

COURT OF APPEAL FOR ONTARIO

B E T W E E N

HER MAJESTY THE QUEEN

Respondent

and

NICOLE YVONNE KISH

Appellant

APPELLANT'S FACTUM

PART I:
STATEMENT OF THE CASE

1. In the early morning of August 9, 2007, Ross Hammond suffered a series of stab wounds to his chest during a fight on Queen Street West, in Toronto. He died two days later. The Appellant was charged with second degree murder in his death. Her trial commenced on January 24, 2011 before Mr. Justice Nordheimer of the Superior Court of Justice, sitting without a jury, at the Courthouse in Toronto. On March 1, 2011, the Appellant was convicted as charged, and sentenced to imprisonment for life with a 12-year parole ineligibility period. This appeal is from conviction.

PART II:
STATEMENT OF THE FACTS

I. OVERVIEW

(i) Introduction

2. Shortly after midnight on August 9, 2009, the deceased, Ross Hammond, and his business associate, George Dranichak, attended an outdoor Toronto Dominion Bank ATM at the corner of Queen St. W. and Euclid Ave. in Toronto.¹ They were approached by a female on a bicycle who asked them for twenty dollars. She was variously described as looking like a “squeegee kid” or a “street kid”. Hammond and Dranichak – who were generally described as looking “preppy” or “clean cut” – responded with a series of vulgar insults, which upset and angered the female. An argument ensued, and more people became involved. The dispute moved west on Queen St. to Niagara St. where an eastbound streetcar was stopped on Queen St. at the traffic light. On the south side of the streetcar, a fight broke out between Hammond (or possibly Dranichak) and a male who had joined the affray on behalf of the angered female. At some point, a second fight broke out on the *north* side of Queen St. between Hammond and a group of “squeegee kids”, which included, on some eyewitness accounts, a single female. Hammond eventually extricated himself from this fight by grabbing onto the side of a taxi cab which carried him a few blocks west. He fell from the cab on the street outside a church at the corner of Queen St. and Bellwoods Ave. and wandered up the church steps where he placed a knife. He then stumbled back down the steps to the sidewalk and collapsed. He had suffered four stab wounds to the chest, one of which was fatal, and a number of superficial wounds to the

¹ A detailed map of Queen St. W. showing the locations of the relevant events leading up to Hammond’s stabbing is included as part of this factum at Appendix “C”.

back, arms and hands. Hammond died in the hospital two days later. At some point during these events, the Appellant suffered a stab wound to her arm. Forensic analysis eventually isolated her DNA, mixed with Hammond's, on the base of the blade of the knife recovered from the church steps.

(ii) The Positions of the Parties

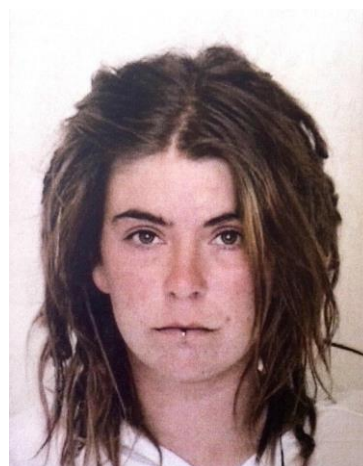
3. The central issue in the case was the identity of Hammond's stabber. The Crown's theory was that the Appellant was the female who had approached Hammond and Dranichak and asked them for money at the ATM, and that she was incensed by the men's insulting responses to her request. Hammond and Dranichak then walked towards the streetcar at Niagara St., followed by the Appellant, who was joined by at least three other "street kids": Faith Watts, Douglas Fresh and Jeremy Wooley. On the south side of the streetcar, Fresh and Hammond wrestled with each other. The Crown theorized that the Appellant, armed with a knife, entered the south side fight in Fresh's defence and inflicted superficial stab wounds to Hammond's back. Hammond got the upper hand and knocked Fresh unconscious. According to the Crown, Faith Watts remained on the south side of the street to tend to Fresh. Hammond moved to the north side of the street, pursued by the Appellant, Wooley, and an unknown male. These three individuals beat Hammond on the north side of the street as he lay on his back in a defensive posture. The Crown posited that while Wooley and the unknown male were striking blows to Hammond's head, the Appellant stabbed him four times in the chest. Hammond eventually disarmed the Appellant and slashed her arm before grabbing onto the side of the taxi. In the alternative, the Crown theorized that the Appellant was guilty of murder as a *party* because she provided the weapon to Wooley or the unidentified second male in order to assist one of them in the killing.

In the further alternative, the Crown argued that the Appellant was guilty of murder on the basis of a common intention because she intentionally assaulted Hammond in tandem with the two other males and was subjectively aware that Hammond's death was a probable consequence of that common unlawful purpose. The Crown's case was founded primarily on testimony from a large number of civilian eyewitnesses who had observed the melee at different stages and from different vantage points and who each testified to a different version of the material events. No one, however, saw anyone stab Hammond or the Appellant.

4. The defence position was that the Appellant neither stabbed Hammond, nor aided his killing. The events surrounding the stabbing unfolded quickly and chaotically. The eyewitness accounts, which were fragmented, prismatic and frequently confused, were unreliable and incapable of establishing that the Appellant was the one who inflicted Hammond's fatal wounds. According to the defence, it was Faith Watts, not the Appellant, who initially approached Hammond and Dranichak for money, who became enraged when they insulted her, and who introduced the knife into the fight. Watts and the Appellant both had a generic "street kid" appearance, with messy hair and baggy, dark coloured clothes, and could have been easily mistaken for one another – as more than one Crown witness admitted they might have done when trying to recall the material events. Moreover, most of the eyewitnesses described the female most heavily involved in the dispute – alleged by the Crown to be the Appellant – as having blonde or dirty-blonde hair, which was equally – and perhaps more – consistent with Watts's dirty-blonde hair colour and lighter features as with the Appellant's subtly highlighted, darker brown hair and generally darker features.



Faith Watts – Ex. 49



The Appellant – Ex. 50

Moreover, George Dranichak identified Faith Watts from a photo lineup as the female who initially asked for \$20.00, and Nataja DeSilvia identified her as the female involved in the fight on the north side of Queen St. In contrast, no witness identified the Appellant as the female involved in the fight on the north side of Queen St. from any photo lineups. In addition, numerous deposits of Hammond's DNA were located on Watts's clothing, including the shafts of her boots and the back of her shorts, while only a small speck of his DNA was found on the rubber toe cap of the Appellant's shoe. Finally, an unidentified male and female were seen fleeing the scene at about the time of the stabbing. The defence submitted that all of this, combined with evidence that at least one other unidentified male was stabbed during the fight, made it impossible to conclude that the Appellant had stabbed Hammond or aided the stabbing.

5. The Appellant did not testify, but the defence called five witnesses. Three of these (Raymond To, Laura Williams and Cameron Bourdignon) observed the fight on the north side of Queen St., but did not see the Appellant, or any female, involved in that altercation. And with

the consent of the Crown, the defence introduced an edited portion of the preliminary inquiry testimony of Faith Watts. According to Watts, who purported to have only a limited recollection of the events in question, she was in possession of a knife at the time of the fight and was disarmed by Hammond or Dranichak as soon as she unlocked the blade. The defence also filed DNA results showing that Hammond’s blood was on the knee of Jeremy Wooley’s right pant leg.

(iii) The One of A Kind Pasta Video Surveillance Footage and the CityTV footage

6. There were two important items of video evidence in this case. First, a west-facing surveillance camera mounted outside “One of a Kind Pasta”, on the north side of Queen Street at Niagara St., captured the movements of some of the parties around the time of the stabbing on the north side of the street.² On the video, a seemingly unarmed male can be briefly seen running in and out of view:



Frame taken from One of Kind Pasta Surveillance Video

² Video footage from an east-facing surveillance camera also mounted on the front of One of a Kind Pasta, and footage recorded by a surveillance camera located inside a nearby store, was lost by police. This was the subject of an unsuccessful application for a stay of proceedings at trial.

The Crown's position was that this male was Hammond.³ A few moments later, the Appellant is shown on the video being tended to by Watts, Fresh, a bystander named William Patsiopoulos, and an unknown male⁴:



Frame from One of A Kind Pasta Surveillance Video

Exhibit 10, One of a Kind Pasta Surveillance Footage (DVD)

7. Second, a CityTV camera crew arrived on scene at the corner of Gore Vale Ave. and Queen St. W. shortly after the fight. They captured video footage of Hammond lying on the ground and the Appellant, Watts, Wooley and Fresh walking west towards an ambulance outside the church. In the video, the Appellant is wearing a black tank top, a long black skirt, and a

³ The only evidence that this was Hammond came from George Dranichak, whose testimony was acknowledged by the Crown as being unreliable and was rejected in all material respects by the trial judge. This was an important issue because, if it was Hammond, he was unarmed before he reached the north side of the street, which supported the Crown's position that Hammond stabbed the Appellant on the north side of Queen St. once he came into possession of the knife, and not at an earlier point. If it was not Hammond, it left available the inference that the Appellant received her injury elsewhere and not by direct involvement in the fight with Hammond on the north side of the street.

⁴ A few moments later, the unidentified male is shown raising his shirt and showing something on his chest to another, unidentified male, and then to someone on a bike. This male was potentially involved in the killing, but was not located by the police. He may have been seen leaving the scene by Shaun Park, discussed at para. 49, *infra*.



Frame from CityTV footage showing Watts (left) and the Appellant (middle)



Frame from CityTV footage showing Wooley



Frame from CityTV footage showing Fresh

scarf around her neck. Watts is dressed in a similar style, with a dark sweatshirt, dark cutoff shorts, and black shin-high Doc Martin boots. Watts is shorter and smaller than the Appellant. Wooley is wearing dark pants and a dark button down shirt that is open with his chest exposed. He has scruffy blonde hair and a beard. Fresh is dressed in a green shirt, green shorts and a backpack. He has brown hair and his face is bloodied. Hammond is shown on the ground bleeding. He is wearing blue or black jeans and a dark shirt ripped open in the front.⁵

Exhibit 11 – CityTV Video (DVD)

II. THE EYEWITNESS EVIDENCE

8. The Crown's case rested primarily on the observations of witnesses standing at different positions along Queen St. around the time of the stabbing. The Crown wove these fragments into a narrative of the dispute as it moved west from Queen St. and Euclid Ave. to Queen St. and Niagara St. and then to the church at Queen St. and Bellwoods Ave. This narrative broke

⁵ Notably, Hammond's shirt was a very dark blue or black, considerably darker than the light blue shirt worn by the male seen running in and out of the frame in the One of a Kind Pasta Video, which suggests the male on the One of a Kind Pasta Video may not be Hammond, as Dranichak testified (Exhibit 33 (DVD) – Photos of Hammond's T-Shirt, *Appeal Book*, Vol. 1, p. 53)

naturally into three main sections: the initial incident outside the ATM, the fight on the south side of the street car, and the fight on the north side of Queen St. The identity of the participants and the nature of their actions at each stage of the events were the central issues in this case.

(i) **First Stage: The Incident Outside the ATM and the Movement Westward**

9. The Crown theorized that the Appellant approached Hammond and Dranichak outside the bank machine at Queen St. and Euclid Ave. and asked for twenty dollars. This request met with abusive comments from Hammond and Dranichak, and the verbal dispute escalated into a physical confrontation which continued along the north side of Queen St. to Claremont St. Hammond and Dranichak then crossed south on Queen St. diagonally towards an eastbound streetcar that was waiting at the intersection of Queen St. and Niagara St. The Crown relied on the evidence of four witnesses in relation to this stage of the events leading up to the stabbing: Mystica Cooper, Shaun Park, Laura Quigley and, to a more limited extent, George Dranichak.

10. Three pieces of evidence cast doubt on whether the Appellant was the female who asked Hammond and Dranichak for money, and who subsequently became enraged in response to their insults:

- Dranichak testified that the female who instigated the initial dispute outside the ATM was Faith Watts, and identified her from a photo lineup in the days following the stabbing. (See para. 13, *infra*).
- Mystica Cooper described the angry female involved in the dispute with Hammond and Dranichak as having dirty blonde hair and a skirt with an “Indian-style pattern” on it.

However, the Appellant's skirt was patternless, and the female's dirty blonde hair was at least as consistent with Watts's hair colour, as it was with the Appellant's. (See para. 15, *infra*).

- Shaun Park described the female involved in the dispute with Hammond and Dranichak as wearing black lace-up Doc Marten style boots. This was strikingly consistent with Watts's appearance, but inconsistent with the Appellant's, who was wearing running shoes that would have been obscured by her long dress. (See para. 17, *infra*).

George Dranichak

11. George Dranichak testified that on the night of the stabbing, he and Hammond had been out drinking with their employees. At some point in the evening, they parted ways with their employees and went to a club at the intersection of Queen St. W. and Bathurst Street. After leaving the club at about 11:30 p.m., Hammond and Dranichak walked west to an outdoor ATM at the northwest corner of Queen St. and Euclid Ave. At the ATM, a female on a bicycle approached the two men from the west. She stood 5'5" and looked like a squeegee kid, with loose clothing, a loose pony tail, and dirty light brown hair. She asked them for twenty dollars. Hammond and Dranichak sarcastically suggested that she should prostitute herself if she wanted money. They hurled insults at her and said, "why don't you go suck dick." They called her a "stupid cunt", a "crack whore", a "jizz bucket" and a "hooker". A shouting match ensued, during which the female became "psychotic and angry". She started yelling like a "screeching witch" and called Hammond a "motherfucker". According to Dranichak:

[T]he first girl was completely irrational and loud and I thought borderline psychotic...she became insane...she was absolutely livid on the street and screeching and

it was like – it was like we hit a nerve...She was absolutely screeching and screaming and swearing...I'm not a psychiatrist but she was acting insane.

Other people gathered around the dispute, including a second female, who approached on a bike, and a blonde male in “hip-hop” style clothing. Things became “loud and crazy”. There were as many as ten people involved, and Dranichak grew concerned for their safety.

Evidence of G. Dranichak, *Trial Proceedings*, Vol. I, 80/5-81/10, 84/5-85/20, 86/5-25, 91/1-5, 93/1-94/20, 95/20-25, 96/1-25, 99/1-100/10, 101/1-103/5, 104/5-25, 107/5-10, 110/20-111/20, 112/1-5, 218/20-220/5, 249/10-20, 248/20-249/10, 216/5-20

12. According to Dranichak, he and Hammond crossed to the south side of the street and walked west. The second female crossed the street on her bike and rammed into his leg. A blonde male punched him in the stomach and he fell to the ground where he was punched and kicked by the two females and a middle eastern-looking male. The blonde male tried to gouge his eyes out, and Dranichak rammed him into a store front. Dranichak then hailed a taxi and fled the scene. He denied walking any further west on Queen St. than Manning Ave.

Evidence of G. Dranichak, *Trial Proceedings*, Vol. I, 112/1-5, 118/1-20, 120/1-15, 123/5-15, 125/1-126/5, 128/15-25, 268/15-20

13. According to Dranichak (and contrary to the Crown's theory) the female who had asked for money at the bank, and who had become enraged at his and Hammond's insults, was Faith Watts. Indeed, he had identified her as such from a photo lineup on August 14, 2007, five days after the stabbing. When shown the CityTV footage at trial, he identified the Appellant as the female who had rammed into him with her bike, Wooley as the blonde male who had gouged at his eyes, and Fresh - who was depicted in the CityTV video as having neither blond hair nor “hip hop” style clothing – as the blonde male who had joined the affray with Watts at the ATM.

According to Dranichak, who initially told police that he was 75-80% sure it was Watts who had rammed him with her bike, he may have been “mashing up” the two females in his memory.⁶

Evidence of G. Dranichak, *Trial Proceedings*, Vol. I, 135/10-20, 137/1-10, 138/20-25, 139/1-25, 290/1-5, 298/10-25, 226/5-20, 298/10-25, 306/10-25

14. Dranichak’s testimony that he had crossed south on Queen St. from the ATM, that he had been beaten up on the south side of the street, and that he had then fled the scene in a taxi before the fight moved west to Niagara St., was inconsistent with the bulk of the testimony from the other witnesses to these events, who described the dispute moving west along the *north* side of Queen St. and who testified to seeing two males fitting the descriptions of Hammond and Dranichak trying to get onto a streetcar at Queen St. and Niagara St. The Crown and defence agreed that Dranichak’s evidence was unreliable, and the Crown invited the court to disregard his account of events after he and Hammond arrived at the ATM.⁷ The Crown thus sought support for its theory that the Appellant was the female who had approached Hammond and Dranichak for twenty dollars in the evidence of Mystica Cooper, Laura Quigley and Shaun Park.

Defence Counsel’s Closing Submissions, *Trial Proceedings*, Vol. IV, 1806/5-1813/25

Crown Counsel’s Closing Submissions, *Trial Proceedings*, Vol. IV, 1937/5-1938/20

Mystica Cooper

15. Mystica Cooper testified that she saw and heard a dispute on the north side of Queen St. at Euclid Ave. as she was locking up her bike outside Squirly’s bar, located at 807 Queen St, on

⁶ This “mashing up” of Watts and the Appellant was a theme that pervaded the trial, and, according to the defence, underscored the unreliability of the eyewitness accounts. See especially the evidence of Molly Stopford, discussed at para. 27, *infra*.

⁷ This included disregarding Dranichak’s identification of Watts as the female who approached them for money, though it is difficult to imagine that he had any motive to lie about this.

the south side. She looked across the street where she saw two white, clean-cut males – Hammond and Dranichak – in casual clothing, arguing with a scruffy looking male and female. The female, whom the Crown theorized was the Appellant, was Caucasian with dirty blonde hair in dreadlocks. She was in her 20’s and wore loose clothing and a long “hippie style” skirt with an Indian-style pattern on it.⁸ The male with the female, whom the Crown theorized was Fresh, was grungy looking, in his mid-20s, stood 5’8”-5’9” and wore a backpack. He had ripped up pants, dirty blonde hair and a thin build. The female was screaming:

He hit me, somebody hit me, call the police, this man hit me, somebody call the police, don’t let him get away.

The scruffy-looking male was also saying, “This man hit her”.

Evidence of M. Cooper, *Trial Proceedings*, Vol. I, 354/1-25, 355/1-15, 356/1-15, 356/20-25, 357/10-20, 358/1-10, 359/1-360/25, 361/1-20, 390/10-25, 392/5-392/25, 394/1-10

16. At some point, Hammond and Dranichak walked west, away from the male and female, saying, “We’re done here. This is over.” At the same time, the male and female walked east. Either before or after this – Cooper could not recall when – there was a physical altercation between either Hammond or Dranichak and the scruffy-looking male. They wrestled and fell into a window. The two groups then moved west towards Niagara St. The female was loud and angry and was throwing garbage bags from the curbside at Hammond and Dranichak. She continued to scream, “Don’t let this man leave. He hit me”.

Evidence of M. Cooper, *Trial Proceedings*, Vol. I, 362/10-20, 363/20-25, 364/1-10, 364/15-365/10

⁸ The Appellant’s long skirt, seized from her at the time of her arrest, did not have an “Indian-style” pattern on it. It was plain black. (See: Exhibit 35, JPEG 18365-07, *Appeal Book*, Vol. 1, p. 55)

Shaun Park

17. Shaun Park owned a restaurant, Seoul City, on the south side of Queen St. W., just east of Manning Ave. After dinner service on the night of the stabbing, he stepped outside the front of the restaurant to smoke and saw his friend Daniel speaking with a white female, whom the Crown theorized was the Appellant. Her outfit was all black. She had a black backpack on her back, a black top, black tights, “some sort of a skirt” or a sweatshirt tied around her waist and black lace-up “Doc Marten” style boots. She looked like a “street kid” and had a “gothic” or “punk” style. She was there for 10 seconds and left towards the east. Daniel and Shaun finished their cigarettes, went back inside and sat at the bar. Fifteen to twenty minutes later, he heard screaming from outside. He looked out and saw the same female arguing with two males. The two males -- Hammond and Dranichak -- were tall, white, clean cut and had short, dark brown hair. They were wearing jeans and jackets, one of them leather. They looked well groomed, “preppy” and professional. Park could not hear what had upset the female, but, paraphrasing, he heard one of the males say, “why don’t you something, something, you stupid cunt”.

Evidence of S. Park, *Trial Proceedings*, Vol. II, 637/10-637/20, 641/15-25, 642/1-10, 642/20-644/20, 646/10-20, 647/1-5, 648/25-650/25, 651/15-25, 686/20-687/20, 704/20-25, 705/15-25, 706/5-20, 707/1-5

18. The two males walked west at a slow pace, with the angry female following behind them. They were arguing and yelling at each other. A third male approached from the east, and joined the dispute on the side of the female. A scuffle broke out and one of the clean cut males threw him into a storefront. The female was yelling and the altercation moved west down Queen St. One of the “preppy” males pushed the female to the ground. Two other “street kids” crossed from the south side of the street and joined the altercation on the north side.

Evidence of S. Park, *Trial Proceedings*, Vol. II, 649/5-15, 652/1-653/5, 654/20-655/10, 656/5-15, 656/20-25, 658/20-25, 659/10-15, 660/1-15, 661/20-25, 662/10 -663/10

Laura Quigley

19. Laura Quigley was a waitress at Terroni Restaurant at 720 Queen St. W., on the north side of the street between Claremont St. and Manning Ave. After work, as she was unlocking her bicycle to go home, she heard a woman screaming from somewhere to the east. She looked towards the screaming and saw a woman, whom the Crown theorized was the Appellant, sitting on the sidewalk on the north side of Queen St. It looked like she had been pushed from the front and had fallen over the curb. She was 5'5" and Caucasian. Her hair was tied in dreadlocks, and had "bits" of blonde and some dark areas in it. It looked like it had been dyed, and she could see the roots. She was wearing "some kind of patched together dress-type of thing". It was brownish and "hippie style". There was a white male with her. He was tall and thin and dressed in similar "street kid" fashion. Another two males - Hammond and Dranichak - stood in front of the female when she was on the ground and it seemed to Quigley that they had pushed her. They were white, and wore dark casual clothing. They looked like "business guys who were going out for a night".

Evidence of L. Quigley, *Trial Proceedings*, Vol. I, 399/1-10, 399/20-25, 400/1-401/10, 402/5-15, 403/1-25, 404/5-404/25, 406/5-10

20. After the female was pushed to the ground, she and the tall skinny male pursued the two "business guys" west. They picked up garbage bags and threw them at the two males who were walking away. As they did so, the female was yelling,

I can't believe you're just going to walk away. They're just going to walk away. He hit me. I can't believe they're just going to walk away. He just hit me.

The two males walked west down the middle of Queen St. W. towards Manning Ave. The "street kids" were throwing garbage at them from the sidewalk. An eastbound streetcar pulled up to the intersection of Queen St. W. and Niagara St. and the two males walked toward it.

(ii) **Second Stage: The Fight on the South Side of the Street Car**

21. Hammond and Dranichak did not board the streetcar. A fight broke out on the south side of the streetcar between Hammond and Fresh. Hammond quickly gained the upper hand. The Crown theorized that the Appellant entered the fight with a knife and cut Hammond's back a number of times, but only superficially.⁹ This ended the fight between Hammond and Fresh. Fresh was pulled to the sidewalk unconscious, and Hammond ran to the north side of Queen St., pursued by the Appellant, Wooley and an unknown male. According to the Crown, Watts remained with Fresh on the south side of street. The identity of the Appellant as the female who entered the fight with a knife was a central issue in the case because if, as the Crown theorized, the Appellant introduced the knife into the south side fight, this was the only evidence that she was armed with a knife during the *north* side fight, or, alternatively, that she passed the knife to a third party, perhaps Wooley, who inflicted the fatal wounds on the north side of the street.

22. The Crown's theory that the Appellant was the female who entered the fight on the south side of Queen St. was founded mainly on the evidence of two passengers on the streetcar, Molly Stopford and Jonathan Paget. Stopford and Paget both testified that after Fresh was subdued by Hammond, they saw the same female who had entered the south-side fight with a knife standing on the north side of the streetcar. She was injured and bleeding. Since the Appellant was the only injured female on the north side of the streetcar, this led, in the Crown's submission, to the

⁹ The post-mortem examination showed that Hammond had suffered a number of superficial sharp force injuries to the back of his upper body before his death. (Evidence of Dr. M. Pollanen, *Trial Proceedings*, Vol. III, 1415/5-1415/25, 1417/1-10, 1417/20-25)

conclusion that the Appellant was the one who had entered the fight on the south side of the streetcar with the knife.

23. The defence position was that Stopford and Paget's testimony linking the injured woman on the north side of the streetcar to the knife wielding woman on the south side of the streetcar was unreliable. To support this, the defence relied on the following:

- Stopford was not certain that the female she had seen with a knife on the south side of the streetcar and the injured female she had seen on the north side of the streetcar (i.e. the Appellant) were the same person. (See para. 27, *infra*)
- Paget could not articulate a reason to believe these two females were the same person beyond his feeling that it was ironic that the person who had brought the knife into the fight was the person who was injured. Moreover, he recalled that the female who entered the fight with the knife had blonde hair, which described Watts, as much as, if not more than, the Appellant. His description of the knife-wielder's size fit Watts better than it did the Appellant. When shown the photo lineup pictures of Watts and the Appellant during cross-examination, Paget could not rule out the possibility that it was Watts who had entered the fight with the knife, rather than the Appellant. (See paras. 29-30, *infra*)

Molly Stopford

24. Molly Stopford was sitting next to the window, 5-6 seats from the front, on the passenger's side of the streetcar. When the streetcar stopped at the stoplights at Niagara St., she

looked out the open window and saw two males fighting on the south side of the streetcar, to the west of the bus shelter. One male was white and “jockish” in a tight fitting t-shirt. The Crown theorized that this was Hammond. The other male was also white skinned but smaller and scruffy looking, with longer hair and baggy clothing. The Crown theorized that this was Fresh. The fight moved right under Stopford’s streetcar window. The jock was punching the male up against the streetcar and she could feel the vibrations from the blows through her seat. The jock was “pummeling” him. The scruffy male lost consciousness. He fell to the ground, and the jock continued to punch him, “over and over and over”.

Evidence of M. Stopford, *Trial Proceedings*, Vol. II, 449/15-450/5, 454/1-20, 455/15-20, 456/15-20, 457/5-25, 458/10-20, 458/20-25, 459/1-10, 460/1-10, 463/10-25

25. About ten seconds into the fight, Stopford noticed two women on the south side of the streetcar, partially on the pavement and partially on the sidewalk, west of the bus shelter. Both were white, medium height, slim build with “maybe light brown hair”. According to Stopford, she “didn’t differentiate between the two of them too much in [her] mind in terms of looks.” They were swearing and yelling at the jock to stop fighting and they were pulling, pushing and punching him. One of the females -- who had baggy pants, and wavy messy hair and messy clothing -- was more involved than the other. The Crown’s theory, and the trial judge’s conclusion, was that this was the Appellant. She was pulling the jock’s shirt and punching his back and shoulders.¹⁰ This female, was, “more persistent” and in closer contact with the male. She was also yelling more. However, the jock was not affected by their efforts to stop the beating; he was simply “swatting them away”. The beating stopped when the street kid stopped

¹⁰ The Crown’s theory was that the Appellant was stabbing Hammond in the back at this time.

responding. According to Stopford, there were a lot of other people in the area who were “involved” and not just “passersby”, including, potentially, a third woman.

Evidence of M. Stopford, *Trial Proceedings*, Vol. II, 465/20-25, 466/1-15, 467/10-25, 468/10-25, 470/5-10, 504/10-505/20, 508/10-509/15, 504/10-505/20, 505/20-25, 506/5-10

26. Stopford noticed that the “more persistent” female – the Appellant in the Crown’s theory -- had a knife and she closed the window. The handle of the knife was in her mouth and the blade was sticking straight out. The knife had a distinctive “hole or something” on the dull side of the blade.

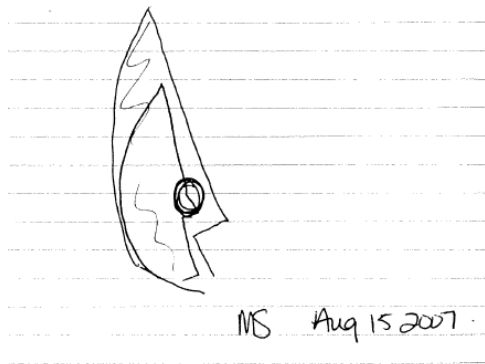


Exhibit 45 - Drawing of Knife by M. Stopford



Exhibit 21 (JPG 006) - Photo of Knife from Church Steps

The female was gripping the handle in her teeth and yelling, but she was not using it and Stopford did not see it in her hands. Stopford averted her gaze from the violence and looked back inside the streetcar. Then she looked back outside. She did not see the woman with the knife. She noticed that someone had dragged the scruffy looking male to the sidewalk. Then she saw the jock walk west and go out of view. He was staggering as if drunk, but he was not holding his torso and his hands were by his side.

Evidence of M. Stopford, *Trial Proceedings*, Vol. II, 470/20-25, 471/5-10, 471/25/-472/5, 476/10-15, 477/1-15, 515/20-516/25, 500/1-25

27. The scene around the streetcar was chaotic, and there were things to look at in all directions, as if a street brawl had broken out around her. Stopford saw a woman run to the north side of the streetcar from the south side of Queen Street, around the front of the streetcar. She was screaming and “freaking out”. According to Stopford, this could have been either of the two females that had been involved in the fight, or one of the other women in the vicinity. She then saw a female on the north side of the street, slightly ahead of the streetcar, partly on the sidewalk, and partly on the road near the “lampposts”. Her arm was cut and another female had taken off her shirt and was wrapping it around the injured arm. She was wearing a white bra. During her testimony, Stopford stated that the “less involved” female from the fight on the south side of the streetcar was wrapping her shirt around the arm of the woman she had seen with a knife in her mouth. However, in cross-examination, she admitted she may have been mistaken in her identification of the injured female as the female with the knife in her mouth during the south side fight, that she might have interchanged the two females, and that she could not say how she had distinguished between them. And, when interviewed by police, Stopford did not identify either the Appellant or Watts from a photo lineup she was shown.

Evidence of M. Stopford, *Trial Proceedings*, Vol. II, 510/20-25, 519/5-520/10, 521/5-25, 521/5-524/25, 477/20-25, 778/10-25, 536/5-537/10

Jonathan Paget

28. Jonathan Paget was in the right-side aisle seat next to Molly Stopford on the eastbound streetcar. He heard yelling through the open window and saw two males in a fist fight on the road southeast of the streetcar. One of the males had long hair and was dressed in “street fashion” (Fresh, on the Crown’s theory). The other was “preppy” with shorter hair (Hammond,

on the Crown's theory). The preppy male was the aggressor and the other was backpedaling west towards the streetcar.

Evidence of J. Paget, *Trial Proceedings*, Vol. II, 545/5-10, 549/25-550/5, 551/5-10, 533/1-10, 553/10-15, 555/5-20, 556/5-557/20

29. Two females walked west on the south side of the street car. They were yelling in the direction of the fight. One of them, whom the Crown theorized was the Appellant, was dressed in "street" fashion and had straight or wavy blonde or dirty blonde hair. Paget could not recall her footwear, whether she wore a skirt or pants, or whether she carried a purse or a handbag. The other female, who was not involved in the fighting, was wearing a red t-shirt and was a bit larger than the first female in height and stature. The smaller, blonde-haired woman yelled at one of the fighters to stop beating the other. The males went out of view below the streetcar window and Paget heard the sound of something hitting the side of the streetcar. The blonde female approached them "with intent" to stop the fight. She moved briskly with her arms out in front of her and the fight ended. Paget did not see how she managed to end it. At one point – Paget was not sure if it was before or after the fight between the two males transpired – he briefly saw a knife in this female's right hand. She was not holding it with a "stabbing grip". Notably, when shown the photo lineup images of Watts and the Appellant during cross-examination, Paget testified that he had not seen anyone with the Appellant's hairstyle involved in the fight on the south side of the streetcar, and that he could not rule out that it was Watts who had entered the fight with the knife.

Evidence of J. Paget, *Trial Proceedings*, Vol. II, 558/20-559/10, 560/5-561/25, 562/15-25, 563/1-10, 564/10-565/5, 566/5-10, 569/1-10, 570/10-15, 616/10-15, 577/15-578/25, 601/15-603/10, 604/10-15

30. After the fight broke up, the preppy male went west along the south side of the streetcar, and the scruffy male was dragged to the sidewalk. The preppy male was agitated and animated,

and said, “Who’s next? Bring it on!” a couple of times. He did not appear injured, and was not favouring any part of his body. He went out of view and Paget did not see him again on the south side of the streetcar. Paget’s attention then shifted to the north side of the street. He saw the same female he had first seen with the knife on the south side of the street -- the Appellant on the Crown’s theory -- standing to the northeast of the street car, on the westbound streetcar tracks. The other female that he had seen on the south side of the streetcar had taken off her shirt and was standing in a white bra. She was wrapping the shirt around the arm of the first female, who was yelling and crying, “He cut me”. Paget testified that he believed the female with the cut was the same woman he had seen with the knife on the south side of the streetcar because he thought it was ironic that the female who produced the knife was the one who was stabbed by it.

In cross-examination, Paget agreed that irony is “far from a descriptor.”¹¹

Evidence of J. Paget, *Trial Proceedings*, Vol. II, 565/15-566/5, 573/1-574/5, 620/5-25, 584/20-585/5, 585/10-20, 586/1-10, 595/10-20, 596/10-20, 605/20-606/15

(iii) Third Stage: The Fight on the North Side of the Street

31. The Crown’s theory was that Hammond received the fatal stab wounds to his chest during a fight on the north side of Queen St. According to the Crown, after subduing Fresh and being stabbed superficially in the back by the Appellant on the south side of the streetcar, Hammond moved around the front of the streetcar to the north side of the street, pursued by the

¹¹ Paget was unclear on the sequence of events that preceded his observations of the wounded female on the north side of the street. After the fight on the south side of the street, he observed a male lying on the ground on the north side of the street being beaten by two people whose gender he could not identify. Then he saw this male on the hood of a taxi holding a knife. In his statement to the police, he said that the male on the ground on the north side of the street – presumably Hammond – was being hit at the same time the injured female was being tended to. At trial, he maintained that he saw the man being beaten, then the man on the hood of the car, and then the female being tended to. (Evidence of Jonathon Paget, *Trial Proceedings*, Vol. II, 579/5-580/15, 583/1-15, 631/1-20, 633/15-634/5, 635/5-25, 636/10-637/10)

Appellant, Jeremy Wooley and an unknown male. Hammond was then beaten by the three assailants as he lay on the ground. The Crown further theorized that while Hammond was using his arms to protect his head from the blows, the Appellant stabbed him four times in the chest. Hammond then gained control of the knife from the Appellant and stabbed her on the arm. He extricated himself from the fight, and tried to get into a westbound taxi that was driving by but the driver, Saad Mir, would not let him into the cab. Hammond then hooked his arm around the doorframe of a second westbound taxi driven by Wossen Hailmeraian and it carried him west to Bellwoods Ave. where he collapsed on the sidewalk outside a church.

32. This aspect of the Crown's theory was based primarily on the evidence of Nataja DeSilvia, Saad Mir, Wossen Hailmeraian, William Patsiopoulos and Melissa Gallately. These civilian witnesses all observed the fight on the north side of the street and saw a single female involved in it that the Crown theorized was the Appellant. The Crown emphasized that Melissa Gallately described the female involved in the fight as making "flailing" arm movements. The Crown argued that these were stabbing motions. The Crown also relied on the evidence of Molly Stopford who saw Hammond on the hood of a taxi holding in his right hand the same knife she had seen in the mouth of the female involved in the fight on the south side of the streetcar.

33. The defence position was that this evidence fell far short of establishing that the Appellant had inflicted the fatal stab wounds and indeed left uncertain what, if any role she had played in the north side fight beyond receiving a cut to the arm from Hammond after he had wrested possession of the knife from his assailant. The defence relied on the following pieces of evidence to call the nature and extent of the Appellant's involvement into question:

- The scene was extremely chaotic. Many witnesses described a large group of people and a number of vehicles obstructing their view of the fight. This made reliable observation and identification of the participants impossible. (See paras. 35 (DeSilvia), 36 (Mir), 39 (Patsiopolous), and 44 (Quigley), *infra*)
- Laura Quigley had observed an injured female, presumably the Appellant, standing towards the middle of Queen Street while Hammond was being beaten on the north side. This suggested that the Appellant did not receive her injury while beating Hammond on the north side and that she was not a participant in that fight. (See para. 44, *infra*)
- Cameron Bourdignon saw the fight on the north side. His view was obstructed, and he could not say whether there was a female involved. He thought that if there had been, he would have noticed this. Lindsay Williams also saw the fight on the north side, but did not see a female involved in it. Similarly, Raymond To, who lived above One of a Kind Pasta -- in the immediate vicinity of the north-side fight -- looked out his window and saw three males, and no females, involved in the fight on the north side of Queen St. (See paras. 46-48 , *infra*)
- Nataja DeSilvia and Saad Mir both described a female involved in the fight as having blonde hair. Again, this was consistent with Watts's appearance, and, in fact, DeSilvia identified Watts as the female involved in the fight during a photo lineup. DeSilvia also saw a second, possibly brown-haired female, near to the fight, but not directly involved in it. (See paras. 34-36, *infra*)

- DeSiliva and Hailmeraian described the female involved in the fight wearing pants. The Appellant was arrested wearing a long skirt. (See paras. 34, 38, *infra*)
- Melissa Gallately's claim that she had seen the Appellant flailing her arms at Hammond was unreliable. Gallately had made no mention of this to the police in her original statement, and did not mention it at the preliminary inquiry. Gallately had also told police that she had seen Hammond drive away from the scene at the wheel of a dark vehicle. (See para. 42-43, *infra*)
- The Appellant did not flee the scene after Hammond was stabbed. Rather, she waited for the ambulance and police to arrive and actively engaged with officers who had been dispatched to the scene. According to the defence, had she just committed a murder, she would have fled the area and avoided contact with the police.
- Shaun Park observed an unidentified male showing off a number of stab wounds and bragging about his participation in a knife fight in the minutes after the stabbing. This made it impossible to safely conclude that there were not two knives in the altercation. (See para. 49, *infra*)

Nataja DeSilvia

34. Nataja DeSilvia was working at Terroni on the night of the stabbing. She heard a fight outside the restaurant. Ten minutes later, she left work and heard more yelling from the west on

Queen St. From the northeast corner of Queen St. and Claremont St., she could see a fracas about thirty feet away on the sidewalk on the north side of Queen St. at the intersection with Niagara St., where east-west traffic was stopped at a red light. At least four white people were involved, and there may have been more. One was a male in a black t-shirt with blue jeans and olive-toned skin, in his late 20's or early 30's. He appeared "singled out". The other three looked like "squeegee kids". There was a tall, skinny male, wearing army-green clothes and a backpack. Another shorter and stockier male wore a dress shirt that was ripped in the front. The fourth participant was a female, about 5'1", with blondish dreadlocks. She was a younger girl, in her late teens or early twenties, with a tank top and wide legged "raver" pants. There was a second female, possibly with brown hair, nearby who was not involved in the fight and who was "crouched down on the sidewalk most of the time".

Evidence of N. DeSilvia, *Trial Proceedings*, Vol. II, 960/15-20, 961/10-20, 961/20-25, 962/15-25, 963/15-20, 964/5-25, 965/5-20, 966/1-10, 966/15-967/5, 967/15-20, 968/1-10, 969/10-15, 969/25-970/5, 968/10-969/5, 971/10-972/15, 972/20-25, 1002/5-20, 998/1-999/10

35. The fight was chaotic and at very close quarters, and DeSilvia's view was obstructed by people and cars. There was little room between the participants and many punches were thrown by everyone involved. According to DeSilvia, the "squeegee kids" were even attacking each other. The male with the black t-shirt tried to break away from the group. He was chased back and forth across the street by the other two males and the female. Someone was thrown over a taxi cab. No one was on the ground. The fighting continued until the stoplight turned green. The male in the black t-shirt hooked his arm inside the open rear passenger side window of a westbound taxi cab and it carried him down the street. At the same time, DeSilvia heard the female with dreadlocks scream, "He stabbed me, he stabbed me." She was hysterical and spinning around the street. DeSilvia saw a gash on her arm, and she was bleeding on the

sidewalk. The stockier male – who fit the description of Wooley - was also cut on the arm. The injured female said she wanted to go to a hospital. Reflecting the confusion of other witnesses, during a police photo lineup, DeSilvia erroneously identified Faith Watts as the woman who had yelled that she had been stabbed. And, according to DeSilvia, the female who had been stabbed was the same woman who had been involved in the fight. During the same photo lineup, DeSilvia wrote on the back of the Appellant’s photo, “Maybe involved. Looks familiar”.

Evidence of N. DeSilvia, *Trial Proceedings*, Vol. II, 973/5-20, 974/5-975/15, 976/5-10, 977/20-978/5, 991/10-15, 992/20-25, 995/10-15, 995/15-25, 1000/20-1001/20, 991/25-992/15, 1008/1-10, 987/15-20, 988/20-25 Exhibits 49 and 50, Photographic Lineup Photos of Faith Watts and the Appellant, *Appeal Book*, pp. 156, 175

Saad Mir

36. Saad Mir was driving his taxi west on Queen St. His attention was drawn to a fight on the north side of the street, north and west of the two light standards at the intersection of Queen St. and Niagara St. He heard a number of voices, and saw a “whole bunch” of people – as many as 20 – moving around on the sidewalk and the road near the fight. At times during the 10-15 seconds he was stopped to observe the fight, this group of people obstructed his view. Despite this, he observed – for “hardly maybe ten seconds” – Hammond being kicked by two males while Hammond sat on top of a female’s stomach. One of the males was white, with blonde-reddish hair and a beard; this male was more aggressive than the other, who was also white skinned and blonde haired. The female had blonde hair too, and it was tied up in a ponytail. She was on her back on the ground, her head was to the west, and her feet were to the east. She was making punching motions, but Mir could not gauge the force of the blows. Somehow, Hammond got to his feet and walked towards a taxi that was in front of Mir. The doors were locked, and Hammond approached Mir’s cab. Mir locked the doors, but the windows were open. Hammond grabbed onto the post between the front and rear passenger doors. He had a knife in

his hand. According to Mir, before Hammond hooked himself onto his cab, the female got up off the ground.

Evidence of S. Mir, *Trial Proceedings*, Vol. III, 1045/5-15, 1048/15-20, 1049/20-1050/5, 1050/20-1051/5, 1051/15-20, 1052/1-15, 1052/15-25, 1053/10-25, 1054/1-25, 1061/5-1063/15, 1063/15-25, 1065/10-25, 1066/25-1067/15, 1067/15-20, 1068/5-15, 1069/20-25, 1068/20-25, 1070/1-20, 1071/1-25, 1072/10-20, 1082/15-1083/25, 1094/5-20

37. Mir drove west on Queen St., and Hammond dropped off his cab as they passed by the church. Mir made a U-turn and saw Hammond lying down on the sidewalk. He drove east towards Niagara St. and alerted a police officer to Hammond's distress. He then made another U-turn in the intersection of Queen St. and Niagara St. He saw the female from the fight east of the area of the fight, on the north side of the street, around 732 Queen St. She was with the bearded male, holding her left wrist and saying, "I got stabbed".

Evidence of S. Mir, *Trial Proceedings*, Vol. III, 1055/20-25, 1056/1-15, 1057/1-1058/25, 1090/15-25, 1092/20-1093/20, 1108/25-1109/15

Wossen Hailmeraian

38. Hailmeraian was driving his taxi westbound on Queen St. He saw people fighting on the north side of the street, on the sidewalk near a pole. One female and three males were involved in the fight. One of the males was on the ground, and the others were hitting him with their feet. The female had white skin, a black jacket and black jeans. She was not wearing a dress. The male on the ground got up, and stood in front of his cab. He had a knife in his right hand. He tried to enter Hialmeraian's taxi on the driver's side, but the door was locked. Mir's taxi approached from behind his taxi heading west and passed Hailmeraian on the south side. The man with the knife put a portion of his body in the window of Mir's taxi and was dragged west. Hailmeraian drove west behind Mir. He saw the man drop off Mir's taxi at the church, sit on the church steps, then fall down onto the sidewalk.

William Patsiopoulos

39. William Patsiopoulos was heading north on his bicycle on Niagara St. At the intersection of Queen St. and Niagara St., he stopped for a red light. When the light turned green he proceeded north into the intersection and turned west on Queen Street. As he made the turn, he noticed two people fighting by the traffic light standards on the north side of the street. There were six to twelve people around the scuffle, either involved in it, or trying to break it up. He saw two people on the north side fall to the ground, and a man banging on the north side of the eastbound streetcar. The man was 5'8"-5'9", wearing a jacket, jeans, and dark shoes and he had short dark hair. He looked drunk and dangerous. After making the turn onto Queen Street, Patsiopoulos turned his bike around 180 degrees and rode east, back towards the intersection. His attention was divided between the man banging on the streetcar, whom he noticed had a knife in his left hand, and the Appellant who was coming from the area of the fight. She looked distressed and was standing in the middle of the street by the western boundary of the cross-walk across Queen St. Patsiopoulos saw that she was wounded, dropped his bike in the middle of the road, and called 911. Patsiopoulos then moved the Appellant from the intersection to the north side of Queen St. As he did so, the man who was banging on the side of the streetcar stepped in front of a taxi as if to stop it and get inside. Patsiopoulos assisted the Appellant with the wound on her arm and staunched the bleeding. There was a lot of blood, and she was bleeding on the sidewalk. Some of her friends arrived and he withdrew.

Molly Stopford

40. Stopford did not see a fight on the north side of Queen St. But she saw the “jock” that she had earlier seen fighting on the south side of the street on the hood of a taxi that was travelling westbound. He had a knife in his hand and the blade looked the same as the one she had seen on the knife in the mouth of the woman on the south side of the streetcar. He was yelling and screaming at the driver and hitting the windshield. Then he moved from the hood of the car and punched the driver repeatedly with the knife still in his hand.¹² Stopford noticed there was blood on the hood of the car. The cab drove west. Her attention returned to the injured woman, and then she saw another cab going east. The jock was gone and the streetcar started moving again.

Evidence of M. Stopford, *Trial Proceedings*, Vol. II, 520/20-25, 479/10-25, 480/5-15, 481/5-483/20

Melissa Gallately

41. Mellissa Gallately’s apartment occupied the second and third floor of 843 Queen St. W, on the south side of the street. On the night of August 8-9, 2007, she was lying down in bed on the third floor of the apartment after nursing her baby. She heard yelling from outside. She saw a fight on Queen St and stepped onto the balcony. The fight was on the north sidewalk, a bit to the west of the light standards near One of a Kind Pasta. Two males and a female were on top of another male, who was on the ground. The male on the ground was olive skinned, and wearing a dark shirt. He was in the fetal position, with his head to the west and his feet to the

¹² Stopford, a key witness, was wrong about this. Hailmeraian, the driver of the taxi whose hood Hammond had mounted himself upon, testified that his windows were closed throughout the entire incident (Wossen Hailmeraian’s Evidence, *Trial Proceedings*, Vol. II, 765/10-20)

east, parallel with the sidewalk. He was trying to protect his head from the blows, and was lying half on the sidewalk, and half on the road. One of the males delivering the beating was wearing a baseball cap. He was in his early to mid-20s, with long hair and an open shirt with nothing underneath. The second male was shorter, with shorter hair and 8-hole Doc Martin boots. He was in his late teens. The female, who was in her late teens or early 20s, was crouched down, and it looked like she was wearing a long black skirt. She had a black tank top, and her hair was in dreads or matted. The male on the ground looked “a little more conservative”, while the male with the cap, the male with the Docs, and the female looked like “street kids” with dirty, disheveled clothes. There were other people walking around the fight, but no one remained in the vicinity to any significant degree except a second female and a male on bike.

Evidence of M. Gallately, *Trial Proceedings*, Vol. II, 888/1-15, 890/5-15, 890/20-891/5, 891/20-892/25, 893/5-10, 894/5-10, 895/1-10, 896/1-897/15, 898/1-20, 900/5-15, 899/1-20, 900/1-5, 900/20-901/5, 901/10-20, 933/20-25, 958/15-20, 916/10-20, 920/1-5, 923/15-25, 938/5-10

42. During the fight, the male with the cap was punching, kicking and stomping the male on the ground. At times he was crouching over him and punching too. He was the more aggressive party. The male with the short hair was punching and kicking. The female was bent over the male on the ground on the north side of him. His chest and stomach were exposed to her. She was, “flailing, her arms are moving”. Very early in the fight, she was screaming about her hand bleeding. Gallately heard her say the word, “stab”. The female was very angry and aggressive, and her arms were moving constantly. According to Gallately, she could not be certain if her arms made contact with the male, but her arms were flailing “down towards his body.” Notably, Gallately had made no mention of the female flailing her arms in her statement to the police on the morning after the stabbing. She explained this by stating that at the time she gave the statement, she did not know that someone had died. If she had, Gallately stated, she would not

have “brushed it off”. But at the preliminary inquiry, long after Hammond’s death, when questioned extensively about the female’s interaction with the man on the ground, Gallately again made no mention of seeing the female flail her arms.

Evidence of M. Gallately, *Trial Proceedings*, Vol. II, 902/20-25, 904/5-15, 905/5-15, 905/20-906/10, 907/1-5, 907/5-908/15, 910/20-25, 912/5-25, 914/5-25, 915/15-20, 943/20-944/20, 945/5-10, 947/20-950/5

43. Eventually, the male on the ground got to his feet. He stumbled into the street towards the driver’s side of a dark vehicle in which he left the scene. The second female tried to comfort the female who had been involved in the fight. In her original statement to the police, Gallately stated that the man had entered the dark vehicle and actually *driven away*. When asked about this prior statement by the Crown, she stated that in reality, her attention had been focused on the female and that she must have assumed that the male had gotten into the dark vehicle and left because he had walked towards it and was then gone.

Evidence of M. Gallately, *Trial Proceedings*, Vol. II, 912/5-25, 914/5-25, 915/15-20, 958/1-10

Laura Quigley

44. It was difficult for Quigley, who was standing outside Terroni, to recall the specifics of what happened after the two males – Hammond and Dranichak – approached the streetcar because she was distracted and because “what was happening in the street became chaotic”. More “street kids” arrived and became involved; there were six in total, perhaps more. Quigley noticed a person lying limp on the ground being dragged towards the sidewalk on the south side of the streetcar. Then she saw the girl who had earlier been pushed to the ground by the two men:

I see the girl, um, and I see that there – there’s blood around her and she’s holding her shoulder and still hysterical, screaming. Um, and, um, I see blood on the street near –

like, this is when things get sort of chaotic because there is a bicycle and a little bit of blood on the street sort of near to where I – a little bit west of where I am.

This female was standing in the middle of the street, near the streetcar. The two “business guys” were trying to get into a taxi cab. Then the female was brought towards a group of her “street kid friends” who had gathered on the north sidewalk west of Quigley’s position. The Crown asked:

Q. And where is she brought towards them from?

A. From, ah, from the middle of the street and also around where – around where the streetcar was, over to the north side of the street.

Q. And is there something happening around where you see this girl?

A. Um, not – it just seemed chaotic.

Q. But by chaos, is – what is chaotic? What are people doing?

A. Screaming and holding herself and yelling. Like, people yelling and, um, yeah.

Q. And this is in the middle of the street?

A. Mm-hm.

Q. But when you’re describing it as chaos, is there another way to describe what you’re seeing? Is there a physical altercation?

A. Yes, but I – I wasn’t watching it that closely.

Q. Okay. But you had -- you formed the impression that there was a physical altercation going on?

A. I did, yes.

Q. And at what point in time does this altercation end?

A. Um, it ends when the girl goes over to the side of the street.

According to Quigley, her attention was focused almost exclusively on the female who was 10 to 15 feet away from her. She saw no one stab anyone, saw no weapons, saw nothing in the female’s hands and could not say who was fighting with whom. Once the injured female was taken to the north side of the street, things calmed down. Quigley heard sirens and rode her

bicycle west on Queen St. As she rode towards Trinity Bellwoods Park, she saw a man lying on the north sidewalk who looked hurt.

Evidence of L. Quigley, *Trial Proceedings*, Vol. I, 411/15-20, 412/5-15, 413/5-10, 413/20-414/5, 414/15-415/20, 416/10-417/5, 415/20-25, 416/10-15, 419/10-20, 421/15-25, 433/25-30, 437/10-438/10, 440/15-20, 440/20-441/15, 445/15-446/15, 424/10-20

Cameron Bourdignon

45. Cameron Bourdignon was walking east on the south side of Queen St. towards Niagara St. He saw both the fight on the south side, and the fight on the north side. On the south side, he saw two “jocks” walking southwest across Queen St. to the streetcar waiting at the southwest corner of Queen St. and Niagara St. Three to four “street kids” were walking behind them. A few of them were yelling at the jocks. The jocks were about 5’11”, athletic, with t-shirts and jeans. At least one of their shirts was dark coloured. A male street kid, who was tall and thin with dark shaved hair, approached one of the jocks and they started fighting in the road between the street car and the south side of Queen St. The jock immediately got the better of the street kid. He hit him in the face a few times and hit his head off the ground. The jock said, “If you guys want to fight, like let’s do this!” Lots of people were around and there was lots of yelling. The street kid was lying on the sidewalk by a TTC shelter. He was with a female who was dressed in a similar street style. It seemed to Bourdignon that the male street kid and the similarly attired female knew each other. The female remained with the injured male on the south side of the street. The Crown theorized that this female was Watts, Fresh’s girlfriend, and that she and Fresh were, from this point on, out of the fight.

Evidence of C. Bourdignon, *Trial Proceedings*, Vol. IV, 1617/20-1618/25, 1619/5-25, 1621/5-15, 1622/1-25, 1622/5-10, 1624/1-10, 1624/10-15, 1624/20-1625/10, 1641/20-25, 1626/15-1627/5, 1633/20-25, 1639/15-25

46. Other street kids approached and a second fight broke out in front of the streetcar involving the street kids and one of the jocks. Bourdignon could not say if it was the same jock that had been involved in the altercation with the street kid on the south side of the streetcar. At some point, the fight moved to the north side of the street where two or three street kids were beating the jock. They were close to the light standards in front of One of a Kind Pasta. One of them was a huskier heavier male with scruffy facial hair and possibly a hat. He could not identify the sex of the other people involved, but testified that if one of them had been a female, he would likely have noticed it. A westbound taxi cab pulled up on the north side of Queen St., and obstructed Bourdignon's view from the waist down. But he could see that the street kids had the jock on the ground and were punching and kicking him. The scruffy male street kid said, "You die tonight". Thirty to forty seconds later, the jock stumbled to his feet and got on the hood of the taxi. His face was bloody. While the fight on the north side was happening, Bourdignon saw the other jock in the middle of Niagara St. just south of Queen St. He was scared and was trying to get the other jock to leave.

Evidence of C. Bourdignon, *Trial proceedings*, Vol. IV, 1626/1-10, 1628/1-25, 1029/1-10, 1629/10-15, 1630/10-20, 1630/15-1631/20, 1634/5-20, 1642/20-1643/5, 1644/15-25, 1648/10-15, 1649/20-25, 1651/5-15, 1654/5-20

Lindsay Williams

47. Lindsay Williams was walking north towards Queen St. on the west side of Niagara St. As she approached Queen St., she heard a male voice yelling, "You hit a woman!" Then she heard a woman say, "Not him, him". She could not see either the male or female. The voices were coming from an area on the north side of Queen St. between One of a Kind Pasta and Bellwoods Ave. where an argument had escalated into a fight. She saw two males run from the south side of Queen St. to the north. One was wearing a black t-shirt, cut-off denim shorts and 8-

hole Doc Marten boots. A group of people were beating on one person, just west of One of a Kind Pasta. She did not see any women involved. When she thought that the fight was over, Williams walked to the north side of Queen St., east of Niagara. As she was walking by Claremont St., she heard a woman screaming hysterically, “Stop, Stop!” and asking for help.

Evidence of L. Williams, *Trial Proceedings*, Vol. IV, 1658/5-1659/25, 1660/10-15, 1660/15-25, 1661/10-15, 1661/20-25, 1663/1-10, 1664/10-15, 1663/5-15, 1664/15-1665/5, 1666/1-5, 1667/1-1668/15, 1669/5-25

Raymond To¹³

48. Raymond To operated the One of a Kind Pasta restaurant on the north side of Queen St. and he lived in the apartment above it. On the night of the stabbing, he was in bed on the second floor trying to sleep when he heard noise coming from outside. He opened the window and looked out. He saw three males arguing. They were on the sidewalk, directly below the window. One was pushed to the ground and they started fighting. The man who was pushed to the ground was “fat”, with frizzy, collar length hair. He was wearing an “army outfit” with a long sleeve button-down shirt. The other two were similarly dressed. One crouched down on his knee and punched the male on the ground, while the other one was kicking him. There were no females nearby. After about thirty seconds, the “fat man” struggled to his feet and approached the side of a taxi. He tried to speak to the driver, but the taxi drove off. The three men continued to argue. The “fat” male -- who was in the middle of the road -- and a group of people on the south side of Queen St. were calling for the police to come. Mr. To saw the police arrive. They spoke with some of the males who were involved in the fight. These males then walked west. To changed his clothes and went outside. There were many people around,

¹³ Mr. To testified with the assistance of a Cantonese interpreter.

including police. To walked west towards Bellwoods Ave. He saw an injured female speaking to a paramedic and a male lying on the ground.

Evidence of R. To, *Trial Proceedings*, Vol. IV, 1692/5-20, 1693/5-10, 1693/15-25, 1694/1-25, 1695/15-25, 1697/5-10, 1698/1-15, 1699/1-1700/20, 1701/5-20, 1701/20-1702/10, 1706/1-10, 1706/15-25, 1706/20-1707/5, 1708/20-1709/5, 1710/20-1712/5, 1713/10-15, 1713/15-25, 1714/1-15, 1716/10-20, 1718/5-20, 1722/5-1723/5

Shaun Park

49. After hearing the approach of emergency vehicles, Shaun Park went outside his restaurant and saw two males walking east on the south side from the direction of Niagara St.¹⁴ They looked like the two males he had seen crossing from south to north fifteen minutes earlier. One was white, six feet tall, about 200 lbs and wore a grey hooded sweatshirt, faded grey shorts that went below the knee, sneakers and a hat from the back of which his brown hair protruded. He had tattoos on his left leg and upper body. The other male was smaller and also wore a hat. Park asked them what was going on and the taller one said, “Somebody got stabbed”. The taller one then lifted his shirt and said, “I got stabbed”. He had puncture wounds on his abdomen and chest area. Park suggested that he attend a hospital and he responded that he was from the United States, had been stabbed 19 times before and that it was “no problem”. The two men then continued walking east, away from the scene.¹⁵

Evidence of S. Park, *Trial Proceedings*, Vol. II, 664/10-20, 666/5-25, 667/1-10, 667/15-25, 668/10-669/5, 669/10-671/15, 671/20-672/25, 701/5-10, 710/1-10, 711/10-25, 713/5-714/25, 721/1-10

¹⁴ Paul Gallately, Melissa Gallately’s husband, testified that he saw from his balcony two unknown individuals (a male and a female) quickly leave the north side of Queen Street proximate to the time of the north side fight. (Evidence of P. Gallately, *Trial Proceedings*, Vol. IV, 1750/20-1752/15)

¹⁵ During cross-examination, Park testified it was “very possible” that the unidentified male in the One of a Kind Pasta video was the same male who showed him his stab wounds outside of his restaurant. (Evidence of Shaun Park, *Trial Proceedings*, Vol. II, 718/-719/25, 720/1-721/10, 722/15-25, 724/20-25)

III. THE TESTIMONY OF FAITH WATTS

50. As the trial judge recognized, the circumstantial evidence of Watts's involvement in the events surrounding the stabbing – including her physical similarity to the Appellant – made her a suspect in Hammond's death. Watts was not called as a witness at the trial, but her testimony at the preliminary inquiry – which had been taken via video link from a courtroom in San Francisco – was tendered by the defence and admitted into evidence with the consent of the Crown.

51. According to Watts, on the day of the stabbing, she was drinking with her boyfriend, Doug Fresh, the Appellant, and the Appellant's boyfriend, Jeremy Wooley. They were hanging out with a female named Nahla Saleh, and two males named "Hal" and "Twitch". Nahla had a dark complexion and curly hair. She was riding a bike. Hal was white and heavy set. In addition to drinking alcohol, Watts said she had injected Oxycontin, and that she was quite intoxicated. She recalled little of the night's events.

Preliminary Inquiry Evidence of F. Watts, Exhibit E (DVD)

52. Watts said she had been drinking in a park south of Queen St. after dark, and walking on Queen St. with the Appellant, Fresh, Wooley, "Hal", Nahla, and as many as three other "random kids". They were confronted by two males. There was a scuffle and "harsh words" were exchanged. She recalled the two males calling them "whores". Then she recalled feeling scared. She pulled out her knife and unlocked the blade but was immediately disarmed by "Richard Hammond". According to Watts, the knife was part of a matching set that she and Fresh had stolen earlier that summer from a store in Montreal. Watts further testified that the Appellant did not have a knife on her the night of the stabbing. She had told the Appellant that she should get one for protection. The Appellant had responded that she did not need a knife for protection

because she had a boyfriend. Notably, a knife identical to that found on the church steps was seized from Fresh by police on the night of the stabbing. No blood was chemically detected on a swab taken from it, and it was not tested for DNA.

Preliminary Inquiry Evidence of F. Watts, Exhibit E (DVD)
Evidence of S. Kearon, *Trial Proceedings*, Vol. I, 12/20-13/10
Exhibit 31 – Photo of Fresh’s Knife (JPG 18365-07 by 6834 005) (DVD), *Appeal Book*, Vol. 1, p. 44
Exhibit 57B, “CFS/FIS – Items not fully examined”, *Appeal Book*, Vol. 1, p. 268
Exhibit 56A, CFS Report, December 17, 2007, *Appeal Book*, pp. Vol. 1, p. 224

53. Watts professed to have no recollection of being around the TD bank or of a physical fight with Hammond. She said she remembered seeing that the Appellant was injured, and assisting her with the wound. They walked up to a police officer and Watts told him that the Appellant had been stabbed and needed an ambulance. Then she remembered being in front of an ambulance and seeing a man on a stretcher. She claimed she did not recognize him and thought to herself, “Who is that?” The next morning she noticed that she had suffered some bite marks on her arm, but, according to Watts, she did not know how she got them.

Preliminary Inquiry Evidence of F. Watts, Exhibit E (DVD)

IV. HAMMOND’S DYING DECLARATIONS

54. Hammond was still conscious and capable of speaking when he collapsed outside the church on Queen St. Adrienne Chan was walking home from the 7-11 on Queen St. when she heard him yelling, “Help me, help me, I’m dying. I’ve been stabbed.” She saw Hammond stumble down the church steps and fall onto the sidewalk. Chan and her friend approached Hammond and asked him what had happened. He said he had been stabbed. Chan called 911. After she spoke to the dispatcher, a male bystander pointed out a knife lying by the church steps.

Police arrived and one of the officers asked Hammond where he got the knife. Hammond said, “I got it in the fight”.

Evidence of A. Chan, *Trial Proceedings*, Vol. III, 1141/20-1142/5, 1143/5-10, 1146/15-20, 1147/10-25, 1148/15-20, 1152/1-25, 1154/25-1155/5, 1155/10

55. Cst. Brian Dawn, a member of the Toronto Police Service with six years of experience, testified that he attended at the church at Gore Vale Ave. and Queen St. and saw Hammond on the ground struggling to breathe. A bystander pointed out a knife on the church steps. Cst. Dawn asked Hammond about the knife and he said, “No comment. No comment. I just took it off *them*.” The paramedics arrived and Cst. Dawn accompanied Hammond to the hospital. In the ambulance, Cst. Dawn asked Hammond to describe, “the people that did this” and he responded, “They were punks. Just punks.” According to Cst. Dawn, he recorded this conversation in his notes when he got back to the police station at 8 a.m. the next morning, close to eight hours after it occurred.

Evidence of B. Dawn, *Trial Proceedings*, Vol. III, 1174/20-25, 1179/50-1181/25, 1182/20-25, 1183/5-10, 1184/5-25, 1186/5-10

56. Det. Gordon Scott – a Toronto Police officer with twenty-seven years of experience – testified that he spoke with Cst. Dawn at the hospital at 3:14 a.m. Cst. Dawn advised him that he had asked Hammond about the knife while they were in the back of the ambulance to the hospital. According to Det. Scott:

He [Cst. Dawn] attributed the following to Mr. Hammond: What about the knife? No comment, no comment. He then stated, I ripped it out of **his** hand. A bunch of punk kids did this to me, indicating, ah, wounds to his chest. (Emphasis added)

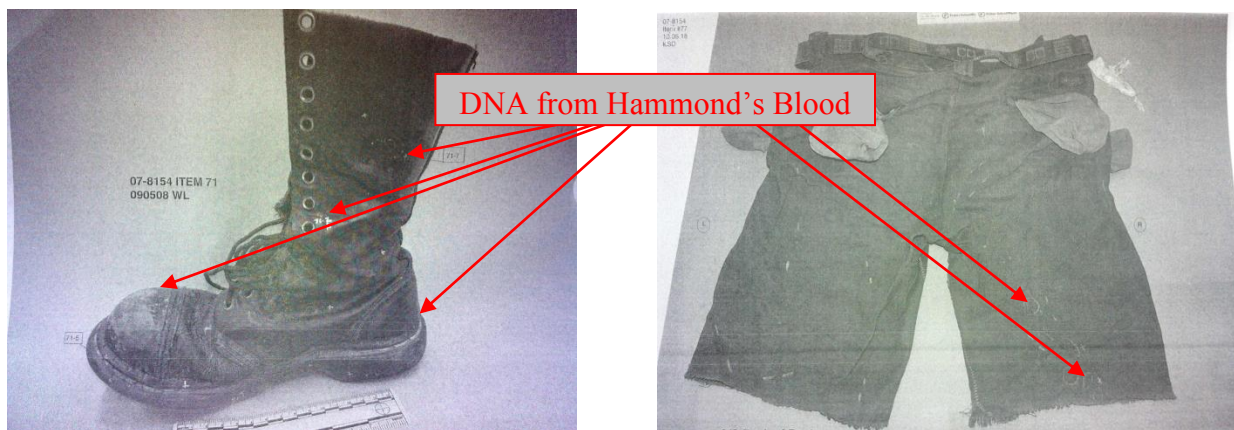
Det. Scott further testified that he recorded what Dawn had told him in his notebook 22 minutes after their conversation. He was the lead investigator at the time and was aware that Hammond

might die and that they might not have a chance to interview him. He acknowledged that at the time he took his notes he did not think he would be called to testify regarding Hammond's utterances. Nonetheless, he did not think it possible that he had recorded Dawn's information incorrectly.

Evidence of G. Scott, *Trial Proceedings*, Vol. III, 1221/15-20, 1225/1-25, 1229/20-25, 1231/1-20, 1240/15-25

V. THE DNA EVIDENCE

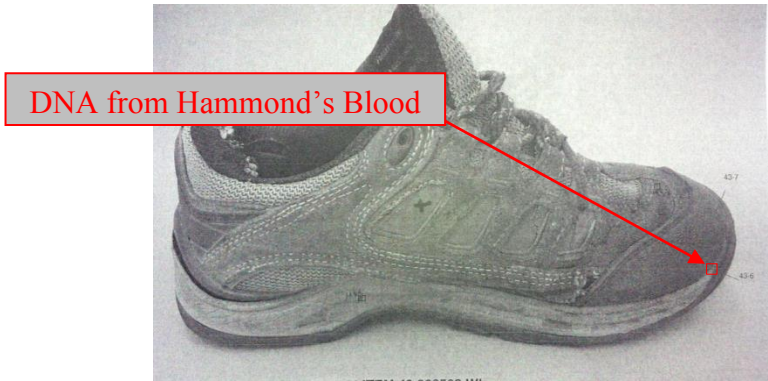
57. The Appellant's DNA was located on the base of the blade of the knife that was found on the church steps. It was mixed with Hammond's DNA. While one source of the DNA was blood, the forensic biologist could not say whether both DNA samples were from blood, or whether one was from another bodily source. Importantly, DNA from Hammond's blood was also located on Watts's clothes, in seven spots on her boots (including high up on the shaft of the right boot) and in two places on the rear of her shorts.



Watts's Right Boot
Photos2-26, Exhibit 59A (DVD)
(Samples 71-7, 71-2, 71-6, 71-8)

The Back of Watts's Shorts
Photos2-53, Exhibit 59A (DVD)
(Samples 77-1, 77-2)

In contrast, a single deposit of Hammond's DNA was found in a 1 mm blood stain on the toe cap of the Appellant's left running shoe, about 1 cm from the edge of the sole.



The Appellant's Left Shoe – *Photos2-2*, Exhibit 59A (CD)

Out of 28 samples taken from the Appellant's clothing, and after four rounds of testing, this was the only sample on which Hammond's DNA was found. Both Hammond's and the Appellant's DNA were located in blood samples taken from the street and sidewalk on the north side of Queen St. Hammond's blood was also located on the knee of Wooley's right pant leg, and on one of his shoes, near the sole.

Evidence of M. Sloan, *Trial Proceedings*, Vol. III, 1322/10-1324/10, 1311/1-15, 1339/10-1340/15, 1370/5-10, 1365/15-20, 1365/20-1366/10, 1370/10-25, 1354/15-25, 1360/5-10, 1361/20-1362/10, 1362/15-20, 1384/5-1385/5
Exhibit 57A – DNA Blood Results – Items Tested and Untested, *Appeal Book*, Vol. 1, pp. 260
Exhibit 59A – Photographs of Various Items of Clothing (DVD), *Appeal Book*, Vol. 2, pp. 352, 379, 328
Exhibit 16 – Large Scale Diagram of Queen and Niagara Showing Deposits of DNA, *Appeal Book* (NCR)
Exhibit 62 – Forensic Lab Report – Maxxam Analytics, *Appeal Book*, Vol. 2, p. 425

**PART III:
ISSUES AND THE LAW**

58. There was a significant hole in the Crown's case against the Appellant: no one saw her – or anyone else - with a knife during the fight on the north side of Queen Street where the Crown alleged that Hammond suffered the fatal wounds. In order to bridge this evidentiary gap, the Crown theorized that the Appellant was the female involved in the south side fight who had produced the knife, that she had stabbed Hammond in the back superficially during the south side fight, and that she had either chased Hammond to the north side and stabbed him there, or had passed the knife to one of the other individuals involved in the fight who then inflicted the stab wounds to Hammond's chest. Accordingly, in respect of the latter possibility, the Crown, in his closing submissions, stated:

[I]n the event that Your Honour doesn't find that she is the actual stabber, but in fact provided the knife to either Wooley or Fresh or the third party that is still unknown, that she in fact would fall under [21(1)(b)], which would be the aider under the – under the party liability. She would be aiding in terms of making that murder, so she would fall under the murder section, but she'd fall under as a party by providing the knife.

And the trial judge, in his Reasons for Judgment, held:

I would also note that if that conclusion is in error [that the Appellant stabbed and killed Hammond intending to kill him], the only other explanation for the wounds to Mr. Hammond is that Ms. Kish, having brought the knife to the second fight, then passed it to one of the males who were involved in the fight and that he then inflicted the stab wounds. In that scenario, Ms. Kish would have aided that act and be liable as a party to the offence.

Thus, the possibility that someone other than the Appellant had inflicted the fatal wounds was a live one in this case. Under either scenario, however, the Appellant's liability for murder depended on a finding by the trial judge that the Appellant was the female on the south side who produced the knife. The Crown emphasized this in his closing submissions regarding the Appellant's role:

During the course of the fight [on the south side of the street], it is submitted that Ms. Kish is the woman that is seen with the knife both in her hand and in her mouth. It is submitted that the superficial sharp force injuries on Mr. Hammond's back were inflicted by Ms. Kish during the course of that fight.

The south side fight was the lynchpin of the case. Without a finding that the Appellant was the female with the knife on the south side, there was no basis to infer that it was the Appellant - and not someone else – who had stabbed Hammond in the chest, or had passed the knife to the one who did.

The Crown's Closing Submissions, *Trial Proceedings*, Vol. IV, 1885/20-1886/5, 1943/5-15
Reasons for Judgment, *Supplementary Appeal Book*, para. 137

59. In his Reasons for Judgment, the trial judge found that the Appellant had produced the murder weapon during the south side fight. He based this finding on the evidence of Stopford and Paget. The first ground of appeal is that Stopford and Paget's identification of the Appellant as the female armed with a knife on the south side of the street was manifestly unreliable, and that the trial judge's reliance on it resulted in an unreasonable verdict.

60. The second ground of appeal is that the trial judge, in his Reasons for Judgment, misapprehended, or failed to confront, items of exculpatory evidence that could have contributed to the existence of a reasonable doubt in this case. It may be that this was a by-product of the trial judge's attempt to determine, in his reasons for judgment, "what really happened" on the night of Hammond's death, instead of determining whether the Crown had proved its case against the Appellant beyond a reasonable doubt and whether there was an available construction of the evidence consistent with her innocence. Had the trial judge not made these errors, he may have acquitted the Appellant.

61. Finally, the trial judge erred in law by discounting the exculpatory potential of Watts's testimony that she had produced the murder weapon because the defence never suggested to Watts during her testimony that she was the female "with the knife in the fights". According to the trial judge, defence counsel was "duty bound" to put this "assertion" to her if he was subsequently going to make that suggestion to the court so that she could have an opportunity to respond to it. However, defence counsel was under no such duty, and the trial judge's consideration of this supposed failure as a factor in his assessment of Watts's involvement was improper and prejudicial.

I. THE VERDICT IS UNREASONABLE

(i) Introduction

62. In his Reasons for Judgment, the trial judge premised the Appellant's conviction for murder on his conclusion that she had either wielded the murder instrument, and was therefore a principal, or had passed it to one of the other people involved in the fight, and was therefore an aider. However, the trial judge's conclusion that the Appellant had wielded or passed the knife was in turn premised on his finding that the Appellant was the "more involved" female who entered the fight on the south side of the streetcar with the knife. Without this finding, there was no basis on which the trial judge could conclude that the female involved in the fight on the north side of the street, whom the trial judge found was the Appellant, was the one who either used the knife to inflict the fatal wounds, or who passed the knife to the one who did.

63. The trial judge based his conclusion that the Appellant was the female who wielded the knife during the fight on the south side of the streetcar substantially on the testimony of Stopford

and Paget. These witnesses observed two women involved in the fight on the south side of the streetcar, one of whom was more involved and in possession of a knife. They also saw, after the fight on the south side had finished, an injured female – the Appellant – standing bleeding on the north side of the streetcar being tended to by the second, less involved female. According to Stopford and Paget, the injured female – the Appellant – was the female they had seen in possession of the knife during the south side fight.

64. However, both Stopford and Paget’s testimony on this point was highly problematic, and not the kind of evidence on which a conviction for murder should rest. Stopford admitted in cross-examination that she might have confused the more-involved with the less-involved female, and that she could not be sure that the injured female was the same female whom she saw in possession of the knife on the south side of the streetcar. As for Paget, he could offer no meaningful description of the female he saw holding the knife on the south side of the street, or the one he saw injured on the north side of the street. But he concluded they were the same person because, in his estimation, it was ironic that the person who introduced the knife into the fight was the one that was stabbed. The Appellant submits that the trial judge was not entitled to rely on this evidence to conclude that the Appellant was the knife-wielder (or the knife-passer) and that his misplaced reliance on this evidence resulted in an unreasonable verdict.

(ii) The Testimony of Stopford and Paget

65. Neither Stopford nor Paget provided the kind of evidence from which a court could safely conclude that the female armed with a knife on the south side of the street was the injured female on the north side of the streetcar (i.e. the Appellant). Stopford’s description of the two females

on the south side of the street car was little more than generic. According to her, the females were white, medium height, slim build with “maybe light brown hair”. The more involved female had baggy pants and messy hair and clothing. Further, Stopford stated that she “didn’t differentiate between the two of them too much [...] in terms of looks”. When shown a photo lineup after the incident, she failed to identify either the Appellant or Watts. And, in cross-examination, she testified that the two females were so similar in appearance that she could provide no basis on which to distinguish them and that she might have been interchanging them in her memory:

Q. I understand these two women, one of the reasons that you might be less specific or, you know, less detailed in your description of the second woman, [is] that they’re actually very similar in appearances, aren’t they?

A. I thought so, yes.

Q. Roughly the same age?

A. Yes.

Q. Roughly the same build?

A. Yes.

Q. Both kind of scruffy or messy appearances, both more like street kids, is that right?

A. Yes.

Q. So there is nothing actually in the descriptions of the two women that you can point to to distinguish between the two of them.

A. No.

...

Q. So the woman that you thought was cut and the woman who was tending to the injury may or may not have been the same two that you had seen in the fight?

A. Yes. I thought they were but it’s possible that I was wrong.

Q. I gather your first instinct was that the girl who was cut was also the girl who’d had the knife in the fight, is that right?

A. Yes.

- Q. And I also understand that you've examined that idea closely, is that right?
- A. Mm, yeah, I guess so.
- Q. It's possible you're interchanging the two women that are in the fight in your mind?
- A. Yes, it's possible.
- Q. The two girls just looked so similar?
- A. I just didn't focus closely enough on their faces I guess to keep them in my memory.
- Q. You just agreed with me earlier this morning that the way you distinguish them was by their roles, not by their appearance, is that correct?
- A. Yes.
- Q. So once they're over on the other side of the street and they're not playing that role in any fight anymore, you can't distinguish them?
- A. I suppose at the time I may have been able to distinguish them, but now or in retelling the story, I'm unable to explain how I was distinguishing them at that moment.
- Q. I understand when you were interviewed by the police, you indicated to them you could be interchanging the women in your memory. You're not sure?
- A. Yes.
- Q. Between the two girls, you're not even 100 percent sure which one took the shirt off, which one was cut?
- A. That's right.
- Q. Do you recall being asked by the police, "Do you think you can tell them apart" and answering, "Honestly, I don't know. I have no idea"?
- A. Yes.
- Q. You agree with that again today?
- A. Yes.
- Q. You're not 100 percent positive that the girl who was cut was the girl with the knife?
- A. That's right.
- Q. You're not 100 percent positive that the girl who took off her shirt was the second girl?
- A. That's right.

Q. You are 100 percent positive of other things. It's not just a figure of speech for you?

A. That's right.

Thus Stopford's evidence provided no reasonable basis to conclude that one female, rather than the other, was in possession of the knife on the south side of the streetcar, or that the female with the knife on the south side of the street was the injured female on the north side of the streetcar.

Evidence of Molly Stopford, *Trial Proceedings*, Vol. II, 497/10-498/5, 522/10-524/25

66. Paget's testimony that the woman with the knife on the south side of the streetcar was the same female he saw standing injured on the north side of the streetcar was equally devoid of substance. Paget maintained in cross-examination that he was "a little less than 100 percent" certain the females were the same. But further questioning by defence counsel showed that this assertion was baseless:

Q. And I know we went through this exercise before at the preliminary hearing, but you remember absolutely nothing about this girl's footwear?

A. No, I don't recall.

Q. You can't recall whether she's wearing a skirt or pants?

A. No.

Q. Polka-dot pyjama bottoms?

A. I can't recall what she was wearing. I'm pretty sure she wasn't wearing polka dot pyjama bottoms.

Q. We can eliminate that, but as far as a skirt or a pair of pants or pair of shorts, you've got nothing.

A. Unfortunately.

Q. And you don't know if she had a backpack or a handbag or a purse?

A. No, I don't know.

Q. With respect to what she was wearing on the upper half of her body, it could be anything from a sweater to a tank top to a t-shirt?

A. I don't know.

- Q. Can't help us with colour?
- A. No, I'm sorry.
- Q. All right. Jewellery on the wrists?
- A. I don't recall anything that she was wearing.
- Q. Jewellery around the neck?
- A. I don't recall.
- Q. And was there anything at all distinctive about her facial features?
- A. Ah, not that I can recall.
- Q. In fact the only thing that you were able to tell Detective Ponzi and her partner was that the girl that you saw, you recalled her having blonde hair.
- A. I do believe I had made that statement, yeah.
- Q. Okay. And as far as the style went, you said it wasn't curly?
- A. No.
- Q. It was either straight or a bit wavy.
- A. Correct.
- Q. Is that your recollection?
- A. That is what I recall as my statement, yeah.
- ...
- Q. And coming back to what you said, one thing you could remember is that there was a girl with blonde hair, right?
- A. That's what I said in my statement.
- Q. It might have been dirty blonde.
- A. Yes.
- Q. But it was blonde, right?
- A. I did say that.
- Q. Which is different than light brown, right?
- A. Right.

Then, when shown a photograph of Watts, Paget could not rule out that she was the female he saw with the knife. He further stated, when shown a photograph of the Appellant, that he had

not seen anyone with her hair style on the night of the stabbing.¹⁶ The only thing that Paget could offer by way of explanation for his conclusion that the female with the knife on the south side of the streetcar was the injured female on the north side of the street were the same person was his feeling that it was ironic that the person who brought the weapon into the fight was the person who was injured by it.

Evidence of Jonathan Paget, *Trial Proceedings*, Vol. II, 601/1-603/10, 604/10-606/5

(iii) The Trial Judge's Reasons

67. In his reasons for judgment, the trial judge acknowledged the frailties of eyewitness identification evidence. Then, with respect to Stopford and Paget's evidence that the female armed with the knife on the south side of the streetcar was the Appellant, he said:

In addition to concluding that that Ms. Kish was involved in the second fight, I have also concluded that she was involved in the first fight. Both Molly Stopford and Jonathan Paget saw the female in the first fight with a knife. Ms. Stopford gave a particularly accurate drawing of what the knife looked like. Ms. Stopford also believed that she saw the female later when another female was tending to what Ms. Stopford assumed was a cut on the first female's arm. Not only was that a reasonable assumption, it was a correct one. Mr. Paget was "fairly certain" that the female he saw with the knife was the same female that he later saw with a cut on her arm. Both Mr. Stopford and Mr. Paget gave their evidence in a very fair, unbiased and sincere fashion. As I have already said, I accept their evidence.

And further, he concluded:

I repeat that Ms. Kish was involved in the second fight and that she was stabbed during the course of that fight. I find that Ms. Kish was stabbed with the knife that Mr. Hammond eventually got control of. That is the knife that was recovered from the steps of the church after Mr. Hammond left it there. **I find that that knife is the same knife that Ms. Stopford and Ms. Paget saw in the possession of the female who was involved in the first fight. I am satisfied that that female was Nicole Kish. It follows from those findings that Ms. Kish took the knife from the first fight to the second**

¹⁶ Paget was not shown a photo lineup after the stabbing. The trial judge misapprehended this, when, in his reasons for judgment, he stated, "I would also note on this point that some witnesses, Jonathon Paget for example, were not shown photographic line-ups until months after the events, and others were not shown line-ups at all". (*Reasons for Judgment*, para. 116)

fight. That is how the knife, that Mr. Hammond eventually got hold of, became involved in the second fight.

Thus, Stopford and Paget's evidence was central to the trial judge's finding that the Appellant was the stabber, or, alternatively, that she aided the stabber by passing the murder weapon to them. Had he not relied on it, as the Appellant submits he should not have, the verdict in this case would have been an acquittal.

Reasons for Judgment, *Supplemental Appeal Book*, para. 76, 130, 132

(iv) Analysis

68. Convictions based on eyewitness identification evidence often raise concerns about verdict reliability. As Doherty J.A. stated in *R v. Quercia*, "The spectre of erroneous convictions based on honest and convincing, but mistaken, eyewitness identification haunts the criminal law." This case is no different. The evidence provided by Stopford and Paget regarding the identity of the Appellant as the female with the knife on the south side of the street could provide no objective confirmation that these women were the same person, and presented many of the dangers traditionally associated with eyewitness identification evidence. Their observations were made at night, under difficult, chaotic circumstances. According to Stopford the scene around the streetcar was "complete chaos". Neither witness knew the Appellant before the incident, nor did they have a favourable opportunity to observe the Appellant on the south side of the streetcar. Stopford plainly admitted that she was not sure the injured female was the same one she had seen with the knife, that she might be interchanging the injured female with the less involved one, that these two females looked so similar that she was unable to tell them apart, and that she was unable to explain how she distinguished between them. Her assertion that the

Appellant was the knife-wielding female on the south side of the streetcar was an unreliable conjecture.

R v. Quercia (1990), 75 O.R. (2d) 463 (Ont. C.A.)

R v. Turnbull (1976), 63 Cr. App. R. 132 (C.A.)

R v. Reitsma (1998), 125 C.C.C. (3d) 1 (S.C.C.)

69. The trial judge's reasons suggest that he was moved to accept Stopford's identification of the Appellant as the south-side knife wielder as accurate because she was willing to acknowledge the possibility that her conclusion in this regard was faulty. In his judgment, he made this general observation:

Our reliance on the evidence of eyewitnesses also recognizes that an eyewitness does not have to be certain in his or her identification. To the contrary, it is well recognized that there is a weak link between the certainty of an eyewitness and the accuracy of that witness's evidence. A witness who is certain may be mistaken. Equally, a witness who is not entirely certain may be correct. Consequently, we should not discount the evidence of any eyewitness just because that witness fairly allows for the possibility that they might be mistaken. Certain witnesses in this case said precisely that. Rather than detracting from their evidence, in my view, their willingness to acknowledge the reality that they might be wrong only serves to enhance the genuineness with which they gave their evidence.

And, later in his reasons, when dealing with Stopford and Paget's testimony, he specifically noted:

Both Mr. Stopford and Mr. Paget gave their evidence in a very fair, unbiased and sincere fashion. As I have already said, I accept their evidence.

With respect, in the context of this case, the trial judge's assertion that "we should not discount the evidence of any eyewitness just because that witness fairly allows for the possibility that they might be mistaken" missed the point as far as Stopford's testimony was concerned. Her admission that she could not be certain that she had accurately identified the Appellant as the knife-wielder may have been a mark of her credibility, but it was no mark of reliability. Far from it: Stopford was clear that she might be mixing up the people involved in the incident.

That the trial judge seems to have taken this as a badge of her reliability was perverse, and turned

the law's skepticism of over-confident eyewitnesses on its head. The reliability of eyewitness identification evidence may be poorly correlated with eyewitnesses' confidence in the accuracy of their observations. But it does not follow from this that uncertain witnesses are more reliable than they themselves claim to be.

Reasons for Judgment, *Supplemental Appeal Book*, para. 76, 130

70. As for Paget, he could describe nothing but the woman's hair colour (which matched Watts's, not the Appellant's), and, for this reason alone, undermined the reliability of his belief that the Appellant was the knife-wielding female. Further, his resort to a sense of irony as a foundation for his identification of the female was the kind of eyewitness evidence of which judicial experience tells us to be skeptical, and which has generally been held to amount to nothing more than opinion. As MacKay J.A. stated in *R v. Smith*:

If the identification of an accused depends upon unreliable and shadowy mental operations without reference to any characteristic which can be described by the witness, and he is totally unable to testify what impression moved his sense or stirred and clarified his memory, such identification, unsupported and alone, amounts to little more than speculative opinion or unsubstantial conjecture

In this case, the only physical characteristic of the knife-wielding female identified by Paget was blonde haired – a physical characteristic which was not possessed by the Appellant, but *was* possessed by Watts. He also described the knife-wielder as the smaller of the two women, which again described Watts, not the Appellant. Nor was irony the kind of “impression” that could meaningfully “move his senses and clarify his memory” so as to elevate his identification beyond the realm of mere opinion. This is so because his feeling of irony was based on the *assumption* that the women were the same person. For Paget, it may have been ironic that the same woman who introduced the knife was stabbed by it. But that irony could not – without some objective basis – establish that they were in fact the same person. Viewed through the lens

of judicial experience, the trial judge's reliance on Stopford and Paget's testimony renders his conclusion that the Appellant was the female in possession of knife on the south side of the street untenable. To the extent that this finding was integral to the trial judge's ultimate conclusion, his reliance on their testimony casts the reasonableness and safety of the Appellant's conviction into doubt.

R v. Smith (1952), 103 C.C.C. 58 (Ont. C.A.)

R v. Boucher (2000), 146 CCC (3d) 52 (Ont. C.A.)

Chartier v. Quebec (Attorney General), [1979] 2 S.C.R. 474 at p. 494

R v. Biniaris (2000), 143 C.C.C. (3d) 1 (S.C.C.) at para. 36

R v. Yebes (1987), 36 C.C.C. (3d) 417 (S.C.C.)

II. THE TRIAL JUDGE MISSAPPREHENDED AND FAILED TO ADDRESS EXCULPATORY EVIDENCE

71. In this case, the trial judge misapprehended and failed to come to terms with several key items of evidence that could give rise to a reasonable doubt about the Appellant's guilt. For example:

- The trial judge made no mention of Shaun Park's evidence that the female involved in the initial confrontation outside the ATM was wearing lace-up Doc Marten-style boots, which described Watts, not the Appellant. Contrary to the Crown's theory, this suggested that the woman who lost control during the initial dispute was, as Dranichak testified, Watts and not the Appellant.
- The trial judge made no mention of Mystica Cooper's description of the angry female as wearing a skirt with an "Indian style pattern". The Appellant's skirt was plain black, and Cooper's description suggested that the angry female was not, as the Crown contended, the Appellant.
- The trial judge did not fully confront the frailties in Stopford and Paget's testimony that the Appellant was the knife-wielder on the south side of the streetcar. In particular, he failed to give proper effect to Paget's evidence that the woman with the knife had blonde hair, and was smaller than the less involved female. This evidence strongly suggested that the woman with the knife was Watts, not the Appellant.
- The trial judge did not give adequate consideration to the exculpatory potential of the DNA evidence. While he made mention of it, he focused on the overall small quantity

of DNA isolated from the clothes of the parties involved in the fight. However, the true significance of this evidence lay in the minuscule amount of Hammond's DNA that was found on the Appellant, near the sole of her shoe, compared with the relatively large number of deposits on Watts's clothing, some of it high up on her boots and shorts, in places that could not be easily explained by innocent, incidental contact with Hammond's blood on the ground. The trial judge's misplaced emphasis on the overall quantity of blood, combined with his failure to consider the location of the deposits on Watts's clothes, suggests he did not consider the exculpatory significance of this evidence: that Watts had been in much closer contact with Hammond than the Appellant had been, that Watts may well have been the one who stabbed Hammond on the south side of Queen St., and that Stopford and Paget may have been mistaken in their identification of the Appellant as the knife-woman during the south side fight.

It may be that the trial judge did not give proper consideration or effect to these exculpatory features of the evidence because he fell into the trap of trying to piece together an explanation of the night's events so that he could in his words, "determine who caused the death of Ross Hammond." But it was not the trial judge's task to determine the identity of the stabber. Rather, it was to assess whether the witnesses' competing versions of events led inexorably to the conclusion that the Appellant had stabbed Hammond (or had passed the knife to one who did) or whether there was a reasonable interpretation of the evidence that was consistent with a conclusion other than the Appellant's guilt.

Reasons for Judgment, *Supplemental Appeal Book*, paras. 2, 5, 135

R v. Morrissey, (1995), 97 C.C.C. (3d) 193 (Ont. C.A.)

R v. Lohrer, (2004), 193 CCC (3d) 1(S.C.C.)

Harper v. The Queen (1982), 65 CCC (2d) 193 (S.C.C.)

R v. Pittiman (2006), 206 C.C.C. (3d) 6 (S.C.C.) at para. 8

R v. Avetysan (2000), 149 C.C.C. (3d) 77 (S.C.C.) at para. 21

R. v. Cooper, [1978] 1 S.C.R. 860 at p. 881

R v. Harris, [2009] 2 S.C.R. 42 at para. 33

Hodge's Case (1838) 2, Lewin 227, 168 E.R. 1136

72. Such an interpretation was available. It would have been sufficient for an acquittal had the trial judge accepted the mere possibility that Watts had produced the knife during the fight (which she admitted doing), that she had inflicted the superficial stab wounds to Hammond's back (which was possible if Stopford and Paget were mistaken in their identification of the

Appellant as the female armed with the knife on the south side of Queen St.), that the knife had been passed to one of the males involved in the north side fight (a possibility expressly contemplated by both the trial judge and the Crown), and that one of these individuals, and not the Appellant, inflicted the fatal wounds (a possibility similarly contemplated by the trial judge and the Crown). This was an entirely reasonable interpretation of the evidence, especially in light of the fact that:

- No one saw the Appellant holding a knife on the north side of the street.
- Watts stated that she discovered she had a bite mark on her arm the morning after the killing, which suggested a far higher degree of involvement in the melee than she admitted in her testimony.
- Dranichak identified Watts from a photo lineup as the woman who had asked him for money and who became enraged when Hammond and Dranichak insulted her. This linked Watts to the initial argument, and suggested an animus towards Hammond on her part which could have motivated her to introduce the murder weapon into the fight. Her motivation in this regard could also have been fuelled by having just witnessed her boyfriend, Doug Fresh, be severely beaten by Hammond.
- The inference that Watts owned and produced the knife that killed Hammond was strengthened by her testimony that she and Doug Fresh had stolen identical knives and by the finding of an identical knife in Fresh's possession.
- Shaun Park described the female involved in the initial confrontation as wearing Doc Marten boots. The Appellant was wearing running shoes, obscured by a long skirt. Watts, however, *was* wearing Doc Martens and shorts, and could have been the angry female most involved in the early stages of the confrontation as it moved down Queen St.
- Watts had numerous deposits of Hammond's blood on her boots and shorts. The Appellant had a miniscule quantity on the edge of her shoe. This suggested very close contact between Watts and Hammond on the night of the stabbing, after the bloodletting began. It is difficult to see how the Appellant, flailing wildly atop Hammond on the north side of the street, while stabbing him four times in the chest, would have received only a single, tiny deposit on her shoe.
- Watts and the Appellant were dressed in a similar punk style, and witnesses could easily have confused one for the other, as Dranichak and Stopford admitted they might have done.

- Paget did not see anyone with the Appellant’s hairstyle on the night in question, and could not rule out that it was Watts who had entered the fight on the south side with the knife.
- It was a male voice that called out during the fight on the north side, “You die tonight”, which suggested that Hammond’s stabber may have been a male. Further, Hammond’s blood was found on the right knee of Jeremy Wooley’s pant leg, which suggests he may have been the one who inflicted the fatal injury on the north side of the street.

And notably, if Watts was the one who had produced the knife and stabbed Hammond in the back with it during the south side fight, this would explain how his DNA was deposited on her boots and on her shorts, if, as the trial judge found, Watts had remained on the south side of Queen St. to care for Fresh while the altercation continued on the north side of the street. However, this construction of the evidence was precluded by the trial judge’s inadvertence to, and misapprehension of, exculpatory aspects of the evidentiary landscape.

III. THE TRIAL JUDGE ERRED IN REJECTING THE EXCULPATORY POTENTIAL OF WATTS’S TESTIMONY BECAUSE DEFENCE COUNSEL DID NOT SUGGEST TO HER THAT SHE WAS THE FEMALE WITH THE KNIFE IN THE FIGHTS

73. Faith Watts was not called to give *viva voce* evidence at trial. Rather, a DVD of her preliminary inquiry testimony was admitted into evidence with the consent of the Crown. This evidence was particularly helpful to the defence because, in her testimony, Watts admitted that she had introduced the murder weapon into the affray. At the same time, Watts disavowed any meaningful recollection of the actual fight with Hammond – as one might expect her to do if she played a role in his death. In his reasons for judgment, the trial judge found Watts’s evidence generally unreliable. Notwithstanding this finding, he went on to discuss two aspects of her testimony. First, he found that Watts’s assertion that the Appellant did not own a knife failed to

establish that the Appellant did not have possession of Watts's knife on the night in question. Second, he emphasized the fact that defence counsel never suggested to Watts that she was the female with the knife in the first and second fights. He stated:

Then in somewhat of a reversal of approach, the defence asserts that Ms. Watts was the female with the knife in the fights. On that point, I note the defence called Ms. Watts as a witness. ***It was never put to Ms. Watts that she was that person and counsel was duty bound to put that assertion to her if they were subsequently going to make that suggestion to the court so that Ms. Watts could have the opportunity to respond to it.***

The Appellant submits that the trial judge's holding that the defence was "duty bound" to put this assertion to Watts during her testimony at the preliminary inquiry was incorrect, and further, that the trial judge's decision to discount this aspect of the Appellant's defence on that basis was highly prejudicial.

74. The kind of reasoning that the trial judge employed is akin to the rule in *Browne v. Dunn* and other cases which articulate a duty on the part of counsel to cross-examine an *opposing* witness where counsel intends to contradict that witness with further evidence. McWilliams summarizes the rule and its foundation as follows:

In sum, the confrontation principle is driven by the need to treat the witness and the parties fairly, to prevent the fact finder from being misled and to promote the orderly presentation of the evidence at trial. These are the factors that should animate the principle's employment, both in determining whether it has been breached and in fixing upon the appropriate remedy. Since these factors will be differently engaged depending upon the circumstances of the case, the application of the confrontation principle is often fact driven. It is for this reason that contemporary courts recognize that the rule in *Browne v. Dunn*, to quote the Supreme Court of Canada in *R v. Lyttle*, "is not fixed. The extent of its application is within the discretion of the trial judge after taking into account all the circumstances of the case". If applied too rigidly, and without due attention to its *raison d'être*, the rule in *Browne v. Dunn* risks jeopardizing the pursuit of fairness and truth, and lawyers will waste court time by engaging in excessive cross-examination in order to foreclose any possibility of being found in its breach.

In this case, the trial judge should not have applied or adapted the principle in *Browne v. Dunn* to Faith Watts's evidence in the manner he did.

McWilliams' Canadian Criminal Evidence, 4th ed., Vol. II, at 18:30.60
Browne v. Dunn (1893), 6 R. 69 (H.L.)
R v. Paris (2000), 150 CCC (3d) 162 (Ont. C.A.)
R v. Verney (1993), 87 C.C.C. (3d) 363 (Ont. C.A.)
R v. McNeill (2000), 144 CCC (3d) 551 (Ont. C.A.)

75. First, at the preliminary inquiry, Watts maintained that she had no recollection of Hammond being stabbed because she had blacked out after she was disarmed by Hammond. Indeed, this was the focus of the Crown's cross-examination of her. So suggesting to her that she was the one who stabbed Hammond would have been a pointless formality. This is similar to the case of *R v. Khuc* where the British Columbia Court of Appeal refused to order a new trial because the Crown had failed to cross-examine defence witnesses, including the accused, and submitted to the jury that it would have been pointless to do so. On appeal, the accused argued that this was a violation of the duty to cross-examine. The British Columbia Court of Appeal dismissed this ground of appeal, and said:

There can be no doubt that the general rule is that counsel must confront a witness with any new material he or she intends to adduce or rely on after the witness has left the box. **However, the rule does not go so far as to require counsel to ask contradicting questions about straightforward matters of fact on which the witness has already given evidence that he or she is very unlikely to change.** [...] I do not believe the rule is any different if the evidence on which there is no cross-examination directly contradicts the evidence of the Crown or merely supports a fact inconsistent with the Crown's theory of the case. Counsel who does not cross-examine takes the chance that the evidence will be accepted; but rather than embark upon a futile cross-examination, counsel is entitled, as Crown counsel did in this case, to rely on the judgment of the jury as to what evidence it will accept.

The same is true in this case. Suggesting to Watts that she was the female in the fights would not have changed her position that she could not recall what happened after she was disarmed, and the exculpatory impact of her evidence should not have been disregarded on this basis.

R v. Khuc (2000), 142 C.C.C. (3d) 276 (B.C.C.A) at para. 44

76. Moreover, there was no unfairness created by defence counsel's lack of cross-examination. The Crown consented to the admission of Watts's preliminary inquiry evidence when it would have been plainly aware that the defence was relying on her involvement in the events leading up to Hammond's death to raise a reasonable doubt about the Appellant's. In the absence of an objection to the defence suggestion that Watts introduced the knife into the fight, the trial judge's adaptation of the rule in *Browne v. Dunn* was inappropriate. Further, the trial judge never put the defence on notice that it considered this to be an issue in his assessment of Watts's evidence. This was itself unfair because it deprived the defence of the opportunity to be heard on an issue that was central to the defence position, and central to the trial judge's reasoning. This is doubly so in light of the Crown's consent to the admission of her testimony, and its acquiescence to the notion that the defence would be using her testimony to implicate her in the homicide. Further, had defence counsel been given an opportunity to address the trial judge's concern, it would have emphasized that the DNA tests which revealed Hammond's blood in multiple locations on Watts's shorts and boots – and which cemented her involvement in Hammond's death – were not disclosed until *after* the preliminary inquiry. As such, at the time of Watts's testimony, the defence was not yet in possession of the evidentiary cornerstone for the contention that Watts was intimately involved in Hammond's stabbing. In the circumstances, the trial judge's reasoning on this point was unfair and prejudicial.

Evidence of Monica Sloan, *Trial Proceedings*, Vol. III, 1364/1-10, 1370/20-1371/15

**PART IV:
ORDER REQUESTED**

77. The Appellant requests that the Court quash her conviction for second degree murder, and enter an acquittal. In the alternative, the Appellant requests that the Court order a new trial. In the further alternative, the Appellant requests that the Court substitute a conviction for manslaughter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of June, 2013.

Philip Campbell
LOCKYER CAMPBELL POSNER
30 St. Clair Avenue West
Suite #103
Toronto, Ontario
M4V 3A1

Zachary Kerbel
Darling Building Law Chambers
96 Spadina Ave.
Suite 501
Toronto, ON
M5V 2J6

Counsel to the Appellant

APPENDIX “A”

- R. v. Quercia*, (1990), 75 O.R. (2d) 463 (Ont. C.A.)
- R. v. Turnbull*, (1976), 63 Cr. App. R. 132 (C.A.)
- R. v. Reitsma*, (1998), 125 C.C.C. (3d) 1 (S.C.C.)
- R. v. Smith*, (1952), 103 C.C.C. 58 (Ont. C.A.)
- R. v. Boucher*, (2000), 146 C.C.C. (3d) 52 (Ont. C.A.)
- Chartier v. Quebec (Attorney General)*, [1979] 2 S.C.R. 474 at p. 494
- R. v. Biniaris*, (2000), 143 C.C.C. (3d) 1 (S.C.C.) at para. 36
- R. v. Yebes*, (1987), 36 C.C.C. (3d) 417 (S.C.C.)
- R. v. Morrissey*, (1995), 97 C.C.C. (3d) 193 (Ont. C.A.)
- R. v. Lohrer*, (2004), 193 C.C.C. (3d) 1 (S.C.C.)
- Harper v. The Queen*, (1982), 65 C.C.C. (2d) 193 (S.C.C.)
- R. v. Pittman*, (2006), 206 C.C.C. (3d) 6 (S.C.C.) at para. 8
- R. v. Avetysan*, (2000), 149 C.C.C. (3d) 77 (S.C.C.) at para. 21
- R. v. Cooper*, [1978] 1 S.C.R. 860 at p. 881
- R. v. Harris*, [2009] 2 S.C.R. 42 at para. 33
- Hodge’s Case* (1838) 2, Lewin 227, 168 E.R. 1136
- McWilliams’ Canadian Criminal Evidence*, 4th ed., Vol. II, at 18:30.60
- Browne v. Dunn* (1893), 6R 69 (H.L.)
- R. v. Paris*, (2000), 150 C.C.C. (3d) 162 (Ont. C.A.)
- R. v. Verney*, (1993), 87 C.C.C. (3d) 363 (Ont. C.A.)
- R. v. McNeill*, (2000), 144 C.C.C. (3d) 551 (Ont. C.A.)

APPENDIX "B"

LEGISLATION TO BE CITED

NONE

APPENDIX “C”: MAP OF QUEEN STREET

Based on Exhibit #1

