

Defence says victim's death was accidental: trial

By LISA CARTWRIGHT
The Champion

David Fiorino accidentally killed Stephen Andreopoulos, a defence lawyer told a jury Tuesday in his opening statements in an ongoing first-degree murder trial in Superior Court in Milton.

For the first time in the four-month-old trial, defense lawyer Robert Nuttall spoke intimately to the nine-men, three-women jury about what happened on July 2, 1996.

He told the jury Mr. Fiorino, 27, did meet the deceased that day over four years ago to take part in a contraband liquor deal. He said his client — who will be testifying at the trial — got involved because he heard it was an easy way to make money.

He started playing a role of someone who had connections so he could look good in front of Mr. Andreopoulos and his partners Dominco Sacco and Jim Pearson, the jury heard.

"He wanted to be taken seriously," Mr. Nuttall said.

The jury heard that Mr. Fiorino's connection to the contraband alcohol world was Mike Fontaine.

But on July 2, 1996, Mr. Fiorino found out the booze wasn't coming.

"David Fiorino is greedy," Mr. Nuttall said. "David Fiorino wants the money. David Fiorino begins to think 'How can I rip off Stephen Andreopoulos?'"

The jury heard that Mr. Fiorino continued the plan and met Mr. Andreopoulos and Mr. Sacco at a gas station in Maple, Ontario. Mr. Andreopoulos kept the money. They left, heading for Milton.

The pair stopped at the Derry Road property under the pretense of picking up a trailer that was loaded with two stolen trees, to use for the alcohol.

Mr. Fiorino got into a backhoe and unloaded the first tree. It was while unloading the second tree that the backhoe malfunctioned, causing either the backhoe bucket, the base of the tree or both to hit Mr. Andreopoulos in the chest.

"Mr. Fiorino did not call the police. Mr. Fiorino did nothing."

ROBERT NUTTALL

Mr. Fiorino noticed the other man on the ground. He went to him and saw he was gasping for air. He also noticed his chest was covered in what he thought was blood.

Mr. Fiorino thought the man was dead, the jury heard. "Mr. Fiorino did not call the police. Mr. Fiorino did nothing," Mr. Nuttall told the jury.

The jury heard the accused didn't think anyone would believe him that it was an accident.

Instead, Mr. Fiorino lifted the 36-year-old Barrie man's body into the backhoe bucket and placed him in tall grass. About two hours later he buried the man in a six-foot grave.

"David kept the money," Mr. Nuttall said.

Mr. Nuttall told the jury what he had just said wasn't evidence. The actual evidence would come from the witnesses.

Forensic pathologist Dr. James Ferris also testified Tuesday.

The jury heard that before he made his report for Mr. Nuttall, the British Columbia pathologist received a number of documents including a report by Dr. Martin Bullock.

Dr. Martin Bullock, who testified earlier in the trial, said he couldn't give an exact cause of death.

Mr. Nuttall asked the doctor if it was possible to have a traumatic death without any signs of injury.

Dr. Ferris told the jury about commotio cordis, which occurs when there's blunt impact in the chest. It leads to cardiac arrest. And it doesn't leave any signs.

The doctor gave the example of a hockey player who gets hit in the chest with a puck and dies.

But usually commotio cordis happens when people — usually friends and family — are around to see it occur, Crown attorney Brian O'Marra told the doctor Wednesday. Dr. Ferris agreed. "You are not usually concerned (that) the person describing what happened would lie... or mislead," asked Mr. O'Marra. The doctor replied "In most cases, no." The trial continued yesterday.

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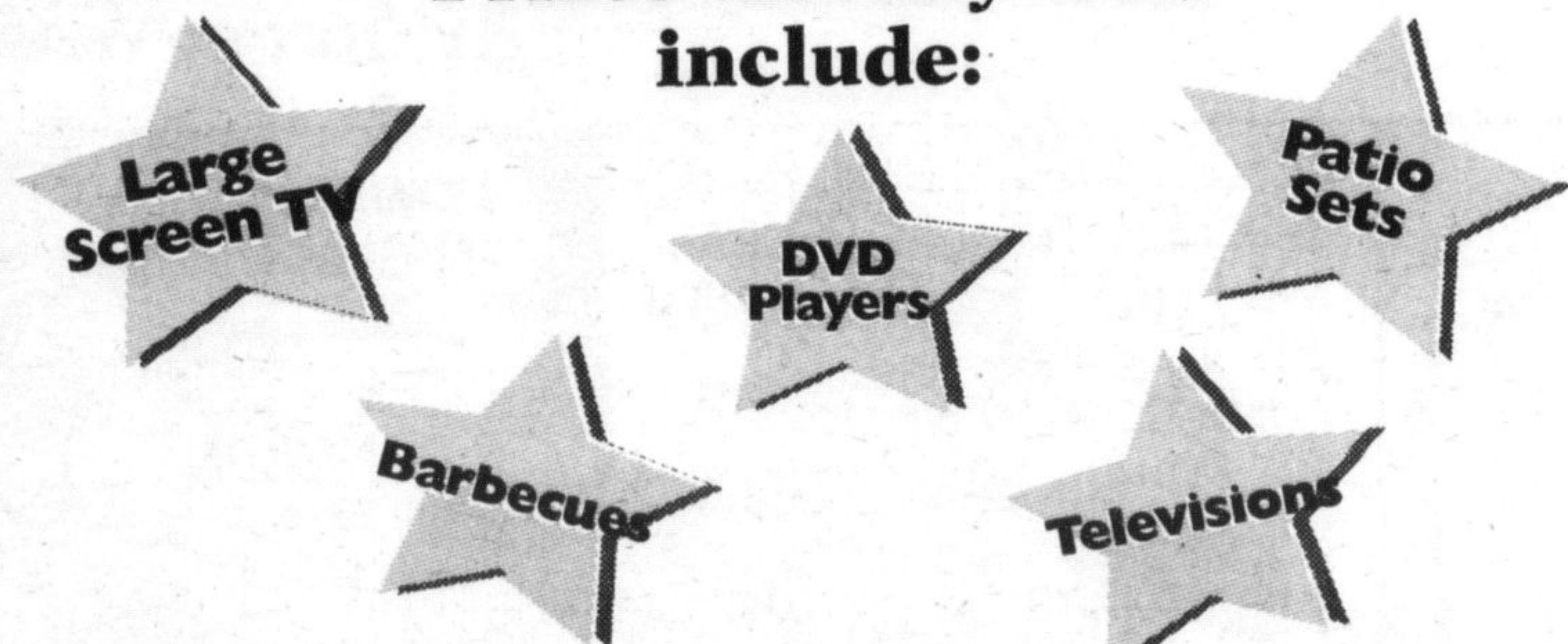
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