

**Crown informs jury**

**No smoking gun in hotel fire case, but footprints in the sand**



Defense Michael Moldaver, far left, points out the model of the hotel to a witness, while Crown Attorney Paul Stunt and Detective Richards (backs showing) listen intently. Court reporter takes down every word said.

There is no smoking gun, just footprints in the sand in the Dominion Hotel fire murder trial. Crown Attorney Paul Stunt said there is no concrete evidence Cosimo Mercuri and Michael McCristall started the fire which ultimately caused the death of Howard Gibbons. However, circumstantial evidence, he feels, proves beyond a reasonable doubt the pair are guilty.

If you are on a deserted island and you see footprints in the sand, Stunt said, it would be safe to assume you were not alone on the island.

Going over all the evidence and testimony carefully in his summation to the jury, Stunt pointed out it was finally decided the fire divider was exactly where the fire marshal said it was, and was not completely burned through. This supported the Crown's theory there were more than one fire burning. In fact, Stunt continued, there were actually four fires, one in Cripps

room, two in the lounge and one in the kitchen. Reviewing testimony by various firefighters, Stunt established there was a fire at the south end of the lounge and at the north end. He said there was no reason to believe they were the same fire.

Stunt contended Mercuri had a financial motive to burn down the business. In spite of what the accused claimed, he was in financial difficulty, the Crown said.

Mercuri was in a sinking boat and couldn't bail fast enough. He was forced to find some other source to pay for the mortgages, he needed a drastic increase in revenues, he had to sell the business or find a new use for the land, Stunt suggested.

The Crown Attorney pointed out Mercuri's ex-lover, Gloria Eckstein came into the courtroom embarrassed at having to discuss her relation-

ship with the accused, but also with the knowledge she was used by Mercuri.

If, as Mercuri testified, the couple ended their affair in 1978, why did Stunt have a picture of the two of them sitting on a couch with Mercuri's arm around her, taken in June 1979.

She was a credible witness, Stunt told the jury. Mercuri's meeting with arsonist Cecil Kirby was confirmed by the accused telling Eckstein there were people one could hire to burn down buildings.

Mercuri knew Heather Moreland's weaknesses and exploited them, Stunt suggested to the jury. Stunt described Moreland, Mercuri's ex-bartender and lover, as being a problem-ridden person who needed her job.

Moreland told the truth on the witness stand, Stunt said, which is more than Mercuri did.

Stunt said it is not very consoling to know a man like Kirby could operate in Canada for six years without being caught, or even be a suspect. But it is also not consoling to know a person could hire someone like Cecil Kirby to commit arson.

While Kirby is a bad person, he was a credible witness, Stunt said. The meeting in early August coincided with the Liquor Licence Board hearing at which Mercuri's licence was lifted for two weeks. And the meeting coincides with the shareholder's loan account being in a deficit position, and Mercuri in the worst financial situation since he bought the hotel.

If the defense is correct that Kirby was just exciting his meal ticket, why not go all the way and say he started the fire.

Mercuri not only had a motive, he also had the opportunity, Stunt told the jury. Witnesses saw the accused leaving the hotel once by the lobby door and twice by the south-east door. One witness testified she saw Mercuri leave just a few minutes before McCristall was seen touching the air conditioner. Other witnesses however said Mercuri left the same time as the remainder of the employees went home—just after 2 a.m. Stunt says this could only mean Mercuri return-

ed to the hotel after he departed from his friends.

The suggestion by the defense that another witness had something to do with the fire should be placed with the theories the fire was started by a gas leak or electrical problem.

Stunt suggested Mercuri was trapped and he knew it. "He intended (in his testimony) to deceive you just like he deceived his staff. Mercuri's testimony was evasive, he tried to get around incriminating facts."

"He hardly even looked at you," Stunt pointed out, "Gloria, Heather and even Cecil Kirby did, but not Cosimo."

Stunt pointed out several inconsistencies in Mercuri's testimony from that of other witnesses or evidence, including when he spoke to his lawyer about the appeal for the licence suspension, his relationship with both Heather Moreland and a Toronto real estate agent, and his knowledge of the hotel shares.

Michael McCristall was a follower, Stunt told the jury. He was easily led, a little simple, a person who believed he did not have the alternative to say no.

"We don't know what he did," the Crown Attorney said, "but we know what he didn't do." He didn't try to locate the flames and extinguish them, he didn't try to get Gibbons out, and he mixed up his sequence of events, at one time saying he went directly to his room when he heard the fire alarm, another time saying he went into the washroom.

McCristall was indebted to Mercuri, Stunt said, and did not have the will power to say no. "He had a weakness and Mercuri exploited it."

Stunt instructed the jury if they could not find McCristall guilty of second degree murder, to consider manslaughter. However, he urged them to have no salvation for Mercuri and consider only the murder charge.

**Trial...**

(Continued from page 1)

The jury must also decide if Mercuri and McCristall knew the consequences of their actions (a man's death), if the jury finds arson was involved.

"If you are satisfied beyond a reasonable doubt Mercuri burned the hotel and that he knew death was the consequence, that is murder," Mr. Justice Osborne told the jury.

As for McCristall, he continued, a person who assists in the offense is just as guilty. The jury must decide if Mercuri is guilty before they can decide if McCristall is an aider.

However, Mr. Justice Osborne said, he feels the evidence against McCristall is thin. The judge also questioned McCristall's ability to realize the consequences of the act, whether through "drunkenness or adject stupidity."

The jury could come to one of three possible decisions, he continued: not guilty of second degree murder, not guilty of second degree murder, but guilty of manslaughter, or not guilty.

The judge noted McCristall is guilty of manslaughter if he assisted in the burning of the hotel and aided in murder if they are not satisfied beyond a reasonable doubt that he knew the consequences.

Mr. Justice Osborne continued to outline the evidence of motive and fire damage, and reminded the jury of the closing statements by Crown and defense.

The judge told the jury they have the right to disagree with all his observations.



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**Moldaver says**

**Mercuri seeks justice, not sympathy**

Cosimo Mercuri was not asking for sympathy, he was asking for justice, said Michael Moldaver, Mercuri's lawyer, in his final summation to the jury last Thursday.

Stressing proof must be beyond a reasonable doubt, Moldaver gave a two-and-a-half hour outline of the information revealed in the court over the past four weeks.

The removal of the rubble of the north-east end of the building greatly hampered a proper investigation, Moldaver told the jury. The defense lawyer contended the fire which destroyed the hotel actually ended at Cripps room, travelling from the north to the south, instead of what experts said.

The controversial fire divider, which the Crown says is the key to the two fires, was not totally settled as far as Moldaver was concerned. The defense contended the fire divider was completely consumed by fire, and the fire in the north spread to Cripps room. The Crown says there are two fires, one in the north, one in Cripps room, because fire did not spread through the divider.

If Mercuri was so financially destitute, as accounting witnesses have testified, Moldaver asked, why did the Federal Business Development Bank give him a mortgage of \$200,000, when they could have turned him down? Had he been so hard up for money, Mercuri could have sold his home and moved into the hotel, or he could have sold the land next door with the proceeds helping to relieve him of his financial obligations. He could also have sold a car or put more seats in the hotel, raised prices or brought in better entertainment.

Moldaver told the jury Mercuri did not know of the real estate ads in the Toronto Star saying the Dominion Hotel was up for sale, nor did he know if a prospective buyer, at the hotel the day of the fire was going to buy the property or not.

So what if the Mercuri's were taking money from the business? The lawyer asked. It was their money, there were no partners being cheated, he pointed out.

The theory of having a clear slate once the land was free and clear of the building, Moldaver said, was ridiculous. No lending institution in the world would lend him the money he could need to rebuild with only \$30,000 or \$40,000 down, which would be all he had left after the mortgages were paid off with the insurance money.

Self-confessed arsonist Cecil Kirby could not be labelled a creditable witness, Moldaver told the jury, because he could not even describe Mercuri properly to the police nor could he remember Mercuri having a cast on his right hand when they allegedly met in August, 1979 to discuss the burning or bombing of the hotel. He described Kirby as being cunning, devious, displeasing and deplorable.

"It is unbelievable that Mercuri, because of a man like this, has had to bare publicity being linked in the mob," the lawyer said.

Moldaver continued, "If he (Mercuri) was such a close friend of the mafia family, would there be any doubt the family would have loaned him \$10,000, or barring that, they would tell Kirby to do the job anyway and he would get the money after the fire."

Moldaver referred to Mercuri's ex-lover Gloria Eckstein as a woman scorned. The de-

fense counsel admitted Crown Attorney "caught me good" with proof his client was having an affair with Heather Moreland, after repeated denials by Mercuri himself. However Moreland, Moldaver said, was a close friend of the accused's wife and he did not want to hurt his wife with knowledge of the affair.

There was serious inconsistencies of evidence given by Jeannette's Rest Home employees Brenda Adams and Catherine McInosh. He didn't feel the witnesses were trying to mislead the jury, but the excitement of the evening, and the fact they did not go to the police until one week after the fire suggested the times they gave the court they saw Mercuri leave could have been inaccurate.

There is no reasonable doubt that another witness who was on the scene did not set the fire, Moldaver told the jury, this man had the motive, being kicked out of the hotel the night of the fire, and he was seen around the lobby door just before the fire broke out. He was also seen disappearing around the north end of the building, where he could easily have gone through the kitchen windows into the hotel.

The Crown has to prove beyond a reasonable doubt that Mercuri either set the fire or was involved in some other way. There is no evidence, Moldaver said, Mercuri had exclusive opportunity. There is another person, he continued, who had a motive and opportunity. "I'm not saying he did it, I'm just saying that there is a reasonable doubt."

Would a guilty man keep incriminating records in his home following the fire? Moldaver asked. He reminded the jury the records were still at the accused's home two months after the fire.

"Mercuri sits before you a humbled man," Moldaver concluded.

More on the trial on page B5

**McCristall says he never covered up for Mercuri**

Michael McCristall had no reason to cover up for Cosimo Mercuri in August, 1979, nor does he have any reason now.

So said McCristall last Wednesday on the witness stand in his own defense.

Responding to questions from his defense lawyer, John D. Smith, McCristall said Saturday, August 18, was no different than any other Saturday. He worked on and off at the hotel during the day, helping Mercuri because he was short staffed.

About 5:30 p.m. he got cleaned up and went into the bar area to sling beer.

During the evening, the accused said he remembers Whitey (William) Engleby being cut off, but said that was not unusual.

McCristall admitted he was hazy on the times, but estimated around 2 a.m. he and his friend Leonard Cripps returned to Cripps' room with sandwiches and beer, to watch television. They had just started drinking the beer, he said, when he heard the fire alarm in the hallway.

It was not unusual for people to pull the alarm, McCristall said. He ran down to his room to see if everything was alright and also to check on the alarm, which was near his room. McCristall then ran up to the third floor and remembers the steel door at the top of the stairs being warm. He remembers the hall was full of smoke, but he could see no flames.

McCristall told the court he started banging on doors to awaken people. He recalls banging on Howard Gibbons' door, but explained Gibbons often spent the weekend with friends. When he got no response, the defendant said, he assumed Gibbons wasn't home.

Sometime during his rushing around he checked the washroom across from Cripps' second floor room. It was full of smoke he said.

McCristall said he ran down to the main lobby of the hotel and put in a call to the fire department. He pointed out the connection was bad and he did not know if he got through. He went out to the air conditioner at the front of the hotel and remembered seeing smoke or "something that wasn't water" coming from it. He also remembers running up the street to the taxi stand and phoning Mercuri at home. He does not remember if he called the police from there. When he got back to the hotel the fire trucks had arrived and he was not allowed back into the building.

Smith asked McCristall how much he had to drink that day. The accused said he could not remember. McCristall denied he was an alcoholic saying he could take or leave it, (beer) but most times he took it.

Referring to a statement by a previous witness, Smith asked his client if he had any reason to cover up for Mercuri. McCristall said he did

not at the time and has no reason now. McCristall said the only mention of "cover" was in regards to insurance coverage of personal belongings of hotel residents.

The only item he was able to salvage from the wreckage of his room was a picture of his daughter.

Under cross-examination by Crown Attorney Paul Stunt, McCristall admitted he could not remember the sequence of events after closing time.

He did not recall if he went to the washroom first or to the third floor, or if he went to the taxi stand before checking the air conditioner. McCristall could give no reason for running to his own room when the fire alarm went off and could not explain why he was the only one who heard the alarm. He estimated it was on for 30 to 60 seconds and he does not know how it was shut off.

Stunt asked McCristall why he passed up a pay telephone just outside the lobby door, and ran to the taxi stand. The defendant said he did not notice the phone booth. He said it was around the corner of the hotel.

The Crown Attorney wanted to know why, when McCristall was on the third floor and saw the smoke in the hallway, he did not try to locate the flames and put them out with a fire extinguisher. McCristall said the smoke was all over the hall and he and Cripps started banging on doors to rouse people.

"Did you look for fire?" Stunt asked.

"I suppose so," McCristall said.

"In any way, shape or form, did you look for a fire and attempt to put it out?" the lawyer persisted.

"No," the accused replied.

McCristall cannot remember standing next to Bert Eade in the kitchen of the Station Hotel on August 23. He denies he said "We just have to cover up for Cosimo a little longer."

McCristall said he did not say "Lord Jesus, I guess I bare the brunt" when being arrested on December 28, 1979. He does not deny making the statement, but said he thought he said it in response to a specific question later on that day. The accused said he was gently told if he did not co-operate he would spend the next 25 years in jail.

Stunt asked McCristall if it was true he was known as a happy-go-lucky sort of fellow. The accused said he was thought of as a "nit-wit."

Mr. Justice Coulter Osborne asked McCristall how much he had to drink the day of the fire. The accused admitted he was not "dead sober". Under further prodding by Smith, McCristall said he usually drank a case of beer a day, and he did not buy a 12 pack.

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