

LARRY EARL
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QBCJ No. 42

CA No. 22
of AD 1998

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON
(Held at YORKTON, SASKATCHEWAN)

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

LARRY EARL FISHER

TRIAL
COMMENCING: OCTOBER 12, 1999

VOLUME IV
OCTOBER 20 & 21, 1999

A TRANSCRIPT OF A TAPE RECORDING

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Saskatchewan Justice
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<u>PROCEEDINGS COMMENCE OCTOBER 20, 1999</u>	1
	2
THE COURT: Good morning.	3
MR. JOHNSTON: Good morning, My Lord.	4
MR. BERESH: Good morning, My Lord.	5
MR. SINCLAIR: Good morning, My Lord.	6
THE COURT: On January 19, 1998, at the preliminary	7
inquiry into this matter, one Patricia Alain, from Ottawa, gave	8
testimony at the preliminary inquiry as a witness called on behalf of	9
the Crown. Her evidence appears in what amounts to Volume IV, of a	10
lengthy series of volumes, from the transcript of the preliminary inquiry	11
into the charges against Mr. Fisher, and it commences at page 795	12
and her actual evidence completes at page 889. It's approximately 94	13
pages and, of that, 39 of the pages represent examination in-chief,	14
and 54 of the pages represent cross-examination.	15
The witness Patricia Alain, the Crown	16
asserts, is unable to testify at these proceedings due to an illness, and	17
in that regard the Crown make application pursuant to s. 715 of the	18
<i>Criminal Code of Canada</i> to have the evidence which that witness	19
gave at the preliminary inquiry entered into evidence at this trial. s.	20
715, in its relevant part, provides as follows:	21
715. (1) Where, at the trial of an accused, a person	22
whose evidence was given at a previous trial on the	23
same charge, or whose evidence was taken in the	24
investigation of the charge against the accused or (as	25
is pertinent here) on the preliminary inquiry into the	26
charge, refuses to be sworn or to give evidence, (and	27
again as is pertinent here) or if facts are proved on	28
oath from which it can be inferred reasonably that	29
the person	30

(c) is so ill that he is unable to travel or testify, 1
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3
In this instance that should read she is unable to travel or testify due 4
to illness. The section carries on to say: 5
and where it is proved that the evidence was taken 6
in the presence of the accused, it may be admitted as 7
evidence in the proceedings without further proof, 8
unless the accused proves that the accused did not 9
have full opportunity to cross-examine the witness. 10
11
In relation to this inquiry, I heard from two 12
witnesses that were called, one called by the Crown and one called by 13
the defence. I propose briefly to review the evidence of the two 14
witnesses. 15
Dr. Elizabeth Jablonski was called by the 16
Crown. Dr. Jablonski is a psychiatrist practising in Ottawa. She has 17
operated a private practice there since January of 1990. She 18
graduated from university in Poland in 1970, and underwent four years 19
of residency. In 1974 she was certified as a psychiatrist in Poland, did 20
some work in Algeria and, in 1982, came to Canada and underwent 21
testing, which she successfully completed in Canada. Between 1985 22
and 1989 she was involved in a psychiatric residency program. She 23
opened her practice in 1990. She is a member of the Ontario 24
Provincial College of Physicians and Surgeons. 25
Patricia Alain is a patient of hers and has 26
been from time to time. The most recent treatment period 27
commenced in 1999, and has been -- and Dr. Jablonski has been 28
seeing Ms. Alain since July of 1999. She has been seeing her on a 29
weekly basis, and for the past three weeks seeing her twice a week. 30

She asserts that Ms. Alain is suffering from major depression with melancholic features. She remains seriously depressed at this time, and her condition remains very serious. Dr. Jablonski sees no improvement in Ms. Alain's condition. Her liver is damaged, and at a later part in her evidence it comes to light that that occurred as a result of a lifelong battle, very difficult battle, with hepatitis, which has destroyed the liver and made medication difficult to take. Dr. Jablonski indicates they have tried various medications, however they have had limited success due to her condition.

Hospitalization may be required of Ms. Alain, and Dr. Jablonski has noted a change in Ms. Alain from very hardworking and motivated, to a point of Ms. Alain now feeling guilty for seeing these changes in herself. She is not well groomed when she comes to the appointments, and Dr. Jablonski sees a marked deterioration from before. She last saw Ms. Alain on Saturday, October 16, 1999, and her condition on that occasion was as serious as described by Dr. Jablonski.

Dr. Jablonski indicates that, and I quote, "I think she is not capable to testify, she can't focus or concentrate to frame sentences. I see her standing on the bridge being ready to jump, and she needs just one little push. I don't see any improvement in the future". Those were the comments in examination in-chief.

Some of the cross-examination involves the following. She was asked whether she found the patient to be cognitively impaired. The answer was "her memory is not impaired, her concentration is impaired, it is poor. Didn't find her memory being

impaired".

1

In 1997, on cross-examination, Dr. Jablonski indicated that she treated Ms. Alain for a period of time, for a few months, also treated her in 1998 and, as we know, in 1999. She learned that the patient was treated, prior to being seen by Dr. Jablonski, the first time in 1989, involving a psychologist, and again, that psychologist worked with her for seven or eight sessions, and between 1991 and 1993 further sessions occurred in relation to it.

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Ms. Alain was apparently first referred to a psychiatrist, that being Dr. Jablonski, in 1997 by the family Doctor, Dr. Hodjson. Dr. Jablonski knew that Ms. Alain saw Dr. Hodjson who was the family physician practising in Orleans, a part of Ottawa, and apparently the family physician first saw her back in 1989.

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On cross-examination she further indicated that Ms. Alain wanted to work and tried very hard to stay functional. She continued to work for six months after her family doctor told her not to work, and when asked when the current episode commenced, she indicated it possibly started in January of 1999. In 1997, Dr. Jablonski describes Ms. Alain as mildly depressed and she saw her for three months, commencing in June of 1997. That lasted through to the fall of 1997. She did not tell Ms. Alain during that time to leave work.

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After the fall of 1997 she next saw her in June of 1998, again referred by her family physician. In August of 1998, Dr. Jablonski considered that Ms. Alain was moderately depressed. Her concentration was lower at that time. July 12, 1999

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was when she next saw Ms. Alain, and in the interim she had seen -- 1
Ms. Alain had seen Dr. Hodjson and had been treated with medication. 2

The witness expressed the opinion, when 3
asked, that she didn't think Ms. Alain was feigning the matter, and 4
she was questioned about stressors, which were being exhibited as 5
being -- impacting upon Ms. Alain from outside, and the questions 6
revolved around an issue of whether they were professional or 7
personal. Ms. Alain voiced her concerns about her financial situation, 8
and from 1997 onwards there were no other professional concerns. 9
She had not complained to Dr. Jablonski about her memory. 10

Dr. Jablonski also agreed, on cross- 11
examination, that the problems are long-term problems, and she also 12
acknowledged that there was one traumatic event that happened in 13
1996, that being the death of her brother, that gave rise to many of 14
the matters, and it was a personal matter. As I indicated before, Dr. 15
Jablonski confirmed Ms. Alain is a carrier of hepatitis B since birth, 16
and that is the reason that her liver is damaged and medication has 17
limited effect. 18

The cross-examination continued of Dr. 19
Jablonski after a break was taken, and Dr. Jablonski agreed it's 20
difficult to predict the severity of a particular matter, and agreed that 21
around her brother's death in 1996 that Ms. Alain later on stated that 22
that was a turning point while, however, in 1997 she probably did not 23
perceive it that way, and this came out in the therapy/treatment. 24

I then heard from Dr. Keith Ian Pearce. Dr. 25
Pearce's *curriculum vitae* was filed before me, and he is currently a 26

resident of Cochrane, Alberta. In 1964 he received a degree from the 1
University of Saskatchewan. He has supervised other psychiatrists 2
over a number of years, and from time to time has been the head of 3
the psychiatric department. He was the head of the department at the 4
University of Saskatchewan, for instance, in 1962. He then attended 5
in Britain for a while, came back to the University Hospital, then went 6
to the Foothills Hospital in Calgary and became the department head 7
there as well. He held different administrative positions, including two 8
of them at the same time, for approximately 13 years. This was 9
followed by a teaching period in his career and then he went into 10
private practice with a strong emphasis on forensic psychiatry. He has 11
testified throughout Canada, the United States, and the United 12
Kingdom. 13

He discussed before me, in the *voir dire*, 14
major depression and the characteristics and hallmarks surrounding 15
major depression. He indicated that depression is the most common 16
disorder of all in psychiatry. He indicated that depression is common 17
with the diagnosis of depression to coexist with personality disorder. 18
He was asked regarding the onset of a depressive episode, and he 19
indicated that it was usually a series of depressive episodes of 20
gradually increasing severity, and stressed that it is progressive. The 21
ideas that a person may hold when psychiatrically ill are not 22
unreasonable to them, whether or not an outsider might view it quite 23
differently. 24

Dr. Pearce looked at Dr. Jablonski's letter of 25
October 1999, in which she had set forth symptomatology of Ms. 26

Alain, and indicates that upon reviewing that he wouldn't expect 1
such symptoms in a first episode and the likelihood is that this has 2
been going on for some time. When asked regarding the time frame 3
of January 1998, the time of the preliminary inquiry, Dr. Pearce 4
indicated that most probably Ms. Alain would have been somewhat 5
depressed at that time. The severity of the depression is parallel to 6
the severity of cognitive impairment, in his view, and she may not 7
have had sufficient insight into her own condition at that time to 8
recognize it. 9

On cross-examination he acknowledged that 10
he had read her testimony from the preliminary inquiry and he 11
indicated that, and agreed, that he was unable to make a firm 12
diagnosis without knowing more about it. In 1998 he acknowledged 13
that can't make a firm diagnosis, but he indicated he has a strong 14
suspicion regarding, in effect, her ability to provide evidence in that 15
regard. 16

I reviewed carefully the evidence of Dr. 17
Jablonski and Dr. Pearce in this particular matter, and I have also 18
reviewed very carefully the actual evidence given by Ms. Alain in 19
January of 1998, at the preliminary inquiry. During the review of that 20
evidence I have been looking for several things. I have been looking 21
for the aspect of whether it could be said that there was some 22
limitation on the ability of the defence to cross-examine Ms. Alain in 23
that particular matter, and I have also looked at the context of her 24
evidence with particular scrutiny, for the following; to ascertain 25
whether there is anything in the reading of her evidence and the 26

nuances of it that could be said to disclose an objective demonstration 1
of some inability to testify, or some demonstration of potential lack of 2
capacity to give her evidence. Quite frankly, from my review of it, I 3
find no such indicators in that particular regard. 4

What I have before me is the spectre of Dr. 5
Pearce suggesting a caution that he brings forth, that it may have been 6
a factor and it's something that may have been operative and, in his 7
view, most probably was operative. The question for me to answer 8
becomes; to what extent? 9

The other evidence I have before me is the 10
evidence of Dr. Jablonski who was actually treating Ms. Alain in 1997 11
and 1998, on either ends of the polarity of the time frame in question, 12
before January of 1998 and after January of 1998. In the months 13
leading up to January of 1998 she found her mildly depressed and 14
certainly able to continue working. In the summer of 1998, following 15
the testimony, she found her somewhat more depressed but still 16
apparently not to the extent of indicating that she should be away 17
from work. So, I have the actual treating psychiatrist and I have a 18
psychiatrist attempting to give me his best estimate and opinion 19
reviewing the material that was there. 20

Significantly, Dr. Pearce did not suggest to 21
me, from a review of the evidence, anything in the evidence which 22
would be a signal to him, and therefore to me, to have concerns about 23
the internal context of Ms. Alain's evidence, and I think that is 24
significant. 25

So, my conclusion on it is that I am satisfied 26

that Ms. Alain is ill, and is unable to travel or testify, and meets the
criteria that are set forth in subsection (b) to s. 715. 1
2

Is it therefore, appropriate for me to admit 3
the evidence, or should I exercise a residual discretion which I have, to 4
exclude the evidence? I am satisfied that cross-examination occurred 5
in detail and in an exhaustive fashion and dealt with the issues that 6
were of concern to counsel for Mr. Fisher in that particular regard. 7
There appeared to be no impediment on the face of the cross- 8
examination and, as I attempt to ascertain the best picture I can glean 9
from the evidence of Ms. Alain's condition at the time, I see no 10
impediment that would have prevented cross-examination in relation to 11
the material parts of her evidence. There is simply no basis on which I 12
would be justified in exercising my discretion to refuse to admit the 13
evidence to be admitted before me. 14

I am satisfied, accordingly, that the criteria 15
in s. 715 has been met, and the Crown will be entitled to enter the 16
evidence from the preliminary inquiry at this trial, in due course. 17

We will now rise until ten o'clock. 18

COURT ADJOURNED 19

COURT RECONVENES 20

THE COURT: Yes. Bring in the Jury. 21

JURY ENTERS COURTROOM 22

MR. JOHNSTON: We're ready to go, I think, My Lord. 23

THE COURT: Yes. Mr. Johnston, the witness is? 24

MR. JOHNSTON: Richard Hounjet, My Lord. 25

THE COURT: Yes. Thank you. Good morning, Ladies and 26

Gentlemen. Mr. Johnston, your next witness. 1

MR. JOHNSTON: The next witness is Richard Hounjet, please, 2
My Lord. 3

THE COURT: Yes. 4

MR. JOHNSTON: Richard, would you take the stand up there, 5
please. 6
7

RICHARD HOUNJET, having 8
been duly SWORN, states: 9

MR. JOHNSTON: **EXAMINATION-IN-CHIEF:** 10

Q. Do we correctly pronounce your name Hounjet? 11

A. Yes. Hounjet. 12

Q. And your first name, you go by Rick? 13

A. Yeah. 14

Q. What is your date of birth, Mr. Hounjet? 15

A. September 2, '61. 16

Q. 1961. And so that would have made you 7 years old on March 2, 17
1969? 18

A. Yes. 19

Q. I understand that day, Mr. Hounjet, you found something that is of 20
interest to the Court and the Members of the Jury today? 21

A. Yes, I did. 22

Q. Would you tell them, please, what you were doing and what you 23
found? 24

A. Well, I was 7, I was playing in the snow, and I found a handle of a 25
knife. 26

JOHNSTON

- Q. A handle of a knife? 1
- A. Yeah. 2
- Q. Would you describe it, as you recall it. 3
- A. I can remember it being about this big, kind of a reddish beet-coloured handle, plastic, I believe. 4
5
- Q. And there was just a handle? 6
- A. Just a handle. 7
- Q. The blade was missing? 8
- A. Part of the blade was on, just a little bit, from what I can remember. 9
- Q. Just so that we know, I appreciate the Jury saw it, but if you could hold your fingers up again when you say how long. 10
11
- A. About, I would say -- 12
- Q. Can you put that in inches, or are you a centimetre person? 13
- A. I would say three or four inches. 14
- Q. Okay. It was in your backyard? 15
- A. Yes, it was. 16
- Q. And where were you living at the time? 17
- A. At 227 Avenue N South. 18
- Q. 227 Avenue N South? 19
- A. Yeah. 20
- Q. In Saskatoon? 21
- A. In Saskatoon. 22
- Q. I'll just show you exhibit P-3 here, Mr. Hounjet. The Jury has a copy of (inaudible - not near microphone) the Jury has a copy of it as well, what seems to be a planned drawing similar to the big one here. 23
24
25
- A. Okay. 26

- Q. If you would just look at the planned drawing in front of you and tell us where -- which rectangle represents your house? 1
2
- A. Well, there is the 227 block. 3
- Q. Right. 4
- A. And then there is the small square, that would be the house. 5
- Q. Okay. In the 227 block? 6
- A. In the 227 block. 7
- Q. So, your house faces Avenue N? 8
- A. Yes. 9
- Q. You said you found the knife handle in the back yard? 10
- A. Yes. 11
- Q. Are there any marks at all, on the map that you're looking at now, that correspond roughly to where you found the knife handle, Mr. Hounjet? 12
13
14
- A. The small dot on -- kind of in the middle of the back yard. 15
- Q. Of the back yard? 16
- A. Yeah. 17
- Q. Maybe you could just hold it up, please, so that my friend and Members of the Jury can see where you're pointing. Maybe if you don't mind going a little closer so they can see it. 18
19
20
- A. Oh, okay. 21
- Q. There is a small dot that appears in the photograph -- 22
- THE COURT: Excuse me. Did you have a chance to see that? 23
24
- NO AUDIBLE RESPONSE 25
- Q. I wonder if I can bother you, Mr. Hounjet, using that diagram because 26

we may be referring to this one later on, if you would come and mark
it on the diagram we have.

A. Yes.

MR. JOHNSTON: I'm referring to P-1, My Lord.

THE COURT: Yes.

A. On that one there?

MR. JOHNSTON: Yes, if you can. With the Court's permission
I would just ask him to put his initials at the approximate location where
he found the knife handle in exhibit P-1, My Lord.

THE COURT: Yes.

EXAMINATION-IN-CHIEF OF RICHARD HOUNJET (CONTINUES):

Q. So you have now put a dot there and your initials, in the approximate
location where you remember it being?

A. (No audible response).

Q. Can you tell us at all, Mr. Hounjet -- I'm sorry, you can go back to the
stand now. Can you tell us at all how far it would be from the
location where you found the handle to the -- to your back fence, to
the alley?

A. I don't know in feet.

Q. What about in steps, if we can put it that way.

A. Well, I would say from -- about from here to about halfway through
this room, or maybe a little bit more. So, about from here to the lady
in the purple jacket right there. About that distance.

Q. That distance?

A. Yeah. Maybe a little bit farther, but not much.

Q. I'm always reluctant, My Lord, to -- can you give us any sense of that

- in steps, Mr. Hounjet? How many steps would it take you to get to
that lady? 1
- A. I'm not really too sure, 15, I would say. 2
- Q. Approximately. Now, I'm sorry I wasn't very clear, Mr. Hounjet, for
the record, I was referring to how far it was to the alley that runs
north and south. Is that how you understood my question? 3
- A. Yes. 4
- Q. And you said about 15 steps? 5
- A. I don't know, I would guess around 15 steps. 6
- Q. All right. Now I'll ask you how far it was from the alley that runs east
and west? 7
- A. Fairly close. I would say closer than from me to you. Maybe from me
to the gentleman in the gray shirt. 8
- Q. So if I suggested three -- 9
- A. Very close. 10
- Q. ... or four steps would you agree? 11
- A. Yeah, from what I can remember. 12
- MR. JOHNSTON: My Lord, I'm looking for P-17. I am referring
to P-17 in these proceedings, My Lord. 13
- Q. Mr. Hounjet, if you would just look at the bottom of this plastic
envelope that I've been showing you that's marked as exhibit P-17,
there appears to be a plastic item. Look at that and tell us if (inaudible
- not near microphone). 14
- A. I didn't hear you, sir. 15
- Q. Oh. Look at that, and tell us if it means anything to you, please. 16
- A. Yeah. This is what I believe that I found. 17

314002

X-EXAM
RICHARD
HOUNJET
BERESH

- Q. Okay. Is there anything different about that item that -- that you recall, from the one that you found? 1
- A. No, I don't think so. 2
- Q. Okay. You mentioned, Mr. Hounjet, that the one you found had a little bit of the blade protruding. Do you see that on that particular item? 3
- A. Yes, I do. 4
- MR. JOHNSTON: Thank you. I have no further questions of the witness. 5
- THE COURT: Thank you, Mr. Johnston. Mr. Beresh, please. 6
- MR. BERESH: Thank you, My Lord. 7
- MR. BERESH:** **CROSS-EXAMINATION OF RICHARD HOUNJET:** 8
- Q. Mr. Hounjet, we heard that the knife in this case, yesterday, was a very common kind of knife. My only question is whether you picked up a handle of that object, I don't think -- I take it you didn't mark it in any way? 9
- A. Not when I picked it up I didn't. 10
- Q. Okay. And then do I understand you gave it to your mother? 11
- A. Yes, I did. 12
- Q. And then she gave it to somebody else, you think? 13
- A. A policeman. 14
- Q. Okay. Your mother's name, please, is? 15
- A. Anita Hounjet. 16
- Q. And your father is John? 17

- A. John. Yes. 1
- Q. Okay. The reason I ask that is, were you involved in the finding of a
lipstick tube? 2
3
- A. I can remember my dad finding something under his car. When all
this happened my mom and dad were in Hawaii, and then they came 4
back two days later, I believe. And then when he went to work I 5
believe that he found a lipstick tube under his car, when he pulled his 6
car out. 7
8
- Q. But you weren't there? 9
- A. I wasn't there, no. 10
- Q. Fair enough. But I do want to -- just so the Jury can get a clear
picture, your house faced toward Avenue N? 11
12
- A. Yes. 13
- Q. And so did it sit closer to N than it did the alley, or in the middle, or do
you remember? 14
15
- A. It sat closer to Avenue N. 16
- Q. Okay. And where would your dad park his car? 17
- A. Behind the house. 18
- Q. So would he come in from the alley, or come in from the front? 19
- A. He would come in from the front and then go down the alley and then
turn in behind the house. 20
21
- Q. Okay. So correct me if I'm wrong, I'll follow with my finger down this
way and turn in somewhere here, or -- 22
23
- A. Just behind the house. 24
- Q. So these lines here -- 25
- A. Mhmm. 26

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798 *Cross-exam of RICHARD HOUNJET*
by Mr. Beresh

- Q. ... turn in somewhere there? 1
- A. Yeah. 2
- Q. And park behind the house? 3
- A. Yeah. 4
- Q. And I take it parked outside, not in a garage? 5
- A. No, we didn't have a garage. 6
- Q. Fair enough. So you were what, home alone at the time? 7
- A. When? 8
- Q. You said your parents were in Hawaii? 9
- A. Well, my auntie was keeping care of us. 10
- Q. How many kids in the family at the time? 11
- A. Well, there was myself, two younger sisters, and two older brothers. 12
- Q. Okay. And you would normally get up on school days and go to school? 13
- A. Mhmm. Yes. 14
- Q. Did you go to St. Mary's? 15
- A. Yes. 16
- Q. So what did you do, come down the alley here, around? 17
- A. Yeah. 18
- Q. Generally? 19
- A. Usually all the time. 20
- Q. All the time. Okay. 21
- A. Yeah. 22
- Q. And would you come out where your dad drove into the parking area, or would you go out the back? 23
- A. No, always out the -- we had a little driveway behind the house and 24
- 25
- 26

314005

- because we had all the bush in the backyard there, so we always went
out the driveway. 1
2
- Q. Fair enough. And so I take it you'd come, like my finger, down here
and then out? 3
4
- A. Yes. 5
- Q. And do you remember what time you'd leave for school
approximately? 6
7
- A. Well, school started at 9:00, so I probably left around 8:30. 8
- Q. Right. That, the morning -- you discovered of course that there was
some trouble in the back alley -- 9
10
- A. Mhmm. Yes. 11
- Q. ... that morning, I take it? 12
- A. Yes. 13
- Q. Okay. Did you go out to that area? 14
- A. No. 15
- Q. Okay. But that morning that you discovered (Inaudible - not near
microphone) trouble, you didn't hear any shouts or screams at all that
morning? 16
17
18
- A. No, I didn't. 19
- Q. Okay. When you indicated to the prosecutor that you found the knife
blade, that would be fairly close to this alley? 20
21
- A. Yes. 22
- Q. Close for someone to throw it in from there? 23
- A. Yes. 24
- Q. Not far at all? 25
- A. No. 26

Q.	Did all the kids in your family go to the same school?	1
A.	Yes.	2
Q.	And did other kids in the neighbourhood go to the same school as well, or most of them?	3 4
A.	Oh, yes.	5
Q.	So would you see kids in that back alley going to school most mornings?	6 7
A.	That alley wasn't too travelled in the mornings. Actually just -- we kind of used it once in a while, a friend of mine might come and pick me up on the way to school. But, most of the kids walked down 20th Street.	8 9 10 11
Q.	Okay. I understand. But this alley was used quite a bit?	12
A.	Yeah.	13
Q.	By kids?	14
A.	Yeah.	15
Q.	Okay. (Inaudible - not near microphone). Did you know a person by the name of Linda Duffus at the time?	16 17
A.	No.	18
MR. BERESH:	Thank you very much, sir.	19
THE COURT:	Thank you, Mr. Beresh. Any re-examination?	20 21
MR. JOHNSTON:	No, My Lord.	22
THE COURT:	Yes. Thank you, sir. You're excused.	23
MR. JOHNSTON:	Giles Beauchamp, please.	24 25 26