

C53904

SUPERIOR COURT OF JUSTICE
(Toronto Region)

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B E T W E E N :

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HER MAJESTY THE QUEEN

15

- and -

NICOLE KISH

Accused

20

TRIAL PROCEEDINGS

25

FEBRUARY 3, 8-10, 2011

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VOLUME III

**SUPERIOR COURT OF JUSTICE
(TORONTO REGION)**

B E T W E E N :

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HER MAJESTY THE QUEEN

- and -

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NICOLE KISH

Accused

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---heard before THE HONOURABLE MR. JUSTICE

NORDHEIMER, on January 26-28, 31, February 1-3,
8-10, 14-16 and 22, 2011, in courtroom 4-9
at 361 University Avenue, Toronto.

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TRIAL PROCEEDINGS

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APPEARANCES:

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Mr. W. Thompson and
Ms. E. Middlekamp

Appearing for the Crown

Mr. J. Scarfe and
Ms. V. Simpson

Appearing for the Accused

1044
Colloquy
February 3, 2011

---THURSDAY, FEBRUARY 3, 2011

5

---UPON RESUMING

(10:06 a.m.)

10

MR. THOMPSON: Good morning, Your Honour.

THE COURT: Mr. Thompson.

15

MR. THOMPSON: Just a couple housekeeping matters. We have an exhibit from the other day to be formally filed as Exhibit 48B. It's the 911 call of Mr. Patsiopoulos.

THE COURT: Yes. 48B.

THE REGISTRAR: 48B, Your Honour.

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MR. THOMPSON: And just an update, Your Honour, as to where the Crown's case is. We've had discussions with respect to this in chambers, but the Crown is very close to completing its case subject to interviewing a few more witnesses. Unfortunately Dr.

25

Pollanen is only available on the 10th of this month. We had to book him far enough in

1045
Colloquy
February 3, 2011

5 advance to even get that date. We have Monica
Sloan who is from CFS and there is a great
deal of forensic evidence that we're trying
to work out with my friend right now in terms
of a graph and display. We had got part of
that in and it's a matter of him reviewing it
and seeing if he has any complaints about any
of our -- the diagrams that we have. I
10 believe it's going to be worked out so it's
possible that her evidence is only going to
be, at best, a half a day, so that even the
two of them I would suggest it's one day. We
have a few officers with respect to the dying
declaration that we plan to call next week
15 and one additional witness. Today we only
have the one remaining witness that we had
booked for this week because we moved quite
quickly yesterday, and it is Saad Mir is the
next witness the Crown calls.

20 THE COURT: All right.

MR. THOMPSON: All right?

THE REGISTRAR: The name, please?

MR. THOMPSON: Saad Mir.

THE REGISTRAR: Saad Mir please.

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1046
S. Mir - in-ch. (Thompson)
February 3, 2011

---SAAD MIR: AFFIRMED

---EXAMINATION IN-CHIEF BY MR. THOMPSON:

MR. THOMPSON:

5 Q. Good morning, Mr. Mir, how are you today?

A. I'm good.

10 Q. All right. Just a couple of brief questions first. I understand you feel comfortable in the English language and that you actually conducted your interview in the English language, is that correct?

A. Yeah.

15 Q. And that you actually gave the police an interview in the English language, and that you have indicated to us that you should be able to conduct yourself that way. If there is a difficulty with a question, only if you're unable to totally understand it, do you need an interpreter at that point.

20 A. Yes.

Q. All right. So the other thing I want to be clear with you, sir, is that you actually met with the Crown Attorneys and the officer --

A. Yes.

25 Q. -- in the last week, or actually last two

1047

S. Mir - in-ch. (Thompson)

February 3, 2011

weeks, and that during that time you had an opportunity to review your transcripts and your police interview.

A. Yes.

5 Q. And sir, let's deal with what is it you do for a living, sir?

A. I'm a cab driver.

Q. Okay. And how long have you been a cab driver?

10 A. Around seven years.

Q. All right. Back in August - sorry - 9th of 2007, were you working as a cab driver.

A. Yes.

15 Q. And around approximately 12:30 in the morning on the 9th, can you tell us roughly where you were?

A. Queen and Niagara.

20 Q. Okay. And we've already filed as Exhibit Number 1? Okay. That's a map of Queen Street and do you see Niagara on there?

A. Yes.

Q. Okay. You should have a pointer up there. Do you have a laser pointer? Is it up there? Do you have a laser pointer up there, sir?

25 THE COURT: It's on the corner of the box.

1048
S. Mir - in-ch. (Thompson)
February 3, 2011

THE WITNESS: This one?

MR. THOMPSON:

Q. Right here, sir. Hidden in the corner.

Can you tell us, sir, where you were driving?

5 A. I was going west at -- at Queen West.

Q. Where had you come from?

A. Ah, I'm heading toward west so Queen east
to west. This way.

10 Q. But where had you come from? Bathurst
Street is to your right. Did you come from Bathurst?
Where had you gone on to Queen Street?

A. I was going towards, like, Ossington, so
it's west. That way.

15 Q. Okay. So fair enough. And you're going in
a westerly direction?

A. Yes.

Q. All right. And just roughly, sir, does
anything come to your attention?

20 A. A fight. It's a fight going on there.
Yeah. A lot of people are standing, so yeah.

Q. Okay. And can you tell us approximately
where it is that you see the fight, sir?

A. Ah, it's roughly here.

25 Q. Okay. And now what we're going to do,
sir, what you have marked on the exhibit in any

1049
S. Mir - in-ch. (Thompson)
February 3, 2011

event is a spot that's very close to -- it appears
to be --

A. This area.

5 Q. -- just north of Niagara Street, but what
I'm going to do, sir, is can we put up the other map
please? I can't read the number there, please.

Exhibit Number 2. That's a closer view of Niagara
Street, sir, and Claremont. Can you tell us roughly
where it is that you saw the fight?

10 A. Ah, around here.

Q. All right. So just in front of 750?

A. Yes. I don't know the number exactly but
it's around that area.

15 Q. All right. And sir, it was a warm night
in August I assume is it?

A. Yes.

Q. Did you have your window open, sir?

A. Yes.

20 Q. What was the first thing that came to
your attention, sir, when you saw the fight? Did
you hear anything?

25 A. There was a lot of voices or -- I don't
know exactly what they are saying, but yes, it's a
fight going on, I saw, like, ah, two -- two guys
first, and after that a bunch of people are in

1050
S. Mir - in-ch. (Thompson)
February 3, 2011

between them. One guy's on top of a girl and --

Q. Sir, I'm going to get you to stop and I'm going to go into the details of it. I just want to deal first with your movements that night.

5 A. Yes.

Q. When you saw the fight, what's the next thing that happened? Without going into details of the fight, what's the next thing?

A. When I saw the fight?

10 Q. When you saw the fight, did you -- does the vehicle remain stationary or do you move forward or what happens?

A. It's almost, yeah, I just move a little bit. Not far. Just maybe five feet, ten feet maybe like that.

15 Q. Let me ask you this: Is the traffic heavy at that time?

A. It was busy and traffic, yes.

20 Q. When you stop, what happens, sir. What do you observe?

A. When I stopped I look at to my right, right direction, right side.

Q. Okay. So the right side would be the north side of the street?

25 A. Yes. So because the fight is going on

1051
S. Mir - in-ch. (Thompson)
February 3, 2011

there also.

Q. Okay. What happens next please?

A. Next I saw two guys and, yeah, two guys,
one girl and one, the victim Ross.

5 Q. Okay. And you mention "the victim Ross".
How do you know that the victim is Ross.

A. Ah, now I know.

Q. Okay. So you see another individual and
you later determine that person's name is Ross?

10 A. Yes.

Q. All right. So what does that individual
do?

A. Ross?

Q. Yes.

15 A. Yes. He was, ah, on -- when I saw he was
on a top of that -- I believe -- yeah, that girl,
and they are fighting, yes, and the two guys who are
with that girl, they are -- they are kicking him.

20 Q. Okay. I'm going to get into the details
of that in a minute, sir, but what does that
gentleman do eventually? Do you have any further
contact with that gentleman?

A. Yes. He approached my car.

25 Q. Okay. So when he approaches your car,
what happens?

1052

S. Mir - in-ch. (Thompson)

February 3, 2011

A. He tried to -- he tried to get in.

Q. Yes?

A. Because my windows are opened, so he just grabbed the centre panel between two doors.

5 Q. Okay. Now, just stop there for a second. He tries to get in. What side of the car does he try to get in?

A. Ah, passenger side, so right.

Q. Sorry?

10 A. Right. Right.

Q. So the passenger side.

A. Yes. Yes.

15 Q. And did he do anything before that, sir, at all? Was he involved with another vehicle prior to that or not?

A. Yeah. The cab in front of me, the Beck taxi.

Q. Yes?

20 A. He tried to get in that cab first but, ah, his doors are locked and the windows are up so he can't get in. And my --

Q. I just want you to stop there for a second. Take your time. When he goes in that cab, is it first or second he goes to that cab?

25 A. First he went to that cab.

1053

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. And where does he go to that cab? What side of the cab?

A. Um, front.

Q. Yes?

A. Yeah.

Q. And does he go to the left side or the front side?

A. From right he tried to get in, then come to the front, and then come to me.

Q. And when he comes to you, sir, what does he do again, please? When he comes to your vehicle?

A. Yes. So he tried to get in. I just locked the door, the windows are still opened. I just locked the doors but windows are still opened and, ah, he just grabbed that central panel.

Q. The centre panel between where, sir?

A. Between two doors. The centre one.

Q. Is that the front door and the rear door?

A. Front door and the rear door.

Q. Is that the post?

A. The post, yes.

Q. And the hard top that supports the window frame?

A. Yes, yes.

Q. Okay?

1054

S. Mir - in-ch. (Thompson)

February 3, 2011

A. So he grabbed that post and he tried to get in but I -- I got scared because he had a knife in his right hand.

Q. Yes?

5 A. So yeah, I just keep driving, because it's too much traffic there I can't run from the scene so but I just drive slowly like five, ten kilometer per hour.

10 Q. So you see he has a knife in his hand. Is he -- where is he in relation to your car as you're driving, sir? Where is he --

A. Uh-huh.

Q. -- in relation to your car?

A. That post. So yeah.

15 Q. So you've, just for the record, you've indicated your hand, being your right hand, hooked in a manner. Is --

A. Yeah, his right hand. Yeah. Hooked on the post.

20 Q. Okay. And as you're driving, what's happening to him?

A. Yeah, he's, yeah, when I was driving he go with my car, yeah.

Q. Okay. He goes with your car.

25 A. Yeah.

1055

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. Is he saying anything to you, sir, when that's taking place?

A. Mm, not really. I don't remember, but just I think, yeah, he just want to get in and that's it.

Q. Did you see what happened to the knife while that's going on?

A. Which?

Q. The knife. What happens to the knife while that's going on?

A. I saw that knife just once when he tried to get in, very first attempt. And after that I don't know, he dropped it on the road or somewhere, I don't know. Because I'm driving so I can't tell.

Q. So you're driving slow and I gather you're still driving in a westerly direction?

A. Yes.

Q. What eventually happens to the gentleman you refer to as Ross?

A. Ah, after, when I get close to the 7-11, it's, like, roughly less than a half block, so yeah, he, yeah, he just -- he just dropped his self there.

Q. Sorry?

A. No more grabbing that panel and he just dropped. Dropped there.

1056

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. Okay. I'm just going to stand back here so you can maybe pick up your voice a little bit?

A. Okay.

Q. Because everybody has to hear. So are you saying he has hooked, and when you got around the 7-11, if I'm correct, you -- he no longer had it hooked.

A. Yes.

Q. So does he fall off? Does he walk away? What happens?

A. No, he fall off.

Q. And when he falls, do you know approximately, does he fall into the street? Does he fall into the sidewalk? What happened?

A. He fall on the street, but very close to the sidewalk.

Q. Okay. Once that happens, what is it you do, sir?

A. I -- when he first time he approached my car?

Q. No, no. Once he falls off?

A. Yes.

Q. I just want you to give me the narrative first and then we will go back in the details later, but once he falls off, what is it that you do next?

1057

S. Mir - in-ch. (Thompson)

February 3, 2011

A. Because, um, I just made a u-turn. I saw the police so I went towards police.

Q. Okay. So he falls off, and how far down the street do you make a u-turn?

5 A. Mm, just like maybe, like, ten, fifteen feet?

Q. When you make that u-turn do you see the gentleman that you know as Ross?

A. Yes.

10 Q. Where is he at that point?

A. I believe so he's on side path.

Q. Side path?

A. Yeah, that --

Q. Sidewalk you mean?

15 A. Yes. Yes.

Q. Do you know approximately -- has he moved from the -- from where he originally fell off? In other words, has he moved from that position?

20 A. Yes, because he fall off on the road because I was driving, so he fall on the road so he, yes, he moved.

Q. Okay.

A. Because when next time I saw him, I saw him on the foot path.

25 Q. Sorry?

1058
S. Mir - in-ch. (Thompson)
February 3, 2011

A. The next time when I saw him, he was on the path -- ah, sidewalk.

Q. And when you see him on the sidewalk, when you've made your u-turn, can you tell me what position he was in?

A. Mm, I don't know.

Q. Let me ask you this: Do you know whether he was standing or whether he was laying down or kneeling?

A. He was laying down. Yeah.

Q. So you've made your u-turn, sir. What is it you do next?

A. I just approach to the police. Police officer.

Q. What do you do with your car, sir?

A. I'm in the car. All the time I was in a car. I just drove to the police officer and said to him loudly that one person is there, so --

Q. Do you know where the police officer is, sir?

A. Is close to intersection at Queen and Niagara.

Q. He's close -- okay.

A. Yeah.

Q. And you tell the police officer at that

1059

S. Mir - in-ch. (Thompson)

February 3, 2011

point, and what do you do next with your car?

A. Ah, next I just made another u-turn.

Q. Okay?

A. And went back to that 7-11 location.

5 Q. And what do you do at the 7-11?

A. I park my car there in a parking of 7-11.

Q. And once that happens, sir, do you stay there for a length of time? Do you leave? Or what do you do next?

10 A. No, I walk towards -- I walk towards the -- where the Ross was at that point, so because police was there and I believe so ambulance was there so I just went there.

15 Q. And how long do you stay at the location where the gentleman you know as Ross and the ambulance is there?

A. It's not long. Just maybe -- maybe 30 seconds, because police was there, they just moved us back, so I went back to the car.

20 Q. All right. Now, just to finish it off, what do you eventually do? Can you tell us what eventually happens to you and your car?

A. I, ah, what eventually I do with my car?

Q. Car. Yes.

25 A. Yes. I park there. I ask officer that --

1060
S. Mir - in-ch. (Thompson)
February 3, 2011

I asked officer that I'm -- my car and me, we are involved in this situation so I just want to let you know that there's a blood on my car and this guy just hooked my car to this location, towards 7-11, so what I should do, so they just, ah, they went, yeah, they took my statement then and they seized my car and they took the car next day from 7-11 parking, so --

Q. Okay. So sir, now let's go back to when you first come on scene and you see the fight.

A. Yes.

Q. All right. Now, you said you saw, and just repeat again, how many people did you see involved in the fight?

A. Total four.

Q. Sorry?

A. Total of four.

Q. Total of four?

A. Yes.

Q. And we're going to go through them individually, sir, so if you can just focus in your mind what you saw. Let's deal with of the four people, are they all males or is there a female in there? Or what?

A. One female, three male.

1061

S. Mir - in-ch. (Thompson)

February 3, 2011

5 Q. And with respect to the three males, can you just briefly describe to me, looking at the image, what -- the best you can, any information you can provide this court with respect to what they look like?

A. White.

Q. Just one at a time. Just deal with one gentleman. What is he wearing. The first gentleman in your mind's eye vision.

10 A. I don't remember their dresses exactly.

Q. Do you know whether or not they had any head gear on at all?

A. Sorry?

15 Q. Did they have any -- did they have anything on their head?

A. I don't remember.

Q. Okay. Can you describe with respect to anything the length of their hair or the colour of their hair?

20 A. Yeah, it's, ah, blonde, reddish.

Q. One at a time. There's one gentleman that has what did you say?

A. Blonde.

Q. Long?

25 A. No. Blonde.

1062

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. Oh. Blonde. And how long is his hair?

A. Mm, not short.

Q. Okay. So let's call that gentleman the blonde haired gentleman, okay?

5 A. Yeah. Yeah.

Q. Now, the other gentleman there, can you tell me what he looked like?

A. I don't know exactly.

10 Q. Do you have anything about him in terms of colour of hair, length of hair, clothing?

A. The colour, the other one, the hair colour, I believe so he's blonde too.

15 Q. The other guy's blonde. Does he have any facial hair the other one? Does anyone have facial hair?

A. The one person has a beard.

Q. Who has a beard? Number one blonde or number two?

A. Number one blonde.

20 Q. So we're going to call him blonde with beard.

A. Yes.

Q. The other gentleman is just going to be the blonde. The third gentleman.

25 A. Third is Ross and I believe so dark hair.

1063

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. Okay. So you say "Ross". That's the gentleman that you know -- you say you know as Ross as the victim?

A. Who approached my car, yes.

5

Q. And that's the gentleman who was on your car.

A. Yes.

Q. Okay. So we'll just, for lack of a better word, we're going to call him Ross, okay?

10

A. Okay.

Q. The woman involved in that, can you tell me just a little bit about her?

A. Mm, she's white.

Q. Yes?

15

A. And blonde. Yeah.

Q. So we'll just call her the female at this point. Okay. If we're to work backwards, sir, can you tell me where Ross is located, involved in this fight? Where he is? His position?

20

A. Yeah, the location I told you which is around 750 right here where the fight is going on.

Q. Okay. And I think what -- we've got an exhibit, okay, sir? This Exhibit Number 5, it's going to come up here on the screen in a minute but it has been identified in court earlier as the

25

1064
S. Mir - in-ch. (Thompson)
February 3, 2011

intersection of Niagara Street and Queen Street?

A. Yes.

Q. Okay. And you've got the marker there.

Now, when -- can you give us a little bit more
5 accurate picture as to where you saw the fight? And
actually --

A. Roughly around here. Yes.

Q. Okay. Now, you've got it on the sidewalk
there.

A. Yes, I do. Yes.

Q. Is that where you saw the actually
10 involved or was --

A. No, at this point, yes, actually
involved. Yes.

Q. Okay. And is that where you see the fight
15 going on or just a group of people?

A. A fight going on.

Q. Okay.

MR. SCARFE: Can you just put it on the
20 record?

MR. THOMPSON: I'm going to. For the record,
he's indicated the fight to have happened
just north of the two light standards, or the
traffic light standards, and somewhat a
25 little bit east.

1065
S. Mir - in-ch. (Thompson)
February 3, 2011

5 Q. All right, sir? And when I asked you the location of Ross, can you just indicate, and it was probably my error, I meant is he standing up? Is he laying down? Can you give us an indication as to what he's doing?

MR. SCARFE: Just before we go on, Your Honour, no disrespect to my friend but his description didn't accord with what I saw. I wonder if we could just go over that again.

10 MR. THOMPSON: Oh. All right. I thought that was the description.

Q. Can you point again where you saw the fight?

A. Around here.

15 Q. Okay. Which I would still say is just a little bit north and west of the two light standards.

MR. SCARFE: Thank you.

20 MR. THOMPSON: I don't think it changed, but in any event...

THE COURT: I think you said east before, Mr. Thompson.

MR. THOMPSON: Oh, I'm sorry. I apologize.

25 Q. Where are they located at that point in time in terms of Ross, what is he doing at that

1066

S. Mir - in-ch. (Thompson)

February 3, 2011

point.

A. When I saw he was on top of that girl.

Q. Yes?

A. And they are fighting.

5 Q. So he's on top of the girl. Can you just give me the description what you mean by "on top of" her?

A. Yes. Yes.

10 Q. Is he laying on top of her? Is he standing -- like, is he over -- huddled on top of her? What is he doing?

15 A. He's on top and they are -- they are fighting, like, on top of, if you do like this, right? So he's sitting on, you can say, on -- on a belly and approaching -- and they are fighting, yes.

Q. All right. Now just break that down again. You say he's laying on his belly?

20 A. He's sitting there -- I'm just trying to explain it. He's on top of her at this point and facing toward her face, so like this position.

Q. What position -- let's deal with it this way. What position is she in?

A. She's on the ground. She's on the ground, he's on top of her.

25 Q. So is she, when she's on the ground, is

1067
S. Mir - in-ch. (Thompson)
February 3, 2011

she on her side? On her back? On her belly?

A. Back.

Q. And with respect to him, when he's laying
on top of her, is he on his side, his belly or his
back?

A. Who?

Q. When Ross is on top of her, just so it's
clear, is his belly facing her belly or is he on his
side, on top --

A. His belly facing her belly. Yes.

Q. And so when that's going on, sir, what
are the other two gentlemen doing? The blonde and
blonde with hair? What are they doing?

A. They are kicking him.

Q. Okay. And while that's going on, just so
I'm clear, you said that you were moving slowly or
you had come to a stop at that point? Or not. Can
you just explain what your position was in the
vehicle?

A. I was -- yeah, I'm stopped.

Q. Can you tell me how long you were stopped
for at that time?

A. Just around maybe ten, fifteen seconds?

Q. Okay. So during that time, was that
entire ten, fifteen seconds spent looking at them or

1068
S. Mir - in-ch. (Thompson)
February 3, 2011

were you looking elsewhere?

A. Ah, I was looking at them and yes, my car is start, I'm driving so my intentions are other way too, so not completely to them.

5 Q. So during that ten or fifteen seconds, is your view at any time obstructed by the two men who were kicking at Ross?

10 A. I'm not sure. Yes, because a lot of people are there, they are walking around so I guess must be, yeah.

Q. Okay. And all right. So I'm trying to determine how much time you're actually able to see the kicking going on and Ross being on top of the girl.

15 A. Oh, okay. So if we talk -- okay. So it's -- but I saw hardly maybe ten seconds for that.

Q. Okay. Let me ask you this: During the period of time that you actually were observing, do you have any idea how many kicks were applied?

20 A. No.

Q. Was there one particular individual more than another who was more aggressive?

A. The beard one is more aggressive.

Q. Blonde with beard was more aggressive?

25 A. Yes.

1069

S. Mir - in-ch. (Thompson)

February 3, 2011

5 Q. And can you tell me where he was in relationship to the body? In other words, was he stationary, was he at the head of the body, the middle of the body or the feet of the body, or did he continually move?

A. What they are kicking?

Q. Yes.

A. Which part of body? My best knowledge, middle of the body.

10 Q. Okay. And that's -- and that's I'm referring to specifically blonde with beard.

A. Yeah. He's more aggressive than other.

Q. No, but I want to know whether he's kicking at the time.

15 A. Middle. Middle of the body, my best knowledge. Yes.

Q. And while that kicking is going on, sir, what is happening with Ross and the girl? Are they still in the same position? Do they move? What happens?

20 A. For that eight to ten seconds?

Q. Yes.

A. Or -- yes, they are -- they are in the same position, so yeah. For that ten seconds, yes.

25 Q. Do you see any movement from the girl?

1070
S. Mir - in-ch. (Thompson)
February 3, 2011

In other words, do you see what she is doing while she is underneath Ross?

A. They are struggling, like, fighting, so I don't know exactly -- exactly what's going on, so yeah, but they are fighting, yes.

Q. Do you see what she does with her hands?

A. Yeah, same, like, when somebody try to punch other person, so like this kind of situation going on. So Ross is --

Q. Just for the record, you're indicating a movement of the hands back and forth?

A. Yes. Yes.

Q. All right. Can you give us any indication as to the force of that?

A. Oh, I can't --

Q. The force of it?

A. Ah, I can't tell really.

Q. While you're there, sir, do you hear any words spoken or any noise at all coming from either one of the individuals?

A. Just, ah, at one point when that -- I saw that girl is standing on the road, so she is holding I believe so her left wrist and she is saying, I'm stabbed. That's all I know. That's all I heard in whole fight.

1071
S. Mir - in-ch. (Thompson)
February 3, 2011

Q. We'll get to that in a minute, but while the fight is going on, do you actually see the fight break up?

A. No.

5 Q. You say Ross comes over to your car.

A. Yes.

Q. How does Ross get away from the group of people?

10 A. Yeah, because when he's on top of that girl, and the other guys kicking, so at that point after like eight to ten seconds he just run.

Q. Okay?

A. He just get up and come towards my car.

15 Q. I'm just going to ask you to go through a little bit of detail. When he gets up to run, how does that take place? Does he get up quickly? Does he do it all in one movement? Does it take him attempts? Can you just give us a little bit more description as to how he gets up?

20 A. I don't remember. He just -- I saw when he get up, but I can't explain it, how he get up. I don't remember that.

Q. Well, let me ask you this: Does he get up quickly?

25 A. Yeah.

1072

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. Okay. And does he walk? Does he run?
How does he get to your vehicle?

A. He walk.

Q. Okay. And were you able to determine by
5 looking at him walking whether or not he was injured
at all?

A. It's blood everywhere, but I don't know
he's -- I don't know that's his blood at that point.

Q. Yes?

10 A. But yes, it's blood. It's blood
everywhere. On his shirt so...

Q. When he gets up to go, um, do you see
what happens to the girl?

15 A. Yeah, she was fine actually. She got up
so --

Q. She gets up and what happens?

A. Oh, I have no attention there at that
point because Ross was coming towards me so -- or
the Beck taxi. First he went to the Beck taxi so I
20 have a complete focus on that guy. I'm not looking
at that girl at that point.

Q. Well, let me ask you, do you ever see
that girl again?

A. Ah, on that whole -- at that time, right?

25 Q. At any time, either then or any time in

1073
S. Mir - in-ch. (Thompson)
February 3, 2011

the evening, do you see that woman again?

A. Yeah, when I -- yeah, I saw that woman again, yeah.

Q. And when did you see that woman again?

5 A. When she was -- when I, yeah, when I -- the first I approached to the police officer.

Q. Yes?

A. So and I made another u-turn.

10 Q. And that was the u-turn -- where was that u-turn, sir?

A. Ah...

Q. Let's put this back on --

A. I was slightly here.

Q. Oh, you're able to determine there?

15 Okay. I just need to put this on the record. So you make a u-turn which would appear to be almost in the middle of the intersection, at the T intersection of Niagara and Queen, yes?

20 A. I made a u-turn roughly around here. After -- just after this light. So around here somewhere.

Q. Okay? And when you made the u-turn again, which way did you go, sir?

A. Again, west.

25 Q. West? Where is it you saw the woman?

1074

S. Mir - in-ch. (Thompson)

February 3, 2011

A. It's around -- she was standing around -- around here somewhere.

Q. Okay. So I'm just going to mark on there where you saw. Um, would it help you if you look at the actual map of the location? In other words, the diagram? In terms of the streets? Can we have Exhibit 1 up, please? Okay. So there's Niagara Street again. So where is the u-turn again?

A. Around here I made a u-turn.

Q. So fair enough. You make that u-turn there and you see the woman, and just so it's clear, you're once again at the T intersection although you are just a little bit east of that intersection at that point in time.

A. Yes.

Q. And you've done a u-turn there and you're going which direction again?

A. Again west.

Q. All right. Where is it, and I'm going to put the other one back on the screen, where is it you see the woman again?

A. Ah, around here.

Q. Okay. And you've, just for the record, you've put down it looks like 752 there, and it's just a little bit west of Claremont Street on the

1075
S. Mir - in-ch. (Thompson)
February 3, 2011

north side. Okay. And what is she doing at that point?

A. She was holding her, I believe so, left wrist and she is saying, I -- I got stabbed. Yeah.

5 Q. Okay. And she's holding her left wrist. Do you see anything on her left wrist at all?

A. No.

Q. Okay.

10 A. She's just holding like this so I don't know.

15 Q. Just for the record, indicating -- you've got your right hand holding the lower portion of your left hand just above the wrist joint, to the southern part of the wrist joint. Or lower part. It's going to be from underneath as opposed to going over top. Okay.

And can you -- did you hear what she was saying at all?

20 A. I just heard one thing, that, I'm stabbed. That's all.

Q. And I'm just going to ask you again, did she just say it once or did she repeat it a number of times? Or --

A. I just heard once, so...

25 Q. Did you -- how close to her were you at

1076
S. Mir - in-ch. (Thompson)
February 3, 2011

that point?

A. So maybe ten steps or, yeah. Hardly ten steps maybe.

Q. And was there anyone else around her at that point?

A. The beard one. The beard guy. With the blonde beard guy.

Q. Okay. The blonde beard guy?

A. Yes, he's around all the time, yeah.

Q. And how long do you stay there, sir, again?

A. It's not long. I was moving slowly so -- because that intersection was busy, so I just keep moving, but very slow speed.

Q. Do you ever see her again that evening?

A. Not after that, no.

Q. Indulgence please, Your Honour. When the gentleman you know as Ross, you see him get on your cab, or hook on -- as you indicated hook on to your cab, and you said you saw him down by the church later on?

A. Ah, yeah. This street, that Walnut? Or -- yeah. Right here.

Q. All right. In any event, sir, do you -- you looked at him there.

1077

S. Mir - in-ch. (Thompson)

February 3, 2011

A. Yes.

Q. Did you see him on the ground?

A. Yes.

5 Q. And is that the time you mention you saw
the ambulance, when you did your final -- when you
parked your vehicle? Is that the time --

A. Yeah, I saw most the same time so...

10 Q. All right. So what I want to ask you now,
sir, is at the time you saw him there, did you see
any blood on him there?

A. At this point? Right here?

Q. While he was laying on the ground with
all the medical emergency people. Were you able to
see whether he had blood on there?

15 A. No, at that point, no, because I can't
get close, so...

20 Q. All right. When he approaches you when
you are up the street, when he hooks his hand around
the cab, you later said that you had blood on your
car?

A. Yes.

Q. Okay. And I want to ask you, did the --
did the blood that you have, did you actually see
blood on him? Or did you see blood on your car?

25 A. Blood on him too, yeah.

1078

S. Mir - in-ch. (Thompson)

February 3, 2011

Q. And in terms of the amount of blood, you said there was blood on his shirt. In your mind's eye, when is it you observe the blood on his shirt?

5 A. When he is approaching to us, my cab, so I can have a straight look so on his whole body, so I can see him because he is coming towards me, so yeah.

Q. Let me ask you, was his shirt opened or closed at that time?

10 A. Mm, I don't know. I don't remember.

Q. Well, I want to know, if you don't know that, sir, I'm curious how you know there was blood on his shirt then.

15 A. The shirt open or close? What I -- what I remember, I think it's t-shirt, black. Dark colour. So I don't know he's wearing shirt -- I don't know about that.

20 Q. Okay. And let me get back to the question I asked you. If you don't know whether it was opened or what kind of shirt he had, how do you know that there was a lot of blood on that shirt?

A. Because I saw blood there.

Q. Well, what did it look like?

A. The shirt?

25 Q. No. How do you know there was blood on

1079

S. Mir - in-ch. (Thompson)

February 3, 2011

his shirt? Can you tell me what it looked like in order to describe the blood on his shirt?

A. I don't know exactly what shirt he's wearing. I can't explain it properly then.

5 Q. Well, that's why I want to ask you, sir, do you know whether or not what you saw was sweat, perspiration, or blood? Is there anyway you can tell this court what it was?

A. I believe so it's blood.

10 Q. But I'm asking you why you believe, sir. In other words, you've said there's blood on your car afterwards. Why do you believe he had blood on his shirt?

15 A. Because he's holding and he's the only person who approached the car and hold that post and contact with my car. There's nobody else there.

Q. So without putting words in your mouth, sir, is the reason you think it's blood on his shirt because there's blood on your car?

20 A. Yes.

Q. All right, sir. Thank you, I don't have any further questions. My friend may have a couple questions for you.

THE COURT: Cross-examination?

25

1080
S. Mir - cr-ex. (Scarfe)
February 3, 2011

---CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE: Thank you, Your Honour.

Q. Mr. Mir, thank you for coming today.

5 A. You're welcome.

Q. I just have a few questions for you. Just following up with what my friend was talking about, it was nighttime?

A. Yes.

10 Q. You recall this guy had a black t-shirt on?

A. Yes, in my best knowledge, yes.

15 Q. Yeah. And so if there was blood all over his t-shirt at night and his t-shirt's black, that's going to be very hard to see, right?

A. Okay.

Q. Yeah. You -- you remember blood because it's all over the car later.

A. Yes.

20 Q. But you can't say you saw blood on his shirt.

A. Because -- yeah. Yeah.

Q. Now, you're travelling along Queen West, you had a fare in your car?

25 A. No.

1081
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. Okay. You were by yourself but you were going to Ossington?

A. Towards Ossington, yes.

Q. Did you have a call there?

5 A. No, just cruising around.

Q. You were just cruising around.

A. Yeah.

Q. And you remember there was a lot of traffic on the road?

10 A. Yes.

Q. Do you remember anything about a streetcar?

A. Yes.

Q. Where is the streetcar?

15 A. Other side. East. Towards east.

Q. Going east?

A. Yes.

Q. And did you see the streetcar -- where did you see the streetcar?

20 A. At the lights.

Q. At the lights? So it was stopped or moving?

A. At that point? Stopped.

25 Q. Stopped. Okay. And did you -- do you remember stopping at the lights or was the light

1082
S. Mir - cr-ex. (Scarfe)
February 3, 2011

green for you?

A. I don't remember the lights.

Q. You don't remember. So you may have been moving?

5 A. Me?

Q. Yeah. When you first saw the fight you may have been moving in the car? Or was your car stopped when you first saw the fight?

10 A. When I saw the fight, my car was almost, yeah, stopped position. Yes.

Q. Just coming to a stop or stopped?

A. Ah, when I saw I just stopped, so it's that moment.

15 Q. Okay. And you see a lot of people on the street, right? It's not just the four people we talked about.

A. It's not just four people. There are other people too, yes.

20 Q. There's a whole bunch of other people on the sidewalk?

A. Yes.

Q. Are there any people on the street?

25 A. Mm, they are passing by but, like, lot of -- of people are standing in a one spot so people are moving too, so --

1083
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. I see.

A. Yeah.

Q. But you see a big -- you see the four
people but they're inside a bigger group?

5 A. Ah, yeah, other people, yes.

Q. Right. Can you estimate how many people?
10? 20? 30?

A. Maybe 10. 10 to 20.

Q. 10 to 20 people?

10 A. Yes.

Q. All there on the sidewalk or are some of
them a little bit on the road?

15 A. Ah, mostly are, like, just a mix
situation so mostly on -- some are on east side,
some are on standing west and some are just -- some
people are passing by so it's that kind of
situation, so...

Q. Okay. Of the 10 or 20 people there --

A. Roughly, yes.

20 Q. -- are they all on the sidewalk or are
some of them on the road too?

A. Some of them are on the road too, yes.

Q. Mm-hm. And a lot of them are moving,
right?

25 A. Yeah.

1084

S. Mir - cr-ex. (Scarfe)

February 3, 2011

Q. They're not all just standing there?

A. No, not everybody's standing there, yes, because that's a busy spot at the nighttime too so a lot of people are working too.

5 Q. So you look over and you see this big group and you see two guys fighting. Kicking another guy?

A. Two and the girl and the four, all together four, yes.

10 Q. Right. And today, you're able to describe for us that the guy named Ross, right? Was on top of the girl.

A. Yes.

15 Q. Okay? And the girl was lying on her back?

A. Yes.

Q. Right? Which way was her head, which way was her feet? Do you remember?

A. Head west, feet east.

20 Q. And you're coming from the east going west.

A. Yes.

Q. So you see some feet.

A. No. Ah, ah, not just feet.

25 Q. Right. You're looking out the front

1085
S. Mir - cr-ex. (Scarfe)
February 3, 2011

windshield, right?

A. No, no. On my right side.

Q. So you're looking out your passenger
side.

5 A. Yes.

Q. So you don't see this until you get right
to it.

A. Obviously, yes.

10 Q. You didn't really notice it until it was
right beside the car on the right.

A. Yeah, when I approached there then I look
at my right side, yes.

Q. And you see a girl on the ground, lying
on her back?

15 A. Yes.

Q. Right? And you see the guy sitting on
her?

A. Yeah, sitting, yes, on top of her.

20 Q. Okay. So you know, like, horizontal and
vertical?

A. Yes.

Q. Yes? Horizontal, vertical?

A. Yes.

25 Q. Just indicating. So the girl is
horizontal, right?

1086

S. Mir - cr-ex. (Scarfe)

February 3, 2011

A. Yes.

Q. But the guy's not horizontal, right?
He's more on his knees? Sitting on her belly?

A. Yes. Yes.

5 Q. Okay. And do you see anything in his
hands at that point?

A. No.

Q. And you don't see anything in the girl's
hands?

10 A. I don't remember.

Q. Okay. But he clearly is in control of the
fight with the girl? He's kind of winning the fight
because he's on top and she's down, right?

15 A. That's the situation I saw so -- yeah,
that's what I saw, so I don't know who was winning,
who was losing, but yes, this is the situation
there.

20 Q. Right. And it's about eight to ten
seconds and the guy gets up and runs to the Beck
taxi.

A. Roughly, yes.

Q. Okay. And in those eight to ten seconds
there's people moving back and forth.

A. Yes.

25 Q. Right? And could it have been less than

1087
S. Mir - cr-ex. (Scarfe)
February 3, 2011

eight seconds?

A. Mm, it must be around eight seconds. It's
not --

5 Q. And as soon as the guy leaves that
fight --

A. Yes.

Q. -- right? You watch the guy. You're not
looking at the sidewalk anymore.

A. No, I was not looking.

10 Q. Your attention's totally focused on the
guy.

A. Yes.

Q. So you don't see the girl stand up?

A. At that point, yes, no.

15 Q. No.

A. I'm just looking --

Q. You don't hear her say anything?

A. No.

20 Q. No. Then the guy goes, he tries to get in
the Beck taxi?

A. Yes.

Q. And then he comes to you.

A. Yes.

25 Q. And he hooks his hand in the front
passenger window, and when he does that you see the

1088
S. Mir - cr-ex. (Scarfe)
February 3, 2011

knife in his hand?

A. At that point, yes.

Q. Right. You thought he was going to hit you with the knife.

5 A. Yes.

Q. All right. And so you step on the gas and take off.

A. Not step on the gas because I can't move fast there, so --

10 Q. Why? Is there someone in front of you?

A. Yes, it's a busy intersection, especially at that time. Everybody's looking towards what's going on so and plus it's traffic there so I can't move fast from that intersection.

15 Q. Now, you try to put the windows up?

A. No.

Q. You leave the windows down?

A. Already windows are already down, so --

20 Q. Right. But you have electric windows, right?

A. Yes.

Q. You don't have to roll them, old fashioned.

A. No.

25 Q. So did you try to put -- I mean, you've

1089

S. Mir - cr-ex. (Scarfe)

February 3, 2011

got this guy with his hand in the window with a
knife in it.

A. Yes.

Q. You're scared.

5

A. Yes.

Q. And you can't go fast to get rid of him?

A. Yes.

Q. You know like in the movies where they're
back and forth, right?

10

A. Yes.

Q. Because there's someone in front of you.
So you didn't think to try to put the windows up?

A. No.

Q. Okay. So you drive down to the church and
he falls off.

15

A. Yes.

Q. On the road.

A. Yes.

Q. And you look in your mirror to see what
happened to the guy. Do you remember that?

20

A. I don't remember exactly.

Q. But suddenly he's not there.

A. Yeah, he's not there because I'm looking
at that guy so he's not there.

25

Q. So you make a u-turn?

1090

S. Mir - cr-ex. (Scarfe)

February 3, 2011

A. Yes.

Q. And you come back?

A. Yes.

Q. And then you make another u-turn to go
5 back west again.

A. Yes.

Q. And while you're making the second u-turn
you see a girl on the street.

A. Yes.

10 Q. Right? And she is quite a bit east --

A. Yes.

Q. -- of where you think you may have seen
her before?

A. From where?

15 Q. She is quite a bit east of where the
fight was?

A. Yes.

Q. Okay?

A. Yes.

20 Q. And she's -- you see the guy with the
beard near her?

A. Yes.

Q. So does that help you with whether it's
the same girl? Because the guy you saw with the
25 beard, who was the more aggressive one?

1091
S. Mir - cr-ex. (Scarfe)
February 3, 2011

A. Yes.

Q. He was beating up the guy who got on your taxi.

A. Yes.

5

Q. Right? So when you come back, you see a girl in the road and near to her is the same guy who was the more aggressive guy, the guy you could remember a little bit about because he had a beard?

A. Yes.

10

Q. Right? And he's near that girl?

A. Yes.

Q. So you figure that's the same girl.

A. At that point, yes, I know that she is -- she is the -- that girl.

15

Q. You know that because she's with that same guy.

A. No. At that time I know that she is that girl because I saw her when she is laying on the ground. So --

20

Q. Oh, you recognized her.

A. Now, no.

Q. No. Okay. But then.

A. Then, yes.

Q. You recognize her as the same girl there.

25

A. Yes.

1092
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. Remember we talked about the taxi and you thought you saw blood on his shirt?

A. Yes.

Q. But then after many more questions, you've just sort of assumed that -- do you know the word "assumed"?

A. Yes.

Q. Yes. You assumed there was blood on his shirt because there's blood all over his cab. You didn't actually see the blood on the shirt.

A. Yes.

Q. Right. So isn't it the same thing? You come back to make the second u-turn, you see the girl -- first you saw a girl lying down?

A. Yes.

Q. And now you see a girl standing upholding her arm?

A. Yes.

Q. It's just because -- and she's not in the same location, right?

A. Yes.

Q. Just to be clear, you had the fight over here at 750?

A. Yes.

Q. Right? But when you make the u-turn,

1093
S. Mir - cr-ex. (Scarfe)
February 3, 2011

it's way over here. It's 732. It's like seven, eight
stores east, right?

A. Yeah, it's...

Q. There's a Starbucks here, right?

5 A. Yes.

Q. You know the Starbucks?

A. Yeah, one Starbucks, ah, I know one
Starbucks is there but exactly I don't know it's
right at this intersection or --

10 Q. All right. So you said you saw them
around 750 when the fight's going on, but now it's
over here, it's 732, right?

A. 752?

15 Q. 724, -28, -30, 732. Right? Where I'm
pointing here.

A. Yes.

Q. Okay. So where she was a little bit west
of the intersection before, now she's quite a bit
east of the intersection.

20 A. Yes.

Q. Right. So you're thinking she's not in
the same place, maybe it's not the same girl, right?
But then you see the guy with the beard and you
recognize him from that eight or ten seconds.

25 A. What I know at that time, I believe that

1094
S. Mir - cr-ex. (Scarfe)
February 3, 2011

she is the same girl.

Q. You believe she is the same girl.

A. This is in my best knowledge, that she is
the same girl.

5 Q. Now, you remember that this girl was
blonde.

A. Yes.

Q. That's clear.

A. Yes.

10 Q. Okay. Didn't have brown hair. It was
blonde hair.

A. Ah, how can I explain. Ah, in my -- I
believe so she is blonde, yeah.

15 Q. Do you remember how her hair was? Did
she have hair down to her waist? Was it up in a
ponytail? Anything about the hair?

A. It's kind of -- yeah, it's -- it's
ponytail.

Q. It's tied up in a ponytail.

20 A. Yes.

Q. Okay. And do you remember her feet?

A. No.

Q. Do you remember anything about big black
boots?

25 A. No.

1095
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. No? Do you remember anything about whether she had pants on? Shorts on? Skirt on? You don't remember, do you.

A. Not -- not -- no.

5 Q. You don't remember anything about her top?

A. No. It's two years, or 2007 to now. Not exactly, no.

10 Q. It's actually three and-a-half years, isn't it.

A. Yeah. From 2007. Yes.

Q. Okay. Now, the person that you remembered best, right? It was the one with the beard. Remember?

15 A. Yes.

Q. And you remembered a little bit about his hair? Do you remember how long his hair was?

A. Not short.

Q. It wasn't short.

20 A. No, not short hair.

Q. Do you -- but how long? Like, down to the waist?

A. I don't know exactly.

25 Q. Could have been down to the waist, it could have just been to the shoulders? You're not

1096
S. Mir - cr-ex. (Scarfe)
February 3, 2011

sure.

A. Not short hair.

Q. Not short hair. Do you remember anything about the clothes that he was wearing?

5 A. No.

Q. Nothing about the clothes? Jeans? Shorts? What about the feet? The shoes?

A. I don't know.

Q. Okay.

10 A. I don't remember actually the dress.

Q. It's hard to remember, isn't it.

A. Yeah.

Q. And the second guy, do you remember the colour of his skin? The second guy doing the kicking?

15 A. Yeah, white.

Q. He's a white guy.

A. Yes.

Q. You remember that for sure.

20 A. Yes.

Q. We know that the two, both of the guys are white.

A. Yes.

Q. And the girl's white?

25 A. Yes.

1097

S. Mir - cr-ex. (Scarfe)

February 3, 2011

Q. With blonde hair in a ponytail?

A. Yes.

Q. Okay. But really you don't remember anything else about the descriptions because you'd only looked at them for eight or ten seconds.

A. Yes.

Q. Right? And of the four people, the person you noticed first was the guy with the beard doing the kicking.

A. Yes.

Q. Because that was the most dramatic movement when you looked out the passenger window of your car.

A. Yes.

Q. Right? And then you noticed, he's not the only one kicking. Because you saw movement from the other white guy.

A. Yes.

Q. Right? So then your mind went to think, Well, who are they kicking, and you see this guy kind of on his knees, do you see his face or his back?

A. Side.

Q. You saw the side of the guy who was being kicked.

1098

S. Mir - cr-ex. (Scarfe)

February 3, 2011

A. Yes.

Q. And which way was he facing?

A. West.

Q. West. He wasn't lying down, again, he was
5 sitting up, but he was on his knees and he was
looking west?

A. Yes.

Q. And then the last thing you notice just
at the end of the eight to ten seconds is that
10 there's some -- somebody underneath him, right?

A. Yeah, in the same time. Yes. At that
time. Yes.

Q. Right. And so of how good a look you got
at each of the four people, you mostly saw the two
15 guys kicking, right?

A. The most good look is the beard one.

Q. Is the beard one, right? And you can
tell us what the guy on his knees who was on top of
somebody looks like because he got on your cab and
20 rode with you down by the church, right?

A. Yes.

Q. So you could tell then there is a black
t-shirt, blue jeans, and then you saw him later
after you made the u-turn, you went up to tell the
25 officer there's a guy down there?

1099
S. Mir - cr-ex. (Scarfe)
February 3, 2011

A. Yeah, but at that time, ah, I can't get close to that -- that guy because the fire people and the police and everybody is there.

5 Q. So the girl who is underneath, she is the one you got the worst look at, right?

A. Yeah.

10 Q. And there are just a couple of sections from your statement that I want to play to you, because you say that you're sure, even though you only had a quick look, that that girl is the same girl you saw later, right?

A. Yes.

15 Q. The one with the blonde hair. You are sure.

A. At that time. At that time.

Q. At that time you're sure.

A. Yeah.

20 Q. But now, three and-a-half years have gone by, it's hard to be sure.

A. I don't remember.

Q. Okay. But you say at that time you were sure it was the same girl.

A. I believe so, yeah.

25 Q. Okay. And what happened was after you spoke to the police, after the two u-turns, you

1100
S. Mir - cr-ex. (Scarfe)
February 3, 2011

ended up leaving your car in the 7-11 lot?

A. Yes.

Q. And then the police came along and put yellow tape around it, right? Were you there for that?

A. I was there after that, yeah, quite a time.

Q. They told you, You can't drive this car anymore until we finish with it.

A. Yeah, it's -- yeah.

Q. I guess taking pictures or whatever they do, right?

A. Not in front of me but maybe they did.

Q. And then somebody gave you a drive to the local police station.

A. Yes.

Q. Right? And you went in there and you sat down with two police officers in an interview room.

A. Yes.

Q. And they told you it's being videoed?

A. Yes.

Q. And they made you swear to tell the truth.

A. Yes.

Q. Right. They even had a special lady come

1101
S. Mir - cr-ex. (Scarfe)
February 3, 2011

in and have you sort of swear like our clerk did
today?

A. Yes.

Q. Right?

5

A. Yes.

Q. And you wanted to do your best to help
the police, right?

A. Yes.

10

Q. Okay. So we're going to talk about just
how sure you are. I've asked Ms. Fineberg here if
she could, right on the video statement, play about
35 seconds of it. You've seen the movie? The video?
You've watched it before?

A. Yes.

15

Q. And that's about two weeks ago you came
Crown Attorneys' Office?

A. Yes.

Q. You watched it with the Crown Attorney?

A. Yes.

20

Q. And the police officer, and your English
was pretty good.

A. It's okay.

Q. Yeah. And the last three and-a-half years
it gets better, right?

25

A. Yes.

1102
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. So you haven't had any problem understanding my questions.

A. Not right now, no.

Q. All right. So we're going to take a minute and we're going to play this 35 seconds of video and then I'm going to have a couple questions for you, okay? And I'd ask Ms. Fineberg if she can set it up as close as she can to three hours 56 minutes and ten seconds. If we go a little before, that's okay. Okay. We're ready.

---VIDEO PLAYING

MR. SCARFE:

Q. So the officer in -- did you understand that okay? If you need to see it again let me know and we can play it again.

A. Ah, I can't hear well so can I see that paper? Or --

Q. You want to see the paper?

A. Yeah. The written statement so it's kind of easy for me.

Q. Absolutely. And do you want us to play

1103
S. Mir - cr-ex. (Scarfe)
February 3, 2011

the video again while the written statement --

A. No.

Q. While you read the written statement?

A. Yes.

5 Q. Okay. Okay. The section of the statement,
I'm going to block this up. Your reading's okay,
right?

A. Yeah.

10 Q. Okay. So the section of the statement
starts on page 26 of 30, right? And it's going to
start up around here. You remember the one officer
was talking to you and then they switched and the
other guy started asking questions?

A. Yes.

15 Q. Yeah. So it's just below here where the
one officer says to the other:

"Okay. Do you have any
questions?"

20 And then he says: "I just
wanted to clarify", and it's
going to go over to almost the bottom of the next
page.

A. Okay.

25 Q. Okay? So we're going to go slow and you
read along. I'm going to turn it up a little bit so

1104
S. Mir - cr-ex. (Scarfe)
February 3, 2011

it's extra loud. Okay. Here we go.

---VIDEO PLAYING

5

MR. SCARFE:

Q. Now, it's hard because sometimes you and
the officer are talking at the same time so -- oh.
Can we play the next...

10

---VIDEO PLAYING

15

MR. SCARFE:

Q. So for part of that section that we
played, it's hard to understand because sometimes
you're talking and sometimes the police officer's
talking, right? At the same time and you're both
sort of over the same microphone here that's on the
table.

20

A. Okay.

Q. So you remember there were a couple
things that were hard to understand. But what seemed

25

1105
S. Mir - cr-ex. (Scarfe)
February 3, 2011

to be clear was that he was asking you about what you remember before the u-turns, right? About the female. And you said, just near the bottom of 26:

5 "No, that's what I told you,
 that I'm not quite sure but I'm
 -- I think that at that time,
 the girl was under that person
 who grabbed my car."

A. Yes.

10 Q. Today you seem a little bit more sure
 it's the same girl, but you'd agree with me that at
 33:00, 4:00 in the morning, two, three hours after
 this all happened, right? You weren't quite sure
 about the girl, were you.

15 A. That's the only thing I can say, that --

Q. Sorry?

A. -- it's girl. She is girl. So she --

Q. Right.

A. Yeah.

20 Q. You remember I asked you all those
 questions, because you come back and then you see a
 girl with blonde hair with the ponytail, right?

A. Yes.

25 Q. You're not sure that's the same girl, are
 you.

1106

S. Mir - cr-ex. (Scarfe)

February 3, 2011

A. At that point, I -- as I told here that I think she is that same girl.

Q. You think she is that same girl.

A. At that point, yes. At that time, yes.

5 Q. All right. When you say you think, that's different than you know.

A. Yeah.

10 Q. You can't be 100 percent. That the girl you saw underneath the guy who grabbed your car was the same girl that you saw later holding her arm. You can't be 100 percent sure.

A. Again, it's, yeah, I think so, she's the same girl.

15 Q. You think so.

A. Yeah.

Q. Are you 100 percent sure?

A. I'm quite sure, yeah.

Q. You're quite sure.

A. Yeah.

20 Q. Okay. We're going to play another section from earlier on in the interview. For my friend, the bottom of page 8. For Ms. Fineberg trying to get as close as she can 3:45 and 6 seconds is fine. This is earlier in the interview. So can you go to
25 page 8?

1107
S. Mir - cr-ex. (Scarfe)
February 3, 2011

A. Yes.

Q. Have you got page 8 there?

A. Yeah, I've got 8.

Q. Okay. So it's just going to start after:

5 "Yeah, my windows are open", okay?

A. Okay.

Q. And we'll just play that one little
section to you.

10

---VIDEO PLAYING

MR. SCARFE:

15

Q. So this was a little earlier in the
interview and you were talking about the two guys
who were hitting the person, right? And while those
two guys are hitting the person, he's hitting --
this guy's sitting on somebody, right?

20

A. Yes.

Q. And when you were talking to the
officers, maybe two, three hours after all of this
happened, you said:

25

"I don't know if this is girl or
boy."

1108
S. Mir - cr-ex. (Scarfe)
February 3, 2011

5 That's the person that's lying on the
ground with the guy sitting on them, right? When
you got to the police station, and after you swore
to tell the truth, and the officer says what's
happened, you describe the two guys kicking, you
describe the guy sitting on someone but you didn't
even know if it was a girl or a boy. Do you remember
that? I mean, those were your words. You heard that
10 on video.

A. Yeah.

15 Q. And so today you're here telling us that
you're certain that that person lying on the ground,
being sat on, is the same -- that you only saw for,
at most, eight seconds --

A. Yeah.

20 Q. -- is the same person you see later eight
doors east. But when you look back at what you
remembered at the time, you didn't even know whether
that person was a boy or a girl.

A. Yeah, that's -- that's what I said. It's
-- I think, yeah, at that point I said I think she's
a girl, yeah.

25 Q. Right. So like today you see this man
coming at your car with blood all over his shirt,

1109

S. Mir - cr-ex. (Scarfe)

February 3, 2011

and you realize now you've filled that in in your mind because of what you saw later - blood all over the car. You realize now you didn't see a man in a black t-shirt at nighttime with blood all over his shirt. You're assuming that, correct? And it's the same thing happens here. At first you don't know if that person lying on the ground is a guy or a girl, but then you come back, you see a blonde girl, ponytail, holding her arm, you -- over three and-a-half years you've come to convince yourself that that's the same girl, but you know you can't be sure.

A. Yeah.

Q. Where did you learn that the guy who grabbed your car, his name was Ross?

A. I got a letter in the mail, so...

Q. You got a letter in the mail?

A. Yeah.

Q. That told you that the guy who grabbed your car, his name was Ross.

A. Yeah.

Q. What kind of letter?

A. Ah, it's, ah...

Q. Are you talking about your subpoena?

A. I think so, yeah.

1110
S. Mir - cr-ex. (Scarfe)
February 3, 2011

Q. The thing that tells you you've got to come to court?

A. Ah, yes. This paper.

Q. Hold it up for us? So a letter from --
5 two pieces of paper.

A. Yes.

Q. So you've got one short person -- one short piece of paper and one long piece of paper, so we'll start with the long one. It says "Criminal Subpoena ", it's got big seal on it, right? And it
10 has someone's name on it, Nicole Kish, right?

A. Yes.

Q. You see that?

A. Yes.

Q. Do you know who that person is?
15

A. By name? No.

Q. But it's a girl's name.

A. Yeah.

Q. So maybe it's the same girl we're talking
20 about, right?

A. Maybe.

Q. And then what came with this paper was this other paper? Did that come with --

A. I think so. I just got one mail.

Q. You just got the one mail, eh? And that
25

1111
S. Mir - cr-ex. (Scarfe)
February 3, 2011

paper comes from the Toronto Police Service,
Homicide Squad, right? Yeah?

A. Yes.

Q. And it says that:

5 "On the 9th of August, 2007,
Ross Hammond was stabbed to
death in the area of Queen
Street West and Niagara Avenue
in the City of Toronto."

10 A. Yes.

Q. You read that, right?

A. Yes.

Q. Before you got this paper did you know
the name Ross?

15 A. No, I don't know.

Q. Right. The paper goes on. It says:

20 "The accused in this case is one
Nicole Kish. The accused stands
charged with second degree
murder. The trial of this
accused will commence on the
17th of January, 2011, the
Superior Court of Justice
located at 361 University Avenue
25 in Toronto, and the Court has

1112
S. Mir - cr-ex. (Scarfe)
February 3, 2011

issued a subpoena compelling
your appearance at this trial."

5 Then it talks about whether you have to
actually come that day and it's signed by Gary
Giroux?

A. Yes.

Q. And who is that? Who is Gary Giroux?

A. The detective.

10 Q. This gentleman here at the counsel table?

A. Yes.

Q. Right. Okay. Do you need this subpoena so
they pay you for work?

A. Sorry?

15 Q. This first piece of paper, the long one,
do you need this back?

A. I don't know.

Q. Are you missing work today?

A. Ah, no. I work in the nighttime so...

20 Q. You work in the nighttime. So can I leave
this in the court?

A. Sure.

Q. All right. If these two could be the next
exhibit, Your Honour. The covering letter could be
25 are we 51 now?

1113
S. Mir - cr-ex. (Scarfe)
February 3, 2011

THE COURT: Yes.

MR. SCARFE: A and B.

THE COURT: Exhibits 51A and B.

THE REGISTRAR: 51A and 51B the subpoena,
Your Honour.

---EXHIBIT 51A: Cover letter to subpoena - produced
and marked for identification.

---EXHIBIT 51B: Subpoena - produced and marked for
identification.

MR. SCARFE: Thank you. Those are my
questions.

THE COURT: Re-examination?

MR. THOMPSON: I note the time, Your Honour.
It's 11:30. I'm going to ask for the break.
The morning break?

THE COURT: I take it you're going to be some
time in re-examination?

MR. THOMPSON: It's possible, Your Honour. I
may be.

1114
S. Mir - re-ex. (Thompson)
February 3, 2011

---RECESS (11:31 a.m.)

5

---UPON RESUMING (11:53 a.m.)

---RE-EXAMINATION MY MR. THOMPSON:

10

MR. THOMPSON:

Q. All right, Mr. Mir?

A. Yes.

Q. Okay. Now, Mr. Mir, at the time you, in your car, you indicated you called the police did you?

15

A. I call 911, yes.

Q. And just so it's clear, approximately when was that phone call?

A. When I made that phone call?

20

Q. Yes.

A. Ah, when that person, he approached my car and he -- and he grabbed that, ah, post, so around that time. Yeah.

25

Q. All right. And sir, were you -- just so it's clear, when you were talking to the police,

1115
S. Mir - re-ex. (Thompson)
February 3, 2011

were you indicating what happened to the police at
the time you were talking to them?

A. Yes.

5 Q. What I propose to do, Your Honour, on the
issue, and strictly on the issue, is as to the
confusion with respect to the two portions of the
statement he provided to the police, is play that
portion of the 911 call back to him in which my
friend has already indicated earlier he has no issue
10 about the 911 call, but it may clear up that issue.
So if that could be played. It's starting at two
minutes.

15 And I just want you to pay attention. I
have a copy, Your Honour, of the transcript of the
actual transcript, and I'm just referring to the
last portion of it. I'm going to file a copy with
the Court and I will file the tape as well.

20 MR. SCARFE: I'm just taken a little bit by
surprised so I haven't formulated to a T and
honed down my objection, but I'm concerned
that we're exceeding the scope of
re-examination and that -- he could have
played the 911 call in-chief. Everything that
I did in cross-examination was clear in black
25 and white and available to my friend before

1116
S. Mir - re-ex. (Thompson)
February 3, 2011

we went down this road, so I'm in the Court's hands, but clearly the scope of re-examination is generally limited to new matters not really in the Crown's foreseeable knowledge that were raised in cross-examination. All I did was play portions of a statement that I got from my friend and I don't see how now going back and playing a 911 call he could have played in-chief -- I'm not exactly clear why it is, how that is in any way new.

So with the greatest of respect for my friend, he needs to articulate the foundation for this before we go down this road.

THE COURT: Thank you. Mr. Thompson?

MR. THOMPSON: Yes, Your Honour. My friend brought into the -- into question and I just want some clarification as to on page 8 refers to the witness, whether or not he adopted, he didn't know whether it was a boy or a girl in the fight, and on page 26, it was put to the witness with respect to his statement earlier, he does refer to it as being a girl under the car and I'm not

1117
S. Mir - re-ex. (Thompson)
February 3, 2011

entirely sure what he eventually adopted, and he has a 911 call in which I respectfully submit it is live to the place, at the time, and will provide the Court with a better understanding and clearer understanding as to what was viewed at the time.

THE COURT: But Mr. Scarfe is correct, is he not, that you could have played this call and asked the witness about it in examination in-chief?

MR. THOMPSON: Well, I can do a lot of things, Your Honour, but the bulk of that tape really is dealing with nothing but him getting on the cab and this -- the continued process. It is only a very small portion, and I'm careful what I'm saying while the witness is here, in which he specifically describes, um, the sex of the individual who was involved in the fight.

So when my friend is putting a question to him that you are not sure, he has two, what he would respectfully submit, is two different positions here. I'm essentially clarifying that because as far as I'm concerned, the witness has adopted one

1118
S. Mir - re-ex. (Thompson)
February 3, 2011

position in terms of being a female, and my
friend may argue that it isn't, but I have --
I think it should be properly before the
Court that during the time of the 911 call,
5 how that person was identified.

THE COURT: But it still begs the question,
could you not have put the 911 call in during
your examination in-chief. Could you not have
asked this witness, Did you make a call to
10 the police? Or did you make a call to 911?
If the answer is in the affirmative, say, I
want to play the call, play the call and
confirm that's his voice, and then ask for it
to be made an exhibit.

15 MR. THOMPSON: Well, Your Honour, the issue
as to whether or not male or female was quite
clear, I respectfully submit, in his
statement, and at that point in time there is
no -- with respect, there was no point in
20 putting the 911 call in to go to an entire
narrative as to how this individual got -- or
Mr. Hammond got on top of the cab and got
driven away. So that evidence, I would
respectfully submit, at that point in time,
25 is redundant. My friend is now calling into

1119
S. Mir - re-ex. (Thompson)
February 3, 2011

question whether or not the individual he saw
underneath was male or female, and I will
grant him this, that he can have
re-examination or rebuttal examination on it
if he needs be, but I think in order to be
properly informed, the Court should at least
entertain that evidence.

THE COURT: Mr. Scarfe?

MR. SCARFE: Well, number one, I'm not sure
what my friend means when he says that the
issue of whether it was male or female only
arose in cross-examination. He had this
transcript, obviously reviewed it, it's right
in the transcript. And to -- maybe -- perhaps
it would be best if I made the remainder of
my submissions in the absence of the witness.
Thank you, Ms. Simpson.

THE COURT: Mr. Mir, would you excuse us for
a moment? If you just go out those doors
where the court staff person is? Just so --
it won't be very long, sir.

THE WITNESS: Okay.

---WITNESS LEAVES THE COURTROOM

1120
S. Mir - re-ex. (Thompson)
February 3, 2011

5 MR. SCARFE: The fact that Mr. Mir at page 8
said, "I don't know if it's a boy or a girl",
it's right there in black and white. And so
obviously this issue is certainly available
to the consideration of my friend before I
got up to cross-examine. So to say, Well, I
need to get it in and clarify it now but he
10 can cross-examine, I mean, there are rules
and structure here for a reason, right? It's
supposed to end with the cross-examination
unless there are new matters raised which
need to be dealt with in re-examination.

15 The second thing I wanted to say
to you, and I invite my friend to pass up an
unmarked copy of the 911 transcript, but my
interpretation of it is, as he said, this guy
got on his car, he called 911, he's going
20 back and forth and is making u-turns and it's
only at the very end of the call, right?
That he -- he's giving his cab number, and
he's asked what direction he went, not sure
of that, and he says, "I think he went west
25 on Queen", and then it sounds like he's

1121
S. Mir - re-ex. (Thompson)
February 3, 2011

describing what he's seeing when he gets back
and he's doing his I guess second u-turn
where it says:

5 "Yeah, but still, and there's
still a lot, and yeah, and that
girl and she's in there too. And
I saw that she -- and yeah, and,
like, four or five guys there
and now -- and are now there."

10 So my friend, what he's trying to
clarify the original recollection with is the
fact that Mr. Mir has now driven back to the
scene and he sees the guy with the I guess
15 the red -- or the beard, and he sees four or
five other people that he thinks was part of
the whole thing and that girl too, who's
obviously standing on the street holding her
arm. So whatever it is my friend's trying to
20 use to suggest that he saw a girl before he
made any of the u-turns, it doesn't follow
from the transcript, and I think if Your
Honour's actually considering letting him do
this you should carefully review these six
25 pages and/or the call before that be

1122
S. Mir - re-ex. (Thompson)
February 3, 2011

permitted. But obviously my fundamental submission is that this is inappropriate re-examination.

THE COURT: Well, the only difficulty, Mr. Scarfe --

MR. SCARFE: Yes, sir.

THE COURT: -- seems to me with your position Mr. Thompson could have done this in examination in-chief is I could have anticipated possibly, had he attempted to do so, that the defence would have stood up and objected on the basis and asked why it was being done, and then argued that in a sense what Mr. Thompson was trying to do was put into evidence a prior consistent statement of the witness, and that that would be improper.

MR. SCARFE: Right. And what --

THE COURT: So it's certainly arguable that had Mr. Thompson attempted to put the 911 call into examination in-chief he wouldn't have been allowed to.

MR. SCARFE: I think that, and I'm going to let Mr. Thompson speak to this, but in our dialogue in trying to streamline the evidence in this case as much as we can for Your

1123
S. Mir - re-ex. (Thompson)
February 3, 2011

5 Honour, we've had discussions about the issue
of prior consistent statements and yes, I've
indicated to Mr. Thompson that I'm not going
to agree that he can put every 911 call in,
but that we'd be able to talk about it on a
case-by-case basis. So I don't think, unless
I am misunderstanding, that Mr. Thompson can
actually get up and say to you, Oh yeah,
Scarfe would have objected. But I understand
10 your point. You're just not privy to those
conversations.

THE COURT: All right. Mr. Thompson, the
reference on page 6 near the top is the one
you are referring to?

15 MR. THOMPSON: Yes. And there's two things
involved here. One is I'm not going to
resile on my position with Mr. Scarfe. It was
in terms of 911 calls, there was agreement
that they can go in. As to what use they
20 could be viewed with that's another issue but
I don't think he would have objected to it
going in in its entirety. I appreciate that.

25 But the really final issue, what
I would respectfully submit, is my friend has
brought up the issue of certainty in his

1124
S. Mir - re-ex. (Thompson)
February 3, 2011

5 cross-examination, and I think I'm entitled
to go in, back in there to suggest, or to
play back something that would in fact
indicate a level of certainty. It is
something that is not -- that he has brought
up in cross-examination and I think I'm
totally entitled to go into it.

10 And the other issue is because
there's an unidentified or unintelligible in
there, it's my position that what that says
is the girl he saw in the intersection.
Because I've listened to the tape and that's
why I wanted the break, to actually listen to
it and that's what I hear it saying, and that
15 becomes even more relevant because it's now
going to be in reference to the woman in the
intersection. I think it's relevant.

20 So, I mean, Your Honour can
obviously disabuse his mind one way or the
other, but I'm suggesting that we can at
least play the tape and on that basis Your
Honour can make the decision if I can put it
to the witness.

25 THE COURT: Well, I think in the
circumstances it's proper re-examination and

1125
S. Mir - re-ex. (Thompson)
February 3, 2011

I'm going to allow it to be played to the
witness. Can we have Mr. Mir back, please?

5 ---WITNESS ENTERS THE COURTROOM

MR. THOMPSON:

10 Q. Now Mr. Mir, you indicated earlier when
you listened to your video, that you have
difficulties hearing?

A. In this speakers it's too low, so...

Q. It's too what?

15 A. It's too low so I can't understand. But I
can read it here, so...

Q. No, but there's a passage in there that
says "UI". Let's try and see what it is. Would it
help if you came down, with the permission of the
Court, to hear this better?

20 A. No, it's --

THE COURT: Why don't we try it first and if
necessary, by all means, the witness can go
down.

25 MR. THOMPSON: All right.

1126
S. Mir - re-ex. (Thompson)
February 3, 2011

---TAPE PLAYING

5 MR. THOMPSON:

Q. Okay. So what I want to ask you, where it says on the second line down, or actually the third line, I'm just going to read that back. Were you able to understand, where you see where it says "UI" here?

10

A. "UI". Yes.

Q. Were you able to understand what was said in that? That means unintelligible, but were you able to hear what it says on the speaker?

15 A. No.

Q. All right. I'm going to ask you to come down here, sir, and when you read this we're just going to maybe pause, subject to His Honour's permission of course.

20 THE COURT: Yes. Go ahead, Mr. Mir.

MR. THOMPSON:

Q. You've got the 911 call, right?

A. Yes.

Q. And don't stand too close or it will hurt your ears, but where it says "UI" there, I want you,

25

1127
S. Mir - re-ex. (Thompson)
February 3, 2011

where it just says: "She's in there too and I saw that she", can you listen very closely to what that says on the speaker? Okay?

A. Okay.

5

---TAPE PLAYED

10

MR. THOMPSON:

Q. Okay. Do you see --

A. She's in the intersection?

Q. All right. Can you just repeat that for the Court, please?

15

A. She's in the intersection.

Q. All right. Can you take the stand please. So in terms of your level of certainty as to who was involved in the fight, whether it was male or female, does that help to assist you in terms of your level of certainty?

20

A. Yes. That --

Q. So can you tell us what it was, sir? Was it a male or female? Or --

A. Female.

25

Q. Okay. And just so I'm clear, when you

1128
S. Mir - re-ex. (Thompson)
February 3, 2011

were talking about the intersection in this passage,
do you know what intersection you're referring to on
-- I'm going to show you the -- in all fairness
let's show you the intersection here, on Exhibit
5 Number 1. Do you know which -- I have to turn the
screen on. So when you're referring to the
intersection, sir, can you tell us what intersection
you're referring to?

A. When I made a 911 call, at that point
10 it's going to be on this area.

Q. Okay. So just in terms of intersections,
sir, can you just tell us for the record what
intersection you're referring to?

A. Niagara and Queen.

15 Q. Okay. All right. I have no further
questions. Thank you.

THE COURT: Thank you, sir.

MR. SCARFE: Um, with the greatest of
respect, when my friend was asking permission
20 to do this, one of the things he said was
that he had no objection to me asking some
further questions in rebuttal, and there is
something I'd like to clarify if I might be
permitted to do so.

25 THE COURT: Normally the Court decides the

1129
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

order of examination, Mr. Scarfe, not
counsel.

MR. SCARFE: I just wanted to make the
request.

5 THE COURT: All right. Go ahead.

MR. SCARFE: Thank you, sir.

---RE-CROSS-EXAMINATION:

10 MR. SCARFE:

Q. Sir, you've listened to the entire 911
call in the past? Or is that the first time.

A. In the past?

15 Q. Maybe when you came to the Crowns' Office
a couple of weeks ago?

A. No.

Q. That's the first time you've heard it?

A. Yes.

20 Q. Do you recall how long you were on the
phone with the 911 operator?

A. I don't know exactly how much time.

Q. Well, you've told us that you made the
call sort of just as the guy -- just before or
around the time the guy was hooked on your car?

25 A. Yes, just around that time. Yes.

1130
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

Q. Right. And then you made a u-turn, and you came back to the area of Queen and Niagara?

A. Ah, yes. When I went -- approached to the 7-11.

5 Q. You made the u-turn and you drove back to nine -- to -- past Niagara and made a u-turn. You told us that before.

A. Yes. Yes. Yes.

Q. Are you still on the phone?

10 A. No. No.

MR. THOMPSON: Your Honour, I just -- just so it's clear, I mean, it seems pretty evident, and unless I'm wrong, that the 911 call is -- he's indicated is when the gentleman's on his hood, not when he's done a u-turn and come back, so I don't know why he's going into that area, and if my friend wants the exact time it's not a difficult thing to find out how long this 911 call is. It's three pages. So I don't want him putting to him --

15 MR. SCARFE: Two minutes and 16 seconds, and this happens at the very end.

THE COURT: Yes.

MR. SCARFE: So I think we know where...

25 Q. Sir, I'm going to suggest you were on the

1131
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

phone for over two minutes --

A. Okay.

Q. -- with the 911 operator.

A. Okay.

5 Q. And that the part that my friend played
you was right at the end.

A. Okay.

Q. Just before you say "The police are
here".

10 A. Yeah.

Q. Okay. And I'm going to suggest to you by
that time you've made the u-turn by the 7-11, and
you've come back to Queen and Niagara and you see
the police and that's why you say "The police are
here".

15 A. Ah, no, I remember that part, because I
saw the cops car is -- from -- coming from
west-east, towards east, so car -- cops car, I saw
the cops car, cops are coming, going towards east,
20 so when I saw the car just pass me so quick, so I
said, Okay, I saw the police so police is here.

Q. Right.

A. So I don't know if anybody's coming from
other side or not. I just saw one car.

25 Q. Okay. But at that point you'd been on the

1132
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

phone for over two minutes.

A. Yeah.

Q. I'm suggesting to you that you've already
come back to Niagara, and the reason you said
5 "intersection" is because you could see the girl
with -- holding her arm, standing in the
intersection.

A. I finished my call there at 7-11 before
making u-turn.

10 Q. Mm-hm?

A. I saw the car, so when I was way back
towards east, so I was not on phone at that time.

Q. Okay. So you've only seen the girl once
when you finish the 911 call? You've only --

15 A. No, I start from here, the guy dropped
here.

Q. Yeah?

A. Okay? I saw police is coming this way
and my call ended at around this point.

20 Q. You're still down by the church.

A. Yes. And I made u-turn here.

Q. Yes?

A. On the way back I was not on phone, so I,
yeah, I made next u-turn I made around here.

25 Q. Okay. When -- so at the point that you

1133
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

finish the phone call, what you're telling us is that you've only seen the girl once.

A. On the way west, once, yes.

5 Q. Okay. And the girl you told us already was somewhere around 750, right?

A. Yeah, this is my best knowledge. Yes. Around 750.

Q. On the sidewalk.

A. Yes.

10 Q. So why did you say "intersection"?

A. Because generally I'm taking intersection. This happened here so generally I was saying on 911, "intersection" because I tried to explain her, so --

15 Q. You said "She's in the intersection" to the 911 operator.

A. Yeah, generally I use that term so I don't know why I use that intersection word at that point, but yes, generally, because I try to explain her maybe that's why I said intersection? But at that point, I don't know why I used that word at that point but I just --

20 Q. Isn't it possible you may be mistaken and that you -- you're still on the phone when you see her in the intersection after you come back.

25

1134
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

A. I don't think so I'm on phone at that
time when I -- I'm on my way back, so...

Q. But you have no explanation for why the
girl you see on the sidewalk, west of the
5 intersection, you say to the 911 operator --

A. Yeah.

Q. -- is in the intersection. You can't
explain that to us, can you.

A. I just general term. That's -- that's I
10 can say to you. That intersection. Because it's so
close. It's not a big area. This is very small area
so you can cross the street maybe 20 steps, so
everything is happening right that spot so maybe
that's why I use "intersection". Otherwise no. And
15 I'm quite sure on the way back I was not on phone.

Q. Thank you, sir.

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

THE WITNESS: Thank you.

MR. THOMPSON: Just so it's clear, I left a
20 copy. I don't know if the Court has it. It
can be filed as the next exhibit.

THE REGISTRAR: Thank you, Your Honour.

THE COURT: We didn't file the actual call
25 itself.

1135
S. Mir - re-cr-ex. (Scarfe)
February 3, 2011

MR. THOMPSON: I will do that at some point.

THE COURT: 52A for the transcript and 52B
for the actual call, Mr. Registrar.

MR. THOMPSON: Thank you.

5

---EXHIBIT 52A: Transcript of 911 call - produced
and marked for identification

10

---EXHIBIT 52B: 911 call - to be produced.

15

MR. THOMPSON: That, Your Honour, is the
evidence for the Crown today.

THE COURT: I assume consistent with our
earlier discussion that on Tuesday there will
be additional witnesses to be heard from?

MR. THOMPSON: There will be, yes.

20

THE COURT: All right. This matter then is
adjourned to Tuesday.

MR. SCARFE: February 8th.

THE COURT: The 8th, ten o'clock.

25

1136
Colloquy
February 8, 2011

---COURT ADJOURNED

(12:45 p.m.)

5

---TUESDAY, FEBRUARY 8, 2011

---UPON RESUMING

(10:14 a.m.)

10

THE COURT: Just before we begin, can I ask
an indulgence from counsel. I have a meeting
at 4:30 so if we could rise about 4:15? If
that wouldn't be too much of a problem?

15

MR. THOMPSON: I don't think so, Your Honour.
Good morning. We can deal with the Kish
matter. Just a couple of housekeeping issues.
There is Exhibit 52B which was the 911 call
of Saad Mir. If I could formally file that
now?

20

THE COURT: Thank you.

THE REGISTRAR: 52B, Your Honour.

MR. THOMPSON: And in terms of the
anticipated evidence, Your Honour, I

25

1137
Colloquy
February 8, 2011

anticipate calling three witnesses today.
Adrienne Chan, P.C. Dawn and Detective Gord
Scott. The purpose of them is for dying
declarations, so if it assists, Your Honour,
5 we can actually have -- type out the actual
dying declaration part and file that for the
Court.

THE COURT: Thank you.

MR. THOMPSON: And what is anticipated
10 tomorrow is forensics with respect, or CFS
with respect to Monica Sloan. Hopefully she
-- this is a chart that's going to be filed
so her evidence will go in a little smoother
I hope, and Dr. Pollanen is available, if
15 this court is available, at one o'clock,
starting one o'clock on the Thursday should
Your Honour want to start earlier. We'd like
to get all his evidence in within a day or --
and he's only available in the afternoon, so
20 rather than push the time out to -- it may go
a little bit longer in the afternoon. So it
may be an earlier start or -- and I'm just
leaving that with you now. He can --

THE COURT: That's -- then by all means.

MR. THOMPSON: All right. I'll take that as a

1138

A. Chan - in-ch. (Thompson)

February 8, 2011

yes then. All right. And I'm going to call
Adrienne Chan, please.

--- ADRIENNE CHAN: AFFIRMED

---EXAMINATION IN-CHIEF BY MR. THOMPSON:

MR. THOMPSON:

Q. Good morning, Ms. Chan. How are you?

A. I'm good thank you.

Q. Do you mind if I call you Adrienne?

A. That's fine.

Q. Adrienne, there's going to be a couple of
things we are going to do, one of which is I
understand you made a 911 call that evening?

A. Yes.

Q. As well as you were on scene when Mr.
Hammond was being attended to by the ambulance.

A. Yes.

Q. All right. And we have -- we have a City
TV tape that we're going to be showing to you as
well. But I think at this juncture, perhaps we can
just play the 911 tape if we may, please?

---TAPE PLAYING

1139
A. Chan - in-ch. (Thompson)
February 8, 2011

MR. THOMPSON:

5 Q. Okay. Your Honour, if I could just -- I
will file the tape in a moment, if I could just make
this the next exhibit, the transcription of it as A
and B, whatever the number?

THE COURT: Exhibit 53.

THE REGISTRAR: A, Your Honour?

THE COURT: A and B, B for the actual call.

10 THE REGISTRAR: Thank you.

15 ---EXHIBIT 53A: Transcript of 911 call - produced
and marked for identification.

20 ---EXHIBIT 53B: 911 call - to be marked for
identification.

25 MR. THOMPSON: And the other thing is I'm
going to show you a tape which is Exhibit 11,
the City TV tape, and we're just cuing it up.
And when I'm showing you this tape I want to
-- to ask you whether you recognize yourself

1140
A. Chan - in-ch. (Thompson)
February 8, 2011

during the tape.

---VIDEO PLAYING

5

THE WITNESS: Yeah, that's me.

MR. THOMPSON:

Q. Sorry. Could you stop it there?

10

A. Yeah, bent down.

Q. I'm just going to give you a pointer. Is the pointer still up there? Or not. Sorry. No. Just push the button and indicate on the...

A. That's me.

15

Q. Okay. And you've pointed to an individual, and let's perhaps just play the tape a little bit more. It may become self-evident, but you're directly over Mr. Hammond at this time when he's laying on the ground. Okay. Continue to play?

20

---VIDEO PLAYING

25

MR. THOMPSON:

1141

A. Chan - in-ch. (Thompson)

February 8, 2011

Q. Okay. Is that you again there?

A. Yeah.

Q. All right. Okay. And just so we can mark
it off, we're going to play on the tape, please?

5 1:24.

How long are you with Mr. Hammond at that
point?

A. How long had I been with him?

10 Q. Yeah. Just tell us how it is you come to
be there.

A. How did I find him?

Q. Yes.

A. Um, I was walking home from 7-11 and
then, um --

15 Q. Just slow down a bit. You have to speak
up a little bit.

A. Okay. Like, piece-by-piece?

20 Q. Just project your voice a little bit more
if you can and that microphone doesn't -- sometimes
it works, sometimes it doesn't, so if you could just
project your voice and talk to me over here?

25 A. Sure. I was at 7-11 with a friend of
mine, he is the gentleman in the red shirt, and we
were at 7-11, we were headed west towards my house,
um, so we had crossed the street and sort of passed

1142

A. Chan - in-ch. (Thompson)

February 8, 2011

the church and then I heard a man screaming, um, and then I turned around and then I found, um, Mr. Hammond.

5 Q. So as you approached the church, sorry, where is your friend with you at that point in time?

A. He was with me walking.

Q. Okay. And where -- Court's indulgence.

A. Is it that one?

10 Q. Thanks. I believe it's Exhibit twenty -- okay. Actually let's just deal with the scene diagram first. It makes sense. Okay. Can you tell us where it is exactly you're coming from? Are you familiar with these streets?

A. Yeah. Yeah.

15 Q. Okay.

A. Um, I believe that's the 7-11? Oh yeah, that is the 7-11, so we came out of here and then we walked across and then we probably got to about there.

20 Q. Okay. So just for the record, you've walked in about a 70 degree angle from the corner of Walnut and Queen over towards the north side of Gore Avenue just between 770 and 780, okay?

A. Yeah.

25 Q. So whereabouts is it that you arrive?

1143
A. Chan - in-ch. (Thompson)
February 8, 2011

A. We probably didn't get very far. We probably got just around here.

Q. So right around there. Are you right on the -- just so you -- you've marked on the area, the north sidewalk in front of 780. Where is the church?

A. Right here.

Q. And is it well-lit in that area?

A. No, it was very dark at the time.

Q. So you hear somebody screaming or yelling, and what are they yelling?

A. Um, I heard him yelling, he said, Help me, help me. I'm dying. I've been stabbed.

Q. Okay. So when you hear that, where -- do you see anybody upon hearing that?

A. Ah, at the time, no, because we were a little past where Mr. Hammond was, but --

Q. Okay. So just stop there. Do you know which direction the sound's coming from?

A. From where I was, it was coming from east.

Q. So it was east of you?

A. Yes.

Q. Okay. And directly east or east-west, east -- or east south? East north? Or directly east?

1144

A. Chan - in-ch. (Thompson)

February 8, 2011

A. I'd say directly east. I mean, it was very prominent. I was very close to where he was.

Q. Okay. So what's the next thing that you see?

5 A. So after I heard him screaming, we walked towards where I heard the screams, um, and then it was very dark --

Q. So I have to unfortunately --

A. No, it's okay.

10 Q. -- mark this. So you moved, you walked towards where you heard the screaming and you walked towards 780. Were you on the sidewalk where you originally marked there on the alcove? Or can you tell us where it was you walked to?

15 A. I was on the sidewalk closer to 780.

Q. Yes?

A. And then when I heard the screaming, I walked east towards 770.

20 Q. Okay. And did you walk directly east or northeast?

A. Um, directly east. I was already on the sidewalk, so we just kept walking on the sidewalk.

25 Q. Just so it's -- you've marked moving in an easterly direction in front of -- are you halfway in front of 770 at that point in time? Or

1145

A. Chan - in-ch. (Thompson)

February 8, 2011

approximately where --

A. I went to the stairs.

Q. Do you know where the stairs are?

A. I'm guessing that's the stairs?

5 Q. Okay. So I'm just going to bring up
another... I'm showing you Exhibit Number 20. I
think that's 060. Do you recognize that area?

A. Yes.

10 Q. Okay. So probably -- if we can just
repeat that evidence, which way are you walking in
that area? First of all, you recognize it as what?

A. The scene.

Q. As what?

A. The scene.

15 Q. Is that the area you're referring to in
front of the church?

A. Yes.

20 Q. Okay. So now just tell us, you've got a
marker there actually. If you use that marker pen
there on the screen it will actually move the
cursor. It should. It doesn't. Okay. Let's use --

A. Am I doing it right?

25 Q. No. All right. Let's use the laser again
then, please. Now, can you tell us where you walked,
please?

1146

A. Chan - in-ch. (Thompson)

February 8, 2011

A. Yeah. I was more, like, over here.

Q. Okay. Indicating --

A. West.

Q. -- the bottom left-hand corner?

5 A. Yeah, further.

Q. In a westerly direction. Yes?

A. Then we walked this way.

Q. Okay. So you're walking in an easterly direction. And how far do you get?

10 A. I mean, here.

Q. And you've marked on this diagram just beside number 20. When is it that you hear the voices? Or the screaming?

15 A. I'd heard the screaming when I was over here, and then I walked towards, um, like, east, and then, ah, I saw him. He kind of stumbled out of, like, down the stairs.

Q. Okay. Now, where is the first time that you saw him?

20 A. When he was sort of stumbling down the stairs.

Q. Okay. Now, there's a set of stairs there.

A. Yeah.

Q. Is that the stairs you're referring to?

25 A. I think -- I'm not positive.

1147

A. Chan - in-ch. (Thompson)

February 8, 2011

Q. Okay. Can you bring up the other exhibit, Exhibit Number 20, JPG 62. Okay. Now, that's the same scene but there's two sets of stairs there.

A. Mm-hm.

5 Q. Now, out of those two sets of stairs, do you know which set of stairs that you saw him coming from?

A. I'm not positive.

10 Q. Okay. When's the first time that you see him?

A. When he's coming down the stairs.

Q. Okay. How many stairs did he have to go down?

A. Not many.

15 Q. Okay.

A. Like, if I was using this set of stairs, he was, like, around there, or if it was this one it was around there.

20 Q. Okay. So what does he do when he gets to the bottom of the stairs?

A. He kind of falls and rolls.

Q. Okay. And which way does he roll?

A. Towards the street.

25 Q. Can you put the other exhibit back up, please?

1148

A. Chan - in-ch. (Thompson)

February 8, 2011

A. So yeah. He, like, if he -- let's say he came down these stairs, he kind of rolls and falls this way.

5 Q. Okay. And you've marked to about the area about the 17 marker? That's where you put the laser marker. Is that --

A. Yeah.

Q. I just have to put on the record where it is that you've marked.

10 A. Sure. Yeah. Around this area.

Q. Okay. You've marked an area between 20 and 17.

A. Yes.

15 Q. And when he gets there, what happens at that point?

A. Um, so he's on the ground and so my friend and I go over to him and ask him what happened, and he says he's been stabbed, so I call 911.

20 Q. Okay.

A. And in the meantime, my friend, who is in the red shirt in the video, he went back to 7-11 to get some napkins to, um, help with applying some pressure on Mr. Hammond's chest to --

25 Q. Okay. Just stop for a second. I just have

1149

A. Chan - in-ch. (Thompson)

February 8, 2011

to get this down. So the 911 call we heard, that's the call that you made?

A. Yes.

5 Q. And while you were making the call, do you know what your friend did?

A. He ran across the street to 7-11 and then came back.

Q. And how did -- and sorry. The purpose for him to go was what?

10 A. He was going to get napkins to, um, like, put his hands on Mr. Hammond's chest.

Q. And why did he need napkins?

A. I don't know.

Q. Was he bleeding?

15 A. Yes.

Q. Okay.

A. Yes.

Q. How could you tell he was bleeding?

20 A. Um, he had some cuts on his arms. I'm not sure which arm it was.

Q. Yes?

25 A. But he kept on sort of motioning to his chest, so I remember his shirt sort of being a little bit ripped too but he kept on motioning to his chest, so we assumed the injuries were a little

1150

A. Chan - in-ch. (Thompson)

February 8, 2011

bit more severe, so my friend just decided to go to 7-11 and get some napkins to help.

Q. Well, when he came back, did he apply those napkins?

5 A. Yes. Yeah. While I was on the phone with the dispatcher, um, he got right on top of him and ripped his shirt open and that's when it was sort of revealed that he had some stab wounds and he was bleeding.

10 Q. Okay. Just -- can you just stop there for a second? I just want to go into that area. You said at the beginning that his shirt was ripped, all right? When you gave your evidence?

A. Yeah.

15 Q. And you've also said now that your friend ripped open the shirt.

A. Yes.

20 Q. So can you just sort of elaborate a little bit on that in terms of the -- what the shirt looked like when you first arrived and what the shirt looked like after your friend ripped it open?

25 A. Sure. I mean, I'll try. Um, his shirt, I remember there just having -- like, it looked like he had been in a scuffle of sorts, um, there was definitely some blood on his shirt too, um, and then

1151

A. Chan - in-ch. (Thompson)

February 8, 2011

when I was on the phone, I didn't actually see my friend rip his shirt apart but then when I looked down it had been ripped apart so my friend could put his hands right on top of him.

5 Q. Okay. Ah, when you came upon Mr. Hammond on the ground with your friend, was there anybody else present at the time?

A. No.

Q. Did you ever see a knife at any time?

10 A. Ah, yes. Um, after I -- I believe after I spoke to the dispatcher, a man -- another just man in passing I guess was a little confused and had just seen a knife on the ground and saw me and actually started pulling me away. I guess maybe
15 concerned that I was in some sort of danger, so then I explained to him, no, what happened, and that I was fine and then so he actually --

Q. Okay. I'm going to ask to you slow down a little bit. The Court has to get these notes down.
20 Thank you. Okay. So I've just got you now, this gentleman has approached you. Where did he come from?

A. I don't know. He just appeared. I'm not sure what direction he had come from.

25 Q. And you said he mentioned something about

1152

A. Chan - in-ch. (Thompson)

February 8, 2011

a knife?

A. Yes. He came up to me, he's like, There's a knife over there. Get away.

Q. When he said that to you, did you actually see if there was a knife over there?

A. Yeah, then I looked and I saw it. I hadn't seen it at the time.

Q. Do you remember where you saw the knife?

A. Yeah. It was around -- it was, um, it was closer to, like, I'm not 100 percent sure but it was closer to the stairs than the street. So...

Q. Now, just so --

A. Around here-ish maybe.

Q. Okay. Was it on the stairs or was it close to the stairs?

A. No, it was on the street level I think.

Q. All right. There was two sets of stairs in the other exhibit. Do you know which one of those stairs, when you say "stairs", which one you're referring to?

A. No.

Q. Okay.

A. I just know it was on street level.

Q. Okay. Can you put up the other exhibit please? Out of those two sets of stairs, do you

1153

A. Chan - in-ch. (Thompson)

February 8, 2011

have any idea where the knife was?

A. No.

Q. Okay.

A. Sorry.

5 Q. That's all right. But in any event, this gentleman showed you where -- made you look at a knife. As a result of that, what happens?

A. Um, I didn't do anything with it. Like, I saw it and that was sort of it.

10 Q. All right. Continue now. You have -- you've been told, I mean, when this gentleman pulls you away, do you say anything to him at all?

A. Yeah, I say, This man's been stabbed and I'm fine and police are on the way.

15 Q. What does he do?

A. He's sort of -- oh, actually, no, he just stood by because I talked to him a little later on too, so he just kind of moved over, and then just hung around the area.

20 Q. All right. What happens with your friend then? The friend you were with in the red?

A. Yes. Um, so we -- so after I got off the phone, um, well, during the whole time that I was on the phone, sorry, with the dispatcher, um, he was on top of Mr. Hammond just applying pressure to his

25

1154

A. Chan - in-ch. (Thompson)

February 8, 2011

chest, um, you know, trying to minimize the loss of blood as much as possible, and then, um, the police arrived.

5 Q. Okay. And when -- when the police do arrive, we played that video for you, the City TV video. Is that where you are when the police arrive?

A. Ah, yes.

Q. All right. Over Mr. Hammond?

A. Yeah, I was there the whole time.

10 Q. And is your friend assisting Mr. Hammond while the police are there?

A. Yes.

15 Q. So how far are you away from Mr. Hammond during that period of time? Do you ever move from that area?

A. No, I stayed right there the whole time.

Q. Are you present when the police arrive on scene?

A. Yes.

20 Q. And do you hear Mr. Hammond say anything at all to the police officers?

25 A. Um, yes. I -- I don't know what the police officer -- I don't know how he worded his question, but, um, something -- I guess one of the officers asked something about the knife, you know,

1155

A. Chan - in-ch. (Thompson)

February 8, 2011

something like, Where did you get it, or something like that, and then Mr. Hammond said, I got it in the fight.

5 Q. All right. The police are there, talking to Mr. Hammond. At some point in time in the video -- at some point in time, are you joined by a number of people that come down the street?

A. Ah, just people just looking, like, looking at what was going on.

10 Q. Do you see what happens in terms of the ambulance? Does anybody go to the ambulance?

A. Ah, yes. The -- well, I mean, so the police come, and then the ambulance came, and then, you know, there was a bunch of people around obviously seeing what was going on, and then four people come from the -- from east coming west down Queen and they approach the area and there's two men and two women.

15 Q. And can you give a description of those two men and two women?

20 A. I just remember one of the girls, I think she might have had, like, dreadlocks possibly? Um, I know one guy had kind of a scruffy beard and the other girl and guy I don't remember what they look like.

25

1156

A. Chan - in-ch. (Thompson)

February 8, 2011

Q. What brought your attention to them?

A. So from where I was, I could hear people just screaming, um, all sorts of obscenities and they were very distressed. Um, the man in particular with the scruffy beard was saying things like, This is a class war, This is injustice, You're helping the wrong people, um, He hurt -- I think he said my girlfriend. I believe they might have been a couple. So that sort of got my attention.

Q. When he was using the term "he", who did you think he was referring to?

A. I assume he was referring to Mr. Hammond.

Q. Well, let me ask you this: Where was Mr. Hammond in relationship to these four people?

A. Um, do you want me to, like, point at the board?

Q. Well, no. I don't mean exact location. How close to Mr. Hammond. It's my fault. I didn't word the question properly. How close to Mr. Hammond were these people when they were engaged in that conversation?

A. Um, they were pretty far away. They weren't right, like, I mean, they weren't in the exact area where I was with him. They were further up the street.

1157

A. Chan - in-ch. (Thompson)

February 8, 2011

Q. Okay. Let me just -- if I can walk towards you, does that assist you in telling us how far away they were from Mr. Hammond?

5 A. Yeah. If I was me, they would be, ah, like, past that wall.

Q. Okay. So the wall at the end of the court?

A. Yeah. Past that.

10 Q. Okay. I'm going to say that's probably about 50 feet. And do they come towards the van?

A. Yes. They came right towards, um, where we were. They were definitely --

Q. So that's --

A. Yeah.

15 Q. When they come right towards where you were, how close to you were they at that time?

20 A. How close were they to me. About past that wall, like I said. So they didn't get very close to us because there was so much going on. There was police officers and there was ambulances everywhere, so they -- and at that time the police were there and had sort of secured the area, so I don't think they were allowing a lot of people into the direct, um, location where we were, so they
25 didn't get very close to us. I mean, they didn't get

1158

A. Chan - in-ch. (Thompson)

February 8, 2011

very close.

Q. You watched a video, the City TV tape in which you identify yourself?

A. Yes.

5 Q. Did you see those people that you were referring to on that tape?

A. Um, I wasn't looking for them when I watched it.

10 Q. If I played the tape back for you would it assist you in determining whether they were there or not?

A. Sure.

Q. Can you play that back, please.

15

---TAPE PLAYING

THE WITNESS: That's her.

20 MR. THOMPSON:

Q. Speak up? Stop.

A. That's her.

25

Q. Okay. So if you can just play it back for a second please? You say "that's her". "Her" meaning who?

1159

A. Chan - in-ch. (Thompson)

February 8, 2011

A. The -- one of the girls.

Q. Okay. Can you play?

5

---VIDEO PLAYING

MR. THOMPSON:

10

Q. Okay. So my question to you again is:
How far away from them were you?

A. Oh. Okay. I was, at that point, on the
northwest corner of Queen and Gore Vale Avenue.

Q. I understand, but the person, just so
it's clear, is beside the ambulance, right?

15

A. Yeah. You asked where I was?

Q. And you're right beside Mr. Hammond?

A. There? Well, by the time that they got
there I moved, right?

20

Q. Okay. So where -- but where had you moved
to by the time they got there?

A. To the northwest corner of Gore Vale and
Queen.

Q. Okay. So when is it in that video that
you actually move?

25

A. I think it's around when the police were

1160

A. Chan - in-ch. (Thompson)

February 8, 2011

putting the tape up, because they told us to all evacuate the area.

Q. Okay. So sorry. You are at the corner of where then?

5 A. Where did I end up by the time the four came?

Q. Well, you saw them come -- by the time that they -- did you see them arrive at the ambulance?

10 A. Ah, at that particular point I was talking to some people, but I remember her being by the ambulance. I don't know if I saw that exact moment in time.

15 Q. Okay. So if you remember her by the ambulance, could you tell me how far away from her you were at that point? Where were you located?

A. I think I was around here.

20 Q. Okay. So you've marked on there the, west north corner of Gore and Queen Street, and so you're just a little bit west of the church. You're across the street.

25 A. Yeah. Because when they told us to leave, I was either talking to some police officers or else I was talking to some people that had passed by and were discussing what happened.

1161

A. Chan - cr-ex. (Simpson)

February 8, 2011

Q. Okay. Did you have any further contact at all with any of those individuals you saw walking down the street?

A. Did I have any contact with them? No.

5

Q. Any further contact. Did you have any further contact with Mr. Hammond?

A. No.

Q. And do you remember when you provided the police a statement?

10

A. Yes. Um, when -- when we were told to move over, I said, you know, Do you want my information? They said, No, "they" being the police, and then a few days later I was walking down Queen Street and saw signs posted that Mr. Hammond had passed away and that if anyone had any information to call, so I called it must have been just a couple days after the incident.

15

Q. All right. I don't have any further questions. Thank you, ma'am. Could you remain there for a few minutes, please?

20

THE COURT: Cross-examination?

---CROSS-EXAMINATION BY MS. SIMPSON:

25

MS. SIMPSON:

1162

A. Chan - cr-ex. (Simpson)

February 8, 2011

Q. Good morning.

A. Good morning.

Q. Thank you for coming to speak with us about this this morning. I have relatively few questions for you so you won't be long.

A. Okay.

Q. I understand you have an appointment later today. I'm almost positive you'll make it.

A. Okay. Thank you.

Q. I understand you heard, before you saw, the injured man, is that correct?

A. Yes.

Q. You had cut across Queen from south to north, and you ended up close to the corner past the church, is that right?

A. Yes.

Q. You're heading west to where you lived then?

A. Yes.

Q. And the other side of Gore Vale, that's where the park starts.

A. Yes.

Q. Had you made it over to the park or were you still where there were buildings?

A. No, that I believe, 780, is an old

1163

A. Chan - cr-ex. (Simpson)

February 8, 2011

photography store so I was right there, around that area.

Q. So you haven't crossed over Gore Vale.

A. No.

5

Q. And you turned back when you heard a noise from I guess behind you, is that correct?

A. Yes.

10

Q. And you turned back because you heard something. Not because you'd seen anything unusual but because you'd heard the sounds, is that right?

A. Yeah, I heard him screaming.

Q. You said that the area there is not well lit, is that correct?

A. Yes.

15

Q. So what you first saw then was this gentleman heading back out and he's coming downstairs and towards the sidewalk, is that correct?

A. Yes.

20

Q. And you can't remember which set of stairs. It might have been the further back stairs or the closer stairs.

A. Yeah. Sorry. I don't remember which stairs.

25

Q. But you know it was the further west

1164

A. Chan - cr-ex. (Simpson)

February 8, 2011

stairs?

A. Rather -- oh, rather than like the ones on the outside?

Q. Rather than the further east stairs.

5 A. Yeah. Yeah.

Q. And he's coming down on his own two feet. He was walking down the stairs and sort of hits the ground once he's at the bottom of the stairs, is that correct?

10 A. He kind of is stumbling as he's going down the stairs and then rolls.

Q. But he's able to make it down the stairs on his feet. He's not crawling. He's not rolling down the stairs. He's walking, however unevenly or imperfectly.

15 A. Yeah.

Q. You didn't see a knife in his hand as he's coming down the stairs, did you.

A. No.

20 Q. In fact you didn't see the knife at all until the stranger pointed it out to you, is that right?

A. Yeah. I was sort of preoccupied.

25 Q. Of course. You're helping Mr. Ross -- or Mr. Hammond. You're not looking around. And that

1165

A. Chan - cr-ex. (Simpson)

February 8, 2011

stranger in fact tried to stop you as you're helping. Tried to pull you away.

A. Mm-hm.

Q. Is that correct?

5

A. Yeah.

Q. Now, do you remember if he told you there was a knife or if he pointed to it?

A. I don't remember. It could have been both.

10

Q. Either? Both?

A. Yeah. It was, I mean, both happened. I just don't know what order.

Q. And it was when he drew your attention to it that you first saw the knife, that you first noticed it.

15

A. Yes.

Q. It was in the same rough area that Mr. Hammond had come from?

A. Yeah.

20

Q. Same set of stairs in that --

A. Yeah. Around the same area, yes.

Q. When you were looking at the stranger, the man who was trying to help you actually?

A. Yeah.

25

Q. Did you see him touch the knife?

1166

A. Chan - cr-ex. (Simpson)

February 8, 2011

A. Oh, no, he definitely didn't.

Q. And you definitely didn't either.

A. Oh yeah. No.

Q. So it was left there and then the next
5 thing that happened was the police picked it up, is
that right?

A. Yes. Yeah.

Q. I understand you called the police, you
called 911, very quickly once you saw Mr. Hammond
10 and realized this is a very serious situation, is
that right?

A. Yes.

Q. And you had to ask them I think, we heard
it this morning, for some guidance on how to help
15 him because you weren't sure what to do, is that
right?

A. Yeah. Yeah.

Q. And you wanted to ensure that an
ambulance was coming and some help was coming.

20 A. Yeah.

Q. You got that assurance from them.

A. Yeah.

Q. I understand the police arrived before an
ambulance did, is that right?

25 A. Yes.

1167

A. Chan - cr-ex. (Simpson)

February 8, 2011

Q. And there were a large number of police that were standing around you and your friend and Mr. Hammond.

A. Yes.

5 Q. You recall them speaking to Ross?

A. Yes.

Q. Speaking to Mr. Hammond?

A. Yes.

10 Q. And I understand you also remember that they all had their thick black gloves on? They were all wearing more clothing than you and your friend were, is that right?

A. Yes. Yeah.

15 Q. So you and your friend are there trying to help Mr. Hammond with your bare hands at the same time as officers in gloves were sort of milling around, is that correct?

A. Yes, that's correct.

20 Q. If they're wearing gloves, correct me if I'm wrong, but they couldn't have had notebooks out. They weren't making notes at the time, is that right?

25 A. Um, I -- I don't remember if anybody had any notebooks, but I definitely remember the thick gloves because I was wondering why nobody was taking

1168

A. Chan - cr-ex. (Simpson)

February 8, 2011

over for my civilian friend with bare hands.

Q. And so Mr. Hammond spoke to the police about the knife at the same time as you and your friend are trying to help him, is that right?

5 A. Yeah.

Q. He did not say the knife was his. He said he got it in the fight or in a fight, is that right?

A. Yes.

10 Q. At that point, you had no idea what fight he was talking about, what the issue was about.

A. No. Yeah. No.

Q. And then when you speak to the police a few days later, you told them the same thing, is that right?

15 A. Yeah.

Q. And again, you didn't know by that point what this fight or a fight was about. That was just what you heard Mr. Hammond say.

A. Yeah.

20 Q. I understand --

A. Sorry, can I just add to that?

Q. Of course.

25 A. I knew that there was some sort of, or at least I had sort of pieced together in my mind that there was some sort of fight because, um, you know,

1169

A. Chan - cr-ex. (Simpson)

February 8, 2011

5 those four people came to the area when I was there
and they had said some -- that, you know, they had
had an altercation. I don't know if they meant
necessarily Mr. Hammond, but they were saying that
there was some sort of incident between them and
somebody else. So I don't know if that helps.

Q. I'll get back to that in just second.

A. Sure.

10 Q. When Mr. Hammond said that he got it in
the fight or a fight, that's all the explanation
that you heard from him about where the knife came
from, is that right?

A. Yeah.

15 Q. You don't recall the question the police
asked, you don't recall any follow-up questions, but
that's as much information as he provided about the
knife, is that right?

A. That's as much that I heard and can
recall.

20 Q. You didn't hear Mr. Hammond explain
anything about the fight or who he had been fighting
with?

A. No. He was in a lot of pain at the time.

Q. Of course.

25 A. He didn't talk very much.

1170

A. Chan - cr-ex. (Simpson)

February 8, 2011

Q. And at the time that you heard this comment from Mr. Hammond, how close were you then?

A. I'm not positive how close I was at the time.

5 Q. So moving back then to the group of four, you saw the injured woman and her three friends in at the scene. You told us today you can't actually be sure that you saw them arriving, but you saw them around when the ambulance was there, is that right?

10 A. Yeah. I -- rather them coming down the street from east coming west towards where we were, because I was with Mr. Hammond at the time and I remember kind of, like, hearing screams and something was going on, so I sort of -- I recall
15 their arriving but then, you know, I was doing other things so I don't remember exactly when they got to where I was.

Q. And this group is coming down the north sidewalk when you look up and see them?

20 A. Um, they're kind of coming down the -- as far as I remember, they're coming down kind of like the middle of the road. I mean, like the -- at the time I think there was already a lot of the
25 ambulances and the police, so there wasn't a lot of traffic and things going on, so I remember them kind

1171

A. Chan - cr-ex. (Simpson)

February 8, 2011

of walking, like, through the vehicles.

Q. So not on the sidewalk. Back out where the traffic would be normally.

A. Yeah.

5

Q. The roadway.

A. Yeah.

Q. It's a very vocal group?

A. Yes.

10

Q. And when you saw the woman with blood and the injury to her arm, that was the first time that you were aware that there was another person who was injured aside from Mr. Hammond, is that correct?

A. Yes.

15

Q. By this point you said the ambulance is already there, there are all sorts of police cars around at the time?

A. Yeah.

Q. And were there flashing lights that were going as well?

20

A. Yes.

Q. So the number of police walking about, the number of police cars, that would have been very obvious to anyone?

A. Yes.

25

Q. And the group of four, in particular the

1172

A. Chan - cr-ex. (Simpson)

February 8, 2011

woman with the injury to her arm, they walked right up. They didn't hesitate or run away from the police. They approached right there to the police and the ambulance attendants to talk to them, right?

5 A. Yeah.

Q. No hesitation, no --

A. No.

Q. -- careening away. They wanted to talk to these people.

10 A. Yes.

Q. And from your recall, the message of the woman with the blood and the cut on her arm was that she wanted medical help, is that right?

15 A. Yeah. Um, she was -- she was just saying, like, I've been hurt too.

Q. You heard the others yell a variety of things about a class war and so on. Am I right that that's all the male voices that are saying that?

20 A. Um, I just remember, um, the one guy with the beard being the most vocal, um, in terms of saying those types of comments.

Q. You didn't -- you don't recall any comments like that coming from her that you can attribute to her, do you?

25 A. Not that I recall, no.

1173

A. Chan - re-ex. (Thompson)

February 8, 2011

Q. And the two men that she approached to the ambulance with, do you remember either of them having any kind of cuts or any injuries? From what you saw.

5 A. Ah, I don't remember. I know the girl was definitely injured. I don't remember about the other ones though.

Q. About the other two? Okay. Thank you very much.

10 THE COURT: Re-examination?

---RE-EXAMINATION BY MR. THOMPSON:

MR. THOMPSON:

15 Q. My friend asked you a question with respect to at the time the comment was said about, I got it in a fight, as to how close -- I got it in the fight or a fight, how close you were to him at that time, and you said you don't know. Can I ask you this: How well could you hear it?

A. Um, I could hear it clearly.

20 Q. All right. So when you answer you don't know, do you have an approximate idea in terms of distance?

25 A. Um, within hearing distance. I'm -- I

1174

B. Dawn - in-ch. (Thompson)

February 8, 2011

could hear it. I don't know.

Q. Well, where were you in relation to Mr. Hammond at that time? Do you know?

A. Um, I'm not sure.

5 Q. All right. Thank you. No further questions.

THE COURT: Thank you, ma'am.

THE WITNESS: Okay.

THE COURT: You may step down.

10 THE WITNESS: Thanks.

MR. THOMPSON: Next witness for the Crown is P.C. Dawn.

THE REGISTRAR: Sorry?

MR. THOMPSON: P.C. Dawn.

15 THE REGISTRAR: P.C. Dawn, please.

---BRIAN DAWN: SWORN

---EXAMINATION IN-CHIEF BY MR. THOMPSON:

20 MR. THOMPSON:

Q. Good morning, Officer. You are a member of the Toronto Police Services and have been for how long?

A. Ah, I believe it's six years now, sir.

25 Q. So back -- or do you have any notes with

1175

B. Dawn - in-ch. (Thompson)

February 8, 2011

you today?

A. I do, sir.

Q. And can you tell me what the purposes of those notes are?

5 A. The purpose is to refresh my recollection of the events.

Q. All right. Can you tell me when those notes were made?

A. Ah, on or about the day.

10 Q. Okay. And can you tell me whether or not -- were you the sole author of those notes?

A. I am.

Q. Have there been any additions or deletions to those notes --

15 A. No.

Q. -- since the time --

A. Sorry. My apologies.

Q. Since the time in which you originally put them in within the day?

20 A. No.

Q. All right. Your Honour, I ask he be allowed to use his notes to refresh his memory with respect to times and dates?

MR. SCARFE: No objection.

25 THE COURT: Very well, Officer. You may make

1176

B. Dawn - in-ch. (Thompson)

February 8, 2011

reference to your notes as necessary in
giving your evidence.

MR. THOMPSON:

5 Q. Officer, I'm going to ask you to deal
with the August 9, 2007, and can you tell us, you
were on duty that day?

A. I was.

Q. Can you tell us where you were and what
you were doing?

10 A. On that day at around the -- was it, 36
minutes after midnight I was in the area of Queen
and Niagara.

Q. Okay. And you say you were in the area.
Were you walking? Scout car?

15 A. No, I was assigned to a scout car. My
plate number --

Q. I don't need your plate number.

A. It's 1413. I was assigned to a scout car.

20 Q. All right. So you're in the Queen and
Niagara area. Which way are you going?

A. Ah, I was coming up -- I was heading
north along Niagara Street to Queen Street and then
just started heading westbound on Queen. At that
point I came across the radio call which was a --
25 started as a fight. Ah, I exited the vehicle --

1177

B. Dawn - in-ch. (Thompson)

February 8, 2011

Q. Can I take it from that you were responding to a radio call?

A. Yes, I was.

5 Q. And what did you expect to see when you arrived at that location?

A. The information from the radio call was that there was six to seven people fighting. Originally came over, as for my notes, that there was -- in the middle of the street there was a group, one -- there was a male with a knife, and kind of a commotion where someone was being dragged by a cab, and there was a female with a cut on her arm.

10 Q. Okay. So when you arrive on scene, what did you see?

A. When I arrive on scene in the intersection of Queen and Niagara there's a large group of people.

15 Q. Yes?

A. I could see that there is a female with a cut on her arm.

20 Q. Yes?

A. She's got an officer or two around her and they're dealing with her. Um, seeing that she's being dealt with --

25

1178

B. Dawn - in-ch. (Thompson)

February 8, 2011

Q. Can you tell us approximately where you saw this woman?

A. Yeah. She was in the middle of the street at Queen and Niagara. It's a T intersection.

5 Q. Okay. So I'm going to refer you to Exhibit Number 2 I believe it is. Can you tell me roughly -- have you got a pointer there? Can you just mark on Exhibit 2 or on there, it doesn't matter, roughly where it is that you saw this woman?

10 A. Yeah. I believe it is in that area, sir.

Q. Okay. You circled a T intersection more towards the east side or more towards the west side?

15 A. To be quite honest with you, sir, it's -- I didn't feel, like, make specific notes of where she was in terms of the intersection. Just that I remember her in the middle of the intersection at this time.

Q. Okay. Was there anybody around her at the time?

20 A. I believe there was other officers around with her.

Q. So what did you do then, please?

25 A. I, ah, turned my attention to checking the scene just to see if there is any evidence or any other victims or suspects that are outstanding

1179
B. Dawn - in-ch. (Thompson)
February 8, 2011

at this time.

Q. Okay. And --

A. I --

Q. Go ahead.

5 A. I focused my attention on the north side
of the street to see if there is any, like I said,
evidence that can be collected, so I began walking
just on the corner, if I could use the pointer
again.

10 Q. Sure, please.

A. Right there. There's a Starbucks right
there, sir, and I basically started to walk along
the -- along the sidewalk looking for anything such
as a blood trail --

15 Q. Just so it's clear, you marked on the
area that you were in the area of what would be the
northeast -- sorry. I guess it would be the
northwest corner of Claremont and Queen and you were
walking in a westerly direction along Queen Street
20 on the north side, is that correct?

A. Yes, sir.

Q. Continue?

25 A. About when I was basically walking in
that area, I observed a male standing waving his
arms trying to get my attention, so I started

1180

B. Dawn - in-ch. (Thompson)

February 8, 2011

jogging down that direction and I came across a bystander providing first aid to a male on the ground.

Q. How far did you go down, sir?

5

A. It's about 100 meters I'd say, the distance between where I saw the male to where he was.

Q. Okay. So you continue going in a westerly direction?

10

A. Yes, sir.

Q. Where is it that you wind up, sir?

A. Where I wind up, using the pointer if you don't mind, is in this area, sir.

15

Q. Just so it's clear, it's just in front of the church?

A. Yes.

Q. On the north side of Queen Street just -- just so it's clear, is it the stairs or --

20

A. Just on the west side there is a little alcove right here.

Q. Okay.

A. And there's a set of stairs and such right there.

Q. And what do you observe there?

25

A. Um, I observe a male lying on the ground.

1181
B. Dawn - in-ch. (Thompson)
February 8, 2011

He's rolling around on the sidewalk and obviously he is in pain and discomfort at this point. He's holding his chest with one hand and I can see on his left arm there is a large gash about probably two and-a-half inches deep. It's a deep wound. And the male's shirt is ripped so I can see his chest, just because it's torn across. And the male at the time kept saying over and over again that he can't breathe and it's kind of -- he just keeps repeating that again and again.

Q. Okay. At some point in time does anybody join up there with you?

A. Ah, yup. Shortly after my escort at the time, B.C. Babcock, arrives. He was driving the car so just in the time it took him to probably find a spot to place the car.

Q. All right. Are you doing anything when you're down there other than making observations?

A. Ah, at the time, ah, I'm just trying to attend. There's no -- when I first arrive I don't believe there was any paramedics or emergency medical staff on scene so I'm just trying to get a -- a fix on what's going on, see if I can apply any first aid at this point.

Q. All right. And do you provide first aid?

1182

B. Dawn - in-ch. (Thompson)

February 8, 2011

A. Ah, there was a male, a bystander there at the time that was applying gauze or napkins to the male, so...

5 Q. Okay. Do you -- all right. So how long do you stay there?

A. Ah, I'm there until the paramedics arrive and transport the male away.

Q. Okay. So the paramedics arrive?

A. Yes, sir.

10 Q. What happens when they arrive?

A. Ah, when they arrive on scene, the male, he's still in a lot of pain so he's rolling around on the ground, and it's kind of similar to if someone was to -- say you broke your hand or something, you wouldn't want someone touching it, so he keeps pulling away from their actions.

15 Q. Okay? In particular, does anybody bring your attention to anything that's on the street?

A. Ah, yes, sir. There is a bystander that pointed out on the steps, to which would be the north of where I was with the male, approximately I estimate 15 feet, they point out that there is a knife on the steps. Or near to the steps.

20 Q. And do you go look?

25 A. No, I didn't, sir.

1183

B. Dawn - in-ch. (Thompson)

February 8, 2011

Q. Okay.

A. I stayed with the victim at this point.

Q. Okay. And when you stayed with the
victim, do you talk to him? Did you ask him
5 anything about anything when you are talking with
him?

A. When I -- when I heard that there was a
knife involved I asked him about it, and his
response was, No comment, no comment. I just took
10 it off them.

Q. Okay. Can you tell me how close to him
were you when you were asking that?

A. Ah, probably, ah, a few -- like, less
than three feet I would estimate. Just like I said,
15 I was close to the male at this time.

Q. Okay. And at that juncture when you're
talking to him, did he seem lucid at all or is he
still rolling around? Can you just put your mind to
that time when he said those words to you? Do you
20 know what condition he was in?

A. He was in pain.

Q. Yes?

A. But like I said, he was able to speak at
the time.

Q. Now, that comment, which was, No comment,

25

1184

B. Dawn - in-ch. (Thompson)

February 8, 2011

no comment. I just took it off them, did you enter that into your notebook? Did you put that in your notebook?

A. Yes, I did, sir.

5 Q. Okay. When did you put it in your notebook?

A. Just when I was writing up my notes later on in the evening.

Q. When was that?

10 A. It would be back at 14 station when I had an opportunity to do so.

Q. Can you, to the best of your knowledge, tell me approximately how long after the incident happened that you wrote that in your notebook?

15 A. Ah, probably around eight o'clock I would estimate, as I was cleared from the hospital and no longer required at, ah, approximately 7:00, by the time I got to the station and started to write up, sir.

20 Q. So that's approximately 8:00 a.m.?

A. Yes, it is, sir.

Q. That's on the 9th of August would you say?

A. Yeah, it would be the morning.

25 Q. Okay. I just want to get that down. Now,

1185

B. Dawn - in-ch. (Thompson)

February 8, 2011

you stay there, do you have any -- while he is on the ground, do you have any further conversation with him in respect of the knife?

5 A. Ah, any time I tried to, ah, my problem, sir, like I said, the paramedics are now on scene and they're dealing with him. So not really. He -- nothing that I could get an answer from.

10 Q. Okay. So when the paramedics come on scene, are you -- do you stay with him at that point in time?

A. Yes, I did. I travelled with him in the rear of the ambulance.

15 Q. Okay. Just so it's clear, who is in the ambulance when you are in the back of the ambulance when you are travelling with him?

A. Ah, at the time it would just be myself and the paramedic.

Q. Paramedic or paramedics?

A. I believe it was just a paramedic.

20 Q. So there's yourself?

A. Yes.

Q. Obviously Mr. Hammond?

25 A. Yes, so there would be the three of us. Myself, the paramedic, I believe, and -- the one paramedic usually drives. They work in twos from my

1186

B. Dawn - in-ch. (Thompson)

February 8, 2011

knowledge.

Q. All right. And can you tell me, does he make any further comments about the fight or the knife while he's in the back of the ambulance?

5 A. Ah, he did. Ah, I asked the male to describe the people that did this, or the suspects, and all he said was, They were punks. Just punks. And he continued to say, I can't breathe, again and again.

10 Q. So you arrive on scene. Can you just tell us what happens? What hospital you go to? What happens when you arrive?

15 A. Yeah. We arrived at St. Mike's Hospital. It's one of the trauma centres that we attend, and the male was brought to trauma room number one. Basically once we entered the room, he was -- he became unconscious in the back of the ambulance so he was unconscious going into the room, and basically the medical staff started working on him once he entered the -- the trauma room.

20 Q. And do you stay there?

A. Yes, I did. I stayed a distance away, just not to interfere with what the doctors are doing, but I do stay in the back of the room.

25 Q. And we'll go into a little more detail in

1187

B. Dawn - in-ch. (Thompson)

February 8, 2011

a minute, but what time do you eventually leave?

A. Leave the trauma room? Or --

Q. Well, leave the station -- or sorry.

Leave the hospital?

5 A. Seven -- I believe I was relieved at approximately seven o'clock, so around 7:00.

Q. Okay. And between the time -- what time do you arrive at St. Mike's again? Sorry.

A. Ah, I arrive at 01:04.

10 Q. Okay. So during those approximately six hours, do you do any other -- do you have any conversation with any other officers?

A. Yes, I did. The Detective Scott and Detective Constable Umbrello attended.

15 Q. At the time that they attended and to your knowledge, do you know what the status and the state of Mr. Hammond was at that time?

A. Um, I think at the time, one of the staff mentioned that he was in very rough shape and I conveyed that information along to Detective Scott.

20 Q. When you pass that information, was Detective Umbrello there?

A. Yes, he was.

25 Q. By the time you left at 7:00 in the morning, did you know of any different status in

1188

B. Dawn - in-ch. (Thompson)

February 8, 2011

terms of Mr. Hammond? Or were you in the same position as you'd been advised earlier?

5 A. Ah, when he was transferred to the neuro -- the Intensive Care Unit, I believe his status was critical, so I passed that information on to Detective Scott again and advised the OIC of the station, which would be Sergeant Williams, of his condition.

10 Q. I just want to go back to your earlier conversation. Just so -- I just want to be clear, is the time that you're spending with Detective Scott and Detective Umbrello, are you with them constantly or are you just having periodic conversations?

15 A. Just periodic conversations. Just giving them updates. They most likely would have -- they're just checking in on what's happening at the hospital, so...

Q. So are they on site?

A. Yes, they would be.

20 Q. So where would they be in relation to you in the hospital?

A. Ah, when I was speaking to them, it was outside the operating room I believe it was.

25 Q. Okay? And can you give us an idea just roughly how many conversations you may have had with

1189
B. Dawn - in-ch. (Thompson)
February 8, 2011

Detective Scott during that night? And Umbrello?

A. Um, it would be numerous, like I said. Just as the updates on what was going on, ah, I -- a brief rundown of what I did in that scene and, ah --

5 Q. Well, when you were talking, first of all, you indicated earlier that your notes were not made until you got back to the station.

A. Yes, sir.

10 Q. So when you're having conversation with Detective Scott, were -- were you looking at any written notes of any kind?

A. No, sir.

15 Q. Okay. And during that evening, was the conversation -- was the conversation continued -- was it all done on a very professional level or were there just times where you're killing time?

20 A. Like I said, it is more or less -- some of the conversation was directed at the call, some of it is just like you said, passing time, so it wasn't at a fully professional I would say.

Q. Okay. So did you ever tell Detective Scott anything with respect to what Mr. Hammond had told you, ah, in the back of the ambulance?

A. I may have, sir.

25 Q. Okay. And did you ever tell him anything

1190

B. Dawn - in-ch. (Thompson)

February 8, 2011

that he -- that he had said with respect to what
Mr. Hammond had told you on the street?

A. Again, I may have.

Q. So in terms of whether you put any
notation down about that conversation, did you?

A. Notation about the conversation with
Detective Scott?

Q. Yes.

A. Ah, yes, I did.

Q. And what, with respect, did -- is there
anything in particular that you put down with
respect to the conversation that you had with
Mr. Hammond and you subsequently passed on to Mr.
Scott?

A. Oh, no. To clarify, I just have in my
notes that I did speak to him about the male's
condition. I don't have any notes specifically of
what myself and Detective Scott spoke about.

Q. And just so it's clear, do you have any
independent recollection, this is my last question,
Your Honour, any independent recollection of what
was said by you to Mr. Scott about what Mr. Hammond
said to you in the back of the ambulance?

A. Ah, no, not really, sir.

Q. I'm going to ask the same question again

1191
B. Dawn - in-ch. (Thompson)
February 8, 2011

except with respect to what Mr. Hammond said to you on the street. Do you have any independent recollection of what you may have said to Detective Scott about what he said to you on the street.

5 A. I -- in terms of it, I did say what Mr. Hammond had said. In terms of the utterance and that, I did speak to that. I kind of went over some of the situations, like the rundown of what I did and what time things happened, what time I arrived
10 on scene and I would have gone over stuff like that, yes.

 Q. But do you have any -- and that's fine, but do you have any independent recollection of what you said to Detective Scott about what Mr. Hammond
15 said.

 A. No, sir.

 Q. Okay. Thank you very much, Officer.

 THE COURT: We'll take the morning recess.

20 ---RECESS

(11:32 a.m.)

25 ---UPON RESUMING

(11:51 a.m.)

1192
B. Dawn - cr-ex. (Scarfe)
February 8, 2011

THE COURT: Cross-examination?

MR. SCARFE: Thank you, Your Honour.

5

---CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE:

Q. Constable Dawn, how long have you worked
at 14 Division -- or had you worked at 14 Division
at the time, August 9, 2007?

10

A. Three and-a-half years.

Q. Are you still there?

A. Yes, I am.

Q. Okay. So the entire course of your career
has been spent at 14 Division.

15

A. Yes.

Q. Okay. Have you always been on the same
platoon?

A. I was at the time on C Platoon, now I'm
down at the CRU Unit, which is the bike unit, so I'm
on a different platoon now.

20

Q. CRU for Community Response Unit?

A. Yes, it is.

Q. And is Detective Scott still at 14
Division?

25

1193

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Not to my -- no, he's at the training and education, if I'm correct.

Q. Now, that night, the portion of notes that I have here starts around the time of the call.

5 Can you just tell us what -- do you have a note which scout car you were operating that night? When you came on shift?

A. 1413.

10 Q. You were in car number 1413 with P.C. Babcock.

A. Yes.

Q. He was your partner that night? Is he your partner a lot? Or just that night?

15 A. Just that night, sir. Like, I may have worked with him prior, different times, but there's --

Q. It's not like your long-term partner.

A. No, no. We didn't have permanent partners.

20 Q. And at the time that you came to the call, do you remember who was driving?

A. Ah, it would be P.C. Babcock.

Q. Because he always drives? Or --

25 A. No, it's just that night. It's no rhyme or reason. Just that night.

1194

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

Q. He was the driver. And you -- do you remember where it was when you first got on scene, what direction you came from and where the car stopped?

5 A. Ah, yes. We came north on Niagara and basically upon coming to Queen, as I said, there was a commotion and that's where I got out of the car.

Q. So just right in the intersection there?

A. Yes, sir.

10 Q. Okay. Now, and you said that there were other officers dealing with the female who was in the middle of the intersection. Do you remember who those officers were?

A. Ah, no, I don't, sir.

15 Q. And my friend asked you to point out where it was in the intersection that you saw the female. You didn't recall that either. Specifically where in the intersection.

A. Not specifically.

20 Q. No. You just have an image of a female who is yelling, screaming for an ambulance, talking to an officer, right?

A. Yes, sir.

25 Q. Yeah. Clearly she's not trying to divert attention from herself.

1195

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Oh no. She was, as I said, even when I was walking by, she was causing a -- obviously enough of a commotion for me to notice.

5 Q. All right. So you got out of the car and there are no civilians there that seem to require your assistance or come running up to talk to you, right?

A. Not at the time, sir, no.

10 Q. So you see that there are other officers dealing with the female in distress, and for a brief moment you've got nothing to do so you decide to start investigating, looking for physical evidence.

A. Yes, sir.

15 Q. Right. And you start down the north side from the Starbucks, the northwest corner of Claremont and Queen, and you begin to walk west.

A. Yes, sir.

Q. But you get distracted by something.

A. Well, I get flagged down by someone.

20 Q. You get flagged down.

A. Well, someone waving their arms at the west of my location.

25 Q. West of your location. All right. Do you also get approached by a cab driver who says somebody needs help down the street?

1196

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Um, I don't recall, sir.

Q. Sort of picked up your notebook there, and it's not in your notebook, but do you have a recollection of somebody saying that there's a guy
5 down the street needs help?

A. Not that I recall, sir.

Q. No? Could have happened?

A. Not that I recall.

Q. Okay. And the person that you see waving
10 their arms, can you just point out where that -- on the map where you saw that person? If you can recall?

A. As I said before, it was right around there, sir.

Q. That's where the injured party was lying
15 when you got down there?

A. Yes, sir.

Q. Right. But the person waving their arms, was it exactly the same position? Or were they sort
20 of out on the street a little bit?

A. Oh, I can't recall if they were beside standing, but they were in that area, sir.

Q. Mm-hm. And do you recall if you went
25 down, when you went jogging down, would you go along the sidewalk or did you cut out onto the street?

1197

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. I can't recall that, whether I stayed to the street, stayed to the sidewalk. I can't recall.

Q. Okay. And do you have any recollection once you -- well, the person who waved you down, do you have any recollection what they looked like?

A. No. I -- once I arrived at that area, I was focused on the male on the ground.

Q. Okay. But the person who was waving you down, did it appear to be a male? A female?

A. It was a male I believe, sir.

Q. It was a male?

A. Yes.

Q. And was it the same guy who was applying the napkins when you got there?

A. Ah, like I said, I didn't take specific notice of what the male that was waving us down -- waving me down.

Q. Okay. I'm just going to show you a diagram. If you don't recognize it just tell us, but have you ever seen this diagram before?

A. Do you mind if I --

Q. Go ahead. Yeah. Examine it. Take your time.

A. I believe so, sir.

Q. Are you the author of that diagram?

1198

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Ah, I don't know, sir.

Q. Do you have any recollection of being in a hospital with Detective Scott talking about what you saw? And drawing him a little diagram?

5 A. Ah, not that I recall, sir.

Q. Okay. Does that diagram appear to reflect what you saw when you got to the church?

A. I --

10 MR. THOMPSON: Well, Your Honour, at this point in time, I mean, if he doesn't recognize the document, he doesn't know what the document is, without having explained what the document portrays, I don't know how my friend can ask the question does it
15 accurately reflect what he saw at the church. That's my objection.

THE COURT: Mr. Scarfe?

MR. SCARFE: That's fair.

20 Q. Looking at the document, does it appear to depict something you know about?

A. Ah, not that I'm aware of, sir.

Q. Pardon me?

A. Not that I'm aware of. I can't find a reference to it. Sorry.

25 Q. If this could be a lettered exhibit and I

1199
B. Dawn - cr-ex. (Scarfe)
February 8, 2011

could show it to the next witness?

THE COURT: Exhibit B for identification.

MR. SCARFE: Thank you very much.

5

---**EXHIBIT B**: Diagram - produced and marked for
further identification.

10

MR. SCARFE:

Q. Looking at your notes, you're required to
make up your notes before you go off-duty?

A. Yes, I am, sir.

15

Q. And I guess there are some times that you
make up your notes that you just deal with a whole
bunch of overtime and stuff and you do it the next
day when you come on shift?

A. Ah...

20

Q. You can't say you've never done that in
your career?

A. I didn't understand the question.

Q. Sometimes if your shift goes exceedingly
long, right? You make up your notes the next time
you come into the station.

25

A. No, never have, sir.

1200

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

Q. Never in six and-a-half years have you put off making your notes until the next day?

A. No.

Q. No?

5 A. We're required, as I said, to complete our notes. I wouldn't -- in this case I had to get my notes done. I couldn't justify the amount of overtime from one spot to the next of getting to the station at four -- sorry. My apologies. At 8:00
10 approximately and sitting around for a few hours not writing up -- there wouldn't be a sergeant on the force who would allow me to do that.

Q. Okay. So you're sure you did it somewhere after you got back to 14 Division. You have an image
15 in your mind, in your mind, of doing up all your notes.

A. Yes, sir.

Q. And just to briefly review, your notes of this incident start on page 34 of your memo book, at
20 the top?

A. Mm-hm.

Q. Beside the notation 00:36, and go to page
40.

A. Yes, sir.

25 Q. So about six pages of notes.

1201

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Yes, sir.

Q. Covering from just after midnight all the way until seven o'clock, right? Now, clearly, you wouldn't be able to remember all of that stuff without an aid of some sort.

A. Ah, I use the I/CAD system, which is a computer in our car, to --

Q. So what happens is the I/CAD system is basically the police central dispatch, right?

A. Yes, it is.

Q. So someone phones 911 and they start typing. Or if the dispatcher's dealing with officers who say they got somewhere at a certain time that often gets entered in as well.

A. Yes.

Q. And so you're able to go back and piece together from the I/CAD things that you were involved in and attach them to a time.

A. Yes.

Q. So when we look at the six pages of notes, sort of describe your arrival on scene, right? Getting directed to -- down the road by the church, your dealings with Mr. Hammond, and your ride in the ambulance, and then all of the things that happen at the hospital, right? You're using

1202

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

the I/CAD system to help with times, right?

A. Yes. For the on-scene times, yes.

Q. So for example, at page 39, at 3:14
you've got Detective Scott and Detective Constable
5 Umbrello on scene. Advised of call and male's
condition. Do you see that note there?

A. Yes, sir.

Q. And then they leave the hospital at 3:40.

A. Yes, sir.

10 Q. Right? So the 3:14 and the 3:40, you
haven't actually looked at your watch and memorized
the time. You -- you find that in the I/CAD. Scott
and Umbrello arrive at hospital, Scott and Umbrello
leave hospital?

15 A. That wouldn't be in the I/CAD, no. That
would be for on scene times, what time we got to the
hospital, and possibly when ambulance arriving and
such as that.

20 Q. So if you weren't making up your notes
until eight o'clock in the morning, how do you know
Detective Scott and Umbrello arrived at the hospital
at 3:14?

A. Well, possibly because Detective Scott
and Detective Umbrello.

25 Q. So later on you go back to 14, you make

1203

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

up your notes, and you consult with these guys as to times but not content.

A. Yes, sir.

Q. Is that fair?

5

A. That's fair.

Q. Okay. And at the time that you were making up your notes and you had to ask that question, were they sitting there making up their notes? Or had they appeared to have already done all that?

10

A. I don't know, sir.

Q. Were you sitting in a squad room kind of thing?

A. No, I don't recall where I wrote my notes. Most likely it would have been our parade room. It's a quiet area in the station that no one would be in.

15

Q. So you're sitting there making up your notes and at some point you've got to ask Scott or Umbrello, Hey, what time did you guys get to the hospital, right? Are they there in the room with you?

20

A. No, sir.

Q. No? Did you phone them on the cell phone? Radio? How would you do that?

25

1204

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. I don't know, sir. It would just be to find out what times they arrived on scene and what time they're off scene.

5 Q. So when you're back in the parade room at eight o'clock or so in the morning, you don't recall if Scott or Umbrello were at the station or whether you had any dealings with them at all?

10 A. Ah, I believe just to, if I did, it would be to, like I said, to confirm times in terms of the on scene and off scene time.

Q. All right. You agree there's quite a few things about this night you don't remember, right? Madam Reporter's trying to --

15 A. There's a few things, yes, sir.

20 Q. There's a few things, right? And in fairness to you, you didn't understand the significance of what Mr. Hammond was saying to you both when he was on the sidewalk and in the ambulance, because I guess you'd sort of assumed he -- he'd live and we could talk to him later.

A. At first, yes, sir.

25 Q. Right. But you definitely could see that there was a lot of confusion on the street and that things needed to be -- a lot of things needed to be figured out.

1205

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. It was a confusing scene, yes.

Q. Right. And the best way to figure that out would have been to ask Mr. Hammond what he recalls, right? Your first question to him, his answer starts with, No comment?

A. Yes, sir.

Q. Right? Um, and then your evidence was, I just took it off them, right?

A. Yes, sir.

Q. Okay. And he's still out on the sidewalk for that part of it?

A. Yes, he is, sir.

Q. Okay. You're certain you're not confusing a little bit maybe what was said in the ambulance versus what was said on the street?

A. Ah, no, sir. I don't believe so.

Q. You don't believe so. Um, do you remember any of the words you used with respect to Mr. Hammond? I know that it's not so much in the notes.

A. Ah, it would be after, like I said, the bystander pointed out the steps and that, I believe it just it was a straightforward, Who's knife, or something directed towards the knife.

Q. Mm-hm?

1206

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. And his response, as I said in my book,
No comment, no comment. I just took it off them.

Q. Okay.

A. At the same time he's, like I said, still
5 continuing to say, I can't breathe. I can't breathe.
So...

Q. Now, Ms. Adrienne Chan, one of the ladies
that was there, just came to court this morning
before you and testified, recalls you asking, ah,
10 Mr. Hammond where he got the knife. Does that accord
with your recollection, or --

A. Not that I recall, sir.

Q. You're trying to get the best information
you can to assist the investigators?

A. Yes, I am, sir.

Q. Right? So, No comment, no comment. I
just took it off them. You have to agree that your
next logical thought would be, Well, who's "them"?
Who's he talking about? As far as the knife and how
20 he got it, right?

A. Ah, as I said, when I asked him further,
he doesn't say anything in relation to it, so I
didn't get an answer in terms of further at that
moment.

Q. Okay. So but clearly you asked a series

1207

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

of questions. Not just one question.

A. With no response.

Q. You weren't getting a whole lot of
response --

5 A. Yes, sir.

Q. -- on the street. So you tried again in
the ambulance.

A. Yes, sir.

10 Q. Right? And did you have any kind of
little rough notes that you were making along the
way?

A. No, sir.

Q. Do you keep a little pad or something?

A. No, sir.

15 Q. Okay. So once things are a little calmer,
you're able to get a little more information out of
him in the ambulance, right?

A. Yes, sir.

20 Q. Pursuing again, like, who is it that you
got the knife from, right? And you wrote down, They
were all punks. Just punks.

A. Yes.

Q. And he was -- he also stated he couldn't
breathe. That was something he said repeatedly.

25 A. Yes, sir.

1208

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

Q. And you've noted it at a couple times in your notes, but he was repeating it many, many times, right?

A. Yes, sir.

5 Q. Okay. Now, you're prepared to acknowledge the possibility that when you make up your notes seven hours, seven and-a-half hours after something happened, that you might miss something, correct?

A. Miss something in terms of?

10 Q. There may have been another utterance in here but you just might have failed to record it.

A. Not that I recall. He said, ah, he said so few things that they stuck out in my head and that's why I wrote them down. It wasn't a long, drawn out conversation lasting minutes. Between the
15 few times that he did, like I said, he was mentioning his, ah, how he couldn't breathe, those are the few statements that -- or things that he did say.

20 Q. Did you see the knife?

A. Did I see the knife? I never made note of it. I didn't look at it. I never walked over. As I said, I stayed with the victim at this time.

25 Q. But another officer walked over and located the knife and advised you?

1209

B. Dawn - cr-ex. (Scarfe)
February 8, 2011

A. Yes, sir.

Q. Right? And at that point you may have looked over and glimpsed at it but you can't remember?

5 A. I may have glimpsed over just for -- I believe it was my escort at this time just acknowledging something that he had found and I may have glanced over my shoulder to see that general area. I never left the side of Mr. Hammond at any
10 time, like, to see that.

Q. Mm-hm. But when you glanced over and looked at the general area, you saw the knife? Might have seen the knife?

15 A. I may have. Like I said, I didn't make specific, ah, notes on that specifically. Ah, the only thing, like I said, it was just I made a landmarking when the person mentioned where it was, I just estimated about fifteen feet just on the steps but I never went over and looked at it or
20 anything like that.

Q. Sorry. Did you say a marking?

A. Landmarking. I never, like, the distance from the victim versus --

Q. Right?

25 A. So as opposed to saying, Oh, the knife's

1210
B. Dawn - cr-ex. (Scarfe)
February 8, 2011

over there and having it 100 feet away, it's just
the distance from where it was pointed out to be.

Q. You recall testifying at the preliminary
hearing in this matter?

5 A. Yes, I do.

Q. And in preparation for giving your
evidence today, were you given a copy of the
transcript from the preliminary hearing?

A. Yes, sir.

10 Q. You had a chance to review it?

A. Yes, I did.

Q. I can take you to all the page
references, but do you recall early in your
testimony your recollection was that you didn't see
the knife.

15 A. I never looked at it, never -- I may have
glanced back. I never made notes of what it was or
anything like that, sir.

20 Q. But then later you conceded you may have
seen the knife, right?

A. I may have, yes, sir.

25 Q. Okay. So that brings me back to my
question from about four questions ago. Given your
recollection of all these things, right? You're
prepared to acknowledge the possibility that there

1211
B. Dawn - cr-ex. (Scarfe)
February 8, 2011

might have been one more utterance or one more detail coming to you from Mr. Hammond that you didn't record in your notes at eight o'clock.

5 A. Another utterance? Like I said, I don't recall any other utterances, sir.

Q. All right. You had a conversation with Detective Scott somewhere between 3:14 and when he left the hospital around 3:40.

A. Yes, sir.

10 Q. And you recall it being outside a property room.

A. The property room?

Q. I thought -- oh. The operating room.

A. Operate room, yes.

15 Q. So if I were to suggest to you that the conversation took place by the elevators, that wouldn't accord with your recollection?

20 A. Yes, the -- I could not go past, basically once you get out of the elevator, I can't go by. I wasn't in gowns. So basically I'm just standing out in kind of a waiting room.

Q. So the waiting room beside the operating room, but also beside the elevators?

25 A. You exit the elevator and it's just -- it's a room maybe twice as big as the jury box.

1212

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

Q. Mm-hm?

A. And there's --

Q. It's the first thing you get to once you
come out?

5 A. It's just the exit, and unless you are in
I guess surgical scrubs all gleaned up, you can't --
basically I can't go any further.

10 Q. Fair enough. Detective Scott arrived with
Detective Umbrello and basically interviewed you as
to your observations from earlier, right?

A. Yes.

15 Q. And Detective Scott did that somewhere
between 3:10 and 3:40, so within a couple hours of,
ah, you making your observations riding in the
ambulance.

A. Yes.

20 Q. Right? And you'd agree that your
recollection at that time would have been fresher
than it would have back at 14 Division some time
around 8:00 a.m. at the end of your shift, right?

A. Yeah, it would be fresher, yes.

Q. Right. And you -- you knew that Detective
Scott was the lead investigator at that point?

A. Yes.

25 Q. He seemed to be the guy in charge?

1213

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

A. Yes, he was.

Q. Right? And he's your superior officer, right?

A. Yes.

5 Q. So you did your best to help him out.

A. Yes, I did.

10 Q. And I anticipate -- well, he's already testified at the preliminary inquiry in this matter and told us what you told him. Surely you've discussed this with him since, right?

A. About his -- no.

Q. Well, he has a conversation -- often times you have to interview a civilian and --

15 A. Oh sorry, sir. I thought you meant about his testimony. I have not spoken to him about any of the preliminary stuff.

Q. Nothing that happened at the -- you know he testified at the preliminary hearing? You didn't know that?

20 A. I assume so.

Q. Okay. And what Detective Scott put in his notes and what he said at the preliminary hearing was --

25 MR. THOMPSON: Sorry, Your Honour. If I could beg your indulgence.

1214

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

THE COURT: Sure.

MR. THOMPSON: Thank you, Your Honour.

MR. SCARFE:

5 Q. What you told Detective Scott was that
the victim's response at first, the response, he
responds at first with, No comment, no comment.
Then states, I ripped it out of his hand, end quote.
And then he goes on and says, A bunch of punks,
kids, did this to me. Indicating wounds. Does that
10 help to refresh your memory of having a discussion
with Detective Scott about him wanting to know
exactly what Mr. Hammond said?

15 A. No, it doesn't. Like I said, I gave him a
rundown of the situation. Basically what I saw on
scene but no, that doesn't.

Q. If Detective Scott goes to the trouble of
writing this down, this additional utterance, I
ripped it out of his hand, I mean, you're not taking
the position that he just made that up.

20 MR. THOMPSON: Well, I don't know if this
witness can make comment with respect to why
another officer would write notes. I'm just
having some difficulty with that. I don't
think this witness is in a position to give
25 an opinion as to why an officer would put

1215
B. Dawn - cr-ex. (Scarfe)
February 8, 2011

something in his notes.

THE COURT: Mr. Scarfe?

MR. SCARFE: I can go at it a different way.

THE COURT: Very well.

5 MR. SCARFE:

Q. What Detective Scott has recorded in his notes appears to be a verbatim note of what you told him, right? Much like you would interview a civilian witness sometimes and have your notebook there and try and write down everything they said.

A. It's Detective Scott's notes. I -- I don't know what his notes or how he arranges his notes. They're his notes, not my notes.

15 Q. Do you even recall if he had his notebook out when you were talking?

A. No, I don't, sir. I mentioned that in the preliminary. I didn't recall it.

20 Q. Well, it's my suggestion to you, sir, that you told Detective Scott that Mr. Hammond said, No comment, no comment, and then instead of saying what you report eight hours later, I just took it off them, you told Detective Scott, I ripped it out of his hand. Are you denying that you said that?

25 A. I don't understand the question. My apologies.

1216

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

5 Q. All right. I'm suggesting to you, sir, that Detective Scott wanted to know what Mr. Hammond said, and that you told him he said, No comment, no comment. I ripped it out of his hand. Are you prepared to accept that that may be in fact what you said?

10 A. No, sir. What I wrote is what I heard, sir. As I said in the preliminary, I don't -- I can't make an estimate on something like that, of what Detective Scott wrote. I haven't seen his notes. I don't know how he writes up his notes. So all I can say is what I heard at the time and what I heard is what I wrote in my notes.

15 Q. So it's your position that what you wrote in your notes is the exact words of what Mr. Hammond said to you?

A. The way I heard them, sir, yes.

20 Q. And that they include everything Mr. Hammond said to you.

A. Is what I wrote in my notes, sir.

Q. Right. You're saying you got it all. Every last word.

A. From what I heard is what I wrote down, sir.

25 Q. And you're not prepared to acknowledge

1217

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

the possibility you might have missed something when you made up your notes seven and-a-half hours later.

A. Not that I recall, sir.

5 Q. And with the exception of, I ripped it out of his hand, you agree that everything else I just read you from Detective Scott's notes was accurate.

A. From what --

10 Q. No comment, no comment, and, A bunch of punk kids did this to me?

A. I'd recall the punk kids. It's something that would stick out in my head. It's not a word that I use or...

15 Q. And again, you have no recollection of this diagram I just showed you, Exhibit B.

A. Not that I recall, sir.

20 Q. Right. If I suggest to you that you drew that diagram and you did so at the request of Detective Scott when he was at the hospital, that doesn't help you.

A. Not that I'm aware of sir, no.

Q. Those are my questions?

THE COURT: Thank you. Re-examination?

MR. THOMPSON: Court's indulgence. All right.

25 No further questions.

1218

B. Dawn - cr-ex. (Scarfe)

February 8, 2011

THE COURT: Thank you, Officer. You may step down.

MR. THOMPSON: Next witness for the Crown is Detective Scott.

5

THE REGISTRAR: Detective Scott, please.

10

MR. THOMPSON: And just before Detective Scott comes in, um, Your Honour, with respect to Detective Scott, my friend and I are in a position that the only reason that Detective Scott is being called is on the basis of the narrow issue of the hearsay statement.

15

Detective Scott, if you remember, Your Honour, is also the officer who was the officer who reviewed the footage that is missing from One of a Kind Pasta, so we're not getting into those details, and because it would be normally a witness that my friend would be required to call and re-examine in his own case in terms of the hearsay statement, I'm calling him. I will ask him a few questions, but I reserve the right, and my friend is allowing me, to have a liberal re-examination should I need so.

20

THE COURT: You're content, Mr. Scarfe?

25

MR. SCARFE: Well, I think so. I understand

1219
G. Scott - in-ch. (Thompson)
February 8, 2011

5 my friend is -- has asked me to restrict my
cross-examination of Detective Scott for
today to the issue of the dying declaration.
Certainly there are other issues that are
rife for exploration but he's assured me that
he will call them as part of the lost
evidence issue later if we require it. We're
going to do a careful look at his preliminary
hearing transcripts and certainly I'll give
10 my friend some leeway once I figure out why
he needs the leeway, but I might get up.

THE COURT: All right. Can we have Detective
Scott, please?

15 ---GORDON SCOTT: AFFIRMED

---EXAMINATION IN-CHIEF BY MR. THOMPSON:

MR. THOMPSON:

Q. Good afternoon, Detective Scott.

20 A. Good afternoon, sir.

Q. I understand you are feeling ill today
but nonetheless you came down?

A. Correct.

25 Q. Thank you very much for that. I
understand as well, Officer, that you're involved in

1220
G. Scott - in-ch. (Thompson)
February 8, 2011

5 this case from the start. At the very beginning it
was an investigation for an aggravated assault and
that you had a great deal of involvement at that
point in time and we are going to be focusing,
basically, your testimony today merely on the issue
of what transpired at the hospital between you and
Officer Dawn, so I know you have notes?

A. I do.

10 Q. But I'm going to confine those areas to
those, so let me qualify your notes first.

A. Certainly, sir.

Q. Are you the author of those notes?

A. I am.

15 Q. Can you tell me with respect to the
incident that took place at a hospital, when those
notes were made?

A. Sir, I was at the hospital on several
times. Are you just referring to Mr. Dawn's?

20 Q. Let me be more specific. With respect to
Officer Dawn, and your date there on August 9, 2007,
if you need a moment just to confirm, can you tell
me when your notes with respect to what took place
on that early morning were made?

25 A. I arrived at the hospital 3:08 and those
notes were written at, um, 3:40.

1221
G. Scott - in-ch. (Thompson)
February 8, 2011

Q. Okay. So and with respect to that portion, were you the sole author of those notes?

A. Yes.

5 Q. Have there been any additions or deletions to those notes with respect to that portion only since that time?

A. No.

10 Q. All right. I'm going to ask, Your Honour, he be allowed to refer to his notes for the purpose of refreshing his memory as to dates, times --

MR. SCARFE: No objection.

THE COURT: Very well, Officer. You may have reference to your notes as necessary in giving your evidence.

15 THE WITNESS: Thank you, Your Honour.

MR. THOMPSON:

Q. Okay, Officer. You are a member of the Toronto Police Services and have been for how long?

A. 27 years, sir.

20 Q. And on the evening or the early morning hours of August 9, 2007, you attended at St. Michael's Hospital, and can you tell us what transpired then, please?

25 A. Your Honour, on that date at, excuse me, at 3:08 in the morning, I attended St. Michael's

1222
G. Scott - in-ch. (Thompson)
February 8, 2011

Hospital as that's where the victim of my aggravated
assault, Mr. Ross Hammond, had been taken. I
attended to the emergency room and I was advised
that Mr. Hammond had been taken to the operating
5 room on the fifth floor. At 3:14 that morning, I
arrived on the fifth floor near the elevator bay and
I met with Constable Brian Dawn.

Q. Can I ask you, were you by yourself at
that time or were you with another officer?

10 A. I had Detective Constable Umbrello with
me.

Q. Was he in the elevator with you at the
time?

15 A. We weren't in the elevator at that time.
We were in the lobby. There's a, I don't know what
to call it. Reception area I guess outside the
elevators on the fifth floor.

Q. Okay?

20 A. I observed that Constable Dawn had paper
bags that contained, that I learned contained,
Mr. Hammond's clothing. He advised me that he was
the first officer on the scene and he gave me the
details as to Mr. Hammond's identification, his
address, phone number, driver's licence, that sort
25 of thing. He further advised me that he had actually

1223
G. Scott - in-ch. (Thompson)
February 8, 2011

spoken to Mr. Hammond at the scene at Queen just a little -- excuse me. East of Gore Vale Avenue on the north sidewalk. He observed Mr. Hammond had some injuries. This is what he told me. He was having some trouble breathing. The ambulance arrived. Two females related to this incident, the accused Ms. Kish and another woman, had been arrested, in the back of an ambulance. Constable Dawn advised me that the knife I had seen earlier on Queen Street on the steps to the stairs had been there when he got there. He advised that once things had calmed down and he was in the back of the ambulance, he had asked Mr. Hammond about the knife.

Q. Okay. So specifically I want to ask you, at the time that he provided that information to you, were you taking notes?

A. No, sir.

Q. And at that point in time, sir, did you -- did you have any indication in your mind or were you told or had any idea as to the nature or the extent of the injuries that were involved?

A. I knew that Mr. Hammond had gone vital signs absent on the way to the hospital and they had revived him, so I knew they were life threatening.

Q. Did you know that a knife was involved in

1224

G. Scott - in-ch. (Thompson)

February 8, 2011

the matter?

A. I believed it was. That's the information I had. That Mr. Hammond had been stabbed.

Q. And did you have any information at that point in time as to whether the knife you referred to earlier in your evidence had anything to do with this matter?

A. I certainly believed it did. I don't know to what extent.

Q. But had you been provided any information specifically whether that knife had anything to do with it?

A. I didn't at that point.

MR. SCARFE: Sorry. What was the answer?

MR. THOMPSON: He said he did not have any information at that point.

Q. So I'm clear, the area you are in as well, it's a reception area. Is it at that point in time in the evening, is it busy? Is it quiet or what can you tell me about the actual location?

A. Closed and vacant. There was no one there but the three of us.

Q. And you indicated that Officer Dawn told you about something that was said in the back of the ambulance.

1225
G. Scott - in-ch. (Thompson)
February 8, 2011

A. Yes.

Q. All right. Can you repeat what he said?
What you have written down? First of all, did you
write it down?

5 A. When I got in the car after he told me,
yes.

Q. Can you relay to the Court what it is
that you had written down?

10 A. He attributed the following to
Mr. Hammond: What about the knife? No comment, no
comment. He then stated, I ripped it out of his
hand. A bunch of punk kids did this to me,
indicating, ah, wounds to his chest.

15 Q. And did Officer Dawn mention to you
anything about a statement taken from -- or comments
that Mr. Hammond made to him on the street?

A. No. Not -- I believed all that what he
just told me took place in the back of the
ambulance.

20 Q. Okay. So you believe it's all in the back
of the ambulance, but I'm asking, was anything said
by Officer Dawn to you about any conversation that
Mr. Hammond had in the street.

A. I don't believe so.

25 Q. What was the entirety of -- how many

1226

G. Scott - in-ch. (Thompson)

February 8, 2011

pages of notes did you make during that period of time? The time you were in the hospital? How many notes were attributed to that time?

A. Three.

5 Q. Three full pages?

A. Um, three pages of a notebook. Yes.

Q. How much time did you spend with Officer Dawn that evening?

A. Just shy of 20 minutes.

10 Q. Okay. And did you make any observations about Officer Dawn that evening? Did you note if he was tired or made any observations as to if he was upset about the incident or anything to that effect?

15 A. I didn't make that notation. Nothing unusual about him stood out. He was in uniform, um, no, nothing unusual.

Q. Did you ask him to make a diagram of the -- or a sketch of the scene?

20 A. I asked him to make a sketch of where he had found Mr. Hammond.

Q. Okay. And how was -- was it -- do you know how it was done? What kind of paper it was done on?

25 A. A piece of paper I took off the reception counter. It was a scrap piece of paper.

1227
G. Scott - in-ch. (Thompson)
February 8, 2011

Q. I'm showing you a diagram. Can you tell me if you recognize that?

A. Yes. That's the diagram he drew for me.

Q. Okay. It's already entered as Exhibit A. I'm going to be -- or sorry. B. I'll be asking it be entered as a formal exhibit.

THE COURT: Mr. Scarfe?

MR. SCARFE: Absolutely. Yes.

THE COURT: Exhibit 54.

THE REGISTRAR: 54, Your Honour;

---EXHIBIT 54: Diagram - produced and marked for identification.

MR. THOMPSON:

Q. Can you just briefly tell me what it was that he explained to you about that diagram?

A. Um, looking at the diagram, with Queen Street being depicted at the bottom, Walnut Avenue being the T portion of the intersection, the image with the circle with the two sticks on it would be a representation of Mr. Hammond. There is a line above it terminating at two horizontal feet with 15 feet

1228
G. Scott - in-ch. (Thompson)
February 8, 2011

being the number written in there and then there is a depiction of the stairs, a church and a little icon being the knife, putting the knife about fifteen feet away from where Mr. Hammond was found.

5 Q. Sorry. The knife is where on the diagram?

A. It's the triangle with a square below it, on top of or inside of a rectangle above a circle.

10 Q. Okay. It's clear to me. I don't know if it's clear to the Court, but --

THE COURT: Yes.

MR. THOMPSON:

15 Q. All right. Okay. And when he drew this diagram, did he tell you where the knife was found? Other than just the diagram? Did he say -- did he give a location?

20 A. Um, he said it was on the stair adjacent to the church. I had already seen it so it made sense to me as to where it was. The purpose of the diagram was to place Mr. Hammond in position to where Officer Dawn found him.

Q. When he did that diagram, did he have any difficulty doing the diagram?

25 A. No. It was very, well, I asked him to draw it and he did. He didn't appear to have any

1229

G. Scott - in-ch. (Thompson)

February 8, 2011

difficulties.

Q. Did it take him a long time?

A. No. It was very brief. A minute or two.

5 Q. When did you find out the condition of --
let me ask you this: Did you find out the condition
of Mr. Hammond before you left?

A. I did.

Q. And what was that?

10 A. Critical condition and currently in
surgery.

Q. Was Officer Dawn present when you found
that information out?

A. He's the one that told me.

15 Q. When you wrote down the -- in your notes
about what Officer Dawn had said to you that
evening, were you in any way upset from the incident
of the night?

A. No.

20 Q. Could you possibly have written it down
wrong, what he said to you?

A. I don't believe so.

Q. And just so it's clear, was Officer
Umbrello present when this was taking place?

A. The conversation --

25 Q. The conversation between you and P.C.

1230
G. Scott - cr-ex. (Scarfe)
February 8, 2011

Dawn with respect to what Mr. Hammond said?

A. Yes, he was in the -- that foyer or
reception area.

Q. And were you present when Officer
5 Umbrello made his notes?

A. Ah, we were in the car writing up. I'm
not sure -- I'm not sure what he was writing at the
time.

Q. Was what was said by Mr. Hammond and
10 conveyed to you by Officer Dawn, was that discussed
amongst the two of you?

A. I don't believe the quotation was spoken
between the two of us, other than we spoke more
about what was the next step in the investigation.
15 Whether I relayed that, I don't remember.

Q. Court's indulgence. I have no further
questions. Thank you, Officer.

A. Thank you.

THE COURT: Cross-examination?
20

---CROSS-EXAMINATION BY MR. SCARFE:

THE WITNESS: I have it here, Mr. Scarfe.

MR. SCARFE: Oh, you have it there. Thank you
25 very much.

1231

G. Scott - cr-ex. (Scarfe)

February 8, 2011

Q. You were the lead investigator on this case, correct?

A. Initially, yes, sir.

5 Q. And when you got to the hospital you knew that Mr. Hammond had already gone unconscious with vital signs absent at one point?

A. Yes, I did.

10 Q. All right. And as a result, you knew that there was more than an insignificant possibility that he might not make it.

A. I was aware of that, yes.

Q. Serious stab wounds to the chest area, you knew about that?

A. I did, sir.

15 Q. Okay. And so you also knew that whatever he had said, ah, there might never be another chance to interview him, get his version of what happened.

A. I was alive to that, yes.

20 Q. Okay. And you've been the lead investigator on serious assaults and stabbings and -- in your 30 plus years of policing before?

A. 27, but yes.

25 Q. 27. Okay. And this isn't the first time where you had to turn your mind to the fact that, I may have to turn this investigation over to the

1232

G. Scott - cr-ex. (Scarfe)

February 8, 2011

Homicide Squad.

A. Yes.

Q. You've had to do that before?

A. Yes, I have.

5 Q. And so you were motivated to make sure that you could do everything you could, or that was possible, to give the homicide investigators, if it came to that, the most complete picture.

A. Yes, that's fair.

10 Q. And you always prefer to make your notes contemporaneously with the events you are recording.

A. As best I'm able, yes.

15 Q. And you know that if you wait too long to make your notes, that details start to fade, and it's harder to be accurate.

A. I agree.

20 Q. You agree with that. Now, just before I move on to that, my friend asked you something to the effect, I didn't understand your answer, but were you aware when you went to the hospital that the knife on the church steps was somehow involved in what had happened?

25 A. I certainly believed it was. I had observed it, it had staining consistent with blood, um, information I had was that Mr. Hammond had been

1233
G. Scott - cr-ex. (Scarfe)
February 8, 2011

stabbed.

Q. Mm-hm?

A. It was logical to conclude that it was involved somehow.

5 Q. And that he had been seen leaving the knife -- or the scene with a knife. You knew that as well, right?

A. I didn't know that. Not at that point.

10 Q. Well, you looked at the radio calls and the I/CAD, right?

A. Correct, I did.

Q. So some of these early 911 calls coming in talking about a knife and a guy on -- grabbing a cab, literally grabbing a cab and being dragged?

15 A. I don't think I got that information until I got to the scene, but yes, I'm aware of that.

Q. Okay. But by the time you got to the hospital you were well aware of that.

20 A. Yes.

Q. Okay. Now, your notes for getting to the hospital appear to start on page 68 of your notes, 3:14, right? About half way down page 68?

A. Yes.

25 Q. They go over all the way to 69 until

1234
G. Scott - cr-ex. (Scarfe)
February 8, 2011

almost the bottom of page 70 where you go, Ten seven
out on St. Mike's to TWH.

A. Yes.

Q. Right?

5

A. Yes.

Q. So as I understand the narrative, you get
done at St. Mike's and you've got to go over to
Toronto Western Hospital to deal with some other
parties as a result of -- other parties in this
investigation.

10

A. Yes.

Q. Okay. And you agree there's a 14 minute
gap there between when you leave St. Mike's, ten
seven is I'm leaving, right?

15

A. Ten seven means out of service. Which
means I'm not available to do anything else for that
time period.

Q. Oh, okay. And the reason you were out of
service is because you had to drive a car over to
Toronto Western Hospital.

20

A. Right. But I was writing my notes as
well, but yes, that's the plan.

Q. Okay. And how long does it take to get
from St. Mike's to Toronto Western Hospital?

25

A. At 3:00 in the morning? About five

1235
G. Scott - cr-ex. (Scarfe)
February 8, 2011

minutes.

5 Q. Five minutes? So it's your position that all of the notes from the page as I have just described, page 68, 70 and down to -- sorry. 68, 69, down close to the bottom of page 70, all of those notes were written in the car?

A. Right.

10 Q. You didn't take your notebook into the hospital?

A. No, I had it with me.

Q. You had it with you?

A. Yes.

15 Q. All right. Now, I don't want to know the details, but for the purposes of disclosure, often times identifiers, addresses, phone numbers, dates of birth, that kind of thing, are blocked out, right? But you still have that there.

A. Yes, I do.

20 Q. And so under where it says Hammond, Ross, E, I take it you've got an address?

A. And a phone number.

Q. And a phone number and a date of birth?

A. Um, not specifically but I have a driver's licence number as well.

25 Q. Okay. You didn't memorize the driver's

1236
G. Scott - cr-ex. (Scarfe)
February 8, 2011

licence.

A. No, sir.

Q. No. So although you had your notebook
with you, you must have written this down somewhere.
5 You learned this information when you were in the
hospital.

A. Correct.

Q. And you got out to your car 22 minutes
later or so and you wrote it all down.

10 A. Right.

Q. Now, it took me a long time to memorize
my driver's licence number and most people don't
ever go to that trouble, but what form did you use
to record some of the more difficult to memorize
15 details?

A. It would appear to me that the bottom of
page 68 would have been written in the elevator
lobby. When I'm talking about writing my notes in
the car is what I learned from Constable Dawn. I
20 didn't write down, and you can tell from the notes
other than the quotations, it's a synopsis of what
he's told me in the elevator lobby or reception
area, and I put those quotes in there because that's
what I remembered Mr. Drawn tell me that was
25 attributed to Mr. Hammond. So I guess the bottom of

1237

G. Scott - cr-ex. (Scarfe)

February 8, 2011

page 68 would have been written while talking to Mr. Dawn. I didn't transcribe or take a verbatim statement from Constable Dawn.

5 Q. Of course not. But you've -- you understood the importance of the details, right?

A. Well, I know the details are important for me in the investigation. For an evidentiary value, Constable Dawn would testify to that.

10 Q. You also would agree that there is absolutely nothing in your notes to indicate or even give us a hint as to when you stopped writing in the hospital and when you started writing in the car.

A. No, sir.

15 Q. No, you don't agree, or yes, you agree?

A. I --

20 Q. There's nothing in here to give us any kind of a hint as to when you stopped writing in the hospital and when you started writing in the car, is that correct?

A. I agree, no, there is nothing in my notes that would indicate that.

25 Q. All right. And in addition to what we see on page 68 with respect to details, Mr. Hammond's address, phone number, et cetera, there's something else that would be hard to memorize on page 70,

1238

G. Scott - cr-ex. (Scarfe)

February 8, 2011

correct? Do you see about three quarters of the way down, ah, you took note of his cell number.

A. Constable Dawn's number.

Q. Constable Dawn's cell number.

5 A. Yes, I did.

Q. You didn't memorize that and then go out to the car and write that down?

A. No, sir. I put it in my phone.

Q. I'm sorry?

10 A. I put it in my phone.

Q. Oh. You had a cell phone, you programmed it in the phone?

A. Correct.

15 Q. Okay. Isn't it possible that the narrative of what Dawn was telling you, you were noting that up in the hospital?

A. No. I remember sitting in the car outside of St. Mike's emerge making these notes and then writing them on the way to Toronto Western and then I drove away.

Q. So were you the driver or the passenger?

A. The driver.

Q. Okay. So it's not like Umbrello was driving and you were making the notes.

25 A. No, I -- I can't write while the car's

1239
G. Scott - cr-ex. (Scarfe)
February 8, 2011

moving.

Q. At least we shouldn't.

A. Sorry?

5 Q. At least we shouldn't. In any event, I'm
editorializing. You agree that you took your
notebook out in the hospital and wrote some stuff
down.

A. Yes, sir, I did.

10 Q. Right? And you do have a recollection of
writing more notes in the car before you leave for
Toronto Western Hospital.

A. Yes.

Q. But as far as where it starts and stops,
you can't tell us that.

15 A. Well, I know that the portion I wrote
about what Dawn told me, I wrote in the car, and
that starts at the top of page -- or I guess the
very last line of page -- sorry. The last two lines
of 68 through to --

20 Q. The bottom of page 70?

A. Well, not quite.

Q. Not quite the bottom.

A. But yes, certainly two thirds of the way
down.

25 Q. To the cell phone number.

1240
G. Scott - cr-ex. (Scarfe)
February 8, 2011

A. Actually to the point where I wrote, To St. Mike's. Sorry. From St. Mike's to Toronto Western.

5 Q. And how do you know that that's where you stopped writing and started again when you got back to the car?

A. Because I remember writing that I was going to the hospital and what time it was, so that was the end of the notes in the car.

10 Q. Right? But --

A. And I know I only wrote down in the car what Dawn told me.

Q. How do you know that?

A. Because I remember.

15 Q. You have a specific recollection of that.

A. I have a recollection that I wrote that in the car.

20 Q. Okay. So 22 minutes later, or after having a conversation and within about 22 minutes, you wrote out what Dawn told you Hammond said.

A. And the other items. What Dawn had done as well and what he had learned.

Q. Right. And you tried to get it as accurately as possible?

25 A. Yeah.