

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

- and -

STEVEN TRUSCOTT

APPELLANT

THE APPELLANT'S COMPENDIUM

Volume 9

THE APPELLANT'S VIEW FROM THE BRIDGE

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Tab 1

Extract from the trial testimony of P.C. Trumbley, vol. 3A, pp. 1087-1089

Tremblay In-chf. 1087

1 returned again to the Truscott residence shortly
2 before five o'clock, and with Mrs. Truscott and
3 Steven, Corporal Lipscombe and myself, we
4 returned to the bridge and I asked Steven where
5 he was standing when he seen Lynne Harper get
6 into the car the night previous. With that,
7 Steven walked over and took up a position about
8 ten feet south of the north end of the bridge,
9 along the west railing.
10

11 Q. Pardon me before you leave that.
12 Were you present at a later date when Corporal
13 Erskine took certain coloured photographs from
14 that same bridge?

15 A. Yes sir.

16 Q. How did the position, where
17 Corporal Erskine stood to take those, compare
18 to the position indicated to you by Steven
19 Truscott on this date?

20 A. These pictures were taken
21 from the same position.

22 Q. Yes, Officer? Now, proceed
23 with the happenings on the Wednesday afternoon?

24 A. As I was standing in this
25 location, in this position, a grey car with
26 Ontario license passed over the bridge and
27 proceeded towards Number Eight Highway. I
28 fixed my eyes on the license plates, and as
29 the car drew further away towards Number Eight
30 Highway, the license plates kept getting smaller

Tremblay Incht. 1088

1 and when the car stopped at Number Eight Highway,
2 I couldn't see the license plates at all.

3 HIS LORDSHIP: Q. At Number Eight
4 you couldn't see the license plate at all.
5 Is that what you said?

6 A. Yes, my lord.

7 MR. HAYS: Q. Yes. Anything else
8 said by anyone in the group in the presence of
9 Steven?

10 A. Well, after that we were walking
11 overtowards the car, Mrs. Truscott stayed in
12 the car all the time, and I said I couldn't see
13 any license plates at all, and with that Mrs.
14 Truscott ----

15 Q. Pardon me before you say what
16 Mrs. Truscott said. Now, where was Steven
17 Truscott at that time?

18 A. Steven Truscott was walking
19 right beside me.

20 Q. So whatever Mrs. Truscott said,
21 was said in the hearing of Steven?

22 A. I would imagine. I had no
23 difficulty in hearing it.

24 Q. And you were alongside of
25 Steven?

26 A. Yes.

27 Q. What did she say?

28 A. Mrs. Truscott said: "Maybe it
29 was one of those yellow stickers like we have
30

1 on our car from Fairyland Gardens."

2 Q. And what, if anything, did
3 Steven Truscott say when his mother said that?

4 A. He didn't say anything.

5 Q. And what next --- if I might
6 have a moment. I show you Exhibit twenty-one,
7 Constable Tremblay, produced by Corporal
8 Erskine as having been taken by him from the
9 bridge, and as representing in black and white
10 one of the views shown in the coloured pictures.
11 Do you recognize that picture?

12 A. I was present when one picture
13 was taken.

14 Q. Were you present when that
15 picture was taken?

16 A. I am not sure, sir, whether
17 this picture --- I was only present when one
18 picture was taken, but it was the same view.

19 Q. I see. What day was it
20 you were with Corporal Erskine when pictures
21 were taken by him from the bridge, looking north?

22 A. I was present at the bridge
23 at 7:35 p.m., Monday, June the 15th.

24 Q. How did the position that
25 Corporal Erskine took up, in taking these pictures,
26 compare with the position taken by Steven
27 Truscott on the Wednesday?

28 A. Corporal Erskine was in the
29 same location, along the railing of the bridge.
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Tab 2

Extract from the trial testimony of Cpl. Erskine, vol. 1A, p. 82

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MR. HAYS: Q. This one?

Did you take it?

A. I did, sir. This is from the same location.

HIS LORDSHIP: Q. That is the north end of the Township Bridge?

A. That is correct, my lord, looking north. This time with the car bearing the Nova Scotia plates, slightly to the east of the intersection of Number Eight highway, a distance of 1250 feet.

---EXHIBIT "18" Photograph looking north from bridge.

MR. HAYS: Q. And this one? Did you take it? (produced).

A. My lord, I made a mistake. That previous photo was with the Quebec markers on the back of it and backed up into the intersection. I am sorry, my lord.

MR. HAYS: That is eighteen you referred to?

HIS LORDSHIP: Q. Instead of slightly east of the highway?

A. Instead of on an angle slightly east, it was backed up.

Q. Into what?

A. With the back parallel to the course of the road.

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Q. The Township road?

A. The Township road, my lord.

HIS LORDSHIP: Let me see the picture, please. (produced). I can't even see the car in the picture.

MR. HAYS: May I let the witness see that again?

HIS LORDSHIP: Yes, look at it.

MR. HAYS: Q. This is the one you are referring to, eighteen?

A. Yes, sir, that is with the car backed up, with the rear of the car facing the camera.

HIS LORDSHIP: Q. You can see the car, can you?

A. I can see the outline, my lord.

HIS LORDSHIP: The outline.

MR. HAYS: Q. You made reference of parallel to some road. What was your reference?

HIS LORDSHIP: Q. The car is parallel with the road. Up and down or across the road?

A. No, it is up and down the road, my lord.

MR. HAYS: Q. The Township road?

A. The Township road.

HIS LORDSHIP: Show it to the Jury.

Tab 3

Extract from Crown closing, vol. 4B, pp. 2030-2034

1 of chrome on it. There may have been
2 talk of a Bellair. But you have got a
3 pretty specific car being described by him,
4 and then the one thing he carried all the
5 way through, down through several interviews,
6 was that there was a yellow or orange license
7 plate, and this car was seen by him to stop.
8 This is when Lynne was down at the corner,
9 and Lynne got in the front seat, and he
10 added the particular: "There was no one in
11 the back." Gentlemen, I need not take
12 long with that because you are going to have
13 these pictures in the Jury room, and you know---
14 this is important, you know how they took
15 Steven out to the place and he pointed out a
16 spot where he was standing and then they
17 took pictures, in an attempt to see -- Constable
18 Tremblay and the others told how they couldn't
19 see. They couldn't see what he saw.
20 Remember, it wasn't just the yellow license
21 plate, it was no one in the back seat, and the
22 make of car and so on. Now I can see, it
23 isn't a car of conceding. I want to acknowledge
24 that some people know more about makes of
25 cars than others, and there may be some
26 variation in eyesight. There is all those
27 factors. And there may be a variation
28 on one night as against another. But to
29 be of as much assistance as to whether he was
30

1
2 telling the truth or not, these pictures
3 were taken. And Gentlemen, I refer you --
4 and it would appear, I think you will find
5 from recalling the evidence and looking at
6 these pictures, that a real effort was made
7 to put the license plate in a place that
8 could be seen, as favourably as possible.
9 In other words, if this girl were standing
10 on the south side of Number Eight and
11 another car comes from Clinton who are
12 proceeding to Seaforth, and it turns in,
13 swinging its rear to the south, at least on
14 an angle, it sure wouldn't put its rear right
15 out, that isn't just done, but I think you will
16 agree those pictures were taken to duplicate
17 the movement of a car in the manner in which
18 it could be expected to have been manoeuvred
19 to give the best break anybody on the bridge
20 could have to see what he claims to have seen.
21 Now, they seem to have found that Nova Scotia
22 has yellow license plates and Quebec is orange.
23 Now, I don't know whether you would expect
24 them to be any fairer than to get those. Maybe
25 some States in the United States have them, too.
26 I don't know. But in any event, they got
27 a 1959 Chevrolet, Bellair, grey and so on.
28 There seems to be lots of chrome. Now,
29 what better can they do than that? Well
30 there, Gentlemen, I show you a car at the corner

1 on the angle that you discern, with the
2 Nova Scotia plates. I refer to Exhibit
3 sixteen, with the Quebec plates. And then
4 from a position on the west side of the bridge,
5 they took pictures showing the car in its
6 respective positions. The next one I show
7 you, Gentlemen, I am referring to Exhibit
8 seventeen, shows a car, I believe in the first
9 of those positions, with the Nova Scotia plate.
10 You will be able to figure out whether you
11 can see anything, a sticker or otherwise.
12 I refer to nineteen, with the car in the same
13 relative position, with other plates, and here,
14 too, with the car backed on to the south.

15 Now, I think there was some reference
16 made, and it may be that there was some
17 evidence - - reference and argument, and there
18 may be some evidence that a black and white
19 picture would be more favourable, and that
20 is Exhibit twenty-one. It duplicates one
21 of those concerned.

22
23 HIS LORDSHIP: Mr. Hays, I
24 think we should break off now for lunch.

25 MR. HAYS: Very well, my lord.

26 HIS LORDSHIP: You will be very
27 careful, Gentlemen, at the adjournment,
28 that you will not let anyone contact you
29 in any possible way. Please don't make
30 up your minds now. Swear the Constables.

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---Two Constables sworn to attend the Jury.

---Jury retired.

---Accused retired.

---Whereupon the further proceedings were
adjourned at 1:00 p.m., until 2:30 p.m.

---Upon resuming at 2:30 p.m.

---Accused returned.

---Jury returned, polled, all present.

HIS LORDSHIP: Mr. Hays?

MR. HAYS: My lord, Gentlemen of
the Jury, just before the recess I had passed
among you, or you passed among yourselves,
certain pictures of the car down at the corner.
I do not feel I need to labour that further.
It is just one more point, an instance, I
suggest, of guilty behaviour on the part of
the accused in telling, what I suggest, is
not so, therefore indicative of guilt and
also is going against his basic story of
taking this girl to the highway.

1
2 Now, along the same line, as to
3 whether or not he took this girl down to the
4 highway, and his one statement to Constable
5 Hobbs quoted Steven as saying that he took
6 her down at seven, seven-thirty, and then I
7 believe Constable Tremblay's interview with
8 him was that he got her to the highway
9 at seven-thirty, and then a grey Bellair
10 Chev coming along, and her hitch hiking
11 and her being picked up and Steven back at
12 the bush -- pardon me, the bridge, watching
13 all this. Now, Gentlemen, just one thing
14 before leaving that car and the ability to
15 see. Don't confine your observations to
16 these pictures entirely to that license.
17 Ask yourselves also the question as to whether
18 or not he could see that there was no one in
19 the back seat of that car, and that maybe
20 clearer, in a negative way, than even the
21 license.

22 Now, on this question of whether,
23 or not he took Lynne down and left her off
24 at seven-thirty. You will probably recall
25 the evidence of Teunis Vandendool.

26 I wonder, my lord, if I might have
27 Teunis Vandendool step in?

28 This, Gentlemen, is the witness
29 I refer to, that you heard testify.

30 HIS LORDSHIP: All right.

Tab4

Re-Charge to the Jury, vol. 4B, p. 2263

Jury present 2263

1
2 understand the point is that his theory
3 is that food took three and a half hours from
4 a quarter to six to leave the stomach, that
5 she must have died at a time later than the
6 time that Steven was at the river, that she
7 must have died after Steven came home, and
8 therefore, it couldn't be Steven who killed her.
9 That is what the theory of the defence is.
10 I am not going to go over all the evidence
11 again.

12 I made an error in telling you
13 that the number Steve gave of the car, was the
14 car on Number Eight Highway. This was a car
15 on the county road, but it was not the car on
16 Number Eight Highway. You will recall the
17 Police went down and took photographs of the
18 car, took photographs of the road with a
19 car at the end of the road, and a car at
20 Number Eight Highway, and they ask you to find
21 from that and from the evidence of the Police
22 officers, themselves, that it would have been
23 impossible to have seen the license plate of
24 the car from the bridge and therefore, the
25 story told by the accused is a fabrication.

26 Now, I overlooked an important
27 point. Doctor Addison and Doctor Brooks
28 examined this boy physically at the Guard
29 House on the night of Thursday, the 12th,
30 late at night. In fact, it was really

Tab 5

Crown's submissions on the Reference in 1966, pp. 303-307

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MR. JUSTICE HALL: You wait until after he had served his full term or until after he had served part of the term and was out before he applied to the Court to extend the time for appeal, because if he had pursued the appeal the Parole Board would not talk to him.

MR. BOWMAN: My lord, that is a rather shocking proposition.

10
MR. JUSTICE HALL: Shocking or not, it is the fact.

MR. JUSTICE MARTLAND: Had the motion for leave to appeal been disposed of by the time that letter was written?

20
MR. BOWMAN: Yes, the motion for leave to appeal to this Court was disposed of in February, 1960.

MR. JUSTICE RITCHIE: The Haggerty letter went forward at the same time as the Truscott letter?

MR. BOWMAN: Yes, on the 24th. They were all put together by somebody.

30
MR. JUSTICE SPENCE: And you think the classification officer would not see the application for parole made by a person as to whom he was reporting?

MR. BOWMAN: One would think that he would.

MR. JUSTICE SPENCE: Would it be possible to consider that he would not? He would have no business reporting unless he had seen the final document on the case on which he was going to report.

40
MR. BOWMAN: If the application is accepted by the Court, my lords, as a confession, this would appear to be conclusive. If it is not, then, in my submission, this simply amounts to another indication that Truscott will and did say anything that might suit his immediate purpose, whether it was true or whether it was false.

Now, if I may deal with the evidence re-

W.C. Bowman - Arg.

1 lating to the licence plate, in support of this story that Lynne Harper had hitch-hiked on No. 8 Highway, Truscott described the automobile involved as a 1959 Bel Air Chevrolet, grey in colour, with lots of chrome, and appearing to have a yellow licence plate.

10 With respect to this, Provincial Constable Hobbs interviewed Truscott on Wednesday morning, early, and Truscott at that time said that when he got to the bridge he looked back and saw her -- that is, Lynne Harper -- getting into a late model Chevrolet.

And then later, at 12.20 p.m. on the same day Truscott said that the car stopped, turned off the paved portion of the road, into the southerly portion of the highway, off the paved portion, and stopped, and when it stopped it was facing north-east.

20 Then he made another statement at 7.00 p.m. to the effect that he had seen a grey Bel Air Chev. with yellow licence plates "pull in off the highway and stop." Those are the words that he used in describing the movements of the automobile when it came to a stop at the County Road.

30 Then, shortly before 5 o'clock on the same day Constable Tremblay had taken Truscott and Truscott's mother down to the bridge to acquire more detail about Lynne Harper going away in the automobile. From the bridge Tremblay noted that he could not see any licence plates on cars proceeding along No. 8 Highway, and also that when a car with black and white plates proceeding north reached the highway, he could no longer see the licence plates.

40 Truscott heard him say that, and Truscott said nothing; he made no comment whatsoever. And, in my submission, my lords, this is a point -- whether a person be a 14-year old boy or an older person -- at which he would immediately say, "Well, I did see the plates on this car," but Truscott said nothing and, apparently, simply accepted the statement of the police officer as something completely ordinary.

With respect to the visibility of the licence plate from the bridge, certain tests were made by LaBrash, Andrews and Parrish, who were called to

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give evidence on the Reference. A car was placed by them on the County Road at No. 8 Highway, as shown in Exhibit 8. I would ask your lordships to refer to Exhibit 8.

MR. JUSTICE RITCHIE: To what exhibit are you referring?

10

MR. BOWMAN: Exhibit 8. It is a photograph of the vehicle used by Messrs. LaBrash and Parrish in making the test as to the visibility of the licence plate.

CHIEF JUSTICE TASCHEREAU: Exhibit 8?

20

MR. BOWMAN: R-3, Exhibit 8, my lord. It is a photograph of a car at the corner, and I would ask your lordships to note that this car appears to have been placed in the precise position where the rays of the sun were coming from the west and, according to the shadow, pretty directly along No. 8 Highway. The rays hit the licence plate at an angle which would cause the reflection to go directly down the County Road toward the bridge; and that, of course, would be the best position the licence plate could be in acting like a mirror down the road to make it distinguishable or visible at all.

30

Mr. LaBrash, in giving his evidence, said it was unlikely that anyone picking up a hitch-hiker would get his car into the position the car was in. He said that he did not himself attempt to do so in proceeding east, as he did. He went by the intersection, and then backed the car in.

He said -- and I quote from his evidence:

40

"... you have to back around to get it into this position."

Truscott's statements, including his evidence on the Reference, indicate that this car took the normal path that a person would ordinarily take in picking up a hitch-hiker on the side of the road, that it swerved in off the road onto the shoulder and stopped.

306:
W.C. Bowman - Arg.

1
Now, my lords, the manoeuvre would get the car facing nowhere close to a north-east direction, unless the car were backed in, and Truscott has said nothing about the car backed in, but just described it as swerving in off the highway and picking up the little girl and going away.

10
It is my submission, and particularly with some emphasis on the fact that Truscott apparently accepted without comment Constable Tremblay's statement that you could not see a licence plate, or he could not see a licence plate at the highway ---

20
MR. JUSTICE SPENCE: It was probably quite true. In the first place, Tremblay couldn't see because Tremblay did not have Truscott's eyes; and, in the second place, it was a black and white licence plate on a dark car. I would have been surprised if Truscott had admitted that he could not see the yellow plate, a 14-year old boy. As you leave the building look a quarter of a mile east and see if you can tell the yellow plates on the Quebec cars parked around here.

30
MR. BOWMAN: That is quite so, my lord, but we are dealing with this specific case. Truscott is being taken up there to describe what he saw. It is true they were not talking about a yellow licence plate, but it is implicit in the officer's evidence he had some doubt you could see any licence plate.

MR. JUSTICE SPENCE: I would not read that into his evidence.

MR. BOWMAN: But on the whole of the evidence, my lords, it is my submission that Truscott again concocted this story about seeing the Bel Air car with the yellow licence plate.

40
MR. JUSTICE HALL: Mr. Bowman, should any significance be attached to the fact that amongst the witnesses the Crown indicated it wished to call, there is a number who did not give evidence on this point?

MR. BOWMAN: I cannot at the moment think of any witnesses --- oh, I am sorry.

1 MR. JUSTICE HALL: Witnesses listed to be called in connection with this point who were not called?

10 MR. BOWMAN: My lord, the witnesses we had indicated our intention to call, their evidence was pretty well similar to that of the witnesses that were called on behalf of Truscott, particularly with respect to the position in which the car had to be if the licence plate were to be seen.

20 MR. JUSTICE SPENCE: Let us take this position. I suggest to you that any guessing by LaBrash or by Constable Tremblay or anyone else can only be an approximation of the movement that car made, if there was a car there and it made the movement. And, secondly, after the car starts, in order to get back on the pavement it may well have taken the course pretty well that shown in R-8.

MR. BOWMAN: I suppose, my lord, it is a matter of inference, but it would be a pretty severe turn, to get out in a north-easterly direction on a busy highway, to run a car nose out.

MR. JUSTICE SPENCE: If you find there is no following traffic, the faster you get out onto a pavement and get along on it, the better.

30 MR. BOWMAN: I would have thought the normal thing is to drive along the shoulder and ease onto the road. In my submission, it would not only be faster but more practical.

MR. JUSTICE ABBOTT: We can all assess this, I think, Mr. Bowman.

MR. BOWMAN: Thank you, my lord.

40 Truscott's story was supported by Logan and Oates. These were two witnesses called for the Defence at the trial. Logan, aged 13, as your lordships have heard, said that he was at the swimming-hole, standing on a rock. This was some 642 feet from the bridge, according to Constable Tremblay. He was standing there about 7.30 p.m. on June 9th, when he saw Truscott and Lynne Harper cross the bridge proceeding north.

Tab 6

Extracts from the S.C.C. judgment, pp. 326-237, 406-409

river. He denied that he had seen Mrs. Geiger or Paul Desjardine during the course of that trip and said that he did not remember any of them giving evidence at his trial. He denied having seen either Robb Harrington, who was with Geiger, or Ronald Demaray, who says that he was at the bridge while Truscott was there. These were all people who gave evidence that they met him and described his movements on the road between 6.30 and 7.00 p.m.

He denied that he had met Gellatly on the highway and said that he did not remember telling the police that he had met Gellatly. At the trial Gellatly's evidence had not been challenged on cross-examination.

He denied that Arnold George came to his house at 8.30 p.m. on June 9 and that he had any conversation with George at any time during that evening. This was the occasion when George said that he had heard that Truscott was in the bush with Lynne and when Truscott had replied that he was on the side of the bush looking for a cow and a calf.

He denied that he had any conversation with George the following evening, Wednesday, June 10. This is the occasion when George said that he had agreed with Truscott to tell the police that he, George, had seen Truscott at the bridge on Tuesday evening.

Truscott told the police that when Lynne entered the car at the highway intersection, it was facing northeast and that he could see the colour of the licence plate when he was standing on the bridge looking towards Highway No. 8. The police questioned this. Constable Tremblay, Ontario Provincial Police, stood on the bridge on Wednesday, June 10, with Truscott and his mother. From the bridge Tremblay noted that he could not see any licence plates on cars proceeding along Highway No. 8 and also, that when a car with black and white plates travelled north on the county road and reached the highway, he could no longer see the licence plates. The bridge is 1,300 feet from the highway intersection. A photograph was introduced which seemed to support the police evidence.

On the reference this photograph was described as being highly distorted and not representing what could be seen by the human eye standing where Truscott said he was

standing. Also on the reference, evidence was given by a team of private investigators who had various colours of licence plates that identification of colour could be made from the bridge. The Crown did not introduce evidence to contradict this.

In the final argument, Crown counsel said he accepted the evidence such as it was. His criticism of the evidence was that on the admission of the witness who drove the car, it could only be placed in the position where it was photographed by driving east across the intersection, stopping and backing up to place the car in a northeasterly position where it would catch the late afternoon sun, and that no car travelling from west to east would get into that position in the way Truscott described to pick up a hitch-hiker standing on the southeast corner of the intersection. The evidence given on the reference proves no more than this, that if a car is placed in this position at a certain time with the sun shining on the licence plate, an investigator standing at the bridge and knowing what he was looking for could identify colours, but not entirely without error.

The evidence at the reference upon this topic would seem to weaken the Crown's submission to the jury as based on the evidence adduced at the trial that Truscott could not have seen from the bridge what he alleged he had seen, i.e., that Lynne Harper entered a 1959 grey Bel-Air Chevrolet with a yellow licence plate, as it would seem that if that car had been in the one position in which the vehicle used by the witness LaBrash to carry out his test had been placed, Truscott could have made such observation. The purpose of that evidence at trial, however, was to attack the credibility of Truscott on this important part of his defence. Since the evidence was given at trial, Truscott has testified on the reference. We refer herein to the parts of his testimony which simply cannot be believed. In such circumstances, the evidence given at the reference in relation to the possibility of making the observation of an automobile so placed becomes of much less importance.

The body of Lynne Harper was found on Thursday, June 11, 1959, at 1:45 p.m., in Lawson's bush some distance in from the tractor trail. The evidence strongly pointed to this as the place where she was raped and murdered. We have

the going back and forth across the bridge is of very little importance—very little importance, because the question is, did he kill her? That is the point in this case. If there is any other help I can give you, don't hesitate to ask me, Gentlemen, but that is all I can say about it now.

and still later when the jury was recalled a fourth time:

His Lowskur:

Bring the Jury back, please.

...Jury returned.

His Lowskur:

I dislike having to bring you back so often and interrupt your deliberations, but I do it only at the request of Counsel.

I told you when you were last out here, that if Steve brought Lynne back across the bridge, if he brought her back across the bridge, it doesn't make much difference whether he went over the bridge or not, but there is, of course, no eye witness that says that he did. No eye witness said that Steve and Lynne came back from Number Eight Highway, across the bridge, although there is Allan Oats and Logan who say that they saw Steve on the bridge alone. Logan saying five minutes after he went north he came back alone. Somebody brought her back some time. Somebody brought her back some time.

This introduction of the idea or theory that Truscott may in fact have taken Lynne to Number Eight Highway and brought her back to the bush had not the slightest foundation in the evidence or in any inference which could be drawn from the evidence. It came wholly out of thin air. The Crown's case was that Truscott had not taken Lynne to Number Eight Highway at all.

These redirections, particularly in view of the Foreman's question as quoted above, must on any objective reading of what was said, compel acceptance of the argument that the most vital issue in Truscott's case was actually withdrawn from the jury's consideration at this late time in the trial when they were told:

I told you when you were last out here, that if Steve brought Lynne back across the bridge, if he brought her back across the bridge, it doesn't make much difference whether he went over the bridge or not, but there is, of course, no eye witness that says that he did.

and coming as it did after the learned judge had said in his charge:

Now you see, if the accused boy drove or rode Lynne Harper to Number Eight Highway, then you must ask yourselves who brought her back, because somebody brought her back. Somebody brought her back. Is it possible that the accused brought her back? You will ask yourselves and you will ask yourselves the reason, if this boy is guilty, why he has shown such calmness and apathy. Is it because there is an element of truth in his

story, that he took her to Number Eight Highway, because somebody brought her back. Did he bring her back, if he took her?

Rs:
Truscott

The reference to 'apathy' in this passage by the learned judge was purely gratuitous. The word itself or a condition or conduct so describing Truscott does not appear in the evidence. It had been urged that his appearance and conduct were normal. The learned judge wrongly transposed 'normal' into 'apathy'. The dictionary definition of 'apathy' is 'insensibility to suffering or feeling'. 'Apathy' in relation to the crime in question here was a description highly damaging to the accused.

As previously mentioned, it was urged as a defence that Lynne had not been killed where her body was found. I have already expressed my view on this branch of the case. I think the jury was entitled on the evidence before them to find against this contention. But it was a defence open to the accused on the evidence and which had to be left to the jury. Here again, in my view, the learned judge withdrew that defence from the jury when in his charge he said:

The Defence theory, what the Defence asks you to believe, is that she was attacked elsewhere and brought back dead. That she was attacked elsewhere, killed some place else. That theory, of course, is contrary to the medical evidence which says she bled at the place where she was found dead. She bled there and she could not have bled there if she were dead. If she was dead there would be no bleeding.

When Truscott returned to the school yard about 8:00 p.m. on June 9th, he was asked by Warren Hatherall, "What did you do to Lynne Harper—throw her to the fish" to which he replied, "No I just let her off at the highway like she asked." The following morning Lynne's father came to the Truscott home at 7:30 a.m. to inquire if the Truscott boys had seen Lynne. The older boy Kenneth said "No". Then Steven said "Yes, I took her to the corner on my bicycle and she hitched a ride on number eight highway". Later that same morning at 9:30 a.m., Truscott was interviewed by the police and he told the police that he had picked Lynne up outside the school the evening before between seven and seven-thirty; that Lynne told him she may go to see the people in the little white house on the highway and that she had to be home at eight or eight-thirty. He also said that having left Lynne off at number eight highway he cycled back to the bridge and while there

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looked back and saw her getting into a late model Chevrolet, which had a lot of chrome and could have been a BelAir model. He also said it appeared to have a yellow licence plate. He was interviewed several times in the next few days and told the same story, adding some details as he was questioned more closely.

The Crown took the position that Truscott was lying as to his movements after he reached the Lawson bush area on the county road. Accordingly, a great volume of evidence was tendered and received to convince the jury that Truscott was lying and that he had not gone any further north on the county road than the tractor trail at the north limit of Lawson's bush. No objection can be taken to this procedure because the Crown had the burden of establishing beyond a reasonable doubt that Truscott had taken Lynne into the bush and there murdered her, in other words, to translate Truscott from the situation that he had had the opportunity to commit the crime into the certainty that he was the only one who could, in the circumstances, have done so.

It was for the jury to weigh that evidence. In the evidence so to be weighed was the vital question whether in fact Truscott could have seen and recognized a Chevrolet BelAir car with a yellow licence plate. Truscott insisted to the police that he had. The police evidence at the trial supported by photographs was that licence plates could not be seen from the bridge, where Truscott said he was when he said he saw Lynne get into the car. On the evidence which the jury then had, the jury could reasonably have believed that Truscott was lying in saying that he saw a yellow licence plate. However, in referring to this important point, the learned judge confused the statement by Truscott to the police that he had seen a yellow licence plate with the statement made in respect of the old car with Licence No. 981,666. In his charge to the jury dealing with being able to see a car on number eight highway from the bridge, he said:

The boy was asked by the Police, naturally, what happened, and he told the Police that he took her down to Number Eight Highway. He repeatedly told the Police that, and she got in a car. The Police took him down to the bridge and he pointed the spot where he was standing on the bridge, and the bridge is thirteen hundred feet south of Number Eight Highway, and they conducted certain experiments there to demonstrate that not only was it not possible, according to the police testimony, to see

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the numbers on a licence plate, but that you couldn't distinguish the licence plate at thirteen hundred feet. You heard the officers testify that that couldn't be seen.

Now, you have to regard, of course, for the differences in ages and the possibility that a man at age forty has not as good eyesight as a boy aged fourteen. The Crown asks you to say that the story is a fabrication because you couldn't see the licence plate, much less could you read the numbers at that distance. And if he brought her back, if it was he who brought her back, it doesn't matter much. It doesn't matter much and later said:

The Crown submits the story about going away in a car is a complete falsehood because you couldn't read the licence plate from the distance that Steve says you could read it....

When Defence Counsel drew the error to the learned judge's attention, he recalled the jury and said in part:

I made an error in telling you that the number Steve gave of the car, was the car on Number Eight Highway. This was a car on the County Road, but it was not the car on Number Eight Highway.

That would have corrected the error effectively, but having so corrected the mistake, he continued:

You will recall the Police went down and took photographs of the car, took photographs of the road with a car at the end of the road, and a car at Number Eight Highway, and they ask you to find from that and from the evidence of the Police officers, themselves, that it would have been impossible to have seen the licence plate of the car from the bridge and therefore, the story told by the accused is a fabrication. neutralizing the correction he had made by inviting the jury to conclude from the photographs and the police evidence that no one could have seen the licence plate at that distance and in consequence Truscott's story was a fabrication.

On the reference in this Court it was shown that a yellow licence plate on an automobile at the intersection of number eight highway could be seen from the bridge if the car was in a certain position at the intersection. The Crown did not attempt to controvert this evidence. I am bound to say that had the evidence given on the reference regarding what could be seen from the bridge and concerning the unreliability of the photographs used by the Crown on this point been before the jury in the first instance, the jury could reasonably have taken an entirely different view of Truscott's story as put in evidence by the police and of his credibility.

At the trial the Defence stressed that Truscott could not have raped and murdered Lynne in the forty-five minute

Tab 7

P.C. Hardy's Report of July 15, 1966

0-2346

Goderich Detachment,
July 15th., 1966.

Inspector A. Ferguson,
Ontario Provincial Police,
Criminal Investigation Branch,
General Headquarters,
Toronto, Ontario.

Sir:

Re; Observations made between 7:00 P.M. and 8:00 P.M., Thursday,
July 14th., 1966 from bridge over Bayfield River on Sideroad
35 & 36, Tuckersmith Township, Huron County.

Test No. 1
:01 P.M.

Grey 1959 Chevrolet came from # 8 Highway West, pulled past
sideroad 35 & 36 onto South shoulder, backed up into the sideroad,
stopped momentarily, pulled out to # 8 highway, hesitated briefly
and proceeded East on # 8 highway. Unable to determine if vehicle
was coach or sedan and, unable to determine number of occupants
or colour of rear number plate, if any.

Test No. 2
:08 P.M.

Grey 1959 Chevrolet came from # 8 highway West, pulled past
sideroad 35 & 36 onto South shoulder, stopped, backed up into the
sideroad where it hesitated momentarily, then proceeded East on #
8 highway. Observed an orange coloured rear marker plate on the
vehicle. Unable to determine if vehicle was coach or sedan, and
likewise unable to determine number of occupants. Totally unable
to distinguish any numbers or colour of same on rear marker.

Test No. 3
:21 P.M.

Grey 1959 Chevrolet came from # 8 highway West, pulled past
sideroad # 35 & 36 onto South shoulder, stopped, backed up into
the sideroad, hesitated momentarily and then proceeded East on #
8 highway. Number plate on rear of car appeared to be orange.
Still unable to determine if vehicle was coach or sedan and like-
wise, unable to determine number of occupants. At the time of this
observation, another car, description unknown which had been proceed-
ing North on # 35 & 36 sideroad stopped at # 8 highway and turned
West. A light blue coloured car, unable to note make or model, with
yellow license plate came from # 8 highway to West, turned South on
sideroad # 35 & 36 and passed my observation point and, as result,
I moved to the East half of # 35 & 36 sideroad in order to obtain
an unobstructed view of the 1959 Chevrolet. Totally unable to disti-
nguish any numbers or colour of same on rear marker.

Test No. 4
:30 P.M.

Grey 1959 Chevrolet came from # 8 highway West, pulled past
sideroad # 35 & 36 onto South shoulder, stopped, backed up into the
sideroad and, as the rear of the 1959 Chevrolet was pointed directly
at the Sun when backing into the sideroad, I observed the rear
number plate to be either orange or possibly yellow. At the time of
this observation, there was a dark coloured car that came from # 8
highway West and turned South on # 35 & 36 sideroad. Unable to deter-
mine if the 1959 Chevrolet was coach or sedan and likewise unable to
determine if vehicle was coach or sedan. At the time of this obser-
vation there was a man dressed in white shirt and dark trousers who
was accompanied by a small boy, unable to offer further description
of their clothing, both of whom were riding bicycles South on # 35 &
36 sideroad, unable to offer further description of the bicycles,
both of which, by the time I made note of them, were very close to
the bridge I was observing from. Totally unable to distinguish any
numbers or colour of same on rear marker.

(continued page two)

Test No. 5
7:46 P.M.

Grey 1959 Chevrolet came from # 8 highway West, pulled onto the South shoulder past # 35 & 36 sideroad, stopped, backed into sideroad # 35 & 36 and stopped at what appeared to be a point South of the Stop sign located on East side of # 35 & 35 sideroad at # 8 highway, and stopped momentarily, pulled ahead, turned toward the East and again stopped very briefly and then proceeded East on # 8 highway. At this time, I was unable to discern any colour of the rear marker or absence of a rear marker if such was the case, on the rear of the vehicle. I was still unable to determine any description or number of occupants.

Test No. 6
7:56 P.M.

Grey 1959 Chevrolet came from # 8 highway West, pulled onto South shoulder of highway and stopped past sideroad # 35 & 36 and stopped, at a point which to me, appeared to be farther East than the previous stops, then backed into sideroad # 35 & 36 and stopped at a slight angle to the sideroad, the front of the car being pointed more to the West than the previous occasions. At this time I was able to observe that the vehicle has one occupant, unable to determine if male or female. At the time the vehicle stopped in the sideroad, I also observed a white license plate on the rear of same. When the 1959 Grey Chevrolet was stopped on # 35 & 36 sideroad facing generally North, a dark coloured car came from # 8 highway West, turned South on # 35 & 36 sideroad, and, as the result, in order to obtain an unobstructed view of the 1959 Chevrolet, I moved to the East half of # 35 & 36 sideroad to continue my observations. The 1959 Grey Chevrolet pulled out toward # 8 highway and again hesitated momentarily and then proceeded East on # 8 highway. Unable to distinguish any numbers or colour of same on rear marker.

Note:

During the time the aforementioned observations were made, the sun was completely visible 100% of the time. I did however, note very light diffused clouds in the sky to the South-West, however, this cloud formation was at all times, below the level of the sun.

Respectfully submitted,

C.A. Hardy
C.A. HARDY, S.P.I.

HER MAJESTY THE QUEEN v. TRUSCOTT

COURT OF APPEAL FOR ONTARIO

APPELLANT'S COMPENDIUM
VOLUME 9
THE APPELLANT'S VIEW FROM THE
BRIDGE

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