

illegal. It is now a matter for the Court to decide whether he actually was under arrest at the time or not.

The Court is closed to consider and rule upon the objection that the search of Spr Stanley was illegal.

The Court re-opens.

Judge Advocate

The Court have ruled that at the time of the search Stanley was under arrest and I may say now to foresee a ruling coming up in a moment that any search of a man under arrest is legal.

FOURTH WITNESS B-25168 A/QMS Weir JM, 7 Cdn Artizan Wks Coy,  
PROSECUTION RCE, having been recalled and still under oath, the Prosecution continues examination:

- Q. You said you saw him searched by S/Sgt Miller?  
A. Yes sir. He produced two packages of BC 25's and one practically empty package of Buckingham. I don't know but I believe there was one in it.
- Q. What happened right after he produced these cigarettes?  
A. S/Sgt Miller and myself left the accused with Naylor and went to House 18 and showed us where the cigarettes were cached under the stairs and then they showed us the identifying marks on the packages. Up to that time I hadn't seen the marks at all. I then returned with the S/Sgt with the cached cigarettes and examined them with the two taken from the accused. They were identical.
- Q. Would you describe to the Court the exact marks?  
A. The cellophane had been split along the edge and a mark on the edge about one quarter of an inch had been made with blue ink.
- Q. I show you Exhibit "TWO". Do you recognize the markings on these cigarettes?  
A. Yes sir. I recognize them as the ones taken from Stanley.
- Q. Can you identify the markings on these packages with the markings on the cache cigarettes? I don't want you to assume that as there are only two packages here that these are the ones taken from him? You can't say definitely that those are the ones that were taken from Stanley?  
A. No sir. They have similar markings.
- Q. Would you say these cigarettes are similar (shown Exhibit "ONE")?  
A. Yes, they are marked similar to the ones we took off Stanley and the ones taken from under the stairs.
- Q. With the exception of the marking you have detected they are similar to any BC of a similar type?  
A. Yes sir.
- Q. I want to take you back a bit. You stated that earlier Spr Stanley was asked to empty his pockets. What came out of his pockets?  
A. A few pennies, about 4 pence, a 2 oz tin of tobacco practically full. His pay book I think.