

# Dominion Hotel fire second degree murder trial...

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## Monday

### Removed rubble may be evidence

In removing the rubble of the north-east end of the Dominion Hotel August 19, 1979, some very important evidence as to the cause and origin of the fire may have been destroyed.

So says defense counsel Michael Moldaver during his cross examination of Fire Marshal investigator Tom Dewhurst Monday.

In his second grueling day in the witness stand Dewhurst admitted that the removed rubble may have revealed further evidence. However, he stood by his story that there were at least two fires, possibly more, burning in the building.

Moldaver charged Dewhurst had made a mistake when saying a fire divider ran from east to west, right under the wall separating Cripps' room from the next room.

Dewhurst said the photos which led Moldaver to believe the fire wall was located farther to the north of the connecting wall were deceiving. He was at the scene and knows for a fact the fire divider was directly under the wall.

Dewhurst said testimony given by firefighter Chris Tennant earlier in the trial that he felt debris falling on his head at approximately 3.15 a.m. while in the bar area, below Cripps' room, led him to believe that indicated the floor had caved in at that time.

Moldaver insisted had the floor caved in that early in the fire, Cripps' room would have been totally destroyed by fire because of a gapping hole which resulted. Dewhurst admitted there was little fire damage to the room, with the curtains still untouched and a sofa bed intact. The only intense fire, he said was against the east wall between the two windows in the room.

Moldaver pointed out the small fire in the room directly above Cripps' room, at 4.40 a.m. was put out shortly after it had broken through. The defense counsel pointed out the fire the Crown is saying started at 2.30 in the room below took two hours and 15 minutes to burn up. Dewhurst said it was possible, it (fire) may have smoldered in the wall cavity.

The fire investigator said the decision to remove the rubble of the hotel Sunday was made by the police and himself.

While addressing himself to the possibility of flammable liquid being poured down the inside of the wall, Moldaver pointed out the Centre of Forensic Science had examined samples of the hotel and did not find the most minute amount of liquid. He noted their equipment is able to find traces of liquid, if it existed.

Moldaver pointed out that during the investigation, Mercuri was extremely helpful in providing information to help in any way he could. Mercuri told Dewhurst his records had been destroyed in the fire, but at that time, he could have believed that, only to find them later in the rubble Moldaver said.

Moldaver pointed out Mercuri had four days between seizures to do something to the building to make further investigation impossible.

Defense lawyer John Smith wondered if Dewhurst went into the second investigation with an arson theory already in his head. Dewhurst said he was suspicious. Smith charged that during the second investigation what he saw was affected by the way he thought.

## Friday

### Fire investigators have day in court

The Ontario Fire Marshal's Office had its day in court Friday in the continuing second degree murder trial of Cosimo Mercuri, Leonard Cripps and Michael McCristall.

Donald Bryan, fire research engineer from the fire college in Gravenhurst testified that he believed the floor in Cripps' room was caving in when firefighter Chris Tennant was attempting to put out a fire in the bar area one floor below. Tennant had testified earlier in the week he left the room when debris started falling on his head, at about 3.15 a.m. August 19.

Defense lawyer for Mercuri, Michael Moldaver questioned the validity of this timing. He pointed out if the ceiling collapsed about 3.15, why then was there not more fire damage in Cripps' room. In photos taken at the scene he pointed out a number of items in the room which received only smoke and water damage. Moldaver suggested the floor collapsed closer to five a.m. Bryan disagreed.

John Smith, counsel for McCristall reminded Bryan of the theory that Cripps punched a hole in the wall and poured flammable liquid down between the walls. Smith pointed to boat explosions where, because of improper ventilation, boats explode. "If one poured a flammable down the wall," Smith inquired, "wouldn't the fumes be down there?" He continued, "anyone who puts a match through the hole would be found in the back yard."

Bryan said not if the fumes had set. Smith said in most cases there would be an explosion. He noted there was no evidence of an explosion.

It was only after the ravaged hotel was returned by authorities to its owner did evidence of arson crop up, according to Tom Dewhurst, chief fire investigator.

Dewhurst told the court he arrived on the scene at 7.21 the morning of the fire and carefully examined the remains. He said the main concern at that time was to recover the body of Howard Gibbons. Later that morning the body was found approximately 30 feet south of the north end on the first floor, approximately seven feet west of the sidewalk. Because of continuing safety hazards, the fire marshal ordered the clearing of debris in the north end of the building, but the rubble was kept on the site.

Possible accidental causes could not be ruled out because the roof had been consumed, he told Crown Attorney Paul Stunt. Drop burning, where burning embers drop between walls, could have taken place. On August 20, the day after the fire, Dewhurst took a statement from Mercuri, and spoke to firefighters and other witnesses. On August 24, the hotel was returned to Mercuri.

Mercuri told Dewhurst, the witness told the court of various repair works which had been done in months preceding the fire. The hotel owner said all his records had been destroyed in the fire.

Dewhurst testified in the next few days he learned McCristall had been seen leaving the main lobby and touching the air conditioner, and he was concerned how the fire could spread as fast as it appeared. The investigator said Mercuri had been seen coming out of the south-east door of the hotel and placing something in the trunk of his car. And Dewhurst said McCristall had been heard saying "we only have to cover up for Cosimo a little while longer."

Dewhurst testified the focal point of one of the fires was on the six inch ledge at the ceiling level of the first floor, or the floor joist of the room above, and spread from there. That fire, he said, was confined to the east wall of the south end of the main beverage room area.

The fire marshal said there were primarily two fires. One in the north end of the hotel and the other in the north-east corner of the lobby.

On August 24, Mercuri was asked to give a statement to the Halton Regional Police, Dewhurst said. Reading from that statement, Dewhurst revealed to the court Mercuri expected an offer to purchase the hotel the day after the fire.

Dewhurst also read a statement made by McCristall. He said he and Cripps went to his room about 1.30 p.m. He (McCristall) heard Mercuri's car leave the area (he could tell whose car it was because it had no muffler). At the time of the alarm, the statement read, Cripps and McCristall were having a beer. He saw no smoke or fire until he opened the washroom door. He started running through the halls of the hotel, banging on doors to rouse people awake and subsequently save their lives. He rushed outside and saw smoke coming out of the foundation of the building.

The hotel was returned to Mercuri September 6. Accusations of bias in the investigation of the case were launched against Dewhurst by defense counsel Moldaver.

Moldaver charged that Dewhurst entered the second investigation looking for evidence against Mercuri, instead of having an open mind.

Thursday

### Faulty wiring not disproved as cause

Faulty wiring has not been disproved as a possible cause of the fire which levelled the Dominion Hotel August 19, 1979, in which Howard Gibbons died.

Thursday, in the fourth day of testimony of the second degree murder trial of Cosimo Mercuri, Leonard Cripps and Michael McCristall, the jury learned

many of the fuse boxes were overfused making overloading possible. It was explained overfused means having a 25 or 30 amp fuse in a space made for 15 amp.

Crown Attorney Paul Stunt, on questioning Ontario Hydro electrical inspector William Postlethwaite, learned none of the electrical panels inspected by the man on August 20 showed evidence of malfunction. Postlethwaite said he paid particular attention to the kitchen-dining room areas, where it is believed one of two fires in the building started.

All panels, he said, were in satisfactory condition, including the main electrical panel in the basement. Stunt asked the witness, if there was a malfunction anywhere in the building could he tell from looking at the main panel. Postlethwaite explained there would be a ruptured fuse or breaker. He testified he was unable to find anything like that, but admitted he was unable to determine the condition of the breaker panels because of fire damage.

Defense counsel for Mercuri, Michael Moldaver, pointed out to Postlethwaite that when he arrived at the scene the following day, August 20, much of the debris from the northern end of the building was cleared away.

"In terms of doing a proper investigation it is important to have as much of the scene intact as possible," he stated, and said the inspector did not have an opportunity to do a proper investigation of the north-east corner.

"Had all this not been removed you might have found something electrical," the lawyer said. "It is possible," Postlethwaite replied.



Fire Investigator Tom Dewhurst



Michael McCristall



Leonard Cripps

McCristall's counsel John Smith pointed out to the witness a lot of people living in the hotel were "carefree individuals". He continued to say the rooms were not intended to cook in with crock pots, hot plates, etc. "Would you sleep in a hotel knowing someone was using these things?" he asked. The inspector said he would not.

James Stevens, of the Ontario Fire Marshal's office also testified there was a lot of overfusing throughout the building.

He told the court he examined the kitchen panel and found no blown fuses. All the cables, as far as he could see, going into the box were also in good condition.

He also found a panel in the kitchen that he had been told originally came from the north east section of the building and had been left there by another investigation team. He said he could not examine it because it was severely damaged by fire. He could not tell if the breakers were on or off.

In the south end of the second floor, Stevens said the panel box contained four fuses. Only one was 15 amps, two were 30 and one was 25 amps. All holes required 15 amps.

Moldaver was upset over the fact Stevens did not follow the cables after they disappeared into the walls. If there was some damage within the wall, Stevens made no effort to find it, Moldaver charged.

Stevens said any indication of overloading would have gone back to the fuse box.

Lawyer Smith wondered if any "Tom, Dick or Harry" could have put bigger fuses in the fuse box on the second floor. This would enable more hydro to enter the individual rooms.

Stevens said he was unable to rule out one of the Dominion Hotel fires was an accidental electrical fire. However, he noted the chance of two accidental fires occurring in the same building was almost impossible—something like winning a lottery.

Acton firefighter Randy Ridley testified he fought a fire in the area of the bar, and saw a glow over the bar.

When he first arrived at the fire he went in the building and up the stairs. On the second floor there was not that much smoke, but the third floor was completely full of smoke.

Ridley also told the jury he fought a fire in the kitchen near the door to the dining room. He presumed it was an electrical switch because of its position so close to the door.

Gordon Orr of the Canadian Standards Association testified he examined the air conditioner and a receptacle cable. He said he could find no malfunction of the air conditioning unit. He said there was damage to the compressor wiring from the heat of fire, but none beyond the evaporator section and the compressor.

Stunt asked Orr about the origin of thick black smoke from the unit. Orr explained it could come from burning insulation around internal wiring.

There was no evidence of fire inside the unit, he said.

James Brown, also of the Canadian Standards Association, testified that he too examined the unit. He said there was a lot of damage to the portion of the unit inside the building but little to the outside. He testified smoke seen coming from the unit could have been coming from inside the building and escaping through the unit.

In his first day on the stand, Donald Bryan, fire research engineer from the Ontario Fire Marshal's office in Gravenhurst, said he became involved much later in the case and relied on testimony of firefighters and findings by investigators to come to the conclusion the fire was deliberately set.

Bryan told Stunt the findings showed the fire started about 18 feet from the south end of the building.

(Continued on page B5)

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Cosimo Mercuri

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