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and Ross?

5 A. Sure. Sure. That's no reason to do what they did. You know? I mean, it doesn't matter what was said. We never laid a hand, we never -- we were attacked, and we were trying to go away.

Q. Now, at some point you and Ross kind of get separated a little bit, right?

A. Yeah. Yeah.

Q. You --

10 A. I was just trying to get out. I was like, Ross, we gotta get out of here. Fuck these squeegee kids. Let's go. Come on, Ross. Screw these guys. I might have said speed freaks there. Screw these speed freaks or crack whores or something like that, as I was -- was trying to get Ross out of there. We
15 were trying to leave. I'm like, Listen, I don't -- this is way too insane right now. I don't want -- because the way that Sarah was acting was so crazy, I was afraid she was just going to tell the police
20 that we attacked her or something. Like, just to make up a story. She was that, in my opinion, unstable.

25 Q. Okay. And so you're kind of pulling yourself out of it and at the same time trying to encourage Ross to come with you.

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5 A. Yeah. Right. Ross was having his own conversation with the one guy and -- and, you know, I was stuck talking to the girls, and I don't really know what he was saying or what was going on there because I was obviously screaming and it was two separate conversations.

Q. He was having his own conversation with one guy?

10 A. I think so. Yeah. There might have been another guy too. It might have been the Middle Eastern guy too talking to him too, or the other guy came up. The one guy that tried gouging my eyes, I don't know if he was part of their group, but he was the -- the guy that had the no shirt on, ah, he was
15 around there but I don't know if he was talking to Ross or not. I didn't -- it was two separate things going on. And this is all within, I don't know, ten to 30 seconds? I mean, this whole just verbal
20 exchange. The initial thing. It wasn't -- it didn't -- it wasn't like it was dragging on and dragging on. It was a quick thing.

Q. So as you're pulling away, you're sort of in a conversation with the two girls?

A. Yeah.

25 Q. And --

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A. I think I went in between their bikes just to cross the street. Like, I went through them or around them to the east -- or to the west of them around them to cross, just to get away.

5 Q. And they both had bikes?

A. Yes.

Q. And both bikes were kind of similar to each other?

A. I think so, yeah. I think.

10 Q. And they were dressed similar to each other?

A. I think so, yeah. Yeah. That -- I had a lot of problems with their clothes and the mash up and who was wearing what and things like that.

15 Q. Mashing the two together because they were kind of similar?

A. Sure.

Q. Right.

A. Yeah.

20 Q. And even when you watched the City TV video yesterday, you -- they're sort of both wearing that sort of --

A. Right.

Q. -- street garb?

25 A. That's why it was really confusing for me

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with the line-ups and things like that.

Q. So he's having -- you're talking to the two girls and he's having a conversation with one or both of the blonde guys, right?

5 A. Right.

Q. And as you're trying to say, you know, Come on, Ross, you're starting across the street?

10 A. I knew that if I was, like, walking away, that, you know, we would get away from these people and it was just a bad situation, that we did not want -- we didn't want violence. We didn't want a fist fight. We weren't going to pick a fight with a bunch of kids, especially girls. I mean, it just wasn't -- we have avoided a lot of -- lot of fights
15 in the past, even at Shoeless Joe's, just things getting out of hand and we have never fought anyone there, and so we know when things are getting out of hand and people start acting a little crazy and we were trying to leave.

20 Q. Right. I mean, a little bit of both really. You were trying to leave, but in saying, Ross, come on, fuck these squeegee kids, fuck these --

25 A. Yeah, sure, but we were walking away, you know? Yeah, it wasn't -- it wasn't the best

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strategy, you know, in hindsight.

Q. On the one hand you were walking away, but on other hand you were stirring the pot.

5 A. I guess. Sure. But they were giving it right back.

Q. And as far as between you and Ross, right? You were the first person to sort of, as you told us yesterday, you were walking with your back to these kids but looking over your shoulder?

10 A. Yeah, I wasn't -- yeah. I -- I turned my back to them.

Q. Right. But you wanted to make sure that Ross was coming with you?

A. I was looking over my shoulder, yes.

15 Q. And you felt satisfied because you saw him walking backwards?

A. Yes.

Q. Talking to these kids?

20 A. Mm-hm. He, um, yeah. Yeah. He was walking backwards.

Q. All right. And he was taunting them? He was --

25 A. I wouldn't say he was taunting them. I would say -- I'm saying that he was trying to calm them down, and --

Q. Well, when you say, Don't mess with me, you have no idea --

A. It wasn't that tone.

Q. -- who you're messing with.

5 A. It wasn't that tone. I mean, you can say words a thousand different ways but depends on the tone, and he was saying, Listen, guys, you don't know who you're messing with. I mean, he was reasoning with them. Ross was a master debater and
10 he liked to -- he liked to explain his point of view and his stance on something, and he wanted them to know what was going on. But it wasn't taunting, like, You don't know who you're messing with. It was, Listen guys, you don't know who you're messing
15 with, ah, you know? You don't know where I'm from. I don't want to hurt you. I mean, he literally said, I don't want to hurt you. I heard him say that. I don't want to hurt you. So and how that was interpreted by them --

20 Q. I think you've conceded on a prior occasion that you could see how those words would be interpreted as a taunt?

A. It could be. It could be. Sure. Sure.

Q. Mm-hm?

25 A. But we were walking away, so you'd think

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that, you know, just let things -- let things be and let him go. But they -- they want -- they felt disrespected or -- with their street cred or whatever. I mean, it was just... they wouldn't let it go.

Q. I think another time you said that Ross seemed to need to have the last word that night.

A. Sure. Sure.

Q. So while they wouldn't let it go --

A. See, I know how Ross is. I know how he --

Q. Okay. I'm going to stop you right there, because I've got a couple more questions in this area and I want you to listen carefully.

A. Sure.

Q. I want to be absolutely clear that I'm not asking you about how Ross was in the past. What his character was like before this night or his propensity for arguing or anything. I don't want to hear any of that.

A. Well, but that -- but my --

Q. We're talking about this night.

A. But my decisions at the time are based on my history and friendship and his mannerisms and how he acts all the time.

Q. All right. But --

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A. So it's not -- it's not going to make sense.

Q. I'm not asking you about your decisions at the time. All I'm asking you about is what happened, what you observed, okay?

A. Okay. Sure.

Q. So for the next couple questions it's important we not digress into, you know, what kind of a guy Ross was, or what it was like on prior occasions.

A. But a lot of me trying to get him out of there was knowing that he likes to have the last word and he likes -- he's a little bit stubborn, and that I had to cross the street and say, Come on, Ross. Come on. Come on. Come on, to get him to just shake off the situation and let it go. So, I mean, but go ahead. Ask...

Q. Okay. So please try to restrict your answer to what happened that night.

A. I'll try.

Q. But I need you to explain a reference to me. In your first interview somewhere around page 48, you said something to the effect of, Here we go. The old Al Bundy thing. Glory days of high school. And again, I don't want you to tell me about what

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Ross was like at any other time but that night, but Al Bundy is a character from some TV show?

A. Yeah. Married with Children. Sure.

5 Q. Okay. And I'm not really familiar with the show but what do you mean by "glory days of high school"?

10 A. So are you asking me to comment on -- you're asking me to comment on the glory days of high school, which I didn't go to high school with him.

Q. Right.

15 A. But how do I answer this without going into the type of character he is, because that is -- that's an analogy or that describes his personality, so I have to go into that.

Q. All right. But --

20 A. The glory days of high school is something like -- Al Bundy was, like, a middle-aged, ah, husband and father that would talk about the glory days of high school and the glory days of being, you know, like a tough football player or tough soccer player or, like, whatever, in sports, and with, you know, with the ladies and with, ah, however, you know? Just the glory days, right?

25 Ross was, like, the most well-mannered, professional

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guy I've ever worked with, but when he talks about how he was this macho guy or whatever in high school and everything, it is a little bit different than the Ross that I knew, but we all have glory days, you know, from high school or when we were younger.

5 Q. So if I understand it right, the character Al Bundy had, like, a habit, no matter what you were talking about, of working in the fact he was a tough football player in conversations?

10 A. No, no, not really. No. It wasn't like that. But if -- he was a very proud man and he was very proud of, you know, a lot of things, of his accomplishments and things like that, and he wasn't going to let -- just like they didn't want to be disrespected, we didn't want to be disrespected
15 either.

Q. Okay.

A. So that -- that's -- that's what that meant.

20 Q. So when you said, Here we go, the old Al Bundy thing, glory days of high school, you were anticipating, like, a lecture?

A. No, I was anticipating -- well, yeah, I was anticipating that Ross was just going to lecture
25 these kids and try to get them on the straight and

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narrow, and it was, like, already past that situation. It was already past that level of aggression.

5 Q. So you could see that the lecture was going to be pointless, but Ross --

A. Correct.

Q. -- hadn't sort of come to that conclusion yet.

10 A. Correct. And I had to get him out of there. Yeah.

Q. Now, you and Ross, you guys were alone that night. Everybody else had left. We established that yesterday, right?

A. What time are we talking about?

15 Q. By the time you get to the bank machine it's just you and him?

A. Just me and him. Yes.

Q. Right. And you were kind of dressed similar?

20 A. I think so, yeah.

Q. Yeah? Do you remember what Ross was wearing?

25 A. I thought he was wearing jeans and a black t-shirt, and I think I was wearing jeans and a black t-shirt too.

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Q. Okay.

A. He was wearing, like, this little big, um, leather watch. It was like a leather wrist band with a watch on it. Watch in it. And I don't think I was wearing any -- any watches or anything like that.

Q. All right. And do you recall at the preliminary hearing me showing you a little clip of surveillance video?

A. Mm-hm.

Q. And there was sort of four or five seconds of Ross sort of running on to a sidewalk and running away?

A. Yup.

Q. And you weren't there for that. You didn't see that in real life.

A. Correct.

Q. But I explained to you it was from the -- have you ever seen that again?

A. I haven't seen that again, no.

Q. No? Is that something we have handy there?

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---VIDEO PLAYING

MR. SCARFE:

5 Q. Now, we can play it as many times as you
like. I just want to, at least for the purposes of
this court record, make sure that your recollection
is the same. So you see the timer up in the top
there? It's going to be about 07 --

10 A. Yeah. Okay. That's Ross. Oh. So -- it
looked like he was wearing a polo there but -- can
you do it again?

Q. Sure.

15 A. I don't think this is the same video that
I saw the last time, because the last video had a
close-up of his head. I could see the shape of his
head a lot better. I don't think this is the same
video.

Q. Maybe I slowed it down last time.

20 A. Okay. Well, there's his watch. That wrist
band watch that if you go back -- yeah, that's him.
That's Ross.

Q. That's Ross?

A. Absolutely that's Ross.

25 Q. All right. We know surveillance video is

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sometimes not the highest quality.

A. No, I can tell by the shape of his head, his hairline, um, his, um, I can tell by two frames ago you could see the watch that I was just talking about. It was like a letter thing and --

Q. Now, Ross was clean shaven that night and this video kind of --

A. Looks like a shadow to me, but yeah.

Q. Looks more like a shadow than an actual beard?

A. He had lighter shoes on too, right? He had, like, light brown shoes.

Q. And if you look at all the other details, you can see that everything sort of turns blue in this video. That may not be what actually happened. You recall a black t-shirt. Or black polo?

A. I thought it was black but I could have been wrong.

Q. In this proceeding we have Exhibit 25 which, and I guess I can just indicate to you, because continuity's not in issue, that this was recovered from where Ross eventually ended up collapsing on the sidewalk. And it's kind of been stitched back together by one of the nice ladies at the Forensic Identification Services, but it's a

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black shirt, right?

A. It's a black shirt.

Q. And it's more of a golf shirt really.

It's got that kind of collar to it?

5 A. Mm-hm.

Q. And three sort of silvery buttons? Does that bring back memories?

A. I don't remember his shirt.

Q. Okay. But you remember the black polo.

10

A. I remember it being a black. We were both wearing black.

THE REGISTRAR: I believe that's Exhibit 11 on the screen.

THE COURT: Thank you.

15

THE REGISTRAR: Thank you.

MR. SCARFE:

Q. All right. So you've given us as clear as you can kind of what Ross was wearing that night, and what did you say you were wearing again, as far as you can recall?

20

A. Jeans, black shoes, black t-shirt.

Q. Okay. So anything distinguishing? Like just a plain black t-shirt?

A. Calvin Klein, large t-shirt.

25

Q. Any buttons or collars or --

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A. No collars.

Q. Okay. And jeans? What colour?

A. I thought they were blue. They could have been gray.

5

Q. Okay.

A. I turned in my clothes so I -- I don't remember what I wore so -- I turned in the clothes that I had. I turned in the clothes. But they were jeans. Oh, wait a minute. Wait a minute. Were they not jeans? Wait a minute. They might have been cargo pants. I might have been wearing cargo pants. You know what? I don't remember. It was cargo pants or jeans.

10

Q. You recall testifying at the preliminary hearing as we reviewed over a three day period?

15

A. Do I remember testifying at the preliminary hearing? Yes.

Q. It's just a formality, but you testified at the preliminary hearing? And on January 6th, the first day you testified, you were being asked questions -- I think we were still in-chief at that point, by Ms. Sweeney. Do you remember her?

20

A. No.

Q. Female Crown Attorney?

25

A. Okay.

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Q. And getting towards the end of that day, before we had to break, she asked you, starting at line 25, page 44:

5 "Okay. What do you recall -- or do you recall what you were wearing that night?"

And your answer was: "Yeah. I was wearing a black t-shirt, jeans, like, dress shoes. Like, 10 Steve Maddens."

Do you remember --

A. Okay.

15 Q. -- being asked those questions and giving those answers?

A. I don't remember, but sure. I was probably asked those questions, yes.

20 Q. Okay. Now, let's start from the bottom up. Steve Maddens. I'm not totally out to lunch. Those are those very fashionable, usually black dress shoes that are kind of pointy but often have a straight bit at the end?

A. Sometimes. Some of them. I mean, there's different styles.

25 Q. Mm-hm.

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A. Yeah, they generally have laces, dress shoes, yeah.

Q. Right. They're --

A. Cas -- they're not, like -- they're casual work shoes, more on the dressy side.

Q. So if you were allowed to go to work casual --

A. You can wear these with jeans, khakis, anything, but probably not a suit.

Q. Okay. And what you remember when you were asked that question was that you also had jeans on, and so what I'd like to do is show you some photographs that were taken by the Forensic Identification Services people of the clothes that you brought in. You remember you told us already you brought some clothes in --

A. Okay.

Q. -- for police? Okay? And let's start with the shoes. And we've got sort of -- that is -- this was made an exhibit actually through someone else yesterday. Exhibit 37. Oh. There we go.

A. Okay.

Q. Those are Hush Puppies. Those aren't Steve Maddens. Are they?

A. They're not Hush Puppies I don't think.

MR. THOMPSON: Well, I don't know if my friend is giving evidence, if he knows they are Hush Puppies or not, but I don't see any label on there that would say they're Hush Puppies.

THE WITNESS: I think if you look at my testimony, I said like Steve Maddens. So I was kind of making -- I was trying to describe the type of shoe but without specifically saying that they were Steve Maddens. I own Steve Maddens, I think Ross owned Steve Maddens, but I would think if you look at my testimony I said like Steve Maddens. So I was just trying to make a descriptive, um, I was trying to make just a description of the type of shoes I was wearing.

MR. SCARFE:

Q. What they do at Forensic Identification Services is they take photos from many angles, and you're welcome to come down, but --

A. Okay. It says Hush Puppies. If those are mine then I wear Hush Puppies. Okay. I wear Hush Puppies. I don't remember that but, as I said before, I said like Steve Maddens. I'm pretty sure I

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said it that way because I didn't know exactly what I was wearing. I own 20 pairs of shoes and I really don't remember what I wore that night. So --

5 Q. Okay. At some point I have to make that the next exhibit, and we've got lots of CD's. We will be in a position to provide that to Mr. Clerk at the break?

THE COURT: Exhibit 40.

10 ---EXHIBIT 40: Photo - produced and marked for identification.

15 MR. SCARFE:

Q. Those are pretty casual shoes. Those aren't the kind of dress shoes. They're nothing like Steve Maddens, are they?

20 A. They're exactly like Steve Maddens. They're probably the same price range. I wear them interchangeably. I can wear them with khakis, I can wear them with jeans. They're like \$80 shoes. They're exactly like Steve Maddens. In my opinion. I mean, I think it's the same grade or calibre of
25 shoe.

Q. We will move on to the pants now. Do you know -- are you familiar with a brand they sell at Mark's Work Warehouse called Carhartts?

A. No.

Q. No?

A. No.

Q. Maybe you know it by the label.

A. Is it like Dickies? Were they Dickies?

Q. Do you see that little label on the back?

Do you remember buying those pants one day?

Probably in, like, a Mark's Work Warehouse or some sort of utility -- these are like work pants, right?

A. Well, they're -- I consider them jeans, but they're like -- yeah, I mean, to me they're jeans.

Q. They're gray.

A. Well, they're gray -- they have gray jeans. Sure.

Q. Are you certain that the clothes that you have provided to the police and the shoes were in fact the clothes you were wearing?

A. Of course they were. Sure. Because they -- of -- I wanted to help as much as possible. If there was any blood or any -- anything on my clothes, I wanted to help with the prosecution of

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this.

Q. You also turned in a black -- this was already part of the previous exhibit? This photo? All right. So if that could be Exhibit 41?

5 THE COURT: Exhibit 41.

THE REGISTRAR: 41, Your Honour

10 ---EXHIBIT 41: Photograph - produced and marked for identification.

MR. SCARFE:

15 Q. So like a -- you don't see a distinction between, like, a utility work pant and --

20 A. I guess it could be -- I mean, I guess it could be categorized as that but, I mean, to me they're just jeans. They're just gray jeans. They were in the jean aisle when I bought them and, you know, to me they're -- yeah, I guess they could be like a utility cargo pant or whatever, but it's still made out of jean material so, um, I just considered them jeans.

25 Q. Okay. Fair enough. You said the t-shirt was a Calvin Klein. It could have been an Old Navy?

A. It could have been, yeah. I generally wear Calvin Klein but it could have been an Old Navy shirt. I have, like, 20 of those black t-shirts so I just -- you know, I wear them interchangeably.

5 Q. Now, during the course of this whole thing where people come up to you at the TD Bank until you get beat up and get in the cab, did you ever see anybody with a weapon?

A. No. No. Not at all.

10 Q. And did you see anybody bleeding?

A. No.

Q. Were you bleeding?

A. Ah, I had a little bit of -- when I wiped out on the concrete I had a little bit of blood on my hand and the concrete, like some rocks poked I think, but I wasn't bleeding badly. Like, it wasn't noticeable or anything like that, no.

15 Q. Just what you think would come from the concrete.

20 A. Correct.

Q. You didn't get involved with a knife or get --

A. No way.

Q. -- cut with a knife or --

25 A. No way. There was no way I thought it was

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even remotely going to go to there. I mean, I thought at worst it was just a fist fight. I would never think that.

5 Q. Yesterday you said it was sort of us against everyone on Queen Street.

A. Sure. That's what it felt like. Yeah.

Q. There were a lot of people around.

A. A lot.

Q. The group grew, right?

10 A. Yeah. People were just kind of --

Q. Okay. So this is important. When you -- you did your best to describe the people, you know, in your interviews and even yesterday after watching the City TV, on the City TV you were able to identify three people, right?

15 A. Okay.

Q. When you gave that original interview to Detective Scott and his partner you were able to describe about five people and we're going to come back to all of that.

20 A. Mm-hm.

Q. Right? But there were lots of other people.

25 A. A lot of people. And I didn't know who they were friends with or who was going to chime in

on this or anything.

Q. But by the time you started crossing the street, the group had grown to ten or fifteen people, had it not?

5 A. I don't -- I don't know. I don't know, as I said before, I don't know who was friends with them, um, I don't know who was really -- I didn't know where it was going to go, but it looked like it could have gotten really bad.

10 Q. So as far as who was friends, you couldn't tell that.

15 A. Yeah. I don't know who was just, as I said before, I don't know who were friends, I don't know who were just bystanders that were going to jump in thinking that we were being the bullies here and attacking these girls or whatever.

20 Q. And you certainly acknowledge the possibility that there may have been some people around who were friends with the original couple of people?

A. Correct.

Q. But behaved like bystanders?

25 A. Sarah's yelling and screaming and everything like that and screeching almost turned the whole thing into a riot or a mob scene, and

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5 that's what got kind of scary with the whole thing,
because there was no way -- first of all, we didn't
want to fight anyone. We weren't trying to pick a
fight with anyone. And then secondly, we knew that
we couldn't take on every single person on Queen
Street, and it's like -- it was just -- yeah, it was
a little scary there.

Q. So just to be clear, you couldn't really
distinguish who was in the group and who was --

10 A. Correct.

Q. -- a bystander?

15 A. I really didn't know, because it seemed
like people were just kind of coming up and I didn't
know if they were friends, I mean, they kind of
dressed similar but, sure, I didn't really have a
tally, but it could have easily been ten people.
Could have been eight, ten people. Sure.

20 Q. Okay. And by the same token, of the five
people who actually came up to you, first there was
Sarah, right?

A. Yeah.

Q. And then there was a girl who seemed to
know Sarah and seemed to be protecting her?

A. Yeah.

25 Q. But as far as the two blonde guys, the

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Middle Eastern guy, you don't know if they were just coming along and got -- decided to get involved, or if they actually knew these people ahead of time.

5 A. I didn't think the Middle Eastern guy knew them, but it could have been, because he was dressed up very nicely, and he was wearing dress clothes and things like that, so he -- but he could have known them. I don't know. Yeah. I don't know.

10 Q. And so -- but we don't want to go into the danger of sort of talking about five people and leaving the impression that there were only five people there. You're saying at least eight or ten.

15 A. Well, I'm not saying at least eight or ten. I'm saying that everyone's attention was focused on us, so I don't know how many people were -- this whole thing we're talking about, but it could have easily been eight or ten.

20 Q. Mm-hm. And just referring for my friend to the August 14, 2007, the second statement that you gave about six days after to Detective Sergeant Giroux and his partner, page 17, about three quarters of the way down the page, you said: "And then" -- you had been talking about Ross and he was kind of blocking your view of one guy? You remember
25 telling us that yesterday, right?

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A. Yeah.

Q. And then you went on and said:

"And then there was, like -- but
there was so many other people
around the street, like, when
those people are coming at me,
you know, I didn't know, their
group kind of materialized out
of nowhere."

A. Yeah, it was weird. Like, people were
just kind of coming -- that whole Euclid Street
there, I don't -- I don't know what -- what was over
there but it just seemed like people were kind of
coming from around there. So I don't know if they
were hanging out back there, I don't know if there
was a house back there, but people were just kind of
materializing, and it was like, Whoa, what's going
on here? I was like, This is -- This is nuts.

Q. Right. So you seem to emphasize that
there were so many other people there, and I just
want -- before I leave --

A. When I said it like that, I meant that
were going to be up against me and Ross, so when
it's two people against five people, that's a lot of
people. When it's two people against eight people,

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that's a really lot of people. So it was in that context that I meant that.

Q. Could it have been as many as 15 people?

5 A. I don't think so. I don't think so. I mean, there was definitely 15 people on the street, but there was only, you know, you know, and of course my memory is probably going to be a little bit jaded, or exaggerated because it was just me and Ross, so five people is a lot of people, eight
10 people was a lot of people, but I highly doubt that there was 15 that were going to be a part of this -- this thing and I don't know if a couple of those people would have defended me and Ross, would have come in and pulled people off, I don't know, or if
15 people just wanted to watch it. Watch the show. I don't know.

Q. Right. So --

20 A. I mean, when people fight in Toronto, a lot of times they'll congregate and they watch people fight. I've seen it at the ACC, I've seen it at the Rogers Centre. It just happens.

Q. You know the group started small and got bigger, right?

A. Yeah.

25 Q. And as you cross the -- from the TD Bank

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to the -- I think it was 777?

A. Approximately, yeah.

Q. Yeah. It's an Iranian restaurant or something like that?

5 A. I don't know.

Q. As you cross there, the group was growing, and then eventually what happens is you get run into by a bike, knocked to the ground and you're kind of in a fetal position?

10 A. Yeah, I got punched. The punch is what put me in the fetal position because I thought my stomach exploded. I just, you know, I had this surgery and I thought that it felt like my stomach exploded and I thought I was, like, bleeding
15 internally and it was, ah, it was very painful. Very painful.

Q. So when we talk about as many as 15 people, whether in the group or spectating, right? When you get to here?

20 A. Mm-hm.

Q. The group's growing, but then you lose vision of the street because you're down trying to protect your head. You're in the fetal position?

25 A. Yeah. Yeah. I was kind of out. I was -- I was seeing stars. And then as soon as -- as soon

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as my stomach stopped hurting, I was getting kicked in the head with boots. And that hurt. And then I got kicked in the ribs, so --

5 Q. And then you got this adrenaline rush and you --

10 A. Well, I was like, you know? My whole thing was, like, we got to get out of here. I was like -- I figured if I didn't fight back, and if -- because I knew that there was too many. I didn't want to go to jail; didn't want to get arrested. I was like, if I can just get out of here, I'm like, okay, my stomach's all right, my head was just pounding, I did get a burst of adrenaline, you know, like, for survival, and I was like, if I just get out of here, if I can just get out of here and run away, they're going to leave me alone, because I took my licks. I took -- like, I took, you know, I took -- I shouldn't have said those things, you know? I was a complete jerk to do so, and you know what? They got the best of me and I'm going to be the joke, fine, I'm just gonna get out of here and right when I jumped up, and I'm pretty sure I pushed, um, one of the girls, I just pushed her and she kind of fell over with the bike, um --

25 Q. And you told us yesterday --

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A. And the guy was trying to gouge -- then the guy started gouging my eyes. I go, oh, my -- these guys -- these guys want to continue this and it's like -- it's not gonna be over, so, um...

5 Q. So you pushed the girl?

A. Yeah.

Q. You ram this guy into the store front?

A. I might have punched the -- the Arabic -- or the Middle Eastern guy.

10 Q. But you recall yesterday that you had rammed somebody into a store front?

A. Yeah, the guy was from behind. He was trying to gouge my eyes and I had him kind of on my back and I jumped up and I just -- just rammed him into the -- into, um, into the building, to get him off my back.

15 Q. Okay. Now, you remember a lot of store fronts are sort of a little bit of glass and a lot of brick, and some are all glass. Do you remember, when you slammed this guy into the building, whether it was -- could it have been a glass front of a store?

20 A. I thought it was a door, so I think it was probably a glass door with metal on it maybe?

25 Q. Glass door with metal on it? When you

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say "metal", you mean like the bars?

A. Yeah, something like that. Yeah. Yeah.

Q. Something like that?

5 A. Well, I mean, I don't -- I don't really remember a lot -- I don't remember. I didn't look back. I didn't really remember the name of the store and I just remember that was in, like, a little, like a --

Q. Alcove or indentation?

10 A. Yeah. I remember I was, like, in -- in a store front a little bit, like, there was a -- a little bit of space. I just remember that.

Q. Mm-hm?

15 A. It could have been on the wall, but I don't remember.

Q. Right. But you do remember this guy being sort of slammed into the wall?

20 A. Oh yeah. I mean, he was all -- I mean, I was 205 pounds and I went as hard as I could just to get him off me because I was fearing he was going to blind me.

25 Q. All right. So just so we're clear, you cross over, the group is growing, and then there is a period where you can't see anything that's going on because you're in the fetal position and --

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A. Right. Yeah. I didn't -- sounds like maybe 15 to 30 seconds? Does that sound about right?

5 A. I mean, it felt like minutes but it was probably only 20 seconds, 30 seconds.

Q. All right. And then you get up, um, you have your adrenaline rush, you get everybody off you. At that point, do you notice how many people are there?

10 A. No. No. I was looking -- I was looking for Ross and I was just -- I was like, Ross, Ross, and I was looking for him, and I looked down that way, I even looked west. I didn't see where he was.

Q. Okay. We're coming to that.

15 A. Yeah.

Q. But what I'm trying --

20 A. I didn't notice the people. You know what? I noticed that -- I really -- I don't want to recall. Or I don't want to comment because I don't -- I really don't remember.

Q. No one wants you to guess.

A. Yeah, I don't want to guess.

25 Q. But when we talked earlier about there being maybe eight or ten people involved, or maybe 15 total with spectators, right?

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A. Well, the 15 people weren't involved. There wasn't eight or ten people involved. There were a lot of spectators that were potential dangers.

5 Q. Potential dangers.

A. Right.

Q. And I think we agreed that could have been as many as 15.

10 A. I don't think I agreed there could be 15. I don't think it was even close to 15. I was thinking maybe eight to ten. I thought ten was stretching it.

15 Q. Fair enough. But the point where we get to ten is just before you go into the fetal position and lose vision, right?

A. I guess. Sure.

Q. Okay. Oh. Time?

THE COURT: We'll take the morning recess.

20

---RECESS

(11:34 a.m.)

25 ---UPON RESUMING

(11:58 a.m.)

THE COURT: I will say for the record I think the surveillance video that was shown to the witness was Exhibit 10.

5 MR. SCARFE: Thank you, sir.

THE REGISTRAR: Thank you, Your Honour.

10 MR. SCARFE: It came to my attention at the beginning of the break, Your Honour, that, and it's my fault, but that we are giving Madam Court Reporter a bit of a tough day here, and it's my responsibility to control the witness, so I'm not blaming Mr.

15 Dranichak, but Mr. Dranichak, we're both going very fast, we're talking over each other. Madam Reporter says we're up to about 300 words a minute which you kind of have to be super human to type, so we're both going to make an effort in the next hour or so to slow down.

20 THE WITNESS: Sure. I apologize.

MR. SCARFE: No, it's not your fault.

THE WITNESS: Well --

MR. SCARFE: I know Madam Reporter, I asked if that starts again to please interject.

25 THE COURT: The reporter is more than welcome

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to interject if that happens.

MR. SCARFE: Thank you.

5 Q. When we, sir, when we looked at the City
TV video yesterday and we saw your friend on the
ground, and I'm sure it was very upsetting, did you
notice what was in the background there? Did you
see a church in the background?

A. I don't recall seeing a church.

10 Q. All right. Are you kind of familiar with
the area of Queen Street West?

A. I'm not that familiar with that part of
Queen Street.

Q. Mm-hm?

15 A. I'm a little more familiar with east. The
east end.

Q. So Bathurst to Spadina and beyond that?

A. Around that area. I'm not from Toronto,
so I, you know...

20 Q. And you've already stated that while
you're not oblivious to the case, you haven't really
sought out a lot of details.

A. Correct.

Q. You also stated that you're not really
sure what happened to Ross after you left.

25 A. I still don't know.

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Q. Okay. But you -- some of the stuff you've read or what people have told you, has anybody ever mentioned the intersection of Queen and Niagara?

A. I don't recall right now, no.

Q. All right.

A. It doesn't sound familiar.

Q. Well, I mean, we're all human. From time-to-time we try to find out what happened if something's important and, you know, in the end of this night your best friend got stabbed.

A. Yeah, I'm kind of waiting for this whole thing to be -- have closure and then I'm going to seek it out.

Q. What I'm going to suggest to you, sir, is at some point in the last three and-a-half years, somebody told you that the stabbing actually took place, like, two blocks west of where you ended up, over here in the area of Queen and Niagara?

A. Yeah, I've heard that, because the Niagara Street -- I don't know if the police officers mentioned that street. I mean, I heard Niagara Street enough where I think -- where I pieced together that that's probably where he was -- he was killed or where it ended or something like that, because everyone, you know, I'm always in

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5 talking about the TD area and the Euclid and that
part and then it seems like everyone's trying to
stretch me down, you know, farther, and to my
recollection, you know, I wasn't even down there. I
wasn't even remotely close to any of that. So I
don't know what happened.

Q. But again, you're not familiar with the
area, so --

10 A. I'm not that -- there's not a lot of
shops or restaurants or things in that area that I
would be -- that I would know that area well. It's
more towards the east.

15 Q. All right. You just mentioned a couple of
things. You mentioned the police and then you said
everybody's "trying to stretch me down" to that
area?

A. Well --

Q. And --

20 A. No, they're trying to get how far west I
went.

Q. Yeah.

25 A. And they kept saying, Did you get down to
Niagara Street. I'm like, No, I wasn't even close to
that. So they weren't trying to stretch me down
there. They were just trying to figure out the --

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the frame or the -- the area that I was in.

5 Q. You know when you tell somebody something and they might not actually say it, but you can tell by their reaction that they're having a little trouble with your answer? That maybe they don't believe you or maybe they're wondering if you're mistaken?

A. I get that a lot with -- with people that I know. With me.

10 Q. And one of the first things I asked you about this morning was, you know, when Detective Scott and the other officer picked you up from the hospital and took you to 14 to give your first statement, that there was this sort of stop and maybe walked by the TD Bank, did that come back to you maybe or you still don't remember that.

15 A. I don't think that they did that, but they might have. I don't remember it. I think at that point I was just concerned about Ross's health and everything else was just, um, I was oblivious to a lot of things that were going on. I was in a haze.

20 Q. All right. And there's nothing wrong with it. Normally when witnesses are about to testify, they come in for a little prep interview, meet the Crown Attorney. That happened at the preliminary
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hearing and it also happened in the last couple of weeks before this trial, right?

A. Yeah.

5 Q. Yeah. And what I understood from the disclosure I received is that instead of sitting down in the Crown Attorney's office and having, like, a meeting around the table, you guys actually went for a walk. You and Mr. Thompson and Detective Sergeant Giroux and yourself?

10 A. Mm-hm.

Q. Was there anybody else there?

A. Um --

Q. Ms. Middlekamp or --

A. Yes, she was.

15 Q. And the lady, Ms. Fineberg?

A. Yeah, I believe it was -- yes.

Q. Yes. And basically you guys all got in a car and you went down to the area?

A. Yes.

20 Q. Parked, got out, and did you start at the TD?

A. Hm-mm. From -- no, I think we started more towards Bathurst.

Q. Oh. Bathurst?

25 A. Yeah. It was before TD I believe. Yeah.

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Q. Off -- so and you understand Exhibit 1, you've had enough chance to sort of look at it and talk about it to know that Bathurst is off the map over to the right?

5 A. East. Mm-hm.

Q. So eventually --

10 A. Well, we were trying to find parking and parking was an issue, so I think we changed spots or -- you know, he didn't want to get towed, which I thought was funny because he's a police officer, but parking was an issue, so I don't know exactly where we started.

15 Q. No, I agree. I think even this court would take judicial notice of the fact that it's hard to park on Queen Street.

A. Yeah. Yeah.

20 Q. And but anyway, you get -- you finally find parking and I gather it's very cold that day, right?

A. Yeah.

Q. And you -- so the five of you sort of congregate around the TD and you point out this is where it started.

A. Correct.

25 Q. Right? And then they -- you sort of had

the floor at that point. They were all very interested in you pointing out exactly what you remember?

5 A. I've only been on Queen Street maybe two or three times since this. It's very hard for me to go down there, and so, yeah, I was just walking -- it was the first time that I've ever stood in front of the TV since that night. I -- I see it and I've driven past it and it's -- it's just too hard. But
10 standing up there, it was very, um --

Q. But in the last three and-a-half years you've driven this stretch.

A. A few times, yeah.

15 Q. Right. And you know that there's this TD Bank and that everybody is sort of interested when they get you to tell the story, they kind of want you to start there, right?

A. Yeah.

20 Q. And then it's about what happened next?

A. Mm-hm.

25 Q. And you explain, well, there was this sort of 45 degree crossing of the road to 777 which may or may not be an Iranian restaurant, but somewhere in that area, that's the alcove that you get beat up in?

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A. From my best -- yeah. Yeah.

Q. Right. And then somebody inevitably,
correct me if I'm wrong, but somebody inevitably
says, Are you sure you didn't get any farther west?
5 And you say, Yeah, I'm sure. And there's this long,
uncomfortable silence? Is that what you meant when
you said everybody's trying to sort of --

A. No. No. It was like, um, there was a cage
there or some kind of gate that I don't remember
10 being there, so I was trying to remember if it was
ever there or if it's new, um, I was trying to let
things -- I was trying to just absorb things and
just see -- just see if anything popped into my
head, but they were -- he -- they were definitely
15 interested in how far west that I got and I was
trying to work the angle, and me -- and the distance
between me and Ross, because I remember roughly
where he was, you know, in association to where I
was, and the distance, so I was trying to piece it
20 all together so that, you know, like, the -- I was
just working the geometry angles of where he was ,
where I was, the angle that I crossed, because it
might have even been a little bit more. You know, I
was going through my head, I was like, Wow, was that
25 a 45 degree angle or was it more? More west? Was I

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in the street more? And I was just trying to let,
ah, the memories come back to me.

Q. Mm-hm.

5 A. But they weren't trying to pull me west.
They wanted to know, All right, roughly how far, you
know, how far were you and whereabouts did you get
in the taxi and things like that.

Q. Yeah. That seemed to be the issue. The
geography.

10 A. Right.

Q. How far west, right?

A. Yeah.

15 Q. And did you find that when you were
saying, No, no, no, it was -- definitely didn't get
-- I mean, your position is you never got west of
Manning.

A. I'm pretty --

Q. A store or two west of 777?

20 A. Yeah. I mean, yeah, yeah, I don't think I
did get past Manning. I don't think I did.

Q. Okay. So once you confirmed that with all
these people a couple weeks ago, you didn't just get
back in the car.

A. No, we walked west.

25 Q. You did walk west.

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A. We did cross Niagara Street.

Q. You crossed over Niagara Street, and did they sort of stop and have you look around and try to familiarize --

5 A. Well, yeah, the whole time they said, Just be observant, and they were letting me, I mean, there was a long pause of silence when we were talking and they were -- they weren't asking too many questions. They were just saying just, you know, Anything that comes to your mind, and -- and, um --

10 Q. Well, no one's suggesting that they were pushing you to change your story. Don't get me wrong.

15 A. No, no, no, no, no. They weren't.

Q. But they seemed to want you to, even though you never got west of Manning, they seemed to want you to walk a couple more blocks, right? See if you can familiarize yourself with the area?

20 A. Sure. Sure. Sure.

Q. Did they ask you if anything looked familiar down here?

A. Might have. Sure.

25 Q. Right. And then after you made it clear that, No, no, no, this was where it stopped, they

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had you go to the Starbucks for five or ten minutes?

5 A. They had to speak amongst themselves, and I offered, um, they were going to have one person go with me back to the car or something like that. I said, Guys, I'll just go into Starbucks and just pick me up when you're done or just walk by when you're done.

10 Q. And they left you there for ten or fifteen minutes kind of thing and had their discussion and came back?

A. It was around ten minutes.

15 Q. Yeah. Okay. And in the last three and-a-half years you've driven this -- we already established you have driven this stretch before. Are you familiar with that great big church?

A. I'm not familiar with it.

Q. Just before the park?

20 A. Yeah. I didn't even know there was a church there. Like, when I was being questioned with everything, I'm like, Oh, I didn't even know there was a church there, so that's how unfamiliar I was at the time and even, um, my office since then has moved, so and I've always avoided Queen Street since this.

25 Q. Okay.

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A. So I'm not familiar with that being really a church.

Q. So the little bit of stuff you picked up about this investigation and the story, you learned that, Gee, something important must have happened at Queen and Niagara because everybody's focussing on that?

A. Seems like it, yeah.

Q. Right. And you don't know where it is that Ross ended up collapsing --

A. No, I don't.

Q. -- and being attended to.

A. No.

Q. Okay. Now, I know you've been trying to stay out of it, you know, the fray, figuring out from other sources, but we're getting near the end here so your chance to go out and read everything and try and figure out what happened is soon to come. So I'm just going to move forward on that a little bit, okay?

A. If you want, sure.

Q. What I'm going to suggest to you is that we anticipate hearing from a number of witnesses that, yes, there was an argument that started here on the north side by the TD.

A. Mm-hm.

Q. But instead of you and Ross crossing here, the argument sort of continued to move along and that somewhere between Manning and Claremont, that's when --

A. Hm-mm.

Q. -- someone got rammed into a store front?

A. Hm-mm.

Q. But on the north side.

A. No, that's not possible.

Q. And then as the argument moved on close to where the Starbucks was, there are some witnesses who I anticipate will testify that both of -- sometimes they call you the well-dressed guys, sometimes they call you the preppy guys, but whatever, not the street squeegee kids, right?

A. Right.

MR. THOMPSON: I'm just going to rise, Your Honour, if I may interject. This is anticipated evidence. We don't know how that evidence is going to come out actually at the trial proper, and I think my friend has got to be very careful when he says that the witnesses say -- refer to Ross and Mr. Dranichak as the well-dressed guys because

there is descriptions but there's no names
and there's nothing other that would say it
is in fact those two specific gentlemen
walking down there, so I ask my friend, when
5 he is putting to the witness, to be very
careful because it is anticipated and it is
not quite as clear as he's making it out.

MR. SCARFE: I think that's absolutely fair,
Your Honour. I have no issue with that.

10 Q. And maybe what I'll do is say what --
what some of the witnesses describe as a group of
squeegee-type street kids, and then they distinguish
it from a couple of guys, right? Who aren't street
kids, right?

15 A. Okay.

Q. Is that fair, Mr. Thompson?

MR. THOMPSON: Fair.

MR. SCARFE: Okay.

20 Q. And what we anticipate hearing, and you
know, you're going to get off the stand today and go
home, you won't have a chance to respond to this so
this is the big chance, but what some of the
witnesses describe is that after this going down,
the scuffle and the person getting slammed into the
25 store front on the north side just before Claremont,

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somewhere around Claremont, the two guys, which we are interpreting is you and Ross, see a streetcar pull up to the corner of Queen and Niagara, and the two guys sort of approach the front of the streetcar?

A. Wait a minute. "The two guys" me and Ross?

Q. Yeah.

A. That we're over there approaching a streetcar?

Q. Well, you're getting ahead of the kids who are sort of --

A. We were trying to get away from them but there was no way we were that far. I mean, to my best -- listen --

Q. Let me just lay it out for you.

A. All right. Go ahead.

Q. So the idea being that we get down to the intersection where the Starbucks was where you went for ten minutes and had your coffee, and that as the streetcar is pulling up, the two guys, being you and Ross, come off the sidewalk and sort of walk diagonally through the intersection to the doors of an eastbound streetcar, and then can't get on, and then get separated?

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A. No, that's just ridiculous. That's
insane. It's not even remotely close to any of the
stuff. I mean, it's -- is it possible that I was not
at 777 and maybe two down? Yeah, probably, but
5 there was no way we were all the way -- I wasn't on
the other side because I remember seeing the TD and
the bike coming at me, and maybe Ross got in --
maybe Ross rammed a guy into the thing, but I wasn't
there. Maybe that was Ross there, but I never once
10 tried getting on a streetcar. The first time I ever
road a streetcar -- I've never even rode a streetcar
before. I've ridden the bus and the train, so I've
never even attempted to get on a streetcar or rode a
streetcar. I mean, if there is -- hm-mm. We were
15 dressed very similarly. They might be talking about
just Ross. I was not with him all the way over that
far. That's not even remotely close. And we were
trying to go west. We were trying to get away from
them. We were trying to leave. So yes, that was the
20 progression that we went, but the store front thing
definitely happened on the south side. With me. With
me getting hit. I can't speak for Ross, but I know I
was not with him on that thing and I know where I
got in the taxi, so, um, I don't know. I mean, I
25 don't know what to -- I don't know how to answer

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that. I just think that your witnesses are wrong or they're confusing me and him or something like that.

Q. You sound pretty sure about the geography though.

5 A. I -- yeah. As I said before, might be a few stores over, you know, because I know that we were walking west and we were going away from them, and I was walking kind of fast because it was a mob scene, so it's possible it went down a little bit,
10 but there's no way it went past, from my thing, was it Manning Avenue? Is that Manning right there?

Q. Oh. Let me --

A. Is that Manning right there? What's that?

15 Q. That is Manning.

A. Yeah. Yeah. There --

Q. Euclid, Manning and Claremont?

A. I might be wrong a few things here and there, because we were walking and trying to get
20 away. This, you know, this is the vicinity, but there's no way it went past Manning.

Q. Okay. And in fairness to you --

A. Yeah.

Q. Just one more little thing that if -- the
25 other thing we anticipate that we are likely to hear

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in this trial is that as the group, the two guys followed by the street kids, moves down the north sidewalk?

A. Yeah.

5 Q. And someone gets slammed into a store front, a girl starts yelling things like -- like, You hit a girl. I want those people arrested. Things like that.

A. Yeah.

10 Q. Do you recall anything like that?

A. I thought I heard something like -- like, These guys are hitting girls, or like someone was saying that. I go, No, we're not. Like, we didn't throw one punch. Not one push, not one time did we
15 ever lay a hand on them. They attacked me from -- from what I remember, from what I remember, I was attacked with a bike first, and before I even touched anybody, and I don't -- I can't really speak
20 for Ross but I know that he was trying to not fight them and he was walking backwards and walking away, and they wouldn't let us go.

Q. I can check my notes, but didn't you just tell us that in your moment of adrenaline rush, you pushed a girl off a bike?

25 A. Yeah, I have pushed a girl down. I was

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defending myself. Yeah.

Q. You might have punched the Middle Eastern guy?

A. I'm pretty sure I punched someone in the stomach. Yeah.

Q. And you slammed the guy who was trying to gouge your eyes out?

A. Listen, I have every right to defend myself. Do I ever punch women? No, but under this circumstance, if -- if I pushed her down from the bike or even if I punched her, I mean, I was defending myself. I was being attacked.

Q. Do you have any recollection of anyone at that point yelling, Call the police?

A. I don't remember that. No. I don't remember anyone saying that. Because my -- my certain -- from my perspective, see, I thought once they beat me up and I was done, and I thought either Ross -- I thought Ross left me or he ran away and got away and we were meeting back at the office. I didn't think there was going to be a fight, or I thought that they got their licks on me, they got the best of me and it's over. So, um, because it happened so quickly and so fast and I don't remember anyone saying anything about the police.

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5 Q. Okay. Now, your immigration situation puts you in a little bit of a bind here, doesn't it. Because if in fact, and I'm not -- just saying hypothetically, if you were to admit to having beat someone up or caused a street fight and stuff, I think you told us yesterday, your life in Canada would be over for you.

10 MR. THOMPSON: You know, I'm just going to object at this point in time. My friend is putting to this witness that by him testifying in court here, that if he admits to hitting somebody that he's going to -- that it's going to affect his immigration, I think he's got to be very careful about that because there are some protections that are provided to a witness who is testifying in court.

15 MR. SCARFE:

20 Q. All right. Let me be clear. In the previous statements that you gave to the police, you have maintained that you never got west of, say, Manning, right?

A. Right.

25 Q. You've always maintained that you've been around here.

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A. Mm-hm.

Q. Hypothetically, if you had, if it was more like what I just described to you --

A. Mm-hm.

5 Q. -- that would really complicate your life, wouldn't it, because --

A. No, it wouldn't complicate my life because that is not the truth. I was there and I know what happened, and we were being attacked so, I mean, even if I got in a fight, even if I, you know, punched someone or did whatever, I was defending myself. I was being attacked by a bunch of people so that's -- I think the only time I ever really fought back was when the guy was gouging my eyes out and I ran away. I didn't -- I didn't inflict any harm on anyone, you know? I mean, I pushed a girl off a bike just to get away. I was trying to protect myself. I was trying to leave. So I don't see how that would affect my immigration. I'm confident of what happened, and to answer your question, I'm not worried, because I know the truth and I know what happened.

15
20
25 Q. Okay. Just to clarify, I'm going to move now into the four or five people that you were able to identify, okay? Or at least describe.

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A. Okay.

Q. And yesterday you said, you know, as you got across the street, "I went down [on] one knee". Another guy came and punched me. This guy was blonde too. So --

A. Yeah.

Q. -- just to be clear, there's two blonde guys, right?

A. Well, like, dirty blonde-ish, brown. Yeah. Sure.

Q. And then the next thing you said was that the guy who was jogging beside Nicole who was on the bike, coming across the street? You described a guy who was sort of jogging beside the bike?

A. Yeah. Yeah. Yes. Yes.

Q. Was not the guy who punched me?

A. No, that was the guy who punched me. Well, I got punched by the Middle Eastern guy but the guy that was -- punched me in the stomach was that guy.

Q. Well, there was two blonde guys, right?

A. Yeah, the one guy was with Ross and --

Q. There may have been two blonde guys with Ross?

A. There could have been, sure.

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Q. Okay. We talked about that before the break?

A. Yeah, yeah, it's possible. Sure.

5 Q. But maybe I wrote it down wrong, but I thought what you said yesterday was that the guy jogging beside Nicole on the bike was not the guy who punched me.

A. No, I don't think I said --

10 Q. This was another guy. He had ripped jeans, he was older, maybe 24-ish?

A. I pointed him out yesterday. The guy without the shirt and the black shirt, ripped -- torn shirt.

15 Q. Oh, with his whole chest sort of exposed?

A. Yeah, I think he wasn't wearing a shirt. Yeah. Or it was ripped off or something. I don't know.

Q. So was that the guy who punched you?

20 A. Yeah, that was the guy who punched me in the stomach and tried gouging my eyes out.

Q. There were -- you remember when we watched the City TV video there was two guys there by the ambulance and one of them came up and was kind of rude to the cameraman?

25 A. Okay.

Q. So not that guy.

A. That was the guy Ross was talking with.

Q. Okay. Was he the hip hop guy?

5 A. Yeah. Yeah. I was wrong about my initial
description with him. But he -- he talked -- when I
gave my first testimony, I thought he was wearing,
like, a jersey or something, but it was because the
way he talked. It was very urban and I just thought
he was wearing a baseball cap or something and --
10 but that was the guy Ross was speaking with most of
the time.

Q. And then a little later on I was -- what
I wrote down is at one point you said, "I didn't
think [my] life was in danger...". Guy that --
15 "...the guy that punched me...came at me with his
thumbs."?

A. Yeah.

Q. You're saying that the person who gouged
-- tried to gouge your eyes out is also the blonde
20 guy who punched you?

A. Yeah.

Q. So just help me get this straight. Did
both blonde guys punch you? Or just one?

25 A. I mean, you just said it was the same
guy, so it was the same guy.

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Q. All right. So the other blonde guy?

A. Was with Ross the whole time.

Q. You didn't have any --

A. I don't think so. When I was down he
5 might have come over, but I don't know.

Q. So you don't recall having any
interaction with him?

A. You know, I said maybe three or four
sentences to him while we were at the TD thing, and
10 then Ross kind of turned and said, Listen, I'll, you
know, I'll talk to -- or he pretty much took over
that conversation.

Q. Okay. So we're almost done. What I'd like
to do now is talk about -- a little bit about the
15 photo line-ups that you were shown, and we've got it
all cued up if there is anything you want to see on
your video because that whole process was videoed,
right?

A. It was videoed? I thought it was just
20 audio. Oh yeah, it was videoed.

Q. Yeah.

A. So we're going to watch me watching the
-- or I'm going to watch myself doing the photo
line-up?

Q. You know what? That's going to be very
25

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time-consuming.

A. Yeah.

Q. So what I'm saying is I'm just going to show you the photos.

5 A. Okay.

Q. But if at any point you want to see that, I'm very -- or a section of it, I've got all the time references and we can tee that up.

A. Now, if I'm seeing a photograph --

10 Q. Yeah.

A. If I'm seeing a photograph I might have seen this photograph five or six times. Are you going to show me all of my -- all of my comments? Those five -- up to five times? Because I -- I
15 looked through the pictures over and over and over and I think I had separate piles and there were certain things that I thought were maybe maybes or some, you know, like -- so there might be multiple comments per photo.

20 Q. All right. Let me just get straight what you said. You said that you looked at the photos several times?

A. I thought I did. I thought I went through them over and over and over.

25 Q. Mm-hm? You don't remember being

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frustrated that you weren't allowed to look at photos a second time?

5 A. Oh, maybe I wasn't. Okay. See, that's how much I don't even remember of that. I was really frustrated with the pictures and I wanted to help and I wanted -- I wanted to be -- I was embarrassed that I couldn't remember anything. That it just was kind of blacked out. So maybe I couldn't look at them twice.

10 Q. Well, I think that confusion makes it worthy to --

A. Well, I think I reference some of the pictures over and over. It was like, Oh, that third one or that one I really thought that I, you know...

15 Q. Oh. So you mean you'd see a photo once --

A. Yeah.

Q. -- and then you'd make a comment about it?

20 A. Right.

Q. And then you'd see a photo three photos later and you'd say even more so than the one I talked about before?

25 A. Yeah, something like that. Something along those lines.

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Q. But you could say you only looked at each photo once?

A. If you say I did then I've only looked at them once. That must have been another thing that frustrated me with the process, that I couldn't look at them over and over.

Q. All right. Well, there's a two minute clip that sort of talks about how it's all started, so we may jump around a little bit, but if we could start that at 16:05 and 53 seconds.

And while we're teeing that up, do you remember Detective Sergeant Giroux, before he showed you any photos, he read a long list of instructions to you?

A. Yeah, I remember. I remember him reading me instructions.

Q. Okay. And I've got a copy of his instructions but maybe we'll just do that on the recording. So if we could start at 16:05 and 53 seconds of the August 14th statement. It will just take us a minute to tee it up.

---VIDEO PLAYING

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MR. SCARFE:

Q. All right. We're just going to play from
16:05 until --

5 A. This is the photo line-up?

Q. Yeah. You gave that interview --

A. The second time.

Q. -- the second time, and near the end of
10 it they did the photo line-up. Do you remember that?

A. Okay.

Q. We're going to play 16:05:40 to 16:07:43.

15 ---VIDEO PLAYING

MR. SCARFE: Perhaps my timing is wrong.

Yeah. Let's go to 16:09:50. Sorry.

20 ---VIDEO PLAYING

MR. SCARFE:

25 Q. So does that sort of help refresh your

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memory as to the procedure?

A. Yeah. Yeah. That helps, yeah.

Q. You understood all the instructions that
Detective Sergeant Giroux read to you?

5 A. Mm-hm.

Q. And you seemed a little apprehensive
about the whole process?

A. I don't think it's fair. I think the
rules and the procedures, it's not in the best
10 interest of the victims. I just didn't -- I just
didn't think it was fair on any level.

Q. Mm-hm. One of the things that seemed
unfair was that you could only look at one photo at
a time and only once.

15 A. Correct.

Q. Right?

A. From my opinion, yeah.

Q. You thought maybe you'd do better if you
had a chance to lay them all out and compare them,
20 right?

A. Sure.

Q. Yeah. Yesterday you mentioned that you
didn't know how well you did. No one ever gave you
the results?

25 A. Correct.

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Q. You looked at four photo line-ups, you got one out of four.

A. Okay.

5 Q. Okay? Just to take you through that a little bit, I'm going to switch to Detective Sergeant Giroux actually kept the actual photos that were shown to you in the four envelopes that they were and it's been provided to me right now. And while we're not 100 percent sure which one was shown
10 first, I'll just show you a couple of them. The first was trying to sort of get at that blonde haired guy I think?

A. Yeah.

15 Q. Do you remember that one? And you wrote, "The male that tried to hurt my eyes" on the back.

A. With a question mark.

Q. With a question mark?

A. Yeah.

20 Q. Or at least Detective Sergeant Giroux --

A. Giroux wrote that.

Q. Right. But he sort of asked you, Is that okay?

A. Yeah, I believe that was the first picture I looked at too. So it was like --

25 Q. Then you were shown a second one. The

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guy had a ring in his -- under his lip? Some sort
of a piercing?

A. Well, I thought I was -- yeah. Yeah.

5 Q. And then Detective Sergeant Giroux on
your instructions wrote something about, The earring
and piercing that looks familiar, don't know from
where. Right?

A. Mm-hm.

10 Q. Then there was another one, and on the
back nothing was written so I assume that's because
you just said no.

A. Well.

Q. You said no, I don't recognize him?

15 A. I cannot repeat enough how stressful that
was, because they could have been old photographs,
new photographs, um, which I don't think is fair. I
think, like, how am I supposed to know what one of
these guys looked like four years ago or three years
ago? I mean, it doesn't -- that doesn't make sense
20 to me.

Q. No, I understand that, but just -- we're
just reviewing what happened.

A. Right. Right.

25 Q. We understand that you don't think it's
fair, but --

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A. Right. Well, the jewelry and, it's, like --

Q. I can assure you there are reasons why it's done that way and lots of books have been written about it, so for now --

A. But line-ups where I come from, they have five or six, there are ten people in a line, and you pick the person that it is. This is a little bit foreign to me.

Q. And you made a comment about it during the photos, you said that, you know, in the States they line up 12 real people, and Detective Sergeant Giroux explained to you it's very rarely done because it's hard to get all these people to consent?

A. Mm-hm.

Q. Do you remember that?

A. Okay.

Q. So the next photo you were shown, nothing on the back, so presumably you said no. Again we can play it all if you want, but -- and then there is the next photo that was in the very first photo line-up. I want you to have a good and close look at that, and in fairness, you wrote on the back, "Those eyes look so familiar, that stare".

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A. Mm-hm.

Q. But you didn't say, Hey, I recognize that
guy as being one of the guys --

A. Well, I -- that's a pretty -- well, yeah,
5 I guess I didn't say that. Okay.

Q. No, but now that you've watched --

A. You know what it was? Was I didn't want
to -- I kind of wanted to go through all the
pictures and then make a decision, so I was in this
10 mindset of, like, I don't want to commit to someone
too early or too late and I think I was just, um,
yeah, I mean, I just didn't want to make a mistake.
So I was completely -- I was horrible. I was not
happy with my performance with that.

Q. All right. Now, the photo that's
15 currently up on the screen, having watched the City
TV video a couple of times now, does that help you
in any way around this photo? Do you recognize that
person?

A. I mean, it could be one of those guys.
20

Q. Could be but you're maybe, maybe not?

A. I don't know.

Q. And you remember I just said --

A. It's hard because he's got stitches and
25 he looks like one of those two guys, but --

Q. He's sort of the only guy in there with injuries, isn't he, too?

A. Yeah, and that could be, you know, a trick or something. I don't know.

5 Q. Okay. But you don't -- you can't look at this now and say, I know that this was one of the guys. Either the guy who was talking to Ross or the guy who tried to gouge my eyes out.

10 A. Yeah, I don't think that was the guy that gouged my eyes out.

Q. All right. For the record, um, all right. So that is the last one from the first set of photos and for the record, Your Honour, that is Mr. Fresh.

A. Who is that? Fresh?

15 Q. Correct.

THE COURT: Is there a number on that photograph?

MR. SCARFE: None of the photographs are numbered. It's the fifth in the sequence. We're not 100 percent sure that we have the exact sequence. I mean, I can play it all and stuff but you can't actually see it on the recording because it's on the table. But --

20 THE COURT: Does the line-up itself have a number?
25

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MR. SCARFE: The line-up itself has a number,
and the number is 2690.

THE COURT: All right. So photograph five in
2690, for the record.

5 MR. SCARFE: Yes. And I'm loath to mark it,
but --

MR. THOMPSON: Well, if it's of any
assistance, Your Honour, I think he's
probably going to have to file the package of
the entire array and then he can mark on that
particular one an X on the front or the back.

10 MR. SCARFE: Should I put an X? What I'll do
is put an X in the top corner.

THE COURT: Well, unless, before we do that,
15 are you going to be in a situation where you
might be showing these pictures to any other
witness? I assume not since it's a photo
line-up --

MR. SCARFE: These are pictures shown to this
20 witness. I assume that -- let me just consult
for a second. Yes. This would be the only
witness that I would show this to, unless it
was to an officer to say --

THE COURT: Place a mark on it then.

25 MR. SCARFE: It's the one that says, "Those

eyes look so familiar, that stare".

THE COURT: All right. That should sufficiently identify it.

MR. SCARFE: All right. So what I'm going to do is I'm going to put that back in the envelope, 2690, and ask that this be marked 41A.

THE COURT: This is actually 42.

MR. SCARFE: 42A?

THE REGISTRAR: Thank you. 42 -- 42? Sorry.

MR. SCARFE: Well, we're going to have a series, Mr. Murphy, so --

THE COURT: So make it 42A.

THE REGISTRAR: Thank you, Your Honour.

---EXHIBIT 42A: Photo line-up - produced and marked for identification.

MR. SCARFE:

Q. So that was the first one that you were shown, and you weren't able to pick out the individual that --

A. Well, I think that that one was pretty

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specific, that I thought it was one. I mean, so you wouldn't consider that as -- I don't think I made any definitive picks, did I?

Q. Well, yeah, you did.

5

A. Oh okay. Well, I thought that was pretty close.

Q. You made a number of comments for familiarity for some of them. You never said, That's the man, right?

10

A. Correct.

Q. The second one I'm going to show you is one that you actually did very well on. And it's photo line-up number 2689, for the record, and I'm not sure what order it was in when it was shown to you but the photo that you picked out was this one. You felt maybe the eyes were a little puffier than what you remembered?

15

A. Mm-hm.

Q. And in the end they actually had -- just put your initials on the back because you said, Yeah, you were sure that that was the girl.

20

MR. THOMPSON: Your Honour, just -- I apologize for interrupting my friend's cross but I'm not sure -- I don't know where we're going with in terms of the photo you -- in

25

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5 relation to what? I mean, when you put a
photo array to somebody it's usually did this
person -- was this person here or this person
there, but other than just saying recognize
the person, recognize the person in a
scenario? Um, one of the people there, one
of the people that sold gas at the gas
station. I don't think my friend is putting a
reference around how it is he identified that
10 person as what.

MR. SCARFE: And again, this particular photo
took ten minutes to go through and I'm happy
to play it.

15 Q. But in essence, what you said was that
was the girl, the instigator, the one who came up
and asked for the 20 bucks.

A. Okay.

20 Q. Okay? And that's -- that accords with
your recollection? That she appears to be the same
girl you saw in the City TV video and identified
yesterday?

A. Yeah, I guess so.

Q. And her name as far as you --

A. Sarah McDermitt.

25 Q. Sarah McDermitt. Okay. So there's no need

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to show you the other ones in that sequence. I'm
going to put that back into the envelope and ask
that this be 42B?

THE COURT: 42B.

5 THE REGISTRAR: 42B, Your Honour.

---**EXHIBIT 42B**: Photo line-up - produced and marked
for identification.

10 MR. SCARFE:

Q. The third sequence was a series of
photos, I guess aimed at trying to identify the
15 second girl, and I'm not sure what order they were
shown to you but you had this one from the envelope
first, no comment on the back. Then you have this
one. Do you see that okay?

A. Mm-hm.

20 Q. And no comment on the back. So I can
indicate I watched it last night and you just said,
No. If you take a second look at that photo, having
seen what little bit of media you have seen, having
seen the City TV video twice, do you recognize that
25 person today?

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A. Yeah.

Q. And who is that?

A. Nicole Kish.

Q. And you agree that you were -- that
5 within 24 hours of the incident --

A. Can we see the other pictures in that
set?

Q. Within six days of the incident, you were
shown this photo and unable to identify her.

10 A. Yeah, because I think all the other
pictures were similar. Can we see the other
pictures?

Q. Absolutely. That's two. Number three --

A. Okay.

15 Q. -- and no comment on the back. Number
four, no comment on the back.

A. Mm-hm.

Q. Number five, no comment on the back.
Number six, no comment on the back. Number seven, no
20 comment on the back. Number eight, nothing on the
back. Nine, nothing on the back. Number ten, nothing
on the back. Almost there, eleven, nothing on the
back. Twelve --

A. How many pictures of females was I shown
25 in total?

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Q. Two sets of 12.

A. So 24. Okay.

Q. 42C?

5 THE COURT: Which photo line-up number is
that?

MR. SCARFE: Oh I'm sorry. That is number
2692.

THE COURT: Thank you. 42C

THE REGISTRAR: 42C, Your Honour.

10
---EXHIBIT 42C: Photo line-up - produced and marked
for identification.

15 MR. SCARFE:

Q. Then just to be complete, we have the
last set. These were obviously trying to get at the
longer haired --

20 A. Yeah.

Q. -- blonde guy. Number one, nothing on the
back. Number two, and you -- instead of your
initials or saying, you know, That's the guy --

A. Right.

25 Q. -- you explained to Detective Sergeant

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Giroux that there was something about the closeness
and the colour of the eyes?

A. Mm-hm.

5 Q. But you weren't able to say, No, that's
the person, right?

A. Right. Just his eyes. You know, in
hindsight I wish I would have given Detective Giroux
more commentary on the things because I could have
-- it would have been a little bit better.

10 Q. And this is the third photo, and there's
nothing on the back. And just -- do you recognize
that today? Even after watching the City TV video a
couple of times?

15 A. Is that the guy without the shirt? I
don't know. I mean, they all look the same to me,
even now. I mean...

Q. They all look the same to you now?

A. Well, they look similar now, sure. I have
a hard time now even with these, because --

20 Q. To assist you, that was inserted in there
because that was the fellow who was described as
being without the shirt.

25 A. Okay. I don't remember him being that
bald on top though. I thought he just had longer
hair. So how old is that picture?

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Q. Well, that was taken that night.

A. That was taken that night. Hm-mm. I don't remember him being that bald on top.

Q. Well, that's fair.

5 A. Yeah. That's the thing that, um, and I thought his hair was longer in the back. Is it in a ponytail?

Q. It's hard to say.

A. Yeah, I remember his hair being longer.

10 Q. The point being though that you were doing your best.

A. Yeah.

15 Q. And you were shown this photo and you weren't able to identify it until you watched the -- that you were eventually able to identify on the City TV video this individual you described as no shirt, but just to clarify, by the time we get to the ambulance, he's got a shirt on that's not buttoned up. That's open in the front. We can see his whole --

A. Okay.

Q. -- chest and stomach. Do you remember that fellow?

A. Yeah.

25 Q. And again, there was nothing -- no

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comment whatsoever on that. Here's the fourth one,
no comment. The fifth one, and then you recall you
made a comment on the second one about the closeness
and colour of the eyes.

5 A. Right.

 Q. And then this one, "This one more than
the first one". So I think when we were talking
earlier about having gone over them and referring
back, this is where that happened?

10 A. Yeah. A lot of these guys look the same
to me.

 Q. Do you want to see the rest of them?

 A. No. It's okay.

15 Q. Okay. I'm just going to put that back in
-- this is line-up number 2691 and ask that that be
42D?

 THE COURT: Yes.

 MR. SCARFE: Thank you.

 THE REGISTRAR: 42D, Your Honour.

20

---EXHIBIT 42D: Photo line-up - produced and marked
for identification.

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MR. SCARFE: And I will return the file folder to Detective Sergeant Giroux, as well as the instructions.

5 Q. Now, the shot from the City TV video that I've asked Ms. Fineberg to tee up, now you remember us -- this is a frozen still here. The individual in the first photo line-up with the injuries on his face? You'd agree that appears to be the same
10 person, right?

A. Okay.

15 Q. And I'm just trying to be absolutely clear here, but this person that you were able to subsequently identify in the City TV video, is this the person that tried to gouge your eyes out? Or the other guy?

A. The other guy.

20 Q. The other guy. Do you want to just fast forward that a little bit, Ms. Fineberg? Or just play it. He comes into the screen. So this is the guy, Fresh, who was obnoxious to the camera, right?

A. Yeah. Okay.

25 Q. And then we're just going to wait a sec and see if the other gentleman comes into it. And we're sort of playing about from the time counter

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three and-a-half minutes to four and-a-half minutes.
I think we may have gone past the point.

THE COURT: It was actually before the shot
near the ambulance, as you were approaching
the ambulance.

MR. SCARFE: Okay. If we could maybe go back
30 seconds? Okay.

Q. There's the freeze-frame at 3:28. There
is a gentleman in the middle of the street with a
shirt on but unbuttoned as we talked about before.
If we could just play the next five or ten seconds,
Ms. Fineberg? He comes, walks sort of towards the
camera and seems to engage in a conversation with
this fellow, an EMS fellow here. Do you recognize
that?

A. Yeah.

Q. Okay. And that's someone you identified
in the City TV video, we'll call him Wooley, because
that's his name. Jeremy Wooley. You were unable to
pick him out of the photo line-up five, six days
afterwards, but you're saying this is the fellow who
tried to gouge your eyes out?

A. Yeah, and he punched me.

Q. And he punched you. So the other fellow
that we just looked at, Mr. Fresh, he didn't do

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anything.

A. Not to me.

Q. Not to you.

5 A. Not to me. Ah, that I recall. When I was
down he could have gotten a kick in or punch, but I
doubt it because I think he was with Ross. He was
talking with Ross. So I doubt -- I doubt he had
something -- it wasn't possible really. That
possible.

10 Q. All right. And was this the fellow that
you ended up, when you got your adrenaline rush,
slamming into the store front?

A. Yeah.

Q. Mr. Wooley.

15 A. I believe so, yeah.

Q. Thank you.

A. Yeah, because he was trying to gouge my
eyes from...

20 Q. I've got just a couple more sections to
go but I note the time.

THE COURT: We'll take the lunch recess.

---LUNCHEON RECESS

(1:00 p.m.)

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---UPON RESUMING

(2:19 p.m.)

5 MR. SCARFE: Your Honour, as a matter of
housekeeping, I promised to file Exhibit 40
and 41 on CD. I'd like to do that now. And
the interview that I said that I would file,
10 the August 14th interview, I'm not sure of
the number but we've played it so it should
be the next exhibit. That was the portion
from the photo line-ups with Detective
Sergeant Giroux.

15 THE COURT: Oh. Exhibit 43.

15 THE REGISTRAR: Yes. Thank you. 43, Your
Honour.

20 ---EXHIBIT 43: Videotaped interview - produced and
marked for identification.

25 MR. SCARFE: Is there anything else we forgot
to fill out?

THE REGISTRAR: No. Thank you, Your Honour.

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MR. SCARFE: If I could get a list at some point, Mr. Murphy.

THE REGISTRAR: I will have it today, Mr. Scarfe.

5 MR. SCARFE: Thank you. And just before we get back to work there, my friend Mr. Thompson and I approached you jointly about next Friday and we ask if we can start at noon next Friday. I know Mr. Thompson has a
10 medical appointment and I will then try to fill in what I discussed on Monday. Subject of course to --

THE COURT: Next Friday being the 4th? That's fine. I can also tell counsel that I
15 have two other matters to address on Monday morning, February 7th which will probably take the morning, so we won't be able to start until the afternoon on Monday.

MR. SCARFE: 2:15 on the 7th and noon on the
20 4th.

THE COURT: Correct. All right?

MR. SCARFE:

Q. Mr. Dranichak, thanks for your patience. We're almost there. I think what we demonstrated
25 before lunch, and you correct me if I'm wrong, but

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having gone through the photo line-ups and all,
would you agree that your viewing of the City TV
video has kind of changed your perceptions of -- or
your recollections of who everybody was?

5 A. It enhanced my memory, sure.

 Q. So it had an effect on your memory, you
call it an enhancer?

10 A. Sure. If there was a -- if they had an
in-person line-up I would have been able to pick out
all four people, but from photographs I had a hard
time.

15 Q. Okay. I'm going to go back to that first
interview that you gave the very day after this all
happened, August 9th, with Detective Scott and his
partner, and what I propose to do, and you heard me
talk earlier about the difficulties with the
transcript and the audio of that interview. So what
I'm going to do is at the end of that interview you
described in detail for the officers the five people
20 that you remembered at that point in time. And what
I'd like to do, and I ask Ms. Fineberg and Ms.
Santaro assist me, is we're just going to go briefly
through each one. We will play the first person you
described and then I'm going to ask you a few
25 questions about it and then the second and we will

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get to the end and we will be there.

A. Okay.

Q. Okay? So starting at about 16:19 and 27
seconds.

5

---VIDEO PLAYING

10

THE WITNESS: Can you pause it, please? Can
you pause it? I'm having a hard time
understanding even what I'm saying.

MR. SCARFE:

Q. I know. The audio's --

15

A. Is there anyway I can look at a
transcript while I'm watching this?

Q. I can give you one but --

A. Well, you're asking me to comment on it.
I can barely understand my own voice, so I -- I'm
just being honest with you.

20

Q. No, I understand the difficulty.

A. There isn't a transcript of this?

Q. Well, there is, it's just the same
difficulty that you're having, the person who
transcribed it also had, so every third or fourth

25

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word it says bracket UI, which is unintelligible,
and close bracket?

5 A. So how am I supposed to -- how am I
supposed to make a decision on this. If it's
unintelligible. I mean, like, I want to be as
accurate as possible.

10 Q. Absolutely. I'm hoping that there will be
a couple of places where it's hard to hear but then
when we actually get into the description, so why
don't we --

15 A. But can I read the transcript as I'm
watching the video? Or no. Because I'm having a
real -- I'm hearing it from back there and it's
echoing in here and I'm just having a hard time even
understanding myself.

20 MR. THOMPSON: If I may, Your Honour? I'm
not sure what my friend, if he's going to be
putting passages to this witness. The
difficulty about the transcript of course is
that's somebody else's interpretation of what
is being said, and I appreciate my friend's
predicament but, nonetheless, I don't think
that would be an appropriate remedy either
because those may not be the words that were
25 actually said, and the only way this witness

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can comment is if he hears the words himself and comments on that basis. Those are my respectful submissions.

5 MR. SCARFE: I do notice as we go along, I hope it will improve, but I think I had the volume up just a little bit loud and I could hear the speaker distorting.

10 THE WITNESS: Well, I had a hard time even watching my own videos when -- when I was at the Crown or wherever, just reviewing my testimony. It was completely -- it was very tiresome just to try to interpret what I was saying, so...

15 MR. SCARFE:

Q. So you've watched this a couple times already?

A. I think I've watched this, I believe -- is this the first one? With Umbrello. I believe I watched this twice.

20 Q. Okay. And while it was tiresome, were you able to get at least most of it?

A. I did my best.

Q. Okay.

25 A. I mean, I figure I get around 70 -- you know, 65, 70 percent of it, but there's parts where

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I don't even know what I'm saying there.

Q. All right. The Crown has objected to giving you the transcript. I'm not criticizing him. The transcript is really not that helpful. Did you have the transcript when you watched it the first two times?

A. No. They just told me to do my best.

Q. Subject to guidance from the Court, I think what I'm going to ask you to do is do your best.

A. Okay.

THE COURT: Well, I sympathize with the witness's position. I'm having a hard time understanding it myself, but I take Mr. Thompson's point. It seems to me all we can do is play it, the segments you wish to, Mr. Scarfe, and if the witness can make out things and comment on them, obviously he will, and if he can't, he'll let us know.

MR. SCARFE: Hm-mm. Okay. All right.

Q. So that's how we'll proceed and I'll --

A. I know roughly what I'm saying, but that's -- that might not be good enough.

MR. THOMPSON: I think, Your Honour, it's implied in what you said, but I think the

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witness should be at least cautioned that
he's not to guess at what's being said. I
mean, obviously he can hear it or he can't,
but I understand that the witness may be
trying to assist but, nonetheless, I'm not
asking for specific instruction but it should
be no different than any other evidence he
can hear or can't hear or can't understand.

THE COURT: No, as I'm sure the witness
understands, he is not to guess, and if he
can make out what he's saying, he can respond
to it. If he can't make out what he's saying,
then he should just indicate to us that he
can't.

MR. SCARFE:

Q. And I would recommend that if we go
through a point and you really, you know, after a
few seconds can't put it in context, I'm happy to
rewind and go through it again.

A. Okay.

Q. Try and mess with the volume a little bit
so that we don't distort.

A. Okay.

Q. And we'll work together. So perhaps we
should maybe rewind to the beginning of that

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section? And I'm just going to work with the volume here.

A. Work with the base. It's a little basey. Just bring up the treble.

5 Q. Okay.

---VIDEO PLAYING

10 THE WITNESS: That's worse. I can't understand it.

15 ---VIDEO PLAYING

MR. SCARFE: Okay.

20 Q. Again, the audio's bad, but do you sort of get used to it and get 80 or 90 percent about that?

A. Around three fourths. Yeah. I get the gist of it but there's certain words that I can't pick up.

25 Q. You tried to spell the name of a bike?

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A. Yeah. I was -- yeah. Yeah.

Q. So clearly this is this first person that
you're describing to the detectives --

A. Sarah.

5 Q. That's Sarah, right?

A. Mm-hm.

Q. And having watched the City TV video,
right? You'd agree that perhaps there is no thin
gold necklace?

10 A. Well, it might have been ripped off. I
don't know. I couldn't see it in the video so --

Q. Fair enough.

A. -- so there wasn't any close-up of that
so I can't confirm that or deny it.

15 Q. You talked about a three or four button
shirt, either short sleeve or long?

A. I was horrible with the clothes. I mean,
and I know that because I thought -- I thought the
first guy was wearing a jersey and a hat and he
20 might have been wearing a hat and it fell off, but
yeah, I was -- I've learned this about myself. When
I'm in the moment with something, I'm oblivious to
everything else because my mind is completely
focused on one thing, and at the time I was focused
25 on arguing or trying to get away or whatever, so I

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5 know this about myself now. I was completely
oblivious about what they were wearing and, I mean,
I had -- when I was going through the picture
line-ups, I looked at the eyes and I said, Yeah,
those eyes, that stare looked familiar, but aside
from that, with the details, I was absolutely
horrible. You know, I was wrong.

10 Q. So you concede, the necklace, in
fairness, could have been ripped off, but you agree
she's not wearing a three or four button shirt or
jeans. Cheap jeans, designer jeans, any jeans?

15 A. I wasn't even paying attention watching
the video now what she was wearing to confirm if it
matched up with my testimony.

15 Q. I can put it on.

A. I'm pretty sure it was -- it was probably
black, right? It looked like she was wearing all
black?

20 Q. Well, let's put it up. We can minimize
that window and just go back to that section.

A. But I agree that I was wrong about the
clothes. Yeah, put up the -- I want to see the
video, please.

25 MR. THOMPSON: Your Honour, just so it's
clear , one of the witnesses, Ms. Cooper, was

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in the body of the court. She's been removed.
She is one of the Crown witnesses.

MR. SCARFE: Do we know how long she was
here? No?

5 MR. THOMPSON: It couldn't be long. I just
looked around. In any event...

MR. SCARFE: Okay. We're going to play the
section as requested.

10

---VIDEO PLAYING

MR. SCARFE:

15

Q. Right there.

A. Okay.

Q. So which one is Sarah?

A. On the right.

Q. On the right of the two girls?

20

A. Yeah.

Q. I'm just going to point it out for the
record. This lady right here?

A. Yeah, looks like she's wearing a hoody
and some cut-off jeans or cut-off cargo shorts
maybe?

25

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Q. Mm-hm?

5 A. I can't see if she's wearing a necklace or not, but she does have a loose ponytail, she has round eyes, the height and the age, probably the weight -- what was her weight at the time? Was she 115? I would assume she was around 115 pounds. I was correct with all that stuff. I was wrong about the clothes.

10 Q. And you picked her out of the photo line-up.

A. Okay.

Q. Right?

A. She was the first person I spoke with.

Q. So if we can go to the second person.

15 A. Are you waiting for me?

Q. No.

A. Oh, okay.

20 Q. Ms. Fineberg is just doing her best to tee up where it was. Not only is the audio bad on this one, Your Honour, but Ms. Santaro almost threw her computer out the window yesterday because it crashed it about seven or eight times last night, so this does happen from time-to-time but it usually reboots itself and gets going.

25

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---VIDEO PLAYING

5 THE WITNESS: Can you play that part again?

MR. SCARFE:

Q. Pardon me?

A. Can you just play the last ten seconds?

I can't understand any of that, right there.

10 Q. I know. It's difficult.

A. Yeah, just like ten seconds maybe?

---VIDEO PLAYING

15 THE WITNESS: Can you do that part again too
please? Last ten seconds?

MR. SCARFE: Yes.

20

---VIDEO PLAYING

25 MR. SCARFE: Thank you.

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Q. So you've already indicated that this was probably the worst description?

5 A. I think I was pretty close though, now looking at it, except for the jersey and was he wearing nickers? Can we go back to the things? Like, I'll point out who I was talking about there. I mean, it was the first guy. I was right about the facial hair, his weight, probably his height. I mean, the hat, he obviously didn't have the hat so
10 yeah, I -- I think the way he spoke made me think that he was wearing a jersey. It made me think that he was one of those guys. So I was kind of stretching the, you know, in my head. That's what I thought. But I think it was just because, you know,
15 now in hindsight I think it was because of the voice..

Q. Okay.

A. But aside from that I was pretty close with it --

20 Q. You'd like to have another look at the scene?

A. I would. Yeah.

Q. Absolutely. Pause it for a sec?

A. Keep going.

25 Q. Yes. But what I'm going to ask my friend

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to do is we'll put some volume on this, but it's
material in this --

A. I don't need the volume on this one.

5 Q. Well, you described his voice and his
accent.

A. Oh. Okay. Sure. Do you think you can --
it picks it up?

Q. Oh yeah.

A. Okay. Okay. Can you turn it up? Please.

10 ---VIDEO PLAYING

15 THE WITNESS: Is that normal speed? Or is
that slow?

MR. SCARFE: Okay. So we're going to play it
at normal speed.

20 ---VIDEO PLAYING

25 THE WITNESS: Okay. When I comment he wore
nickers, his pants were kind of pulled up and

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I thought they were nickers, like,
three-quarter length, and I guess they're
like camo pants or something like that, but
they appear like they're nickers in this
frame here and that's what I remember.

MR. SCARFE:

Q. What colour are the pants?

A. Well, I would assume that they're green
or, you know, I don't know, because of the colour of
this video, but I would assume that they're, like,
you know, what do they call that with the camouflage
and all that?

Q. Army green?

A. Army green or fatigues. They could be
different shades. It's hard to tell.

Q. It's hard to tell.

A. But they appear like nickers to me, so I
was right about the facial hair and he's probably
around six foot there.

Q. Um, so this is the person --

A. First person.

Q. Is sort of, Yo, yo, yo, urban hip hop
guy?

A. Yup. Yup. Spoke very street, very urban,
very, you know.

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Q. And I don't know if you saw him when he walked up, but he had more boots on than high top sneakers, right?

A. High boots. Yeah. They look like boots. Yeah.

Q. Yeah. As opposed to high top basketball kind of shoes?

A. Right.

Q. You'd agree the jersey is not white, blue or red.

A. Correct.

Q. And it doesn't remind you of a basketball jersey.

A. Not at all, no.

Q. No. And when he spoke to the camera, can we pretty much --

A. He didn't have that backpack either so he must have picked that up or something. Maybe he sleeps on the street. I don't know. But he didn't have that backpack. I know that for a fact.

Q. You talk about a hint of a French Canadian accent or someone from Montreal?

A. Well, his voice was more of a, Hey, what's going on here. It seemed -- it seemed Canadian to me but I guess he was American, right?

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So I don't know. Maybe it was just him trying to be street I guess. I don't know. Or intimidate us with his voice.

5 Q. Did you hear any bit of a French accent when he spoke to the camera?

10 A. As I said before, I'm horrible with accents. I don't know if anyone is from Vancouver, Saskatchewan. I don't know any of these accents. All I notice is that people here do sound differently to me and I can't -- I am really not good at pinpointing where people are from, where everyone else seems to know.

15 Q. We know you were doing your best when you were with Detective Scott to try and conjure up in your memory some accurate facts about what happened, and you seem very sure about a guy with a basketball-type shirt, a hat turned sideways, coloured red, thick gold chain?

20 A. I kept saying maybe red, maybe -- like, I wasn't clear. I wasn't clear at all with these things and if you listen to the video I was very, you -- you know, I went into a thing where I was guessing and stretching and Detective Giroux, you know, instructed me not to do that, so...

25 Q. And you'd agree there was -- he has no

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thick gold chain, gold bracelet or watch?

A. He might have had a chain on, you know.
At the time I thought he had a chain.

Q. Yeah?

5 A. But he probably didn't. I don't know. I
mean, I don't know.

Q. You talk about a gold bracelet and gold
watch?

10 A. That could have been the Middle Eastern
guy too. I could have been just, like, I kept saying
over and over again, I think I'm mashing these
people together, and the Middle Eastern guy could
have had a chain, he could have had a watch, and I
could have just been mashing things together.

15 Q. Well, I'm going to suggest something to
you and ask you to think about it.

A. Okay.

20 Q. When you encountered the person who you
describe as the sort of, Yo, yo, yo guy trying to be
urban, trying to be black?

A. Mm-hm.

Q. Isn't it possible that there was in fact
a fellow in a basketball jersey with a big gold
chain, a big gold watch, gold bracelet --

25 A. You know what? It's abs --

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Q. -- and a hat turned sideways and you're just mashing this guy into that guy?

5 A. There is a small, small possibility, but when I looked at the photo line-up and I saw those eyes, I just remember, when the guy came up and I had eye contact with him, that I felt that that was that guy. It was just like it was a connection. It was like there's something about that, just, you know, the stare and the eye contact. So --

10 Q. But my suggestion is not --

A. I'm going to say it's a five person -- I'm going to say ten percent possibility, but that's about it. It's a ten percent possibility.

15 Q. All right. No one's suggesting that you never saw this guy --

A. Correct.

Q. -- that night.

A. Right.

Q. The suggestion is there is another guy --

20 A. Is there another guy?

Q. -- who fits this description -- well, I'm suggesting to you.

A. Right.

25 Q. And in fact based on your last answer, I'm going to suggest there is a significantly more

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than five percent chance --

A. Okay.

5 Q. -- that there was a hip hop-type guy
talking urban with all that jewelry you described,
the blue and white jersey and a sideways baseball
hat, and you are just mashing this guy into it
because you don't see the other guy on the City TV
video.

10 A. I'm doing the best to my recollection
from the events. And there is a possibility. Sure.
Sure. He probably looked just like this guy and -- I
don't know. I don't know. If you tell me there is
and you show me a picture, then maybe some memories
15 will come back, but it was a long time ago and it
happened so quickly and it was a state of shock and
my focus was not on the guys, it was basically on
the girls. Sure, it's -- it's possible.

20 Q. Thank you. Let's move on to the third
person that you described.

A. This is the third person?

Q. You described five people so --

A. But we're doing it in the order of how I
met them, right?

25 Q. No, we're doing them in the order that
you described them to Detective Scott.

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A. Okay.

Q. Not to say he didn't ask you to do it in
the order you met them.

A. Okay.

5

---VIDEO PLAYING

10

MR. SCARFE:

Q. Now, for the last two ones we've played
follow-up City TV video. Do you wish to see that
again?

A. Sure.

15

---VIDEO PLAYING

20

THE WITNESS: Okay. Stop. Stop. Now go back
one frame.

---VIDEO PLAYING

25

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5 THE WITNESS: Stop. Right there. There's some
black. It's like a black bracelet, black
something. It might not have been on -- I
don't know. I was wrong about the top. I was
right about her being wide there. And she
definitely has, like, a black bracelet on.
She's kind of dressed like a gypsy I guess.
That was my militant or angry lesbian thing
10 which, you know, that was the translation of
that.

MR. SCARFE:

Q. Just may a few more seconds.

A. Right there.

15 Q. All right. That's great. Now, the person
you described to Detective Scott as the second
female, you referred to her as being sort of
Portuguese or Greek looking?

20 A. She looked Portuguese to me. Yeah. I
mean, if I had to pick a nationality I would say
that. I mean, I work with a few Portuguese women
and she looks Portuguese to me. But, I mean, that
was just a guess, yeah.

25 Q. You mean the lady on the City TV video
looks Portuguese to you?

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A. Well, yeah. Yeah. She does. Yeah.

Q. You said she had blue eyes?

A. Did I? Did I say blue eyes?

Q. Yeah.

5

A. Okay.

Q. And Ms. Kish here has brown eyes.

A. Okay.

Q. Now, this is a little bit --

10

A. I didn't -- I didn't really see her as much as Sarah. I was kind of dealing with Sarah most of the time.

Q. Now, you've got her with short black hair?

A. Yeah.

15

Q. Throughout this whole thing you've talked about a black haired girl?

A. Yeah.

Q. And clearly that's not the case here, is it?

20

A. Well, the light is hitting it a certain way but it, you know, it was darker at the time I thought. In my mind.

Q. We looked at that photo earlier on the projector.

25

A. Yeah.

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Q. That wasn't black hair either, was it.

A. Probably -- no, it wasn't.

Q. And you're absolutely right about the bracelet, but you said that the person was sort of manly looking and had a long face.

A. Well, I mean, compared to her friend, her friend was -- I was kind of comparing the two of them. She was wider and stockier, more muscular. I thought that this girl was -- this girl was coming over to protect Sarah, and I was like, Whoa, here comes the army. I mean, she was a lot, um, ah, I think she was a lot bigger than she is right now. I don't know. But she seemed stockier and more muscular.

Q. Mm-hm. Now, I guess the last really glaring thing is this lady has a black tank top on?

A. Yeah.

Q. And you described a --

A. A white thing with flowers. I was wrong about that.

Q. A white t-shirt with flowers, and again, so my suggestion to you, sir --

A. She could have been wearing something on top of that. I don't know. It's possible. It could have been lost. I don't know.

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Q. There's another possibility though that I wanted to suggest.

A. Okay.

5 Q. You talked about being down, crossing the street from the TD Canada Trust, and as you did so the group grew to maybe eight or nine, ten people. Do you remember we talked about that before lunch?

10 A. The core arguments were between the -- the only, like, war of words were between the people that I've described.

Q. Absolutely.

A. So --

15 Q. And we're not saying you never saw this girl.

A. Right.

Q. But isn't it possible, sir, that there was a third girl down there who did have a white shirt with flowers?

A. No. There's no possibility of that. No.

20 Q. Blue eyes --

A. No.

Q. Sorry?

25 A. There is no possibility on that because once I saw -- once I saw the footage, it just -- everything came back. It was very crystal clear. The

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only possible doubt would be the guy with the jersey
and I have a feeling that that was just my mind,
under stress, creating something that wasn't there.
But there was no other third girl.

5 Q. You'd agree though that you were doing
your best to help the officers and that you, at the
time --

A. I was doing the best to help Ross, yeah.
Not just the officers. Just the whole case. Sure.

10 Q. And at the time, right, the distinct
impression of a white shirt with flowers in your
mind --

A. It wasn't distinct. I was shaky, as I
said before, the clothes were, like, the worst
15 thing. When my mind was focused on talking with them
and things like that, I wasn't thinking about what
they were wearing. It was, hm-mm, like, I was wrong
about all their clothes, so I was consistently wrong
about their clothes but I was right about the sort
20 of stockiness and the bracelet. I remember the
bracelet because I'm pretty sure she hit me when I
was down.

Q. And when Detective Scott repeatedly
reminded you, Don't guess --

25 A. Yeah, you know, I've never been a witness

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before, so I'm not good with, you know, I -- and I've said that over and over and over. I'm embarrassed about a lot of these things that I can't remember that, you know, it happened so quickly. It was just what they were wearing and things like that were just -- are not impressionable on my memories.

Q. So despite the inconsistencies, it's your contention that that girl that you just looked at with the black tank top --

A. Yeah.

Q. -- and the brownish hair --

A. Yeah.

Q. -- is the girl that you consistently talked about as the black haired girl who comes up second?

A. I don't remember saying "black haired" consistently. I might have said it once or twice, but I know she hit me with the bike and I remember seeing a black bracelet thing as I was on the ground getting punched, and that's how I remember that, so it was the same girl that -- that jumped me and started the whole -- started the whole violence.

Q. All right. So we'll go through the next two and then I'll have one or two more questions for you and we'll be done.

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A. Okay.

Q. Does Your Honour have a preferred time to
break? I'm not sure what --

THE COURT: 3:15 or 3:30 normally.

MR. SCARFE: So go another five minutes?

Okay.

---VIDEO PLAYING

MR. SCARFE:

Q. Now, yesterday Mr. Thompson played the
City TV video and we went back over it several times
and he asked you if you saw the Middle Eastern guy
in there?

A. I didn't see him.

Q. And you -- you didn't see him so I'm not
going to bother with that exercise at this point.

A. Okay.

Q. And do you want to take the break now,
Your Honour?

THE COURT: Yes.

MR. SCARFE: Thank you.

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---RECESS (3:24 p.m.)

5 ---UPON RESUMING (3:41 p.m.)

MR. SCARFE:

10 Q. Okay. We're almost done. The last one,
Mr. Dranichak. We're going to play the fifth person
you described. Or the third name.

A. Third man?

Q. Third name.

15 A. Okay.

---VIDEO PLAYING

20 MR. SCARFE:

Q. There we go. So you recall seeing a
blonde haired fellow with an Amish style, grown out
beard and a Kid Rock haircut.

25 A. Well, I said he looked like a little Kid
Rock I guess, but I said he looked like white trash,

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scruffy beard, he was taller.

Q. Mullet?

A. Type of guy that would wear a mullet,
something like that. Yeah.

5 Q. Right. And I think at the beginning,
correct me if I'm wrong --

A. I said he was older. You know, I said he
was around 25 to 28.

10 Q. All right. And at one point in the
beginning you said you don't know if he was the one
who came at you or stayed with Ross. Remember that
right at the beginning?

A. In the video?

Q. Just now. Yeah.

15 A. I didn't hear that.

Q. You didn't hear that.

A. Wait. Can you repeat it?

20 Q. Started out very early in the
description. You said something along the lines of
you don't know if he was the one who came at you or
stayed with Ross?

A. Oops. Oh my God.

Q. It's okay.

25 A. I got it. Here. Ah, I don't know. Sorry
about that.

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Q. If it's any consolation I did the same thing this morning.

A. Okay. I feel better.

5 Um, yeah. I mean, a lot of the guys had blonde, scruffy hair. Um, I was, um, I was a little confused with the guys because my attention was -- was on the girls pretty much so I was doing a lot of mash-ups and whatnot with the guys.

10 Q. At one point you sort of implied you're not even sure if this is a different guy from the first guy you described.

15 A. Yeah, that part was very confusing. Yeah. It was confusing until I saw the video testimony. Then I realized, Oh, that's the older guy and that was the younger guy, and --

Q. Right. By video testimony you mean?

A. No, no. When I saw the video.

Q. City TV video?

20 A. Yeah. When I saw the video, I mean, this was much before that, right?

Q. The description that you gave.

25 A. The description I gave is pretty accurate for the guy that was trying to gouge my eyes and punch me, and I didn't really get into the clothes I don't think, but when I saw the video I knew which

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guy was gouging my eyes because that guy was a lot more -- he was a lot more homeless looking. I mean, that guy was in rough shape. I mean, that guy was, like, he's been on the street a lot longer.

5 Q. So you're saying that this fifth guy -- person, or this third male of the five people --

A. Yes.

Q. -- we've gone through --

A. Yup.

10 Q. -- you're not just confusing him and mashing him together.

A. I might have been. I might have been at the time of this testimony, but afterwards it was much clearer.

15 Q. All right. So once you saw the City TV video, you were able to fill in the blanks?

A. Sure. I mean, the -- the guy was around my back, I was an inch away from him, he was trying to kill me, or blind me, he was trying to blind me, and yeah. That guy was pretty clear.

20 Q. And you started to talk about a white shirt with this guy, then the detective kind of stopped you.

A. I don't -- did he? Okay.

25 Q. Yeah, he didn't want you to guess. He

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thought maybe you were guessing.

A. Yeah, I was horrible with the clothes so, you know, I didn't, um, yeah. Okay.

5 Q. Did the guy who tried to gouge your eyes out have a shirt?

A. I thought at the time he did.

Q. Yeah?

10 A. I think. I don't remember him not having a shirt on or having an unbuttoned shirt, as in the thing.

Q. But if there was a guy walking around Queen Street with no shirt, just a pair of pants on and totally bare chested --

15 A. It was August. I mean, it happens all the time.

Q. True. But you would have remembered that as the guy who tried to gouge your eyes out had no shirt, wouldn't you?

20 A. I don't know if I would have remembered it. It could have gotten ripped off in the fight. I don't know. I don't know what happened after that.

Q. Okay. Fair enough.

A. Or the buttons got ripped open. I don't know.

25 Q. Your Honour, the statement that we just

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played through should be the next exhibit?

THE COURT: 44.

THE REGISTRAR: 44 Your Honour

5

---EXHIBIT 44: Videotaped statement - produced and
marked for identification.

10

MR. SCARFE:

Q. Yesterday you told us that it was Ms.
Kish who rammed the bike into your knee on the south
side of Queen Street.

A. Correct.

15

Q. And you're still confident of that?

A. Yeah, I'm pretty -- yeah. Yeah.

20

Q. Pretty confident. I'm going to go over
two passages of the statement that you gave under
oath to Detective Sergeant Giroux and his partner
six days after this happened.

A. Okay.

25

Q. And for my friend, I'm starting at page
15, and rather than read long paragraphs of
information, I'm going to read an excerpt and then
skip ahead. So starting around the middle of the

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page, you indicated --

A. So when is this from?

Q. This is from the interview that you gave
to --

5 A. The first interview or the second
interview or the preliminary?

Q. Second interview.

A. Okay. Okay.

Q. And that's about six days after?

10 A. Okay.

Q. And that's the one that Detective
Sergeant Giroux was part of.

A. Okay.

15 Q. And about halfway down page 15 of your
transcript, the good transcript, you say:

"It was at this point, you know,
ah, the girl kind of, the girl,
one of the girls on the bike
kind of [something] into me when
20 my knee." Right? Then you go on

to talk about the lap band and everything going
black.

A. Yup.

25 Q. And then Detective Sergeant Giroux asks
you:

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"Is it the same girl on the bike
that came up to you originally?"
And your answer was: "Yeah. It
was her."

5

A. Mm.

Q. "And then there was another
girl with black hair. It was,
ah, she had darker hair. That
was her friend. Like, I -- I --
I'm --"

10

A. I think I was associating her -- her
black clothes to the black hair. That's --

Q. Right.

A. I mean, that's the only thing that would
really make sense.

15

Q. Let me finish.

A. Because she was wearing all black so of
course I'm going to, you know, I would associate it
with her hair.

20

Q. I'm just going to read the whole six
lines to you so you can absorb it all.

A. Okay.

Q. "Yeah, it was her, and then
there was another girl with
black hair. It was -- she had

25

darker hair. That was her
friend. Like, I'm -- they were
both on bikes. I'm a little
unclear on -- I'm -- I'm like
5 75, 80 percent sure it was the
blonde headed girl that kind of
went into me. Like, her bike
came at me and, like, it just,
you know, threw my knee or -- or
10 the tire hit me or [something]
momentum."

A. Right. Well, when I saw the video and I
recognized who was who, I realized that it was
Nicole that ran into my -- that I was wrong there
15 and I was mashing them up and I was associating the
clothes to the hair, but after I saw the video and I
saw the faces I knew the girl that rammed her bike
into my -- into me and, you know, hit me when I was
down -- kicked me when I was down in the head.

20 Q. So you acknowledge being asked those
questions and giving those answers.

A. Yes.

Q. Right. You're saying, I was wrong.

A. Well, I said I was 75 percent, 80 percent
25 sure, so I wasn't giving 100 percent answer there.

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Q. And then the last thing I'm going to sort
of read to you was closer to the end of that
statement, again the one with Detective Sergeant
Giroux, your second video statement, starting at
5 page 53 about half way down the side:

"DRANICHAK: Yeah. Well, they
were both on bikes."

Detective Sergeant Giroux says:

"Okay."

10 And then you say: "There's
another -- there was another
girl, I believe, ah, from my
best memory when we were right
in front of, like, TD Visa, the
15 bank machine there, a girl with
black hair came up. I'm pretty
sure she had her bike leaning
against a post" --

A. Right.

20 Q. -- "and she walked up to us" --

A. Right.

Q. --" when I saw her across
the street, when she kicked me
in the head, or attacking you,
25 whatever, I'm pretty sure she

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5 was on a bike. But for some
reason, like, she was either
walking or she had parked her
bike, leaned it against a post,
she was in the area or
whatever."

And then Detective Sergeant
Giroux says: "Of the two of
them you described" --

10 A. I don't remember -- you said something
about a third girl. I never mentioned anything about
a third girl.

Q. I wasn't mentioning anything --

15 A. You just said that. You said that there
could have been another girl aside from the two. I
never said anything like that. There was two girls.
You said, Oh, and then there could have been this
other girl. There wasn't another girl. It was two
girls.

20 Q. Okay.

A. And she came up, when she initially came
up, she leaned her bike against a post, a metal
post, and, like, a foot away, and came up and talked
to us. That's correct.

25 Q. You know it might be better to play the

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tape --

A. Play the tape.

Q. -- than me try to read out with all the
hums and haws, the tape from your second interview.
5 It's going to take us a few seconds to get up to us
but it will help put things in context.

---VIDEO PLAYING

10

MR. SCARFE:

Q. So again, Mr. Dranichak --

15

A. But she had blonde hair, right? At the
time? She had blonde hair and she hit me. The girl
with blonde hair hit me. I was mixing up the clothes
and the hair as I said before, so a girl with -- the
girl with blonde hair rammed into me.

20

Q. All right. He asked you to -- you had
been talking with him --

A. Right.

Q. -- about a blonde haired girl or sandy
brown haired girl and a black haired girl.

25

A. Mm-hm.

Q. And unless --

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A. Right, I understand what you're saying. I understand what you're saying. I was -- I was -- um --

Q. You understand what I --

5

A. No, I understand where you're coming from, but I know that when I saw the video, I know the person that ran into me and I know the one that kicked me in the head.

10

Q. Let me put it another way. If you had never seen the City TV video --

A. Right.

Q. -- then your evidence, honestly, here under oath --

A. Yeah.

15

Q. -- is that the same girl Sarah --

A. Didn't I say 75 percent on that also?

Q. That was the previous one that I read you before.

A. Oh, okay.

20

Q. So just bear with me because we're right at the end here.

A. Mm-hm.

25

Q. If you had never seen the City TV video, you'd be here under oath telling us that it was Sarah McDermitt with the sandy brown or blonde hair

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that came up to me, asked for money, was the
instigator, and later across the street was the same
girl --

A. Right.

5 Q. -- who ran into me with the bike. Isn't
that right?

A. If I never saw the video? Then of course
I wouldn't, um, I was mashing up the girls and the
descriptions and what they were wearing and
10 whatever, so if I never saw the video, then it would
have been Sarah that hit me with the bike. But if
you show me two pictures of the girls I'm going to
tell you the one that hit me on the bike, so I was
incorrect with this.

15 Q. Thank you, sir. Those are my questions.

A. Okay.

THE COURT: Any re-examination?

MR. THOMPSON: Just a moment please, Your
Honour. I have no further questions, Your
20 Honour.

THE COURT: Thank you, sir. You can step
down.

THE WITNESS: Thank you, Your Honour.

MS. MIDDLEKAMP: Your Honour, the next
25 witness for the Crown is Mystica Cooper.

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---MYSTICA COOPER: AFFIRMED

---EXAMINATION IN-CHIEF BY MS. MIDDLEKAMP:

5 MS. MIDDLEKAMP:

Q. Good afternoon, Ms. Cooper. I'm going to ask you if you can speak as loudly as you can so that everybody in the courtroom can hear what you have to say, okay?

10 A. Okay.

Q. Now, I understand that you were in the courtroom this afternoon?

A. Mm-hm.

15 Q. And do you know for how long you were in the courtroom?

A. Um, like, maybe ten minutes?

Q. And do you recall what was happening in the courtroom while you were here?

A. Not really. I was texting.

20 Q. Okay. And your time in the courtroom, does it have any impact on the evidence that you have to give to the Court today?

A. I wasn't really paying attention, so no.

25 Q. I just want to ask you a couple questions about your background and then I'm going to ask you

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about what has brought you here to court today. Can you tell us how old you are?

A. Ah, 29.

Q. And back in August 2007, the evening of August 8th into August 9, 2007, were you working earlier that evening?

A. Yes.

Q. And what type of work were you doing?

A. I was working at a restaurant as a server.

Q. Did you make plans to meet friends in the area of Queen and Niagara that evening?

A. Yes.

Q. And having been working earlier in the evening, can you tell us if you consumed any alcohol prior to coming down to Queen and Niagara?

A. No.

Q. How did you arrive in that area of the city?

A. On my bicycle.

Q. Did you -- did you come by yourself or with friends?

A. I went by myself.

Q. Do you recall around what time you would have been in that area?

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A. Somewhere between 11:00 and 12:00.

Q. Now, I understand that you made some observations when you were there. Can you tell us what you were doing when you arrived down on Queen and Niagara?

A. I was locking my bike.

Q. Where were you parking your bike? Or locking your bike?

A. Outside of the bar Squirrely's.

Q. And do you recall where Squirrely's is in that area?

A. Um, it's between Bellwoods and -- I'm not so sure of the side streets. On Queen. So east of Bellwoods.

Q. And if you can recall for us, which side of the street is that on?

A. It's on the south side.

Q. And did something happen as you were locking your bicycle?

A. Yes. Across the street there were some people screaming.

Q. All right. And that's the north side of the street?

A. Yes.

Q. Can you tell us, you hear screaming. What

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do you see first?

A. Um, when I looked up I saw four people, um, a male and a female and then two males.

Q. And take us from that point in time. You see this group of people.

A. So I see the male and the female who were beside each other, and then two males who were beside each other, and the female and the male were screaming at the two males together. The female was screaming louder, um, He hit me, somebody hit me, call the police, this man hit me, somebody call the police, don't let him get away.

Q. And what, if anything, were the other two males that you described doing?

A. Um, I don't really remember exactly, but they were responding, um, not, like, I guess they were saying things back but I couldn't hear exactly what they were saying, because of the -- the girl screaming.

Q. And do you recall the tone of voice that they were using?

A. What do you mean?

Q. You've described the girl as screaming?

A. Mm-hm.

Q. What about the males?

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A. He was yelling -- oh, the two males?
Well, they weren't screaming back.

Q. And you told us that the male was
screaming?

5 A. As well, yeah.

Q. All right. We'll describe him perhaps as
the male who is with the female.

A. Okay.

Q. Do you know what he was saying?

10 A. Ah, the same things as her. Somebody hit
her. Or sorry. This man hit her. Not somebody.

Q. And you've told us that you're on the
south side of the street. You're locking your
bicycle. How far away from these people would you
15 have been when you first saw them?

A. So I guess Queen Street is a two lane
street, so I was across on the sidewalk, and they
were on the north sidewalk.

20 Q. So you've told us about the male and the
female screaming and these two -- the other two
males were responding back. What happens next?

A. So the female and the male were screaming
at them, um, and it was sort of this verbal
argument, and there was one point where another
25 female arrived on a bicycle. Um, the fight sort of

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prolonged verbally for a while. At one point the male that was with the female and one of the males that was from the two males together, sort of attacked each other. There was also a point where
5 garbage bags were being thrown from the female and male towards the two gentlemen.

Q. Okay. So I'm just going to get you to break that down a little bit.

A. Okay.

10 Q. You told us about the male and female that were together that were screaming at the two males. At what point in time does this girl arrive on the bicycle?

15 A. Um, somewhere between them screaming, before the garbage bags being thrown. She arrives, um, I guess screaming something as well but I couldn't really tell, and then she came across the street on her bike and asked me for a cigarette and then continued east.

20 Q. And did you have a cigarette for her?

A. No.

Q. When you were outside and she approaches you, was anyone else outside with you?

25 A. There was a gentleman who I believe worked at Squirrely's standing out there as well and

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then random people, but not standing there with me.

Q. Now, this girl that arrives on the bicycle and asks you for a cigarette. Do you recall what she looked like?

5 A. Um, not really, um, but at the time I had said that she had dark hair, she appeared to be Spanish or native, she was on a bicycle, she was wearing shorts.

10 Q. And how long approximately would your interaction have lasted with her?

A. Well, she asked me for a cigarette then rode off, so a few seconds.

Q. Now, you've described the male and female as being together. What led you to that impression?

15 A. Well, they were screaming at the two gentlemen the same thing and they were standing next to each other, so I made the assumption.

20 Q. And you've also described the other two males as being together. What led you to that conclusion?

A. Just because they were standing next to each other and they were sort of arguing back with the female and male.

25 Q. Now, what I want to ask you about at this point is if you recall what the girl looked like who

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was with the male that was screaming at the two
males together.

5 A. Um, so she was just, ah, Caucasian, she
had dirty blonde hair, um, that was in dreads, she
was sort of dressed in loose fitting clothing. Um,
the gentleman as well, sort of loose fitted, sort of
ragged, like, not clean cut at all.

10 Q. Okay. So I'll ask you to just stick with
her. You described that she had dirty blonde hair?

A. Yes.

15 Q. And do you recall anything else about her
clothing?

A. Um, she was wearing a sort of long I
guess hippie-style skirt, and just loose fitted
shirt from what I remember.

20 Q. And what about her approximate age?

A. In her 20s.

Q. And what about her height?

25 A. Um, I don't know. Five six? I'm really
short so it's hard for me to tell. Everyone's just
taller than me, so --

Q. And what's your height?

A. I'm about five feet.

30 Q. Do you recall anything else about her
hair?

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A. She had dreadlocks at the time.

Q. And did she appear to you to be associated to any sort of genre?

5 A. Well, I guess if you were to classify her I would say she sort of looked like a street kid, but not necessarily, like, homeless but sort of like that kind of style, that if you, I don't know if, like, dreadlocks and baggy close could be homeless or not. Street kid.

10 Q. Now, if you could turn to describing the gentleman that was with her.

15 A. Okay. So he was sort of grungy and scruffy as well. I guess he had -- I don't really remember what he was wearing, um, but it wasn't, like, tight clothing or anything, and he was sort of, you know, not clean cut.

Q. And besides his clothing, was he wearing anything else on his person that you observed?

A. Not that I remember.

20 Q. And approximately how old would you have described this gentleman as being?

A. Probably early, mid 20s.

Q. And what about his height?

A. Um, I don't know. Five eight, five nine.

25 Q. And you've talked about these other two

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guys that appeared to be together. How did they compare in their dress and how they appeared to the guy and the girl that you've just described?

5 A. Well, they did not look like street kids. They were definitely more clean cut. Um, average, casual clothing.

Q. And what about the colour of their skin?

A. Ah, I remember them to both be white.

10 Q. And average age? Or approximate age I should say?

A. Mid 20s, late 20s.

Q. And do you recall anything about their clothing?

15 A. Um, not really. Just that it was casual. Maybe jeans, could have been, like, long shorts.

Q. Now, having described these two guys, was there anyone else with these two gentlemen that you've just described?

A. No.

20 Q. Was there anyone else at that point in time -- you've told us about the third girl that rode away on the bicycle. When you first observed the girl and the guy, was there anyone else with them?

25 A. Um, no.

Q. And did you form any impression about the girl and the guy? The nature of their relationship?

5 A. Um, at the time I had thought that they were a couple, but I didn't see anything that would give evidence to that. Just that it was my assumption that they were boyfriend and girlfriend.

10 Q. Now, I understand that your attention was directed at, for some period of time, speaking to the girl on the bicycle who asked for a cigarette. What happens after she leaves?

15 A. Um, at this point I can't remember exactly, like, the exact period or the things that happened in procession, but basically the two gentlemen were sort of kind of trying to get out of the situation and trying to walk away and saying, We're done here. This is over. Um, and at one point the male and the female together and the two males sort of go opposite directions for a few seconds.

20 Q. Okay. So I'll just stop you there. If they're going in opposite directions, which direction is -- are the two males travelling in? The two males that are together?

A. West.

25 Q. And which direction do the guy and the girl go?

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A. East.

Q. And can you give us an idea of how far separated they became?

A. I don't know. Maybe -- maybe six feet, ten feet? Not far.

Q. And when you're making that specific observation where the two groups separate, where are they in relation to your position?

A. I'm still across the street on the south side and they're still on the north side.

Q. And have they moved any distance either east or west from where you are?

A. Um, slightly. Not drastically. But the gentlemen -- the two gentlemen together had moved a little more west and the female and male had gone more east.

Q. So take us from that point in time that you see the two groups separate.

A. So I guess at one point the female that was with the male changed her mind and just turned back around and started screaming again at the gentlemen in which it started to go sort of further west, and then my view was more blocked and I couldn't see.

Q. And you talked about at some point seeing

some physical interaction between them. Can you describe that for us?

5 A. Mm-hm. So basically, I can't remember if it was after she had decided to turn back and -- sorry. From walking east or if it was before that, but at some point one of the gentlemen from the two men that were together, and the gentleman that was with the female, sort of got into a physical fight. It wasn't necessarily punching or kicking, it was
10 sort of like a wrestle and they hit a window. They sort of fell into a window.

Q. And what happened after that?

15 A. So that sort of broke up and, like I said, I can't remember whether that was before she decided -- they decided to go separate ways for a few moments or if it was after. I can't remember. So...

20 Q. And now once the two groups, they've -- they've gone their separate ways and now they're back together. Is there anything that the girl is doing at that -- at that point in time?

A. I believe this is when she was throwing the garbage bags and sort of following them further west.

25 Q. And was she saying anything at that point



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in time?

A. Just the same thing. Don't let this man
leave. He hit me. Same thing.

Q. And did you have any impression about the
way that she was screaming?

A. Um, what do you mean?

Q. The volume? Did it form any impression?

A. It was loud and angry.

Q. And are you able to tell us, you said she
was throwing garbage at them.

A. Mm-hm.

Q. Did anything hit them? Did they react in
any way?

A. Um, I don't think it hit them -- I can't
remember if it hit them or not. It could have, or
one of the bags could have hit them.

Q. So they've come back together. Are they
moving in any direction?

A. West.

Q. After they come back together?

A. Yeah, west.

Q. And what do you see after they start
moving west again?

A. So I heard more than I saw. Just more
screaming. And then at one point I saw the traffic

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5 being blocked, so the streetcar was blocked from moving forward and there was a taxi that was blocked from moving forward that -- and the taxi was going west and the streetcar was going east and I saw her sort of run out into the traffic and was screaming. Um, I wasn't sure if she was chasing one of the gentlemen or -- because I couldn't see because there was lots of parked cars and people, so...

10 Q. Did you see where the two gentlemen that were together went?

15 A. Um, well, they were going west. Um, I didn't see the gentlemen run towards the streetcar and get on, but I saw her run towards there so I assumed that he was chasing her -- or she was chasing him.

Q. And could you hear if she was saying anything at that point in time?

20 A. Just screaming. I guess that she was screaming the same things. Like, He hit me, don't let this man leave, um, but I didn't hear specifics.

Q. Did you make any observations if there were any other people in the area?

25 A. Yeah, there seemed to be a crowd sort of forming around the area, but I couldn't see faces. Just like backs of people.

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Q. And you said that the streetcar was stopped. Which direction was the streetcar going?

A. East.

Q. And do you know approximately what the intersection was where the streetcar was?

A. Ah, I think it's Niagara but I'm not 100 percent on the street, and I think there is a stop.

Q. If I can just direct you to what's been labelled as Exhibit 1 on the trial?

A. Mm-hm.

Q. If you can see it from there?

A. Yeah.

Q. Does this assist you with respect to the location?

A. Yeah. Yeah. So I believe that there is a streetcar stop at --

Q. There is a pointer there on the desk.

A. Yeah? Oh. Okay.

Q. So you can try that. See if that will help you.

A. Oh. Okay. I see. So I believe that there is a streetcar stop here.

Q. So you're just pointing to the corner --

A. Yeah.

Q. -- of Queen Street West and Niagara?

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A. Yeah, and I was over here somewhere.

Q. And where you're pointing right now, you're in between 829 and 831 on Exhibit Number 1?

A. I believe so, yeah.

5

Q. So how far away would you say you were from the intersection at Niagara and Queen?

A. Oh, I don't know. Like I said, it's, like, half a block I guess?

10

Q. Do you remain on the south side of Queen Street?

A. Yes.

Q. And at any point do you walk any closer to make observations?

A. No.

15

Q. So you still have your bicycle there?

A. Yeah.

Q. And you're standing near your bicycle when you're observing?

A. Yeah, and I was having a cigarette. Yeah.

20

Q. Now, you're at the point in time where you're telling us about the traffic being blocked, and you see the girl --

A. Mm-hm.

Q. -- approaching up to the streetcar.

25

A. Mm-hm.

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Q. What else do you see?

A. Um, I just see lots of traffic stopped and the streetcar stopped, and then there was just people in the street, like a crowd of people, and this is at the point where I called the police.

Q. Is there any point in time that you hear a change in -- in a female screaming on scene?

A. Yeah, I heard her scream, or maybe -- sorry. I don't know if it was her. I heard a female scream very loudly at one point, but it was just a scream. It was not words.

Q. And did that continue for a period of time?

A. No. It was like one loud scream, and then there was just, like, commotion, but at that point, after I called the police, I saw a police car arrive and my friends arrived at that point so I went inside the bar.

Q. Now, I'm just hoping you can describe for us a little bit more the reaction of the two gentlemen that were together with regards to what was happening on the north side of the street.

A. Um, it seems as though they were sort of defending themselves, but at the same time that they also were sort of nonchalant about it and kind of

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wanted to get out of there at the same time. I don't know if they -- they didn't seem afraid but they seemed like they wanted to leave.

Q. Did you see any weapons at any point?

A. No.

Q. This girl that you've described as arriving on the bicycle and asking you for a cigarette, did you see her again at any point?

A. No.

Q. And when she left, after she asked you for a cigarette, do you know what direction she went?

A. East.

Q. And you indicated at some point when she was on her bicycle on the north side of the street, that she was saying something to the group?

A. She was -- she said something, so she was sort of closer to the street kids, the male and the female, and I don't know if she sort of started to scream at the two gentlemen as well or if she just said something. It was sort of -- I didn't really hear exactly what was said.

Q. Your Honour, I may be a few more minutes with the witness so what I'd suggest now, if we could, I can check my notes and return tomorrow

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morning.

THE COURT: All right. Thank you. Tomorrow
morning at ten o'clock.

5

---COURT ADJOURNED

(4:30 p.m.)

10

---FRIDAY, JANUARY 28, 2011

---UPON RESUMING

(10:08 a.m.)

15

MS. SIMPSON: Your Honour, if I may, Mr.
Scarfe is not in the room. He has invited us
to go ahead without him for a few minutes
until he arrives.

20

THE COURT: Thank you.

MS. MIDDLEKAMP: Good morning, Your Honour.

THE COURT: Good morning.

25

MS. MIDDLEKAMP: If we can continue with the
examination in-chief of Ms. Cooper. She's in

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the witness stand.

THE COURT: Yes.

MS. MIDDLEKAMP:

5 Q. I just have a couple more questions for
you, Ms. Cooper. Yesterday when you were testifying
you had talked about two guys that appeared to be
together and you referred to their dress as being
clean cut. So if we can refer to them as the "clean
cut guys"?

10 A. Okay.

Q. And then you also referred to a woman and
the gentleman who appeared to you to be together,
and they were dressed in slightly more street
fashion I think you described it yesterday. So
15 perhaps we can refer to them as "street fashion"?

A. Okay.

Q. You had talked about in your testimony
that at some point you had observed a woman dressed
in street fashion throwing garbage towards the two
20 gentlemen that you had described being more clean
cut. And I just wanted to ask you, where did this
garbage come from?

A. It was on the street. Bags of garbage.

Q. So was it that bags that are awaiting
25 collection?



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A. I suppose.

Q. Yesterday I also asked you questions about at the point in time where your view wasn't as good and you couldn't really see what was happening but you could hear things happening, and you talked about hearing a woman scream.

A. Mm-hm.

Q. And do you remember me asking you whether you had heard more than one scream?

A. Mm-hm.

Q. And do you recall your answer?

A. No, I just heard the one.

Q. Okay. Now, I just want to ask you, at this point, do you recall attending the station, the police station, on August 2007 to provide a video statement to the police?

A. Yes.

Q. And when you provided that statement were the events that had occurred fresh in your memory?

A. Yes.

Q. And you have an independent recollection of what happened that night?

A. Yes.

Q. Your Honour, I'm going to ask if I can refer the witness to a specific portion of her

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videotape statement in an effort to refresh her
memory on that point?

MS. SIMPSON: I have no objection.

THE COURT: Very well.

5 MS. MIDDLEKAMP:

Q. I'm going to hand you a clean copy of a
transcript of your video statement that you
provided. I'm going to ask if you can just read on
page 21 of your statement, at the very bottom of
10 your statement where it says "Cooper". If you can
read that paragraph there.

A. Okay. "Now" --

Q. Read it to yourself silently.

A. Oh. Okay.

15 Q. Have you had a chance to review it? Does
that assist your memory with respect to what you
heard that evening?

A. Yes.

Q. Okay. And can you tell us what you heard?

20 A. Just really loud screaming at one point.

Q. And who was -- what type of voice was it?

A. A female's.

Q. And what impression, if any, did that
give you when you heard the loud screaming?

25 A. Well, it sounded like something bad had

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happened.

Q. And was it more than one scream or was it just one?

A. Just the one.

5

Q. Was it a continuous --

A. Um, I mean, it lasted more than one second but it wasn't really long.

Q. Your Honour, those are my questions for the witness. My friend will have questions for you.

10

THE COURT: Cross-examination?

---CROSS-EXAMINATION BY MS. SIMPSON:

MS. SIMPSON:

15

Q. Good morning.

A. Good morning.

Q. I'd like you to turn to what first drew your attention to any difficulties on Queen Street that night. You heard voices, is that right?

20

A. Yes.

Q. Where were they coming from?

A. Across the street.

Q. Across the street north side?

25

A. I was on the south side and the voices were on the north side of the street.

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Q. Were the voices coming from the east or west of you?

A. More directly in front of me.

5 Q. And I understand you're at -- right outside of Squirrely's Bar at that point?

A. Yes.

Q. Which is around 829, 831 Queen you indicated on the map yesterday?

A. Yes.

10 Q. And that is to the east of Niagara, is that right?

A. Yes.

Q. East of the streetcar stop?

A. Yes.

15 Q. And almost directly south of Claremont on the other side, is that right? If you can look at the map?

A. Approximately, yeah.

20 Q. So the voices are coming from around Claremont on the north side of Queen?

A. Yeah, but I think it would be -- I don't remember if it was east of Claremont or west of Claremont.

25 Q. Did you hear only one voice at that point or more than one voice?

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A. Two voices.

Q. Male and female?

A. Yes.

Q. I understand the impression that you took
5 was that the woman in particular was very upset.

A. Yes.

Q. The voice was very loud.

A. Yes.

Q. At this point in time, there's traffic
10 going both ways on Queen, isn't there?

A. Yes.

Q. So she must have been loud if you're
hearing her over the traffic, is that right?

A. Yes. Yes.

Q. The kind of words or comments that you
15 hear are, You hit a woman, this man hit a woman,
this man hit me. Is that right?

A. Yes.

Q. You also heard, Someone call police?

A. Yes.

Q. Somebody do something?

A. Yes.

Q. Don't let him leave.

A. Yes.

Q. She's upset, she's aggrieved?
25

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A. Yeah.

Q. And is it fair to say, from what you first heard, interaction has started before you became aware of it.

5 A. Exactly.

Q. She wanted some official attention to the problem she was having.

A. Yes.

10 Q. At least one of the guys, maybe both of the guys, had done something to her that she was complaining about?

A. Um, I guess so. Not that I saw, but that would be the implication of the screaming, yeah.

15 Q. And that was going to be my question. You didn't see any of the guys do anything.

A. No. No.

Q. As you're looking further east down Queen --

A. Mm-hm.

20 Q. -- you're looking in the dark, right?

A. Well, it was streetlights and...

Q. Is it fair to say you can't see if there are more people or -- with that group or not?

25 A. Um, well, I was paying attention to them so I wasn't really looking east or west.

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Q. Same thing applies west? You weren't looking to see --

A. At that moment in time when I was seeing the screaming and the talking back and forth, I wasn't looking at them.

Q. And is that you talking back and forth with your friends? Or talking back and forth that you see on the other side?

A. I was alone waiting for my friends to come. There was a gentleman who I guess worked at Squirrely's outside as well. We hadn't really spoken yet, at first.

Q. I understand you see a scuffle on the north side.

A. Mm-hm.

Q. That's one of the first men --

A. Mm-hm.

Q. -- and the man that was walking after them, is that right?

A. What do you mean. What do you mean "man...walking after"?

Q. You see a group of two?

A. Yes. Two gentlemen.

Q. And then you see another group of two, a man and a woman?

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A. Yes.

Q. So the scuffle that you see is one of the first two men?

A. Yes.

5

Q. And the man from the second --

A. Exactly.

Q. -- group of two. And you say there was wrestling and they went into the store window, right?

10

A. Mm-hm.

Q. Yes?

A. Yes. Sorry.

Q. Don't apologize. Do you recall whether that store window was on the east or west of Claremont?

15

A. No.

Q. And I understand both the woman and the man throw garbage?

A. Um, I don't know. If it says in here that's what happened then yeah, because at this point I can't remember. I remember mostly the female because she was the most upset.

20

Q. The woman that you spoke of who was most upset, she didn't have a bike. She had to have her hands clear for garbage.

25

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A. Exactly. Yes.

Q. So a woman on a bike arrives from the north side at a certain point, across to the south where you are, is that right?

5

A. Yes.

Q. She asked you for a cigarette?

A. Yes.

Q. I understand that she had also joined this group on the north side at some point previous?

10

A. Yeah. Yeah. She -- it's sort of like she rode over, said something, and then came to the south side of the street to ask for a cigarette.

Q. So she also engaged in this exchange between the four on the north side?

15

A. Yes.

Q. I understand she was also yelling?

A. Not louder than the other female, um, but she was -- she said something. I don't remember what she said. And it was above speaking level.

20

Q. So it wasn't a normal conversational type --

A. Exactly.

Q. Louder than that.

A. Exactly. Yes.

25

Q. When you then look further west, I

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understand a larger group arrives at a certain point?

5 A. Um, when the male and the female and the two males sort of make their way further west, more people seem to have crowded around, yes.

Q. You describe it as, A bunch of people?

A. Yes.

Q. Or a crowd?

A. Yeah.

10 Q. And your impression of the crowd is that these are more what you describe as street people.

A. From what I could see, but, I mean, I can't be certain because I was not close enough to make a judgment on the clothing, so...

15 Q. And you're also not close enough I guess to tell us men, women?

A. Exactly, yes.

Q. So there could be more women in that group that gathers.

20 A. Yes.

Q. So the girl that's being most vocal on the north side, you see her run into traffic on Queen Street, is that right?

A. Mm-hm.

25 Q. So around this point in time that the

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streetcar arrives?

A. Mm-hm.

Q. And the two men are heading towards the streetcar also, is that right?

5

A. I don't know if the two men went to the streetcar. I'm not 100 percent. But I assumed it because the female ran into the traffic towards the streetcar. I know she was chasing them. But I'm not 100 percent.

10

Q. Yesterday you said that you did not see the man run towards the streetcar, is that right?

A. I don't know. Did I say that yesterday?

Q. That's what my note is. It could be wrong.

15

A. Yes. Yes. Okay. Sure.

Q. Did you see the man run towards the streetcar?

A. Not 100 percent sure, no.

20

Q. If it's not 100 percent, more likely? Less likely?

A. I don't know.

Q. Okay. Do you still have your statement up there?

A. Yes.

25

Q. Do you want to turn to page 7?

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A. 7?

Q. See if this, again, assists your memory.
I'm looking at the very last paragraph, again where
it indicates --

5

A. Mm-hm.

Q. -- that you're speaking, and it follows
onto the top of page 8.

A. Mm-hm. Okay.

Q. Does that assist at all?

10

A. Yeah.

Q. The two men headed to the streetcar?

A. Yeah, but it says that I wasn't sure.

Q. Absolutely.

A. Yeah.

15

Q. You then heard the woman yelling at the
streetcar driver?

A. Um, well, she was still screaming but I
don't know what she was saying.

Q. She's screaming near the streetcar.

20

A. Yes.

Q. And the traffic is stopping around her
and around -- is that correct?

A. Yes.

Q. And around other people in the street?

25

A. Yes.

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Q. I understand she's more alone at the front of the streetcar at a certain point. The fellow that she had been with initially wasn't there anymore.

5 A. I couldn't see him anymore.

Q. So your recall, as you're looking west towards that streetcar, is her frame in front of the streetcar. Her body. And the fellow's gone and you couldn't see him?

10 A. Yeah.

Q. She's just in front of the streetcar there by herself.

A. Yes. From what I recall. Yes.

15 Q. So this bunch, this group, that was milling about earlier, they're around somewhere but they're not there stopping the streetcar by herself like the girl.

A. From what I could see, yes.

20 Q. Fair to say it's a confusing scene, the whole thing?

A. Yes.

25 Q. Okay. And the voice of the content of what you're hearing changes at some point, and I think that was the point that my friend was asking you about this morning, is that right?

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A. Yes.

Q. Really loud.

A. Yes.

5 Q. And it's not words anymore, it's just a
scream.

A. Yes.

Q. Your impression was something really bad
had happened?

A. Yes.

10 Q. You didn't see something really bad
happen, did you?

A. No.

Q. This is the impression that you're
drawing from what you're hearing?

15 A. Yes.

Q. And it's not distinct words at the second
point that we're talking about.

A. No.

Q. It's just a yell?

20 A. Exactly.

Q. And it's awful?

A. It's sorry?

Q. It's awful.

25 A. Well, it's loud, yeah. It sounded like
someone was scared, so yeah.

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Q. I understand you saw no serious injury on anybody?

A. No.

Q. Saw no weapons at all throughout this whole incident, is that right?

A. No.

Q. And you saw the wrestling match between the two fellows on the north side?

A. Mm-hm.

Q. But apart from that, you saw no other fights?

A. No.

Q. No other physical contact.

A. No.

Q. After the group moves further west towards Bellwoods, I understand the more -- the girl you described as more vocal was the only person that you saw?

A. Sorry. Can you repeat that?

Q. After the group moved more to the west?

A. Mm-hm.

Q. Towards Bellwoods?

A. Mm-hm.

Q. I understand the more vocal girl was the only one that you saw.

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A. Yes.

Q. I understand she was the focus of your attention most of the time?

A. Yes.

5

Q. Because she was so loud?

A. Yes.

Q. And in fact that when you were asked about clothing for the other people, it's difficult for you to do because you're focusing so much of your attention on her, is that right?

10

A. Mm-hm. Mm-hm.

Q. Now, from where you are in front of Squirrely's, and you stayed in front of Squirrely's the whole time, is that right?

15

A. Yes.

Q. You didn't ever cross to the north?

A. No.

Q. You didn't ever walk back towards the streetcar stop to see what was going on?

20

A. I might have taken a couple steps forward but no more than, like, five feet.

Q. You didn't cross Niagara?

A. No.

Q. And you didn't head the other direction to try to get away either?

25

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A. No.

Q. So you're sort of placed in front of Squirrely's the whole time?

5 A. Well, the conflict was moving away from me so I didn't feel the need to go east or leave.

Q. Your best view, straight across north side, right across from you, is that right?

A. Yes.

10 Q. The front of the streetcar as it pulls up at that stop at Niagara?

A. Yes.

Q. And you also see sort of straight along the south side of the streetcar, is that right?

A. Um...

15 Q. As you're on the south sidewalk?

A. Well, there was parked cars so not -- from what I remember there was parked cars so it wasn't like a clear direct view, but...

20 Q. Do you remember parked cars before or after Niagara? Or both?

A. I don't really remember how many or -- but I remember there being at least one or two on both sides of the streets.

25 Q. So your best view is looking straight across the street north, and when you're looking at

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the front of the streetcar, is that right?

A. Yes.

Q. Now, we spoke a bit about the descriptions of the various people that you recall seeing.

A. Mm-hm.

Q. You described a woman most of all. You've described her having a long, hippie-style skirt?

A. Yes.

Q. Do you remember an Indian-style pattern that you recall?

A. That's what I said at the time, yes.

Q. Do you remember that now?

A. No, but it's been three years.

Q. Hair in dreadlocks.

A. Yes.

Q. Blonde or dirty blonde hair?

A. Mm-hm.

Q. And she looked a bit like a street kid to you, is that right?

A. Yes.

Q. What does that mean?

A. Um, it means somebody who is not wearing a suit, somebody whose clothing is more layered, um, more disheveled looking I guess.

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Q. Bit scruffier?

A. Yeah, but, I mean, it doesn't necessarily mean...

5 Q. You're describing a look, not where she sleeps?

A. Exactly. Exactly.

Q. The man that she was with on the north side had a similar appearance?

A. Yes. To her.

10 Q. Scruffier?

A. Yes.

Q. A street kid, describing the style.

A. Yes.

15 Q. I understand he had a backpack, is that right?

A. At the time I think I said he had a backpack but I don't remember at this point if he did. I said I think at the time I said I think he was wearing a backpack but I wasn't 100 percent.

20 Q. Ripped up pants?

A. Yeah.

Q. Again, dirty blonde hair or maybe brown hair?

A. Yes.

25 Q. And your impression of him is average

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height. Five eight, not particularly tall, not particularly short, is that right?

A. Yes.

5 Q. And thin, though not extraordinarily skinny, is that right?

A. Yes.

10 Q. Then let's talk about the first two men that you see from the north side. These are not people that you would describe as having the street kid style.

A. No.

Q. It's quite distinct?

15 A. I wouldn't say distinct, it's just casual male clothing for, like, I don't know, jeans, t-shirts, but not scruffy is what I meant.

Q. Let me be clear. Distinct from the other two.

A. Yes.

Q. Not distinctive in and of itself.

20 A. Yes. Distinct from the other two.

Q. Medium size height?

A. Yes.

25 Q. The male street kid we talked about a moment ago, you recall him being somewhat taller, right?

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A. Yes. At the time.

Q. And I understand these two men are both very similar in their appearance, in their clothing, is that right?

5

A. Mm-hm. Yes.

Q. Black t-shirts both?

A. Um, I don't remember if they were both wearing black t-shirts. I just remember I said in here at least one was wearing a black t-shirt.

10

Q. Jeans both?

A. I think so but I'm not 100 percent.

Q. And then the last person that you can describe clearly or more clearly --

A. Mm-hm.

15

Q. -- is the girl that you saw on the bike, is that right?

A. Mm-hm.

Q. Dark brown or black hair?

A. Mm-hm. Yes.

20

Q. Shorts?

A. Yes.

Q. And I understand you don't recall beyond that the colour of her clothing.

A. No.

25

Q. Lighter skin?

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A. Um, I think at the time I said that she was either Spanish or Native, but I couldn't be sure.

5 Q. So fair to say then Caucasian but with a darker white skin?

A. Olive skin tone, darker.

Q. That's better. Medium average frame, again not terrifically skinny.

A. No.

10 Q. We've described five people now. I understand that does not exhaust the group on the street that night, is that right?

A. No.

Q. There are others that you can't describe?

15 A. Yes.

Q. Your impression was also falling into the street kid group?

A. Yes.

Q. Maybe other men?

20 A. Maybe.

Q. Maybe other women?

A. Maybe.

Q. You just can't say.

A. Exactly.

25 Q. Thank you, ma'am. Those are my questions.

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THE COURT: Re-examination?

MS. MIDDLEKAMP: No thank you, Your Honour.

THE COURT: Thank you, ma'am. You may step
down.

5 THE WITNESS: Thank you.

THE COURT: Crown's next witness?

MS. MIDDLEKAMP: Yes, Your Honour. The next
witness for the Crown is Laura Quigley.

THE REGISTRAR: Sorry?

10 MS. MIDDLEKAMP: Laura Quigley, please. Your
Honour, if I can advise the Court at this
point in time as well, this is the last
witness that the Crown has scheduled for
today. We had another witness, and we advised
15 our friends yesterday, who has childcare
issues for today and he cannot be here.

MR. SCARFE: That is true. My friend did call
me last night and indicated that and we
discussed the merits of starting another
20 witness out of order, and then interrupting
because we have a Ms. Stopford. We have a
witness coming on Monday from Ottawa. She is
an important witness. She knows one of the
other witnesses and so we did weigh the
25 merits of filling in this afternoon but

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thought better of it. So I join my friend
in...

MS. MIDDLEKAMP: Your Honour, we have
arranged for a flight to come in for Sunday
and that's the difficulty that we experience
with scheduling at this point.

THE COURT: All right. Thank you.

MS. MIDDLEKAMP: Thank you.

THE REGISTRAR: Could we have the witness,
please?

THE WITNESS: Sorry. I'm just turning my
phone off. I apologize.

THE COURT: It's all right, ma'am. Thank you.

---LAURA QUIGLEY: AFFIRMED

---EXAMINATION IN-CHIEF BY MS. MIDDLEKAMP:

MS. MIDDLEKAMP:

Q. I'm going to ask you, Ms. Quigley, if you
can project your voice so that everybody in the
courtroom can hear what your answers are to the
questions that I have for you.

A. Yes.

Q. I just want to ask you a couple questions
about your background. Can you tell us how old you

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are?

A. I'm 34 years old.

Q. And back in August of 2007, were you
working in the area of Queen and Niagara in Toronto?

5

A. I was, yes.

Q. Where were you working?

A. I was working at a restaurant called
Terroni.

10

Q. Do you remember what the address is of
Terroni?

A. No, I'm sorry. I don't know the exact
address.

Q. Where is it located?

15

A. It's located on Queen, um, between
Niagara and -- I don't know. I'm sorry.

20

Q. Okay. We have a map that we can show you
that may assist you with respect to the location.
I'll get the map up on the screen, but we also have
a larger size version. This is Exhibit 1 on the
trial. Does that assist you with respect to the
location?

A. It does. I just can't read the names of
the streets. It's too far. Can I come over and look?

25

Q. We'll see -- it should come up -- it's
right on the screen.

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A. Oh okay. So it's between Euclid and Manning on Queen Street. No. It's between Manning and Claremont Street.

Q. All right. And which side of the street?

5

A. It's on the north side of the street.

Q. And looking at that map that you have on the screen, Exhibit 1, would you say it's closer to Claremont or Manning?

A. Um, it's a little closer to Claremont.

10

Q. And on the evening of August 8, 2007 into the early morning hours of August 9, 2007, were you working at Terroni?

A. I was.

15

Q. And do you recall what time your shift would have ended that evening?

A. At about midnight. It was just a little before midnight.

Q. And once you finish your shift, were you preparing to leave?

20

A. I was, yes.

Q. And what type of transportation were you using?

A. My bicycle.

25

Q. Now, I understand that you were outside of Terroni unlocking your bicycle?

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A. I was, yes.

Q. And was that in relation to having finished work and being on your way home?

A. Yes.

5

Q. Now, can you take us from that point in time? I understand that you made some observations when you were unlocking your bicycle after work.

10

A. Yes. I left work and, um, and as I was unlocking my bicycle I heard a woman screaming and so I looked to the direction of where I heard the screams.

Q. And which direction were the screams coming from?

A. They were coming from the east.

15

Q. And at that point in time, did you have any impression of how far away the screams were from you?

A. A few blocks away. It seemed like a few blocks.

20

Q. Had you parked your bicycle right in front of the restaurant or was it east or west of the front of Terroni?

A. It was a little east of Terroni.

25

Q. You hear a woman screaming. Are you able to make out any words or is it just screaming that

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you hear?

5 A. At first it's just screaming, and then, um, and then -- so I looked over to where I was hearing the screams, and, um, and I saw that the woman had been pushed and she got up, back up right again quickly, and then I made out some of the screaming.

10 Q. Okay. Now, I'm just going to ask you a little bit more about what you just said. You said you looked toward the scream and you saw a woman pushed. How far away from you was the woman?

A. A couple of blocks.

15 Q. And just describe exactly what you saw. Your impression was that she had been pushed. What did you see?

20 A. Yes, my impression was that she had been pushed. Um, she had fallen, it looked as though she had fallen sort of over the curb and on to her bum, so somebody had -- looked like somebody had pushed her from the front. And then she got right back up immediately, um, yes. That's what I saw.

25 Q. Now, you told us that you're on the north side of the street unlocking your bicycle and you're looking towards the east. When you see this woman, which side of the street is she on?

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A. The north.

Q. Is she on the sidewalk or on the street?

A. Um, it looked like she had been pushed
sort of over the curb, so on the sidewalk and close
to the street.

Q. And when you see this woman fall, was
anyone around her?

A. Um, yes, there was. There were two guys
that I saw who seemed to be the ones who had pushed
her. I couldn't tell who exactly.

Q. And so at that point in time do you just
see three people or is there anyone else in the
immediate vicinity?

A. There are four people in general that I
see.

Q. Now, you've described two guys, one of
them seemed to be the one who had pushed her. What
led you to that impression?

A. That one, particular one, had pushed her?

Q. Or just that there were two guys and that
one of those two guys had been the one that had
pushed her.

A. Because they were in front of her when
she was on the ground.

Q. So you have two guys that are in front of

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this woman?

A. Yes.

Q. You have the woman who's fallen towards
the curb?

5

A. Mm-hm.

Q. And you indicated that there was one
other person there.

A. Yeah. Somebody that seemed to be with
her.

10

Q. Okay. And was that a male or a female?

A. A male.

Q. Now, at this point in time I'm just going
to ask you to describe these people so we'll go
through that. I understand that you do make some
other observations of them later on and they're
closer to you, correct?

15

A. Mm-hm.

Q. So at this point I'll just ask you to
describe them. The two guys who you had thought one
or the other had been the one that had pushed her
that were in front of her?

20

A. Mm-hm.

Q. Were you able to differentiate between
the two of them?

25

A. Not at this point, no. And in general

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the two guys, not at all really.

Q. Can you give us a general description of the two men? First of all, were they -- what was the colour of their skin?

5 A. Ah, they were two Caucasian men.

Q. And their clothing?

A. Their clothing, ah, was like they were going to a bar or something. I remember -- I don't remember specifics, like, if they were wearing jeans or if they were blue jeans or black jeans and I don't remember really the colour of their tops, but it seemed like, you know, dressed up to go have an evening kind of thing. Like casual -- casual clothing.

10

15 Q. And what about their shirts?

A. I -- I don't really remember.

Q. Generally the style? Can you recall?

A. Um, I don't remember if they were t-shirts or dress shirts to be honest.

20 Q. And just general colour? Light or dark clothing?

A. Um, at the time, looking back on my testimony, I had said that I thought that they were wearing dark clothing.

25 Q. Were you able to observe either of their

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hair colour?

A. Not really. I thought dark. I thought they both had dark hair.

5 Q. And so you've described them as wearing sort of casual bar clothing. Now, I'm going to ask you if you can describe the woman that you saw who was pushed near the curb.

10 A. Um, she had -- she was shorter than I am, so maybe five -- between five four and five five, um --

Q. What's your height?

A. I'm five six and-a-half.

Q. Okay. What was the colour of her skin?

A. She's Caucasian.

15 Q. Were you able to observe the colour of her hair?

20 A. Um, it seemed like there was a bit of blonde in it, um, but there was some dark as well. Like it had been died and there were roots, and it seemed to be in dreadlocks, um, and it was tied back.

Q. And did you make any observations of the clothing that she was wearing?

25 A. I did. Like a, um, some kind of patched together dress-type of thing.

Q. And you describe it as a patched together dress. What sort of led you to that conclusion that it was patched together?

5 A. Um, it just -- it looked like maybe it was brownish in colour and it looked like -- like a -- like a hippie-type style kind of patched together thing.

Q. Was there anything else that you observed about her?

10 A. Um, about the way she looks? No.

Q. You've also described that there was another male with her who appeared to be with her.

A. Mm-hm.

15 Q. Were you able to observe the colour of his skin?

A. He was also Caucasian.

Q. And did you observe what he would have been wearing as a shirt or his pants?

20 A. Um, similar in style to hers, which helps me to differentiate those two from the other two guys. Um, he seemed tall and thin.

Q. And in terms of the condition of their clothing, did it appear to you to compare in any way to the other guys?

25 A. Yeah. They -- like, street kids. Like

they were dressed in, you know, to hang out on the street kind of thing.

5 Q. Okay. So comparing the two guys that you described and the girl and the guy, you've referred to the girl and the guy more as street kids?

A. Mm-hm.

Q. And how would you describe the other guys then in comparison?

10 A. Ah, like, business guys who were going out for a night kind of thing.

Q. All right. So if we can refer to the two gentlemen as business guys and then the female and the male as street kids.

A. Okay.

15 Q. If you can take us from the point in time you just told us about, having seen the woman fall to the ground and your impression that she was pushed by one of the two business guys.

20 A. So I saw that she had been pushed and, um, that she had fallen, and my reaction was to go and help her. Um, but I had my purse in my basket of my bicycle and so between going to get my purse and making sure that my bike was locked up to go and help this woman, um, I -- I decided not to go to her
25 aid because it seemed that she got right back up and

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5 she was okay physically, ah, and it also seemed as though she and her friend were pursuing the other two guys. The other two guys seemed to want to get away, were walking away, and -- and so I wanted to observe because a woman was involved and I was still concerned for her, but I decided for my own safety not to get involved and go and help this woman because she seemed okay.

Q. Now, you see her get up?

10 A. Mm-hm.

Q. And you're forming the impression that these guys want to get away. Does the group move in any direction?

15 A. They start to come more toward me, so they're walking west.

Q. And you've sort of described the street kids and the business guys. Are they all together at this point or is there a separation between the two groups?

20 A. Um, there's a separation. The business guys seemed to have, um, gotten away. As soon as the push happened, they -- they left and they started to walk away, um, and the girl and her friend, um, were walking toward them, toward me, and then I noticed
25 them picking up garbage. Like, it must have been

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garbage day, and so they were picking up garbage bags and throwing them at the two business guys who were walking away from them.

5 Q. Did you hear whether the woman, the female street kid or the male street kid, were saying anything to the business guys when this is happening?

10 A. I heard the woman yell repeatedly, I can't believe you're just going to walk away. They're just going to walk away. Looking back on my testimony I, um, I also said I -- He hit me. I can't believe they're going to walk away. He just hit me.

15 Q. Do you recall if the male street kid was saying anything?

15 A. I don't recall him saying anything.

Q. What about the business guys? Do you remember if they responded in any way to what she was saying?

20 A. I -- no, I don't think they -- I don't think they were responding.

Q. And you said that they're moving towards you, which would be in a westerly direction, correct?

A. Yes.

25 Q. What's the pace of events? Are they

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walking quickly or --

A. It seems to be happening quickly enough.

Um...

Q. Okay. When you're telling us about having
5 seen the female and male street kids picking up
garbage and throwing it towards the business guys,
how far away from you are they at this point in
time?

A. They get, um, close enough, like, you
10 know, from Euclid toward Manning - excuse me - but
by the time they get to around Manning Street, the
business guys are not on the sidewalk. I don't know
how -- when they get off the sidewalk but they're
walking -- I notice that a streetcar has pulled up
15 and they're walking toward a streetcar.

Q. Okay. So just using Exhibit 1 on the
trial, does that assist you with respect to where --
you can look at your screen or the big screen. Does
that assist you with respect to where the streetcar
20 you are referring to pulls up?

A. Yes, the streetcar has pulled up to
Niagara and Queen West. That's where the stop is.

Q. And which direction is the streetcar
facing?

A. It's going east.
25

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Q. So that would be on the south side of the street?

A. Mm-hm.

5 Q. Does the group of four people that you've described actually cross in front of where you're standing with your bicycle on the north side of the street?

10 A. Yeah, they -- they -- they're not on the sidewalk. They never get really close to me on the sidewalk. They're in the middle of the road.

Q. Okay. But at the point in time that you observe the two street kids throwing garbage bags, they're still on the sidewalk?

15 A. I think the street kids were on the sidewalk and I think the business guys are on the street.

Q. Okay. And do you see the business guys cut across the street?

20 A. Ah, I don't specifically notice them crossing the street, but I see them on the street and walking toward the streetcar.

Q. And during this time that you're making your observations, are you staying by your bicycle or have you moved in any way?

25 A. I stay by my bike.

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Q. And as you're watching this unfold, are you becoming concerned about what's happening?

A. Yes. Um, I become concerned and I -- there were still people who were finishing up at Terroni, um, and so I opened the door at one point and asked somebody to call the police and said that there was a fight that seemed to be getting out of hand.

Q. And in terms of what you've already described to us, do you remember at what point in time you would have gone into the restaurant to draw other people's attention to what you're observing?

A. Um, specifically I don't remember. Yeah.

Q. All right. So if you can take us from the point in time you had the impression the two men were heading towards the streetcar.

A. Yeah. So that's -- this -- from that point on it's difficult for me to remember specifics because -- because I had gone into Terroni to open the door and at one point somebody who I work with had come out and was standing next to me and calling the police. There was a girl who walked up to me and asked what was happening, so and it seemed chaotic. What was happening in the middle of the street seemed quite chaotic.

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Q. Okay. So if you can -- we'll just break it down. You formed the impression that the two men were heading towards the streetcar. Were you able to see whether they got onto the streetcar?

5 A. Ah, I noticed that they didn't get onto the streetcar. Um, and I don't know how they didn't get onto the streetcar because it was clear to me that that's what they were doing. I don't know if they waved it but -- but it was clear that they were
10 leaving and getting on a streetcar and suddenly they weren't. Um, and -- and I noticed, I guess it must have been after I had opened the door to Terroni, I noticed -- I don't know if it was one of the guys but I had noticed that somebody had been dragged.
15 Somebody was lying kind of limp on the ground and had been dragged onto the sidewalk.

Q. Okay. Now, you notice this person getting dragged onto the sidewalk. Which side of the street are they getting dragged on to?

20 A. Ah, they are on the north side of the street, and I'm on the south side of the street.

Q. You're on the north --

A. I'm on the north side and they're on the south side. Yes.

25 Q. So what sort of view do you have? You

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talked about the streetcar being stopped at Queen
and Niagara?

A. I don't have a good view. The streetcar
blocks quite a bit of my view.

5 Q. So you see this person getting dragged
toward the south?

A. Yes, I see the person getting dragged
toward the sidewalk.

Q. Did you see who was dragging this person?

10 A. No.

Q. But the --

A. I couldn't see their bodies because -- I
couldn't see this person's whole body. I saw this
person's legs and their feet.

15 Q. And from what you saw, was this person
moving?

A. It looked like their body was limp.

Q. And so you see this person being pulled
onto the sidewalk, and what do you see after that?

20 A. Um, 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
25 there is a bicycle and a little bit of blood on the

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street sort of near to where I -- a little bit west
of where I am. I see that. And I also -- my friend
said to me --

5 Q. Okay. So we won't ask you to testify
about what anyone told you.

A. Yeah.

Q. Just about the observations that you
actually made. Now, once you see this guy dragging
onto the sidewalk --

10 A. Mm-hm.

Q. -- what's happening? Is there anything
happening on the other side of the street or --

15 A. It seems as though there are more street
kid friends who have gathered around. Um, and they
are west of me on the same side of the sidewalk and
they're on the sidewalk, and the girl goes toward
them or is brought toward them.

Q. And where is she brought towards them
from?

20 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?

25 A. Oum, not -- it just seemed chaotic.

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Q. But by chaos, is -- what's chaotic? What are people doing?

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

5 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?

10 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.

15 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.

20 Q. And how does this -- okay. So you're referring to --

A. There was also a taxicab, and that happens before the girl goes to the side of the street I think.

25 Q. The streetcar is parked, um, on the south

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side of the street facing east, so is there other westbound traffic that you're observing when you're there?

5 A. Yes. This is why I was going to bring up what my friend said, because I was going to bring up what my eye focus did at that point.

Q. So we just --

A. I won't say what my friend --

Q. Just tell us what you saw.

10 A. So I saw, um, I saw -- it seemed like the same two guys were trying to get into a taxicab, and I saw the taxicab further down. There seemed to be some traffic.

15 Q. Okay. And then you indicated to us that it was your impression the fight ended when you see this girl get taken from the middle of street to the north side, correct?

A. Yes.

20 Q. When you're referring to "this girl", you've described another girl earlier on in your testimony who you saw fall to the curb, and that she was in more of a street kid style.

A. Yes.

25 Q. Is this the same woman that you described earlier?

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A. Yes.

Q. Okay. So did you see people coming to her aid?

A. She had people with her. She -- her other friends I suppose were with her.

Q. Okay. So she's going from the middle of the street to the north side?

A. Yes.

Q. And do you recall around where on the north side of the street that she went?

A. Um, I think, um, Claremont and Queen, um, close to Claremont Street.

Q. And did she come up onto the sidewalk.

A. Yes.

Q. Now, do you recall giving a statement to the police on August 14, 2007? You went into the police station and gave a videotape statement?

A. Yes.

Q. And when you were -- when you gave that statement, were the events fresh in your mind?

A. Yes.

Q. Okay. And you have -- do you have an independent recollection of the events that night?

A. I -- I have a difficult time remembering the events that night.

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Q. But you do have some memory of what you saw?

A. I do have some memory, yes.

5 Q. Your Honour, I'm going to ask to refresh the witness's memory with this specific portion of her statement with respect to the location?

MS. SIMPSON: Again, I have no objection, Your Honour.

10 THE COURT: Very well.

MS. MIDDLEKAMP:

15 Q. I have a copy of your statement here. I'm going to ask you to read from page 39. I'm just going to ask you to just read to yourself this paragraph where it says "Quigley" on the top of your page of 39 of your statement?

A. Okay. You'd like me to read it allowed?

20 Q. No, just read it to yourself and then I will ask you if it assists you with respect to refreshing your memory. Have you had a chance to read that over?

A. Yes.

Q. Okay. Does that assist your memory with respect to where the girl was taken to the sidewalk?

A. Um, where -- where? Yes.

25 Q. Okay. You reference something regarding a

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boot shop?

A. Yes.

Q. Okay. Just on the map, does that help
you? If you think of that, does that help you of
5 where that would have been?

A. Yeah. I think the boot shop is west of
Claremont Street before Bellwoods on the north side
of Queen Street.

Q. Okay. So you see this woman on the north
10 sidewalk with other people, and do you see anything
after that? What do you do after you see her on the
north sidewalk?

A. When I see her I -- it's clear that
things have calmed down at that point and I want to
15 get out of there, and I know that the police are
coming, I hear sirens and so I -- I got on my bike
and, um, and headed toward home.

Q. Okay. I just want to ask you a little bit
more. You said that you saw blood on the ground and
20 you saw a bicycle?

A. Mm-hm.

Q. Okay. So where was that?

A. Ah, I think -- I mean, it's around
Claremont Street. Um, Claremont and -- and it's on
25 Queen Street.

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Q. Would it be on the north side or the south side of the street?

A. North.

5 Q. All right. And you've talked about this woman, the street kid girl that you saw from the beginning going over to the north sidewalk. Before that time, had you seen anyone else on the sidewalk? On the north side?

A. I hadn't noticed anyone else.

10 Q. So you figure that things have subsided?

A. Mm-hm.

Q. And you get on to your bicycle?

A. Mm-hm.

Q. Do you ride home?

15 A. I do. Yes.

Q. Which direction do you travel in when you're riding home?

A. West.

20 Q. Do you ride past what -- the area that you've just described to us?

A. I ride past that area, I, um, I was going through Trinity College Bellwoods Park and so I passed Bellwoods and then got up the hill toward, um, toward home.

25 Q. So when you passed by the area around

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Queen and Niagara that you described where things were happening, do you make any observations?

A. I didn't look that way. I didn't...

Q. Were people still in the area?

5 A. Ah, it seemed so. I did make an observation at Bellwoods and Queen though.

Q. Can you tell us about that? You're biking westbound. Are you on the north side of Queen?

10 A. I am.

Q. And you pass by the area of Queen and Niagara?

A. I do. I pass by Queen and Niagara and then head toward Bellwoods.

15 Q. Okay? And what do you see as you're heading towards Bellwoods?

A. Um, on my right side, so on the sidewalk, I see a man lying on the ground, um, and he appears -- he appears hurt. He has, um, two other men with him. Um, the two other men seem to be looking -- don't seem to be. The other men are looking east and sort of toward -- toward where things occurred. Um, and yeah. And I kept going because it seemed that he had somebody with him and I wanted to get out of
25 there.

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Q. Okay. Did it appear to you that he was
conscious or --

A. He seemed to be unconscious.

5 Q. And in terms of the first two gentlemen
that you've described to us, the business guys, did
you form any impression as to whether or not it was
one of those gentlemen, or are you able to say?

10 A. It seemed as though they -- yes. I
assumed that he was from the first two gentlemen.
That he was one of them.

Q. And as you're biking by, about for how
long did you make observations for?

15 A. I slowed down certainly because I sort of
want to make sure that there was somebody with him.
I didn't stop, so I -- was that the question? How
long did I observe it for?

Q. About how long did you observe him as you
were biking by?

20 A. A minute. I was on my bike so I was still
moving, but I slowed down and looked at him and
looked to see that he -- that the two people that
appeared to be looking the other way, I made sure
that they were with him, that they were looking at
him and were with him, before I continued on.

25 Q. Now, I just want to ask you if I can, at

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the point in time where you're unlocking your
bicycle and you first hear a female screaming,
approximately how much time passes until you see the
same woman being taken to the north side of the
street? And just approximately.

5 A. Ten minutes?

Q. And you told us earlier that when the
transition was happening, you saw her on the
sidewalk and then the movement towards the
streetcar, it appeared to you to be happening
quickly?

10 A. It did.

Q. I just want to ask you a question about
where you were standing on the north side of Queen
Street and making your observations between Queen
and Niagara and Queen and Claremont. What's the
lighting like in that era?

15 A. There are streetlights and store front
lights, so it's pretty well lit, so even though it's
dark and nighttime, it's lit.

20 Q. When you made your observations of the
woman who you believed to have been injured, did you
hear her say anything at that point in time?

A. Um, I don't remember.

25 Q. Okay. Do you remember if she was saying

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anything or yelling or --

A. She seemed to be constantly speaking, screaming and...

5 Q. And were you able to observe whether or not this woman was bleeding?

A. Yes. She appeared to be bleeding. Um, she was holding her arm and it seemed like there was a lot of blood coming from her arm.

10 Q. And if you can just -- how are you able to see that from the distance that you were watching from?

15 A. I kept my eyes on the woman, and so I think that's part of why I had a hard time seeing lots of things that happened. I kept my eyes as much I -- when my focus was there, my eyes, I -- was on the woman, and so I just -- I saw. She was maybe ten feet away from me, maybe 15.

20 Q. And you did indicate for yourself that there is a fight going on and that you don't like to watch fights?

A. Yes.

Q. Those are my questions for the witness, Your Honour. My friend will have some questions for you.

25 A. Okay.

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THE COURT: Cross-examination?

---CROSS-EXAMINATION BY MS. SIMPSON:

5

MS. SIMPSON:

Q. Good morning, Ms. Quigley.

A. Good morning.

10

Q. The female voice that you hear yelling at the very beginning, I understand she's voicing a complaint, is that right?

A. Yes.

Q. You hear, You're just going to walk away? You hit me in the head.

A. That's right.

15

Q. And I also understand that what you saw was an argument between a woman and a man and two men, is that right?

A. Um, I guess you could put it that way, sure.

20

Q. I don't want to put words in your mouth. Is "argument" fair?

A. Ah, it seemed at first that it was an argument and then it seemed like a pursuel [sic] afterwards.

25

Q. Focusing on that initial phase, she gets

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pushed down to the ground, is that right?

A. She does.

Q. And the reason why I was asking you about
an argument is you see some words or some
5 interaction, something coming from the first two men
also.

A. I don't see words coming from the men.

Q. Hear them. Do you perceive them
interacting in any way?

10 A. I didn't notice an extended argument, no.
I -- I did see the woman pushed, which is why I
immediately, um, watched, because I was concerned
for the woman.

15 Q. And I understand it's either a push or a
punch in fact.

A. I didn't see a punch. I did -- in my
statement that I reread, I at one point said I think
she said, He punched me in the head.

20 Q. So you think that was what you heard
rather than what you saw with your own eyes.

A. I definitely never saw a punch with my
own eyes.

Q. Do you still have your statement up
there?

25 A. I do.

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Q. Do you want to take a look at page 22,
about half way down, and there's no numbering on
this so --

A. There is numbering. I just found the
numbering.

Q. Oh, you found numbering?

A. Oh sorry. Page numbers. Okay.

Q. I'm wondering if I can just read this out
loud if my friend doesn't have any objections. It's
one question and answer, because I can't figure out
a way to orient the witness's attention to this.

MS. MIDDLEKAMP: No objection, Your Honour.

MS. SIMPSON:

Q. The question that the officer asked you
is:

"Now, when he -- the pushing, is
it a push or is it a punch?"

Do you see that?

A. Yes, I do.

Q. And your answer is: "I don't know." Is
that correct?

A. Yes, that's right.

Q. So at that time, closer to the event, you
can't say either way, either push or punch, is that
fair?

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5 A. No. No. It's -- I can't say. I just -- I said that I definitely never saw a punch, and I didn't see the push either. What I saw were two -- the two -- one or two bodies leaning over as if they had either pushed or punched her. I'm not sure. And the woman who had fallen down, I didn't see the action that led her to fall down, and then I saw her get back up.

10 Q. So when you indicate "I don't know" during this interview with the officer, what you're trying to express is could be push, could be punch, I don't know, she fell.

A. That's right.

15 Q. Is that a fair summary?

A. Yes.

Q. Okay. The garbage bags are being thrown by both of the second two, is that right?

A. I think so.

20 Q. And this is not little scraps that are on the sidewalk, like an empty coffee cup. This is the full bag --

A. These are bags.

Q. -- that they're tossing.

A. Yeah.

25 Q. And it's both the man and the woman that

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are throwing the garbage bags?

A. I can't be sure. I don't remember exactly. I don't know if maybe I said it was both in my statement or not, but...

5 Q. Do you want to take a look at page 24 and see if that helps you?

A. Sure.

Q. It's the first line that you speak for four lines instead of just a one liner.

10 A. The first line --

Q. The first time that you speak for four lines? There's more a block of your words?

A. Yeah. So the two.

15 Q. Does that assist you in refreshing your memory about whether it was only one or whether it was both that you saw throwing garbage?

A. It doesn't refresh my memory actually. I don't remember seeing the garbage bags being thrown but --

20 Q. This is certainly what you said when you gave the statement on August 14th?

A. Yes.

Q. You were trying to be accurate and thorough?

25 A. Absolutely.

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Q. August 14, 2007 is a lot closer to the events than we are today?

A. That's right, yeah.

Q. Are you willing to adopt this --

5

A. Absolutely.

Q. -- as a true statement?

A. Yes.

Q. Both people were throwing garbage.

A. Yes.

10

Q. You don't ever see a bike, do you?

A. I don't ever see a bike, do I? Is this -- I have my --

Q. Sorry. Amongst the group of four.

A. Oh. Not that I can recall.

15

Q. Again, if there's garbage being thrown, that would require both hands so there couldn't have been logically, is that fair?

A. I don't know. I mean, I don't know. But I don't remember seeing a bike.

20

Q. Then you see the streetcar arrive at the stop at Queen and Niagara, is that right?

A. Yes.

Q. On the south side?

A. Yes.

25

Q. Streetcar headed east?

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A. Yes.

Q. So it's across the street from you?

A. Yes.

Q. You're looking toward the front of the
5 streetcar.

A. I am.

Q. You see both men heading then, the
initial two men, heading towards the streetcar?

A. Yes.

10 Q. And they approach those doors at the
front but don't get on, is that what you recall?

A. Yes. I can't see the doors from where I'm
standing but yes, they go and approach the streetcar
to get on and then I notice they don't get on.

15 Q. That's where they are heading towards on
the streetcar, is the area where you know the doors
are on the far side.

A. Yeah.

20 Q. So you don't know why they don't get on.
You can't say one way or the other?

A. I don't know.

Q. You don't see it.

A. That's right.

25 Q. But you don't actually see them get onto
the streetcar.

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A. I don't.

Q. And it's both men that you see walking towards that streetcar, is that right?

A. Mm-hm. Yes.

5 Q. I understand the next memory that's clear in your recall is this person that's lying on the south side somehow.

A. Yeah.

10 Q. And you have no view whatsoever of how they got there on the street.

A. None.

Q. And again, streetcar would be between you so you can't help us at all and help His Honour at all about how that person came to be on the street?

15 A. No.

Q. And that person on the street is being dragged up on to the south sidewalk?

A. Yes.

Q. Is that right?

20 A. That's right.

Q. You can't see who's doing the dragging?

A. I can't.

Q. So you can't describe the people, or person, doing the dragging at all?

25 A. No.

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Q. Could be male or female?

A. I -- I wasn't really -- I don't know.

Q. Is that a yes, could be male or female?

A. Oh, yes, it could be male or female. I
5 thought you were asking me to say which one.

Q. You can't say.

A. No.

Q. Okay. You start with the group of four
that you perceived, is that right?

10 A. Yes.

Q. And then there's -- there seemed to be
more people in the street. More people arriving, is
that right?

A. That's right.

15 Q. And I understand it's almost more street
kids that you seem to perceive arriving, is that
right?

A. Seems that way, yeah.

20 Q. And again, let me ask this: Is there any
way you can give us a number. An estimate?

A. Ah, I think involved in the situation was
maybe four to six -- no, well, six -- maybe six
people in total.

25 Q. And your number there, it's no way a
fixed number, is it?

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A. No way.

Q. There could be more people on the sidewalk, more people on the street, you're not there doing a count.

5 A. No, I wasn't at all doing a count.

Q. Okay. And I gather you can't give us descriptions of these other people that are arriving either, can you?

A. Not clear, detailed descriptions, no.

10 Q. And again, additional street kids that arrive, could be male, could be female, could be both, is that fair?

A. That's fair.

Q. So yes, maybe more women?

15 A. Yes, maybe more women.

Q. I understand you described it as getting kind of big, the fight, is that right?

A. Mm-hm.

20 Q. Many more people joined in. It wasn't just that group?

A. Didn't -- there were more people than just the initial four people involved.

25 Q. Now, I understand, to be fair to you, your attention was back and forth throughout this whole event, is that right?

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A. It is, yeah.

Q. Your attention was diverted a couple of times by other things happening?

A. That's right.

5 Q. I understand you can't pinpoint, understandably, when it was during the course of events?

A. When what was during the course of events?

10 Q. That your attention was diverted?

A. Specifically, no.

Q. You opened the door at Terroni at a point?

A. I did.

15 Q. You yelled to co-workers to come out?

A. I did.

Q. I understand that is before the streetcar has arrived, is that right?

A. Yes. From what I remember, yes.

20 Q. And the reason you were calling to your colleagues is you were hoping someone was going to call the police.

A. Yes.

25 Q. Isn't that also one of the things the girl you hear yelling is calling for?

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A. I don't hear her yell that at all.

Q. You open the door to Terroni and you say,
Something is happening out here.

A. Yeah.

5 Q. Did you go and open the door to Terroni
more than once?

A. I did. Twice.

Q. And I understand some of your colleagues,
your co-workers, come out?

10 A. Mm-hm.

Q. Is that right?

A. Mm-hm.

Q. And then things seem to have calmed down
and they go back in.

15 A. Mm-hm.

Q. That's before the streetcar arrives.

A. I think so, yeah.

Q. So it would seem then that this kind of
flare-up of activity before --

20 A. Mm-hm.

Q. -- a period of calm and then another
escalation, is that right?

A. Yeah.

Q. Your friend came out of the restaurant?

25 A. Mm-hm.

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Q. She called the police?

A. Mm-hm.

Q. And that's Taj, is that right?

A. That's right.

5 Q. I understand she came out more than once
also, is that right?

A. Um, yes.

Q. And you were trying to encourage her to
head back inside.

10 A. I was, yeah.

Q. So you have Taj on the phone at least
twice, you have colleagues that come in and out, you
have Taj at least that comes out twice and you're
having a conversation with Taj?

15 A. Mm-hm.

Q. So where we start with the distraction is
there?

A. Mm-hm.

Q. We have more.

20 A. Mm-hm.

Q. There was a woman who came up and asked
about the situation; what was going on?

A. Mm-hm.

25 Q. That's not one of your colleagues or
friends?

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A. Un-un.

Q. That's someone from the street, is that right?

A. That's right.

5

Q. And you just want to shut her up. You don't want to have the conversation, is that right?

A. That's right.

Q. Now also -- so that's another distraction?

10

A. Mm-hm.

Q. We also have your own attitude. I understand, and I don't want to ask you anything about the explanation, but you feel like you're going to faint because you had a pretty intense year.

15

A. Uh-huh.

Q. You don't want to deal with this.

A. No.

Q. I understand you don't have any first aid training, is that right?

20

A. That's right.

Q. So you didn't think --

A. I didn't at the time.

Q. You didn't at the time.

25

A. Yes.

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Q. You didn't feel at the time that you could help anyone --

A. That's right.

Q. -- when help was needed, is that right?

5 A. Mm-hm.

Q. You also, in terms of your attitude and what you were paying attention to, you didn't want to get hurt.

A. That's right.

10 Q. So you're avoiding the confrontation or the disagreement as well.

A. That's right.

Q. Out of concern for your own personal safety, is that right?

15 A. Yes.

Q. Once you see the fellow being dragged on the south side, you're worried about his safety also.

A. Mm-hm.

20 Q. Is that fair?

A. Yes, that's fair.

Q. And you're not the kind of person that watches fights in streets, is that right?

25 A. Usually I walk away. Um, I -- I couldn't get away because the fight was in front of me and

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then moved in my pathway, and also there was a woman involved and that, um, concerned me. I was worried for her.

5 Q. There's some people that, if there is a fight or argument in the street, will group around just to see the events happening, see the action.

A. Mm-hm.

Q. Is it fair to say you're not one of those people?

10 A. Yes.

Q. Okay. So there are a lot of reasons that you're not focusing intently on all the events.

A. That's right.

15 Q. Insofar as you are focusing, you're looking at that girl.

A. That's right.

Q. I understand there was a lot that was going on in the street as well.

A. There was a lot, yes.

20 Q. It was a chaotic scene?

A. Mm-hm.

Q. Once everyone arrived from wherever they arrived from, is that fair?

A. Mm-hm.

25 Q. You can't describe who's fighting with

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whom or why.

A. No.

Q. You saw no weapons?

A. No.

5 Q. And you saw no one stab anyone?

A. No.

Q. It suddenly seemed like there were so many people but you can't really help in placing individual actions, is that right?

10 A. That's right.

Q. As you're focusing your attention on that first woman most of the time, I understand you don't see anything in her hands. You don't see her carrying anything, is that fair?

15 A. That's fair.

Q. And the first two men that you saw, we've gone through some of their description already this morning. I understand that at a certain point you describe them as being, in your memory, almost like clones, is that right?

20

A. I guess so.

Q. I just thought it was very descriptive language. It's page 21. See if that refreshes your memory. It's almost exactly in the middle of the page, if that helps you.

25

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A. Mm-hm.

Q. You remember now using the word "clone" when you were doing that police interview?

A. I suppose so, yeah.

5

Q. And that describes your recollection of the two men being almost indistinguishable, is that right?

A. That's right. Mm-hm.

10

Q. And one other area I wanted to touch on is the person you saw down on the ground on the north side.

A. Mm-hm.

Q. So this is just as you were leaving and further west, is that right?

15

A. Mm-hm.

Q. And what I heard you say this morning is that you thought it was one of the business guys, is that right?

20

A. I thought it was. Like, in my mind that night there were two groups. There were the guys and then there was the girl and her group of people, and I imagined that that guy belonged to the I guess we're calling them the business guys.

25

Q. Do you want to take a look at page 11 to 12?

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A. Mm-hm.

Q. Starting at the bottom of 11.

A. Huh.

Q. Does that assist at all?

5 A. Yeah. I say that I didn't think that he was one of the initial two guys because I noticed that he was wearing a white shirt.

10 Q. When you reflect back on it now, does this assist in whether the person you saw on the ground was wearing a white shirt?

A. Ah, yes. That's what I said I saw.

Q. And your impression at that time then was not that it was one of the first two. You felt like it was a new fellow.

15 A. Yeah.

Q. So perhaps not one of the business guys at all. Someone else. Is that right?

A. Yes.

20 Q. And I understand that where you saw this new person on the ground on the north side --

A. Mm-hm.

Q. -- is at the northeast corner of Bellwoods and Queen, is that right?

A. Ah, yes. That's right.

25 Q. And this is something that you see once

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you're riding your bike heading west.

A. That's right.

Q. And it's a brief observation, is that right?

5 A. Mm-hm. That's right.

Q. And he's not moving at this point?

A. He's not moving. Um, I sort of want to clarify, because the -- it's likely the first time that I actually looked at one of those guys, and you were trying to highlight the word that I used, "clones", and I think it's because I -- I wasn't distinguishing them one from the other. They were like a pair and I wasn't specifically watching them. So I just wanted to clarify that.

10

Q. I think that as we described the clothing, you described dark clothing, perhaps dark t-shirts, is that right?

15

A. Perhaps.

Q. And this is why you might have distinguished the person on the ground because you recall light.

20

A. Mm-hm.

Q. So as between which of the two men did what, you can't say?

25 A. I can't.

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Q. But as between the person on the ground, you do feel like, or felt like, at a certain point that was different, is that right?

A. Yes.

5 Q. A different person?

A. Yes.

Q. I think I'm done. Let me check.

A. Okay.

10 Q. There is one thing I've been reminded to go back to --

A. Okay.

Q. -- you'll be unhappy to hear, but we are still almost done.

A. Okay.

15 Q. In terms of the order of events and the timing?

A. Mm-hm.

20 Q. You recall it ending when the girl was pulled over to the north side to join her friends, is that right?

A. It ending in that I felt it was safe for me to get on my bike and go home.

25 Q. Had the men already gone to the cab by this point to leave? Do you remember the order there?

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A. Well, they must -- I don't know. Although I think yes, because I said that I saw them pursuing a taxi, trying to get into a taxicab, so yes.

5 Q. So in terms of the timing, the men leave from this group that's in the street towards the taxi that's headed westbound, is that right?

A. Mm-hm.

Q. Then you see the woman dragged north by her friend to the north side of the street.

10 A. Mm-hm.

Q. So the best of your recall is this departure to the taxis --

A. Mm-hm.

15 Q. -- is before the departure of the friends, is that right?

A. I think so, yes.

Q. Thank you, ma'am. Those are my questions.

A. Thank you. Okay.

THE COURT: Re-examination?

20 MS. MIDDLEKAMP: No questions in re-examination. Thank you, Your Honour.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Thank you.

25 MS. MIDDLEKAMP: As indicated, Your Honour, I

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5 have put us in a difficult position of having
a witness flown in from Ottawa who will take
the balance of the day, and her flight is
booked to come in on Sunday, so the Crown
doesn't have any further witnesses to call
for today.

10 THE COURT: It's a lot of time to lose, but
it is what it is I guess. We'll adjourn until
Monday then.

15 ---COURT ADJOURNED

(11:40 a.m.)

20

25

30

