

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

- and -

STEVEN TRUSCOTT

APPELLANT

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**APPELLANT'S COMPENDIUM**

**Volume 14**

**REPLY**

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Tab 1

1 Lawson, Lot 35, Concession 2,  
2 Tuckersmith in the Province of  
3 Ontario on the 11th of June, 1959  
4 about 40 hours after death."  
5

6 Now, a quick -- a quick math, Mr.  
7 Manning, would mean that that would mean that Dr.  
8 Penistan in those notes, which we're assuming were made  
9 at the time of the autopsy, would mean that he was fixing  
10 the time of death at about 12:45 a.m. on June the 10th.  
11 Did you ever see these notes, sir?

12 A. No, I didn't.

13 Q. Were you ever aware, sir, of the  
14 fact that Dr. Penistan in his original notes had made  
15 such an estimate of time of death?

16 A. No, I didn't.

17 JUSTICE DOHERTY: Sorry, Mr. Lockyer,  
18 we went through this yesterday and I'm a little confused.  
19 Now, is it 40 hours from when the body is found?

20 MR. LOCKYER: No -- yes, sorry, from  
21 4:45 in other words.

22 JUSTICE DOHERTY: So we go backwards  
23 from 4:45?

24 MR. LOCKYER: Which means you add eight  
25 to 4:45.

JUSTICE DOHERTY: I know how to do it.

1 ~~From when the body was found?~~

2 MR. LOCKYER: Correct, yes.

3 BY MR. LOCKYER:

4 Q. Did you ever hear any talk of this  
5 amongst the Crowns that Dr. Penistan had originally  
6 estimated the time of death at around 12:45 a.m. on June  
7 10th?

8 A. No, I don't recall that.

9 Q. And would it be fair to assume that  
10 you likely would remember it if you had heard that?

11 A. That's correct.

12 Q. And perhaps it goes without saying  
13 that this information, I might add that this part of what  
14 I've read to you to all appearances is actually in Dr.  
15 Penistan's handwriting, the balance of the report being  
16 Dr. Brooks' handwriting, perhaps it goes without saying  
17 would be important information for Mr. Justice Martin to  
18 have had in 1966 and the Supreme Court of Canada to have  
19 had too?

20 A. If he didn't have it, absolutely.

21 Q. Um-hmm. And presumably you were up  
22 enough on the pathology of the case that you would likely  
23 have -- do you think in the normal course of events if it  
24 had been known that he had made this original prediction  
25 that you would have been aware of it?

1 A. Yes, and if Mr. Bowman had had this  
2 document, I'm sure I would have been made aware of it.

3 Q. And this is the document, you'll  
4 recall, that was referred to at the trial by Dr. Penistan  
5 and was requested in writing by Mr. Martin in one of his  
6 letters to Mr. Bowman?

7 A. Yes, and just during the break,  
8 just before the court returned, you handed me a document  
9 from Mr. Martin to Mr. -- to Francis Camps which I had  
10 never seen before.

11 Q. I was going to refer to that next.

12 A. Dated July 19th, 1996 (sic) and a  
13 very quick skim read of it shows a reference to the notes  
14 of Dr. Penistan on page 2.

15 MR. LOCKYER: If that document could be  
16 -- it didn't make the original materials.

17 THE REGISTRAR: Chief Justice, should I  
18 mark this?

19 CHIEF JUSTICE MCMURTRY: We'll insert  
20 it in Exhibit 1 then.

21 THE REGISTRAR: Thank you, chief  
22 Justice.

23 BY MR. LOCKYER:

24 Q. Now, this letter written by Justice  
25 Martin to Professor Camps, sir, was written some three

Tab 2

Douglas Bates, 11.

Catching turtles -  
I think it was Tue. Supper about 5 PM  
Bike - Then about 1 1/2 hours. Dyr usually  
home about 8 o'clock school nights. Lynne was  
on crossbar - I went alone - Came home  
alone - Arnold George at bridge. I left  
bridge about 10 minutes after Lynne & Steve.  
Went north - Didn't see Lynne or Steve again.  
Didn't see Lynne get into car.

Arnold George, 13.

Thurs - had supper, cut lawn, went  
to swimming hole about 7 PM - Was there about  
15 minutes when Steve & Lynne biked north. Went  
for swim on east side of bridge - I came home  
just before dark - About 8:30 pm. Before that I  
went to Steve's house & chatted. He was baby-sitting.  
Didn't talk to him about Lynne.

(Philip Burns - said he saw grey car answering desc.)

Joey Jocelyn Landette - said she was  
looking for Lynne - Came out of bush - Said she  
was where Lynne was found (later.)

Mike - said he was swimming - About 7:15  
Saw dk grey Chev on County Rd. Stopped & got  
him pie - Man in farm clothes.

Tab 3

R.C.A.F. Station,

Clinton, June 13, 1959

Statement of Mrs. Anne Nickerson, J4 Aprt. Bldg. PMQ Clinton

Age 32 years. I am the Brown Owl of the 3rd Clinton Brownie Pack. Lynn Harper was a Girl Guide, we didn't have her as a Brownie. I last saw Lynn the evening of Tuesday, June 9th at the field day right below the A.V.M.C. school. We were getting the younger children off home, and Lynn asked if she could stay, and about 6.40 p.m. I sat down under a tree and talked with Lynn. She said she didn't want to go home, her mother was cross with her. She told me her mother wouldn't let her go swimming, but she seemed very joking about it. I must have talked with her about twenty minutes. At about five after seven Lynn walked away, and then a boy came along with red trousers and red shirt on. He had a bike and parked it, and Lynn sat on the side. I didn't know the boy, not by name, but by sight, and now believe it to have been Stephen Truscott. They walked away together towards J Block, him pushing the bike. When it came time to feed the girls about 8 o'clock Lynn was not there.

~~Signature~~

Witness:

D. H. Graham  
Inspector C.I.B.

*Not a witness*

~~Signature~~

Signed:

Anne Nickerson

June 16/59

Tab4

June 25-59.

FURTHER TO STATEMENT OF Robert S. LAWSON.

Jocelyn GAUDET came to my farm at 7:25 p.m., June 9 and asked if I had seen Steve Truscott. I told her I hadn't so she left. Prior to leaving she said she had been down at the bush looking for Steve and went down towards the bush again to look for him. <sup>She</sup> Steve came to the farm the second time and said she still hadn't found Steve. I would estimate it as being between 20 minutes and a half hour between the time she was there the first time and her coming the second time.

Tab 5

46-91

July 25, 1959.

FURTHER TO STATEMENT OF:

Robert LAWSON, R.R., Clinton.

Jocelyn GAUDET came to my farm at about 7:15 p.m., June 9th. and asked if I had seen Steve Truscott. She stayed around for a few minutes, asked the time and left. It was 7:25 p.m. by my watch. Jocelyn returned in about twenty minutes or half an hour and said she hadn't seen Steve. She stayed around for a little while leaving at a little after 3:00 p.m.

The last time I was in the grain field north of the bush was on June the 2nd or 3rd. That day I took a rubber tired wagon attached to the tractor and picked up the drag harrows.

Steven Truscott and Leslie Spilsbury found a cow with a new calf in Fred Pepper's bush, which is east of my bush and adjacent to the east side of my bush.

Tab 6



ONTARIO

## THE ATTORNEY-GENERAL'S LABORATORY

PROVINCE OF ONTARIO

8 JARVIS STREET  
TORONTO 2PHONE  
EM. 2-1211 LOC. 2-2861

July 7th, 1959.

Lab. File No. 841-59-SEB

Your Ref. No.

## LABORATORY REPORT

For: Mr. H. G. Hays, Q.C., Crown Attorney, Goderich, Ontario.

Reference: Miss Cheryl Lynn HARPER (V)  
Mr. Steven Truscott (A)Copies to: Inspector H. Graham, C.I.B., Ontario Provincial Police, 125 Fleet St.E., Toronto  
Corporal H. M. Saysau, Ontario Provincial Police, Goderich, Ontario.Submitted by S. E. Brown Reviewed by .....  
S. E. Brown, B.S.A.,  
Biologist.

Purpose: Murder

Continuity: The following articles were received by me for examination as detailed below:  
Articles "A" to "C" inclusive were received from Corporal Saysau of the  
Ontario Provincial Police, Goderich, on June 12th, 1959.

Exh. No.	Description	Findings
"A"	A glass bottle containing a quantity of blood - label on bottle bearing notation - "Lynne Harper, Blood from Heart, etc." Bottle was contained in a cylindrical screw top container sealed with Seal AG-2201	Blood was group "A" - human blood.
"B"	A glass bottle with metal screw top containing a quantity of blood, and bearing label with notation - "Blood from ground, etc." Glass bottle was contained in a cardboard cylindrical container sealed with Seal AG-2282	Blood was group "A" - human blood.
"C"	A cardboard cylindrical container sealed with Seal AG-2203 and bearing notation - "Fingernail scrapings taken from fingernails of Lynne Harper, etc." The container contained a glass bottle with metal screw top in which there was a small quantity of debris.	Some very short white synthetic fibers along with general debris and what appears to be epithelial cells.

138-7c

ab. File No. 841-59-SEB.

July 7th, 1959.

<u>kn. No.</u>	<u>Description</u>	<u>Findings</u>
"D"	<p>A blood stained white under-shirt contained in a plastic bag along with tag bearing notation - "Removed from body at Ball and Hutch funeral home, Clinton - undershirt - top whole - cut down left side - front labelled, etc."  Usine side labelled "FRONT" as orientation.</p>	<p>All blood stains tested contained group "A" - human blood.</p>
	<p>There are a number of small blood spots on front, notably below and adjacent to neck opening.</p>	<p>No seminal stains found.</p>
	<p>Blood stains at the back on both arm opening.</p>	
	<p>There are three prominent blood stains in the mid-back area approximately 5" below neck opening. There are two small holes in the same general area of the three stains - also blood stains on hip area and bottom edge of mid-back area.</p>	
	<p>Shirt had been cut off and contained insect eggs and larva. No evidence of rips or tears.</p>	
"E"	<p>A pair of white panties with pink design contained in plastic bag along with card bearing notation - "Panties found on ground 33 feet 8 inches easterly from head of Lynne Harper, etc."</p>	
	<p>There are brownish blood stains on the left front at and adjacent to the leg opening approximately 1 1/2" to the right of the side seam.</p>	<p>Blood stains - human, insufficient to group.</p>
	<p>There are green stains on the edge of the right leg opening at the back and on the interior extending up from edge of leg opening.</p>	
	<p>The exterior of the edge of left leg opening and left seat bear dark smudges.</p>	<p>Dark smudges contain soil.</p>
	<p>No evidence of rips or tears.</p>	<p>No seminal stains found.</p>
"F"	<p>Three dandelion leaves, a twig and a tree leaf contained in a plastic bag sealed with Seal A.M.S. No. 146963. Bag contained a tag bearing notation - "Dandelion leaves and twig gathered by Dr. Peniston and containing stains taken from ground beneath crutch of Lynne Harper".</p>	<p>The blood on the twig is group "A" - human blood.</p>
	<p>There are blood stains on the leaves and on the twig midway between the two ends.</p>	<p>Blood on leaves is human - insufficient to group.</p>
		<p>Tests for seminal fluid yielded negative results.</p>

Lab. File No. 841-59-SEB

July 7th, 1959.

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"G"	<p>A pair of turquoise shorts enclosed in a sealed plastic bag along with tag bearing notation - "Turcois shorts found lying on ground at extended right elbow of <u>Lynne Harper, etc.</u>"</p> <p>The exterior of the front to the right of the mid-seam has numerous greenish stains extending up from the leg opening. The seat area is heavily contaminated with soil and there are numerous greenish stains present also.</p> <p>There are greenish brown discolorations on the interior of the front on both sides of the mid-seam.</p> <p>The shorts (article G) were turned over to Miss D. Gillies of this laboratory June 23rd, 1959, for further examination of the soil on the shorts.</p>	<p>There are three blood stains (small dot-like) on the front to the right of mid-seam.</p> <p>No evidence of violence in the form of rips, tears or missing buttons.</p> <p>No seminal stains found.</p> <p>No hairs or foreign fibres present.</p>
"H"	<p>A white sock in a sealed plastic bag along with card bearing the notation "socket located on ground 1 foot 3 inches north of head and 1 foot 8 inches east of head of <u>Lynne Harper, etc.</u>"</p> <p>Sock is rolled in a tight roll to approximately mid-instep area.</p> <p>Inside the rolled sock, portions of 7 green grass blades.</p> <p>Two brownish grass blades, portion of green-colored grass pannicle.</p> <p>Two pieces of dried weed, stem <math>\frac{1}{2}</math>" and <math>\frac{1}{4}</math>" in length respectively.</p> <p>Socks bear a dark smudge on exterior of back above heel also on interior at back.</p> <p>There is a clump of soil inside the toe of the sock.</p> <p>Soil lamp turned over to Miss Gillies of this laboratory July 6th, 1959.</p>	<p>Negative for blood and seminal stains.</p> <p>Plant debris of the same type is present in area of woodlot where body found.</p>

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"I"	<p>A white sock enclosed in a sealed plastic bag along with a card bearing notation - "Socket found on ground 1 foot 3 inches north of head and 1 foot 6 inches east of head of Lynne Harper, etc."</p> <hr/> <p>Stocking was rolled in a tight roll to approximately the mid-instep area. Contained in the roll a quantity of grass leaves and panicles. Two leaves, one green and one dried brownish colour.</p> <p>There is a dark smudge on the exterior at the back above the heel area. There is a prominent green stain on the exterior adjacent to leg opening.</p>	<p>Plant material of same type present in area where body found.</p> <p>Negative for blood and seminal stains.</p>
"J"	<p>A brown shoe enclosed in a sealed plastic bag along with tag bearing notation "Right shoe found on ground 1 foot north of right elbow of Lynne Harper, etc."</p> <hr/> <p>There was a piece of grass approximately 6 1/2 inches in length wedged between front right corner of the heel and sole.</p> <p>Soil on soles and heel collected.</p> <p>Soil passed to Miss Gillies of this laboratory June 23rd, 1959.</p>	<p>Negative for blood and seminal fluid.</p>
"K"	<p>A brown shoe enclosed in a sealed plastic bag along with tag bearing notation - "Left shoe found 1 foot east of right shoe and 1 foot 7 inches north of head and 1 foot north east of right elbow, etc."</p> <hr/> <p>Soil caked on the bottom surface of the heel and soles of the shoes</p> <p>Soil turned over to Miss Diane Gillies of this laboratory June 23rd, 1959.</p> <hr/> <p>The shoes articles "J" and "K" were passed to Sergeant D. Johnson of the Identification Branch, Ontario Provincial Police, July 6th, 1959, and received back the same day, July 6th, 1959.</p>	<p>Shoe negative for seminal fluid.</p> <p>A small blood stain was present on exterior of left side of shoe, approximately 3 inches back from toe tip.</p>
"L"	<p>A portion of a blouse in a sealed plastic bag along with tag bearing notation - "Removed from the body at Ball and Nutch Funeral Home, Clinton, clothing taken from around neck of deceased, Lynne Harper cut at knot region, etc."</p>	<p>There are traces of blood general throughout the blouse - insufficient concentration to group.</p> <p>No seminal stains found.</p>

July 7th, 1959.

Lab. File No. 841-59-SEB

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"L" - CONT'D	The blouse is in two parts. One part knotted consists of the left lower portion of the front. Side seam had been ripped apart and top edge cut. Balance of left front (area extending from approximately nine inches up from bottom to and including part of the collar) is missing. Numerous larva and eggs present.	There is one button present on the knotted portion and a hole where a second button has been ripped off opposite a button hole in the matching other side of front opening.  No hairs or foreign fibers present.
"M"	A red plastic hair band in a sealed plastic bag along with a tag bearing notation - "Hair band found on ground 1 foot 3 inches north of head and 1 foot 6 inches east of head of Lynne Harper, etc."	Findings negative.
"N"	A black comb tagged - "Black comb found in bush lot, etc." There were no hairs on the comb.	Findings negative.
"O"	Two white kleenex in a sealed plastic bag along with tag bearing notation - "2 Kleenex found south of C.N.R. tracks, etc." There are reddish brown stains on the kleenex.	No blood or seminal stains present on the Kleenex.
"P"	A white kleenex enclosed in a sealed plastic bag along with tag bearing notation - "Kleenex found south of C.N.R. tracks, etc." Kleenex is soiled.	No blood or seminal stains found on Kleenex.
"Q"	Maggots contained in a glass jar with metal screw top sealed with Seal A.G.-22839 - jar bears label with notation - "Maggots from skin lesion: of left buttock, etc."	Maggots are flesh fly larva (family Sarcophagidae genus sarcophaga) Unable to determine species and approximately time of deposit.
"R"	Maggots and eggs contained in a glass jar with metal top sealed with seal A.G. 2283. The jar bears a label with notation - "Eggs and maggots from abdo & nose, etc."	Larvae are first instars of the blow fly (Family, Calliphoridae genus Calliphora).
"S"	A quantity of hair in a sealed white envelope bearing notation - "Hair pulled from scalp of Lynne Harper, etc."	Hair is light brown in colour - 5 - 5/8 inches in length.
"T"	A branch of tree complete with leaves tagged - "Branch which was lying across body of Lynne Harper, etc."	Branch had been broken off and portion of bark pulled from limb. Larvae and eggs were on portion of limb.

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July 7th, 1959.

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"W"	A jar sealed with seal A.G. 2202 and tagged - "Quart preserving jar received from Dr. Penistan and said to contain contents of stomach of <u>Lynne Harper, etc.</u> "	This exhibit was turned over to Mr. E. J. Funk of this laboratory, June 12th, 1959.
"V"	A quantity of soil in a sealed plastic bag along with tag bearing notation - " <u>Soil sample taken from ground 6 inches west of right foot of Lynne Harper.</u> "	This exhibit was turned over to Miss Diane Gillies of this laboratory, June 23rd, 1959.
"W"	Articles "W" to "Z" inclusive received June 15th, 1959, from Corporal Saxeau of the Ontario Provincial Police, Goderich.	
"W"	A pair of white undershorts enclosed in a sealed plastic bag along with tag bearing notation - " <u>1 pair of underwear shorts seized from laundry basket in basement, etc.</u> "	Hairs are a mixture of light to medium brown pubic hairs - 1/4" to 3/4" in length. These hairs differ from those found in shorts from accused at jail (Article U1)
	Shorts have brownish discolorations and are stiffened in the fly area and crotch.	There is blood on the inside of the shorts in the stiffened discolored area.
	There were a number of brown pubic hairs present on the interior of the shorts.	No spermatozoa found.
	There were two red fibers and one blue fiber on the shorts.	The fibers were compared with fibers from clothing of victim and were found to be different.
"X"	A red shirt with a pattern of various colours enclosed in a sealed plastic bag along with tag bearing notation - " <u>1 red shirt with pattern seized from laundry basket in basement, etc.</u> "	Shirt appears clean.
	Top corner of breast pocket separated from shirt, approximately 1 1/2 inches.	
	There is a tear in the back right shoulder area approximately 5/8 inches in length.	No blood stains or seminal stains found.
	Third button from top on front is missing.	No hairs or fibers.
"Y"	Two pairs of white undershorts in a sealed plastic bag along with tag " <u>2 pairs of underwear shorts seized from upstairs bedroom dresser drawer</u> "	
	Shorts appear not to have been worn since laundering.	Findings negative.

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Lab. File No. 841-59-SEB

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"2"	A brown canvas rubber soled shoe enclosed in a sealed plastic bag along with tag - "Brown canvass shoe (left) seized in hallway, etc."	Shoe appears quite clean and sole is <del>free</del> of soil. Negative for blood.
"A1"	A brown canvas rubber soled shoe enclosed in a sealed plastic bag along with tag - "Brown canvas shoe (right) seized in hallway, etc."	Shoe appears clean and free of soil. The rubber sole at the toe is split approximately 2/3". There is also a split in the rubber sole at the front inside corner of the heel. Negative for blood.
"B1"	A red pyjama bottom in a sealed plastic bag along with tag - "Pyjama bottom, red flannel seized from off table in upstairs bedroom, etc."	White discolorations negative for seminal fluid. Hair is a light brown head hair, approximately 1/4" long and exhibiting characteristics of hair of accused.
"C1"	A white shirt contained in a sealed plastic bag along with tag - "Wigo made, white sport shirt seized from dresser in upstairs bedroom."	Shirt does not appear to have been worn since laundering.
"D1"	There is an "L" shaped tear in the back approximately 1 1/2" x 1 1/4". Tear is approximately 9/16" to left of right side seam and approximately 1 1/2" above bottom of shirt.	Findings negative for blood stains, seminal stains and fibers.
"D1"	A white pillow case enclosed in a sealed plastic bag along with tag - "Pillow case, white cotton, seized off bed in upstairs bedroom, etc." There is a rent in one side of the case.	Findings negative.
"E1"	A white bed sheet enclosed in a sealed plastic bag along with tag - "Bottom sheet, white cotton, seized from bed, etc." Five head hairs and 1 pubic hair is present.	Sheet negative for blood and seminal stains.
"F1"	A white bed sheet enclosed in a sealed plastic bag along with tag - Top sheet, white cotton, seized from bed in upstairs bedroom, etc."	Findings negative.
"G1"	A pair of red trousers enclosed in a sealed plastic bag along with tag - "1 Pair of red trousers seized off clothes line in basement, etc." There is a three cornered tear, approximately 1" by 1" on the back of the right leg, approximately 21" above bottom edge of cuff. There is a small tear on the back above the left hip pocket.	Trousers appear clean. There are discolorations in both knee areas. Discolorations contain chlorophyll (plant stains). Negative for blood stains and seminal stains.

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Lab. File No. 841-59-SEB

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"Q1" - CONT'D	There was a hair caught in the lower part of fly zipper. A fiber on the exterior back of left trouser leg.	Hair is approximately 1 1/4" long, very fine light coloured head. Does not resemble hair of victim or accused. Fibers <del>are</del> similar to fibers of clothing of victim.
"R1"	Two pair of black socks enclosed in a sealed plastic bag along with tag "2 Pairs of black socks seized from dresser in upstairs bedroom, etc."	Socks do not appear to have been worn since laundering.  Findings negative.
"I1"	A pair of grey slacks complete with belt enclosed in a sealed plastic bag along with tag - "Pair of grey trousers seized from hallway, etc." Numerous brownish stains present, notably on the left seat area and left leg.	Stains negative for blood and seminal fluid.
"J1"	A small hunting knife with 2 1/4 inch blade enclosed in a sealed brown envelope bearing notation - "Hunting knife with 2 1/4 in blade found on table, etc."	Findings negative.
"K1"	A white wool blanket with blue stripes enclosed in a sealed plastic bag along with tag - "Wool blanket seized from bed in bedroom, etc."	Findings negative.
"L1"	A Raleigh bicycle minus wheels tagged "1 Raleigh bicycle seized from beside east side of house".	No blood, fibers or hairs present on the bicycle frame.
"M1"	A sealed white envelope enclosed in a sealed plastic bag - Envelope bore notation - "Hair removed from between sole and canvassing of left shoe possessed from residence, etc."	A brown head hair (not that of the victim).
"N1"	A red plastic button in a sealed plastic envelope along with tag bearing notation "Red Button said to have been found on ground underneath left shoulder of body of Lynne Harper, etc."	There is blood on the button. The button appears identical in colour and structure to the button on the victim's blouse from which a button is missing (Article L). Both are made of <del>al</del> formaldehyde plastic and the thread is cotton in both cases.
"O1"	A pair of fawn trousers enclosed in a sealed plastic bag along with tag - "1 pair of fawn coloured trousers taken from Steve Truscott at Huron County goal, etc."	Trousers negative for blood stains and seminal stains.
"P1"	A black and white striped shirt enclosed in a sealed plastic bag along with tag - "1 Black and white striped shirt taken from Steven Truscott at the Huron County goal, etc." There is a small "L" shaped tear on left sleeve near the cuff.	No seminal stains or blood stains present.

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"Q1"	A handkerchief enclosed in a sealed plastic bag along with tag - "1 Blue and white handkerchief taken from Steven Truscott at Huron County Goal, etc."	Negative <del>for</del> findings.
"R1"	A black leather belt enclosed in a sealed plastic bag along with tag - "2 Black leather belt taken from Steven Truscott, etc."	Findings negative.
"S1"	A pair of black socks enclosed in a sealed plastic bag along with tag - "1 pair of black socks taken from Steven Truscott at Huron County Goal, etc."  There are numerous hairs on the socks. There is one hair looped around and holding a small bundle of fibers. There is an assorted plant debris present.	Socks are dirty and emit odour of sweaty feet. All are head hairs, two are dissimilar to victim or accused, remainder are characteristic of hair of accused.  The fibers while cotton, as in the blouse of victim are dissimilar in colour. Fibers are a mixture of white cotton, red cotton, blue green cotton and black flecked synthetic and a dark wool fiber.
	<u>NO EXHIBIT "T1"</u>	
"U1"	A pair of white undershorts enclosed in a sealed plastic bag within a plastic bag along with tag - "1 Pair of underwear shorts taken from Steven Truscott at Huron County Goal, etc."  Shorts are very dirty and have caked faecal deposits in seat area. Fly area discoloured.  4 Pubic hairs were present on the shorts.	A trace of blood (not visible) was present in fly area.  Spermatozoa were found in fly area.
"V1"	A black boot (left) enclosed in a sealed plastic bag along with tag - "Left boot (Wellington) taken from Steven Truscott at Huron County Goal, etc."  Heel bottom surface at front is ragged and worn.	Findings negative.
"W1"	A black boot (right) enclosed in a sealed plastic bag along with tag - "Right boot (Wellington) taken from Steven Truscott at Huron County Goal, etc."  Front edge of heel worn and ragged.	Findings negative.
"X1"	A corked test tube containing blood of Steven Truscott and sealed with seal S.1938 label on test tube bore notation "Dr. Addison Patient Steven Truscott, etc."	Blood was group "A" - human blood.
"Y1"	A quantity of blood in a screw top bottle sealed with seal S 1970 Label on bottle bore notation "Steven Truscott Citrated", etc.	Blood was group "A" - human blood.

July 7th, 1959.

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"21"	A sealed brown envelope enclosed in a sealed plastic bag and bears notation - "Look of Seven Truscott's hair, etc."  Envelope contained a quantity of short brown head hairs.	Hairs had been cut and were only 1/4" - 1/2" in length. Hairs too short to enable an adequate examination and full length pulled hairs requested and received (Refer Article K2)
"A2"	Received from Cpl. Sayean of the Ontario Provincial Police, Goderich, June 18th along with Exhibit "B2"  Seven samples of soil in 7 OAC soil sampling boxes each box sealed with Seals - AG-23363, AG-23362, AG-23361, AG-23360, S1942, S1941 and S1940.	These samples turned over to Miss D. Gillies of this laboratory June 23rd for analysis.
"B2"	Three sealed white envelopes (1) bearing notation "Piece of red plastic found in bushlot, etc." (2) "2 pieces red plastic found 6'6" south westerly from where Lynne Harper's panties found, etc." (3) "2 pieces of plastic (red) found in bushlot." L	Plastic is "Sénac" or a closely related material. This type of plastic is normally used in household utensils and is now replaced by "Melamac". No like material found on other exhibits examined.
"C2"	Material said to be from vagina of victim received by mail June 19/59 in a glass bottle enclosed in a cardboard screw top container sealed with seal AG-2205. There was a report enclosed bearing notation "From Dr. J. L. Penistan re Lynne Harper Material from Vagina, etc."	No spermatozoa were found. Material was grouped and gave an "A" group reaction.
"D2"	1 bag of "Baby Pops" suckers received from Inspector K. Graham of U.I.B., June 22nd, 1959.	These were turned over to Mr. D. A. Eagleson of this laboratory June 23rd for analysis.
	Articles "E2" to "J2" inclusive received July 6th from Corporal Sayean of the Ontario Provincial Police, Goderich.	
"E2"	A sealed white envelope bearing notation - "Hair taken from Steven Truscott", etc.  Head hair is short ranging 1/4" - 2/4" in length, medium brown with occasional dark brown hair.	
"F2"	A sealed white envelope bearing notation - "Comb used by Steve Truscott, etc."  Envelope contained black comb and plastic bag.	No examination.
"G2"	A sealed white envelope bearing notation - "Hair particles removed from bottom strand of barbwire on west bush fence. Envelope contained seven hairs.	None of the hairs are human.
"H2"	A sealed white envelope bearing notation - "Hair found on second strand of barbwire, etc."  Envelope contained one hair, approximately 1/2" long.	The hair is animal hair.

Lab. File No. 841-59-SEB

July 7th, 1959.

<u>Exh. No.</u>	<u>Description</u>	<u>Findings</u>
"I2"	A sealed white envelope bearing notation - "Five pieces of plastic, etc."	This plastic same as that submitted in three envelopes (Article B2)
"J2"	Three coils of barbwire each individually tagged. <u>The wire was examined for fibers.</u>	No fibers found on the wire.

S U M M A R Y : -

- 1) The blood of the victim and of the accused are both Group "A".
- 2) No blood except Group "A" was identified on the articles examined.
- 3) No evidence of blood was found on the clothing of the accused except very small traces (not visible) on the shorts seized at Huron goal (reference Article U1)
- 4) Blood was found on fly of shorts taken from laundry basket (Article W)
- 5) Spermatozoa were found on shorts of accused taken at Huron goal (refer Article U1)
- 6) No fibers or hairs found on clothing of accused which match those from victim and vice versa.
- 7) Botanical material encountered on exhibits is present in area of body as well as in surrounding area. (This was established by personal examination of area.)
- 8) Examination by members of this laboratory of other materials as outlined below are being made and separate reports will be submitted by them.

SOIL - Miss D. Gillies ✓  
 STOMACH CONTENTS - Mr. J. Funk  
 "BABY POPS" suckers - Mr. D. A. Eagleson. ✓

Tab 7

1 disagreements here and there, but in a fundamental sense  
2 you don't think there's anything that you two differ on  
3 in this case?

4 A. No, no.

5 Q. Let me move on, and I'm still  
6 dealing here in terms of identification. We have the  
7 photographs here of Lynne Harper's body both at the scene  
8 where her body was found and also at the autopsy, and I  
9 want to ask you this.

10 If the lower part of her body had been  
11 colonized by blow flies, what would you expect to see in  
12 the photographs of her lower body?

13 A. I would expect to see a large mass  
14 of maggots just as was observed on the upper part of her  
15 body, on her face.

16 Q. And as you examined the photographs  
17 of the lower part of her body, are there any photographs  
18 that show such a mass of that range in the lower part of  
19 the body?

20 A. No, there isn't.

21 Q. In fact, for the court's  
22 assistance, I think the one photo that does show maggots  
23 on the lower part of the body and arguably the only photo  
24 that does is photo number 24. You can distinctly see,  
25 you may well need a magnifying glass, but you can

1 distinctly see maggots in photo 24.

2 JUSTICE MOLDAVER: Apart from those  
3 that are in the lesions?

4 MR. LOCKYER: That's also by far the  
5 best shot of the lesions, but yes, you can see maggots  
6 elsewhere than in the lesions. If you put the magnifying  
7 glass on and particularly if you go to the original in  
8 the Supreme Court of Canada, it's clearer than on those  
9 photographs, My Lord.

10 JUSTICE MOLDAVER: The lower part of  
11 the buttocks, is that where you're pointing to?

12 MR. LOCKYER: Yes, you can -- sorry,  
13 could you -- may I borrow your photograph? Thank you.  
14 My Lord, if you particularly look here, you can see them.

15 MR. TWENEY: Which photo?

16 MR. LOCKYER: Photo 24. You may have  
17 to go to the original. You can also see them here.

18 JUSTICE MOLDAVER: You're now pointing  
19 to the lower right buttock?

20 MR. LOCKYER: And also left.

21 JUSTICE MOLDAVER: And the lower left.

22 MR. LOCKYER: On both.

23 JUSTICE MOLDAVER: And the little white  
24 things that we see on the lower right, are those maggots?

25 BY MR. LOCKYER:

1 Q. Yes. Is that right?

2 A. Yes.

3 Q. And I think that's really the only  
4 photograph that you can see them, so that's why I bring  
5 it to your attention.

6 But the photographs are not as complete  
7 as you would like them, I think I can lead you on that,  
8 from an entomological point of view; is that right?

9 A. That's correct.

10 Q. Okay, fair enough. If there was a  
11 large colonization of the interior of the vulva or the  
12 vagina, would you expect to see any evidence of that in  
13 any of the photographs?

14 A. A large colonization of blow flies?

15 Q. Yes, blow fly maggots, yes.

16 A. Yes, because I would expect to see  
17 it on the photo of the external portion of the vagina  
18 because there would be very large numbers. As well, they  
19 move around when they feed so they would be visible on  
20 the external portion of the vagina.

21 Q. And in any of the photographs that  
22 you've looked at, have you seen it?

23 A. No, I haven't.

24 Q. If on the other hand the -- you  
25 certainly do -- you're not suggesting, are you, that

1 there were no -- there was no Calliphoridae, blue bottle  
2 or green bottle activity in the lower part of the body?

3 A. No, I'm not suggesting that at all.  
4 It is very clear that there are blow fly eggs on the  
5 external portion of the vagina.

6 Q. So you can see eggs but no maggots?

7 A. I don't see any maggots.

8 Q. Okay. If on the other hand we  
9 assume for a moment that the family of fly that had first  
10 landed sometime before June 11th on the lower part of  
11 Lynne Harper's body was Sarcophagidae, is there anything  
12 in the photos inconsistent with that conclusion?

13 A. No, there isn't.

14 Q. If you could elaborate just a  
15 little?

16 A. With the sarcophagids they don't  
17 lay larvae in the large numbers that the blow flies do,  
18 so with a mass of sarcophagid maggots, I wouldn't expect  
19 to see a mass of maggots on the outside of the vagina.

20 Q. So if you were to look at the  
21 maggots or if you had seen -- been at the scene and seen  
22 the maggots on Lynne Harper's facial area, would you have  
23 drawn a conclusion that they could all be sarcophagid  
24 maggots or not?

25 A. The maggots on the facial area?

1 Q. Yes.

2 A. No.

3 Q. You wouldn't have because?

4 A. Because there was far too many.

5 They would definitely have been blow flies.

6 Q. Okay. Not all of them but  
7 certainly the majority of them, yes.

8 JUSTICE MOLDAVER: Sorry, Mr. Lockyer,  
9 apart from -- in terms of the vaginal area, are you and  
10 the doctor, you referred to pictures and I'm just trying  
11 to, for my own purposes, are you talking about for  
12 example 1 and 1A and page -- 5?

13 MR. LOCKYER: Sorry, could you do that  
14 again?

15 JUSTICE MOLDAVER: 1, 1A and 5, those  
16 are in the woods.

17 MR. LOCKYER: Yes, 1A and 5  
18 particularly. What didn't get in here, because we only  
19 got the photo after we prepared this book, is an  
20 enlargement of that. I'm not sure if it's 1A or 5, but  
21 an enlargement of the relevant area of Lynne's body.

22 JUSTICE MOLDAVER: All right. And the  
23 only other one that I see that is peripherally connected  
24 is 20, which shows more the abdomen but it's kind of --  
25 sorry, you'll, doctor, tell us if there are others.

1 You've been referring to pictures of the vaginal area. I  
2 want to make sure we're on the same page here.

3 MR. LOCKYER: Yes, the only good ones  
4 of the vaginal area are 1A and 5 and we do have an  
5 enlargement which we obtained just two or three days ago  
6 that perhaps I can try and get you during --

7 JUSTICE MOLDAVER: That's fine.

8 MR. LOCKYER: After recess, My Lord.  
9 We haven't copied it.

10 JUSTICE MOLDAVER: So the doctor though  
11 when she speaks of the fact that there doesn't appear to  
12 be a lot of colonization there, she was really referring  
13 to 1, 1A and 5?

14 MR. LOCKYER: I think, without wishing  
15 to put words into the witness' mouth, 22 and 24 would  
16 also be relevant in that they're showing the area of her  
17 body below her waist.

18 JUSTICE MOLDAVER: All right, thank  
19 you.

20 MR. LOCKYER: And there's a couple of  
21 photos, My Lord, since you raise this, if you go to the  
22 Supreme Court book, one or two of these photos are  
23 repeated with a ruler beside them. I'm frankly not quite  
24 sure, I assume that happened at the autopsy, but they are  
25 no help in measuring, unfortunately.

1                   But one, I think it's photo 24, is  
2 repeated with a ruler at one point, I think I'm right in  
3 saying, but we didn't put it in the book because the  
4 photo itself is not as good, albeit it is of the same  
5 area. It's identical but not as good, if you see what I  
6 mean.

7                   JUSTICE MOLDAVER: Thank you.

8                   MR. LOCKYER: Sorry, we do have the one  
9 photograph that I referred to as a close-up, My Lord.  
10 May I pass that to the court? I'm sorry, I don't have  
11 copies of it. Could that be the next exhibit?

12                   THE REGISTRAR: Exhibit 33, Chief  
13 Justice.

14                   EXHIBIT NO. 33: Enlargement of a  
15 photograph.

16                   MR. LOCKYER: That's a close-up and,  
17 I'm sorry, I should be able to tell you off the top but I  
18 can't, but it's either a close-up taken from 1A or 5 and  
19 I'd have to look at it more closely to see which it is.  
20 When I say it's a close-up, I mean it's an enlargement,  
21 is what I mean, not a close-up. That's the wrong term to  
22 use.

23                   MR. TWENEY: Chief Justice, I wonder if  
24 the publication ban could extend to that exhibit as well?

25                   MR. LOCKYER: Of course.

1 CHIEF JUSTICE MCMURTRY: Yes.

2 MR. LOCKYER: Would the court like to  
3 wait just to have a look at that exhibit before I  
4 proceed?

5 BY MR. LOCKYER:

6 Q. Indeed, on the photograph that's  
7 just been filed as an exhibit I think you can see eggs  
8 distinctly; is that right?

9 A. That's correct.

10 Q. Now, the other issue that's been  
11 raised through Dr. Haskell in his evidence is this  
12 reference to Dr. Penistan's use of the word "seething,"  
13 not in his autopsy report but in his subsequent evidence,  
14 reference to maggots seething in the vulva or vaginal  
15 area.

16 Now, it was pointed out yesterday by  
17 Mr. Campbell that there were references in his autopsy  
18 report to innumerable eggs in the hair and innumerable  
19 maggots on the face. Remember that?

20 A. Yes, I do.

21 Q. And could you tell us what  
22 attention or what consideration, perhaps is the better  
23 way of putting it, you paid to Dr. Penistan's use of the  
24 word "seething" insofar as the maggots in the vulva area  
25 were concerned?

1                   A. The way that I interpret the word  
2 "seething" is a lot of movement, but it doesn't give any  
3 indication as to quantity, so as far as I was concerned  
4 that just meant that the maggots in the vulva were moving  
5 and feeding, which is what we'd expect for maggots in a  
6 maggot mass.

7                   Q. So did you draw from his use of  
8 that word a conclusion that the maggot activity in the  
9 lower part of her body was the same type of activity as  
10 in the upper part of her body?

11                   A. I'm sorry, I don't know what you  
12 mean by activity?

13                   Q. The same numbers, actually, is what  
14 I meant.

15                   A. No.

16                   Q. You did not?

17                   A. No, I didn't.

18                   Q. Now, I think I may be right in  
19 saying that it was, if not essential, certainly  
20 important, arguably essential to Dr. Haskell's  
21 conclusions that Lynne Harper must have died on the  
22 evening of June 9th before darkness set in, what's  
23 essential to that conclusion was his hypothesis that some  
24 of the maggots described as being up to a quarter of an  
25 inch to which Dr. Penistan referred in his report, and

Tab 8

1 little bit about the presence of maggots in the vaginal  
2 area. We talked about that a bit this morning. And I  
3 want you to leave aside what you've seen in the  
4 photographs because we're going to talk about that  
5 separately.

6 But you said this morning that you  
7 haven't seen in your experience calliphorids colonizing  
8 genitalia as often as you've seen them colonizing the  
9 face in terms of the first location of their  
10 colonization; did I get that right?

11 A. That's correct, in my experience.

12 Q. It's certainly not outside the  
13 realm of possibility that the colonization could take  
14 place at the vaginal area before it took place elsewhere  
15 on the body, like the face?

16 A. I have not witnessed this and  
17 working with other forensic entomologists I have not seen  
18 that happen. It's generally the mucus membranes, even  
19 with things like wounds, calliphorids go for the mucus  
20 membranes first, generally.

21 Q. If Dr. Haskell, for example, were  
22 to testify that in his own experience he's seen that  
23 happen where the calliphorids are colonizing the vaginal  
24 area particularly where there's been some evidence of  
25 trauma to that area prior to colonizing the area of the

1 face, you wouldn't discount that experience?

2 A. Well, no. I mean, if he's recorded  
3 that, obviously then I'd have to consider that.

4 Q. And I believe you've said that as a  
5 general proposition, flesh fly deposits do not result in  
6 the same or in the large masses of maggots the way that  
7 blow fly deposits do, correct?

8 A. That's correct.

9 Q. And that's because they're  
10 depositing larvae, not eggs?

11 A. Larvae and generally they're larger  
12 and they're fewer. I mean, they don't lay anywhere near  
13 the number of eggs that calliphorids do. You don't see  
14 this mass of -- maggot mass with calliphorids -- excuse  
15 me, with sarcophagids.

16 Q. With sarcophagids. So, in other  
17 words, the presence of a large mass of maggots would  
18 likely be indicative of blow fly activity and not flesh  
19 fly activity; would you agree?

20 A. If numbers -- you have to talk  
21 about numbers. Because sometimes, like, a mass of  
22 larvae, if you have 20 to 40 sarcophagid larvae, some  
23 people might interpret that as a mass of larvae, although  
24 for us as forensic entomologists that's nowhere near a  
25 mass as compared to the calliphorids where you have

1 hundreds to thousands.

2 Q. It may be a question of  
3 interpretation in terms of how you describe the  
4 population?

5 A. That's correct.

6 Q. I know that your understanding of  
7 the evidence is that the collection of maggots that  
8 became item Q, which were later identified as the flesh  
9 flies, came from both the skin lesions and the vulva,  
10 correct?

11 A. That's correct.

12 Q. Set aside for the moment the  
13 understanding that that sample contained maggots from the  
14 vaginal area and let's assume for the moment that those  
15 maggots are actually not identified in this case. Okay?

16 A. Okay.

17 Q. You're with me so far?

18 A. I think so.

19 Q. Okay. The volume of maggots in the  
20 vaginal area has been described by those who saw them in  
21 this particular case in the following terms, and I'm not  
22 going to take you to the references, I'll just use the  
23 terminology that was used to describe them, okay?

24 A. Okay.

25 Q. The first term was a tremendous

1 population of maggots, and it was elsewhere described as  
2 seething with maggots, and another witness testified that  
3 there were masses of maggots in the vaginal area.

4 I'm going to suggest that the volume of  
5 maggots that's characterized by those descriptions is  
6 likely consistent with blow fly colonization and  
7 inconsistent with flesh fly colonization. Would you  
8 agree or disagree?

9 A. Seething, that's kind of a  
10 difficult word to describe, because if you had 20 to 40  
11 sarcophagid larvae in a wound or in an area, I mean, some  
12 people might describe that as seething. I mean, do you  
13 understand what I'm saying?

14 Q. Yes.

15 A. You know, tremendous numbers,  
16 that's a bit different but I think, you know, it varies.  
17 Seething is kind of a nebulous word.

18 JUSTICE DOHERTY: Mr. Tweney, the  
19 witness can tell us what words he uses but can he really  
20 help us as to what somebody else would mean when they use  
21 those words?

22 MR. TWENEY: No, fair enough.

23 BY MR. TWENEY:

24 Q. But in terms of whether or not  
25 those -- the witness couldn't tell us what another person

1 meant by using that terminology, but my question for the  
2 witness, I think, Justice, is whether or not those  
3 descriptions as just taken on their face regardless of  
4 the intention of the person who gave the statement, that  
5 those descriptions might be consistent with a description  
6 of something much larger than, you know, the handful of  
7 maggots that you might get from flesh fly  
8 larvipositioning. Would you agree?

9 A. Well, tremendous numbers, that  
10 would suggest that.

11 Q. Okay. And if there was no positive  
12 identification of the species of fly that were  
13 responsible for the maggots in the vaginal area in this  
14 case, would you agree that it's certainly possible that  
15 those -- that that kind of terminology was describing the  
16 presence of maggots that may well have come from blow  
17 flies and not flesh flies?

18 A. But you should be able to see these  
19 in the photos.

20 Q. Let's talk about that. We have  
21 limited photography in this case regarding the genital  
22 area. We have a few photographs that were taken at the  
23 crime scene and there certainly weren't any close-ups  
24 that were taken at the autopsy, correct?

25 A. Correct. Mainly the crime scene.

1 Q. Just the crime scene photos, that's  
all we have to go by?

A. As far as I know.

4 Q. There weren't any photos of  
anything beyond the view of the body in situ?

A. That's correct.

6 Q. In other words, in the location  
where the victim was found?

9 A. Yes.

11 Q. And in the few photos that we do  
12 have we certainly, as you testified, we don't see the  
same volume of maggots around the external genitalia as  
13 we see around the area of the nose and face?

14 A. That's correct.

15 Q. Dr. Haskell has testified that  
16 that's not unusual and that the maggot mass may well have  
17 been deeper inside the vaginal vault, as he's described  
18 it. Do you agree that that's a possibility or not?

19 A. If the description of tremendous  
20 numbers of maggots in the genital area, if you assume  
21 that, it would be hard for me to believe that you  
22 couldn't see something in these photographs because the  
23 photos are very good, I felt, in terms of seeing any  
24 activity in that area.

25 Q. Okay.

1 A. As far as I know.

2 Q. Would you agree that it's certainly  
3 not unusual for the maggots to burrow deeper inside the  
4 body cavity as they are progressing through --

5 A. Yes, that's right. Yes, yes,  
6 that's particularly true for the facial areas and things  
7 like this. I can't speak to the genital area in terms  
8 of, you know, how deep they would burrow or anything like  
9 this.

10 Q. Okay. And if the evidence were to  
11 describe a complete destruction of the inner portion of  
12 the vaginal area, would that be consistent with feeding  
13 by a large mass of maggots?

14 A. I don't think I can really answer  
15 that question. I just don't have the expertise to answer  
16 that.

17 Q. Okay. Nevertheless, if the maggots  
18 had burrowed deeper inside the vaginal cavity, you  
19 wouldn't necessarily expect to see them in the same  
20 quantities around the external genitalia that you see  
21 around the face; would you agree?

22 A. No, you would never see -- I mean,  
23 if you had the number of maggots that you found from the  
24 calliphorids ovipositing in the face, if they were  
25 ovipositing in the genital area, I would expect to see

1 more than I did in these photographs, more larvae in that  
2 area.

3 Q. You might expect to see that but  
4 it's certainly not outside the realm of possibility,  
5 correct?

6 A. I guess it's possible but I don't  
7 see that in the photos.

8 Q. Certainly the area of the nose is a  
9 more exposed area than the genital area. There are some  
10 areas where the maggots may not be as visible?

11 A. Well, that's true. I mean, the  
12 nose is -- that area is more exposed.

13 Q. Doctor, I would just like to ask  
14 you a few questions about Dr. VanLaerhoven's recent  
15 experiment in the bush, the wood lot a couple of weeks  
16 ago.

17 She sent you a draft protocol by email;  
18 is that correct?

19 A. Yes.

20 Q. And she was seeking your input on  
21 that protocol?

22 A. That's correct.

23 Q. And do I understand that you didn't  
24 receive that email until sometime after the experiment  
25 was completed?

COURT OF APPEAL FOR ONTARIO

APPELLANT'S COMPENDIUM  
VOLUME 14  
REPLY

LOCKYER CAMPBELL POSNER  
Barristers and Solicitors  
1515-180 Dundas St. West  
Toronto, Ontario  
M5G 1Z8 (416) 847-2560  
Fax: (416) 847-2564  
Solicitor for the Appellant