemed to be out in the scrub somewhere. There was no one else in the van with me, I looked in the back and saw this dog and I started talking to the dog for a while.

And Lowery and Rosalyn were still absent from the van?---They weren't in the van, no.

Well what did you do after sitting in the van for a while, what did you do?---I got out and walked about 10 yards in front of the van and sat down next to a tree and I was - hear all this music and watching the trees and everything, saw a few animals walking by and all that.

10

What - how did the trees appear to you?---Taking on sort of like grotesque forms, the branches were like big hands and like fingers, and they sort of curved right over the top of the track, I didn't - be able to see out sort of thing. I got pretty frightened, I think, paranoid.

You got frightened, what?---Paranoid.

20

Paranoid?---Yes.

Did you come across either of them?---Yes, well I had a lot of trouble walking, as I got up near them I walked right on past them sort of thing, I didn't take much notice of them, and I headed into the scrub further away and I come back again and I could see Chris kicking her.

What was - where was she?---She was lying on the ground.

Was she clothed or not?---I don't think so, no.

30

How did he look to you? Chris?---You know, he was really grotesque, he had great big hands and long legs, big feet.

What did you do?---I was scared of him so I sat down in this chair, what I thought was a chair, next to this tree and was trying to work out in my mind what was going on and I was listening to the music all the time and watching people.

Well was Lowery saying anything apart from what

you saw him doing or appeared to be doing?---
He was yelling, but I don't know exactly what
he said.

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Well did you say anything to him or do anything
apart from sitting down under the tree?---I
couldn't appreciate what was going on to do
anything, I was - like, I didn't think anything
was wrong.

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10 Well what happened next?---Lowery walked away and
Rosalyn came over to me and she put out her arm
and asked if Chris - she said "Is Chris going to
kill me"? I just said "I don't know", you
know, I just couldn't gerry what was going on.

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Where was Lowery at this time?---He'd gone away.

20 Well what happened next?---He come back and he
had his hands on her throat, or sort of appeared
to be, and then I started walking away I felt sick
in the stomach and I went away and vomited
further up near the car. I went up to the car and
I come back, I kept falling over coming back
because like the ground seemed to be moving to me,
its going up and down and I was limping and I
stumbled up and Chris had this, wrapping this flex
around Rosalyn's neck.

30 And what happened then?---He - I'm not too sure -
tied her up on the track or tied her up down in
this ditch thing, but I remember him dragging her
down into this ditch, sort of half dragged and
half carried her down and he yelled out to me and
I didn't want to go down and he come up towards me
and told me to "Come down here" and I went down
there and I think he might have said to hold her
feet up or something and he told me to back up the
track, pick up her clothes and I threw some and I
picked up this jumper and hung it on a tree and
then we left.

40 Well when you said you think Chris might have asked
you to hold her legs up, can you remember whether
you did in fact hold her legs up or not?---Not
exactly, no, but I might have.

Were you able to appreciate how she was tied up
the method of tying up?---No, not exactly.

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Was it dark at the time or not? Could you see what was going on?---It was fairly dark because there was clouds in the sky at night sort of thing, there was no moonlight or nothing.

It was pretty dark?---Yes.

Well then at any stage did Lowery do anything else apart from what you have told us?---He had a - what I thought was a bra in his hand at one stage and I thought he put it around her throat, but I'm not absolutely certain it did happen, and I remember -

10

Well was - the picture that you could then see of what was going on a clear picture or how would you describe it?---Not it was very confused, it was sort of ... when you get hallucinations followed by - by what you think is reality and it just keeps on flashing, it gets very confusing.

Did he do anything about lighting a match?---Yes, this is when she was down in the gully he lit this match and there was like, froth around her face.

20

I think you may have a tendency to run your words quickly one into the other, try and speak a little more slowly and more clearly across to the gentlemen of the jury.---Yes.

Now what happened after that? From after she was tied up, bound and left down in the gully, what happened next?---Chris come back out of the gully and started walking back up towards the van, so I followed behind him.

30

Well then when you got to the van was the dog there still?---Yes, Lowery was trying to pull it out.

What happened?---The dog snapped at him.

Then did you get - both of you into the van?--- Yes, he told me to get in. I got in the van and -

Where did you go?---We tried to turn around and he couldn't, so he backed up and turned around and went out the Muroa Lane, about a mile from the track.

40

What happened then?---He stopped the van and told me to see if I could get the dog out. I went around the back and whistled it and pulled the cord and it come out.

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That was in Muroa Lane was it, or somewhere up that way?---Yes, I think it's called the Muroa Lane.

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10 Where did you go after that?---We went back into town, I think we went to the sports centre first next to the..

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Is that where the billiard tables are?---Yes. Lowery pulled up outside there and went inside and I went after him, talking to a couple of blokes from Port Fairy.

(continued)

20 Was there any conversation in the car between leaving the Mount Napier Reserve and getting to the sports centre?---Yes, coming back I asked Lowery - I just asked him what happened and he said, "What's the matter? Are you drunk or something?" And then I told him I was stoned. And he laughed and he said "I killed Rosalyn" and he said, "You helped me" which made it pretty confused. He seemed to be sort of bragging about it, you know, how he smashed her and all this.

Was there anything else said?---He made up this story about a hitch-hiker going to Port Fairy but I couldn't grasp it.

30 Who made it up and what did that person say?--- Lowery suggested we'd have to say where we were so he come across this thing about a hitch-hiker, long hair, going to Adelaide. We gave him a lift to Coleraine.

Did he give any description of this mythical hitch-hiker?---Yes, he said he had a beard and sandy coloured hair. Fairly long. He had denim jeans on.

40 At this stage when you were driving back and he was talking about this hitch-hiker and telling you he killed her were you still on the trip as a result of the LSD? Were you still affected by the LSD or what was your state of mind at that stage?---I was starting to come down then.

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That means-?---Coming out of it.

Come out of the hallucinations?---Sober up sort of thing.

Well you went to the sports centre you have told us?---Yes.

What happened after that?---Lowery had a transistor, he told me it belonged to Rosalyn.

Are you able to say whether when Rosalyn got into the van, or when you were talking to her in Gray Street, Hamilton earlier whether she had a transistor with her or not, did you notice?---No, it was the first I saw of it. 10

Well he said he had a transistor - you said he had a transistor and he said what?---To get rid of it, so we drove out the Hensley Park Road, he instructed me to throw it out the window, I did this and we went back into Shakespeare Street then.

When you went back into Shakespeare Street who was home there then?---His in-laws, his wife Hazel, Merilyn Cooper and I think Kevine was asleep. 20

Did you - five of you, the names have all been mentioned before, then go later to the midnight Drive-In?---Yes, about quarter to twelve we left.

Did you have any knowledge at all prior to seeing Lowery tie Rosalyn up of the existence of the flex in the car?---No, I hadn't seen it before.

After going to the Drive-In were you driven home by Lowery to your own home?---Yes, that's right.

About what time would that be?---Approximately 3 a.m. 30

Well then what happened the next morning, what time did you awaken and get up?---About 12 I think, mid-day.

Yes.--- I didn't have much sleep that night and I got up anyway. I did a bit of work on the bike, we blew it up the previous day. I think Garry Bailey come round, we went up to Lowery's flat at about 2 o'clock.

Did Sugar Bailey say anything to you about what you had done or ask you what you had done last night, you and Lowery?---Yes, he asked us what we did last night and Chris told him we gave Rosalyn a lift down to the Commercial pub and then we gave a bloke a ride to Coleraine.

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That is the hitch hiker?---Yes.

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10 Anything else said by Lowery?---He asked Sugar if Rosalyn had been up to his place the previous night, Sugar said "No." That was about the only conversation at that stage I think.

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Well then at about 5 o'clock that afternoon did Lowery come round to your house?---Yes, he come round about - I suppose it would be fiveish and asked me if I'd give him a hand and shift his stuff down to Woodbridge Street.

Some furniture you mean, shifting stuff - do you mean furniture, belongings?---Yes.

20 Did he come back again later after you had done the shifting? Well you did go and help him with the shifting did you?---Yes, after tea.

Did he come back - he came back after tea and you did the loading after tea, is that what you mean? ---No, I walked up to his flat after tea, and shifted the stuff.

And helped him to shift the stuff then?---Yes.

30 Was there any conversation between you and Lowery then about Rosalyn?---He asked me if I had the story straight, I said I wasn't sure and he started to explain all the fine points and all this other stuff, that was really all that was said on the Monday.

Now that night you were there - this is the Monday night - you were there at .. whilst helping with the moving I suppose or afterwards, and was his wife Hazel there?---Yes, she was.

And other people?---I think one of Lowery's sisters, I'm not sure if it was.. I think it was Mrs.Harris.

40 Did you pass any remark on that occasion to Mrs. Lowery about the baby she expected?---Yes, I said,

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"I suppose you're looking forward to having the baby".

Was that said just as you have said it there? Or did you have some threat in your voice or your tone or -?---No, no threat at all.

Does Mrs. Harris live in Hamilton too?---Yes, further up in Woodbridge Street.

Well then on the Tuesday following what happened? Where did you go?---I went to work Tuesday.

That is at the shop?---Yes, at the shop. About 10
lunch time Lynne Overend, that is the policewoman at Hamilton, came round -

That is Mrs. Johnstone as she now is?---Mrs. Johnstone. Come round and asked me who Rosalyn's latest boyfriend was, I said I did not know.

Do not worry about that. What I do want to take you to is that after Policewoman Overend, or Mrs. Johnstone had left did Lowery come to the shop?---Yes, he come about 5, 5.30 that night.

Did he say anything to you then? About either 20
Rosalyn or the dog or anything of the sort?---I think he come down to the shop for groceries or something and he asked me if I'd heard anything. I told him they'd found the dog out at Muroa Lane or somewhere.

You told him that they had found the dog?---Yes.

Did you tell him that - did you tell him anything about Policewoman Overend's visit?---Yes, well she gave me instructions to -

I do not want you to say what she said, but what 30
you said to Lowery about Policewoman Overend's visit?---I said to Lowery "Probably have to make a witness statement".

COURT ADJOURNED AT 10.45 A.M.

COURT RESUMED AT 1.24 P.M.

MR. OGDEN: Your Honour, before I resume with evidence for the accused King, there are two matters, Your Honour. One is that I have a number

of experts who have come up from Melbourne, and there may be others who, from time to time, arrive Your Honour, as and when that - it can be arranged for them to do so, and I take it that if it is not within the letter of the direction that Your Honour gave it is within the spirit of it that they should be permitted to be in Court and to hear any evidence that may assist them in giving their own evidence, expert evidence Your Honour.

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HIS HONOUR: Yes, I think your experts should be treated in the same way as the others.

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MR. OGDEN: Another matter, Your Honour, is that I would like Your Honour to order that the two Exhibits which relate to the handwriting, one the letter that I put to the accused Lowery and the other the specimen of writing that he performed in Court.

HIS HONOUR: Do you mean "K1" and "K2" for identification?

MR. OGDEN: Thank you Your Honour, that those two exhibits be released to Sergeant Bethune whom we have here, Your Honour, to - Timewell, Your Honour, Sergeant Timewell to examine, Your Honour.

HIS HONOUR: Yes. Is there any objection to that?

NO OBJECTION BY COUNSEL.

HIS HONOUR: Yes, very well.

CHARLES IAN KING, recalled and warned.

MR. OGDEN: And also Your Honour if we may also have released to Sergeant Timewell Exhibit "U" which is the fingerprint chart and contains some writing of Lowery.

HIS HONOUR: Yes, any objection?

NO OBJECTION BY COUNSEL.

HIS HONOUR: Very well.

MR. OGDEN CONTINUED EXAMINATION--IN-CHIEF.

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MR. OGDEN: King, I want you to come now to the events of the Wednesday. Did you go to work as usual that morning?---Yes.

And were you informed during the morning of the fact that Rosalyn Nolte's body had been found?---Yes.

And did Policewoman Overend come to the shop late that morning?---Yes, she did.

Did you finish work and go home at about what time, 6 p.m. or thereabouts?---Approximately, yes. 10

And did the accused Lowery come to your home that evening?

MR. WRIGHT: Your Honour, these matters....

HIS HONOUR: Yes, those are matters in conflict I think, and it is wrong to lead.

MR. OGDEN: Did Lowery come to your home that night?

HIS HONOUR: Well that is the very question that is objected to, is it not? The question is whether anybody came to his home I suppose.

MR. OGDEN: Well did you see Lowery that night anywhere?---Yes, I think he might have come round just before I finished work and asked me if I'd help him shift - pick up a table from Tahara and bring it into town. 20

Well what - where was the table to be picked up, you have said Tahara but at anyone's place?---Yes, Cooper's.

Is that Marilyn Cooper's parents' place?---That's right.

Where was it to be brought from Tahara to where? ---Into Hamilton, I'm not too sure where it was supposed to be left. 30

What did you say to him when he made that request to you?---I said Yes, I suppose I would.

Did you go out with him?---Yes.

To Tahara?---Yes.

Was there any discussion between you and Lowery on the trip?---Yes, Lowery asked me what .. Lowery asked me if I knew the body had been found, I told him it had, and also told him I wasn't supposed to leave town because I'd probably be wanted for interview later on that day.

10 Anything further said?---He just asked me if I was sure I had the story about the hitch-hiker straight.

Anything else?---No, not that I can think of.

20 Where did you go then?---We went up to Lowery's flat first, I think we'd picked up his mother-in-law and took her to the flat and left the mother-in-law and Hazel Lowery there and went out to Tahara, we were out there for about half an hour or so. We come back in, went to the flat and Mrs. Bray told us the Police wanted us for questioning. We took the table down to Chris' father's place and went to the Hamilton Police Station.

At the Police Station you were interrogated were you by the Police Officers there?---Yes.

And you each made statements which are in this Court Exhibits "BB" and "GG".. After making those statements about what time did you leave the Police Station?---I think it was about nine o'clock, I'm not certain of that.

30 Did you leave together? You and Lowery I mean, did you leave -?---Yes, we did.

Was there any conversation between you and Lowery after you left the Police Station?---He asked me what I said in my statement.

Did you tell him?---Yes.

Was there anything else said?---No, not that I remember.

Well then on Thursday did you go to work again?---Yes.

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Were you, during the day, told that you were required back at the Police Station?---Yes, came in about one o'clock in the afternoon.

Did you go to the Police Station?---Yes, I left for the Police Station about 2 o'clock.

Where did you go then?---I went down to the Police Station, made another statement.

That is the longer statements that are in evidence, yours was Exhibit "OO", it is a longer statement, you can have a look at that if you like.---Yes, the one I made. 10

That is the one you made on the Thursday is it?---Yes.

And Exhibit "FF" we know is the statement that was made by the accused Lowery. During the course of the questioning at the Police Station on the Thursday night - How long were you there altogether, Thursday afternoon and night?---I'd say about six hours.

And were you asked some questions about another motor car?---Yes, I was asked about a two-tone Holden. 20

What colours?---Green with a white top, had body filler on it or something.

And were you given any instructions about clothing? ---Yes, I was told to bring the clothes I was wearing on the night of the Sunday 31st into the Police Station about 9 o'clock the next morning.

Who told you to do that? Do you remember?---I think it could have been Detective Rippon. 30

Well then whoever it was, did you then - were your fingerprints taken also on that occasion?---Yes, they were taken in the afternoon.

Well then as you left the Police Station was your father waiting outside?---Yes, he was waiting across the road.

And did you see a green and white Holden sedan? ---Yes, it was at the Mid-City Service Station.

At the Mid-City Service Station?---M'mm.

Did you go back and tell the police about it?
---Yes.

And you have heard the evidence that you were taken in a police car and you looked for that car around the town, is that right?---That's right.

Were you taken in a police car then and looked for it round the town?---Yes.

10 And did you find it?---No.

Well then come to Friday, did you take your clothes into the police station?---Yes.

And did you see Lowery at all during the day?
---Yes, he was down there a bit later than I was.

In the street at Hamilton did you see him?---Yes I saw him in the afternoon.

Well then on Saturday did you see Lowery on that morning?---Yes, he come round about 10.30 I think, I was just having breakfast.

20 Did you go anywhere with him?---Yes, we were going down to the pub first, we were going down there but drove around then he went back to his in-laws place at Shakespeare Street to pick up some money.

Then did you go for a drive?---Yes, he took us for a drive up - went out on the Mount Bainbridge Road and back into town that way.

30 While you were out there was anything said by Lowery?---He said "Things look pretty sweet", and I said, "Don't be too sure of it." And he says, "Oh we'll find out anyway", that's about all that was said.

Well then after that drive to Mount Bainbridge Road where did you go to then?---Went down to 3 Shakespeare Street and there was I think three Detectives waiting for us out the front.

Well we have heard the evidence about them picking

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you up there outside those premises. You were taken then to the Police Station, is that so?--- That's right.

Well now it was then that you were interviewed at length and you made and signed a record of interview which has been tendered in evidence?---That's right.

Could I have that? Exhibit "HH". Would you have a look at that?---That's the statement I made.

That is your record of interview that you signed? 10
---Yes, made on the Saturday.

And then of course after the signing of that you were arrested and you were locked up and charged? ---That's right.

And have you been in custody ever since?---That's right, yes.

Were you given a copy of that record of interview on that Saturday evening?---Yes, it was given just after I signed it.

Well the evidence is that it was signed at about 4.10, do you mean just after that you were given a copy of it?---Yes. 20

And what did you do with that copy?---I gave that and the charge sheet to my father.

When?---I think it was around about 6 o'clock, I'm not certain.

On the Saturday?---Yes.

6 p.m.?---Yes.

When did you next see your father? After you handed him that statement at about 6 p.m.? Did you - when did you next see your father?---I think it was the Sunday morning. 30

And did your father tell you anything?---Yes, he told me not to tell the police any more, or go out to the site of the killing, or allow them to take any photos or movies, things of that nature.

Well after your father had been to the police station were you asked on the Sunday morning to make a film or go out to the scene?---Yes, sir, Detective Morrison took me inside and asked me if I'd shown them where he picked Rosalyn up and where we took her.

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10 What did you say?---I asked if I could ring my father first, he said it was O.K., so I rang up home and my brother answered the 'phone and said dad wasn't home. I hung up and then asked if I could ring my solicitor. I was refused that and they sort of put to me it was something I had to do so -

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It was put to you it was something that you had to do?---Yes. I understood by that that the solicitor must have made a mistake or something.

Well you were taken to the street in Hamilton?---Yes, taken to Gray Street.

20 And as you saw on the film you showed which way Rosalyn was walking when she came up to the car and how she got into the car and so on, did you not, at Gray Street?---Yes, sir.

What happened next?---They asked me which way we went to Mount Napier, I told them I couldn't remember which way we went. They took me out to Mount Napier and got out the car and started to walk up the track.

30 Was any further warning given to you after you had left Gray Street and before you started to walk along the track?---No.

When you did walk along the track what was your recollection of the place where the events had occurred? Was it a clear recollection or -?---No, it wasn't very clear at all.

How far did you walk along the track on the Sunday morning?---I'd say it would be approximately 200-300 yards.

40 The film shows that there were several occasions when you stopped on the track and appeared to look around, what were you doing then?---I was trying to get my bearings so to speak, I wasn't too sure exactly where it was.

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When you got to a spot which you thought might have been the place you then, as the film shows, showed certain actions on the film. You saw the film?---Yes.

What were you showing the Police by your actions at that time?---Do you mean when we'd come to the scene, do you?

Yes.---I was showing them what I thought Chris was doing at the time.

Then after being out there at Mount Napier and the filming there you were then taken to a spot and there was some more filming of the finding of the transistor radio was there not?---That's right. 10

Would you tell the gentlemen of the jury what went on at that spot on that roadway?---When we come up there they asked me to get out of the car and help them look for the transistor radio, I climbed up the bank and I was looking around and Detective Rippon yelled out "It's over here" and they stopped the filming then. They told me to walk over to it and point to it. 20

Did you do that?---I did, yes.

Was the car radio there where Detective Rippon had said?---Yes, the transistor was there in the grass.

When you were asked about going out to make this film did you say "Yes, I suppose it won't hurt"? ---I did say that, but I added on to it "I should ring my solicitor first."

Now would you keep the record of interview in front of you, I do not think we need bother about the first page of it. Do you see on p.2 of the record of interview towards the bottom you were asked "Would you tell me in your own words what happened on Sunday night?" And then there was a long pause and did you say, "The only thing I can remember is about Mount Napier, I don't remember going out there" or words to that effect?---Yes. 30

And then you say there, "Chris was kicking her on the ground" in fact is that what you saw happen at the scene?---That's what I thought I saw happen, yes. 40

You say - asked "Why was he kicking her?" You said, "I don't know, he went mad." What are you referring to about that?---I'm mainly referring to my thoughts afterwards.

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In what way do you say he went mad when he was kicking her?---He seemed to be sort of enjoying it more or less.

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You say in the record of interview he, meaning Lowery, "had hold of her arm and she complained that it hurt"?---Yes.

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Did that happen? Did you recall that happening at the scene?---Yes.

(continued)

And in fact at the scene did Rosalyn say anything at that stage when she complained that it hurt, what did she say?---I thought she said it was broken.

And what did Lowery reply to that?---"Stiff shit".

Well if you would just read through that record of interview from that point onwards, "Why did he have hold of her arm". Do you see that question?---Yes.

20

If you would just read through the rest of that page, that is p.3,?---Yes.

And read p.4. Read p.4 down to where you were asked the question "What did you do then?" And your answer "Tried to get the dog out of the back", this is after the events at Mount Napier when you - read down that far on p.4 of the record of interview. Have you done that?---Yes.

30

Well now as far as your recollection goes, is that account on those pages up to that point to the best of your recollection accurate as to what occurred in fact on this Sunday night?---Yes.

Well then would you look at p.5? You were asked some more questions there about what happened out at the track, do you see on p.5?---Yes.

And would you read p.5 down to the answer that you gave, towards the bottom, "I thought he might turn on me." Do you see that answer?---Yes.

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Well now if you read p.5 down to there, is that account that you have given of the events at the track to the best of your recollection accurate?
---Yes.

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Well now you have heard evidence given by Mrs. Johnstone who was Policewoman Overend, that on the Saturday night at the commencement of the interview which resulted in the record of interview you asked for her to be called to the station did you not?---
That's right, yes.

10

Before you asked her to - asked for her to be called, you have heard evidence that you were crying and sobbing at the police station?---Yes.

Is that true?---That's true, yes.

Were you very upset at that time?---Yes, I was.

And you did in fact ask for her to be called, is that right?---Yes.

MR. WRIGHT: Sir, I would ask my friend not to lead on some of these points.

HIS HONOUR: Yes, the objection seems to be well taken.

20

MR. OGDEN: Very well Your Honour. (To Witness):
When she came what was your condition then?---I was very upset.

What did you do?---I was sobbing a bit.

Did you say anything to her?---Yes I said "I'm sorry," that I didn't do it. And I asked her to write to my girlfriend in Sydney, and she then left the room.

Well now I want to go to - Your Honour, I am sorry for this, at my own request I have asked for exhibits to be released, but I should not have, Your Honour, I want this witness to identify -

30

HIS HONOUR: Yes, well are they still in the building?

MR. OGDEN: I believe so Your Honour. My instructing solicitor is trying to get them.

HIS HONOUR: Yes.

MR. OGDEN: I am handing you Exhibit "K" for identification. Have you had a look at that?
---Yes.

Whose handwriting is that?---I think it is Lowery's.

When did you first see that document?---It was handed to me at the holding cells here.

By whom?---Lowery.

10 Did he say anything to you when he handed it to you?---He said "This is what you want to say in Court".

Your Honour, I now tender that absolutely.

EXHIBIT EXHIBIT "K1" Document handed to
(Admitted Absolutely) the witness.

MR. OGDEN: Would you just hold it - perhaps hand it to be marked as an Exhibit first. Would you read out what is on that Exhibit?---"At approximately".

20 Blank is it? "At approximately - blank -" is it?
---Yes.

Yes?---"On Sunday January 31st."

No speak - read a bit louder please, the jury will never hear that.---"On Sunday January 31st I took tablets of Methedrine".

30 "Took - blank - tablets" is it?---Yes, "Took - blank - tablets of Methedrine until 7.15 p.m. At 7.15 Christopher Lowery arrived at my parents house at 46 Stephens Street. About five minutes later we left Stephens Street. As we backed out the drive I took an envelope from my pocket and from it I took a tablet of L.S.D. At about 8 p.m. in the company of Lowery I saw Rosalyn Nolte leading her corgi dog along Gray Street. She waved to me and I told Lowery to stop and pick her up. When she come up to the van she asked Lowery if we would drive her to Kenny Street to see Garry Bailey. I told her that Bailey would not be home as he had gone to a party at Toolong. She asked us if we could take her there and we agreed

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to do this. It was my intention to have sex with her. By this time the drug was beginning to work. I asked Lowery if he knew the way to Toolong and he said that he didn't. So then I directed him to the Mount Napier Reserve. When we arrived there I directed Lowery to a small track. When we stopped."

"When he stopped", is it?---"When he stopped the van I asked the girl if she would go for a walk with me and she said that she would. When we were out there - when we were out of sight of Lowery I asked her to take her clothes off and she agreed. Suddenly I become excited and I began to strike her around the head. She fell to the ground, I grabbed her arm and stood her up. She cried out as I pulled on her arm. I then struck her again and she fell to the ground, then I returned to the panel van where Lowery had parked it. Lowery was sitting there drinking beer. I saw a length of electrical cord lying-"

10

20

"I saw" or "I seen"?---"I seen". "I seen a length of electrical cord lying on the seat of the van and I took this and returned to the girl. When I got back she was on her feet and she was holding her arm. I grabbed her and put the flex around her neck and pulled it tight. Lowery then came along the track and attacked me. I pushed him away and he fell to the ground. He stood up and attacked me again. I let go of the girl and knocked him to the ground again. I told him that if he interfered again I would kill him. I then told him to gather up her clothes and throw them away. I dragged her off the track and tied her up then Lowery and I left the scene. Lowery had nothing to do with the killing and I forced him to do what he did do."

30

Did do?---Yes. "The next night I went to Lowery's flat at about 7.15, Lowery went to the toilet and I made threats to his wife. On Saturday, 6 February, I seen Lowery drive past my house in Stephen Street and I signalled him to stop. We both remained there for about 20 minutes and then we went for a drive. While we were driving I told Lowery that I thought I'd been found out and I told him that if the Police got me he was to say that he was involved. He wasn't involved. I made more threats at this time."

40

And that is the document that he handed to you?
 ---That's right, yes.

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Is the account that you have given in the
 witness box today a true account of the events
 which occurred - all the events of which you
 have recounted?---Yes.

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Insofar as that document which you have just read
 out conflicted with that, what do you say about
 it?---It's completely false.

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Did you do anything out at the scene by way of
 striking, kicking or punching Rosalyn Nolte on
 Sunday, 31 January?---No.

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MR. BYRNE COMMENCED CROSS-EXAMINATION

Cross-
 Examination

MR. BYRNE: Did you obtain your Intermediate Certi-
 ficate, Mr. King?---That's right.

You had not done as well in that year at school
 as you had in previous years, is that so?---That's
 right, yes.

20

In previous years had you come close to the top
 of your class?---Yes.

In fact, had you topped your class on occasions?
 ---Yes, I think it might have been Form two.

And you left school after obtaining your
 Intermediate did you?---That's right.

You were transferred by the P.M.G. to Melbourne
 in December, 1969?---Yes.

And lived at various places around Melbourne and
 the suburbs -?---Yes, that's right.

30

When was it that you made the acquaintance of the
 University students?---More or less on and off all
 year. I met more towards July.

Where were you living then?---At a terrace house
 with some mates in Curtin Street, Carlton.

When was that, July?---It could have been before
 July.

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How much before July?---Six weeks approximately.

Did any University students share a flat with you at any time?---No, not University students.

You got on well with the students, did you?---Yes.

Did you wear your hair in that fuzzy style that you were shown to have it in the film that we saw, Exhibit "K"?---Yes, a bit longer than that.

Did you have a beard?---At that time, yes.

Among the students that you were friendly with there were drug takers were there not?---Yes. 10

Acid takers?---Yes.

And they had acid trips did they not?---I suppose they might have, yes.

Well they talked about them to you did they not? ---No, not really talked about the trips or that.

Did they not discuss them at all?---Maybe the only discussion you ever hear about it is when they freak out or something.

Did they talk about the effect that the acid had on listening to music?---No, I don't think so. 20

Did not? Do you listen to classical music?---No, not at all.

You never visited the National Gallery while you were down in Melbourne did you?---Yes, once.

Fond of looking at works of art?---Yes.

Did the students that you knew speak of the effect of acid when they looked at pictures?---No, not that I know of.

I suppose you met some drug takers while you have been on remand in this matter have you?---There's been a couple in there, yes, sir. 30

How did you know they were drug takers?---Pick them by appearance.

You could recognise them could you?---Yes, some of them I can.

Did you talk to them?---Yes, I had a conversation with a few of them.

And that confirmed your impression that they were drug takers, did it, when you talked to them?---Yes.

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They told you about taking drugs?---They didn't tell me about taking drugs, they just told me they were on drugs, that's all.

What do the letters LSD stand for?---I think it is Lycasurgic or something like that.

Lycasurgic what?---A drug, I believe, I'm not sure though.

What does the "D" stand for?---Drug I think.

You have heard the word "Lycasurgic" before have you?---I think I've read about it somewhere, I'm not certain though.

20

You have read about LSD have you not?---I've read about, like, the experiments going on with it, that's all.

You have been interested in it for some time have you not?---Not a long time but -

You have read about the way in which it affects different people.---I don't believe there are any books about that really.

You did tell us in answer to your counsel, did you not, that LSD affects different people in different ways?---That's true, yes.

30

You said you had the flushing effect?---This is common all round I think.

But other people have other symptoms do they not? ---They may have, yes.

What would they be?---I wouldn't have any idea. I wouldn't have a clue.

How did you know that it did affect other people

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differently?---I think I read about it, and there's a thing in the Reader's Digest about it..

The letters stand for Lysurgic Acid Diaphilomite do they not?---They may.

Where did you get it?---Off some mates.

Where?---In Melbourne.

Was it a donation or did you pay for it?---I paid for it.

How much?---About six or 7 dollars a tablet.

When did you start taking it?---March or April. 10

What was the first trip like, a good one?---Yes, it was good.

You did not know what it was going to be like before you took it did you?---No idea, no.

You had not found out anything about it before you tried it?---No. Only what I'd heard.

Were you not curious to find out how it might affect you?---I thought trying it was the easiest way.

It might have been very unpleasant for all you knew?---It's possible, yes. 20

But you were not so much curious as to question some of your University friends were you?---No.

Is that true?---That's true, yes.

Well you found that you liked it did you?---Yes, it's all right.

And you kept taking it?---Yes.

When was it that you first took it?---March or April.

Of what year?---1970.

March or April of 1970. And by January 31 of 1971 30
you had had as many as fourteen or fifteen trips had you?---That's right, yes.

You found that as you kept taking it that you were getting control of it did you?---No, it's something you wouldn't get control of.

Yes, but you began to feel at home with it?---No, I wouldn't say that.

Were they all good trips?---I've had a bad one.

When was that?---It was about July I think. I took too much.

10 Were you buying other drugs at about the same time?---Not so much grass and stuff, I had a bit of that left over from the girl I was going with once.

A fair bit of what?---Grass and hash I sort of had left over from when I was going with this girl I first got it from.

Were you taking speed?---Once before, yes.

What sort of a drug is that?---Methedrine. Amphetamine I think it is.

20 When you took the 8 or 9 tablets on January 31st - was it?---That's right, yes.

What did that cost you?---Nothing.

Where did you get that?---Off a bloke coming through from Sydney.

That is somebody from Sydney donated that to you did they?---That's right, yes.

You had a supply of drugs at your home in Hamilton, did you?---I had a bit there, yes.

Still there I suppose, is it?---Not any more, no.

Is it not?---No.

30 Well it was there on January 31st, was it not?---That's right, yes.

What happened to it?---I flushed it down the toilet.

When?---About Wednesday, Thursday.

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Of course you had convinced yourself that you were not being sold aspirin tablets or something like that, had you not?---Yes.

There are no drugs of any description to be found in your home at Hamilton now, are there?---I don't think so.

Got rid of it all?---I think I did, yes.

When you took the speed, that is the Methedrine on the 31st it made you depressed for a while, did it?---No, I was depressed when I took it. 10

But you felt depressed after it, did you not?---Straight away I did, I still felt depressed sort of thing.

Had you often taken that?---Methedrine?

Pardon?---Methedrine?

Yes?---Only once before.

Never took it together with L.S.D.before?---Yes, once before.

Had you?---Yes.

And was that to improve the trip?---Yes. 20

Make it last longer?---No, I flaked out.

Well it was not a very good experience when you took it before?---No, it wasn't really.

When did you do that?---I'd say it would be somewhere around June, July.

Well did you expect to flake out again when you took it on Sunday 31st January?---I thought there was a chance, yes.

What wages were you earning when you were down in Melbourne?---Approximately 60 dollars a fortnight. 30

And were you paying rent on a flat?---Yes.

What rent were you paying?---About 13 dollars.

Running your motor bike?---Didn't have a motor

bike at that stage.

Did you have any motor car or any vehicle down there?---No.

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HIS HONOUR: The rent was 13 dollars a week?---Yes.

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MR. BYRNE: Were you buying any other drugs apart from L.S.D. down there?---No.

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Only LSD you bought?---M'mm.

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Did not have a motor bike at all during 1970?---
I had a lend of a mate's of mine, that's all.

10 M'mm?---Had a lend of a bike of my mate's...

(continued)

Well you crashed that in May did you?---No, in
May I was on pillion with one of my other mates.

Pardon?---I was pillion with one of my other
mates when I crashed in May.

Well you were not riding your bike then, were
you?---I don't think so, no.

Was that your mate's bike?---Yes, a bloke from
Western Australia.

20 Was it the same mate's bike you crashed again in
August?---No.

Had no trouble in borrowing motor bikes?---Well
I was going to buy this one.

How did you go over to the bikes at McNamara Park
in Mount Gambier at Christmas time?---With Chris
in the panel van.

Did you bring your bike with you?---No.

Well now Mr. Lowery, the gentleman sitting down
is a particular friend of yours?---Yes, he was
then.

30 At school with him?---Yes.

You have been very close mates, have you not?---
Over the last - well before this incident we were,
yes.

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Did you still feel friendly towards him after you had seen him committing murder?---No.

Felt some hostility towards him then, did you?---Yes, to a certain extent I did.

And that was after you came down from your trip, was it?---That was from then on, yes.

Well now would it be correct to say in colloquial language that when you were at Mount Gambier you were boozed all the weekend?---Yes.

Boozed on beer, on alcohol?---Yes, beer, honeymeade. 10

And what?---Honeymeade.

Honeymeade, you drink that over in South Australia, do you?---Yes.

No drugs at the bikes?---No.

And Lowery said to you as you were driving around the town one night, he said, "I wonder what it would be like to kill somebody", did he?---That's right, yes.

What did you say?---Just laughed and passed it off as a joke. 20

Well you made it quite plain to Lowery that you regarded his remark as a flippant one, did you not? ---What do you mean by that?

As a joke?---Yes.

Not taking it seriously at all?---No.

And you made that obvious to him?---That's right, yes.

Gave him no ground to believe that you were interested in doing such a thing?---That's right, yes. 30

And you were not, were you?---No.

Well then you say he sort of increased on it, what do you mean by that?---He kept on talking about it.

When?---Right up until the incident.

Well did you ever fail to let him know that you were not taking him seriously?---Yes, I just didn't take any notice of him in the end.

It got a bit tedious, did it?---It wasn't actually tedious, but -

Every time he talked about it you would make it plain to him that you thought it was a lot of nonsense?---Well towards the end I didn't take any notice of him at all, didn't say nothing.

10 But before you got to the end you never failed to let him know that you were not taking him seriously?---That's right, yes.

Now how did you go about that?---I just said "You're mad" or something like that, you know.

What was that?---I said, "You're mad".

Did you think he was serious?---No, I didn't.

It never occurred to you for a moment that he might really be enthusiastic about such an idea? ---No, I thought he was just joking all the time.

20 Did you ever call him a "Damn Sadist"?---Yes, I did once.

Did you mean that at the time?---Yes.

Well you really thought he was a sadist did you? ---Yes.

When was that?---I'm not sure if it was before or after the killing. But I do remember calling him a sadist.

30 I am asking you about these occasions when he was discussing this interest of his as to what it would be like to kill somebody. Did you ever call him a 'damn sadist' when he spoke in that vein to you, before the killing?---I may have.

Do you say to the jury, Mr. King, that you did say that to him but you are not sure whether it was before or after the killing?---That's right, yes.

That is the truth is it?---Yes.

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When you went to the bike track with Sugar Bailey and Lowery on 31 January you had some rides on your bike did you not?---Pardon?

You had some rides on the bike that afternoon?---
Yes, later on.

You had some beer before you left?---Yes.

How much?---About two cans.

What sort of beer was it?---I wouldn't have a clue.

What colour were the cans?---I wouldn't remember.

You took some beer out - about half a dozen cans out to the track?---That's right, yes. 10

What time did you arrive at the track?---About 1.30 I think, it may have been later.

And you and Bailey and Lowery shared the half dozen cans during the course of the afternoon?---That's right.

Shared them equally did you?---It mightn't have been equally but -

Well nobody -?---Nobody complained, no.

Mr. Bailey says - p.322, - that you got back from there at about 6 o'clock.---I think it would be earlier than that. 20

But you were not paying any particular attention to the time were you?---No, not really.

After you got back from there what did you do? Went into your home?---I started a bit of work on the bike first. Then I went inside and laid down for a while.

What next?---I took the speed.

How long did you work on the bike?---Not very long at all. I got sick of it. 30

What did you do to it?---Started to take the head off.

How long did you spend doing that? If you started

to take the head off -?---Ten minutes at the most.

How far did you go?---I just took the tappet cover off and started to undo the nuts and the head.

Did you undo the nuts?---Not all of them, no. I loosened them all off I think.

After you loosened them all off you just left it did you?---Yes.

10 Went and lay down for a while?---That's right, yes.

Did you go to sleep?---No.

For how long did you lie down?---About ten minutes.

Then you took the speed did you?---That's right, yes.

How did you know it was Methedrine you were taking?---You usually just trust somebody when you get something like that.

Somebody sent it through the post did they?---No.

20 What, brought it down by hand from Sydney?---No, I had it when I came home, from Melbourne. A couple of them anyway.

This is the Methedrine you are talking about?---That's right, yes.

You brought that up from Melbourne?---Yes.

Somebody gave it to you in Melbourne?---I'm not too sure whether it was Melbourne or Sydney I got it from.

It did not cost you anything?---No.

30 Who gave it to you?---I'm not too sure if it was the girl from the pub I was talking to one night or one of my mates.

How much did they give you?---It could have been Jerry Humphries, I'm not sure.

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How much were you given?---I think it was about ten, it could have been less.

Just as a free gift?---Yes.

It was not a sample or anything?---No.

You knew the pushers in Melbourne, did you, the drug pushers?---I've seen them around but I didn't actually know any personally.

Who did you buy the LSD from?---Jerry Humphries.

Where did you meet him?---I think it was the T.F. Much ballroom.

That is the name of it, is it, T.F.Much?---M'mm.

That is where you go to get drugs is it?---No.

Does he run the ballroom?---I think he's got a part in running it.

Where is this ballroom?---It's down in Fitzroy.

What is the address of it?---Cathedral Hall - I'm not too sure of the street though.

Well having had your little rest you swallowed eight or nine tablets of Amphetamines did you?---That's right, yes.

That is the correct name, it is Amphetamine is it not?---I think so.

Lowery was not there then was he?---No.

You did not tell him that night that you had had any speed did you, until after the killing?---That's right, yes.

You did not tell him that you had had any LSD until after the killing did you?---That's right.

You gave him no reason to think that you had?---No.

Had you ever given him, so far as you are aware, any reason to believe that he could kill somebody in your presence and get away with it?---No.

10

20

30

Never discussed what it would be like to kill somebody in the context of taking drugs have you with Lowery?---No.

What it would be like to watch somebody die under the influence of LSD?---No.

Nothing like that?---No.

Well to use your words, Mr. King, you were asked by my learned friend Mr. Ogden this morning with respect to these tablets of Methedrine 'what effect did they have on you?' and you said "They made me drowsy to start off"?---Yes.

You have a clear memory of them making you drowsy have you not?---They start off and make me drowsy straight away.

I suppose after a while your drowsiness passed off with time did it?---Yes, that's right.

And you were still feeling a bit depressed?---No, I was starting to feel a bit better then.

You took the LSD tablets next did you?---More or less straight afterwards.

Did you take that to brighten yourself up?---Yes.

To make yourself feel less depressed?---Yes, that and other things.

How much after the Methedrine did you take the L.S.D.?---It would be only a couple of minutes at the most I think.

Well then you had a look at the television?---Yes.

You saw the television go out of perspective, did you?---Yes.

And you knew there was nothing wrong with the set? ---Well the set was moving too, so -

Yes, there was nothing wrong with the line hold? ---Oh no.

You knew that?---Yes.

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You knew at the time that you were seeing something that really did not exist in fact?---That's right, yes.

You knew it was the effect of the L.S.D.? Did you not?---Yes.

That was because of your past experience with it? ---M'mm.

You did not believe for a moment that the television set was really in the shape that it seemed to you to be in, did you?--You can't say it definitely, it goes through your mind, you think what you are seeing is going on. 10

Yes, but you knew very well from past experience that they were pseudo-hallucinations that you were having, false hallucinations were they not?---It may have crossed my mind.

Had you felt any symptoms at all before noticing that?---I felt flushed.

Flush?---M'mm.

No others?---My muscles seemed to get a bit stiff, you lose your strength sort of thing. 20

What is that?---You lose your strength.

You are speaking in general now, "you lose your strength", did it happen on this occasion?---Yes.

Well you watched some T.V. programme, did you?---I was watching T.V., I don't know what was on though.

Why watch it?---For the sake of something to do more or less, just watch the T.V. sort of groove on it. 30

Pardon?---Groove on it, sort of thing.

What programme was on do you know?---No, I don't.

Well you had made an appointment to meet Lowery, had you?---He said he was coming around to pick me up about sevenish.

Well how long had you been grooving on the T.V.

before he arrived?---I suppose it would be close on an hour.

Well you were strobing then were you?---No, I wasn't strobing at that time.

What does strobing mean?---Well when you're on acid you get flashes of hallucinations then flashes of what you think is reality.

Well things simply looked distorted at that time?---Yes.

10 And that went on for about an hour, did it?---
Close to an hour anyway.

You did not have your tea that night, did you?---
Yes.

You did? Well where did you fit that in?---In
my stomach.

I suppose you did, but what stage did you go about
trying to fit it into your stomach?---Well this
is about - had tea about six, quarter past six,
well it takes a while for the acid and that to
20 start taking effect.

You are in a happy frame of mind today, are you?
---I'm nervous.

Well now did you dine with anybody, in anybody's
company?---Yes, my parents, my brother and
sister.

Talking to them at the dinner table?---I had
tea watching tele.

Watching tele too, were you?---Yes.

Joining in the conversation?---I might be.

30 What was your experience during your meal, if
any?---I could sort of start to feel it taking
effect, that's all.

What?---Pardon?

What was the feeling?---Just, things seemed to be
moving, just slightly.

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Not strobing during tea?---No.

That certainly did not start during the meal, did it?---No.

It would be quite wrong to say it did?---Yes.

Now what next happened?---Lowery came round about 7 I think.

What happened then?---Went down to his inlaws place in Shakespeare Street.

Did you converse with anybody there?---Yes.

Who did you talk to there?---Probably everyone. 10

What did you talk about, do you remember?---No.

What happened next?---We went down the street, we saw Kevine Butterworth, took her back up Shakespeare Street.

And how was the acid affecting you at that time?-- It was starting to build up a bit.

What do you mean by that?---Well it takes - it can take anywhere between half an hour and three hours to - before you actually start tripping.

Well you have timed yourself, have you?---That's 20 only approximately.

Or is this something you read?---No, something I know.

Pardon?---It is something I know.

What, somebody told you?---No.

All right then, well what happened after that?--- We took Kevine back up to Shakespeare Street and we left - went back down Gray Street.

Well in Gray Street you saw Rosalyn Nolte?---That's 30 right, yes.

You met her before?---Yes.

She was friendly with your young brother Stephen was she?---Yes.

How old is Stephen?---13.

Is that the lad sitting in court there?---No.

Not here?---No.

And he is 13?---That's right.

And Rosalyn had her dog with her?---Yes.

She waved?---Yes.

And called out something?---Yes.

You did not hear what she called out?---No.

10

Lowery pulled the van over to the kerb?---That's right.

Do you remember all this?---Pardon?

Do you remember all this?---Yes.

And you talked to her for a while?---Yes.

Lowery said something about a chance?---Yes, that's right.

You got out of the car?---Yes.

Out of the van?---That's right.

She got in?---Yes.

And you got in?---That's right.

20

She sat between you and Lowery?---That's right, yes.

And you blacked out after that, did you?---Yes.

Just blacked out?---Went to sleep sort of thing.

Yes, got a complete blotting out of your memory?
---Yes.

As if you were asleep?---Yes.

And the next frank memory you have or the next memory you have I should put it to you is that you were going out on a road?---Yes, we were going

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along a road, yes.

That is only a faint memory?---M'mm.

And you blacked out again?---Yes.

Complete blotting out of your memory there? After that?---Yes.

You do not remember the van stopping?---No.

You do not know where it went, you do not remember going anywhere?---No.

And the next thing you remember is you were alone in the van?---That's right, yes. 10

And there was a dog in the back?---Yes, sir.

Was that the dog that Rosalyn had had?---I think it was, yes.

Did it look the same?---To me it did, yes.

Were the headlights of the van on?---No.

They were switched off?---That's right, yes.

It was quite black outside the van was it?---Fairly dark, yes.

Pitch black out there in the bush?---I wouldn't call it pitch black. 20

It was cloudy weather?---Yes.

And it was dark?---It was dark, yes.

Very quiet?---For the bush it was, yes.

A silence you get out in the bush at night?---It's not complete silence, it's silent in its own way.

You could not hear anything?---Yes, the wind.

You got out of the van?---After a while, yes.

And you walked about ten yards in front of the van? ---About that, yes.

That is a pretty accurate measurement is it, about 10 yards?---Only approximately.

You were lucid at that stage were you not?---Pardon?

You were lucid at that stage?---I was starting to, yes.

Did you have another acid experience then?---Yes.

Another hallucination?---M'mm.

10 That was the one you told us about about meeting a few animals and seeing trees in grotesque forms?---Yes.

You said you became paranoid then, did you not? That was your word was it not?---Later on, yes.

Pardon?---Then and a bit later on.

What does that mean?---In one word - fear.

Fear of what?---Nearly everything.

Have you read about this word "paranoid"?---No.

20 It is just a word that you fix on your own personal experiences?---Yes.

A word you use yourself to describe it was it?---That's right, yes.

You were not staggering about like a drunk were you?---Yes.

Lurching all about the place?---Yes.

Did you always lurch about like that under the influence of LSD?---Sometimes, yes.

Well you lurched up the track, did you, for about 10 yards?---M'mm.

30 And you saw Rosalyn and Lowery there?---That was up further.

Were you enjoying the experience?---At that stage it was all right.

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Interested in it?---Sort of, yes.

Not very?---No.

Not very interested in these trees and the animals
and whatnot?---No.

And you were interested to meet Rosalyn and Lowery
were you?---I saw them and just passed on by.

What were they doing?---I don't remember.

That is another failure of memory is it?---To a
certain extent, yes.

Your memory is a blank there?---It wasn't blank. 10

You just do not know what they were doing?---No.

You do not know whether she had her clothes on or
not?---No.

You do not know whether either of them was moving
or not?---No.

Well then you lurched off into the bracken did
you?---Yes.

Lurched past them and then staggered off into the
bracken?---That's right.

Were you staggering around in the bracken for a
while?---I went in about - I don't know how far,
and sat down. 20

Sat down in the bracken?---M'mm.

How long did you stay there?---I wouldn't have a
clue.

Hear any noises at that time?---Yes.

What sort?---I could hear music, bells.

Did you have a word with any animals?---I think I
did, yes.

What, exotic animals were they? Not native fauna? 30
---No.

What were they?---Lions and tigers.

What happened next?

MR. OGDEN: Something seems to be amusing my learned friend up the other end of the bar table and I suggest, Your Honour, that he should .. that it should cease, Your Honour, these amateur theatricals at the end of the bar table are not helpful, Your Honour, in my submission.

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10 HIS HONOUR: Yes, well the Prosecutor said that he was smiling back in return for a smile.

MR. OGDEN: Not only Mr. Byrne, Your Honour, it is my learned friend next to him.

MR. BYRNE: Well what happened next now Mr. King? You did not hear any cries of pain did you?--- There was a lot of noise but I couldn't distinguish what was what.

What was the next thing that happened?---I found my way back up to the track.

20 Did you get down in one of those gullies?---I don't remember if there was a gully there or not.

It is pretty stony and rugged out there is it not? ---It is fairly stony in places, yes.

You knew this track did you?---I've been out there before, yes.

Been drinking out there on any occasion?---Only while spot lighting.

Did you warn Lowery to look out for spot-lighters at any time?---Not that I remember, no.

30 Well what did you do next, you got out of the bracken?---Yes.

What happened then?--I went back up to the track and started walking back up towards the van and I came across Lowery and Rosalyn.

How close to them did you get before you could see them?---I don't know.

You did not hold a light for Lowery at all?---No.

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Nobody had a light out there?---No.

And you are quite sure the lights of the van were
switched off?---I think they were anyway.

Well you notice light particularly when you are on
acid do you not?---I would have noticed if they
were on, yes.

You would know that would you not?---Yes.

Do you have some doubt about it? As to whether
they were on or not?---I didn't notice they were
on.

10

You say you think they were out?---Yes.

Is that as far as you go?---That's as far as I go,
yes.

They may have been on, and you not notice them?---
It is possible.

What did you notice about - before I ask you that,
had the hallucinations passed off, had the animals
and the other things, the bells and the music had
that all gone by the time you got back and saw
Rosalyn and Lowery?---No, I was strobing at that
stage.

20

You had waves of clear thought and waves of
hallucinations, is that what that means?---That's
right, yes.

Well during the clear periods when you were not
hallucinatory did you notice anything?---When I was
back up on the track I did, yes.

What did you notice?---Lowery - Chris - kicking
Rosalyn.

Lowery?---Kicking Rosalyn.

Kicking Rosalyn. Whereabouts on her body was he
kicking her?---I thought around the head, and the
shoulders.

30

And where was she?---Lying on the ground.

And how was her head?---It was resting on the
ground.

In what way?---It may have been to one side, I'm not certain.

Pardon?---It may have been to one side.

But it was to one side, was it not?---I wouldn't say for sure.

Did you not point out when the film was made how her head was?---I may have then.

Well you did, did you not?---I still wouldn't have been certain then though.

10 But you corrected the position of Mr. Rippon as he was lying on the ground, did you not?---Yes, because I remember which side Chris was.

Yes, and you moved his head into the position that you saw Rosalyn's head, did you not?---Where I thought her head was, yes.

Well that is how you remembered it, that is right, is it not?---I thought I remembered it that way.

20 Well then were you still lurching about at this stage?---No, I was sitting down.

And Lowery walked away?---Yes.

Did he look at you?---I think he gave me a glance, he might have even said something before he walked away.

Now were you sitting down when he gave you a glance? ---I think so, yes.

Rosalyn came over to you?---That's right.

And did she put her arms round you?---One arm I think.

30 One arm. When you made the record of interview on the 6th February did you say "Chris walked back to the car and Rosalyn stayed there with me"?---Yes.

That was as it happened, was it not?---Yes.

"She put her arms around me and asked 'Is Chris

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going to kill me?"?---Put arm around me, one arm
it was.

Well when you said "arms" you meant "arm"?---Yes.

That is what you said though, is it not, "She put
her arms around me"?---I thought I said "Put her
arm".

"And asked 'Is Chris going to kill me?'"?---I
thought I said at the record of interview "put her
arm".

Well you read this over before signing it, did you 10
not?---Oh yes.

And initialled mistakes?---Yes.

Did not make any correction there, did you?---
Probably didn't notice it.

"She put her arms around me and asked 'Is Chris
going to kill me?' I said, 'I don't know, he's
gone mad'".---M'mm.

That is what you said to her, is it?---Yes.

Next, did Chris come back with something?---Yes.

You do not know what it was?---No. 20

He started hitting her again then, did he?---Yes.

Do you think he was hitting her with his hand?---
I thought it was.

Did he make you sick to see what he was doing to
her?---It wasn't what he was doing to her made me
sick, it was just like my stomach, I was sick in
my stomach, that's all.

It did not upset you to see what was happening?
---I couldn't appreciate what was happening to
be upset. 30

Well you could see what he was doing?---Yes, I
know, but I couldn't appreciate it mentally.

You knew you were on a trip, did you not?---Yes.

And when he had this grotesque shape you knew

that was not his real shape, did you not, you knew that at the time?---No.

M'mm?---No.

You were aware at the time that you were on a trip, were you not?---Well I remember taking the acid, I knew I was on a trip. The things you see you think they're real.

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When you looked at the lights of Melbourne when you went up to the Pentland Hills you did not really think the lights were giving off the colours that they seemed to be giving off?---Yes, at that stage I did.

Pardon?---Yes I did.

You thought at the time that they really were doing that?---M'mm.

That is true, is it?---Yes.

Well after you felt sick you walked up to the car, did you?---Yes.

And you vomitted up near the car?---M'mm.

20

After you vomitted you got your smokes out of the car?---Yes.

Did you light yourself a smoke?---I don't remember.

You may have?---I may have, yes.

The purpose of getting them out was to have a smoke, was it?---I suppose so, yes.

And you thought about what Chris was doing up there with Rosalyn?---Yes, well after I vomitted I sort of sobered up a little bit anyway.

And you set off back to where he was?---Yes.

30

And you thought to yourself that you would stop him doing what he was doing?---Yes, it flashed through my mind.

And that you would take the consequences? Of what had happened so far during that night?---M'mm.

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What consequences did you have in mind that you would take?---It wasn't so much for my point of view, but sort of if I could stop Lowery what he was doing, leave it at that sort of thing.

Well these are your words are they not?---Yes.

"I thought I'd stop him doing what he was doing", perhaps I should read that again. "I thought I would stop him doing what he was and take the consequences of what had happened so far during the night"?---M'mm.

10

That was your thought?---It was not my thoughts at that time, but that's what it sort of turned out to be on my record of interview at that stage.

Well were you pulling the policeman's leg when you told him that you were trying to, were you?
---Pardon?

That was not what you..?---No, I wasn't pulling his leg, I'm not sure what I thought out at the track.

But you are describing what you thought out at the track here, are you not?---The exact meaning of that wouldn't have been the exact meaning of what I was thinking out at the track.

But this is what you were saying.---I knew - I thought something was wrong and I was going to try to stop it.

But you - oh Mr. King, you are describing the thoughts that went through your head, are you not?
---I was thinking it was wrong out at the track, yes.

30

You see the question was, "Well after you vomited what did you do", that was the question that Mr. Morrison put to you, was it not?---Yes.

And you went on to describe what you did and what you thought, did you not?---Yes.

He did not suggest anything to you, you simply gave him a description?---M'mm.

And what you said was "I got my smokes out of the car"?---Yes.

That was something that you did?---That's right, yes.

"I started to walk back down to Chris" that is something else you did?---M'mm.

You did do that, did you not?---That's right, yes.

And then you went on to your thoughts, "And on my way down I thought I would stop him doing what he was and take the consequences".---Yes.

10 Now you see there you tie down that thought to a particular circumstance, namely, the time that you were on your way down. You see that do you not?---Yes.

You do not want to interpret that now do you?---It's hard to -

Say it does not mean what it says. You do not want to do that do you?---It's hard to explain exactly what I did mean by thinking that.

20 I am not asking you what you meant, I am asking you what you thought.---Well I knew it was wrong, the thought passed through my head that it was wrong.

This is a piece of the truth here is it not, Mr. King?---Yes.

"On the way down I thought I'd stop him doing what he was and take the consequences." That is true, is it not?---It's not me taking the consequences because I did no wrong to start off with.

30 You meant "and let Lowery take the consequences"? ---Yes.

That is what you meant was it?---Yes.

Had you left out Lowery from the..?---I may have anyway.

Left him out did you?---Yes.

Let me remind you of your full answer. "I got my smokes out of the car. I started to walk back

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down to Chris and on the way down I thought I'd stop him doing what he was and take the consequences of what had happened so far during the night. When I got back down there Rosalyn was on the ground moaning and I asked Chris what happened and he said 'I hit her'."---That's right, yes.

That is as it happened?---M'mm.

That is as it was is it not?---That's what I thought happened anyway.

Then you were asked, "What did you do then?" "I asked him what he intended doing now." You asked him that did you not?---Yes, I asked him that. 10

"Chris said 'I'll have to kill her'." He said that did he not?---M'mm.

"I asked him how." That happened did it not?---I might have said a few more words than "how".

But that happened did it not?---Yes.

He said, "I don't know". Is that right?---That's right, yes.

And then your answer proceeds, "I don't remember what exactly happened after that." Did you have another gap in your memory there, another complete amnesia?---I may have started hallucinating again then. 20

But there was another black spot in your memory was there?---In my memory, yes.

So there is a hiatus there, a blank in your recollection?---M'mm.

And there always has been?---Yes.

And then you say, "But he had a piece of brown two-cord flex and had it around her neck."---Yes. 30

You could see that could you?---I knew what it was later on, I didn't know it was flex at that stage.

Did you know it was brown?---No.

When did you first learn the colour of it?---It

was about Wednesday I think.

"She was trying to scream or talk or something".
---That's right, yes.

That happened did it not?---Yes.

"She couldn't get her breath", right?---She
didn't seem to be able to anyway.

She seemed to be fighting for breath did she not?
---M'mm.

10 You were standing there watching her were you?
---I wasn't all that close, I was close enough
to see.

Close enough to see her in the dark?---Yes.

And close enough to see that she could not get
her breath?---Yes.

No light on?---No.

"She was trying to scream or talk or something"
that is what you..?---That's right, yes.

"There was a sort of whine coming from her mouth"?
---M'mm.

20 "Her chest then stopped moving."---I thought it
stopped moving, yes.

You saw that did you not?---I thought it stopped,
yes.

Did you have a close look to see whether it really
had?---No.

What next happened was that he put the two flex
round his neck about six times you say?---Yes, it
appeared to be to me anyway.

30 "And pulled it tight and dragged her off the track
into the ferns."---That's right.

Did you say to the Police on Saturday the 6th, "She
was on her stomach and he pulled her legs back up
and tied the end of the cord around her legs and
her arms."?---Yes.

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You remember him doing that do you not?---I thought he tied her up something like that.

She was up on the track then was she not?---I don't remember if she was on the track or down in the gully when he tied her up.

You just do not know whether she was down the track or down the gully or not?---I have an idea it was down the gully but I wouldn't say I'm certain of it.

"He turned her over so I could see her face."?---
Just turned her head over.

10

Lit a match.---Yes.

All you could see was froth coming from her lips?
---Froth sort of stuff.

Did you notice her tongue?---No.

Her chest had stopped moving at that stage had it not?---I think it had, yes.

And you have got a clear memory of this bit have you not? Seeing the froth?---The whole night wasn't clear.

20

No, but you remember seeing this froth?---Yes.

This is one of the times when you were not hallucinating is it not, one of the clear periods?
---Yes.

Did you describe that froth as vomit to the Police?
---Yes, probably.

You said to them, "He turned her over so I could see her face, and lit a match and vomit came from her mouth, it was horrible." You said that did you not?---Yes.

30

That was the description you were giving of what you saw?---Yes.

"He then grabbed her shoulders and pulled them back and I heard this horrible crack."---Yes.

Again, that is a description of what you observed?
---Yes.

"He then went back to the car."---That's right.

"We then went back to the car" rather?---Yes.

"Tried to get the dog out of the back"?---Yes
Lowery tried to do that.

"It snapped at Chris and he asked me to try and
get it out and I said I wouldn't."---Yes.

He seemed frightened of the dog did he?---To a
certain extent he was.

Were you frightened of it too?---No.

10 Why would you not get it out?---I don't know why
I didn't at that stage.

You were not frightened of him were you?---
Lowery?

Yes.---I was frightened of him pretty well all
night.

You refused to get the dog out when he asked you
to?---Yes.

You were not frightened of him then were you?---
I may have been.

20 You had just seen him commit a pretty horrible
murder had you not?---I thought - I wasn't too
sure what happened then.

"We left the tail gate of the van down and he
tried to turn around but we couldn't so we backed
down the road, found a place big enough to turn
around in"?---That's right.

Do you remember all those particulars?---Yes.

30 "We drove out onto the sealed surface and
stopped the car about a mile or so up and he
said 'We've got to get this dog out'", did that
happen?---That's right, yes.

"So I went around to the back of the car and
called the dog"?---M'mm.

Do you know the dog's name?---No.

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"It wouldn't come so I grabbed hold of its leash and called it at the same time, it jumped out of the back of the van and sat on the edge of the road"?---That's right.

All that happened?---Yes.

"Then we drove back into Hamilton"?---Yes.

Remember all that?---Yes.

Remember going back?---Yes.

"And the rest of it is what I said in my statement", that is the statement that you had made earlier, is that so?---Yes, that's right. 10

"And we drove around the town, went to the sports centre then up to his mother-in-law's place"?---That's right.

And did you have a game of 500 up there?---I might have helped..

Helped somebody with a hand, did you?---Yes.

Not strobing then?---No, I was pretty well down then.

Well your memory is complete, is it, from the time that you tried to get the dog out of the back of the van?---As far as I know it is, yes. 20

That is right. You went to the sports centre in order to be seen, did you?---No.

Did you not feel it was important that somebody should see you as early as possible after the murder to help with any alibi?---No.

What did you go to the sports centre for?---Lowery just pulled up outside there. Lowery pulled up outside there. 30

You know of no reason why he pulled up outside of there?---No, not really.

Yes?---Saw some motor bikes across the road, it may have been the reason.

You saw Mr. Harkness give evidence here?---Yes.

A bikie from Port Fairy?---That's right.

Knew him?---Yes.

Had a word with him?---Yes.

That was about quarter to 10, was it?---Could have been.

Well coming back to the Mount - coming back to Hamilton from the Mount Napier Reserve, you asked Lowery "What happened", did you?---Yes.

10 And he said to you "What's the matter, are you drunk or something?"?---Yes.

He seemed surprised to learn that you did not know what had happened, did he?---Yes.

And you told him that you were stoned?---That's right.

He seemed surprised to hear that, did he not?---Yes.

You had not bumped into him as you lurched past? ---Don't think so.

20 Well now did he look at you at all as you were lurching along?---I don't know.

And he thought there was something funny about the situation apparently did he not?---What do you mean by funny?

Well he laughed, did he not? He laughed then when you told him you had been stoned?---He just snorted sort of thing, you know.

M'mm?---Didn't actually laugh aloud, but -

Well he had a little chuckle to himself?---Yes.

30 And he announced to you that "I killed Rosalyn"? ---Yes.

In a cheerful tone of voice?---Yes.

And he told you that you had helped him?---Yes.

You had come down then from your trip, had you

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not?---Pretty well, yes.

And then he bragged about it, did he?---Yes.

Described how he had smashed her and all that?---
That's right, yes.

What did he say?---I wouldn't know his exact
words, just the text of it.

Well what are you describing when you said he
bragged about it and described how he had smashed
her, what have you got in your mind?---I was just
talking about how he kicked her and all that,
punched her. 10

Did he say he had struck her with any instrument?
---Not that I remember.

Any of the tools from the van taken up near where
the girl was?---Not that I know of.

And then you set about helping him, did you not, I
do not mean helping move the furniture, the table,
but helped him avoid detection?---Yes, I thought
I had to.

I suppose you thought you had to help him move his
furniture too, did you?---No, not really. 20

Are you still friendly with him?---Just.

Just friendly. And you two worked hard over this
story to bamboozle the Police with, did you not,
about the hitch-hiker?---Yes.

Got all the little details all matched up?---Yes.

Made it sound good?---Yes.

And after you - you compared notes after you had
made your statements?---Yes.

Asked him what he had said?---Yes. 30

And you told him what you had said?---Yes.

And you felt pretty pleased with yourself, did
you?---I wasn't.

But you thought a good job had been done?---Well

he thought there was, but I -

Did you think that the police were not convinced?
---Yes.

Is that what you mean by that?---Yes.

But you did your best to convince them, did you not?---I tried hard, yes.

Now this Policewoman Overend was a good friend of yours?---Yes.

Friendly with your mother?---Yes.

10 And well disposed to you?---How do you mean?

Well seemed to think well of you?---Yes.

Offered you good advice, did she?---About certain things, yes.

Seemed to want to help you?---May have, yes.

And it was because of this friendly relationship you sent for her at the police station?---That's right.

And when you saw her coming you started to sob, did you not?---Yes.

20 And she comforted you?---Yes.

And you pulled out a letter from your pocket?---Yes.

HIS HONOUR: The jury would like to have a break.

MR. BYRNE: Yes, if Your Honour pleases.

COURT ADJOURNED AT 3.14 P.M.

COURT RESUMED AT 3.25 P.M.

CHARLES IAN KING recalled and warned.

MR. BYRNE CONTINUED CROSS-EXAMINATION

MR. BYRNE: I was just asking you about the entrance

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of Policewoman Overend, Mr. King, on Saturday the 6th. When she walked in you started to cry, did you not?---That's right.

You put your head in your hands?---Yes.

And she made up and comforted you?---Yes.

She put her hand on your shoulder?---Yes.

And stood quite close to you did she not?---I think so, yes.

You said to her, referring to the girl who had written you the letter that you handed Miss Overend, "Will you write to her and tell her I'm sorry. I didn't mean to do it." You said that did you not?---No, I didn't.

10

You say you did not?---Yes.

You did not say that?---I didn't say what's there, no.

You did say "Tell her I'm sorry" did you not?---Yes.

You did say "Will you write to her"?---Yes.

Do you say that you did not use these words to Miss Overend "I didn't mean to do it"?---No, I didn't say that.

20

You say, do you that you denied doing it at all to Miss Overend?---That's right.

That is a very different thing from "I didn't mean to do it" is it not?---I said "I didn't do it."

You said "I didn't do it"?---Yes.

Told her that - you said "Write to her and tell her I didn't do it"?---That's right.

In other words, a declaration of innocence?---Yes. 30

That was what you were making was it not?---Yes.

You did not use the word "mean" at all?---No.

Well you have told us that you went out to the

track at Mount Napier on Sunday the 7th with the policemen and cameraman?---That's right.

And after walking up the track for some time you pointed to the left of the track as you walked along in a southerly direction and said "Can I have a look over here?"---Yes, I said that a couple of times.

And you walked off the track and down a depression.---Yes.

10 Down in that depression you paused for some time did you not?---Yes.

And you said "This could be the spot where the body was left"?---Yes.

And that was your belief, was it not?---Yes.

You were depending on your recollection of the events of the previous Sunday night?---That's right.

Of course it was dark - quite dark when you were last in that spot was it not?---Yes.

20 Did Morrison say "Would you show us where she was kicked?"---Yes.

Did you say "Up on the track"?---Yes.

And then you walked back up on to the track with the Police?---That's right.

Did you then move forward and look around?---Yes.

And then you said "Somewhere between these two, these two trees" and indicated two trees. Waved your arm backwards and forwards.---Yes, that's right.

30 You recognised the two trees, did you?---Yes.

Did Morrison say to you "Demonstrate with Mr. Rippon what went on?"---Yes.

And you said, "I believe she was lying on the ground here"?---Yes.

And you indicated the spot that you were talking

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about?---That's right.

And then did you walk towards a forked gum tree?
---It may have been forked.

Did Morrison say to you "Show us where"?---Yes.

Did you say "Lying down - "I am sorry, "Lying this way"?---Yes.

"Face down, head on one side"?---Yes.

Mr. Rippon lay down, is that right?---Yes.

And you said, "Chris kicked her a couple of times. Chris kicked her in the ribs a couple of times"? 10
---Yes.

Did you say, "I think he was standing this side, turn her - turned her". Did you say that?---Pardon?

Did you say "I think he was standing this side, turn her" or "turned her"?---Turned her?

Yes, or did you in fact -

HIS HONOUR: "Turned her over" I think is what the correct .. indicated.

MR. BYRNE: Yes, I apologise.

HIS HONOUR: This is the passage that was the 20
subject of some discussion. As corrected it reads,
"King said, 'I think he was standing this side. Turn her, turned her, lifted foot,' etc.

MR. BYRNE: Is that what you said?---Yes.

And you indicated how Lowery was doing the kicking then did you?---Yes.

And you demonstrated with your foot how he had stamped down on her head?---Yes.

And you said, as Mr. Rippon was lying on the ground, "Her head was turned around this way"?--- 30
Yes.

And you adjusted Mr. Rippon's position did you?
---Yes, to the way I thought it was.

Did you say "I think Chris kicked her near the eyes somewhere"?---Yes

Did Morrison say to you, "What then?" ---Yes.

Did you say, "I think he told her to stand up." ---Yes.

"And he tried to strangle her with her bra"?---That's right.

Well then Morrison handed you a handkerchief?---That's right.

10 And he said, "Do you want him (referring to Mr. Rippon) to stand up?"---Yes.

You said, "Yes", Rippon stood up and you demonstrated what had happened to those present and the cameraman by placing the handkerchief round Rippon's neck?---That's right.

Did you say "He was around behind her?"---Yes.

"Pulled back"?---Yes.

"Shoulder in back."---Yes.

20 "I couldn't watch, I turned away and walked to car."---That's right.

Did you say, "I came back, she was lying on the ground"---Yes.

Morrison, referring to Rippon, said, "Put him in position"?---Yes.

And you did that, put Mr. Rippon in position?---Yes.

Did you say "She was on her back, moaning"?---Yes.

30 "I asked Chris what happened and he said he hit her, I remember about the brown cord".---Yes.

And Morrison said, "Show us with this string" and gave you some string?---Yes.

Did you say "He rolled her on her stomach"?---Yes.

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And you rolled Mr. Rippon over?---Yes.

And did you say "Sat on back, put cord around, grabbed and pulled back"?---Yes.

And you sat on Mr. Rippon's back and showed those present what you were talking about?---Yes.

Did Morrison say "What then?"---Yes.

Did you say "We wrapped it-" or "He wrapped it around her several times"?---Yes.

And did that to Mr. Rippon, "Grabbed both ends like this and pulled her into the area I have shown you before"?---That's right. 10

"He dragged her like this" and then you pointed to the place?---Yes.

That was that depression that you walked off into, into the left of the track, is that right?---Yes.

Did you say "She was then lying on her stomach"? ---Yes.

And Morrison said, "Put Mr. Rippon in position"? ---Yes.

And then you led Rippon in the direction that you had seen the girl dragged?---That's right. 20

Rippon lay down and you say "This was up, pulled back and pulled her legs back up" and demonstrated how she was tied?- Is that so?---Yes.

Did you say "Then grabbed her elbows and wrenched it back?"---That's right.

And you showed the sort of wrench that you were talking about?---Yes.

And Morrison asked you where you were standing and you said "Here" and pointed to the place where you were standing?---That's right. 30

Morrison said, "You said he rolled her over and struck a match."---Yes.

And you said, "Rolled her over, yes." and you

then bent forward to demonstrate?---Yes.

Morrison said, "Where did you go then?" And you said, "Walked up here, back to the car."---That's right.

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When you got back to the car, once you were in the car, this is the Police car, on the 7th, you got back to the Police car did Morrison say to you, "Now will you take us to where the transistor is"?---Yes.

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10 And did you say "Yes"?---Yes.

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Morrison said, "We've got to go back into Hamilton first, is that right?"---Yes.

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And you replied "Yes"? Is that right?---That's right.

On the way along the Muroa Lane did Morrison ask you where you threw the dog out?---Yes.

And did you say "Further along here"?---Yes.

And did Morrison say "How further"?---Yes.

20 Did you say "Up near a post a marker post"?---Yes.

And you remembered the dog getting out near a particular post by the side of the road, is that right?---Not a particular post. I remember there was a post there.

And as the car proceeded along did Morrison say "Which side of the road is it?"---Yes.

Did you say "Left hand side"?---Yes.

And you drove on further, he said "Have you sighted it yet?"---Yes.

30 And did you say "Yes, it was one of those back there"?---Yes.

And in fact you had noticed the post as you went past, had you not?---The approximate area anyway.

Well you had come right down out of your trip as at

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that time, had you not?---No.

Had you not?---No.

Do you say Mr. King that you were not the person
that found that radio out at Hensley Park Road?
---Yes.

You acted in front of the camera as if you were
finding it, did you not?---Yes.

And did you believe then that the film would record
the scene which would lead somebody looking at it
to believe that you were finding the camera?---
Finding the camera? 10

Finding the radio I am sorry, the camera recorded
a scene which would lead somebody looking at the
film to believe that you were finding the radio?
---I didn't look at it that way then.

Well it was being filmed?---Yes.

And you were acting as if you were making a
discovery were you not?---I know that now, yes.

Well you knew that then, did you not?---No.

You were searching around the place?---I was
looking around, yes. 20

And then you came on an object and pointed to it?
---Yes.

The preliminary searching you did was just play
acting, was it?---No, I was looking for it then.

Well the searching immediately before pointing to
the radio?---Yes, I was looking for it.

You were looking for it?---Yes.

It had not been found then?---No.

You found it, did you?---No. 30

Well did you pretend to search for it right up to
the time you pointed to it?---I was searching for
it.

Right up to the time you pointed to it?---I was

instructed to walk up and point to it.

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You just did not come upon it, you were told
where to go to?---Yes.

You did not pretend to be looking for it?---No,
I was looking for it.

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After it had - after you had been informed where
it was?---No.

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How far away from it were you when you were told
to walk up and point to it?---About 30 or 40 feet.

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10 So far as you were aware was the camera on you
as you walked that distance and pointed to it?
---I didn't know it was then.

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You walked straight to it and pointed to it?---
Yes.

Now up until Saturday 6th February you did your
best to keep it a secret from the police that you
had been present at the killing of Rosalyn
Nolte?---Yes.

20 Did you not? And it was your intention to
maintain that secret forever if you could?---Yes.

You were very keen that it should never be
discovered? Were you not?---To a certain extent,
yes.

And indeed Sergeant Morrison told you that in
effect, that the police had scientific evidence
which put you at the scene?---Yes.

Is that what he conveyed to you by what he said?
Did you think it was all up with you then?---Yes.

And you started to sob?---Yes.

30 And did you then decide to tell the truth?---That's
right.

Well part of the truth was the truth that you were
so stoned at the time that you could not help
yourself?---That's right.

That was the major part of the truth insofar as you
were concerned, was it not?---Yes.

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But you did not tell that to the police, did you?
---No.

You told them - and you were asked if you had been
drinking?---Yes.

You told them about the alcohol?---Yes.

But you kept the drug bit a secret yet?---That's
right.

And it was your belief at the time that that was
very important information in your favour?---No,
I thought it was information against me.

10

You did, did you? You thought they might charge
you with taking drugs?---That's right.

That is why you did not tell them?---That's right.

That is your explanation, is it?---Yes, that's
right.

MR. WRIGHT COMMENCED CROSS-EXAMINATION.

MR. WRIGHT: Mr. King, you have given us an account
today of certain happenings, certain things you
thought out at Mt. Napier on 31st January?---Yes.

Now is that mainly just sort of imagination or are
you telling us the truth?---The truth. 20

Is it all the truth?---Yes.

And you have told us what you believe really
happened out there on that Sunday night?---Yes.

Now you have told us that drugs, you gave us quite
a description I think, heighten the awareness and
the thrill of sensation, is that right?---I don't
think they were the words I used.

Well words to that effect. Is that what you inten-
ded to convey?---Yes. 30

I mean if you want to qualify it, tell me, but is
that my amateur description of what you drug
takers feel?---Yes, roughly.

That it heightens the awareness and the thrill
of sensations, is that right?---Yes.

And it heightens the perception of various things you do under drugs?---You don't really do much under drugs, nothing physical mainly.

Well some people do, do they not?---They may, yes.

You have heard of people doing things under drugs, have you not?---Yes.

10 Now you told us I think that in the statement to the police, that - "HH" , when you made that statement to the police you were asked "Did either of you try to have sexual intercourse with her and meet with a refusal?" Do you remember that question being asked you by the police?---Yes.

What did you say?---I don't remember.

You said "I don't remember"?---That's right.

Well is it possible that under these drugs that you were seeking sexual satisfaction?---No, I don't think it is.

20 Well are you sure about it? You do not remember, do you?---I don't remember trying, but I'm sure I wouldn't have tried.

You might have had sexual sensations under the drug?---No.

Well how can you be so certain if you do not remember?---Because L.S.D. doesn't affect me that way.

But you do not confine yourself to L.S.D. you had had a lot of alcohol had you not?---Yes.

30 And Methedrine?---Yes.

And L.S.D.?---Yes.

The full treatment?---Yes.

And do the whole three affect you, can you state definitely how the total packet affects you?---Well its never got me that way before.

Have you frequently taken such a mixture before?

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---Once before.

Once before?---Yes.

And in these quantities?---Yes.

How long before?---Pardon? Oh, the middle of the year.

I see, well that is a fair time ago, perhaps you had progressed a bit since then and the effect is a bit more serious now, is that possible?---I don't think I've changed in any way.

Now it appears that from the description you have given us that you were in search of new sensations under drug, were you not?---Yes. 10

You were seeking, I think, heightened awareness of music were you not, by taking the drug?---I wasn't seeking it.

Well you took the drugs in order that you could have heightened awareness of the music were you not?---What music are you talking of?

I was saying what you said this morning. I thought that you actually became part of the music, I think you told us you became a note in the music? ---This is previously, yes. 20

I am simply asking you about the progress of your experiences with drugs, is that clear?---Yes.

Well you sought heightened awareness of music and also of lights, did you not?---Yes.

You went up to the Pentland Hills and getting an increased awareness of the lights of Melbourne were you not, in the Pentland Hills?---Yes.

You were seeking an increased awareness of other sounds, were you not?---Yes. 30

In other words you were greedy for new sensations under drug were you not?---Yes.

And you had progressed quite a bit, had you not, from Marijuana?---Yes.

Hashish?---Yes.

Methedrine?---Yes.

L.S.D.?---Yes.

Any others?---No.

You had not got past L.S.D. At this stage is that right?--- I didn't intend going past it.

Have you ever heard of drug takers seeking such new sensations as killing somebody?---Never.

You have never heard of that?---No.

10 Have you ever heard of the Manson trial in California?---Yes.

Was there any suggestion in that trial that those drug takers were seeking sensation by killing people?---Not that I remember.

Now you have described your sensation on this Sunday evening when you went to Mount Napier, now are you quite certain you are not just making this all up, is that so?---I'm not making it up, no.

20 And it is all true is it?---Yes.

You have given the story in your own words, I suggest, that at about 6 p.m. when watching television things started to get distorted.--- That's right.

And the T.V. set was all squashed up?---And stretched out.

It squashed up and then it stretched out did it? ---M'mm.

30 And the walls and the floor were waving about?--- Yes.

Was that an unusual sensation for you when you had been taking drugs?---No.

What you frequently experienced visual effects of that kind did you?---Yes.

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How long before this particular Sunday was it that you had last been experiencing such effect with drugs?---August.

What, there had been a gap between August 1970 and January 1971, is that true?---That's true.

Had you taken any of these drugs in that - in the interim? In between?---No.

None at all?---No.

I see, what, were you trying to break the habit or something is that it?---I didn't really have any need for them then. 10

You were not ashamed at all of your inclination to taking drugs were you?---No.

You are not ashamed now?---No.

But in other words, you had had a huge gap between - say 5 months since you had last taken drugs and you took this dose of alcohol plus Methedrine, plus L.S.D. after that gap?---Yes.

Well anyway, when Rosalyn Nolte came along to the van you were pretty stoned, that was your expression 20 was it not?---Yes.

In other words, you were pretty high with these drugs?---Yes.

And when you were first out at Mount Napier you were watching strange trees with grotesque branches?---Yes.

And foreign animals?---Yes.

And the sky itself was curved right over like a canopy?---No, the trees were.

The trees were curved?---Yes. 30

To hide the sky, is that so?---Yes.

And you had trouble in walking?---Yes.

And that was not because of any limping because the ground itself seemed to be moving up and down?---Yes.

And you walked past the others into the scrub?
 ---Yes.

And sat down on an imaginary chair?---Yes.

And you saw Lowery, he appeared to have a great big head and big feet and big hands and all out of focus?---That was later on.

How much later was that?---I don't know the time, but it was after I went back up the track again.

10 Would it be right to state that when you were in this condition that the normal contact with reality had been lost, had it not?---Yes, to a certain extent it was.

And the contact with times and places and so forth - the real times and the real places were no longer affecting you?---Yes.

Now your own words were, I think, (p.305 of the transcript) "The picture was very confused. Hallucination followed by what you think is reality", is that right?---Yes, that's right.

20 You are still telling us truly what your sensations were on that night are you?---Yes.

You mean by this reference to hallucinations and reality and so forth that you cannot really say whether any particular thing took place or did not take place?---I can say that some things took place but I'm not sure how.

30 I am putting it to you that you cannot really say in that state of hallucination followed by what you think is reality that you cannot really say whether in fact some particular thing took place or did not take place.---I can't agree with you.

Well if you have got no contact with reality, you see, and all you have got is hallucination followed by what you think is reality you cannot say for certain whether any particular thing happened?---I think I can.

Why? Because you have only got your hallucination and you have only got what you think is reality.---

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But what you think is reality, does happen.

It might happen, but it might not happen, is that not so?---Yes, but I did not see Lowery under any hallucinating effects.

I thought that was exactly what you had been telling me of Lowery under hallucinating effects. That he had a great big head and great big hands and great big feet and he was all out of focus.---Yes, but you misunderstood me. You can have hallucinations and hallucinations if I put it that way. Like you might see a lion or something walking around.

10

You did see lions walking around?---I did, that's right.

I mean that is true, you are telling us the truth?---Yes.

You saw them walking around, they were not there but you saw them?---Yes.

And the tigers you saw they were not there?---Yes.

And the trees were over-arching when you saw them, but they were not there?---Yes.

20

And I am putting to you that anything you saw that night you cannot be sure whether it was there or not.---I say I can be sure.

How can you be so sure about any particular thing? Let us take the - let us leave the lions and tigers out - let us take Lowery's enormous head and big hands.---Yes.

Do you think you can be sure whether or nor he had big hands and head?---It appeared to be to me he had them.

30

Of course it did. It appeared to you that something grotesque - which was unreal appeared to you to be the reality did it not?---Yes.

And so anything that you saw that night you cannot be sure whether you were seeing something grotesque and unreal or whether it was reality?---Yes, what I thought was grotesque and unreal is what I thought was the reality.

Exactly, and so you cannot be sure that anything you are describing that you saw that night was or was not in actual fact occurring?---I still don't agree with you to a certain extent.

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Well to what extent do you qualify it? I have only been taking I think your statement about your visual and mental and auditory or your seeing and thinking and hearing that night. You were hearing bells and music were you not?---
10 Yes. Well while I was tripping everything was out of proportion, everything. But then you can see things, that may not even be there.

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Well that is precisely what I am putting to you. ---Yes, but I'm not saying I imagined Lowery out there because I'm sure he was out there.

(continued)

I see yes.---Because if you take it to the extent you are saying, he and Rosalyn mightn't have been there at all.

20 Well let us leave them out for the moment, how about the lions and the tigers, do you think they were there?---I thought they were at this stage, yes.

I see, well anything you thought was there might or might not be there, is not that so?---Yes.

And that is all - all the question I put to you was that you cannot say whether any particular thing took place or did not take place?---I suppose so, yes.

30 Well is not this the situation then, you cannot deny that you killed the girl?---I can deny that.

You can deny it in the box now, but can you deny it as a matter of what you actually saw and experienced that night?---Yes.

Why?---Because I saw Lowery with the girl. Well if I was in that part how could I see him.

You what?---If I was taking the part I said he is, how could I see Lowery doing it?

Well you could see a lion and tiger which were not there?---Yes.

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Why could you not see somebody - some other person that was not there?---I referred to it like watching a picture.

Yes?---It's just like watching the movies. Like I'm watching you now, well if I was you I couldn't watch you, could I?

Is it not possible that just as you can have an impression that a tiger is there that is not there, you might be - a vision of yourself be there when you are not..?---No, I can't agree. 10

Would you agree that it is possible?---No.

That the vision that you see that is not real may be a human being and not a tiger or lion is that possible?---I don't know.

You do not know?---No.

Is there any reason why the thing that you see in your imagination is necessarily an animal or a tree and - or not a person?---Well no one knows that.

Yes?---When you're under the effect of acid. 20

No one knows what - under the effect of acid?---Yes.

No one knows, under the effect of acid, whether what they are seeing is reality or not?---Yes.

And whether their memory of what happened is reality or not?---To a certain extent, yes.

Well is it not true that under acid you can not be sure that what you are seeing is reality or not? ---Vaguely, not completely though.

What do you mean by that?---Well no matter how stoned you can get you'll always remember something. 30

I see, you always remember something, but do you not remember it in a rather distorted way? ---Yes.

Lowery was there, was he not?---Yes.

But his feet and his head and his hands were enormous were they not?---Yes.

And the trees were there, were they not?---Yes.

But they had grotesque branches arching up like a canopy over the sky?---Yes.

And the ground was there, was it not?---Yes.

But it was not heaving up and down, was it...?
---M'Mm.

10 And so that you have got two sorts of illusions, have you not, you have got the lions and the tigers that were not there at all and you have got things like the ground that was there, but was behaving in a way that was not real?---Yes.

And you have got the trees that were contorted in a way that was not real?---Yes.

And you have got Lowery with features and hands and arms that were not real?---Yes.

20 So that for all practical purposes the whole - could not the whole scene be so distorted that it is unreal in total?---But to have something unreal there's got to be something there to make it unreal.

To make it unreal?---To make it appear unreal.

Well surely the lions and the tigers, there was nothing there to make them appear unreal?---No, but the trees were there, and you're saying -

But I am just saying there are both kinds you see, there are some - there is the thing that has some base like the distorted trees?---Yes.

30 And there are things that have no base like the lions and tigers?---Yes.

Is not that so?---That's right.

So - and anything you saw could be one or the other, could it not?---Maybe.

Now you said, by the way, after it was all over

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on the way back you said, "Coming back I asked Lowery, I just asked him what had happened" p.507 sir of the transcript, and what you put, I think, was "Was there any conversation in the car between leaving the Mount Napier Reserve and getting to the Sports Centre?" "Yes, coming back I asked Lowery, I just asked him what happened and he said, 'What's the matter, are you drunk or something?' And then I told him I was stoned"--- Yes.

10

Well in fact you were so stoned that you did have to ask what happened, did you not?---I asked what happened because I wasn't sure what happened.

Exactly, that you could not be sure about any detail of that night's events?---I could be sure of most of the detail.

You could be sure you saw details, but could you be sure that any detail was a real one?---Yes.

What sort of details were immune from this hallucination that affected the trees and Lowery and the ground and the lions and the tigers, what detail was it that was so real that it was not distorted?---As I said before, everything is distorted, no matter how dumb you are you can still work out what's there and what isn't there.

20

So that you did not really need to ask Lowery what happened, is that so?---Yes, because - I asked him because I thought it was a dream, and I was just sort of reassuring myself.

You thought it was a dream?---Yes.

30

I see, and that was your immediately after leaving Mount Napier on the way back to Hamilton you thought it was all a dream? Is that it?---Yes.

Now did you have any memory of what was said that night?---Yes.

Did you have an exact memory of what was said?---No.

And is it possible that some things were said that night that you do not remember?---Yes.

40

It is possible you said something like this, you said to Lowery "Stop there or you'll be next"?---What text does this come under?

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That you knocked him down when he came at you when you were strangling the girl and that you said to him "Stop there or you'll be next"?---He didn't come at me.

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Is it possible that you said that to him?---Well why would I say it to him?

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10 I am not asking you why you said it to him, I will discuss that later. I am simply asking you is it possible that you did say that?---No.

Why are those particular words words that could not have been said?---Because I had no reason for saying them.

But your night's recollection of this dream has not got much contact with reason at all, has it? ---How do you mean?

20 Well it is just a dream, in your own words, it is an hallucination in your own words, it is just what you think is reality in your own words, is it not?---Yes.

And reason does not enter into the matter really, does it?---No.

30 And you did not, when you were telling the police in your statement after the - on the Saturday, within about six days, you did not tell the police about Lowery just laughing and saying "I killed Rosalyn", and that he said to you "You helped me", did you?---No.

Did not tell that incident to the police at all? ---No.

Why not?---I didn't want to.

What?---I didn't want to.

You did not want to?---No, they didn't ask me anyway.

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I see, but you were telling the police a number of things about Lowery were you not?---Yes.

But you just left that one out?---Yes.

It is possible it did not happen?---He said it.

Is it possible he did not say it?---No.

How far had you come down from the trip on the way back to Hamilton?---Quite a lot.

Tell us when you did really come down to earth again, where were you?---Back in Hamilton.

Back in Hamilton, so that on the way back to Hamilton you were still partly on the trip, is that so?---I wouldn't say I was tripping. 10

Well you have told me you were not down until you were back in Hamilton, could you tell exactly how far you had come down at any particular time?---No, but I wasn't freaking anyway.

Well you were not freaking but you cannot tell whether you had come down is that correct?---I was down, I know that.

In Hamilton?---Yes. 20

And before that?---(Answer inaudible)

You were not down?---I was on the way to being completely sober.

By the way, on your account you have given us here, you really had nothing to be ashamed of at all, did you, that night?---I knew I was in trouble.

But why were you in trouble? You were just an innocent bystander.---I was out there after all though.

Now these drugs which you had taken, did you think that they might cause you any trouble if it came out later that you had them?---Yes. 30

Why?---Drugs and Police don't mix.

Now you went and flushed these drugs down the

toilet during the week following the murder?---
Yes.

Was that because you realised what you had done?--
--I didn't want to get caught with them.

It had nothing to do with the possibility that
the drugs were connected with the murder? Is
that so?---I knew I was on drugs the night of
the murder, I had to get rid of them so the
Police wouldn't know I was ..

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10 Were you quite certain what you had done and
had not done when under those drugs?---I was
pretty certain of what I'd done.

Pretty certain - were you quite certain what you
had done or had not done at Mount Napier?---I'd
say quite certain.

What, you have changed your mind in this minute
have you, from being pretty certain to quite
certain?---Well the way you're implying pretty
certain I could have been 30 mile away.

20 But you were not 30 mile away, Mr. King, you were
out at Mount Napier when a girl was murdered were
you not?---Yes.

And you were under the influence of drugs, were
you not?---Yes.

And you were afraid, were you not, of what had
happened there?---Yes.

Now Mr. King you have had second thoughts about
some of the evidence that you gave to the Police
in this statement "HH" have you not?---I may have.

30 Have you or have you not decided today to alter
some of the things that are in "HH"? "HH" is the
record, I thought that had been pointed out to him.
I think that is probably the one on-?---Yes, that's
it there.

That is the record of interview that you gave on
the Saturday, do you remember, six days after?---
Yes.

I want to be quite clear about this because I am
going to ask you some questions, do you understand?

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---Yes.

Now you have in fact altered your story, have you not, today, as compared to what is in "HH"?---No.

Now Mr. King, is that a frank statement?---This one here?

Yes. Well now you told us - rather you told the Police in "HH" did you not - would you get out "HH" and have a look at it there? Have a look at p.3 of "HH". Do you see that?---Yes.

Now do you see the - in the middle of page this .. 10
would you read out the sentence beginning - "What else do you remember about the events of that Sunday night?" That is the question. Would you read out the answer to that?--- "Chris walked back to the car and Rosalyn stayed there with me. She put her arms around me and asked 'Is Chris going to kill me?' I said 'I don't know, he's gone mad.' "

Now what did you say today in relation to that incident?---She put her arm around me. 20

Yes, you altered "arms" to "arm" did you not? Two arms to one arm. Your statement today is about one arm is it not?---Yes.

Your statement there is two arms, is it not, "arms" plural?---Yes.

Did that have anything to do with the fact that Dr. Dick had told us that she had got a broken elbow, that she could not have put two arms around you?---No.

Nothing to do with that?---No. 30

I mean that change is just coincidence is it, it has this event, you make the statement about arms, Dick gives the medical evidence about the other arm -?---I'd say this is in error.

Oh, that is in error, oh, I see. When did you first suggest, Mr. King, that that was in error? Today?---No.

To whom did you suggest previously that that was in error?---No-one.

Never before?---No.

Let us see if there are any more errors. Now did you say anything today about Chris trying to strangle her with his hands?---Yes.

What did you say about that?---It appeared to me that Chris was trying to strangle her with his hands.

What about the question of the vomit. Do you remember that?---Yes.

10 Have a look at p.4 of "HH". Now you see that - read the answer in the middle of p.4 in answer to the question, "What happened next?"---"She was on her stomach and he pulled her legs back up and tied the end of the cord around her legs and arms. He turned her over so I could see her face and lit a match and vomit came from her mouth. It was horrible."

Yes, well now what did you say today about that incident?---Froth.

20 You had heard Dr. Dick's evidence, had you not? You know Mr. Dick the pathologist?---Yes.

Did he say there was any vomit there?---I don't know.

Why did you alter it from vomit to froth?--- That's what the vomit was like, frothy stuff.

I see, it was sort of vomit that looked like froth, is that so?---Yes, it was vomit.

30 What about the - and at p.3, would you have a look at that again? I think I have mentioned to you about your statement in "HH" there about "Chris on top of her, trying to strangle her with his fingers" do you see that?---Yes.

There was no statement to the Police "It seemed to be like that" or "I thought it was something like that" was there?---No.

But your statement today to me I think was that you thought that he was strangling her with his fingers, is that so?---Yes.

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You had a bit of trouble about observing what were fingers and what were not that night did you not? Did you not say the trees appeared to have branches like fingers and reaching up?---Yes.

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I will read the top of p.504, sir, of the transcript. "How did the trees appear to you?" "Taking on sort of like grotesque forms, the branches were like big hands and like fingers." Now is it possible that you are a bit confused about fingers and what were happening about fingers on that Sunday night?---I don't think so. 10

Well at any rate these trees had big fingers and Lowery had his fingers too did he?---Yes.

Did you hear the evidence that there were no marks of finger strangling on the -?---Yes.

HIS HONOUR: No evidence.

MR. WRIGHT: You know what I mean do you not?---Yes.

In view of that did you decide to make it just seem that it possibly was not a reality?---No.

Come now, I mean did it not come to you then that if there were no marks on the girl's throat that there would have been if there were real strangling, that it must have been just one of these illusions, do you follow? That you thought you saw him strangle her but it was not really so at all.--- Just because there are not marks does not prove it was not tried. 20

No, but it would be pretty unlikely though, the doctor was asked - you heard the Doctor was asked did you not?---Yes. 30

And medical science taking that as reality well then if there were no marks, well presumably it was just what you thought you saw was it not?--- That's what I said.

Yes, you said today. But you did not say in "HH" did you?---I didn't say 'I thought', no.

You have been telling us all along about the - what you thought of your experience there, what about the bra, do you remember - what did you say today about what Lowery was doing with Miss 40

Nolte's bra? What did you say today?---I don't know what I said today, but he had some item of clothing around the neck and he had a bra in his hand at one stage.

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And was that what you said on the previous occasion?---Basically, yes.

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Well do you remember?---Yes.

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10 What, that basically you said that he really was - what was the basic fact?---That he tried to strangle her with her bra.

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I see, now what do you say today?---The same.

(continued)

What do you remember?---Much the same.

M'mm?---He tried to strangle her with an item of clothing and I saw him with the bra in his hand.

I see, you think he had some item of clothing in his hand, is that right?---No, I definitely saw a bra in his hand.

20 What, do you remember from that night or have you just reconstructed it?---I remember.

The bra being in his hand?---M'mm.

I see, and is that the evidence you gave today? ---Basically, yes.

Now what about the matter of putting the cord around her throat? Do you remember how many times you said he put it round her throat in your statement here?---About half a dozen.

You heard the Doctor's evidence of course, Dr. Dick?---Yes.

30 That there were no marks...?---Yes.

And do you think you are wrong about that?---I must have been.

So that it is possible that that was one of the hallucinations that you get on a trip like this? ---No.

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Well if you saw something that was not there, that did not happen, presumably something had affected your sight or mentality, had it not?---Yes, I thought he put it around about half a dozen times, that's what I told the police.

That is what you thought you saw?---Yes.

And does the medical evidence affect your belief as to the truth of what you saw?---Well it shows it was only around three-quarters of a turn.

Three-quarters of one turn, yes?---Yes.

So that if you saw, you honestly told that you saw it being wound round six times, that must have been an illusion, must it not?---Possibly, yes.

Not possibly, there are only two possibilities, it was either real or it was not real, are there not?

MR. OGDEN: Well there are many more possibilities that occur to other people.

WITNESS: Yes.

MR. WRIGHT: Mr. King - yes, well what you said today I put it to you at p.505 is this, - "Well at any stage did Lowery do anything apart from what you have told us?" You said, "He had a - what I thought was a bra in his hand at one stage and I thought he put it round her throat, but I'm not absolutely certain it did happen."---Yes.

Is that your statement today? Now have a look at "HH", would you mind? Page 5. Would you look at the question in the middle of the page? "Did you see her clothing on the ground out there?" Is that right?---Yes.

What is the answer?---"I think so, yes, Chris tried to strangle her with her bra."

I see, a bit more definite than the statement that you made today, is it not?---Well there's a reason for it.

Is the reason for it that Dr. Dick's evidence came in the meantime?---No.

Or the evidence of what the clothes were?---No.

10

20

30

Or you have just had second thoughts?---Haven't had second thoughts, just made that statement sound as definite as possible.

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In the police statement you made it sound as definite as possible, is that right?---Yes.

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Why?---So they wouldn't gerry I was on drugs.

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10 So that in order that the - in order that you would not - the police would not gerry that you were on drugs you were prepared to tell the police that Lowery was trying to strangle her with her bra, is that what you are saying?---
Make it sound more definite.

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Yes, of course?---Yes.

Against Lowery?---Yes.

Did you consider there was anything improper or immoral in making a statement like that just to save yourself a drug charge?---Well that's what I thought that happened, that's what I told them.

20 Yes, you told them, you told them in other words, "Chris tried to strangle her with her bra", and you said that so that they would not gerry that you were on drugs?---Yes. That's what definitely I thought.

Now when you are on a mixture like you had almost anything can happen to you, can it not?---Yes.

And you lose all normal reasoning powers for the time being, do you not?---Most of them, yes.

30 And you would have lost the power to reason about the likelihood of being caught if you drive off from the middle of Hamilton with a local girl and take her out and murder her, do you not?---I didn't believe we were going out.

Well that is what you tell us now anyway. But a person in a normal state of mind would realise that, would he not?---He might.

And did you hear what Lowery said to the police when he was first asked about the murder? Do you remember? I read at p.148. That he said this, it

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is in the middle of the page, it is the evidence, sir, of Detective Rippon, "I said to him 'The jumper lead on your car is similar in size and colour to that which bound the girl Nolte, did you kill her?' To which he replied, 'Do you think I'm a so-and-so madman?'" Do you remember him saying that?---Yes, in court.

Well did you have any such reasoning powers about the chance of getting caught when you left the middle of Hamilton on Sunday night?---I'd no reason to believe I was going to get caught for anything. 10

You were not reasoning at all, were you?---No.

You were high as a kite, were you not? On -?---Yes.

That is your story, on this combination of alcohol and Methedrine and L.S.D.?---Yes.

You were stoned?---Yes.

Is that so?---Yes.

And you were with two people who were not, were you not?---Yes. 20

Now in your other activities you are a member of Hell's Angels, are you not?---Was.

Of the Nomad Chapter?---I was, yes.

And you had rather a collection of books and pictures about Hell's Angels, did you not?---Yes.

Which were sent down to Mr. Lewis, the solicitor in Hamilton?---That's right, yes.

Do you remember one called "Sex and Sadism of Hell's Angels"?---"Sex and Savagery". 30

"Sex and Savagery"?---That's right.

And did you have a picture also of "The Fat Man"?
---Yes.

He was a man that was murdered by the Hell's Angels in California, was he not?---I don't think he was murdered.

Well I suggest to you that that was the picture that you yourself had written underneath "Another good citizen snuffed out, guess why?" Do you remember writing that?---No, sir, that is completely false.

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What?---It is completely false.

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It is completely false to - did you have the picture of the fat man?---I've got the picture but that wasn't what was written underneath it.

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10 What had you written underneath it?---Nothing under that one, the one on the opposite page.

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What had you written on the opposite page?---
"Another citizen gets snuffed."

(continued)

Now the feature of the fat man was that he was stripped naked was he not, before you..?---I believe so, yes.

Now Hell's Angels have rather a reputation for revenge on any person who offends another Hell's Angel have they not?---In America they have, yes.

20 And this Hell's Angels Organisation out here is linked with the one in America is it not?---Not the one I was in, no.

The literature comes from America does it not?---
No.

Did not these books come from America, "Sex and Savagery of Hell's Angels"?---They were written by an American, printed in Australia I believe.

A reprint of something that had been printed in the States?---Yes.

30 Now why were you so interested in the sex and savagery of Hell's Angels?---I wasn't interested, I was just reading about it.

Did it give you any ideas?---No.

Are you sure of that?---Positive.

Why were you so resistant to the ideas of what Hell's Angels were doing in America?---Why was I so what?

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Why did you think it so wrong, for instance, to
copy what Hell's Angels had done in America?---
It's immoral the way they live.

I see, it was the immorality that shocked you was
it?---Yes.

Would you regard yourself as a strictly truthful
person?---Not completely, no.

Would you tell lies if you thought you would get
yourself out of trouble by doing so?---No.

Well you told the Police some lies did you not?--
--No.

10

Not even a little lie?---I don't think so, no.

What about the hitch hiker going to Coleraine?---
Yes.

That was just a verbal imprecision was it?---It
was a lie, yes.

The whole thing was a pack of lies was it not?---
Yes.

But on the other hand - well apart from telling
lies you regard yourself as highly moral do you?
---Yes.

20

DISCUSSION RE DURATION OF CASE.

COURT ADJOURNED AT 4.32 P.M. UNTIL WEDNESDAY,
16TH JUNE, 1971 AT 9.30 A.M.

(Seventh Day)

COURT COMMENCED ON WEDNESDAY 16TH JUNE 1971 AT
9.30 A.M.

CHARLES IAN KING, recalled and warned.

MR. WRIGHT CONTINUED CROSS-EXAMINATION.

MR. WRIGHT: Mr. King, may we first perhaps test your story that you did not commit this murder. Now may we test it firstly against, firstly the evidence given by Mrs. Johnstone, the former Policewoman Overend, that is the lady who lived next door to you, is it not?---That's right, yes.

A friend of your family?---Yes.

10 Do you suggest that she had any motive for giving evidence adverse to you?---No.

20 Well if I might perhaps refer to what she said, I refer to p.212 sir, of the transcript, it is recorded under the name Johnstone sir, because that is her married name. And I read toward the bottom of the page, this is Miss Overend as she was then, speaking, "I knocked at the door, and went in and Detective Morrison and Womersley were seated and Charles King was seated there too. Charles was crying and he did not look at me, he dropped his head and he said 'I'm sorry'. And then he pulled a letter out from his pocket and gave it to me and he said 'Will you write to her and tell her I'm sorry, I didn't mean to do it.'" Now she was then cross-examined about that and at p.215 about six lines from the top, this is a question by my learned friend, "Well, he was crying as you walked in, is that right?" And Miss Overend answered "No, I don't think he was. When I knocked on the door and walked in
30 he was just looking up and he didn't look at me when I walked in, he started to cry and put his head in his hands." And the question was "You see, I suggest to you that when he asked you to write the letter he said "Tell her I'm sorry, I didn't do it" and Miss Overend answered "I didn't mean to do it, he said". Next question, "Well, at the time you were upset were you not Mrs. Johnstone?" "Yes, I was". "Well, would you agree it is a possibility he might have said
40 'I didn't do it', the answer is "No."

MR. OGDEN: Well with respect, this is a question presumably that is going to be asked of the accused and my submission is it does not need to be - read the whole of the cross-examination from the transcript, Your Honour, the matter can be put as a question I submit.

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HIS HONOUR: Well it may be that it is desirable that his memory should be refreshed as to just what she did say.

MR. OGDEN: Well he has done that, Your Honour, I did not -

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HIS HONOUR: I think that Mr. Wright is within three questions of the end of the matter when you raised the point, I think it is preferable to complete it now.

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MR. OGDEN: Well Your Honour, my submission is that it is not fair to the witness to put so much to him and then - as a basis of a question Your Honour, it is -

10

HIS HONOUR: Well we will have to see what the question is.

MR. OGDEN: Yes.

MR. WRIGHT: Mr. King, I am putting this to you because I want to ask you to give you the chance to say is there any inaccuracy in the account of the circumstances under which Miss Overend said it, do you follow?---Yes.

20

Well, if I may go back to that question before I continued. This was the question, "You see I suggest to you that when he asked you to write the letter he said 'Tell her I'm sorry I didn't do it'." Miss Overend answered: "'I didn't mean to do it' he said." Next question, "Well at the time you were upset were you not, Mrs. Johnstone?" "Yes, I was." "Well would you agree that it is a possibility he might have said 'I didn't do it'?" "No." "Did you make a note of it?" "Yes, a mental note, I couldn't forget it." "When were you first asked to recall it?" "Very soon after as I left the room I did." Now that is all that I am putting to you of Miss Overend's evidence, Mr. King. And firstly I ask you is there any inaccuracy in the transcript account of what Miss Overend said?---Yes.

30

It is not right, is that so?---No.

Well what did Miss Overend say?---What she said in Court was right, but what she said was incorrect.

40

Well I take it you mean then that she is not correctly saying what she said in the station when you were there, is that so?---That's right yes.

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It is not very long, is it, the statement that she gives?---No.

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And it would not be likely that a trained policewoman would forget things as short as that is it?

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10 MR. OGDEN: Well Your Honour, I submit that is not for this -

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HIS HONOUR: That is a matter for comment I think.

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MR. WRIGHT: Do you think it is likely that Miss Overend forgot-?

MR. OGDEN: Well Your Honour, I submit that is in the same position.

HIS HONOUR: Yes, I think it is much the same -

20 MR. WRIGHT: Well can you give me any reason why from the circumstances as you saw them Miss Overend should have got it wrong?---Yes, I think I can.

What was that?---I was upset and when I do get upset I talk very fast and it's hard to understand me a lot.

Well that is the explanation is it?---Probably.

30 Let us just take, if I may, your account in Exhibit "HH", have you still got Exhibit "HH" there Mr. King? Now Lowery has said, has he not, that you had taken acid that evening?---That's correct, yes.

Is there anything in "HH" about your taking acid?---No, there's not.

Is this the fact that "HH", that is the document you have before you there, does not contain the major part of the truth?---It's a record -

MR. OGDEN: Again, with respect, that is asking

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the witness to draw comparisons, it is a matter
for the jury, Your Honour.

HIS HONOUR: No, I think that this is a permissible
question as to this statement that he has made
and the major part of which he has since confirmed
in answers to you.

MR. OGDEN: Yes, Your Honour, but major part of the
untruth is a matter for the jury, Your Honour, it
is a question of comparison and in my submission
it is not a matter that the witness should be
asked to express an opinion upon.

10

HIS HONOUR: It seems to me that it is a permissible
form of cross-examination.

MR. OGDEN: If Your Honour pleases.

MR. WRIGHT: Mr. King, (I refer to p.563, sir, of
the transcript) I refer to a question put to you
yesterday by my learned friend the Crown
Prosecutor on the end of the table there. I just
read a particular couple of questions to explain
where the phrase "the major part of the truth"
occurs do you see. Mr. Byrne said to you: "And
did you then decide to tell the truth?" You
answered: "That's right." And the next question
was: "Well part of the truth was the truth that
you were so stoned at the time that you could not
help yourself?" And you answered, "That's right"
did you not?---Yes.

20

The next question was: "That was the major part
of the truth insofar as you were concerned was it
not?" And your answer was: "Yes."---That's right.

30

"That you did not tell that to the police did you?"
And your answer was, "No." I take it then that
"HH" in addition to containing no reference to
'acid' as Lowery has told us was the fact, it
contains no reference to your being so stoned does
it?---No.

May I suggest that "HH" or your account to the
police is deficient in a number of other ways.
Do you remember being asked this (at p.545 sir) -
in the middle of the page, you were being asked
about what you did out at Mount Napier when you
were asked to make the film, you follow, you went
out with Rippon and other detectives, you remember

40

the incident?---Yes sir.

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And the question was, "Yes, and you moved his head into the position that you saw Rosalyn's head, did you not?" And your answer was, "Where I thought her head was, yes." The next question was, "Well that is how you remembered it, that is right, is it not?" And your answer was, "I thought I remembered it that way." Now is that the state of your recollection today about the matter that you just think you remember in that way?---Yes, much the same as.

Once again, on p.546 sir I read. You said you got sick, you went away and became sick?---Yes.

That is, you are telling them that on the night of the 31st of January, the Sunday, at a certain stage you went away and you got sick?---Yes.

20

And it was put to you "Did he make you sick to see what he was doing to her?" And your answer was "It wasn't what he was doing to her made me sick, it was just like my stomach - I was sick in my stomach, that's all." The next question, "It did not upset you to see what was happening?" The next answer was "I couldn't appreciate what was happening to be upset." Now is that another description of your state of mind, that you could not appreciate what was happening?---Yes.

30

Now once again on p.549 you were being asked when you - about an answer that you had made about going up to get your smokes out of the car on the Sunday night.---Yes.

And it was put to you and then you said "That is as it happened?" And you said "M'mm." "That is as it was is it not?" "That's what I thought happened anyway." That is your true statement of mind is it, that that - you are just telling what you thought happened out there?---Yes.

40

And on p.551 you were being asked - I will refer you to the exact questions - where it was that the girl was tied up. Now these questions were put to you, it is about the sixth question, this is the question, "She was up on the track then, was she not?" Your answer was "I don't remember" - oh, the question before that, "You remember him doing that, do you not?" And your answer was "I

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thought he tied her up, something like that."
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MR. OGDEN: "Something like that" means - refers to
an earlier method of tying up ..

MR. WRIGHT: Yes, that is so, is it not? As Mr.
Ogden said, I have not gone into the whole of it,
but -?---Yes.

The method had been described you know about the
legs and the arms and so forth.---Yes.

I will read the previous question if you like, but 10
do you follow that -?---Yes.

Putting the way that she was tied up. "Something
like that". And the next question, "She was up on
the track then was she not?" Your answer was, "I
don't remember if she was on the track or down in
the gully when he tied her up." The next question,
"You just do not know whether she was down on the
track or down in the gully or not?" The answer
was, "I have an idea it was down in the gully,
but I wouldn't say I'm certain of it."?---That's 20
right, yes.

Is that still your state of mind?---Yes.

And then a couple of questions further on you are
asked about the froth out of her mouth, do you
remember that?---Yes.

The question was put, "And you have got a clear
memory of this bit, have you not, seeing the froth?"
And your answer was "The whole night wasn't clear."
Is that -?---That's right, yes.

Is that still your state of mind?---Yes. 30

MR. OGDEN: Ask him the next question.

MR. WRIGHT: And then my friend wants me to ask -
"No, but you remember seeing this froth?" And
you said "Yes"?---Yes.

And then on the next page, p.552, you were being
asked about Lowery and whether you were frightened
of him, and then the question that I am referring
to is this, "You had just seen him commit a
pretty horrible murder, had you not?" Your

answer was "I thought - I wasn't too sure of what happened then." Is that right too?---Would you repeat that please?

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Yes, the question was "You" - well perhaps if I might make it clearer I will read the question before if it would help.---Yes.

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On p.552 . you were asked, "You were not frightened of him then, were you?" This is of Lowery you see, and your answer was "I may have been." And the next question was "You had just seen him commit a pretty horrible murder, had you not?" And your answer was "I thought - I wasn't too sure of what happened then."---Yes

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Is that right?---(NO AUDIBLE ANSWER).

I see. Now there is, however, is there not, one bit of evidence that is not in "HH", your statement to the police and that is not in Lowery's evidence and that is your taking Methedrine, is not that so?---That's true, yes.

20

And that was something, was it not, that Lowery did not know about?---That's right, yes.

And was not the reason that he did not know about it because he had not seen you take it?---That's right, yes.

Well how did he know about the acid?---When we were coming back in, when he asked me if I was drunk or something, I said "I'm stoned on acid".

30

Now please - now be fair - now what do you say you said to him?---When we were coming back in he asked me if I was drunk, or something, and I says, "No. I'm stoned on acid."

Are you certain that is what you said?---Something like that anyway, close enough to it.

40

Well I suggest, I read at p.507 of the transcript that you told us in Court here, being asked by my learned friend Mr. Ogden, this question "Was there any conversation in the car between leaving the Mount Napier Reserve and getting to the sports centre?" Your answer was "Yes, coming back I asked Lowery - I just asked him what happened?"

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And he said, 'What's the matter, are you drunk or something?' And then I told him I was stoned, and he laughed and he said 'I killed Rosalyn.'" Now you did not say when you were giving that evidence, "stoned on acid", did you Mr. King?---No.

I suggest you have just added that in the box, have you not?---I have not.

Well do you still say that you said to him "I was stoned on acid"?---Yes.

Well how is it you happened to forget it..?---I just couldn't have said it, that's all. 10

Of course if you were stoned on acid if you told him that, that would explain how he knows about it, would it not?---That's right, yes.

But another reason why he might know about it might be that he saw you take it might it not?---He couldn't have.

And I suggest to you that if he saw you take it and the word "acid" was not said by you in the box he would have known that you took acid later than you said you did. 20

MR. OGDEN: Well Your Honour, with respect, my submission is that is an unintelligible question Your Honour.

HIS HONOUR: I think it needs to be re-cast.

MR. WRIGHT: Mr. King, what I am putting to you is this, if I may simplify it, Lowery said that at about quarter past seven on the Sunday night when he picked you up he saw you take some acid, did he not?---That's what he said, yes. 30

That you told him it was acid, is not that right? ---That's what he said, yes.

And you told us that you took acid, that is true is it not?---Yes.

And you say, however, that you took the acid considerably earlier than Lowery said you took it? ---That's right.

You say you took it when Lowery was not there at

all, do you not?---Yes.

Apart from this bit about - that I suggest you have told us this morning about being stoned on acid, would there be any other reason why Lowery should know that you had taken the acid?---He may have put 2 and 2 together.

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Would you have had any reason for suggesting that you took the acid later - earlier rather, than Lowery said you took it?---No.

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10 Might this be a reason, that you wanted to suggest that the drug worked on you earlier than in fact it did work on you?---No.

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I suggest that you wanted to suggest that it worked on you when you were in the middle of Hamilton and not begin to work on you when you were up the track with the girl?---No.

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20 I propose now to put to you what you did say as to the times when you took the drugs. (It is at p.501, sir, and 502 that I propose to read.) You were asked, "You felt depressed and you took these nine tablets of Methedrine, is that right?" And you said, "That's right"?---Yes.

30 And then three questions lower, "Did you take anything else after the Methedrine?" You said, Yes, I took a tablet of acid." Next question: "About approximately when did you take that?" The answer was, "It was not long after I took the speed." "Speed is the word for Methedrine is it?" "Yes." Well then over the page then you were asked about what effect it has on you. Then the question was: "Well when did it" - have the effect I think - "on this day?" Perhaps I had better read the question. I just remind you if I may, the last question that I read to you, the actual question from the transcript was: "Speed is the word for Methedrine is it?" You answered "Yes." Remember that?---Yes.

40 Now I will read the next question in order to make it clear. "What effect did that have on you and when did the effect start to come on you?" You answered, "When you first take it you feel flush, heat in your arms and your legs and that. Then things just start to get distorted. It does with

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me, it varies with different people." And Mr. Ogden said, "Well when did it on this day?" The answer was: "About 6 o'clock." Are you quite certain if things had started to get distorted with you about 6 o'clock, after taking the Methedrine that you remember precisely when you took the acid?

HIS HONOUR: Just let me stop you, Mr. Wright, I think that because of the point at which you went back to p.501 you may be misunderstanding the effect of the questions and answers, if you go back a little earlier I think that you will see that that question "Well when did it on this day?" refers back to the L.S.D. "Did you take anything else after the Methedrine?" "Yes, I took a tablet of acid." "About approximately when did you take that?" "It was not long after I took the speed." "Speed is the word for Methedrine is it?" "Yes." "What effect did that have on you and when did the effect start to come on?" That seems to be a reference back to the acid, Methedrine having been referred to in passing and then dropped, I think that the witness' answers there meant that the acid started to take effect about 6 o'clock.

MR. WRIGHT: Yes that may well be the - see what His Honour is putting, Mr. King?---Yes.

I may be mistaking the effect of the questions. But in any case your story is that you took the acid pretty soon after the Methedrine and that was about 6 o'clock, is that right?---No, not at all. That's when it started to take effect.

You took the acid even earlier did you?---Yes.

About what time?---I don't know, I thought between 3 and 5.

You took the Methedrine or the acid?---The Lot. I'm not too sure of the time.

Which did you take first?---The Methedrine.

What was the interval between taking the Methedrine and the acid?---Long enough to pick it up.

Roughly how long in time?---Less than half a minute. 40

What the Methedrine, and then straight after that

10

20

30

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the acid?---Yes.

And no truth whatever in suggesting that you took it, that Lowery saw you take it when you were leaving the house?---No truth at all.

Now look, Mr. King, are you not a much more sophisticated character than you pretend to be? ---I don't think so.

There was some reference to your work, do you remember that, you were asked about your work?--
10 -Yes.

And did you want to get back to Sydney to your work, is that right?---I wanted to get up to Sydney to work.

What kind of work was that?---What I could get. I had a job more or less a certainty at the Mascot Airport.

Did you have any illegal kind of work in mind?--
-No, I did not.

I suggest to you that you were anxious at this time that the Police should not investigate you, is that right?---No.

Can you think of any reason why the Police would have been wanting to investigate you about this time?---No.

Have you received any communication suggesting that the Police might have been anxious to investigate you?---No.

Received a letter?---No.

A letter mentioning the Police and the necessity to lay quiet?---No.

It does not suggest anything to you at all - my questions? Any letter?---There was no letter.

Did you receive a letter dated 2nd February, 1971 from somebody called Leonie?---Yes.

2nd February, that is the day after this crime is it not?---Two days.

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Is there any reference in that letter to any
Police activity?---No, not that I remember.

Would you have a look at this letter and tell me
if that is the letter you got from Leonie?

Would you look at the last page please
Mr. King? The last page where the
signature - is that the one you got
from Leonie?---Yes.

Could I have it back again please? I am reading
at the bottom of the third page of the letter. It 10
reads, "The cops must be really hard up for some-
thing to do there, but just ignore them, that's the
safest way out." Do you remember that passage?---
Oh yes, yes.

And do you remember the next lines that follow at
the top of p.4, "You will have to be careful when
you come to Sydney because one more step out of line
and the cops are really going to hit you for every-
thing you've got", have you any idea what that
passage refers to?---Not that passage, no. 20

What, you have got no idea what that - ?---No.

Is that a frank answer?---Yes.

Let us refer perhaps to another - to an earlier
passage in the letter. It is "Dear Charlie," this
is the beginning of it.---That's right.

"Great to hear you coming up. Jeff will be pleased
as he was a bit anxious that you were never going
to come up. As soon as I hear from him I'll get
him to write to you and I'll also enclose his new
address as I don't know what it is exactly. I 30
hope he gets in contact with you otherwise you'll
be in a real pickle"?---Yes.

Any idea what that refers to?---Yes.

What was that?---Jeff is my friend, Jeff Smith,
he's living at Pott's Point and I was going up there
once and I was unsure of his address and it means
by that if I went up there I wouldn't know where
he was.

Now does it say in the letter "You'll need
transport in Sydney, but that's your business 40

anyway"?---Yes.

What would you need the transport in Sydney for?
---It's a big place.

What?---It is a big place.

10 And finally now at the end of the letter it concludes like this, "Don't forget to write and tell me exactly when you're coming up. I hope Jeff gets in touch with me soon, as soon as he does I'll tell him to write and as I said before will give you his address. If you don't hear from us about a week from when you get this letter, write straight away to me and I'll let you know what the situation is."?---Yes.

That was just a social reference to his living at Pott's Point was it?---That's right, yes.

It did not have anything to do with any business of yours, did it?---No.

20 What was this business or this activity that you were mixing with the university students down in Melbourne about?---What business is that?

Was there any business?---No.

What, you were sort of taking a University extension course were you?---No, they were just friends.

Just what?---Friends.

I see, what about the discotheque, what were you doing around there?---Used to go with mates, that's all.

Just mates?---Yes.

30 How was it that you were able to obtain these drugs?---That you had a supply of?---Because the people I used to go round with always had them.

They always had them, did they?---Yes..

In other words were you concerned with people who were peddling drugs?---No.

You were concerned with people who had possession of drugs?---Yes.

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Who were in a position to supply you with drugs?
---Yes.

And you were particularly anxious, were you not,
that the police should not know about drugs in
connection with you?---Yes.

You have been up and down to Sydney several times
during 1970 have you not?---A couple of trips, yes.

What was that about?---Just seeing mates, something
to do of a weekend.

It is quite a long way from Hamilton to Sydney 10
just to see some mates was it not?---No, from
Melbourne to Sydney.

What, Hamilton to Melbourne, Melbourne to Sydney?
---No, I was living in Melbourne in 1970.

It is quite expensive to go from Melbourne to
Sydney, is it not?---Not on a motor bike, no.

I see, and you went up there - what months was it
that you went up to Sydney?---Mainly half way
through the year onwards I think.

What?---Mainly from half way during the year 20
onwards.

And did you tell me that the - when was it that
you came back to Hamilton?---September.

And you were particularly anxious to get back to
Sydney at the end of January?---That's right, yes.

And was that just a social visit too?---No, I was
staying up there for a fortnight, I come back home
and went up to Sydney for a fortnight.

What were you going back to Sydney again at the
beginning of '71 for?---To start work up there. 30

And can you think again now as to what sort of
work it was that you were -?---Yes.

What?---Well I thought I had a job lined up at
Mascot Airport.

And was all this talk about meeting you and so

forth and new addresses, was that all just concerned with the job at the Mascot Airport?---Yes.

Did that job at Mascot Airport have anything to do with drugs?---No.

What, you would be horrified at the suggestion that it was anything to do with drugs, would you?---It depends on which way you mean it.

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I mean it that you were concerned in the drug traffic?---No.

Now on this Sunday afternoon -

MR. OGDEN: I submit that my learned friend should tender that letter.

MR. WRIGHT: I have got no objection whatever to tendering the letter. I will tender it, sir, with - that is the envelope it came in is it not? Would you look at that please?---Yes.

HIS HONOUR: This is your first exhibit..

MR. WRIGHT: It is, yes.

20 EXHIBIT EXHIBIT "L1" Letter of 2nd February '71 and envelope.

MR. WRIGHT: Just one further point on that question - on that matter, you did get these drugs free, did you not?---Some of them, yes.

Most of them?---Yes, the majority.

They are pretty expensive articles as a rule, are they not, drugs?---Not all of them, no.

Some of them are, are they not?---Yes, some get a bit pricey.

30 Now about L.S.D. what is the price of that?---It has gone down to 2 dollars recently I believe.

I see, what has it gone down from?---About eight.

What, 8 dollars or what?---Yes.

For how much?---A tab, that's black market.

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8 dollars a tab. black market?---Yes.

What has it gone down to - 6 Dollars?---Two.

It has gone down to 6 Dollars is that right?---
2 Dollars.

I am sorry I am not following you.

HIS HONOUR: It has gone down from 8 Dollars to
2 Dollars.

MR. WRIGHT: I see I thought he said it had gone
down 2 dollars sir, that was the.. What about
Methedrine, what about the price of that?---About 10
3 or 4 cents a tab.

What about hashish?---It varies with the type I
think.

What types are there?---There is Lebanese, Malayan
and Indian.

Which is the better?---I don't know.

Which do you think is the better?---It's much the
same to me.

Well you have tried them, have you not?---Yes.

What did you think was the better?---I didn't form 20
an opinion on it.

What about marijuana, what is the price of that?
---It is cheaper than hashish.

Now Mr. King would you have had any moral objection
to having some sex on that Sunday afternoon?---
Moral objection?

Yes?---No.

And you went out with Lowery of course, is that
right?---Yes.

And the drug had begun to work at about 6 o'clock 30
had it not?---Slightly, yes.

And you remember, of course, all the details about
horse play in the car do you not?---Most of them,
yes.

Were you rather shocked at the way Chris was going on with Kevine?---I wouldn't say completely shocked no.

Well a bit shocked?---Mildly.

I suppose particularly about the Butterworth backside?---No. That was only friendly, you could see that.

I see it was rather a tempting target was it, in the white jeans?---Maybe, yes.

10 So that there was no moral indignation involved in what happened in the car is there?---No, not really.

As to the position out at the Mount Napier Reserve, you remember about Miss Nolte's clothes, do you remember that? What do you say was the position where her clothes were?---They were on the track at one stage. I think I threw them off.

20 Could I have Exhibit "A" sir? Would you look at picture 4 please? Have you got that?---Yes.

Now I desire to refer, sir, to the evidence, I think at p.96, Mr. Mengler's evidence. I refer sir, to the cross-examination, the complete bottom of the page. Mr. King, I am referring in the cross-examination that I am about to refer to to three sticks, they appear to be placed in position along the edge of the track, can you see them? You see one that is a couple of feet from the base of the tree?---Yes, sir.

30 Another one is perhaps a foot further to the west? ---Yes.

And then a lighter coloured one - it is a bit.. say a foot closer to the edge of the track. I am going to read you what Detective Mengler said about those particular sticks do you see?---Right.

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I said, "Mr. Mengler, would you please look at Exhibit "A" photograph No.4. Now that is the tree on which the - Miss Nolte's jumper was hanging was it not?" The answer was, "That is so." "Now you have had placed in position three sticks running to the north along the edge of the track have you not?" The answer was, "Yes." "Now of those three sticks what article does the stick nearest the base of the tree indicate?" "The Kennel Club badge." "The badge was the nearest and then the next one to the north what was that?" "A watch." "And then the other one with a light coloured stick, that was the choker?" "The furthest article away was the choker." "About how far away would the choker have been from the base of the tree?" "About 9-10 feet." "And the other articles are what, 3 or 4 feet are they from each other?" "The badge is about 2 foot 6 from the base of the tree, the watch was about 3-4 feet away." Now do you remember anything about those articles that night? ---No. 10 20

Nothing at all?---No.

Did you not make some mention of the jumper in your evidence?---Yes, I hung it up in the tree.

At what stage did you hang it on the tree?---I think when I was picking up the clothes.

Now those three articles, they appear to be placed in a fairly orderly kind of way, do they not? On the edge of the track?---Yes, in a line.

Is it possible you forgot them when you were gathering up the clothes?---I didn't even know they were there. 30

I see, completely surprised?---Yes.

What did the jumper look like on this night when everything looked queer and hallucinated?---Just like a jumper.

Well if it did look like a jumper was it not the only thing in the place that did look normal?---Well everything had irregular shapes to it. It was still a jumper.

Did the jumper look its ordinary natural self? And everything else was out of focus?---Nothing 40

was out of focus.

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I thought you told me - for instance, did you not tell me that Lowery was out of focus with his enormous head and big hands?---You wouldn't call that out of focus, if he was out of focus you would not be able to see the outlines of his face it would be blurred.

10

I thought that - however, I may be wrong, but I thought that was the phrase that you used, "out of focus". At any rate, he was all distorted and weird was he not?---Yes.

And the ground was all distorted and weird and jumping up and down?---It wasn't jumping up and down, waving.

And the lions and the tigers were there?---At one stage, yes.

And the trees were all arching overhead?---Yes.

And they had long arms like fingers?---Yes.

20

Well was the jumper in any way distorted when you saw it there that night?---It was only distorted as far as the body was distorted.

Now, how was the body distorted?---It was long and spindly.

Did it look much longer and more spindly than its normal appearance was, is that so?---Yes, I suppose.

Did the head look distorted?---No, not particularly.

It was not distorted like Lowery's head?---No.

Did the hands look enormous?---No.

30

Or the feet look enormous?---No.

Was Lowery close to the girl when you saw the distortion of his body?---I'd say four feet.

I see, so is this the position that practically everything else was distorted, Lowery was distorted and four feet away and the only effect of the body was it was long and spindly, is that right?

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---Yes.

That was not of course its true shape?---No.

Now at that time you were in what you call a
paranoid situation, were you not?---Yes, to a
certain extent.

Well paranoid means fear does it not, you have
told us?---Yes.

And you have told us that (I read at p.504 sir)
you said - I will read the question, "Well did
the " (at the bottom of p.503 the question begins) 10
"How did the trees appear to you?" The answer was
"Taking on sort of like grotesque forms, the
branches were like big hands and like fingers and
they sort of curved right over the top of the
track, I didn't - be able to see out sort of thing.
I got pretty frightened, I think, paranoid." Mr.
Ogden: "You got frightened, what?" "Paranoid".
Now that was your situation, was it not, that you
were frightened there that night?---Yes.

And then you made the further reference to it, I 20
read at the bottom of p.541, "Did you have another
acid experience then?" "Yes." "Another hallucina-
tion?" "M'mm." "That was the one you told us
about meeting a few animals and seeing trees in
grotesque forms?" "Yes." "You said you became
paranoid then, did you not? That was your word,
was it not?" Your answer was? "Later on, yes."
"Pardon?" "Then and a bit later on." "What does
that mean?" "In one word, fear." "Fear of what?"
"Nearly everything."---Yes. 30

So you were afraid of nearly everything. Did you
get frightened of what the girl looked like?---No.

But was it not rather a frightening thing to see a
girl very long and spindly which was not her true
shape at all?---But she didn't look all that
grotesque.

Well she looked distorted, did she not?---She
looked longer, but everything else was the same..

Spindlier?---Yes.

Everything else was the same except the girl,
that she was long and spindly?---Yes. 40

And you were frightened of nearly everything, were you frightened of her?---No.

Why was it that you were not frightened of her when you were frightened of nearly everything? ---Because she didn't look anything to be scared of.

10 But there was nothing there to be scared of in the ground or in the trees, or even Lowery for that matter was there?---Yes, but the trees were taking on - the trees were taking on a shape that brought fear to me.

That what, brought fear to you?---Yes.

Well she was taking on a curious shape too, was she not?---She wasn't bringing fear though.

You were not afraid of Lowery's shape were you? ---Sometimes, yes.

20 Why? I mean it was only that - you knew it was just taking on a shape, did you not?---Even though you know it is taking on a shape it still appears sort of grotesque.

But a little fellow like Lowery..?---He didn't look small though from where I was sitting.

Now is it possible that you wanted something to tie the girl up to?---No.

Never heard that suggestion before?---Yes, heard the suggestion before.

That you said that you wanted something to tie her to?---Yes.

30 Well could you have said something like that on that night?---I don't think so. I don't remember it.

No, well you do not remember?---No.

So it is possible, is it not that you did look for something to tie the girl up to?---I had no reason to tie anybody up, so that's why I think I don't remember it.

That is why you think you do not remember it?---Yes.

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Might you have thought that she was some kind of weird shape or animal?---Pardon.

Might you have thought that she was some kind of weird shape or animal?---No.

You do not remember, is that it?---I didn't.

M'mm?---I didn't.

Well your memory on that particular point is very much better, is it, than it is on other points?--- I didn't think I was anybody else except myself.

I am not asking what you thought you were, I am asking you what you thought she was.---She was just long and spindly that's all she was. 10

About how long did she look?---Like sort of tall.

How many feet was it, 6 feet or 8 feet or what?--- I had no judgment of measurement.

No...?---No.

Now you have, Mr. King, told us yesterday, I read at p.549, this is something that the Crown Prosecutor at the end of the table was putting to you, the question was - it was a quotation he was putting to you from your "HH", do you see?---Yes. 20

He was putting to you something that he says is in "HH". "On the way down I thought I would stop him doing what he was and take the consequences", that is the end of the quotation, and then the Crown Prosecutor asked a question, "That is true is it not?" And you answered "It's not me taking the consequences because I did no wrong to start off with." The next question was, "You meant", and then the Crown Prosecutor quotes "and let Lowery take the consequences" and you said "Yes." So that when you were saying to him, - when you were saying in "HH" "I thought on my way down I thought I'd stop him doing what he was and take the consequences" you were sort of transposing Lowery into the person who was to take the consequences is that so?---Yes. 30

And similarly in "HH" you were - have you got p.6 of "HH" there? Would you read the fourth question? The question is "What was the conversation?" Do you see that?---Yes. 40

And would you read out the answer?---"Chris said, 'If we get caught deny everything' he said 'if they still get us then I'm going to plead temporary insanity'." In the Supreme Court of the State of Victoria

Well is it possible that you are transposing yourself for Lowery, that you were going to plead temporary insanity?---No.

M'mm?---No.

10 Well you had transposed Lowery for yourself in the previous conversation, had you not?

MR. OGDEN: ...transposing, Your Honour, with great respect, my learned friend has picked on a word. My submission is that the witness - that is my learned friend's word Your Honour, "transposing" in that question which he earlier read at p.549, Your Honour.

20 HIS HONOUR: Yes. The difficulty about the question is that it - there seems to be ambiguity about the time that is referred to, whether it means you have in your statement to the police transposed the two persons, or whether it means that at the time you were transposing Lowery and yourself.

MR. OGDEN: But Your Honour my submission is that there is no necessary transposition at all in that question, it is not "me taking the consequences.." and let Lowery take the consequences. There is no necessary transposition there, in my submission.

30 HIS HONOUR: Yes, I think that is so. Mr. Wright, I am not clear what you are directing these questions to is it a suggestion that he is now doing a transposing?

MR. WRIGHT: Yes.

HIS HONOUR: I see, well you may proceed with that.

MR. WRIGHT: His Honour put to me in what way - my learned friend, what way am I putting these questions.---Yes.

40 Now I suggest to you that you tried to get Lowery to say that he was in with you and that then you were trying to slide out from under and leave him

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alone in it?---That's not true.

I suggest to you further that you threatened the Lowerys to make them agree to your..?---I did not.

Now would you turn to the - to this letter "K(1)"? Now when did you first mention in this case the question of your taking Methedrine?---In the box.

When was it that this letter was handed to you? ---In the holding cells on the first.

On 1st June?---Yes.

Before the case began is that so?---Yes. 10

Just what time was it handed to you?---I think it would have been in the morning.

Come on, it is a matter of importance, being handed a letter like this or a document like this, it is not signed of course?---It would have been before Court.

What time? Try and remember. It is only 1st June this is still June.---I haven't got a watch and I've no idea of the time.

Just exactly where was it?---Over yonder in the Police Station. 20

On 1st June you had been brought up from Melbourne had you not?---Yes.

In the same van with Lowery had you not?---Yes.

And you had been with him for a month in Pentridge before that?---Yes.

And in fact when you got up here on 1st June you got up here very late, did you not?---It wasn't all that late, it was reasonably late though.

There was no time for a shower was that not so? Or a shave?---So they said, yes. 30

Very late indeed?---It wasn't very late.

In fact, when you got up here then you - did not your parents meet you with a change of clothes? ---Yes.

And the whole thing was rather hurried to get you into Court?---There was a fair bit of time lag after I got changed.

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In fact, was there not some delay because there was a petrol tanker in the side entrance and there was difficulty getting the van in?---Yes.

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Are you suggesting that after you and Lowery - you had been together for months in Pentridge had you not?---Yes.

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10 And you had been together in the van coming up?
---Yes.

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And then it is at the last second when you are just being, I suggest, in a hurried preparation for Court that he hands you this letter, is that the suggestion?---Yes.

(continued)

Does it include any reference to Methedrine?---
I don't remember.

20 Methedrine was mentioned for the first time, was it not by you in the box in the Court?---I may have mentioned it to Lowery at the prison, but the first time in Court I've mentioned it and to the Police.

HIS HONOUR: I did not catch that last answer, what did you say?---It's the first I've mentioned it in Court and to the Police, but I think I've mentioned it to Lowery before at Pentridge.

At Pentridge did you say?---Yes.

MR. WRIGHT: Or before Pentridge?---At Pentridge.

You think you did?---Yes.

30 When was that?---It could have been any time in the four months.

I see. Of course this document was handed to you at a time - you were seeing your legal advisers when you got up there are you not?---Yes.

My learned friend and Mr. Ogden and Mr. Dunn?---Yes.

You were seeing your parents?---Yes.

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Police were all around?---M'mm.

There was no kind of pressure on you by Lowery
to -?---No.

Nothing at all. And so then you just kept this
document. It is not signed of course is it?---No.

Did you and Lowery attend the same school?---Yes.

Did you have some of Lowery's writing as a method
of comparing this with?---No.

But are you able to say, as you did say, you thought
that was Lowery's writing?---Well he handed it to 10
me so I just figured it was his.

Mr. King would you try again. I say, how are you
saying that it is Lowery's writing by looking at
it?---I haven't said definitely it was Lowery's
writing. It may look a bit like his.

How did you know what it was like if you did not
know what Lowery's writing was like?

HIS HONOUR: I do not know that he said that, did he?

MR. OGDEN: No, Your Honour, he did not say he did
not know what Lowery's writing was like. 20

MR. WRIGHT: Thank you Mr. Ogden.

Did you know what Lowery's writing was like?---
I've glimpsed it, that's all though.

Where did you glimpse it?---Maybe in the mess hall
writing letters.

In other words, you were with Lowery in the mess
hall at Pentridge, is that so?---Yes, once.

What, only once?---Writing letters I was only in
there with him once, yes.

What, in the whole five months you only once saw 30
him writing letters?---Four months.

And you took a note of what his handwriting was
like on that occasion did you?---No.

Just had a hasty glimpse?---Yes.

Were you a bit interested in what his handwriting was like?---No.

And in the whole four months you only had that one opportunity to observe what his handwriting was like?---There may have been others, but it's nothing you take notice of.

Well I suggest you were taking notice more than once?---I was not.

Mr. King, may I suggest to you that on that Sunday afternoon, that when you were at the middle of Hamilton with - in Lowery's van and Kevine Butterworth was driven to her home you remembered what happened, did you not?---
Parts of it, yes.

Parts of it, you remembered whether he hit her and she hit him did you not?---There may be parts I didn't even remember. I was just telling you what I did remember.

What?---I'm telling you what I did see.

You just remembered the colourful bits is that right?---No.

Well then you went in with them did you not, into the Brays' home?---Yes.

And it was arranged about going to the drive-in?
---Yes.

And then you went back down to the centre of the town, did you not?---Yes.

You just had a bit of spare time?---Yes.

And you had all arranged you were going to come back to the Lowery parents-in-law afterwards, you were going to pick up his wife and you were going to pick up Kevine Butterworth and Marilyn Cooper and you were all going to the drive-in?
---That's right, yes.

Did you know the way up to the Mount Napier Reserve?---Yes, I do.

You had been there a number of times, had you not?---Yes.

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Now may I suggest that you went out there, that you were interested in sex?---That's not true.

You are quite definite you were not interested in sex?---Yes.

Do you remember what your state of mind was when you were going out there?---In which way?

About being interested in sex?---I wasn't interested in sex then, no.

Do you remember what your state of mind was about that?---Negative. 10

What stage was it - just tell us now you start off from the centre of the town?---Yes.

A lot of people about, were there not?---There might have been a few.

Yes, the holiday weekend, Sunday evening was it?---The same as any other day in Hamilton.

And you were a well known character in Hamilton were you not?---I suppose so, yes.

And so was Lowery was he not?---Yes.

And so was Miss Nolte?---She may have been, yes. 20

And you start off and you drive out to the Mount Napier Reserve? Is that right?---I don't remember going out Mount Napier Road, no.

Well you do not know then when you were going out there whether you were interested in sex or not, is that so?---I wasn't in that frame of mind.

At what stage did you happen to lose consciousness? You remember being in the centre of the town, do you not?---Would have been still in the centre of the town I think. 30

Do you remember speaking to Miss Nolte?---Yes.

Do you remember talking about Garry Bailey?---Only faintly.

You remember saying something about the party?---No.

What?---Don't know anything about that.

MR.....: I understand the jury is having difficulty in hearing.

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MR. WRIGHT: Is it mine, sir, or is it the witness?

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HIS HONOUR: Is it the witness or counsel that you are having difficulty in hearing?

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FOREMAN: No, the witness.

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HIS HONOUR: Yes, well you see you have to keep your voice up....Right.

10 MR. WRIGHT: Mr. King, if I am going too fast just tell me.---Right.

(continued)

Now what is the last part of the trip out that you can remember?---I remember one stage I know we were going along a road.

Where presumably you were not flying through the air, were you?---Yes, well this is what I remember.

At that stage.---That's what I remember, going along the road.

20 Now at what stage was it that consciousness, if you can call it that, returned?---Out at the track.

And at that stage was it this grotesque consciousness with everybody distorted and the lions and the tigers and the -?---Yes.

The branches arched overhead?---Yes.

30 And that is the time that you saw the girl with the shape all elongated?---When I walked past them, didn't seem to take on any shape, just normal. There was nothing grotesque about them, when I come back they started to take on that shape.

How far past did you go?---Wouldn't be very far.

You have got no real memory have you, of distances there?---Only rough.

M'mm?---Only rough.

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It was just like a dream, was it not?---Yes.

And in the dream you walked past - did you go past
the forked tree with the jumper on it?---Yes, it
would have been past that I think.

In the dream?---Yes.

Can you remember everything that happened in the
dream?---No.

I see, so things could have happened that you do
not remember?---Yes.

And is it that you could have killed the girl but 10
you do not remember?---No.

Re-
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MR. OGDEN COMMENCED RE-EXAMINATION.

MR. OGDEN: Could the witness have, Your Honour,
Exhibit "L1".

EXHIBIT "L1" HANDED TO WITNESS.

MR. OGDEN: Now look, I want you to read that out
slowly and - so that the gentlemen of the jury can
hear it.---Right through?

Now, do not rush it and keep your voice up.---
"Dear Charlie, Great to hear you're coming up. 20
Jeff will be pleased as he was a bit anxious that
you were never going to come up."

Who is "Jeff" by the way?---Jeff Smith a mate of
mine I met in Melbourne.

Yes?---"As soon as I hear from him I'll get him to
write to you and I'll also enclose his new address
as I don't know what it is exactly. I hope he
gets in contact with me otherwise you'll be in a
real pickle. That was pretty lousy -"

What do you mean - what did - what do you take that 30
to mean, that unless he gets in touch with her
you will be in a real pickle, what does that refer
to in your view?---Well neither of us knew where
he was staying at that time and if he didn't get
in contact with her I'd have to wait longer before

I could go up because I wouldn't know where to stay.

Because you would not be able to get in contact with him either?---That's right.

Unless through her is that what..?---Yes.

Yes, I am clear enough, well read on?---"That was pretty lousy of the Huns not to turn up but I hope you had a beaut birthday anyway. Try not to have too many arguments with your mother and father before you go as it will only make things more difficult for you when you do. You've only got a couple of weeks to go so act real sweet. I think that's bad about the bike as you'll need transport in Sydney."

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MR. OGDEN: What is that referring to? What was bad about the bike?---Well I intended taking the bike with me up there, but it worked out it would cost too much to take it up, so I decided to sell it.

You mean carry it - have it transported up?---Yes by rail, yes.

Why would you not ride it up?---It wouldn't get there.

Yes?---"I won't go into details about Jeff on paper, plenty of time to fill you in on all that, all that's been going on when we see you. We have our differences quite often but all - well most people do. He only annoys me when he puts on the big tough man act, but most fellows do it anyway every now and then. I don't know exactly who he is going out with now, it's hard to tell who he likes if any of the birds. The girl who likes - the girl who lives in the flat next to the one Jeff lives in has a baby about eight months old and she works at night at a night club and goes out at night and comes in about 4.30 in the morning which I reckon is a pretty lousy deal and I'd love to turn her in to the Authorities because in my opinion she's not fit to be a mother, but its none of my business if the stupid cow wants to-" I can't understand half of this - "its not - its none of my business if the stupid cow wants to turn some poor kids life", it could be "ruin".

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"Ruin", yes.---Yes.

Yes?---"Honest, that really makes me mad. The cops must be really hard up for something to do there, but just ignore them, that's the safest way out. You'll have to be careful when you come to Sydney because one more step out of line and the cops are really going to hit you for everything you've got. I don't like the way Jeff... he still thinks."

Yes, would you just stop there for a moment and go back to that earlier statement about "The cops there" I think that you just read would you mind reading that again? Slowly.---"The cops must be really hard up for something to do there." 10

Now had you been in touch with Leonie, written to her - was this in effect a letter in reply to something you had written to her?---Yes, sir.

When had you written to her? Approximately, I do not expect you to know the precise date?---I'd say it would be January some time. It would have been before the 22nd. After the 22nd, sorry. 20

What was that referring to about "the cops must be short of something to do there"? Or whatever the precise words were?---It arose out of an incident with Chris in the van.

What was that?---He stacked it one night against the kerbing. And he reported it stolen. And they were going to put an accessory on me.

He stacked it, you mean had an accident with it?---Yes, bent the axle and what have you. 30

And he reported it stolen?---Yes. And because I was there they were going to put an accessory on me.

Charge you with being an accessory?---Yes.

Was that the activities of the Police that that refers to?---Yes.

And you had written to her about that, had you?---Yes.

Well read on.---"I don't like the way Jeff's

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10 heading, he still thinks sleeping around with
different chicks, popping pills and getting
drunk all the time is a real thrill. I reckon
we all ought to know better than that, but I'm
not going to run your lives believe me. If I
try to tell you what to do, just tell me to
mind my own business and I will. I'm pretty
unhappy I guess, I don't know anyone at all and
I get lonely which is stupid, but I can't help
it anyway. Enough of that garbage. Don't
forget to write and tell me exactly what . .
when you are coming up. I hope Jeff gets in
touch with me soon, as soon as he does I'll tell
him to write and as I said before give you his
address. If you don't hear from us about a
week from when you get this letter write straight
away to me and I'll let you know what the
situation is. Look after yourself, etc."

And Leonie is your girl-friend is she?---Yes.

20 Did Lowery explain to you why he reported the
car stolen after he had crashed it?---I think
it was only because his father wouldn't go crook
at him.

30 HIS HONOUR: I have not followed what it is that
you said to be "accessory to".---Yes, well I was
with him the night that it happened, I was
following him around on the bike and I was with
him when he rang up the Police and I said what
he said was true, about we come out and it was
gone. And they said, "Well you could have been
aiding and abetting a false statement" or some-
thing like that.

Yes, I follow.

MR. OGDEN: What does the word "originals" mean?---
An Angel term or just a bikie term for clothes
that haven't been washed, something you wear all
the time.

An Angel or bikie term for something you have not
washed or -?---A pair of jeans.

40 You have not washed and you wear all the time?---
Yes. You call them party clothes, things you
wear out when you go with your mates.

And fundamentally it refers to jeans, is that

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right?---That's right, yes.

Now you have mentioned in the course of the very long time you have been in the witness box the word "strobing", what does that mean to you? What do you mean by the word "strobing"?---Flashing on and off

In regard to the effect of the drugs that you took, the effect of them on you this night, what do you mean by "strobing"?---Getting hallucinations then stop, things are clear, and you get hallucinations again. 10

As I have understood your evidence, the drugs that you took had this effect on you this night, is this correct, first of all, -

MR. WRIGHT: My friend, with respect, is leading..

HIS HONOUR: Yes, this is re-examination, Mr.Ogden.

MR. OGDEN: Well you have said that there was a period that you cannot recall at all. Or very little, practically nothing of it, have you not? ---That's right, yes. 20

Then you have mentioned a strobing effect?---Yes.

Now, when the - when you are in the hallucinatory period of that strobing effect can you afterwards recall what went on in that period including the grotesqueness and distortion?---Yes, I can.

So far as recall is concerned, can you recall the clear periods, the relatively clear periods during your strobing also?---Yes.

And you mentioned the word "peaking" in cross-examination, what does that mean? What did you mean by "peaking"?---That's when you build up to your trip and when you are up there it is the peak of it. 30

Does that have any relationship to the hallucinatory period when the image that you see is distorted?---Yes, it can.

What I want to know is, does "peaking" describe that period and that period alone or has it got

some wider meaning than that?---Peaking is the time when you are actually really tripping, you know, it is not building up, you're not coming down.

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If you imagine the thing as a triangle on one side going up and the other side of the triangle, the other arm of the triangle coming down, then peaking is up at the peak of the triangle is that what you mean?---That's right, yes.

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10 What do you say about the accuracy of what you recall occurring during the clear period, not the hallucinatory period but the clear periods of this strobing?---Pretty accurate.

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(continued)

What do you say of the clarity in your mind of recalling the hallucinatory period although it includes distortion?---Pretty clear.

20 Is there any possibility that in either period - let us take them singly - is there any possibility that in the clear period you could be transposing yourself with Lowery?---No, not at all.

Is there any such possibility in the hallucinatory period?---No.

When you are recalling the hallucinatory period, that is at the present time for instance or at any time after the trip is completely over, when you are recalling it are you able in your recalling to distinguish between distortion and what is to your knowledge fact?---Yes.

30 You have told the gentlemen of the jury of occasions during the day that you had liquor, for instance you said that you had some liquor before going out to the track to ride the bike and you have also told the jury that you had some liquor at the track, and you have also told them that you had, I think, a can each in the township later on as you were just driving around the town about 8 o'clock or thereabouts. About how much liquor did you have to.. did you
40 consume up until the time that you spoke to Rosalyn Nolte? On that day?---By myself I'd probably say four cans.

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And with Lowery, or in his presence?---About eight.

I do not know whether this is clear, but -

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HIS HONOUR: I do not think the question was clear, whether you were talking about different periods or different combinations.

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MR. OGDEN: Yes, Your Honour, there may be some overlapping. All I want to know is an estimate only of the total amount of liquor you drank up until that time, I do not care whether it is with Lowery or on your own, but could you say approximately the total number of liquor you drank on that day? ---I'd say about eight skinny tins - small cans. 10

About eight small cans?---Yes.

You call them skinny tins do you?---Skinny tins.

You were asked by my learned friend Mr. Wright - would you look at the record of interview - have a look at your record of interview, Exhibit "KK" is it not?---"HH".

"HH", thank you. Remember being asked - look at the middle of about p.3, "Chris walked back to the car and Rosalyn stayed there with me. She put her arms around me and asked 'Is Chris going to kill me?' I said 'I don't know, he's gone mad'." You remember you said to my learned friend that that was a mistake 'arms' it really should have been and you said 'arm'.---That's correct, yes. 20

Would you have a look only three questions further down, "Prior to breaking off for lunch"---Yes.

Now that is an obvious typing error, is it not?---Yes, for sure. 30

There was no such question put to you was there? Let me read the whole question as typed first of all. "Prior to breaking - to breaking off for lunch you said that Chris had gone back to the car and Rosalyn stayed with you, is that correct?" Now that is the question as typed.---Yes.

Was that the question as said to you?---No, it wasn't. It was "Prior to breaking off for lunch".

So that is an obvious mis-typing is it not?---Yes. In the
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It has been suggested to you by my learned
 friend Mr. Wright this morning that in effect
 you have been or are a pusher of drugs, is there
 any truth in that?---No, not at all.

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10 Do you know others who have bought them?---Yes,
 I do.

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It has been suggested that you have a friend
 who is a murderer, is that true?---No, not at
 all.

(continued)

Do you know anybody who is a murderer?---No, not
 from memory.

Anyone who has been convicted of murder or
 anything..?---No.

20 You have said that you are no longer in the
 Hell's Angels, how old were you when you were
 in the Hell's Angel group?---Seventeen.

For how long were you in the Ballarat branch or
 section or group?--- About two months I suppose.

WITNESS WITHDREW AND RETURNED TO DOCK.

COURT ADJOURNED AT 11.02 A.M.

FRANCIS NICOL COX sworn and examined.

Francis Nicol
 Cox

WITNESS TO MR. OGDEN: My full name is Francis Nicol
 Cox. I reside at 40 Rocklea Road, South Yarra,
 Melbourne. I am a psychologist by occupation.

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30 MR. OGDEN: Where do you carry on that vocation,
 Professor?---In two ways, at the University of
 Melbourne in the - where I am at the present
 time in the Faculty of Education, I am employed
 as a psychologist and also from time to time I
 see people as a clinical psychologist from my
 home.

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What degrees or qualifications do you hold?--- I hold a Master of Science Degree from Yale University and a Master of Arts and a Doctor of Philosophy Degree from Melbourne University.

How long have you been carrying on the profession or occupation of a psychologist?---Since the end of 1952.

What experience have you had? Have you any appointments of any kind?---I have had appointments as honorary psychologist at Prince Henry's Hospital and the Melbourne Hospital, I do not have such an appointment at the present time. 10

What experience have you in the practise of the profession apart from what you have told us, is there any other experience that you have?---Yes, I was in the Australian Military Forces for a little over two years in the earlier 1950's in charge of a psychological research unit there.

Well have you had a consultation and examination of the accused Charles King?---Yes. 20

When was that Professor? If you want to refer to notes I think there will be no objection, the notes taken at the time.

NO OBJECTION BY COUNSEL.

HIS HONOUR: Yes.

WITNESS: On May the 14th of this year.

MR. OGDEN: And at the time of this examination had you read a copy of the depositions taken at the coronial inquiry into the death of Rosalyn Nolte? ---I had, yes. 30

And had you read a copy of the record of interview Exhibit "JJ" in this case, that is the record of interview between the police and King at Hamilton Police Station on the Saturday following the murder - "HH"?---Yes, I had.

Now would you tell the gentlemen of the jury about your examination of King on the day in question?

MR. BYRNE: Well Your Honour, it is submitted that on the face of it, a description of such an

examination does not go to any issue. My learned friend, I trust, knows what is the issue to which he directs his question, but if the issue is not an issue of insanity or perhaps automatism, I submit that the question is simply irrelevant and objectionable insofar as it may elicit evidence of the personality of the accused King which may be in some way suggested contrast with the personality of the accused Lowery. I submit sir that my learned friend ought to indicate how this - how this question is put and to say as to what issue it is directed before proceeding.

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HIS HONOUR: Yes, well you have not given any indication so far Mr. Ogden of any issue to which such an examination would obviously be directed. What is it directed to? (continued)

MR. OGDEN: Your Honour, I thought I - in my opening I said that I was going to call various medical and other expert witnesses to depose to the state of health of King and - including his mental state, at the time. I also, Your Honour, want to lead evidence of his - through this expert witness as to his psychological makeup. The issue - that is as to his, King's psychological makeup Your Honour.

HIS HONOUR: Well let us take these two matters you have mentioned in sequence.

MR. OGDEN: Yes.

HIS HONOUR: The first, is that intended to provide material for a defence that King was insane at the time of the death of the girl?

MR. OGDEN: It is intended, Your Honour, to be the basis of a defence which puts in issue King's mental condition at the time of the offence, yes.

HIS HONOUR: Well I do not think that quite answers the question that I am in doubt about. Mental condition can cover such a very wide field. You are not, I imagine, talking about matters such as mood or interest or emotion or things of that kind. Are you talking about an attempt to establish that he was suffering from a disease or disorder of the mind at the time the girl died?

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MR. OGDEN: Your Honour, my submission is that it is for the jury to compartmentalise, if I can use that rather cumbersome word, the results of the evidence. This evidence would be relevant to both a defence of automatism and what has been referred to as a defence of insanity. Automatism really is not a defence, of course, as Your Honour understands, it is a direction - it is material directed to the issue of whether or not an act - any act to which King was a party was done voluntarily or as a willed act and it would go, in my submission, to both, Your Honour.

10

HIS HONOUR: Well I do not see then what the great difficulty is in specifying the issues. You are intending this as I follow it now to be directed to the issue as to whether the mental element necessary to constitute the crime of murder was present.

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: And to the question of whether the accused King, at the time of death of the girl, was legally sane or insane, those are the two issues, to which you are addressing it.

20

MR. OGDEN: Yes.

HIS HONOUR: Well now you mentioned another aspect and so far as admissibility is concerned it may be unnecessary at this stage to go into that if the evidence is tendered on the two issues you mentioned, well then you are entitled to tender it, but I gather from what you said and what the Prosecutor said that you were also expecting to elicit from this witness matters which do not bear on these two issues, is that so?

30

MR. OGDEN: I had not at this stage, Your Honour. All I was asking the witness at this stage was to give the result of his interview, to speak of the interview that he had with King as to King's psychological makeup or mental makeup, things of that nature.

HIS HONOUR: Yes, well you told me that there were two matters that you were directing it to, it is perfectly true that at this stage all you have asked him to do is to describe his examination of the accused.

40

MR. OGDEN: Yes.

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HIS HONOUR: But in case we may get some inadmissible evidence in I want to be clear at this stage whether you are going to elicit in this description of the examination material which is not relevant to the issues of the mental element in murder or to the defence of insanity. If you are going to elicit material which is not relevant to those two issues, then I think before we get into some legal difficulty through getting inadmissible evidence in, I had better know what is the nature of the evidence, if any, that you are going to tender from this witness beyond what bears on mens rea and insanity.

10

MR. OGDEN: In the long run, Your Honour, I will also seek to tender evidence from this witness, although it does not relate to the question I was asking the witness, it will come later, but -

20

HIS HONOUR: Well if you can separate them out we can leave this second matter until you come to it. I just want to be sure we do not stumble over it by accident.

MR. OGDEN: If Your Honour finds it convenient I would be just as prepared to tell Your Honour now what the other issue is and let Your Honour rule on it or give some provisional ruling at any rate in advance. And that -

30

MR. WRIGHT: This is being said in the presence of the jury, sir, and what I desire to state, sir, is that I associate myself with the objection that this witness should be asked.. his evidence should be put as to either automatism, if lack of the mens rea, or insanity or both, but apart from that sir I object to his evidence.

HIS HONOUR: Yes.

MR. OGDEN: Well Your Honour, I have not yet said what the - I am not allowed sir, I want to, Your Honour, to tell Your Honour that the other issue that it will be directed to is the issue raised by Lowery in his defence, namely, that he was terrified of King. And I propose to ask this witness later about an examination that he had of

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Lowery and of the contrast in personality between
Lowery and King going to that issue raised by
Lowery, Your Honour.

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MR. WRIGHT: Well sir I would certainly object to
this witness, as I understand it, he proposes to
give evidence of an examination of Lowery who
consulted him as a client, at the behest of my
friend. It is suggested, sir, I take it, that
Lowery consulted this gentleman as a client, that
he proposes to give -

10

MR. OGDEN: No, no, it is not suggested at all, Your
Honour, it is suggested that Lowery was sent by
his legal advisers to be examined by Professor Cox
and the examination took place, and I certainly
want to lead evidence of the result of that
examination on that third issue, Your Honour. And
this is an issue which is raised by Lowery fairly
and squarely in this trial, not by King, it is
raised by Lowery.

HIS HONOUR: Well just a moment, Mr. Ogden, you want
to tender evidence of an examination by this
witness of both the accused, is that it, or only
of -?

20

MR. OGDEN: Of each of the accused, yes, Your Honour.

HIS HONOUR: And you want to elicit from the witness
his opinion, do you, as to the mental characteris-
tics of the two men in regard to such things as
inherent aggressiveness or things of that kind?

MR. OGDEN: Yes, Your Honour, and whether one would -
one has the qualities of being a leader in a venture
of aggressive nature or whether - and the other is a
compliant, easily led person and whether - Lowery for
instance, would be the sort of person who would be
in fear of King or would it be the other way round.

30

HIS HONOUR: As to that matter of being in fear, I
have considerable difficulty about that because
evidence as to what the actual temperamental
characteristics of a person are seems to be some-
what removed from the question whether some other
person is in fear of him. It may be that the
question of the temperamental characteristics of
each accused, if that can be established by the
evidence of a properly qualified expert, is
evidence of a fact which will render more probable

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that this or the other thing did or did not happen. But it may be more difficult to relate it to the question of what was going on in another person's mind.

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MR. OGDEN: That is so Your Honour. Well the issue is raised in my submission - has been raised in this case, of the contrast in personalities, behavioural patterns of the two accused persons, it has been fairly and squarely raised by the defence of Lowery, and that this witness having seen both his - is qualified to speak on matters which relate to that topic Your Honour.

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HIS HONOUR: Well the statements made to the police on the 6th of February paint differing pictures of what occurred, each statement casting the other accused in the leading role. It may be that evidence as to personality would be evidence of matters making it more or less probable that this one or that one was in accordance with Exhibit "A" or Exhibit this or Exhibit that, playing the leading role. I suppose it might be relevant in that way.

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(continued)

MR. OGDEN: Yes, Your Honour. My submission is that it is, Your Honour, it is relevant there.

HIS HONOUR: But if it is relevant there, you may need a much deeper inquiry into the qualification of the witness before you could ask him to express an opinion about such a matter.

MR. OGDEN: Yes. Well Your Honour I had not intended to do it at this stage originally, but because I was -

HIS HONOUR: Well I merely mention that so that if we reach the point it will not be overlooked.

MR. OGDEN: Yes, well Your Honour may I ask some questions of the witness in regard to the material that he has by way of examination of Lowery and other documentary material, so that we can get a basis Your Honour for his expression of any opinion later.

MR. WRIGHT: I object to this. In my submission, sir, the basis is the qualification of the witness before he can express any views at all as an

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expert he must be properly qualified.

HIS HONOUR: Yes, well I am disposed to agree with that as I have already indicated to Mr. Ogden that we were rather discussing one aspect of this in the air, we have heard that the witness is a psychologist and performs various functions, but he has not, I think, been qualified in sufficient detail or specifically enough to entitle him to express opinions on the matters we have been discussing and probably we had better have that question cleared up before we go on to debate the question further as to whether such opinions are admissible. 10

MR. WRIGHT: If Your Honour pleases.

HIS HONOUR: Yes Mr. Ogden.

MR. OGDEN: Professor, have you in the course of the experience that you have related formed assessments of the personality and character of various people by means of interviews of the kind that you had with King in this case?---Yes, I would like to qualify that if I might to say that apart from interviews the main stock in trade of the clinical psychologists are various tests, Your Honour, rather than interviews. 20

Well at the tests, let us first of all take the test of King - rather, at the interview of King, what tests did you give him?

HIS HONOUR: Are we going into the examination at this stage? I thought that you were going to go into qualifications, not examinations. Could we have it clear what - clear and in detail what qualification the witness has to express opinions first about sanity, secondly about the mental awareness of persons at a previous occasion, thirdly, that the characteristics of a person's personality, those, I think, are the three matters that were mentioned as likely to be the subject of opinions, perhaps we should know just how far this witness' training, research and experience qualify him to express opinions about those matters. 30 40

MR. OGDEN: Well let us take the assessment of the personality of a person. What experience have you had in that field, Professor?---In the

training that I had first, if I could take that, that led to the academic qualifications, in each of the - in each of those periods of training there was theoretical and practical training on the administration, the scoring and the interpretation of tests of personality and tests of intelligence. The second point, with respect to the research side, I have done research into aspects of personality, again if I could include intelligence under that word.

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10

MR. OGDEN: Yes. -- For approximately 20 years I think, Your Honour, in personalities of children, adolescents and adults, in varying proportions.

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HIS HONOUR: When you talk about personality including intelligence, does that have any reference to such characteristics as leadership or aggressive tendencies or things of that kind? ---With the word "personality" yes, Your Honour, but I have done research on to terms like - words I think would be a better phrase would it not? Words such as aggression, dependence leadership, and - the only reason I included intelligence under the heading of "personality" was to avoid saying the two words repeatedly.

(continued)

20

Yes, I followed that, but I just wanted to be sure as to the nature of the subject matter that you are including under the word "personalities".

MR. OGDEN: Well you include those particular facets I suppose it can be called of personality such as aggressive, leadership, - ---Yes.

30

Dependency and so on. --- And I have in the army and at public hospitals and seen people privately, made assessments of personality covering words like - aggression, dependence, anxiety, I was trying to estimate in my mind the number of persons that I had seen as individuals, Your Honour, and would think that the fairest estimate I could give would be between five and six thousand people individually.

40

HIS HONOUR: Does your study and experience cover matters of abnormal personality and insanity? Matters of that kind?---Well before I had this appointment in the Education Faculty, Your Honour, I was at the psychology Department at Melbourne

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University from 1961 through to 1968 and at that time I was responsible for lecturing and tutorials and practical classes with students in aspects of abnormal psychology. And to taking the students to hospitals and to other institutions where they might see patients suffering from different conditions.

HIS HONOUR: Am I right in thinking that what - from what you have said that the various forms of insanity are matters falling within your specialty? 10
---Well as a psychologist we lecture to the students on aspects of insanity, yes, Your Honour. In terms of being able to state whether a person is sane or not clearly one is not qualified in the sense of not being a legally qualified medical practitioner, but in talking about the symptoms of the conditions, yes.

Do I understand you to mean that you would not regard yourself as qualified to express an opinion about insanity in relation to a particular person, 20
but that you would be qualified to express an opinion as to whether he possessed this that or the other symptoms, or exhibited this, that or the other symptom which might have a bearing on his sanity, is that it?---I think that is fair, Your Honour, that if I was asked, as I could be asked to give various tests, psychological tests to a person who - the question being whether or not the test evidence suggested sanity or insanity, one is asked to do this, and then one says the test evidence is 30
consistent with A or consistent with B, but one does not formally make a diagnosis.

Yes, I see. Yes, Mr. Ogden, do you want to take this matter of qualification further?

MR. OGDEN: No Your Honour, my submission is that that is adequate qualification for the evidence that he will be asked to lead. I might add Your Honour that I shall be calling medical evidence in addition, medical evidence which is to some extent - will use the assistance of Professor Cox - that 40
Professor Cox is able to give.

HIS HONOUR: The findings - the limited findings he makes will be used by medical witnesses.

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: Yes, I follow.

MR. OGDEN: Not as the only basis, but as part of it.

HIS HONOUR: Yes.

MR. WRIGHT: May I cross-examine the witness on his qualifications?

HIS HONOUR: Certainly.

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MR. WRIGHT COMMENCED CROSS-EXAMINATION

Cross-
Examination

10 MR. WRIGHT: Professor Cox, you are not a professor of medicine, are you?---No, certainly not.

And your first degree is an American degree is it not?---My first - I gave that degree first because it is customary. The first degree I obtained was in Melbourne.

Well only taking - ?---Yes, I know that, I'm -

What I see reported here -?---Yes.

20 And I take it you have only been discussing this matter on what you saw before you, have you not? ---Yes.

Well now the first degree that I understand you claim is M.S. of Yale, that is an American University?---That is correct.

How long were you there?---I was at Yale for 14 months.

When was that?---1952/1953.

And is it true that American Universities are regarded as rather enterprising in the psychological matters?---By some people, yes.

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Now your second qualification is you are a Master of Arts of Melbourne, is that so?---That is correct.

What year did you qualify in?---I qualified the beginning of 1952.

Well I speak from some experience, you would not suggest that being a Master of Arts of Melbourne would give you any particular qualification medically, would it?---Not medically, certainly not.

10

Or psychologically?---Yes, I would suggest the other, because the Master of Arts thesis I did was on a psychological topic and -

What was it?---It was concerned with the analysis of personality in children in a particular kind of institution.

How old were the children?---The children's ages ranged, in that institution from four to 16, 17.

Then you have a Doctor of Philosophy of Melbourne, is that so?---That is so, yes.

20

What is that related to?---This is a degree given when you submit a thesis on the basis of a piece of what is classified as original research and that research was concerned with studying the personalities the emotional functioning and the social functioning of a group of children aged between 10 and 12 years.

Well am I right in saying that your two Australian degrees, the two that you mentioned here are confined to children really?---Those two pieces of research are, yes.

30

And it is on those two pieces of research that your degrees are based are they not?---To a large extent, yes.

And Doctor, - is it right to call you 'doctor' because you are a doctor of philosophy, is that right?---I don't mind what -

What is your courtesy title?---Doctor is, yes, the courtesy one, it doesn't matter.

Professor, I am sorry, of course. Well now Professor, in relation to psychology you are accustomed to making certain estimates of a man's - what, of his personality?---Personality, intelligence, pattern of abilities, yes.

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His intelligent pattern of ability?---No, his intelligence, his pattern of abilities and aspects of his personality.

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10 And these are matters, are they not, Professor, on which a wide variety of diverse opinion exist?
---That is true I think, yes.

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Would you say that not being a medical man you are not as capable as a man with medical as well as psychological qualifications to assess a man's capabilities?---Could I ask what you mean by the word "capability" please?

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20 Well his capabilities in relation to intelligence for a start.---No, I would think that in the particular area of intelligence that this is the field that the psychologist makes his distinctive contribution.

But would it not be assisted by medical training?
---Intelligence?

Yes---If the person was concerned with the extent to which intelligence was inherited I would think that would be so, otherwise I would think not.

Is that not a pretty wide basis on which to discuss it, as to whether it is inherited or not?---It is one aspect of it certainly.

30 And an important aspect?---Yes, certainly.

And do you know Dr. Peter Ebeling?---I know of Dr. Peter Ebeling, yes.

You have - apart from your specialized concern with children and their.. what, their personalities?
---Yes.

MR. OGDEN: He has not said he has got specialized -

MR. WRIGHT: Doctor, that is true, is it not, your specialized-?---What you did say and what I agreed was the two major theses I did happened to involve children.

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Yes, and it is on those qualifications that you are seeking to give your evidence, is it not?---
No, I wouldn't suggest that really, I would suggest that the theoretical and practical training in America was relevant and also that the other research work that His Honour suggested that I have done was seeing people individually, most of whom are not children and research work and University teaching would all be part of one's qualifications apart from two particular theses. 10

What is your main interest in psychology?---I would say my main interest is in clinical psychology, that is the overall assessment of an individual.

What does the word "clinical" involve in that regard?---Well in this particular context the word "clinical" means that one is seeing the individual in a two-person situation. Usually seated across a table, sometimes not seated across a table. One is talking with the individual, observing the individual and giving the individual, in the case of the psychologist, certain kinds of tasks, but the clinical means the interaction between two people in that kind of situation. 20

That is the interaction between you and the patient is that it?---That's right.

I see, and in other words what you are really saying is how this particular patient struck you, is that so?---No, I'm saying it - would be saying how the person functioned on certain tasks and what inferences might or might not be drawn from that. 30

And would it be correct to say that the inferences that might be drawn from the performance of certain tasks that there could be a wide variety of opinions as to the inferences to be drawn?---
It depends very much on the nature of the task. I think in the case of most of the tasks that I use that there is some range of opinion, but not a great range of opinion, no. 40

HIS HONOUR: Mr. Wright, I am concerned that perhaps we are diverging off from a cross-examination about qualification, to what might be a later form of cross-examination as to the weight to be attached to opinions expressed, and things of that kind.

MR. WRIGHT: Well sir, I was directing my mind to really, sir - first of all I directed it to his degrees and the basis on which he had obtained the degrees and then I was directing it to the kind of work that he does as qualifying him to express an opinion of this kind, so that..

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HIS HONOUR: Yes, well I am not stopping you on that.

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10 MR. WRIGHT: Doctor, in relation to children, I think your first love if I may say so?---I wouldn't accept that latter phrase, no.

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20 Well second and third loves, is that it? Not at Yale but the thesis for the M.A. and the thesis for the Ph.D. were both children were they not? ---Yes, it is partly when one does research - a piece of research it depends upon research that is going on in the Department and the availability of subjects, it does not necessarily reflect, I don't find in anyone's research, mine or other people's, necessarily reflects their preference, it also is a matter of accessibility and availability of people.

(continued)

What, it just means that you were sort of channelled into the children on each occasion, does it - without wanting to do that, is that it?---I wouldn't again make it as extreme as that, but there would be some influence that way and one might go along with the..

30 That is what you wanted to do, was it not?---
On the whole, yes.

And have you been concerned with questions of deviant behaviour?---Yes.

To a considerable extent?---Yes.

In children?---Sometimes in children, yes.

And is this a different question from the question of intelligence in general?---As I would use the word "deviant behaviour", yes.

40 And are there any aspects of personality upon which psychiatry is important?---There are many aspects of personality in which..

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And important aspects?---Undoubtedly.

And these are aspects I take it upon which a medical psychiatrist would be more qualified than you would to express a view?---Certainly.

I was about to ask you there is a science known as psycho-pathology, is there not?---There is a subject - part of psychology that is sometimes described as psycho-pathology, yes.

And is that deviants?---That is concerned with abnormal behaviour, it is just another term for abnormal behaviour. 10

And in that relation would a psychiatrist be better equipped than you would be to express an opinion? ---Yes, except on - in terms of the use of psychological tests to look at such people, then the psychologist I think, otherwise the psychiatrist.

Well my submission is, sir, that this witness, in my submission, is not qualified by anything that has appeared here, to express any opinions about criminal behaviour in relation to a particular murder case, that he has given no evidence whatever to suggest that he has been concerned with major crime and in my opinion sir, considering the importance that is being attached to this evidence, that the witness should not be allowed to give evidence on this basis. And any evidence - no evidence should be based in our submission upon anything that he seeks to say. 20

HIS HONOUR: Did you wish to say anything Mr. Byrne?

MR. BYRNE: No, I have no submissions I wish to make thank you. 30

HIS HONOUR: Yes. I think, Mr. Ogden, that you have laid a sufficient foundation for obtaining opinion evidence from this witness as to the personality traits of people that he examined and as to whether those people displayed any symptoms of insanity, and I think that it is relevant to the issues of whether what happened at the scene that night is more likely to have accorded with one accused's account given to the police or the other to have evidence of these personalities and I think of course that insofar as the witness is able to 40

depose to matters bearing on the issue of insanity that also would be relevant. I gather, however, that he will not in fact express an overall opinion about sanity, but in that field he will confine himself to his findings which may be used by other witnesses to build on.

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MR. OGDEN: That is all I intend, Your Honour.

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HIS HONOUR: Yes. Well you may proceed on the basis that I have indicated.

10 MR. OGDEN: If Your Honour pleases.

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MR. WRIGHT: Sir, might I say this, that the two issues, sir, - the two matters are separate. One is this issue of insanity or lack of mens rea which is raised by King and is not raised by Lowery, there is no issue of insanity or lack of mens rea raised by Lowery and insofar as this witness' evidence is confined to the question of insanity, or automatism of King, sir, that is one thing, but insofar as his expressing opinions about any tendencies of Lowery in our submission it is not relevant to anything.

(continued)

HIS HONOUR: Well insofar as concerns sanity or mens rea in Lowery that would seem to be so, there does not seem to be any issue raised, but on the other aspect the question of whether what is described one or other of these Police - statements to the Police is in fact what happened, I think evidence as to personality of each of the accused is legitimate.

30 MR. WRIGHT: Well sir, we submit with respect that for this Professor to give evidence as to whether one man is more likely to tell the truth than another in our submission is not proper evidence.

HIS HONOUR: I did not understand that that was what was in question. I have not succeeded in conveying what I had in mind as the basis for admitting evidence as to personalities of these two accused. It seems to me that each of these accused has made a statement to the Police on 40 6th February in which he has told the Police of happenings out at Mount Napier in which he the person making the statement is cast in the secondary role and the other accused is cast in

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the leading and dominant role. Now one of the questions for the jury to determine will no doubt be in relation to each of these statements, whether it is a correct account of what really happened out there. And it appears to me that evidence by this witness as to the qualities of dominance, leadership, dependence, or submission, matters of that kind in either of these accused would tend to establish facts which will make it more or less probable that what really happened out at Mount Napier is what is stated in one or other of those statements to the Police, not a matter of intelligence but of general personality. That is the basis on which it appears to me that the kind of evidence in question is admissible. Opinion evidence, in my view, of facts which may be regarded by the jury as rendering more probable some facts in issue. 10

MR. WRIGHT: Well sir, I take it then that this witness' evidence in the matters Your Honour has mentioned is confined to the issue of dominance, one over the other, not of - 20

HIS HONOUR: I cannot foresee what will be the ultimate limits of relevance here, there may be aspects of personality that I am not sufficiently instructed about but the aspects that I mentioned appear to me to be relevant and as we go along we may have to find out whether there are others.

MR. WRIGHT: Well sir, would Your Honour note me, with respect, of renewing my objection to the matter³⁰ and on this basis in particular that those statements are only one part of the evidence before the jury as to whether each of those statements was indicating a dominant personality in our submission in view of all the other evidence, and quite diverse evidence given, is of such minor importance that the evidence will be of little value in any event.

HIS HONOUR: Well those statements may be regarded by the Crown for all I know as the corner stone⁴⁰ of their case. They may be simply saying that the other evidence you referred to should be discarded.

MR. WRIGHT: Yes.

HIS HONOUR: I do not think that I can exclude this

evidence on that footing, that you suggest.

MR. WRIGHT: Yes, well initially apparently the evidence as to dominance, what transpires, sir, may be a matter of perhaps further objection.

HIS HONOUR: Yes, I think dominance - the aspects that occur to me as likely to be relevant are dominance and dependence and the others.

MR. WRIGHT: If Your Honour pleases.

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MR. OGDEN CONTINUED EXAMINATION

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10 MR. OGDEN: Professor, you have said that you examined him, I think you said May 14, 19 - this is King we are talking about now, - May 14 was it?---That is correct.

1971 ?---May 14, yes.

And you had also - had read the depositions taken at the Coronial Inquiry and the accused King - a copy of the accused King's record of interview? ---Yes, that is true.

20 Would you tell the gentlemen of the jury about the general examination and the testing that you gave King?---Yes, if I could mention four tests and then be told which ones are relevant Your Honour.

Yes, well what test - first of all, did you give him a test for intelligence?---I gave him some two parts of a test of intelligence, yes.

Let us have the first of them, is that the Wechsler Adult Intelligence Scale Test?--- That is right, yes.

30 Now you might just explain to the jury what that was - what that test is?---Yes, certainly. It is the best known test of adult intelligence

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that is used in this country, in England, the United States and in Canada, apart from some other places. It consists of eleven different parts to it. Because of some degree of balancing of how would one use the time available I had decided that I would spend much more time on personality tests and much less on intelligence tests so I gave him two particular sub-tests, ones which have been shown by research and by clinical practice to show us, as it were, any signs of intellectual abnormality. In fact, I found on these two sub-tests that he functioned at what is called a bright normal or a good level, above average, so I did not proceed in looking at his intelligence any further.

10

MR. OGDEN: Well then we will accept that for the moment and leave it at that. Did you - one test is the one that I have mentioned the Wechsler adult intelligence scale test?---Yes.

Was the other the Bender Gestalt visual motor test?---Yes.

20

We will leave that for the moment, did you then examine him and test him as to personality?---Yes, I did.

What tests did you give him there?---Here I decided to use two what are called indirect or projective personality tests, that is, tests in which the connection between what a person says and does and the score that is derived and the meaning that is attached to that score is not obvious. In other words, the tests are indirect in the sense that the person doing them is not normally aware of the purpose of the testing.

30

MR. OGDEN: And certainly - did you tell him at the interview that you were testing him for personality?---No.

Well then what were the two tests that you gave him?---The two tests, the first one is known as - what is called the Rorschach Test after the man who invented it.

40

Well what is that Rorschach Test?---The Rorschach Test is - consists of ten cards on which are variously shaped and variously coloured patterns

of ink or ink blot patterns. These cards are shown one by one to the individual being tested, given to him, and he is asked to look at it and tell you what it looks like. Then he is subsequently asked some questions about - in giving his response was he responding to the whole of the pattern or to part of the pattern, was he responding to the coloured part or not to the coloured part and he is asked to describe his thought processes that led him to say what he did in fact say, and he is observed while this is going on.

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You are watching him as well as listening to him?---Yes, that is correct, and then at the end of the testing the responses are scored and the pattern of his record, not a particular response at all, but the pattern of his record is then compared with patterns that have been established quite independently on known groups of individuals, known groups of people of various - who have been separately and independently diagnosed by psychiatrists or neurologists or people who are in institutions, training establishments or people who are in gaols, and of course, with people who are not in any of these situations but are leading normal lives.

Well then what does his - what was the other test that you gave him? The other personality test?
---The other personality test is called the Thematic Apperception Test.

Well "Thematic", does that mean relating to a theme does it?---Relating to a theme, yes.

Well then what is this test?---This test consists of a series of pictures, photographs really, of a person or sometimes more than one person in a situation that is intended to be ambiguous. Sometimes the person's face is slightly turned away so that the expression is difficult to imagine.

This is the person depicted on the photograph?
---The person depicted on the photograph, I am sorry, sometimes the sex of the person is not obvious, even these days, and sometimes some of the background features in the picture are deliberately made indistinct or blurred.

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Well then these various pictures, as I understand you are shown to the interviewee, is that right?
---That's right. They are shown to him again, one by one, in the normal administration, and he is asked in response to the picture to make up a story about what he thinks is happening in the picture.

Well he was given each of those two tests, was he?
---That is so, yes.

Well now is it more convenient for you to take those separately to express - as a basis for the opinion I will ask you to express in a moment?---Yes. 10

Is it better to take them...?---I think it - excuse me, I coughed - I think it is much easier to take them separately, as they do yield somewhat different information.

Well now with the Rorschach Test, that is the ink blot test.---Yes.

How did he behave and what are your conclusions about him on that test?---He was - all the time that I was testing him he was composed and showed rather little emotion, except when he spoke about Lowery, then he revealed quite openly and in the interview, not in the tests, dislike and what I interpreted as contempt. On the Rorschach Test he gave a record that I would describe as being productive in the sense that he produced quite a large number of responses. There were 10 ink blots, sometimes people may only respond to three or four of these and hardly give you any responses, sometimes people can go on for well over an hour and give you a very large number of responses. He gave a record that falls in that sense, well within normal limits, quite a productive record. On the Thematic Apperception Test on the other hand his stories were not really stories, they were very very short indeed. Very terse. He was not carrying that task out. On the Rorschach record if I could take out the five main points that seemed to me to come out of the record and then try to combine them for a description of the personality, this is the way one proceeds. 20 30 40

HIS HONOUR: Yes, just before you do, Mr. Ogden, from the way the witness is shaping up, one might expect that he would be telling us perhaps of

quite a lot of characteristics of the person examined which may have no relevance. Will it not be necessary to direct his attention to the particular aspects that you want him to speak on or that you are suggesting would be relevant, then we can debate them.

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10 MR. OGDEN: Yes. Your Honour, I notice that it is nearly the adjournment time, and perhaps I might take advantage of the adjournment to see if there is anything that is likely to -

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HIS HONOUR: Yes, that is a very good suggestion if I may say so.

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WITNESS STOOD DOWN.

(continued)

COURT ADJOURNED FOR LUNCHEON AT 12.29 P.M.

COURT RESUMED AT 1.45 P.M.

20 MR. WRIGHT: Sergeant Timewell would find it convenient, as he has another legal matter to prepare for, if we could possibly interpose him now sir for the cross-examination? Would it inconvenience my learned friend if..

MR. OGDEN: No, Your Honour, I have got trouble in the same respect with all the witnesses that I have to call Your Honour, they are all anxious to get their evidence completed.

MR. WRIGHT: Well I am just anxious to oblige a witness.

30 MR. OGDEN: Yes, I know, but I have got other witnesses too, including - I have Doctors, Your Honour, who have been waiting around the court for some time. It is a difficult thing to determine but perhaps my learned friend could tell me - give me some estimate of the length of time he will be cross-examining.

MR. WRIGHT: It will not be long at all.

HIS HONOUR: Yes, well perhaps in those circumstances it is convenient to call him and let him go.

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FRANCIS NICOL COX recalled and warned.

MR. OGDEN: Professor -

HIS HONOUR: When we adjourned, Mr. Ogden, just before you resume, when we adjourned I think you were going to direct your attention to the specific matters as to which the Professor could speak so that he might be confined to the relevant matters in accordance with the ruling given.

MR. OGDEN: Yes, Your Honour, I hope, if I have understood Your Honour's ruling properly, that that 10 will be done, Your Honour.

HIS HONOUR: Yes, very well.

MR. OGDEN CONTINUED FURTHER EXAMINATION.

MR. OGDEN: You were giving evidence about the personality tests such as the Rorschach and the Thematic Apperception test that you gave to King and I want to ask you about the findings in regard to the Rorschach's test, that is the blot test, and you understand that you are to restrict yourself within the limit of His Honour's ruling and not to go outside that?---Yes. 20

What were your findings?---I think that within that restriction there were five main findings. Firstly, that there was consistent evidence of a rather massive denial of underlying feelings of depression.

What do you mean by that, Professor?---What is meant by this is that in the responses that are given the individual is indicating two things, one, underlying feelings of dejection, unhappiness, depression, these words will be interchangeable I think, and that without being aware of it he is denying it by tending to emphasise the very opposite sorts of feelings. Rather than stressing all the time unhappiness, dejection, depression, the opposite - 30

So that you say that this was an unconscious denial, is that what you say?---That's what I'll be saying, yes.

The second finding?---Secondly, there was evidence of - consistent evidence of what I would describe as a passive dependent kind of personality. 40

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And the next finding?---There was also evidence of some impulsiveness or impulsivity.

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Next?---Fourthly, that there was evidence of some quite intense aggressive impulses over which his control was rather tenuous, or rather weak.

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10 Were those aggressive impulses - are you able to say any more about them? As to the intensity of them or as to the length of time these impulses would last or anything of that kind?---Taking the previous finding and that finding together, which one must do in interpreting this test, the indications would be that there would be sporadic acts of aggression which would on the basis of the tests seem likely to be over and done with quickly, not to be sustained, if I could put it that way.

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20 And the last finding?---There was evidence of some capacity to relate adequately to other people, to feel with and feel for other people, there was evidence of some capacity of that kind.

HIS HONOUR: Did you say "capacity" or "incapacity"?
---Capacity I'm sorry.

MR. OGDEN: Well then so far as that - that is the result of the Rorschach test?---within the limits, yes.

30 So far as the other tests, the Thematic Apperception test is concerned, what conclusions did that lead you to come to?---As I have said before the adjournment his T.A.T. stories were very meagre indeed, really just descriptions of the cards and therefore do not provide a great deal of evidence. Stories of this kind are usually obtained from individuals who are rather self-preoccupied and it is usually inferred their personalities are rather shallow.

40 Well now combining the test records of personality, the two that you have spoken of,-?---Combining the two together, the conclusions that I would draw would be that the test picture is that of an immature - by that I mean immature for a young man of his age - an immature, emotionally shallow youth who seems likely to be led and dominated by more aggressive or dominant men and who conceivably

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could act out or could behave
aggressively to comply with the wishes or the
demands or the orders of another person.

MR. OGDEN: Well now do not answer this question,
Professor, I would like my learned friend to have
an opportunity of objecting to it and His Honour
to rule on it. Is there anything from that test
record which could assist you to form a view as
to whether his personality is consistent with
his assertion to you - and in evidence in this
case - that he would be the type of person who
would take to drugs? 10

MR. WRIGHT: No objection, sir.

MR. BYRNE: I do not object, Your Honour.

HIS HONOUR: Yes, very well.

WITNESS: Do you want me to answer the question?

MR. OGDEN: Yes. --- Yes, I would think there were
two features from the Rorschach test that would
be consistent with that, consistent with the
assertion that he has been taking drugs, the
underlying feelings of depression and also the
passive dependent orientation, both of these
characteristics or qualities of attributes are
quite commonly found in psychological studies of
people who are known to have consumed drugs. 20

Again I will ask you another question I ask you
not to answer it immediately. Do the tests that
he did in your interview with him show consistency
or otherwise with his assertion that he was
frightened by Lowery while these events were
taking place? 30

MR. WRIGHT: Well sir, in the first place we submit
that any assertion made outside the Court in the -
in that sort of way is hearsay and my friend
should not have opened it in any case as
assertions made to another person, - expert or not.

HIS HONOUR: I am not sure that I follow this. I
thought that Mr. Ogden was referring to the
evidence in the case, is that not so?

MR. WRIGHT: I thought he was referring to an
assertion made to this witness, sir. 40

MR. OGDEN: Your Honour, I think I did include in the question both.

HIS HONOUR: I see. Well on what basis do you justify an inquiry into what he told the psychiatrist? I have some difficulty in following the relevance of evidence which would merely make it more likely perhaps that he did say something to this witness out of Court.

10 MR. OGDEN: Yes, well Your Honour, I am prepared to withdraw that part of the question, Your Honour, and may I re-frame it without that -

HIS HONOUR: Very well.

MR. OGDEN: Are the results of the tests and your interview consistent with his assertion in the - in this case that he was frightened of Lowery while the events in question were taking place? Now do not answer it - I do not know whether there is any objection.

20 MR. WRIGHT: I do not object to a comment on the evidence, sir.

HIS HONOUR: Yes, very well.

MR. OGDEN: Have you got the question Professor or -?---Yes, I have the question. I would say that the tests record, particularly the Rorschach test is consistent with any statement made to the Court that he was frightened by Lowery while the events were taking place.

30 Again, do not immediately answer this question, Professor. Did the test evidence and the interview - did it or did it not indicate that he would have been likely to initiate and carry out the major role in those events.

40 MR. BYRNE: Your Honour, I object to that, sir, I submit that the witness has described no qualifications that would enable him to answer such a question and it would seem that this is really a speculation on the part of the witness that is being sought. What he is being asked, in effect, it would seem, I would submit, is that he should speculate in the manner that he was invited to speculate having regard to his finding that this man King was a dependent

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personality.

HIS HONOUR: I suppose the basic difficulty about a question of the kind put is that it is impossible to know what assumptions the witness will make as to what the background facts and situation may be. No-one in Court knows what the jury's ultimate findings will be as to what really happened. And this seems to be the sort of question that in distant jurisdictions is sometimes the subject of a four-hour hypothetical question. There does seem to be some difficulty about this question does there not Mr. Ogden? In the way I have been describing? It is one thing to get from this witness a description of the relevant personality traits of this accused person and let the jury then place .. make such use as they think appropriate of that evidence and to their inferences and conclusions but to ask this witness how the particular accused would have been likely to act does seem to involve various assumptions on his part as to what the situation was out there does it not?

MR. OGDEN: Yes, Your Honour, I do see the difficulty of asking him to form an appreciation for himself of what in fact happened there, Your Honour, I do see that difficulty.

HIS HONOUR: The other method that I was referring to without any very obvious approval has its own difficulties too does it not?

MR. OGDEN: Yes. I will not press it, Your Honour.

HIS HONOUR: Yes, very well.

MR. OGDEN: Professor, did you examine the accused Lowery?---I did, yes.

When?---Also on May 14 of this year.

I do not know that it matters much but just for the sake of the record was that before or after - do you know - you examined King?---It was before I examined King.

Bearing in mind His Honour's ruling as to the limits of the evidence that should be given by you, could you tell us first of all what intelligence tests you gave, if any?---Yes, I used exactly the same tests as I have described for King. In the

case of the estimate of intelligence with Lowery it was derived from five of the 11 sub-tests rather than two. I gave him more tests as there was more fluctuation. The test evidence showed that he functioned at the top end of the average band of the population, the top end of that.

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And did you give him the same or different personality tests?---The same ones.

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That is the Rorschach and the Thematic Apperception?---That is correct.

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Would you prefer to give, as you did in the case of King the results of these tests separately or would you prefer to do it cumulative?---In the case of Lowery the two tests yielded -

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MR. CUMMINS: Well Your Honour, if I may object, with respect to the question or the breadth of it, on my understanding Your Honour, of the ruling Your Honour previously gave the relevance of the evidence as to the tests of Lowery came into being by virtue of the different roles that each attributed to himself in the two interviews on the Saturday the 6th. That is to say that as to whether one was more dominant or one was more compliant than the other, and if that is the way this evidence comes into relevance, Your Honour, in my submission the question should be phrased so that the Doctor is confined to that issue, rather than to be asked about other traits of personality or other aspects in the broad.

HIS HONOUR: Yes, well I thought that the personality traits that were dealt with by the witness in relation to corresponding tests of King were directed to this particular issue, but I think it is important that the witness should bear in mind that in the case of Lowery no question of insanity or mental disorder arises and that consequently it is not proper to put forward any material simply on the basis that it is something that some other witness, a psychiatrist may build on.

MR. OGDEN: Oh no Your Honour, I am not intending to lead - I intended to lead from this witness the same kind of things such as aggression or non-aggression and so on.

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HIS HONOUR: Yes, I follow that, and I had thought that you did keep the witness to matters relevant to that issue, but that as the other aspect was mentioned earlier and there is this difference between the two witnesses, I think it is important that - between the two accused - important that the witness should have this in mind.

MR. OGDEN: Yes, well Your Honour I certainly had -

HIS HONOUR: This distinction. 10

MR. OGDEN: Yes, Your Honour, I am grateful and no doubt Professor Cox will understand what Your Honour has said.

HIS HONOUR: Yes.

MR. CUMMINS: With respect Your Honour I might indicate that we have no objection to the witness being led as to the point of the dominance or compliance and that may be the most appropriate course.

HIS HONOUR: Yes. 20

MR. CUMMINS: In view of the fact that when the examination was conducted those particular criteria had not apparently been clarified to him.

HIS HONOUR: I think that the situation had been clarified to the witness before and as I say I understood that what he told us was directed to the issue as to the roles that these two men attributed to each other on - in their statements.

MR. OGDEN: Yes, Your Honour, it is a contrast of personalities in those respects that Your Honour has mentioned. 30

HIS HONOUR: Yes, well I think the witness will follow what is in question now, and there is no danger in proceeding.

MR. OGDEN: I think not, Your Honour. (To Witness): Did you carry out the same - you said, you did, I think, carry out the same personality tests namely the Rorschach and the Thematic Apperception Tests.. in regard to Lowery?---That is so, yes, I had said that. 40

Well then what - and you say - you were about to say I think that you preferred to give the cumulative result of the two tests in Lowery's case or did I misunderstand you?---No, I was about to say that on each test the evidence was consistent from one test to the other so it was easier to give the evidence as a - both tests combined rather than separate, it can be done the other way if you would prefer.

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10 No, well if it is more convenient to do it that way you do it that way. What were your findings in regard to Lowery? As a result of those personality tests?---Well -

HIS HONOUR: Your findings relevant to this particular issue that we are talking about.

MR. OGDEN: Yes.---Yes, Your Honour, what - could I ask one question before starting off here please?

HIS HONOUR: Yes.

20 MR. OGDEN: Yes?---That is that I would refer to four characteristics here, ones about which I did speak about King, the same sort of characteristics.

HIS HONOUR: They are the same heads of personality traits or characteristics that you have dealt with previously when talking about King, is that it?---That was right, Your Honour, if that was permissible.

30 Yes. Well that appears to be in order.

MR. OGDEN: Go ahead then?---The first finding was that he showed consistent evidence then of little capacity or - sorry - small capacity if you like, to relate adequately to other people, there was little evidence of capacity to relate adequately to others. He showed a strong aggressive drive with weak controls over the expression of that, of those aggressive impulses, the third one was showing what I described as ostentatious compliance covering a basic callousness.

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What do you mean by that Professor? "Ostentatious

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compliance covering a basic callousness"---Well what I mean here - this is inferred from the responses to the tests and the observations of his behaviour during the testing were consistent with that. That is that if I take the observations of the test behaviour first, that he appeared at the outset to be very nervous and anxious at the beginning of the session, these feelings or emotions decreased quite rapidly as the session went on and by the end of the session he appears to me to be very confident and arrogant; that in terms of the tests responses that he complied willingly when asked to produce responses to the tests, but he gave evidence in some of the tests responses of what I have described as basic callousness, that is what I meant.

10

MR. OGDEN: Yes, well that was I think the third finding that you have mentioned?---Yes. The fourth one was there was evidence of impulsiveness, of impulsivity.

20

Well now in addition to that did one of his Thematic Apperception Tests indicate something else, additional?---I wouldn't say it was additional -

MR. WRIGHT: If I may perhaps take over from my learned junior, in my submission sir, having given these four tests directed to this limited issue of the domination of one of the other, the Professor should not go any further, that that is the comparison of the two sets of tests given to both, and that anything further sir in our submission is not a matter on all - it is essentially a matter of comparison, and it is not something that the Professor is to be permitted to give at this stage on this limited issue of the comparison as to domination or otherwise.

30

HIS HONOUR: I do not think we know enough about it, yet, do we, to know what it is that he wants to talk about?

MR. WRIGHT: Well with respect sir, if my friend is going to persist, I would ask for a voire dire on this evidence.

40

HIS HONOUR: Yes. Well what do you say Mr.Ogden? Is it of importance enough to have a voire dire?

MR. OGDEN: Your Honour, my appreciation of this is that it is within the limits of Your Honour's ruling, but I would hate to lead any evidence that might result at this stage of the trial in any difficulty, and much as I am anxious to save time Your Honour, I am afraid that I would have to concede - at least discussion of this with Your Honour in the absence of the jury might be wise.

10 HIS HONOUR: Yes. Well Mr. Foreman and gentlemen, would you mind going to the jury room while I hear what this is?

JURY RETIRED AT 2.14 P.M.

FRANCIS NICOL COX sworn (ON VOIRE DIRE)

20 HIS HONOUR: I do not know, Mr. Ogden, that it is essential to have the evidence given from the mouth of the witness, now that the jury is absent we can probably discuss it in general terms. If all parties are agreeable to that course.

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: What is it that you are seeking to establish?

MR. OGDEN: I am seeking to get from this witness, Your Honour, that the result of one of his Thematic Apperception tests indicated that Lowery had sadistic pleasure from observing suffering of others.

30 HIS HONOUR: Well that seems to fall into a different category from what we have been discussing so far does it not?

MR. OGDEN: Your Honour, my submission is that it is very much allied to the conception of aggressiveness and sadism and aggressiveness, Your Honour, I submit are at least allied personality traits and -

40 HIS HONOUR: Yes, well maybe that it is a fact which if established would make more probable the view that what happened was what is described in "HH". That is how it is put, yes.

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MR. OGDEN: That is how it is put, Your Honour.
May I just go on a little further, as to other
matter that I intended to get from the Professor,
Your Honour?

HIS HONOUR: Yes.

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MR. OGDEN: An opinion that all of the points that
he has given and including that last matter that
I was proposing that he should give, point towards
his having an anti-social aggressive personality. 10
I leave out another adjective, Your Honour, which
was, according to my note of what the Professor
can say, because it may be doubtful, but the point
towards him having an anti-social aggressive
personality.

HIS HONOUR: Well the witness has already spoken of
the indications of aggression, so that this really
comes down to whether the witness should be allowed
to say that he has - appears to have an anti-
social personality.

MR. OGDEN: Yes, sir. Well they are the - 20

HIS HONOUR: They are the two matters that you want
to deal with are they?

MR. OGDEN: Yes, Your Honour. Then I would have
liked to have gone on from that to get an opinion
from him as to whether, having seen the both, he
can express any view that it is likely that he
(Lowery) was the planner and initiator, of what
occurred.

HIS HONOUR: And what was that? What did occur?

MR. OGDEN: The death of Rosalyn Nolte. 30

HIS HONOUR: But in which of the several different
ways that have been described in the evidence?
That is the problem is it not?

MR. OGDEN: It is, Your Honour. Perhaps I can not
put it to what did occur but to any aggressive
act.

HIS HONOUR: Yes.

MR. OGDEN: They are the matters, Your Honour.

HIS HONOUR: Yes. What do you say Mr. Wright?

MR. WRIGHT: May it please Your Honour, in the first place this matter is certainly not a matter of comparison between the two men which was the ostensible basis for the whole of this evidence. The second thing, sir, that this witness is not qualified to indicate whether - and this will be the way it will be taken by the jury - whether in particular circumstances unknown to him a man would act in a certain particular way. After all, sir, what -

HIS HONOUR: Yes, well I feel a great difficulty about that aspect of the proposed evidence. And I also feel some difficulty about the - what I might call the sociological question. As to the question as to his sadistic tendencies it is true, as I recollect, that the witness has not said anything about that aspect of character in relation to King, but it may be for all I know that the test was negative in regard to that. If it emerged that he would have expected the tests to show up that characteristic which was present and they did not, would that make a difference?

MR. WRIGHT: Well sir it is so highly suppositious as to - I mean it is almost the sort of thing on which the Professor must have been making his assessment in the interview, have all been highly controverted here, that almost every aspect of the behaviour of the two men. Whether one was up in the clouds and the other was down on the ground it comes to, and with respect there could hardly ever have been a set of circumstances deposed to by two men so fundamentally different at the same place and time as have been deposed to here.

HIS HONOUR: Are you referring to the evidence given in the box by the accused?

MR. WRIGHT: Well taken with the - one must do because it is the effect on the jury that counts - taken with the evidence given here, take the accounts of the two men, sir, and then the qualifications - this is important - the qualifications on those accounts which the men have given here, because with respect, sir, it

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would be quite erroneous to ask the Professor to base his estimate on statements - written statements which have been qualified in two respects by the authors themselves in the Court here.

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HIS HONOUR: Yes, well that, I think, has reference or relevance to a third of the points that Mr. Ogden wanted to put, but I feel great difficulty at present in seeing how he can properly be allowed to put either his second or his third point. It is the first one that is troubling me, and perhaps the best way to get to the bottom of that is to ask the witness now what the situation is, and have some firm basis then on which to proceed. Perhaps Mr. Ogden at this stage could find out whether the examination of King showed up anything in this question of sadistic tendencies, whether it was calculated to, that sort of thing, whether we have got anything to make a comparison with.

10

MR. WRIGHT: Well, sir, my last objection is that any weight this evidence may have, sir, is greatly out-weighted by its prejudicial character. There could hardly be anything in a trial of this nature more prejudicial than to have experts coming along and saying 'I consider this man has got sadistic tendencies' and in our submission, sir, when at best the connection with the comparison is so tenuous, in our submission, sir, it would be a complete miscarriage of justice to have a professor come along and say that he considered that one man was a sadist when it is a question of a trial for murder, unless there was the most essential basis for it which one could hardly imagine. We submit, sir, that quite apart from anything else, that the danger of prejudice, the danger that will be taken by the jury in a way outside the comparison as it inevitably must be in our submission is so great that this evidence should not be admitted at all, including any reference to these alleged traits.

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40

HIS HONOUR: What do you wish to say, Mr. Byrne?

MR. BYRNE: Your Honour, I submit that insofar as the witness confines himself to findings that derive from the objective tests that he performed he should put before the jury a complete picture of the personality of each of the accused, and not make any rejection or collection with respect

to particular character traits. I would submit, sir, that there should be no editing out of any adjective, as my learned friend Mr. Ogden was disposed to suggest there should be. Having listened to the witness and as to what he has had to say about King, I would think that that adjective is likely to be the - that word is likely to be the word "psychopath", and that the same applies to the accused Lowery. I would submit Your Honour that the witness is going beyond his function when he speaks of the likelihood of any particular conduct which - with respect to either of the accused men and insofar as he might speak of the sociological aspect of the personalities of the accused as to whether they were likely to be anti-social in their conduct, but apart from that, Your Honour, I submit that each of the accused should be fully and completely described by the witness in order that the jury have a true and not a selective picture of the evidence that the witness is giving.

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HIS HONOUR: Well I do not altogether like the idea of introducing the word "psychopath" in relation to an accused person who is not raising any defence of insanity because it is a word which, particularly to lay ears, may tend to raise such an issue. I would have thought that the appropriate course is that if that word is in fact - does in fact represent something which the witness found as a result of his tests, the proper course would be for him to state in laymen's terms what he found and not use these possibly misleading medical terms about it, and it is quite possible that what he would state in layman's terms would come within the ruling. I rather imagine that it would.

MR. BYRNE: Yes.

HIS HONOUR: I do not want any false issues raised though.

MR. BYRNE: Without using the word "psychopath", Your Honour, I submit that the matter may be best catered for with respect by the witness describing those attributes that are peculiar to a psychopathic personality, the witness speaking of a personality disorder rather than - or a personality trait rather than any question of

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mental illness.

HIS HONOUR: Do you see any difficulty about that Professor?---Only one problem I think Your Honour, that - leaving aside the sadistic issue, which is quite separate I think, if one was trying to describe a set of traits of that kind, usually one would tend to use, I admit, a coloured adjective, like anti-social or something of this kind, or one would have to put some other adjective in front of the word "aggressive" to distinguish that kind of person from many other people who are aggressive, but do not have these particular - don't have the quality of the aggression of the kind that I would be trying to describe.

10

HIS HONOUR: But the quality, I take it, is something which expresses itself in certain forms of conduct?
---Yes.

Well is it not possible to speak of a personality which is likely to express itself in certain forms of conduct?---Yes, if one was speaking - if one was asked a question which led to general - speaking along those lines generally I think it is, but one would then want to find some sort of I think, behavioural examples which could reasonably, I suppose be called speculations. You would want something to try and anchor the words down to some of behaviour. This would be a problem I think.

20

Well you get to it, to the problem in any event do you not, if you use one of those terms of the science, and then someone asks you to explain what it means?---You do, Your Honour, yes.

30

Well I think it is preferable to speak of a known class of personality and describe its characteristics rather than to use terms such as "psychopath" which may convey wrong meanings or speak of anti-social attributes which may seem like personal abuse.

MR. WRIGHT: Sir, may I submit that we embarked on this venture for the purpose of comparison. We have reached our comparison under four definite heads, the Professor himself says that the sadistic issue is quite separate and with respect sir we submit that sufficient has been obtained

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on the point on which the inquiry was directed. That these other matters are further matters, sir, and I have already indicated our attitude towards it sir. We submit, sir, that the utility of the comparison has - is there, and that there was no point - no assistance to the comparison in going further, but that there are very grave dangers indeed in letting further evidence - particularly in view of the ambiguous sound as Your Honour said it must have to lay ears to hear many of these technical phrases.

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HIS HONOUR: Professor, your tests applied to the accused King, did they tell you anything about the question of sadistic tendencies?---They both had exactly the same tests, Your Honour, and the answer to that must be "yes", that both tests give an individual, if I can put it this way, an opportunity to display these characteristics if they are markedly there, this is not a question of labelling a person a such-and-such, but of saying there are - there might or might not be such tendencies in them, and the answer would be I found no evidence of those tendencies in King, that would be the answer I would have to give.

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20

And would the test in your view be expected to disclose such traits if they were present?---
The answer to that would have to be "Yes", Your Honour.

30

Well Mr. Ogden, I think the proper course to take here is to allow you to put this matter of sadistic tendencies having been revealed in the case of the accused Lowery to allow you to do that on the footing that you make the comparison in some such way as has just been done with this witness by me.

MR. OGDEN: Yes, Your Honour.

40

HIS HONOUR: That I should reject the proposal to enter upon an inquiry in terms of what is anti-social, but that if you can elicit from the witness that his tests disclosed a known kind of personality disorder expressing it in some general terms of that kind, and without using those terms suggestive of insanity, you may proceed in that field too. As to the final matter I do not think it is proper to ask the

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witness the kind of summation question which you
proposed.

MR. OGDEN: In any form Your Honour?

HIS HONOUR: No.

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MR. OGDEN: Even if I amended it to read instead of
"the killing" or "the event", any aggressive act?

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HIS HONOUR: Well the difficulty about that is, I
think, that it may be misleading to get an answer
to that, there are all kinds and degrees of
aggressive acts and the witness has spoken of 10
aggression on both of them, and with one of them says
it is likely to be a flash in the pan and I do not
think it has got - a comparison of that kind has
got sufficient relevance to what we are here
concerned with to be justified.

MR. OGDEN: Well Your Honour I had left out, when I
said I was going to ask him to leave out an
adjective, it was the word "psychopathic" that I
was - because I -

HIS HONOUR: Well I would suggest that that be left 20
out.

MR. OGDEN: Yes.

HIS HONOUR: I do not know that I can rule the
language of counsel or witnesses, but it seems to
me that it is likely to lead us onto a false scent
with a lot more evidence unnecessarily introduced
in the case to prove that the word does not mean
what you might think it means.

MR. OGDEN: Well Your Honour also frowns on the
expression "anti-social" I take it. 30

HIS HONOUR: I do because I think it might be
regarded as something in the form of personal
criticism of the particular accused. It is not
really essential is it?

MR. OGDEN: May I ask on the voire dire while we
are here, Your Honour, so that we do not get into
trouble later?

HIS HONOUR: Yes, very well, find out what the
witness can tell us about the characteristics or

forms of activities of this kind of personality exhibit.

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MR. OGDEN: Yes. Do you understand, Professor,
that we do not want you to use the word
"Psychopathic" or indeed the word "anti-social".
Can you tell His Honour what the aggressive
personality that you speak of in Lowery is - of
what quality of aggressive personality did you
have in mind by the use of the words "psycho-
pathic" and "anti-social" without using those
words.---Yes. Such a person - speaking generally
if I could about it, Your Honour - would be
likely to indulge or engage in physically..might
be likely to engage in physical or aggressive
behaviour, likely to act very much under the
impetus of getting immediate satisfaction with
very little regard for the consequences; would
be likely to be extremely concerned for his own
satisfactions or satisfactions of his own impulse
without regard - with very little regard for the
feelings or I suppose the word "rights" could do,
the rights of other people. That would be one
way of trying to get round it.

HIS HONOUR: Well I do not know whether the cure is
not worse than the original disorder, now that
you have told me what the alternative is. I
think perhaps Mr. Ogden the best course is to
allow you to elicit this description provided
that you bring it out immediately that it is not
a mental disease or insanity but it is a
description of particular kind of personality and
go on and get what you can about the personality.

MR. OGDEN: In other words, Your Honour is saying
that it might be better -

HIS HONOUR: I have changed my mind about it now
having heard what the witness had to say.

MR. OGDEN: Yes. If he uses the word "psychopathic"
I will get him to define it as being non -

HIS HONOUR: Get him to define it immediately, to
try and avoid misunderstanding.

MR. OGDEN: Yes.

MR. WRIGHT: Well with great respect, would Your

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Honour note the objection completely to this
evidence?

HIS HONOUR: Yes, I understand that fully, Mr. Wright.

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MR. BYRNE: Your Honour, may I for the sake of
clarity as to what is embraced by the word
"psychopath" address some questions to the witness?

HIS HONOUR: Yes.

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MR. BYRNE COMMENCED CROSS-EXAMINATION.

MR. BYRNE: Professor Cox, psychopath is a -
psychopathy rather is a personality disorder is
it not?---Yes. 10

And that personality disorder presents a well-
recognised clinical picture to a psychologist?
---Yes.

That includes faulty personality organisation?---
Yes.

Egocentricity?---Yes.

For immediate gains and satisfaction a psychopath
ruthlessly sacrifices everybody but himself, would
you say that?---That's what I was trying to say 20
before, I just put in a word like "may" or something
to avoid saying this happened with every single
act of such a person, that was all.

This is one of the characteristics of a
psychopath?---Yes.

And one of the things that points to the diagnosis
of psychopathy, is that so?---That's so, yes.

Psychopaths are seldom lacking in intellect?---
A lot of them don't lack in intellect, yes.

They are pathologically dishonest?---Yes. 30

They are wanting in insight?---Yes.

Would you say it would be true to say that they lie, cheat and swindle shamelessly and without compunction?---They may do all of those things, yes.

These are the criteria that you look to in order to make this diagnosis?---Certainly the set of characteristics you might not find all of them in the one person, that would be all.

10 And there are degrees of psychopathy are there not?---Yes.

HIS HONOUR: I think what you have elicited from the witness raises a spectre of some danger. The characteristics of psychopath apparently are not only such as to throw light on the question whether the account given in Exhibit "HH" is more likely than the account given in the other exhibit, it may also in some respects throw light on matters purely of credit. Well
20 now there is some difficulty there if you are going to go into that kind of matter and lead that sort of evidence in chief, it may be thought to go only to credit and therefore to defeat the rules of evidence.

MR. BYRNE: Insofar, Your Honour, as psychopathy may be relied on by the accused King in support of any plea of insanity it is submitted that he shared the difficulty that all psycho - that is
30 common to all psychopaths, that part of the material that is likely to be relied upon would depend on his credit and by the very fact of being a psychopath he is subject to this -

HIS HONOUR: Which accused are you speaking of?

MR. BYRNE: The accused King, Your Honour.

HIS HONOUR: Well this question of psychopathic tendencies, Mr. Ogden, which accused is that to be led in relation to?

MR. OGDEN: Oh, Lowery, Your Honour.

HIS HONOUR: Yes, that is what I understood.

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MR. BYRNE: As I understand the witness' description, unless I have misunderstood it, Your Honour, it amounts to a diagnosis of psychopathy with respect to the accused King as well. Perhaps if I ask him sir.

MR. OGDEN: Your Honour, this is developing into a general fishing expedition. I mean this is hardly an objection to evidence, Your Honour, and I submit -

MR. BYRNE: I thought that was the adjective you were going to leave out with respect to your client? 10

MR. OGDEN: With respect to Lowery.

MR. BYRNE: I see, I am sorry.

MR. WRIGHT: Only Lowery?

MR. OGDEN: Of course it was only Lowery. I thought everybody understood that.

HIS HONOUR: I understood you to have left this word out of a question which you wanted leave to ask in relation to Lowery.

MR. OGDEN: Exactly, Your Honour. There has never been any doubt about that in my mind, Your Honour. 20

MR. BYRNE: Your Honour, as I understand the witness' description of the characteristics of each accused the thing that unites them is their psychopathic personality. Now I may have misunderstood what the witness says and that could be rapidly clarified if I might ask the witness, what his findings are on the voire dire.

HIS HONOUR: Just a moment before we have any questions put to the witness. Just a moment Mr. Ogden. I have not understood the witness to say anything about psychopathic personality in the case of King, is what you are putting that if one adds up what he has said about King it would lead to the conclusion that there was a psychopathic personality there, is that it? 30

MR. BYRNE: Yes, Your Honour.

MR. OGDEN: I submit that that is not so.

MR. BYRNE: Well if I might ask him it might clear it up.

MR. OGDEN: Well Your Honour -

HIS HONOUR: I do not want to trouble you at this stage, Mr. Ogden. I do not see where you are leading with this form of inquiry, Mr. Byrne. What is the ultimate objective of finding out this?

10 MR. BYRNE: Well Your Honour it is submitted that this has been put on the basis that one accused man's account is to be preferred to the other and when one accused man is to be regarded as the aggressor rather than the other, the Crown would put it that both were aggressive and that the things that unite them are more significant than the things that divide them; that they are both psychopathic and both acted in keeping with their psychopathic personalities on the occasion in question, and that the jury ought to conclude
20 not that there is a preference to be made as between one account and the other insofar as the essential ingredients of the crime are concerned, but that they should find that each acted in concert with the other in order to perpetrate the crime.

HIS HONOUR: On the footing that all detailed accounts are unreliable and that the proof of concert should lead to the conclusion that this was a crime committed by two in the result of
30 psychopathic tendencies?

MR. BYRNE: Yes, Your Honour, yes. Be put to the jury that they could not rely on what either of the accused said as likely to be the truth in their accounts to the Police.

HIS HONOUR: Well the way this then should arise I would suspect, is as Mr. Ogden has no intention of leading any such evidence, that you or Mr. Wright might want to put it in cross-examination, is that not so?

40 MR. BYRNE: Yes.

HIS HONOUR: Yes, well I think that then is a question which does not necessarily have to be

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decided at this present moment, and it is a matter of convenience whether we argue it out now or whether we wait until we reach it. Do counsel for the accused have any view about that, when we should deal with it?

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MR. WRIGHT: Yes sir, we submit that any argument that is to be ventilated on this basis should be certainly be by voire dire and not before the jury, because we submit sir, that the mere touching upon this, we submit, irrelevant issue can have nothing but the most inflammatory affect and should certainly be taken here and not before the jury. 10

MR. OGDEN: Well Your Honour my submission is that this does not arise at the present stage and if either of my learned friends want to cross-examine about it, Your Honour, that is a matter entirely for them, and it should be decided as and when it arose - as and when it arises, if it does. But this voire dire should not be used as an excuse to have a free excursion into the evidence that the witness may give or may not give Your Honour. 20

HIS HONOUR: Yes, well I think that the strict rule is to decide these matters as they arise and as it is requested that it be done in that way it will be done in that way. Well you can proceed with the examination-in-chief on the footing that I suggested to you, that you may use or elicit from the witness the word "psychopath" if you will elicit from him immediately an explanation as to what it means.

MR. OGDEN: Yes, Your Honour. 30

HIS HONOUR: Yes, bring in the jury.

WITNESS: Could I ask one question Your Honour, before -

HIS HONOUR: Yes, just a moment, yes.

WITNESS: That is that in the - what worried me in the list of the characteristics of a personality that given I agreed with the list and would agree with them of course, in terms of what you had said before, that my test evidence does not bear on quite a number of those characteristics I've given those on which it does bear, the absence - there are some things that are not stated that 40

could be said, certainly, but on the particular concept of pathological line, there is nothing in the test evidence in either case to say whether this is so or is not so.

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HIS HONOUR: Yes, well as to that I drew the Prosecutor's attention to the fact that there were some characteristics which seemed to bear only on the question of credit or truthfulness. Well now insofar as you may be asked for the characteristics of a psychopath or a psychopath's personality, I would like you to confine your list - you may say that it is incomplete, but confine your list to those personality traits which are relevant to this question that we have been debating as to which of these accounts as to how the events happened is made more probable by the personality of the parties and do not go into any which merely relate to tendencies towards any characteristics that go into tendencies to lying or fraud, deceit or anything of that kind. Is that plain?---Yes, thank you.

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Yes. Bring in the jury.

JURY RETURNED AT 2.54 P.M.

MR. OGDEN CONTINUED EXAMINATION-IN-CHIEF

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MR. OGDEN: I was asking you Professor in addition to the matters that you have mentioned about Lowery, your observations and in testing, did one of the Thematic Apperception Tests indicate anything else in your view?---Yes, it did.

What did it indicate Doctor?---One of the stories given indicated some sadistic pleasure in - was obtained from observing the suffering of other people.

In relation to King was there any such indication in the tests that you gave him?---No.

Now in view of - getting back now again to Lowery, in view of the matters that you have mentioned, did you form any opinion as to the type of quality of the aggressive personality that he had?---Yes, the over all personality

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picture, if I could put it that way would be of quite intense aggression with poor control over those impulses, quite marked tendency to behave impulsively, that is with little reflection of the consequences of such acts, the test records suggested certainly a - what I'd describe as a self-centered sort of personality.

I was thinking rather of the matter that we have been discussing in the absence of the jury, to bring your mind to it, you were then giving an adjectival description of the aggressive personality?---Yes.

10

That is what I am asking you about.---Right. I was trying to do that.

HIS HONOUR: Is there a name for it?---Yes, there is a name for it, Your Honour.

MR. OGDEN: What is it?---The name that is commonly used is a psychopathic personality.

Yes, well now the word psychopathic may carry all kinds of overtones and may cover many things. In the tests that you put Lowery to, what kind of attributes do you cover in that term, "psychopathic"? ---The kind of attributes I covered in terms of the test records I got from him.

20

Yes.---The impulsivity, that is the tendency to seek immediate satisfaction or gratification for one's own impulses without sufficient - without normal, if you like, regard for the rights and feelings of other people and the suffering of other people, a tendency to pay insufficient attention, if you like to the consequences of one's actions, and in this particular case where the aggression was intense and the evidence of some sadistic impulses one would describe such an individual then as having strong tendencies to express aggressive impulses towards others. Aggression can often be expressed towards one's self of course as to others, and one would think of the aggression as being directed to others and likely to be done, as I have said, without sufficient or without normal consideration of the consequences of the acts and without consideration of the sufferings and rights and feelings of other persons.

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Well now in your examination and consideration of the accused Lowery you of course had the same depositions as you had in connection with King, the joint depositions of the Coronial Inquiry?
 ---Yes.

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And included in those depositions were the records of interview of each?---Yes.

10 There is one other matter that I want to draw your attention to in regard to King. And then ask you whether that gives you any corroboration or otherwise of what you have said about King. The evidence that we have heard is that just before he made the record of interview or answered all the questions that are there set out he broke down and sobbed and asked that a policewoman, who was known to him, should be brought to the police station because he wanted to see her, when she arrived he again sobbed in her presence. Now I want to ask you, does that
 20 attribute of his, of doing that help you by way of reinforcing or not your previous assessment of King?---I would say that it was consistent with the statement I made that he had a passive dependent kind of personality, this is the sort of personality that one would expect to behave in such a way, therefore, the evidence that that is so - that particular act of crying I mean provides some support for the test assertion, yes.

30 HIS HONOUR: Just before you go too far away from this matter of psychopathic personality, the word "psychopathic" has a somewhat alarming sound perhaps, I gather that it is not a description of a form of insanity or mental disease?---No, Your Honour.

It is a particular class of personality, it is the name for a particular class of personality, is that right?---Yes, Your Honour, not a statement of a psychosis or neurosis, of neither.

40 MR. OGDEN: Well of course that adjective "psychopathic" you have used in regard to Lowery?
 ---Yes.

I want to then go to Lowery's evidence at p.415, Your Honour. Lowery has given sworn evidence in

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this case, Professor, that you of course were not here to hear, he was asked this by his own counsel, in regard to some questions which preceded the signing of the record of interview. Do you understand?---Yes.

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And this is what - I will read to you from the transcript: "Well what happened after he asked you those questions that he said he thought he asked you, what happened after that?" "He" being a member of the Police Force. "Well he was aggressive when he said them -" this is Your Honour speaking of Detective Rippon - "So I asked if I could see the other detective who had been interviewing me." "What was the difference in the attitude of them both as far as you could feel?" "Mr. Carton seemed to be nowhere near as aggressive." Mr. Carton being an inspector, or senior officer. "Well did Mr. Carton come back in at your request?" "Yes, sir." "And did he ask you further questions?" "Yes, sir." "What was said from then on in your own words between Mr. Carton and yourself?" And this is Lowery's answer: "He came back in and he asked me why I wanted to see him and I said to him 'to get rid of that other pig' and he asked me if I wanted to tell him anything I said, 'No, I just wanted to get away from Rippon'." The words I want you to recall is "that I said to him 'to get rid of that other pig'." Does that confirm or otherwise any view that you have expressed of Lowery?

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MR. WRIGHT: Well with respect we object to this, to call a witness like this just to give evidence upon particular words used in the transcript in a murder trial, in our submission, sir, it is ludicrous to suggest that this is admissible evidence, that the jury are not hearing what this man happens to think about certain words in the transcript and in our submission, sir, it is quite improper to seek to influence them in this way at all.

40

HIS HONOUR: Well Mr. Ogden, the witness, as I understand it, makes his assessment of personalities by certain - by using certain known tests, this seems to be getting a fair way away from that, does it not? You are asking him to assess personalities now by reference to the transcript of part of a conversation.

MR. OGDEN: Yes, it is behaviour of the interviewee
Your Honour, on another occasion.

HIS HONOUR: I think that I should give effect to
this objection and exclude that question.

MR. OGDEN: Very well, Your Honour.

MR. BYRNE COMMENCED CROSS-EXAMINATION:

MR. BYRNE: Professor Cox, you found as a result
of your tests, did you not, that the accused
Lowery showed little evidence of the capacity
to feel for other people?---That's true, yes.

In the case of the accused King, did you find
evidence of some capacity to feel for other
people?---Yes.

But it was not the normal capacity that a normal
personality has was it?---It's very difficult
to compare him with young men of his own age,
there was evidence of capacity to relate, it
was probably rather less than the average that
you find in a boy of that age but not drastically
so.

So it would be true to say that he was - he
showed up on your test as being to an extent
deficient in his capacity to feel for other
people?---Rather below the average, I don't
think I'll go quite so far as to say deficient.

It amounts to the same thing, does it not?---
Perhaps.

There were signs of aggressive tendencies?---Yes.

And his control over such tendencies showed up
as being weak?---As being relatively weak, yes.

If one compares the two accused, both showed
results first of all in relation to their capacity
to feel for other people, this showed up in the
tests?---Yes.

Both showed a below-average capacity in that
respect?---Yes.

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And both showed aggressive tendencies?---Yes.

And both showed weak control over those tendencies?---Yes.

In the case of the accused King did you find evidence of impulsiveness?---There was evidence of some impulsiveness, yes.

What do you mean by impulsiveness? In this context?---Doing things on the spur of the moment without very much reflection on the consequences of what one is doing. 10

And that was a personality trait which again the accused share in common?---Yes.

Now was there a fourth characteristic which each had in common?---Could I refresh my memory please of the...?

Yes.---I don't see a fourth one in common in terms of the headings that I was using.

Well is there a fourth personality trait that -? ---I had used the term dependence in describing one and not the other. 20

I see, there is no other personality trait that they would share? Is that what you are saying or not?---Yes, I think that is true.

I thought you mentioned earlier in answer to my learned friend Mr. Ogden that you found in Lowery four characteristics which were the same as those you found in King, is that what you said, or have I misconstrued?---I thought it was three, I think, unless the aggression and the control over it was broken down, I had it as one, one heading. 30

Yes, I see, you found aggression in each?---Yes.

And a weakness of control?---I had that as one and you may have broken it into two I think.

I thought you used the word "four", that is all. ---If I did, I am...

Now Professor Cox, you spoke of the accused Lowery as a psychopathic personality and you

explained what you meant by that?---Yes, that his test results was consistent with that.

Psychopathy is a personality disorder?---Yes.

10 And do those traits that you spoke of with respect to each of the accused, that is those traits which they share in common, do they point in the direction of the existence of this particular personality disorder?---Yes, the combination and particularly the intensity of them, yes.

And there are degrees of this disorder, it is more severe in one personality than in another? ---Certainly.

What do you say about the accused King? Did you make a conclusion as to whether he had this disorder or not?---I would conclude that he showed some such features, but not all the features and that the features he did show were less intensive than the other.

20 Well he showed some features of a psychopathic personality?---Some features of - that were consistent with that description, yes.

But he was not so severe a case of psychopathy as Lowery, is that what it comes to?---Yes.

MR. CUMMINS COMMENCED CROSS-EXAMINATION.

MR. CUMMINS: Now Professor, you have said in answer to Mr. Ogden concerning King that he conceivably could comply with the orders of another, is that right?---I did say that, yes.

30 And it is conceivable he could refuse them as well, is that right?---Yes.

40 And you said that it was - the test you took was consistent with King being frightened of Lowery while the events were taking place? Was this the 5'4" 9 stone Lowery you are talking about that he was frightened of or the one with the big head and the long legs and the big hands and the big feet that you are saying he was frightened of?---More likely - much more likely the latter, certainly.

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In other words he is frightened of his imagination?
---Frightened of some aspects of it, yes.

Well you are not suggesting that Lowery at any
stage ever did have a huge head or long legs or
big arms, are you?---No.

Well then you come back to it again, as regards
what he thought was Lowery he was really frightened
of his imagination?---Yes.

And you were asked about the capacity or the feeling
that Mr. King had for other people and how you
were told by Mr. Ogden some of the evidence about
the sobbing, and how he broke down and sobbed. 10
Perhaps I will read to you actually what Mr. King
did say, at p.563 in cross-examination Your Honour.
This is concerned with the stage when just before
he began to sob. Q: "And indeed Sergeant Morrison
told you that in effect that the police had
scientific evidence which put you at the scene" -
the "you" being "King" - and he answered, "Yes".
Q: "Is that what he conveyed to you by what he 20
said? Did you think it was all up with you then?"
A: "Yes." Q: "And you started to sob?" A:
"Yes." Well the person that King might have
been feeling for - the person he might have been
feeling sorry for, could have been King himself,
could it not?---Yes.

Now returning to the analysis you have given of
Mr. Lowery, how long did you spend with him in
your interview?---The total time spent with - 30
was somewhere between 65 and 85 minutes, in that
area.

And did you give him the Wechsler test first, that
is the adult intelligence scale test?---The parts
of it I gave him I gave first, yes.

How long did that take?---The five sub-tests that
I gave him - can I just see which ones they were
and I can tell you.

Certainly, you may refer to your notes for any
questions that I ask.---Thank you. For those
five sub-tests would take of the order of 15 to 40
20 minutes, I didn't note the exact time.

So you had from about three quarters of an hour

to a bit over an hour for the rest of your tests? In the
 ---And any discussion with, any interview as well.

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Well you only had the one interview with him,
 did you?---That's correct.

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Only the one, all right, and he did quite well
 on his intelligence test, he was a bit above
 average, is that right?---That's correct.

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And I suppose he was a bit - that gave him a
 bit of confidence I suppose, he felt he was not
 making a fool of himself?---Probably it did.

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Well you said he developed a bit of confidence
 as he went along, is that right?---That is
 correct, yes.

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Well you have given evidence about his, what
 you have called a psychopathic personality, on
 the basis of your 65 or 85 minutes on the one
 occasion you had with him. Evidence has been
 given in this court Mr. - Professor Cox that
 the only trouble he has ever had with the police
 before in his 19 years was driving an unroad-
 worthy car, he has given evidence and his wife
 has given evidence that they were happily
 married, evidence has been given that he was
 about to have his first child and he was happy
 about this, evidence has been given that he
 was just purchasing his first home, even has
 been given that his work record was good. Two
 people have come along to court, one of whom
 said he was a normal country lad and the other
 said he was a good lad. Does all of that body
 of evidence make you question your own opinion
 in any way?

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MR. OGDEN: Your Honour, I object to the question.

MR. CUMMINS: I would ask my friend for the basis
 of his objection sir.

HIS HONOUR: Yes, what is the basis for the
 objection?

MR. OGDEN: My submission is, Your Honour, that
 it is quite wrong to refer to a whole body of
 evidence of that nature without in the first
 place telling the witness what the basis of the
 opinions expressed by other people were, for

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instance their relationship or otherwise to Lowery,
and to their expertise or otherwise and in any
event Your Honour, it is in my submission a matter
which is irrelevant to any opinion that the
witness has expressed.

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MR. CUMMINS: With respect, Your Honour, as to the
first matter I am happy to tell the witness the
basis of the various opinions expressed in this
court, as to the second matter I am entitled in my
submission to test this witness as to the evidence
he has given.

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HIS HONOUR: Well the only difficulty I feel about
your question is this, that instead of asking the
witness to assume the existence of facts throughout
you have diverged off in the end to ask him to
assume that people came to court and swore to
things.

MR. CUMMINS: Yes.

HIS HONOUR: And you impose on him then the task of
guessing whether they were telling the truth or
not. So if you confine it to asking him to assume
certain facts and there is evidence to support
those facts, well then the jury can make up their
own minds as to whether the facts are as you put
them to him, and you can ask the question and leave
it to the jury.

20

MR. CUMMINS: Well assume that those were the facts
as deposed to, you heard what His Honour said, and
in reference to what my friend said, assume that
one of the persons who came to Court had known
Lowery for 15 years and the other one for - I think
it was 8 years or something like that, and that
each of them was connected with him through some
form of marriage.

30

HIS HONOUR: I must stop you again, I am afraid, Mr.
Cummins, I have not conveyed to you what is troubling
me.

MR. CUMMINS: I am sorry, sir.

HIS HONOUR: You are not in my view entitled to ask
this witness to make an assessment of the truth
of some other evidence that has been given,
whether or not you tell him about the relationship

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of the other witness to the accused or not - whether you do that or not, but if you want to ask him a question based on an assumption that your client bore a good average reputation in the district or some other set of facts of that kind, well then put it in that form, I see no objection to it.

MR. CUMMINS: Thank you, sir. (To witness)

10 Well if you would assume that he bore a good average reputation in the district and that he had no previous significant trouble with the Police and that his apparent relations with those around him, such as his wife and work relations were good average relations does that shake you in any way in your conclusion that you have come to on the basis of 65-85 minutes?--- I think I would, in answering your question, have to take the points one by one, one would not - if you would not mind taking me back..

20 Well, you were talking about his inability to relate to other people and so on?---Yes.

Now he has given .. I am sorry, assume that the fact is that he has a happy marital relationship and that he was happily looking forward to his first child, does that make you qualify your opinion in any way?---Not necessarily, because this is commonly found in such individuals, quite commonly found.

30 And assuming that at the age of 19 years he has got through his youthful exuberance without any trouble with the Police apart from driving an old car, an unroadworthy car, does that make you qualify your opinion in any way?---Yes, that is a little unusual. Again trouble with the Police means of course being apprehended by the Police does it not?

I appreciate that.---Yes, I would say that is a little unusual.

40 Assume that he has been cross-examined at length by Mr. Ogden and that there were no significant anti-social acts of behaviour, leaving aside this alleged murder, that have been put to him?

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MR. OGDEN: Well Your Honour, I object to that. That is a matter of interpretation of a whole lot of ..

HIS HONOUR: I think you are asking him now to make some assumptions as to what Mr. Ogden would have done, I do not think that is permissible.

MR. CUMMINS: Very well.

Will you assume that he - not only that he had a happy marriage that we have already adverted to, but that in fact he was sufficiently sensible and normal to be purchasing his first house in time for the birth of his first child, does that again shake any confidence you have in your own opinion that this boy cannot adequately relate to other people?

10

MR. OGDEN: I object to that, Your Honour. There is no evidence sufficient basis for the main part of that question, Your Honour, we do not know what assistance he was getting from what other people to purchase his home and all of these things. Whether he is sensible or normal and so on, these adjectives are thrown in, and my submission, Your Honour, is that the question has no basis on which the witness can be asked - we do not know who is helping him to buy the home, at what stage he had got to it, whether he had ever paid the deposit or anything about it, Your Honour.

20

HIS HONOUR: Does not your question assume matters that go beyond the evidence?

MR. CUMMINS: Well I understood that he said he was purchasing the home, sir, I did not suggest that he had paid a deposit but I would have thought it was a matter of common sense logic, it must be followed that there was some financial payment on his home.

30

HIS HONOUR: But you are implying, are you not, to the witness that payments coming out of his pocket?

MR. CUMMINS: Yes, I suppose that is so, sir, yes. All right. Well assume that he in fact was about to complete his apprenticeship as a brick-layer and that he had served the apprenticeship to that stage, being I think within a few months of it, does that make any difference to your assessment about him? That he is able to hold down a job

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in that way?---No, not necessarily, there are plenty of recorded instances, I've seen people who have been described this way who have finished long periods of training.

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10 What about the combination of the factors, Professor, that is really the significant thing is it not, you may say, may you not, "He is a psychopath even though he holds down a job" or "He is not likely to be a psychopath if he is related well to his wife" but it comes to this, does it not, that in the end you have got a combination of factors and I suggest that that combination shakes you in your assessment over this brief interview that he is a psychopath?--- To be shaken in the assessment I would want clear independent evidence of what I would call non-psychopathic characteristics.

20 Well unfortunately you were not here during all of the evidence so we cannot assist you on that you appreciate.---That would be the way I would have to answer your question.

Well it comes down to this, does it not, that you would expect a psychopath to indicate by some means that he was anti-social in his general behaviour would you not?---You'd expect that there would be some evidence of some of these impulses being expressed, yes, let me put it that way.

30 For instance, one figure which might give you such an idea was if a person kept a book showing murders or killings, something like that, that might give you an indication he is a psychopath? ---Not necessarily.

A sort of sick book?---It might.

Or that a person, for instance, was a member of Hell's Angels or an organisation of that violent type might again give you a clue to his being a psychopath?

40 MR. DUNN: I object to that question, Your Honour, on the basis we have no knowledge that Hell's Angels are a violent organisation at all. We have had smear campaigns, sir, and statements about American Hell's Angels, but we have had

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very little said about the Australian branch or
adopters or imitators or whether they are weak,
strong or not.

HIS HONOUR: That seems to be so, does it not?

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MR. CUMMINS: Very well, Your Honour. Well the
position is this, is it not, Doctor, really that
by the time you get to nineteen if you are a
psychopath something would have shown back in the
past in your behaviour to indicate that you are
a psychopath?---That is often the case but not
always so. 10

Turning from that once again back to King, compared
him to Lowery and you have said one is more this
and one is more that. Did you ever test King
when he was under the influence of LSD?---No.

Or under the influence of Methedrine?---No.

Or under the influence of alcohol?---No.

Or any combination of those?---No.

Well you are unable to say, are you not, Professor,
what he would be like in comparison with Lowery
if he were high on any one of those factors and
Lowery was not?---Yes, I could make no such
comparison. 20

Nor could you make any conclusion, Doctor, as to
the respective roles each would play in relation
to the other?---You mean if one was under the -

Yes?---Yes, I would agree with you on that fact.

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MR. OGDEN COMMENCED RE-EXAMINATION

MR. OGDEN: Doctor, you said to my learned friend
Mr. Byrne that there was to some extent in each
of them a lack of feeling for others?---Yes. 30

Of course, if one person had a one percent lack
of feeling for others -

MR. BYRNE: This question seems to be cast in the
form Your Honour so as to suggest to the witness
the answer my learned friend seeks, in other
words, it -

HIS HONOUR: Well this is re-examination, yes.

MR. BYRNE: It is leading in character I would submit, sir.

HIS HONOUR: Yes.

MR. OGDEN: Well Your Honour may I merely put this as a basic proposition.

HIS HONOUR: The trouble about a basic proposition is that it asserts something usually and in re-examination you are not of course entitled to make assertions to the witness.

MR. OGDEN: Could you, Doctor, in regard to the lack of feeling for others, describe the difference between the degree of lack of feeling on the part of Lowery, and the degree of lack of feeling on the part of King?--Yes, it is difficult to quantify this. The language that I used was--there was some capacity to relate adequately to others in King, and then in response to the question I said this was on the test rather below the average for a boy of his age, but not markedly below the average, but a little below the average. If one could think of it diagrammatically it would be easier. In terms of Lowery the - the evidence of lack of capacity to relate to others was distinctly marked, oh, I would say very marked, so that the difference between them is quite - in this attribute is quite considerable as revealed on the test.

Well now as to the aggressiveness which you found in Lowery and you said you also found in King, could you describe the difference if any, in that attribute between them?---Yes, that with respect to Lowery the aggressiveness displayed in the tests was definitely more intense than expressed by King. I think that would be a fair statement.

Insofar as the attribute of each lacking control over their aggressive impulses, can you draw any distinction in the degree of lack of control, one opposed to the other?---It is a little more complex I think; that one would talk of both of them lacking adequate controls, but the effects would be different, because of the differing strength of the aggression involved. One can not really quite talk about controls, adequacy of controls in isolation I think, it becomes -

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Yes, because you say it relates to the aggressive-
ness itself?---To the aggressiveness itself, yes.

The impulsiveness which you said each showed some
signs of was there any difference in the degree of
- or strength of the impulsiveness that you observed
one as opposed to the other?---Not a great deal, it
would be a little more marked with Lowery, but not
a great deal more marked.

MR. OGDEN: You said that as regards King at the
interview he showed a - tendencies of fear towards 10
Lowery, is that so?--Yes, he stated that to me.

HIS HONOUR: That was not a responsive answer I do not
think. You asked what was shown, and the witness
replied he said something.

MR. OGDEN: Yes.

HIS HONOUR: If that is objected to I must tell the
jury to disregard it.

MR. OGDEN: Yes, well what about the attributes - I
will leave that Your Honour for the moment - what
about the attribute of the - of dependancy?---As I 20
stated before this was marked in King, I didn't
find any evidence of marked dependence in Lowery at
all, so there's a big difference on the two here.

Well what does that mean when you did not find any
evidence of marked dependancy in the case of Lowery?
---Well it would make me infer that he was not
what I would describe as a passive dependent man
at all.

And the attribute of callousness that you have
spoken of in Lowery, did you find any of that in 30
King?---No.

Or sadistic tendencies?---No.

Could Professor Cox be excused Your Honour?

NO OBJECTION BY COUNSEL.

WITNESS WITHDREW - EXCUSED.

GUY HALE SPRINGTHORPE sworn and examined.

WITNESS TO MR. CUMMINS: My full name is Guy Hale Springthorpe. I am a legally qualified medical practitioner.

MR. CUMMINS: Do you practise at Epworth Hospital, Richmond?---Yes.

For over the last thirty years have you been practising as a psychiatrist?---Yes.

10 Apart from the basic medical degrees you hold the following positions, a Member of the Royal College of Physicians?---Yes.

A Fellow of the Royal Australasian College of Physicians?---Yes.

A Fellow of the Australian & New Zealand College of Psychiatrists?---Yes.

And a Corresponding Member of the American Psychiatric Association?---Yes.

20 For over 30 years were you attached to the psychiatric department of the Royal Melbourne Hospital?---Yes.

For over 20 years were you a consultant psychiatrist to the Repatriation Department?---Yes.

On 24th May 1971 did you attend Pentridge Gaol in order to interview and assess Christopher Lowery, an accused in this case?---I did..

For how long was it that you conducted your interview and assessment?--- Between an hour and three-quarters and two hours.

30 Would you assume, Doctor, for the purposes of your assessment that the - these facts, that the accused Lowery is 19 years of age and that he is married and that he has resided in Hamilton all his life and that he is approaching the end of his apprenticeship as a bricklayer and that he attended the local school at Hamilton, and would you assume further for the purposes of your assessment and diagnosis that the history given in relation to the crime alleged against him was that

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he and the other accused met and picked up the deceased in the main street of Hamilton on the evening of 31 January and that he had been planning to go to the midnight Drive-In later that night.---Yes.

And that he had had some alcohol to drink and that the co-accused had taken a tablet of what he believed to be LSD---Yes.

And how they drove out to Mount Napier with this girl and that Lowery believed that the co-accused King and the girl were going down the track for some sex.---Yes.

10

And that he in fact stayed in the car and had a beer and was cleaning the car out and how the co-accused subsequently returned to the car and took some flex, and after some time King..Lowery went down the track to see what was going on, and when he got there he saw the co-accused apparently strangling or had strangled the deceased and that the accused Lowery tried to stop him but was thrown to the ground and was terrified and shocked by what he had seen and subsequently received threats from the co-accused in relation to his safety and that of his wife.---Yes, that was what Lowery told me, yes.

20

And finally, that he has no criminal record of any sort. Doctor, on the basis of that history that I have put to you and on the basis of your examination and experience did you find any evidence whatsoever that Lowery was a psychopath? ---I did not.

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Did you find any evidence whatsoever that Lowery was a sadist?---I did not.

Have you, Doctor, read the evidence in relation to Lowery that was given in this case by Professor Cox?---Yes, I read it just before lunch.

Did that include both his evidence in chief and the various cross-examinations that related to Lowery?---Yes.

In fact, over the many years you have worked as a psychiatrist have you worked with clinical psychologists for purposes of your assessments? ---Yes, I have, both at the Melbourne Hospital

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and in my private practice.

Has that included innumerable instances of those psychologists using the three tests in question, the W.A.I.S. test, the Thematic appreciation test and the Rorschach test?---Yes. The Thematic appreciation test is a rather more recent one than the Rorschach but -

10 Thank you, Doctor. And have you read what conclusions Professor Cox said he reached in relation to Lowery on the basis of those tests?---
Yes.

What do you say about the reliability or weight that can be put on those tests given the evidence of Dr. Cox that his examination only lasted from 65-85 minutes, 20 minutes of which was occupied with intellectual assessment?---

MR. OGDEN: Your Honour, I do not know whether this is an attempt to attack the credit of Dr. Cox through this witness.

20 MR. CUMMINS: It is not, sir, it is assessing his techniques that is all.

MR. OGDEN: My submission is it looks, Your Honour, and sounds like an attack on his credit and in my submission that is not permissible.

HIS HONOUR: No, well Mr. Cummins has indicated that it is not directed to credibility but to the weight that should attach to the results of a test made in the stated circumstances.

MR. CUMMINS: If Your Honour pleases.

30 Well what do you say, Doctor, given those facts that it was a 65-85 minute interview of which 20 minutes was based.. was devoted to intellectual assessment, what do you say about the conclusions that he reached?---I do not pay much stress on the time taken, that person's technique. The tests fall into two headings, the first were the tests for intellectual capacity and I might say that these tests are the most reliable that clinical psychologists perform, they have been used for
40 over 70 years, not in exactly the present form, but modified from the original Binet test and in the hands of an expert clinical psychologist they

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would have an accuracy of - or an error of less than 5 percent in a great majority of cases. However, they are not particularly important in establishing a diagnosis of psychopathic personality and/or sadism. The test I expect Professor Cox bases these opinions on would be the Rorschach and the T.A.T. Now these are tests of a rather different order in that they don't test intelligence as such or any aspect of intelligence. They test qualities of personality and are to a considerable extent subjective, and it is my opinion, having had to deal with quite a number of psychopathic persons and sadistic persons both in private practice and in medico-legal affairs, it is my opinion that to make a definitive diagnosis, a definite diagnosis of a psychopathic personality and sadism on those tests - I do not want to overstate it - I would regard it as unwise. My reason for saying this is that psychopathic personality is a well known disorder, it has been written about, studied for many years, it is the bugbear of most psychiatrists and I would think of most penal officers in that people who are of this type show a long history before they come to some form of judgment, of psychopathic behaviour. They are persons who, to put it in a rather simple way, exhibit no form of conscience about what they may do or not do regarding other persons. They act on the basis of their own immediate satisfactions. Those matters were mentioned by Dr. Cox and I agree with that insofar as he said that, but why I would be sceptical of making a diagnosis on psychological tests alone is this fact that a psychopathic personality does not develop suddenly, I could get no evidence of any such abnormality of behaviour and personality in Lowery's case prior to this particular set of incidents. I am not saying the evidence couldn't be brought, that he did show some of these peculiarities, but as far as I know he has shown none of these peculiarities in his previous behaviour, and I think that fact is of considerably more importance in making a diagnosis than the findings on two particular psychological tests.

MR. BYRNE DID NOT WISH TO CROSS-EXAMINE.

MR. OGDEN COMMENCED CROSS-EXAMINATION.

MR. OGDEN: Doctor, what are the two personality tests that you understand Dr. Cox gave Lowery?---
The Rorschach Test and the T.A.T. Test.

What is the T.A.T.?---Thematic Apperception Test.

And how recently do you say that the Thematic Apperception Test has been in use? 30 years?---
I didn't say 30 years, I -

10 No, I am suggesting, 30 years?---I don't know how long it has been in use. I said it hasn't been as long in use as the Rorschach.

I thought you said "recently", you used the word "recently" in connection with it, did you not?---
I don't think so, I might have said "more recently that the Rorschach", all I was saying was that it was more recent than the Rorschach, that has got no special significance, they are tests that are both used now.

20 It is a test which has been in use, commonly in use, and is regarded as a reliable test, and has been, for 30 years I suggest?---It is a good test, it has been used, yes.

And it is a test which is in almost universal use, I am not saying - I do not know every country in the world uses them, but in most countries in the world it is used, is it not?---It is used on certain occasions, yes.

30 Doctor, what do you regard as the attributes of a - or the indicia of a psychopathic personality?---
I have mentioned some of them, I will mention them again, they broadly, show that the person has what is commonly known as no conscience, they take no regard in their actions of how their actions may affect other persons, in other words they act on the basis of their own immediate gratifications, the type of gratifications vary in different persons, they are often or not infrequently of a violent nature, but not always.

40 Yes, what else?---Well there are other qualities that go with that, those are the main ones, these actions are sometimes hasty and sometimes they are

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considered, they are not always impulsive, they may be.

Yes, anything else?---Well I think that is -

HIS HONOUR: Mr. Ogden, you may remember we had a discussion about pursuing this line of questioning down to the final end of the catalogue and I indicated earlier that I thought there were some difficulties about pursuing it too far. Do you remember that?

MR. OGDEN: I do Your Honour, yes. But surely I am not to be limited, Your Honour, in cross-examination. I do not at the moment intend, Your Honour, to go very far with this, but I.. 10

HIS HONOUR: Yes, well I will leave it to your discretion then.

MR. OGDEN: Yes, Your Honour.

(To witness): Yes, is there any other aspect?--- I don't propose to add any more, there possibly are others if you -

Well I want you to tell us all the aspects that you can think of Doctor, that are aspects of a psychopathic personality?---Well I - 20

HIS HONOUR: Just a moment, Doctor. Are you asking him about aspects of personality that are relevant to what is alleged to have happened out at Mount Napier on that night?

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: Those aspects only.

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: Yes, very well. 30

MR. OGDEN: Do you understand that Doctor?---Not quite, because I am not completely certain of what happened in absolute detail there. I have been told and read certain things. I have given as adequate a description of a psychopathic person as I think I can.

All right, well that is sufficient for my purposes, you have given what you regard as sufficient, sufficient description?---Yes. Yes, I am well aware of what a psychopathic person is.

I want just an answer to my question if I may, you have given what you regard as an adequate description?---I have said so, yes.

10 Is one of the characteristics that they are pathologically dishonest?---Not necessarily, but they very often are.

Yes,?---Because as they have no conscience of course they don't mind being dishonest.

But they are -

HIS HONOUR: Now Mr. Ogden, what is this directed to? The credit of another witness?

MR. OGDEN: No, Your Honour.

HIS HONOUR: What happened out there that night?

MR. OGDEN: Partially Your Honour, yes.

20 HIS HONOUR: Well I do not see the connection, it seems to me that this is going beyond the legal limits of cross-examination.

MR. OGDEN: Yes, Your Honour, may we carry on this discussion in the absence of the jury?

HIS HONOUR: Certainly. Would you gentlemen mind going to your room?

JURY RETIRED AT 2.20 p.m.

WITNESS ASKED TO LEAVE COURT.

HIS HONOUR: Yes Mr. Ogden.

30 MR. OGDEN: Your Honour, the Doctor has based his opinion entirely on one version of what occurred out at Mount Napier and I want to put the other version to him and ask him to accept the truth of that. I also want to put to him -

HIS HONOUR: Before we go past that, what was put to the

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witness as I followed it was not that he should believe what Lowery told him, it was that he should assume certain facts that had occurred.

MR. OGDEN: Yes, but those factors, Your Honour, that he was asked to assume were in fact Lowery's version of events.

HIS HONOUR: Yes, substantially.

MR. OGDEN: I want to ask him to assume the contrary set of facts, Your Honour -

HIS HONOUR: But that is not what you are doing. 10

MR. OGDEN: I also want to include in those facts an assumption that the person in question is a liar in the sense that he has gone to the lengths of denying on oath authorship of a document which he handed to King on 1 June of this year in the holding cell. Now, Your Honour, that may be a very important indicia of a psychopathic personality.

HIS HONOUR: Well I do not see as at present advised any objection to your putting to the witness a request that he assume the facts to be this, that or the other and the facts you ask him to assume may include facts as to what you say the other evidence demonstrates to be lies told in the witness box. In other words, you can say to him, for example, "I want you to assume that this person told such and such a lie in the witness box, I want you to assume that." It will be for the jury to decide whether it was a lie or not, and you can ask him whether those facts that you ask him to assume throw any light on the diagnosis of psychopath. But if you just proceed from the other end as you seem to be doing now and say "Well aren't psychopaths liars?" that is not connected to any particular facts and it seems to me to be merely an attack on the general credit of Lowery as a witness. 20 30

MR. OGDEN: Your Honour, I thought I was putting to him that the quality of being a liar is one of the indicia of a psychopath. 40

HIS HONOUR: I followed, I think, that that is what you put to him, but I am suggesting to you that

so far the only relevance that attaches to an affirmative answer to that is to say to the jury that they should not believe Lowery on his oath.

MR. OGDEN: No, Your Honour, I was not suggesting that.

HIS HONOUR: I am not saying that you are suggesting it, but that is the only relevance of it so far. Now if you come at the matter from the other end, as at present advised, I do not see that you can be stopped, provided you put particular things to him and say "Well assume he got into the box and told this lie, - told this, and it is a lie, assume that he said it and assume that it is a lie," and the jury can decide later whether it was, would that throw any light on the diagnosis? I do not see that you can be stopped in that way, but if you want to get out general evidence in the air that lying is a characteristic of psychopaths then it seems to me that that is objectionable.

MR. OGDEN: Your Honour, I was not only going.. to do that only, I was doing that as a preliminary step, Your Honour, to putting the other version to him.

HIS HONOUR: Well it is improper at this stage, whether you will ever get to the stage of being entitled to do it I do not know, but I think I should rule it improper at this stage and warn the jury that they should put out of mind that answer that was obtained. I am surprised really, Mr. Ogden, that you should have done this in view of the fact that I drew your attention specifically to the point that we are discussing now about this supposed characteristic of psychopaths, it had been discussed earlier and action had been taken earlier to avoid bringing out these matters. You may remember that I said to Professor Cox "Don't-" talking about those aspects of psychopathy 'tell us more than the ones that are relevant to what happened out at the scene, and you can say 'I said to him that your list is incomplete'. Now I reminded you of that episode and yet you go straight ahead and do the very thing that I was asking you not to do.

MR. OGDEN: Well I am sorry, Your Honour, I misunderstood, I did not think that I was transgressing, Your Honour. I intended that only

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as a preliminary to what I proposed to ask him about putting the other version and then asking him to assume certain things in regard to the handing over of the document and denial of the authorship, Your Honour. And as I understand Your Honour's ruling, at the moment Your Honour feels that I may do that.

HIS HONOUR: Well do not let us have any more misunderstandings for heaven's sake. What I am ruling is that you may put to the witness in the box a request that he assume that Lowery said something in the box and that it was false to Lowery's knowledge and you may ask him to assume that if you consider that there is other evidence before the Court which justifies..would justify the jury in considering that it was a lie. And you may ask the witness then whether on that assumption any light is thrown on the diagnosis of psychopathy. That is all I am ruling is admissible.

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MR. OGDEN: If Your Honour pleases.

JURY RETURNED TO COURT AT 2.28 p.m.

HIS HONOUR: Well Mr. Foreman and gentlemen, we have had a discussion about the law relating to that last question and answer and I direct you to put that out of your minds, we will start afresh, on that aspect.

GUY HALE SPRINGTHORPE, recalled and warned.

MR. OGDEN CONTINUED CROSS-EXAMINATION.

MR. OGDEN: Doctor, the evidence that you have given is based upon an assumed set of facts that was put to you? That is correct, is it not?---Put to me by Lowery? 30

No, no; put to you by my learned friend Mr. Cummins at the -?---Well he put them to me from my report, of my interview with Lowery.

Doctor, please, the basis upon which you gave your evidence was on the basis of an assumption?

HIS HONOUR: Well I would like to intervene now Mr. Ogden, if I may. That is what he was asked 40

to do, whether it is true that he did it, I do not know.

MR. OGDEN: Yes. Well Doctor, that is what you were asked to do, was it not?---Yes.

And your answer was responsive to that question?---Well I made several answers, yes.

10 Now that is - do you understand that to be the limit of the facts that you base your opinion on, that you were limited in that question to an assumption of those facts put to you?---Well they were the main facts I had given in my report, and I -

All right. No, just a moment please.---Yes, all right, I gave my -

No, please, Doctor, the question that you were asked was to express a view based on those facts that were put to you?---Yes, that is so.

20 Did you do a Rorschach Test yourself?---I and other clinical psychiatrists practically never do the tests themselves, no I did not.

Did you do the Thematic Apperception Test?---I did not do any psychological tests at all.

What tests did you do?---I didn't do any psychological tests. I took a clinical history.

I see, you got from the accused a clinical history?---That is so.

30 I want to ask you to assume one set of facts Doctor, that I will put to you now. Assume this to be so; that Lowery was interviewed on Saturday 6th February 1971 by the police at some length, some two hours or more, that he gave a version of the events at Mount Napier to the police in great detail, that he then gave evidence in the witness box, that the evidence that he gave in the witness box I will ask you to assume differed from the prior version that he had given to the police in that he asserted that threats were made to him by King immediately after leaving Mount Napier and were repeated later. I also want you to assume that he gave to King in the
40 holding cell at Ballarat a document in his, Lowery's,

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handwriting, which was a direction to King, a draft if you like, of evidence which King should give in this trial. And I further ask you to assume that in his evidence at this trial he denied on oath - falsely denied on oath the authorship of that document. Will you assume those facts?---I understand what you are saying.

Would you regard those facts - if you assume them - to be an indication of a psychopathic personality?---Not necessarily, no.. 10

Could they be?---They might be, but they are not in themselves proof that he is a psychopathic personality. Even if this did occur.

I am not saying they are proof, are they an indication is my expression?---Not in themselves, no.

Could they be an indication in themselves of a psychopathic personality?---Well psychopathic persons might carry out somewhat similar activities at times, but in itself it is not evidence of a psychopathic personality even if it did occur. 20

Assuming still, of course, the truth of those facts - and that is a matter for the jury - but assuming the truth of those facts, is it not an indication of egocentricity on the part of a person to presume to tell his co-accused what his evidence should be?---Egocentricity is not tantamount and the same as a psychopathic personality.

Is egocentricity an indication of a psychopathic personality?---It is one of the features, but not in itself an indication. 30

No, no, I am not suggesting it is, it is one of the features. Does that conduct, which I ask you to assume, indicate egocentricity?---Yes.

If you assume again the truth of what I have put to you - a denial on oath.. false denial on oath of the authorship of his own handwriting taken together with the indication of egocentricity point to, or could it point to a psychopathic personality?---It could be associated with it, but not necessarily. 40

MR. CUMMINS COMMENCED RE-EXAMINATION

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MR. CUMMINS: Doctor, before it would be wise to come to a definite diagnosis of either sadism or psychopathy, apart from the two tests, the T.A.T. test and the Rorschach test, what other information or data would you consider would be advisable to have before you expressed such an opinion?

MR. OGDEN: Your Honour, does this arise out of cross-examination Your Honour?

10 MR. CUMMINS: It does, Your Honour, on the basis that my friend was submitting that the T.A.T. test was of long standing and assuming therefore it was of itself an important element for the jury to consider in the conclusion expressed by Dr. Cox.

HIS HONOUR: Yes, I think probably there was an implication there, it is a little repetitive in regard to the examination in chief but I think it is permissible.

MR. CUMMINS: Thank you, sir.

20 What other material or data would you, as a psychiatrist, would want to see before you expressed a definite opinion?---To make a diagnosis of that nature and psychopathic personality and sadism are not one and the same thing, they are two things, they may co-exist. To make that diagnosis one would need a great deal of evidence of psychopathic and sadistic behaviour over a period, over quite a lengthy period in fact. This is what is always done by psychiatrists, whether
30 they are seeing people as patients and if they have got time if they are seeing them for medico-legal purposes they try to get this information. This is the difference, an important difference that has been the procedure of clinical psychologists and medically trained psychiatrists, this taking of the history which is based on knowledge and experience of a large number of mental disorders.

40 What, in your opinion, Doctor, is the more reliable or preferable method to be followed?---Well psychological tests can be a part of the evidence just as X-rays can be a part in diagnosing tuberculosis, but as I said earlier I think it is unwise to make such a diagnosis on that evidence

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alone when there is no, as far as I know, no corroborating evidence of psychopathic or sadistic behaviour in the past.

MR. CUMMINS: Might the Doctor be excused Your Honour?

NO OBJECTION BY COUNSEL.

WITNESS WITHDREW - EXCUSED.

MR. WRIGHT: We have no further evidence to lead sir.

HIS HONOUR: That is your case then?

MR. WRIGHT: It is.

10

REVISED BY TRIAL JUDGE.

No. 3

Judge's
Charge
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No. 3

JUDGE'S CHARGE TO THE JURY

THE HONOURABLE MR. JUSTICE SMITH:

Mr. Foreman and gentlemen of the jury, in accordance with the laws that govern this community you twelve men have been brought here to perform a duty which involves as grave a responsibility as any citizen is ever called on to perform. The duty cast on you is to determine whether these two accused men have or have not been proved guilty of the crime of murder with which they have been charged. You have sworn an oath to return a true verdict according to the evidence. Your verdict, therefore, must be based on the evidence that has been given before you, and you must put out of your minds altogether anything that you have heard or read about this case before you were sworn in as jurors. You must decide the case on the evidence that has been given before you and in what you have seen and heard and read in Court during the course of the trial. Your verdict must also, in order to be a true verdict, be a faithful performance of your duty to do justice according to law between these two accused men and the community of which you and they are

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members. You are called on to perform that duty faithfully and without flinching whether that duty proves ultimately to convict or a duty to acquit.

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10 Now gentlemen, at the outset of this charge, and before I come to deal with the questions of law and fact that arise in this case, I need to put to you certain important general matters which you need to have clearly in mind in order that you may perform your functions properly. The law says that it is my duty to tell you what the law is so far as it affects this case, and the law says that it is your duty to take the law as being what I tell you it is, and to decide the case in a way which is consistent with the views of the law that I put to you. If I were to make any mistake about the law, that mistake could be corrected elsewhere, and for your purposes the law must be taken to be in accordance with the statement of the law that I put to you.

20 As to the facts of the case, however, you are the judges and the only judges. It is for you to decide how much or how little of the evidence of each witness you regard as truthful and accurate. It is for you to say what conclusions are to be drawn from facts that have been sworn to in the witness box and which you accept as being correct. The deciding of all questions of fact is your province entirely. I will, it is true, be making a number of references, some fairly extensive references, to the evidence with a view to drawing your attention to parts of it that it seems to me to be useful to call attention to. But you will appreciate gentlemen, that those references must, of necessity be extremely complete. It would obviously be impossible for me to attempt to put before you all over again the whole of the evidence that has been given.

30

40 Bearing that in mind you will appreciate that you ought not to draw any inference just because I fail to mention some particular piece of evidence that I am suggesting that that piece of evidence does not matter, and on the other hand when I mention some particular piece of evidence do not assume merely from that fact that I am suggesting to you that that piece of evidence should be regarded as of critical importance. It is entirely a matter for you to decide what weight should be given to each part of the evidence, whether it is evidence that I happen to

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mention or evidence that I do not. I will indeed be making some comments on the facts and the evidence, but I want you to be quite clear in your minds about this, that anything I say to you about the facts or the evidence is not binding on you in any way whatsoever. Such comments are made with the idea that they may possibly assist you. If you find that they do assist you, then you make use of them; if you find that they do not, then you discard them. You discard them because the community and these two accused men are entitled to have this case decided upon your view of the facts, and not upon anybody else's.

10

Another matter of general law which I think I should mention by way of precaution, although it can hardly be doubted that you are aware of it, is that you do not arrive at your verdict in relation to either of these accused men by majority vote. Any verdict that you give must be one in which each and every man of you is agreed. It is not, of course, necessary that each of you should have arrived at that verdict by the same line of reasoning, but it is necessary that you should all be agreed that any verdict that you give is a true verdict.

20

A further point of law to be borne in mind is one which I mentioned at a much earlier stage in this case. Each of these accused men is entitled to have his case considered separately upon the evidence which is admissible against him. That is of importance here because as you have been already told evidence given before you that one of these accused men said something out of Court or gave some demonstration out of Court and the view by you of the demonstration as recorded on film, that is in law evidence against the man who said the thing out of Court and the man who made the demonstration but it is not admissible evidence at all against his co-accused.

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On the other hand, what each accused swears to in the witness box before you is evidence in the case which you can use for or against him and for or against his co-accused, and that includes evidence of the kind that you have heard here by an accused person saying that passages in his written statement to the Police are correct in accordance with his recollection so far as he remembers.

40

That too is evidence given before you and may be used by you for or against him and for or against his co-accused because he is there giving evidence as to the truth or otherwise of the particular statements that appear in those parts of his written statement.

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10 Now, I have to warn you, however, about the use
by you of evidence given before you by either of
these accused as against his co-accused. The
Crown here has charged these two men with a joint
crime, they are therefore persons whose evidence
falls within the legal category of evidence of
accomplices, and the law recognises that evidence
given against an accused person by an accomplice is
dangerous evidence to act upon. An accomplice
obviously may have reasons for wanting to make false
accusations against the other person with whom he
is alleged to have acted. The law therefore says
20 that it is dangerous and every jury should be warned
that it is dangerous to act upon the evidence of an
accomplice as against an accused man. And the law
says that you should be warned that you ought not to
do so unless that evidence is corroborated.

The law does not say that there is an absolute
prohibition against your acting upon such evidence
when it is uncorroborated but it does say that it is
highly dangerous to do so, and that you ought not to
do so unless after scrutinizing it with the utmost
care you are completely convinced of its accuracy.

30 Now I have said that the law requires you to be
given that warning against acting on the evidence of
an accomplice unless it is corroborated. What then
is the meaning of corroboration in this connection?

40 The law says that corroboration is evidence which
is independent of the accomplice who is to be
corroborated. It is evidence from some other source
and it must be evidence which not only tends to prove
that the crime charged against the person against whom
the evidence is given was actually committed, but also
tends to prove that that accused person was the man
who committed the crime. You see, there are three
elements involved. To amount to corroboration of
evidence of an accomplice the evidence put forward as
corroboration must be independent of the accomplice,
and it must tend to show that the crime charged
against the man against whom the accomplice has given

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evidence was in fact committed and it must tend to show that the man so charged is the man who committed the crime.

Now the Crown here has charged each of these accused men with the crime of murder. The law says that in those circumstances the burden rests on the Crown to prove against each of these accused and by evidence admissible against him, those facts that are necessary in law to constitute the crime charged against him. Subject to what I will have to tell you later about the defence of insanity, the law is that an accused person is not called upon to prove that he is innocent. Except in relation to that defence of insanity the law says that in all respects he is to be presumed to be innocent until the Crown, on the whole of the evidence that is admissible against him, has satisfied you of his guilt. 10

Furthermore the law says that the Crown has to satisfy you in that way of those facts, beyond all reasonable doubt. In a civil case a jury may find a verdict for a plaintiff on the balance of probabilities; that is to say simply because the jury considers that it is more likely than not that the plaintiff is in the right. In a criminal case, however, before you can find an accused person guilty of the crime charged against him, you have to be satisfied upon the evidence admissible against him, and satisfied beyond reasonable doubt, of all the elements necessary to constitute the crime that is charged against him. 20 30

Now I want to ask you to look a little more particularly at that aspect of the law. Some facts which go to establish the charges made against.. the charge made against these two accused men have been sworn to directly by witnesses. In relation to facts of that kind you have to ask yourself the question - are we satisfied beyond reasonable doubt that what those witnesses have sworn to is truthful and accurate? Other facts which go to establish the charge have been sworn by witnesses to have been admitted by an accused person before you, admitted by one of the accused persons before you. In relation to facts of that kind, you have to ask yourselves whether you are satisfied beyond reasonable doubt that the admissions were made and that they were true. In this case, however, as in 40

nearly all criminal cases the Crown does not merely ask you to be satisfied of facts sworn to by witnesses or sworn to have been admitted by the accused, the Crown contends in addition that from the facts of which you have been satisfied beyond reasonable doubt in one or other or both of those ways, against a particular accused, you should draw certain conclusions or inferences and that you should be satisfied of them too beyond reasonable doubt. The law allows proof in that way and indeed I think you will realise that it is essential that that form of proof should be permitted because otherwise it would never be possible to prove against an accused man that he had the intention or state of mind necessary to constitute a crime unless, of course, he happened to have admitted that particular intention or state of mind.

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Well the law does allow inferences or conclusions to be drawn in the way that I have just been mentioning, but it is necessary to bear this in mind in relation to the drawing of conclusions or inferences of that kind. Before you are entitled to infer any particular fact against an accused person in the way that I have been describing, you have to be satisfied beyond reasonable doubt that the inference ought to be drawn. The law says that you are not entitled to be satisfied unless the other facts from which you are drawing the inference admit of no reasonable explanation other than the explanation that you are asked to accept. The other facts must be such that all other reasonable inferences and explanations are excluded.

Now gentlemen, that is all I want to say to you about the burden of proof that rests on the Crown in this case and I will not keep on repeating all the time the full expression "satisfied beyond all reasonable doubt." But I want you to bear in mind throughout the course of my charge that whenever I speak of your being satisfied by the Crown of any fact and whenever I speak of any fact that is alleged against one of the accused by the Crown being established, or proved, what I am referring to is proof to your satisfaction beyond all reasonable doubt.

I think gentlemen that although there is a short time to go before the usual adjournment hour, this is a convenient point at which to break off.

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COURT ADJOURNED AT 4.25 p.m. UNTIL TUESDAY,
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REVISED BY TRIAL JUDGE:

HIS HONOUR'S CHARGE TO THE JURY (CONTINUED)

IN THE CASE:

THE QUEEN

--v--

CHRISTOPHER RUSSELL LOWERY & CHARLES IAN KING.

(Eleventh day)

COURT COMMENCED AT 9.30 a.m. ON TUESDAY 22nd JUNE 1971. 10

THE HONOURABLE MR. JUSTICE SMITH:

Mr. Foreman and gentlemen of the jury, as the charge laid by the Crown against these two accused persons is that of murder you need to be clear at the outset as to what it is that amounts, in law, to this crime of murder. The crime of murder is committed when a person causes the death of another by a conscious voluntary act done with the intention of killing that other or doing that other grievous bodily harm, that is to say really serious bodily injury, provided that there is no lawful justification or excuse for what is done and nothing such as provocation, for example, which could operate in law to reduce the crime from murder to a lesser crime. 20

I will repeat that; the crime of murder is committed when a person causes the death of another by a conscious voluntary act done with the intention of killing that other or doing that other grievous bodily harm provided that there is no lawful justification or excuse for the act and nothing which could operate in law to reduce it from murder to a lesser crime. 30

Now some importance has been attached in the course of this case to the expression "a conscious

voluntary act" which I have used in that definition. And the requirement that there should be a conscious act means of course that the killing must not be done by an act of which the killer is unconscious. It must be done by an act of which he is aware. The statement that it must be a voluntary act means that it must not be something done by him involuntarily. It must be something that he did intentionally .

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10 Well now the definition that I have just given
you is the definition of murder on which you should
proceed in your deliberations. The situation here
is that in law there is nothing in the circumstances
disclosed by the evidence which could provide a
lawful justification or excuse for an intentional
killing or an intentional infliction of grievous
bodily harm, or which could reduce such an act from
murder to such a lesser crime. Accordingly, the
proviso to the definition that I have given you has
no operation in fact on the evidence in this case,
20 and the elements that it is necessary in law for the
Crown to prove in order to establish that the
deceased girl was murdered come down to these three:
first, that her death was caused by a conscious
voluntary act, secondly, that the act was done with
the intention of killing her or doing her grievous
bodily harm - I am afraid I have run together the
elements there, so that they do not add up to the
number I specified, but I will repeat that what on
the facts here it is necessary in law for the Crown to
30 prove in order to establish that the girl was
murdered is first, that her death was caused by a
conscious voluntary act, and secondly, that that
act was done with the intention of killing her or
doing her grievous bodily harm.

40 Well now of course, it is entirely a matter
for you to say, but I should think that you would
have no doubt that the girl was in fact murdered.
In addition, however, to satisfying you that
Roselyn Nolte was murdered the Crown here, before you
can find either of these two accused men guilty of
her murder, has to satisfy you upon evidence
admissible against that particular accused that the
facts are such that in law he is guilty of her
murder.

In order that you may appreciate what are the
facts that have to be established for that purpose
it is necessary for me to tell you something about

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the law as to the degree of participation that is necessary to render a man guilty of a crime, and in the first place it is necessary for me to say something to you about the legal position where people are acting in concert. The law says that if two or more persons reach an understanding or arrangement that together they will commit a crime and then while that understanding or arrangement is still on foot and has not been called off, they are both present at the scene of the crime and one or other of them does, or they do between them, in accordance with their understanding or arrangement, all the things that are necessary to constitute the crime then they are all equally guilty of that crime regardless of what part each played in its commission. In such cases they are said to have been acting in concert in committing the crime. 10

The typical example of persons acting in concert that comes before the Court is in house-breaking cases. Let me illustrate it by an example. Suppose that, say, two men are driving along at night and they see a house in darkness with a lot of newspapers and milk bottles at the gate and one says to the others: 'That looks as if it would do'. The car pulls up, two of the men get out, one of them stays in the car behind the driving wheel with the engine running. The other two go to the front door and there one of them breaks a glass panel beside the door, puts his hand through and opens the door and throws it open. The third man goes inside and collects valuables and comes out while the man, say, who opened the door, goes back to the gate to keep watch, and never enters the house at all. Now in law each of those three men can be found guilty of the crime of house-breaking, the elements of which are breaking, entering and stealing, yet obviously the man who sat throughout behind the driving wheel outside ready to drive the other two away when they had got the goods, he did not break anything and he did not enter anything, and he did not with his own hands steal anything, and the man who broke the door never touched the goods. But in law if a jury is satisfied that the three were acting in concert under an understanding that they had reached - communicated between them more by actions than by words - an understanding under which, between them, they were to commit this house-breaking, then in law they are all guilty of the offence and it does not matter which part each played in the 20 30 40

commission of the offence. You can imagine that cases can often arise in which, in circumstances such as I have described, the Crown is not able to prove which did which act. It may not even be able to prove which was the man behind the wheel. Now that is an illustration of the operation of this doctrine of acting in concert.

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10 For people to be acting in concert in the
commission of a crime, their assent to the under-
taking or arrangement between them need not be
expressed by them in words, their actions may be
sufficient to convey the message between them, that
their minds are at one as to what they shall do.
The understanding or arrangement need not be of
long standing, it may be reached only just before
the doing of the act or acts constituting the crime.
Remember, however, that before a person can be found
guilty of a crime under this doctrine he must have
been present when it was committed and the crime
20 committed must not go beyond the scope of the
understanding or arrangement. On the other hand, it
is to be remembered that under this doctrine, although
the understanding or arrangement must not have been
called off before the commission of the crime, the
mere facts that while it is being committed one of
the persons acting in concert feels qualms, or wishes
he had not got himself involved, or wishes that it
were possible to stop the proceedings and still get off
30 Scot free, will not amount to a calling off of the
undertaking or arrangement.

This doctrine of acting in concert applies to
the crime of murder as to other crimes and the first
way, the primary way, in which the Crown puts its
case against each of these two accused persons, is
that the evidence admissible against each of them
shows beyond all reasonable doubt that the girl was
murdered by the acts of one or the other or both of
them while they were both present acting in concert
to kill her.

40 The facts of which the Crown has to satisfy
you in order to establish its case on this basis of
acting in concert are these; first, that there was an
actual understanding or arrangement reached in some
manner between these two accused men that the girl
should be killed, secondly, that while they were both
present for the purpose of the understanding or
arrangement being carried out the girl's death was in

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fact caused by a conscious voluntary act or acts done by one or the other or both of them, acting under or in accordance with the understanding or arrangement between them and done with the intention of killing her. It is not necessary for the Crown in order to establish the guilt of the accused upon this basis of acting in concert to show what part each of the two accused took in the carrying out of the undertaking or arrangement.

Now there is another aspect of the law relating to criminal responsibility which it is necessary for me to tell you about. Even if there is no prior understanding or arrangement that the crime shall be committed a person is guilty in law of a crime committed by the hand of another, - another whom the law calls the principal in the first degree, - if the person is present when the crime is committed and aids and abets the commission of it. In such circumstances he is called the principal in the second degree and he is equally guilty of the crime with the principal in the first degree. Aiding and abetting in this connection means doing one or other of these three things while aware that the crime is being committed; first, intentionally helping the principal in the first degree to commit the crime, or secondly, and intentionally encouraging him by words or by your presence and behaviour to commit it, or thirdly, intentionally conveying to him by words or by your presence and behaviour that you are assenting to and concurring in his commission of the crime. A person present at the scene of the crime and so aiding and abetting a person to commit a crime is in law a principal in the second degree and is guilty in law of the crime committed by the hand of the principal of the first degree. That doctrine applies to murder as it does to other crimes, and the Crown here is entitled to urge on you that even if for some reason you were not satisfied that there was an actual understanding arrangement between the two accused that the girl should be killed, nevertheless, you should at least be satisfied by the evidence admissible against each of the accused that the girl must have been intentionally killed by the conscious, voluntary act of one of them, no matter which, aided and abetted by the other.

In other words, the Crown may urge on you that one of them must have murdered her as principal in

the first degree and the other must have been guilty of her murder as a principal in the second degree. Primarily, however, the case put before you by the Crown has been that this girl was intentionally killed by the two of them acting together in concert in the carrying out of a plan which the Crown says has been carefully plotted in advance.

I want now to put before you in outline the facts appearing in evidence which the Crown relies on to establish its case against the accused Lowery.

First, there are some general and preliminary matters. In his statement to the police, his first statement to the police, made on Wednesday 3rd February Lowery admitted that Rosalyn Nolte was in his car with him and King at 8.00 to 8.15 p.m. on Sunday 31st January of this year in Gray Street, Hamilton, and that he drove off from there with her and her dog and King in the car. Then it appears from the evidence of the witness Hope Johnstone and from other evidence that at about 11.40 on the next morning, Monday 1st February, her dog with its lead still on was found by the roadside about 8 miles south of Hamilton on the way to the Mount Napier Reserve. On February 3 her body was found about two miles further south in the reserve in a depression in the bracken about forty feet from a bush track. The cause of death, according to the medical evidence, was asphyxia produced by strangulation by a length of flex and from that length of flex a strand had been torn and that piece torn off was found attached to the coil under the bonnet of Lowery's car. The special way in which the body was tied up or trussed up with this flex shows (the Crown says) that her death was a premeditated killing and that the killing was intended to produce sadistic satisfaction while her body weight choked her to death. The evidence of Dr. Dick indicates that the girl was trussed up in the fashion in which her body was found some minutes at least before her death. Lowery's fingerprint was found on the same day as the body was found, Wednesday, 3 February, upon a small beer can which was standing upright sheltered by the trunk of a tree about a hundred feet north of where the body was found. Apart from those general matters, the Crown relies as against Lowery upon detailed admissions sworn to have been made by him to Carton and Davidson at about 1.20 on Saturday, 6 February, and those admissions I shall discuss presently in more detail. The Crown also relies upon detailed

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written admissions made by Lowery in a statement to the Police which is Exhibit "PP" and that statement, the evidence indicates, was taken between 2 p.m. and 4.10 p.m. on the same Saturday, 6 February.

The Crown relies also on certain general admissions made on that Saturday, in the first place to the Witness Warne at about 4.40 after the written statement Exhibit "PP" had been made, and in the second place at about 5 p.m. on that same Saturday in the presence of witness Dawson. Warne told you that he said to - he said that about 4.40 on that Saturday afternoon he said to Lowery at the Hamilton Police Station, "I understand you have signed a written statement of interview in which you admit your part in the killing, is that correct?" Lowery replied, "Yes". He was shown his statement of interview and he was asked, "Have you any complaints to make about your treatment by the police?" And he replied, "No, none."

Then according to the evidence of the witness Dawson, about twenty minutes later Lowery's father came to the police station and Dawson heard this conversation between Lowery and his father: The father said to him, "Son, did you do it? Tell me that you didn't do it," Lowery, Dawson says, looked towards the ground and hung his head and did not say anything in reply. Lowery's father then said to him: "Why, son? Why did you do it?" And Lowery replied, "I don't know."

I want to go next to the detailed admissions sworn to have been made by Lowery. These admissions put the main blame on King for what occurred, but if what Lowery admitted was done by him was in fact done by him, then the admissions are ample to justify you in concluding that he was guilty of the girl's murder by acting in concert with King.

First, there is evidence of admissions of a prior understanding between the two accused before they set off with the girl in the car. The witness Davidson told you that at about 1.20 p.m. on the Saturday the 6th, Detective Inspector Carton said to Lowery "I understand you wish to see me," Lowery said "Yes." Carton said, "What do you wish to say?" Lowery said, "It all started about last Christmas." Carton said, "Yes." Lowery said, "Charlie and I were at the bikes in Mount Gambier, we were boozed all weekend, we got

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this idea." Carton said "What was the idea?" Lowery said, "To kill a chick." Carton said, "Yes?" Lowery said, "I'm not sure which one of us suggested it, but we decided to see what it would be like to kill a chick." Carton said, "Yes, what happened then?" Lowery said, "We were in the van on the Sunday night and Rosalyn came up and we decided it would be a chance." Carton said, "What happened then?" Lowery said, "We did it." and "It" you may think there means "We carried out the plan."

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Then in the written statement which Lowery then proceeded to make following on that conversation this passage appears; "Are you prepared to start at the beginning?" "Yes." "Well would you go ahead?" "It all started about Christmas time, went over to Mount Gambier for the bikes with Charlie and we were pretty boozed all weekend, had a fair bit, I don't know exactly what he said, but we just came up with this idea." "Yes, go ahead?" "Kill a chick, Charlie might have suggested it, I'm not sure, but we decided to see what it would be like to kill a chick." "Yes, what happened then?" "We just sort of worked the idea over, thought about it and thought of different clues about it, talked it over and it just sort of built up and up and up." "How often did you talk about it?" "Couldn't say, talked about it a bit I suppose, that's about all." "Well are you prepared to tell me again what occurred on Sunday last, the 31st January?" "We seen Rosalyn walking along the street, pulled up, she came up to the car, by the time she got to the car we decided that there was a chance." "What do you mean by a chance?" "Use our idea."

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Then the Crown is entitled to urge on you that the detailed admissions of Lowery showed that he and King acted in concert at all stages from the time the girl got into the car and that between them they carried through their understanding or arrangement. There is first the statement to Carton and Davidson which I have already referred to, the statement "Well we did it." Then there is evidence that they tricked her into thinking that they were taking her to see the witness Bailey, and that Lowery then drove the girl and King to this spot on the track at Mount Napier on directions given by King.

In the conversation between Lowery and Carton on the Saturday before the statement was - the written

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statement was taken, this was said, according to the evidence of Davidson, Carton; "You realise that you could be charged with a serious offence in connection with this death and you need not say anything further unless you wish." Lowery; "I sent for you because I want to tell you about it." Carton; "Well go ahead then," Lowery; "Rosalyn wanted to go and see Sugar Bailey, she got in the van and Charlie said he would be at a party. We drove out the Port Fairy Road and then Charlie showed me a turn off to Mount Napier." Carton; "Yes, what then?" Lowery; "We went in to the Mount Napier Reserve, we pulled up along a track."

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In the written statement, already referred to, made immediately after that conversation this passage appears; "What happened then?" I will start a little earlier, - "Charlie told her that Sugar was home, and she asked us if we'd take her out there. We didn't want to at first and then Charlie told her that he'd be at the party." "What happened then?" "She asked us if we'd take her to see him and we agreed." "Whom do you mean?" "Garry Bailey." "What happened then?" "Charlie asked me if I knew the way and I told him I didn't. So he said 'Go out Port Fairy Road' and when we got out there he asked me if I knew any short-cut, I told him I didn't and then he showed me a turn-off further on, we went down there and I followed the road until we came to Mount Napier." "Was there a party in progress somewhere?" "I don't know." "Well, where did you intend going?" "Charlie said earlier that he knew where to go."

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In cross-examination before you Lowery was asked about this. He was asked: "You knew that King had no idea whether or not Sugar Bailey was at a party did you not?" "Yes, sir." "You had been with Sugar Bailey that afternoon?" "Yes, sir." "It was your belief that he was not at a party, was it not?" "Yes, sir." "You believed, did you not, that King was misleading the girl at that time?" "Yes, sir." "Doing that to entice her into the van, that was what you thought, was it not?" "Yes, sir." "Did you think then that he was enticing her into the van to take her away and have sex with her?" "Yes, sir." "And you were willing to help him by driving the van, were you not?" A. "Yes, sir." The Crown is entitled to submit to you that that evidence makes it clear that the girl was decoyed into the car on the pretext of

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taking her to a party and that the purpose of doing so was not simply the one suggested in that last piece of evidence that I have read, not just the purpose of having sex with her but the purpose of carrying out the plan to kill a girl in a special sadistic manner.

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10 The Crown puts it that the very circumstances show that there could have been no other purpose in decoying her into the car and taking her there; that that is apparent from the very special way in which the body was found trussed up and from the fact that she was driven over half a mile down that rough bush track. There is also the consideration that the evidence indicates that they walked her on about 50 or 60 yards beyond the point where they had stopped the car, and there is evidence from which you could conclude that for ordinary vehicles this track was in substance a dead end, so that they were free from the risk of interruption from the south and the car provided a block to the North. 20 The witness Barr said, "It is more or less an access track to the "stones", a normal vehicle would not be able to drive right through. In other words, it would be closed off at the end."

30 In the written statement of Lowery, made on the Saturday afternoon, this passage appears; Q. "What happened then?" A. "We went into the Mount Napier Reserve and drove along the track and Charlie said to turn up another one, so we went up there and he said 'Pull up, we'd better see if there's any spotlights about'. We pulled up and got out and we all walked along the track." Then there is evidence that they combined in stripping the girl. In the conversation between Carton and Lowery preceding the making of the written statement on the Saturday, according to Davidson this was said by Lowery; "We went into the Mount Napier Reserve, we pulled up along a track. I held her and Charlie took her clothes off." And in the written statement 40 after saying "We pulled up and got out and we all walked along the track", Lowery, it appears, was asked the question "Yes?" And he answered "It happened." Q. "What happened?" A. "I held her and Charlie took her clothes off, then I don't know what happened." And a little further on he was asked, "You recall you said that Charlie took her clothes off, what did he do with the clothes?" A. "Just threw them on the ground." Then it appears

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from the medical evidence that she received a series, a long series of physical injuries, and the Crown contends that whether Lowery inflicted them or stood by while they were inflicted their infliction bears out the contention that she was taken there for the purpose of being killed. And you may take the view that the person - that a person who inflicted these injuries and equally a person who stood by and saw them inflicted must have had it in mind that this girl was never going home.

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Now as to what these injuries were, according to the Doctor, there was first a fracture dislocation of the left elbow. This, the doctors said, could possibly have been caused by forcing the arm up the back. There was a swollen right eyelid and a bruise and an abrasion below the right eye, there was a bruise in the left forehead region, an abrasion to the nose two bruises under the chin, three rounded abrasions under the left collarbone, two abrasions on the left breast, two long abrasions between the breasts, an abrasion on the right elbow and a quite extensive bruise on the back of the left shoulder. All those injuries the Doctor says were inflicted before death. In addition there was a long pressure mark on the back of the left shoulder, the width of which the Doctor says compares with the width of the flex, and there were constriction rings round the wrists and the ankles. And that long pressure mark and those constriction rings the Doctor said were caused by pressure which would have had to be applied for a matter of some minutes before death.

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In addition there were other injuries which the Doctor said either were or may have been post-mortem injuries. First, there were about 20 longitudinal scratches on the front of each thigh, but none below the knee. Now those longitudinal scratches the Doctor said were post-mortem injuries and you may think that they were probably inflicted when the body was being dragged from one place to another. The Doctor also referred to a long abrasion on the front of the right hip and seven abrasions on the abdomen and he said that those may be post-mortem injuries. The witness McNamara, however, says that he received specimens from the abdomen and the hip and they showed changes which would occur before death. So you may think that

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the abdomen abrasions, the seven abrasions on the abdomen and the long abrasion on the front of the right hip were also probably ante-mortem injuries. Then there is a long curving abrasion below the right breast and a long abrasion on the front of the left shoulder. They, according to Dr. Dick, were post-mortem injuries, and so you may think that the proper conclusion is that all the injuries were before death, except injuries which could have been caused by shifting the body along the ground, namely the 20 longitudinal scratches on the front of each thigh, the long curving abrasion below the right breast, and the long abrasion on the front of the left shoulder.

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In addition, of course, there is the incomplete constriction ring on the neck above the Adam's apple, and according to the Doctor, death was due to asphyxia caused by strangulation from the pressure which produced that constriction ring on the neck. And he told you of the changes in the body, the whites of the eyes, the surface of the lungs and so on which bore out that conclusion.

Then still continuing with this matter of admission evidence of acting in concert in the killing, there is material from which you could conclude that Lowery and King combined closely in the dark in what was done to the girl with the flex. In the conversation with Carton before the written statement was made on the Saturday, Lowery, according to Davidson, was asked by Carton, "What happened then?" Lowery: "I can't remember, Charlie went away and came back with the cord." Carton: "Who tied her up?" Lowery: "Charlie." Carton: "Did you have any part in tying her up?" Lowery: "I just held it when Charlie asked me to hang onto it." In the written statement which followed, these questions and answers appear. "Do you remember anything else?" "Well Charlie went away and I didn't know where he was, so the next thing I knew he come back with the cord, then he asked me to hold her head up." "Where was she at this stage?" "She must have been on the ground I suppose?" "What happened then?" "Charlie put the cord around her, the wire." "What sort of wire was it?" "Two flex." "What did he do with the wire? How did he put it around her?" "Just wrapped it around her throat then he said to me 'Hang onto this' and I just held it with one hand. It was around her neck

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and I just held it behind her. Charlie said if she started to move pull it tight." "What happened then?" "I just held onto it and Charlie disappeared again, I called out to him a couple of times, I called him 'Mother' that's his nickname." "What happened next?" "Charlie went off to the right and the next thing I knew he was behind me on the left. He said 'Bring her over here'". "What happened then?" "I suppose I must have dragged her over there." "Did you pull the wire tight behind her neck?" "It was tight when he gave it me." "What happened then?" "I dragged her over to him, then both of us then dragged her down this gully thing and Charlie said 'Tie her up', I couldn't, I couldn't see properly." "What do you mean by that?" "It was dark." "Well, she was tied up?" "Charlie said he'd tie her up while I found something to tie her to, I couldn't find anything and then Charlie said 'That'll do, let's go.'" "Her hands and feet were tied. Who did that?" "I think I tied her feet and Charlie told me to hang onto one end of the cord so I held onto that, then he said, 'Now give it to me' and I took it and he must have tied her up with it." 10 20

Now I would make this comment that you may think that that last answer that I have read to you fits in with the picture of this truss which is shown in the photographs, and particularly, I think in photograph 22. You see that Lowery says he was told to hang onto one end of the cord and then that he was told to give it to King, and that King took it, (that is the end of the cord that Lowery had been holding) and tied her up with that. If you look at, say, photograph 22 you will see there the slip knot, so-called, at the back of the neck. Now there are two ends of the cord that come away from that and according to the evidence that has been given one of them, what you might call the right-hand end as shown in that photograph, coming away from the neck, goes down to the feet, is tied round them and is then tied on itself in the knot that you see low down in the photograph opposite the girl's left thigh, and then there is a loose end left trailing there. Well, then the other end, coming away from the slip-knot at the neck, you will see comes down to the feet, goes round them, and then according to the evidence having been tied to the feet is taken back up and used to tie the hands together. Now my comment is that you might think that in the dark it would be difficult 30 40 50

10 for a man who was acting on his own to keep the pressure applied to the neck by holding both those loose ends then in the dark take one of the loose ends, get the legs, haul them back, tie them up with the one loose end and tie that knot which you see on the right-hand end, at the same time keeping the pressure on the neck. But the matter would be very much simplified you may think if what Lowery describes in the passage of the statement which I have just read to you in fact occurred, that is if the man who had put the slip knot around the neck was applying the pressure to it, got someone else to keep the pressure on by hauling, say, on the left string, or on both, and then went down with the right hand string and tied up the legs and tied that knot and then came round on the other side and took over the left-hand end and tied it round the legs and the hands. However, it is entirely a matter for you to say, but my comment was that you may think that the description given in the statement about hanging onto one end and passing that end over and what was done with the ends fits in well with the tying up of the girl in the dark in the manner in which she was tied up.

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40 Now in the statement, to which I have been referring the written statement - there are several places in which Lowery says that he cannot remember things, disclaims memory. This is an aspect of the statement which arises perhaps more importantly in relation to the statement of King, but the Crown has put to you that to say 'I don't remember' is a common recourse for people who are being questioned about something and would prefer not to describe the thing that they are asked about. It is easier to say 'I don't remember' than to describe bad conduct of your own part or something which you prefer to have forgotten. Now this matter arises importantly, perhaps more importantly, in relation to this statement made by King, it may be of some assistance to you to point out what there is of this kind of thing in the statement of Lowery. After saying "I held her and Charlie took her clothes off" Lowery says, "Then I don't know what happened." Q. "What do you mean you don't know what happened?" "I just can't remember things after that." "What do you mean you can't remember?" "Well, I remember that Charlie had a go at scruffing her." "What do you mean by scruffing her?" "Shagging her." "Yes, what happened then?" "I don't know." Later on in the statement,

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"Did she say anything?" "Yes" "What did she say?"
"She kept on getting our names confused." "What
was she saying?" "Did she say anything?" "I
can't remember what she was saying." "Did she
object to her clothes coming off?" "Yes." "What
did she say?" "Don't know". It is open to you to
take the view that those alleged lapses of memory
represent the kind of thing that the Crown was
speaking to you about.

Now the Crown contends that the fact that the
killing was done by these two men acting in concert
is confirmed by the evidence that they continued to
act in concert after the killing. In Lowery's
statement of the Saturday, his written statement,
this appears: "I couldn't find anything, then
Charlie said 'That'll do, let's go.' Further on,
"Well now you walked back to the van, what
happened then?" "We backed up and we found a
place where we could turn round and we turned
around and drove out." "Where did you go then?"
"We drove back and stopped before we got to the
main road, the Port Fairy Road, and we got the
dog out." Then further on in the statement the
question appears: "After returning to Hamilton
what did you do?" "We drove around a bit, went
to the sports centre, left there and drove around
a bit more, then we went up to 3 Shakespeare Street,
left there, went to the drive-in to find out what
time the show started; returned to 3 Shakespeare
Street, then we all went out to the Drive-In."
"Whom do you mean by 'all'?" "Myself, my wife,
Charlie, Kevina Butterworth and Marilyn Cooper."

Then you have evidence from witnesses who
were at the sports centre and who say that the two
accused men came there sometime between 9 and 10
perhaps about 9.45 and the witness Harkness tells
you that they talked to him there. Then it appears
from the evidence that they drove together two
miles north of Hamilton and there got rid of the
girl's transistor. Then the evidence indicates
that they came back to the Bray's house, the house
of Lowery's wife's parents, they came there
together by about 10.30. The witness Cooper tells
you that there they both stated the false alibi about
a hitch-hiker and from her evidence you may conclude
that they behaved in a normal manner as friendly vis-
itors; that they had a tin of beer, they watched
the television and that one of them helped somebody

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with a game of five hundred. As to the matter of the false alibi, it was suggested to the witness Cooper that it was only Lowery that told that story, but she was insistent that they both told that story. She was asked, "When he returned did he tell you by way of explanation what they had done? That they had taken a hitch-hiker to Coleraine?" "Chris told you that he did not?" "Yes, both of them did." Q. Well, Chris, I suggest, told you that, that in the meantime they had not gone to the Drive-In, but had taken a hitch-hiker to Coleraine, did he not?" "Yes." She is saying that Chris did and so did King.

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Then it appears that having gone to the late Drive-In show the two accused went together to the refreshment room to get some refreshments for someone in the party, and according to the accused Lowery's wife, Lowery went to sleep during the second picture. The Crown are entitled to rely, as they do, on that episode as making it improbable that Lowery's present story is correct, because if his present story is correct then out at Mount Napier where he had gone quite innocently, King had murdered a girl, had thrown Lowery twice to the ground when he tried to intervene, had left the body out in the bush, had threatened him on the way home and was now with him that same night at the pictures, and the Crown says, well the picture that you get from Mrs. Lowery of a man going to sleep during the second part of the show is quite inconsistent with that of a man who had been through such a dreadful experience and was in fear of King.

Now the evidence of Bailey is that on the following afternoon, Monday 1st, at about 2 o'clock he was at Lowery's flat and Lowery and King were there, King arriving on his motor bike after Bailey had arrived. Bailey was asked, "In the presence of the accused Lowery, did King say anything to you about Rosalyn Nolte on that occasion?" A. "I think once down the street they mentioned her name." Q. "What was said by whom?" A. "I can't actually remember exactly who, but one of them said that they had seen Rosalyn up the street the night before, Sunday 31st, and she said she was going out to my place but they wouldn't take her out there and they dropped her off at the Commercial corner". You may remember that Lowery admits that he and King went through the hitch-hiker alibi that afternoon, so

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you have the sequence, the hitch-hiker alibi told at about 10.30 or a little after on the Sunday night, the Commercial Hotel story told to Bailey on the Monday and on that Monday a going over in collaboration of the hitch-hiker story.

Then going on to Wednesday the 3rd, Lowery in his evidence admits that King went with him on that day to Tahara to get a table and on that Wednesday each of them made a written statement, a witness statement to the police. There are some parts of those two statements that I need to refer you to. Lowery's statement includes this passage. "She approached the car and spoke to Charlie through the passenger side window, she said 'hello' and Charlie told her that Garry Bailey was home. She asked if I would take her out to his place in Kenny Street. I told her 'no' and she then asked for a ride down to the Commercial Hotel in Thompson Street, I gave her a ride down to the Commercial Hotel and dropped her off at the corner, she took the dog out of the car and said she might walk to Bailey's." It is now conceded that that passage about her asking for a ride to the Commercial Hotel, being driven there, being dropped off at the corner and saying that she might walk out to Bailey's, - that is all fabrication .

Now the statement made by King on the same day, the Wednesday 3rd, contains this passage: "I think she told me she didn't know he was in Hamilton and she asked me if we would give her a ride out to Garry's place. We refused to do this because we thought that Garry may not want to see her. She then asked us if we would give her a ride down to the Commercial Hotel which is on the corner of Thompson Street and Lonsdale Street. We agreed to do this and drove her to Lonsdale Street and let her out near the entrance to the car park at the rear of the Hotel, that is the Commercial Hotel. During the time she was with us I think she said she was going to walk out to Bailey's place." Now that passage again is admitted fabrication and you may think that it is significant that it matches so closely the fabricated passage in Lowery's statement.

While dealing with King's statement it is perhaps worth mentioning that there is also a reference in it to the meeting between Bailey and the accused on the Monday afternoon at Lowery's flat. The statement says "I saw Garry Bailey at Chris' flat on Monday 1st February and I asked him

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if he had seen Rosalyn on Sunday night and he told me he hadn't." Now that was the Wednesday.

10 Then on the following day, Thursday 4th, each again makes a statement to the police, and in each of those statements you find what I might call the Commercial Hotel fabrication set out with great detail, and also the hitch-hiker fabrication set out in great detail. The two accounts do not match in the sense of being learned off word for word, but they are telling the same basic story, each, you may think, providing his own minor embellishments to the story. We take Lowery's statement first. This is the passage dealing with the Commercial Hotel matter. "She then asked me if I would drive her out to Bailey's place. I refused because I thought Garry might not want to see her. She asked me a couple more times if I would take her to Bailey's place, but again I refused. Then she asked me if I would drive her to
20 the Commercial Hotel, I agreed to do this", and then he describes Charlie getting out, the girl getting in and the dog being put in the back, and he says, "We drove to the Commercial Hotel at the corner of Thompson Street and Lonsdale Street, I drove left into Lonsdale Street and stopped near the fence and entrance to the car park at the rear of the Hotel, Charlie then got out of the van, Rosalyn then lifted the dog over the seat and then Charlie got back in. She seemed a bit angry, or perhaps
30 she was sorry not being taken to Bailey's place. When she got out I think she said something about walking to Bailey's place."

40 The corresponding part of King's statement made on that day is this; "She then said 'Will you give me a ride out to Sugar's place?' Chris said 'no', and she said 'Why not?' He said, 'We're going to the drive-in and he mightn't be home anyway.' She said 'Well can you give me a ride down to the Commercial Hotel corner?' Chris said 'Okay'. The reason we said that Garry mightn't be home was because we didn't think he'd want to see her." Then there is the description of his getting out and the girl lifting the dog into the back, and getting in the front seat in the middle as in Lowery's statement, and then this proceeds, "We drove off and turned right into Thompson Street and pulled up around the corner into Lonsdale Street and parked adjacent to the end of the driveway into the car park of the Commercial Hotel. I'm pretty sure she said on the

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way to the Commercial Hotel, that she would walk out to Garry's place when we dropped her off. When we stopped the panel van I got out and she lifted the dog from over the back, she got the dog out of the panel van and I then got back into the passenger seat, she said 'See you later' - and said 'See you later' - and she said something to the same effect and we drove off the way we were facing."

Then the two passages in these two statements of the Thursday which relate to the hitch-hiker alibi are in these terms. In Lowery's statement after talking of driving south along Lonsdale Street and saying that as they did Rosalyn was just standing there, "We drove down to the swimming pool, and turned right, then we went along this street, then we turned right again and came out onto Coleraine Road. Charlie wanted to see "Von Ryan's Express" which was showing at the drive-in, I wasn't too keen to see it, but I agreed to go to the drive-in. When we got alongside the cemetery I saw a hitch-hiker, Charlie didn't want to stop, but I've hitch-hiked a bit and I know what its like. The hitch-hiker was a man about 18 to 24 years, 5'10" to 6', medium build, yellow blonde almost shoulder length hair, he had a full beard, Ned Kelly style the same colour as his hair. He had a pack on his back, it could have been khaki or dark green. I told Charlie that I'd give him a ride and Charlie didn't want me to. I stopped a little bit past him and Charlie got out and lifted up the back window and put his pack in the back. This man then got in the front and sat in the middle. Charlie then got in and I said to this man, 'How far are you going?' He said 'I'm going to Adelaide through Mount Gambier.' I told him that we were only going to the corner of Coleraine Road and Cavendish Road where you turn off to go to the drive-in and I told him that I'd give him a ride out to there. He then asked how far the next town was, I told him it was 20 miles. He then said 'I'll give you \$5 to take me over there' or something like that, when he offered me \$5 I thought that if he was that desperate for a ride I would take him to Coleraine. I've hitch-hiked myself and know what it is like. I then drove him to Coleraine and let him out just near the shops in the main street. The fish shop there was open, it's always open. I travelled at about 45-50 miles an hour. During the conversation in the car

the man told me he'd come from Melbourne. He was talking to Charlie most of the time and I just didn't listen to their conversation. After we let the hitch-hiker out Charlie got his pack out of the back of the van. I then made a U-turn and we drove back to Hamilton and arrived back about 9.30. We drove around a bit, we drove up Gray Street as far as the Railway line for no particular reason, I then drove to the sports centre."

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10 If you turn to this false alibi of the hitch-
hiker as it is put in King's statement of the same
day, it appears in this form: "Chris and I then
drove towards the swimming pool and out along the
Coleraine Road. On the way out Chris said he
didn't want to see the show at the drive-in because
it was just a war film. I said I wanted to and he
said all right. Then we saw this hitch-hiker
walking along the left-hand side of the road
parallel to the cemetery. Chris said 'We'll pick
20 him up', and I said 'We'll miss out on part of the
show, it's late enough as it is.' Chris said,
'We'll give him a ride as far as the intersection
of Cavendish and Coleraine Roads'. I agreed to this.
We pulled up alongside the hitch-hiker and I'm not too
sure if I said Chris said 'We're only going as far
as the Cavendish Road but it'll save your feet a
bit anyhow'. He said 'O.K.' and put his gear in the
back. He had a rucksack, sleeping bag and he had
a billy on his rucksack. He put his gear in through
30 the back of the van, I got out and opened it up for
him. He was wearing a pair of denim jeans, a jumper -
I don't remember what colour it was - and a denim
jacket I think. He got into the panel van, sat in
the middle between Chris and me. As we were driving
along I asked him where he had come from and he said
Melbourne.' He said he left there on Saturday
afternoon and was heading to Adelaide. He said
something about going to Mount Gambier first and was
meeting someone at Mount Gambier. He then asked us
40 how far it was to the next town, we said 'About 20
miles'. By this time we were slowing down to stop at
the intersection where we were going to drop him.
He said if we'd drive him to the next town he'd
give us \$5 for our trouble. Chris said, "Well if
you're that hard up for the ride, I'll take you there
for nothing." We drove him to Coleraine and let him
off about three-quarters of the way up the main
street. There was a garage nearby and I think a
milk-bar too. Then we came back to Hamilton and

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drove around the town a bit and then went to Chris' mother's house at 3 Shakespeare Street."

Well gentlemen, the Crown says that those statements show continued collaboration and close concert between these two accused men, continuing on for days after the killing and you may also think that as it is now admitted that both the Commercial Hotel and the hitch-hiker story are fabrications they show great talent in the invention of their convincing detail. Now the Crown says in regard to this general matter of concert as against Lowery that you do not take a second person to such a place as this track to commit such a crime as this unless that person is an accomplice, and that the evidence admissible against Lowery shows that from the time the girl got into the car until she was killed the two accused were acting together in concert for the purpose of killing her. And the Crown says that on the evidence that it has led, which is admissible against Lowery, there is the clearest possible case that he and King, acting in concert, murdered the girl. I think it is a convenient point at which to give you a break, gentlemen.

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COURT ADJOURNED AT 11.05 a.m.

COURT RESUMED AT 11.16 a.m.

HIS HONOUR:

Mr. Foreman and gentlemen, I want to put to you next what I understand to be the main elements of the defence put by Lowery against the Crown case made against him which I have already outlined. To begin with, I want to read you some substantial passages of Lowery's evidence. In his examination in chief these passages appear: "Did you kill Rosalyn Nolte " "No, sir, I did not." "Did you take any part in her killing?" "No, sir." "At any time prior to her death, did you plan to kill her or to kill a girl?" "No, sir." Then a little further along this appears: "On Sunday, 31 January, 1971, did you go round and pick King up at about quarter past seven?" "Yes, sir." "In the evening. And did you intend spending the evening with him and ultimately you and your wife and King and her girl-friends all go off to the drive-in?" "Yes, sir." "Was that going to be the late show what was

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called the horror show?" "Yes, sir." Then a little further on: "And as you were leaving King's place at Stephen Street, Hamilton, what did he do?" "He took an envelope from his pocket and took a tablet out of it, I asked him what it was" "What did he say?" "Acid". "Did you understand by 'acid' that he meant what is called LSD?" "Yes, sir." "What did you say to him, and what did he do?" "I asked him what he was going to do with it". "Yes," "He put it in his mouth and said 'that'." "Had you taken acid or other drugs yourself?" "No, sir." "Well, in fact where did you both drive to?" "To Gray Street, Hamilton." "Did you there see Kevina Butterworth?" "Yes, sir." Lowery went on to say, "I'd spoken to Kevina earlier and I knew she intended to go to 3 Shakespeare Street and I pulled up and asked her if she wanted a lift up there. She said she had to see her mother first, so I gave her a ride to the Grand Central Hotel. I waited for her there, then I drove her to 3 Shakespeare Street." Q. "Was she a girl-friend of your wife's?" A. "Yes sir." Then Lowery went on to give a detailed description of what passed between him and Kevina Butterworth on that occasion and in that description he put it that there was merely fooling around and harmless horseplay. He was then asked whether he went inside with her and then subsequently went off again with King and he agreed. He said, "We returned to Gray Street, Hamilton", and he said that his purpose in going down there was to see a friend of his, Jamie McKenna. He was asked, "When you went down to the Main Street, who did you in fact see?" A. "Rosalyn Nolte." He went on to say "She waved to us, King asked me if I'd stop, I pulled up and she came up to the car. King asked her if she knew that Garry Bailey was home. I'm not exactly sure what she said, I couldn't be sure what she said then. Then King told her that he was in fact in Hamilton and she asked if we'd take her out to see him." "Did you agree or what happened?" A. "No, King said that Garry would be at a party so she asked us if we'd take her to the party and I thought we might as well go out and see what was going on." Pausing there, I would make the comment that you will remember that I have already read you a passage in the cross-examination of Lowery relating to this matter in which he conceded that he knew or believed that Bailey was not at the party and that King was simply misleading the girl by this party story and enticing her into the van for the purpose of sexual intercourse.

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However, in his examination-in-chief he said, "I thought we might as well go out and see what was going on." He said that the girl got into the car. He said, "King stepped out, she put the dog in the back of the van and then she got in and King got in after her." He said, "King said, when she got in the car, that the party was at Toolong. I didn't know how to get there so I asked him how to get there and he said 'Drive out the Port Fairy Road'." Q. "Did you in fact do that?" A. "Yes, sir." Q. "Where did you drive, from then on and how did you take the route that you took?" A. "We drove out the Port Fairy Road, - drove along, King said, 'You turn off here', so I turned off at the Muroa Lane, I know it is now." He said he did not know it at that time and he said "I followed the road and went straight through into the road that leads into Menzels Quarry." Q. "Did it become evident to you that you were or you were not going to a party " A. "I didn't think we were going to a party then". Q. "What did you believe King was up to at that stage?" A. "I thought he wanted to have sex with her." He went on to say "There was a small track there, we turned off up that." He said "We drove up the track a bit first and then stopped." The distance, according to the Crown evidence, from the turn-off into the track, to the place where the body was found was about six-tenths of a mile. Lowery told you something about it in cross-examination. He was asked, "It is a very stony track is it not?" He said, "In places." Q. "Plenty of bumps in it?" He said "Yes, sir." Q. "The terrain goes up and down and you go over rises and then down into hollows?" A. "Yes, sir." Q. "You cannot drive fast can you?" A. "No, sir" Q. "Were you driving up the track in the first gear?" A. "Yes, sir." Q. "It took quite a while to get as far as you went into the track, did it not?" A. "No, sir." Q. "Of course he could have just as well had sex with the girl - you thought he was going up there for that purpose - if you had driven only a few yards into the track?" A. "Yes, sir."

Going back to the evidence-in-chief, he said, "King stepped out of the van -" this is in Gray Street. I am sorry, this is at the track, - "King stepped out of the van and asked Rosalyn if she wanted to go for a walk with him." "What happened next " "They walked off up the track." Q. "Where did you go?" A. "I stopped in the van."

Q. "Why did you not go with them?" A. "I thought they'd want to be alone." He went on to say, "When she first hopped into the van I had the beer sitting on the seat beside me, so I had to place that over the back. Then I reached over the back to get it, I seen that there were a lot of old papers and so forth and they were well behind the seat so I thought I'd clean the van out while I was out there. I sorted out what I wanted to keep and what I didn't. What I wanted I sat on the seat or laid over the seat and threw some papers out."

Q. "Can you remember approximately or precisely what you did throw out?" A. "Newspapers, bottle tops." Q. "Well, what did you keep in the car, can you recall that?" A. "The jack, brown flex, a bag." He went on to say, "I just threw a few bits of rubbish out first, then I opened the can. I was just drinking it. The things that I wanted to keep, I had them sitting on the seat. King came back to the car and he opened the door and I asked him if he wanted the beer. He looked in the van and he seen the flex and said 'no', that'll do me.' I said to him, that - 'Did you have trouble drinking it?' or something like that. He said he could have just as much fun with it. He took the flex and walked back off. I sat in the van, sitting there drinking, smoking for two or three minutes. I wondered what he was doing with the flex so I thought I'd walk up and see. He went on to say "One day up at Shakespeare Street King had shown me a few things that he said to do when you're on L.S.D. I thought this might be something also like that." When asked how far he walked he said "About 60 or 70 yards". He was asked what happened as he was walking that distance. He said "I sat the beer can down, I walked on and I seen them." He was asked what he saw and he said "When I first seen them I couldn't work out what they were doing, the way he was holding her. I got a bit closer and I realised he was trying to strangle her." He was asked "What did you see him doing when you got close enough to actually see him?" He replied, "He was behind her and just had the flex around her neck or something, something like that." Q. "What did you do?" A. "I ran at him and when I ran in he just brushed me away, he knocked me down and I got up again and went at him again and he let go of the girl and then knocked me down again." Q. "How tall or heavy are you?" A. "About 5'4", about 9 stone." Asked whether anything was said he replied "Yes, I was still

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laying down and he told me not to move, to stop there and said, 'Well get up and pick up all her clothes'. I picked up what I could see, I picked up all the clothes and he said 'Bring them down here'. He dragged her off the track. I carried the clothes and he said 'Throw them away' so I just threw them." Q. "When he told you to stop there, or not to do anything, did he say anything further to you?" "Yes". Q. "What did he say?" A. "He said 'stop there or you'll be next'". Q. "What state did Miss Nolte appear to be in?" A. "She was unconscious or she wasn't moving. She was just lying there when he let go of her." Q. "Did you have any belief when King said 'Stop there or you'll be next'?" A. "What do you mean sir?" Q. "Did you believe him?" A. "Yes, sir." Q. "What did he appear to have done to Miss Nolte at that stage?" "I thought when he let go of her that she was dead, she just lay there." "Do you know what the clothes are that he told you to throw away?" A. "Just what I seen laying on the ground, just what I picked up." Q. "What happened after he dragged the girl off the track?" A. "Tied her up then." Q. "Did she move at any stage after you first saw her?" A. "No sir." Q. "What happened from then on?" A. "He tied her up and I'd thrown the clothes away. I don't know where I threw them. He said, 'We'll go back to the van' and we walked back." Q. "What state were you in mentally?" A. "Shocked." Q. "What did you do when he said 'Walk back to the van'?" A. "I walked back up there, I didn't know what to do." Q. "Well what happened when you got back to the van?" A. "I walked back to the van and it was a very narrow track so I had to reverse until I could find a spot wide enough to turn. I turned around and drove out. When we got back out onto the road we seen the dog was there, - said 'Pull up, we'll get it out'." Q. "Who said that?" A. "King". Q. "Who in fact got the dog out?" A. "King did." Q. "All right, did you continue on?" A. "Yes sir," "On the way back into Hamilton what was said between you and King about it?" A. "King said to keep quiet about it, don't tell anyone and that we would have to work out a story where we were." Q. "After he told you to keep quiet about it and not to tell anyone did he say anything further about it?" A. "Yes, sir." Q. "What did he say?" A. "I don't know what his exact words were." Q. "No, well the substance " A. "Well he'd get Hazel if I didn't." Q. "He said what?" A. "He'll get Hazel if I didn't." Q. "Did you believe him?" A. "Yes, sir." Q. "Well was anything

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said about what to say?" A. "Yes, sir." Q. "What was said and by whom?" A. "King said, 'We'll have to work out a good story' and worked out about the - going to Coleraine." Q. "Who made those suggestions?" A. "King did." Q. "Well what happened about the transistor?" A. "When we got back to Hamilton - said 'just act naturally', so we stopped outside the sports centre and said 'Go in there and see who was in there'. We seen the bikes out the front. He said 'We might as well go in there and see who is in there'." "Who said that?"

10 A. "King did." Q. "What did he say to you you were meant to do?" A. "Just act natural." Q. "Well what happened?" A. "He seen the transistor there and said 'Hide this somewhere' and I put it underneath the dashboard. Then we went into the sports centre, stopped in there for a while and then we left again and he said 'We might as well get rid of this transistor somewhere'." Q. "And what happened?"

20 A. "We just drive out the road to throw it out." Q. "Well did you in fact drive out the road?" A. Yes, sir." Q. "Who threw the transistor out?" A. "King did, it was on his side." Q. "Where was that?" A. "Out Hensley Park Road." Q. "And did you then return into town?" A. "Yes, sir." Q. "Where did you go then?" A. "Back to 3 Shakespeare Street." He went on to say "We went in and they asked us why we hadn't gone to the drive-in and we said we'd taken a hitch-hiker to Coleraine." Q. "Who said that?"

30 A. "I'm not sure, sir." Q. "Could you have said it?" A. "I could have." Q. "Well what did you do then after that?" A. "Then drove to the drive-in to see what time the late show started." Q. "What...when had arrangements been made about going to the drive-in?" A. "In the afternoon." He was asked, "Did you still want to go to the drive-in?" And he said, "No, sir." Q. "Well why did you go?" A. "Well he said to appear natural, act naturally and I thought the arrangements had been made so -". Q. "Well did you all go out to the drive-in-?" A. "Yes, sir."

40 Q. "What happened at interval at the drive-in?" A. "Hazel wanted something to eat." Q. "That is your wife is it?" A. "Yes, sir. So I said I'd walk over to the cafeteria and buy it for her and I got out and King hopped out and he walked over with me." Then he was asked, "After the end of the drive-in did you eventually drop everyone off and go back home?" A. "Yes, sir." "Did you tell your wife that Sunday night, it would have been early Monday morning, anything about what had happened?" A. "No, sir." Then

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he was asked some questions about the following
afternoon. "Did King say anything to you that
afternoon about what had happened?" A. "Yes sir.
He asked me to just go over the story again."
Q. "What did you do, both of you?" A. "Just kept
over it, just wanted to make sure that I was going
to say the same thing as him." Q. "What happened
on the night of that Monday?" A. "I started to tell
Hazel about what had happened, she said she thought
there was something wrong with me, the way I was 10
acting, so then I started to tell her and then King
came round." Q. "Were you present all the time while
King was with Hazel or not?" A. "No. I went to the
toilet, sir." Q. "After King left did you speak
further to Hazel?" A. "When we went to bed that
night I told her then what had happened on the
Sunday night." Q. "What was her reaction?"
A. "She said I should go to the police." Q. "What
did you say to that?" A. "I said I didn't want to
after what King had said he'd do." Q. "Did you 20
discuss the matter fully?" A. "Yes, sir."
Q. "What conclusion did you eventually reach?"
A. "I just didn't want to tell the police about it
because of Hazel." Q. "Well then on the Wednesday,
that is the 3rd, were you questioned by the police?"
A. "Yes, sir." Q. "What do you say, substantially
about the evidence they said?" A. "That is what was
said." Q. "What story did you tell the police then?"
A. "About going to Coleraine." It may be noted in
passing that he is wrong about that, according to 30
the police statements. The statements to the
police on this Wednesday were the ones that told
the Commercial Hotel story. The hitch-hiker story
was still in reserve apparently. But that is
apparently merely a confusion of dates on his
part. Q. "What story did you tell the police then?"
A. "About going to Coleraine." And he was asked
"Again on the Thursday were you further questioned
by the police?" A. Yes." Q. "And did you make a
fuller statement?" A. "Yes." Q. "Did you again 40
tell them the Coleraine story?" A. "Yes sir."
Q. "Is what the jury have said - is what the police
have said to the jury substantially correct about
what was said between you all?" A. "Yes sir."
Q. "On Friday were you further questioned and taken
around for the mattress and so on?" A. "Yes sir."
Q. "Well then come to - come the Saturday that you
had been questioned on the previous three days,
did you see King on the Saturday morning?" A. "Yes
sir." Q. "What was said between you both then?" 50

A. "He said they seem to be getting onto him. He said that if they ever look like they could prove that he done it, to admit that I was in it with him."

Q. "Was anything specific said about what was to be said?" A. "No sir." Q. "What can you remember King told you about what to say?" A. "He just said to say that I was in it with him, just to admit that I was there and helped him do it." Q. "Was anything further said about what might have happened before?" A. "I don't understand the question, sir." "Was anything

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said by King to you about any plan?" A. "Yes, sir." Q. "What was said?" A. "He said to say that it was planned." Q. "What were the words that he used, can you recall?" A. "Just tell them we planned to kill a chick." Q. "Whose words were they originally?" A. "King's." Q. "Apart from those two factors that

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you have mentioned, firstly to say that you were part of the killing, and secondly, to say that you had planned it, was anything further discussed between you and King at that stage?" A. "Yes, he said that I didn't he'd get Hazel." Q. "Did you believe him?" A. "Yes, sir." The account there given is further referred to in cross-examination in these questions and answers: "And he had not told you anything about the details?" A. "No, sir." Q. "You thought that he said to you to say - well why did you think that he said to say that you were in it with him?" A. "I don't know sir." Q. "That was

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an odd thing for him to say, was it not?" A. "Yes, sir." Q. "You did not believe that would make him any the less guilty did you?" A. "No, sir."

Then in examination-in-chief Lowery went on - and was asked: "Apart from those details that you have mentioned about being in the killing with him and having planned it and that he would get Hazel if you did not, was anything further said between you both about what to say specifically?" A. "No, sir." "Did you know in detail what to say?" A. "No sir." Q. "In fact were you taken down to the police station at about a quarter past twelve?" A. "Yes, sir." Then Lowery went on in evidence to say that he remembers Mr. Carton asking him a few preliminary questions and that Carton then left him with Detective Rippon. He was asked, "Well in fact you have heard Mr. Rippon give evidence that he asked you a number of questions after Carton had left?" A. "Yes, sir." Q. "And the actual questions that he said he asked in Court, did he ask those?" A. "Yes, sir." Q. And what was his general manner

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of attitude to you?" A. "Very aggressive, sir."
Q. "And throughout this series of questions that
you agreed he asked you, what story did you stick
to?" A. "Going to Coleraine, sir." Q. "Well what
happened after he had asked you those questions
that he has said in Court he asked you, what
happened after that?" "Well he was aggressive
when he said them so I asked if I could see the
other detective who had been interviewing me."
And he went on to say that Mr. Carton came in at
his request. He was asked, "What was said from
then on in your own words between Mr. Carton and
yourself?" A. "He came back in and he asked me
why I wanted to see him and I said to him 'to get
rid of that other pig' and he asked me if I wanted
to tell him anything and I said 'no', I just wanted
to get away from Rippon." Q. "And did Mr. Carton
start speaking to you then about the matter?" "Yes,
sir." Well then he described Carton talking to him
about studying psychology and psychiatry and Lowery
feeling better if he got it off his chest and so on.
Q. "Was anything said about King?" "Yes, sir, he
said that King was making a statement." "Did he
say about what?" A. "Yes, sir." Q. "What was
said?" A. "He said 'King's in there now making a
statement, telling them all about how you were
both in it'. He said to me, 'You'll look stupid
standing up there, him telling them everything,
all about it, and you saying you weren't there.
The Jury is going to make..going to think you are
guilty'." Q. "Well what happened then?" A. "Rippon
came back in." Q. "What did he say?" A. "He came
back in and he said - he had a bit of a talk with
Carton first, I didn't know what was said there and
he said to me, 'You're nothing but a dirty little
murderer. King's in there telling us all about how
you punched her and kicked her and how you killed
her, you're just a murdering little bastard'."
Q. "What sort of way did he say that to you?" A.
"Violently. He said if I didn't tell them what
they wanted to know he'd spread me around the four
walls." Q. "Yes, and did he stay in the room or
did he leave?" A. "He left again." Q. "Had you
asked Mr. Carton for anything?" A. "Yes, sir."
Q. "What had you asked him for?" A. "I said to him
that if King was making a statement could I see a
copy of it." Q. "Why did you ask him that "
A. "To see if he was actually making one." Q. "Well
what happened, did Mr. Carton return eventually?"
A. "Yes, sir." Q. "What did he say?" A. "He told
me again that King was making a statement and he

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asked - I asked him if I could see a copy of it. He went off and he came back again and he said to me, "Oh I can't get it yet, he hasn't finished with it yet. I'll get you one as soon as I can".

Q. "Did you believe Mr. Carton?" A. "Yes, sir."

Q. "What was his attitude towards you like?"

A. "Much more calm." He was asked, "What did you actually believe was happening in the next room?"

10 And he said, "I believed that King was making a record of interview saying he was out there."

Q. "Well what did you decide you should do then?"

A. "I thought that he'd say that, - it looked like they could prove he was there, to say that I was in on it with him so I made the record of interview then." Q. "What made you in fact change from the Coleraine story to the second story? Was it either

the way Rippon was speaking to you, was it that? Or was it the information that King was in fact making

20 a statement" A. "The information." Q. "Well did you in fact proceed to make a record of interview?"

A. "Yes, sir." And then reference is made to the written statement of the.. of Saturday, 6 February. Lowery agreed that he had heard that record of

interview read out in Court, he was asked, "Is that in fact what was said between you and the police?"

And he said, "Yes, sir." Then he was asked about the meeting of which Dawson had given evidence

between Lowery and his father. He was asked, "Why did you not tell your father the truth about it?"

30 If he was -seeing he was your father?" A. "The police were standing there, they could hear." He

was asked about his discussion with Superintendent Warne when he was asked whether he had any complaints

to make about the way he had been treated and he agreed that he did not make any complaint to Warne.

It was put to him, "You said earlier on that Rippon had been speaking to you violently, why did you not

complain about that?" A. "I wasn't worried about that at the time." Q. "What were you worried about?"

40 A. "The fact that I had been charged." Q. "Did Mr. Rippon ever actually hit you or anything like that?"

A. "No, sir." He was then asked, "Next day did you make a film that has been shown in evidence?" And

he was then asked some questions about how that came about. And he described seeing his solicitor the

night before and he said that Carton asked him about it and he told Carton he did not want to say

anything, and Carton said, "I'll give you five minutes to think it over." Carton walked out of the cell and

50 they locked the cell again and then they opened it

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again and Carton said, "Come inside and think about it", and he went inside, and asked Lowery if he wanted to make it and Lowery said "No." Lowery told you "I didn't know what to do about it". Carton, according to Lowery, then said "Well you can come out anyway", and Lowery says, "So I went out and made the film". He said he did not know he had any right to refuse it. And it was then put to him, "If in fact you were going along with King's story because of fear for your pregnant wife, why did you not willingly go and make the film to sort of help King further?" A. "Well sitting in the office was all right just saying that 'I done this and done that', but when they wanted me to show them how it was done I just couldn't do it, I didn't know how." Q. "Why not?" A. "It was a lot easier to just talk about it and just leave it up to their imagination what actually happened, the details. When I had to show them I thought that I might make a mistake somewhere." Q. "Why might you make a mistake?" A. "Well I hadn't seen the record of interview so I didn't know what I'd said. I thought I could be confused." He was asked, "When you eventually got to the spot did Mr. Carton, as he said in evidence, say 'This is the spot where the body was found'?" A. "Yes." Q. "Did you actually know the position yourself?" A. "No, sir." He went on to say, "They asked me to show them what had happened and more or less as the film is, and they were just telling me what to do at each stage." He said, "Someone took a piece of string out of their pocket and handed that to me and said to me 'Just show us how it was tied around her neck'. I said I didn't know, he said 'Well just put it round the Detective's neck, how you think it could have been.'" Q. "Did you do that?" A. "Yes." Q. "What other things were asked of you?" A. "Positions mainly, where she was and so forth." Q. "Did you know those?" A. "No, sir." Q. "What else was asked of you? Was anything asked of you about going down off the side of the track to where the body was?" A. "Yes, sir." Q. "What was said about that?" "Just have a look down there and see if you think that's where it was left." Q. "In fact did you think that was where it was?" A. "No, I didn't know, sir." Q. "Why was your knowledge of it so limited in fact?" A. "The only time I've been out there was when it was dark and I wasn't noticing the area much at the time." Q. "In fact after you had been down the side of the track and

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come back up onto it again did you say anything about continuing the film?" A. "Yes." Q. "What was said?" A. "I said I didn't want to continue with it."

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10 Then further on in the examination-in-chief it was put "Well then on the Monday morning who visited who?" A. "On the Monday morning I wouldn't know sir." Q. "Well when?" A. "They came up home, the two of them," that is Bailey and King, "on the Monday afternoon about 2 o'clock." Q. "How had you slept the night before?" That is the early Monday morning in effect, the Sunday night to the Monday morning. A. "Not very well sir." Q. "Well did you eventually get off to sleep?" A. "Yes, sir."

20 Q. "Do you know roughly what time it was that you slept properly?" A. "I think it was daylight before I got to sleep." Q. "Well now Miss Cooper has given evidence that you made a statement to her and others in the kitchen at Shakespeare Street after the body had been in fact discovered, can you remember what was - who was in the kitchen and what was being said?" A. "There was Hazel, Marilyn, my mother-in-law and myself." He was asked had the news come out that the body had been found. A. "Yes, sir." Q. "And can you remember what you said, the exact words or the approximate words if you do not know the exact words?" A. "Just that it could have been a joke, could have started off as a joke with someone."

30 Q. "Why did you say that phrase " A. "King seemed to be treating it as a joke and I was feeling a bit more relaxed there." Q. "Why was that?" A. "Well I knew everyone there." Q. "Were they close friends?" A. "Yes, family more or less. It just slipped out." Q. "Did you have any belief as to whether if you had told the actual truth King could have got at your wife?" A. "Yes, sir." He went on to say "I thought even if he couldn't, his friends possibly could have." Then just before the conclusion of the evidence-in-chief, "To your knowledge had King been taking drugs prior to this occasion?" A. "Yes, sir." Q. "And on the night in question, the night of Miss Nolte's murder, did you have anything of a stimulant nature, apart from some cans of beer?" A. "No, sir." Q. "Did you take part in the killing?" A. "No sir," Q. "You have mentioned Mr. Rippon's behaviour at the police station and Mr. Carton's behaviour, were you afraid of the police?" A. "No sir." Q. "Were you afraid of anyone " A. "Yes, sir." Q. "Who?" A. "King."

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Q. "Why was that?" A. "I'd seen what he could do just mucking about, just for a joke."

Then during the course of the cross-examination Lowery was asked about the conversation he said he had with King on Saturday morning and this question was put to him, "After a while King said to you that it looked like the police might be able to prove that it was him, something to that effect, did he " A. "Yes, sir." Q. "Then he told you what you should say if the police caught up with him in effect?" A. "Yes, sir." Q. "And he said that you should say that you were in it with him?" A. "Yes." Q. "He said to say that it was a plan?" A. "Yes sir." Q. "And he said 'just tell them - say that we planned to kill a chick'?" A. "Yes sir." Q. "He said that if you did not well then he would get Hazel?" A. "Yes sir." Q. "That was all he had to say about that, was it not?" A. "Yes, sir." Q. "He went into no more details or particulars?" A. "No, sir."

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Now you will see from those passages that I have read to you that Lowery in his evidence admitted saying to the police what they say he said to them and admitted saying to them what has been recorded in the record of interview of Saturday the 6th. But Lowery denies the truth of all the statements tending to incriminate him which he is alleged to have made to Carton on the Saturday and which appear in his written statement of the Saturday. He says that those statements which appear to incriminate him were all invented by him to comply with a direction that he says was given to him by King on the Saturday morning, a direction, he says, which was given to him in general terms and without detail that if it looked as though the police could prove that King killed the girl, Lowery should admit that he was in it with King and helped him to kill the girl and that they had planned to kill a chick. And Lowery says that when he made the statements to Carton and when he made his written statement on the Saturday he believed that King was in fact making a statement of King's guilt and that the time, he thought, had therefore come for him to comply with King's direction and he says that the reason he felt he should comply with it was because of the threats that he says King had made against Lowery's wife.

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10 Now Mrs. Lowery gave evidence that at the beginning of February of this year the marriage between her and Lowery was very good, very happy, that they were just about to move into their first home, and that Lowery's attitude to her having the baby was that he was very pleased about it. She told you that on the night of the killing of the girl sometime after ten o'clock when her husband came into the Brays' house she thought he was over-cheerful, too cheerful as if he were acting a part, but for the next few days he appeared very, very quiet and that neither of those states corresponded with his normal state. She said that on 1 February, the Monday night her husband started to tell her something and she said that King arrived, that her husband went out to the toilet and that King said to her, "You're looking forward to having this baby aren't you?" and she says that King said it in a very vicious tone. As I have already mentioned she went on to say in cross-examination that on the night of Sunday the 31st the day of the girl's death, she was at the drive-in with her husband and he went to sleep.

30 Lowery also put forward further evidence pointing to absence of motive and to the existence of circumstances calculated to deter him from taking the kind of risk that would be involved in the commission of a crime of this kind. He said that he had an expectation about his father's business; that his father had a reasonably good business and he was under the impression that when he retired, he said 'Well a lot of the builders had told me that when he retired I could more or less take over their work for him'. He said he loved his wife and he was glad about the coming of the baby and that he was shifting into his first home, that he was happy about that and that he had no motive whatsoever to take the girl away and kill her. There was also evidence that he was nearing the end of his apprenticeship. He appears to have been apprenticed in his father's business to the trade of a bricklayer.

40 Lowery also put before you evidence of character and the law relating to that class of evidence is that evidence that an accused person has previously been of good character is material which the jury are entitled to take into account in arriving at a conclusion as to whether the charge has or has not been proved against him. The law is that it can be taken into account on the footing that it is a

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logical argument to contend that if a person has for a long time been of good character then it is for that reason the less likely that he would be guilty of criminal conduct.

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Accordingly, the evidence of character that was called is relevant to the issue before you as between the Crown and Lowery. And Lowery himself gave evidence that he had had no previous convictions except a conviction for driving a vehicle in a dangerous condition. He called Mr. Niddrie who gave evidence that Lowery's reputation was the average for a youth of his age in the town. And he called the witness Keane who said that Lowery's reputation was that he was a good general type of boy. Those two witnesses had some family connection with Lowery, it was brought out in cross-examination, but that was their evidence as to the reputation that he bore.

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Now of course an accused person who relied on evidence of good character has to take the rough with the smooth, and so in conjunction with that evidence it is proper for you to consider evidence here which tends to show that he is not of good character. And in that field it appears to me that the Crown would be entitled to point to these matters appearing in the evidence; he admitted a close association with King who, he said, had to his knowledge been on drugs and who, he said, had dangerous friends in Melbourne; he admitted having made a false report to the police that his car had been stolen; and in the course of his cross-examination he admitted to having knowingly joined with King in decoying this fifteen year old girl into his car and driving her into the bush at night so that King could have sexual intercourse with her.

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There is the evidence of Cox that the Rorschach Test and the Thematic Apperception Test gave results indicating that Lowery has a psychopathic personality and that there was an indication of sadistic tendencies, and you will remember that Cox gave you in some detail what he said were the indications of personality that appeared on his tests, including the aggressiveness, poorly controlled, and inability to relate to other people, lack of feeling for other people. When Cox used that expression "psychopathic personality" I was

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concerned that you should not be misled by it, and so I asked him a question or two about it myself, and he told you that the expression "psychopathic personality" describes a particular kind of personality or character make-up and that it is not a description of an insane person. To say that a person has a psychopathic personality does not mean that he has symptoms of insanity.

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10 Now as to Cox's evidence you will remember that there was evidence called by an eminent - of an eminent medical man who told you that he interviewed Lowery for something under two hours and obtained from Lowery a history of Lowery's past activities and that in what occurred at the interview and in the history that Lowery gave him he found no evidence of psychopathic tendencies. And he also said that in his view it was unwise to form a diagnosis that a person has a psychopathic personality simply on the results of the tests that Professor
20 Cox used, unless you have a history covering a substantial period, a history of bad conduct on the part of the person whom you are trying to diagnose.

Now counsel for Lowery submitted to you that you should reject the Crown contention that Lowery acted in concert with King in the killing of the girl, or that he aided and abetted her killing. It was submitted to you that you should accept Lowery's evidence that all his incriminating admissions to the police as to plotting and events
30 in the car and out at the track were untrue and were made by Lowery, merely because owing to threats made to him by King, Lowery feared what King would do to Lowery's wife if Lowery did not comply with King's request that Lowery should admit complicity in the killing if it looked as though the police could prove that King killed the girl. And counsel submitted to you that you should accept that evidence given by Lowery and accept Lowery's evidence that he made the admissions when he did because he
40 believed that King at that time was in the process of making a confession to the police.

It was submitted to you, further, on Lowery's behalf, that what passed between Lowery and Lowery's father was due to the same cause and to the presence of the police within hearing at the time Lowery and his father were talking. It was further submitted that you should accept Lowery's account now given to

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you in the witness box as to how he came to go to the - out to the track and what happened out at the track, his evidence that King took a tablet in his presence and said it was L.S.D., and his evidence that King alone killed the girl, and that Lowery, far from taking any part in the killing, had tried to stop him. Putting the matter at its lowest on Lowery's behalf it was urged by his counsel that you should not be satisfied beyond reasonable doubt of Lowery's guilt.

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In addition to those general submissions counsel for Lowery in the course of his address put to you a number of particular submissions, some of which I think I should remind you of. He put to you at the outset of his address that the dominant facts about this killing are that out at the track there were two normal people, the girl and Lowery, and one abnormal person, namely King, who he submitted was abnormal owing to having taken drugs, and he urged on you that it was obvious as a matter of common sense who was more likely to have committed the crime. It was pointed out to you that in the course of King's evidence before you he again and again disclaimed recollection of things or having a clear appreciation of what happened or having an ability to distinguish real from unreal. It was urged on you that King does not remember anything sensible or feasible or orderly or credible at all about what went on out at the track.

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Then it was put to you in relation to the statement which King made to the police on the Saturday, the written statement, the major parts of which he has now sworn before you.. King has now sworn before you are truthful to the best of his recollection..accurate to the best of his recollection; that in that statement King has put in false details to make things look worse against Lowery and that having heard the evidence of Dick, King has shown the untruth of those imputations by qualifying them. Reference was made in particular to the question whether it was an arm or arms that the girl put around King; to the question of whether the flex was put around the girl six times; to the question whether it was vomit or not that was seen coming from her mouth when the match was struck; the question whether Lowery tried to strangle her with her bra; the question whether he attempted to strangle her manually, and the evidence about

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a horrible crack. As to that, I would make this comment - that although, of course, counsel may be perfectly right in this submission there is strong evidence that it was dark and there may be room for misapprehension as to some observations made in the dark and of course there are things other than bones that can cause a crack.

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10 Now counsel for Lowery went on to point out that King conceded in evidence that in his statement to the police he made the evidence about the bra as definite as possible so that the police would not gerry to the fact that he was on drugs; and counsel for Lowery said that in view of that admission it is clear that King was being an unscrupulous falsifier of the facts in the account which he gave to the police and which he has now sworn is accurate to the best of his recollection.

20 Counsel for Lowery put to you also that there are confirmations to be found in the evidence that King was under the influence of drugs out at the track; that you not only have King's evidence that when they left Hamilton he was not reasoning at all; you have King's evidence that at the scene he was afraid of nearly everything and you have Bethune's evidence that one possible effect of L.S.D. is fear, and that Bethune said that he could not rule out the possibility that King had been fearful or terrified of the girl and had assaulted and killed her.

30 Then as to the complicated nature of the tying up of the girl, the truss, it was urged on you that this is not inconsistent with King having done the tying on his own when under drugs, and it was pointed out that he had been for a period a trainee technician with the P.M.G. and that the witness Bethune said that the sort of things that could be done by a person under drugs in such matters as this are things which are accustomed tasks, things that he has been accustomed to doing. And it was submitted to you further that as to the suggestion that King may not have been able to do the killing alone in the way described - in a way consistent with Lowery's present evidence, - it was urged on you that if the girl was unconscious that would have allowed an opportunity for King to come back to the car and get the flex, and that if you look at the method of tying up, there was no need for a second hand to help in such a tying up.

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Then reliance was placed on the evidence of Mrs. Johnstone, the former policewoman, and it was put to you that it is impossible to believe that she was mistaken, or that she would come to Court here and swear to the admission she did swear to unless she was absolutely positive and that the suggestion put to her that she may have mistaken the words "I didn't do it" for the words "I didn't mean to do it" is incredible because it means adding something to what she heard and completely changing the sense from a penitent admission to a denial of guilt. 10

As to the document, Exhibit "K1" which King alleged had been handed to him by Lowery in the holding cell in Ballarat on 1 June, it was urged that you should reject King's evidence about that, that Timewell's evidence did not show the writing on the document to have been Lowery's and that you should take the view that that document was not written by Lowery. It was urged on you further, 20
- once again really, - that you should apply a commonsense test and asked yourselves which of these two men qualifies as the macabre murderer who committed this killing, and that on the evidence the answer must be King because of King's history and the evidence about drugs on the one hand and because the evidence should persuade you here that Lowery, on the contrary, was an ordinary normal citizen.

COURT ADJOURNED FOR LUNCHEON AT 12.30 p.m. 30

COURT RESUMED AT 1.46 p.m.

HIS HONOUR CONTINUED HIS CHARGE TO THE JURY.

THE HONOURABLE MR. JUSTICE SMITH:

Mr. Foreman and members of the jury, I now want to put to you what the Crown says about that defence put forward by Lowery and on his behalf.

Now the Crown's contentions are that the admissions that Lowery had made to the police were so damning that he had to have some explanation of them, but that the explanation he has put forward cannot be accepted. The Crown contends that if Lowery had really been making up a false confession of complicity through fear of what King might do 40

to his wife it is incredible that Lowery would have elaborated his admission with the mass of detail that appears in his statement to the police. And the Crown says that that is all the more incredible when you find that he says he wanted to convince the police of his complicity and he could have had no idea whatever of what detail King might have fabricated about Lowery's complicity if, as Lowery alleges, it was an entirely imaginary complicity.

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Well the matters in the statement to the police which could be regarded as coming under the head of unnecessary fabrication of detail are indeed very substantial. They include such matters as these;

"We just sort of worked the idea over, thought about it and thought of different clues about it, talked it over and it just sort of built up and up and up." Then the statement as to deciding when Rosalyn got to the car, - by the time Rosalyn got to the car, - that there was a chance to use their idea. The matter, for example, of getting out to the reserve and King saying "We'd better see if there are any spotlights about, and we pulled up and got out and we all walked along the track." There are many other pieces of the statement, including passages that I have already read to you which contain great elaboration of detail and stopping at the point that I just reached, it may be urged on you -why put in "We all walked along the track?"

What was the need for that piece of elaboration when, as you will recall, if it is true, it completely destroys Lowery's present story that he remained in the car while the other two went off down the track, and that while he was still in the car King came back and picked up the flex and left, and it was only after all that that he went down the track to see what was happening and found what was happening.

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Now there is another aspect of this explanation given by Lowery that I would like to comment on, it is this. According to Lowery, the direction that King had given him was to be acted on if and when it seemed that the police could prove that King killed the girl. But what did Lowery have to go on at the time he says that he decided to carry out the direction? What did he then have to go on as to whether the police could prove that King had killed

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the girl? What he says he had to go on, as I follow it, is that the police officers had told him that King was making a statement, that he had asked to see the statement, and that his request had not been complied with; and he seems to have been going on the word, - according to his account, - on the word of two policemen for whom he had a poor regard, - whom he, according to his account, had called "pigs" to their faces. However, it is entirely a matter for you whether you think that those considerations throw any light on the matter. 10

Now the Crown says that you should reject altogether this story about Lowery making his admissions to the police in order to comply with a direction given by Lowery (King) (sic) and because of fear of what Lowery (King) (sic) might do to his wife. The Crown also contends that Lowery's explanation of his admission to his own father is completely incredible. And the Crown says that the story that Lowery now tells in the witness box should be rejected by you as being merely the latest in a long series of stories that he has told, the previous ones being now admitted to be false. I am referring to the hitch-hiker story as told to Cooper at 10.30 on the Sunday night, to the Commercial Hotel story told to Bailey on the Monday afternoon, either by Lowery or by King in his presence, to the Commercial Hotel story as told in the statement of Lowery to the police on Wednesday 3rd, and to the very elaborate story as to the Commercial Hotel and the hitch-hiker contained in Lowery's story to the police, his written statement to the police on Thursday 4th. I have read those documents to you and the Crown as I said, says that they are earlier fabrications and that the story now told by Lowery in the witness box is in the same category. 20 30

The Crown suggests that the origin of Lowery's present story, as told from the witness box, can be seen in that document which is Exhibit "K1", - the document, the handwriting of which was disputed. The Crown says that it is hopeless for Lowery to deny writing that document, that the mis-spelling in it which matches the mis-spelling in his specimen writing made in court demonstrates that he is the author of that document, and he wrote it. And the Crown contends that what that document shows is that at some time during the period of 40

several months when Lowery and King were detained together in the remand section at Pentridge awaiting trial, Lowery proposed to King that Lowery should tell the court precisely the story that he has now told the court. And that King should confirm it in every detail and should put forward as his own defence the story of taking Methedrine and L.S.D. which King has now sworn to. The Crown says in effect that you may regard that document as being an early draft of the defences which you have heard sworn to, but that those - that early draft had a major weakness which does not appear in the ultimate defences as sworn to. That weakness, it is suggested, was that for King to confirm Lowery's story might have looked like yet another piece of collusion between them like the hitch-hiker situation and that what has happened is that the draft has been improved upon by removing that dangerous aspect of the proposal and having King contradict the story that Lowery was then proposing to tell and has now told. There is a curious feature of that document I suggest, and that is the existence in it of two blanks. It leaves a blank for the time at which the drugs were taken on the Sunday and it leaves a blank for the dosage. Now it may be a question for your consideration what is the most likely reason for those blanks to have been there. If the story of the drug taking was true, is it likely that, even when they were in Pentridge together and Lowery had come to the stage of writing out a document of this kind, he would still be in ignorance of the time the drugs were taken and the quantity taken. It may be that he was, and that he had to go to King, or leave it to King, to fill in details that he had not yet found out. It may be, however, as the Crown I think suggests, that those blanks were left so that the time when it was to be said that the drugs had been taken and the dosage could be decided upon when further information was available as to what time and what dosage would fit the story of drug effects that it was desired to put forward, - drug effects during the car drive and out at the track.

Well the Crown contends that having regard to the history of the story now told by Lowery, the conflict between it and the story that he told to the police on Saturday, 2 February, and what the Crown says is the highly improbable nature of the explanation that he gives for telling the police

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what he did, you should reject altogether Lowery's explanation and his present evidence. The Crown contends that they are both fabrications.

Now I want to pass next to put before you the aspects of the evidence which the Crown relies upon to establish its case against the accused King. In the first place, there are several general points more or less common to the case against King and the case against Lowery. You have in King's statement of Wednesday, 3 February, his admission that he was with Rosalyn Nolte in Lowery's car between 8 and 8.15 p.m. on Sunday 31 January in Gray Street, Hamilton, and that they drove off from there with her and that she had a dog with her. You have from the evidence of the witness Hope Johnstone and other evidence the fact that at about 11.40 the next morning Monday 1 February, her dog, with its lead still on, was found by the roadside 8 miles south of Hamilton on the way to the Mount Napier Reserve. You have the fact that on the Wednesday, 3 February, her body was found about 2 miles further south in the reserve, among bracken in a small gully about 40 feet from a bush track. You have the medical evidence that the cause of death was asphyxia produced by strangulation by a length of flex. And you have evidence that from the length of flex a strand had been torn which strand was found attached to the coil on Lowery's car. The Crown says that the way in which the girl was trussed up with the flex shows premeditation and shows that the killing was meant to produce sadistic satisfaction while the girl's body weight choked her to death and there is the evidence of Dr. Dick to show that she must have been tied up at least some minutes before she died. There is the evidence of Lowery's fingerprint being found at the time the body was found on a beer can standing sheltered by a tree trunk about a hundred feet north of where the body was found.

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Then on the Saturday 6th February you have admissions made by King, both detailed and general ones. I will refer first to the general ones. The witness Womersley told you that at about 12.20 on Saturday 6th February he was present when Morrison had a conversation with King. He told you that Morrison said "There is scientific evidence which suggests that you and Lowery were concerned

in the death of this girl. Have you anything to say about that?" King said "No." Morrison said, "Electrical lead similar to that used to bind the girl was found in Lowery's panel van. Do you have anything to say about that?" King said "No." Morrison said, "There is other evidence to suggest that you two men were concerned in this girl's death. Do you have anything to say?" And Womersley gave evidence that at that stage King bent forward, put his head and his hands on his knees and began to cry and continued to do so for two or three minutes. Womersley says that King then said "It happened out at Mount Napier. It was awful." Morrison asked him "Were you involved in the murder of this girl?" and King said "Yes." Morrison said, "Was Lowery with you?". King said, "Yes." And King then said "Could I see the Policewoman?" And Morrison said "Why do you want to see her?" And King said "I want to talk to her."

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20 The Policewoman, then Miss Overend, now Mrs. Johnstone, was brought in and at about 12.30 she had a conversation with the accused King. In her evidence this passage appears, "I knocked on the door and went in and Detectives Morrison and Womersley were seated and Charles King was seated there too. Charles was crying and he did not look at me. He dropped his head and said 'I'm sorry'. Then he pulled out a letter from his pocket and gave it to me and he said 'Will you write to her and tell her I'm sorry, I didn't mean to do it'." She stayed there a few minutes apparently trying to comfort him and then said "Do you want me to stay any longer?" And he said "No, it doesn't matter", and she then left.

30 It was put to her in cross-examination in a passage which has been read to you that what King said was "Tell her I'm sorry, I didn't do it." And the witness, Mrs. Johnstone, corrected that by saying "I didn't mean to do it" he said". She agreed that she was upset but she refused to agree to the suggestion that there was a possibility he might have said "I didn't do it."

40 To diverge for a moment at this point King has sworn in evidence that his words were "I didn't do it". The Crown contention is that Mrs. Johnstone being not only a policewoman then, but a friend, could hardly have been mistaken about this, and would

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certainly not have come into court to swear to the words if she had not been completely positive about them. On King's behalf it was pointed out that if you look at the record of interview, the written statement of King, made on this Saturday, this episode is referred to and that the disputed words do not appear in it, either in Mrs. Johnstone's version or in King's version. That, - the relevant passage in the written statement is "At 12.41 Policewoman Overend entered the room. King said 'I'm sorry' and began to sob. Policewoman Overend did not speak to King but merely comforted him while he was crying. At 12.45 King handed Policewoman Overend a letter and said 'Write to her'" and then at that point where you would expected one or other of these statements to appear, neither appears. The document goes on, Miss Overend looked at the letter and said "It's a girl-friend's letter. She lives in Sydney", and Sergeant Morrison said, "Do you feel well enough to go on with the interview now?" King said "Yes" and Miss Overend left the room. On King's behalf the point is made, as I have said, that there is a gap there in that record; that neither the version given by Mrs. Johnstone nor the version given by King appears there. On King's behalf it is submitted that if he had in fact said what Mrs. Johnstone says he said, the police would have picked it up and put it in the document.

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As against that, there is the consideration, I suggest, that immediately before this he had been admitting guilt and immediately after this Mrs. Johnstone episode he went on and made the written statement, telling of his complicity in this crime. And it might be urged on behalf of the Crown that it would have been odd if at this middle stage when Mrs. Johnstone was there he was saying 'I didn't do it'. However, it is for you to say what you make of the evidence bearing on this point.

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Now there is a further general piece of evidence, namely, the evidence of the witness Warne as to the conversation between him and King at 4.35 on the Saturday after the statement had been signed. According to Warne, he asked King this question; "I understand you have signed a written statement of interview in which you admit your part in the killing, is that correct?" He said, "Yes." I said, "Have you

any complaints to make about your treatment by the police?" He replied, "No."

I want to go now to the detailed admissions by King on this Saturday, 6 February. First, as to the matter of prior understanding that the girl should be killed, there are these passages in his written statement that I want to refer you to. Q. "Prior to Sunday, January 31, 1971 have you ever had a conversation with Chris Lowery about killing a girl?" A. "Yes, but I thought he was just mucking around." Q. "Would you tell me when that conversation took place?" A. "I don't remember." Q. "Can you tell me the text of the conversation?" A. "I think Chris said it would be good to watch her -" the document says "strangling" and I do not know whether that means struggling or strangling - "and something about dying slow". Q. "Was it in fact a serious discussion about murdering a girl?" A. "I didn't take it seriously, but I think Chris was serious. I just played along with him. I said to him, 'You're nothing but a damn sadist'. I was serious about this, but Chris thought I was joking. And he replied, 'So what anyway'." Q. "Was there any discussion along this line on Sunday, 31 January, 1971 before you murdered the girl?" A. "There might have been but I don't remember. If there had have been I wouldn't have taken much notice of it." You will have noticed in the passage that I read one of these statements by King "I don't remember".

In his written statement of 6 February you will find quite a large number of these statements and the Crown has put it to you that they do not represent amnesic effects of drugs, that the drugs he took, according to the expert evidence, do not normally affect memory. The Crown puts it that these are just what I might call the "I don't remembers" of a person who prefers to say that, rather than to describe or state the thing that he is being asked about. Well if you look at the statement of Saturday, 6 February, you will find that the first of these assertions of inability to remember seems to be in answer to the question, "Would you tell me in your own words, what happened on Sunday night?" The statement then reads: "(Long pause) The only thing I can remember is about Mount Napier. I don't remember going out there." Q. "Will you tell me what you do remember?" "Chris was kicking her on the ground." Q. "Why was he kicking her?" A. "I

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don't know; he went mad." Q. "Why did you go out to Mount Napier?" A. "I don't know, I can't remember it all." Now King says that soon after the girl got into the car and while they were still in the middle of Hamilton he either had a blackout or his memory stops, apart from realising a little later that he was travelling in a car, and that his real memory does not begin again until they were at Mount Napier. Well it is for you to consider whether this is a genuine inability to remember as King says, or whether he is, as the Crown contends, conveniently saying that he cannot remember because if he did remember what he would have to describe would be embarrassing or dangerous. Well in relation to that it may be necessary for you to, or it may be of assistance for you to consider what would have been going on in the car on the way out to Mount Napier. One possible view of that is perhaps that as King's story would involve, that he was in the front with the girl and Lowery was driving and he was in a blackout or something like it, and there was no trouble until they got out to Mount Napier. There is, however, of course, another possibility. You have Lowery swearing to you in the witness box here in cross-examination that the girl was decoyed into the car on a false pretence that she was going to be taken to a party at Toolong where Garry Bailey was supposed to be and there is a question therefore of whether the girl was in fact complacent on finding out, as you may think she would necessarily find out on that version, that she had been tricked and was not going to a party but was being taken off into the bush for some purpose. Well the answers on the evidence are left entirely to inference, but my purpose in discussing this with you is to indicate to you, or to suggest to you, that King's statement of his inability to remember what went on in the car on the way out to Mount Napier may be due, as he says, to his being in a blackout, or it may be due to his having done things in the car on the way out there that he did not want to tell the police about.

Now the remaining parts of the statement contain further instances here and there, quite a number of them, of this statement, "I don't remember." One is that after saying that Lowery kicked the girl and seemed to enjoy it he does not remember anything else that Lowery did to the girl at that time. He is asked "Why did you leave the vehicle

and walk back 60 paces?" He says "I don't remember." In a later passage which may have some bearing on the matters that I was discussing with you a moment ago "Why did you go out to this spot that night at all?" "I don't remember that either." Q. "Did the girl travel out there quite willingly?" A. "I don't remember going out there." Q. "You remember being there with her though?" A. "Yes."

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10 Now according to the statements in this document signed by King on the Saturday afternoon 6th February he was present with Lowery and the girl at the scene of the killing up to and at the time of the killing. Under the expression "the scene of the killing", I include the place where the car was. In the statement he was asked to say what he did remember about Mount Napier and he said "Chris was kicking her on the ground." He was asked "Did you see her clothing on the ground out there?" A. "I think so, yes. Chris tried to strangle her with her bra." Q. "Was this before he returned with the flex?" A. "It was after he kicked her several times at the start as I said earlier in my statement. I remember seeing him with the flex, but I don't remember how he got it." He was asked "Whereabouts at Mount Napier did this kicking take place?" He replied "About 60 yards from where the car was parked on the track." He was asked "Were you still on the made road?" He said, "No, it wasn't made." He was asked "When Chris and the girl were 60 yards away from the car were you with them?" A. "Yes, I was with them. I can remember about what you asked me before. He had hold of her arm and she complained that it hurt. I remember her words, I think she said 'It's broken.' I think Chris said 'Stiff shit' or something like that." He was asked, "What else did Chris do to the girl?" He said, "I can remember Rosalyn lying on the ground and Chris on top of her trying to strangle her with his fingers." Q. "Was this before or after he had been kicking her?" A. "Afterwards." Q. "And was it after she had complained about hurting her arm?" A. "Yes." He went on to say, "Chris walked back to the car and Rosalyn stayed there with me, she put her arms -" in the plural as it appears in the statement - "around me and asked 'Is Chris going to kill me?' I said, 'I don't know, he's gone mad'." He said that Chris came back with something, "I don't know what it was, I forget." Asked what Chris did, he said, "I think he started hitting her

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again." Asked what he was hitting her with, he replied, "His hand I believe." He said he could not tell how many times. He said that he walked off, he felt sick and he walked up to the car. He said he vomited. He said, "I got my smokes out of the car. I started to walk back to Chris and on the way down I thought I would stop him doing what he was and take the consequences of what had happened so far during the night. When I got back down there, Rosalyn was on the ground 10 moaning and I asked Chris what had happened and he said 'I hit her'." Asked, "What did you do then?" he replied, "I asked him what he intended doing now. Chris said, 'I'll have to kill her', I asked him how. He said, 'I don't know.' I don't remember what exactly happened after that but he had a piece of brown two cord flex and had it round her neck. She was trying to scream or talk or something. She couldn't get her breath. There was a sort of whine coming from her mouth and her chest then stopped moving." Asked "What happened next?" He said, "He put the two flex round her neck about six times and pulled it tight and dragged her off the track into the ferns alongside the road. He was just pulling her by the piece of flex." Asked, "What happened next?" He said "She was on her stomach and he pulled her legs back up and tied the end of the cord around her legs and her arms. He turned her over so I could see her face and lit a match and vomit came from her mouth, it was horrible. He then grabbed her shoulders and pulled them back and I heard this horrible crack. We then went back to the car." 20 Q. "What did you do then?" And he went on to describe what was done about the dog. Earlier in the statement he had been asked the question - "When you said you were concerned in the death of this girl did you mean you were present when she was killed?" He replied, "I was present, yes." 30 Towards the end of his statement he was asked. 40 "Is there anything else you wish to say?" and he replied, "So far as I can remember I didn't help in the actual killing itself but I was present at the time, that's all I want to say." There are, therefore, clear admission by King in the statement that he was present at the time of the killing.

The next point that the Crown relies on in this statement is that although King in the statement may be thought to be trying to minimize

his part in what has happened, the admissions made in the statement clearly show that he was acting in concert with Lowery throughout, even if - as he asserted in the statement - he had qualms at some stages. I want to refer you to some passages bearing on that. First there is the passage that I have already read in which he says that when Lowery walked back to the car he (King) stayed with the girl, and she put her arms around him and asked whether Chris was going to kill her. He says that his reply was "I don't know, he's gone mad." But of course that puts him in a situation when he and the girl were together and conversing about the likelihood of her being killed. Then further on in the statement this appears - "Did she at any time ask to be taken back to Hamilton?" A. "I think she did when I was alone with her, when Chris was back at the car." Q. "What did she say?" A. "She said 'Will you please take me home' or something like that." Q. "Did you make any effort to get Chris to take her home?" A. "I was too scared to ask him." Well the Crown, no doubt, would contend that that last answer is not a credible one.

Perhaps the passage that I next come to is the one which is most important on this question of acting in concert during the killing. It is the passage that I read to you a few moments ago about going and getting his smokes out of the car and thinking he would stop Lowery and as he put it "Take the consequences of what had happened so far during the night". The Crown is entitled to urge on you that notwithstanding some explanations about transposition of personalities and things of that kind the meaning of that statement includes that King realised, at the time he was thinking these things, that the girl was going to be killed if things continued on in the way they had been going. And the words "What had happened so far" may, of course, be relied upon by the Crown as indicating that something planned was at that stage incomplete. And the reference to taking the consequences of what had happened so far may, of course, be relied on by the Crown as indicating that King appreciated that he was guilty in respect of what had happened so far.

Well according to that statement he was thinking of calling the thing off, the Crown would say, but when he got back to Lowery he did not pursue that thought, but decided on the contrary to

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allow matters to continue on. The statement there says not that he said to him "Let's stop this", or "You've gone too far", or anything of that kind, "I asked him what he intended to do now? Chris said 'I'll have to kill her'." Well if King was not acting in concert in her death the Crown is entitled to say that his response to that should have been "I'm not going to let you do that." But in fact, according to this statement his response was "I asked him how" and the Crown of course are entitled to rely on that as indicating that King, having agreed initially to her killing was in the same frame of mind again; he had got over his qualms and he was now concerning himself with ways and means.

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Then in the course of the statement King, as has been pointed out, showed some disinclination to admit that he helped to truss the girl up in this truss; and you will remember that the Doctor's evidence indicates that the trussing up was before death. In a fairly - at one part of the statement he was asked "Why did you help him tie her up?" And he said "I don't know." The Police kept pressing him and a little later on, in answer to a question which was a misleading one, he made an admission. The question put was "According to an earlier answer you did in fact help him tie the girl up, is that correct " He replied "Yes." He was asked "Why did you help him tie the girl up with the flex?" His answer was "He might have asked me to help him, I don't remember." He was pressed still further "But you do in fact remember helping him tie the girl up with the flex, is that correct?" A. "Yes." So that despite his initial reluctance, according to this statement he did in the end admit that he helped to tie her up. His final statement I have already read to you; his final statement on this point is "As far as I can remember I didn't help in the actual killing itself but I was present at the time. That's all I want to say."

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Well the Crown contends that the admissions made in that statement, even though they may minimise King's part in what happened, show quite clearly not only that he was present at the time of the killing but that he was present there, acting in concert with Lowery throughout the killing. And you will appreciate that the weight that the Crown attaches to - not only to his admissions as to what

he did but as to what he observed, takes some of the colour from the conditions out there. It seems to be common ground that it was an overcast night and pretty dark and it seems to be clear that it was sufficiently dark for it to be necessary to strike a match to let one of them see the girl's face. But if that is so, then the Crown is entitled to urge that King must have been very close indeed to what was going on to have observed, as he says he did, whereabouts on the girl's body it was that she was being kicked, when she stopped breathing and things of that kind. The Crown contends that you should have no hesitation in accepting as true the admissions somewhat reluctantly made and somewhat minimised which- by him - which King made against himself in the statement on the Saturday.

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The Crown then contends that the fact that they killed the girl acting in concert is confirmed by the evidence of the film taken of King and the evidence, the descriptive evidence, of what was going on during the filming. I understand that the jury desire to see these films again and they will be run off in the presence of the jury before the jury retires to consider its verdict, but in the meantime I would refer you to some of the evidence of Womersley relating to what happened while the filming was going on.

According to Womersley after they had reached a certain point they stopped and after a short time King pointed to the left and said "Can I have a look over there?" Womersley says "We then walked off the track and down a depression. King said - he paused for some time - King said 'This could be the spot where the body was left.' Morrison said 'Would you show us where she was kicked?' King said, 'Up on the track.' We then walked up onto the track. King then moved forward and looked around and then he pointed and said 'Somewhere between these two trees.' Morrison said 'Demonstrate what Mr. Rippon - with Mr. Rippon what went on.' King said 'I believe she was lying on the ground here.' We then walked towards the trees, to the forked trees, - forked tree. Morrison said 'Show us where.' King said 'Lying this way, face down, head on one side.' Rippon then laid down. 'Chris kicked her a couple of times, Chris kicked her in the ribs a couple of times', King said. 'I think he was standing this side, turned her', -

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he is indicating how Lowery kicked, - 'turned her, lifted foot, stamped down on back of head. King said 'Her head was turned around this way, I think Chris kicked her near the eyes somewhere.' Morrison said, 'What then?' King said 'I think he told her to stand up and he tried to strangle her with her bra.' Morrison then handed King a handkerchief and Morrison said 'Do you want him, Mr. Rippon, to stand up?' King said 'Yes'. Rippon stood up, King walked behind Rippon and placed the handkerchief round his neck. King said 'He was around behind her, pulled back, shoulder in back, I couldn't watch. I turned away and walked to the car.' King said 'I came back she was lying on the ground.' Morrison said 'Put him in position'. He then indicated and Rippon lay on the ground. King said, 'She was on back, moaning; I asked Chris what happened. He said he hit her. I remember about the brown cord.' Morrison said 'Show us with this string.' Morrison then gave King the string. King said 'He rolled her on stomach.' He then rolled Rippon over. King said 'Sat on back, put cord around, grabbed and pulled back.' Morrison said 'What then?' King said 'He wrapped it around her several times, grabbed both ends like this, pulled her into the area I showed you before. He dragged her like this' and then pointed. King said, 'She was then lying on her stomach.' Morrison said, 'Put Mr. Rippon in position'. Morrison got up and was led off the track by King to the area where he first indicated. King then indicated the area and Rippon lay down. King said, 'This was up, pulled back, pulled back, legs up, wrapped it around, then her arms were back, tied it around, then grabbed elbows and wrenched it back." Q. 'Where were you standing?' King said, 'Here.' And he pointed. Morrison said 'You said he rolled her over and struck a match.' King said, 'Rolled her over, yes', and he then bent forward. Morrison said, 'Where did you go then?' King said, 'Walked up here, back to the car.' Well once again the Crown is entitled to urge on you what the detail of that description could not be given by a person who was there in the dark, and it was dark enough to have to strike a match to see the girl's face, unless he was operating in effect shoulder to shoulder with the other man, right close beside him.

The Crown then relies in the case of King, as

in the case of Lowery, upon the fact that according to the evidence the two of them continued after the killing to act in concert together, and the Crown says, 'Well that is evidence which strongly confirms that they were acting in concert at the time of the killing.' As to their acting in concert after the killing, there are passages in the written statement of Saturday 6 February which I would refer you to. After describing the lighting of the match and the crack King said, "We then went back to the car." Q. "What did you do then?" A. "Tried to get the dog out of the back. It snapped at Chris and he asked me to try and get it out and I said I wouldn't. We left the tail of the van down and he tried to turn around, but we couldn't, so he backed down the road and found a place big enough to turn around in. We drove out onto the sealed surface and stopped the car about a mile or so up and he said 'We've got to get this dog out'. So I went around to the back of the car, called the dog, it wouldn't come, so I grabbed hold of its leash and called it at the same time. It jumped out of the back of the van and sat on the edge of the road. Then we drove back into Hamilton and the rest of it is what I said in my statement that we drove around the town and went to the sports centre and then up to his mother-in-law's place."

Then later in the statement there is a reference to the transistor. "What did you do with the transistor?" A. "Chris put it under the dashboard and when we were back in town Chris drove up to Hensley Park Road and he passed it to me and said 'Throw it out of the window'. I threw it out of the window." Q. "What time did you get back into Hamilton that night?" A. "Approximately half past nine or quarter to ten."

Well then you have the evidence of Harkness as to the visit to the sports centre, and he is talking to the two of them there at about quarter to ten. You have the evidence of Cooper as to their coming to the Brays at about 10.30 where, according to her, both stated the false alibi about the hitch-hiker and where they had some beer, looked at the television and one of them may have helped with a hand of five hundred. And you have the evidence of their going to the pictures in company with the young woman and remaining together until 3 a.m.

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As to what happened after that night King's evidence is much fuller than Lowery's and as I follow it his account of their association during the following days may be summarised in this way. On Monday, the day after the killing at about 2 p.m. King went with Bailey to Lowery's and according to King, Lowery told Bailey of the hitch-hiker story and the Commercial Hotel story. At about 5 p.m. on that Monday Lowery asked King to help him in shifting furniture, and after tea that night King in fact 10 helped him with the furniture and Lowery, according to King, went into details of the hitch-hiker story. On the next day, the Tuesday, according to King, at 5 or 5.30 Lowery called at the King's shop and King told him of the finding of the dog and of a visit from the Policewoman Overend and told Lowery that King would probably be required to make a witness statement. On the following day, the Wednesday, the 3rd, King says that Lowery came to his home and Lowery asked King to pick up a table and they went and did 20 that together, and they had a conversation about the finding of the body and about the hitch-hiker story. That night both of them made corresponding false witness statements about the Commercial Hotel story, statements which I have already read extracts from to you. Then on the next day, Thursday, the 4th, each of them made similar statements to the police telling with much invention and collaboration the false story about the hitch-hiker. They met on the Friday afternoon and again on the Saturday morning 30 and according to King on that Saturday morning they had a discussion about going to the hotel for a drink and about whether they were in the clear and then the police arrived and they were taken to the police station where questionings took place which resulted in the admissions and written statements of the Saturday to which I have been referring.

Just before we adjourn, may I complete what I have been saying about that aspect. The Crown says that the fact that both King and Lowery were 40 present at a crime such as this at such a place, shows that they were acting in concert, and the Crown says that on the evidence that has been led and which is admissible against King there is the clearest possible case against King that he and Lowery were acting in concert in the murdering of the girl.

We will take a break now I think gentlemen.

COURT ADJOURNED AT 3.03 P.M.

COURT RESUMED AT 3.16 P.M.

THE HONOURABLE MR. JUSTICE SMITH:

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Mr. Foreman and members of the jury, I want now to turn to the topic of the accused King's defence and in relation to that I think that I should read you some substantial parts of his own evidence.

10 He told you that in about March 1970 he was introduced to marijuana and that he smoked it thereafter, that there were two occasions he thinks when he had a spiked cigarette, that he smoked hashish now and then and took L.S.D. He said that prior to returning home to Hamilton from Melbourne in September 1970 he had had a dosage of L.S.D. approximately 15 times, but on none of those occasions had the drug shown a tendency to make him at all violent, nor had the drug had the effect on him of making him more
20 desirous of having sexual intercourse.

30 He told you that he was at Mount Gambier on Boxing Day in 1970. He said "We went across to the motor bike races at McNamara Park." Asked "Were you drinking?" He said "Yes, quite a bit." And asked about Lowery saying anything to him that weekend or holiday period he said "I don't know what we were talking about, but he came up and said in the car as we were driving round the town of a night, he said, 'I wonder what it would be like to kill somebody', and then he sort of increased on it and said, 'I wonder what it would be like to kill a chick?' I just laughed it off, I thought he was mucking around." Q. "Did he ever repeat any such words or similar words to you between Boxing Day and 31 January?" A. "Yes, a couple of times." Q. "Well did you take him seriously?" A. "No, not at all". That matter was the subject of further questioning in his
40 cross-examination and it was put to him, "Well now you say he sort of increased on it, what do you mean by that?" A. "He kept on talking about it." Q. "When?" A. "Right up until the incident." Q. "Well did you ever fail to let him know that you were not taking him seriously?" A. "Yes, I just didn't take any notice of him in the end."

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And he was asked, "Every time he talked about it you would make it plain to him that you thought it was a lot of nonsense?" A. "Well towards the end I didn't take any notice of him at all, didn't say nothing." Q. "But before you got to the end you never failed to let him know that you were not taking him seriously?" A. "That's right, yes." "How did you go about that?" "I just said 'You're mad' or something like that, you know." "What was that?" A. "I said 'You're mad'." Q. "Did you think he was serious?" A. "No, I didn't." Q. "It never occurred to you for a moment that he might really be enthusiastic about such an idea?" A. "No, I thought he was just joking all the time." Q. "Did you ever call him 'a damn sadist'?" A. "Yes, I did once." Q. "Did you mean that at the time?" A. "Yes." "Well you really thought him a sadist did you?" A. "Yes." Q. "When was that?" "I'm not sure whether it was before or after the killing, but I do remember calling him a sadist." 10 20

Returning to the examination-in-chief, we find that King said on 31 January, the Sunday, he went out on his motor bike to the dirt road at the back of Hamilton and before he went out he had a couple of cans. He said he thinks they took about half a dozen cans with them, but he is not sure. He was asked, "Well then when you got home from this bike riding trip did you take anything when you got home?" A. "I took about eight or nine tablets of Methedrine and a little bit over a tablet of acid." Asked this question, "When did you take the - about what time I mean did you take the nine tablets of Methedrine?" A. "I couldn't put a definite time, I'd say it would be somewhere between - in the two hours between 3 and 5." Later he was asked, "Did you take anything else after the Methedrine?" A. "Yes, I took a tablet of acid." Q. "About approximately when did you take that?" A. "It was not long after I took the speed." Q. "'Speed' is the word for Methedrine is it?" A. "Yes." Q. "What effect did that have on you and when did the effect start to come on?" A. "When you first take it you feel flush, heat in your arms and your legs and that. Then things just start to get distorted. It does with me, it varies with different people." Q. "Well when did it on this day?" A. "About 6 o'clock." Q. "What were you doing then?" A. "Watching T.V." He said "It squashed the figures up in the T.V. set, made the T.V. set look thinner and bigger, waves around 30 40 50

and the walls and the floors move up and down, waving." He said that Lowery came over in the panel van and picked him up and that it was pre-arranged to go to the drive-in. He said that they drove down to Lowery's inlaws' place in Shakespeare Street and they were there for a few minutes and went up to Gray Street. He was asked about Kevina Butterworth and about her evidence that Lowery said "What's it worth to drive you home?" And he said that did happen and that her answer was "Nothing." Asked "What happened thereafter?" He said "I think Chris hit her, but I was not certain of it." He was asked "Yes, all right." And he continued "And I think she might have hit him back. When we got up to Brays' place he gave her a kick in the behind." And he said, "We went inside for a while"; and then he said, "We went up Gray Street again and Rosalyn was walking along the footpath near Thompsons' Store." He said he had known her before for about two months, and that she had been to his house now and then to see his brother Stephen. He was asked what happened when he met Rosalyn in the street and he said "She waved and yelled out something. Lowery pulled the van over to the kerb and I think I was talking to her for a while, I'm not sure though. Chris said something about a chance or something, but I didn't gerry to what he meant. I was getting pretty stoned then and I remember getting out and she got into the car and things sort of blacked out for a while. I faintly remember going out this road; my eyes were closed, but I could hear the car going. I opened them once and saw the trees and that all around us. Then I don't remember the van stopping, but opened my eyes and we seemed to be out in the scrub somewhere. There was no one else in the van with me, I looked in the back and saw this dog and I started talking to the dog for a while." After a further question he said, "I got out and walked about 10 yards in front of the van and sat down next to a tree and I was - hear all this music and watching the trees and everything, saw a few animals walking by and all that." Q. "How did the trees appear to you?" A. "Taking on sort of like grotesque forms. The branches were like big hands and like fingers and they sort of curved right over the top of the track. I didn't - be able to see out sort of thing. I got pretty frightened, I think paranoid." He went on in answer to further questions to say that he came

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across the other two. He said, "I had a lot of trouble walking, and as I got up near them I walked right on past them sort of thing, I didn't take much notice of them and I headed into the scrub further away and I come back again and I could see Chris kicking her." Q. "Where was she?" A. "She was lying on the ground." Q. "Was she clothed or not?" A. "I don't think so, no." Q. "How did he look to you - Chris?" A. "You know, he was really grotesque. He had great big hands and long legs, big feet." Q. "What did you do?" A. "I was scared of him so I sat down in this chair, what I thought was a chair, next to this tree, and I was trying to work out in my mind what was going on, and I was listening to the music all the time and watching people." "Well was Lowery saying anything apart from what you saw him doing or appeared to be doing?" A. "He was yelling but I don't know exactly what he said." Q. "Well did you say anything to him, or do anything apart from sitting down under the tree?" A. "I couldn't appreciate what was going on to do anything. I was like - I didn't think anything was wrong." He said "Lowery walked away and Rosalyn came over to me and she put out her arm and asked if Chris - she said, 'Is Chris going to kill me?' I just said 'I don't know'; you know, I just couldn't gerry what was going on." Q. "Where was Lowery at this time?" A. "He'd gone away." Q. "What happened next?" A. "He come back and he had his hands on her throat, or sort of appeared to be and then I started walking away. I felt sick in the stomach and I went away and vomited further up near the car. I went up to the car and I come back and I kept on falling over coming back because like the ground seemed to be moving to me. It's going up and down and I was limping and I stumbled up and Chris had this - wrapping this flex around Rosalyn's neck." "What happened then?" "He - I'm not too sure - tied her up on the track, or tied her up down in this ditch thing; but I remember him dragging her down into this ditch, sort of half dragged and half carried her down and he yelled out to me, and I didn't want to go down and he come up towards me and told me to come down and I went down there and I think he might have said to hold her feet up or something, and I told him to back up the track - "I am sorry, "and he told me to back up the track, pick up her clothes, and I threw some and I picked up this jumper and hung it on a tree and then we left."

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Q. "Well when you said you think Chris might have asked you to hold her legs up, can you remember whether you did in fact hold her legs up or not?"
 A. "Not exactly, no, but I might have." Q. "Were you able to appreciate how she was tied up, the method of tying up?" A. "No, not exactly."
 Asked whether it was dark and whether he could see what was going on he said, "It was fairly dark because there were clouds in the sky at night sort of thing; there was no moonlight or nothing." Q. "It was pretty dark?" A. "Yes."
 Asked whether Lowery did anything else, he replied, "He had a - what I thought was a bra in his hand at one stage and I thought he put it around her throat but I'm not absolutely certain it did happen and I remember -" Q. "Well was the picture that you could then see of what was going on a clear picture or how would you describe it?"
 A. "No, it was very confused, it was sort of when you get hallucinations followed by what you think is reality and it just keeps on flashing, it gets very confusing." Q. "Did he do anything about lighting a match?" A. "Yes, this is when she was down in the gully. He lit this match and there was like froth around her face." Asked what happened next, he said, "Chris come back out of the gully and started walking back up towards the van so I followed behind him." Q. "Well then when you got to the van was the dog there still?"
 A. "Yes, Lowery was trying to pull it out. The dog snapped at him." Q. "Then did you get, - both of you, - into the van?" A. "Yes, he told me to get in. I got in the van and we tried to turn around and he couldn't, so he backed up and turned around and went out the Muroa Lane about a mile from the track." Q. "What happened then?"
 A. "He stopped the van and told me to see if I could get the dog out. I went around the back, and whistled it and pulled the cord and it came out." The place where that happened, it appears from other evidence, he pointed out later to the detectives. He said "It's called Muroa Lane".
 Asked where they went after that, he said "We went back into town, I think we went to the sports centre first, next to the -" Asked whether there were billiard tables there he said, "Yes, Lowery pulled up outside there and went inside and I went after him, talking to a couple of blokes from Port Fairy." Asked whether there was any conversation in the car between leaving the Mount Napier reserve and getting to the sports centre

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he said, "Yes, coming back I asked Lowery - I just asked him what happened and he said 'What's the matter, are you drunk or something?' And then I told him I was stoned. And he laughed and he said 'I killed Rosalyn' and he said 'You helped me', which made it pretty confused. He seemed to be sort of bragging about it, you know, how he smashed her and all this." Q. "Was there anything else said?" A. "He made up this story about a hitch hiker going to Port Fairy but I couldn't grasp it." 10
Asked who made it up and what did that person say? He replied, "Lowery suggested we'd have to say where we were, so he came across with this thing about a hitch-hiker, long hair, going to Adelaide, we gave him a lift to Coleraine." "Did he give any description of this mythical hitch-hiker?" "Yes, he said he had a beard and sandy coloured hair, fairly long. He had denim jeans on." Q. At this stage when you were driving back and he was talking about this hitch-hiker and telling you he 20
killed her, were you still on the trip as a result of the LSD? Were you still affected by the LSD or what was your state of mind at that stage?" A. "I was starting to come down then, coming out of it". Q. "Coming out of the hallucinations?" A. "Sober up sort of thing." He went on to say that Lowery had a transistor and told King that it belonged to Rosalyn. He said that Lowery said to get rid of it, and so they drove out to Hensley Park Road; he said Lowery instructed him to throw it out the 30
window, he did this, and they went back to Shakespeare Street then. He said they went later to the midnight drive-in, - about quarter to twelve, they left for it. He was asked "Did you have any knowledge at all prior to seeing Lowery tie Rosalyn up of the existence of the flex in the car?" He replied "No, I hadn't seen it before." He said that after going to the drive-in he was driven home by Lowery to his own home at approximately 3 a.m. He said that on the Monday he thought Garry Bailey 40
came round and they went to Lowery's flat at about 2 o'clock and he was asked "Did Sugar Bailey say anything to you about what you had done or ask you what you had done last night, you and Lowery?" A. "Yes, he asked us what we did last night and Chris told him 'We gave Rosalyn a lift to the Commercial pub and then we gave a bloke a ride to Coleraine'." Asked, "At about 5 o'clock that afternoon did Lowery come round to your house?" He replied "Yes, he came round about, I suppose it would be 5-ish 50

and asked me if I'd give him a hand and shift his stuff down to Woodbridge Street", and he agreed that that meant furniture and belongings. He said, "I walked up to his flat after tea and shifted the stuff." Q. "And helped him to shift the stuff then?" A. "Yes." Asked whether there was any conversation then about Rosalyn he replied "He asked me if I had the story straight. I said I wasn't sure and he started to explain all the fine points and all this other stuff. That was really all that was said on the Monday." And he was asked "On this Monday night while you were helping them moving, I suppose, or afterwards, was his wife Hazel there?" King replied "Yes." Asked whether there were other people there, he said "I think one of Lowery's sisters. I'm not sure if it was, - I think it was, - Mrs. Harris." He was asked "Did you pass any remark on that occasion to Mrs. Lowery about the baby she expected?" He replied "Yes, I said, 'I suppose you're looking forward to having the baby.'" And he was asked whether he said it just as he said it in court or whether he had some threat in his voice or tone and he replied "No, no threat at all." And he said that Mrs. Harris lives in Hamilton.

As to the Tuesday he said that Lowery came to the shop at five to 5.30 that night and asked King if he had heard anything. King told him that they had found the dog out at Muroa Lane or somewhere, and he told Lowery of a visit by Policewoman Overend and he said to Lowery "Probably have to make a witness statement."

On the Wednesday he said the accused Lowery he thinks might have come around just before he finished work and asked him if he would help shift - pick up a table from Tahara and bring it into town. Tahara was Marilyn Cooper's parents' place apparently. Asked "Where was it to be brought from Tahara, to where?" He replied "Into Hamilton, I'm not too sure where it was supposed to be left." Asked what he said when this request was made, his answer was "I said 'Yes', I suppose I would", and he agreed that he did go out with Lowery to Tahara and on the trip Lowery, he said, asked him "If I knew that the body had been found". King said that he told Lowery that it had been and he told Lowery that he, King, was not supposed to leave town because

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he would probably be wanted for interview later on that day. Asked whether anything further was said, he replied "He just asked me if I was sure I had the story about the hitch-hiker straight." He said that then they went up to Lowery's flat first, he thought they had picked up Lowery's mother-in-law and took her to the flat, left the mother-in-law and Hazel Lowery there and went out to Tahara, were out there for about half an hour or so; they came back, went to the flat and Mrs. Bray told them that the police wanted them for questioning. He said, "We took the table down to Chris' father's place and went to the Hamilton Police Station", where he said they were interrogated by Police Officers, and each made statements which are in evidence. 10

He said they left together and Lowery asked him what he had said in his statement and he told him. That was the Wednesday statement, those are the two Wednesday statements of the - about the Commercial Hotel. Asked about the Thursday he said he left for the police station about 2 o'clock and there made another statement, that is the Thursday statement that you have already been told about. He said that on the Friday he saw Lowery and he took clothes to the police station and Lowery was there a bit later than he was. He said that he saw Lowery in the street in Hamilton in the afternoon; and on the Saturday he said Lowery came round about 10.30, when King was just having breakfast; and he said he did go somewhere with him. He said, "We were going down to the pub first, we were going down there, but we drove around, then he went back to his inlaws' place in Shakespeare Street to pick up some money", and he was asked whether they went for a drive. He replied "Yes, he took us for a drive up - went out on the Mount Baimbridge Road and back into town that way." Q. "While you were there was anything said by Lowery?" A. "He said 'Things look pretty sweet', I said, 'Don't be too sure of it.' He said, 'Oh, we'll find out anyway,' that's about all that was said." And King said that they went down to 3 Shakespeare Street and there they found three Detectives waiting for them out the front, and they were taken to the police station where the admissions of the Saturday were made. 20 30 40

Questioned about the film King said, "I was

showing them what I thought Chris was doing at the time." And that was gone into in some detail in cross-examination. He was asked there, "After walking up the track for some time you pointed to the left of the track as you walked along in a southerly direction and said 'Can I have a look over here'?" A. "Yes, I said that a couple of times." Q. "And you walked off the track and down a depression?" A. "Yes." And then the questions and answers follow in this form; "Down in that depression you paused for some time, did you not?" "Yes." "And you said 'This could be the spot where the body was left?' "Yes." "And that was your belief, was it not?" "Yes." "You were depending on your recollection of the events of the previous Saturday night?" "That's right." "Of course it was dark, quite dark when you were last in that spot, was it not?" "Yes." "Did Morrison say 'Would you show us where she was kicked?'" "Yes." "Did you say 'Up on the track?'" "Yes." "And then you walked back up on the track with the police?" "That's right." "Did you then move forward and look around?" "Yes." "And then you said 'Somewhere between these two - these two trees' and indicated two trees waved your arm backwards and forwards?" A. "Yes, that's right." "You recognised the two trees, did you?" "Yes." "Did Morrison say to you 'Demonstrate with Rippon what went on?'" "Yes." "And you said, 'I believe she was lying on the ground here?'" "Yes." "You indicated the spot you were talking about?" "That's right." "And then did you walk towards a forked gumtree?" "It may have been forked." "Did Morrison say to you 'Show us where?'" "Yes." "Did you say 'Lying this way?'" "Yes." "Face down on one side?" "Yes." "Mr. Rippon lay down, is that right?" "Yes." "You said, 'Chris kicked her a couple of times, Chris kicked her in the ribs a couple of times?'" "Yes." "Did you say 'I think he was standing this side, turned her', did you say that?" "Pardon?" "Did you say 'I think he was standing this side, turn her or turned her?'" "Turned her?" - and then there was a break in the questioning and it was pointed out that the transcript, as corrected, read "King said 'I think he was standing this side, turn her - turned her, lifted foot.'" Q. "Is that what you said?" A. "Yes." "And you indicated how Lowery was doing the kicking

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then, did you?" "Yes." "And you demonstrated with your foot how he had stamped down on her head?" "Yes." "And you said as Mr. Rippon was lying on the ground, 'her head was turned around this way'?" "Yes." "And you adjusted Mr. Rippon's position, did you?" "Yes, to the way I thought it was." "Did you say 'I think Chris kicked her near the eyes somewhere'?" "Yes." "Did Morrison say to you 'What then'?" "Yes." "Did you say 'I think he told her to stand up'?" "Yes." "And he tried to strangle her with her bra?" "That's right." 10
"Well then Morrison handed you a handkerchief?" "That's right." "And he said, 'Do you want - referring to Mr. Rippon - to stand up?' Do you want him - referring to Mr. Rippon - to stand up'?" "Yes." "And you said 'Yes', Rippon stood up and you demonstrated what had happened to those present and the camera man, by placing the handkerchief round Rippon's neck?" "That's right." "Did you say he was around behind her?" "Yes." 20
"Pulled back?" "Yes." "Shoulder in back?" "Yes." "I couldn't watch, I turned away and walked to the car?" "That's right." "Did you say, 'I came back, she was lying on the ground'?" "Yes." "Morrison referring to Rippon said, 'Put him in position'?" "Yes." "And you did that, put Mr. Rippon into position?" "Yes." "Did you say 'She was on her back, moaning'?" "Yes." "I asked Chris, 'What happened' and he said he hit her, I remember about the brown cord'?" "Yes." 30
"And Morrison said, 'Show us with this string', and gave you some string?" "Yes." "Did you say 'He rolled her on her stomach'?" "Yes." "And you rolled Mr. Rippon over?" "Yes." "Did you say 'Sat on back, put cord around, grabbed and pulled back?' "Yes." "And you sat on Mr. Rippon's back and showed those present what you were talking about?" "Yes." "Did Morrison say 'What then'?" "Yes." "Did you say, 'He wrapped it around her several times'?" "Yes." "And did that to Mr. Rippon. 'Grabbed both ends like this and pulled her into the arena - into the area I have shown you before'?" "That's right." "He dragged her like this' and then you pointed to the place?" "Yes." "That was the depression that you walked off into, into the left of the track, is that right?" "Yes." "Did you say, 'She was then lying on her stomach'?" "Yes." "And then you led Mr. Rippon in the direction that you had seen the girl dragged?" "That's 40 50

right." "Rippon lay down and you say 'This was up, pulled back, and pulled her legs back up' and demonstrated how she was tied, is that so?" "Yes." "Did you say 'And then grabbed her elbows and wrenched it back'?" "That's right." "And you showed the sort of wrench that you were talking about?" "Yes." "Did Morrison ask you where you were standing and you said 'here' and pointed to the place where you were standing?" "That's right." "Morrison said - 'You said he rolled her over and struck a match'?" "Yes." "You said, 'Rolled her over yes.' And you then bent forward to demonstrate?" "Yes." "Morrison said, 'Where did you go then?' and you said, 'Walked up here back to the car'?" "That's right."

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Well returning to the evidence-in-chief King said, as I have mentioned that what he was showing them was what he thought Chris was doing at the time. He was then asked in chief, about the written statement of the Saturday and asked to keep it in front of him, and he was asked this, "Do you see on p.2 of the record of interview, towards the bottom, you were asked 'Would you tell me in your own words what happened on the Saturday night?' And then there was a long pause and did you say 'The only thing I can remember is about Mount Napier, I don't remember going out there' or words to that effect?" "Yes." "And then you say there, 'Chris was kicking her on the ground', in fact is that what you saw happen at the scene?" A. "That's what I thought I saw happen, yes." "You say - asked why was he kicking her, you said 'I don't know, he went mad', what are you referring to about that?" A. "I'm mainly referring to my thoughts afterwards." Q. "In what way do you say he went mad when he was kicking her?" A. "He seemed to be sort of enjoying it more or less." Q. "You say in the record of interview he (meaning Lowery) 'Had hold of her arm and she complained that it hurt'?" "Yes." Q. "Did that happen? Do you recall that happening at the scene?" A. "Yes." And asked what the girl said when she complained that it hurt, he replied, "I thought she said it was broken." Q. "And what did Lowery reply to that?" A. "Stiff shit." He was then asked to read through the rest of that page, which is p.3 of his record of interview and then to read p.3 down to the question - "What did you do then?" And his answer, "Tried to get the dog out of the back." He was asked, "Have you

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done that? Have you read that far?" And he was then asked, "Well now, so far as your recollection goes, is that account on those pages up to that point, to the best of your recollection, accurate as to what occurred in fact on this Sunday night?" A. "Yes." Then he was asked to go to p.5 and he was asked.. it was put to him, "You were asked some more questions there about what happened out at the track." And he agreed. He was asked to read p.5 down to the answer that he gave towards the bottom, "I thought he might turn on me." And he was then asked to read p.5 down to there, he was then asked rather, "If you read p.5 down to there, is that account that you have given of the events at the track to the best of your recollection accurate?" And he replied, "Yes."

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In re-examination he was asked some questions about the effect of the drugs that he took and what he meant by "strobing." He replied, "Getting hallucinations, then stop, things are clear, and then you get hallucinations again." It was put to him: "Well you have said that there was a period that you cannot recall at all, or very little, practically nothing of it, have you not?" He replied, "That's right, yes." He was asked, "Then you have mentioned a strobing effect?" A. "Yes." Q. "When you are in the hallucinatory period of that strobing effect can you afterwards recall what went on in that period, including the grotesqueness and distortion?" A. "Yes, I can." Q. "So far as recall is concerned, you can recall the clear periods, the relatively clear periods during the strobing also?" A. "Yes." Q. "What do you say about the accuracy of what you recall occurring during the clear period, not the hallucinatory period, but the clear periods of this strobing?" A. "Pretty accurate." Q. "What do you say of the clarity in your mind of recalling the hallucinatory period, although it includes distortion?" A. "Pretty clear." Q. "Is there any possibility that in either period, let us take them singly- is there any possibility that in the clear period you could be transposing yourself with Lowery?" A. "No, not at all." Q. "Is there any such possibility in the hallucinatory period?" A. "No." Q. "When you are recalling the hallucinatory period that is at the present time for instance or at any time during the trip, - any time after the trip is completely over, when you are recalling it, are you able in your recalling to distinguish between distortion and

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what is to your knowledge fact?" A. "Yes." Then he was asked about the conversation between him and Mrs. Johnstone, (then Policewoman Overend) on the Saturday afternoon, 6 February, and he was asked, "When she came in what was your condition then?" A. "I was very upset." Q. "What did you do?" A. "I was sobbing a bit." Q. "Did you say anything to her?" A. "Yes, I said 'I'm sorry', that I didn't do it. And I asked her to write to my girlfriend in Sydney and she then left the room."

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He gave evidence that the document, Exhibit "K1", he thinks is in Lowery's handwriting and that it was handed to him at the holding cells here by Lowery and that when Lowery handed it to him he said "This is what you want to say in court." He agreed in cross-examination that he and Lowery had been together for months in Pentridge, and that they had come up in the van together, and it was put to him, "Methedrine was mentioned for the first time, was it not, by you in the box in the court?" He replied "I may have mentioned it to Lowery at the prison, but the first time in court I have mentioned it and to the police."

Then after that document had been read through he was asked "Is the account that you have given in the witness box a true account of the events which occurred, all the events of which you have recounted?" He said, "Yes." He was asked "Insofar as that document which you have just read out conflicted with that, what do you say about it?" A. "It is completely false." Q. "Did you do anything out at the scene by way of striking, kicking or punching Rosalyn Nolte on Sunday 31st January?" And he replied "No." That document is an exhibit in evidence and you will have an opportunity of looking at it in due course, but it starts off with the words "At approximately - blank - on Sunday January 31st, I took - blank - tablets of Methedrine until 7.15 p.m." Where I have used the word "blank", there is a space in the writing. And then the document goes on, "At 7.15 Christopher Lowery arrived at my parents' house at 46 Stephens Street. About five minutes later we left Stephens Street. As we backed out the drive I took an envelope from my pocket and from it I took a tablet of L.S.D. At about 8 p.m. in the company of Lowery I saw Rosalyn Nolte leading her corgi dog along Gray Street. She waved to me and I told Lowery to stop and pick her up. When she came up to the van she asked Lowery if he would drive her to Kenny

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Street to see Garry Bailey. I told her that Bailey would not be home as he had gone to a party at Toolong. She asked us if we could take her there and we agreed to do this. It was my intention to have sex with her. By this time the drug was beginning to work. I asked Lowery if he knew the way to Toolong and he said that he didn't, so then I directed him to the Mount Napier Reserve. When we arrived there I directed Lowery to a small track. When he stopped the van I asked the girl if she would go for a walk with me and she said that she would. When we were out there, when we were out of sight of Lowery I asked her to take her clothes off and she agreed. Suddenly I became excited and began to strike her around the head. She fell to the ground. I grabbed her arm and stood her up. She cried out as I pulled on her arm. I then struck her again and she fell to the ground. Then I returned to the panel van where Lowery had parked it. Lowery was sitting there drinking beer. I saw a length of electrical cord lying - I seen a length of electrical cord lying on the seat of the van and I took this and returned to the girl. When I got back she was on her feet and she was holding her arm. I grabbed her and put the flex around her neck and pulled it tight. Lowery then came along the track and attacked me. I pushed him away and he fell to the ground. He stood up and attacked me again. I let go of the girl and knocked him to the ground again. I told him that if he interfered again I would kill him. I then told him to gather up her clothes and throw them away. I dragged her off the track and tied her up. Then Lowery and I left the scene. Lowery had nothing to do with the killing and I forced him to do what he did. The next night I went to Lowery's flat at about 7.15. Lowery went to the toilet and I made threats to his wife. On Saturday 6th February I seen Lowery drive past my house in Stephen Street and I signalled him to stop. We both remained there for about 20 minutes and then we went for a drive. While we were driving I told Lowery I thought I'd been found out and I told him that if the police got me he was to say that he was involved. He wasn't involved. I made more threats at this time." And as I have said, King went on to say that the account he had given in the witness box was the true account and that the account in the document was completely false, and that he did not do anything out at the scene by way of striking, kicking or punching Rosalyn Nolte.

I want then to turn to some of the expert evidence called in support of King's defence, and first the evidence of Professor Cox. He told you that on doing the Rorschach Test on King there was consistent evidence of a rather massive denial of underlying feelings of depression. He said, "Secondly, there was consistent evidence of what I would describe as a passive dependent kind of personality", and as to the next finding, he said, "There was also evidence of some impulsiveness or impulsivity." He said, fourthly, that there was evidence of some quite intense aggressive impulses over which his control was rather tenuous or rather weak. He said there was evidence of some capacity to relate adequately to other people, to feel with and feel for other people, there was evidence of some capacity of that kind. Then as to the Thematic Apperception Test he gave some description of what he had done, and he said, "Combining the two together, the conclusions that I would draw would be that the test picture is that of an immature - by that I mean immature for a young man of his age - an immature emotionally shallow youth who seems likely to be led and dominated by more aggressive and dominant men and who conceivably could act out, or could behave aggressively to comply with the wishes or the demands or the orders of another person."

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Then in relation to the personality of Lowery, he said "The first finding was that he showed consistent evidence then of little capacity or - sorry, small capacity if you like, to relate adequately to other people. There was little evidence of capacity to relate adequately to others. He showed a strong aggressive drive with weak controls over the expression of that.. of those aggressive impulses. The third one was showing what I described as ostentatious compliance, covering a basic callousness. The fourth one was there was evidence of impulsiveness, of impulsivity." Under cross-examination he said that in the thematic apperception test of Lowery one of the stories given indicated some sadistic pleasure in - was obtained from observing the suffering of other people. He was asked whether in relation to King there was any such indication in the tests and he said 'no.'

Going back to the question of Lowery, he said,

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"Yes, the overall personality picture, if I could put it that way, would be of quite intense aggression with poor control over those impulses, quite marked tendency to behave impulsively, that is with little reflexion of the consequences of such acts. The test records suggest certainly what I'd describe as a self-centred sort of personality." He was asked whether there was a name for that type of personality and he said, "The name that is commonly used is psychopathic personality." And he went.. then he was asked, as I mentioned to you this morning, the question - "The word 'psychopathic' has a somewhat alarming sound, perhaps. I gather that it is not a description of a form of insanity or mental disease?" He replied "No." Q. "It is a particular class of personality, it is the name for a particular class of personality, is that right?" And he replied, "Yes." And he said that it is not a statement of either a psychosis or a neurosis.

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Then Professor Cox was asked in cross-examination some questions involving comparison. It was put to him, "Now Professor Cox, you spoke of the accused Lowery as a psychopathic personality and you explained what you meant by that?" A. "Yes, that his test results were consistent with that." Q. "Psychopathy is a personality disorder?" "Yes." Q. "And do those traits that you spoke of with respect to each of the accused, that is those traits which they share in common, do they point in the direction of the existence of this particular personality disorder?" A. "Yes, the combination and particularly the intensity of them, yes." Q. "And there are degrees of this disorder, it is more severe in one personality than in another?" A. "Certainly." Q. "What do you say about the accused King? Did you make a conclusion as to whether he had this disorder or not?" A. "I would conclude that he showed some such feature, but not all the features, and the features he did show were less intensive than the other." Q. "Well he showed some features of a psychopathic personality?" A. "Some features of - that were consistent with that description, yes." Q. "But he was not so severe a case of psychopathy as Lowery, is that what it comes to?" A. "Yes." And at p.626, in further cross-examination, he was asked, "Did you ever test King when he was under the influence of L.S.D.?" A. "No." "Or under the influence of methedrine?" A. "No." "Or under the influence of alcohol?" "No." "Or under any combination of those?" "No." Q.

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"Well you are unable to say, are you not, Professor, what he would be like in comparison with Lowery if he were high on any one of those factors and Lowery was not?" A. "Yes, I could make no such comparison."

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10 You will remember that in regard to this question of psychopathic personality as I mentioned to you earlier, Dr. Springthorpe was called in reply and he expressed the view that it is unwise to make a diagnosis of psychopathic personality without having knowledge - merely on tests and without having knowledge of a history of bad conduct extending over a substantial period. And he said that he had examined Lowery for nearly two hours and got a history of Lowery's past from Lowery and had found in that interview and that history no evidence of psychopathic personality. There is now, of course, some evidence of Lowery's past behaviour but that was not put to.. the detail of that was not put to Dr. Springthorpe except in relation to this document Exhibit "K (1)".

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30 Now I want next to refer you to some passages in the evidence of the witness Balla. He said that he took an electroencephalogram of King; that the recording made by that test, he concluded, was mildly abnormal and that this is the type of recording frequently seen in immature personalities or patients with personality disturbances. He was asked, "That type of abnormality is found where there is a personality disorder or disturbance?" A. "It may do, yes." "It is commonly found in cases of psychopaths, is it not?" A. "It may be found in psychopaths, yes." And he said that it may be a confirmatory feature. Then as to the question whether the dosage of drugs which King alleges he took could have made King's acts involuntary, or prevented him from having the intention alleged by the Crown, there are some passages in the evidence of the witness Balla that I wanted to refer you to. This question was put to him "Eight small cans of alcohol, Doctor, nine tablets of Methedrine and one tablet of L.S.D. Under the - assume that that has been taken on the occasion and at the times I have mentioned to you earlier, what is the effect which I have asked you to assume on him, the strobing effect, is that consistent with the taking of that dosage of

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those drugs at those times?" A. "Perhaps I should say that unfortunately I cannot remember how many milligrams there were in each tablet, so -" Q. "I do not know that there is any evidence about that." A. "Well certainly this amount of drugs could affect a person in this way, and circumstances are always terribly important, and different people are affected differently in different circumstances." Q. "What do you say as to a person in that condition (which I take to mean strobing) at the scene having an ability to control their activities?" A. "People under the influence of this type of drug would in my opinion not be in complete voluntary control of what they were doing." Q. "Would they be able to will their conduct in the sense of it being a voluntary or willed act?" A. "That's what I was referring to. I believe that they would not be able to will exactly what they wanted to do." Q. "Would such a person be able to appreciate the realities of the situation around him?" A. "No, I think all this comes together due to the disturbance of consciousness and, as part of it, apart from not having complete voluntary control also they would not be able to appreciate exactly what was going on, and what's more the significance of what was going on. Even if they happened to see certain things or certain actions, they may not be able to appreciate what this really meant, what its deep significance was." Q. "And is this consistent - is it consistent with that condition that the person may be powerless to intervene?" A. "Well powerless in a psychological rather than a physical sense, in that they would not understand what was required." Q. "And in your opinion would a person in that condition, had he taken those drugs, be able to form an intention to kill or do grievous bodily harm?" A. "Well I think all this really comes back to what I said before, that once someone has such a disturbance of their conscious state if they are not fully conscious in this way, they cannot form an intent in the proper manner." 10 20 30 40

Then he was asked in cross-examination "Does not the disturbance vary as a function of the dosage?" He said, "It varies on a number of things, partly on the function of the dosage", and he went on to say "I said in the first place that I don't know the dosage", he said further, "The dosage requirements would be extremely variable from individual to individual and in the same individual 50

from one circumstance to the other circumstance, and I made it quite clear at the beginning, I hope, that I do not know what dosage this man had and I do not know what he would require."

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10 On behalf of King it is submitted that that evidence indicates that if King was having the hallucinatory strobing symptoms that he has deposed to, then he would probably not have done acts voluntarily; his actions would have been unconscious or involuntary and he would not have had the intention alleged by the Crown. The Crown, on the other hand, contends that in that evidence the key words are such words as "complete" or "entirely" and that the evidence even on the assumption that King did have those symptoms, would not justify the conclusion that he asks for, and the Crown also of course contends that you should not accept his evidence that he had the drugs.

20 Now as to the question whether these particular drugs are likely to impair memory there are some passages to be referred to. It was put to Mr. Balla, Dr. Balla, "L.S.D. induced amnesia is a rare if ever occurring phenomenon, is it not?" A. "That is true. L.S.D. by itself does not, I believe, does not usually give amnesia." Q. "And the same is true of Methedrine, that does not give an amnesic effect?" A. "No, not usually, no." Q. "And there is no reason to suppose that a combination of these two drugs would be likely to produce amnesia?" A. "No; we've got three drugs, haven't we?" Q. "Well just take these two for a start. We have not got to the eight cans of beer yet." And the witness then answered in relation to the combination of Methedrine and L.S.D. that they do not usually produce amnesia, or loss of memory.

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40 Then as to alcohol the witness said "I think that eight cans of alcohol by itself would be most unlikely to make you amnesic." He said, "I just don't think that eight cans of beer under normal conditions would make you amnesic, not usually, no, by itself." And it was put to him, "In fact, persons remember more under the influence of L.S.D. though in a perceptibly distorted form?" He replied "They often are like that, yes." Q. "They remember more than they would if they did

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not have it?" A. "That's true." Then he was asked, "But by the very fact that he may be distracted from his outer surroundings by his enjoyment of the drug experience under L.S.D. he would be likely to recall most if not all of that inner experience that he was enjoying?" A. "Yes."

And then in the evidence of the witness Bethune, these questions and answers appear, "Would it be true to say as a general proposition, that L.S.D. does not blot out memory?" A. "As a general proposition, yes." "Would it be true to say as a general proposition that Methedrine does not blot out memory?" "In the vast majority of people, no, it would be inclined to enhance it." "In the circumstances in which the person who has taken L.S.D." I am sorry, "If the circumstances in which the person who has taken L.S.D. are dramatic circumstances, if a dramatic happening is going on in his presence, there would be less likelihood still of L.S.D. operating to blot out memory, is that so?" "By and large this would be so." "Would you make the same observation with respect to Methedrine?" "With Methedrine, yes, provided it was not taken in a toxic dose. The question in my mind is was this stuff taken in an alerting dose or had it reached sufficient concentration in the bloodstream, assuming that eight pills were taken, and assuming that - or nine pills - and they were 5 milligram pills which after all is only an assumption on my part, there is a possibility here of toxic effects coming in, which could interfere with memory. But by and large, we would say that memory would be enhanced." "Assuming that it was a non-toxic dose you say that memory would be improved rather than blotted out?" "Improved, yes." And in cross-examination further this was put: "Does this bear on the unlikelihood - this very mechanism bear on the unlikelihood that the subject who had taken L.S.D. and Methedrine would describe a mental blackout? In other words, he would remember his inner experience?" A. "Usually he would remember his inner experience. I've only seen one person - it took me a long time to recall it - one person who went to sleep on L.S.D., I've only seen one." Q. "And how many people would you have seen during your course of study and research, Doctor?" A. "I wouldn't know, several hundred." Q. "Seen under the influence of L.S.D. and Methedrine, the subject we are inquiring into?"

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A. "Seen under the influence of L.S.D. several hundred, under the influence of L.S.D. and Methedrine a few." "I know you say that we might discount the alcohol, but have you ever had any empirical experience of the combination of the three?" A. "Yes." "Have you?" A. "No, not of the three, of the two. Alcohol and L.S.D. It tends to enhance the euphoria, a person is really happy." Q. "So this one person stands out as quite unique and extraordinary case does he not?" A. "Very unusual if he was asleep, that is if he was asleep." Q. "And indeed quite apart from your own research and experience, your reading, extensive reading, on the subject that you have described, inclines you to the opinion that amnesia, or blotting out of memory, blackout or whatever it might be described is most unlikely?" A. "It is unlikely, it is most unusual." There is one other passage relating to the influence of L.S.D., perhaps I should add this was at the end of the examination of Balla by Mr. Byrne: "Does the subject who was under the influence of L.S.D. recognise that the abnormal effects of the drug are abnormal?" A. "Quite often they do, but not always." Q. "It often produces a loosening of emotional inhibitions?" A. "Yes." As to the question of disregarding the effect of the alcohol taken, Mr. Bethune.. Dr. Bethune spoke of the evidence that had been given as to the amount of beer consumed on the afternoon, eight skinny tins. He said as to whether it would have a significant effect on his behaviour at the material time, "Not really, it may lighten it a bit, but if I remember correctly there were about eight skinny tins taken altogether over a period of some hours. It could lighten the mood a bit, but it would not affect it greatly." Q. "Could the alcohol be largely discounted for the purposes of the present discussion?" A. "I would think so." Q. "So you can discard that as an irrelevancy really?" A. "I would think so." He was asked, "Alcohol is a central nervous system depressant is it not?" A. "Roughly speaking, yes." Q. "It is more likely to depress the hallucinogenic effects of L.S.D. insofar as it would affect it at all?" A. "This has been noted, yes."

Then Dr. Bartholomew said that he agreed with the evidence of Mr. Bethune, except that he had a reservation as to whether the effects of

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the alcohol could be entirely disregarded. And he went on to say something about insanity. He was asked, "What do you say, Dr. Bartholomew, about the fact - assuming it to be a fact that the accused has sworn to on oath, - that he took at the times and in the dosages deposed, alcohol, Methedrine, L.S.D. and then alcohol again; assume that and assume the accuracy of his evidence as to what he saw, did and experienced at the scene." A. "Yes." Q. "If all that is true, what in your opinion was his state - the state of mind of the accused out at Mount Napier?" A. "It would be my opinion on any balance of probability that out at Mount Napier at the time he was there that he was suffering from psychosis which would be in my opinion a disease of the mind such as he would be unable to reason, understand adequately what was going on. And he was asked further questions in response to which he said "If he had taken the drugs that I was asked to assume that he had taken, and if I accept the evidence that he gave when I am asked to accept that he was in fact hallucinating out at that scene, I would then say that I would consider that a disease of the mind such that he had a defect of reason and would be unable to reason with a moderate degree of composure as to the wrongness of his or other acts." It was put to him, "Well then is what you are saying this, Doctor, that if the story is correct it is your opinion that at this scene he was insane?" A. "That is so" and he went on to say that he meant insane in accordance with the Macnaghten Rules as he understands them, and that he would not be able to appreciate the wrongness or reason with composure as to the wrongness of his own or other people's acts, he said, "I don't think he would have a true appreciation of what was going on."

Well, now there is still, I am afraid, a little more evidence that I want to refer to, called in support of King's defence and I still need, of course, to say what were his counsel's contentions in relation to it, what the Crown had to say about his defence. I think in view of the hour we had better adjourn.

COURT ADJOURNED AT 4.31 P.M. UNTIL 9.30 A.M. ON
WEDNESDAY, 23RD JUNE, 1971.

REVISED BY TRIAL JUDGE

HIS HONOUR'S CHARGE TO THE JURY (CONTINUED)

IN THE CASE:

THE QUEEN

-v-

CHRISTOPHER RUSSELL LOWERY & CHARLES IAN KING

(Twelfth Day)

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COURT COMMENCED ON WEDNESDAY, 23rd JUNE 1971 AT
9.35 a.m.

10 THE HONOUR ABLE MR. JUSTICE SMITH:

Mr. Foreman and members of the jury, yesterday afternoon in the course of this charge I had put before you a large part of the evidence to which I desired to refer which is relied on in support of the defence of the accused King.

20 To continue from that point I come to the question of King's character evidence. I have already told you what the use is that you may make of evidence of this kind. Now King himself gave evidence on this topic. He was asked "In 1970 were you before the Sunshine Court of Petty Sessions on a charge of larceny?" A. "Yes". Q. "And were you put on a bond to be of good behaviour for 12 months?" A. "That's right." Q. "Apart from that episode have you any convictions for violence at all?" A. "No." Q. "Have you ever been charged with any offence relating to violence or assault, or anything of that nature " A. "No."

30 Then something was said about his character by the witness Mrs. Johnstone. She was asked "Of course being a nextdoor neighbour and being the Policewoman you had plenty of opportunity to observe King and his family?" A. "Yes." Q. "To see the home and the home life?" A. "Yes." Q. "Would you say that Charles King was a quiet, introspective type of boy?" A. "Yes, he was quiet, introvert." Q. "Would you say that his family was a decent, law abiding family?" A. "Yes, very good family."

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Q. "To your knowledge the boy King had been working for the P.M.G. in Ballarat, then in Melbourne, and had then come back to live in Hamilton." Then there is the evidence of the witness Carless the school teacher. He told you that the accused King was at school while he was there in 1967 and 1968 and he said that during the period that King was a pupil at his school he had ample opportunity to observe him and observe his reputation among his classmates and school friends. He said "King, I would say, enjoyed the respect and esteem of his teachers and fellow students. He was always a co-operative student and he did have to my knowledge a very close personal relationship with another boy and it was very nice to see the friendship between the two of them."

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King himself told you that although he had taken drugs while in Melbourne during 1970 and been on trips on LSD, I think he said about fifteen times, he gave up drugs about five months before the girl was killed. And that, you may think, would seem to have been about the time when he left Melbourne and returned to Hamilton in August/September of 1970. There is evidence from Mrs. Johnstone about his mannerisms and appearance on his return from Melbourne which you may think bears out to some extent that evidence by King. But King, like Lowery, has to take the rough with the smooth in regard to this matter of character evidence, and it is to be borne in mind that there is evidence indicating that he was on 12 months' probation for larceny when he became in some way mixed up in Lowery's false report to the police about a stolen car. Then there is the evidence of the letter from the girl in Sydney and it is open to you to take the view that that letter is far from being a testimonial as to his past behaviour. And then there is the expert evidence of his personality which attributes to him psychopathic traits though not in so pronounced a form as in the case of Lowery.

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I want, shortly, to attempt to summarize for you the contentions that were put on King's behalf based on that evidence and other evidence in the case. But so that you may follow the bearing of some of those contentions it is necessary for me to say something first about some matters of law. The first matter that I want to say something

about as regards the law is the effect on a person's responsibility for crime of the fact that he has been intoxicated by drink or by drugs. Now the law says that the fact that a man has taken drink or drugs and has thereby been made bolder or more aggressive or sexually stimulated, or that his self control has been reduced or his awareness of surrounding circumstances and possible consequences reduced, none of those matters amounts in law to any defence whatever in respect of crimes committed in consequence of those altered attitudes of mind. In law, the fact that a man is intoxicated by drink or drugs cannot assist him in his defence to a criminal charge except in one or other of two ways. The first is this. If the amount of drink or drugs taken has been so great as to produce actual, even though temporary, insanity then a defence of insanity arises, secondly, the quantity of drink or drugs taken may have been so great that it prevents a man from forming the intention which is necessary and which the Crown has to establish as one of the elements of the crime, or even, in extreme cases, the drink or drugs may deprive him of consciousness or cause what his body does not to amount to voluntary action resulting from the processes of his own will. In either of those circumstances the taking of the drink or the drugs does amount to a defence, in the first case the necessary element of intention which the Crown has to prove is negatived and in the second case acts that the accused's hand does do not amount to conscious, voluntary action and consequently he is not criminally responsible for them. He is in those extreme circumstances a mere automaton who is no more liable criminally than a sleepwalker would be.

The other matter of law that I want to say something about at this stage is related to the defence of insanity. That is a defence which arises for the consideration of the jury only after the Crown has established the elements which the Crown is required by law to establish in order to constitute the crime. It is a defence which the law says the accused has to establish. The law says that the Crown does not have to satisfy you that an accused man was sane at the time of the commission of the alleged crime. The law says that he is presumed to be sane until the contrary is shown.

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It is for the defence therefore to satisfy you here that there is a good defence of insanity. And the defence has to satisfy you of that before you are entitled in law to make a finding of not guilty on the ground of insanity.

You need to keep clearly in mind, however, that the law does not require an accused person to satisfy you beyond reasonable doubt that he has a good defence of insanity. The burden on him in this regard is not the same heavy burden that rests on the Crown to prove the elements of the offence alleged. It is sufficient in law for an accused person to satisfy you on what is called the balance of probabilities that he has a good defence of insanity. In other words it is sufficient if he establishes to your reasonable satisfaction on the whole of the evidence, having regard to all the circumstances and probabilities of the case, that it is more likely than not that he has a good defence of insanity.

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If you take the view that it is more likely than not that the facts necessary to establish the defence are - were existing here, then the defence is proved. Well now you need to be clear in your minds as to just what are the elements which have to be established in order - on the balance of probabilities - in order to establish a defence of insanity.

The accused has to show, first, that at the time of the killing he was suffering from a defect of reason due to a mental disease, disorder or disturbance, and secondly he has to satisfy you that the mental disease, disturbance or disorder was, at the time of the act which caused the death, of such a character that it prevented him, the accused, from knowing the nature and quality of the act he was doing, that is the physical nature of the act he was doing, or else from knowing that what he was doing was wrong.

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You will see that there are two alternative ways in which the defence may be established. One is to show that the mental disease, disturbance or disorder was at the time of the act which caused the death of such a character that it prevented the accused from knowing the nature and quality, the physical nature of the act he was doing, and the

other is to show that the mental disease, disturbance or disorder was at that time of such a character that it prevented him from knowing that what he was doing was wrong.

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10 Now after that digression to deal with those aspects of the law, I want to come to what I take to have been the main submissions made to you on King's behalf. In the first place it was emphasized that the burden is on the Crown to prove every element of the charge beyond reasonable doubt. Next, it was put that the Crown here have not established that King ever understood seriously, or became a party to, any understanding or arrangement that the girl should be killed. Further, it is put that the Crown has not established that King did anything beyond failing to intervene, and that there is no evidence, or no satisfactory evidence, of any physical participation by King in the crime.

20 Next, it was put in the alternative that if you were satisfied that King did to some extent participate, the Crown has not satisfied you that it was a conscious willed participation as distinct from mere unconscious involuntary action. In support of that contention reliance was placed on King's own evidence and upon the evidence of the experts called on his behalf. It was also submitted that the Crown has failed to establish that King was able to form or did form an intent to kill or do grievous bodily harm, or an intent that the girl
30 should be killed or so harmed. And the evidence of the same witnesses was relied on in support of those contentions. Now those, as I followed, it, were the primary submissions and it was urged on you, on the basis of those submissions, that your verdict should be one of not guilty in the case of King.

40 Alternatively, and as a secondary point, it was put that you should find King not guilty on the ground of insanity if the Crown has established the matters that the Crown is called on to establish to prove its case against him. It was urged that the evidence here establishes on the balance of probabilities that King did take the drugs and did have the symptoms of blackout and hallucination that he swore to; and it was submitted that if you accept that - those two propositions, then the medical evidence establishes that he did have the state of mind which amounted in law to insanity; that he did have a defect of reason

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arising from mental disease, disturbance or disorder so as to be unable to know what was going on, or what he or Lowery was doing, or if he did know those things then to know what he or Lowery were doing was wrong.

Now in addition to those main submissions, many detailed submissions were made to you on King's behalf and it may be useful to remind you of some of them. It was submitted that the killing here was done by one man - Lowery. It was submitted 10 that having seen King in the box you should regard him as an honest and reliable witness. It was urged that this killing was a sadistic and callous one, and that on hearing of it your first reaction, the first reaction of any person, would be to ask what manner of man did this? And on King's behalf it was submitted that he (King) by the witnesses he called had tried to let you know. Then counsel for King went through the evidence bearing on 20 the personality traits of King as appearing from the evidence of Cox and through the personality traits of Lowery as appearing from that evidence. It was urged that you should accept Cox's evidence as establishing that each of these men had the character traits to which he referred, and it was put that you should reject the evidence of Springthorpe insofar as it tends the other way. It was pointed out that Springthorpe only said that he found no evidence of psychopathic 30 personality traits in Lowery and said that it was unwise to make a diagnosis of psychopathic personality without a history of bad conduct. It was urged on you that it was not surprising that Springthorpe found no evidence of psychopathic personality since he made no tests and merely interviewed Lowery and took the history that Lowery chose to give him. It was urged that the view of Cox as to Lowery's personality is confirmed by a number of aspects of the evidence as to the facts 40 of this case, and reference was made to a number of passages in the evidence including the evidence relating to the use of the expression "kill a chick", the use of the expression "stiff shit", the incident of the lighting of the match, the evidence about kicking and some other episodes. It was urged that the document, Exhibit "K1", was clearly the production of Lowery and that its nature showed supreme arrogance on his part when he would give such a document to King knowing that

King was represented by solicitor and counsel. It was urged that Lowery will lie at the drop of a hat and that his oral evidence amounts to a complete denial of what he told the police, and is a false account attempting to attribute everything to King.

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10 As to the evidence of Mrs. Lowery it was urged on you that the conversation in question took place in the presence of a third person, Mrs.
10 Harris, that what King said to Mrs. Lowery was not a threat, but merely a social comment, and that what has happened has been that, looking back at the particular conversation, Mrs. Lowery has come to think that there was some threat involved in what was said, but that she is wrong in that conclusion. And it was urged that anything sworn to by Lowery could not properly or reasonably be relied on as credible evidence against King and you were asked to remember also a warning that you
20 have been given more than once, that statements made by one accused out of court are not evidence against a co-accused, but only against the man who made them.

30 It was urged that King's own evidence is consistent with his statement to the police and it was urged that the reason why he did not tell the police that he took drugs was that he thought he was in enough trouble already without that. As to Overend's evidence of his saying that he was sorry and that he did not mean to do it, it is put to you that Overend, or Mrs. Johnstone as she now is, was mistaken; that the Detectives were extremely close by at the time taking notes; that their record does not corroborate her evidence; and that if this statement had in fact been made then they would have heard it and if they had heard it they would have recorded it. They would have recorded it, it is said, because it was important material against King, - it would have been important material against
40 King.

And then, finally, counsel for King came back to the point, - which of these two men is the more likely to have killed this girl? And it was submitted that your conclusion in regard to that inquiry should be "Lowery".

I come then to what the Crown have to say in

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answer to King's defence. In the first place it is put by the Crown that the story about drugs, blackout and hallucinations is just another in the series of false stories told by King which I have already made some reference to, the hitch-hiker story told by both, according to Cooper about 10.30 on the night of the killing; the Commercial Hotel story told by one or the other - by one in the presence of the other to Bailey on the Monday, according to Bailey's evidence; and the two successive statements to the police on the 3rd and 4th February from which I have read you substantial passages.

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Now in relation to this contention that the drug story is a fabrication it may be of assistance to ask yourselves "How do King's assertions in regard to this matter fit in with other aspects of the evidence?" King is saying he was blacked out in the car, except for a momentary appreciation that he was travelling in a car; and that he was an innocent bystander in a drugged and hallucinated condition, wandering round in the bush at the time of the killing. Well now as to the blackout, there is the evidence that I referred you to yesterday that Lowery admitted in cross-examination that the girl was decoyed into the car with a story of taking her to a party at Toolong. Now if that is true, then you may need to ask yourselves, - is it likely that Lowery would drive her ten miles out into the bush to murder her if his companion in the car had blacked out shortly after she got into the car and while they were in Hamilton? You might, if Lowery's evidence on that point is right, ask, - What was Lowery going to do when she discovered she was tricked? Who was going to control her while he drove the car?

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Then as to the scene of the killing, you have evidence from King himself as to Lowery having left the girl alone with him. You will recall the evidence as to her asking him for help. Well if that evidence is true, then you may need to ask yourselves, - Can it be that Lowery would have run the risk of having her with King when he had left King in a blacked-out condition in the car and King had been rambling through the bush in an hallucinated state? Would there not have been a grave risk of her escaping into the bush and hiding? The Crown, of course, contends that this

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was a crime which needed the co-operation of two men from the start, in the car, in stripping the girl, in seeing that she did not get away and in trussing her up.

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10 Now the Crown points out that King, according to the evidence, did not say anything to the Police at any time about being under the influence of drugs. The Crown says that would have given him a far better excuse than the one and a half dozen cans
20 of beer that he told them about, according to his written statement of Saturday the 6th. The Crown says that his explanation for failing to tell the Police cannot be believed. As to why he says he did not tell them, I would refer you to this passage in his cross-examination. Q. "And indeed Sergeant Morrison told you that in effect the Police had scientific evidence which put you at the scene?" A. "Yes." Q. "Is that what he conveyed to you by what he said? Did you think it was all up with you then?" A. "Yes." Q. "And you started to sob?" A. "Yes." Q. "And did you then decide to tell the truth?" A. "That's right." Q. "Well part of the truth was the truth that you were so stoned at the time that you could not help yourself?" A. "That's right." Q. "That was the major part of the truth insofar as you were concerned, was it not?" A. "Yes." Q. "But you did not tell that to the Police, did you?" A. "No." Q. "You told them, - and you were asked if you had been drinking?"
30 A. "Yes." Q. "You told them about the alcohol?" A. "Yes." Q. "But you kept the drug bit a secret?" A. "That's right." Q. "And it was your belief at the time that that was very important information in your favour?" A. "No, I thought it was information against me." Q. "Did you, did you? You thought they might charge you with taking drugs?" A. "That's right." Q. "That is why you did not tell them?" A. "That's right." Q. "That is your explanation, is it?" A. "Yes, that's right." And
40 the Crown submits that that passage shows that at the time he made this statement of Saturday, 6 February, to the Police King believed that it was all up with him in respect of a charge of murder; and that in those circumstances it cannot be believed that he would have refrained from telling them his real excuse of drugs if that had been true, - that he would have refrained from telling them that to avoid punishment for some minor offence of taking drugs. It may, perhaps, be of some

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importance, you may think, that the Police evidence indicates that Lowery, too, said nothing to them about drugs although, according to his present evidence he was aware at that time that King had taken drugs. And it may be, you would think, that if the drugs had been — had in truth been taken, Lowery and King would both have spoken of it.

Now the Crown contends that this defence of drugs was thought up by King or Lowery or both of them while the two of them were together for some months in the remand section at Pentridge awaiting trial, and the Crown contends that the document, Exhibit "K1", provides strong evidence of that, and that the blanks in it, to which I have already referred, are of significance. And the Crown contends that this view about the evidence relating to drugs that King has given is confirmed when you look at the evidence of Dr. Bartholomew. According to Dr. Bartholomew King, on the 16th May 20 of this year, gave Bartholomew to understand that he had taken Methedrine at 3 p.m. What is now said is that it was between 3 and 5, and the evidence of Bailey and Cooper gives support for the view that King and Lowery were still out at the dirt track until substantially after 5 o'clock. Bartholomew says further that King told him that the L.S.D. was taken one hour after the Methedrine. The evidence now given by King before you is that it was taken after the Methedrine but only long 30 enough after to pick it up, and less than half a minute after. And then it appears from Bartholomew's evidence that King told Bartholomew he thought some of the drug was still at Hamilton in a pocket, but King's present evidence is that what he had he flushed down the sewer.

The Crown contends that that evidence of Bartholomew shows that on the 16th May of this year the drug story was at an early stage of its development and that it is a false story. The 40 Crown also contends that the expert evidence given shows that King is in a difficulty about his story of the drugs because the symptoms and time sequence that he speaks of do not fit the normal operation of the drugs that he says he took. In particular the Crown points out that the scientific evidence indicates that blackout or alleged loss of memory would not have been usual and that the time

sequence as to the period of full effects is not what would have been normally expected.

I should, I think, refer you to some of the passages bearing on this. Dr. Bethune was asked by Mr. Byrne, "So this one person stands out as quite unique and extraordinary case, does he not?"

10 A. "Very unusual if he was asleep, that is if he was asleep." Q. "And indeed quite apart from your own research and experience, your reading, extensive reading on the subject that you have described, inclines you to the opinion that amnesia or blotting out of memory, blackout or however it might be described is most unlikely?" A. "It is unlikely, it is most unusual." And then it was put, "It comes down to this, does it not, that the account that King gives on the face of it tends to contradict the presence of an L.S.D./Methedrine reaction?"

20 A. "It does, by and large it tends to do that, correct." And then this question was put to him, "That is the kind of picture that I want you to direct your mind to, that the behaviour was normal except for that hour and a half, and that in that hour and a half the symptoms and behaviour were as described by King. Is that a normal picture of a trip, that is what I am trying to find out?"

A. "It is an unusual one, sir, it is possible, but it is unusual with that time sequence."

30 Finally, on this aspect of the evidence about drugs, blackout and hallucination, you may need to direct your minds to what you think about what I may call the coincidence in times. If King's contention had been that he himself killed the girl while he was under the influence of drugs, there would have been nothing about the times that called for an explanation. But as I understand it, what he is saying is that though he had not taken any drugs for five months he happened to take some at a time on this Sunday which gave him a blackout and hallucinations for almost the precise period

40 of about one and a half hours while his companion committed the crime. I am speaking of the period from about 8.15, just after the girl got into the car when he says he blacked out, until the time he and Lowery were returning to Hamilton after the girl had been killed, which you may think was about perhaps 9.45, and when, as he says, he was coming out of the effects of the drugs. And it is for you to consider whether that is - that coincidence of

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times affects the credibility of the story, bearing in mind that a shift of quarter of an hour or half an hour either way would have — in the times — would have left King with a period of time which he could be called on to explain. Well the Crown says that you should reject altogether King's evidence about drugs, blackout and hallucination, that it is all just another fabrication; and the Crown contends that the detailed knowledge of what happened out at the track there which is displayed in his written statement to the police, and in his actions in the film, and in what he said during the taking of the film, show that the drug story cannot be true.

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As to the expert evidence upon which King relied the Crown says that it was expressly based on the assumption that King did in fact have all the symptoms of blackout and hallucination that he alleged, and on the assumption that those were due to the taking of some quantity of these drugs, a quantity not known to the experts. The Crown said that if you reject his story as to his symptoms, the whole of the expert evidence becomes useless to him. And the Crown said further that even if you make the same assumptions as the experts were asked to make and did make, still their evidence does not warrant any inference that King's acts were unconscious or involuntary or that he did not have the intentions necessary to make him guilty of the crime charged against him.

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Then as regards the defence of insanity the Crown says that you should reject it altogether. The Crown says that the expert evidence relied on to support it is merely to this effect, that if he is telling the truth when he says that he took these drugs and that they gave him these symptoms that he described then those symptoms are those of a man temporarily insane, and that, therefore, if he is telling the truth, he was insane in a legal sense. The Crown says that that piece of reasoning and that proposition can be conceded, but that the truth of the matter is that King has fabricated this story about the drugs and his symptoms and that you should, therefore, reject altogether the defence of insanity.

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Well the Crown, as I have now indicated to you, says that you should reject the defences of

both these accused persons and that you should hold that it has been established beyond reasonable doubt by the evidence admissible against each of them that they are both guilty of murder. The Crown, as I have already told you, has the burden of establishing as against each of these accused persons, upon the evidence which is admissible against him, that a case of killing in concert is made out. And I would remind you that I told you that the facts of which the Crown has to satisfy you in order to establish its case on that basis are these; first, that there was an actual understanding or arrangement reached in some manner between the two accused that the girl should be killed, and secondly, that then while they were both present for the purpose of carrying out that understanding or arrangement, the girl's death was caused by a conscious, voluntary act or acts done by one or the other or both of them, acting under and in accordance with the understanding or arrangement and done with the intention of killing her.

I told you earlier that the Crown says further that even if for some reason you were not satisfied that there was an actual undertaking or arrangement between the two accused that the girl should be killed, nevertheless the Crown contends that you should at least be satisfied by the evidence admissible against each of them that the girl was intentionally killed by the conscious, voluntary act of one of them, no matter which, aided and abetted by the other; and I have directed you already that in the circumstances to which I have last referred the man whose hand causes the death is called the principal in the first degree and the man who aids and abets is called the principal in the second degree; and I have directed you that that is an alternative basis upon which the Crown can seek to rest its case. In order to establish the guilt of each of the accused upon that basis the Crown has to satisfy you beyond reasonable doubt by evidence admissible against that accused that the girl was intentionally killed by the conscious, voluntary act of one of them, no matter which, aided and abetted by the other. And I would remind you that I told you that aiding and abetting in this connection means the doing of one or other of these things when aware that the crime is being committed in your presence, namely, intentionally helping the principal in the

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of the State
of Victoria

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No. 3

Judge's
Charge to
the Jury

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(continued)

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first degree to commit the crime, or intentionally encouraging him by words or by your presence and behaviour to commit it, or intentionally conveying to him by words or by your presence and behaviour that you are assenting to and concurring in his committing the crime.

The Crown says that it has discharged the onus resting on it to prove the guilt of each of these accused persons by evidence admissible against him and that it has done so on the first basis of acting in concert which I have described to you, or failing that, then on the alternative basis of principal in the first degree and principal in the second degree. On the other hand, the defendant, - the accused, - Lowery says that he is innocent and that you should not be satisfied beyond reasonable doubt of his guilt and that King alone murdered the girl; and the accused King says that he is innocent and that you should not be satisfied beyond reasonable doubt of his guilt and that Lowery alone murdered the girl. The accused King also says that even if the Crown has proved as against him all the matters it has to prove to establish its case against him, nevertheless he should be found not guilty on the ground of insanity. The Crown says that you should reject that defence too, as well as the other defences raised.

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Now the law is that on the Crown case as presented, that is on the basis of acting in concert or alternatively on the basis of acting as principal in the first degree and principal in the second degree you cannot convict one only of these two accused. Either you find them both guilty or you acquit both. If, however, the Crown failed to satisfy you beyond reasonable doubt of the guilt of the two accused on those two bases then it would be open to you in law, if you were satisfied beyond reasonable doubt that King's defence was a fabrication, to find King alone guilty on the basis that Lowery's evidence of what King did, corroborated by evidence of King's admissions to the Police and to Mrs. Johnstone, satisfied you beyond reasonable doubt that King murdered the girl. Alternatively, on the other hand, it would be open to you in law, if you were satisfied beyond reasonable doubt, that Lowery's defence was a fabrication to find Lowery alone guilty on the basis that King's evidence of what

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Lowery did corroborated by the evidence of Lowery's admissions to the Police and his father satisfied you beyond reasonable doubt that Lowery murdered the girl.

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10 The verdicts open to you, therefore, in this case, are first that the two accused are both guilty on the basis of acting in concert or of having been principal in the first degree and principal in the second degree. Secondly, you may find them both not guilty. Thirdly, you may find one guilty and the other not guilty on the last basis which I have just put to you. And you should bear in mind, this, that if you should find the accused King not guilty, then you will be asked to say whether you so find on the ground of insanity or not.

20 Now, I think, gentlemen of the jury, that that is all that I wish to say to you at this stage. But I understand that counsel have some matters to raise. Is that so, Mr. Wright?

MR. WRIGHT: Yes, sir.

HIS HONOUR: Have you, Mr. Ogden?

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: Should they be raised in the absence of the jury?

MR. OGDEN: Yes, I think they should, your Honour.

HIS HONOUR: Very well. I would ask you, gentlemen, if you would not mind, to go to your jury room while I hear what these matters are.

30 JURY RETIRED AT 10.44 a.m.

HIS HONOUR: Yes, Mr. Wright?

MR. WRIGHT: May it please Your Honour, I should like to mention first, sir, the basis of the admissibility of the evidence of the witness Cox.

HIS HONOUR: Yes.

MR. WRIGHT: And we do not desire to resile in any way from our absolute objection to the admissibility of

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his evidence anyway, but, sir, I desire to refer
to Your Honour's charge.

HIS HONOUR: Yes.

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MR. WRIGHT: In relation to the issue whether the
accused had put his character in issue and so had
made admissible the evidence of Cox as to his
alleged psychopathic or sadistic personality.

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HIS HONOUR: Yes.

MR. WRIGHT: Now, sir, we submit that circumstance
of putting his character in issue or any other
circumstance in the case does not allow in
evidence of his criminal propensities in regard to
murder or any other crime. And furthermore, sir,
we submit that Cox's evidence only related to his
mentality or personality and that propensity
would be a further step, namely, that having such
a personality as is suggested he was unable to
control it and so was likely to translate his
criminal personality into action. We submit,
sir, that this proposition is in fact supported.
If I may refer to a book by a living author, it
is Gobbo's Australian Edition, sir, of Cross On
Evidence and I read, sir, from Chapter 14 which
deals with evidence of disposition and character
and in particular at p.376 and he is dealing,
sir, at the bottom of p.375 under the general
rubric cases in which relevant evidence is
excluded as being substantially relevant as
showing bad disposition only, and at p.376 he
said that many of the cases of incest and in the
middle of the page the learned author says, "On
a charge of incest, evidence of intercourse with
a relationto commit intercourse with
a particular person." And there is a reference
in Footnote 41, sir, to the case of R. v. Ball
1911 A.C., the report beginning at p.47, and
there, sir, in the House of Lords at p.64 it was
conceded in argument by Sir Rufus Isaacs, he
said, "The general rule is very clear. If the
evidence tendered is merely to show that the
person accused is of evil disposition it is
clearly irrelevant." Now, sir, we submit further
that the principle ..

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HIS HONOUR: I think that that line of authority
certainly raises a problem of considerable

difficulty here, but there is the question how far that general proposition goes. It certainly operates to limit what the Crown may do, but suppose we consider the case of Christie and Evans. Would Evans have been entitled to prove at the trial that Christie was a sadistic murderer, living in the same house with him?

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10 MR. WRIGHT: Well sir, with respect, I fully appreciate the difficulties arising from that, but that takes it, does it not, sir, into the sphere of action. If he merely proved that half the psychologists in England had examined Christie and had found that he had sadistic tendencies to sadistic murder, in our submission it would not have been admissible.

20 HIS HONOUR: I think we have to keep in mind the fact that there may be a distinction between the rules of relevance governing admissibility and particular rules of exclusion which operate as a matter of public policy, and if material is admissible under the general rules of relevance you then come to a question of whether there is some exclusion rule which bars it. It may be that that is the appropriate way of considering the problem here.

30 MR. WRIGHT: Well sir, we would submit that under both heads of relevance and admissibility the evidence is not admissible at all. I desire to refer first, sir, to the Victorian case, the judgment of the Full Court delivered by Sir Leo Cussen in R. v. Aiken, the report, sir, is in the 1925 V.L.R., the report begins at p.265 and at p.268 His Honour said this: and this was a case of larceny as a bailee, sir, and as to - there had been reference to a similar thing happening in another case. Sir Leo Cussens said at p.268 in the middle: "The mere similarity in the means adopted in the two cases.....likely to commit the offence charged." Now, sir, we submit that that is - so that was a case, of course, 40 sir, relating to external acts, not simply his interior mental composition and we submit that this is very much an a fortiori case. That case, sir, was mentioned by the Full Court in the case of R. v. Blackledge 1965 V.R., the report beginning at p.397 and at pp.398-9 the Full Court cites the very passage, sir, from R. v. Aiken to

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which I have referred. Now, sir, we submit that in a case such as this, and assuming that the accused has put his character in issue, that the same principle is applicable. And at p.416, sir, the learned authors discuss the cases of R. v. Rowton which was reported in - the footnote, sir, says, 1965, there are two - it is a nominate report Le. and Ca. are - the precise names do not readily spring to my mind, I do not think they are available here, sir. But it is Le. and Ca. 520 and it says this, sir: "In R. v. Rowton a schoolmaster was charged with indecent assault.....a matter about which he plainly knew nothing." And it goes on to stress: "The Court confirmed that rebutting evidence was admissible, but their decision on the form which evidence of character should take was criticised by Stephen..." a matter that does not seem to relate to this. "Plainly there is much force in this view.....not by specific acts or opinion." Lower down, sir, on that p.417 the learned authors say this: "When a party speaks to his character.....overt acts to which he refers." Now, sir, the 1947 case referred to is the case of R. - 1948, sir, I am sorry, R. v. Buttawasser 1948 Vol. 1 of the King's Bench Division, the report, sir, begins at p.4 and at p.6 Lord Goddard, C.J. said "Evidence of character nowadays is very loosely given and received.....and not dependent upon particular acts or actions." Well we submit, sir, that it appears to be a case of at best, of evidence in rebuttal and that it is not even evidence of any kind of external conduct at all, but is merely of some personality locked in the breast of Lowery until unearthed by this 10 minutes with the cards, and in our submission, sir, it is not on any principle admissible in rebuttal of character evidence.

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HIS HONOUR: It was not called as such, was it, or admitted as such?

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MR. WRIGHT: No, sir.

HIS HONOUR: The question is what - I suppose the question is what use are the jury entitled to make of it once it is in.

MR. WRIGHT: Yes.

HIS HONOUR: If an accused wants to rely on evidence of good character, can other material which has got in for other reasons, legitimately, be discussed - taken into consideration - by the jury in deciding what weight is to be given to the evidence of good character?

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10 MR. WRIGHT: Well sir, we submit that even assuming that it was properly admitted, and I think we made our position clear at the time, at most, sir, it is evidence of his personality, and Your Honour expressly put it to my learned friend in passages to which I will refer as to the way in which it was being brought in, and I refer, sir, to -

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HIS HONOUR: I remember those pretty clearly, I think.

MR. WRIGHT: Yes.

HIS HONOUR: Mr. Ogden and I had a difference of opinion.

20 MR. WRIGHT: Where Your Honour said, "Just before you go too far away from this matter of psychopathic personality, the word 'psychopathic' has a somewhat alarming sound perhaps, I gather that it is not a description of a form of insanity or mental disease?" "No, Your Honour." "It is a particular class of -" this is Your Honour's question, "It is a particular class of personality. It is the name for a particular class of personality, is that right?" "Yes, Your Honour, it is not a statement of a psychosis or neurosis, or of
30 neither." And the matter had been adverted to earlier, sir, at p.583. Now, perhaps if I may read one sentence, sir, from what fell from Your Honour at that stage, it is the eleventh line that I begin at, "And it appears to me that evidence by this witness as to the qualities of dominance, leadership, dependence, or submission, matters of that kind in either of these accused would tend to establish facts which will make it more or less probable that what really happened out at Mount Napier is what is
40 stated in one or other of those statements to the Police, - not a matter of intelligence but of general personality. That is the basis on which it appears to me that the kind of evidence in question is admissible." There are a number of others touching on it, but they appear to be the

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most direct statements, sir, as to the basis on which the matter was admitted, but -

HIS HONOUR: Yes, well then there was the further passage in which you asked me to rule in advance that the evidence must be confined to those particular traits and I declined to do that, and said that there might be other traits of which I was not instructed which would have some relevance.

MR. WRIGHT: Yes. And at p.612, sir, you said to the Professor, "I would like you to confine your list, you may say it is incomplete, but confine your list to those personality traits which are relevant to the question that we have been debating, as to which of these accounts as to how the events happened is made more probable by the personality of the parties and do not go into any which merely relate to tendencies towards any other characteristics, - that go to tendencies to lying or fraud, deceit or anything of that kind. Is that plain?" Now, sir, we submit that in the course of the charge in Your Honour's reference to the accused having put his character in issue and say that he must take the rough with the smooth, we submit, sir, that any jury cannot fail to take into account then, this material that was admitted on this limited basis as being evidence of bad character. And the matter is touched on incidentally, I think, by Lord Denning in the case of Plato Films & Ors. v. Speidel as to what is character, the report, sir, is in the 1961 volume of the Appeal Cases, the report begins at p.1090 and I read at p.1143, it does appear, sir, that Lord Denning was not dissenting in this case, and it is at p.1143 His Lordship said: "The only legitimate purpose.....then it should be discouraged." We submit, then, sir, that by putting his character in issue Lowery did not thereby let in evidence that he was the kind of man who would be likely to commit a murder, and this murder, much less did he let in evidence that he had traits in his personality which if not controlled would be likely to result in his committing murder. Now, sir, that is our primary submission and we submit that it is a matter of the greatest importance, of course, in any murder case, but particularly in a case with facts such as this, sir, where the accused, one of his main contentions is that there is no motive whatever shown for his acting

in this way and in our submission, sir, when the references to psychopathic tendencies and sadistic tendencies or psychopathic personality and sadistic personality taken with Your Honour's charge must inevitably lead the jury to believe that here is a motive, here we have a man who is the kind of man who would be likely to commit a murder. Particularly in view, sir, of the Crown's allegation which was adverted to by Your Honour right at the beginning of the charge that the Crown alleged that the accused derived sadistic pleasure from killing the girl in a specific sadistic manner - a special sadistic manner. Now, sir, in relation to that our primary submission is that in view of the importance of this matter and in our submission its great likelihood of being linked by the jury in that way in view of the charge that the jury should be discharged, sir. And that nothing that can be said to them can rid their minds of this inevitable link unfavourable to the accused. Now that is our first primary point, sir.

The second point is this, that in view of the way in which the Crown has put the case as set out in our submission correctly by Your Honour at the beginning of the charge that because of the prominence of the references to sadism that it was necessary, sir, with the greatest respect, we do not minimise the difficulties Your Honour laboured under in a trial of this length and Your Honour cannot be expected to refer to everything, of course, but we submit, sir, that in view of that specific reference to sadistic personality that Your Honour should have referred to Dr. Swinburne's repeated statements as to the lack of any indication of sadism - Dr. Springthorpe, I am sorry. And we refer, sir, as for such references by Dr. Springthorpe to p.714, sir. I do not propose - unless Your Honour desires me to - to read them, sir, but they are references to the absence of sadism or any indication of it on 714, 716, 722, 723 and 724. And to sum it up, sir, this was the last piece of evidence of Dr. Springthorpe, he said this: "Well psychological tests can be part of the evidence just as X-rays can be a part in diagnosing tuberculosis, but as I said earlier, I think it is unwise to make such a diagnosis on that evidence alone when there is no - so far as I know - no corroborating evidence

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of psychopathic or sadist behaviour in the past."
Now, sir, my understanding of Your Honour's
charge is that there was no reference to
Dr. Springthorpe having referred to the question
of sadistic behaviour or sadism at all."

HIS HONOUR: Is that not supposed to be one of the
psychopathic traits though?

MR. WRIGHT: Well, sir, all throughout, both in
Professor Cox's evidence and in Dr. Springthorpe's
evidence, the two were treated as distinct with
respect, sir. And Your Honour of course, I
think, did mention them both in relation to Cox's
evidence, the positive side, but with respect,
sir, we submit that Your Honour did not put the
other necessary counter-balancing side of the
other expert's evidence as to the lack of any
such indication of sadism.

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Now, sir, we submit further - thirdly, -
that in view of the - in relation to Cox's
evidence, that in view of the extremely dangerous
- because inflammatory nature it had - as to
psychopathic and sadistic personality in the
circumstances that I have described in this
case with its - with one of the main bases of
the accused's case being the absence of motive,
that it was necessary, sir, to give proper
balance to the charge that there should have been
references to these following points; firstly,
that Cox's tests were merely his subjective
impressions and were in no way objective. And
secondly, that the evidence was based on the
interpretation of one single picture as is set
out at p.612 of the transcript, the whole thing
taking approximately 10-20 minutes and as against
the man's 19 years of unshaken character, apart
from the one incident with a motor car, and
finally, sir, that there should have been a
reference with respect to the very limited
nature of the admissibility of the evidence.

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And with respect, sir, we submit that though the
basis of its admissibility was clearly stated in
limited terms in his earlier passages, yet
before the jury that was not adhered to, sir,
that it was suggested without any refutation from
Your Honour that it had more extensive
applications, that in fact it was not specifically
confined before the jury particularly in reference

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to the character allegation as letting in character evidence, that that evidence was confined in the way Your Honour had first referred to it. But there was nothing in the charge to bring to the jury's mind that it was so confined, and I am reminded, sir, that any of the concessions made by Cox as to the effect of the 19 trouble-free years was not referred to at all, and the reference, sir, is by Cox, I think it was put to him at p.623.

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Now, sir, a fourth point, sir, as to the character evidence, the charge contains considerable detail as to matters weighing against Lowery's character, but no reference was made, sir, to the important further element not only that he had not been convicted of anything, except driving - and it was an unroadworthy car, sir, not a dangerous car, incidentally, that is of no moment, but no reference was made to the fact he had never been charged with anything else. We specifically put that in, sir, that he had never been charged with anything, apart from this murder...

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Now fifthly, sir, as to our submission that the evidence was consistent with the girl having been unconscious from the time when King was with her alone down the track, according to Lowery's account, and returned to collect the flex, now, sir, we submit that - our submission that the girl was unconscious is supported by the evidence of Dr. McNamara at 320 and Dr. Dick at pp.357 and 358, an unconsciousness which may have been caused by the blows to the head and the blows to the - under the chin and the pain of the fractured elbow. Now, sir, we submit that that is of great importance in two ways, firstly as showing that King, by himself, dealt with the girl before returning for the flex and secondly as to King's ability to tie the girl up in however involved a fashion without any assistance if the girl was unconscious, and we submit, sir, that since the bases on which the accused Lowery was putting his defence were fairly simple and clear that this is one of them, sir, and that the balance of the charge required some reference to this evidence of the Crown witnesses as supporting this very allegation.

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Next, sir, as to the allegations that the

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crime was a cunningly thought out and pre-conceived plan, now, sir, the answer which the accused made to that allegation was a clear one, sir, which was basic to his whole defence and it was this, that if you have cunning plotters premeditating a murder, then, sir, it was absurd to suggest that any such plan could conceivably have included taking the girl in a most public manner, from a most public place well frequented by local people at the time if the intention was to take her away and murder her. 10

HIS HONOUR: Did not someone say there was no-one about at the time?

MR. WRIGHT: Well, sir, it appears that Kevina Butterworth had come along, that other people were there, that people were sitting on the bonnet of the car, it was 8 o'clock on a summer evening on a holiday weekend, sir, in the middle of Hamilton, and our submission is that there could not have been a more public place from which to take the girl. 20

HIS HONOUR: I was only trying to recall whether there was not evidence from one of the witnesses that there was no-one about at the time the girl Nolte would have been taken into the car and I thought some evidence that Hamilton on a holiday evening was not a busy place.

MR. WRIGHT: Well, sir, in any event we submit that in view of what had happened before, that Miss Butterworth had come along, that Miss Nolte then comes along and a number of people in fact did see this well known car driven by well known people - containing well known people, and we submit that a number of people did in fact see Miss Nolte and it would be absurd to suppose that they take the risk that nobody would see them. And we submit, sir, that that, as it was such a basic element in the accused's defence, should, with respect, have been referred to. 30

Now, sir, finally, as to the reference of psychopathic personality as being evidenced by the incident of the false account of the - by Lowery, so it was said, in relation to the accident to his car earlier, now we submit, sir, that it appeared that the syllogism was this, 40

that Lowery had given a false account about an incident with his car hitting a kerb -

HIS HONOUR: Let me stop you, Mr. Wright. Is this something in Mr. Ogden's address that you are referring to ?

MR. WRIGHT: I thought, sir, it was referred to - earlier incidents as bearing on his personality, I thought Your Honour did refer in the charge to that.

10 HIS HONOUR: I do not remember referring to this matter as a symptom of psychopathic personality. I referred to it when I was dealing with his reliance on evidence of good character I think.

MR. WRIGHT: Yes. Well sir, in relation to that, the syllogism then would be that he had given a false account about a car incident, that therefore he was of bad character and therefore it must be assumed, if it has any relevance, that he would be likely to commit a murder.

20 HIS HONOUR: I think that I would be inclined to put it in a slightly different way. Here is an accused person asking the jury to say that because he is of good character, therefore he is unlikely to have committed this crime, but in deciding whether that argument is a valid one, it is proper to look at the instances of his bad conduct, if any, that appear in the course of the evidence.

30 MR. WRIGHT: Well sir, we submit that because of the nature of the crime with which he is charged, if there had been previous instances of brutal assaults or any kind of physical injury to people, or anything of that kind, that it might be proper to take it into account as blowing upon his character as a person not likely to commit murder, but sir, in our submission, to take into account the fact that he has given a false account about a happening, financially apparently, in relation to a motor car, in our submission it is not one that should properly be taken into account really at all as bearing upon
40 his character as a person likely to commit murder, it is too trivial and too remote from the kind of crime with which he is charged to be of any importance at all.

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HIS HONOUR: Yes, well I suppose all these instances are of slight weight. It is a matter of the general picture. On your side you rely on a lot of small matters to build up a picture of good character, matters such as close to the end of an apprenticeship, moving into a new house, things of that kind. All these things are small matters, they just go to a general picture I think as you combine them all.

MR. WRIGHT: Well sir, I do not envisage that that last point I raised is the strongest of my submissions. Well they are submissions, sir, and our primary submission is that the jury should be discharged; if not, that the jury should be re-directed in relation to these matters. 10

HIS HONOUR: Yes. Mr. Ogden? The question has been raised whether we are going to take near enough to lunch time with these matters. If so, the jury might be more comfortable at their hotel if their transport could be arranged. 20
Could you throw any light on that question?

MR. OGDEN: Well Your Honour, I do not think for one moment that I will be as long as my learned friend was, Your Honour, I apprehend that Your Honour is inviting me at the moment to put any submissions that I make on behalf of King in regard to Your Honour's charge, not to make any comment at this stage at any rate on what my learned friend Mr. Wright has said.

HIS HONOUR: No, I think not, I think I would like to hear first what you have to say by way of application for re-direction. Yes, well in the circumstances we will at least defer a decision about the jury, we will see what happens. 30

MR. OGDEN: Yes, if Your Honour pleases. Your Honour, I want to preface my submissions to Your Honour by these observations, that it is in our submission of the greatest importance that the matters that I am going to refer to Your Honour.. Your Honour to should be the subject of re-direction because in this trial the prosecution has so loaded the case against King in both its presentation and in the learned Prosecutor's final address. In his address, Your Honour, Mr. Byrne spent approximately two hours on the case against King and put it first 40

out of order on the presentment, and approximately half an hour on the case against Lowery. And Your Honour a number of matters were put by the learned Crown Prosecutor which in our submission have no validity. He asked - for instance, he made one comment that King asks you, he said to the jury, to accept that he preferred a murder charge to the drug charge. That was in the context of King not having told the police about his ingestion of drugs. Your Honour, that was quite wrong. There was no evidence that King thought that telling the police about drugs would prevent his being charged with murder, and indeed it is, we submit, almost an absurdity to suggest that it would have. He said, Your Honour, amongst other things that King showed ruthless cunning and inventiveness by putting together this story about the hitch hiker. Your Honour, he stated that as though it were a fact and at least it is open on the evidence for the jury to say that that was not his story or his invention at all, but it was Lowery's. And even, Your Honour, in the half hour that the learned Prosecutor purported to put a case against Lowery most of his observations were aimed still against King. He put it that Lowery's record of interview, for instance, was a genuine recounting of the actual facts. And a necessary result of that was to suggest that King was the main actor.

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HIS HONOUR: I have not followed that point. What was that precisely - would you mind re-stating it?

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MR. OGDEN: Yes, Your Honour. He put it that Lowery's record of interview was a genuine recounting of true facts and that had the effect, Your Honour, of -if the jury accepts that submission - of course of putting the main blame on King because it was the burden of Lowery's record of interview that King was the main actor. Now Your Honour, there are other matters but I do not propose, Your Honour, to enumerate other matters which I submit unfairly loaded the case against King in the Crown Prosecutor's address.

I go, Your Honour, to exceptions to Your Honour's charge. I do urge Your Honour to put it to the jury that even on the theory of concert it is open to the jury to convict Lowery and acquit King on the ground of insanity.

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HIS HONOUR: I thought that I had indicated that that was so, by telling them that they - on that basis they could find - they could not convict one only, they had to find both guilty or both not guilty.

MR. OGDEN: Yes, well Your Honour, what I -

HIS HONOUR: Rather, I said they had to either find both guilty or acquit both.

MR. OGDEN: Yes. I was putting - submitting, Your Honour that the jury should be told that it is possible for the jury to come in with this verdict, a verdict of not guilty on the ground of insanity for King and a verdict of guilty in the case of Lowery, even on the concert conception of the Crown case.

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HIS HONOUR: Well that is a point of law that we debated earlier in the case.

MR. OGDEN: Yes, Your Honour, it is.

HIS HONOUR: And although I regarded it as a debatable one, I came to the conclusion that the law was not as you are now submitting.

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MR. OGDEN: That is so, Your Honour, yes.

HIS HONOUR: Yes.

MR. OGDEN: I realise, Your Honour, that Your Honour has, after consideration, put the case in the way that Your Honour has.

HIS HONOUR: Yes.

MR. OGDEN: Yes. Your Honour, as to the - Your Honour's charge on the matter of the document Exhibit "K1", we submit that, with respect, that Your Honour was in error in putting it to the jury that it was open to them to think that in the remand yard King would have told Lowery when he had taken drugs and in what doses. We submit that there is no evidence at all from which - that he did ever speak to Lowery in the remand yard about his taking drugs or in what doses, we submit that it is inviting the jury to speculate without any basis of evidence. We submit, Your

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Honour, that it is just as likely, if not more likely, that on legal advice both accused were told, and carried out the instruction, not to talk to each other at all, if possible..

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10 HIS HONOUR: Well, if there had been nothing but the evidence that the two of them were in remand for that period it might - there might be considerable force in what you are saying. But was not this put to the jury on the footing that if the relations between them was such that Lowery in remand would get to the stage of putting down a plan like this, and giving it to King, then it might seem to them unlikely that if drugs had in fact been taken he would not have known by then when and how much.

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20 MR. OGDEN: I would submit, with respect, Your Honour, that it goes to the contrary. The evidence is that this document, "K1", was handed to King in the holding cell at Ballarat on 1st June which was I think the day before the first trial which was aborted was commenced.

30 HIS HONOUR: Quite so, but it was strongly urged as against you on that point that that story was incredible and that it must have been prepared and considered down in the remand yard. That was one of the arguments that was put against you was it not? That if they were there for three months, or whatever it was, and came up in the van together it was incredible that the document would have been handed over in the holding cell here as King swore.

40 MR. OGDEN: Well Your Honour, that was the only evidence as to the time of this handing over, and my submission is that it is all speculation to invite the jury to conclude that there was any discussion about drugs in the remand yard, and it is inconsistent with the evidence of the handing over of the document on 1st June and we do submit, Your Honour that even is it not more speculative to invite the jury to think that this was a plot worked out by Lowery and King behind the backs of their legal advisers, and necessitating or even requiring that it be put in documentary form. Your Honour, if there was a plot worked out by Lowery and King at some time before trial, is it not inconsistent that Lowery should hand a written

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instruction in this form of "K1". Why could not that be done orally? Why could not the matter be done in a way which left no record of it, and why should - if there was that plot, why should King then hand the document over to his legal advisers? My submission is, Your Honour, that really this suggestion of the plot that has been put by the Crown and, with respect, taken up by Your Honour in Your Honour's Charge, is pure speculation and really is contrary to the probabilities, that it is the kind of thing, Your Honour, which ought not to have, in our respectful submission, been given the judicial approval.

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Your Honour, in speaking - the next matter Your Honour is what I could call the Overend alleged admission, Your Honour. Your Honour mentioned in the charge that he, that King had admitted guilt immediately prior to speaking to Miss Overend, as she then was, and that he went on to say what he did by way of admission in the record of interview - a statement soon afterwards. But Your Honour, what we say is of great significance in that connection is that in the record of interview he did not say he did it, far from it, he - nor in the - in any verbal conversations before Miss Overend came into the room did he say he did it. All that he has ever said, either before or after Miss Overend coming into the room was that he was present and saw what went on.

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HIS HONOUR: Well I think that what I put to the jury about that was directed, was it not, to the contest as to whether what he said was "I didn't mean to do it" or "I didn't do it." If his evidence had been - "I did not say anything about it at all" - that would have been a different situation, but he put up a version as to what he said to the witness Overend. I think that the part of the charge that you are referring to now was directed to the question which of those two versions - Overend's or his - was more likely to be true.

40

MR. OGDEN: Well I suppose that is probably so, Your Honour. I suppose that must be so, because that is really the only issue on this conversation since King has not said that it did not happen, it did not occur at all. All King has ever said

is that Miss Overend mis-heard him. Then Your Honour referred to what he had said before and after as a test of consistency as to what he had said, I point out Your Honour that neither before nor after had he said that he did it, and that there is no consistency or no running together - it does not increase the likelihood of Miss Overend's version being correct as against him by looking at what he said before or after.

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10 HIS HONOUR: Well I think the argument that I was suggesting was rather that the sequence was inconsistent with King's version; that he would not be saying at one stage "I was involved in it" and weeping; a few minutes afterwards, "I didn't do it" and then go straight on and make that statement "HH", that did not seem to be a consistent sequence.

20 MR. OGDEN: Well, Your Honour, my submission is as to that that the jury should have been - it should have been pointed out to the jury that that is one view. Another view is that there is a consistency because neither before nor after has he ever said "I did it" or anything amounting to that. Both before and after all he has ever said was "I was present and saw it done" in effect.

30 HIS HONOUR: Well then I think the view that what he meant was "In fact I was there, it wasn't my hand" and is not one that was put to them. I suppose it is one that is open. But, I thought the contest was as to whether what he had said to Miss Overend was a contrite admission of guilt or a denial of guilt. That is what I thought the contest was.

40 MR. OGDEN: Well Your Honour, the contest is as to the words used. What the interpretation the jury put on one version or the other is for them, Your Honour, but dealing with it purely as a contest on what words were used my submission is that no comfort or no corroboration or no light is thrown on the words by looking at what he said either before or after because what he said before or after is not inconsistent with "I didn't do it".

The next matter that I ask Your Honour to mention to the jury is a matter that was left out completely from Your Honour's charge, the matter

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which we submit is of some real significance, and that is the incident of the injury to the foot of King on the bike riding trip on the Sunday afternoon. And the fact that he was, it seems that that is abundantly corroborated by other witnesses who saw him in the afternoon, Merilyn Cooper and Bailey, two that come to mind quickly, both mentioned having seen him limping - Bailey actually before Cooper, and our submission is, Your Honour, that that is a matter of some significance for the jury to take into consideration with - if they are going to, as they must, discuss and consider who it was that was doing any kicking of the girl. Of course, there were plenty of people who saw him at the Drive-In and the sports centre also limping, Your Honour, but I do not put as much weight on that evidence as I do on the evidence of those who saw him before eight o'clock, but it is all consistent, Your Honour, in our submission, with him having this foot injury and therefore unlikely that he would be indulging in any kicking. And it is also relevant, Your Honour, to whether or not he could have or should have got away from the scene or gone for assistance. 10

The next matter, Your Honour, is the question of Dr. Balla's evidence. Your Honour was dealing with the question of possible amnesic effects of combinations of drugs and Your Honour referred twice, I think, on two separate occasions once this morning and once yesterday, to Dr. Bethune's evidence about that, that it being unlikely or unexpected and things of that kind, but Your Honour nowhere referred to the evidence of Dr. Balla which is at p.640. 30

HIS HONOUR: Is that the statement "Drugs can cause...?"

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: It did not specify the drugs, did it?

MR. OGDEN: I prefer to look at it, Your Honour, I am not quite sure what preceded it. It is about the seventh line on p.640. 40

HIS HONOUR: He was asked, "Is that something which happens in the case of taking drugs of this kind?"

But his only answer was: "You can certainly see amnesic episodes with drugs" but he seems to be declining to speak except in general terms about drugs, does he not?

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MR. OGDEN: If you look at it only in that answer,
Your Honour, but if one looks at the question
preceding, "I want you to assume as I have put
to you amongst the history that I gave you earlier,
the assumed facts that he had the quantity of
10 drugs, of course, that he said he had at the time
he said he had them on this night or afternoon."
"Yes." "So far as the period of amnesia is
concerned that is amnesia being lack of memory
of events that occurred, that is from the time
that he was speaking - he recalls speaking to
Rosalyn Nolte in the street at 8 o'clock until
the period when after they arrived at Mount Napier,
is that something which happens in the case of
20 taking of drugs of this kind?" My submission is
that it is clear enough in that context that he
is speaking of a combination of alcohol, Methedrine
and L.S.D., and he says, "Yes, you certainly see
amnesic episodes with drugs", and the next page,
Your Honour, he also says something more about
this, at the bottom of the page he says, reading
his answer to that last question on the page, "As
I mentioned earlier if I could sort of start at
the beginning, a great deal of the work - a
30 neurologist deals with patients who have the
abnormalities of their conscious state and in our
community one of the common reasons for a change
in conscious state is some sort of drug. The
commonest and certainly the one that I would have
seen most often would be alcohol, but I've
certainly seen patients, much fewer patients, I
cannot tell you how many, who have taken L.S.D.
or Methedrine or combinations of various drugs
sometimes with alcohol or by themselves, and so
I have seen such patients and I've certainly seen
40 a lot of patients who have a change in their
conscious state or a disturbance of memory due to
one or other or a combination of these three drugs."

HIS HONOUR: Yes.

MR. OGDEN: Then Your Honour asked a question over
the page. But Your Honour, my submission is that
that is evidence which ought to have been put to
the jury as to the amnesic effects of drugs and

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the combinations of drugs of the kind that the accused swore he had in this case.

My final submission, Your Honour, is as to the evidence of insanity that Your Honour omitted to read to the jury the evidence of Dr. Bethune or put to the jury the - his evidence at p.667 sir - 667-70 really.

HIS HONOUR: Was that not read to them?

MR. OGDEN: I beg Your Honour's pardon?

HIS HONOUR: Was that not read to them?

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MR. OGDEN: Well I think not, Your Honour.

HIS HONOUR: Do you know the - can you find the page in the charge where this was dealt with?

MR. OGDEN: The part, yes, Your Honour, I think so.

HIS HONOUR: I mean the reading of the evidence of Bethune.

MR. OGDEN: Your Honour dealt with the evidence of experts called on behalf of King and you made a reference to the evidence of Dr. Balla, and then Your Honour made a reference to Dr. Bartholomew and then you read Dr. Bartholomew's opinion at p. 700 and 702, that was very late in Your Honour's charge yesterday afternoon, Your Honour. It is almost immediately before the adjournment last evening, Your Honour.

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HIS HONOUR: Yes. The last page of all, is it? Which pages did you refer me to in -

MR. OGDEN: In the evidence sir?

HIS HONOUR: When you were complaining that it had not been read?

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MR. OGDEN: 667 Your Honour, to 669.

HIS HONOUR: 667, yes. I was seeking to find the passage that is quoted there on p.99. Do you know where that is? He is asked the further question, "If he had taken the drugs-" He is asked a further question in response to which he

said, "If he had taken the drugs that I was asked to assume he had taken," and so on.

MR. OGDEN: Yes.

HIS HONOUR: That probably comes in somewhere further on, does it? However, the bit that was quoted to them is this, "If he had taken the drugs that I was asked to assume he had taken and if I accept the evidence that he gave when I am asked to accept that he was in fact hallucinating out at that scene I would then say that I would consider that a disease of the mind such that he had a defect of reason and would be unable to reason with a moderate degree of composure as to the wrongness of his or other acts", it was put to him, "Well then is what you are saying this, Doctor, that if the story is correct is your opinion at the scene he was insane?" A. "That is so", and he went on to say that he meant insane in accordance with the Macnaghten Rules as he understood them.

MR. OGDEN: That was Dr. Bartholomew was it not, Your Honour?

HIS HONOUR: I see, that is Bartholomew.

MR. OGDEN: That is Bartholomew, yes.

HIS HONOUR: "And that he would not be able to appreciate the wrongness or reason with composure as to the wrongness of his own or other people's acts?" "Yes."

MR. OGDEN: Yes, that is Bartholomew, Your Honour, it is true Your Honour did read Bartholomew's opinion there.

HIS HONOUR: Yes.

MR. OGDEN: Perhaps, I think at p.702 or thereabouts.

HIS HONOUR: Yes. Well then the passage you are referring me to that is -

MR. OGDEN: The evidence of Bethune, Your Honour.

HIS HONOUR: The evidence of Bethune, and is again directed to making out the defence under the

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Macnaghten Rules.

MR. OGDEN: Yes, Your Honour.

HIS HONOUR: Well probably the reason I did not go beyond referring to Bartholomew there was that the Crown as I understood it, was conceding that King was insane on medical evidence, if he took the drugs and if he had the symptoms that were deposed to by him, and I said so to the jury as I recall.

MR. OGDEN: I had not understood Your Honour to say so to the jury, but again I would be mistaken, Your Honour. 10

HIS HONOUR: Referring back to my notes about it, I said, "The Crown says that this proposition may be conceded" that is the medical proposition.

MR. OGDEN: Well they are the matters that I wish to mention, Your Honour. As Your Honour pleases.

HIS HONOUR: Yes.

These applications for re-direction raise a number of matters of - some of which are of considerable importance. The first one raised by Mr. Wright related to a question which was much in debate during the course of the evidence, namely, the admissibility of the evidence of Cox, as to the result of his tests. I considered, for reasons which I gave during the course of the evidence, that within limits such evidence was admissible; and during the course of the evidence and the submissions to the jury I have extended my view as to how far such evidence was admissible. I have extended it beyond the original restricted ground which I initially gave. I indicated when I gave that initial ruling that such an extension might emerge. 20 30

The problem which Mr. Wright now puts is how far the admission and use of that evidence is consistent with the general rule that evidence is not admissible to show that an accused person is the kind of person who would be likely to commit a particular crime. The question of the limits of that restrictive rule is a difficult one, and in determining it it must be remembered that the 40

primary purpose of the rule is to protect accused persons from the use of such evidence by the Crown. How far such a rule can operate to prevent one accused person from proving his innocence against attacks made by a co-accused is a very important aspect. I concluded here, not without considerable thought, that this evidence was admissible, and I have not changed that view. I have also, of course, considered the question of the application to it of the discretion rule and I thought and think that it should not be excluded under the discretion rule.

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Then I was asked to give an additional direction to say that Dr. Springthorpe in his examination of Lowery not only found no evidence of psychopathic personality but also found no evidence of sadism. I think that was a small omission which might perhaps be corrected, or made good.

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Then it was urged that I should have directed the jury that the evidence of Cox as to personalities could only be used for the limited purpose for which that evidence was originally ruled to be admissible. As I have said I have come to the conclusion that its admissibility and use are not so confined.

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It was pointed out that the evidence.. the character evidence of Lowery was not merely to the effect that he had never been convicted of any offence other than the one mentioned, but that he had never been charged with one. That is a small omission which I think perhaps might be made good.

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Then it was said that I should have directed the jury's attention to the point that consistently with Lowery's version the girl might have been unconscious when King (according to Lowery) returned to the car and that there was medical evidence to give support to that. That was an argument that was put by counsel and I did not attempt to put all the detailed arguments that counsel put and I do not think that there is occasion to tell them of that one now.

Then there was a similar submission made as to the question whether it was likely that there

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would have been a plan, a cunning plan, executed in such public circumstances as prevailed when the girl got into the car. That, too, is an argument that was put and similar considerations I think apply to that, -similar considerations to those that apply to the preceding point.

Then it was urged that the false report of the stolen car was not important enough to deserve mention on the question of character. As I have already indicated I think that this question of character was a matter of the general picture built up for and against with a number of incidents, none of which perhaps was of outstanding importance, but the fact that this was a relatively minor episode did not I think call for its exclusion.

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Then Mr. Ogden seeks a re-direction. In the first place he contended that the Prosecutor had devoted too much time and too much weight of argument to the case against King, and had taken it out of order. The order in which he took the cases, I think, was a matter within his discretion and as to the length of time taken it must be borne in mind that King's case included a great deal of scientific evidence and that in any event there were matters common to the cases against each of the accused, so that the second dealt with would necessarily take less time in addressing the jury.

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Then it was put that certain of the arguments advanced by the Crown were illegitimate but having considered them I do not think that that is so, I think that they were arguments which could legitimately be advanced on the evidence.

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Then it was urged that the jury, proceeding on the ground of concert, could legitimately in law find King not guilty on the ground of insanity and Lowery guilty. This is the point that was the subject of discussion earlier in the hearing, and I then came to the conclusion, after some doubt and hesitation, that the argument was erroneous, and I have not seen anything yet to cause me to alter that view.

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Then it was urged that in the charge it was - it had been wrongly put to the jury that it

was open to them to think that if the drug story was true King would have told Lowery in remand of the details of the story. It has to be remembered in relation to this that it was put very strongly to the jury by counsel that the story told by King as to the handing over of this document in the holding cells in Ballarat on 1 June was incredible. And the point that was suggested to the jury as open was a point as to what they might think would have been the situation by the time Lowery in remand with King had reached a point when it was appropriate to draw up the document, Exhibit "K1". I think that that was a matter fairly open for the jury's consideration.

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Then a point was put as to the evidence of the witness Overend. It was said that the charge was wrong in suggesting to the jury that there was some inconsistency involved in King's sequence of attitudes if he first adopted an attitude of contrition and wept before the witness Overend entered and after, if he then said "I didn't do it", and if he then later proceeded to make the statement, Exhibit "HH". The point made is that the inconsistency would disappear if King was taken as meaning, - as having said "I didn't do it" and as having meant by those words "I did not do it", "I" as distinct from somebody else. That is not an interpretation which was put forward during the course of the hearing and I think the charge was an appropriate one on the basis on which the rival versions as to what was said were dealt with during the hearing.

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Then it is pointed out that no reference was made to the evidence about King having an injured foot and it was said that this was significant on the question who might have kicked the girl, and whether King could have gone for assistance. I think that was an omission and it might be filled in.

I have indicated during the course of argument that I had reasons for not referring to the passage at p.640 in the evidence of the witness Balla. That, it is said, should have been referred to, but it appears to me to be too general. The following passage on p.641 it is suggested should have been put, but that appears to me to be

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consistent with the passages that were put.

As to not putting the evidence of Bethune on the matter of insanity that was perhaps a small economy of space in a very long charge. The view I took was that Dr. Bartholomew's evidence covered the point and that if Lowery's facts were - if King's version as to drugs and symptoms was accepted then the Crown, as I told the jury, was prepared to concede the insanity point. I thought in the circumstances that that was sufficient.

10

I think that although, if I had sent the jury out to consider their verdict, the particular points that I have mentioned as calling for some addition to the charge would not have been sufficient to warrant their recall, yet as they have merely been sent out while some submissions are made I think they may be brought back and those points, those small points, mentioned and the jury asked to - told that they will then be shown immediately after lunch the film that they have asked to see. And then following that they can be sent out to consider their verdict.

20

Bring in the jury.

JURY RETURNED TO COURT AT 12.25 p.m.

HIS HONOUR:

Mr. Foreman and members of the jury, as a result of discussion with counsel there are several pieces of evidence that I want to draw your attention to in addition to the ones that I mentioned in the charge.

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In the first place you will remember that I told you that Dr. Springthorpe said that in his examination of Lowery and in the history he took from him he did not find any evidence of psychopathic personality. I should also have said that Dr. Springthorpe added that in that interview and that history he did not find any indication of sadism.

Then in the course of the charge referring to evidence of good character in the case of Lowery I told you that the evidence was that he

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had never been convicted of any offence other than driving a dangerous vehicle. What I should have said was that he had never been convicted or charged with any offence other than the driving of an unroadworthy vehicle.

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10 And finally, I omitted to mention to you the evidence that King on the afternoon of the Sunday 31st January injured his foot or leg in some way with his motor cycle and that as a result he was limping that afternoon and evening. On behalf of King it was urged on you that that is of significance, first on the question whether he is likely to have kicked the girl, and secondly on the question whether it would have been practicable for him to go for assistance. Now those are the only matters that I want to add to what I have already put to you. In view of the hour now, you will be going to lunch. Immediately after lunch the film which you asked to have re-played will be re-played and you will then be asked to go to your jury room and consider your verdict.

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COURT ADJOURNED FOR LUNCHEON AT 12.29 p .m

COURT RESUMED AT 1.47 p.m.

FILM SHOWN.

30 HIS HONOUR: Mr. Foreman and members of the jury, there is now nothing further that I wish to add to the charge in this case. I would ask you now to retire and consider your verdict. If you find that there is any further matter that you want any direction on, knock and let me know. The exhibits may be taken into the jury room.

MR. OGDEN: Your Honour, I just wondered before the jury go, there is one matter of amendment of the transcript that I wanted to bring to Your Honour's attention, I do not know whether that..

HIS HONOUR: Do you want it dealt with in the presence of the jury?

40 MR. OGDEN: I do not know that it matters, Your Honour, I leave it entirely to Your Honour, sir.

HIS HONOUR: Yes, well I do not think we need to hold

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up the jury for any matter of amending. The jury,
- we can do it after they have retired.

JURY RETIRED TO CONSIDER VERDICT AT 2.19 p.m.

HIS HONOUR: I think perhaps the jury might be asked
whether they really want the exhibits that consist
of clothes and pullovers and things of that kind,
and they need not be taken in unless they want
them. They have the photographs and the maps
with their own copies. Now Mr. Ogden, what was
the passage?

10

MR. OGDEN: At p.395 Your Honour.

HIS HONOUR: Yes.

MR. OGDEN: About two thirds of the way down that
page. The answer is "I threw her clothes away"
and the word "he" which follows should be omitted,
Your Honour.

HIS HONOUR: Yes, well that was the passage that
was played over and I think we all heard that
there was that error in the transcript. I
direct that the word "he" be deleted from the
transcript.

20

MR. OGDEN: If Your Honour pleases.

CASE STOOD DOWN TO AWAIT JURY'S VERDICT

JURY RETURNED WITH VERDICT AT 4.20 p.m.

JURY RETURNED A VERDICT OF GUILTY OF MURDER IN
RELATION TO ACCUSED LOWERY AND KING.

HIS HONOUR: Mr. Foreman and gentlemen of the jury,
I have to thank you for your services in this
long and painful case and in view of the service
that you have had to render in this case I will
direct that you be entitled to be excused as of
right from jury service for the next five years.
Thank you gentlemen.

30

JURY FINALLY DISCHARGED.

ASSOCIATE: Christopher Russell Lowery, you have
been found guilty of the charge of murder, have
you anything to say or do you know why the
sentence of the Court should not be passed upon

you according to law?

ACCUSED LOWERY: No, sir.

ASSOCIATE: Charles Ian King, you have also been found guilty of the charge of murder, have you anything to say or do you know why the sentence of the Court should not be passed upon you according to law?

ACCUSED KING: Even though I disagree with the sentence I told the truth in Court, I'd like to thank Your Honour for your fairness during the trial. I'd also like to thank my legal advisers, Mr. Ogden, Mr. Dunn and Mr. Boulton respectively. That's all.

HIS HONOUR: It is now my duty to pass the sentence which the law prescribes in these circumstances, a sentence which does not lie in the discretion of the Court, but which the Court is required to pronounce.

The sentence of the Court in your case Lowery is that at such time and within the walls or enclosed yard of such gaol as the Governor may direct you shall be hanged by the neck until you are dead and that your body shall be buried within the precincts of the gaol in which you shall have been last confined after conviction. I have to pronounce the same sentence in your case too King. The sentence of the Court in your case is that at such time and within the walls or enclosed yard of such gaol as the Governor may direct you shall be hanged by the neck until you are dead and that your body shall be buried within the precincts of the gaol in which you shall have been last confined after conviction.

Remove the prisoners.

PRISONERS REMOVED.

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No. 4

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST
CONVICTION AND GROUNDS OF APPEAL.

No. 4

CRIMINAL APPEAL RULES Second Schedule

Notice of
Application
for Leave to
Appeal against
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grounds of
Appeal

Crimes Act 1958

Form No. 3 (Rules 5, 8, 25 and 27)

2nd July 1971

1, Christopher Russell LOWERY am convicted of the offence of Murder and I am now a prisoner of Her Majesty at Coburg and I wish to appeal against my conviction. Take notice that I hereby apply to the Full Court for leave to appeal against my conviction on the grounds set out hereunder.

10

Signed C. Lowery
Applicant

Dated this 2nd day of July, 1971.

GROUND'S FOR APPLICATION

(State specifically and concisely and not in general terms the grounds upon which you wish to appeal against your conviction)

See grounds as attached supplied by counsel.

20

PARTICULARS

1. Appellant's name Christopher Russell LOWERY
2. Offence for which convicted and in relation to which it is sought to appeal - Murder
3. Convicted at Ballarat Supreme Court
4. Date of conviction - 1.6.71. Smith J.
5. Sentence - Sentence of Death passed.
6. Date of Sentence - 23rd June 1971.
7. State whether you wish to be present at the final hearing of your appeal - I wish to be present at my appeal.

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8. The Full Court will, if you wish, consider your case and argument in writing, instead of an oral presentation of your case and argument. If you wish to present your case and argument in writing, set out fully your case and argument supporting your appeal.

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9. If you desire to apply to the Full Court to assign you legal aid on your appeal state your position in life, the property you own and its value, and the amount of wages or salary, &c., and any other facts which you submit show reasons for legal aid being assigned to you.

Notice of
Application
for Leave to
Appeal against
conviction and
grounds of
Appeal

2nd July 1971

(continued)

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To the Prothonotary.

- - - - -

Full Court
17 Sept. 1971

IN THE SUPREME COURT
of the State of
Victoria

Appeal dismissed on
all grounds.

THE QUEEN

J. Lambard

against

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ASSOCIATE TO THE CHIEF
JUSTICE

C.R.LOWERY

Notice of Application
for Leave to Appeal
Against a Conviction

- - - - -

In the
Supreme Court
of the State
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SCHEDULE "A"

QUEEN .V. LOWERY & ANOTHER

GROUND OF APPEAL AGAINST CONVICTION

No. 4

Notice of
Application
for Leave to
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2nd July 1971

(continued)

1. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox. 10
2. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox in relation to the Applicant Lowery and the Accused King. 10
3. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox in relation to the Applicant Lowery.
4. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox that the Applicant Lowery had a psychopathic personality.
5. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox that the Applicant Lowery obtained sadistic pleasure from observing the suffering of other people. 20
6. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox that the Applicant Lowery had small capacity to relate to other people.
7. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox that the Applicant Lowery had strong aggressive drive with weak control thereof. 30
8. That the learned Trial Judge wrongfully admitted evidence, namely the evidence of Professor Cox that the Applicant Lowery showed a basic callousness.
9. That the learned Trial Judge failed to direct the jury as to the proper use of the evidence of Professor Cox that the Applicant Lowery had a psychopathic personality.

10. That the learned Trial Judge failed to direct the jury as to the proper use of the evidence of Professor Cox that the Applicant Lowery obtained sadistic pleasure from observing the suffering of other people.

11. That the learned Trial Judge failed to direct the jury as to the proper use of the evidence of Professor Cox that the Applicant Lowery had small capacity to relate to other people.

10 12. That the learned Trial Judge failed to direct the jury as to the proper use of the evidence of Professor Cox that the Applicant Lowery had strong aggressive drive with weak control thereof.

13. That the learned Trial Judge failed to direct the jury as to the proper use of the evidence of Professor Cox that the Applicant Lowery showed a basic callousness.

20 14. That the learned Trial Judge failed to put the defence of the Applicant Lowery to the jury in any adequate or balanced manner in that he failed to put the defence of the Applicant Lowery to the propositions that -

- (a) the crime was planned in advance;
- (b) the commission of the crime was joint;
- (c) the Applicant Lowery was a psychopath;
- (d) the Applicant Lowery was a sadist;
- (e) the Applicant Lowery had small capacity to relate to other people;
- 30 (f) the Applicant Lowery had strong aggressive drive with weak control thereof;
- (g) the Applicant Lowery showed a basic callousness;
- (h) the Applicant Lowery was more dominant than the Accused King.

15. That the learned Trial Judge erred in admitting as evidence a film of the applicant Lowery made on Sunday 7th February 1971 in that no warning or alternatively no adequate warning as to the applicant's

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(continued)

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right to refuse to make or partake in such film
was given to the applicant.

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(Signed) C, Lowery

Applicant

Notice of
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conviction and
grounds of
Appeal

- - - - -

2nd July 1971

(continued)

3.8.71 (forenoon)

Listed for mention as to
date for Hearing.

Court intimated that
parties will be advised
of date fixed for hearing

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(sgd)

C.R. LOWERY

3.8.71 (afternoon)

Court intimates that
the appeal is to be
heard at next sitting
and given priority in the
list of appeals against
over the appeals of Lovett
Grant & Lovett.

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(sgd)

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JUDGMENT

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Court of the
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COURT OF CRIMINAL APPEAL, MELBOURNE

BEFORE HIS HONOUR THE CHIEF JUSTICE (SIR HENRY WINNEKE)

No. 5

and

Judgment

THEIR HONOURS MR. JUSTICE LITTLE AND MR. JUSTICE BARBER

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1971

THE QUEEN

.V.

CHRISTOPHER RUSSELL LOWERY

CHARLES IAN KING

J U D G M E N T

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(Delivered 17th September, 1971)

WINNEKE, C.J.: The applicants, Christopher Russell Lowery and Charles Ian King, were presented at the June sittings of the Court in Ballarat before Smith, J. on a charge that on the 31st day of January 1971, at Mt. Napier, they murdered Rosalyn Mary Nolte. The trial extended over a period of twelve days, and at the conclusion thereof both applicants were found guilty of murder. Both have applied for leave to appeal against conviction.

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In order that the grounds of appeal may be properly appreciated, it is necessary to refer in some detail to the facts. Rosalyn Nolte was a young girl of 15 years of age living with her parents in Hamilton. On the evening of Sunday the 31st January, she left her home between approximately 6.15 and 6.30pm taking her Corgi dog with her for a walk. Later in the evening, at approximately 8 p.m., she was walking with the dog in Grey Street, Hamilton and at the same time the applicants were driving along that street in a Holden panel van owned and driven by the applicant Lowery. The Panel van was brought to a stop, and after some conversation between the applicants and the girl, she entered the panel van with the dog. It would appear plain from the evidence that deception of some kind was practised by the applicants upon her, and that she was no consenting party to the journey on which the panel van was then driven to a bush area known as the Mt. Napier Reserve, some ten miles out of Hamilton. The last half mile approximately,

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of that journey was along a narrow unmade bush track, wide enough for one vehicle only, and flanked on either side by heavy thick scrub.

In that area the girl either left or was removed from the vehicle, and, save for her socks, she was stripped of her clothing. She was then attacked by one or both of the applicants, and in the course thereof she suffered many injuries from kicks or punches and one of her elbows was broken. She was tied up by the applicants, or one of them, with plastic covered electric flex cord, which was knotted around her neck so that it bit deeply into the flesh. One end of it was passed around her ankles, with her knees flexed behind her and the other end secured her wrists and arms behind her back. The flex was placed around those portions of her body several times, and it was so tightly drawn that the weight of the body caused such pressure and tension of the flex on or about the throat as to strangle her. It may be interpolated at this point that strangulation was, according to the medical evidence given at the trial, the cause of the girl's death.

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It would appear from some of the evidence that the tying up of the girl commenced on the unmade track by passing the flex around her throat, that by pulling on the flex she was then dragged by one or both of the applicants into the scrub at the side of the track, and that the tying up was then completed. Other evidence, however, may be taken to indicate that the tying up procedure was completed on the unmade track, and that she was then dragged into the scrub. On either view, she was left to remain in the scrub in the tied up state.

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The applicants then departed from the scene in the panel van, and after reaching the main road the Corgi dog was put out of the vehicle and left by the roadside. The applicants then returned to Hamilton where they visited a sports centre and spoke to several persons, and later drove out of the town and threw from the car a transistor which the deceased girl had been carrying at the time when she was picked up. The applicants then visited the home of Lowery's parents-in-law, Lowery being a married man of 18 years of age whose wife was expecting a child. King also was 18 years of age, but unmarried. After participating in or witnessing

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a game of cards at that home, the applicants, together with Lowery's wife and others, went to a drive-in theatre, and ultimately returned to their respective places of abode in the early hours of Monday morning, the 1st February.

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10 The body of the deceased was found on Wednesday, the 3rd February. In the interim the applicants had agreed on a false story to give to the police in the event of their being questioned. On the 3rd of February, in separate signed statements both applicants told the police, in substance, that the deceased had entered their vehicle in Grey Street and had been then driven to the Commercial Hotel corner where, with the dog, she left the van and went on her own independent way. On the day following, in further and separate statements signed by them, each applicant repeated that story, but added to it an account of their driving out of Hamilton and meeting a hitch-hiker, whom they drove to Coleraine, The falsity of these accounts, directed to create an alibi for themselves, was exposed in records of interview made and signed on Saturday the 6th of February, and was conceded by them at the trial.

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30 In the record of interview signed by Lowery, he narrated that at about Christmas 1970, he and King, "decided to see what it would be like to kill a chick," and that in subsequent talks between them, the idea "just sort of built up and up"; and when they saw Rosalyn on the Sunday night, they decided there was a chance to use their idea. He described the events of the Mt. Napier Reserve in terms which attributed to King the main responsibility for the killing, but which plainly showed that he had participated, assisting King to tie the flex about the girl's body.

40 In the record of interview signed by King, he also spoke of discussions which had earlier taken place between him and Lowery as to killing a chick. He said any such talk was originated by Lowery, and he added that he did not value it seriously. He alleged that he had no memory of the trip from Hamilton to the Mt. Napier Reserve. As to the violence which there occurred, he again alleged lapses of memory, but he recalled Lowery was kicking and hitting the girl, that she complained her arm was broken, and at one stage asked him whether Lowery

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was going to kill her, to which he replied he didn't know, he's gone mad. The burden of his statements in the record of interview was to fasten on Lowery responsibility for the acts causing death, but there were various passages therein which provided evidence of concert, or at least evidence of aiding and abetting.

On the following day, Sunday the 7th of February, each accused, and particularly King, re-enacted at the scene of the killing events which he said had there occurred on the night of the 31st of January. At the trial objection was taken to the admissibility of a film showing the re-enactment, but the learned trial Judge found that the accused voluntarily took part in re-enacting the events, and in the exercise of his discretion allowed it to be admitted in evidence, and shown to the jury. The learned Judge also admitted in evidence, after argument, a number of photographs, some of which showed the deceased in the position in which her body was found in the scrub, and others of which, taken after she had been removed from that position, revealed some of the injuries inflicted upon her, and clearly described the manner in which she had been tied up. 10 20

The material to which we have already referred, supplemented in various ways by other evidence, was led by the Crown at the trial, and the case against the two accused was primarily put on the basis that they were acting in concert as principals in the first degree. Alternatively it was put that one was a principal in the first degree and the other an aider and abetter, and so a principal in the second degree. 30

At the conclusion of the Crown case, the applicant Lowery gave evidence on oath. He admitted that the record of interview correctly set forth what he had told the police on Saturday the 6th of February, but he denied the truth of all the statements therein which tended to incriminate him. He said that such statements were invented by him to comply with a direction which he said King had given him on the Saturday morning, that if it looked as though the police could prove that King killed the girl, Lowery should admit he was in it with King and helped him to kill the girl, and that they had planned to kill a chick. He said 40

that at the time the record of interview was being taken, he believed that King was making a statement of his own guilt, that the time had accordingly come to comply with King's direction, and he complied because of threats made by King to him and to his wife to do them injury.

10 The truth, according to Lowery's evidence, was that he had driven the panel van at King's direction to the bush area because he thought King wanted to have sexual intercourse with the girl; that when the van stopped on the bush track King and the girl then walked away whilst he remained for some time in the van; that King subsequently returned, obtained some flex, and walked away with it. After a time he, Lowery, became curious, and after walking some 60 yards along the track he found that King had secured the flex around the girl's neck, and he observed him ill-treating her. He tried on two occasions to stop King's assaults on the girl, but he w
20 was knocked down and threatened, and eventually he lent some minor assistance in tying the girl up. Lowery also introduced into his evidence a matter which had previously not been mentioned by him or by King to the police, namely, that before seeing the girl on the 31st January he observed King put a tablet in his mouth which King then told him was acid - that is a drug called LSD. The taking of drugs by King on this occasion loomed large in King's evidence as subsequently given. In
30 association with that subject, it is convenient at this stage to mention a document which was put to Lowery in cross examination by Counsel appearing for King. This document, which was subsequently admitted in evidence as Exhibit 'K1', was one which King said he thought was in Lowery's handwriting, and that it was handed to him by Lowery at the holding cells in Ballarat shortly prior to the trial, Lowery then telling him, "This is what you want to say in court." Lowery denied the document
40 was in his handwriting or that he had handed it to King. It commenced with the words, "At approximately (blank) on Sunday the 31st I took (blank) tablets of methedrine until 7.15 p.m." It proceeds to say, "At 7.15 Lowery arrived at my parents' home and a few minutes later I took an envelope from my pocket and from it I took a tablet of LSD." The document then relates the picking up of Rosalyn Nolte, and as to the events in the bush it contains an account ascribing to King the doing

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of the acts which led to the girl's death. The Crown relied on this document as one in which Lowery proposed to King that Lowery should tell the Court the story he gave in evidence; that King should confirm it, and advance as his own defence the story of taking drugs.

King also gave evidence on oath, and in the course of it he said that between three and 5 p.m. on Sunday 31st January he took eight or nine methedrine tablets, followed shortly thereafter by a tablet of acid (LSD), and that at about 6 p.m. things started to get distorted. He recalled the girl Rosalyn getting into the panel van driven by Lowery and the latter saying, "Something about a chance, or something". King did not, according to his evidence, "jerry to what he meant. I was getting pretty stoned then". He did not remember the journey out to the Mt. Napier Reserve and when he did realise the van "seemed to be out in the scrub somewhere", he suffered, as a result of the drugs, a series of hallucinations. He recalled getting out of the van and that after walking about he came across Lowery and the girl, and he then saw Lowery kicking her as she lay on the ground. He said he could not appreciate what was going on; that he did not think anything was wrong. He said that at one stage Lowery walked away, leaving the girl with him, and that Rosalyn then asked him whether Lowery was going to kill her, to which he replied that he did not know. He further recalled that when Lowery returned, Lowery had his hands on the girl's throat and later was wrapping flex around her neck; that Lowery dragged her down into a ditch; that he went down there at Lowery's dictation; and that Lowery might have told him, "to hold her feet up or something". It should be added that King said in evidence that between Christmas 1970 and the 31st January Lowery had talked about what it would be like "to kill a chick", but he had never taken such remarks seriously.

King called as a witness a psychologist, Professor Cox of Melbourne University, who had interviewed both of the accused and had submitted them to tests commonly employed by clinical psychologists in making assessments of personality. He said that King showed consistent evidence of a rather massive denial of underlying feelings of

depression and of a passive dependent personality. He said there was also evidence in King of some impulsiveness, of some quite intensive aggressive impulses over which his control was rather tenuous or weak, and of some capacity to relate adequately to other people, to feel with and for other people. His conclusion was that King was an immature, emotionally shallow youth, who seemed likely to be led and dominated by more aggressive and dominant men and who conceivably could act out or could behave aggressively to comply with the wishes or demands of another person. In relation to the personality of Lowery, the finding of Professor Cox was that he showed consistent evidence of little capacity to relate to other people; that he showed a strong aggressive drive with weak controls over the expression of those aggressive impulses; that he showed ostentatious compliance covering a basic callousness; and that there was evidence also of impulsiveness. Cox also said that in one test given to Lowery, one of the stories given indicated some sadistic pleasure was obtained from observing the sufferings of other people. Cox was asked whether in relation to King there was any such indication in the tests, and he replied in the negative.

The admissibility of the evidence of Professor Cox was contested by counsel for Lowery and the admission thereof at the trial is one of the grounds of his appeal to this court.

Three medical practitioners were also called as witnesses by King. Their evidence was directed to negative on King's part the elements of a conscious and voluntary act involved in the crime of murder, and also to support a defence of insanity. In either aspect the opinions expressed by the doctors were based on the assumption that King had taken drugs and also consumed some beer, as he stated in his evidence.

Mr. Cummins for the applicant Lowery submitted under grounds 1 to 8 of the Notice of Appeal, in an attractive argument that lost none of its clarity by reason of its relative brevity, that the evidence of Professor Cox was inadmissible. It was first submitted that the evidence was irrelevant to any issue in the trial. It was contended it lacked any probative force because it

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purported to do no more than show that Lowery possessed certain traits of personality, one of which, sadism, King did not possess, and others of which King possessed in much less degree. It was said that the evidence disclosed only traits possessed by Lowery without regard to his ability to control them; that Cox gave no evidence that he was likely to give way to his sadistic tendency as he did say with respect to Lowery's traits of aggression; and that the possession of those traits in the absence of expression of or likelihood to give way to them was probative of nothing. In substance the contention was that the possession of traits was not probative that Lowery gave expression to them or any of them on the occasion charged.

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It was also contended that the material on which the opinions of Professor Cox were based was insufficient to give his opinions probative value. As to this, the argument really means that the Learned Judge was wrong in holding that Cox was qualified to express the opinions he did. On the evidence before him, which we have reviewed for ourselves, we are of opinion that the learned Judge was right in holding that Cox was qualified to express the opinions he did on the materials before him. The weight of his evidence was, of course, entirely a matter for the jury.

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As to the first contention, the evidence was let in on behalf of King to show that as between him and Lowery it was less probable that he was the killer. It would, no doubt, have the effect of tending to show that Lowery was the killer. In considering this argument it is important to bear in mind that there was, in the very nature of this killing and in the prior arrangement to "kill a chick to see what it was like", evidence that it was a sadistic and otherwise motiveless killing. If the opinions of Professor Cox were soundly based, so that his evidence tended to prove that Lowery was sadistic and King was not and that King possessed other aggressive traits to a lesser extent than Lowery, we think they were evidentiary material tending to make it less probable that King was the killer, and therefore had probative value which made them relevant to the issue between the Crown and King. See R. v. Toohey (1965) A.C.595 per Lord Pearce at p.604.

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Mr. Cummins then submitted that if the evidence was relevant it was not admissible because it was excluded as a matter of law. We were not referred to, and have been unable to find for ourselves, any authority applicable to the precise issue raised by this submission. It is, however, established by the highest authorities that in criminal cases the Crown is precluded from leading evidence that does no more than show that the accused has a disposition or propensity or is the sort of person likely to commit the crime charged. See Makin v. Attorney-General for New South Wales (1894) A.C. 57 at p. 65; Maxwell v. The Director of Public Prosecutions (1935) A.C. 309 at p. 317; and Harris v. Director of Public Prosecutions (1952) A.C. 694 at p. 705. We refer also to R. v. Robbins (1966) V.R. 508 at p. 509; R. v. White (1969) V.R. 203 at p. 205; and R. v. Knape (1969) (1965) (sic) V.R. 469 at p. 472. This rule of exclusion, however, is based, not on grounds of relevancy, but on reasons of policy and fairness to an accused person. See Attwood v. The Queen 102 C.L.R. 353 at p. 359.

Mr. Cummins submitted that the rule of exclusion is equally applicable where the evidence is sought to be led, not by the Crown, but by one of the accused on a joint trial. He said the danger of a wrong conviction, which underlies the rule, is no less where the evidence is so led, and that the purpose or intent with which the evidence is led is immaterial. He conceded that the rule would not apply where the evidence was led by an accused person tried alone. There appear to be some logical difficulties about supporting such a rule of exclusion which is applicable to joint trials, but inapplicable where the accused is tried alone. Mr. Cummins conceded such logical difficulties, but contended that the law does not always act in strict accord with logic.

It is, we think, one thing to say that such evidence is excluded when tendered by the Crown in proof of guilt, but quite another to say that it is excluded when tendered by an accused in disproof of his own guilt. We see no reason of policy or fairness which justifies or requires the exclusion of evidence relevant to prove the innocence of an accused person. That evidence may, of course, show disposition or propensity of a co-accused to commit the crime charged, but this is also the case where such evidence

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is admissible when adduced by the prosecution as relevant to prove some such issue as intent, or identity, or to rebut accident or mistake.

In relation to this matter, the learned Judge in his report to this court said:

"If this evidence had been tendered as part of the Crown case it would plainly have had to be rejected by reason of the rule that 'The prosecution are not allowed to prove that the person has committed the offence with which he is charged by giving evidence that he is a person of bad character.' Rex v. Fisher (1910) 1 K.B. 149 at p.152 per Channell, J; Reg. v. Rowton, Leigh & Cave, 520 at p. 540 per Willies, J.; Noor Mohamed v. The King (1949) A.C. 182 at p. 190. The purpose of that rule, however, is to protect innocent persons from conviction, whereas a corresponding rule if applied as between two persons jointly charged with an offence could operate to convict the innocent, and to apply such a rule against one of two co-accused when the other has given evidence against him would seem to me to deprive the former unjustly of the right to defend himself against that attack. For example, if Christie had been Evans' co-accused and had given evidence against him, such a rule would have prevented Evans from calling a psychiatrist who had examined Christie to give evidence that Christie was a homicidal maniac. The view that the policy considerations which justified the rule stated in Rex v. Fisher, supra, do not justify preventing an accused person from defending himself from an attack by his co-accused appears to be recognised by the special exception of that situation in the statutory provisions limiting cross-examination of accused persons. See Crimes Act 1958, s.399 (e) (iii).

Furthermore, the circumstances of the present case were such that to have excluded the evidence in question would not, as it appeared to me, have been consistent with justice for the particular case, nor indeed with any just general policy that could be permitted. I refer in particular to the following circumstances:

- (i) It was common ground that no-one other than the two accused had any hand in the girl's death.
- (ii) The Crown case was that regardless of whose

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hand was the cause of death, she was murdered by the two of them acting in concert or one aiding and abetting the other.

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- 10 (iii) The method of killing her was to tie her up in a complicated manner, the natural consequence of which was that she would die slowly from strangulation caused by the weight of her own body. There was no evidence of motive beyond the obtaining of satisfaction by causing and observing such a death, and accordingly the killing appeared to be the work of a person or persons with a special kind of personality, aggressive, sadistic callous and arrogantly self-centred.
- 20 (iv) Lowery's evidence was that the killing was entirely the work of King and was committed despite strong efforts by Lowery to prevent it; and even if the jury rejected those parts of Lowery's evidence which were additions to the account in his final statement to the police, what remained would still have cast King in the role of main, or even the sole perpetrator of this killing.
- 30 (v) King's case was that Lowery's evidence had reversed their respective roles. He had an additional defence based on the allegation that he was in a drugged condition; but if the jury should reject this, it was vital to him that the jury should accept his account as given to the police and in large part confirmed in his evidence, for on that account his role had been minimal and had been that of a person dominated by Lowery, and there was a reasonable chance that the jury, if they accepted this account would hold not only that there had been no pre-concert, but also
- 40 that what he did fell short of making him a principal in the second degree.
- (vi) In the circumstances it was of critical importance to King to establish that Lowery had a psychopathic personality with the common traits of such a personality to which I have referred in (iii) above, and

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that King, though he had some of the traits of such a personality, had them in a lesser degree than Lowery and that despite his larger stature he had a passive, dependent and rather timid personality.

- (vii) Lowery himself had not only called evidence as to his reputation with a view to showing that his disposition made him unlikely to have committed such a crime as this, but in addition he had for the same purpose given evidence that he had never been charged with any serious offence, that he had been happy in his marriage, happy in the prospect of the birth of the child and happy in the prospect of moving into his new house, and that he had had good hopes for his financial future. He also called his wife to confirm his evidence on some of these matters".
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We agree with the view so expressed by the learned trial Judge, and for the reasons given by him in support of them. They accord with our own view that no reason of policy or justice requires the exclusion of such evidence when adduced by an accused person in disproof of his guilt of the crime charged. It is one thing to say that it is unjust or unfair for the Crown to put a person in danger of conviction by leading such evidence against him. It is, however, a very different thing to say that he is to be restricted in defending himself by excluding such evidence when it tends to rebut his guilt or to prove his innocence. The considerations applicable when such evidence is sought to be led by the Crown against an accused person are by no means the same as when it is led by an accused person to support his defence, notwithstanding that it may have a prejudicial effect on the co-accused. See R. v. Miller (1952) 2 All E.R. 667, per Devlin, J. at p.669; and Murdoch v. Taylor (1965) A.C. 574 per Lord Morris at p.586, and per Lord Donovan at p.593. In the latter class of case one important differentiating consideration is the need for an accused person to be left unfettered in defending himself by any legitimate means against the charge made against him.

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Under the grounds we are now considering, Mr. Cummins further submitted that if Professor Cox's evidence was relevant and admissible, the learned Judge was wrong in not excluding it from evidence in the exercise of his discretion. He contended that either the evidence should have been excluded in whole, or alternatively, the evidence that the applicant was a sadist should certainly have been excluded. He argued that the prejudicial effect on the defence of Lowery, having regard to the nature of the crime, was so great as compared with any probative value it had for King, as to render it unfair or unjust to Lowery to admit it. The learned Judge considered this aspect of the matter and exercised his discretion against the applicant. According to well-established principles his decision is presumed to be right. It is not suggested that the learned Judge acted on any wrong principle, or that he took account of irrelevant considerations, or failed to take account of relevant considerations. His exercise of discretion must, accordingly, stand unless the court is satisfied that he failed to give sufficient weight to relevant considerations, or that his decision was manifestly unjust or unreasonable. See Australian Coal and Shale Employees' Federation v. The Commonwealth, 94 C.L.R. 621 per Kitto, J. at p.627.

It must be borne in mind that what fell to be assessed in this case was not the relative positions of the Crown and the applicant, but the probative value of the evidence to the defence of King and the prejudicial effect on the defence of Lowery. The considerations applicable to the two relationships, as we have already said, are by no means the same. As it is fundamental to the administration of criminal justice that a person accused must be completely free to meet the charge against him by all legitimate and relevant means, it cannot, in our opinion, be said that the learned Judge acted unjustly or unreasonably by exercising his discretion to admit evidence which was relevant to disprove the guilt of King. In the circumstances of this case it cannot, in our opinion, be said that the probative value to the defence of King, was so weak compared with the prejudicial effect on the defence of Lowery, as to require the judge to exclude it as a matter of discretion.

We should perhaps say that the learned

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Solicitor-General submitted that the rule of exclusion applies only to disposition or propensity evidenced by bad character or prior convictions, and has no application to disposition or propensity when relevant and not so evidenced, even if the evidence is led by the Crown. Having regard to the reasons we have already given for holding that the evidence was not excluded in the circumstances of this case when led by one of the accused, it is unnecessary to determine this wider proposition. The learned Solicitor-General also submitted, relying by analogy on the decisions in R. v. Wickham 1971 C.A.R. 199; R. v. Miller 36 C.A.R. 169; and Murdoch v. Taylor 1965 A.C. 574, that where such evidence is relevant and led by one of the accused, a trial Judge has no discretion to exclude it. As we are of opinion that the discretion - assuming the learned Judge to have possessed it - was rightly exercised in the present case, we also find it unnecessary to rule on this submission. 10 20

Grounds 9 to 13 of the Notice of Appeal were included therein on the assumption that the evidence of Professor Cox was admitted, not as relevant to the general issue, but to authenticate Lowery's signed confession. Such not being the case, these grounds were not pursued by Mr. Cummins in the course of the argument.

Ground 14 is that the learned Judge failed to put the defence of Lowery in an adequate or balanced manner. Included in this ground was a number of particulars lettered (a) to (h). Mr. Cummins abandoned the particulars lettered (c) to (h). 30

Particular (a), however, alleged that the learned Judge failed to put the defence of Lowery against the allegation that the crime was planned in advance. It was said that there was evidence that people were in the street shortly before the accused picked up the girl in the car. The learned Judge did not in his charge refer to this evidence, nor to the defence based upon it; namely, that it was most unlikely if the crime was planned in advance that the accused, who were well known in the district, would have picked up a girl who was also well known. Particular (b) alleged that the learned Judge failed to put the applicant's answer 40

to the allegation that the crime was a joint one. It was conceded by Mr. Cummins that the Judge put the argument in relation to this, but he said the Judge failed to refer to medical evidence adduced in cross-examination that possibly the girl was unconscious when she was tied up, and that King therefore could have done it alone. The learned Judge regarded these matters as arguments already put by counsel to the jury and refused to re-direct. In our opinion the learned Judge was justified. The charge is not to be read in isolation but in the light of the conduct of the trial. The jury had heard the evidence and the addresses of counsel. The learned Judge was not required to repeat all the arguments, and failure to refer or refer further to those matters did not, in our opinion, make the charge unbalanced or result in the defence of the applicant not being adequately put. See R. v. Kerr (No.2) 1951 V.L.R. 239 at p.247.

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Ground 15 is that the learned Judge was wrong in holding that Lowery's re-enactment of his actions for the purpose of the film on Sunday 7th February was voluntary, or that he wrongly exercised his discretion in not excluding the film from evidence. It was contended that the applicant was not specifically warned of his right to refuse to participate, or that the film might be used in evidence. It was contended also that earlier warnings admittedly given related only to speaking and not to acting.

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The learned Judge heard the relevant evidence, held that the applicant co-operated voluntarily, and refused to exclude the film in the exercise of his discretion. Having regard to the evidence of the earlier warnings given to the applicant, to the evidence that the applicant had had the advice of his solicitor, to the terms in which he was requested to co-operate in the making of the film, and to the absence of any evidence from him on the holding of a voir dire, the learned Judge, in our opinion, was amply justified in holding that the applicant acted voluntarily, and also in exercise of his discretion in refusing to exclude the evidence. We think, after having seen the film for ourselves, that the decision of the learned Judge was right in both respects.

As all the grounds upon which the applicant

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Lowery relied in support of his application in our opinion fail, it follows that his application must be dismissed.

For the applicant King, 19 grounds were stated in his Notice of Appeal, but Mr. Ogden, who appeared with Mr. Dunn on his behalf, in the course of the argument abandoned or did not pursue grounds 4, 10, 13 to 16 and 18.

Ground 2, which was the first ground argued, was amended by leave prior to the hearing of the application, but during the hearing the court gave leave to substitute a new ground 2 for the original as amended. The ground relates to the following passage which appears on page 116 in the transcript of the learned Judge's charge :

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"Now the law is that on the Crown case as presented, that is, on the basis of acting in concert or alternatively on the basis of acting as principal in the first degree and principal in the second degree, you cannot convict one only of those two accused. Either you find them both guilty or you acquit both."

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The charge then continued :

"If, however, the Crown failed to satisfy you beyond reasonable doubt of the guilt of the two accused on those two bases then it would be open to you in law, if you were satisfied beyond reasonable doubt that King's defence was a fabrication, to find King alone guilty on the basis that Lowery's evidence of what King did, corroborated by evidence of King's admissions to the police and to Mrs. Johnstone, satisfied you beyond reasonable doubt that King murdered the girl. Alternatively on the other hand it would be open to you in law, if you were satisfied beyond reasonable doubt, that Lowery's defence was a fabrication to find Lowery alone guilty on the basis that King's evidence of what Lowery did, corroborated by the evidence of Lowery's admissions to the police and his father, satisfied you beyond reasonable doubt that Lowery murdered the girl.

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The verdicts open to you, therefore, in this case, are first that the two accused are both guilty on the basis of acting in concert or of having been principal in the first degree and principal in the second degree. Secondly, you may find them both not guilty. Thirdly, you may find one guilty and the other not guilty on the last basis which I have just put to you. And you should bear in mind, this, that if you should find the accused King not guilty, then you will be asked to say whether you so find on the ground of insanity or not."

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It was contended that the passage first quoted meant, or was reasonably calculated to lead the jury to think that even though the jury was not satisfied that King acted voluntarily or had the murderous intent or was satisfied he was insane, the doctrines of concert or of principals in the first and second degree would nonetheless apply so that both accused must be convicted or both acquitted alternatively it was said the learned Judge failed to direct that on any of such findings, if Lowery was the principal in the first degree he should be convicted and King acquitted or found not guilty on the ground of insanity, or if King was the principal in the first degree Lowery should be acquitted and King acquitted or found not guilty on the ground of insanity.

It was said that the charge accordingly involved a material misdirection or non-direction of law, as the case may be, as in the event of any such findings neither the doctrine of concert nor of principals in the first and second degree would apply. It was argued, however, that the language used, properly understood, was apt to direct the jury that if Lowery was the killer and King was in fact acting in conjunction or aiding him in any way, King must also be convicted even if he was insane, or acting involuntarily, or lacked the murderous intent. Alternatively, it was said that the misdirection or non-direction was calculated to lead the jury to think that if the accused were in fact acting in conjunction, or one was in fact aiding or abetting the other, it was unnecessary to determine whether King was insane, or to consider whether he acted involuntarily or lacked the murderous intent. It was said that in these circumstances the applicant King was deprived of the chance open to him, on a

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proper direction, of acquittal or of a verdict of not guilty on the ground of insanity.

This submission, in our opinion, is misconceived and reveals the fallacy of looking at a passage in a charge in isolation. The learned Judge had earlier directed that the primary way the Crown put its case was that the accused were acting in concert, and that alternatively it advanced a case that they were acting as principals in the first and second degree, it being immaterial on either view what part was played by each. He plainly and correctly directed the jury as to the elements in the crime that must be found before King could be convicted of murder. He had also correctly directed the jury as to the law relating to the defence of insanity raised by King. Immediately preceding the impugned passage in the charge, the learned Judge directed the jury, as he had earlier done, that the doctrine of concert required concert in each element of the crime, and that the doctrine of principals in the first and second degree required a principal offence, and that the aider and abetter should be aiding and abetting knowingly and intentionally in each element of the principal offence. He also again reminded the jury that King should be found not guilty on the ground of insanity if it was satisfied he was insane. The impugned passage, read in the context of the directions immediately preceding them and prefaced by the words, "Now the law is that on the Crown case as presented, that is, on the basis of acting in concert or on the basis of acting as principal in the first degree and principal in the second degree", in our opinion contains no misdirection, and when so read did not call for any further direction to prevent the jury thinking that it was unnecessary to consider whether King acted voluntarily or had the murderous intent or was insane, or that he must be convicted if in fact he was acting in conjunction with Lowery even if he was not acting voluntarily or lacked the murderous intent or was insane. When the relevant passages in the charge are read together, we are of opinion that the impugned passage could not be taken to mean other than that the verdicts must conform, if, applying the judge's directions, the jury was satisfied that the accused were acting, in concert or as principals in the first and second degree, it

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being involved therein so far as King was concerned that the jury was satisfied he had acted voluntarily and with the necessary intent and was not insane.

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10 Ground 3 is that the learned Judge wrongly failed to direct that it was open to the jury on the evidence to find a verdict of manslaughter against King. It was submitted that it was open to the jury to find that King committed an unlawful assault on the girl by tying her up with the flex, or assisting Lowery to tie her, intending to cause her some injury or pain more than of a trivial nature. See R. v. Holzer (1968) V.R. 481. This submission was based on several statements in King's record of interview to the police that he might have helped Lowery or assisted or helped Lowery to tie the girl with the flex, and on a passage in his evidence that he might have held her feet up at the direction of Lowery.

20 A similar submission was put to the learned Judge before he charged the jury, but he held that there was no view of the evidence on which a verdict of manslaughter was open. In so ruling, the learned Judge at p.765 of the transcript said:

30 "The other matter on which I reserved my opinion was whether the question of manslaughter should be left to the jury in relation to King. That matter may be considered on two alternative assumptions, the first being that it was King's conscious voluntary act that caused the death and that that act was a strangling of the girl with the flex pursuant to an intention to assault her by applying the flex to her neck in the way in which it was applied, but not an intention to kill. I can see no basis in the evidence admissible against King on which such a conclusion could be arrived at. And it is even more difficult I think to find a basis for a conclusion that King was guilty of manslaughter if one makes the alternative assumption that the cause of death was a conscious voluntary act of Lowery.

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I think, therefore, that the true view is that there is no basis here in the evidence upon which the jury could find manslaughter as against King and that if they found themselves

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unable to be satisfied on the charge of murder as against him, the only proper course for them to take would be to acquit him. For those reasons I do not propose to submit the question of manslaughter to the jury".

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We agree with the view so taken of the evidence by the learned Judge. The passages in the record of interview cannot of course be read in isolation, and when read in their context can only, we think, be taken as admissions that King was assisting Lowery in the murder of the girl. The passage in his evidence, either taken alone or in conjunction with his statements in the record of interview, provides, we think, no basis for manslaughter. On any view of this case, either with King as a principal participant or as an aider and abettor, having regard to the nature of the killing, including the severe injuries and the mode of causing death by the tying of the girl, there was, in our opinion, no view of the facts to warrant a finding by the jury that although King did or participated in voluntary acts causing death, he did so with an intent less than that necessary to constitute murder. 10 20

Ground 5 is that the learned Judge misdirected the jury concerning the document Exhibit 'K1'. That is the document alleged to have been given to King by Lowery just prior to the trial, and suggesting the account he should give in evidence. It was submitted that the explanation for this document suggested by the learned Judge in his charge at pages 57 and 111 was unwarranted by the evidence, and had the effect of destroying its value as a factor strongly confirmatory of King's whole case that Lowery was psychopathic, dominant and aggressive to a degree that indicated he could dictate the case of King so as to exculpate himself. 30

It is to be observed that the learned Judge did comment that the document was open to another interpretation from the point of view of the Crown, namely, that it was an early draft of the defences sworn to at the trial, but contained a major weakness in that it might have looked like another piece of collusion, and that the blanks in the document might have been left so that the time when it was to be said the drugs had been taken by 40

King and the dosage could be decided upon when further information was available as to what time and dosage would fit the story of drug effects.

We think the comment made by the learned Judge was permissible. There was evidence that no mention of drug-taking had been made to the police but that it may have been mentioned by King to Lowery at the prison, and that King and Lowery had been together at Pentridge for months and had travelled together in the prison van to Ballarat. There was, we think, a sufficient evidentiary basis to justify the comment. Moreover, the Judge plainly directed the jury that the facts were for it to decide; that it was not bound by any comments made by him; and that the parties were entitled to have the case decided on its view of the facts. It was put only as a view of the document open to the Crown, and there was nothing, in our opinion, either in the form or terms of the passage complained of so strong as to be likely to over-awe the jury. See R. v. Mawson 1967 V.R. 205 at p.209

Grounds 6 and 7 may conveniently be taken together. They are that the learned Judge wrongly admitted in evidence photographs of the body of the deceased girl, or wrongly exercised his discretion in not excluding them from evidence. Objection was taken at the trial and the learned Judge excluded some but admitted others. It was submitted that the mode of death and the method of tying up were not in issue; that the photographs disclosed nothing relevant; that some were posed and taken away from the place where the body was found; and that some depicted extraneous objects which might, for example, be taken as torn skin. It was further submitted that the photographs were horrifying and calculated to arouse anger or disgust, and that the prejudicial effect was overwhelming when compared with any probative value they might possess. We think the photographs had value in showing the rather complex method of tying up, and moreover on the evidence there could have been no doubt as to the circumstances in which the photographs were taken. The trial proceeded for a considerable period. We think that any initial shock which might have been caused would tend to become exhausted as the jury became accustomed to the photographs. We think they were not such as to distract the minds of the jury

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from the issues it had to decide. In our opinion, the photographs admitted were plainly relevant. The learned Judge, as we have said, exercised his discretion to admit them, and it is impossible for us as an appellate court to say that his discretion miscarried according to well-established principles.

Grounds 8 and 9 may likewise be conveniently taken together. They are that the learned Judge wrongly admitted the film-re-enactments by each accused depicting what each had done at the time and scene of the killing. It was submitted that the films were taken after the accused had been charged, and in the absence of each other, and that in a case where each was casting the blame on the other the jury might well use the actions of each depicted on the film as evidence against the other, and that accordingly the films in that way were inadmissible. The learned Judge, however, clearly and correctly directed the jury that the filmed demonstrations were admissible only against the man who made them and not against his co-accused. It was then contended that the learned Judge was wrong in holding that King took part in the film voluntarily, as he was not warned that he was not obliged to do so or that the film might be used in evidence, and that he was tricked by the police into giving his consent so far as he subsequently re-enacted his actions. The learned Judge, however, heard the evidence and saw the relevant witnesses, and we see nothing in the evidence or the circumstances to justify us in saying that he decided the question of fact that King acted voluntarily, wrongly. Reviewing the evidence for ourselves, we think the learned Judge was right in so finding. See Benmac v. Austin Motor Co. Ltd. 1955 A.C. 370. The exercise of the learned Judge's discretion not to exclude the film was also challenged on similar grounds. We likewise see no justification for holding that his discretion miscarried.

Ground 11 is that the learned Judge mis-directed or failed adequately to direct the jury concerning the evidence of an alleged admission made by King to a Mrs. Johnstone, a former policewoman. It was contended that the Judge failed to direct the jury that her evidence was not corroborated by two detectives who were present at the time the admission was alleged to

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have been made. The learned Judge, however, as appears from the transcript, said sufficient to remind the jury of the circumstances of this incident, and indeed this aspect of the ground was not pressed by Mr. Ogden. Mr. Ogden did, however, submit that a comment made by the Judge in respect of the conduct of King immediately before and after the alleged admission was unfounded. We think the comment was justified, and in any event the jury was clearly warned that it was not bound by any such comments made by the learned Judge.

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Ground 12 is that the learned Judge failed to put to the jury an important aspect of King's defence concerning Lowery's knowledge that he was drugged, and accordingly decided to take advantage of the situation to cast the blame upon King. The jury, however, had heard the evidence and the addresses of counsel and had been told by the learned Judge that he was not going to recapitulate many of the detailed submissions. Furthermore, so far as this objection is concerned, the learned Judge was not asked to re-direct upon it. In any event, read as a whole, the charge in our opinion fairly and fully put the defence of the applicant King to the Jury.

Ground 17 is that the learned Judge unjustifiably commented to the jury that King's alleged failure to recollect events while the girl was being driven in the van to the scene of the killing, may have been due to lack of willingness to tell the police of events he knew had occurred. The Judge did not, as alleged, invite the jury to draw such a conclusion. What he said was no more than a comment as to a possible explanation of King's alleged loss of memory. This comment was subject, along with the other comments complained of, to the learned Judge's warning to the jury that it was not bound by it. The learned Judge had indeed reminded the jury of King's evidence on this matter. In the context the comment was, we think, justifiable, with regard to this and the other objections to the way in which the learned Judge directed the jury as to the facts, it is well to recollect that the charge must be read as a whole and in the light of the conduct of the trial. When this is done we are of opinion that the charge was full and fair and adequately placed the defence of King before the jury. We see no basis for any

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suggestion that the charge was calculated, in the manner in which it dealt with the facts, to have any such effect on the jury as to produce a miscarriage of justice. We once again refer to the remarks of this court in R. v. Kerr (No.2) 1951 V.L.R. 239 at p. 247 as illustrating the manner in which objections of this nature to a charge are to be tested.

Ground 19 is that the learned Crown Prosecutor did not fully present the case against the accused Lowery whereas he over-emphasised the case against the accused King to such an extent as to be calculated to bring about a miscarriage of justice against the accused King. It was submitted that the learned Prosecutor failed to lead evidence admissible against Lowery; provided Lowery's advisors with a letter written by King's girl friend suggesting he was a taker of and trafficker in drugs; that the learned Prosecutor made unfair and unfounded and inflammatory submissions not justified by the evidence in his final address against King, and spent two hours in that address compared with half an hour against Lowery. Such objection was taken before the learned Judge but rejected by him at the trial. The learned Judge held that the arguments of the learned Prosecutor could be legitimately advanced on the evidence in the case. As to the evidence said not to have been led, the learned Solicitor-General submitted that, even if it was relevant, in each case it had been withheld on grounds of fairness to the accused, but that it had been made known to the advisors of the applicants insofar as it was not contained in the depositions. He also submitted that the production of the letter from King's girl friend, which was known to be in the Crown's possession, was demanded by Lowery's advisors, and that the learned Prosecutor's arguments were well justified. We think this ground, even if it be a ground capable of invalidating a verdict otherwise justified against King, is without merit and unjustified.

Finally, under ground 1 of the Notice, Mr. Ogden submitted that the verdict against King was against the evidence and the weight of evidence. Having regard, inter alia, to the evidence of prior discussion about killing a girl

to the evidence of King's presence at the time of the killing and to the evidence of his subsequent false accounts of his movements on the night of the killing, we are of opinion there was ample evidence to support the verdict.

As in our opinion each of the grounds taken on King's behalf fails, his application must likewise be dismissed.

10 Accordingly, for the reasons we have given both applicants are dismissed.

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No. 6

ORDER GRANTING LEAVE TO APPEAL TO HER MAJESTY
IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of December 1972

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

In the Privy Council

No. 6

Order Granting Leave to Appeal to Her Majesty in Council

20th December 1972.

20 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 30th day of November 1972 in the words following viz:-

30 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Christopher Russell Lowery in the matter of an Appeal from the Full Court of the Supreme Court of the State of Victoria between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal to Your Majesty in Council from a Judgment of the Full Court of the Supreme Court of the State of Victoria sitting as a Court of Criminal Appeal dated the 17th September 1971 which

In the
Privy Council

No. 6

Order
Granting
Leave to
Appeal to
Her Majesty
in Council

20th December
1972.

(continued)

dismissed the Petitioner's application for leave to appeal against his conviction in the Supreme Court of the State of Victoria on the 23rd June 1971 of murder: And humbly praying Your Majesty in Council that the Petitioner shall have special leave to appeal from the Judgment of the Full Court of the Supreme Court of the State of Victoria dated the 17th September 1971 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Full Court of the Supreme Court of Victoria dated the 17th September 1971;

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"AND Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor or Officer administering the Government of the State of Victoria and its Dependencies in the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

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IN THE PRIVY COUNCIL

No. 2 of 1973

ON APPEAL FROM THE FULL COURT OF
THE SUPREME COURT OF THE STATE OF VICTORIA
SITTING AS A COURT OF CRIMINAL APPEAL

B E T W E E NCHRISTOPHER RUSSELL
LOWERYAppellant

- and -

THE QUEEN

Respondent

 EXHIBITS

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"BB"

ExhibitsSTATEMENT BY APPELLANTProsecution
ExhibitsCHRISTOPHER RUSSELL LOWERY
STATES:

"BB"

Statement by
Appellant

I am a bricklayer by occupation and I live
at 4 Woodbridge Street, Hamilton.

3rd February
1971

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Between 8 and 8.15 p.m., on Sunday 31st
January 1971, I saw the deceased, Rosalyn Nolte,
walking in a westerly direction along Grays
Street, Hamilton. She was walking between Brown
and Thompson Streets, on the southern side of
Gray Street. She was walking a Corgi dog on a
leash. I was driving my grey Holden panel van
registered number JVS 435 in a westerly direction
along Gray Street. Seated in the passenger seat
was Charles King. I drove this car into the
parking bay alongside the deceased.

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She approached the car and spoke to Charlie
through the passenger side window. She said
hello and Charlie told her that Garry Bailey
was home. She asked if I would take her out to
his place in Kenny Street. I told her no and

Exhibits

Prosecution Exhibits

"BB"

Statement by Appellant

she then asked for a ride down to the Commercial Hotel in Thompson Street. I gave a ride down to the Commercial Hotel and dropped her off at the corner. She took the dog out of the car and said she might walk out to Bailey's. I then drove away. This would be about 5 minutes after we had first seen her. I have not seen her since that time.

3rd February 1971

(Signed) Christopher R. Lowery

(continued)

Statement taken and signature witnessed by me at 10.15 p.m. on 3.2.71.

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Malcolm A. Hyde,
Constable 15877

"FF"

"FF"

Statement by Appellant

STATEMENT BY APPELLANT

4th February 1971

CHRISTOPHER RUSSELL LOWERY STATES:

I am a bricklayer employed by my Father and I reside at 4 Woodbridge Street, Hamilton.

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About 8-5 p.m. on Sunday the 31st January 1971, in company with my friend Charlie KING, I was driving my car which is a 1964 Holden Panel Van Reg.No. JVS-435 in a southerly direction along Brown Street, Hamilton. As I turned right into Gray Street to travel west I saw the deceased Rosalyn NOLTE walking with her corgi dog west along the south side of Gray Street. As we drove slowly past her she called out to us and I stopped opposite Thompson's Store. Charlie wound down the window and Rosalyn walked up to us. She said hello and Charlie then asked her if she knew that Garry BAILEY was home. I think Charlie used the nickname 'Sugar'. She said she knew he was home but she seemed suprised. She then asked me if I would drive her out to BAILEY'S place. I refused because I thought Garry might not want to see her. She asked me a couple more times if I would take her to Bailey's place. But again I refused. Then she asked me if I would drive her to the Commercial

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ExhibitsProsecution
Exhibits

"FF"

Statement by
Appellant4th February
1971

(continued)

Hotel. I agreed to do this. Charlie then got out and Rosalyn then lifted the dog over the seat and put it into the rear of the van. Then she got in the front seat and sat in the middle, Charlie then got in and we drove to the Commercial Hotel, at the corner of Thompson Street and Lonsdale Street. I drove left into Lonsdale Street and stopped near the fence and entrance to the car park at the rear of the hotel. Charlie then got out of the van, Rosalyn then lifted the dog over the seat and then Charlie got back in. She seemed a bit angry or perhaps she was sorry not being taken to Bailey's place. When she got out I think she said something about walking to Bailey's place. We then drove south along Lonsdale Street and as we did Rosalyn was just standing there. We drove down to the swimming pool and turned right then went along this street then we turned right again and came out onto Coleraine Road. Charlie wanted to see Von Ryan's Express which was showing at the Drive-in, I wasn't too keen to see it but I agreed to go to the drive-in. When we got along side the cemetery I saw a hitch-hiker. Charlie didn't want to stop but I have hitch-hiked a fair bit and I know what its like. The hitch-hiker was a man about 18-24 years, 5'-10" to 6', medium build, yellow/blonde almost shoulder length hair, he had a full beard, Ned Kelly style, the same colour as his hair, he had a pack on his back, it could have been khaki or dark green. I told Charlie that I'd give him a ride and Charlie didn't want me to. I stopped just a little way past him and Charlie got out and lifted up the back window and put his pack in the back. This man then got in the front and sat in the middle. Charlie then got in and I said to this man, "How far are you going". He said, "I'm going to Adelaide through Mount Gambier." I told him that we were only going to the corner of Coleraine Road and Cavendish Road, where you turn off to go to the drive-in, and I told him I would give him a ride out to there.

He then asked us how far the next town was, and I told him it was 20 miles. He then said, "I'll give you five dollars to take me over there" or something like that. When he offered me five dollars I thought that if he was that desperate for a ride I would take him to Coleraine. I've hitch-hiked myself and I know what its like. I then drove him to Coleraine and I let him out just

Exhibits

Prosecution
Exhibits

"FF"

Statement by
Appellant

4th February
1971

(continued)

near the shops in the main street. The fish shop there was open, its always open. I travelled at about 45 to 50 miles per hour. During the conversation in the car the man told us that he had come from Melbourne. He was talking to Charlie most of the time and I just didn't listen to their conversation. After we let the hitch-hiker out, Charlie got his pack out of the back of the van. I then made a U turn and we drove back to Hamilton, and arrived back about 9-30 p.m. We drove around a bit, we drove up Gray Street as far out as the railway line, for no particular reason. I then drove down to the Sports Centre in Gray Street, near the Spectator' Newspaper Office. I parked my car just south of the centre on the same side of the road. Charlie and I then went into the centre and we walked right down to the far billiard table where I spoke to three blokes who are bikies from Port Fairy. They all had their leathers on. I don't know their names although I have met them once before about 5 o'clock that same afternoon. They had a girl from Hamilton with them, I think her name was Cynthia WOOLFE, she also had her leathers on. Charlie and I spoke to them for about two or three minutes. The four of them were playing billiards and we talked about the game. I saw Laurie RICHARDS there but I didn't speak to him. I think RICHARDS is a partner in the sports centre. We didn't play anything we only went there because we saw the bikes out the front. We were only there for about two or three minutes and left. After we left the sports centre we drove out Hensley Park Road just for something to do. Then Charlie and I went to 3 Shakespeare Street, and spoke to my Father in law and Mother in law, Mr. and Mrs. BRAY my wife Hazel, Marilyn COOPER and Kevinna BUTTERWORTH. All except Kevinna were playing cards, they were playing 500.

Charlie and I then left 3 Shakespeare Street about 11 p.m. and we went in my van to Drive-in theatre to find out what time the late show started. We drove straight to the drive-in and didn't stop on the way. When we got there, there was no-one in the office. There was a bloke leaning over the fence just near the office and I asked him if he had any idea what time the late show started. He said he didn't know but thought the other show was nearly finished. There was a white Holden Sedan with a woman and children in it parked nearby and

the man I spoke to seemed to belong to this vehicle.

Exhibits

Prosecution Exhibits

"FF"

Statement by Appellant

4th February 1971

(continued)

10

We then returned to 3 Shakespeare Street, and went inside. The others were finishing the game of cards. Marilyn got some blankets and woke up Kevinna. My wife, Marilyn, Kevinna, Charlie and I then left and we drove to 77 Stephen Street, where we all went inside. I got some cans of beer out of the fridge and Hazel got some clothes and then we all drove to the drive-in theatre. We stayed there until the finish, then I took Kevinna and Marilyn back to 3 Shakespeare Street, then I took Charlie home to 46 Stephen Street then Hazel and I went home, arriving there about 3-30 a.m.

20

On Sunday the 31st January I was wearing blue jeans, black T shirt, black flying boots, and when I left the flat with Charlie about 6-30 p.m. I took with me a black 'Bell Staff' jacket.

That day Charlie was wearing blue jeans, and I think a black T shirt, flying boots and a black leather jacket.

When we gave Rosalyn the lift earlier that night she was wearing blue bleached jeans, a purple jumper.

(Signed) C. Lowery.

30

Statement taken and signature witnessed by me this 4th February 1971 at 7-50 p.m. at Hamilton Police Station

(Signed) V. Womersley

V. Womersley
Detective First Constable 13668

"PP"

"PP"

RECORD OF INTERVIEW WITH APPELLANT

Record of Interview with Appellant

Record of Interview between Detective Inspector CARTON and Christopher Russell LOWERY at the Hamilton Police Station on 6. 2. 71. Inspector

6th February 1971

Exhibits

CARTON asking questions. Detective DAVIDSON typing.
Time commenced 2.00 p.m.

Prosecution
Exhibits

"pp"

What's your full name?---Christopher Russell
LOWERY.

Record of
Interview with
Appellant

What is your date of birth?---5th of the 5th, 52.

6th February
1971

What is your occupation?---Bricklayer.

(continued)

Where do you reside?---Where do you mean?

I thought you were living at number 3 Shakespeare
Street?---I only stayed there a couple of nights.

What is your true address?---Haven't got one at
the moment I suppose. 10

Well where were you living before you went to stay
a few nights at Shakespeare Street?---77 Stephens
Street.

Well you've admitted to Detective DAVIDSON and I
this is Detective DAVIDSON, that you were present
with Charles Ian KING when Rosalyn NOLTE was
killed. You have admitted that you took part in
the killing. Is that correct?---Yes.

I intend asking you further questions about this
matter. It is my duty to warn you that you aren't
obliged to answer any questions unless you wish.
Do you understand that?---Yes. 20

Are you prepared to answer further questions?---
Yes.

You could be charged with an offence in connection
with this. You understand that don't you?---Yes.

Are you prepared to start at the beginning?---Yes.

Well would you go ahead?---It all started about
Christmas time. Went over to Mt. Gambier for the
bikes with Charlie, and we were pretty boozed all
weekend. Had a fair bit. I don't know exactly
what he said, but we just come up with this idea. 30

Yes, go ahead?---Kill a chick. Charlie might
have suggested it, I'm not sure, but we decided
to see what it would be like to kill a chick.

Yes, what happened then?---We just sort of worked the idea over, thought about it, and thought of different clues about it, talked it over, and it just sort of built up and up and up.

How often did you talk about it?---Couldn't say. Talked about it a bit I suppose. That's about all.

10 Well are you prepared to tell me again what occurred on Sunday last the 31st of January?--- We seen Rosalyn walking along the street, pulled up, and she come up to the car, by the time she got to the car we decided that there was a chance.

What do you mean by chance?---Use our idea.

Whereabouts did you pick up Rosalyn?---In front of Thompson's.

Would you like a glass of water?---Yes.
(Glass of water obtained and handed to LOWERY)

In front of Thompsons store in Gray Street?---Yes.

20 What time of the day was it?---About eight, a bit after.

In the evening?---Yes.

What vehicle were you using?---In the van.

Your van?---Yes.

What's the make and number of it, do you know?
---Sixty-four Holden JBS 435. JV.

Who was driving?---I was.

What did you say to Rosalyn prior to picking her up?---Nothing.

30 Well how did she come to get into the van?---She waved to us and we pulled up. And she come up to the van. Charlie told her that Sugar was home and she asked us if we'd take her out there. We didn't want to at first, and then Charlie told her that he'd be at the party.

What happened then?---She asked us if we'd take

Exhibits

Prosecution Exhibits

"PP"

Record of Interview with Appellant

6th February 1971

(continued)

Exhibits

Prosecution
Exhibits

"PP"

Record of
Interview with
Appellant

6th February
1971

(continued)

her out to see him and we agreed.

Whom do you mean by 'Sugar'?---Garry BAILEY.

What happened then?---Charlie asked me if I knew the way and I told him I didn't. So he said 'go out Port Fairy Road' and when we got out there he asked me if I knew any shortcut. I told him I didn't and then he showed me a turnoff further on. We went down there and I followed the road until we come to Mt. Napier.

Was there a party in progress somewhere?---I don't know. 10

Well where did you intend going?---Charlie said earlier that he knew where to go.

What happened then?---We went into the Mt. Napier reserve, and drove along the track and Charlie said to turn up another one. So we went up there and he said 'Pull up. We'd better see if there's any spotlighters about.' We pulled up and got out and we all walked along the track.

Yes?---It happened. 20

What happened?---I held her, and Charlie took her clothes off, then I don't know what happened.

What do you mean, 'you don't know what happened? ---I just can't remember things after that.

What do you mean you can't remember?---Well I remember that Charlie had a go at scruffing her.

What do you mean by 'scruffing her'?---Shagging her.

Yes, what happened then?---I don't know.

You recall you said that Charlie took her clothes off. What did he do with the clothes?---Just threw them on the ground. 30

Do you remember anything else?---Well Charlie went away and I didn't know where he was, so the next thing I knew he come back with the cord. Then he asked me to hold her head up.

Where was she at this stage?---She must have been on the ground I suppose.

Exhibits

What happened then?---Charlie put the cord around her, the wire.

Prosecution Exhibits

"pp"

What sort of wire was it?---2 flex.

Record of Interview with Appellant

What did he do with the wire. How did he put it around her?---Just wrapped it around her throat. Then he said to me, 'Hang onto this', and I just held it with one hand. It was around her neck and I just held it behind her. Charlie said, 'If she started to move, pull it tight.'

6th February 1971

(continued)

10

What happened then?---I just held onto it and Charlie disappeared again. I called out to him a couple of times, I called him 'Mother' that's his nickname.

What happened next?---Charlie went off to the right, and next thing I knew he was behind me on the left. He said, "Bring her over here."

What happened then?---I suppose I must have dragged her over there.

20

Did you pull the wire tight behind her neck?---It was tight when he gave it to me.

What happened then?---I dragged her over to him then both of us then dragged her down this gully thing and Charlie said, 'Tie her up'. I couldn't I couldn't see properly.

What do you mean by that?---It was dark.

Well was she tied up?---Charlie said he'd tie her up while I found something to tie her to. I couldn't find anything then Charlie said 'That'll do, let's go'.

30

Her hands and feet were tied. Who did that?---I think I tied her feet and Charlie told me to hang onto one end of the cord so I held onto that then he said, 'Now give it to me' and he took it and he must have tied her up with it.

Did the girl scream at any time?---Once I think.

Did she say anything?---Yes.

Exhibits

What did she say?---She kept on getting our names confused.

Prosecution
Exhibits

What was she saying?

"PP"

Record of
Interview with
Appellant

At 2.46 p.m. Superintendent WARNE entered the room and said to LOWERY, "Is everything alright?"

LOWERY replied, "Yes."

6th February
1971

Did she say anything?---I can't remember what she was saying.

(continued)

Well what happened after you say that Charlie must have tied her up. What happened then?---Walked back to the van. 10

What condition was the girl in when you left her? ---She must have been dead when she didn't move before when Charlie asked me to hold the cord.

You said earlier that 'she must have been on the ground.' Do you remember whether or not she was on the ground?---Yes, she was I suppose.

You say that Charlie took her clothes off. Did she object to the clothes coming off?---Yes.

What did she say?---Don't know. 20

Well now you walked back to the van. What happened then?---We backed up and we found a place where we could turn around, and we turned around and drove out.

Where did you go then?---We drove back and stopped before we got to the main road, the Port Fairy Road, and we got the dog out.

You haven't told us about the dog. What can you tell us about it?---Just sat there, calm.

When you picked Rosalyn up, she was leading the dog. Is that correct?---Yes. 30

Where was the dog when you Rosalyn and Charlie left the van at Mt. Napier?---It was in the van.

Was it tied up in the van or not?---No, it was left in the van.

Well after letting the dog out, then what happened?---We came back to Hamilton.

Did you have any liquor to drink that day?---
Only a bit.

How much?---4 or 5 small cans between us.

Did you drink any liquor out at the place where the girl was left?---No.

Did she have anything to drink while she was in your company?---I think she had one mouthful.

Exhibits

Prosecution
Exhibits

"pp"

Record of
Interview with
Appellant

6th February
1971

(continued)

10

Where was that?---On the way out there.

Did you drink some on the way out there?---Yeah we opened a can when she got in the van.

What type of cans were they?---Melbourne.

Did you know Rosalyn NOLTE very well?---Reasonably well.

How long have you known her?---Four or five weeks I suppose.

20

Did you have intercourse or attempt to have intercourse with her that night?---Ah no, I don't think so.

Have you been in her company before?---What do you mean by that?

Well have you been in her company, have you taken her out?---No.

Where did you first meet her?---She was walking along the street one day and me and Charlie pulled up later on and she come over and started talking to us. That's when I first met her.

30

Amongst other injuries, Rosalyn's left arm was broken at the elbow. Can you explain how that happened?---No.

There was also a number of bruises and cuts about the face and body. Can you explain how that happened?---No.

Did you hit her with your hand?---I don't know.

Exhibits Did you hit her with any sort of a weapon?---No.

Prosecution Exhibits Did you kick her? Or stamp on her with your foot?
---I don't know.

"PP"

Record of Interview with Appellant What clothes were you wearing that day?---Flying boots, originals, T-shirt, bellstaff and I had me sleeveless in the van.

6th February 1971 What do you mean by 'Originals'?---It's an Angel term for your original party clothes, jeans.

(continued) What do you mean by 'Bellstaff'?---It's a brand of jacket. 10

What was Rosalyn wearing that night, can you remember?---A pair of jeans and a jumper. That's all I can remember.

Did she have a transistor radio?---I don't know, but I think I could take you to it though.

Well what do you mean by that?---Well when you first said it I never remembered it, but then I thought.

Well where would it be now?---Hensley Park Road, near a corner. 20

We're also trying to find a signet ring, what do you know about that?---She had one on one day up at Charlie's. She came to see Stephen, Charlie's young brother, cause Stephen had it.

Well did you notice whether she was wearing a signet ring that day?---No.

(LOWERY) Can I go to the toilet please?---Yes.
(Taken to toilet by Detective DAVIDSON at 3.15 p.m.)

Interview re-commenced at 3.25 p.m. 30

This 2 flex cord which was tied around the girl. Did you have that in the van?---Yes.

When was that placed in the van?---Quite a while ago.

Does it belong to you or Charlie?---Me.

Where did you obtain it from?---I've had it for quite a while.

For what purpose?---When I was going to put the radio in the van, I was going to put the speaker in the back.

When was that?---When I first got the van about a month before Christmas.

10 A length of this flex was found under the bonnet of your van by Police. Is that portion of the flex that was used to tie up the deceased girl?
---Don't know.

When you were first interviewed by Police you said that you picked up Rosalyn and that you dropped her near the Commercial Hotel corner. Is that statement incorrect?---Yes.

You also told Police that in company with Charlie you gave a hitch-hiker a lift to Coleraine. What do you say about that?---It's incorrect.

20 After returning to Hamilton, what did you do?--- We drove around a bit, went to the Sports Centre, left there and drove around a bit more. Then we went up to 3 Shakespeare Street, left there, went to the drive-in to find out what time the show started, returned to 3 Shakespeare Street. Then we all went out to the drive-in.

Whom do you mean by 'all'?---Myself, my wife, Charlie, Kavina Butterworth, Marilyn Cooper.

30 What did you do with your empty beer cans after you'd drank the beer?---Threw them out, along the road.

Will you have a look at this piece of lead (Shown lead). Was that similar to the piece that was tied around Rosalyn?---Yes but I didn't think it was so thick.

Will you have a look at these jeans? (shown jeans)---Yes, they were Rosalyn's she always wore those.

Will you have a look at this pullover? (shown pullover)---Yes, That's Rosalyn's.

Exhibits

Prosecution Exhibits

"PP"

Record of Interview with Appellant

6th February 1971

(continued)

Exhibits

Would you look at these shoes?(shown shoes).---
Yes, they're Rosalyn's.

Prosecution
Exhibits

"PP"

Would you look at this choker?---Never seen it
before.

Record of
Interview with
Appellant

Would you have a look at this watch? (shown watch)
---Don't remember that.

6th February
1971

(continued)

Would you look at this piece of flex which was
found in your van. What do you say about that?
(shown flex)---No I don't know about the shoes
back up there. That's not the flex from under the 10
bonnet, that's too thick. (shown another piece)
That's it. I've never seen it before Mr. RIPPON
found it there and showed it to me.

Would you look at this pair of panties, bra and
sockettes? What can you say about them?---No I
wouldn't have any idea about them.

Would you look at these flying boots, jeans and
jacket?(shown boots jeans and jacket)---The boots
and jeans are mine, the jackets my wife's.

Were you wearing all of these on the night of the 20
31st of January when you went to Mt. Napier?---Yes.

You will be charged with the murder of Rosalyn
Mary NOLTE. Do you wish to say anything in answer
to the charge. You are not obliged to say anything
unless you wish, but whatever you say may be taken
down in writing and given in evidence. Do you
understand that?---No. You've made a mistake there,
you've put 'No' and I answered 'Yes'. I do under-
stand.

Are you prepared to make a written statement?--- 30
No I've told you all I can.

You've watched Detective DAVIDSON typing all my
questions and your answers to my questions. Are
you prepared to read this record over aloud and if
you agree it is a true record, would you be
prepared to sign it as such?---Yes.

(Read record aloud) (Commenced reading aloud at
3.54 p.m.) Concludes reading at 4.08 p.m. Pages
1 to 6 out of machine, page 7 whilst still in
machine.

Well now you've read the record over aloud. What have you to say about it?---It's correct.

Are you prepared to sign it as being correct and that you have read it over?---Yes. I've read it over and it is correct. 4.10 p.m.

(Signed) C. Lowery

(Signed) G.J. DAVIDSON. (Signed) K.CARTON
Detective 1/Constable 13718. Detective Inspector

Exhibits

Prosecution Exhibits

"PP"

Record of Interview with Appellant

6th February 1971

(continued)

"GG"

"GG"

10

STATEMENT BY CHARLES IAN KING

Statement by Charles Ian King

CHARLES IAN KING
STATES:

3rd February 1971

I am a shop assistant employed by my Mother, trading in the name of KING and ROBERTS, 88 Coleraine Road, Hamilton. I reside at 46 Stephen Street, Hamilton. I am 18 years of age.

20

I had known the deceased Rosalyn NOLTE for only about two months. I have been working at Ballarat and Melbourne for the past two years and I only arrived back in Hamilton in September 1970. I did not know the deceased prior to going to Ballarat and Melbourne and I actually only met her about two months ago. She had been to my home a couple of times as she knew my brother Stephen.

30

Between 8 p.m. and 8-15 p.m. on Sunday the 31st January 1971 I was with Chris. LOWERY, in Chris's car and we were driving along Gray Street, Hamilton, when I saw Rosalyn who was walking a corgi dog. She called out to us and we stopped outside Thompson's Store, and she walked over to us.

I asked her if she knew Garry BAILEY was in Hamilton for the weekend. Garry BAILEY works as a trainee engine man on the Railways in Ballarat and only comes home now and then. I think she

Exhibits

Prosecution
Exhibits

"GG"

Statement by
Charles Ian
King

3rd February
1971

(continued)

told me she didn't know he was in Hamilton and she asked me if we would give her a ride out to Garry's place.

We refused to do this because we thought that Garry may not want to see her. She then asked us if we would give her a ride down to the Commercial Hotel, which is on the corner of Thompson Street and Lonsdale Street. We agreed to do this and drove her to Lonsdale Street and let her out near the entrance to the car park at the rear of the hotel, that is the Commercial Hotel. During the time she was with us I think she said that she was going to walk out to Garry BAILEY'S place. She was wearing blue striped slacks at the time. I can't remember her other clothes.

10

About 1-45 p.m. on Monday the 1st February 1971 I saw Garry BAILEY at Chris's flat and I asked him if he had seen Rosalyn on Sunday night and he told me he hadn't. Chris LOWERY was then living in a flat at the rear of 77 Stephen Street, Hamilton. He now resides at 4 Woodbridge Street, Hamilton.

20

Statement taken and signature
witnessed by me this 3rd
February 1971 at the Hamilton (Sgd.) C. King
Police Station

(Signed) V. Womersley

V. Womersley
Detective First Constable 13668

"OO"

"OO"

Statement made
by Charles Ian
King

4th February
1971

STATEMENT MADE BY CHARLES IAN KING

30

CHARLES IAN KING
STATES:

I am a shop assistant employed by my mother at her shop at 88 Coleraine Road, Hamilton. It is a mixed business there. I live at 46 Stephens Street, Hamilton. I live there with my parents.

On Sunday the 31st of January, 1971 about 8.00 p.m. or 8.15 p.m. I was with Chris LOWERY in his panel van. Chris was driving along Gray Street,

Hamilton towards Thompson Street. Chris's panel van is a Holden. I think it's an EH model. It has EJ taillights.

Exhibits

Prosecution Exhibits

"00"

Statement made by Charles Ian King

4th February 1971

(continued)

10 Approaching Thompson's store, we saw Rosalyn NOLTE walking along the left hand side of Gray Street. She had her dog with her. It's a Corgi and it was on a lead. All I can remember about her dress was she had blue and white denim jeans. She waved and yelled out to us and we pulled up outside Thompson's store. She came over to my side of the car; the passenger side of the car and I put the window down and said, "How are you?" She said, "Alright." Then I says, "Did you know Sugar's in Hamilton?" and she said, "No."

'Sugar' is the name Garry BAILEY is known by.

20 (Earlier on Sunday, I had seen Garry BAILEY and he told me that he had been walking along one of the streets in the town and evidently Rosalyn had been walking along and had seen him and yelled out, 'Good day Sugar,' and he told me that he had ignored her and kept walking. So I'm pretty sure she must have known he was in town.)

30 She then said, "Will you give me a ride out to Sugar's place?" and Chris said, "No." She said, "Why not?" and he said, "We're going to the drive-in, and he mightn't be home anyway." She said, "Well can you give me a ride down to the Commercial Hotel corner?" and Chris said, "Okay." (The reason we said that Garry mightn't be home was because we didn't think he'd want to see her.)

40 I then got out of the panel van, and she lifted the dog up over the back of the front seat and then got in herself and sat in the middle of the front seat. We drove off and turned right into Thompson Street and pulled up around the corner into Lonsdale Street and parked adjacent to the end of the driveway into the car park of the Commercial Hotel. I'm pretty sure she said on the way to the Commercial Hotel that she would walk out to Garry's place when we dropped her off.

When we stopped the panel van, I got out and she lifted the dog from over the back and she and the dog got out of the panel van. I then got back into the passenger seat and said, "See you

Exhibits

later", and she said something to the same effect, and we drove off the way we were facing.

Prosecution Exhibits

"00"

Statement made by Charles Ian King

4th February 1971

(continued)

I'm pretty sure there were cars parked along the kerb in Lonsdale Street but I'm not sure whether or not there was anyone in them or not. The last I saw of Rosalyn was when we were driving off and I saw her walking back towards the corner of Lonsdale and Thompson Streets.

Chris and I then drove towards the swimming pool and out along to the Coleraine Road. On the way out Chris says he didn't want to see the show at the drive-in because it was just a war film. I said I wanted to and he said 'Alright'. Then we saw this hitch-hiker walking along the left hand side of the road parallel to the cemetery. Chris said, "We'll pick him up", and I said, "We'll miss out on part of the show, it's late enough as it is." Chris said, "We'll give him a ride as far as the intersection of Cavendish and Coleraine Roads", and I agreed to this.

10

20

We pulled up alongside the hitch-hiker and I'm not too sure if I said or Chris said, "We're only going as far as the Cavendish Road but it'll save your feet a bit anyhow." He said, "Okay", and put his gear in the back. He had a rucksack, a sleeping bag and he had a billy on his rucksack. He put his gear in through the back of the van, and I got out and opened it up for him. He was wearing a pair of denim jeans, a jumper, I don't remember what colour it was, and a denim jacket I think.

30

He got into the panel van and sat in the middle between Chris and me. As we were driving along I asked him where he'd come from and he said Melbourne. He said he left there on Saturday afternoon and was heading to Adelaide. He said something about going to Mt. Gambier first and was meeting someone at Mt. Gambier. He then asked us how far it was to the next town and we said about 20 miles. By this time we were slowing down to stop at the intersection where we were going to drop him. He said if we'd drive him to the next town he'd give us five dollars for our trouble. Chris said, "Well if you're that hard up for the ride, I'll take you there for nothing."

40

We drove him to Coleraine and let him off

about three quarters of the way up the main street. There was a garage nearby and I think a milk bar too. Then we came back to Hamilton and drove around the town a bit and then went up to Chris's mother-in-laws house at 3 Shakespeare Street, Hamilton. When we got there, Chris's wife Hazel and a couple of her girl-friends were already there. Marilyn COOPER and Kavina BUTTERWORTH were the friends of Hazel. We had a couple of hands of 500 and then went back out to the drive in to see what time the horror show was starting. Hazel and Marilyn and Kavina were getting ready while Chris and I went out to the drive in. There was no one in the ticket box out there so we came back and collected the three girls and went up to Chris's flat and all got out of the car and went inside. We were only inside for a couple of minutes while Chris and I got a couple of cans out of the fridge and went back outside into the car with the three girls. When we got in the car, Hazel realised she'd forgotten to get her smokes and Chris and myself went back inside again to get them for her.

We then went to the drive in, the five of us, and after the show they drove me straight home. I would have arrived home between a quarter to three and three o'clock. I went straight to bed and did not get up again until about midday.

(Signed) C.I. King

Statement taken and signature witnessed by me at the Hamilton C.I.B. Office at 7.55 p.m. on 4/2/71.

(Signed) G.J. DAVIDSON

G.J. DAVIDSON
Detective 1/Constable 13718

"HH"

RECORD OF INTERVIEW WITH CHARLES
IAN KING

Exhibits

Prosecution Exhibits

"00"

Statement made by Charles Ian King

4th February 1971

(continued)

"HH"

Record of Interview with Charles Ian King

6th February 1971

Record of interview between Detective Sergeant

Exhibits

Prosecution
Exhibits

"HH"

MORRISON and Charles Ian KING at the Hamilton Police Station on Saturday the 6th February 1971. Sergeant MORRISON asking the questions. Detective Womersley present and typing. Interview commenced 12-40 p.m.

Record of
Interview with
Charles Ian
King

Earlier this morning you were brought here for an interview in relation to the death of the girl named NOLTE. A short time ago you told me that you were concerned in her death with Chris LOWERY.

6th February
1971

At 12-41 p.m. Policewoman OVEREND entered the room. 10

(continued)

KING said, "I'm sorry" and began to sob.

Policewoman OVEREND did not speak to KING but merely comforted him while he was crying.

At 12-45 p.m. KING handed Policewoman OVEREND a letter and said "Write to her".

Miss OVEREND looked at the letter and said, "It's a girl friend's letter, she lives in Sydney".

Sergeant MORRISON said, "Do you feel well enough to go on with the interview now.

KING said, "Yes". 20

At 12-48 p.m. Miss OVEREND left the room.

The interview re-commenced.

Just before the Policewoman came in I had said that you had admitted being concerned with the death of this girl NOLTE. Do you agree with that?---Yes.

Before we go any further I want to explain to you your position that is that you don't have to answer any questions unless you wish to do so. Anything you do say will be taken down in writing and may be used in evidence. Do you clearly understand your position?---Yeah. 30

Are you prepared to answer the questions I put to you?---Yes.

As you can see what will happen is that as I ask the questions Detective WOMERSLEY will record it. Any answer you choose to make to the question will also be recorded. Do you follow the procedure?---

Yes.

Exhibits

What is your full name?---Charles Ian KING.

Prosecution
Exhibits

How old are you?---Eighteen.

"HH"

What is your date of birth?---22nd of the first
53.

Record of
Interview with
Charles Ian
King

Where do you live?---46 Stephen Street, Hamilton.

6th February
1971

Are you married or single?---Single.

What sort of work do you do?---Shop assistant.

(continued)

10 When you said that you were concerned in the
death of this girl did you mean that you were
present when she was killed?---I was present yes.

Where did the incident take place?---On a track
off Mount Napier.

When did it take place?---Sunday night.

Was Chris LOWERY present when the girl was killed?
---Yes.

At 1 p.m. Inspector CARTON entered the room and
said to KING, "Is everything alright." KING said
"Yes."

20 Inspector CARTON then left the room.

When you answered Sunday night did you mean last
Sunday the 31st January?---Yes.

How long have you known the girl NOLTE?---About
two months.

Where did you meet her first?---I don't remember.

Had you ever been out in her company prior to last
Sunday night?---Once.

30 Do you recall when that was?---Can I have a look
at a calendar. (He reached for a small desk
calendar). Second of January 1971. It may have
been the third.

Do you know if it was a Saturday or Sunday?---

Exhibits

Prosecution
Exhibits

"HH"

Record of
Interview with
Charles Ian
King

6th February
1971

(continued)

It was a Sunday.

Well will you tell me what occurred on that occasion?---Rosalyn and her girl friend Dianne WILSON went to Port Fairy with Chris and myself.

Did you go in Chris' panel van?---Yes.

Why did you go to Port Fairy?---Just for a drive for a day.

Is that the only occasion that you had been away with her?---Yes.

Did you know how old the girl NOLTE was?---Only approximately. 10

Coming back to the Sunday the 31st of January last can you tell me where you first met her on that day?---In Gray Street Sunday night.

What time of night?---Approximately 8 p.m.

Who were you with when you met her?---Chris LOWERY.

Were you in Chris LOWERY'S panel van?---Yes.

Would you tell me in your own words what happened Sunday night?--- (long pause) The only thing I can remember is about Mount Napier I don't remember going out there. 20

Will you tell me what you do remember?---Chris was kicking her on the ground.

Why was he kicking her?---I don't know he went mad.

Why did you go out to Mount Napier?---I don't know I can't remember it all.

Had you been drinking?---Yes.

How much drink had you had?---We had about one and a half dozen small cans between us during the day.

Do you want a cigarette?---Yes please. (Given a cigarette). 30

You said Chris went mad what did you mean by that? ---He just kicked and kicked he seemed to enjoy doing it.

Did he do anything else to the girl?---I don't remember at that time.

Whereabouts at Mount Napier did this kicking take place?---About 60 yards from where the car was parked on the track.

Were you still on the made road?---No it wasn't made.

10 When Chris and the girl were 60 yards away from the car were you with them?---Yes I was with them. I can remember about what you asked me before. He had hold of her arm and she complained that it hurt. I remember her words I think she said its broken. I think Chris said stiff shit or something like that.

Why did he have hold of her arm?---I don't know.

Why did you leave the vehicle and walk back 60 yards?---I don't remember.

20 What else did Chris do to the girl?---I can remember Rosalyn lying on the ground and Chris on top of her trying to strangle her with his fingers.

Was this before or after he had been kicking her? ---Afterwards.

And was it after she had complained about hurting her arm?---Yes.

30 What else do you remember about the events of that Sunday night?---Chris walked back to the car and Rosalyn stayed there with me. She put her arms around me and asked is Chris going to kill me. I said I don't know hes gone mad.

Its now 1-36 p.m. would you like to stop now and have a meal and a cup of tea?---Yes I'd love a cup of tea and I'll have a salad roll.

Interview ceased at 1.37 p.m. KING was given a cup of tea, salad roll and a packet of cigarettes.

Interview re-commenced at 1.53 p.m.

Prior to breaking off for lunch you said that Chris

Exhibits

Prosecution Exhibits

"HH"

Record of Interview with Charles Ian King

6th February 1971

(continued)

Exhibits

had gone back to the car and Rosalyn stayed with you. Is that correct?---That's correct.

Prosecution

Exhibits

What happened next?---Chris came back with something I don't know what it was I forget.

"HH"

Record of
Interview with
Charles Ian
King

What did he do?---I think he started hitting her again.

What was he hitting her with?---His hand I believe.

6th February
1971

How many times did he hit her?---I couldn't tell you.

(continued)

What happened next?---I walked off I felt sick. 10

Where did you walk to?---Up to the car.

KING said, Excuse me I want to go to the toilet.

At 1-56 p.m. Sergeant MORRISON and KING left the room.

At 1.59 p.m. Sergeant MORRISON and KING returned to the room.

What happened next?---I vomitted.

Well after you vomitted what did you do?---I got my smokes out of the car. I started to walk back down to Chris and on the way down I thought I would stop him doing what he was and take the consequences of what had happened so far during the night. When I got back down there Rosalyn was on the ground moaning and I asked Chris what happened and he said I hit her.

What did you do then?---I asked him what he intended doing now. Chris said I'll have to kill her. I asked him how. He said I don't know. I don't remember what exactly happened after that but he had a piece of brown two cord flex and had it around her neck. She was trying to scream or talk or something. She couldn't get her breath there was a sort of whine coming from her mouth. Her chest then stopped moving. 30

What happened next?---He put the two flex around her neck about six times and pulled it tight and dragged her off the track into the ferns along

side the road he was just pulling her by the piece of flex.

At 2-8 p.m. Assistant Commissioner McLAREN entered the room.

MORRISON said, This is the Assistant Commissioner Mr. McLaren from Headquarters.

McLaren said, "Is everything alright son."

King said, Yes, sir.

Mr. McLaren then left the room.

Exhibits

Prosecution Exhibits

"HH"

Record of Interview with Charles Ian King

6th February 1971

(continued)

10 What happened next?---She was on her stomach and he pulled her legs back up and tied the end of the cord around her legs and her arms. He turned her over so I could see her face and lit a match and vomit came from her mouth it was horrible. He then grabbed her shoulders and pulled them back and I heard this horrible crack. We then went back to the car.

20 What did you do then?---Tried to get the dog out of the back. It snapped at Chris and he ask me to try and get it out and I said I wouldn't. We left the tail gate of the van down and he tried to turn around but we couldn't so he back down the road and found a place big enough to turn around in. We drove out onto the sealed surface and stopped the car about a mile or so up and he said we've got to get this dog out. So I went around to the back of the car called the dog, it wouldn't come so I grabbed hold of its leash and called it at the same time. It jumped
30 out of the back of the van and sat on the edge of the road. Then we drove back into Hamilton. And the rest of it is what I said in my statement that we drove around the town and went to the sports centre and then up to his Mother-in-law's place.

You described what Chris did to the girl. What part did you play in it?---I think I might have helped to tie her up.

Why did you do this?---I don't know.

40 Did either of you have sexual intercourse with

Exhibits

the girl that night?---No.

Prosecution
Exhibits

Did either of you try to have sexual intercourse with her and meet with a refusal?---I don't remember.

"HH"

Record of
Interview with
Charles Ian
King

Why did you go out to this spot that night at all?
---I don't remember that either.

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1971

Did the girl travel out there quite willingly?---
I don't remember going out there.

(continued)

You remember being there with her though?---Yes.

Did she at any time ask to be taken back to
Hamilton?---I think she did when I was alone with
her when Chris was back at the car. 10

What did she say?---She said will you please take
me home or something like that.

Did you make any effort to get Chris to take her
home?---I was too scared to ask him.

Why did you help him tie her up?---I don't know.

When the girl's body was found it was naked. Who
undressed her?---I don't remember. I think she
must have been undressed before Chris started
hitting her because after he was hitting her I
seemed to forget what happened before that. 20

Did you see her clothing on the ground out there?
---I think so yes. Chris tried to strangle her
with her bra.

Was this before he returned with the flex?---It
was after he kicked her several times at the start
as I've said earlier in my statement. I remember
seeing him with the flex but I don't remember how
he got it. 30

Had you seen the flex in the van at any other
time?---I don't think so.

What was the girl doing when he tried to strangle
her with the bra?---I don't remember I couldn't
watch.

Whilst this was going on was Chris saying anything?
---I don't remember.

What was Chris's condition at the time he was killing the girl. Was he calm or agitated?--- He was calm he seemed to be enjoying it. What was your condition?---Shaking I couldn't watch him doing it.

Did you make any efforts to stop him?--- No I was scared to.

What were you scared of?---I thought he might turn on me.

10 According to an earlier answer you did in fact help him tie the girl up. Is that correct?--- Yes.

Why did you help him tie the girl up with the flex?---He might have asked me to help him I don't remember.

But you do in fact remember helping him tie the girl up with the flex. Is that correct?---Yes.

20 While you were out at Mount Napier with the girl and Chris that night did you drink any alcohol? ---I think Chris had a can of beer but I didn't.

Was that before or after you had killed the girl? ---Before.

Well after the girl was killed was there any discussion between Chris and you as to what you were going to do?---Yes.

What was the conversation?---Chris said if we got caught deny everything. He said if they still get us then I'm going to plead temporary insanity.

30 Apart from leading the dog was the girl carrying anything?---I didn't see anything but after we got back into the car Chris said I've got a transistor here and I said where did that come from and Chris said she had it with her.

What did you do with the transistor?---Chris put it under the dashboard and when we were back in town Chris drove up to Hensley Park Road and he passed it to me and said throw it out of the window. I threw it out of the window.

40 What time did you get back into Hamilton that night?---Approximately half past nine or a quarter to ten.

Exhibits

Prosecution Exhibits

"HH"

Record of Interview with Charles Ian King

6th February 1971

(continued)

Exhibits

Have you been back to the area where the girl was killed since Sunday night?---No.

Prosecution Exhibits

"HH"

Have you discussed with Chris since leaving him on that Sunday night anything about the murder of the girl?---Yes.

Record of Interview with Charles Ian King

At 2-45 p.m. Superintendent WARNE entered the room and said to KING, Is everything alright. KING said yes.

6th February 1971

Mr. WARNE then left the room.

(continued)

It is now about 2-46 p.m. would you like to have a break for a while and have a cup of coffee?---If you're going to have one I'll have one.

10

Interview ceased at 2-47 p.m.

KING was given a cup of coffee.

Interview re-commenced at 3 p.m., after coffee supplied.

What discussion did you have with Chris since Sunday about the murder of the girl?---I think I said it was a pretty cruel way for her to die. Chris said bad luck she's dead now anyway.

20

When did this conversation take place?---I'm not sure I don't know what day it was.

Prior to Sunday January the 31st 1971 have you ever had a conversation with Chris LOWERY about killing a girl?---Yes but I thought he was just mucking around.

Would you tell me when that conversation took place?---I don't remember.

Can you tell me the text of the conversation?---I think Chris said it would be good to watch her strangling and something about dying slow.

30

Was it in fact a serious discussion about murdering a girl?---I didn't take it seriously but I think Chris was serious. I just played along with him. I said to him you are nothing but a damn sadist. I was serious about this but Chris thought I was joking. And he replied so what anyway.

Was there any discussion along this line on Sunday the 31st January 1971 before you murdered this girl?---There might have been but I don't remember. If there had of been I wouldn't have taken much notice anyway.

Exhibits

Prosecution Exhibits

"HH"

10 Is the position this you were present with Chris LOWERY when he picked the girl up in Gray Street, Hamilton on Sunday the 31st of January 1971 and also present with him when he murdered her and you assisted him in tying her up with the flex cord?---Yes.

Record of Interview with Charles Ian King

6th February 1971

(continued)

At 3-10 p.m. MORRISON left the room and returned at 3-13 with a box of exhibits.

Is that the jumper Rosalyn was wearing on the night of Sunday the 31st of January 1971?---(Shown purple jumper) I don't remember.

Is that the pair of jeans that she was wearing? ---(Shown pair of jeans) They are the same colour.

20 Are they the pair of boots that she was wearing? ---(Shown pair of boots) I don't remember.

Is that the pair of socks that she was wearing? ---(Shown socks) I couldn't say.

Is that the bra that LOWERY was trying to strangle her with?---(Shown bra) He used a bra the same as that. They all look the same.

Is that the watch that the girl was wearing on the Sunday night?---(Shown watch) It might have been I don't know.

30 Is that the cord flex that LOWERY used to strangle the girl?---(Shown brown flex) Yes it was the same type as that it was fairly long.

Had you ever seen that lead before, Sunday the 31st January last?---I don't think so.

Was the girl wearing this leather choker around her neck that night?---(Shown choker) I don't remember.

Were you wearing this leather jacket on Sunday night the 31st of January last?---(Shown jacket)

Exhibits

Yes.

Prosecution Exhibits

Were you also wearing the pair of jeans that night?---(Shown jeans) Yes.

"HH"

Record of Interview with Charles Ian King

Were you wearing either of these two jumpers on the Sunday night?---(Shown two jumpers) I was wearing one of them but I don't remember which one.

6th February 1971

Were you wearing this pair of flying boots on that Sunday night?---(Shown pair of flying boots) Yes.

10

(continued)

Do you remember whether the girl was wearing a ring on that Sunday night?---I don't remember.

Charles Ian KING you are going to be charged with the murder of Rosalyn Mary NOLTE at Mount Napier on Sunday the 31st January 1971. Do you wish to say anything in answer to the charge. You are not obliged to say anything unless you wish to do so. Anything you do say will be taken down in writing and may be used in evidence. Do you clearly understand that?---Yes.

20

Is there anything you wish to say?---As far as I can remember I didn't help in the actual killing itself but I was present at the time. That's all I want to say.

During our interview here today you have seen Detective WOMERSLEY record my questions to you and your replies to those questions. Will you read through this record of interview and if it is a correct record of our interview sign it. You don't have to read it or sign it unless you wish. Do you understand that?---I will read it and sign it.

30

Will you read it aloud in order that we may follow you on the copy?---Yes.

As you go through the record of interview would you be good enough to initial the typing errors? ---Yes.

Read back commenced at 3-45 p.m.

This page removed from the typewriter and handed to KING.

Read back finished at 4-5 p.m.

Exhibits

You have just read aloud the record of our interview here today. Have you fully understood everything contained in it?---Yes.

Prosecution Exhibits

"HH"

Is it a true record of our interview here today? ---Yes.

Record of Interview with Charles Ian King

6th February 1971

Bearing in mind what I have told you about not having to sign it, are you still willing to sign it?---Yes.

(continued)

10 Would you also sign the carbon copies please?--- Yes.

(Signed) C. I. King

(Signed) H.Morrison (Signed) V. Womersley

H. Morrison
Detective Sergeant 10113.

V. Womersley
Detective First
Constable 13668.

Interview concluded at 4-10 p.m.

Copy of the record of interview handed to KING.

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF THE STATE OF
VICTORIA SITTING AS A COURT OF CRIMINAL APPEAL

B E T W E E N :

CHRISTOPHER RUSSELL LOWERY Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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