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May 8, 1991 4:27 PM
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN.

IND#10/90

REGINA V. KEITH WILLIAM BARNES

It is my duty to explain to you the law and to give you some guidelines on your approach to the evidence in this trial. Let me remind you of our respective roles in the trial, Mr. Foreman, members of the jury. Questions of law are for me and you must accept any direction on law that I give. On the other hand questions of fact, decisions on fact are for you and you alone. You are the judges of fact in this case. Of course as I review the evidence my own views on that evidence are bound to come through. I will be making some comments, remarks on the evidence as I review it. But those comments are with the view to stimulating thought trying to give you some guide lines on your approach to your review of the evidence. You may disagree with any view of mine that comes across and that is right and proper because I am not the judge of the facts in this case, you are the judges of fact and it is your view that counts. If you disagree with any view then that is your right. I may seem to attach too emphasis, I may place too much emphasis, attach too much weight to any part of the evidence. I may skip over parts of the evidence that you think require more emphasis. Well that is a question for you Mr. Foreman, members of the jury. You are the judges of fact and you will attach as much weight to any part of the evidence as you think proper. If I seem to attach too much weight to a part of the evidence that you consider is unimportant, well so be it, you will give the evidence and each part of it the weight you consider it merits.

Now in reaching your verdict, bring to bear your knowledge of the world, your knowledge of human nature and above

all your reason and your common sense. I must give you a word of caution. That is, that you must reach a verdict on the evidence you have heard in this Courtroom and on that evidence alone.

Now evidence is what you have heard from the witness box, and includes of course, the exhibits properly tendered which you may wish to take into the jury room when you retire. Evidence is not what you have heard outside this Courtroom. Now you have taken an oath which is to bring in a true verdict according to the evidence. That is a solemn oath - to be taken, as I am sure you do, with the utmost seriousness. And the oath means you must ignore any marl road gossip you may have heard about the case, you must consider only what has been properly tendered as evidence in this courtroom. The oath also requires that you should deal with the evidence fairly and you should set aside your prejudices. Look at the evidence as dispassionately as you can. You see you may have strong feelings about rape, you may have strong feelings about rapists and any one present in court could well be touched by the sight of the two ladies Ms. Boston and Ms. Peters who gave evidence doing their utmost not to break down. You saw it. Unless you think they made the whole thing up, hearing their evidence can't have been a pleasant experience for you. You may be forgiven for feeling sympathy for them. But that sympathy should not be allowed to cloud the real issue and you may come to the conclusion that the real issue in this case is the identification of the assailant, whether or not this accused was the one who committed the rape and robbery. So any sympathy you may have for the victims shouldn't be allowed to cloud your judgment on the main issue. You should not strike out to place the blame on someone because you have sympathy for the complainants.

Conversely it will not have escaped your attention that the complainants are not citizens of Cayman. I think they are both Canadian citizens and the accused is Caymanian. You must not let any natural and understandable bias you may have towards

your own countryman cloud your judgment. You would be false to your oaths and it would not make common sense for you to lean one way or the other in reviewing the evidence because of the nationality of any witness or accused in this trial. Common sense and common Christian decency dictate that ladies in these Islands of all races, creeds, colours and nationalities should be protected from violent and sexual assault.

You have heard from counsel on the burden and standard of proof in a criminal trial, indeed the accused himself has just touched upon it but I have a duty to explain it to you in my own way. An accused is innocent until he has been proved guilty to the satisfaction of a jury in this case, a jury of seven citizens of this country. There is a presumption of innocence. The burden of proof is upon the prosecution and the accused has to prove nothing. It is for the prosecution to establish guilt of the accused before you return a verdict of guilty on any charge in the indictment. That is a basic principle of our law. The prosecution has the burden of proving its case to a certain standard and the standard is beyond all reasonable doubt. Before you can convict you must be satisfied beyond all reasonable doubt. That is, that you must be sure of the guilt of the accused on any charge on the indictment. If you have any reasonable doubt as to the guilt of the accused, then as a matter of law he is entitled to the benefit of that doubt and you must acquit him. A reasonable doubt means exactly what it says, it must be reasonable and not a whimsical or capricious doubt which may be lurking in the back of your minds. You must not cast about for excuses to find doubt. You mustn't try to justify acquitting the accused by casting about for unreasonable doubt. But if after examining the evidence as a whole you are left with any real doubt as to the guilt of the accused on the charges then he is entitled to the benefit of that doubt.

Now you may draw inferences from the facts that you

find proved, logical inferences which those facts point to. But you can only draw an inference which is adverse to the accused person if it is the only reasonable inference to draw from those facts. In other words the facts must point irresistibly to the inference that you draw before you can draw it. My direction to you is that you can only draw an inference adverse to this accused if the facts point irresistibly to that inference.

This is a particularly important in this case because some of the evidences upon which the prosecution relies is circumstantial evidence, it is not direct evidence. I will explain the difference between direct evidence and circumstantial evidence, because it is important for you to bear in mind the difference between them. Direct evidence is evidence which proves, or which tends to prove a fact directly, usually by the sworn evidence of a witness, or by an admission. If for example in this case you had heard the evidence of an eye witness to the incident who positively identified the accused as he committed these alleged offences then that would be direct evidence of his involvement. But of course, there is no such direct evidence in this case.

Circumstantial evidence is evidence of circumstances which can be relied upon not as proving a fact directly but at pointing to a fact. For example, in this case, if you are satisfied that the necklace found on the accused was that of Ms. Boston you may find in all the circumstances that it points to him having taken it from her. But as I say you can only draw that inference if the facts point irresistibly to it.

Now in reaching you conclusion of course you have to assess the credibility and the reliability of the witnesses who have come before you. You have to decide whether they are truthful and reliable. In assessing a witness you should have regard to their demeanour as you saw them in the witness box. You will ask yourselves if that witness has any reason to lie or

to make anything up and the reasons, if any, put forward as to why he or she would be lying. You will consider whether they may be mistaken and whether those mistakes are reasonable in the circumstances. A witness can, of course, be very honest but he can still be mistaken. I would suggest to you that you should not be daunted by any minor discrepancy or inconsistency in the evidence of any witness, provided that inconsistency or discrepancy is on a minor or irrelevant issue. You should remember that we are dealing with human beings and they are after all relating events which occurred more than twelve months ago. You can't expect them to be exactly accurate on such things as times, distances, colours such like. I would suggest that you ask yourselves whether any inconsistency or discrepancy in the evidence of any witness is important. If you find that discrepancies or inconsistencies undermine your confidence in the accuracy of the evidence given by any witness, and you will judge each witness separately, then you assess that witness's evidence accordingly.

Your duty in the end is to bring to bear your knowledge of the world, your common sense on the evidence in this trial and to determine whether the truth emerges on the important aspects of this case despite there been any inconsistency or discrepancy.

ALIBI

~~Can I have the indictment please?~~

READ INDICTMENT

PARTICULARS OF OFFENCE.

Now, what have the prosecution set out to prove? It is all contained in the indictment which contains two charges. The first charge and you have already heard it, is rape, contrary to section 116 of our penal Code. The particulars of the offence read the Keith William Barnes, on the 29th January, 1990, at Smith Cove, Grand Cayman had carnal knowledge with Lisa Boston without her consent. The second count in the indictment is one of robbery, contrary to section 219 of the Penal Code and the particulars of the offence are that Keith William Barnes again on

the 29th January, 1990, at Smith Cove, Grand Cayman being with a firearm stole a gold chain from Lisa Boston and in order to do so used force against the said Lisa Boston.

Now this the prosecution alleges and this they have to proved. What constitutes rape is set out in our Penal Code as follows :-

'Whoever has unlawful carnal knowledge of a woman or girl, without her consent, or with her acquiescence if such acquiescence is obtained by threat of force or use of force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of the offence termed rape.'

Now in this case, there are no admissions and everything in that charge or in the indictment is in issue. But you may have found little difficulty, Mr Foreman, members of the jury finding that there was an act of unlawful carnal knowledge of Ms. Boston. Carnal knowledge requires penetration of the vagina, and in this case there is evidence, not only from Ms. Boston herself but from the expert witnesses that sperm was found on a tampon taken from her vagina and sperm was found from swabs on swabs taken from the vagina. You may have no difficulty from the evidence of Ms. Boston, supported by Ms. Peters, in finding that they were threatened with a gun.

Any acquiescence there may have been on Ms. Boston's part you may without difficulty find was obtained by threat of force. Can there be any doubt, if you believe these ladies at all, that they were at least in fear of the use of force? And that in fact the gun was applied to side of the head.

The real issue you may find is not whether a rape was committed, but whether it was the accused who committed it.

And so with the robbery, the definition of which is set out in section 219 of our Penal Code. Subsection (1) of that section reads :-

" A person is guilty of robbery if he steals, and immediately before at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force."

Now stealing is the dishonest appropriation of property belonging to another with the intention permanently depriving them of it.

Well Mr. Foreman, members of the jury, again you may have little difficulty in finding that there is clear evidence that a person stole a necklace from Ms. Boston and that in order to do so he pointed a pistol at her putting Ms. Boston in fear of being objected to force. The real issue you may feel Mr. Foreman, members of the jury, is not whether a robbery was committed but whether it was the accused who committed that robbery.

Now there are two charges in the indictment which are independent charges and which must be independently proved. However you may feel that the evidence in relation to the two charges is common and intertwined. If you disbelieve Ms. Boston and the other witness, the other lady witness or there is a real doubt in your minds as to whether the incident occurred at all, then both charges in the indictment will go. However, if you are satisfied beyond doubt that the two ladies told the truth and that the accused has been identified as the assailant then you may have little difficulty finding that both rape and robbery were committed. It is only if you find part of their evidence true, say in relation to the rape, and another part untrue say in relation to the robbery, that you could convict of one offence and not the other. As I say, however the evidence is so intertwined that you may well find that the both charges stand or

fall together.

Now I am going to take a short break.

Mr. Foreman, members of the jury I am just going to, as briefly as I can, review the evidence with you of the first two witnesses before we break this afternoon and then I think that would prove to be a convenient point to break.

The first witness was of course was the complainant Lisa Boston and you heard how she went to Smith Cove on the morning of 29th January, 1990 and how when her friend Ms. Peters arrived about twenty past twelve. They lay sun bathing on a picnic table. How they were disturbed by a man pointing a gun at them and how he told them to move and told them not to make a noise. She said he held the gun to her head, but as they were moved on to the pathway leading into the wood area. Ms. Boston was walking a little off to one side and the man had his arm around with Ms. Peters with the gun pointed at Ms. Peters. They went off the pathway and into a clearing where this man told the ladies to put their towels on the ground and lie on them face down. He then tied Ms. Boston hands behind her back and asked if she had any money. He took a gold chain from around her neck and tied a sock around her mouth and then he started to tie Ms. Peters up. After that he took Ms. Peters swimming costume off and then off Ms. Boston and then you heard the witness relate how the man had sexual intercourse with her and I don't think I need to repeat her evidence to you in that connection. I think you may have little difficulty in finding Mr. Foreman, members of the jury, but of course it is a matter for you, if you believe Ms. Boston, that the offence of rape was committed. Similarly, if you do believe her can there be any doubt in your minds that the assailant stole Ms. Boston gold chain and that in order to do so he put her in fear of being subjected then and there to force. According to the two witnesses, if you believe them at all he had gun pointed at one of them or both of them at any given time.

After sexually assaulting Ms. Boston, she said, the assailant then tied a sock round Ms. Peter's mouth and then went through Ms. Peter's bag.

Shortly afterwards the two ladies thought, correctly, that he had gone and they freed them selves, went back to the Cove and they were taken to the hospital and certain specimens were taken from Ms. Boston by the doctor. Mr. Foreman, members of the jury this is the description Ms. Boston gave of assailant:

The man was tall, slightly taller than Kim, probably anywhere between 5'11 or 6' maybe not as tall as 6 feet. He was wearing mask on his face, a bandana. We only saw from the eyes up. It may have been a shirt tied around. I don't remember him wearing a shirt that why I think it was a shirt. He had on blue jeans. He was not dark skin. His skin was clear, not really dark. He had some what loose curls. There were lighter shades in it and if he had been out in the sun, sun bleached. At one point I grabbed his risk behind me. He was not a large grown man. I could fit my hand around his wrist. He was slim built. he was about twenty-five years of age.

Of course, Mr. Foreman, members of the jury you will compare that description with the accused as you see him in court.

Ms. Boston went on :

When he spoke to us, the man's accent was Caymanian. Since coming to court today when I was sitting in the court room earlier, after his lawyer left, the tone and everything about the voice of the man I thought to myself that is the same voice as my assailant. This is not the first time in this case that I have come to court. Mr. Barnes has been before the court before and I come to watch. He was on those occasions represented by an attorney. I had not had an opportunity to heard Mr. Barnes speak before.

Well Mr. Foreman, members of the jury I shall be directing you later on the value, or lack of value, of a dock identification in relation to later evidence. This part of Ms.

Boston's evidence you must submit to careful scrutiny, because she knew who she would be facing in court and would be anticipating some sort of adverse reaction to the man who is alleged to have violated her. She knew who was alleged to have violated her and may just have anticipated some adverse reaction. It is quite possible in such circumstances for a complainant to react to an alleged assailant for quite the wrong reasons. Indeed you heard her say she had come to court previously to prepare herself for the day she had to testify. You may think that her evidence that in relation to recognizing his voice should be treated with the utmost caution and, indeed, may be rejected. Of course, Mr. Foreman, members of the jury even if you do reject that evidence you are still left with the evidence she gave as to her description of the man.

Now this is Ms. Boston's description of the gun :

The firearm was pointing directly at me when I first came up from the table. It was small, it would fit in the palm of your hand. Flat, it was the flat type, brownish on the handle grip.

And then later in cross-examination she admitted telling the police it had silver frame. And here is her evidence about the chain :

"I have the chain I was wearing for about five years. It is a very simple chain, not very long hanging a little below the adams apple.

There was nothing specific about it, very common back in Canada. It was given to me as a gift in Canada a thin chain. That evening two police officers came to my apartment, they had a plastic bag with things in it. My gold chain was in there. I identified the chain as mine. It has a habit of kinking and it has a kink in it right now."

And then she told Mr. Smellie that she submitted to his office photographs of her wearing the chain. I didn't allow the photographs to be tendered in evidence. When she was questioned about the chain by the accused she admitted that there is nothing specific about it. She said that if there were four identical chains in the line she wouldn't be able to identify it.

And she said she can go into a jeweller at any time and buy exactly the same.

This is Ms. Boston's evidence about the watch worn by the assailant:

I described the assailant's watch to police. I saw it only from an angle. It was black with a black plastic band. I could see the edge of the watch, it was also black plastic, it had notches in the side. I knew it was a digital watch. I never did see its face. A few days later I was in Superintendent Hall's office, Kim and I had gone there to hear if there was any news. There was a watch sitting on his cabinet, off to the side. At the time I was angry with superintendent Hall because he wouldn't tell us anything. I shook it at him and said this is like the watch he was wearing and at that time he took a statement from me.

And later Mr. Foreman, members of the jury Ms. Boston identified the watch that you seen in court, a similar to the one worn by the assailant. However in cross-examination she did admit (End of tape)

In cross-examination Ms. Boston also said that the accused hair is much shorter than her assailant's. She didn't see any scare on his hand and you will remember Mr Foreman, members of the jury the accused showing you a scar on, I think his left hand, near the knuckle of four finger.

Mr. Foreman, members of the jury, the second witness was of course, Ms. Peters who joined Lisa Boston at Smith Cove on the day in question and you remember her testimony that she heard the noise of metal grinding but ignored it and only took notice when she felt something tugging at her hair. When she looked at the man wearing something across the bottom of his face, she laughed because she thought it was friend playing a joke, only when he told her not to make another sound or he would blow her head off did she take it seriously. Then again, Mr. Foreman, members of the jury I needn't repeat her evidence word for word. I am sure its quite clear in your mind. She related how they were taken into the woods, how they were told to lie face down on the towel,

tied up and how the man raped Ms. Boston. She also related how he took the chain off Ms. Boston's neck.

Ms. Peters gave, she said a description of the assailant to the police on the same day. And this is her description of him to court :

He was a little bit taller than I was. I am 5 feet 9 inches. He was slim. He had fairly muscular shoulders. He had very short dark curly hair. It was not in an Afro, it was more in little curls. he was medium colour, not really dark. Fairly light colour like the defendant. He had a Caymanian accent. I would say he was in his mid-to-late twenties.

And again, you will compare that description with the accused. And in cross-examination Ms. Peters said :

The incident occurred around 1 o'clock maybe five or ten after one. We probably spoke to the woman who took us to the hospital at one thirty. The man had black sneaker, or definitely dark coloured, acid washed jeans, a light blue colour, tight fitting. The bandanna on his face might have been his shirt. It was blue with a white pattern. He was wearing a watch which had a black armband on it. That is probably about it, meaning the description. I can't describe the watch further it was clearly far away from me.

Ms. Peters also described the gun :

The gun was flat and brown and black. It was probably the size of your hand. I could not give a more specific definition of the gun. I have not seen one before nor have I seen one since.

As I ought to recap and add to her definition of the man:-

"I never thought I would forget his eyes. I looked at his eyes more than anything else. I can give no distinguishing mark from the neck down, that concludes her description."

Then she went on to describe the gun as I have read out to you. Later she said it could have been a toy gun but that she thought that it was a real gun. And she said that there was no struggle:

"I thought about running, I was not going to run and I was not going to fight."

Well Mr. Foreman, members of the jury you may well find that the two ladies were wise not to run or struggle in all the circumstances. You may have no difficult finding that any acquiescence there may have been was through a genuine fear of violence if you do believe their evidence.

Now, Mr. Foreman, members of the jury that's the direct evidence relating to the alleged rape and robbery and it will not have escaped your attention that the one issue about which you will have to make a finding and as to which there is no direct evidence from either of the two ladies is that of identification. Now in this respect I am going to have to give you some directions on corroboration, but in all the circumstances I will leave that direction until tomorrow morning.

I adjourn until tomorrow morning and I adjourn these proceedings until tomorrow at 11:30 a.m.

Now Mr. Foreman, members of the jury we left off yesterday after I had reviewed for you the evidence of the complainant Ms. Boston and Ms. Peters and I said I would direct you on an important aspect relating to the law of evidence and that is corroboration. Now this direction that I am giving you relates to the first count of rape only and there is a very important rule in rape cases. Because you see experience in the courts has shown that for various reasons or no reason at all, complainants in sexual cases have told false stories. And complaints of this nature are very easy to make and very difficult to refute and so there is a rule of evidence that we look for some confirmation of the complainant and from a source other than the complainant that she is telling the truth. In other words we look for corroboration of her evidence. Now evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates

him that is which confirms in some material particular, not only the evidence that the crime was committed but also that the accused committed it. Now of course, if you accept the prosecution's evidence or various parts of it, there is ample corroborative evidence that a rape was infact committed. Ms. Peters is an independent witness independent that is of Ms. Boston and she says she was an eye witness to a rape. There is also medical evidence that sperm was found inside or around Ms. Boston vagina after the incident, and there is very strong evidence that there was no consent. You may feel by the fact that a tampon was taken from inside her after the incident you'd think that if there was consent she would remove the tampon before sexual intercourse.

But corroboration should relate to the issue in the trial and the issue in this trial you may think is identification. Now, strictly because Ms. Boston has not identified the accused as her assailant there no evidence to corroborate and thus there no corroborative evidence in that regard. There is evidence of course in the trial which implicates the accused if you accept it. There is the evidence relating to the chain, there is the expert evidence relating to the DNA, the PMG and the blood testing which implicates the accused. But strictly there is no corroborative evidence of identification because there is no evidence of Ms. Boston to corroborate. She didn't identify the accused.

But Mr. Foreman, members of the jury if after looking at the facts of this particular case you find that although strictly there is no corroborative evidence on the issue of identification you may still convict the accused provided that you give yourselves the warning that it is dangerous to do so.

Now next Mr. Foreman, members of the jury we come to the evidence of the taking of the samples from Ms. Boston and the accused and the evidence relating to the labeling of those

samples and this you will recall involved the recalling of some witnesses. Dr. Catriona Johnson conducted an examination of Ms. Boston at George Town Hospital and she took samples from Ms. Boston in the presence of WPC Bodden. The tampon and gauge swab from around the Ms. Boston's vagina was exhibit 4a. The vaginal swab was exhibit 4b, saliva sample was exhibit 4c, two swabs from inside the vagina are exhibit 4d and a smear of tissue from inside the vagina displayed on a glass slide is exhibit 4e. Exhibit 4f is a blood sample taken by the doctor and 4g another blood sample placed in special container. There were other samples taken but they are not relevant to this trial. The doctor recognized the seven exhibits produced to the court as those she took from Lisa Boston on the 29th January, 1990.

Mr. Foreman, members of the jury this is Dr. Johnson's evidence regarding her physical examination of Ms. Boston. I examined the patient at 1:20 p.m. I examined her physically. She looked as though she had been crying. She was tearful at one point. She was alert and cooperative and gave a good history. She had circumferential bruising and abrasions around both wrists. That's consistent with something being tied around her wrists. She had a bruise adjacent to the vagina entrance. Any blood trauma could have caused that, including forceful entry. Now Dr. Melody Muckarjie was the doctor at George Town hospital who examined the accused on the night of the 29th January last year. She took specimens from him in the presence of two police officers. She produced as exhibits 6a and 6b two samples of blood taken from the accused. Exhibit 6c was a saliva sample taken on a gauge swab and there were other samples taken and produce which were not used in any of the later tests. When cross-examined the doctor said that the samples of blood produced can be anybody's samples, you remember that. They meaning the doctors don't label the sample. The samples of blood are taken from one needle stick and put into two separate tubes. Further questions were asked by Mr. Smellie in this connection and Dr. Muckarjie said that her signature doesn't appear on the label of

Exhibit 6a that is the blood used for the DNA sample. She doesn't believe the card was written up in her presence but the doctor was subsequently recalled and she testified that her signature or initials appear on the labels on all exhibits apart from the one exhibit, exhibit 6a. She thinks the samples were witnessed by one of the police officers and they recorded the samples as they were taken. When questioned by the accused Dr. Muckarjie said it would be possible for the sample in exhibit 6a to be put there in other circumstances. There is no writing of hers upon it. She went to say that she can only think that taking two samples at one time from the same patient having written on only one she must have forgotten the second. And you recall that she said in her evidence that there was one needle stick and then the two samples were taken from that needle stick.

Detective Constable Rankine was at the hospital with the accused and PC Martinez when the samples were taken from the accused and he took the samples to the police station and kept them in safe custody. The samples were numbered by the doctor he said. He recognized exhibit 6a to 6h as the samples taken in his presence and the doctor put those samples in envelopes. Some of them were in envelopes and were they were not any envelopes the doctor did that and WPC Bodden put the exhibits in the plastic envelopes at the Police Station.

The blood samples he said exhibit 6a and 6b were put in there vials by the doctor in his presence. The blood was taken from the accused and they were given in that condition he said to WPC Bodden and he said he didn't write on the exhibits.

D.C. Martinez he said then came and testified as to his observations of the taking of the samples and to his role in the labelling of them. And he testified that he labelled each and every one of the containers of the samples. He labelled each envelope and vial and his handwriting appears on each sample including the one not initial or signed by Dr. Muckarjie at his

exhibit 6a. He said as the doctor handed the samples to him he wrote on them. And when cross-examined the officer said exhibit 6a was labelled by him in the hospital. The doctor put the blood into the vial and he is positive that exhibit 6a is the tube that she gave him. WPC Bodden was present when doctor Johnson examined and took samples from Lisa Boston and she recognized them as exhibits 4A to 4G.

She received 8 packages of exhibits and she took those packages and exhibits 4a to 4g to the Metro Dade Laboratory in Miami. And she received a receipt for all exhibits she took to Miami and among the exhibits she took there were exhibits 6A to 6H which were taken from the accused. The samples purportedly taken from the accused by Dr. Muckarjie. When recalled PC Bodden said that these exhibits were given to her by DC Rankine and she sealed them in the plastic envelopes and prepared the outside labels.

Chief Inspector Cooke in charge of Scenes of Crime made smears of blood on the two pieces of gauge you see in exhibit 6a. This was for DNA examination. Blood was taken from the vial in exhibit 6a by Chief Inspector Cooke and smeared on the gauge. And when cross-examined the officer said that it was not possible for the sample to be tampered with before she received it. The container was properly sealed.

Now I have been through this part of the evidence very carefully with you, Mr Foreman, members of the jury because its is of importance in the trial. Because the tests conducted by the experts to have any validity you must be satisfied that the sample tested by the experts, Dr. Hass and Mr. Chin-See. Where the samples taken from the complainant and from the accused. And you have to be satisfied that in particular exhibit 6a the blood sample which was purportedly taken from the accused was that which was tested by Dr. Hass.

Now the doctors have positively identified the samples they took from Ms. Boston and the accused, by means of initials or signatures that is with the exception of exhibit 6a. The blood sample allegedly taken from the accused and examined by Dr. Hass in the DNA test. However you have the evidence, Mr. Foreman, members of the jury of DC Martinez that he wrote the label on the sample as it was handed to him by Dr. Muckarjie.

Now you must be sure as I say that the correct samples were tested. Could it be that exhibit 6a is someone else's sample say picked up inadvertently in at the hospital. Now Mr. Foreman, members of the jury Dr. Muckarjie did say that she took the two samples using the same needle stick. D.C. Martinez said he labeled the samples as they were handed to him. Dr. Hass testified that if the wrong sample was picked up those making the mistake would have had to choose the one sample in at least 48 million with a pattern consistent with that of the cell tissue found in Ms. Boston vagina. You may think that the chances of such a wrong being collected is so remote as to be beyond acceptance. It is also the possibility which frankly you must consider because everything is in issue that there was a deliberate switch of samples. This hasn't been suggested by the accused but it may have crossed your mind and you must consider it. This however would involve a deliberate act of dishonesty on the part of D.C. Martinez. He would have to find or take or make a new vial of blood to substitute for that of the accused and it would almost inevitably have to be from the person who he knew or suspected to have blood to match up with the semen found in the complainant's vagina. In other words it would almost certainly involve a cover-up of the true suspect and you would have to throw into that consideration the fact that according to Mr. Chin-See the accused blood exhibit 6b which had Dr. Muckarjie initials was consistent with that of the semen..... sorry, the blood grouping and PGM type was consistent with that in the semen found in the complainant Ms. Boston. In other words by chance in a less positive but still you may think indicative test, he

matches, the accused matches up with the blood grouping of the assailant.

Now it is a matter for you to consider whether you think it reasonably possible for D.C. Martinez is covering a switch of the blood samples taking all that into account. Then of course, you have to consider whether the sample exhibit 6a could have been contaminated in Chief Inspector Cooke's process of putting smears on the gauge found in the exhibit envelope. Well you have heard Dr. Hass on that. There would have to be a substantial substitution of tissue fluid for that of the accused blood for the integrity of the sample to be affected and you may well think that this such a remote possibility as to be beyond reasonable consideration.

Now Mr. Foreman, members of the jury we next turn to the evidence turn to the evidence of the expert witnesses Mr. Chin-see and Dr. Hass. Now the only difference between an expert and any other sort of witness is that an expert witness may give evidence of his opinion where as any other may not give evidence of his opinion, he must restrict his evidence to facts. But even with an expert witness the courts not obliged to accept any opinion he gives. The court is obliged to test that opinion and come to an independent conclusion. In other words, you Mr. Foreman, members of the jury after hearing the evidence you must come to your own conclusion giving whatever weight you think the experts evidence is worthy of. You have Mr. Chinsee's CV at exhibit 8 and he did say he is responsible for surgically analysis and he received the exhibits in this case and checked them against copies of the receipts even to WPC Bodden. He selected of all the samples taken from the complainant, seven, exhibits 4a to 4g, for further testing. Of the eight samples taken from the accused five were tested and Mr. Chinsee conducted a series of analyses.

First he conducted preliminary tests on exhibit 4a the

tampon and exhibit 4b a vaginal swab and he found they were positive for the presence of sperm. A test of Ms. Boston's saliva sample exhibit 4c showed she was a secretor, that is that her blood type shows up in bodily fluids except blood. And you recall he said that approximately eight percent of the population are secretors. Microscopic examination of the vaginal smears exhibit 4e confirmed that sperm cells were present in Ms. Boston vagina and semen or seminal fluid was present.

Mr. Chinsee then place on a index card the items which were needed for further testing and the card was produced as exhibit 9. He stored these away to preserve them together with Ms. Boston's blood sample Exhibits 4f and 4g. And Exhibit 9 and the sample of blood exhibit 4g he ultimately passed on to Dr. Hass fro DNA testing.

Mr. Chinsee tested various of the exhibits including the blood sample and made a chart of his findings.

He then took three of the accused samples, the saliva sample and the two blood samples exhibit 6a and 6b for further testing. Part of exhibit 6a was the sample passed to Dr. Hass for DNA testing. The saliva sample was tested for secretor status and the accused proved to be a secretor.

Mr. Chinsee said that he conducted two surgically tests on the blood of both Ms. Boston and the accused. Now, he produced charts. One of them shows the ABO system and he said that each person falls into one blood type, A, B, AB or O. and that blood group substances found in the secretion of secretors which both the accused Ms. Boston were, are in the case of group A, A and H, in the case of group B, B and H, in the case of AB, AB and H, and in the case of O just H. Now the PGM system is different and each person falls into one of ten groups and you recall the charts you have and I invite you.... Have they got copies?

These are the common PGM types, you will recall that. Now he also produced a chart of the results submitted..... it doesn't matter. Now the combined result of testing Ms. Boston's blood and saliva showed her to be a group B secretor with PGM type 1+ and 1-. The combined results of testing the accused blood and saliva showed him to be a group O secretor and PGM type 2+ 2-.

Mr. Chin see then performed ABO testing and PGM testing on the swabs taken from Ms. Boston genital area and vagina, and the tampon as displayed on the card exhibit 9. And all three items gave similar results. He detected antigens B and H in respect of the ABO testing and in respect of the PGM testing 1+1- and 2+2- types. This meant that there was secretion from two persons and as Ms. Boston is group B PGM type 1+1-, the foreign secretions were an H antigen and PGM type 2+2-. and this is what he said about it, Mr. Foreman, members of the jury:

Lisa Boston would have B and H antigens in her secretions. We know you are dealing with a mixture of secretions, so you look at the possibility of what the secretions are, the related possibilities are that the donor of semen is a B secretor, then you will get a similar result to that obtained here. He maybe a none secretor. If he is a none secretor his blood group would not show up in semen. The third possibility that he of O blood group because he only secretes the H antigen. So the three possibilities are that the donor of the semen is a B secretor, a none secretor or an O secretor. He has to be a 2+2- PGM donor. The accused fell into 2+2- PGM type and O secretor.

That is of course, Mr. Foreman, members of the jury, it means that the accused ABO and PGM types are consistent with the types found in the samples taken from Ms. Boston. And Mr. Chin-see gave statistics gleaned from the computer at his laboratory. He said that the cumulative likelihood

You've got that Mr. Foreman, members of the jury, Mr. Chin-see's opinion and his conclusion from the test were that the

accused ABO types and PGM types were consistent with the types found in the samples from Ms. Boston. And Mr. Chin-see gave statistics gleaned from the computer at his laboratory. And he said the cumulative likelihood of the occurrence in individuals consistent with the secretions found in Ms. Boston is 13 in 1000.

Now Mr. Foreman, members of the jury, Mr. Chin-see's test were independent of the DNA test. They have nothing to do with the DNA test and much be considered independently. They are the conventional tests and those are his results. You will determine Mr. Foreman, members of the jury whether you accept his evidence.

Next we come to Dr. Hass's evidence and he conducted the DNA test and he produced for you his CV which is exhibit 11.

Dr. Hass was presented with 8 samples by Mr. Chin-see. Three of those he tested, the vaginal swab, the genital swab and the tampon were on the card exhibit 9 and there were two other samples that he tested and those were the blood samples from Ms. Boston and the accused.

Mr. Foreman, members of the jury I don't think any profit can be gained by me going through Dr. Hass's test with you step by step. I recorded it but I don't think you need me to read it out for you word for word. I think its sufficient for me to refer you to the diagram of the 11 steps. Perhaps you can give the jury. Those were the 11 steps taken in the process in determining the repeated regions in the DNA. Now the procedures used, he said, are those established by the FBI in Washington with only minor variations they used the FBI protocol and its the protocol used in most forensic labs in the USA.

As I say it won't be necessary for you, for me to go through the process with you step by step. You have now decided whether you understand the process, whether you are satisfied the

process has integrity and whether you accept the conclusion drawn by Dr. Hass from the tests he made.

Dr. Hass's analysis showed cellular material on the vaginal swabs, the genital swabs and the tampon and he separated the DNA from the sperm cells, from the DNA from the non sperm cells. He also extracted DNA from the blood of both Ms. Boston and the accused. Those samples you will recall were put into the gel with a five minute span and in different lanes of gel. There was a control sample put to confirm that process was reacting in accordance with their expectations and calibration markers against which measurements could be taken. So he testified as to built in checks to ensure that the process was working properly. And he said, by Sept. 4 and 5 there the results are obtained. But the further steps are concerned with producing the result which can be seen. And using 4 different probes, 4 different patterns are obtained. Now it is the accumulation of 4 different results which allow them to make their conclusions. On probe, one result wouldn't be although conclusive. The odds increase that it is a correct pattern that there is a matching as you repeat the process. The first result, far from positive but by the time they reach 4 results using different probes, if there is conformities then the odds substantially increase that the donor samples come from the same individual. The odds for positive identification increase with the number of tests.

You recall that by step 3 for unknown reasons the tampon could not be used but they continued the process with the other samples.

Dr. Hass produced the 4 films showing the results of the 4 tests he conducted. He showed on each the position of the control sample and the calibration markings. He said that in respect of each test he was satisfied that the calibration was correct and that the introduction of the electrical current at the gel stage into the gel had the expected result, so he was

satisfied that they were dealing with a process that was working properly.

On each x-ray film Dr. Hass showed you the lane containing the DNA from the standard blood from Lisa Boston and the lane containing DNA from the standard blood of the accused. In one lane was the DNA from Ms. Boston's vaginal tissue which corresponded with the pattern from her blood. In another lane was the DNA from the sperm cells from the same sample and in yet another was the DNA from the sperm cell fraction of the genital swab from Ms. Boston and in all four tests there was a visual match between the DNA of the sperm containing cells of the genital..... sorry the sperm containing cells of the genital and vaginal swabs and the DNA in the blood of the accused. The non-sperm cells DNA appeared to match the DNA in the blood of Lisa Boston. You will also recall Mr. Foreman, members of the jury that in the last film using the most sensitive probe you could see part of the non-sperm fraction in the sperm cell lane. That matched with the pattern in Ms. Boston's blood and you may think that confirmed the integrity because of Dr. Hass's explanation and he said, that this was because of the sensitive nature of the probe which picked up that not all the non-sperms cells were separated from the sperm cells at step 1 of the process.

Dr. Hass then went further and used a video camera to take a digitized picture of each film and then analysed it using a computer programme. And he concluded that the DNA profile in the sperm containing fraction on the vaginal swab and of the genital swab matches the DNA profile of the accused. He then compared the DNA profiles from the 4 probing with the DNA profiles already determined by their laboratory. The data accumulated from Dade County, sorry..... the data is accumulative from Dade County Red Cross blood donors. And he had this to say, Mr. Foreman, members of the jury :-

*From comparison of the accused profile with these DNA profiles of

the Dade County population which is a mixed population, I calculated the likelihood of finding another individual in the Dade County area with the same DNA profile as that of the accused. The likelihood is one in 48 million. I have calculated the figure within the Dade County case for Caucasian, Hispanic and black and this is the most conservative figure*.

And his conclusion, Mr. Foreman, members of the jury for the purposes of this case is the DNA profile of Keith Barnes matches the DNA profile in the vaginal swab and the genital swab taken from Lisa Boston. The matching of Ms. Boston's DNA was confirmatory of rest of the test, so you are not only compared on the computer the accused pattern but he compared Ms. Boston pattern and it all confirmed. And he went on:

It is common to have result of one laboratory cross checked with other laboratories. There are indicators that there is great reproducibility of result through the various laboratories. In this case I submitted the films or copies them who was an expert who was retained by defence counsel for his comparison of the DNA profiles. In addition the membrane to which the samples are fixed in this case was mailed to Life Codes Cooperation in New York. They are one of the three major commercial laboratories doing DNA analysis in forensic and paternity cases. And he said as far as I am aware in cases where there have been crossed checking there have been no difference of opinion as to regard to identification.

When cross-examined Dr. Hass said that this was the first DNA profile that he has done on a Caymanian. They have no specific resident of Cayman in their data base. He said if the probe was not what it was intended to be the control sample would not operate in the way that they anticipated.

Well that then, Mr. Foreman, members of the jury, is the evidence of the two experts who conducted independent tests which, they testify, matched the cells or fluids found in samples taken from Ms. Boston with those of the accused. And it is for you to determine Mr. Foreman, members of the jury whether you accept those opinions and conclusions.

Jose Webster testified that he known the accused for some time - since he was a young man. He said he saw the accused in South Church Street between the Grand Old House and Exotic Apartments in the vicinity of Smith Cove, on the day in question he said between 11 a.m. and mid-day. The accused waved to him and he waved back. The accused was walking towards town on the sea side of the road. Mr. Webster said that at an identification parade he identified the accused and you will recall that he first said that Inspector Myles didn't mention Texford Barnes son when he asked him to do the identification but when told what was in Inspector Myles statement he said, well, he wouldn't remember what was said word for word. The basic thing was that he was asked to identify an individual. You will also recall that he was asked about an incident between the accused and himself back in 1984 when Mr. Webster acknowledged that he could have called the police to the accused.

Well, you will decide for yourselves, Mr. Foremen, members of the jury whether that incident in 1984 shows that the witness had a grudge for him to come and falsely testify against him. You make your own minds up about Mr. Webster and you'll decide whether he could have been mistaking of course, whether he has any reason to lie. Of Course you compared his evidence to that, or to the statement given by the accused by the police where he gave his movements which on that day, and of course to his evidence called and to the evidence of the other witnesses.

I should warn you Mr. Foreman members of the jury that there is special need for caution before relying on the correctness of identification. it is quite possible for an honest witness to be mistaken to give a mistake in identification and notorious miscarriages of justice have occurred as a result. Even where as in this case identification involves recognition of someone quite well know to the witness mistakes are sometimes made. A mistaken witness can be a very convincing one. Examine carefully the circumstances in which the identification ws made.

It was made in daylight but it could only have been a fleeting observation for a second or two.

In assessing the evidence of Mr. Webster be aware of the risks involved in relying on fleeting observations.

And this direction is particularly relevant to the next witness who was called, and that was Mr. Vincent Duhaney. He was temporarily employed on the compound of Bob Brenton's house which is next to the Grand Old House in South Church Street. He was leaving the Island the next day the 30.1.90 so he remembers the 29th.

The week before the 29th, he said, a man parked his bicycle behind Mr. Brenton's garage on the sea side, came through the yard and went across the bush to Smith Cove. He saw him, he would think approximately 10 to 10:30 in the morning.

And on the 29th January, he again saw the man at the same time, this time walking from the Grand Old House towards Smith Cove on the iron shore and he didn't see a bicycle on that day. He gave a description to the police later in the day and this is the description he gave in Court :

I described the person. I tell them, that's the police, a slim guy. I think they asked me the height. I don't remember what I told them but five feet eight to five feet ten. Brown complexion and brown curly hair. Brownish. They asked me what clothes. I said I don't remember but I think he was in short pants the week before. On the 29th he had what looked like stone washed jeans. I said he had a meanish look like he don't smile or anything like that."

Mr. Duhaney didn't know the accused before and he sight of this man was from a goodly distance you will recall. Now could he not be mistaken particularly when one considers the evidence of the accused work mate, Samson Christy that between 10 and 10:30 the week prior to the 29th January, the accused would be at work.

Mr. Duhaney looked through a number of photographs in an album at the Police Station and you'll recall being shown the photograph he picked out. It is in the album there. I will remind you not to speculate how the photo of the accused or any of the photographs happened to be in an album in the possession of the police. Speculation often leads to erroneous conclusions.

Mr. Duhaney when questioned by the accused said the man in photo is about eighteen years of age. The man he described to the police was twenty to twenty-two years old and he would think the accused is about twenty-four.

Samson Christy worked with the accused at P&G Industrial Gas in Crewe Road. He testified that the accused didn't come to work on Monday 29th January, 1990, that at least until 12 noon when Mr. Christy left work.

He saw the accused at about 6:15 that day in town by the Cable and Wireless building. He asked the accused why he didn't go to work that day and the accused said he had some business to take care of. Ricky, the man who works with them would know about it.

Since the Saturday previously, Mr. Christy said the accused had had his hair trimmed. From the time he knew the accused he had never had his hair low.

Any you remember how Mr. Christy testified during the week before the 29th January the accused had removed a pouch from the desk and had shown him a gun and four rounds of ammunition from him and this is his description of the gun:

"He handed the gun to me and I held it. The gun was a small automatic gun about 4 to 5 inches long. It had a brown handle and the rest of the gun was black."

The witness described the pouch or holster as being dark brown and soft, made of leather or plastic and it wasn't the one

that was shown to him in court as recovered from the accused room.

Mr. Christy was cross-examined by the accused about whether he had a grudge against Mr. Barnes over a girlfriend who left him and you will recall the rather interesting exchange in that connection.

Mr. Christy testified that the accused came to work everyday the week previous to the 29th January from Monday to Saturday. His hours of work were from 8 or 3:30 to 4 p.m., but you will recall that his lunch hour could be from 11 to 12 or 1 p.m. and that applied to all three working there.

Well Mr. Foreman members of the jury you have made your own assessment of Mr. Christy as a witness and you will compare the description of the gun he said the accused showed him with the descriptions of the gun given by Ms. Boston and Ms. Peters. You will also make your own assessment of whether he could be falsely testifying against the accused because of a grudge over a girlfriend a year or two before. If he was intent on putting the accused in trouble rather than telling the truth do you not think it would have been more likely for him to say that the pouch shown to him in court was the one he saw the accused with. That's for you, Mr. Foreman members of the jury to consider all that.

Ronald Williams has known the accused since December 1989, and indeed he dropped him at work sometimes and sometimes bought him a drink. That was because of a favour that the accused did him, he said. Sometime between the 22nd and 25th January last year, the accused came to him and asked him to borrow, asked if he could borrow \$300. And Mr. Williams testified, he told the accused he didn't have the money at the time. He didn't see Mr. Barnes on the 29th January nor did he have any arrangement to meet him. There was no arrangement that

he take money to him on that day. And you will of course, recall Mr. Foreman members of the jury that at page 10 of his interview with the police, the accused said that the friend who would bring him the money was Ronald Williams who works at Cable and Wireless. And you will also Mr. Foreman members of the jury recall the accused explanation in that connection that he given the message through someone else. When cross-examined by the accused Mr. Williams denied that he ever told him when he worked at Cable and Wireless that there was someone who could be confused with him.

You will well remember, Mr. Foreman members of the jury I'm sure, the fiery Ms. Sandra Connor who testified that she has known the accused for about 17 years. She was taken to George Town Police Station on the 30th January last year and she was shown a gold chain by Det. Insp. Brady. She said she never seen it before. She denied selling it to the accused in his presence. The accused said she had sold it to him for \$25.00 but she denied it, she said. She said she squared off to lick him because she was angry when he made that accusation.

She said she had seen the accused last at Merengue Town about a week or two before that. Not at the Zodiac Club. She was cross-examined on a letter exhibit 19 which was shown to her and she denied writing the letter, and denied apologizing for getting the accused into trouble.

Well Mr. Foreman members of the jury you saw Ms. Connor in court and you heard what the accused told the police in connection with selling the chain to her and what he said in this court. You make your assessment of where the truth lies. If of course, you decide the truth lies with the accused or could lie with him then no adverse inferences can be drawn from the gold chain. If on the other hand you believe Ms. Connor, that she never sold the chain to the accused you are left with no explanation where the chain came from and you may think that is

strong inferential evidence that the chain infact belongs to Ms. Boston and that the accused took it from her.

Fitz Norman Blair is a sales clerk at Walkers Road, Gas Station. He saw the accused at the gas station at about 11 a.m. on the 29th January, 1990. He went for lunch he said, at about 12 noon and saw the accused up to that time. When he returned at 1 p.m. he didn't see the accused. This evidence of course is in relation to the interview record copies of which you have. Page 9 of that record shows the accused as saying he was talking to Blair at 1 p.m. when his alarm watch buzzed. Well, Mr. Foreman members of the jury you will recall the accused telling the court that this part of the interview was incorrectly recorded and that he was speaking to Blair at 12 o'clock. So Mr. Blair's evidence isn't denied by the accused. It is the interview record which is challenged.

The accused's girlfriend Gloria Dilbert was called and she testified that she left the accused at her apartment at about 8:15 a.m. on the day in question. She had no sexual relations with him that day or the day before. And again Mr. Foreman members forth jury that piece of evidence relates to the interview record which the accused says was incorrectly recorded, at page 4, that he had intercourse up to the morning and at page 12 that he had intercourse with Gloria.

Gloria denied that a police officer came to her on the 29th January, 1990, and said that the accused said that he had sex with her that day.

Inspector Courtney Myles testified as to his conduct of the Identification Parade at which the accused was identified by Jose Webster.

Detective Constable Mark Miller was with Detective Inspector Brady when the accused was arrested and he searched the

accused at the Police Station, and inside a wallet taken from his back pocket was found the chain exhibit 1. He said the chain appeared to be forced into a corner of one of the pockets in the wallet. At 12:05 a.m. early hours of the morning of the 30.1.90 the accused was interviewed by Detective Inspector Brady in the presence of Detective Chief Inspector Branch. The interview record has been exhibited as exhibit 20 and you have copies I think. Mr. Foreman members of the jury I needn't go through it word for word. If you are going to accept it as a piece of evidence truly and accurately recorded then you may take it with you and read it through in the jury room.

My direction to you on that record is this. You are only to take notice of it, take it into account if you are satisfied that the interview was conducted without threat of violence to the accused or offer of any reward to him. In other words it must have been voluntarily conducted on the part of the accused. You are only to take notice of it if you are satisfied it is a true and accurate record of the questions and answers. And if you are uncertain that it was freely and voluntarily given then you must cast it out. If you are uncertain that it is a true and accurate record then you must cast it out. It is a matter for you. And you have heard Inspector Brady and Detective Chief Inspector Branch testify and answer questions about the recording of the interview and you have heard the accused, and its for you to decide whether you accept it as a true record.

You are invited by the prosecution to conclude lies, and indeed you are invited to infer that those lies relate to the accused whereabouts on the day in question that around the time the incident and about the purchase of the gold chain. And you are invited to draw inferences adverse to him from those lies. Why would he lie about his whereabouts at the given times if he was involved elsewhere than at Smith Cove that day? Why would he tell lies about his purchase of the gold chain if he didn't get it from Lisa Boston? Those are I think are the questions the

prosecution is inviting you to ask yourselves. And you can't get away from the fact much of what is contained in the accused interview record has been contradicted by people who were names therein.

Now it is necessary to approach this matter with some care because a statement made by an accused out of court does not directly prove anything except where it constitutes an admission, and the accused has consistently denied these offences. But a statement shown to be false may go directly to show something. For example in this case if you are satisfied that he accused lied when by saying he was talking to Mr. Blair at 1 p.m. that day then you may infer that he wanted to give the police the impression that he was other than where he actually was at that time. But no such inference may be drawn unless the following requirements are satisfied.

1. You must be satisfied that the statement is false and that the accused knew it was false;
2. It must be a statement relevant to the offence with which he is charged;
3. You must take account of the fact that it wasn't made on oath;
4. You must consider whether there is any reason other than his guilt of the offences which there was or may have been for not telling the truth.

To recap them, Mr. Foreman members of the jury, only if you are satisfied that the interview was voluntarily taken and that it was true and accurate can you take account of it. And then only if you accepted can you draw the inferences adverse to the accused from it and only then if those four requirements I have outlined are satisfied.

Now Chief Inspector Branch was the officer who witnessed the recording of the interview and witnessed Sandra Connor's reaction to the questions about whether she sold the chain to the accused. And he also showed Vincent the Duhaney the album of photographs and he said the witness looked through the album for about 12 to 15 minutes before he picked out a photograph. And as a result instructions were given and the accused was arrested. He was also with the accused he said, and Detective Inspector Brady when a shed which he says the accused showed them as one he sleeps in was searched and a holster and one round of ammunition were recovered. Now, Mr. Foreman members of the jury you may find that you are unable to draw any adverse inference from the finding of this holster and round of ammunition, it's a matter for you. It doesn't seem to connect the accused with the alleged offences save in the most indirect way of showing that he had a holster which could fit a gun of about the size testified to by the complainants, the complaint and Ms. Peters. And you will recall the accused questions and testimony in relation to the Walkers Road premises not being occupied by him.

Detective Inspector Brady was the last prosecution witness to testify and his evidence covered the taking of the interview record and the areas covered by Chief Inspector Branch.

The accused testified that on the 29th January, 1990, he left home at approximately 9:15 in the morning, walked to Walkers Road Gas Station reaching there shortly after 10. He was waiting on a friend, who he said later in his evidence was Ronald Williams, to bring him money. He spoke to Michael White, Fitz Blair and Darren Frederick and he left the Gas Station at 1:05 or 1:15 p.m. He walked to Mr. Nixon's or Ms. Nixon's house, saw a couple of friends and then went home taking a lift off Mr. Nixon to the Blue Marlin.

Then he related his movements from leaving his apartment in Eastern Avenue to being arrested in the presence of Mr.

Christy. He was first taken in, he said for the Gas Station robbery and then they told him that they had a more recent charge of rape and robbery which took place the same day.

He told Inspector Brady where he got the chain from but when Ms. Connor was brought she denied it and he was taken to his grandmother's house, after they had gone to the Eastern Avenue apartment and searched it, and a gun case and bullet was found there.

He denied that he had a gun which he showed to Samson Christy.

He had his hair cut on the Saturday evening, he said at 4:30 or 5 o'clock but he said he is reluctant to call his barber because he had a fight with him over a gambling game that evening. And he has had his hair short from 1983.

Now Mr. Smellie's cross-examination of the accused will be very fresh in your mind and you will have drawn certain conclusion as to the veracity of the accused from that cross-examination I'm sure. The accused was cross-examined against about the grudges he alleges his barber, Mr Christy, with whom he was found walking when he was arrested, and Jose Webster had against him.

He was he said, at the gas station waiting for Ronald Williams to bring him money. The reason he gave for Ronald Williams not knowing of the arrangement to meet him is that the message was given through someone else.

Regarding Mr. Fitz Blair's evidence the accused said that although there was no animosity between them Mr. Blair was not being truthful when he said he returned to the gas station at 1 o'clock. He was then cross-examined about this recorded, these recorded questions and answers in the interview record and I will

invite you to have a look at them, Mr. Foreman members of the jury.

Have you got the interview there? Look at page 9, near the top.

His answer: I wears my watch all the time.

Have you got that? I wears my watch all the time.

And then its recorded. Can I ask you again what time you say this rape occurred?

Then this would be Mr. Brady: It occurred between 12:45 p.m. and 1 p.m. yesterday 29.1.90.

Answer: the accused; 12:45, 1 p.m. okay. My watch has a built in alarm system. It alarms every half hour. When that buzzed at 1 o'clock I was standing up at Walkers Road, Texaco Station, talking to Blair.

Now his explanation to the court is that he was talking to Blair at 12 o'clock, not 1 o'clock and the Inspector wrongly recorded the time.

Well Mr. Foreman members of the jury you will decide whether that makes sense given the context in which the time was given in the exchange between Inspector Brady and the accused. If you are satisfied that it was an accurate record.

The accused then testified that Ms. Connor is telling untruths and about the letter she allegedly sent him in prison. And the accused produced a jeans exhibit 23 and the T Shirt, exhibit 24 as the clothes he was wearing on that day and he showed you.

Now the accused called William Hayward Ebanks who testified that he passed the letter exhibit 19 from Sandra Connor to the accused. Well, Mr. Foreman members of the jury, you will have formed your own impression of Mr. Ebanks. Is he the kind of person whose word you trust in respect of your day to day

dealing?. Would you trust him or trust his word on anything on importance?

If you think its possible that Sandra Connor wrote that letter just look at it Mr. Foreman members of the jury. I invite you to take it with you. Does it say anywhere in the letter that she now admits selling a chain to the accused? You will bear in mind that it is in response to a letter calling for her help, but the kind of help asked for or offered is not specified. Of course Ms. Connor denied sending the letter and if you think that she did sent it or she may have send it, then of course it would detract from her overall credibility. But don't lose sight of the real issue, whether or not she sold the chain to the accused.

Dennis Brown testified that he was playing dominoes at the gas station on 29.1.90. His girlfriend's birthday was the day before, so that is how he remembers the day. He said, he saw the accused come by in between 12:30 and 1 o'clock, at about a quarter to.

When cross-examined he admitted being in custody at Northward at the moment and he said he wasn't paying any particular attention to the accused's movements, and although he wore a watch he didn't check it each time he saw the accused.

Darren Frederick another domino player testified that he was at the gas station between 10 a.m. to after 2:30 p.m. on the day in question. The accused came to the gas station at 12 or 12:15 and left at a quarter to one.

Then he was asked about the gold chain which he said he remembers the accused pulling out of his pocket when he reached for a cigarette. That was on the Saturday before the 27th January. He also said he has never seen the accused hair as high as the usher's. When cross-examined he said he had several previous convictions for giving a false name, handling stolen

goods and burglary.

Michael Wight is the manager of the gas station and he gave evidence which corresponded to Mr. Fitz Blair's. He went for lunch he said at the same time as Mr. Blair, mid-day, and the accused was still there. And the accused was not there when the witness returned at about 1:15 or 1:30.

When cross-examined the witness said that the accused could have left the gas station between 10:30 and 12 and returned.

And finally Mr. Foreman members of the jury, it was the elderly gentleman Patrick Nixon. He testified that he gave the accused a lift when he was going back to work after lunch on that day. He was supposed to go back to work at 1 o'clock but he picked the accused up he said, at 1:10 p.m. Now three interesting aspects of the evidence came out, two of them spontaneously not as a result of questions.

The first that they stopped by the accuseds grandmother's place in Walkers Road, which the witness knows the accused stays at. That was on there way to the Blue Marlin. The second quite spontaneously wasn't the accused hair wasn't trimmed liked it is now when he picked him up on that day. And the third was that the accused wasn't wearing the T shirt that the accused says he was wearing on the day. It was another shirt he said with stripes. I think black and then at some stage mentioned blue.

Well, Mr. Foreman members of the jury that is the totality of the evidence in which you have to determine whether you find the accused guilty or not guilty of one or both of the charges in the indictment. When making your determination consider all the evidence, both for the prosecution and the defence. You may of course feel that it is unrealistic to expect

witnesses to give precise evidence relating to times, particularly in relation to events which occurred over twelve months ago. But of course you may think that those witnesses who had a time to relate to, for example going to work or coming from work, lunch hours, are more likely to be accurate than others. But use your common sense in this relation. Mr. Foreman members of the jury think back to events which may have had some significance to you a couple of days ago, then a year ago and see whether really it is realistic to expect witnesses to be accurate as to time. And don't lose sight of the fact that whatever the evidence relating to times the accused on his own admission and according to his own witnesses was within striking distance of Smith Cove on the day in question. He was at Walkers Road Gas Station at about the time the incident allegedly occurred during the span of time and you know the geography Mr. Foreman members of the jury and you have heard the witnesses give various opinions, or give various testimony as to how long it would take you to walk, or run, or hurry from the gas station to Smith Cove.

Now of course no amount, no number of discredited or unconvincing pieces of evidence with little or no value when linked together can present a solid structure upon which you can base a finding of guilt. You can't piece together valueless pieces of evidence or pieces of evidence which have little value and create something of value upon which you can base a decision. But you must look at the intrinsic value of each piece of evidence. But a number of convincing and consistent pieces of evidence when linked can create a solid structure.

Look at the various pieces of evidence in this case and you start of course, with the complainant and her friend Ms. Peters. Their descriptions of the assailant, which includes the type of watch he was wearing which was according to the complainant focused on by her.

There is the evidence that a gold chain similar to that

worn by the complainant and taken from her by the assailant was found in the accused possession. And you will judge his explanation for that possession and of course, Ms. Connor's evidence in that connection.

There is evidence of Jose Webster that he saw the accused in the vicinity of Smith Cove between about 11 and mid-day on the morning of the alleged attack.

There is the evidence of Samson Christy that the accused had a firearm in his possession the week before the attack, a firearm which matched you may think the description of the firearm given by the complainant, Ms. Peters.

And there is the evidence relating to the accused hair style. And Mr. Foreman members of the jury, there what you may regard as independent evidence from two experts who say that sperm taken from Ms. Boston vagina and genital area is consistent with the blood grouping and the PGM typing and the DNA of the accused. These experts evidence should be independently considered for you may reject both their opinions, you may accept both their opinions, you may accept for one reason or another the evidence of one expert and not the other.

Balance that against the evidence of the accused and his witnesses and ask yourselves whether those and all the other items of evidence do or do not point irresistibly to the accused's guilt.

Now remember that what I told you, that it is for the prosecution to prove his guilt on each charge beyond all reasonable doubt, you must be sure as to his guilt before you can bring a verdict of guilty on one or both charges. And before I put you in the charge of two police officers, Mr. Foreman members of the jury I should advise you that it is better that you bring in a unanimous verdict. That is a verdict upon which each and

everyone of you agreed. A verdict of guilty or not guilty. If however, after one hours deliberation you can't come any agreement, any unanimous verdict then you can bring a majority verdict on each charge independent of guilt or not guilty and that majority verdict would be a verdict of guilty or not guilty on each of the charges on which any five or more of you agree. It can be five to two or six to one. But the Mr.. Foreman members of the jury would only be after one hours deliberation.

Thank you. I now put you in charge.

D. Schofield