

COURT RECONVENES

THE COURT:

Good afternoon.

JURY ENTERS COURTROOM

***TERRY MICHAYLIUK,  
having been duly SWORN, states:***

**MR. SINCLAIR:**

**EXAMINATION-IN-CHIEF:**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

313541

1969. Were you on those premises on that date? 1
- A. Yes, I was. 2
- Q. And did something happen on that date which has resulted in you 3  
being called to give evidence today? 4
- A. Yes. 5
- Q. Could you indicate how that started for you, please. 6
- A. Well, I got buzzed on the intercom by Mr. Murdock to go out and 7  
check because they thought there was a lady in the lane, and he 8  
wasn't quite ready and so if I would go out and check. So that was -- 9
- Q. Where were you when you were buzzed on the intercom, sir? 10
- A. Downstairs in the basement. 11
- Q. In your living quarters? 12
- A. Right. 13
- Q. What had you been doing? 14
- A. Well I was getting ready. We were just -- we opened up at 8:30 and 15  
that was right (inaudible - not clear). 16
- Q. Pardon. I missed that. 17
- A. We opened up at 8:30 and I was probably opening up, or I was just -- 18  
it was just before we opened up. 19
- Q. Was it around 8:30 that this call came from -- 20
- A. Yes. 21
- Q. ... Mr. Murdock? 22
- A. Right. 23
- Q. All right. So what did you do, sir? 24
- A. Well, I went out to the back of the funeral home through the garage. 25  
And when I stepped outside I met a young girl in the alley then, and 26

**313542**

- she took me on further down to the alley and showed me where the body was laying in the lane. 1  
2
- Q. Okay. And did you approach that body? 3
- A. Yes, I did. 4
- Q. And as you approached the body where did you walk? 5
- A. Where did I walk? 6
- Q. Yes. 7
- A. It would be on the travelled side of the lane. 8
- Q. Okay. 9
- A. You know, where the cars would have travelled. 10
- Q. Okay. And how close did you go the body, sir? 11
- A. Well, at first probably not that close. I spoke to the person and then I got up closer and tugged the -- tugged her on the shoulder -- 12  
13
- Q. Mhmm. 14
- A. ... and then realized that the person wasn't alive. And that's all I did. 15
- Q. Okay. What did you do then? 16
- A. Well, then I went back to the funeral home and I talked to Mr. Murdock and I believe Mrs. Murdock, I had talked to her as well. But I went in and got a blanket to cover the body, as well as I phoned the police. 17  
18  
19  
20
- Q. Okay. 21
- A. And had asked Mrs. Murdock to phone the ambulance. 22
- Q. Okay. So you phoned the police, did you? 23
- A. Yes. 24
- Q. And you asked Mrs. Murdock to phone the ambulance? 25
- A. Correct. 26

**313543**

- Q. And you retrieved a blanket? 1
- A. Yes. 2
- Q. And did you then take the blanket out to the scene? 3
- A. Yes. 4
- Q. Okay. What did you do with the blanket? 5
- A. I just covered the body and that was all. 6
- Q. All right. And then what did you do, sir? 7
- A. We just waited for the police to arrive which was in very short order. 8
- Q. In very short order -- 9
- A. Yes. 10
- Q. ... the police arrived? 11
- A. Yes. 12
- Q. So were you then in the area of the body until they arrived? 13
- A. Yes. 14
- Q. All right. Was the body disturbed in any fashion before the police  
arrived? 15  
16
- A. No. 17
- Q. Other than you have indicated by tugging on the shoulder? 18
- A. No. 19
- Q. Okay. I think we have a booklet of photographs marked as exhibit  
P-3. Do you have those in front of you. 20  
21
- THE COURT: Is there any possibility the last witness took 22  
it. 23
- MR. SINCLAIR: I was worried about that, My Lord. 24
- THE COURT: Put them beside you, sir. 25
- Q. I wonder if you could look at exhibit P-3, photograph number 1, 26

**313544**

- please, sir. 1
- A. Okay. 2
- Q. That's -- do you recognize that to be a picture of the back alley where  
the body was found that morning? 3  
4
- A. Yes. 5
- Q. When you went into the alley that morning, did you see any people in  
the alley? 6  
7
- A. No, I didn't, other than myself and the girl. 8
- Q. Okay. And how close did the little girl get to the body as you were  
with her? 9  
10
- A. Well, she was with me but as we got closer I think she stood back a  
ways when I -- she didn't come that close to it. 11  
12
- Q. You actually went right up to the body, did you? 13
- A. I went up to speak to the body, yeah. 14
- Q. In photograph number 1, am I correct in suggesting that there appears  
to be a travelled portion of the alley with snow to either side of the  
travelled portion? 15  
16  
17
- A. Correct. 18
- Q. And do you have any idea how deep the snow was on either side of  
the travelled portion of the alley? 19  
20
- A. No. I couldn't -- 21
- Q. Okay. Could you flip to photograph number 2, please. Do you  
recognize that, what's depicted in that photograph? 22  
23
- A. Yes. 24
- Q. What is depicted? 25
- A. Pardon. 26

313545

- Q. What is depicted? 1
- A. Well, the body in the snow. 2
- Q. All right. And photograph number 3 as well? 3
- A. Yes. 4
- Q. Now, you said that you tugged on the body. What portion of the body did you tug on? 5  
6
- A. On the shoulder. 7
- Q. Okay. And did you disturb the body in any fashion from that action such that the position in these photographs is different than the position that you found the body in before you tugged on the shoulder? 8  
9  
10  
11
- A. No. 12
- Q. So, the position of the body is about the same as you found it that morning? 13  
14
- A. Yes, I would say so. 15
- Q. The position of the clothes is about the same as you found it that morning? 16  
17
- A. Yes. 18
- Q. Pardon. 19
- A. Yes. 20
- Q. All right. Now, could you indicate whether or not photograph number 2 appears to indicate any marks or trampling around the body. Do you see what I'm referring to? 21  
22  
23
- A. Yes. 24
- Q. And do you know if that was the condition of the snow when you attended that morning? 25  
26

**313546**

- A. That would be the condition that I first saw. 1
- Q. All right. And based on your observations of the area around the 2  
body, did you have a conclusion as to what you were -- what you 3  
were viewing? 4
- A. Well, yes, after I got closer I saw that -- I realized it was a lady or a 5  
girl. 6
- Q. Okay. 7
- A. And that would be -- that was my conclusion. 8
- Q. In particular did you come to any opinion about what you were seeing 9  
and the marks in the snow? 10
- MR. BERESH: Well, I'm not sure he's in a position to give 11  
us any opinion about that, is he? 12
- THE COURT: I'm sorry, what is your view on that? 13
- MR. BERESH: It sounds like it's an opinion which is not of 14  
course admissible. 15
- THE COURT: Let me hear the question again. I'm sorry, 16  
what was the question again, Mr. Sinclair? 17
- MR. SINCLAIR: I'm asking the witness, My Lord, if he 18  
formed any opinion or came to any conclusion based on his 19  
observations of the area of the trampled snow around the body as he 20  
viewed it on that day. 21
- THE COURT: Okay. It seems to me, Mr. Beresh, that's 22  
the kind of thing that all of us could offer an observation on in relation 23  
to it if asked. It doesn't require any expertise other than perhaps the 24  
normal powers of observation. But is there something I'm missing in 25  
that regard? 26

MR. BERESH: Well, I'm -- the question is not clear to me. 1  
I guess that's the problem. 2

THE COURT: Okay. 3

MR. BERESH: Better that we have it clarified than not. 4

THE COURT: All right. 5

MR. BERESH: Obviously the photographs speak for them- 6  
selves. 7

THE COURT: Right. I realize that. This is an individual 8  
who was there and was on the scene, and if he made some 9  
observations it seems to me they're in the normal purview of human 10  
observation. I presume that's what you're asking, Mr. Sinclair? 11

MR. SINCLAIR: Exactly. 12

THE COURT: Go ahead. 13

MR. SINCLAIR: I'll try to be as clear as I can, My Lord, 14  
especially so that the witness understands me. 15

EXAMINATION-IN-CHIEF OF TERRY MICHAYLIUK (CONTINUES): 16

Q. You see the area of snow that appears to be trampled around the 17  
body, do you? 18

A. Yes. 19

Q. In that photograph and also in photograph number 3 and in photograph 20  
number 4. 21

A. Yes. 22

Q. Now, that area of snow that appears to be trampled around the body, 23  
was it in that condition when you arrived that morning? 24

A. Yes. 25

Q. Based on your observations of the area around the body did you come 26



- to a -- did you form an opinion as to what apparently had happened in that area around the body? 1
- A. Possibly I guess the opinion was that there was somebody that was -- that was not alive in the lane. 2
- Q. Yes. 3
- A. And there wasn't an awful lot of time and that was -- and the clothing the way it was and disarranged and the body laying face down, it -- I came to the conclusion that there was something wrong and that I wouldn't, you know, do the least I can or sort of stay out of the -- not touch anything to any extent. 4
- Q. And not interfere with the scene? 5
- A. Right. 6
- Q. All right. Okay. Now, in that connection, sir, you said that you stayed until you -- until the police arrived, is that correct? 7
- A. Right. 8
- Q. Did you see any foreign objects or any foreign material around the body itself as you approached? 9
- A. No. No. 10
- Q. Now, did you see any spots in the snow, sir? 11
- A. Yes, I saw just a few. I would hazard a guess of maybe three, four. 12
- Q. All right. And whereabouts in the snow were these spots? 13
- A. They were near the body, just sort of as I approached it from the side. 14
- Q. And do you recall what colour these spots were? 15
- A. They were reddish. I thought they were blood. 16
- Q. And other than the clothing that you saw on the body did you see any other clothing as you approached the body? 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

- A. No, I didn't. 1
- Q. Okay. Now, there is a rod or something that is depicted in some of these photographs. I take it that wasn't at the scene when you arrived? 2  
3  
4
- A. No, it wasn't. 5
- Q. All right. The blanket that you retrieved from the funeral home, what happened to that blanket? 6  
7
- A. I believe it was returned later by the police to the funeral home. I couldn't tell you, you know. 8  
9
- Q. You didn't take it off the body -- 10
- A. No, no. 11
- Q. ... and return it yourself? 12
- A. No, no. I left the body covered and that's all I ever did, and I think they brought it back a few days later or whenever. I couldn't -- but I know they had it back at the funeral home. 13  
14  
15
- Q. So as I understand it, as you were there did anyone come closer to the body than you had actually? Did anyone go right up to the body before the police arrived? 16  
17  
18
- A. No. 19
- Q. And was anyone in the area of the trampled snow that we see around the body in these photographs? 20  
21
- A. No, not at that time. Other than myself and the girl. 22
- Q. Okay. And when you approached the body you approached the body from what portion of the alley, the travelled portion or the not travelled portion? 23  
24  
25
- A. The travelled portion. 26

MR. SINCLAIR: Thank you. Nothing further. 1  
THE COURT: Thank you. Mr. Beresh, please. 2  
MR. BERESH: Just a few questions if you'll bear with me. 3

**MR. BERESH:** **CROSS-EXAMINATION OF TERRY MICHAYLIUK:** 4 5

Q. This was a long time ago obviously. 6  
A. Yes. 7  
Q. This was a long time ago obviously? 8  
A. Yes. 9  
Q. You lived at the funeral home, if I understand correctly then, on the  
ground level? 10  
A. No, in the basement. 11  
Q. In the basement. 12  
A. There was a suite in the basement. 13  
Q. Fair enough. To get to your suite, I take it -- 14  
A. Yes. 15  
Q. ... to get to your suite would you go in from the back alley? 16  
A. Yes. There was -- that was the easiest way. 17  
Q. Fair enough. So I take it you'd leave your suite, go up a set of stairs  
and leave through the back? That was one way to leave? 18  
A. Yeah. I would -- yeah, okay, that's right. Up a set of stairs and  
through the garage. 19  
Q. Okay. Sometimes we have split levels and full levels, was this split  
level or what was it? 20  
A. Just a full set of stairs. 21  
Q. Fair enough. But I take it, sir, that you were in the habit of getting up 22

- pretty early, were you? 1
- A. Well, I always opened up usually, so I was up probably before Rae 2  
was. 3
- Q. He was your employer? 4
- A. Boss. Yes. 5
- Q. Your boss? 6
- A. Yes. 7
- Q. So you didn't mind getting up early? 8
- A. No. 9
- Q. The reason I ask you is this, do you remember what time you got up, 10  
what your practice was, about what hour? 11
- A. I couldn't be specific but I would say I would probably be up about an 12  
hour before. 13
- Q. All right. 14
- A. So which would probably around 7:30 at that time. I wouldn't need 15  
to be up any earlier because living there you didn't have to travel or 16  
anything. So -- 17
- Q. Fair enough. 18
- A. ... you were right there. 19
- Q. And I don't want to pry into your personal business, were you alone 20  
there or with someone else? 21
- A. No, I was alone. 22
- Q. Okay. All right. I take it that that morning you didn't hear any shouts 23  
or screams coming from the alleyway? 24
- A. No. And because it's in the basement I wouldn't hear -- like, I would 25  
never hear any traffic or anything in the lane. 26

- Q. Fair enough. 1
- A. So I don't presume I could hear anything else. 2
- Q. Those lanes were pretty well used by traffic, vehicular traffic? 3
- A. Normal. Normal. I wouldn't say that it was really heavy or anything, 4  
but it was normal. 5
- Q. And do you recall an apartment building being constructed to the north 6  
up the alley, directly north of the home? 7
- A. I can't recall it being constructed. I know it was there and 8  
constructed but I can't recall whether it was specifically at that time or 9  
not. I couldn't honestly say. 10
- Q. Fair enough. Now, I want to take you back to the photographs for a 11  
moment and ask a few questions. From the information I have you 12  
went back to the scene with a little girl Marcoux. 13
- A. I don't -- I didn't know her -- 14
- Q. Don't know her name? 15
- A. I don't know her name. I didn't. But it was a little girl, that's all I 16  
know. 17
- Q. Do you know someone, or did you know someone then by the last 18  
name of Hnatiuk, H-N-A-T-I-U-K? 19
- A. I knew there was a family living up the street by that name. 20
- Q. Did you see them in the alley? 21
- A. No. 22
- Q. Did you -- did you learn whether or not this little girl had gone to tell 23  
someone else before telling you? 24
- A. Well, the only thing I had learned that she had knocked on Rae 25  
Murdock's door, and that's all. I really didn't talk very much with the 26

little girl other than when she showed me the body. Then things seem 1  
to -- when you figure it out and she just stood there. And then I went 2  
and got the blanket. But there really wasn't an awful lot of 3  
conversation. 4

Q. I understand. 5

A. Yeah. 6

Q. And it's my understanding from evidence you've given before that 7  
there were kids walking down this alley when you were out there, 8  
apparently going to school? 9

A. I wouldn't say that and I don't -- I mean, there was kids probably 10  
going to school before, at different days, but not at that particular day. 11  
I only saw the little girl. 12

Q. Okay. Let me ask you then -- 13

MR. BERESH: For my friend's benefit, page 168. 14

THE COURT: One sixty-eight of what kind of volume? 15

MR. BERESH: Just getting it, My Lord. 16

Q. Of the preliminary inquiry. Do you recall testifying at the Milgaard 17  
preliminary inquiry, sir? 18

A. I remember testifying. I don't know what -- 19

Q. You gave evidence at the preliminary inquiry? 20

A. I believe so. 21

Q. And I understand you gave evidence at the trial as well? 22

A. I remember giving evidence at the trial. 23

Q. Okay. Let me ask you if you recall this series of questions. Let me 24  
put it into context by reading question 45: 25

45 Q Once you had covered the body did you stay 26

at the scene for a while? 1

A Yes. We waited for the police. When we 2  
phoned them prior to that they told us to wait 3  
at the scene and someone had turned in the 4  
call just before that and they were on their 5  
way. 6  
7

Do you remember being asked that question and giving that answer, 8  
please? 9

A. No, I don't remember being asked that question. 10

Q. But I take it it is accurate. 11

A. Yes. 12

Q. I'll continue in a minute, but in your answer you say that you learned 13  
that someone had already turned in the call. 14

A. That would probably be what they told me on the telephone, the 15  
police when I phoned them. 16

Q. Oh, okay. So someone else had already called is what they told you? 17

A. That's what they told me. 18

Q. Okay. Next question: 19

46 Q You and Mr. Murdock waited right there? 20

A Right. 21

47 Q While you waited was there anyone else 22  
around but the two of you? 23

A There might have been. Nobody really waiting 24  
with us, there was just kids going down, 25  
further down the alley of course to school 26  
because it was -- 27

48 Q No other adults around? 28

A No. 29

Now, help me with this. 30

A. Yes. 31

32  
33  
34  
35  
36  
37  
38

- Q. Were other kids -- 1
- A. Well, if there were any kids they would have to be further away, not 2  
anywhere near the scene where I was with the girl. That I would 3  
know. Now, I couldn't help you much to say specifically. If I try to 4  
recollect the thing I can't tell you that there were -- you know, they 5  
may have been further down the lane towards St. Mary's Church 6  
which would be west or -- or somewhere else. But not in the 7  
immediate. 8
- Q. Okay. Where were you had Mr. Murdock standing at that point? 9
- A. It would be probably somewhere back away from the body, just on the 10  
road part, probably where the T was. I can't be specific because I 11  
can't remember exactly where we were standing. 12
- Q. But there were some children in the general area at least, that you saw 13  
out and around? 14
- A. Yes. Might have been, yes, if I had said that. 15
- Q. Okay. Do you remember, sir, seeing children in the area generally, like 16  
if you went out some morning or afternoon did you see kids around 17  
the area? 18
- A. Oh, yes. There was always some kids because there were kids in the 19  
area, so there was always some kids somewhere, yes. 20
- Q. Fooling around, or -- 21
- A. Yeah. There was never a problem. We were there at the funeral 22  
home for some time, there was never a problem with the kids but 23  
there were kids there. 24
- Q. The blue blanket, was it in fact returned to the funeral home on the 25  
31st of January? 26



- A. No, I don't think it was the 31st. I think if it was returned it was 1  
returned later and I believe -- I can't tell you when it was returned. I 2  
know it was returned because -- 3
- Q. The reason I ask is that I don't see it in the photographs. 4
- A. I don't know. I know I remember getting it and covering it, but 5  
whether -- when the police arrived what they did I don't know, 6  
because I wasn't there. 7
- Q. I appreciate that. But here is how you can help me. 8
- A. Yes. 9
- Q. The photographs were taken at a certain time, obviously after you 10  
were there. 11
- A. Yes. 12
- Q. So they depict the scene at the time the photograph was taken, 13  
correct, obviously? 14
- A. I think so, yes. 15
- Q. The reason I ask that is because I just want to be clear about what 16  
you remember about the area around the scene. 17
- A. Yes. 18
- Q. First of all, you went up to the body to put the blanket on it. 19
- A. Yes. 20
- Q. Obviously if you look at the photographs, someone has gone up to the 21  
body and taken the blanket off. 22
- A. Yes. 23
- Q. Someone else has gone up and put a yardstick or the same person has 24  
walked up with this yardstick? 25
- A. Yes. 26

- Q. If we look at photograph number 5 -- 1
- A. Okay. 2
- Q. ... that seems to be taken with the photographer standing against the fence? 3  
4
- A. I would say so, yes. 5
- Q. We see some photographs, looks like somebody had walked in the snow. I take it that could have been the photographer sort of backing up to get that angle shot? 6  
7  
8
- A. You're asking an opinion I wouldn't know, but I guess it could have been. I wasn't there. 9  
10
- Q. Fair enough. I guess I want to ask you, you don't know how many people walked around the body in that area before the photograph was taken? 11  
12  
13
- A. No. 14
- Q. And obviously before you arrived you don't know how many kids, people, came around there that you would not have seen. 15  
16
- A. Correct. 17
- MR. BERESH: Correct. Okay, thank you very much, Mr. Michayliuk. 18  
19
- MR. SINCLAIR: Nothing in re-exam. Thank you very much, Mr. Michayliuk. 20  
21
- THE COURT: Thank you, counsel. Yes, Mr. Michayliuk, thank you very much for coming. You're excused. 22  
23
- MR. SINCLAIR: I wonder if Mr. Michayliuk would be kind enough to call Thor Kleiv to the -- into the courtroom. Thank you. 24  
25
- TERRY MICHAYLIUK: Am I done? 26