

IN THE SUPREME COURT OF ONTARIO.

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THE KING V. HASSEN NEBY.

EVIDENCE.

614

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Thomas J. Agar

1 IN THE SUPREME COURT OF ONTARIO.

2
3 THE KING V. HASSEN NEBY (alias Jack Ali,
4 alias Kanser George)

5 (Charge: The murder of George H. Tucker).
6

7 Tried by the Honourable Sir Glenholme Falconbridge, Chief
8 Justice of the King's Bench, and a Jury, October 30th and 31st
9 1918, at Toronto.
10

11 THOMAS J. AGAR appeared for the Crown.

12 ---The prisoner was without counsel, and the Court asked
13 W. A. Henderson to act for the prisoner. Mr. Henderson
14 consented.

15 MR. HENDERSON: The prisoner does not understand English
16 very well.

17 HIS LORDSHIP: What nationality is he?

18 MR HENDERSON: Albanian.

19 MR AGAR: The Crown has a man named Louis George here as
20 Interpreter.

21 ---Louis George was sworn in as Interpreter.

22 HIS LORDSHIP: Ask him what his real name is.

23 THE INTERPRETER: Hassen Neby.

24 MR HENDERSON: He says he has no other name.

25 ---The prisoner was arraigned, with the aid of the
26 interpreter, and pleaded not guilty.

27 ---The Jury were sworn.

28 MR HENDERSON: I think the aliases on the indictment
29 should be struck out.
30

Thomas J. Agar

1 HIS LORDSHIP: Any objection to the aliases being struck
2 out?

3 MR AGAR: I think not, my Lord.

4 HIS LORDSHIP: I will strike them out then. I suppose
5 the evidence will have to be interpreted to the prisoner.
6 Mr. Interpreter, will you interrogate the prisoner to see if
7 he does not understand any English?

8 THE INTERPRETER: He says he does not.

9 MR AGAR: I am instructed he has talked with the officers
10 in English.

11 HIS LORDSHIP: Tell him I am told he has been talking to
12 the officers in English.

13 THE INTERPRETER: No.

14 HIS LORDSHIP: Are you satisfied he does not understand
15 English.

16 THE INTERPRETER: Yes sir.

17 MR HENDERSON: On behalf of the accused I would waive
18 the repeating of the answers by the interpreter to him,
19 because I understand he can understand what the evidence is.
20 The witnesses are mostly Albanians.

21 HIS LORDSHIP: See that he understands that.

22 MR HENDERSON: Yes, my Lord.

23 ---The Interpreter explains to the prisoner.

24 HIS LORDSHIP: Now, Mr. Interpreter, is he willing that
25 the evidence given should not be interpreted to him by you?

26 THE INTERPRETER: Yes.

27 HIS LORDSHIP: Is that what he says?

28 THE INTERPRETER: Yes.

29 HIS LORDSHIP: You are sure?

30 THE INTERPRETER: Yes.

John Hunter

1 HIS LORDSHIP: Is that right? There is no mistake about
2 it now?

3 THE INTERPRETER: That is right.

4 HIS LORDSHIP: Listen to me, Mr. Interpreter; let me
5 distinctly understand that he does not desire the evidence
6 as it goes along to be repeated in his own language, is
7 that right?

8 THE INTERPRETER: That is right.

9 HIS LORDSHIP: That is right, is it?

10 THE INTERPRETER: Yes.

11 HIS LORDSHIP: Very well.

12 ---Mr. Agar opened to the Jury.

13

14 JOHN HUNTER, Sworn Examined by

15 MR AGAR: Q. I understand that you were an employee of
16 the Canadian Pacific Railway Co. in May last? A. Yes.

17 Q. Do you know where Weston is? A. Yes.

18 Q. How many were in your gang working for the C.P.R.?

19 A. Six men and the foreman, seven.

20 Q. Where were you and your fellow workers on Saturday
21 the 18th May last? A. At Woodbridge.

22 Q. Did you leave Woodbridge that day? A. Yes.

23 Q. Where did you go? A. To Weston.

24 Q. What quarters did you have at Weston? A. Right in
25 the neighborhood of that Iron Works.

26 Q. Where did you sleep, did you have a boarding car?

27 A. Right in the boarding car.

28 Q. Where was the boarding car placed at Weston?

29 A. At the Iron Works on the siding of the C.P.R.

30 Q. Near the Roman Stone Company's works? A. Yes.

John Hunter

1 Q. Was Mr. George H. Tucker one of the men who came from
2 Woodbridge to Weston? A. Yes sir.

3 Q. How many men slept in the car on the night of the
4 18th May? A. Three men.

5 Q. Who were they? A. George Tucker and Bill Hill and
6 myself.

7 Q. On Sunday the following day what were your movements?

8 A. We all got up about 12 o'clock in the day time,
9 Sunday.

10 Q. Did you leave the car that day? A. Yes.

11 Q. What time? A. Three o'clock.

12 Q. What time did you return? A. One o'clock Monday
13 morning.

14 Q. Can you tell the hour or about the hour when you
15 last saw Mr. Tucker alive? A. Half past one on Sunday.

16 HIS LORDSHIP: You came back on Monday morning when?

17 A. I left Sunday afternoon half past one and came back
18 one o'clock Monday morning.

19 MR AGAR: Do I understand you saw Mr. Tucker last alive
20 about half past one o'clock on the afternoon of May 19th.?

21 A. Yes, Sunday.

22 Q. How many doors were in this car where the sleeping
23 quarters were? A. Three doors.

24 Q. Tell me where those three doors were? A. There is an
25 end door of the car here, and then there is a door on each
26 side of the car.

27 Q. One door at the end and one door on each side of
28 the car? A. Yes.

29 Q. Do you know whether Mr. Tucker had a key?
30

John Hunter

1 A. I gave him a key when I left.

2 Q. On Sunday? A. Yes.

3 Q. To what door did you give him a key? A. The side door.

4 Q. That would be the one towards the south-west?

5 A. The one next towards the buildings on the road, on
6 the west side .

7 Q. That would be towards ~~the~~ Weston Town? A. Yes.

8 Q. Do you know whether or not Mr. Tucker had any money
9 on his person on Saturday evening the 18th May? A. No I
10 could not say.

11 Q. Do you know whether he spent any money that evening?

12 A. We were all at the show at the Star.

13 Q. Did he pay for his own admission ? A. I could not
14 say whether he bought them or whether we all bought our own.

15 Q. Do you know whether he drew any money a few days
16 before? A. Yes.

17 Q. How much? A. He drew \$39.

18 Q. Would that be when you were at Woodbridge?

19 A. I think it was at Woodbridge we drew the cheque.

20 Q. When did he draw the cheque? A. He drew \$39 15th
21 day of May.

22 Q. Did he have any money at that time before he drew
23 the \$39? A. I don't think he had very much; I don't know
24 of any.

25 Q. Do you know whether or not he had spent any part
26 of the \$39? A. His board came to \$14.73.

27 Q. Had he paid that board? A. I could not say, but we
28 all should have paid it. I paid mine; and he sent \$10 home
29 to Mrs. Tucker with Mr. Snell, the foreman, and he bought a
30 pair of boots at five or six dollars.

John Hunter

1 Q. If he had paid the board bill that would mean about
2 \$29 altogether he had paid out? A. Yes, he would only have
3 about eight dollars left.

4 CROSS-EXAMINED BY MR HENDERSON:

5 Q. I understand you were from the car away practically
6 eleven and a half hours? A. Yes.

7 Q. Was it three o'clock in the afternoon or 1.30 you
8 left the car? A. I left at 3 o'clock.

9 Q. Was Tucker in the car at that time? A. No sir.

10 Q. Where had Tucker gone? A. He left the car at half
11 past one.

12 Q. You left the car at three; you did not come back
13 till 1 A.M. Monday morning? A. One o'clock Monday morning.

14 Q. Why was it necessary to leave the key with Tucker?

15 A. He did not have a key to get in if he came back and
16 nobody there.

17 Q. Was Tucker the only man in the car, or when you
18 left was the car empty? A. Yes, the car was empty when I left.

19 HIS LORDSHIP: When you left would it be closed up?

20 A. I locked the car solid before I left.

21 MR HENDERSON: You do not know what transpired from the
22 time you were away until you returned again? A. No.

23 Q. You say that he drew \$39 on the 15th May? A. Yes.

24 Q. How much of that did he spend? A. He paid \$14.73
25 for board.

26 HIS LORDSHIP: That is you do not know he paid it, but
27 he owed that much? A. Yes; and I understand he sent \$10
28 home to Mrs. Tucker, his mother, and he bought a pair of
29 fine shoes; I could not say what he gave for them.

30 Q. If he disbursed those amounts of money he would

1 still have about \$10 left? A. He would have about \$8.20
2 left.

3 Q. Was he a single man? A. Yes.

4

5 WILLIAM HILL, Sworn, Examined by

6 MRAGAR: I understand you were an employee of the C.P.R.
7 in May last? A. Yes sir.

8 Q. And were at Weston on the 18th May? A. Yes.

9 Q. Having come from Woodbridge? A. Yes.

10 Q. On Sunday did you leave the boarding car that was
11 on the siding there? A. Yes.

12 Q. What time did you leave? A. About one or 1.30.

13 Q. What time did you return? A. About 10 o'clock that
14 Sunday night.

15 Q. Was Mr. Tucker there? A. Yes.

16 Q. Alive or dead? A. Dead.

17 Q. Where did you find his body? A. Lying on the bunk.

18 Q. In what condition was his clothing? A. His pants
19 were tore and down over his feet, and his shirt was up under
20 his arms.

21 Q. What about his underdrawers? A. His underdrawers
22 were with his pants.

23 Q. Both down over? A. Yes.

24 Q. Can you tell me whether or not a considerable
25 portion of his body was exposed? A. Yes, his body was
26 exposed from his breast to below his knees.

27 Q. Were any of the doors to the car open? A. Yes.

28 Q. Which one? A. The west side.

29 Q. Is that the door to which Tucker had the key? A. Yes.

30 Q. Were all the men in your gang of seven men on friendly

1 terms? A. All on friendly terms.

2 Q. There were no foreigners in your gang? A. No.

3 Q. All Canadians? A. Yes.

4 Q. What was the nature of the physique of Mr. Tucker?

5 A. Well, he was a very strong man.

6 Q. Having found the body of this young man in the car,

7 what did you do? A. Went for a doctor.

8 Q. Did you find all of your property there? A. No sir.

9 Q. What, if anything, did you find missing?

10 A. A set of glasses and a bunch of keys.

11 Q. When were they last in the car to your knowledge?

12 A. At noon on my leaving.

13 Q. On Sunday at noon? A. Yes.

14 Q. Have you seen those glasses since? A. Yes sir.

15 Q. Would you know the glasses if you saw them again?

16 A. Yes sir.

17 Q. I produce for your inspection a pair of glasses;

18 kindly look at these glasses and tell me whether you have

19 seen them before? A. Yes.

20 Q. Whose glasses? A. They are my property.

21 Q. Are those the glasses that were taken from your car?

22 A. Yes sir.

23 Q. What means of identification have you? A. By the

24 broken screw, broken adjustment, and the leather off them,

25 and a misty glass at the bottom.

26 Q. Three means of identification; the screw off at

27 the top? A. One of the large ~~xx~~ glasses is misty.

28 Q. And the leather off? A. Yes.

29 ---EXHIBIT NO.1: Pair of field glasses.

30 Q. When did you miss the glasses? A. I wont positively

1 say for sure whether it was on the same night or the following
2 day.

3 Q. You mean the night you found the body dead? A. Yes sir.

4 Q. Do you know whether or not Mr. Tucker had any money
5 upon his person on Saturday night? A. I could not say for
6 sure, but I know he had money to pay his way on Saturday
7 night.

8 Q. Are you able to give me any information as to the
9 amount of money he would have? A. I could not say, sir.

10 HIS LORDSHIP: Pay his way on Saturday night where?

11 A. We went to the Star Theatre on Saturday Night
12 together.

13 MR AGAR: I might ask you the formal question, did you
14 identify the body you found in the car there as the body of
15 George H. Tucker? A. Yes sir.

16

17

CROSS-EXAMINED BY MR HENDERSON:

18

Q. When you left the car who were present at that time?

19

A. George Tucker and John Hunter.

20

Q. That is the former witness? A. Yes.

21

22 Q. And you say you arrived home at 10 o'clock in
the evening? A. Yes sir.

23

Q. I suppose you came in, you say, the western door?

24

A. The western door was partly open.

25

Q. Did you have a key? A. I had a key of the end door.

26

27 Q. Did all the keys apply to the end door? A. Oh no,
I was the only person I suppose that had a key for the end
28 door at that time.

29

Q. Are you sure? A. I am not sure about that.

30

1 Q. Take the seven men that were there, supposing you
2 were all out, did you have seven keys to the car? A. No,
3 I don't know that there were.

4 Q. You had a key? A. Yes sir.

5 Q. Which enabled you to go in by the end door? A. Yes.

6 Q. And to your knowledge who else had a key? A. Tucker
7 had a key of the side door.

8 Q. How do you know that? A. Because Mr. Hunter let
9 Tucker have the key before he left.

10 Q. How do you know that? A. He told me that.

11 Q. I suppose you discussed a lot of this since the
12 affair happened; don't tell us anything you have been told.
13 You don't know of your own knowledge, whether Hunter ever
14 gave Tucker a key or not? A. No sir.

15 Q. I thought you were told that, because you had left
16 the car before Hunter ever gave Tucker the key; according
17 to your evidence given at the inquest this unfortunate man
18 Tucker would not have much money left on him by Sunday
19 night? A. I could not say what money he had got.

20 Q. You swore at the inquest--? A. He should have had
21 somewheres about \$12 or \$15 I would think by what he spent
22 and the cheque he drew.

23 Q. In regard to his board bills would somebody look
24 after the board in the car and you all put in your share?

25 A. Yes.

26 Q. This \$14.75, what was that, board for the month?

27 A. Yes.

28 Q. To whom would that money be paid? A. The man that
29 bought the eatables, the cook.

30 Q. Did you take turns or did you have one deputed to that?

Wm. Hill

1 A. One man all the time.

2 Q Who was that? A. Richard Treble.

3 HIS LORDSHIP: He was not one of the seven that came
4 back from the other car? A. Yes, one of the seven.

5 MR HENDERSON: Did you make your payment on Friday night
6 to him of \$14.75? A. Yes.

7 Q. And you would assume Tucker would make the same
8 payment? A. Yes.

9 Q. And Tucker sent ~~some~~ money to his mother did not he?

10 A. Yes, I understand he did.

11 Q. How much would that be? A. I forget at the present
12 time how much it was.

13 Q. \$10? A. I forget.

14 Q. These glasses that you recognize as yours you cannot
15 positively say whether they were in the car Sunday night
16 or not? A. I don't remember whether it was Sunday night I
17 found them missing or the following Morning.

18 Q. You could not positively say those glasses were not
19 in the car Sunday night? A. No sir.

20 Q. I suppose as a matter of fact when you came home
21 there, as I read from your evidence, you called out to
22 Tucker and there was no response, and went over and found
23 the man dead? A. Yes.

24 Q. The natural thing you did then was to run for the
25 doctor or the policeman? A. Yes.

26 Q. And I suppose you were excited like any ordinary
27 human being in finding this condition existing there;
28 you did not make an examination of the car, did you?

29 A. No sir.

30 Q. So far as you know there was never any trouble

*put in
on type
under*

Thomas Allengame

1 between the men and yourself that worked in one gang with
2 any other gang that worked on the railway? A. No, not that
3 I know of.

✓
4
5 RE-EXAMINED BY MR AGAR:

6 Q. Where were these field glasses when you saw them
7 on Sunday at noon? A. In my grip sitting on the bunk.

8 Q. How far would that be from where you found the body
9 of the dead man? A. Only a few feet right on the opposite
10 side, just across the aisle-way.

11 Q. There is a passage way between the two bunks?

12 A. Yes.

13 Q. Tucker was on one side and your bunk was on the
14 other? A. That is right.

15 *ame ✓*
16 THOMAS ALLENGAME, Sworn, Examined by

17 MR AGAR: Q. I believe you were one of the fellow
18 workers of the late George H. Tucker? A. Yes.

19 Q. And arrived from Woodbridge at Weston on Saturday
20 the 18th May last? A. Yes.

21 Q. You left I believe that day? A. I left again
22 Saturday evening.

23 Q. To spend Sunday away? A. Yes.

24 Q. What time did you get back? A. Between half past
25 eleven and twelve o'clock Sunday night.

26 Q. Was the body of Mr. Tucker there then? A. Yes.

27 Q. Dead? A. Yes.

28 Q. Do you know whether or not Mr. Tucker carried on
29 his person a little purse? A. A little black pocket book.

30 Q. Tell me please how you happen to know that he
carried such a little black pocketbook?

Thomas Allengame

1 A. I saw him with it one day, was looking at it in fact.

2 Q. How long before the 19th May? A. It would be about
3 a week.

4 Q. Have you one of a similar nature? A. Mine is not
5 just the same.

6 Q. What was there about this purse that he had the week
7 before which drew your attention, if anything? A. The
8 identification card in it.

9 Q. Will you tell me whether or not you have one
10 of a similar nature? A. I have one in my book now.

11 Q. Issued by the same company? A. Yes.

12 Q. Would you know this little black pocketbook that
13 Tucker had a few days before the murder? A. Yes.

14 Q. I produce for your inspection a little black pocket-
15 book; kindly have a look at it and tell me whether that book
16 is the one Tucker had with him a few days before the murder?

17 A. That is the one with the card in it; that is the
18 card that drew my attention to it.

19 Q. Let me see yours? A. Here is my card. This is not
20 the pocket book I carried at that time though.

21 Q. Have you any objection to my filing your card in
22 the meantime? A. Not at all.

23 HIS LORDSHIP: We will give it back to you after the
24 trial.

25 MR AGAR: I will file Tucker's card and pocket book
26 as Exhibit 2, and the card of Mr. Allengame as Exhibit 3.

27 CROSS EXAMINED BY MR HENDERSON:

28 Q. I understand your evidence is that about a week
29 before the 19th May you saw the deceased Mr. Tucker with
30 a pocket book something similar to yours? A. Yes.

Thomas Allengame

1 Q. And that is as far as you can go? A. The card in it.

2 Q. With the card in it? A. Yes.

3 Q. What happened to the pocket book from the last time
4 you saw it until the 19th May you do not know? A. He had it
5 with him as far as I know.

6 Q. And you ever saw it? A. No.

7 Q. It was a week before? A. Yes.

8 Q. I suppose, because you had yours is the reason you
9 thought he had his? A. Sure; why not.

10 Q. You don't know where it was in the meantime?

11 A. I know where he was in the meantime.

12 Q. But that did not say the pocket book was with him?

13 A. If it was not with him it was in the car.

14 Q. How do you know that now; let us see how far you
15 will go? A. Well, we were in Weston, I guess none of us
16 was very ^{far} apart at the time.

17 Q. But the very day in question when the murder took
18 place you were away at Mone Road, were you not? A. No, I
19 was at Woodbridge.

20 Q. That was far enough away? A. Yes.

21 Q. And the other gentleman that gave evidence a few
22 minutes ago, he was down in Toronto was he not? A. Yes.

23 Q. So that on that day in question you were all widely
24 separated, the very day of the murder? A. Yes.

25 Q. In fact four of the men had gone home for the
26 week end, hadn't they? A. Yes.

27 Q. Did you make the famous trip on Friday night to
28 see the girls at the Star with the other two? A. No.

29 Q. You were separated that night? A. That was Saturday
30 night.

Wm. J. Ward

1 HIS LORDSHIP: Was it only a movie?

2 MR HENDERSON: The Star Theatre is a burlesque theatre
3 here in Toronto.

4 Q. You were five or six miles away from each other that
5 night? A. Yes, but until that night we were not.

6 Q. That is on the 18th? A. Yes.

7 Q. So that you were not in the car all the time? A. No.

8 Q. I suppose during the day you would get out and work
9 on a bridge? A. Working together would not lose sight of
10 one another.

11 Q. How far were you working away from the car, or had
12 you done any work in Weston? A. We were about half way between
13 Woodbridge and Weston.

14 Q. Had you gone on and repaired any portion of the
15 bridges or anything after you had left Woodbridge, or had
16 you just located at this point? A. We had just come down
17 nearer Weston to do a job there and the cars came on after-
18 wards.

19 Q. I suppose you would sometimes go half a mile away
20 to do work? A. Yes, sometimes two miles.

21

22 WILLIAM J. WARD, Sworn, Examined by

23 MR AGAR: Where do you live ? A. Weston.

24 Q. You are an undertaker I believe? A. Yes sir.

25 Q. Did you take charge of the body of the late George H.
26 Tucker? A. I did.

27 Q. When? A. On thde morning of the 19th May.

28 Q. Monday morning? A. Yes.

29 Q. Monday the 20th? A. Well, it was on Monday morning
30 anyway.

Elis Franklin Irwin

1 Q. Did you examine the clothing worn by the deceased?

2 A. Yes.

3 Q. And from your examination can you tell me whether
4 or not you found any holes in the clothes? A. I found one
5 hole in the shirt.

6 Q. Is this the shirt in the first place? A. Yes.

7 Q. Point out to me the hole you refer to? A. There.
8 (In the left breast).

9 Q. Where would that hole be as regards the vital parts
10 of the deceased? A. Just over the heart.

11 Q. And this is the only hole you found? A. That is the
12 only hole I found by the instrument that the deed was done
13 with.

14 ---EXHIBIT NO.4: Shirt of deceased.

15 Q. Did you find any money at all in the pockets of
16 the deceased or upon his person in any way? A. No.

17 Q. Nothing at all? A. No.

✓ 18 Q. Not a cent? A. No; I had nothing to do with
19 examining the pockets.

20 CROSS-EXAMINED BY MR HENDERSON:

21 Q. You were not called in until the following morn-
22 ing? A. No.

23 HIS LORDSHIP: Did you say you examined the pockets?

24 A. No, I had nothing to do with examining the pockets
25 at all.

26 -----

27 ELI FRANKLIN IRWIN, Sworn Examined by

28 MR AGAR: You are a duly qualified medical practitioner?

29 A. Yes sir.

30 Q. Practising at Weston I believe? A. Yes.

1 Q. And I understand you made a Post Mortem examination
2 on the body of the late George H. Tucker? A. Yes.

3 HIS LORDSHIP: A written report I suppose? A. Yes.

4 HIS LORDSHIP: You have no objection to his reading
5 his written report?

6 MR HENDERSON: No.

7 MR AGAR: Is this document which I produce your report
8 showing the result of your examination? A. Yes.

9 Q. When did you make the examination? A. On the
10 afternoon of the 20th.

11 Q. That is Monday afternoon? A. Yes.

12 MR AGAR: Just read your report.

13 ---Dr. Irwin reads the report of the Post Mortem,
14 which was filed as EXHIBIT NO.5.

15 MR AGAR: Were there any bruises or marks on the body
16 other than the wounds that you have described? A. None
17 at all.

18 Q. Which would indicate any struggle at all? A. No,
19 none.

20 Q. What do you say from your examination of the body
21 as to whether or not the deceased was a very powerful
22 man? A. He was one of the finest built men I ever saw.

23 Q. Are you in a position to state whether or not
24 this wound which was the only one that was necessarily
25 fatal was the first wound received? A. Well, a man could
26 have put up a fierce struggle, that man particularly
27 could have put up a fierce struggle after any of the other
28 wounds; the wound through his liver would not have
29 prevented him from doing some fighting. All the others
30 were simply superficial wounds that would not have hindered

1 a man from putting up a defence, but after the wound over
2 his heart he could have struggled only for a second.

3 Q. Did you see the body in the car? A. No.

4 Q. Were there any evidences of blood on the other
5 thirteen wounds? A. No.

6 Q. Would that assist you in coming to the conclusion?

7 A. Yes, if these wounds had been made during life there
8 would have been smears of blood all over, because they
9 were very sharp wounds.

10 Q. If there was only one hole in the shirt worn by
11 the deceased would that assist you in coming to the con-
12 clusion that the fatal wound was the first wound? A. Yes,
13 decidedly.

14 Q. And do I understand your opinion to be that the
15 fatal wound was the first one? A. Yes.

16 HIS LORDSHIP: I understand you then that the other
17 wounds that you saw were probably inflicted after life
18 had departed? A. Yes.

19 MR AGAR: Do you know what a stiletto is? A. I never
20 saw one, but I have an idea.

21 Q. From your examination of the body of the deceased
22 would the condition of the wounds be consistent with the
23 use of a stiletto? A. Yes.

24 CROSS-EXAMINED BY MR. HENDERSON:

25 Q. Any other kind of instrument sharp on each side?

26 A. I would not swear it was a stiletto, because I
27 never actually saw one, but the description I have given
28 there of the instrument would be the only instrument
29 that would make that wound in the rib.

30

Elizabeth Wagner

1 BY MR AGAR:

2 With your Lordship's permission, if the body of the
3 deceased was found dead about 10 o'clock, can you give any
4 evidence as to the time or about the time that Mr. Tucker
5 must have died? A. No, I could not. Rigor mortis was very
6 complete when I saw the body.

7 HIS LORDSHIP: When did you see it? A. Not till the
8 following afternoon in Mr. Ward's rooms.

9 Q. You did not see it that evening? A. No.

10 Q. By rigor mortis you mean the stiffness? A. Yes,
11 that would be in any case at that time.

12 Q. You had nothing to indicate to you what time that
13 fatal wound was probably inflicted? A. No.

14 Q. You found undigested matter in the stomach? A. Yes.

15 Q. How long would that indicate that fatal blow was
16 given after a meal? A. Digestion would not have gone on
17 more than an hour and a half to two hours.

18 Q. So that he was killed apparently an hour and a
19 half to two hours after having had some kind of a meal?

20 A. Apparently.

21 -----

22 ELIZABETH WAGNER, Sworn, Examined by

23 MR AGAR: I believe you live in West Toronto? A. Yes sir

24 Q. What street address? A. 86 Mulock Ave.

25 Q. Do you remember Sunday the 19th May last? A. Yes sir.

26 Q. Did you know the late George H. Tucker? A. Yes sir.

27 Q. Did you see him on Sunday the 19th May last? A. Yes.

28 Q. Where? A. At my own house.

29 Q. What time did he leave? A. Pretty nearly 6 o'clock.

30

1 Q. Did he express any intention as to where he was
2 going? A. Yes, he said he was going to his boarding car.

3 Q. Where did he tell you that was? A. ~~He~~ At Weston.

4 Q. He left about six o'clock? A. He said he wanted to
5 catch the 6 o'clock car, and he left about twenty minutes
6 to six as near as I can tell.

7 Q. Did he say anything at your place before he left
8 as to how he was feeling? A. He said he was not feeling
9 just extra well. I wanted him to have a dish of strawberries
10 and he refused.

11 HIS LORDSHIP: I don't know that that is exactly
12 evidence, declarations of the deceased not in the presence
13 of the prisoner.

14 ---No Cross-Examination.

15 -----

16 FREDERICK K. DALTON, Sworn, Examined by

17 MR AGAR: Where do you live? A. At Weston.

18 Q. Do you remember Sunday the 19th May last? A. Yes.

19 Q. How far did you live from the premises of the Roman
20 Stone Co. at Weston? A. I lived in the house called the old
21 rectory which is about two to three hundred yards down the
22 track towards the station.

23 Q. Were you in the immediate vicinity of the Roman
24 Stone Company's works on Sunday evening the 19th May?

25 A. I passed along the lane which runs between two of
26 the buildings of the Roman Stone Company's plant.

27 Q. What time? A. Twenty minutes to eight in the
28 evening.

29 Q. Did you see any person while doing so?

30 A. I met one man.

1 Q Where was the man when you first met him? A The
2 man was between the C.P.R. tracks and the Grand Trunk
3 tracks which branch and are about 150 to 200 feet apart
4 at that point. This man was just across the C.P.R. switch
5 coming from the Grand Trunk towards the C.P.R. track.

6 Q Looking at this plan which I produce, does this
7 plan show the buildings of the Roman ~~3~~² Stone Works?

8 A It does, but not very much.

9 Q Does it show the location of the railway tracks?

10 A Yes.

11 Q The Grand Trunk Railway? A These tracks are closer
12 together here. They separate in just about that manner,
13 but this building is back farther from the C.P.R., and there
14 is no addition to this building.

15 Q Those are minor details, but so far as the railway
16 tracks are concerned does this plan show the C.P.R. siding
17 referred to? A Yes.

18 Q And does it show the boarding cars as they were
19 on that day on the C.P.R. siding? A I do not remember
20 just how they were.

21 Q Does it show the main line of the Canadian Pacific
22 Railway? A Yes.

23 Q And the main line of the Grand Trunk Railway? A Yes.

24 Q And the buildings of the Roman Stone Co.?

25 A Three of them.

26 Q When you first saw this man, as I understand he
27 was between the Grand Trunk tracks shown on this plan,
28 and the C.P.R. siding? A Right about there.

29 Q I will mark that with a cross; the cross indicates

30

1 where the man was when you first saw him? A. No, where
2 I met him.

3 Q. Did you see a man before that? A. I saw some man
4 I presume before.

5 Q. I am trying to find out where you were when you
6 first saw him? A. Oh, I came out of the house through the
7 back fence at about ten minutes past seven with a black
8 Spaniel dog. I went up the C.P.R. tracks past the Roman
9 Stone ^{to a pond} ~~plant~~, which is up here, about three feet deep,
10 where I frequently on Sunday evening and other evenings
11 took the dog for a dip. I went straight up on the way up
12 and I saw no one; I stayed up here about fifteen or
13 twenty minutes and I slowly started back. As I was coming
14 back the dog was over in this field. My attention was
15 more or less kept over here, and when I got to a point
16 about here something white attracted my attention.

17 HIS LORDSHIP: Mark that last one with a circle.

18 A. (Marks). From this point you can see there to this
19 point.

20 MR AGAR: Q. From the corner of the Roman Stone Works building
21 marked with a circle you could see over to the storehouse
22 of the Roman Stone Co.? A. Not quite. From a point here
23 you could see past this building to the Roman Stone Co.
24 What I saw when I was here, which attracted my attention,
25 and on which I focused my eyes was something white over here;
26 it was a man with a white shirt.

27 Q. I want you to mark with a circle the place where
28 you first saw this man--the circle with the cross in it
29 shows the point where the man was when you first saw him?

30 A. Yes.

1 HIS LORDSHIP: What is the plain circle for?

2 MR AGAR: The plain circle shows one building of the
3 Roman Stone Works being near the corner of which he first
4 looked over and saw this man.

5 HIS LORDSHIP: And the circle with the cross in is
6 where the man was standing? A. Yes, my Lord.

7 Q. About what time would it be when you first saw the
8 man at the point which is indicated by the circle with the
9 cross in it? A. About 7.30 or 7.35 in the evening.

10 Q. Did you see that same man again? A. Yes, I met
11 the same man--as a rule I came straight down the tracks
12 home, but this time, I don't know why I came down along
13 the lane, to Hawley Ave., along the lane which curves
14 out, and at this point I met the man.

15 Q. At this point is the point where the cross is?

16 A. Yes.

17 Q. Was it light then? A. Yes.

18 Q. You could see the man? A. Yes.

19 HIS LORDSHIP: How long was that after he had first
20 seen the man? A. It is only a matter of 200 feet at the
21 most; I walked straight down.

22 Q. It would only be a few minutes later? A. It would
23 not be two minutes; I walked along around this path and
24 met the man here, and said good night to him, and he
25 answered me in a foreign tongue, and I came up to the Grand
26 Trunk tracks; at this point the spaniel was over here in
27 the field; in this field the spaniel had been hunting, and
28 was delayed there, and I stopped on the Grand Trunk tracks
29 to look back.

30 Q. The place where you stopped on the Grand Trunk

1 tracks is marked with a square, and what happened there?

2 A. At that point I stopped to whistle for the dog.

3 Q. This is the point where the square is, and you
4 stopped to whistle for the dog? A. Naturally I turned
5 around to look for him at the same time, and when I turned
6 around the man whom I had seen here was standing--

7 ---At this point there was an intermission to receive
8 the answers of the Jury in another case.

9 ---Resuming:

10 MR AGAR: At the point where the square is appearing
11 on the plan you stopped, and turned around to call your dog,
12 and you saw this man where? A. The man whom I had seen here
13 by the storehouse at the point marked with the cross I
14 also saw at this point facing the north-west.

15 Q. This point, we will mark that with a triangle.

16 HIS LORDSHIP: He stopped at the square and saw him where?

17 MR AGAR: At the point where the triangle is on the plan.

18 Do you see that man today? A. The man whom I saw I said was a
19 foreigner, and I am reasonably sure that the man in the box
20 is the man; he looks very much like him.

21 Q. By the man in the box you mean the prisoner?

22 A. I mean the prisoner at the bar. There are two or three
23 features that I noticed.

24 Q. Did you notice what hat the man was wearing? A. The
25 man whom I saw had a black hat or very dark felt of the
26 nature which I have seen many foreigners wearing.

27 Q. How does the hat which I produce compare in appearance
28 with the hat which this man was wearing on the occasion in
29 question? A. It is quite sufficiently close to be the hat.

30 ---EXHIBIT NO.6: Plan.

1 ---EXHIBIT NO.7: Hat.

2 THE WITNESS: There is one thing I might say about the
3 plan; at the point marked by the triangle a man can look
4 north-west without having his vision obscured by the Roman
5 Stone Buildings; in that way this position marked with a tri-
6 angle does not quite show the conditions existing at that
7 point.

8 HIS LORDSHIP: Now, he will have to come and repeat
9 some of that evidence to me; I did not see the plan and did
10 not know what he was saying to the Jury.

11 ---Witness explains plan to his Lordship.

12 HIS LORDSHIP: You came in a westerly direction along
13 the C.P.R. track? A. Yes.

14 Q. To the point which would be in the direction of the
15 upper left hand corner of this plan? A. Yes.

16 Q. After swimming the dog you came back in a south-
17 easterly direction still along the C.P.R. track? A. Yes.

18 Q. Then you looked across from the point up above the
19 Roman Stone works, a point near the Roman Stone works to
20 this storehouse? A. Yes.

21 Q. And there at a point marked with a circle with a
22 cross in it you saw a man that was standing or walking?

23 A. Sitting.

24 HIS LORDSHIP: The witness says he was straightening up
25 his clothes for a reason which we can imagine. That was
26 about 7.30 or 7.35 P.M. What happened then?

27 (Witness speaks to the court in a tone inaudible to the
28 reporter).

29 HIS LORDSHIP: The witness says he came along past the
30

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1 corner of the Roman Stone works and passed in front of the
2 Roman Stone works to the place marked with a square.

3 Q. There you stopped to call the dog and you saw the
4 man standing at the triangle facing towards the Roman Stone
5 Works? A. Yes.

6 Q. You say the northerly boundary of the Roman Stone
7 Works should be a little more than this, so that the man
8 at the triangle could see across; but you don't know,
9 I think you said before, about the position of these cars?

10 A. No, I am not sure.

11 Q. As you understand from his motions, adjusting his
12 clothes at the corner of the storehouse where the circle is
13 surrounding the star, he had been there for some necessary
14 purpose? A. Yes. (Witness speaks further to his Lordship
15 in a tone inaudible to the reporter).

16 HIS LORDSHIP: You cannot see from the square across
17 the track because the track is elevated there? A. Yes.

18 Q. If these cars were properly indicated here he
19 was looking away from them? A. Yes.

20 Q. Your house is about here (marking)? A. Yes.

21 HIS LORDSHIP: He has marked a line which would shorten
22 the length of the Roman stone works; that line indicates
23 that the man standing at the triangle could see past the
24 building; in other words on the plan the Roman Stone works
25 extends too far in a northerly direction? A. Yes.

26 ---Court adjourned at 12.40 P.M. to 1.55 P.M., the
27 Jury not being allowed to separate.

28

29

30

1 ---Court resumed at 1.55 P.M.

2 FREDERICK A. DALTON, CROSS-EXAMINED BY

3 MR HENDERSON: You remember appearing at the Coroner's
4 Inquest before Dr. Charlton? A' Yes.

5 Q. On May 28th.? A' I don't know what the date was.

6 Q. According to the notes I have you appeared before
7 the death of Dr. Charlton at the inquest on Mr. Tucker on May 28th.?

8 A' Yes.

9 Q. Do you remember being examined by Mr. Greer the
10 Crown Attorney? A' Yes; Mr. Greer asked me one or two
11 questions.

12 Q. And I notice on page 71 question 20 you were asked
13 this question, "About 7.40 when you met the man first"--
14 this is referring to the man you saw this night in question?

15 A' Yes.

16 "Q.21: Would you know the man again if you saw him?

17 A' I would not swear to a foreigner being the exact
18 same man unless he had some scars, but I think "--

19 "Q. 22; Had this fellow any scars? A' No. If a man
20 had some scars, something the matter like that I could
21 identify him."

22 WITNESS: That is if I had noticed the scars when I
23 first saw him if I saw him close.

24 "Q. 26: Was he acting in any peculiar or suspicious
25 way? A' Well no, he looked to me as though he had been
26 away for the day and was coming back just looking towards
27 the sunset."

28 At that particular time, nine days after you had
29 seen this man you were then asked if you could identify
30

Frederick X. Dalton

1 the man that you had seen that night in question, and you
2 were not sure at that time, were you? A. No, I was not.

3 Q. Because you told us in the transcript here anyway,
4 that as far as you could go the man was a foreigner, and
5 apparently all foreigners look alike to you? A. I did not
6 say that all foreigners looked alike.

7 Q. I know, but that is apparently the impression
8 you left from your answers? A. That was not the intention.
9 The intention was that out of two foreigners which might
10 look alike I could not pick and choose which was ~~either~~
11 which.

12 Q. "Q.10: Look like a Turk or an Italian? A. I call
13 all those men Italians, whether Greeks, Austrians or
14 Italians, I don't know the difference".

15 A. The nationality.

16 Q. That is what you said that night? A. Yes.

17 Q. Nine days after you had met this man whoever he was;
18 now, it is a fact, is it not, when you first observed this
19 man at the storehouse where you have marked on the plan
20 the circle with the cross in it, that this man apparently
21 was relieving himself? A. Quite so.

22 HIS LORDSHIP: Or had just finished? A. Yes.

23 MR HENDERSON: And you apparently turned down in the
24 direction towards him. He apparently buttoned up his clothes
25 and came up towards you? A. Yes.

26 Q. And you passed each other? A. Yes.

27 Q. And as you told at the Coroner's Inquest, the man,
28 so far as you could ascertain, appeared as if he had been
29 coming back from the city? A. He was dressed up in Sunday
30 attire.

1 Q. Because at page 72, question 22, you were asked by
2 Mr. Greer: "There was nothing about the man's conduct at
3 all to arouse your suspicion? A. No; when I heard there had
4 been a murder up there I remarked I was there about half
5 past seven and I saw a man; that is all the interest I took
6 in it."

7 As a matter of fact on the night in question you did not
8 take much interest in the man did you? A. I was not partic-
9 ularly interested in the man, no.

10 Q. And ~~at~~ I suppose it is fair to say that you passed
11 each other, and you just took a cursory glance at the man
12 and said, How do you do? A. A cursory glance of three or
13 four seconds, because I was looking at him.

14 Q. You described the man as a dark man and as a man with
15 a dark mustache; do you remember doing that at the inquest?

16 A. Yes.

17 Q. Your memory has not been mellowed any more by
18 distance than the impression you had of this man looking
19 towards the sunset? A. I had an impression which stayed with
20 me; I had an impression which I took as I passed the man.

21 Q. You have been carrying that in your mind ever since,
22 knowing the trial would come on, and as it has drawn on you
23 again and again it has impressed itself--? A. When I heard
24 the next day, naturally I called up to mind the impression
25 which I had received the night before, and in doing so it
26 became a little more vivid.

27 Q. Have you ever seen this prisoner at the bar?

28 A. No sir.

29 Q. If that was the man you have never seen him?

30 A. I have never seen him from that day to this.

1 Q. He was present at the inquest? A. Yes, I was absent
2 at the time.

3 Q. You were not absent the day you gave your evidence?

4 A. Yes, and I was asked to be there on another date,
5 but I was out of town and did not get back.

6 HIS LORDSHIP: Was the prisoner there at the inquest?

7 A. Not when I was there; I was told he was there at a
8 second time.

9 Q. At any rate you were not asked to identify him?

10 A. No.

11 MR HENDERSON: You were not even very sure as to what
12 these cars constituted on the night in question.

13 HIS LORDSHIP: He does not give any evidence about the
14 cars? A. I won't say anything about the cars as to any
15 particular day; I saw it there probably twenty times inside
16 of a month, and possibly the cars were different sometimes
17 out of that twenty; I don't know what they were that night;
18 I don't remember now.

19 Q. I notice at page 76, at question 19, you were asked
20 "Nothing extraordinary about his appearance at all", and
21 your answer is "No". What I would like to know is this,
22 that the man you saw there on this occasion apparently did
23 not give any indications that he was afraid of anybody or
24 that he was apparently endeavoring to hide himself from
25 the view of any person? A. No such impression; he did not
26 give me any such impression.

27 Q. I suppose as a matter of fact were you in the habit
28 of going up to this pond with your dog on the tracks?

29 A. I said a minute ago I went up there twenty times
30 inside of a month.

1 Q. I suppose you would meet a good many foreigners
2 coming and going? A. No; I had not usually seen anybody. I
3 think probably twice when I went up there there was some men
4 hanging clothes on the wire fence.

5 Q. Was this some time prior to the 19th? A. Probably three
6 or four days, not more, that I noticed those men hanging out
7 clothes.

8 Q. Were they men who were apparently on the siding there
9 staying in cars too? A. Apparently so, yes.

10 Q. Did you come in close contact with men or pass them
11 at a distance? A. I do not remember; I think they were over
12 at the fence. I walked up the tracks, I did not meet them
13 shoulder to shoulder.

14 Q. How far would the fence be? A. About from here--
15 about half the width of this room.

16 Q. Had you seen any foreigners that you would recognize
17 as any of the foreigners that were there at that time?

18 A. I do not understand.

19 Q. Have you seen any of the foreigners or men since that
20 time recognize them as the men that were there at the time
21 you saw them hanging out the clothes? A. No; I did not notice
22 any; I may have met them, but did not notice any.

23 RE-EXAMINED BY MR AGAR:

24 Q. I do not understand you to say you knew what the
25 man was doing when you first saw him near this Roman Stone?

26 A. Straightening up his clothes.

27 Q. You do not know what he had been doing? A. No.

28 HIS LORDSHIP: He had a sort of inference he had been
29 doing something, because of the fact that he was arranging
30 his clothes.

1 MR AGAR: In regard to the cars my learned friend speaks
2 of, do you remember whether or not one of the doors of one car
3 was open? A. No, I do not remember anything definite about the
4 cars that night, that is definitely applying to that night;
5 I have seen the cars in several different positions and
6 different arrangements up there.

7

8 MR AGAR: With your Lordship's permission I want to recall
9 Mrs. Wagner.

10 MRS ELIZABETH WAGNER, Recalled.

11 HIS LORDSHIP: You are still under oath.

12 MR AGAR: Q. When Mr. Tucker left your place about twenty
13 minutes to six on Sunday on the evening of the 19th May, do
14 you know from anything he said whether he had had his supper?

15 A. I asked him to have tea with us; we were just having
16 tea, and he said no thank you, I had a good tea. I wanted him
17 to have a dish of strawberries and he refused, he would not
18 have them, he said he was not very well, and he would go home.

19 Q. How old was he, by the way? A. I guess about twenty
20 or somewheres like that.

21 Q. I believe your sister was his aunt? A. Yes.

22 Q. You knew Mr. Tucker quite well? A. Yes.

23

24 WILLIAM BLAIR, Sworn, Examined by

25 MR AGAR: What is your occupation? A. Caretaker of the
26 Roman Stone.

27 Q. Where are the premises of the Roman Stone Co.? A. Weston.

28 Q. Were you the caretaker for that company in May last?

29 A. I was.

30 Q. Do you remember Sunday the 19th May last? A. I do, well

1 Q. Where were you about 8 o'clock that evening? A. I was
2 standing by the gate where they go out through from the Roman
3 Stone looking towards the Main St. of Weston.

4 Q. Would that be where the Grand Trunk Railway Company's
5 track is? A. Yes.

6 Q. And you were standing on the track of the Grand Trunk
7 Railway Co. there about 8 o'clock in the evening, did you see
8 any person nearby? A. Yes, I saw the prisoner at the bar coming
9 over the steps from the Roman Stone, and it was my place to
10 see what he was doing down in there, and I walked up to the
11 railway track and stood on the railway tracks, and I asked him
12 was he in those cars that were down there now, because I
13 thought he had come with the cars, working in them, because I
14 had seen him there working with the other cars.

15 Q. Tell the Jury first what cars you were referring to?

16 A. The Boarding cars.

17 Q. Where were they? A. I see a lot of them call it the
18 C.P. R. siding, but it is the Roman Stone siding; of course
19 it is the C.P.R. too.

20 Q. Do I understand you to say the cars you were referring
21 to in addressing this man were the cars on the C.P.R. siding?

22 A. Yes, the boarding cars.

23 Q. Did I understand you to say you had seen this man
24 previously? A. Yes, he was working there for a time, two or
25 three weeks, I had seen this man along with the other men.

26 Q. Where were the other men stopping? A. They had gone
27 away; they were stopping at the same siding in boarding cars,
28 they had ten or twelve boarding cars there.

29 Q. This particular man you had seen on Sunday May 19th
30 you had previously seen? A. Yes, of course I had not picked

1 out him any more than any others, but I knew he was one of the
2 gang that had been working there.

3 Q. What was it you said to him? A. I said "Are you staying
4 down in those cars now"? And he said "Oh no, no, no". I wanted
5 to find out on account of fire; and he kept on walking, and
6 he had a parcel in his hand.

7 Q. Which way? A. Going towards Weston; he had a parcel
8 in his hand he was trying to put in his pocket.

9 Q. Could you tell what the parcel was? A. No, because it
10 was rolled up in paper, do you see.

11 Q. How does this parcel which I produce to you compare
12 in size with the parcel which you saw the prisoner trying to
13 put into his pocket on the occasion? A. Something the same as
14 that, only it was done up rough, you see.

15 MR HENDERSON: I object; no identification of the parcel.

16 HIS LORDSHIP: I note the objection. You might have asked
17 him how big a parcel it was? A. He was just holding it in his
18 hands loose, the paper was all loose, and he was trying to
19 put it in his pocket, and he did not seem as if he was able
20 to get it in.

21 HIS LORDSHIP: Well, it looks about the same size as that
22 one? A. Yes.

23 MR AGAR: And this parcel, I draw your attention to the
24 fact that it contains a pair of field glasses? A. Yes; of
25 course I did not know that.

26 Q. Come and look at this plan. As I understand your
27 evidence you were at the Grand Trunk Company's track where
28 the square appears on the plan, and the prisoner was walking
29 up in a direction which would be towards you, towards the
30 Grand Trunk tracks? A. Yes.

Q. And you asked him if he had been near to this car, and he made a reply; tell me, please, anything about his condition that you noticed at the time, if anything?

A. I noticed he was in a kind of a hurry, kind of excited.

HIS LORDSHIP: Can he identify the position of the cars there?

MR AGAR: I will do that. Did you say you noticed that he was in a kind of a hurry? A. Yes.

Q. Anything else? A. And a kind of excited too.

Q. Tell me whether or not the plan correctly shows the location of these boarding cars as they were that day?

A. Yes, it does pretty near.

Q. On the C.P.R. siding? A. Yes.

HIS LORDSHIP: You said he seemed ^{to be kind of} excited?

MR AGAR: Do you know a man named Frederick K. Dalton?

A. I just know him to see him. I don't think I ever spoke to him till the day before yesterday.

Q. I am referring to the gentleman who was a witness just before you? A. Yes, I knew him just to see him, but not personally.

Q. Did you see him on the evening of the 19th May?

A. Yes.

Q. How long before or after you had seen the prisoner?

A. It might have been half an hour or might be shorter and perhaps might be a little more, because I had to walk from my own house down.

Q. Did you see Dalton before or after you saw the prisoner? A. About half an hour before I saw the prisoner,

30

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1 but of course I did not know who Dalton was at that time,
2 because I was too far away from him.

3 Q. Do you know whether or not he ^{got} ~~had~~ this parcel
4 into his pocket before he passed you? A. No, he passed
5 me at the gate, where he put it in--he passed by me,
6 but before he opened the gate to go out through he got
7 it in his pocket.

8 Q. In what direction did he go after getting over the
9 tracks of the Grand Trunk Railway Co.? A. He went towards
10 Main St. in Weston, that is the main road, and it is always
11 called Main St.

12 Q. Do you know where Burk's Hotel is? A. Yes.

13 HIS LORDSHIP: Is Main St. indicated on the plan?

14 MR AGAR: Yes.

15 Q. Do you know where Burk's Hotel is? A. Yes; well
16 it is on Main St.

17 Q. Would Burk's hotel be or would it not be in
18 the direction in which the prisoner was walking after he
19 passed you? A. Yes, he would have to go that way to get
20 over to Burk's hotel; no other way could he get over there.

21 Q. Do you remember being at the office of the Canadian
22 Pacific Railway Co. a few days after the 19th May? A. Yes.

23 Q. There were some men being paid off I believe?

24 A. Yes.

25 Q. How many men did you see being paid off?

26 A. Twelve, somewhere about twelve; there was one
27 was not paid there, they had to go up to a shop for him.

28 Q. Did you see the prisoner that day? A. I did.

29 Q. Where? A. Getting his cheque at the C.P.R.

30 Q. From whom? A. From the office of the C.P.R.

Wm. Blair

1 Q. I want you to tell me please, whether this man the
2 prisoner who was getting his pay that day, was pointed out
3 to you, or whether you pointed him out to the officers,
4 amongst the twelve men? A. Nobody could point him out
5 because nobody knew him.

6 MR HENDERSON: I object to that. I think the proper
7 question is ask him what he did.

8 HIS LORDSHIP: I think the question is perfectly fair.
9 He said he identified a certain man and the Crown counsel
10 very fairly wants to know whether the man was pointed out
11 to him or whether he pointed him out himself? A. No, I
12 pointed him out myself, because none of them knew him.

13 HIS LORDSHIP: You pointed him out without any one
14 interfering? A. Yes; they asked me if I thought I could
15 pick the man out if I went down, and I said if the man
16 was there I could.

17 MR AGAR: On the 19th May were there any cars on the
18 siding except the three shown on the plan? A. There were
19 three cars there, two boarding cars and another lumber car.

20 CROSS-EXAMINED BY MR HENDERSON:

21 Q. Whereabouts did you see him, show me there--mark
22 where you first saw the man? A. This is the Roman Stone
23 building; this is the track; they would be down about
24 here, the steps would be.

25 HIS LORDSHIP: Mark it with a letter "A"--that is
26 where the man was when you first saw him? A. Yes.

27 MR HENDERSON: Where were you? A. I was standing by
28 the gate.

29 Q. Whereabouts on the plan? A. Out here where it crosses
30 the track.

Wm Blair

1 Q Where the square is? A Yes. There was a gate there
2 and I was standing there looking over the gate, and I went
3 right on to the track then, and I met him on the track, on
4 the Grand Trunk Railway track, because I went up when he
5 was coming, because he was coming from a building that I
6 was supposed to be watching.

7 Q Where was the last witness Dalton at that time?

8 A Dalton had gone down the road, I could not have told
9 whether it was Dalton, only I seen him with a dog going down
10 there; about a quarter of a mile away I was from Dalton when
11 he crossed the track.

12 Q. At the time you met this man had Dalton gone down?

13 A Towards home.

14 Q. Half an hour before? A. It might be that, because
15 I had walked down from where I got up on the track from my
16 own home, and I stood looking over the gate because it was
17 coming night.

18 Q We will say half an hour; you are the man that was
19 there, and are we fair in saying half an hour? A Yes, I had
20 no watch to tell the time.

21 Q Is half an hour correct? A Yes; I could not be
22 correct to a thing without a watch.

23 Q. So that the impression you received was that Dalton
24 had gone down home? A Yes.

25 Q And half an hour after that or about half an hour
26 after that this man apparently appeared on the premises of
27 the Roman Stone Co.? A Yes.

28 Q Was he coming down that, I think they call it
29 Hathaway Ave.? A Coming down between the two buildings of
30 the Roman Stone, and he came up over the steps, and the steps

Wm. Blain

1 are not marked there.

2 Q. Just indicate the direction? A: He has come up along
3 here, but this is where I seen him about here; there are two
4 buildings and he was coming between; he would be up about
5 here when I seen him.

6 Q. What direction was he coming? A. Towards Main St.

7 Q. What direction is that? A. Going west.

8 Q. How far away would he be before he first noticed you?

9 A. He would not be any further when he first noticed me
10 than from here to that other door.

11 Q. And he came right on and met you? A. Yes.

12 Q. What was the first thing you said to him? A. I just
13 asked him if he was stopping in those cars, and I thought he
14 was; I wanted to find out if there were any ^{fires} ~~hazards~~ in the
15 cars.

16 Q. Why did you want to find out whether there were any
17 fires in the cars? A. Because our place was there, and I
18 would not want to see it burned, because they were cooking in
19 the cars and I wanted to know if there was any fires in the
20 cars.

21 Q. How near were the cars to your building? A. They
22 would not be any further than from the corner of one of the
23 buildings, a little further than from here to that corner of
24 the room.

25 Q. And still there is danger of fire if they caught fire?

26 A. Yes.

27 Q. Did you say that in your evidence at the preliminary?

28 A. No, because I was not asked; but that was my idea.

29 Nobody ever said anything to me about it.

30 Q. Apparently judging from the evidence that I read here

1 you were very carefully taken over the ground by Mr. Greer
2 the Crown Attorney? A. No, I don't think the Crown Attorney
3 ever took me over the ground. Mr. Greer was up there, I
4 mean the Crown Attorney, but he never took me over the
5 ground.

6 Q. Your evidence as to what you saw that night, I don't
7 mean he took you around the premises? A. No, he did not
8 take me around the premises.

9 Q. How long before this was it you saw this man around
10 there before? A. A week or two weeks.

11 Q. Prior to that when you had seen him? A. Working
12 there.

13 Q. How many men were working there? A. There were
14 twenty four all the time; there are twelve appeared here
15 today.

16 Q. Were there twenty four working there? A. Yes; I would
17 know them if I seen them I think; pretty near.

18 Q. Have you seen any of them here today? A. Yes, I
19 have seen some of them.

20 Q. What time of night would it be? A. Pretty near eight
21 o'clock; I could not say to five minutes or may be ten
22 minutes, because I had not my watch on me.

23 Q. When this man approached you he was apparently coming
24 in the ordinary walk of a pedestrian? A. He was walking
25 pretty quick.

26 Q. Is that what you say today? A. Yes.

27 Q. You say he was walking pretty quick? A. Yes.

28 Q. Let me just read to you page 25 of the evidence
29 taken in the Police Court; do you remember appearing before
30

1 Major Brunton, the Magistrate? A. Yes.

2 Q. At page 25 and question 12 you were asked this question:

3 "Walking or running? A. He was walking; he did not seem to
4 be in any hurry"? A. He was walking quick.

5 MR AGAR: My learned friend should read the whole answer.

6 MR HENDERSON: That is the question of walking.

7 MR AGAR: I submit my learned friend should read the
8 whole answer.

9 HIS LORDSHIP: Let me see the question.

10 MR HENDERSON: The other portion does not refer to the
11 walking; it refers to something else which I can ask him
12 later on about.

13 HIS LORDSHIP: "He did not seem to be in any hurry"--do
14 you remember that answer? A. Yes, but he was walking fast,
15 more than any ordinary walk. At first he was not running.

16 MR HENDERSON: Does he always walk fast? A. He might
17 have always walked fast for all I know; he seemed to have a
18 quick walk with him, I know that.

19 Q. Apparently as far as you gathered from what you saw
20 that night he was walking in his natural manner? A. Yes.

21 HIS LORDSHIP: Did you ever see him walking before?

22 A. Yes, I had seen him around the job before walking
23 there.

24 MR HENDERSON: Do you say that the question you asked him
25 when you first met him was "Were you over at the cars"?

26 A. I asked him if he was staying in those cars, and that
27 is the question I have told you, you cannot twist me any,
28 because that is the words I said.

29 Q. What was his answer? A. He said "No, no, no"--
30 he said it three times quick.

Wm. Blair

1 Q. You asked him and he said "No, no, no"? A. Yes.

2 Q. So he denied being near the cars? A. Yes.

3 HIS LORDSHIP: He said he was not staying there?

4 A. I did not ask him if he had been there; I asked him
5 if he was staying in the cars because I thought he had come
6 back with that gang to work.

7 MR HENDERSON: At page 24 line 24 "What did you say to
8 him? A. I said 'Was you down at them cars'?"

9 WITNESS: No, was he staying; I did not say whether he
10 was down at them.

11 Q. This is the evidence you gave at the preliminary
12 investigation, do you say that is not correct? A. The
13 words I asked him was he staying at those cars.

14 Q. Let me read it to you: "What did you say to him?
15 A. I says 'Was you down at them cars'?"

16 A. I might have placed it in that way, I am not sure.

17 Q. "Because I thought he was one of the men who
18 would be in the cars and he said "Naw, naw"--is that
19 actually what happened? A. Yes, I would not say whether I
20 placed it that way or not.

21 Q. You did not ask him whether he was living in the
22 cars? A. I asked him whether he was staying at the cars;
23 I might have said was he staying in the cars.

24 Q. I am asking you did you swear to that, is that
25 the statement you made at the investigation or did you not?

26 A. That is what I swore to.

27 Q. And you did not swear at that time you had asked him
28 whether he was staying down at the cars, did you?

29 A. Well now, I would not swear which way I put it;
30

Wm. Blair

1 that is the way it was put to me~~n~~ and that was the meaning
2 of it, was he staying there or had he been down to the cars-
3 you might say, was he staying there, and say down in the cars
4 and still be the same meaning.

5 Q This is taken down by the shorthand writer? A. That
6 might have been the way I swore it.

7 Q Page 25 line 3, Question 1 on that page; "And then
8 you said to him Have you been around those cars? A. Yes."
9 You were still asked the question and he said "Naw, naw",
10 and your answer again to that was "Yes", that is what you
11 said to him as a matter of fact is it not? A. Yes, ~~what~~ ^I What
12 did ^I say, yes, to him? I never said yes to him.

13 Q Is not that the question you asked the man? A. Yes.

14 Q Why are you so positive this is the man you had the
15 conversation with? A. Because I am certain of it, or how
16 could I go and pick the man out?

17 Q I don't know anything about that; people are apt to
18 make mistakes in identification? A. I know they are.

19 Q You are not above making mistakes? A. No, I could
20 make a mistake.

21 Q The human family is noted for making mistakes? A. Yes.

22 Q I notice there were a great many of these men working
23 out shortly before this trouble, I mean men of this national-
24 ity? A. Yes.

25 Q And they look somewhat alike? A. Yes, they look alike.

26 Q And you did not go down near the boarding cars?

27 A Yes, I did go down near the boarding cars.

28 Q After you had seen this man? A. Yes, I went on the
29 east side of the cars, and looked along to see if I could see
30 any person in the cars, and of course the doors ~~were~~ shut,

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X
✓

Wm. Blair

and I came down back again, and I did not go at the other side of the car or else I would have found the door open.

Q. Why do you say that? A. Because the men that came said the door was open, and the people across at the other house said it was open all the evening. I asked others if they had seen any person there that day and they said they had seen a person twice.

Q. What kind of a person? A. This was not at this time; it was before the murder, I had asked these people if they had seen any people around.

Q. Can you tell me what time the murder took place?

A. No, because the murder might have taken place in the afternoon for all I know, but the man seemingly was not there in the afternoon, so that it could not be.

Q. That is some more you have been told? A. No; I have heard the evidence of the people; there is nobody told me nothing only what I have heard just in this court room.

Q. At the time that you met the man that you claim is this man here apparently right on the Grand Trunk tracks you did not see Mr. Dalton around at that time? A. No, he was away, gone towards home; I just seen him from my own house, I seen the man with the dog; I did not know it was Mr. Dalton--on account of knowing the dog, I seen them-- I could not tell it was Mr. Dalton at that time.

Q. As far as you know you say he had gone home? A. Yes, the man that had the dog.

Q. Had gone down home? A. Yes.

Q. Sometime prior to the time you met the man on the track? A. Yes.

Wm. Blair

1 Q. Was the prisoner dressed the same as he is today when
2 you saw him? A. He looks to me to be the same only he has
3 got no hat on now, that is all.

4 Q. Was he dressed the same? A. When I noticed him I
5 noticed he had a kind of, I took it, brownish coat on, and a
6 pair of pants of the same kind, only they were faded more
7 than the coat; that is my opinion of what I thought you know,
8 because I noticed these pants being a little faded.

9 Q. When you were taken to the Pay office of the C.P.R.
10 you claim you picked this man out? A. Yes.

11 Q. And still the authorities were not sure, notwith-
12 standing you had picked him out? A. Well, they did not tell
13 me whether they were sure or not.

14 Q. The man was not arrested on that occasion? A. No, I
15 don't suppose he was arrested on that occasion.

16 Q. You know, because you were right there? A. Yes, he
17 was not arrested then.

18 Q. Were you absolutely positive about the identification
19 at the pay office? A. Yes, I am absolutely positive that is
20 the same man I identified to them.

21 Q. What did you say then? A. I did not speak at all;
22 I just turned my head, nodded towards the man when he was
23 going out the door; I never spoke at that time; just turned
24 to the detective and nodded towards the man going out the door
25 that he was the man; I did not speak at all.

26 Q. He was the man you claim you had seen on Sunday night
27 the 19th May? A. Yes.

28 Q. How was he dressed that day? A. He was not dressed
29 exactly the same as he was when I seen him before, because
30

1 his clothes looked a little tidier at that time; his clothes
2 looked to me as if he had been greasy or something when I
3 had seen him the other time.

4 Q. Did he look as if he had been working? A. Yes, and when
5 I seen him down there he looked as if he had come from work
6 too; of course you never know when those fellows are working,
7 because they are always greasy, whether working or not.

8 Q. That is the impression I had; it is pretty hard to tell
9 these men apart by reason of that fact? A. Well, how could I
10 go and pick the same man out again?

11 Q. Is not that the fact? A. Yes; it is hard thing to
12 pick them out.

13 Q. As I was going to say apparently from your evidence
14 you were not sure whether this man had come from the cars
15 or not, because you asked him had he been down near those
16 cars? A. Yes; I did not see him coming out of the car, that
17 is certain.

18 Q. You did not know whether he had been near the car or
19 not? A. No; if I did I would have known whether he was there
20 or not, but I did not.

21

22

JOSEPH WATSON, Sworn, Examined by

23

MR AGAR: I believe you were employed by the Toronto
24 Suburban Railway Co. in the capacity of a conductor? A. Yes.

25

Q. Do you remember the 19th May, the day of this alleged
26 murder? A. Yes, I do.

27

Q. Taking your mind to the evening of that day, were you
28 in charge of one of the street cars on that evening? A. Yes.

29

Q. What is your route; where do you go from, and where to?

30

That

1 A. ~~At~~ night?

2 Q. Yes? A. I was on Weston that night.

3 Q. Where is the terminus at Weston? A. Burk's Hotel.

4 Q. And looking at plan Exhibit No.6 does it correctly
5 set forth on the plan where Burk's Hotel is at the place
6 marked hotel, Main St.? A. Yes.

7 Q. Did your car that evening go up in front of the
8 hotel? A. Yes.

9 Q. From there where would you start back? A. Back to
10 West Toronto.

11 Q. What time would it be that you would start back
12 that evening from Burk's Hotel for West Toronto? A. Ten
13 minutes to the hour.

14 Q. What time was it in the evening? A. 7.50 and 8.50
15 and so on.

16 Q. It is an hour's run? A. Yes sir.

17 Q. Do you remember any particular person getting on
18 the car at Burk's Hotel? A. At what time?

19 Q. About eight o'clock or nine o'clock? A. Yes.

20 Q. What was there about this particular person, if
21 anything, to direct your attention to him? A. He was
22 standing there when he came up to the hotel, and there
23 were no other passengers there, so when we started the
24 car he made a rush for the car--it was a pay as you enter
25 car and he dropped his nickel in and I took notice of
26 him.

27 Q. Which car was that? A. Either 7.50 or 8.50.

28 Q. Was there any person who got on the car except this
29 one man? A. He was the only passenger got on the car.

30 Q. Was there any other passenger in the car when he got

1 on except himself? A. No, he was the only passenger.

2 Q. Have you seen that man since that night?

3 A. Only up at Weston.

4 Q. Do you see him in the court room now? A. Yes, right
5 over there (pointing to the prisoner).

6 Q. Is that the gentleman to whom you are referring?

7 A. Yes, that was the gentleman I saw get on the car.

8 Q. You identify the prisoner as the man that got on
9 the car? A. Yes.

10

11 CROSS-EXAMINED BY MR HENDERSON:

12 Q. When was the first time you saw this man after you
13 claim you saw him this night in question? A. Up at
14 Weston at the Town Hall.

15 Q. He was pointed out to you, the man was under
16 suspicion? A. They had him there.

17 Q. Was that at the inquest?

18 MR AGAR: That would be at the inquest I believe.

19 MR HENDERSON: What date would that be? A. I could not
20 say what date it was.

21 HIS LORDSHIP: There was an inquest and then a prelim-
22 inary inquiry before the Magistrate.

23 MR HENDERSON: It would be the inquest.

24 HIS LORDSHIP: Where was the Magistrate's inquiry?

25 MR HENDERSON: At the old court house in the City of
26 Toronto.

27 HIS LORDSHIP: So that any investigation out there
28 would be the inquest.

29 Q. Was it at the Town Hall? A. Yes, in Weston, that is
30 where I saw him.

Joseph Watson

1 MR HENDERSON: How long was that after this Sunday?

2 A. It was the next week, the following week after.

3 HIS LORDSHIP: It was the 28th.

4 MR HENDERSON: There were previous sittings to that;
5 the first sitting was on May 20th; the second May 28th
6 and the third on June 5th.

7 HIS LORDSHIP: May 20th I suppose they viewed the body?

8 MR HENDERSON: Yes, just the preliminary opening.

9 HIS LORDSHIP: Do you know when you were called?

10 A. It was the following week.

11 MR HENDERSON: Notwithstanding you could not remember
12 the time you were called at the inquest which apparently
13 was the 28th, still you can remember the 19th?

14 A. I remember the 19th.

15 Q. Why do you remember the 19th? A. Well, I was
16 working that night.

17 Q. Did not you work every night? A. Yes, I had been
18 working every night.

19 Q. Nothing extraordinary for you to work on Sunday
20 May 19th?

21 HIS LORDSHIP: Did you hear of anything that happened
22 on the 19th? A. That day?

23 Q. Yes? A. No, not on the 19th.

24 Q. Did you hear anything within a day or two?

25 A. Yes, I heard there was a murder up in Weston.

26 MR HENDERSON: As I understand this man was the only
27 man that got on the street car that night going back to
28 West Toronto? A. Yes.

29 Q. And you stated a few minutes ago that apparently this
30 man was in the midst of a lot of passengers? A. No, I said

Joseph Watson

1 he was the only passenger.

2 Q. I understood you to say something about passengers,
3 and the car started and this man ran after it? A. No;
4 when I went in the car to ring the bell he made a rush
5 for the car.

6 Q. Where was the next place you took on a passenger?

7 A. I could not say what stop it was, but it was down
8 in Weston.

9 Q. Could you tell us who got on the car? A. The name?

10 Q. The man? A. I don't know the name.

11 Q. If the man was brought to you today could you pick
12 him out? A. Yes.

13 Q. Can you tell me how many passengers you took on
14 in that car all the way down from Weston to West Toronto?

15 A. No, I could not.

16 Q. You wont say you believe that you can positively
17 pick out a man, identify him as the man who got on your
18 car at that particular night in question at Burk's Hotel?

19 A. Yes, because he was the only man standing there.

20 Q. What time did he get on? A. Either 7.50 or 8.50.

21 Q. Why are not you sure about that time; you must
22 remember the particular run, because you are trying to
23 impress us with the fact as extraordinary that there
24 were no passengers getting on at the Burk's Hotel.

25 HIS LORDSHIP: I don't know that he said that was
26 extraordinary; as a matter of fact it was the case.

27 MR HENDERSON: Are you positive that this was the man?

28 A. Yes.

29 Q. What makes you positive about him? A. I had a good
30 look at him; he was standing there when we came up, and

Joseph Watson

1 when we came up to Weston there was nobody in the car,
2 and we stopped there for about a minute or two and he
3 never offered to get in the car until I went in the car
4 and rang the bell, and it was a pay as you enter car,
5 and he made a rush and dropped in his nickel and ~~dropped~~
6 went in the car.

7 Q. How was he dressed? A. I just could not say how he
8 was dressed.

9 Q. What is it makes you say this was the man?

10 A. His face.

11 Q. That is the only thing you can go by? A. Yes.

12 Q. There is nothing else apparently? A. No.

13 Q. You say you do not remember his clothes? A. No.

14 Q. So that his face is the only thing you can go by?

15 A. Yes.

16 Q. Have you seen people who look very much like each
17 other? A. I have.

18 Q. And would you swear on your oath always that you were
19 sure that you are able to distinguish between them?

20 A. Yes, I would not swear unless I was sure.

21 Q. I mean to say where two men look alike are you always
22 sure you can distinguish between them? A. Yes.

23 Q. So that you are an expert identifier, is that what
24 you would like us to believe--is that the fact--as a matter
25 of fact you have thousands of people who come and go on
26 the street cars? A. Yes.

27 Q. And you could not remember them five minutes afterwards
28 in some cases? A. If they do not pay their fare.

29 Q. But I mean to say the men who come and go and pay their
30 fares you cannot remember everybody that comes?

Joseph Watson

1 A. Not everybody, not 100 people on the car.

2 Q. And have you ever seen me out there on the street car
3 this summer? A. No, I have not.

4 Q. You say you appeared at the preliminary inquest at
5 the Town Hall in Weston, and this man was shown to you as
6 the man that was in custody? A. They asked me if I ever
7 saw this gentleman before and I told them I had.

8 Q. Was he alone? A. At the City Hall?

9 Q. Yes? A. No; there were a couple of other men sitting
10 beside him.

11 Q. Not a couple of other men of his own nationality?

12 A. No.

13 Q. He was there alone by himself? A. Yes.

14 Q. You knew they had taken into custody somebody whom
15 they were apparently accusing of having committed the crime?

16 A. Yes.

17 Q. As a matter of fact, the first thing you knew as soon
18 as you looked at this man "That must be the man that they
19 had in custody"? A. As soon as I looked at him I knew he
20 was the man that got on my car at Weston at Burk's Hotel.

21 Q. Why could not you remember the date as well as you
22 can remember this particular Sunday? A. Well, it has just
23 slipped my memory.

24 Q. How did you come to be brought up there? A. I got a
25 summons to appear.

26 Q. You had never interviewed any person prior to this?

27 A. Yes, I was interviewed.

28 Q. How long after the Sunday in question? A. About two
29 days after I think.

30

Joseph Watson

1 Q. Then you appeared at this inquest in response to the
2 summons, and you were taken in and asked if you knew this
3 man? A. Yes.

4 Q. So that they did not leave you to your own volition to
5 walk around and point out the man? A. Walk around where?

6 Q. In the Town Hall at Weston? A. No, they took me in
7 this room.

8 Q. They asked you if this is the man. Is not there a
9 possibility of you being mistaken? A. No, I am not mistaken.

10 Q. This man is charged with murder and you are not
11 the first man that has ever gone into the witness box
12 who might feel that you were identifying the same man and
13 still be mistaken? A. I am not mistaken with that gentleman
14 at all.

15 Q. Have you seen the other men, these other Albanians
16 that lived with him in the same house? A. That night or
17 today?

18 Q. Any time? A. I saw them today and yesterday.

19 Q. You have not seen about 24 of them all told together?

20 A. I don't know whether there were 24 or not; I never
21 counted them.

22 Q. Have you discussed the case with anybody since you
23 identified the man? A. Yes.

24 Q. Talked it over I suppose off and on from that time
25 on till now? A. Yes..

26 Q. I suppose the longer the time elapsed the stronger
27 your satisfaction was that this was the man that got on
28 your car that night? A. The more I see the prisoner the
29 more I am sure .
30

Joseph Watson

1 Q. I suppose if you see him for a year you will be surer
2 than you are now that that is the man? A. I don't know.

3 Q. If you keep on the way you have been for the last
4 three or four months; you say the more you see him the more
5 sure you are? (No answer).

6 RE-EXAMINED BY MR. AGAR.

7 Q. I would gather from your evidence at the inquest
8 that you pointed out to Mr. Greer who was examining you
9 the man whom you saw in the car, is that correct, and you
10 pointed to the prisoner? A. I was asked if he was the man
11 that got on my car.

12 Q. The question is "There is no doubt in your mind as
13 to his identity? A. No."

14 Q. "You are sure of him? A. Yes, I am pretty sure that
15 is the fellow that got on the car."

16 Is that correct? A. Yes.

17 Q. You were asked by the Coroner and you say you are
18 positively sure that is the man; so that it is correct to
19 say at the Inquest you pointed out the man who was in
20 the crowd; there must have been others there were not
21 there? A. Yes sir.

22 HIS LORDSHIP: That is very leading. Begin at the
23 beginning and tell me whether you first picked him out
24 from other people or whether you were first asked, is
25 that the man? A. I was asked did I ever see a man that
26 looked like him and I said I had.

27 -----

28
29
30

JOHN MILLER, Sworn, Examined by

MR AGAR: You are one of the Inspectors of Criminal Investigation? A. Yes sir.

Q. Headquarters at the Parliament Buildings Toronto?

A. Yes.

Q. Did you make an investigation in connection with this case? A. I did; I assisted Inspector Greer.

Q. You know the premises at 569 King St. West in Toronto?

A. I do.

Q. Did you visit those premises? A. I did.

Q. When? A. On the 29th May last.

Q. Tell me please what you did at those premises that day? A. On the strength of a search warrant Inspector Greer and myself and two or three of the city detectives searched the premises of 569 King St. W., occupied by 12 foreigners called Albanians. At the time we got there, which was about four o'clock in the afternoon, there were only three men in the building. One was in the kitchen, two others were upstairs on the second floor in bed. We made a search of the premises for two articles that were known to have been taken from the car at Weston on the night of the murder.

Q. What were those two articles? A. One was a field glass, the other a wallet. The field glass was said to belong to William Hill, one of the occupants of the car at Weston; and the wallet was said to have been in the possession--

MR HENDERSON: That is not evidence.

HIS LORDSHIP/NO; in consequence of the information--

/ MR AGAR: In consequence of the information you received you went to search this house, and did you find the articles in question? A. I did.

John Miller

1 Q. Continue and tell me what you did in the way of a
2 search? A. We had searched two or three rooms until we
3 came to the top floor of this building.

4 Q. How many floors were there? A. Three floors. There
5 are three rooms on the top floor in addition to a bathroom.
6 The rear room is occupied by two beds; the front room is
7 occupied by two beds. The centre room is vacant, and in
8 this centre room there were several suit cases, grips;
9 and in a black suitcase which was there I found the field
10 glasses and the wallet containing the card, the insurance
11 card of George H. Tucker.

12 Q. In the first place does this plan which I produce
13 show the plan of the upstairs floor? A. It does.

14 ---EXHIBIT NO.8: Plan of upstairs floor.

15 Q. I produce a black suitcase; tell me whether this black
16 suitcase is the black grip you referred to in your evidence?

17 A. This is the suitcase I referred to my evidence in
18 which I found the articles referred to.

19 EXHIBIT NO.9: Black suitcase.

20 Q. Are these articles, Exhibits 1 and 2, the articles
21 that you refer to? A. These are the field glasses that I
22 found in this grip; I put my own mark on them.

23 Q. What about these? A. This is the card and the
24 wallet.

25 Q. Was there anything else found in the black suitcase?

26 A. Some clothes, some envelopes.

27 Q. I produce two envelopes here; please look at them
28 and see whether they are the ones you refer to? A. Yes sir.

29 ---EXHIBIT NO:10: Two envelopes.
30

John Miller

1 Q. These which have been marked Exhibit 10 were found
2 in the black suitcase? A. Yes sir.

3 Q. Now, about the clothes, where did you find the clothes
4 that are produced? A. The pants corresponding with this coat
5 were in the bedroom occupied by the prisoner. The coat
6 was in the grip.

7 Q. In the black suitcase? A. Yes.

8 ---EXHIBIT NO.11: Trousers and coat.

9 Q. What about the other garments? A. They were found in
10 this case.

11 HIS LORDSHIP: The prisoner was not there when you were
12 making this search? A. Not at that particular time.

13 MR AGAR: This muffler and this colored shirt and the
14 other articles now left in the grip in the way of clothing
15 were found in the black grip? A. Yes.

16 ---EXHIBIT NO.12: Muffler and other articles of clothing
17 in the black grip Exhibit 9.

18 Q. On this plan Exhibit 8, I show the word "Grip"
19 appearing in the room marked vacant; what grip does that
20 refer to? A. Referring to this black suitcase.

21 Q. Does that show on the plan the place you found the
22 black grip?

23 MR HENDERSON: I would like to know where this plan was
24 made.

25 HIS LORDSHIP: He can look at it and say that that is a
26 fair representation of that top flat, and in that particu-
27 lar place he found this suitcase. I don't care who made it.

28 MR AGAR: As I understand it the square marked "grip"
29 represents what? A. Where the suitcase was that I found
30 the articles, the purse and the field glasses, in.

John Miller

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 Q. The black grip? A. Yes.

2 Q. Was this black grip produced open or locked?

3 A. It was locked.

4 Q. During your investigation did you see the prisoner?

5 A. He came in after we had found these articles in the
6 suitcase.

7 Q. Did you have any conversation with him? A. I asked
8 everybody in the building as they came in who owned that
9 black grip.

10 MR HENDERSON: I object; that would not be evidence.

11 HIS LORDSHIP: Not what answer he got. It is perfectly
12 competent for him to say he asked every one. You cannot
13 tell any one else's answer until you come to his answer.

14 MR AGAR: Did you have any conversation with the prisoner
15 upon his arrival? A. I did.

✓ 16 Q. About what time would it be he arrived? A. About
17 a quarter past five as near as I can remember now.

18 Q. Do you remember the hat the prisoner was wearing
19 when he arrived? A. Yes sir.

20 Q. Looking at this hat produced, Exhibit 7, what do
21 you say? A. That hat that he was wearing, that is the hat
22 that he was wearing when he came in the house and we took
23 it as evidence.

24 Q. Tell the jury the conversation which you had with
25 the accused? A. I asked Neby if he owned that grip and he
26 said no.

27 Q. By that grip you mean the black grip? A. Yes. He
28 said no; he did not know whom it belonged to; and then
29 he qualified that by mentioning some name, said it belonged
30 to--I cannot give you the name offhand. He then went into

John Miller

1 the rear room on the top flat and produced a brown grip
2 which he said was his grip.

3 Q. Is that grip in court? A. Yes, that one there.

4 Q. This is the grip he claimed as his? A. The first
5 grip he claimed was his he got it in the rear bedroom.

6 ---EXHIBIT NO.13: Brown suitcase.

7 WITNESS: When the owner of that grip claimed it as his
8 he then claimed that one, Huson Hassen's.

9 Q. By this one you mean the grip which I now produce and
10 put in as Exhibit 14? A. Yes, it belongs to Mike Demo.

11 Q. In the meantime Huson Hassen, the owner of Exhibit 13
12 had come in? A. Yes. Mike Demo claimed that as his, a
13 fellow room mate.

14 Q. As to the contents of the black grip what conversa-
15 tion if any, did you have with him in regard to these
16 garments that are produced? A. I had no conversation
17 with him in regard to the garments other than what took
18 place subsequently at Police Headquarters.

19 Q. On the occasion on which you were at 569 King St. W.,
20 did you learn from the prisoner what part of the house he
21 occupied as sleeping quarters? A. Yes.

22 Q. What part did he say he occupied? A. On the top floor,
23 the front bedroom, right next to the vacant room where
24 the suitcase was found.

25 HIS LORDSHIP: Not the same one as the suitcase was found
26 in? A. No, the suitcase was found in an empty compartment
27 in the rear.

28 MR AGAR: As to the rear room in which there are two
29 beds--? A. That is where he produced this first brown
30 grip from.

John Miller

1 Q. Was the prisoner taken in custody then? A. Yes.

2 Q. Were you present later that day when you heard a
3 further conversation with the accused? A. I was.

4 Q. Tell me whether the prisoner had been cautioned prior
5 to the statement that he made then? A. He was cautioned
6 by Inspector Kennedy.

7 Q. Who is Inspector Kennedy? A. Inspector of the City
8 Detectives.

9 HIS LORDSHIP: This was some time afterwards? A. The same
10 evening.

11 MR AGAR: What did Inspector Kennedy say to him in your
12 presence? A. He told him he was going to ask him some
13 questions; he was not obliged to make any statement, but
14 any statement he might make would be used in evidence
15 against him at his trial. He was told he was going to be
16 charged with the murder of George H. Tucker.

17 Q. Having been cautioned by Inspector Kennedy in the
18 manner you have described did he subsequently make any
19 statement?

20 MR HENDERSON: I understand this man does not speak
21 English very well.

22 HIS LORDSHIP: That is a matter for cross-examination?

23 A. It was done through an interpreter, Louis George.

24 HIS LORDSHIP: The same gentleman we have here?

25 A. Yes, my Lord.

26 MR AGAR: That is the gentleman who has been sworn as an
27 Interpreter in this case? A. Yes.

28 Q. Tell me please, what statements the prisoner made to
29 Inspector Kennedy in answer to questions put to him by
30 the inspector.

Louis George

1 MR HENDERSON: I think I must object to the witness giving
2 secondary evidence.

3 HIS LORDSHIP: He was present.

4 MR HENDERSON: But your Lordship will see--

5 HIS LORDSHIP: That is evidence at first hand.

6 MR HENDERSON: Your Lordship will see the prisoner is a
7 foreigner, and he is purported to have had the caution
8 submitted to him through an interpreter.

9 HIS LORDSHIP: That is a matter for cross-examination.

10 MR HENDERSON: I submit I could not cross-examine Mr.
11 Miller.

12 HIS LORDSHIP: I have no doubt the interpreter will be
13 called, in fact I shall direct him to be called if it
14 is desired. His name is on the back of the indictment.

15 MR AGAR: I will be very pleased to call him if the
16 Court desires it.

17 HIS LORDSHIP: If you would like to have Louis George
18 examined before his statements are given.

19 MR HENDERSON: I submit it is only proper he should be
20 examined.

21 HIS LORDSHIP: I am offering him to be called now.

22 MR HENDERSON: Yes.

23 HIS LORDSHIP: Inspector, you can stand down for a moment.
24 ---Inspector Miller stands down.

25 -----

26 LOUIS GEORGE, Sworn, Examined by

27 MR AGAR: Q. Do you recollect the evening of the 29th
28 of May last being in the office of Inspector Kennedy?

29 A Yes.

30 HIS LORDSHIP: What is the nationality of the prisoner?

Louis George

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 A. Albanian.

2 Q. Are you of the same nationality? A. No, I am a
3 Macedonian.

4 Q. Do you understand his language? A. Yes sir.

5 Q. No mistake about his being able to understand you?

6 A. He can understand me.

7 MR AGAR: Was Mr. Miller, the previous witness, present?

8 A. Yes.

9 Q. And was the prisoner there? A. Yes.

10 Q. It appears that certain questions were asked of the
11 prisoner by Inspector Kennedy; will you tell the court
12 please whether or not you truthfully repeated those
13 questions to the prisoner in a language which he understood?

14 A. Yes.

15 Q. And did you truthfully report the answers which the
16 prisoner gave to those questions? A. Yes.

17 MR AGAR: Those questions and answers my Lord, are in
18 writing and were taken down by a stenographer who was sworn
19 I believe; and perhaps my learned friend would consent ~~me~~
20 to my calling the stenographer and in that way putting
21 in the questions and answers as they appear in writing.

22 HIS LORDSHIP: What do you say about that?

23 MR HENDERSON: I hardly could consent to that. I submit
24 when a man is charged with a serious offence like that
25 the Crown must prove everything properly.

26 HIS LORDSHIP: Very well; you call the stenographer and
27 he swears to the correctness of his notes, you can put
28 those in. First of all, does the stenographic report
29 contain the warning?

30 MR AGAR: Yes, my Lord.

1 HIS LORDSHIP: Have you ever had an opportunity of looking
2 at the report written out by the stenographer? A. Yes sir.

3 Q. Is it substantially correct? A. Yes.

4

5 CROSS-EXAMINED BY MR HENDERSON:

6 Q. You are a Macedonian? A. Yes.

7 Q. What portion of Macedonia do you come from?

8 A. From Castoria.

9 Q. That is a portion now under Greek rule? A. Yes.

10 Q. Where did you learn the Albanian language? A. In
11 Albania.

12 Q. How long did you reside in Albania? A. After fifteen
13 of my years I was in Albania all my life; I was in Albania
14 since I was fifteen years of age.

15 Q. How old are you now? A. Fifty.

16 Q. How long have you been in Toronto? A. Six years.

17 Q. So that you were 29 years in Albania? A. Yes.

18 Q. What portion of Albania were you in for 29 years?

19 A. Bilistl.

20 Q. What did you say to this man before Inspector Kennedy
21 put the questions to you? A. Which man?

22 Q. The prisoner in the dock? A. Inspector Kennedy asked
23 me to talk to the man.

24 Q. What did Inspector Kennedy ask you to do, what did
25 he first ask you to ask the man? A. What nationality in
26 the first place.

27 Q. Was that the first question he asked? A. I think so,
28 what his name and what his nationality.

29 Q. What was the next thing that you remember?

30 A. How old was he, married or not. That is all the things

1 I remember. I cannot remember all the questions. There
2 were eleven or twelve men altogether.

3 Q. Eleven or twelve men altogether in the room? A. Yes.

4 Q. What did you tell this man before you started to ask
5 him the questions? A. The inspector asked me to tell to
6 the man--

7 Q. Is that all he said? A. The inspector asked me to
8 ask the man.

9 Q. Did you tell the man he was charged with murder?

10 A. Yes.

11 Q. Did you tell the other men they were charged with
12 murder too, the other eleven or twelve men, they were all
13 charged with murder were they? A. No, just for this man.

14 Q. Did you tell him he was charged with murder? A. Yes.

15 Q. Then what did you say to him after he was charged
16 with murder, did you tell him he did not need to answer
17 any questions? A. We say to the man and he answer that.

18 Q. Did you tell him he was not bound to answer any of
19 your questions? A. My questions?

20 Q. Yes, ^uquestions you put to him? A. Yes.

21 Q. Did you tell him he was not bound to answer any of
22 those questions? A. We asked every one of them, all the
23 questions.

24 Q. Did you tell the man he was not bound to answer any
25 of your questions? A. I cannot understand you.

26 Q. I am asking you if you told this man, the accused
27 in the dock, that he was not bound to answer any questions
28 that you asked him; did you tell him that? A. All the
29 questions I asked he answered to all of them.

30 Q. Did you tell him he was not bound to answer any of

1 them if he did not wish to? A. Yes, that is right; he said
2 he did not want to answer.

3 Q. He said he did not want to answer any of the questions?

4 A. Yes.

5 Q. And notwithstanding that you got him to answer some of
6 the questions? A. He answered them.

7 Q. After he told you he did not want to answer any of the
8 questions you asked him still you kept after him and got
9 answers to your questions? A. We asked him again.

10 Q. And then he answered, is that correct? A. Yes.

11 MR HENDERSON: I will let it stand at that.

12

13 RE-EXAMINED BY MR AGAR:

14 Q. Was there a stenographer there who was taking down in
15 shorthand everything that was said? A. Yes.

16 Q. Tell me please, whether or not you correctly stated
17 in the English language for the benefit of the stenographer-

18 HIS LORDSHIP: He has already said that.

19 MR HENDERSON: Surely my Lord, after his own evidence now
20 it is dangerous to put any questions--

21 HIS LORDSHIP: We will hear what the stenographer says
22 about what actually took place.

23 MR HENDERSON: If your Lordship will remember, to my
24 questions he apparently does not say that this man was
25 warned, and the man himself said he did not want to answer
26 questions, and they kept on plying them, and finally
27 received his answer.

28 MR Agar; So that there may be no mistake about it I will
29 put the question as appears here in the record and ask him
30 if he stated that in the Albanian language to the accused.

George Kennedy

1 MR HENDERSON: This man might not have understood him.

2 HIS LORDSHIP: He says he speaks the language perfectly.

3 It would be very difficult for this witness to remember
4 everything that was said. The stenographer will tell us
5 exactly what was said.

6 Q. What is your occupation? A. Grocery store.

7 Q. Where? A. 112 Portland St., Toronto.

8 MR AGAR; You are in a district where several of your
9 customers are Albanians? A. Yes, all around there.

10 -----

11 GEORGE KENNEDY, Sworn, Examined by

12 MR AGAR: You are the Inspector of Detectives in the
13 Department of Police here? A. Yes.

14 Q. Do you remember questioning the prisoner on the 29th
15 of May last? A. Yes sir, through an interpreter.

16 Q. Who was the interpreter? A. Mr. George.

17 Q. Was there a stenographer present? A. Mr. Breckell,
18 the stenographer, was present.

19 Q. To take down in shorthand the questions and answers?

20 A. To take down in shorthand the questions put and
21 the answers given.

22 Q. And did you question the accused? A. I did, through
23 the interpreter.

24 Q. And received the answers from the accused through
25 the interpreter? A. Yes.

26 Q. Which the stenographer took down? A. Yes.

27 Q. And did you caution the accused? A. I cautioned him
28 through the interpreter.

29 Q. Was it before or after the caution that the questions
30 were put to the prisoner? A. It was after the caution that

1 the questions were put.

HIS LORDSHIP:

2 Q. Does the caution appear in the stenographic report?

3 Where is the stenographer?

4 MR AGAR: I find he is not at his office, and I am
5 bringing the officer up now to prove personal service upon
6 him. He was under subpoena to be here.

7 HIS LORDSHIP: I suppose there is some mistake; he would
8 not disobey a subpoena? A. No.

9
10 CROSS-EXAMINED BY MR HENDERSON:

11 Q. All you can say is that you, through the interpreter
12 Mr. George, had the usual caution administered to the
13 accused? A. Yes.

14 Q. I suppose so far as you understood it was then trans-
15 lated into the Albanian language to the accused? A. Yes, by
16 the interpreter as far as I know.

17 Q. You remember the time quite clearly when you had this
18 man in your office? A. It was I think about the 29th May.

19 Q. You remember the time anyway? A. Yes, it was late
20 at night.

21 Q. At any time while you were putting questions to the
22 man did the interpreter Louis George tell you that he said
23 that he did not want to answer any questions? A. No, he
24 did not; not as far as I recollect.

25 Q. Would you be surprised to know that today this man
26 George in the witness box tells us that he did ask him
27 questions, and this man did not want to answer them,
28 and he asked them again? A. Sometimes he would answer
29 questions in English before the interpreter would have
30 time to translate them.

George Kennedy

1 Q. You were never told at any time by the interpreter
2 George that any of the questions you asked him he did not
3 want to answer? A. No sir, not to the best of my recollection

4 Q. But there were occasions when this man George had
5 to put the questions two or three times to him before you
6 would get an answer? A. Not that I recollect; sometimes I
7 could not get, I thought I could not get a direct answer
8 to my questions, and I got him to try and put it in a
9 different way so that I could understand that it was an
10 answer to what I was asking, but I was not aware at any
11 time that he refused to answer any questions, or wished
12 to refuse, no sir.

13 Q. So that when that did happen apparently the inter-
14 preter did not give you the correct answers to some
15 questions that you put? A. Not the point that I wished
16 to make, no.

17 Q. I say on certain occasions when a question was put
18 to the accused in which he apparently replied to the
19 effect to the interpreter that he did not want to answer
20 the interpreter did not notify you of that fact? A. No sir;
21 sometimes I considered the answer was an evasive one,
22 and I got him to put the question again.

23 Q. That was an evasive answer as it came through the
24 interpreter? A. That was the only medium through which
25 I could understand him, was the interpreter, except some-
26 times when he answered in English.

27 Q. So that it gets down to this, that apparently the
28 statements made by this man so far as you know, had to
29 entirely come through the interpreter? A. Yes.

30

George Kennedy

1 HIS LORDSHIP: Did the stenographer through this examina-
2 tion repeat the questions that he was taking down, or did
3 he just take it silently the same as this gentleman?

4 - A. Sometimes he took it silently; other times when he
5 appeared to not catch it correctly he had it repeated.

6 Q. When it was transcribed did you read it over?

7 A. I read it over and to the best of my recollection it
8 was correct, as far as I could say.

9 Q. How long after the conversation did you read it over?

10 A. It was some time after.

11 Q. But to the best of your recollection? A. To the
12 best of my recollection as far as I could remember it was
13 just the examination directly.

14 HIS LORDSHIP: Have you any objection to the inspector
15 refreshing his memory now with those notes?

✓ 16 MR HENDERSON: Not a bit. I may say I know Mr. Breckell
17 and I have every confidence in his ability to take down.

18 HIS LORDSHIP: Then on your consenting, the inspector
19 will take those notes and read them and state whether they
20 agree with his recollection? A. All right, my Lord.

21 HIS LORDSHIP: In that way we may dispense with the
22 attendance of the stenographer. Read them out aloud.

23 A. (Reading:)

24 "The following depositions were taken by
25 Inspector of Detectives George Kennedy in his office in
26 the City Hall, Toronto, at 9 P.M. on Wednesday May 29th
27 1918, in the presence of Joseph Rogers, Superintendent
28 of Ontario Provincial Police, Inspector Miller and
29 Interpreter Louis George.

30

George Kennedy

1 "INSPECTOR KENNEDY: Mr. George, do you understand the
2 Albanian language and Turkish language? A. Yes.

3 Q. How long have you been in Canada? A. Six years.

4 "HASSON NEBY, Examined by

5 DETECTIVE KENNEDY: (Through Interpreter); Q. What is
6 your name? A. Hasson Neby. I go by the name of
7 Jack Ali.

8 "Q. You are charged with causing the death of George
9 Tucker? A. I don't know anything about it. I am only
10 a working man, and just came in this country to work.

11 "Q. I am going to ask you some questions.

12 A. I will tell you the truth.

13 "Q. This gentleman (stenographer) is going to take down
14 in shorthand all you may say. This is the Superintendent
15 of Provincial Police, Mr. Rogers, and this is Inspector
16 Greer. Now I am going to ask you some questions, and
17 anything you say will be used against you; you need not
18 say anything if you do not want to? Do you understand?

19 A. Yes.

20 "Q. You understand that? A. Yes.

21 "Q. Where were you born? A. In Albania. I will tell
22 you the truth about anything you ask me.

23 "Q. You were born in Albania? A. Yes.

24 "Q. Are you a Turkish subject? A. I belong to Turkey
25 before and now I belong to Albania.

26 "Q. What part of Albania? A. Coutha.

27 "Q. When did you come to Canada? A. Two years ago.

28 "Q. Where have you been employed during that time?

29 A. Since coming to Canada I have been working with the
30 Canada Metal Company, the Dominion Glass Company and

George Kennedy

1 "John Inglis and the Grand Trunk.

2 "Q. Have you been in Toronto all that time? A. Yes.

3 "Q. What port did you land at? A. I came from New York.

4 "Q. Did you land in New York? A. Yes.

5 "Q. And came direct here? A. Yes, came through Buffalo.

6 "Q. By way of Bridgeburg? A. Yes.

7 "Q. Where were you working a week ago Sunday, the 19th
8 of May? A. I was not working on Sunday. I was home
9 writing a letter and I go to work on Monday morning.

10 "Q. Where were you that Sunday? A. I was home.

11 "Q. Home? A. Yes.

12 "Q. Where do you make your home? A. 569 King Street west

13 "Q. Were you there all day? A. I was cook all day.

14 "Q. You acted as cook that day, did you? A. Yes.

15 "Q. What time did he prepare the supper? A. 6 o'clock.

16 "Q. Who were there? A. All them men out there.

17 "Q. Where did you go after you cooked the supper?

18 A. After the supper I go to bed and go to sleep.

19 "Q. Did you not go out of the house at all? A. No.

20 "Q. What time did you go to bed? A. Eight o'clock.

21 "Q. Eight o'clock? A. Yes.

✓ 22 "Q. Did any of the other men go out? A. Everybody was
23 home.

24 "Q. Everybody was home? A. Yes.

25 "Q. None of the men there went out at all? A. None of
26 them go out.

27 "Q. Did you sleep alone? A. In the same room is two beds

28 "Q. Did anybody sleep in bed with you? A. Yes, somebody
29 else sleep in the bed, too.
30

George Kennedy

1 "Q. Was the other man in bed before you? A. At the
2 same time both went to bed.

3 "Q. What was the name of the men who slept with you?
4 A. Malik Selman.

5 "Q. Where do you work now? A. John Inglis.

6 "Q. Is it all day work that you do? A. I was working
7 at day time and the boss said to me to leave the job and
8 start to work at night time.

9 "Q. When did you start to work at nights? A. I have to
10 go at nights now.

11 "Q. But when did you start to work at night? A. Tonight
12 was the first night to work.

13 "Q. You were working during the day up until tonight?
14 A. Yes, I was working day time.

15 "Q. Do any of the other men who are rooming with you
16 work at night? A. Some of them work at day time,
17 just one of them work at night.

18 "Q. What is his name? A. Malik Selman.

19 "Q. Was he doing night work on Sunday the 19th of May?
20 A. No.

21 "Q. Were there any of these other men doing night work
22 on Sunday the 19th? A. Yes, Safedin Maxut, Rushiar
23 Ibrahim, and there is another one, Hadji Maxut.

24 "Q. What time did they go to work? A. Seven o'clock.
25 They go at 7 o'clock at night.

26 "Q. What time did they come home in the morning? A. At
27 six o'clock in the morning.

28 "Q. Did any of these men work for the C.P.R.?

29 A. Seven was working for the C.P.R.

30 "Q. Where were they working for the C.P.R.?

George Kennedy

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"A. I don't know.

"Q. When did they discontinue working for the C.P.R.?

A. I don't know.

"Q. Did you work for the C.P.R.? A. I was ready to go there to work, but I never go, because when I get ready to go the fellows come back, they leave the job there, they quit.

"Q. Did you ever work for the C.P.R.? A. No.

"Q. Not at any time? A. No.

"Q. Never worked for the C.P.R.? A. No.

"Q. Were you ever out at Weston? A. No, I don't know who is there at Weston.

"Q. You never were out at Weston? A. I don't know the place Weston.

"Q. Were you ever out at West Toronto Junction?

A. No, I don't know that place at all.

"Q. You don't even know the place? A. I don't know the Junction, and I don't know Weston.

"Q. It is alleged that you were out at Weston on Sunday evening, the 19th of May, about seven o'clock?

A. I was at home; I never go out at all.

"Q. Have you a pocket knife? A. No, I have not a pocket knife.

"Q. You have not a pocket knife? A. No.

"Q. And never had one? A. No. I never used to keep any knives in my pockets at all.

"Q. Have you a trunk? A. No.

"Q. Have you a suitcase? A. Yes, I have one.

"Q. Just one? A. Yes.

George Kennedy

1 "Q. What kind of a suitcase is it? A. It is a brown
2 color.

3 "Q. Brown or black? A. It is kind of yellow.

4 ---Inspector Miller produces black suit case.

5 "Q. Is that your suitcase? A. No, no.

6 "Q. What about this one, is this yours (showing to
7 witness light brown suitcase)? A. No, no.

8 "Q. This suitcase that is locked is not yours? A. No.

9 "Q. What about this one, is that yours? (light brown) ?
10 A. Yes, that is mine.

11 "Q. It is empty.

12 ---Inspector Miller places tags on respective suitcases
13 presented to witness.

14 "Q. What did you keep in this suitcase? A. I keep my
15 shirts in it.

16 "Q. It is alleged that this black suitcase is yours.

17 Who owns the clothes in it (opening suitcase)?

18 A. No, that is not mine.

19 "Q. Who owns that coat (showing)? A. It is not mine;
20 it belongs to Mehmet Ali. He owns that.

21 "Q. Look it over carefully and see if there is anything
22 in that grip that belongs to you? A. There is nothing
23 in that that is mine.

24 "Q. Is this your hat (showing)? A. No.

25 "Q. Is this your watch (showing to witness open-face gold-
26 filled watch)? A. No. This is my watch (taking watch
27 from trousers pocket.)

28 "Q. Do you know to whom that black suitcase belongs?

29 A. That is not mine, that is Mehmet Ali's.

30 "Q. Do you know which man that black suit case belongs

1 "to? A. Mehmet Ali.

2 "Q. And are these Mehmet Ali's clothes? A. Yes.

3 "Q. Do you sleep in the same room with Mehmet Ali?

4 A. No, I was not sleeping in the same room.

5 "Q. Whose name is that; do you know who that is (showing
6 to witness envelope bearing printed address)?

7 A. I don't know; I don't know anything about those
8 things in there. That is not mine. I don't know
9 anything about that, that is another fellow's.

10 "Q. Does this envelope belong to the man that owns
11 that suitcase? A. That is Mehmet Ali that the suitcase
12 belongs to and that envelope to Safedin Maxut.

13 "Q. Who does the envelope belong to? A. Safedin Maxut.
14 I work with pick and shovel; I don't learn to read
15 and write.

16 "Q. What time did the man that you say owns this suit-
17 case go to bed that Sunday night--the 19th?

18 A. I don't sleep in the same room; he sleeps in another
19 room, and I don't see him go to bed.

20 "Q. How many of those other men were up after you went
21 to bed? A. At eight o'clock everybody goes to bed,
22 every one of them.

23 "Q. Who locks the door of the house before you all
24 go to bed? A. The door is open all the time, day
25 and night."

26 ---EXHIBIT NO.15: Statement of prisoner.

27 HIS LORDSHIP: Do you wish to ask the Inspector any
28 questions?

29 MR HENDERSON: No, my Lord.
30

Walter L. Breckell

1 WALTER L. BRECKELL, Sworn, Examined by

2 MR AGAR: You are a stenographer? A. Yes.

3 Q. And do you recollect being present at the office of
4 Inspector Kennedy on the 29th May last in this matter?

5 A. Quite well.

6 Q. And did you take down the questions put by Inspector
7 Kennedy to the prisoner? A. Yes, through an interpreter.

8 Q. Did you truly and faithfully transcribe into your
9 notes, as I have them here, the questions and answers as
10 given to you by the interpreter? A. Yes; I presume that
11 is the copy. I heard Inspector Kennedy read a section of it.

12 Q. Do you identify that? A. My signature is lacking here.

13 Q. It is taken from this book here? A. Yes, that is
14 right.

15 Q. Does this Exhibit 15 set forth the questions and
16 answers as you took them down that evening? A. Yes.

17

18 CROSS-EXAMINED BY MR HENDERSON:

19 Q. Do you remember whether the inspector had to put
20 certain questions two or three times or put it in a diff-
21 erent way? A. I have not any specific recollection with
22 regard to that, without the answer necessitated it.

23 HIS LORDSHIP: The point is whether you took down, no
24 matter how it was answered, whether you took down every
25 question and transcribed it? A. Yes my Lord, as the notes
26 show.

27 Q. The notes speak for themselves? A. Absolutely.

28 MR HENDERSON: And that is the end of it, is it?

29 A. No, that is not the end of it; two witnesses were
30 recalled after that.

John Miller

1 Q. So far as the statement of the accused is concerned?

2 A. Yes, absolutely.

3 Q. I might say to you, but you probably do not understand
4 Inspector Kennedy has sworn here that on some occasions
5 he put ~~the~~ a question to the accused through the interpreter
6 and that by reason of an evasive answer as he thought an
7 evasive answer, he put the question another way to him;
8 do you remember that circumstance? A. No, I cannot say
9 that I remember that.

10 HIS LORDSHIP: What he says is , whatever happened is
11 down there in black and white.

12 MR HENDERSON: I don't think there is any question about
13 that.

14

15 JOHN MILLER, Examination continued.

16 MR AGAR: At the time that the prisoner denied owning
17 the black grip had you told him that you had found in this
18 grip the pair of field glasses and the little purse
19 produced? A. No, I did not; he did not know.

20 Q. Is this Exhibit No.7 the hat which was produced by
21 Inspector Kennedy? A. That is the hat.

22 Q. Which the prisoner denied owning? A. He was wearing
23 it; We took it off him at the time; at the time of his
24 arrest we took it off him.

25 Q. Is this the hat which Inspector Kennedy produced
26 in the evening? A. That is the same hat.

27 Q. At page 5 of this Exhibit 15 the record shows that
28 you produced a black suitcase which the prisoner denied
29 owning? A. Yes sir.

30 Q. Is this Exhibit 9 the one you produced? A. That

1 is the same suitcase.

2 Q. The record further shows that you produced then a
3 light brown suitcase which the prisoner denied owning, is
4 that Exhibit 13 the one you produced? A. Yes, that is the
5 one.

6 Q. Is that the same one which in the afternoon he
7 claimed to own? A. Yes.

8 Q. But which subsequently he denied owning upon the
9 arrival of Hassen, is that right? A. Yes sir.

10 Q. Is this Exhibit 14 the suitcase which on the evening
11 of the 29th May he claimed to own when questioned by
12 Inspector Kennedy? A. Yes, he claimed that before he left
13 the house, and also in the evening when questioned by
14 Inspector Kennedy.

15 Q. Are the clothes referred to at page 5 of Exhibit 15,
16 which he denied owning, the clothes which are produced
17 here today and filed? A. Yes.

18 Q. Perhaps you could tell me about how long would it
19 take for a person going from the home of Mrs. Wagner and
20 taking a street car at the corner nearby, to get to the
21 car on the siding at Weston? A. The trip from West Toronto
22 to Weston takes half an hour by car; to walk from Mrs.
23 Wagner's place to obtain that car at say St. Clair
24 will require five or ten minutes walk.

25 Q. Do I understand your evidence then to be that a
26 person leaving Mrs. Wagner's house would in the ordinary
27 way reach the cars on the C.P.R. siding at Weston in
28 about 40 minutes? A. 40 minutes about, providing they did
29 not have to wait very long for the car.
30

John Miller

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

CROSS-EXAMINED BY MR HENDERSON:

1
2 Q. When you made the visit to this place on King St.
3 who opened the suitcase? A. I did.

4 Q. How was that opened? A. With a key.

5 Q. What kind of a key? A. The key I have in my pocket,
6 one of the keys I have on my ring.

7 Q. One of the keys you have on your ring would open
8 that suitcase? A. Yes.

9 Q. I suppose it is a suitcase that can be easily opened
10 with a key of similar nature; was yours just an ordinary
11 key? A. I suppose it is just one of the ordinary kind;

12 I think that is the one; I am not quite sure whether that
13 is just the one or not;

14 Q. When this man came in you told us he did not know
15 you had found the pair of field glasses and this wallet
16 in that suitcase? A. No sir; I did not tell him.

17 Q. And then even at night time when he was questioned
18 through the interpreter he did not know that you had
19 discovered them? A. No sir;

20 Q. Because it had not been brought to his attention
21 that the suitcase had been opened even? A. No, the
22 question was only asked if it was his suitcase.

23 Q. How many men, so far as you could ascertain, lived
✓ 24 at 569 King St. W.? A. Twelve men.

25 Q. From your first entry to the house I suppose there
26 was easy access to each room? A. No, the rooms were locked;
27 the corridor, like, the stairway was open, but the other
28 rooms occupied by the different men were locked, some
29 with padlock on the outside.

30 Q. The room that the accused and these other two men

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

John Miller

1 occupied what do you say about that, was it locked at the
2 time? A. No, it was open, that was the top front room.

3 Q. I suppose it would be what you call an attic room?

4 A. It is an attic room.

5 Q. From that room you say there led off a small room?

6 A. There is a middle room; there are three rooms in
7 the flat and a bathroom and there is a middle room that is
8 unoccupied except by grips and things like that.

9 Q. And it was in this room where you found these three
10 several grips? A. No, just this one black one.

11 Q. That was in the unoccupied room? A. Yes.

12 Q. The two grips here were in that room? A. The one
13 grip, the second grip that the prisoner claimed was in
14 the front room occupied by himself, belonging to another
15 bedfellow.

16 Q. That is Huson Hassen? A. No, Huson Hassen occupied
17 the rear room.

18 Q. Mike Demo, is that the man? A. Yes.

19 Q. That is Exhibit 14. When he first came in to the
20 King St. premises after you had arrived, did you notify
21 him who you were? A. I don't remember of that, whether I
22 did or not.

23 Q. Had you informed this man Ali? A. I did not see Ali
24 at that time.

25 HIS LORDSHIP: Mahomet Ali, that sounds like Turk?

26 A. Sam Ali, he was the foreman of the gang that worked.

27 Q. Is he an Albanian or a Turk? A. He claims to be
28 an Albanian.

29 MR HENDERSON: You had not seen Sam Ali? A. No, the
30 prisoner was the fourth of the twelve we had seen at that

1 time.

2 Q. When you arrived were there three men in the house?

3 A. Yes.

4 Q. Was he the first man that came in? A. Yes.

5 There might have been one other, but I rather think he
6 was the first man.

7 Q. Where did you have the conversation with him?

8 A. Upstairs in his own room; there is no furniture in
9 the house downstairs.

10 Q. You say he was wearing this hat in question? A. Yes.

11 Q. And notwithstanding that you took it off him that
12 very afternoon he denied the ownership of it that night?

13 A. He did.

14 Q. That apparently appeared like the action of a man that
15 was very badly scared; I suppose you cannot say that? A. No.

16 Q. When was it that this man was first apprised of the
17 fact that he would likely be charged with the charge of
18 killing Tucker? A. If I remember correctly I think Inspector
19 Greer mentioned that fact to him before we took him to
20 the Police Station.

21 Q. So that there was some intimation to him that he
22 would likely be charged? A. Before we went down, yes.

23 MR AGAR: But after you had had the conversation with
24 him? A. Yes.

25

26 HAROLD J. KING, Sworn.

27 MR AGAR: Mr. Good is one of the witnesses whose name
28 is endorsed on the indictment, but he is ill I understand,
29 and this gentleman is an assistant in his office, accord-
30 ing to my instructions. Mr. Good is the representative of

1 the Merchants Casualty Co., who issued the card which is
2 produced here as an Exhibit, and with your Lordship's
3 permission I desire to call Mr. King in the place of Mr. Good.

4 HIS LORDSHIP: I suppose he can identify it just as well
5 as Mr. Good. A. Let me correctly inform you that I know
6 more about the issuance of the card than Mr. Good would
7 himself.

8 MR AGAR: I believe you are employed by the Merchants
9 Casualty Co.? A. Yes.

10 Q. At their office in Toronto? A. Yes.

11 Q. Tell me please whether or not your records show the
12 issue of a registration card to George H. Tucker of Orange-
13 ville? A. It would be necessary for me to refer to the
14 original application and get the number to identify the
15 card.

16 Q. Have you any record showing that? A. Yes.

17 Q. Let me see them please--what is the number of the
18 card issued to George H. Tucker? A. It should be 92723.

19 Q. Is that the card which I produce, being Exhibit No.2?

20 A. It is.

21 Q. This was issued to him when? A. June 1917.

22 HIS LORDSHIP: Do you want to identify the other card;
23 is there any object in identifying that?

24 MR AGAR: This Exhibit 3, issued to Thomas Allengame,
25 is this registration card issued by the same company,
26 namely the Merchants Casualty Co.? A. It is a card we
27 use; I am pretty sure it would be the same; the numbers
28 are the same; I have not the records to show you, so that I
29 could not definitely tell you; it is the same company.
30

Wm. Campbell

1 HIS LORDSHIP: What is the object of these cards?

2 A. Registration to show a man has a policy in force with
3 that company, and for identifying purposes, to identify him.

4 MR AGAR: And this card is indicative of the fact that
5 the holder has a policy of insurance? A. Yes, it is intended
6 to identify the assured.

7 Q. That is accident insurance? A. Accident and health
8 insurance.

9 MR AGAR: I desire my Lord, to call Mr. Campbell, who
10 is the Chief Constable at Weston, whose name is not endorsed
11 on the back of the indictment.

12 HIS LORDSHIP: That is all right.

13

14 WILLIAM CAMPBELL, Sworn, Examined by

15 MR AGAR: You are a constable I believe for this county?

16 A. Yes.

17 Q. And you took charge of the body of the late Charles

18 H. Tucker on the night of the 19th May? A. Yes.

19 Q. Did you search his clothes that were on him? A. I did.

20 Q. What time would it be that you did that? A. Between
21 eleven and twelve.

22 Q. Of the evening of the 19th May? A. Yes.

23 Q. Do you know whether or not you were the first person
24 to search his clothes after his death? A. I am pretty sure
25 I was the first one.

26 Q. Did you find any money in his clothes? A. There was
27 nothing in his pockets.

28

29

30

Sam Ali

CROSS-EXAMINED BY MR. HENDERSON:

Q. Whereabouts was it you searched the clothes? A. In the boarding car.

Q. And had the Coroner been there and viewed the body prior to this? A. The Coroner was there at the time.

Q. How long had he been there before you arrived?

A. We arrived, we both went together.

Q. Do I understand that was your first appearance there?

A. Yes.

Q. Eleven o'clock at night? A. Between 11 and 12.

Q. Then they had known of this murder an hour or so before you arrived? A. Well, of course I was in the city at the time, and had just got home when the Coroner phoned me up and said there was a murder at the west end of the town and he says If you come up you and I will go up together; and I got there as quick as possible, and we both went up in his car.

Q. He had had the notice for some little time? A. Before I had.

SAM ALI.

MR AGAR: Do you understand the English language--you can understand me, can you not? A. Not much.

Q. Would you rather have an interpreter? A. Yes.

---The witness was sworn on the Mohammedan oath through the interpreter--(with hat on and right hand uplifted)

MR AGAR: Q. Were you foreman of a number of men in April last working for the C.P.R.? A. Yes.

Q. Do you know the prisoner Hassen Neby? A. Yes.

Q. Was he one of the men who were working under you for

Moham

Sam Q. Li

1 the C.P.R.? A. Yes.

2 Q. Did you have a time book showing his time? A. Yes.

3 Q. Is that the book? A. Yes, that is mine.

4 ---EXHIBIT NO.16: Time book.

5 Q. Under what name did he go in this book? A. Kanser
6 George.

7 Q. How long did he work for the C.P.R. under you?

8 A. Two months.

9 Q. When did he quit? A. The 26th April.

10 Q. Do you know whether or not he was paid by the C.P.R.
11 on the 27th May for the money that was coming to him?

12 A. Yes.

13 Q. How much did Neby draw on the 27th May from the
14 Railway company? A. I think \$15; I am not very sure.

15 Q. Where were you and your men working in April last?

16 A. In Weston.

17 Q. Were you and your men living in boarding cars?

18 A. Yes.

19 Q. Where were the cars placed? A. CPR. Yard.

20 Q. Do you know where the Roman Stone works are? A. Yes.

21 Q. How far from there were the boarding cars? A. Not
22 very far.

23 Q. Would it be on the C.P.R. siding leading between
24 these two buildings? A. Yes.

25 Q. Was the prisoner one of the men that were there in
26 the boarding car the latter part of April last working
27 for the C.P.R. under you? A. Yes.

28 Q. Where were you living on the 29th May? A. 569 King
29 St. west.

30 Q. In Toronto? A. Yes.

prisoner

1 Q. Where were ~~the~~[^] living at that ~~same~~ time? A. In the
2 same place.

3 Q. How long had he been living there? A. About two weeks,
4 two or three weeks.

5 Q. Were there others besides you and he living there?

6 A. Yes.

7 Q. What room at that place did the prisoner sleep in?

8 A. Upstairs front room.

9 Q. Top floor? A. Yes.

10 Q. Did the prisoner own a valise or suitcase? A. Yes.

11 Q. Would you know it if you saw it again? A. Yes.

12 Q. Which one if any belongs to the prisoner? A. This
13 one. (The black one, Exhibit 9).

14 Q. Have you seen that suit of clothes before? A. Yes.
15 (Trousers and coat Exhibit 11).

16 Q. Who owns them? A. Hassen Neby.

17 Q. Do you know who owns this muffler I produce? A striped
18 muffler? A. Him.

19 Q. Who? A. Hassen Neby.

20 ---The muffler is part of Exhibit 12, being the clothes
21 in the grip Exhibit 9.

22 Q. Did you ever see these two envelopes Exhibit 10 before?

23 A. Yes.

24 Q. Where did they come from? A. From St. Louis.

25 HIS LORDSHIP: One is from St. Louis and the other is
26 Detroit.

27 MR AGAR: There is an address on the back of one envelope
28 giving th~~5~~^e name of some street in St. Louis--who wrote
29 that down giving the address in St. Louis? A. His friend
30 sent it from St. Louis.

1 Q. Did you have these two envelopes at one time? A. Yes.

2 Q. What did you do with them? A. Gave them to Hassen
3 Neby.

4 Q. For what purpose? A. To send to some friend a letter.

5 Q. You handed these envelopes over to Neby with the
6 address of some friend on the back? A. Yes.

7 Q. Did he ask for that? A. Yes.

8 CROSS-EXAMINED BY MR HENDERSON:

9 Q. You were the foreman of the gang that worked out
10 at Weston? A. Yes.

11 Q. You look something like the man in the box? A. May be.

12 Q. And I notice the prisoner has a red mustache and
13 you have a dark mustache.

14 HIS LORDSHIP: From my point of view the prisoner's
15 mustache is as dark as the witness's.

16 MR HENDERSON: At a closer inspection it appears red.

17 HIS LORDSHIP: Come up here, prisoner?

18 (Prisoner goes to Judge's desk).

19 HIS LORDSHIP: Yes it is quite red; and the witnesses
20 mustache is much darker.

21 MR HENDERSON: I understand you had not been working
22 for the C.P.R. since April 28th? A. Never worked since.

23 Q. That is the last day they worked, the 28th April?

24 A. Yes.

25 HIS LORDSHIP: The 27th I understood it.

26 MR HENDERSON: Is it the 27th or the 28th? A. He has
27 the book.

28 HIS LORDSHIP: I see it is about the 26th, and what
29 I had in my mind was they were paid on the 27th May.

30 MR HENDERSON: From the 26th April until he was arrested

Sam Ali

1 where was Hassen Neby working? A. In John Inglis.

2 Q. Did he always work steadily? A. Yes.

3 Q. Can he recall the Sunday May 19th? A. Yes.

4 Q. How many men were there living in the house on
5 May 19th at 569 King St. W.? A. Twelve men.

6 Q. Where were all these twelve men working? A. Some of
7 them were working at John Inglis Co. and some at some other
8 work.

9 Q. Where was the prisoner working? A. John Inglis Co.

10 Q. And was he working in the day time or at night time?

11 A. Day time.

12 Q. On the Sunday of May 19th was there a meeting of the
13 Albanians any place? A. Yes.

14 Q. Where was that meeting held? A. 534 King St. West.,

15 Q. That would be almost across the road; did you
16 attend that meeting? A. No.

17 HIS LORDSHIP: What time of the day was it held?

18 A. All day.

19 MR HENDERSON: Were you in the house all day May 19th?

20 A. I was all day till half past five.

21 Q. Where did you go at half past five? A. I go to work
22 in John Inglis Co.

23 Q. Did you work all that night? A. Yes.

24 Q. How many men were in the house when you went to work?

25 A. Six or seven.

26 Q. Where were the other men? A. There were three of them
27 working, and the rest of them was at home.

28 Q. I understood you to say when you went to work at
29 half past five there were six or seven men at home, is that
30 correct? A. There were twelve people there; three go to
work that night and the rest of them were home.

Sam Ali

1 Q So that it would be eight men home? A Nine.

2 Q Was the prisoner home at half past five when you left?

3 A Yes.

4 Q Had he been home all day? A (Interpreter: He cannot
5 tell for all day, whether he was home or not.)

6 Q He cannot tell whether he was home all day or not,
7 but does he know at half past five when he went to work
8 at John Inglis Co. that the accused was home at that hour?

9 A Yes, he remembers that he was home.

10 Q Who were the other men outside of the prisoner that
11 he left at the house when he went to work at the John
12 Inglis Co.? A Charles Sam was one, Sam Ali two, Ali
13 Kaja three; they go to work.

14 Q Under what name did you work at the John Inglis Co.?

15 A The same name.

16 Q Sam Ali? A Yes.

17 Q And when you were working for the C.P.R. I notice
18 in your examination at the preliminary investigation before
19 the Police Magistrate in the County of York it is said you
20 worked from MacTier to Weston--where is MacTier?

21 A 150 miles from Toronto.

22 Q Is it in the Muskoka District? A Yes.

23 Q How long did you work in Weston? A About two weeks.

24 Q How many men were there in the gang at that time?

25 A Fifteen.

26 Q I suppose every one of you men down in this house
27 at 569 King St. W., had valises of some kind? A Yes.

28 Q And I suppose they could be easily opened with a key?

29 A Yes, easily opened.
30

Sam Auli

1 Q Outside of the twelve men that lived there, did any
2 other Albanians come there to visit them from time to time?

3 A Yes.

4 Q They have business from time to time? A Yes.

5 Q What arrangement did they have so far as their meals
6 were concerned, with a certain number of men working at
7 night, who looked after the place in the daytime, and
8 vice versa? A The day work people worked in the house in
9 the night time, and the night time people do it in the
10 day time.

11 Q In some of the rooms there were two or three of you
12 men sleeping together? A Yes.

13 Q Did you keep working at night work on the 19th May
14 at John Inglis Co.? A Yes.

15 Q Hassen Neby tells me that he understood while he
16 was working under you that you were working in the Muskoka
17 District for the C.P.R.? A From Muskoka to Weston.

18 Q The prisoner is a man that has not much education?

19 A I cannot say anything about that.

20 Q He says he is unable to write; do you know that?

21 A No.

22 HIS LORDSHIP: He cannot write, or does not he know?

23 MR HENDERSON: Does he know he cannot write, or he
24 does not know whether he can write or not?

25 A He says he cannot write. (This answer is given in
26 the third person by the interpreter).

27 Q If the prisoner could not write ask him how he
28 explains his statement that he handed these envelopes
29 contained in Exhibit 10 to the prisoner to enable him to
30 have the address of these individuals?

Sam Ali

1 A He says the prisoner asked him if he had an address
2 for St. Louis and he gave the envelopes to him.

3 Q. This envelope here addressed to--is that his other
4 name? A. That is his name.

5 Q. So that you have two names, Sam Ali, and the name on
6 that? A. This is his proper name, Sfidin Maxut.

7 Q. That apparently had been in your possession before
8 you claimed to hand over to the prisoner? A. Yes; when
9 Hassen Neby asked him for an address he gave it to him.

10 MR AGAR: Wrote on the back of the envelope--

11 MR HENDERSON: What was his explanation to my question,
12 I have just forgotten, when I asked him about handing
13 this to him for an address when he knew the man could not
14 write? A. (Interpreter): He asked him for an address
15 in St. Louis and he gave the envelopes to him.

16 Q. You tell him, I am instructed by this man Hassen
17 Neby that he never asked him at all for these St. Louis
18 addresses, and did not even know they were in the suitcase?

19 A. That is all he says; Hassen Neby has to send a letter
20 to his friend in St. Louis and he asked for the address
21 and that is all he gave him.

22 Q. I understood you to say some time ago that you did
23 not go to the Albanian Club on Sunday May 19th, you stayed
24 at home.

25 MR AGAR: Where is that?

26 MR HENDERSON: At page 131 of the Coroner's Inquest.

27 Q. Ask him if he remembers giving evidence at the
28 Coroner's Inquest on June 5th in the Town of Weston?

29 A. Yes sir.

30 Q. Does he remember giving evidence there?

Sam Al

1 A. It is a long time, may be he does not remember all,
2 he remembers he gave evidence, but not to remember all
3 the words which he said.

4 Q. Do you remember being asked about who was cook the
5 day of the 19th May? A. Yes, Mike Demo.

6 Q. And he was the man who was allotted to look after
7 the cooking? A. Yes.

8 HIS LORDSHIP: Was that at the house 569 King St. W.?

9 A. Yes.

10 MR HENDERSON: Now at page 131 he was asked this question,
11 line 6: "After that you went to the Albanian Club"--that
12 is referring to him--and his answer was "Yes."

13 MR AGAR: Just a minute; I think my learned friend should
14 read the question immediately preceding, commencing at
15 the bottom of page 130.

16 MR HENDERSON: "Do you know whether or not he was home?"
17 A. Yes, he was home.

18 "Q. What part of the day? A. He was there at four o'clock,
19 he just paid his board, and after that this fellow go to
20 the club house, some Albanians".

21 "Q. After that you went to the Albanian Club? A. Yes."

22 "Q. What became of him? A. He was home."

23 Tell him that he swore at the inquest that he went to
24 the Albanian Club on this day in question, did not stay
25 home all day as he has already sworn to.

26 A. (Interpreter): He was sleeping in the day time till
27 3 o'clock, and he got up at 3 o'clock and till half past
28 five he had his supper, and after that he go out to work.

29 "Q. When you left for the Albanian Club, this man,
30 (referring to the accused) was home? A. Yes."

Sam. Ali

1 A. (Interpreter): No, he says when he go to work the
2 men were home.

3 Q. What does he say about this question, line 10:
4 "What time did you get back? A' 11 o'clock."

5 A. (Interpreter): He says he was working all that night
6 at the John Inglis Co.

7 Q. How does he explain giving answers to the questions
8 at the inquest which are entirely different from what he
9 is swearing to today? A. No, he says this is right, what
10 he said now.

11 Q. On June 5th of this year which is practically three
12 weeks after the 19th May, you had a better recollection
13 of where you were on the 19th May than you have today.

14 A. (Interpreter): He says he can prove it by the timekeeper
15 there he was that night working at night.

16 Q. What he means to say, that the evidence he gave here
17 that he was at the Albanian Club on May 19th is not correct,
18 is that what I understand?

19 A. (Interpreter): He says may be something in the
20 writer there; he says half past five he go to work and
21 work till 7 o'clock in the morning.

22 Q. Do you remember giving your evidence through Mr.
23 George, the interpreter, out at Weston?

24 A. (Interpreter): I think he was speaking himself there,
25 not by me.

26 MR HENDERSON: You were sworn in as interpreter
27 according to the notes.

28 INTERPRETER: Yes, but he was speaking through himself.

29 MR HENDERSON: What he means is he did not need the
30 assistance of the interpreter.

John Miller
Mike Demo

1 HIS LORDSHIP: I observe he frequently answers now without
2 waiting for the interpreter.

3 MR HENDERSON: What he says today is this, that he can
4 recollect that on this May 19th when he left to go to work
5 at half past five at night the accused man was home and in
6 the house at that time? A. Yes.

7 -----
8 JOHN MILLER, RECALLED.

9 MR AGAR: You are already sworn. Did you search the
10 prisoner when he was arrested? A. Yes sir.

11 Q. Did you find any money upon his person? A. I did.

12 Q. Contained in what? A. About \$73 and some odd change.

13 Q. The money was contained in what? A. In a purse.

14 Q. Is this the purse? A. Yes.

15 Q. The money is in there? A. Yes; I did not count that
16 money but I suppose it is the correct amount.

17 ---EXHIBIT NO.17: Prisoner's purse with money in it.
18 -----

19 MIKE DEMO, Sworn on the Mahammedan oath, with
20 hat on and uplifted right hand, through
21 the Interpreter. Examined by Mr. Agar.

22 Q. Do you remember the 19th May last?

23 A. (Interpreter): The witness does not understand.

24 Q. Do you remember the officers being at 569 King St.W.?
25 searching the premises? A. Yes.

26 Q. Who was the cook on Sunday the 19th May before these
27 officers came? A. I was.

28 Q. You were the cook that day? A. Yes.

29 Q. Did any person help you out during the day? A. Yes,
30 my brother.

Mike Dene

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 Q. What is your brother's name? A. Jim Charlie.

2 Q. Why did your brother help you out? A. Because I got
3 sick.

4 Q. Was Hassen Neby home for supper on Sunday night the
5 19th May? A. Yes.

6 Q. Did he go out after supper.

7 HIS LORDSHIP: Find out what time.

8 MR AGAR: What time was supper? A. Half past five or six.

9 Q. Did Hassen Neby go out after supper? A. Yes, he go out

10 Q. About what time would it be when Hassen Neby went
11 out? A. Just after supper; he do not remember what time
12 it was.

13 Q. What time did he come back? A. Nine o'clock he was
14 home and half past nine go to bed.

15 Q. Did Neby work for the C.P.R. at Weston in April last?

16 A. Yes.

17 Q. Did he live in a boarding car on the C.P.R. siding
18 there near the Roman Stone Company's works? A. Yes.

19 Q. Do you know who owns these grips that are produced
20 here? A. Yes.

21 Q. Come and pick yours if there is one here belonging
22 to you? A. That is mine (Exhibit 14).

23 Q. You identify that as yours? A. Yes.

24 Q. Who owns this next grip that I produce Exhibit 13?

25 A. Huson Hassen.

26 Q. Who owns this black grip produced (Exhibit 9)?

27 A. Hassen Neby.

28 Q. Tell me whether or not Neby had a black hat like the
29 one produced (Exhibit 7)? A. Yes.

30 Q. Ask him did he ever see a muffler like this one

Mike Demo

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 (black and white striped)? A. Yes. (Part of Exhibit 12).

2 Q. Who had it? A. Hassen Neby.

3 Q. How about that khaki shirt (part of Exhibit 12)?

4 A. Yes, Hassen Neby's.

5 Q. I believe that you occupied the same room upstairs
6 with Hassen Neby? A. Yes.

7 Q. Who else slept upstairs in that same room besides you
8 and Neby? A. Sam Charlie, my brother.

9 Q. How many beds in that room? A. Two beds, a double
10 and single.

11 HIS LORDSHIP: Where did the prisoner sleep?

12 MR AGAR: Did the prisoner sleep alone or with you and
13 your brother? A. Hassen Neby was sleeping with Jim Charlie
14 in one bed.

15 Q. And you slept in the other bed alone? A. Alone by
16 myself.

17 CROSS-EXAMINED BY MR HENDERSON:

18 Q. Was he in all that day? A. Yes, he was all day at home.

19 Q. You were out that night too? A. No, he says he never
20 go out at all.

21 Q. Does he remember giving evidence at the County Police
22 Court? A. He does not remember.

23 Q. His name is Mike Demo? A. Yes.

24 Q. Don't you remember giving evidence at the Police Court
25 at Adelaide St. on the 6th June last? A. Yes, he remembers
26 that.

27 Q. Does he remember giving this evidence, page 13:

28 "Q. And Sunday the 19th May was your day? A. Yes"--that is
29 referring to the cooking? A. Yes.

30 "Q. Do you live in the front room upstairs? A. Yes."

Mike Demo

1 A. Yes.

2 "Q. Do you know where he was on Sunday the 19th May"--
3 that is referring to the prisoner. What is the answer to
4 that? A. He says he never see him.

5 Q. Tell him the answer he gave to that question on the
6 5th June was he stated he was home--

7 MR AGAR: Just a minute.

8 MR HENDERSON: This is cross-examination.

9 HIS LORDSHIP: But if you are making a mistake he has a
10 right to call attention.

11 MR AGAR: I wish to call your Lordship's attention to the
12 fact that on the same page almost in the next breath the
13 witness says the prisoner on Sunday evening came in at half
14 past nine and he did not see him before that.

15 MR HENDERSON: Yes, and then he goes on:

16 "Q. You were not in yourself before half past nine? A. No."
17 So he was out that night too? A. No, he says he never go out.

18 Q. How does he account for making that statement on the
19 5th June: "You were not in yourself before half past nine?
20 A. No."--how does he explain that now? A. He says the
21 prisoner he was nine o'clock home till half past nine
22 and go to bed.

23 Q. As a matter of fact he does not know what time Hassen
24 Neby came home? A. That is all he says, because he was home
25 and he remembers it was nine o'clock when the prisoner came
26 home.

27 Q. Nine o'clock he came home instead of half past nine?

28 HIS LORDSHIP: No, he said he came back about nine and
29 went to bed at half past nine.

30 MR HENDERSON: He stated that he was sick that day, didn't

1 he? A. Yes.

2 Q Did he go to bed? A. He was all right in the morn-
3 ing and he started to cook the dinner, and after dinner
4 he got sick and go to bed.

5 Q Were you in bed all day? A. Yes, he was all day.

6 Q He stayed right in bed? A. Yes.

7 Q Then he does not know what time the accused went
8 out of the house that night? A. Yes, he does not know
9 what time he go out, but what time he came in.

10 Q He does not know whether he was out at all or not
11 because he slept upstairs? A. That is all he says, when
12 he come at nine o'clock that is all he say.

13 Q. What I understand him to say is this, so far as he
14 knows the man Hassen Neby came up to the room at nine
15 o'clock that night, is that all he knows? A. That is
16 right, that is all he knows.

17 Q He does not know whether he was outside or
18 inside all the time he was in bed? A. Nine o'clock he
19 was home; nine o'clock he came back home, that is all
20 he knows.

21 Q As I understand he has told us that he stayed in
22 bed all the time, that he does not know when the man
23 went out if he ever did go out? A. He cannot tell if
24 Hassen Neby was out or not, he remember nine o'clock
25 when he came home.

26 Q. Does he mean when he came upstairs to go to bed,
27 not when he came into the house, but did he go upstairs
28 to go to bed? A. That is all he remembers when he came
29 upstairs in the room.

30 Q. Upstairs to go to bed, that is what he means by

Mike Deems

1 when he came home to go to bed. (No answer).

2 RE-EXAMINED BY MR AGAR:

3 Q. Did you go downstairs for supper that night? A. No.

4 Q. Ask him what he means, what do you mean when you
5 told me the prisoner went out after supper, just after
6 supper? A. He says he never saw him go out, but the
7 other people told him, his brother told him Hassen Neby
8 is out.

9 MR HENDERSON: Surely that is not evidence.

10 MR AGAR: No.

11 HIS LORDSHIP: He does not know as a matter of fact,
12 he did not see him go out and did not see him come
13 back into the house? A. No, he did not see him go out.

14 MR AGAR: Have you told me this today in consequence
15 of what one of the other men in the boarding house told
16 you--did you tell me today that Neby went out after
17 supper because that is what one of the other men in
18 the boarding house told you?

19 MR HENDERSON: Surely that is unfair.

20 HIS LORDSHIP: It is for your benefit.

21 A. He just says he never saw him go out, but some-
22 body else told him he go out, and he just remembers when
23 he came upstairs.

24 HIS LORDSHIP: That is not evidence at all. What that
25 amounts to is he does not know when he went out or when
26 he came back; somebody else told him; that is all there
27 is about it.

28 ---Court adjourned at 6 P.M. to 10 A.M. tomorrow.

29

30

---Court resumed at 10 A.M. October 31st 1918.

KENNETH BAYS, Sworn, Examined by

MR AGAR: I believe you are a clerk in the employ of the Canadian Pacific Railway Co.? A. Yes sir.

Q. And have you with you any records showing the payment of any money on the 27th May to a man named Kanser George or C. George? A. Yes.

Q. What do your records show? A. \$18, C. George.

MR AGAR: I put in this book showing a payment of \$18 to C. George. Would that be on the 27th April that the money was paid? A. No, that is the date it was made out.

Q. When was it paid? A. Paid May 21st.

Q. That was a payment up to the 27th April was it?

A. Yes.

Q. May 21st to this defendant? A. Yes.

Q. To Hassen Neby? A. Yes.

HIS LORDSHIP: I don't think there is any foundation laid for this.

MR AGAR: Yes; the foreman of the gang which works for the C.P.R. has stated that the prisoner went under the name of C. George.

---EXHIBIT NO.18: Stub book of the Canadian Pacific Railway, copy of record to be substituted.

HIS LORDSHIP: Were you present personally when the payment was made? A. No sir.

Q. You only speak of the record? A. Yes.

Q. You do not know anything about this being the man?

A. No sir, I do not.

---No Cross-Examination.

1 HUSON HASSEN, Sworn, on the Mohammedan oath,
2 (with uplifted right hand and hat on
 Examined through interpreter by Mr. Agar

3 Q. Who owns this valise which I produce? A. That is mine,
4 (Exhibit 13).

5 Q. Who owns this black grip which I produce, Exhibit 9?

6 A. Hassen Neby.

7 Q. Do you know this other grip? A. Mike Demo's, (Exh.14).

8 Q. Did you work for the C.P.R. Co.? A. Yes.

9 Q. What about Neby, did he work for the C.P.R.? A. Yes.

10 Q. Where were you living on the 19th May last?

11 A. 569 King St. west.,

12 Q. When you and Neby were working for the C.P.R. where
13 were you working in April, the latter part of April?

14 A. From MacTier to Weston.

15 Q. Were you at Weston for a time? A. Fifteen days, two
16 weeks.

17 CROSS-EXAMINED BY MR. HENDERSON:

18 Q. Do you mean to tell me that this man said in
19 practically one word that he worked at Weston for two weeks
20 or fifteen days? A. (Interpreter): Fifteen days or two weeks

21 Q. Do you mean to say that this man in his language was
22 able to say that he worked at Weston two weeks or fifteen
23 days? ^{[His Lordship:} A. He would not have to say all that, because that
24 is involved in the question, and the answer he would have to
25 give would be the length of time, "Yes, fifteen days."

26 MR HENDERSON: He remembers giving evidence at the prelim-
27 inary investion on June 6th last--at the Police Court on
28 Adelaide St.? A. Yes.

29 Q. And he apparently could not identify the clothes that
30 were produced on that occasion--he was asked this question:

1 "Can you identify those clothes in the black grip? "

2 A. Interpreter: He says he never saw them.

3 Q. He was also asked at page 11 line 25: "Whose are they?"

4 A. I don't know."

5 MR AGAR: That is only part of the answer.

6 MR HENDERSON: Ask him that--

7 MR AGAR: Just a minute.

8 HIS LORDSHIP: Well, so far.

9 MR HENDERSON: I will carry out the question. Probably
10 I had better read the whole: "Whose are they? A. I don't
11 know; I know the grip was Hassen's, but inside I don't
12 know"? A. Yes, he said that.

13 Q. Why did he say he did not know what was inside the
14 grip, why was it necessary for him to lengthen out his
15 answer; he was not asked what was inside the grip.

16 HIS LORDSHIP: Was not he asked before that?

17 MR AGAR: Yes.

18 MR HENDERSON: No, he was not asked.

19 HIS LORDSHIP: Q.20. "Can you identify these clothes in
20 the black grip"--that is quite explanatory, because he
21 had already been asked.

22 MR HENDERSON: Can he recall Sunday May 19th? A. Yes, he
23 recalls that because he remembers six o'clock when he had
24 his supper.

25 Q. He remembers he had his supper at 6 o'clock that day?

26 A. Yes.

27 Q. How many people were in the house at 6 o'clock that
28 day having their supper? A. Twelve men.

29 HIS LORDSHIP: Twelve men were at supper? A. Yes.

30 MR HENDERSON: How many men were there at 7 o'clock that
night?

1 A. After supper he went out.

2 HIS LORDSHIP: Was he the cook that day? A. No, Mike Demo.

3 MR HENDERSON: How long after he had had his supper was
4 it he (the witness) went out? A. Just after supper; he
5 never stay long.

✓ 6 Q. Did you leave the other eleven men in the house when
7 you left the house yourself that night? A. Yes, he left
8 eleven of them home.

9 Q. I understand it that you were the only man that walked
10 out shortly after supper? A. Yes, he is the only man.

✓ 11 Q. When did you come back? A. About 8 o'clock;

12 Q. So that you were away apparently almost two hours.

13 HIS LORDSHIP: If they did not have supper till six it
14 takes them some time.

15 MR HENDERSON: Yes, my Lord; however, you say you came
16 back at eight o'clock. How many men were in the house at
17 eight o'clock when you came back? A. There was nobody home.

18 Q. Who was the first man that came in? A. A. Selak.

19 Q. You say you came back at eight o'clock and there was
20 nobody home? A. There was nobody home.

21 Q. Did you go right straight upstairs and go to bed?

22 A. Right to bed.

23 Q. So that Mike Demo must have recovered from his illness
24 and he must have been out if nobody was home? A. He never
25 go in his room.

26 HIS LORDSHIP: Mike might have been there.

27 MR HENDERSON: Yes; so that some of your friends might
28 have been home and you did not know anything about it?

29 A. No, he did not know.

30 Q. So that when you say nobody was home you are

Jim Charlie

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 mistaken? A. ~~He~~ says I never saw nobody.

2 Q. That is what you mean, you did not see anybody? A. Yes

3 Q. But he is not prepared to swear that there were no
4 people in the house when he got home.

5 HIS LORDSHIP: There were none in the parlor but they
6 may have been in the bedroom? A. He cannot say.

7 MR HENDERSON: As I understand what he says is, he came
8 home and went right upstairs and went to bed? A. Yes.

9 -----

10 JIM CHARLIE, Sworn on the Mohammedan oath, (with
uplifted right hand and hat on).

Examined through interpreter by

11 MR AGAR: You were living at 569 King St.W., in Toronto
12 in May last? A. Yes.

13 Q. Are you related to Mike Demo? A. Yes, his brother.

14 Q. Where did you sleep at this house on King St.?

15 A. Upstairs front room, upstairs top storey.

16 HIS LORDSHIP: Have not they any family name; here is
17 Mike Demo, the brother of Jim Charlie.

18 THE INTERPRETER: These are the names they go by.

19 HIS LORDSHIP: They have real names I suppose.

20 THE INTERPRETER: Yes.

21 Q. Where did Demo sleep? A. He was sleeping with him
22 together in the same room.

23 Q. On May 19th the day of this alleged murder, who
24 was the cook at the house that day, do you remember?

25 A. Mike Demo.

26 Q. Did he cook all day? A. No, he get sick.

27 Q. Who helped them? A. He (the witness) helped him.

28 Q. Did the prisoner do any cooking that day?

29 A. No.
30

Jim Charlie

1 Q. Were you home for supper that evening the 19th May?

2 A. Yes.

3 Q. Do you know whether or not Neby went out of the house
4 after supper? A. Yes.

5 Q. What time did he go out? A. About six o'clock.

6 Q. What time did you go to bed that night? A. About
7 nine o'clock.

8 Q. Was Neby home at that time? A. Just came home about
9 nine o'clock.

10 Q. Did you see him go out right after supper about six
11 o'clock? A. Yes.

12 CROSS-EXAMINED BY MR HENDERSON:

13 Q. I understand that he is a brother of Mike Demo? A. Yes.

14 Q. And why do you adopt the name Jim Charlie?

15 A. He says he just use that name for working places.

16 Q. What is his proper name? A. Ajik Selman.

17 Q. How many men were at supper that night? A. Ten or
18 twelve men.

19 Q. At six o'clock at night? A. Yes.

20 Q. How long were they at supper? A. They finished about
21 six o'clock.

22 Q. Did they start at six and finish at six? A. He says
23 it was six o'clock; he is not very sure.

24 HIS LORDSHIP: He was not the man that says they started
25 at six; it was the other witness said that; he says the
26 prisoner went out about six when supper was over.

27 MR HENDERSON: How many others went out besides the
28 prisoner at six o'clock or some time after supper?

29 A. Every one he says.
30

Kevin Charles

1 Q. So that there was not anything exceptional in the
2 prisoner going out at six? A. He says his brother was sick
3 and he was after his brother upstairs.

4 HIS LORDSHIP: He stayed with him? A. Yes.

5 Q. He did not go out? A. No.

6 MR HENDERSON: So that as I understand from him they all
7 went out except himself and Mike Demo? A. He says yes, but
8 he says there might be somebody downstairs left.

9 HIS LORDSHIP: May be there was some one who did not
10 go out? A. That is all.

11 MR HENDERSON: Is he sure whether the prisoner went out
12 or does he mean he left the room? A. He says he is sure
13 because he is not upstairs in the room.

14 Q. As far as he can go is this, that the accused was
15 not in his room? A. That is all.

16
17 RE-EXAMINED BY MR AGAR:

18 Q. Were you upstairs or downstairs when Demo went out?

19 MR HENDERSON: I submit it is hardly fair.

20 HIS LORDSHIP: Ask him whether he saw him go out.

21 MR AGAR: Did you see Neby go out that night? A. No,
22 that is all he knows; he was not home, that is all.

23 Q. How does he know he was not home? A. Just he was
24 staying upstairs in his room.

25 HIS LORDSHIP: He was upstairs with his brother Mike
26 and the prisoner was not there.

27 Q. How does he know he was not downstairs, how does he
28 know the prisoner left the house? A. He was just he and
29 his brother was upstairs, and the other people were, every
30 one of them out, and at nine o'clock he said Hassen Neby
came home.

John Charles

1 HIS LORDSHIP: Ask him how he knows the prisoner was not
2 downstairs or somewhere in the house? A. Well, he says he
3 never saw him downstairs, he never go downstairs to see if
4 he was there or not.

5 MR AGAR: Do you say you were not downstairs? A. He say
6 no, there was nobody downstairs.

7 Q. Do you say you were not downstairs that Sunday even-
8 ing? A. He just go upstairs after supper.

9 Q. Before you went up after supper tell me whether or
10 not Neby went out? A. He says after supper when he go up
11 stairs to his room all ~~af~~ the rest of the people were
12 downstairs.

13 Q. I want you to tell me whether Neby went out of the
14 house before you went upstairs after supper? A. No, he
15 left him downstairs.

16 Q. Have you previously made statements that you saw Neby
17 going out after supper? A. He says that is all he has to
18 say for that.

19 Q. I want you to tell me whether you have previously
20 stated that you saw Neby going out of the house after
21 supper? A. He says I do not know.

22 Q. Did you make ^a ~~that~~ statement to me? A. Yes.

23 Q. Did you say to me in the presence of Mr. George
24 that Neby went out right after supper about six o'clock?
25 A. Yes.

26 Q. Was that true? A. May be he forget that now.

27 Q. Was that true? A. Yes, that is true.
28 -----
29
30

John Ali

1 JOHN ALI, Sworn, on Mohammedan oath, hat on and
2 uplifted right hand; examined through
 interpreter, by

3 MR Agar: Were you living at 569 King St. W., in Toronto
4 on the 19th May last? A. Yes.

5 Q. Do you know Neby the prisoner? A. Yes sir.

6 Q. Were you one of the same gang with him that worked
7 for the C.P.R.? A. Yes.

8 Q. And did you and the prisoner and others at any time
9 work at Weston? A. Yes.

10 Q. And where were your boarding cars placed when you
11 were boarding there? A. The track going through to some
12 factories there.

13 Q. On the C.P.R. siding? A. Yes.

14 Q. On Sunday the 19th May last were you home for supper?
15 A. Yes.

16 Q. And was Neby there? A. Yes.

17 Q. And tell me whether or not did Neby go out after
18 supper? A. Six o'clock or after six o'clock Hassen
19 Neby go out.

20 Q. You saw him go out? A. Yes.

21 Q. What time did you go to bed that night? A. About
22 eight o'clock.

23 Q. Had Neby got back to the house when you went to bed?
24 A. No, I never saw him.

25 Q. Do you know whether or not Neby had a knife that he
26 carried around? A. Yes, he has a smallknife.

27 Q. How long would the blade be? A. Five or six inches.

28 ---

29

30

Kohu Ali

CROSS EXAMINED BY MR. HENDERSON:

Q. Now, who else went out of the house besides Neby at six o'clock that night? A. Every one go out he says, but some of them go before. He was the last one to go, (that is the witness).

Q. Apparently they all went out, is that the idea? A. Yes

MR AGAR: Some of them went to work.

HIS LORDSHIP: Ask him if he means was no one left in the house at all? A. Yes, there was somebody upstairs in the rooms, he cannot say for the rooms, he says downstairs in the dining room.

HIS LORDSHIP: Did not he mention Demo's name just now in his answer? A. No sir;

MR HENDERSON: So that apparently he is not sure whether they were all out or whether they were in? A. No, he is not sure.

Q. And all these twelve men who lived in the house, of whom he is one, were all through the house from time to time? A. Yes.

Q. I am told that there were some of the men who lived in the house who know that the prisoner was not out of the house that night, does he know that?

MR AGAR: I think my learned friend should not make that statement unless he proposes to offer the evidence in support of it.

MR HENDERSON: I cannot offer the evidence because the Crown Witness--

HIS LORDSHIP: Ask him the simple question whether he was in the house or not.

MR HENDERSON: As I understand he doesnot know absolutely

John Ali

1 whether Neby was out or not? A. Yes, he is sure.

2 Q. He does not know what time he came back? A. Yes.

3 Q. He is sure what time he came back? A. Yes,
4 about eight o'clock.

5 Q. About eight o'clock he came back.

6 HIS LORDSHIP: Who did?

7 THE INTERPRETER (This man). (The witness).

8 MR HENDERSON: Is he sure what time the prisoner came back

9 A. No, he does not know that.

10 Q. What portion of the house did you sleep in?

11 A. On the second floor.

12 Q. And the prisoner might have been up on the third
13 floor as far as he knows when he came back to the house?

14 A. Yes, he was living in the upstairs room.

15 Q. And Hassen Neby might have been upstairs when the
16 witness came home? A. It was about eight o'clock when he
17 go home.

18 Q. He did not go up to the third floor where Neby
19 slept? A. No.

20 Q. So that he does not know whether Neby was home or
21 out when the witness arrived home? A. That is all he can
22 say, about six o'clock or after six he go out and I never
23 saw him till he come back; and that is all he know.

24 Q. Neby was not the only person who went out on that
25 occasion? A. Yes, there was pretty nearly every one of them.

26 RE EXAMINED BY MR. AGAR:

27 Q. Several of the men that went out I believe went to
28 work? A. Four of them.

29 Q. With your Lordship's permission I would like to
30 bring out the fact about the cooking. Tell me what the

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 custom is about the men doing the cooking, is it one man
2 doing it one day, and another doing it another day?

3 A. Yes.

4 Q. Whose turn was it on Sunday the 19th May? A. Mike
5 Demo started to cook the dinner and after dinner he got
6 sick and went to bed, and his brother helped him.

7 -----

8 DUNCAN MCEWEN, Sworn, Examined by

9 MR AGAR: I am tendering this witness, my Lord, in order
10 to prove the matter of time the man must have left the
11 house at 569 King St. West that evening. It is the only
12 authentic way in which I can produce evidence. This witness
13 is an employee of a company who employed one of the men
14 who left.

15 MR HENDERSON: Surely that would not apply to the
16 prisoner.

17 HIS LORDSHIP: The prisoner was not going back to work
18 that night, was he?

19 MR AGAR: No; but there is evidence before the court of
20 about the time the men had supper and that they went out
21 after supper, and I am calling this witness to prove that
22 one of the men who went to work after supper started on
23 his job at a certain hour.

24 HIS LORDSHIP: That is good evidence because that
25 would show what time. It would not necessarily affect
26 the prisoner; it would show at some time what time the
27 men who went back to work would have to leave the house.

28 MR AGAR: Yes.

29 Q. I believe you are a representative of the John Inglis
30 Co.? A. I am.

Duncan McEwen

1 Q. Have you your records showing the names of some of
2 these employees living at 569 King St. W.? A. I have not
3 the records with me; I have the time clock slip, but
4 there are no names on that.

5 Q. Take Sam Ali, who I believe was one of your
6 employees; what does your record show as to the time he
7 started to work on the evening of the 19th May, if at all?

8 A. The records show he started, he rang in on our clock
9 at 5.42 on the night of Sunday the 19th May.

10 Q. That means he registered? A. Yes.

11 Q. How long did he continue working that day?

12 A. He worked that night till he rang out at nine
13 minutes past seven on the Monday morning.

14 Q. So that he worked that night from 5.42 Sunday
15 evening until when? A. 7.09.

16 HIS LORDSHIP: How long would it take a man to go from
17 569 King St. W., to the Inglis Co.? A. Does that lie
18 between Spadina and Bathurst?

19 Q. Just east of Spadina? A. It would take him about
20 ten minutes to walk.

21 Q. Where is the Inglis factory? A. Strachan Ave.

22 HIS LORDSHIP: So that Sam Ali would have had to leave
23 the boarding house at about half past five? A. Yes.

24 Q. To ring in, as you say, about 5.42? A. Yes.

CROSS EXAMINED BY

25 MR. HENDERSON: I understand the John Inglis Co. are

26 down on Strachan Ave. south of the railway tracks? A. Yes.

27 Q. Do you mean to tell me that a man can walk from a
28 little east of Spadina on King St. to the John Inglis Co.
29 in ten minutes? A. I am only approximating it.

30 HIS LORDSHIP: What distance do you think it is?

Duncan McQueen

1 A' About a mile I should think.

2 HIS LORDSHIP: Well, that is very fast walking.

3 MR HENDERSON: I think you were judging the man going
4 by street car? A' Of course he might go on the street car.

5 HIS LORDSHIP: He could take a street car on King and
6 go all the way to Strachan Ave.? A' Yes.

7 MR HENDERSON: It would take you a couple of minutes
8 to walk from the corner of King and Strachan Ave. down
9 to John Inglis Co.? A' Yes.

10 Q. And that is one-sixtieth of the distance between
11 Strachan Ave. and King; you know that district? A. Yes;
12 I tell you I was only approximating that it would take
13 about ten minutes.

14 Q' Were you figuring that man walking or riding?

15 A. Riding and then walking down.

✓ 16 Q. Because the man who ^{could} walk that in ten minutes would
17 be in a class with the superman? A' Yes, he would.

18

19 RE-EXAMINED BY MR AGAR:

20 Q. In your estimation of the time you were figuring on
21 a person taking the street car? A' And walking down;
22 it would take him about four minutes to walk ~~down~~ from
23 King St.

24 Q. And that is allowing ~~six~~ minutes for the street car
25 line? A. Yes.

26 HIS LORDSHIP: I may say the Registrar has a directory
27 here and he makes it seven blocks from Spadina to Strachan
28 Ave.

29

30

30

1 Q. That estimate of ten minutes would be reasonable
2 then? A. Quite reasonable.

3 HIS LORDSHIP: That is assuming he took the car? A. Yes.
4 -----

5 MR AGAR: I have sent for the witness to show the
6 accused drew a pay cheque on the 27th May. The witness
7 we had said it was the 21st May, but I also want to show
8 he was paid on the 27th May also. The witness will be
9 here shortly.

10 ---Intermission.

11 HIS LORDSHIP: Perhaps Mr. Henderson will go on with
12 the defence pending the arrival of this Crown witness.

13 MR HENDERSON: There is no doubt the accused was there
14 on this date to receive his wages, but I thought probably
15 the production of this witness would show--I understand
16 the wages he received were not wages up to date, were
17 wages for the previous month, and it would show where
18 he was working.

19 HIS LORDSHIP: You would rather have the Crown's case
20 complete.

21 MR HENDERSON: Yes.

22 ---After waiting for about forty minutes.

23 HIS LORDSHIP: Have you got the witness?

24 MR AGAR: I find the vouchers have all gone to Montreal.

25 HIS LORDSHIP: I suppose you will have to leave it there.

26 MR AGAR: I can prove it in another way.

27 WILLIAM GREER. Recalled.

28 MR AGAR: You are already sworn. In regard to the pay-
29 ment of these cheques to these twelve men by the C.P.R.
30

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OFFICIAL STENOGRAPHER

1 when you were present, will you tell me please, how the
2 cheques came to be paid on the 27th instead of earlier;
3 and what instructions, if any, did you give? A. When I
4 located the men that had been working at Weston I went
5 to the C.P.R. to find out if they had been paid off, and
6 I got information that they had not. Then I asked the
7 C.P.R. to set a day to pay them off and I would have a man
8 there to identify certain people. That day was set for a
9 Saturday, but I could not get my man there, they did not
10 notify me in time, so I had it arranged on Monday the
11 27th that they were to be paid off, and on the 27th they
12 got their cheques. I took the names of the parties.

13

14 CROSS-EXAMINED BY MR HENDERSON:

15 Q. The wages these men received apparently were wages
16 for two weeks work? A. I presume so, yes.

17 Q. Apparently it appears that these men had waited
18 nearly a month for their wages? A. Yes; I can tell you
19 how that was; there was a strike on and they struck for
20 higher wages and the C.P.R. refused to give them a certain
21 amount and they did not pay them; they sacked them all.

22 Q. So that the wages that the accused received would
23 be wages that he had earned some time in the month of
24 April? A. Yes.

25 ---Case for the Crown closed.

26

27

28

29

30

Sacked

D E F E N C E .

HASSEN NEBY, The prisoner, Sworn on the Mohammedan oath, hat on and uplifted right hand; examined by Mr. Henderson, through the Interpreter.

Q. In the month of April was he working for the C.P.R.? A. Yes, he was working in Muskoka for the C.P.R.

Q. When did he leave the employment of the C.P.R.?

A. He cannot remember the date but he knows he left the job there; he left the job but do not remember the date, but he left the job right at Weston.

Q. Had he come down from Muskoka to Weston and left the job when they reached there? A. Yes.

HIS LORDSHIP: The way that was put it would mean he came straight down and left at Weston; did he work at Weston? A. No.

Q. Will you ask him whether he ever boarded in a car at Weston.

MR HENDERSON: Did you ever board in the cars at Weston with the other men? A. He was in Muskoka, not at Weston.

Q. After he left the cars at Weston did he ever go back to Weston again? A. No, went to John Inglis.

HIS LORDSHIP: I thought he said he had never boarded in a car at Weston.

MR HENDERSON: As I understand he came down from Muskoka in the car and left the cars at Weston.

HIS LORDSHIP: In the boarding cars.

MR HENDERSON: Did he come down from Muskoka in boarding cars or ordinary railway cars? A. In the boarding car.

Q. Did he leave the boarding car and leave the other men there? A.

Hassen Neby

1 A. Yes.

2 Q. As he has already said he never went back to Weston?

3 A. No.

4 Q. Did he go to the C.P.R. pay department to secure his
5 money in May? A. Yes, he got the money for working in
6 Muskoka.

7 Q. He went to the C.P.R. and received the money he had
8 earned for working in the Muskoka district? A. Yes.

9 Q. Will you ask him to explain about this suitcase
10 that belongs to him? A. Yes, the suitcase is his.

11 HIS LORDSHIP: That is the black one Exhibit 9? A. Yes.

12 MR HENDERSON: Tell him, it has been sworn here that
13 when he was asked about the ownership of the black suitcase
14 he denied he owned it? A. No, he never said about the
15 suitcase, but he said for the things which were in it.

16 Q. That is what he meant.

17 MR AGAR: No, that is what he said. I understand the
18 interpreter to say the witness's answer is he did not
19 deny owning the grip, but that he denied owning the
20 contents of the grip.

21 HIS LORDSHIP: That is right; no matter what he meant
22 that is what he said.

23 MR HENDERSON: Can he explain how the field glasses
24 and the wallet were found in his suitcase? A. He don't know
25 anything about them.

26 Q. Did he ever see these two articles before they were
27 produced in the police court? A. Yes, he saw them in the
28 police court.

29 Q. Did he ever see them before they were produced in
30 the police court? A. No.

Hassen Nely

1 Q. And does he claim that he owns these? A. No.

2 Q. Does he remember the Sunday before he was arrested?

3 A. Yes.

4 HIS LORDSHIP: What day was he arrested?

5 MR AGAR: The 19th May would be the second Sunday before.

6 He was arrested on the 29th May.

7 MR HENDERSON: He says he remembers Sunday before he was
8 arrested. A. Yes.

9 Q. Does he remember the Sunday before that? A. Yes.

10 Q. Where was he that Sunday? A. 569 Wellington St.

11 Q. I mean to say on the Sunday, the second Sunday before
12 he was arrested--on the 19th May? A. Yes, the last Sunday
13 before he was arrested.

14 HIS LORDSHIP: The Sunday before that again?

15 A. The Sunday before that again he was in 569 Wellington
16 Street.

17 HIS LORDSHIP: That is another place altogether?

18 A. He means to say for both Sundays.

19 HIS LORDSHIP: We have not heard of Wellington St. before
20 ask him if he is sure he means Wellington St.? A. Yes, he
21 is sure because he pay his board there.

22 MR HENDERSON: What date did he go to 569 King St. W.?

23 A. It was Wednesday when he go to 569 Wellington, but
24 he does not remember the day.

25 Q. The day he went to 569 King St. W.? A. Yes, that
26 is all right; it was Wednesday when he go to 569 King St.W.

27 Q. Ask him who occupied the house at 569 Wellington?

28 A. Some man there Milo; the man there, he says.

29 HIS LORDSHIP: Milo, stand up? (Milo stands up).

30 MR AGAR: Is that the man?

Hasser Neby

1 A. Yes.

2 HIS LORDSHIP: Is that the man who kept the house at 569
3 Wellington St.? A. Yes.

4 HIS LORDSHIP: I do not understand it. Did he say he
5 ever boarded at 569 King St. W. at all? A. Yes, he was
6 boarding two weeks.

7 HIS LORDSHIP: When did he leave 569 King St. W.?

8 A. When he was arrested.

9 Q. How long had he been there? A. Twelve or thirteen days.

10 HIS LORDSHIP: That would take him back over the 19th.

11 MR HENDERSON: Yes.

12 MR AGAR: I desire to apply for an order, if my learned
13 friend intends to call any witnesses other than the accused
14 I was given to understand my learned friend did not intend
15 to call any witnesses. The witnesses should be excluded.

16 HIS LORDSHIP: Do you mean to call any of these men?

17 MR HENDERSON: No, my Lord.

18 HIS LORDSHIP: Is this the only witness you have?

19 MR HENDERSON: Yes.

20 HIS LORDSHIP: Call his attention to the fact if he had
21 been there twelve or thirteen days he must have been there
22 on Sunday the 19th May at 569 King St. W.? A. Yes, he was on
23 King St. west when he was arrested.

24 Q. And he had been there for twelve or thirteen days?

25 A. Yes.

26 MR HENDERSON: Did he murder this man Tucker or have
27 anything to do with him or know anything about him?

28 A. No, he do not know anything about that; he cannot do
29 such kind of thing.
30

1 Q. Has he any explanation of why the field glasses and
2 the little purse would be in his grip? A. He don't know
3 anything about it; he can't explain; he just knows his things
4 were in the suitcase.

5 Q. Tell him Sam Ali has sworn that the witness asked for
6 an address in St. Louis and he handed him two envelopes
7 which are apparently filed as Exhibit 10? A. No.

8 Q. What does he say? A. He says that is his friend,
9 not my friend.

10 Q. Did Sam Ali give him those two envelopes? A. No.

11 Q. Can he explain why they were in his suitcase?

12 A. He don't know; may be he put them in.

13 HIS LORDSHIP: Ask him if Sam Ali wrote down any address
14 for him for people in St. Louis? A. No; he says he don't
15 know anything about that.

16 CROSS-EXAMINED BY MR AGAR:

17 Q. How long have you been in Canada? A. Three years.

18 Q. Did you leave Canada any time during that period of
19 three years? A. No.

20 Q. You were in Canada the whole three years, all the
21 time were you? A. All the time, yes.

22 Q. Were you ever in Waterbury, Connecticut? A. No.

23 Q. I warn you that I am instructed that you were in Water-
24 bury, Connecticut, in January last and also last fall;
25 what do you say? A. No.

26 Q. Is this your photograph? A. No, he don't know it.

27 Q. Look at it? A. No, he don't know that man.

28 Q. You don't know whether that is you or not? A. No.

29 Q. You say that is not you? A. No.

30 Q. Do you say that is not your photograph? A. No.

1 Q. Do you say it is not or you don't know? A. No, he says
2 it is not his photograph.

3 Q. Is this your photograph? A. Yes.

4 Q. Is this one yours? A. He knows just this one.

5 Q. The one marked with the cross is your photograph?
6 A. Yes.

7 Q. What about the other one? A. He don't know that one.

8 Q. This is not your photograph, the one marked with a
9 circle? A. Yes, that is his too.

10 Q. They are both your photographs? A. Yes.

11 MR AGAR: I will file the photograph.

12 MR HENDERSON: My Lord, I don't think they should go in
13 as an Exhibit. This apparently is the picture taken of this
14 man after he was arrested on this particular charge? A. Yes.

15 MR AGAR: I have not any objection to it not going in;
16 it is a photograph of the prisoner; and I was going to try
17 and succeed in getting in the other photograph for the
18 purpose of comparison by the jury, but if my learned friend
19 objects to the one I am tendering now as an Exhibit going
20 in I do not press it at this stage.

21 MR HENDERSON: I think my Lord, I should take the objection.

22 HIS LORDSHIP: He does not press it if you object.

23 MR AGAR: Do you know Frank Dowd? A. No.

24 Q. Were you ever convicted of any criminal offence? A. No.

25 Q. I direct your attention to a conviction on the 9th
26 January last and ask you--

27 MR HENDERSON: I submit my Lord, that once my learned
28 friend has had his answer--

29 HIS LORDSHIP: He is trying to get a more specific answer.

30 MR AGAR: Do you say you were not convicted of an attempt

Hassen Neby

1 to commit murder on Frank Dowd at Waterbury, Connecticut
2 on the 9th January last and sentenced to 18 to 20 years
3 in the State Prison? A. No, he don't know anything about it.

4 Q. Do you say witness, that you did not escape from
5 the New Haven County Sheriff while on your way to New Haven
6 Connecticut--come now, while on the way to the jail at
7 New Haven, Connecticut? A. No.

8 Q. You realize you are stating this on oath, do you?

9 A. Yes.

10 Q. Where were you in August 1917? A. I was in Toronto.

11 Q. That is a year ago last August now, where were you?

12 A. In Toronto.

13 Q. Where were you working at that time? A. He was work-
14 ing at the Dominion Glass factory, the Grand Trunk and
15 some other places.

16 Q. Where were you working on the 3rd August 1917?

17 A. He was in the Dominion Glass factory.

18 Q. In Toronto? A. Yes.

19 Q. August 3rd 1917, so that there is no mistake about
20 it, you were working for the Dominion Glass Co. in
21 Toronto? A. Yes.

22 Q. What name did you go under? A. Hassen Neby.

23 Q. Where were you on the 9th January 1918? A. I was
24 in Muskoka.

25 Q. What were you doing up there? A. I was working
26 there.

27 Q. What were you doing up there? A. I was working there.

28 Q. For whom? A. For the C.P.R.

29 Q. What was your number? A. He has No.7 and No.11, and
30

Hassen Kelly

1 it was changed too many times, the numbers.

2 Q. What was your number in January last when you were
3 working in Muskoka? A. No. 11.

4 Q. Who was your foreman? A. Sam Ali.

5 Q. Did you have a number when you were working for the
6 Dominion Glass Co. on the 3rd August 1917? A. Yes, he
7 had a number, but he forgets the number.

8 Q. What were you doing? A. Laborer, just was working
9 outside.

10 Q. Doing outside work? A. Yes.

11 Q. Who was your foreman? A. Jake.

12 Q. What was his last name? A. He don't know the last
13 name.

14 Q. Is this the gentleman here who you say was your
15 foreman on the 9th January last when you were working in
16 Muskoka? (Sam Ali stands up)? A. Yes.

17 Q. Can you describe the man who was your foreman at
18 the Dominion Glass factory on the 3rd August 1917? A. Yes.

19 Q. Was he a foreigner? A. He do not know what kind of
20 a man he was.

21 Q. Is he in Toronto now? A. He do not know.

22 Q. When did you see him last? A. A year ago.

23 Q. Who else was working with you at the Dominion Glass
24 Factory on August 3rd 1917? A. Russian people.

25 Q. Tell me who they were, don't you know any of them?

26 A. A few of them; he can describe them.

27 Q. Give the name of one of them? A. He cannot say
28 any name.

29 Q. Tell me some person that was working with you in
30 Muskoka on the 9th January last other than Sam Ali--

1 was Mike Demo up there last January? A. Yes.

2 Q. Was Euson Hassen up there in January last? A. Yes.

3 Q. And Jim Charlie? A. No, not Jim Charlie.

4 Q. What about John Ali--was he up there too? A. Yes.

5 Q. Jim Charlie was not there? A. No.

6 Q. I produce this photograph--is that your photograph?

7 A. No.

8 Q. What day did you arrive at Weston? A. He do not
9 remember the date.

10 Q. What month did you arrive? A. April.

11 Q. Where did you go when you left Weston? A. Toronto;
12 when he left Weston he went to 569 Wellington St.

13 Q. Tell me please, how many days you stayed
14 at Weston before you left there? A. He just go for a day
15 and next day he came right through in Toronto.

16 Q. You stayed one day at Weston? A. Just one night.

17 Q. And that was in the month of April last?

18 A. Yes.

19 Q. And from there you came to 569 Wellington St.? A. Yes;
20 there was somebody else with him when he came.

21 Q. Who came with you from Weston? A. Demy Hassen.

22 Q. You both went to 569 Wellington St.? A. He go to
23 another place he do not know the number.

24 Q. He does not know where he went? A. No.

25 Q. Where did you first start to work after you got from
26 Weston to 569 Wellington St.? A. John Inglis Co.

27 Q. What was your number there? A. 1133--no, 1134.

28 Q. There is no mistake about that? A. No.

29 Q. 1134; and that would be in the month of April? A. Yes.

30

Hassen Nely

1 Q. What name did you go under? A. Jack Ali.

2 Q. Why did you change your name--Jack Ali, is that the
3 name you went under when you started working for the Inglis
4 Co.? A. Yes.

5 Q. Where is the property of the John Inglis Co., on
6 Strachan Ave.? A. He do not know the name of the street,
7 but he knows the factory all right; he can find it easily.

8 Q. It is the John Inglis Co. is it? A. Yes.

9 Q. Out west of 569 King St. W.? A. Yes, that is going
10 west on King St.

11 Q. Is it the place where Sam Ali was working in May?

12 A. Yes, the same place it was.

13 Q. How long did you work for the John Inglis Co.?

14 A. He says since he left Weston he started to work in
15 John Inglis, and he was still working there till he was
16 arrested.

17 Q. So that I may understand it, from the time you left
18 Weston in April up to the day you were arrested you were
19 working all the time for the John Inglis Co.? A. Yes.

20 Q. Were you working at night on the night shift or
21 day shift? A. Day shift.

22 Q. Always the day shift? A. Yes.

23 Q. Was your number always 1134? A. Yes.

24 Q. Who were some of the men that were working with you
25 for the John Inglis Co. in April last? A. Just was Italian
26 men with him working. Albanian people were, but they
27 were in a separate place, not with him together; he
28 was working in the fire shop.

29 Q. Do you know the name of any person who was working
30 with you for the John Inglis Co. in April last?

Hassen Nely

1 A. Yes, he knows a lot of Albanian names.

2 Q. Was Sam Ali working there? A. Yes.

3 Q. Was he working there before you started? A. No.

4 Q. Did you start the same day? A. No.

5 Q. Who started first? A. This one started first.

6 Q. How long after did Sam Ali start? A. May be a week
7 or ten days, he is not sure.

8 Q. Did Mike Demo work there? A. Yes.

9 Q. Was he there before or after you? A. After.

10 Q. Did he start the same time as Sam Ali did?

11 A. No, Mike Demo started before Sam Ali.

12 Q. How long after you started was it Mike Demo started?

13 A. Seven or eight days--about ten days he says.

14 Q. That is about the same time Sam Ali started?

15 A. He is not sure if it was the same day or not.

16 Q. Cannot you tell me whether it was in the first half
17 of the month of April that you left Weston? A. He just
18 remember April.

19 Q. You do not know whether it was the first half or
20 second half of April you left there? A. He do not remember.

21 Q. Did you come down from Muskoka with Sam Ali and
22 Mike Demo and the other men to Weston? A. Yes, twelve men.

23 Q. And they were all working out at Weston after you left,
24 were not they? A. Yes.

25 Q. They say that you were working there too with them,
26 what do you say about that? A. No, he asks for Sam Ali.

27 Q. Do you know that Sam Ali and Mike Demo and some of
28 the other men who came down with you continued working
29 at Weston for a couple of weeks perhaps? A. No, the
30 rest of them stayed on working, not this one.

1 Q. So that these men who have sworn here that you were
2 working along with them at Weston, who state you were there
3 for the same time they were, you dispute that, do you?

4 A. There was my number there to see if I worked there
5 or not.

6 Q. Where did you work during the month of April up
7 until the time you say you left Weston? A. John Inglis.

8 Q. Did you work for the C.P.R. during the month of
9 April? A. Yes, he started to work since January to April

10 Q. What time in April? A. He cannot remember the date,
11 he says.

12 Q. Where do you say you were on the 19th May last?

13 A. He was at 569 King St. W.

14 Q. I thought you told my learned friend you were at
15 569 Wellington St.W. that day? A. It was a week before that.

16 Q. I think the evidence shows that you stated you were
17 at 569 Wellington St.W. on the 19th day of May.

18 HIS LORDSHIP: That is what the interpreter said for
19 him distinctly; he said the Sunday before the Sunday before
20 he was arrested he was at 569 Wellington, and then he
21 subsequently said he went to 569 King St. about 12 or 13
22 days before he was arrested.

23 MR AGAR: That is the way I understand it.

24 HIS LORDSHIP: That was in response to my question.
25 So we were then able to fix he was at 569 King St. West
26 on the 19th.

27 MR AGAR: Where were you the Sunday before you were
28 arrested? A. 569 King St. West.

29 Q. Where were you the week before, the Sunday before
30 that? A. He was on Wellington St., 569 Wellington.

Hassan Nelly

1 Q. So that you still say on the second Sunday previous
2 to the day of your arrest you were at 569 Wellington St.

3 HIS LORDSHIP: He said a moment ago on Sunday the 19th
4 he was at King St.

5 MR AGAR: You remember being arrested? A. Yes.

6 Q. The Sunday before you were arrested were you at 569
7 King St. W.? A. Yes.

8 Q. Then the Sunday before that where were you?

9 A. He was in 569 Wellington St.

10 Q. Whom did you see there that day?

11 HIS LORDSHIP: What is the result of this? Does he say
12 on Sunday the 19th he was at Wellington St.?

13 INTERPRETER: No, he was in King St.

14 MR AGAR: As I understand he says he was at 569 Welling-
15 ton St. on the second Sunday previous to his arrest.

16 MR HENDERSON: I don't think there is any
17 question but what he was there at 569 King St. W., on
18 the 19th May.

19 HIS LORDSHIP: Mr. Interpreter, will you kindly get
20 him to understand as far as the Jury and I can make out
21 at one time he says he was on that Sunday the 19th May
22 at 569 Wellington St., and another time he says he was
23 at 569 King St., and I want him to say once and for all
24 where he was on that Sunday the 19th? A. 569 King St. W.

25 HIS LORDSHIP: That settles it.

26 MR AGAR: Did not you point out some gentleman in the
27 rear of the room as the man who knows you were there at
28 569 Wellington St.? A. Yes.

29 Q. But in the face of that you now say you were at King
30 Street? A. He was just for thirteen days in King St.

Sam Ali

1 ---Court adjourned at 12.45 P.M. to 2 P.M.

2 ---Court resumed at 2 P.M.:

3 HASSEN NEBY, Cross-Examination continued.

4 MR AGAR: Where did you have your supper on the night
5 of the 19th May? A. 569 King St. west.

6 Q. And then after supper did you stay in the house or
7 go out? A. He was in till half past six.

8 Q. Then what did you do? A. After that he go to 534
9 King St. west.

10 Q. How long did you stay there? A. He was there till
11 eight o'clock.

12 Q. Whom did you see there? A. He seen a lot of people
13 there, too many of them to say.

14 Q. Who were they? A. Hassen Hidy.

15 Q. Did you know them all? A. Yes.

16 Q. How many would there be? A. Twenty or thirty.

17 Q. Twenty or thirty whom he knew there? A. Yes.

18 Q. Were they there all the time till you left? A. Yes.

19 ---Case for the defendant closed.

20

21

R E P L Y .

22

SAM ALI, Recalled, by

23

24 MR AGAR: You are already sworn; where were you working
25 in January last? A. In John Inglis Co.

26

27 Q. And the prisoner says that you were working for the
28 C.P.R. in Muskoka in January last, is that true?

29

30 A. (Through the interpreter): No, he was not there.

31

32 Q. The prisoner says he was working for you, you being
33 the foreman for the C.P.R. in January last, is that
34 correct? A. No.

Sam Dei

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 Q. When did you start to work for the C.P.R. as a
2 matter of fact? A. The 26th February.

3 Q. Up to that time were you with the John Inglis Co.?

4 A. No, he was two weeks without work; before that he
5 was working all the time in John Inglis.

6 Q. When did the prisoner start to work for the C.P.R.
7 under you as foreman? A. The same day.

8 Q. Where did you first go when you started to work
9 for the C.P.R.? A. In Muskoka.

10 Q. Did any person go up with you from Toronto? A. Yes,
11 there were twelve men.

12 Q. Was the prisoner one of the men who went with you?

13 A. Yes.

14 Q. Is that when you first both started to work for the
15 C.P.R.? A. Yes.

16 Q. That was the 26th February? A. Yes.

17 Q. Were you the foreman? A. Yes.

18 Q. And this time book which is Exhibit 16 starts on
19 the 1st March? A. Yes.

20 Q. And does this Exhibit show the time of the prisoner
21 working for the C.P.R. during March and April? A. Yes.

22 Q. Show me on this page marked 2, the line for the
23 prisoner? A. Number eight.

24 Q. Marked with a circle and I will mark it over here
25 with a circle too; when did the prisoner stop working
26 for the C.P.R. according to this Exhibit 16?

27 MR HENDERSON: I submit that is not in reply because
28 we have already had that evidence.

29 HIS LORDSHIP: I understand it is already in evidence
30 that he stopped on the 26th; is that what the book says?

1 MR AGAR: I was looking to see; I wanted to find out.

2 Q. How many days did the prisoner actually work at
3 Weston?

✓ 4 MR HENDERSON: I submit my learned friend received
5 evidence from this witness in chief, and this man swore
6 they were there two weeks.

7 HIS LORDSHIP: I cannot remember, but I will allow the
8 question, Did you find out when he stopped working
9 according to the book?

10 MR AGAR: Apparently on the 26th and 27th they stopped.
11 The prisoner personally stopped on the 22nd according to
12 the book.

13 Q. Would this day, the 22nd April be the last day that
14 the prisoner worked? A. Yes.

15 Q. And some of the others worked on till the 26th?

16 A. Yes.

17 HIS LORDSHIP: You were asking him how many days the
18 prisoner worked at Weston.

19 MR AGAR: How many days did the prisoner actually work
20 at Weston before he quit on the 22nd? A. He do not
21 remember very well, but he thinks seven or eight days.

✓ 22 Q. So that he arrived at Weston about the 15th of
23 the month? A. Yes.

24 HIS LORDSHIP: Where did the prisoner board when he
25 was working at Weston?

26 MR AGAR: Where did Neby live and board when he was
27 living at Weston? A. In the C.P.R. car, in the boarding
28 car.

29 Q. Where was the car? A. In the yard of the C.P.R. near
30 to some factory which was there in Weston.

Sam Ali

1 Q. Were the cars on the C.P.R. siding there at Weston?

2 A. Yes.

3 Q. Do you know where the Roman Stone Company's plant
4 is? A. Yes.

5 Q. Was it near there? A. Yes.

6 MR AGAR: With regard to Exhibit 10, the stenographer
7 wanted to get the exact address; he could not make it
8 out on the envelope.

9 HIS LORDSHIP: Very well.

10 MR AGAR: Look at those two envelopes; whose name
11 is that on each envelope? A. That is mine.

12 Q. Both? A. Yes.

13 Q. And this address? A. Sfidin Maxut.

14 Q. One of these says Ciefald Maxut, and the other
15 Sfidin Maxut, what does that mean? Is one in your language
16 and the other in the English language? A One is the
17 Albanian language.

18 CROSS-EXAMINED BY MR HENDERSON:

19 Q. I notice by your time book here that the accused
20 apparently stopped working on the 22nd, which would be
21 six days before you stopped.

22 HIS LORDSHIP: He said so.

23 MR HENDERSON: So that when the prisoner states here
24 that he left Weston long before or some days before he
25 left Weston that is correct is it not? A. Yes.

26 HIS LORDSHIP: But the prisoner also says that he
27 never worked at Weston at all, he never stopped in the
28 boarding car.

29 MR HENDERSON: This book does not show where you were
30 located at the time you were doing your work? A. No.

John Ali

1 Q. You have to trust to your memory so far as dates
2 are concerned and where you were on the road? A. Yes.

3 Q. Where is your time book prior to March?

4 A. It is marked in the timekeeper book.

5 Q. Now I notice that the men whose names are in this
6 book are practically the same men who were all living at
7 569 King St. W.? A. Yes.

8 Q. And one of the witnesses here is a brother is he
9 not? A. Yes.

10 HIS LORDSHIP: Which one? A. Sam Charlie.

11 MR AGAR: Sam Charlie was not a witness.

12 MR HENDERSON: And Jim Charlie and Mike Demo are
13 brothers? A. Yes.

14 Q. And you have all been together for some time have
15 you not? A. Sure.

16 Q. Before the time when you went to work for the
17 C.P.R.? A. Yes.

18

19 JOHN ALI, Recalled by Mr. Agar.

20 Q. You are still under oath? A. Yes.

21 Q. Where were you working in January last?

22 A. He was working in December in John Inglis Co.

23 HIS LORDSHIP: What about in January? A. He was not
24 working at all in January.

25 MR AGAR: Were you working in January last? A. He
26 says no.

27 Q. Were you working for the John Inglis Co.? A. Yes.

28 Q. What is your number there? A. 210.

29 Q. Do you say you were not working for the John Inglis
30 Co. in January? A. No.

John Ali

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 Q. When did you start to work for the John Inglis Co.?
2 A. 1st of December.
3 Q. Where were you working in January? A. He was not
4 working at all in January.
5 Q. Are you sure about that? A. Sure.
6 Q. You were not working at all in January? A. No.
7 Q. Home all the time? A. Yes.
8 Q. When did you start to work for the C.P.R.?
9 A. The 26th February.
10 Q. And where did you go to? A. To Muskoka.
11 Q. From where? A. From Toronto to Muskoka.
12 Q. Did the prisoner go up with you? A. Yes.
13 Q. Did the previous witness Sam Ali go with you?
14 A. Yes.
15 Q. Was he the foreman? A. Yes, he was foreman.

CROSS-EXAMINED BY MR HENDERSON:

17
18 Q. Where was the witness living in January last?
19 A. He thinks it is 538 King St. W., he is not very
20 sure about it.
21 Q. That was in February? A. In January.
22 Q. And were all the men that were outside of the
23 prisoner, living there at that time? A. Yes.
24 Q. Ask him whether he means 538 or 534? A. Yes, it is
25 near 534.
26 MR HENDERSON: 534 is where they had the club.
27 Q. How long have all you men been together?
28 A. About three months.
29 Q. You say that in January last that you were living
30 at 538 King St. W., and all the men that constitute the

John Ali

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 gang working for the C.P.R. were living at that address?

2 A. Yes.

3 Q. Does not he know that it was more than three
4 months since January? A. He says in 538 he thinks it was
5 just for a month there, and before that it was just in
6 the same place, 569 King St. W.

7 Q. I asked him how long they had all been together,
8 these twelve men? A. He says twelve months.

9 Q. Tell him he has sworn they were together in January
10 last.

11 MR AGAR: That is hardly correct; he has not sworn that
12 Hassen Neby was there in January.

13 MR HENDERSON: I asked him if the twelve men were there.

14 HIS LORDSHIP: You did not say including the prisoner.

15 MR HENDERSON: Was Hassen Neby there in January last,
16 with them? A. Yes.

17 Q. So that they have been together more than three
18 months, all the men? A. May be.

19 MR AGAR: What time in January did Neby arrive in
20 Toronto? A. The 26th February, not in January.

21 Q. What time did Neby come to Toronto, do you know?

22 A. He thinks about January, some day in January.

23 Q. Was it in January you first saw him? A. Yes.

24 Q. About what time in January would it be that you
25 first saw Neby? A. He does not remember.

26 Q. Can you tell me whether it was the latter part of
27 the month or the first part of the month? A. He is not
28 very sure; he thinks it is about the 5th or 6th January.

29 MR AGAR: I want to lay the foundation for another witness
30 I will call Sam Ali.

Duncan M. Ewen

1 SAM ALI, Recalled, by

2 MR AGAR: What was your number when you were working for
3 the John Inglis Co. in January last? A. 842.

4 -----

5 DUNCAN MCEWEN, Recalled

6 MR AGAR: You are from the John Inglis Co.? A. Yes.

7 Q. What do your records show, if anything, as to No.
8 842 working for you in January last? A. That he did not
9 work on the 1st January, and he worked on the 2nd, did not
10 work on the 3rd; he worked on the 4th to the 13th and he
11 was off on the 14th; and he worked from the 15th to the
12 22nd; off on the 23rd; worked on the 24th and 25th and
13 was off on the 26th, and he worked from the 27th to
14 1st February, and was off on the 2nd February, and he
15 left there on the 3rd February.

16 Q. So that during the month of January he was employed
17 at your company's work, with the exception of those few
18 days when he was not on duty? A. Yes.

19 Q. That is Sam Ali? A. Yes.

20 Q. What about J. Ali 910? A. He started on January 3rd
21 and worked through till January 26th; lay off on the 26th,
22 and worked on the 27th to February 1st, lay off on the 2nd
23 February, and he quit on the 3rd.

24 MR AGAR: I will put this in.

25 ---EXHIBIT NO.19: Time sheet of ~~witness~~ John Inglis Co.

26 MR AGAR: There is an officer from the Dominion
27 Glass Co. that is on the way here.

28 HIS LORDSHIP: I will wait.

29 ---The court waited fifteen minutes.

30 MR AGAR: The witness from the Dominion Glass Co. has

1 just left now, and the place is up on Dovercourt Road;
2 it may be twenty or twenty five minutes; I would not ask
3 the court to wait that long. I will close my case.

4 HIS LORDSHIP: Very well.

5 ---Evidence closed.

6 ---Mr Henderson addressed the Jury.

7 ---Mr. Agar addressed the Jury.

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Charge to Jury

CHARGE TO THE JURY.

HIS LORDSHIP: Gentlemen of the Jury: The prisoner at the bar stands charged before you with the wilful murder on the 19th of May last of this unfortunate man George H. Tucker. I have no doubt you heard me say to the other jury in the last case which was tried, which was a civil action, that the verdict of ten or eleven would be good, although one or two dissented from the opinion of the majority. In this case, which involves a charge of crime, your verdict must be unanimous one way or the other.

A great deal is said, and no doubt properly said, about the responsibility that attaches to the office of jurymen in a case like this. We all have our varying degrees of responsibility in the conduct of a trial like this. The learned counsel, the lawyer for the Crown and for the prisoner have their duties to perform in scrutinizing the evidence, cross-examining the witnesses, and presenting to the Jury and to the court such arguments as they think can properly be based upon the evidence as given in the witness box. The responsibility of the Judge is to see that there is no improper evidence submitted to the Jury, that no proper evidence is excluded from the Jury's consideration, and finally to address such remarks in explanation of the law and the facts as he may think proper to the Jury.

Now, I have been pleased to observe, gentlemen, the careful attention you have paid to the case, and as far as your own responsibility is concerned your responsibility

1 begins and ends in applying your minds to the evidence and
2 giving the verdict that you think is true and correct.
3 When you have done that you have no further responsibility,
4 you are merely the instrument of the law, and whatever
5 may happen to this prisoner as the result of your verdict
6 is not your responsibility. As I said before, your
7 responsibility is solely to apply your best intelligence
8 to the evidence that has been adduced before you.

9 The crime of murder, as has been stated, one of the
10 gravest crimes in the calendar,—not exactly the gravest,
11 because the law recognizes that there are certain forms
12 of treason ~~and~~ felony which rank higher as crimes, crimes
13 of greater magnitude even than the crime of murder; but
14 the crime of murder is the gravest offence which ordinarily
15 falls to the duty of a Jury to consider.

16 Murder consists in the unlawful killing of a human
17 being with malice aforethought express or implied. Malice
18 in law may mean several different things. It may mean
19 actual malice, where it has been proved that there is an
20 antecedent grudge or ill will between the person who has
21 been killed and the prisoner who is upon his trial. But
22 many other things constitute malice in law; for example,
23 the killing of a man with intent to rob, whether the robbery
24 is carried out or not; that is malice, because there is the
25 unlawful purpose, and the intent to kill the man.

26 The evidence in this case is of the nature known as
27 circumstantial; that is to say there is no direct evi-
28 dence of any human being who saw the crime committed.
29 It seldom is in the crime of murder. Where there is an
30 ordinary case of manslaughter, such as arises from a sudden

1 affray or quarrel between men, then there are generally
2 human witnesses; but where murder properly so called is
3 committed there hardly ever is any direct testimony, for
4 the simple reason that a man does not set about the
5 commission of the crime of murder where there is any
6 reasonable probability of any witness being present; and
7 therefore it follows that the crime of murder could
8 never be brought home to a man if ~~we~~ it were held to be
9 the law, or if juries thought that they wanted nothing but
10 evidence of some one who saw the crime committed. For
11 example, a very common form of murder is a man desires to
12 get rid of his wife, or a wife desires to get rid of her
13 husband. That is generally set about by means of poison.
14 Poison is procured, not in the next street from a drug
15 store, but from some distant place and the poison is
16 administered in a secret fashion. That is a very common
17 form of murder, and it is one, ⁱⁿ which as I said before,
18 unless the prosecution were at liberty to piece together
19 this piece of evidence and that piece of evidence, and then
20 to point to that to the jury and say "This constitutes
21 evidence that the prisoner is guilty," the crime of murder
22 could never be punished.

23 In this case the unfortunate young man was most bar-
24 barously and inhumanly murdered sometime in the afternoon
25 or evening of Sunday the 19th May. He was a powerful man,
26 and some argument has been based upon that. The doctor
27 says he was a man of magnificent physique, as fine a built a
28 man as he ever saw; a young man about twenty. Something
29 has been said about a struggle, and the possibility of a
30 man like the prisoner at the bar being able to overcome him.

1 He was struck by some one probably when he was sleeping,
2 and the first blow inflicted was the fatal one. He was
3 dead, according to the evidence of the doctor, within a
4 very few seconds from that first fatal blow. The rest
5 of the wounds were apparently inflicted out of sheer
6 cruelty and barbarity upon a body that was already dying
7 or dead; so that there is no argument about the physical
8 capacity of the man who was struck down when he was sleep-
9 ing, or at any rate unawares.

10 Now, as the learned counsel very properly said,—
11 because the counsel for the Crown has conducted the case
12 with great fairness, and the counsel for the defence has
13 conducted the case with great ability, handling to the
14 best of his ability the material at his hand.— both with
15 ability and with fairness has the Crown Counsel conducted
16 his case; and he put it very properly when he said to you,
17 when the Crown is endeavoring to bring home to a person
18 accused of crime, of which there is no living witness,
19 there are two things that are essential to be proved;
20 the first is the opportunity; the second the motive.
21 The motive may be easily dismissed. If you find upon the
22 evidence that these things were taken by the person who
23 committed the murder, the field glass and the wallet, and
24 that they were found by the Crown in the prisoner's valise
25 or suitcase, as they undoubtedly were, and if you find also
26 that they were placed there by him that supplies the
27 motive. Then as to the opportunity; there are three,
28 you will say probably, most reputable and apparently
29 credible witnesses who have given what you may find to be--
30

1 because you are the judges in this case of everything--
2 you may find to be fairly conclusive testimony of the
3 proximity of the prisoner to the scene of the murder at
4 about the time it might reasonably have been committed.
5 There is John Hunter. John Hunter is not one of the iden-
6 tifying witnesses, but he is one of those in the car, and
7 on Sunday "We all got up about 12; I left about 3 and came
8 back at 1 o'clock on Monday morning." He saw Tucker, the
9 unfortunate man, last about 1.30 on Sunday 19th May when
10 he left. Then there were doors in the car, one at the
11 end and one at each side. "I gave Tucker the key of the
12 side door on the town side. Tucker drew \$39 a few days
13 before on the 15th May. His board bill was \$14.73 which
14 he presumably paid and he sent home \$10 and bought boots
15 for \$5.00, and so if he paid the board bill he would have
16 about \$8 left, and if he did not pay it he would have
17 that much more."

18 Then William Hill, he left the car and returned about
19 10 P.M. and found poor Tucker dead in his bunk, and he
20 described how his trousers and underclothing, drawers,
21 were turned down about his feet, and the shirt turned up
22 over his head, the inference being, of course ^{according} to the Crown
23 Counsel, that the person who did that, having killed him,
24 was searching for money or for something. You are all
25 aware probably, I suppose, gentlemen, that sometimes
26 people do not carry money in their pockets. Sometimes there
27 is such a thing as a money belt, which people travelling
28 about the country use; so that you are asked to draw the
29 inference from that, that whoever committed that murder
30

E. NIELD, C.S.R.
OFFICIAL STENOGRAPHER

1 was searching for more booty or money than he actually
2 carried away. "Tucker was a very strong man. I went for a
3 doctor." William Hill is the man who missed the set of
4 field glasses which have been produced, and a bunch of keys
5 and they were there in that car on Sunday night; he identifies
6 the glasses as his.

7 Then it is proved that Tucker carried that little pocket-
8 book produced here, and it contained an identification card,
9 which card is proved by the agent of the insurance company
10 to have been issued by them, so that there is no doubt about
11 the identify of that.

12 Dr. Irwin's evidence I have already alluded to. He says
13 he was one of the finest men he ever saw, and that the fatal
14 wound was the first one, and that would cause death which
15 supervened within a very few seconds; the rest were inflicted
16 when the man was dying or after life had departed. He says
17 upon the appearance of his stomach he was killed probably
18 from an hour and a half to two hours after a meal.

19 Then we come to ~~one of~~ these gentlemen who claim to
20 identify the prisoner as having been in the vicinity.
21 Those three witnesses were Dalton, Blair and the conductor
22 Watson. You saw these men in the box; you will ask yourselves
23 whether they or any one of them look like men who would
24 come here deliberately to pledge their oaths to the identifi-
25 cation of this prisoner, the result of which would probably
26 be ^{to} send him to his doom, if they did not at any rate really
27 believe the evidence which they were giving. Here is Blair.
28 He is the caretaker of the Roman Stone. "Sunday night about
29 eight o'clock I was at the gate where the Grand Trunk track is.
30

1 "I saw the prisoner come up the steps and asked him was he
2 staying in those cars." You can take that plan and set
3 it out. He asked the prisoner if he was staying in those
4 cars. The position of the cars is marked on the diagram.
5 The prisoner said "No, no, no". He said he had a parcel
6 in his hand wrapped up in paper which he was trying to
7 put in his pocket, about the size of what the field glasses
8 would be if they were rolled up in paper. He seemed kind
9 of excited. He knows Dalton to see him; "saw him that
10 evening about half an hour before. He got the parcel"--
11 (the man whom he thinks is the prisoner)--"he got the
12 parcel into his pocket; he crossed the Grand Trunk, went
13 towards Main St. in the direction of Burk's Hotel."
14 This witness Blair was in the C.P.R. office a few days
15 afterwards and saw about twelve men being paid off.
16 "I saw the prisoner getting his cheque; I pointed him
17 out"--he pointed him out there without any suggestion
18 on the part of any one else, among twelve men. He has
19 marked on the plan "A" where he first saw him; he was
20 walking pretty quick. Before the Police Court he said he
21 did not seem to be in any hurry, but he was walking
22 fast he says now.

23 Dalton says he passed along a lane leading to the Roman
24 Stone Co. about twenty minutes to eight, and met a man
25 between the C.P.R. and the Grand Trunk tracks coming
26 from the Grand Trunk to the C.P.R. tracks. This he has
27 marked with a cross there where he met the man, and then
28 he has marked with a circle surrounding a cross where he
29 first saw the man. That was about 7.30 or 7.35 P.M.,
30 and that where the square is he stopped to call his dog, and

1 saw him up there at the triangle. "I am reasonably sure the
2 prisoner is the man; he looks very like him." Then he
3 identifies the hat which is produced here as like one he
4 wore.

5 Then Watson, the conductor of the Toronto Suburban
6 Railway, you saw Watson, you will probably think he is a
7 very respectable looking man. On the 19th May in the even-
8 ing he was in charge of the car. The terminus is at Burk's
9 Hotel. He starts back at ten minutes to the hour. A man
10 made a rush for the car either at ten minutes to eight or
11 ten minutes to nine at Burk's Hotel, He was the only
12 passenger. Then on cross-examination he says he saw this
13 man at the inquest and a week after. "I am positive that
14 is the man." He says, "This man never offered to get in
15 the car till I rang the bell"--waiting you see till the
16 last moment; and then he made a rush for the car. He
17 does not remember his clothes, only his face. "I am not
18 mistaken; the more I see of him the more I am sure".

19 Those three witnesses seem to speak with great positive-
20 ness about his being in the vicinity of the place at about
21 the time or shortly after the time when this dreadful
22 murder was committed.

23 As to these articles; these articles are admittedly--
24 there is no dispute whatever about the field glasses
25 being the property of Hill; there is no dispute about the
26 wallet being the property of the deceased. Money of course
27 cannot be identified. If he or any one else took money
28 away the money would be mixed up and could not possibly
29 be ear-marked in any way whatever; but as to these two
30 articles they were found in a valise or suitcase belonging

1 to the prisoner, admittedly now his suitcase, but which
2 he made strenuous efforts to deny the ownership of. It is
3 sworn positively that when he was confronted with that
4 suitcase at the boarding house he said it was not his. He
5 was asked where his was, and he produced one that belonged
6 to Sam Ali or somebody, and then he produced another which
7 was Mike Demo's, but none of them were his, but the one
8 in which these articles were found was undoubtedly his
9 property. He says today that he did not deny the owner-
10 ship; he only said that the clothes were not his.

11 Now, gentlemen, I have a remark to make about the
12 evidence of a person accused of crime. I was administering
13 justice according to the best of my ability for several
14 years before a person in the position of this prisoner
15 was allowed to give evidence. It was supposed for hundreds
16 of years, I was almost going to say thousands, but many
17 hundreds of years in the English law, that the temptation
18 for a man in the position of this prisoner here today to
19 say that which was not true was too strong or too great
20 to let him undergo that ordeal; so he not only could not
21 tender himself as a witness, but he was not allowed to
22 be a witness. He might make a statement, not under oath,
23 and not subject to cross-examination, which the jury might
24 consider or not as they chose; but I am only saying to you
25 that for so many years the law regarded the evidence of
26 a person who was in this position as being entirely
27 untrustworthy. Well, when you come to consider it, what
28 is there to prevent a man saying that which is not true?
29 The prosecution for perjury would weigh very little with
30 a man whose life is at stake. Mark you, I am not taking

1 anything from your consideration; you may believe his
2 statement if you think proper; but I am pointing out to
3 you the way the law has regarded the testimony of a person
4 accused of crime. But judged upon its own merits, what do
5 you think of his evidence today? What do you think of the
6 numerous contradictions which have been proved conclusively
7 about his statements of where he was in January and where
8 he was on this, that and the other days? They are contra-
9 dicted in numerous particulars. Of course the suggestion
10 is always made, that some one else put those things in
11 the man's suit case. That is for you to consider; there
12 is no evidence of it; it is a mere suggestion. And then
13 when you come to consider his own evidence about his move-
14 ments, on that Sunday what do you think about it; where
15 are those--if he went out to that meeting of his compa-
16 triots at about eight o'clock and stayed there--while there
17 were twenty or thirty of them, where are they today?
18 Where are these men who ought to say if he was there,
19 "Oh, that man could not have been out at Weston because
20 he was at that meeting. There were twenty or thirty of us
21 there; it was a meeting of our own nationality."

22 Now, gentlemen, it is for you to consider, and it is
23 said, and truly said, in all these cases, if a jury feels
24 doubt about the guilt of a prisoner it is the duty of
25 the jury to acquit him; but that doubt must be a doubt
26 which presses itself reasonably upon the mind of a
27 reasonable man, not a mere doubt which is conjured up
28 out of the imagination in order to try and justify your
29 conscience in arriving at a verdict which is not according
30

1 to the evidence. There is absolutely no proposition which
2 can be proved ~~absolutely~~ beyond doubt. Some people doubt
3 their own existence, some philosophers; but speaking broadly
4 there is no human proposition which can be proved beyond
5 a possibility of doubt. So I ask you not to allow the
6 mere scintilla of a doubt to weigh with you, if upon the
7 whole evidence you are satisfied that this man is guilty.
8 He belongs to a nationality known as Albanian. There
9 have been several of them here today, and you will observe
10 that they are apparently Mohammedans, and took the
11 oath according to their fashion, very much like our
12 Hebrew fellow citizens do, with the hat on their head.
13 Albania appears to be a province, as you may say, of
14 Turkey, on the coast of the Adriatic Sea, and extending
15 down to Greece, so that the nearest neighbors are Turkey,
16 of which it is a part, and Greece. That is where they
17 come from. Of course here they are entitled to all the
18 protection that any other citizen is entitled to, or any
19 other person who is here, as long as they will obey our
20 laws, and no longer. I am glad to hear the learned counsel
21 say that he had had a fair trial, and you are now the
22 ultimate judges about his fate. It is not for you to
23 consider the consequences of your verdict; you are only
24 to apply your best intelligence to the evidence which you
25 have heard and say whether he is guilty or not guilty.

26 Something has been said in the course of the argument,
27 particularly with reference to the evidence of Watson,
28 about being able to fix a date, saying that this man made
29
30

1 this rush for the car on the night of Sunday the 19th.
2 Witnesses are frequently cross-examined; "Well, how many
3 passengers did you have on the 20th; how many did you have
4 on the 27th, and so on." You will know this, that where a
5 dreadful occurrence like that takes place in a community
6 the mind of every one reverts to that; they say a man
7 was murdered in a boarding car last night, and the man
8 at once, if he is speaking honestly--I am assuming an
9 honest witness--his mind reverts, "Whom did I see last night?
10 Where" and so on. And so you wont find there is any
11 uncertainty or any want of credibility about a man being
12 able to say a thing happened on a particular night when it
13 was the night that was fixed in his mind ~~as~~ indelibly
14 by his hearing next day about the crime. The learned
15 counsel for the Crown has commented not only upon the
16 parts of the prisoner's evidence today which appear to be
17 thoroughly contradicted, I mean apart from the actual
18 occurrence, but on the incidental facts which appear to be
19 deposed to by him, which appear to be contradicted today
20 by other witnesses, ~~and~~ some of his own nationality. Then
21 when he is arrested he makes a statement voluntarily,
22 apparently, and in which it is claimed by the counsel
23 for the Crown there are numerous misstatements, statements
24 that now appear to be absolutely incorrect. The whole
25 issue is in your hands gentlemen; it is for you to say
26 whether under all the circumstances of the case there
27 exists in your mind such doubt of the prisoner's guilt as
28 would justify you in finding him not guilty. The Jury
29 may take all the Exhibits.
30

---The Jury retired. at 4.30 P.M.

1 ---At 5.40 P.M. the Jury returned a verdict, "Guilty."

2 HIS LORDSHIP: (To the Interpreter); Ask him what he
3 has to say why sentence of death should not be passed
4 upon him for the murder of which he has been convicted?

5 THE INTERPRETER: He says he is not guilty.

6 HIS LORDSHIP: Tell him that he has had a fair trial
7 and the Jury could not have come to any other conclusion
8 on the evidence but that which they have come to.

9 (The Interpreter interprets to the prisoner).

10 Tell him he was guilty of ~~a~~ most cruel and barbarous
11 murder with the object of robbing this poor boy.

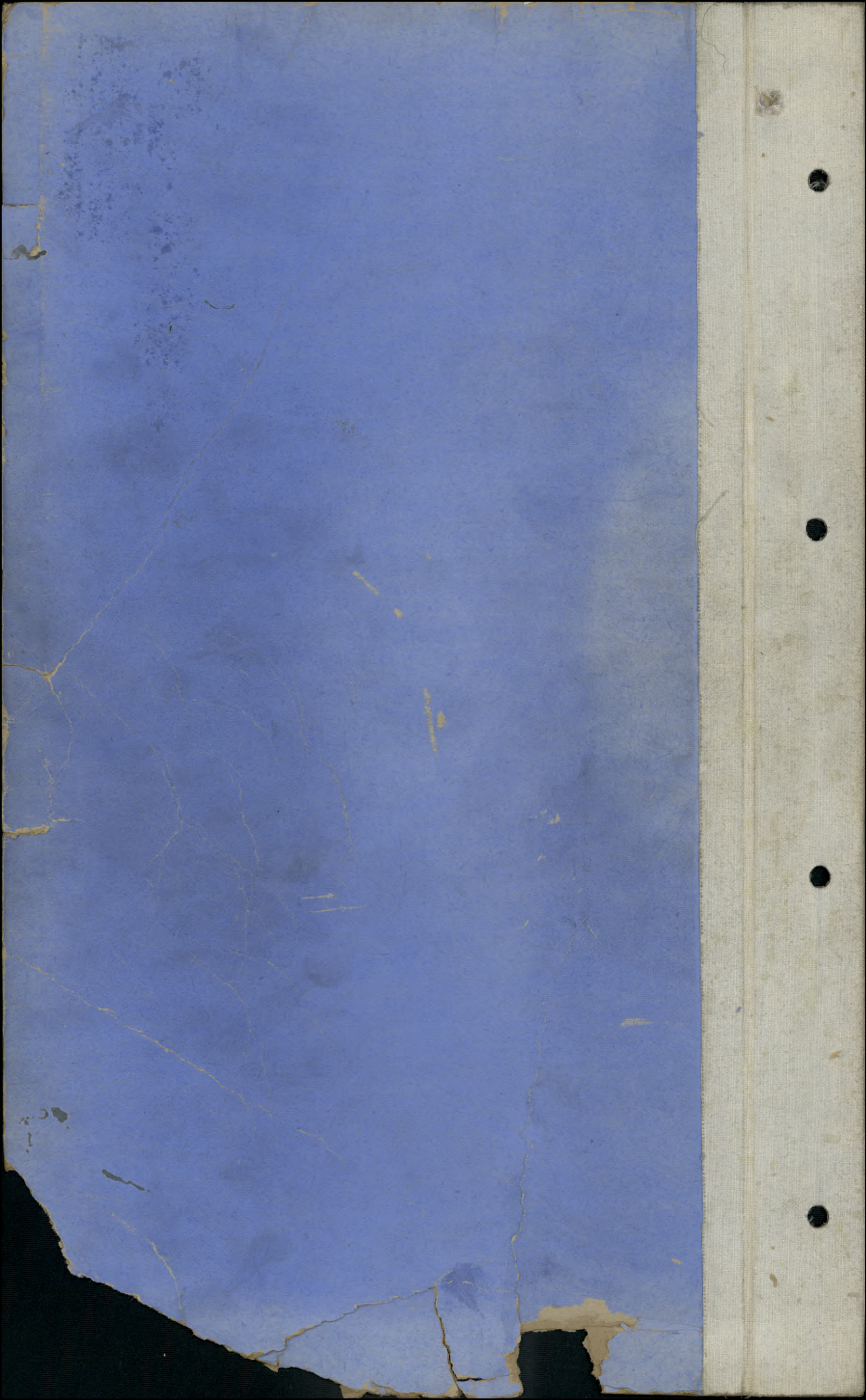
12 The sentence of the Court upon you Hassen Neby is
13 that you be taken hence to the place from whence you came,
14 and from thence on Friday the 3rd day of January you be
15 taken to the place of execution, and there be hanged
16 by the neck until you shall be dead; and may God have
17 mercy upon your soul.

18 -----
19 Certified a correct copy,

20 *E. Nield*
21

C.S.R.,

22 Official Reporter, S. C. O.
23
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29
30





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