

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**HER MAJESTY THE QUEEN**

Respondent

- and -

**STEVEN TRUSCOTT**

Appellant

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**APPELLANT'S FACTUM**

**APPENDIX 2**

*The Approximate Times of Witnesses On and Off  
the County Road as Best as it can be Reconstructed*

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**THE APPROXIMATE TIMES OF WITNESSES ON AND OFF THE COUNTY ROAD  
AS BEST AS IT CAN BE RECONSTRUCTED**

- 6:55 • Tom Gillette and Bryan Glover cycle home from the bridge to get their fishing rods.
- 7:00 • Philip Burns leaves the bridge and starts walking home.
- 7:10 • Teunis Vandendool arrives at the bridge (on one theory).
- Gillette arrives back at the river.
- 7:10-7:15 • Jocelyne Gaudet and Arnold George meet near the bush.
- Burns passes Gaudet and George on his way home.
- Glover cycles back to the river.
- 7:25 • Burns walks to the bend at the south end of the County Road, and walks east of the school toward home.
- 7:25-7:30 • Steven meets Lynne at the school and they walk toward the County Road around the west side of the school. They encounter Daryl Wadsworth, Warren Hatherall, David Faubert and Stuart Westie. Steven tells Wadsworth that he was taking Lynne down to the Highway.
- 7:25-7:35 • Richard Gellatly leaves from the bridge on his bicycle.
- Steven and Lynne pass Richard Gellatly on the County Road.
- They do not pass anyone else on the road because, by this time, the others are all off the road. Gaudet has gone to Lawson's farm. George and Glover are at the swimming hole. Burns is already home or, at the very least, walking on the east side of the school towards his home.
- Vandendool begins cycling toward Highway 8 on his way home (on the one theory)
- 7:35 • Steven and Lynne cycle over the bridge. They are seen by Doug Oates, Gord Logan, Karen Daum and, likely, Arnold George. Steven drops Lynne at the Highway.
- 7:40-7:45 • Steven returns to the bridge alone and sees Lynne get into a car heading east on Highway 8. He is seen at the bridge by Alan Oates, Gord Logan, and, likely, Arnold George. He then cycles towards the base.
- 7:45 • Vandendool leaves home (on a second theory).
- 7:50-8:00 • Steven arrives back at the school grounds. He is seen then, or thereafter, by Daryl Wadsworth, Stuart Westie, Warren Hatherall, his brother, Lyn Johnston, Lorraine Wood, John Carew and Bill Wilkes.
- 8:20-8:30 • Steven returns home to babysit.

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<b>Tom Gillette and Bryan Glover cycle home to get their fishing rods</b>	<ol style="list-style-type: none"> <li>1. Tom Gillette testified that he left the bridge at 7:00.</li> <li>2. Bryan Glover testified that he left the bridge between 7:00 and 7:10.</li> </ol>	<ol style="list-style-type: none"> <li>1. Tom Gillette (June 13): Did not state what time he left but said he "got down there <i>again</i> at about ten after seven."</li> <li>2. Bryan Glover (June 14): "We left around five to seven and came up the road home."</li> </ol>	<ul style="list-style-type: none"> <li>• Gillette and Glover left the bridge at 6:55 before Philip Burns started home.</li> </ul>
<b>Philip Burns leaves the bridge</b>	<ol style="list-style-type: none"> <li>1. Philip Burns testified that Sgt. McCafferty told him it was 6:55 and that he then took a dive, swam to his clothes, went up the river to the bridge and "waited around for about five, ten minutes" before going home." He did not see Richard Gellatly.</li> <li>2. Sgt. McCafferty testified that it was either 6:50 or 7:10 when Burns asked the time.</li> <li>3. Beatrice Geiger testified that Burns asked for the time at 7:00 then swam across the river and departed.</li> <li>4. Donna Dunkin testified that she saw Burns walking south from the bridge between 7:00 and 7:15.</li> <li>5. Chris Higgins, not called as witness.</li> <li>6. Gary Geiger, not called as witness.</li> </ol>	<ol style="list-style-type: none"> <li>1. Philip Burns (June 18 addendum to statement given June 13): McCafferty said it was "five minutes to seven, I took one dive, swam to clothes, walked to bridge then went straight home."</li> <li>2. Sgt. McCafferty (June 19): When Burns asked the time, "it was around seven. It may have been five or ten minutes either way."</li> <li>3. Beatrice Geiger (June 15): McCafferty said the time was "five minutes to seven."</li> <li>4. Donna Dunkin (June 15): "7 or 7:05 ... went to where kids were swimming;"</li> <li>5. Chris Higgins (June 18): "About 7 o'clock we reached the bridge and went swimming. Just as we were going over the railroad track we met Philip Burns walking toward home."</li> <li>6. Gary Geiger (June 19): Drove with Dunkin to bridge. Left home "about seven o'clock or five after and went straight to bridge." Saw Burns walking near the railway crossing.</li> </ol>	<ul style="list-style-type: none"> <li>• Burns left the bridge at about 7:00 on foot.</li> </ul>
<b>Teunis Vandendool cycles to the bridge (on one theory)</b>	<ol style="list-style-type: none"> <li>1. Teunis Vandendool testified that he left home between 7:05 and 7:10. He stated that it would take ten minutes to get from home to the bridge.</li> </ol>	<ol style="list-style-type: none"> <li>1. Teunis Vandendool (July 6): "I left home right after supper at about 7:00 p.m."</li> </ol>	<ul style="list-style-type: none"> <li>• On this scenario, Vandendool arrived at the bridge by 7:10.</li> </ul>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<b>Tom Gillette cycles back to the bridge</b>	<ol style="list-style-type: none"> <li>1. Tom Gillette testified that he arrived back at the bridge at 7:10 p.m. He did not see Gaudet or George on his way back. He was not asked whether he saw Philip Burns.</li> </ol>	<ol style="list-style-type: none"> <li>1. Tom Gillette (June 13): "Got down there <i>again</i> at about 10 after 7:00 p.m."</li> </ol>	<ul style="list-style-type: none"> <li>• Gillette was back at the river by 7:10.</li> </ul>
<b>Jocelyne Gaudet, Arnold George and Philip Burns meet near Lawson's Bush.</b>  <b>Bryan Glover cycles back to the river</b>	<ol style="list-style-type: none"> <li>1. Jocelyne Gaudet testified that she arrived at the bush at 6:40.</li> <li>2. Robert Lawson testified that Gaudet came to his farm "at approximately ten or a quarter after seven in the evening" and said she was going "back" to the bush.</li> <li>3. Arnold George testified that he passed Burns as he cycled north opposite O'Brien's farm and then met Gaudet opposite the bush at 7:20 p.m. He was not asked if he saw Glover.</li> <li>4. Philip Burns testified that he passed Gaudet and George in that order as he walked home. He was not asked if he saw Glover.</li> <li>5. Bryan Glover testified that he left home to return to the river between 7:20 and 7:25 p.m. En route, he saw Gaudet and George. He was not asked if he saw Burns.</li> </ol>	<ol style="list-style-type: none"> <li>1. Jocelyne Gaudet: (June 12): "I went up the county road at about 6:30 to meet Steve".</li> <li>2. Robert Lawson (June 25): "Jocelyne came to the farm at 7:25 p.m." <i>having already been to the bush to look for Steven.</i></li> <li>3. Arnold George (June 12 statement): "Went to swimming hole about 7 p.m."; (June 15 statement): Started cycling north from the school "about 7:00 p.m. then I rode my bike to the north side of Lawson's Bush and I saw Jocelyne Gaudet...Brian Glover passed me on his bike going north."</li> <li>4. Philip Burns (June 13): Saw Gaudet and George. Did not mention seeing Glover. Did not give time.</li> <li>5. Bryan Glover (June 14): "...I was going back to the river about 10 after 7:00 p.m." Saw Gaudet and George. Did not mention seeing Philip Burns.</li> </ol>	<ul style="list-style-type: none"> <li>• Gaudet, George and Burns encountered each other between 7:10 and 7:15.</li> <li>• Neither Gaudet, George, Glover nor Burns saw Steven and Lynne because they were not yet on the County Road.</li> </ul>
<b>Philip Burns reaches the school grounds</b>	<ol style="list-style-type: none"> <li>1. Philip Burns testified that he arrived home "around 7:30 p.m."</li> <li>2. P.C. Trumbley testified that, during his walking test with Burns, Burns reached home 26 minutes after leaving the bridge and 12 minutes after meeting Gaudet.</li> <li>3. Michael Burns testified that Philip arrived home at 7:32.</li> </ol>	<ol style="list-style-type: none"> <li>1. Philip Burns (June 13): Arrived home at 7:30 p.m. Did not give time with respect to when he reached school grounds.</li> <li>2. P.C. Trumbley (no date): test times consistent with trial testimony.</li> <li>3. Michael Burns (September 10): Philip arrived home at 7:30.</li> </ol>	<ul style="list-style-type: none"> <li>• Burns was off the county road and walking along the east side of the school toward his home by 7:25 p.m. This would allow him five minutes to walk home after leaving the County Road.</li> </ul>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<p><b>Steven meets Lynne at the school, they walk toward the county road</b></p>	<ol style="list-style-type: none"> <li>1. Anne Nickerson testified that Steven and Lynne left the area of the Brownie meeting between 7:00 and 7:10.</li> <li>2. Dorothy Bohonus testified that Steven came by "very shortly after" 7:00 p.m. She did not see Steven and Lynne leave.</li> <li>3. Stuart Westie testified that he saw Steven and Lynne walking across the school field between 7:00 and 9:00 p.m.</li> <li>4. Warren Hatherall testified that Steven and Lynne walked past the football field "at about 7:00 p.m."</li> <li>5. David Faubert (playing ball) not called as witness.</li> <li>6. Daryl Wadsworth (playing ball) not called as witness.</li> <li>7. P.C. Hobbs testified that Steven said he met Lynne between 7:00 and 7:30.</li> <li>8. Flt. Sgt. Johnson (with Hobbs at time of interview) testified that Steven "believed it was about 7:25 p.m." when he gave Lynne a lift</li> <li>9. Sgt. Wheelhouse testified that Steven told Hobbs he <i>met</i> Lynne "around 7:00 p.m. or shortly thereafter"</li> <li>10. Cpl. Anderson testified that Steven said he <i>met</i> Lynne at the school at 7:25.</li> <li>11. Steven testified at the Reference that it was "one minute either way of 7:30 p.m." when he left with Lynne.</li> </ol> <p>Steven (June 12, statement to Graham): picked up Lynne about 7:25 p.m.</p>	<ol style="list-style-type: none"> <li>1. Anne Nickerson (June 13): "At about five after seven, Lynne walked away and then a boy came along ... they walked away together toward J. Block him pushing the bike ... about 8 o'clock Lynne was not there."</li> <li>2. Dorothy Bohonus (June 17): Did not see them leave.</li> <li>3. Stuart Westie (June 13): "I saw Steve and Lynne about 7:30 but I would allow 20 minutes either way."</li> <li>4. Warren Hatherall (June 13): Saw Steven and Lynne walk past the football field at "about 7:00 p.m."</li> <li>5. David Faubert (June 24): Steven and Lynne crossed the field between 7:15 and 7:30 p.m.</li> <li>6. Daryl Wadsworth (June 24): Playing ball, saw Steven and Lynne riding double at the corner on the County Road. Steven said that he was taking Lynne to the Highway. Watched them "til they disappeared over the hill out of sight ... When I last saw them it would be about 7:25 p.m., I think."</li> <li>7. P.C. Hobbs (notes of conversation with Steven Truscott, June 10): Steven said he "took her down to the Highway from the school ... between 7 and 7:30 p.m."</li> <li>8. Flt. Sgt. Johnson (June 24): Steven advised he had given Lynne a ride "at approximately 7:30 p.m."</li> <li>9. Sgt. Wheelhouse (June 25 ): No time given.</li> <li>10. Cpl. Anderson (no date): Nothing in his statement about his conversation with Steven.</li> </ol>	<p>Steven and Lynne walked across the field toward the road at about 7:25 or 7:30 p.m.</p>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<b>Richard Gellatly cycles home to get his swimming trunks and passes Steven and Lynne on the County Road</b>	<ol style="list-style-type: none"> <li>1. Richard Gellatly testified that he left the bridge on his bike "about 7:20 p.m." (At the preliminary hearing, he testified that Donna Dunkin was already at the swimming hole when he left). He testified that he passed Steven and Lynne between O'Brien's farm and Lawson's bush at about 7:25 p.m. The Crown argued in his closing address that Gellatly's times were off and that he had to have passed Steven and Lynne earlier. Gellatly did not see Philip Burns on his way to or from the bridge.</li> <li>2. Beatrice Geiger testified that Gellatly left the swimming hole "within the same period" as Burns. She added, "Well, five to ten minutes --" but was then cut off by Crown counsel. She did not actually see Gellatly leave.</li> <li>3. Donna Dunkin testified that Gellatly was cycling toward the railway crossing between 7:00 and 7:15 p.m. about 10 feet ahead of Burns who was on foot.</li> <li>4. Chris Higgins, not called as witness.</li> <li>5. Gary Geiger, not called as witness.</li> </ol>	<ol style="list-style-type: none"> <li>1. Richard Gellatly (June 11, 12): Was [back] down at river about 7:30 to 7:45 p.m. Passed Steven and Lynne on his way home to pick up bathing suit. (June 13): "left home to return to river about 7:25 p.m." Did not mention seeing Philip Burns on his way to or from bridge.</li> <li>2. Beatrice Geiger (June 18): Richard "came down to swimming hole about the time I asked this man what time it was, and he said around 5 to 7:00. He stayed around for 5-10 minutes and said he was going home to get permission from his mother to go swimming."</li> <li>3. Donna Dunkin (June 15): Does not mention Philip Burns or Richard Gellatly; (June 20): Mentions Burns and Gellatly for first time: "Just as we were slowing down to pull off to park I met Richard Gellatly and the Burns boy."</li> <li>4. Chris Higgins (July 22): Drove with Dunkin to bridge. Saw Philip Burns walking. Did not say he saw Gellatly.</li> <li>5. Gary Geiger (June 19): Left with Dunkin at about 7:00 or 7:05 p.m. and went straight to bridge. Saw Burns walking towards the railroad track. Did not say he saw Gellatly.</li> </ol>	<ul style="list-style-type: none"> <li>• Gellatly passed Steven and Lynne, who were cycling north with Lynne on the crossbar, between 7:25 and 7:35 as he cycled home.</li> <li>• Neither Gellatly, nor Steven and Lynne, encountered anyone else on the county road because by this time, the others were all off the road. Burns was off the road and was just getting home, Gaudet had gone to Lawson's Farm. Glover, Gillette and George were at the swimming hole.</li> </ul>
<b>Teunis Vandendool leaves river for home (on one theory)</b>	<ol style="list-style-type: none"> <li>1. Teunis Vandendool testified that he cycled from the river toward the intersection between 7:30 and 7:35.</li> </ol>	<ol style="list-style-type: none"> <li>1. Teunis Vandendool (July 6): Left home at about 7:00. Got to swimming hole "about 10 minutes after leaving home ... only stayed in water 10 or 15 minutes" changed and cycled home.</li> </ol>	<ul style="list-style-type: none"> <li>• On this scenario, Vandendool cycled home at around 7:30 p.m. before Steven and Lynne reached the bridge.</li> </ul>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<b>Steven and Lynne cycle over the bridge toward Highway 8</b>	<ol style="list-style-type: none"> <li>1. Doug Oates testified that he saw Steven cycle north over the bridge with Lynne between 7:00 and 7:30.</li> <li>2. Gord Logan testified that he saw Steven cycle north over the bridge with Lynne at approximately 7:30.</li> <li>3. Arnold George testified that he did not see Steven at the bridge at all that evening</li> <li>4. Karen Daum, not called as witness</li> </ol>	<ol style="list-style-type: none"> <li>1. Doug Oates (June 12): "I'm usually home about 8:00 p.m.... I left the bridge about ten minutes after Lynne and Steve went north." (June 13) Saw Steven and Lynne "I think a half hour either way from 7 o'clock" [statement not signed, Oates denied in cross examination that he ever said half an hour <i>either</i> way].</li> <li>2. Gord Logan (June 13): "It must have been nearly 7:30 p.m. when I saw [Lynne] and Steve."</li> <li>3. Arnold George (June 11 to Hobbs): Saw Lynne and Steven on the cycle going towards the highway (no time given). (June 12 to Graham): "Went to swimming hole about 7:00 p.m., was there about 15 minutes when Steven and Lynne biked north."</li> <li>4. Karen Daum (June 14): "Me and Doug were coming up from the river and going to go home, and I saw Lynne riding on the bar of the Truscott boy's bike." Did not give a time.</li> </ol>	<ul style="list-style-type: none"> <li>• Steven and Lynne cycled over the bridge at approximately 7:35.</li> <li>• They were seen by Doug Oates, Gord Logan, Karen Daum, and, probably, Arnold George.</li> </ul>
<b>Steven returns to bridge</b>	<ol style="list-style-type: none"> <li>1. Gord Logan testified that about 5 minutes later he saw Steven return to the bridge alone.</li> <li>2. Alan Oates testified that he saw Steven on the bridge alone between 7:30 and 8:00.</li> </ol>	<ol style="list-style-type: none"> <li>1. Gord Logan (June 13): "About 5 minutes later I saw Steve come back and stop at the road bridge."</li> <li>2. Alan Oates: No statement given.</li> </ol>	<ul style="list-style-type: none"> <li>• Steven returned to the bridge at about 7:40. He stayed for about five minutes before returning for the school. He was seen by Gord Logan and Alan Oates and probably Arnold George. Doug Oates and Karen Daum likely cycled home between the time Steven and Lynne crossed the bridge and Steven's return to it.</li> </ul>
<b>Teunis Vandendool leaves home (on a second theory)</b>	<ol style="list-style-type: none"> <li>1. Teunis Vandendool's trial testimony does not support this proposition.</li> </ol>	<ol style="list-style-type: none"> <li>1. This is predicated on Vandendool being the fair haired teenager described by Beatrice Geiger, Donna Dunking and Robb Harrington.</li> <li>2. If so, he arrived at the river shortly before 8:00.</li> </ol>	<ul style="list-style-type: none"> <li>• On this scenario, Vandendool arrived at the bridge about 7:50</li> </ul>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<p><b>Steven arrives back at the school</b></p>	<ol style="list-style-type: none"> <li>1. Bill Wilkes testified that he saw Steven return "between 7:30 and 7:45"</li> <li>2. Warren Hatherall testified he saw Steven return alone "about a half an hour" after Steve left with Lynne</li> <li>3. Stuart Westie testified that Steven returned to where they were playing "about half an hour later."</li> <li>4. John Carew testified he saw Steven "about 8 o'clock" at the swings.</li> <li>5. Daryl Wadsworth, not called as witness.</li> <li>6. Sandra Pleasance, not called as witness</li> <li>7. Lorraine Wood testified she saw Steven at the swings at "about 8:10 or 8:15."</li> <li>8. Lyn Johnston testified she saw Steven at the swings at "about 8:15."</li> <li>9. Steven testified at the Reference that it was "around 8:00" when he returned to the school</li> </ol> <p>Steven told Insp. Graham on June 12 that he arrived back at the softball field "a bit before 8:00."</p>	<ol style="list-style-type: none"> <li>1. Bill Wilkes (June 25): "between 7:30 pm and 9:00"</li> <li>2. Warren Hatherall (June 12): "about 15 minutes later Steven came back to the schoolyard alone." (June 13): "Fifteen or twenty minutes or half an hour later I saw Steve alone."</li> <li>3. Stuart Westie (June 12 and 13): saw Steven "about half an hour later,"</li> <li>4. John Carew (June 12): "Steve came by on his bicycle at 8:15 or 8:30 pm", (June 13): "I would say it was 8 o'clock when Steve came to the school and it could vary ten minutes either way."</li> <li>5. Daryl Wadsworth (June 24): "When I last saw them it would be about 7:25 pm, I think ...Steve came back by himself. This would be about a half an hour after I last saw Lynne and Steven together."</li> <li>6. Sandra Pleasance (June 12): "saw Steven coming down road from County Road toward school around 8 pm" (June 22) "Saw Steve: ... I'm not too sure of the time but after talking to my father about it, he thinks it would be between a quarter to eight and eight but I think it would be closer to eight."</li> <li>7. Lorraine Wood (June 24): "Steven Truscott came along about 8:10 or 8:15 from the the north west corner of the school."</li> <li>8. Lyn Johnston (June 25): "I think it was about 8:15... Steven Truscott came to the swings from the direction of the basketball court on the north side of the school."</li> </ol>	<p>Steven arrived at the school between 7:50 and 8:00, he talked to some children at the playing field and was seen thereafter at the swings between 8:00 and 8:30.</p>

	THE EVIDENCE AT TRIAL	UNDISCLOSED STATEMENTS	THE APPELLANT'S BEST RECONSTRUCTION
<p><b>Steven returns home</b></p>	<ol style="list-style-type: none"> <li>1. Doris Truscott testified that Steven arrived home between 8:25 and 8:30</li> <li>2. Steven testified at the Reference that he got home "between 8:00 and 8:30"</li> </ol> <p>Steven told Insp. Graham on June 12 that he "stayed around school until about 20 or 25 after 8:00" and then went home and babysat. He said that his "parents went out about 8:30."</p>	<ol style="list-style-type: none"> <li>1. Doris Truscott (June 16): "He came home 25 or 30 minutes after supper."</li> </ol>	<p>Steven returns home to babysit between 8:20 and 8:30.</p>

COURT OF APPEAL FOR ONTARIO

**APPELLANT'S FACTUM**

**APPENDIX 2**

*The Approximate Times of Witnesses On and Off the  
County Road as Best as it can be Reconstructed*

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