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Q. And what was his build like? What did he appear to you to be?

A. He's fit. Ah, he's a tough person it looks like for me.

5 Q. And --

A. He's not skinny like me. He's a little bit...

Q. And do you remember what he was wearing? Sorry. Did you want to add something?

10 A. Yeah. May I call person, the people who with disabilities, they waiting me. Or if I give a phone number?

Q. Sorry. You need to make a phone call?

15 A. Yeah, because I'm on -- I think I'm -- my appointment is at eleven o'clock, still I'm booked for work. Then if I give a phone number and call to cancel me? Or --

Q. What time is your appointment that you're referring to?

20 A. 13:45, Bayview and Moore.

Q. Your appointment's at 1:45?

A. It's not my appointment, it's my work. I'm working with people with disability. I transfer people from A to B.

25 Q. And your appointment's at 1:45, correct?

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A. 1:45.

THE COURT: Can we deal with this over the lunch hour and deal with his evidence as we are here in court, please?

5 MS. MIDDLEKAMP: Yes. Sorry, Your Honour. I just want to make it clear for the record that he was indicating he needed to make a phone call to cancel his appointment.

10 THE COURT: That can be dealt with over the lunch hour, counsel.

MS. MIDDLEKAMP: Yes, Your Honour. It was whether or not I needed to ask for a short recess. I will continue on.

15 Q. You saw the gentleman fall down on the sidewalk in front of the church, correct?

A. Yes, ma'am.

Q. And I was asking you about his description. You said that he was a white man?

A. Yes.

20 Q. Do you recall what kind of shirt he was wearing or the colour of his shirt?

A. It's, like, black.

Q. And what about for pants? Do you remember what pants he was wearing?

25 A. Like a black jeans.

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Q. Okay.

A. It's night. So it was a reflection and it's very hard to be hundred percent sure.

Q. Okay. Are you able to describe any of the other males that were involved in the fight that you saw on the street?

A. No.

Q. You described the woman being dressed in punk style clothing?

A. Yeah, the problem is now I forgot and, you know...

Q. Once you see the man fall down on the sidewalk in front of the church, do you continue driving in your taxi or do you stop?

A. We stop, and my customer communicate with the police, and I think when police take over the area and I drive the customer. My customer.

Q. Ultimately do you make any observations of anything on your car? Did something happen to your car as a result of this event?

A. Yeah. Dispatch call me and they ask me I'm all right. On my outside car there is a blood, and I see the blood and, um, I'm disturbed with myself at that time and, um, I stop work after that, and I wash the car and, um, go home.

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5 Q. You described seeing this man in the fight on the ground and then a man coming to the hood of your cab and coming to the window of your cab. Is it the same man that was on the ground that came --

A. Yes.

Q. -- to the front of your cab?

A. Yeah.

10 Q. And is it the same man that you saw fall onto the sidewalk in front of the church?

A. Yes.

15 Q. I have another question for you about the fight that you saw. I asked you earlier what the female was doing in the fight. Can you tell us if any -- if you're able to, what the men were doing in the fight?

A. The man, um, that's dragged by the taxi you mean?

20 Q. No, the other men that were in the fight, so not the one that was on the ground.

A. Yeah, they hit this guy.

Q. And how were they doing that?

A. By feet what I see. Yeah.

25 Q. Just a brief indulgence if I could, Your Honour, to check my notes. Those are my questions

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for the witness, Your Honour. Thank you.

THE COURT: Cross-examination?

5 ---CROSS-EXAMINATION BY MS. SIMPSON:

MS. SIMPSON:

Q. I'll start with one area if I may, Mr. Hailmeraian and see if I can clear it up. For you, when you say black dress, you mean black style? Black attire, right?

A. No.

Q. You were asked before --

A. Black dress you mean? When you say -- I don't hear you well. I have a hearing problem. Can you be a little bit loud?

Q. You were asked before what the woman was wearing that you saw. You said she was wearing pants, is that right?

A. Yeah. Pants.

Q. And you said it's not a skirt. Is that right?

A. Yes.

Q. So then we watched video and on video, the words you used were black dress. People dress black in that area, is that right?

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A. Yeah.

Q. And what you mean is the style is black.
The attire of people in that area is black.

A. I don't say the entire people in that
5 area. The entire people when you say that's Queen
Street, all kind of dresses over there.

Q. Of course.

A. Very certain group of people dress black.

Q. And that's what you mean when you use
10 those words in the video, is that right?

A. Yeah.

Q. You also described seeing the woman in a
jacket or in a shirt, is that right?

A. Yes.

Q. So you didn't see any bare arms or bare
15 shoulders?

A. What do you mean? Arm and shoulders?

Q. Bare skin on the top half of her.

A. I don't remember.

Q. You remember --
20

A. I don't remember. This is two years ago.

Q. Of course. I'm just trying to help draw
out your memory if I can. If you remember a shirt or
a jacket, does that help you remember whether the
25 person was covered up on the top half?

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A. Yeah, I believe is covered up. I'm not sure because I forgot. I don't see that deep people.

Q. Of course. Do you remember where you were on Queen when you noticed that traffic was backed up?

A. Yeah. Near Niagara, Tecumseh, that area in between.

Q. You're heading west along Queen?

A. Yes.

Q. And do you recall if it's before the intersection with Niagara or after as you're proceeding along?

A. I think in between. I don't remember.

Q. In between Niagara and what?

A. Queen.

Q. Niagara is an intersection with Queen, isn't it?

A. Niagara is going north and south, Queen going east and west.

Q. What I'm asking you is if you remember the traffic before you hit that T or after you hit that.

A. Before.

Q. Before. Thank you. If you look up beside you, we have there Exhibit Number 1. I'm going to

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try and put it up on that screen as well because that would be helpful to you. Can you see the intersection of Niagara and Queen on that map?

A. Niagara -- I think the middle is Niagara?
Oh. It's here. Okay.

Q. It's even better.

A. Yeah, I see Niagara.

Q. And then the next street on -- as you proceed east, it comes down from the north side, is that right?

A. Niagara's where I am here. This is --

Q. Niagara comes up from the south. If you proceed east, there is a street that comes down and meets Queen from the north. Do you see that? I think it's Claremont?

A. I don't know. Still, I don't understand what you're trying to asking me, to tell you the truth.

Q. Let me just head over and poke at the map and see if this helps. Here we have Niagara coming up from the south to Queen?

A. On the south? Okay.

Q. Is that right?

A. That's south. Okay.

Q. Does that accord with your recall of the

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area?

A. To make it north, you must upside down this on my understanding. This is south. We call it south.

5 Q. South is the bottom of this map. Is that helpful?

A. Okay.

Q. So Niagara comes up from the south and hits Queen?

10 A. Okay.

Q. And then the next street here is Claremont, do you remember that?

A. I don't remember. Go ahead. Okay. Claremont. I must be in the area to remember the whole street name.

15 Q. My question was going to be, sir, do you remember if you were as far back as that next street when you noticed the traffic backed up?

20 A. I'm -- oh. Oh. Claremont is -- yeah. I'm in the middle somewhere.

Q. Somewhere in between Claremont and Niagara?

A. Yeah. May I stand and show you?

Q. Of course. Please do.

25 A. Yeah. I think I'm somewhere here. Where

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is Bellwood? It's before Bellwood. I think I'm
somewhere here.

Q. So you just gestured at the map between
Niagara and Bellwood.

5 A. Yeah. If you show me Bellwood on this
map I can show you where I stand.

Q. And I'm just pointing to the map again.
Bellwood's the next street west of Niagara, the next
west street coming from the north past Claremont
10 right here?

A. Oh, that's Bellwood? Then yeah. I'm
somewhere in the middle where I show you. That's --
okay.

Q. So you're between Niagara and Bellwood.

15 A. Yeah, somewhere there. Yeah.

Q. And this is as you head further west?
You're driving in a westward direction.

A. Yeah. We facing west.

Q. Do you recall if you're in the centre
20 lane or the curb lane?

A. The second lane.

Q. It could be second counting either way.

A. There is, ah, there is two lines.

Q. Yes?

25 A. Heading west.

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Q. Yes?

A. There's two lines heading east. One line car is park, then I'm in from the first to the second line.

5 Q. So you're in the lane that is closer to traffic heading in the opposite direction.

A. Yes.

10 Q. Okay. Do you remember there being a streetcar heading east when you noticed the traffic backed up?

A. I don't remember.

Q. You know that Queen Street is a streetcar route?

A. Yeah.

15 Q. You just don't remember there being one, or not that night.

A. I don't recall.

20 Q. Okay. Do you remember having to stop at the light at Niagara? Or did you encounter all of your problems past Niagara?

A. Again?

Q. Did you stop at a red light at Niagara? Or did you first encounter problems --

25 A. No, no. Before the red light. Before, ah, any light.

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Q. So that would be further to the east between Niagara and Claremont, is that right?

A. No. Between Claremont and Bellwood I believe.

5 Q. Okay. Do you recall it took a while to get through the traffic to head west on Queen Street? It was slow.

A. Yeah. The fight make it slow. And...

10 Q. Do you recall your passenger getting a bit frustrated with this delay?

A. No. My customer is not -- is not frustrated. He's very calm person.

Q. Okay?

A. And he's on the phone with the police.

15 Q. He wasn't going very far, was he. He was just going from somewhere on Queen Street to Queen and --

A. I believe Queen and Beaconfield area.

20 Q. So he's not going out to the airport, he's not going to Mississauga.

A. No.

Q. It's a short trip that he wants to take.

A. Yeah.

25 Q. And your job as a taxi driver is to get him there as quickly and efficiently as you can,

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right?

A. To drive him as a normal from A to B. There is no quick or nothing. There is driving him from A to B. Based on the traffic and based on the situation.

5

Q. Do you remember other cars having a difficulty going west on Queen Street? Other cars trying to squeeze by in traffic?

A. As I get a problem to head west myself, if I get a problem heading west, other cars get a problem too, because I -- the car, they travel on the same street.

10

Q. Of course.

A. One car get a problem, everybody get a problem.

15

Q. One way you reacted to the problem was to start honking, right?

A. No, to mediate these people out of fighting. That's why I do.

20

Q. The honking.

A. Yeah. Not for the traffic.

Q. You just made a gesture pushing down in front of you.

A. Yeah, to distract them if they stop fighting.

25

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Q. Do you remember other people honking?

A. I don't remember. I remember my -- my own.

Q. So maybe yes, maybe no, you just can't tell us, is that correct?

A. What I remember is what I do. I don't remember listening other things because what I hear is my own --

Q. I guess what I'm asking is do you remember silence from the other cars.

A. Pardon?

Q. Do you remember silence from the other cars? Or do you just not have a recollection.

A. No. I don't recall.

Q. Okay. I'm about to move into another area, Your Honour, so I'm wondering if we could take our break?

THE COURT: We'll take the lunch recess.

2:15, please, sir. I need to speak to counsel.

THE REGISTRAR: Thank you, sir, you're free to leave the courtroom. Be back at 2:15, sir.

THE WITNESS: 2:15.

THE REGISTRAR: And at this time kindly don't discuss your evidence with anyone please. We

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tell all the witnesses that.

THE WITNESS: All right.

THE REGISTRAR: Thank you, sir.

5

---WITNESS LEAVES THE COURTROOM

10

THE COURT: At the end of this trial is there going to be any issue that Mr. Hammond had contact with these two cabs and wound up on the sidewalk outside of the church?

MR. SCARFE: If I understand your question in plain terms, no, there's no issue.

15

THE COURT: Then is there a reason we have to get into all of this about the cab and the blood and the church and the rest of it? We just spent a number of amount of time dealing with, and I may be wrong, but I suspect I'm going to hear cross-examination about --

20

MR. SCARFE: There is a part of this story about what happens in the church. There is a bit of a connect. Mr. Hammond, as I understand the evidence, he doesn't just get off the cab and collapse. He actually goes

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back in, hides the knife, comes back down to
the street, collapses and then makes an
utterance to one of the officers, so there
is, I mean, it's part of the logical
narrative so I'm not sure exactly --
5 THE COURT: I'm not getting into that
particular aspect. I'm just talking about the
contact with the Beck cab and then the
Diamond cab I think it was, and then Mr.
10 Hammond winds up outside of the church. What
he does then is still to be explored, but I'm
talking about the taxi contacts we'll call
it.

15 MR. THOMPSON: If I may speak on behalf of
the Crown's side in any event, obviously the
Crown is required to call the evidence that
the witnesses have and I'm not sure where my
friend is going to go with respect to that,
but sometimes the evidence that is called
20 goes to the issue of credibility as to what
they saw afterwards. And I think my friend is
entitled to explore that. I'm not inviting
him to do so but I think just to say that
it's not relevant would be difficult, and if
25 it has some relevance at all it's incumbent

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5 upon us to call. If my friend says don't call
it, he's content with that, that's fine, but
that has not crossed the table at this point
in time. The matter was originally set for
three months. There is a multitude of
witnesses. The preliminary lasted for 21 days
and that was an area in which
cross-examination took place.

10 So it's really not my position to
say it. If my friend is prepared to do that,
that's fine. I won't call any evidence on
that.

15 MS. SIMPSON: If I might, Your Honour, I'm
the person doing the cross-examination. I
plan to focus on the descriptions of the
people involved in the fight, not on the
further contact with the cab. It was
difficult this morning getting orientation
and it was simply the way that the witness
20 answered the questions, and I didn't plan it
to be that long. I thought we were just going
to orient ourselves going west past Niagara.
That was my only goal but that's not at all
how I planned to spend a great deal of time
25 following this.

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THE COURT: All right. Thank you. 2:15.

5 ---LUNCHEON RECESS (1:08 p.m.)

---UPON RESUMING (2:33 p.m.)

10 MR. SCARFE: Your Honour, thank you for the
time in chambers. I agree with my friend that
things are moving faster than they should and
as a result we have determined it will take
Thursday -- sorry. Friday and Monday, we
15 won't sit.

The second issue is that there is
a momentous snowstorm anticipated to hit
Toronto tomorrow, or late tonight, and it is
my client's term of bail that she is not to
20 be in Toronto unless it is for court. So she
returns, it's about two and-a-half hours each
way. Her sister Jody Green, who is present in
the front row, is one of her sureties listed
on the bail and she lives in Toronto, and
25 having discussed it with Your Honour and with

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Mr. Thompson and Detective Sergeant Giroux,
and given the unusual circumstances, I'm just
going to ask you to put something on the
record that would indicate that that will be
okay given the terms of bail.

THE COURT: That's fine. Given the
circumstances, I would consider it within the
condition of "for purposes of court" if your
client were to reside with her sister tonight
in order to make sure she is available for
court tomorrow.

MR. SCARFE: Thank you.

THE COURT: Thank you. Ms. Simpson.

MS. SIMPSON:

Q. Mr. Hailmeraian, do you remember any of
the people around the intersection of Queen and
Niagara?

A. Remember individuals are you asking me?

Q. I'm asking if you remember any other
people in the area.

A. Yeah, there is people.

Q. Beyond the people that are involved in
the fight that you've spoken about already this
morning.

A. I believe so.

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Q. You know this area of Queen Street well. You've not only been there just that night. You nodded your head yes?

A. Yes.

5 Q. The woman that's sitting --

A. I try to hear you. That's why. If you a little bit loud I'll understand you well.

10 Q. The reason why I just said you nodded your head yes is the woman to your left is a court reporter that's recording our words, and just gestures she can't help with.

A. My apology.

15 Q. Again, don't apologize, but that's what I was doing.

A. Okay. Thank you.

Q. You know that in that area of Queen Street there are a lot of restaurants, a lot of bars?

A. Yes.

20 Q. There are a lot of people out at night in that area in the summer, is that correct?

A. Yes.

Q. Did you see anyone walking a bike that night?

25 A. Yes.

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Q. Do you remember if the person walking the bike was a girl or a -- a male or a female?

A. A male. I see him outside today.

Q. And when you said you saw him outside today --

A. Yeah.

Q. -- you mean here --

A. He was outside of the court.

Q. In the halls of the court building?

A. Yes.

Q. Okay. The whole time that you were driving along, your windows were all rolled up, is that correct?

A. No.

Q. Your windows were opened or closed?

A. Closed.

Q. So that means you can't help His Honour with any words or voices that you heard from outside, is that right?

A. Yes.

Q. I understand that the person that you can describe best from that night is the fellow who actually put his hands onto your taxi, is that right?

A. The person die.

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Q. He was one person alone in front of your taxi who put both hands up on the hood, is that right?

A. That person approach my car.

5 Q. He was by himself when he did that, is that correct?

A. Yes.

Q. And you saw that person holding the knife, is that right?

10 A. Yes.

Q. You hadn't seen the knife before he approached your car with the knife.

A. Before, yes, I don't see.

Q. You hadn't seen the knife in the fight?

15 A. No.

Q. You hadn't seen anyone else with a knife.

A. No.

Q. You didn't see anyone use the knife.

A. Yes.

20 Q. You're agreeing with me, no one else used the knife?

A. Somebody use the knife. The person come and in front of my car have full of blood and the blood in my car, and I understand that person
25 stabbed with a knife.

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Q. Did you see anyone use -- did you with your own eyes see anyone --

A. No.

Q. -- use -- using the knife.

A. No.

Q. Okay. And that person in front of your car, I understand the description is he's white, he has a black top or a black shirt, he's wearing jeans and he's fit and kind of more muscular, is that correct?

A. Yeah.

Q. I understand you can't be 100 percent sure that that's the same fellow who you saw in the fight, is that correct?

A. Um, can you repeat again, please?

Q. The fellow that you saw put both of his hands on the front of your car, you cannot be 100 percent sure it was the same fellow that you saw in the fight.

A. I'm hundred percent sure that that's the fellow in the fight, that fell -- lie down and these people attack him. I'm hundred percent sure I see him.

Q. You were --

A. That's the person get up from the floor

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and approach my car.

Q. You remember speaking to the police on September 10, 2007? We watched some of that video this morning.

5 A. Yeah.

Q. And that was within about a month of the incident, is that correct?

A. It might be. I don't...

10 Q. Do you remember it being much closer to the incident than we are today?

A. Yes.

Q. And you tried to help the police as much as you could about what you remembered.

A. What I see and what I remember.

15 Q. And we had some difficulties with the video this morning with you hearing, so let me just try and read something to you and -- instead of playing the video and see if this helps your memory.

A. Okay.

20 Q. The top of page 24 for my friend.

"I'm not hundred percent sure
this man with the knife, he
came, they beating him, and
somehow he managed to go out and
25 for me he looks like a strong

man, this fit man, and -- and
the knife now is -- I'm afraid
to them, as I told you, the
other cab take him you know."

5

You agree that that passage starts --

MS. MIDDLEKAMP: Your Honour, if I could have
a brief indulgence?

THE COURT: Yes.

10

MS. SIMPSON:

Q. You carry on:

"He managed -- managed -- it's
my understanding he, this guy,
is running out from this people.
It's my understanding I might be
right or wrong."

15

Does that help you with whether --

A. Um --

20

THE COURT: Yes?

MS. MIDDLEKAMP: Sorry, Your Honour. If I
could just indicate as well, it's my position
that the conversation actually continues, to
put it into the entire context, to the end of
the page that my friend is referring to.

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5 MS. SIMPSON: The police put a further question to the witness at the remainder of the page. He does answer "Yes". It's my position that his words at the beginning indicate uncertainty; the police question later indicates certainty. My friend, in my submission, in re-examination, can revisit the point. I'm just reading his own words to him.

10 MS. MIDDLEKAMP: Your Honour, perhaps I could just make some submissions in the absence of the witness.

15 THE COURT: Perhaps someone first could give me a transcript so I can understand what the issue is?

MS. MIDDLEKAMP: Yes, Your Honour. I have a bound copy that's clean for Your Honour. And what we're referring to, just for the record, is page 24 of the transcript.

20 MS. SIMPSON: Just to assist Your Honour, I read the first two larger passages, and the issue that my friend wants to continue is the larger passage where it's quoting Carbone at the bottom and Mr. Hailmeraian's answer.

25 THE COURT: It seems to me, Ms. Simpson,

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5 you're obliged to put the other question and
the answer to the witness. You can point out
the difference between the two in terms of
the level of certainty, but they seem to be
directly connected.

MS. SIMPSON: I will do so.

Q. What I last read to you, what you said,
was:

10 "It's my understanding. I might
be right or wrong.", and I'm
just going to keep on reading
from the rest of that interview.
"He needs the taxi to run away
-- "

15 And the police officer says:

"Sure."

And then you said: "-- from
these guys."

20 And then the police officer
says: "Okay. Just so I
understand, because I'm trying
to make it clear, are you saying
that the person that came to
your cab that you saw with the
25 knife, was he the one was on the

ground where people were --"

And you answer: "Yeah."

A. Yes.

5 Q. So what I'm asking is in the first
passages that I read to you, you started: "I'm not
hundred percent sure", and then you said, "I might
be right or wrong".

10 A. I'm hundred percent sure I'm right that's
the person fell down in front of the church, that's
the person was in the ground. Whatever I recall that
hundred percent now, even then.

15 Q. So when you told the police you weren't
100 percent sure and you might be right or wrong,
what is it that you could have been right or wrong?

20 A. I said maybe there is misunderstanding on
the question. If you ask me, if you see that person
fell down on the ground, that's the person fell down
in front of the church, that's the person the people
attack him. I remember at least this part hundred
percent sure.

Q. Do you recall telling the police you're
not 100 percent sure? You could be right or wrong?

25 A. Maybe that's, ah, what you're asking me I
don't understand. If you're asking me that question,
if the person is that person fell out in front of

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the church, that's -- that's person. I don't know what you have in your hand.

Q. You'll agree with me that it was very hard to see what was going on that night.

5 A. It's not that very hard. When you see sit in the car, you don't see detail. You don't see each detail. Detail means -- when I say "detail", I see you from here to there. I can see behind you, I can see near the door. Then what I see I see in general.
10 When people is fighting, I see those people is fighting. If you're asking me detail, yes, it's for human eye, you sit in the car and you don't see much detail.

15 Q. Details like who did what, you -- you can't help us with.

A. I see the people attack this guy and this guy, he stand up and manage and come in front of my car.

20 Q. The people that were in the fight, can you tell us how tall they were?

A. No.

Q. Can you tell us what age they were?

25 A. Young. If you asking me how tall? Um, less than me or equivalent like me. Um, I'm not good to tell you by feet or, you know, they are not huge,

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they are... your size too.

Q. So that's the most detail you can give about the people involved in the fight.

A. Yes.

5 Q. They're not huge. And the height is roughly equivalent to mine which, for the record, is

--

A. I'll --

Q. Five three or a little bit higher?

10

A. Hm-mm?

Q. I'm five three.

A. I don't understand five three.

Q. I understand you work in --

A. I understand by meter and centimeter.

15

Q. And I don't know how many centimeters I am, so just for the record, I'm five three. You think that the people involved in the fight were that high or a little bit taller?

A. Yeah, a little bit higher than you and your size too. I don't -- I'm not hundred percent sure.

20

Q. I understand when you met with the police in September 2007, they asked you to look at some photographs of people, is that right?

25

A. Yeah.

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Q. And you wanted to be certain if you selected anyone. You wanted to be sure. Is that correct?

A. Yeah.

5 Q. And you selected no one out of --

A. Yeah, because what I see is at night and what I -- the police show me is a photograph on the daylight, and myself, I do portrait painting. Then what I see at night and what I see on a day and with a flashlight, picture is completely, for me, you know, people look like the same. I don't want to say this or this.

10

Q. Thank you very much, sir. Those are my questions.

15 THE COURT: Re-examination?

MS. MIDDLEKAMP: No thank you, Your Honour. I don't have any questions in re-examination for the witness.

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

MR. THOMPSON: The next witness the Crown is calling is Mr. Patsiopoulos, please.

THE REGISTRAR: Mr. Patsiopoulos, please.

25 MR. THOMPSON: Your Honour, just so it's clear, we have another witness waiting. Ms.

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Gallately, and we are going to release that witness because my friend has indicated to me it's going to be at least an hour and-a-half with this witness.

5 THE COURT: Okay. Thank you.

---WILLIAM PATSIOPOULOS: AFFIRMED

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

10 MR. THOMPSON:

Q. Good afternoon, Mr. Patsiopoulos. Do you mind if I call you William?

A. That's fine.

15 Q. William, just so it's clear, your preparation to come to court today, in preparation of that, you had an opportunity to look at your transcript from the preliminary inquiry?

A. That is correct, yes.

20 Q. And you met with the Crown Attorneys and the officer on this matter?

A. Yes.

Q. And you had an opportunity to hear your 911 call?

A. Yes.

25 Q. And just so it's clear, you were called

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as a witness for the defence at the preliminary inquiry.

A. That is correct.

5 Q. So I'm just going to, sir, take you, just if you can just tell me a little bit about your background, what you do for a living and why you were at Queen Street and Niagara on the night of the 8th and 9th of August, 2007. So just tell us just briefly what you do for a living?

10 A. Certainly. I am a musician by trade.

Q. Yes?

15 A. I work at a management company as it were, a representation company for artists and artisans, musicians. So I perform duties there, responsibilities of that of an office clerk, so that's what I do during the day. And at night from the moment that I clock off I'm a musician and all my time is spent studying music.

20 Q. Okay. And can you tell us why you were at the Niagara Street and Queen Street on --

25 A. It was a typical night insofar as just doing, you know, social calls as it were, meeting with friends, you know, planning for jam rehearsals and so forth and so on and I was returning home. So I decided to take the route of -- I'm assuming it's

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Richmond right now because I'm trying to -- it must
have been Richmond because I remember passing
Adelaide going north on Niagara, so it must have
been Richmond, because I recall, um, Adelaide to the
right of me as I proceeded north on Niagara.

5 Q. Okay. But now you -- can you just tell
us, were you walking?

A. I was riding my bike of course, so that
was the purpose of me being there with my bike. I
was riding my bike on my way home.

10 Q. Okay. So -- your indulgence please, Your
Honour. Okay. So just so it's clear, it's going to
come on the screen here in a minute, but what street
are you coming up? I mentioned Queen and Niagara
but can you mention how you get -- where you come
from to get at that location? It's going to come up
here. It's easier to do it that way.

A. Sure.

15 Q. Okay. Actually it's not Exhibit 1 but
just as good. This exhibit here is number -- oh,
this is number one. Sorry.

MS. MIDDLEKAMP: That's Exhibit 1.

MR. THOMPSON:

20 Q. Okay. So can you just tell us where
25 you're coming from?

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A. So I'm coming from the south of Niagara proceeding to the north of Niagara.

Q. Okay?

A. Meeting Queen.

5 Q. You've just got a little laser pointer there as a matter of fact.

A. So I'm proceeding northbound on Niagara coming from the south, having turned from Richmond.

10 Q. Okay. And at Niagara, is there a light there?

A. Yes, there is.

Q. And can you tell me at that time of the night what the colour of the light was?

A. The light was red.

15 Q. Okay. And did you stop for the light?

A. Yes, I did.

Q. And how long did you stop for it?

20 A. Ah, that is a good question and I'm trying to recall how long I stopped for the light. My best recollection is that I waited for the light to turn in fact green before proceeding.

Q. Okay? And that's fine. And when you proceeded, which way were you going to go?

25 A. I was going -- I was turning at this point and making a left turn right there with

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intention to proceed west.

Q. All right.

A. To head to Ossington.

Q. And I'm just going to put on the exhibit
5 number that shows that area. Exhibit Number 5. And
that's, just so you know, that's been identified as
the intersection right at Niagara Street and this is
Queen Street going up this way, that's Niagara
coming that way.

10 So can you with your laser pointer
indicate how far you got into the intersection when
you were making a left-hand turn?

A. Ah, it was pretty into -- when you say
"intersection", I was pretty much making this turn
15 here right when I noticed that -- I had noticed that
there was an altercation at the light, so I had
stopped, I -- I very distinctly recall asserting
myself and wanting to make -- assert that I am safe
because I had already seen a fight breaking out in
20 this area here, so by the time I had turned, or was
making the movement to turn, I had made the judgment
call to assert how safe I was at any given moment
while I was on my bike.

Q. Okay. Now, I understand that evening, as
25 a result of having seen the altercation, that you

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phoned 911. And what I plan to do now, Your Honour,
is I'm going to play that tape. I have a copy of the
transcript of the 911 tape, and my friend has
indicated to me earlier that he has no problem with
me doing this in this proceeding without any issue?

MR. SCARFE: That's correct.

THE COURT: Thank you.

MR. THOMPSON: So I'm going to file a copy of
the transcript, I'm going to play it and I'm
going to go through this. If that could go as
the next exhibit?

THE COURT: 48 I believe?

THE REGISTRAR: 48, Your Honour.

THE COURT: Are you going to make the
transcript 48A and the actual call 48B?

MR. THOMPSON: Please.

THE REGISTRAR: 48A, 48B, Your Honour.

---EXHIBIT 48A: Transcript of 911 call made by
William Patsiopoulos - produced and
marked for identification.

---EXHIBIT 48B: 911 call made by William

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Patsiopoulos - produced and marked
for identification.

5 MR. THOMPSON: Okay. Actually I think it
probably makes sense to play it in its
entirety first, then go back to it, so if you
don't mind we will listen to the call in its
entirety and then we're going to go back over
10 it. Okay?

---CALL PLAYING

15 MR. THOMPSON:

Q. Okay. We played that tape and first of
all, I want to make sure, that's your voice on it,
is it?

20 A. Of course.

Q. Okay. And I just want to put a little bit
of a background to that before I get into the
context of it. But you were on your bicycle when
you're going into the intersection.

25 A. That's correct.

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Q. Can you indicate to us when this phone call took place, what it was that you were doing with your bicycle at that time?

5 A. Certainly. When I had made the turn from being stopped at this point right here --

Q. And for the record, I'll just put it on the record, you were at the eastern part of the intersection of Niagara and Queen Street, still more on Niagara Street?

10 A. That's correct. And there was a car that I -- that I had pulled up to on the left side, so that car was parked -- or not parked but had paused here to stop and was waiting to turn, and to the best of my recollection, when the light turned
15 green, that car had veered to the -- or had turned to the right.

Q. Just so it's clear, when what light turned green? The light facing you?

A. These lights here allowing --

20 Q. Was it the light facing you or the lights -- when you say "the light [turns] green", is that the light you were looking at?

A. Yes, because that was the light that allowed me to proceed.

25 Q. Okay. Fair enough.

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A. And gave me the right of way.

Q. Okay.

5 A. When I made that turn is -- and just roughly at the time that I had decided to take note of what was going on, that is when I noticed that there was the fight, as it were. Um, there were certainly two people involved roughly around this area.

10 Q. And I just have to put that on the record, sir. You're saying there was a fight, and you've got the area that you marked with the laser pointer. It looks like a bit on the pavement and near where the telephone -- or sorry. The two poles are that support the traffic lights, is that fair?

15 A. That's roughly where I want to state that I recall seeing the altercation.

Q. Okay. Fair enough.

20 A. So I -- I mean, I'm saying that I remember quite well seeing a number of people now, and in the call I had stated there was an altercation physically between two people, but I distinctly recall there was more people around those two people that were being affected, so if we have two people that are fighting physically, you have
25 other people that are involved, either trying to

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break it up, who are somehow involved in the scuffle so, I mean, obviously that's what prompted me to make the call.

Q. Okay.

5 A. That was the first thing. Obviously you're seeing physical violence break out, that is obviously not order, so you say, Someone needs to be notified.

Q. I understand that.

10 A. To get to answering your question as far as what -- where I was, when I had made that turn, one thing other than that altercation that I saw in this area was a gentleman who was banging on the side of the streetcar that was stopped at that
15 light.

Q. Okay. Now, can you just briefly describe what that gentleman looks like, please?

20 A. To the best of my ability, other than what I had stated on record from the phone call that I had made to 911, I would say that he was taller than myself, so if I'm five seven, he would have to be at least five eight to five nine, judging by a distance of 15 -- 15 feet, couple of, you know, five to ten paces perhaps. You know, to the best of my
25 ability. Ah, how much he weighed as far as, you

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know, trying to give an accurate description, I mean, he wasn't overweight so he was proportional to his height I would have to say. He was, I believe, wearing a jacket, to the best of my recollection. Jeans and dark shoes. I mean, other than that, he had short dark hair. Um, as far as facial features are concerned, I mean, I can't get too descriptive with those but --

Q. All right. That's fine. But let's back up. When you're making this phone call --

A. Mm-hm.

Q. -- on the 911?

A. Mm-hm.

Q. The woman that comes forward towards you, can you just roughly explain to me what you're doing with her when she comes to you?

A. Yes. Um, I want to assert first that the moment that I saw the gentleman, I had turned from now going in a -- my head facing a westbound direction proceeding this way, I had turned my bike around 180 degrees and was now facing east.

Q. Okay.

A. So I had made a 180 realizing that I'm right in the middle of something that I could very well be putting myself in harm's way, so I made sure

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5 that while I was on my bike, that the, ah, the
crank, as we call it, was -- my foot was on it and I
was ready to just go straight up that middle divider
in the two streetcar lanes because that was an easy
word escape or remove myself from the situation
without putting myself at risk, so that was a
judgment call that I made. Um, and that was -- that
was essentially what led me or what put me in the
10 position to be facing east and to have Nicole emerge
right around that -- right around that area. Never
the -- I mean, if I'm facing east at this point,
Nicole was to the left of myself.

15 Q. And when you say "Nicole", are you
referring to -- is she in the courtroom now?

20 A. If I would have to say that this is the
individual that I'm referring to then, I mean, this
is the point that I made myself. If the person in
the courtroom has a scar that would likely have been
left by a gash that I witnessed myself, then I would
25 have to conclude that this is Nicole. I haven't
checked myself so if I'm going to be answering as
accurately and succinctly as I can, I have to offer
that the identity of said person would have to be
concluded whether she has a scar there or not.

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Q. Fair enough. You used the name Nicole and I'm just wondering where you got the name from.

A. I got the name from the subpoena that came to my home.

5 Q. We'll get into the whole identification in a minute. But so using the word "Nicole", you are referring to the woman that you had marked out, and I'm just going to go back to where you marked out, you first saw her where?

10 A. She first came to my attention roughly in the area that that laser pointer is pointing to. Roughly.

15 Q. So it's clear, where was she in relationship to the fight. I mean, you've marked off an area and it seems to be the same area that you've marked for the fight, so is she coming from that area?

A. She's in the middle of it.

20 Q. Okay. When you say "She's in the middle of it", while she is there, do you -- what's the first thing you notice about her? Let me ask you this: What's the first sense -- what brings you to her attention. Let me ask you that.

A. Her face.

25 Q. Is there any -- do you hear anything?

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A. Well, I'm hearing noises all around me. I'm hearing a streetcar that's honking, I'm hearing, you know, I'm more or less in the middle of traffic so, I mean, I'm hearing quite a bit.

5 Q. Do you hear anything from her, I'm going to ask you, specifically.

A. Yes. Ah, I'm obviously hearing screaming from her or at least a perceivable sense of disarray or panic. This was -- anybody who would be next to me and be of sound mind would be able to attest to that without question.

10 Q. Okay. So can I take it then, sir, you did hear some screaming from her?

A. Let's just put it this way: When I had been confronted by this individual, I was more or less already in the -- in the mode of preparing myself to reach into my phone and dial 911, because at this point I'm noticing a gentleman who's banging on the side of the streetcar, I'm noticing that there is a knife in his hand, and I'm noticing that there is someone now coming, you know, who is within a short distance of me who looks distressed.

20 Q. Fair enough. And can I ask you, in terms of timing, did it all happen simultaneously? Or do you see her come from the fight first and then see

25

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him running towards -- or sorry. Banging on the side of the streetcar?

A. That I'm still -- when I'm making the turn I'm more or less -- it's happening concurrently, meaning --

5

Q. Fine.

A. -- at the time I'm making the turn, the way Mr. Hammond -- if -- and I don't want to make -- I don't want to jump to conclusions here so you have to forgive me if I'm making an identification.

10

Q. What I want you to do, sir, is just take your time, take a deep breath, nobody wants you to say anything other than what it is you observed.

A. I understand. I understand.

15

Q. And I'm going to ask the question again. In terms of when you see her coming from the fighting area, or the area where the fight was, and you see him, the gentleman banging on the side of the streetcar, do they happen at the same time? Or do you know.

20

A. At the same time is a difficult assertion for me to make, and the reason that I say that is because at the time I made the turn, in my mind's eye I'm recalling already having seen the altercation between two people and I don't want to

25

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5 -- I don't want to make things up, as it were, but I
want to say that I remember people falling to the
ground and emerging from that, meaning that there
was a fight, people had gone to the ground and it
was, you know, as it were you see two people fall,
you see other people huddled around, you see
afterwards trying to get your bearings straight, I'm
also listening what's going on here. Is there a gun.
What's going on. So at that time is when I made the
10 180. At this time I'm seeing someone who is banging
on the side of the streetcar and you can see now I'm
just in the, you know, in the phase of trying to
remove myself.

15 Q. Okay. I understand. William, if I can
just back up a little bit here.

A. Please.

Q. You do see some people getting up from
the ground? Is that what you said?

20 A. I'm saying -- I'm putting that forward to
the best of my recollection, meaning that when you
see a fight it's very difficult to discern what's
happening and put yourself in a position where
you're not getting in the way of that and you're not
putting yourself in harm's way, so I'm not
25 necessarily looking at -- I'm seeing two things at

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one time, so yes, that would be fair to say that at the time that I'm still on my bike, I'm seeing one event happening over here.

Q. Yes?

5 A. And I'm seeing another series, when I say series of events, I'm seeing a streetcar here, I'm seeing a gentleman banging on the streetcar, and I'm making the judgment call at that point to do a 180 and then to put myself now facing east parallel to the streetcar.

10 Q. Okay. Now, I'm just going to stop you there for a second. You -- can you at least tell us whether or not you saw, or you didn't see, one of the two people you have just described come from the fight.

15 A. I would have to conclude that the person who had the cut on her arm, who verified that was bleeding to me verbally and that I affirmed was bleeding by making visual contact with the cut, had come from the area in which I saw the fight happen.

20 Q. Okay. And I'm just having some problem with the word "conclude". What I have to get from you, sir, is what it is you saw. So originally you said you saw the woman who you referred to as Nicole coming from the area of the fight, and that's what

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your original evidence was. Is that not correct?

A. To the best of my recollection.

Q. Okay. So all I'm asking you in addition
then is whether or not you saw that individual get
up from the ground and come from that area, or
whether you saw that or you didn't see that.

A. I cannot say that I saw a woman that was
on the ground and then got up. What I can say is
that there was a group of people of whom I couldn't
make out what was happening in that group, who was
the aggressor, who was the defender. All I can say
is that I remember a small crowd, I remember wanting
to keep a distance from that crowd, a safe distance,
and then -- and then to the best of my recollection,
my attention was diverted from that crowd to the
gentleman who was banging on the side of the
streetcar. So my attention is diverted from two
separate places. I'm looking both at a physical
altercation and I'm also looking at a gentleman who
is, you know, more or less a part of this scene. So
I'm divided in my attention as to what I'm looking
at and what I'm keeping my attention on.

Q. I understand that. But so I'm going to
leave this area in a minute and we're going to deal
with the 911 tape, but I just want to make sure I'm

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clear. You do see Nicole, as you say, come from that area where the fight was. That you -- is that your evidence.

5 A. I would have to say that yes, that would be -- that would be a fair statement.

Q. Okay.

A. To the best of my ability.

10 Q. The other thing I want to confirm is you don't know whether or not she got up from the ground.

A. I want to say that I did see her get up from the ground but I don't want to say that with 100 percent certainty.

15 Q. Okay. You're just not 100 percent certain that she got up from the ground. Now, I want you to focus for a minute on the gentleman that you say is banging on the streetcar. Did you see where he came from?

20 A. Did I see where he came from. Um, I can't say.

Q. Okay. And that's fine. That's all I want you to be able to tell me what you remember. And can you tell me after he banged on the streetcar, what he did after that or are you not able to do so?

25 A. Um, what I am able to say to the best of

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my recollection is at the time that I had made contact with the young lady that I'm referring to as Nicole --

Q. Yes?

5

A. -- it was almost at the same time, almost concurrently with me reaching into my right pocket and getting my cell phone out and placing the call.

10

Q. Fair enough. Now, let's deal with that phone call. When you make the phone call, and I think maybe we have a copy of the -- filed as an exhibit. I have an extra copy and rather than play it back, if I can just lead him through the extra blank copy so he can read it off as opposed to playing the tape?

15

MR. SCARFE: Sure.

MR. THOMPSON: It's filed as an exhibit. I'm going to put the exhibit to the witness.

Okay?

THE REGISTRAR: 48A, Your Honour.

20

MR. THOMPSON: Thank you, Mr. Clerk. Mr. Registrar. I'm sorry.

25

Q. Okay. So we have you making a call. You say just as she's coming towards you, you pull out the cell to make the phone call. Has Nicole actually physically touched you at that point in time or come

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--

A. I haven't -- no. No. No. She's not -- I'm not in physical contact with her at any point yet.

Q. Okay. You mention here that a gentleman has a knife and they both seem to be intoxicated. Which gentleman are you referring to?

A. I'm referring to the gentleman who was situated next to the streetcar. That's who I was referring to when I was looking. That's who I was referring to who had the knife and who was --

Q. So you can see the knife in any event.

A. Yes.

Q. And this is the gentleman you saw, I don't want to put words in your mouth, this is the gentleman who is banging on the streetcar?

A. This is the gentleman who I'm looking -- I mean, if I was sitting there on my bike right now I can see a gentleman who is trying to communicate with somebody on the streetcar, which was evident, I mean, he's talking to someone, he's pointing his finger with his hand, he's banging on -- rapping on the side of the window and it -- to the best of my recollection, in his left hand, if he's banging with his right hand, in his left hand is where I asserted that there was --

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Q. Okay.

A. -- a metallic looking object that resembled a knife.

Q. And that's fair enough. And you've also, going on to page 2 of that transcript, and you say:

"I'm looking at his hands and --
I'm looking at in his hands and
he is about 170 pounds."

You were able to determine the weight at that time of it, were you? That's fine.

A. At the time when I was looking at the gentleman, my first thought was not his weight.

Q. Okay. So --

A. My first thought was his demeanor. And so when I'm on the phone with a 911 dispatcher, my intention was to give as much information as quickly and accurately as possible before I'm in -- before I'm in the middle of something where --

Q. William, I understand.

A. Okay.

Q. And I'm not questioning what you said. I just want to make sure you said that, because you later go on and you say:

"...Caucasian, he's about five

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5 foot nine and 150 to, yeah, to
170 pounds and he's punching the
passenger - sorry - the driver's
side of the taxi and he's
driving -- he's trying to climb
on top of it and he has a knife
in his hands. If you can, you
could probably hear the taxi
honk."

10 So is that what next happens? You see
him go to a cab?

15 A. At this time, from the time that I made
the call, I'm -- at the time where I place that call
I am roughly in this situation where that cursor is
pointed, where my laser pointer is, so I'm still in
the middle of the intersection at the time that I'm
dialing. From the time that I reached the dispatcher
and I'm now communicating with the dispatcher, I
20 have moved myself from the middle of the
intersection.

Q. Yes?

A. I have left my bike in the middle of that
dividing line.

25 Q. Just so you know, you're moving the

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marker or the laser pointer basically in the centre
of the road just a little bit west of the
intersection, somewhere near the stop line that's
indicated on the south side of Queen Street, and you
5 indicated you've left your bike there and that's
where you're standing is it?

A. To answer your question insofar as where
I was at the time that I'm speaking, I'm standing
but I'm also in motion. I'm also thinking I have to
10 get myself out of an intersection and get myself to
the sidewalk. So from the time that I placed the
call to the time that I found myself on the
sidewalk, viewing what was happened, viewing the
gentleman from having a visual from him banging on
15 the side of the streetcar to proceeding east to the
cab that was now in motion, and trying to get in
front of it as if to stop it, as if to get inside
the cab.

Q. Okay.

A. So that's when I said he is -- now he is
20 pounding on the side of the passenger seat -- no,
the driver's seat, because it was as if it was in
motion and he slowly started to make motions to stop
the driver and then to get on to --

Q. Okay. All I wanted to determine, sir, is
25

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that the gentleman who you said is banging on the side of the streetcar is also the gentleman who eventually gets to the cab.

A. That is correct.

5 Q. Okay. Now, there is a passage in the -- on page 3 and I -- just so it's clear, when there's the female, there is a question:

"Yeah, and do you need -- do you need an -- and do you need an ambulance? Are you bleeding?"

10 The answer is: "No." And you indicated: "Are you bleeding?"

And the female answers: "I am bleeding."

15 Who made that comment? "I am bleeding"? Who was -- who is the female voice?

20 A. Well, the female voice would be -- would -- if -- I'm basing, you know, you're asking me a question that, again, posits the identity of the person who has been cut --

Q. Yes.

25 A. -- in question. And so I have to answer that in a way that says 'til this moment, if it's not Nicole, then I have to assert that this is a

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person who is -- who has been cut.

Q. I'm not trying to make this difficult, sir. All I'm really saying is the person who is talking, the female --

5 A. Yes.

Q. -- who is talking on the 911 tape?

A. Mm-hm.

Q. We overhear a female's voice.

A. Mm-hm.

10 Q. Is that the person you know as Nicole?

A. Yes.

Q. Fair enough. And I'm just going to ask you, at the time that that is made, do you have physical contact at all with her?

15 A. No.

Q. Do you ever have physical contact during the time of the entire phone call?

A. Yes.

20 Q. Okay. Do you know -- after she had mentioned that she needed a cab, do you know how much longer of a conversation it was that you actually had physical contact? Let me ask you this: What kind of physical contact did you have with her?

25 A. Once she had affirmed that she had -- was bleeding and that she had been cut, um, the first

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thing that I did was I took my left hand --

Q. Yes?

A. -- and I placed it, and this is the best of my recollection so I could be wrong, meaning that it could have been her right hand or it could have been her left hand. This is something today I'm still grappling with, but to the best of my ability and the best of my recollection, it was her left hand.

Q. Okay?

A. So I, with my left hand, having the phone in one ear affirming that she has been cut, I reach for her left hand with my left -- with my freehand.

Q. Okay?

A. Which is my left hand.

Q. And do you grab her arm?

A. I do.

Q. Okay. Are you able to tell if it's bleeding?

A. Yes.

Q. Okay. Are you able to stop the bleeding?

A. Eventually it was in my -- in my observation that although there had been blood loss, that my presence had assisted the -- had assisted in slowing the flow of blood. Let's just put it that

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way.

Q. Okay. I don't know if Your Honour wants
to break now or --

THE COURT: We'll take the afternoon recess.

5 MR. THOMPSON: All right.

THE COURT: 15 minutes.

10 ---RECESS (3:31 p.m.)

---UPON RESUMING (3:47 p.m.)

15 MR. THOMPSON: Your Honour --

THE COURT: Yes.

MR. THOMPSON:

20 Q. The only other thing I really wanted to
talk to you about on the tape was you made a
comment, and I'm referring now to page number 9:

"I'm pretty positive that an
artery has been punctured. I can
see a change of blood all over
the floor."

25

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So I just want to ask you a little bit about that. First of all, is there a lot of blood pouring out at this point in time.

5 A. At the time that I had applied pressure was the moment after I had received confirmation from the young lady that in fact she had realized or at least she had affirmed that she was cut.

Q. Yes?

10 A. And she was bleeding. At that moment, I reached out and put her -- the cut in my hand, so to speak, to apply pressure to it and left my bike at that point when I realized that I needed both hands and I needed movement, like, my person to be able to move, so I left it there at that point and then
15 just, you know, we're talking seconds here, so trying to remove an individual with a lacerated wrist or arm from the middle of an intersection, which was roughly there --

Q. Okay?

20 A. -- to the sidewalk, which was there, where I had continued to give my description of the gentleman who was going from there.

25 Q. I just have to put on the record that you moved from the intersection of Queen and Niagara and what would appear at the crosswalk, you've drawn a

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line, you've moved from the middle of the road towards the sidewalk.

A. That's correct.

Q. You actually wind up on the sidewalk.

5

A. Yes. Yes.

Q. And while at -- walking is going on, just to get back to -- is there a lot of blood? Because you say "artery" and I --

10

A. Right. I want to preface my answer with this statement, is that at the time when I'm on the phone with the dispatcher, upon listening to the tape, it could be -- I'm not a physician.

Q. Okay?

15

A. And I understand that all, you know, the respective members of the court know that and that they're not expecting a detailed analysis of someone's weight and whether an artery's been cut or not, but what I did do, to, you know, to sort of realize that there was a situation at hand, I'm trying to kind of do the best I can to, and I'm using the term loosely here, maintain personal responsibility, personal control.

20

Q. Okay?

25

A. So to the best of my recollection, I had, in my mind, made the decision , say I have to get my

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bike from that intersection, so what I did was I left Nicole by herself at one moment to go and get my bike from that point where it was and then to bring it to the sidewalk.

5 Q. Okay.

A. At that moment I said to myself -- there was already -- there was already blood on my hands. Um, I had said to myself, I'm making a judgment call here, and saying if she takes off, it's on her. Or
10 if she moves, you know, I'm saying, Look, I've got to go get my bike or something to that effect, meaning I have to move from one situation being on the sidewalk and then realizing that, you know, this guy's trying to flee or move, I'm not trying to
15 make, you know, judgments here. I'm just using the words as they come. And realizing, Oh, I've got to get my bike, so I go get my bike, I come back and to the best of my recollection, I mean, you know, I'm really -- I'm really -- I've been, since the day
20 that it happened and it's been what, three years? I'm still to this day trying to recall those moments as they were very fleeting.

Q. Okay. But if I can just redirect you, was there a lot of blood?

25 A. There was, yes.

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Q. Okay.

5 A. So, I mean, when you're asking me if I
can affirm an artery being cut, you know, that's a
-- it's a pretty bold statement to make and maybe I
was -- I should say at this point just it would be
prudent of me to say and to note for the Court that
I may have been over-zealous. It may not have been
an artery. I have to offer that as not being a
physician or being a medical expert, but there was
10 enough there to at least feel that if I did not take
some type of action, that, you know, it's just one
of those things.

15 Q. All right. I understand that, sir. The
only other question about that is, just so it's
clear, you do take Nicole's hand at some point in
time, whether it be the left or the right, and you
move to the -- you've indicated you move to the
north side of the street, is she -- and you also
indicated you had the bicycle, so is your evidence
20 that she is -- you're holding her hand to that side
of the street? Or you leave her hand for a minute,
pick up the bicycle and go to that side of the
street?

25 A. My assertion is that I had left my bike
at the time that I had my -- the phone in my hand.

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Q. Yes?

5 A. And the time that I'm asserting that this individual is cut, and now I need all of my faculties which mean I need both of my legs, I need -- I don't need to be cumber -- cumber -- burdened by a bicycle which at this point is in the middle of an intersection with a streetcar sort of coming to my -- or to -- to the right of me, I have oncoming traffic more or less at twelve o'clock so, you know, 10 it's a judgment call. I'm thinking to myself, you know, What do I do here? Do I drop my bike in the middle of an intersection? It was a very precarious situation to be in and so I'm still trying to remember, am I making that call from the time that 15 I'm making the decision to drop my bike and to just grab her arm and start to proceed to the sidewalk so I can get her out of the intersection? Or, you know, that moment where I'm leaving my bike now, because as I indicated, I started on my bike, so at 20 some point I was off my bike, so that means that I had some time, at some point, decided to leave my bike somewhere, and it wasn't over here. It wasn't somewhere here.

25 Q. Okay. And just while we're on the topic, you're sort of jumping all over the map here, but

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let me ask the question this way: Do you -- first
of all, you agree that she was bleeding quite
heavily. She was bleeding. Would you have known
where she walked with you and where she may have
deposited blood?

5 A. Yes. That would be right around this area
right here.

10 Q. Okay. Just so we know, you've indicated
now with the marker that you're on the most
northerly extent of the sidewalk, on the north
sidewalk, and you've pointed out building number --
Court's indulgence. And I just need to make this
properly marked on here and I'm just -- you've
15 indicated right beside light standards, and actually
a little bit to the west -- sorry. To the east of
the light standards. And can we flip on -- I'm
showing you Exhibit Number 2. If that's Niagara
Street, sir, can you indicate to me roughly where --
and these are numbers. Can you indicate to me
20 roughly --

A. Mm-hm.

Q. -- where it is that you said that the
blood would be deposited?

25 A. That would have to be in the front of a
store, if that's Niagara right here.

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Q. Yes?

A. I had tried to situate both myself and the young lady, at this point we don't have a photograph so you won't be able to see where there was a step leading into, ah, leading into the store front, as it were, so what you have, if you were to look at one of these store fronts, maybe it was building 744 or 742 or 740. Either of those three would have had a step where I would have been able to sit and have the young lady seated next to me, so if she was bleeding, it would have been, you know, it would have been in one of those three and I don't recall simply because there was more than one. At the time that I was asked by Detective Giroux to sort of recall, I had -- was at home and I went on Google Earth and tried to pull up the intersection for myself and tried to recall where I was sitting.

Q. Okay. We'll get back to that in a minute, sir, but can you tell me, is there any other area you would have been with her where she was bleeding?

A. Other than the --

Q. Other than that area.

A. No. I didn't stray far from a direct line from where I left my bike to the closest point where I could sit down and just apply pressure to the

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wound.

Q. Okay. And I'm going to just -- I'm going
to -- I'm just going to play you a video that was
entered as exhibit for One of a Kind Pasta. The
5 video number is -- exhibit number?

THE COURT: 10?

THE REGISTRAR: 10, Your Honour. Thank you.

MR. THOMPSON: 10? And we're keying it up at
31:54.

10 Q. I just want to ask you if you can
identify -- I'm going to ask if you can identify
yourself in there. Let's do it that way. Okay? Just
watch the footage. Whatever's easiest for you.

15 ---VIDEO PLAYING

THE WITNESS: That's me with the blue bag.

20 MR. THOMPSON: Okay. Just continue playing.

---VIDEO PLAYING

25

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MR. THOMPSON:

Q. So what are you doing there? Do you know?

5 A. Well, I have the young lady, who is most likely -- maybe that's the one that's cut. I mean, if this is who I'm looking at. Then I'm assisting her with some type of direction. I mean, the video tells itself. I don't really have to interpret it.

10 Q. Okay. I just wonder if you had, other than what was in the video, if you were making conversation at the time of the video or what you were doing other than what's seen in the video.

A. No.

15 Q. Okay. Continue.

---VIDEO PLAYING

20 MR. THOMPSON:

Q. So just stop here for a second. So what are you doing there, sir?

A. What am I doing? I'm observing whatever's going on in front of me.

25 Q. Okay. But you were holding Kish's hand

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there for a while?

A. Mm-hm.

Q. And now you've done what?

A. Now I've left it.

5 Q. Okay. You're backing away.

A. That's right.

Q. Okay. Do you remember why? If you don't
that's fine. But just...

10 A. When you -- when I felt that force was
being applied and that my presence was not welcome,
I removed myself.

Q. Okay. So you felt you were no longer
welcome in the situation?

15 A. From the moment that you see people who
are obviously contributing to the -- to the -- to
whatever can be determined is happening on video, it
was -- you can obviously see that I'm still looking
with intent at the scene, so I'm feeling that I
20 don't want to put myself and insist on being next to
her. It's not my place and so far it's to say that
people who are already closer to her have opted to
take initiative, so that's why I decided that, you
know, I don't need -- there's no need for me to
continue to hold on, as it were.

25 Q. Okay.

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A. I'd like to state something here,
because --

Q. Sure.

5 A. -- at the time that we had reviewed this
video, I had not seen it from start to finish. There
could be a time where I might continue to --

Q. Well, we're just going to play it a
little bit more.

A. Please.

10 Q. Just so you know. Just continue.

---VIDEO PLAYING

15

MR. THOMPSON:

20 Q. In any event -- Court's indulgence.
There's a bike in the left-hand corner. Bottom
left-hand corner. Do you know whether that's your
bike at all? Or not.

A. No, it's not my bike.

25 Q. And rather than play the entirety of the
film, sir, that individual that you referred to as
yourself is -- you're not in the video anymore.
Okay? So we're going to stop it here at 32:38. Now,

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do you see who takes over assisting Nicole with her arm?

5 A. If you're referring to whether I can see it from my personal recollection or recognition, I can't say with certainty that I'm referring or seeing one person -- like, one individual. As the video indicates, there were more than two people surrounding Nicole, so at the time that I felt someone -- I know that there was at least one male next to her. At the time that -- there's -- see, we're at a point now where there's a bit of conflict, meaning I feel a little conflicted from what I'm seeing here on the video from the last moment that I remember leaving Nicole, as it were, in the care of someone else who was at her side. So I don't know *per se*, I can't recollect, as it were, at what time that happened, meaning from the moment that the police and the ambulance had arrived on the scene, to the moment that Nicole was no longer in my physical presence, meaning surrounding, like, surrounding me, meaning in my physical presence, I'm trying to recall at what point the video that I just saw happened.

10 Q. Okay.

15 A. And if at some time I was rejoined, for

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lack of a better word, with Nicole and, you know,
having -- having provided assistance.

Q. Okay. So sir, we weren't there. We don't
know and that's why we're asking you.

5 A. Mm-hm.

Q. But my question is, in viewing the video,
Nicole, would it be your evidence that she's at
least cut at that point in time?

A. Yes.

10 Q. Okay. And there seems to be somebody
helping her at that point in time?

A. Affirmative.

Q. Do you remember whether or not she had
any bandages on her at the time at that video?

15 A. From the video I could discern that there
is something on her arm.

Q. Did you put it on?

A. I have a very strong memory of requesting
that someone bring me a bandage or a cloth.

20 Q. Okay.

A. Someone had, you know, had approached me,
I, you know, it was in a state, obviously, so I
don't recall, you know, have photographic memory of
this but I do recall asking someone to please find
25 me --

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Q. Well, let me ask you --

A. Please.

Q. It wasn't any of your clothing that was wrapped around her.

5 A. Ah, no. I don't believe so. And the reason that I -- there's a bit of hesitation with that is because I know that I had a bag with me so, I mean, it would have been easy for me to reach into my bag and get an article of clothing, but I don't
10 believe that that's what the case was. I believe someone had -- had provided either myself or, you know, it's a little -- it's a little difficult for me to remember even though it's very possible that I could have asked, I could have tied it myself and
15 I'm being, you know, to the best of my recollection. I could have tied it myself and just don't remember.

Q. Okay, sir. I've finished with my questions, and this gentleman here may have a few questions.

20 THE COURT: Cross-examination?

MR. SCARFE: Thank you, Your Honour.

---CROSS-EXAMINATION BY MR. SCARFE:

25 MR. SCARFE:

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Q. Mr. Patsiopoulos, I'm John Scarfe. You recall co-operating and coming to the preliminary hearing?

A. Good afternoon, Mr. Scarfe.

5 Q. Good afternoon. It's clear you're being very, very, very careful in how you give your evidence today.

A. Should I not be?

10 Q. Oh, I didn't mean it as a criticism for it. I thank you for it. But is there something that you're worried about overstating your evidence? Or saying something that might not be true?

15 A. No, I'm not worried about stating something that might not be true. I'm being cautious because I understand the levity of what's being asked of me.

Q. You understand your evidence is very important.

A. That is correct.

20 Q. Okay. That's good. So I'm going to try and take you through this and I'm going to use as much I can very simple, layman's terms, and if I at any point exceed what you recall, you just correct me and say that's not how it was or I'm not sure,
25 okay?

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You're coming up Niagara on your bike and there is a red light, right? So you stop at the red light on the left side of the intersection, correct? You have to say yes or no because this lady types --

5 A. I understand, yes, that is correct.

Q. And you recall there was a car that was also stopped there, and although you can make a right on red in Toronto --

A. Sure.

10 Q. -- your recollection is that that car waited for the light to turn green as well.

A. This is where I am trying to assert that that is in fact what happened. What I remember during the time that I was recalling is that I remember trouble. I remember saying to myself that I am wanting to find out what's going on and knowing if I should turn around or if I should proceed home during -- with the same direction, so I slid in really close up next to the car. My focus was not on the car so was the light green? Red? Did he turn before it went green or red?

Q. You don't know.

A. I don't want to put my integrity on the record by giving an answer that could very well -- there could be evidence in the court today that

25

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might prove that I could be making a mistake. So I'm just wanting to say that I stopped, I made an assertion and then I proceeded.

5 Q. All right. And we appreciate your clarity on that. So whenever it is that this other car went away, you had a moment where you were waiting at this stop line at the top of Niagara and watching what was going on around these two light posts, right?

10 A. That's correct.

Q. And if I understand your 911 call clearly, you saw a group of six to 12 people milling about to the right of these two light posts and it was your impression that a couple were fighting with each other.

15 A. Okay. I can provide a little clarification on that. When I made the call, I counted the number of people that I felt would be necessary to give an accurate description of what I was looking at. I put the number at six to 12 as it's -- as it appears in the --

20 Q. As it appears in the transcript?

A. As it appears in the transcription, so when I say six to twelve, I can at least see a group of people that are , you know, huddled in mass 12

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o'clock of me or at least in transition, in my
direct, you know, where my attention is, and
obviously people who are around on the sidewalk, you
know, if the fight was breaking out more or less
5 going from this direction to this direction.

Q. And you're indicating in the curb lane,
which is the dark asphalt going a little west of the
two light standards and quite a bit east, is that
correct?

10 A. To the best of my recollection, you know,
I want to say there is a possibility that it could
have, you know, spilt a little bit here on to the
street rather than remaining here on the sidewalk,
but yes, I have to say to the best of my ability,
15 and I have to also offer that I could be a little
bit inaccurate, but it was, you know, in that area
right there.

Q. Okay.

20 A. There was also pedestrians peppered along
the streets here that are walking and also looking
at what's going on, so this is why I'm saying there
are six to 12 being affected, as it were. If there
are two people fighting, someone's trying to get
them off, another person is trying to stay clear,
25 another person is with his partner standing or

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walking as it were, so that's why the number seems a little vague, as it were. So...

Q. But your impression is, you're waiting to go at this light, is there is a group of six to twelve people there and they're not all just standing around having a smoke.

A. Thank you.

Q. Right?

A. Mm-hm.

Q. And your other impression, because just before you said the six to 12 people to the 911 operator, you talked about two people fighting.

A. Yes. I mean, this is where I'm trying to exercise the best of my recollection and saying, you know, who am I seeing fight. There's two people that are the main -- the main event, as it were, and then there are people surrounding.

Q. Okay.

A. So...

Q. And in fairness, you can't tell us anything specific about the two people as distinct from the rest of the surrounders [sic].

A. With the operative use of the word "fairness", I would not be able to say that, no.

Q. Right. Having found the girl you refer to

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as Nicole with a cut?

A. Mm-hm.

Q. It would cause you to suspect that she might have been one of the people fighting?

5 A. That would be my immediate --

Q. But that's a logical inference, not what you saw.

A. That is correct.

10 Q. Okay. That's great. And you're not here at this stoplight observing this for very long. We're talking pretty brief period, right?

A. Very brief.

15 Q. You know, sometimes you're at a side street with a traffic light and it's Sunday and it seems like it takes three minutes to turn green?

A. Mm-hm.

Q. It wasn't like that.

A. No.

20 Q. No. You were here for a moment, you caught a glimpse of this fight and you decided, on the one hand, I'm curious to see what's going on, but on the other hand, I've got to watch my safety and make sure I don't get hurt.

A. That's correct.

25 Q. Is that fair?

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A. That is.

Q. All right. So you bike across the
intersection --

5 A. I'd like to say that that's not only
fair, that was exactly my -- those were the --
exactly my thoughts. Those were exactly my thoughts
as I was proceeding from one point to the next.

Q. A little bit of curiosity, little bit of
apprehension.

10 A. I think that it was what -- I want to say
something for the record here. I was not under the
influence of any drugs, I was not under time
constraints, as it were. I'm very -- as apprehensive
when I feel that there's danger in my -- in my
15 immediately case and especially when I have to go
through that to proceed on my way. So yes, I want to
make sure that I'm seeing what's going on if I have
to give an account, but I also want to see is -- is
this the way that I should be going or should I be
20 going another way.

Q. Mm-hm. Okay. Good.

A. Mm-hm.

Q. All right. So you come across to the
middle of the intersection and you start in the
25 westerly direction that you intended to go the whole

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time, right? But you see this guy hanging on a streetcar, right?

A. That's correct.

5 Q. And what I'm trying to get at is how much time goes by between your observations of the six to 12 people and the turn, and where I'm going with this is was there enough time for one of the six to 12 people to leave that group and go to the streetcar, or was it so quick that he must have
10 already been there and not been part of the six to 12 group. Do you understand my question?

A. I do understand your question and I would have to assert that there was enough time.

Q. There was enough time?

15 A. What I'm saying is that there was enough time in the time it took for me to turn around and not go through that altercation, not go through -- not proceed past the point of the fight and to continue westward on Queen, and so -- do you --

20 Q. I think so.

A. Okay. So at the moment where I'm making that turn, I make a 180 at the time where that fight is more or less still in and around this area. Now, I mean, I'm trying to recall what's going on, right?
25 So I don't have a very clear picture. I'm

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remembering flashes, as it were. So I'm saying,
Well, you know, I'd rather just turn my bike the
other way and make sure that I have an ability to
leave if there is a gun, if there is something that
5 -- you know, if this is somebody who is drunk and
disorderly and just is flailing about. I'm just on
my bike and I'm trying to keep myself safe. So I
hope that that answers your question.

10 Q. All right. I think so. If I understand
you clearly, had you come around the front of the
streetcar and started west down Queen Street and
there had been no guy banging on the streetcar --

A. Mm-hm.

15 Q. -- you probably would have kept going.

A. That's correct.

Q. It was seeing him that caused you to do
the 180.

20 A. It was in addition to the fight that by
seeing him, it caused enough attention, it caused
enough alarm to say I should stop.

Q. So the combination of the group of six to
12 and now this guy banging.

A. That is correct.

25 Q. Okay. And so you may have misunderstood
my question before, because you sort of defaulted to

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the 180. Before you get to the 180. Just when you first see the guy, right? You were down here, you see the group of six to 12, you biked I don't know how many feet that is but through the intersection and to the point where you could now see down the driver's side of the streetcar?

A. Mm-hm? How long -- how long in seconds?

Q. Well, what I'm trying to determine is was this, when you witness this fight, can you extrapolate from how long it took whether this guy must have already been at the streetcar? Or is it something you might have seen him here and he might have run across when you were coming across.

A. That's very possible, and the reason I have to posit that without taking your suggestion and making it a memory is because I have to offer that these are sequences of events that happened within seconds. How long does it take for a light to turn green? I mean, I haven't timed it but I'm pretty sure I can tell you from my experience as a courier and my experience living in Toronto all this time, it doesn't take long. It's seconds. So I have seconds now to more or less determine whether I'm going straight or turning around and going the other direction.

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Q. Okay.

A. So it is possible, to answer your question, but in my memory, I am not tracking one individual. I'm remaining -- I'm trying to remain safe while deciding when to call 911. That's what's going through my mind, if I'm physically to be, you know, if I'm mentally to be taken from where I am to where reenacting of events as it took place.

Q. Okay. You -- you make the 180, now you're looking east?

A. Correct.

Q. And you see the person you've been referring to as Nicole hurt, right?

A. Distressed at this point. I haven't affirmed that she's been hurt yet. I mean, I can see that someone's panicked, in distress. You can see when you look at someone's face that they're not having a good day.

Q. And when you first see her with that distressed look, where is she in relation to these two light posts? And if you don't know, just say I don't know.

A. My first answer to that, I want to say that she's in the middle of the street but I also have to take into account that these are seconds

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5 that are going by and we also have traffic that's
coming there, so when do I say to myself that I want
to stay in the middle of the intersection and get
involved to the point where I'm now making decisions
to, what, put my hand out and stop traffic? Are you
trying to understand, like, how I'm trying to
reenact these events so I'm not fabricating anything
or -- it's weighing on me to the point where you can
see how carefully I'm treading for that exact
10 reason.

Q. You're really worried about not giving
the wrong evidence or the evidence as incorrect.

A. I want to answer that question thusly:
It was said to me, it was intimated to me that we're
15 trying to find the truth of the matter. Is that not
--

Q. Who intimated that to you?

A. Ah, when I was interviewed by Detective
Giroux and the Crown Attorney, Mr. Warren Thompson,
20 that this is what this proceeding is for. We're
trying to find the truth. Is that correct?

Q. Yeah.

A. Okay. So my answer to your question is
that I experienced something. I had an experience.
25 That would -- everything that happened that day was

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5 this -- was an experience so to take little bits of
that experience and to give an objective, it's very
-- I don't know. I'm trying to say in my mind that I
actually made a motion for a taxi that's coming in
my direction to stop, because I have someone here
that's, you know what I mean? That's in distress.

Q. Okay. I think I understand. You said when
Mr. Thompson was asking you questions that this was
maybe a series of fleeting glances?

10 MR. THOMPSON: Not to interfere, but I don't
think that's quite what was said. I think the
reference to this was an experience was in
reference to the actual event as opposed to
the time that he spent with me. I don't know
15 that anybody would refer to the time that I
spent with him as an experience.

MR. SCARFE: I could have phrased that
better.

20 Q. Did you say something this afternoon
about fleeting glances?

A. What I mean when I say fleeting glances,
I can provide clarification on that. I am assessing
in a very quick amount of time what is going on
around me and how to communicate that, if it should
25 be communicated and how to communicate that to a

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dispatcher on the other end of the phone while I'm
in, like, while I'm in the middle of traffic.

Q. Okay.

A. So that's why I'm trying to be careful
and to not give you an answer that didn't happen.

Q. Okay. So I'll try again, and maybe you
don't know. When you did the 180 and you first
noticed the lady you refer to as Nicole being in
distress?

A. Mm-hm.

Q. Can you say where she was with any degree
of certainty?

A. I want to say that she was standing in
the middle of the street.

Q. About where?

A. About there, as I've indicated now for
the third time, and I don't mean that
disrespectfully. I'm saying that I have stated for
the third time that she was roughly in this area
right here.

Q. Okay. And in fairness, there is a
crosswalk that goes across Queen, and there is the
west crosswalk boundary and the east crosswalk
boundary and she was somewhere around the line of
the west crosswalk boundary in from the streetcar

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tracks a little bit. That's your best estimation of where you saw her.

A. To the best of my ability, yes.

Q. All right. And within a second or two you realized this girl's hurt, she needs medical attention. You saw --

A. Fair to say.

Q. Yeah. And so instead of parking -- you just dropped your bike right there. Because you knew you needed both your hands and both your feet to help her.

A. That's correct.

Q. The bike was an incumbrance at this point.

A. That's correct.

Q. All right. And at that moment, helping her took greater priority than worrying about blocking traffic by leaving your bike in a lane on Queen Street.

A. I'll clarify that. My bike was left in such a way that was right in the middle of the two streetcar tracks, so as you can see, that space right there, although where the cursor is you have tracks that allow --

Q. You're saying where the stop line for the

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eastbound traffic meets the yellow centre line.
Right?

A. That's correct.

5 Q. Okay. So now I -- so you figured your
bike was blocking both directions of traffic.

10 A. No, because if that bike was left right
in the middle, a streetcar would have been able to
continue to move in one direction, and since I did
not see a streetcar coming in the other direction, I
made a judgment call that a cab, the cab, that was
in front of me, could have moved around it. Or could
at least have seen that there is -- people can see
what's going on.

15 Q. Mm-hm?

20 A. There are more than myself and the people
that are on the street that can obviously witness
that there's something going on here, so I'm
assuming, and, you know, maybe it's not good to make
these kind of assumptions when you're dealing with
the public, but I'm assuming that anybody in a car
can see that there's something here and would go
around the bike that I left there for a couple
seconds. So yes, I made a judgment call to leave my
bike in the middle of traffic.

25 Q. Okay. And so you drop the bike and you

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approach Nicole. Is she still in the spot you indicated before, just by the west boundary of the crosswalk?

5 A. More or less. At this point I'm, you know, I have a phone with me so I'm on the phone now and, you know, I'm calling 911 saying, you know, there's violence breaking out and she's asking me, Is there anybody hurt? You know, the transcript's right here. She's saying, you know, and I'm --

10 Q. And you've pulled your phone out of your pocket with your right hand and actually demonstrated --

A. That's correct.

Q. -- what you do.

15 A. That's correct.

Q. Okay. So you're trying to call 911 but you're also approaching her.

20 A. I'm trying to recall at what point I called 911 so that I can assert when I have one hand that's taken by having it on the phone and another hand that's free. Was it the time that I was right there at that intersection to leave my bike down? It would have to be. That's the best of my ability to recollect.

25 Q. You have a recollection in your mind's

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eye of having the phone to your ear with your right hand and applying pressure to the wound with the left hand.

A. Attempting to at least, yes.

5 Q. Trying to do both those things at the same time.

A. Yes.

10 Q. Okay. And just before we go too much farther down the road, the fellow who was banging on the streetcar was what, say halfway back down the streetcar?

A. Roughly.

15 Q. If you were sitting in the streetcar driver's seat, he'd be behind you and to the left.

A. That is correct.

Q. Okay. And he appears to be -- you see an Asian man on the streetcar.

20 A. Yes. I was able to assert that it was as if he was -- it was as if he was trying to either communicate with him or he was shouting something. Something to the effect of communicating with somebody on that -- on that streetcar, and I had asserted that maybe it could have been the gentleman who -- the Asian gentleman, because it was just the person that was sitting in that seat at the time

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that he was trying to communicate, banging -- I say
banging. You know, he was obviously communicating to
somebody or, you know, somebody in the streetcar to
the best of my -- to the best of my assertion,
5 whatever I could gather.

Q. You thought this male was drunk and you
made a note to stay clear of him.

A. That's correct.

Q. This male who is banging on the streetcar
10 and then proceeding to the direction of the taxi, he
looked like he wanted to fight anybody that was
there.

A. Okay. You -- at the time that I made that
statement that you're -- from the transcription that
15 you are quoting? Is that correct? Because, I mean,
this is what I'm saying, and I'm not reading my
transcript verbatim, but at the time that I'm -- I
have a visual on the gentleman, I'm wanting to keep
clear of him, so that's indication enough for me. I
20 don't have to ask myself how much he's had to drink.
I can see that he's hurt, I can see that he's not in
a calm state of mind, in a rational state of mind,
and from the moment that I assert that he has a
weapon, I'm staying as clear away from that
25 individual as possible.

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Q. He looks dangerous to you.

A. Well, he -- he looks dangerous for me. To me, I mean, dangerous for me to be in anywhere near that individual, so yes.

5 Q. Mm-hm. And you asked about -- because you've got your transcript of the 911 call.

A. Mm-hm.

10 Q. You recall when Mr. Thompson began asking you questions he reminded you that you'd given an interview back after this had all happened to a police officer?

A. Yes.

15 Q. That you testified at a preliminary hearing?

A. Yes.

Q. That you reviewed your 911 transcript?

A. Yes.

20 Q. And you also come in and have gone over it with the Crown Attorneys and the officer in the last couple of weeks? Had a little meeting with them?

A. Yes.

25 Q. Right. And there's actually one more time, a week or two prior to the preliminary hearing, one of my staff called you and you had a

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conversation with him.

A. Yes.

Q. And that's what I was reading from. I noted while talking to you, "this male looked like he wanted to fight anybody".

A. At the time that could have -- that was a fair statement. And I even now, that is a fair statement insofar as saying that it was a gentleman that looked in disarray. How can one say that, you know? I mean, I don't understand if there is a point that you're wanting to clarify in...

Q. Sorry. We're just helping my friend here. Please go ahead.

A. Could you please clarify your question?

Q. Well, I was just noting that you -- I was suggesting to you the male looked like he wanted to fight anybody, and then we sort of digressed as to which transcript and everything, but I guess my question is: What did you mean when you said the "male looked like he wanted to fight anybody"?

A. Well, um, with all -- and I'm not being flippant, but which part is unclear exactly? When you see someone who is in duress, who is in not a fair state, when I say "fair" meaning that you wouldn't want to approach him, then that -- that

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leaves me with the impression that this isn't
someone that I'm going to go shake his hand.

Q. Okay. I'll go at it a different way.

A. Please.

5 Q. You've told us he's banging on the
window?

A. Correct.

Q. And that you see a knife in his other
hand, right?

10 A. Correct.

Q. Was there anything else about his
behaviour --

A. Mm-hm.

15 Q. -- that would lead you to say that this
gentleman looked like he wanted to fight anybody.

A. The behaviour of someone who, from my --
from my assertion seemed intoxicated.

Q. Okay. So the banging, the knife, and your
perception that he was intoxicated.

20 A. Mm-hm.

Q. Was there anything in particular about
his behaviour that led you to believe that he was
intoxicated, beside the banging?

25 A. The sound of his voice, the manner in
which he was -- he was acting, ah, when you put all

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that together in a matter of seconds you don't
really need to -- how -- how should I put this. I
didn't need to spend too much time on that, on that
particular decision. It was pretty self-evident and
5 maybe -- let me just clarify something. When I'm
saying to was it Mr. Duran (ph) that I made that
assertion to?

Q. That's right.

10 A. Yeah, that he looked like he wanted to
fight anybody, I don't want to make a leading
statement and to say that he was -- it might sound
-- let me just rephrase that. Without wanting to
take more information on and to make a change to my
statement, could it be fair to say that the
15 individual was -- how can we put, say panicked
perhaps? Aggressive? So, you know, fighting
anyone, you know, if I'm -- perhaps -- perhaps this
is an individual who could have been in the
altercation, could have fallen down, could have been
20 the one who, ah, had gotten the knife off of
somebody else. All of these are things that I have
to offer, having not seen them, I have to offer the
possibility, so I don't want my statement to be that
which colours somebody who's ready to fight anybody
25 from somebody who's defending himself. I meant -- I

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don't want my statement to be taken out of context.

Q. Are you familiar with the term fight or flight?

A. Of course.

5 Q. And what does that term mean to you?

A. That you either do one or the other.

Q. You're in a state of panic or heightened anxiety and it causes you to behave differently --

A. Correct.

10 Q. -- than when you are relaxed.

A. Correct.

Q. And whether it may involve just getting out of there or if you feel cornered it may involve fighting when you're not really that type of person.

15 A. Of course.

Q. Does that kind of help you in describing the sort of mode that you saw this guy in?

20 A. Does it help me into wanting to characterize him? I'm not going to put myself in a position where I want to make that judgment. I don't want to do that. It would not be prudent of me to make that assumption. I can only say what I remember seeing.

25 Q. Okay. That's fair. We tend to break at 4:30. Are you available to come back tomorrow

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morning?

A. Yes.

Q. Okay. Sorry we couldn't get it all done
today but, Your Honour?

5 THE COURT: Tomorrow morning, ten o'clock.
Thank you.

THE REGISTRAR: Thank you, Your Honour. I
apologize for not being here after the break.

THE COURT: Thank you.

10

---COURT ADJOURNED (4:30 p.m.)

15

---WEDNESDAY, FEBRUARY 2, 2011

20

---UPON RESUMING (10:12 a.m.)

THE COURT: Mr. Scarfe?

MR. SCARFE: Thank you, Your Honour.

25

Q. Ah, I think when we -- you got here okay

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today. Did you bike?

A. No, not today.

Q. You didn't use your bicycle today. Good.
And thank you for coming back. It shouldn't be too
5 long.

We left off yesterday and I had suggested
to you that the guy was banging on the side of the
streetcar, appeared to be in a sort of fight or
flight mode.

10 A. Mm-hm.

Q. And did you have a chance to think about
that after court?

A. Yes, I -- yes, I have.

Q. Do you have any comment? Is that a fair
15 way to characterize what you saw?

A. Very fair, yes.

Q. Okay. Now, you remember there was
screaming and disarray and panic, and when you
testified, you were answering my friend's questions
20 yesterday, you said, in reference to the girl who
was injured, When I had been confronted by this
individual, I was already in the mode to call 911.

A. Mm-hm.

Q. Right? So you turn the bike, you've seen
25 the guy banging on the streetcar, you've done your

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180 and you were already thinking about grabbing
your phone.

5 A. To the best of my recollection, that is
what I can -- that is what I can recall on my own
memory.

Q. But then you saw Nicole, or the person
you refer to as Nicole. The girl with the injury.

A. Mm-hm.

10 Q. And what you said yesterday is that,
"When I had been confronted by this individual."
She didn't confront you.

15 A. No. What -- see, if I were to try and
reenact everything that happened yesterday and in
the way that you asked me the questions that you
did, for you to ask me now if she had confronted me
as if I were to approach a stranger on the street
and confront them, that would not be an accurate
representation of what I'm seeing in my mind's eye.

Q. All right.

20 A. When you had tried to extract the memory
of me first coming in contact with the woman who I'm
to understand is Nicole, the woman who had the cut,
if that is indeed Nicole still, I mean, I don't want
-- I'm trying to help you here, so I'm saying that
25 I'm using words that come as easily as trying to

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understand what I'm seeing from memory. So I don't want to misunderstand -- I don't want to be misunderstood, and when I use the word "confront" --

5 Q. Okay. Good. And that's -- we're both -- I think we're both reading each other's mind here because I thought maybe there was -- I was going to next suggest that this was just sort of the language you were using to describe your experience of turning around and having the image, you were
10 confronted by the image in your experience of this girl who was obviously hurt or in distress.

A. Yes. Like, I just, for the sake of wanting to not, ah, how should I say, ah, volley words back and forth, I'm just using the words as
15 they come easily, so I'm not -- it's not a play on words as far as confrontation is concerned.

Q. Okay. I just wanted to clear that up.

A. Please.

Q. So thank you for your help with that.
20 Now, staying with this image, when you first noticed the girl in distress, is it fair to describe the look on her face as one of fear? Being scared?

A. Yes.

Q. And as you continued to have this
25 experience of sort of realizing that she was

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injured, dropping your bike and moving to try and, you know, put your first aid training to work and get some pressure on the arm, you continue to experience the sense that she was very scared.

5 A. Well, I want to answer that in this way: My presence there did not alleviate her fear for quite some time, so I would leave it at that at this point.

Q. Okay.

10 A. Does that answer the question.

Q. Yes. No. That's fair. And it sort of dovetails with something we heard in the 911 call.

A. Mm-hm?

15 Q. You recall the radio operator suggested to you on the phone --

A. Mm-hm.

Q. -- that it sounds like she's being combative. Do you remember --

A. Yes, of course.

20 Q. And you started to answer, Yeah, she's being combative, and then sort of changed and said, You know, really it's -- she's scared and it looks like her artery may have been punctured?

25 A. I'd like to address that since you've brought it up, and the only reason I'd like to

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address that is because again, after leaving the
court yesterday, I'm trying to really be careful
with my words, because when I suggest to someone
over the phone that something as dire as an artery
being cut, again, I'm not a physician, so I still to
5 this day would say that I was wrong and I will
accept responsibility for, you know, communicating
something that was not accurate for the sake of --
for the sake of assisting something that you
10 obviously see is wrong. I will even go so far as to
say that I could even see that she was cut before
even answering the question from the dispatcher and
maybe even perhaps wanted Nicole to see it because
she might have been in such a disarray she might not
15 have even noticed it herself. I mean, that's the
type of panic that I'm talking about, what I saw.

Q. Okay.

A. Is that fair to say?

Q. Yeah. We all understand that you're not
20 qualified to give a medical opinion as to whether or
not an artery had been affected.

A. I would -- I can say with at least some
certainty that I saw a stream of blood falling down
her arm, so if it was a stream --

Q. You're using, just for the sake of the
25

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court record, you've reached out your left arm and you've used your hand sort of like a --

A. A knife.

Q. Shape of a knife and you've drawn a line along the inside of the arm diagonal from the wrist down towards the elbow?

A. Well, not towards the elbow. I'm not talking about a gash that separated, you know, from her wrist to her elbow. I'm saying that I saw it necessary for maybe it was a judgment call and maybe I made a wrong judgment call, but when she said, Is she bleeding, and she asserted she was bleeding and she said yes, you know, I don't know. I --

Q. That was true. You saw a lot of blood.

A. Well, I mean, can I make sure that I'm not -- and I'm not being dramatic, I'm just asking was there a lot? Was I in fact imagining things? Did I -- was it more than I saw? I mean, is there a scar there?

Q. Well, we can't really get into a -- just because of the way the court procedure works.

A. Of course, and I apologize. I'm not trying to sharp shoot here, but --

Q. No, that's fair. What's important is what you remember and you remember she had an ugly injury

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with lots of blood.

A. Fair to say.

Q. Okay. And -- and the only reason I raise that is because that's kind of what you were trying to convey to the radio operator when you were on the phone with 911.

A. Yes.

Q. And where I was going with that was this idea that she suggests to you she is being combative, which, you know, implies aggressive, maybe angry, that kind of thing, and your answer was this:

"Yeah, she is, well, she's being combative and she's being, well, she's very scared, because I'm pretty positive that an artery has been punctured."

So what I'm getting at is you sort of first are inclined to agree with the radio operator that she's being combative, and then you start talking about being scared, and does that help you remember what her actual demeanor was? Were you kind of correcting the suggestion? Or are you saying it was both? Do you understand my question?

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A. Of course I understand your question, and I -- to -- if the question is asking me whether my response to the 911 dispatcher was to assert that she was being combative and to make the judgment call to assist actively in her -- in assisting her to be less combative, or to, I mean, I would have to answer in such a way that implies that the moment that I picked up the phone, I'm trying to better a situation from obviously one of disorder, and I reviewed my notes very carefully and I'd like to note that when I went on the phone and I said "chaos", or whether it was in the courtroom and I used those words, I don't want to use words that dramatize [sic] effects just for the sake -- I understand where I am and where I'm sitting and I want to be very respectful to everyone sitting here, because I understand this is a serious issue, so I don't want to take an implication and just, with all due respect, go to town with it and just -- from the moment I decided to pick up my phone and dial 911, I'm trying to obviously get other people more qualified than myself to help people from being combative or to get 911 so that they can determine whether in fact -- my own judgments, those are my words I used at the time. Was she being combative?

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I mean, if someone else had asked me, is she nervous? Is she scared? I probably would have said, Yes, she's scared. She used the word "combative" so I understood at that moment she is use using vernacular that a 911 dispatcher would use, so it was only, how should I say, I don't want to say elementary but I want to say -- I wanted to agree because it was evident. It was self-evident. I didn't have to think about it.

Q. Okay. You've already agreed that you were sober, right?

A. Yes.

Q. And hadn't used any kind of recreational drugs or anything. You had all your whits about you?

A. Of course.

Q. Of course. And you come upon this sort of melee, this scene of chaos, and you notice Nicole and then you end up spending, like, at least a few minutes with her.

A. At least.

Q. At least a few minutes. So you're in a very good position to observe her demeanor.

A. Mm-hm.

Q. Do you know what that term means?

A. Of course I do.

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Q. And in observing her demeanor, can you communicate to us what you saw? There was definitely -- you've already told us about distress.

A. Mm-hm.

5 Q. Right? Yes?

A. Yes.

Q. And fear, right? So there's this mixture of panic and distress and fear.

A. Mm-hm.

10 Q. You've already told us that she appeared scared?

A. Mm-hm.

Q. Correct?

A. Yes.

15 Q. What I'm trying to get at, did you see any element of anger, or was -- when the 911 operator suggested she was being combative, would you agree that she wasn't angry or aggressive?

20 A. I would have to say that she wasn't aggressive towards me.

Q. Okay.

A. That's how I would have to answer that question.

25 Q. Did you see her being aggressive towards anybody else?

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5 A. Could you -- when you say "aggressive towards anybody else", I have to -- I want to understand what you're asking me. Is was she -- was she being combative with anybody else? Meaning that are you asking me -- no. I mean, at the time when I was -- people were obviously around her in the video, so she was susceptible to the help that was offered to the so-called friends, if you will, that were surrounding her at the time. So I would have to agree from obviously the evidence and what I
10 experienced there that she was susceptible to -- once she had realized that she was in trouble.

15 Q. Right. And when you first were confronted with the image of her sort of standing by herself there close to where the group was, right? It appeared to you that she was aware of what had happened to her.

20 A. Well, I -- I was even actually able to get her to affirm that while the dispatcher was listening on the other end, so I would have to agree.

Q. Right. And that was in the very few first seconds of your experience with her, right?

A. Very few.

25 Q. Very first few. Yeah. Okay. So you try to

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get her to sit down or lie down. We hear that on the
911 tape, right?

A. Yes.

Q. Yes. And so you go over to her, you're on
5 the phone, you're trying to put pressure on her
wound and you want her to sit down. Stop walking
around, so to speak, right?

A. Yes.

Q. And so you direct her to a step
10 somewhere. You remember sitting on a step?

A. Yes.

Q. And in front of one of the store fronts?

A. Yes.

Q. And I don't want you to guess, but if I
15 showed you a -- you've been by there since. You
understand what the scene looks like?

A. Yes.

Q. The various stores that you were in front
of.

A. Of course.

Q. But if I show you a photograph on the
20 projector, would you be -- do you think you'd be
able to identify the step?

A. I'd do my best.

Q. Okay. Mr. Murphy, any idea why this
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screen isn't working?

THE REGISTRAR: Your Honour...

MR. SCARFE: Little technical difficulty, but we'll get around it the old fashioned way.

5 Q. I'm showing you Exhibit 15E in these proceedings. And you see somebody's sort of written on the diagram and circled three of these little evidence placards on the bottom?

A. Mm-hm.

10 Q. And a couple of things on this pasta restaurant, but it gives you a view of sort of four stores and the two light standards that you described earlier.

A. Mm-hm.

15 Q. Does that help you to recollect where it is you got Nicole to sit down?

A. Yes. Well, it would either have been one of two places because, quite frankly, I don't remember which of the two it was and I -- being as honest as I can, I just don't remember because it

20 could have been this one right here.

Q. Mm-hm?

A. Next to -- and --

Q. Anne Sportun?

25 A. Anne Sportun?

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Q. So just to the left of it?

A. Well --

Q. In place -- the place with the 50 percent off sign in the window? Do you see that?

5 A. Yes. Of course. It could either have been that one right in front of the door or it could have been the shoe store next to One of a Kind. The only reason I have doubt is because I remember enough room to have myself seated and the young lady who I was dealing with at the time, if that is in fact
10 Nicole. To this day, I mean, I understand you want to be absolutely positive that I'm -- that I'm giving an accurate attest of what I'm saying, and so, you know, if it was one or the other, if you
15 found blood near one and not the other, then that's fine. I mean, I don't remember which of the two it was but I remember sitting down at one of them.

Q. My friend Mr. Thompson suggested I also show you Exhibit 5, which gives a slightly different perspective of where the step might be. Do you see there you've got the pasta restaurant?

A. Mm-hm.

Q. And the 50 percent off sign?

A. Mm-hm.

25 Q. And then I think the area, a little

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alcove area with a gentleman in jeans standing
there --

A. Okay.

Q. -- in the photo and then the jewelry
store?

A. Mm-hm.

Q. And does that help you at all with where
you might have --

A. Well, I mean, I'm saying it could have
been here, it could have been here and it could have
been here, because I remember sitting down. At that
point I was not looking where I was sitting.

Q. Okay wait. You pointed three places. One
was in front of Anne Sportun Jewelry slightly to the
-- right under --

A. The only reason I don't say --

Q. No, you have to wait a sec because I have
to put it on the record when you point at something.

A. Sorry.

Q. So you said "here", "here" and "here", so
just so the court reporter can take it down.

A. Please.

Q. If we ever have to review this later, you
pointed to the Anne Sportun Jewelry spot and sort of
under the U and the N of Sportun, then you pointed

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to the little alcove with the guy and the pair of jeans that you can see the bottom half of him in Exhibit 5, and then you went over a little further, and I just need you to remind us what you pointed to.

5 A. I'm referring to the spot right here. I'm pointing to what I see here and I'm referring to a step that leads into a shoe store, and the reason that I pointed to three separate locations --

10 Q. Okay. So when you pointed over here and you went "here" and "here" and "here", the third "here"?

A. Is referring to this right here.

15 Q. To the William's Shoe Store, which is in Exhibit 15E but which you can't really see that well because of the awning in Exhibit 5, fair?

A. Thank you. Yes.

20 Q. Okay. That's great. I'll just put that there for now for His Honour, and did Your Honour want to have a look at all that again?

THE COURT: No, thank you.

MR. SCARFE:

25 Q. And did you get her sat down and then you went and got your bike? Or have you already gone and gotten your bike from the middle of the road at

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this point?

5 A. To the best of my recollection, I had --
I remember asking the young lady to wait because I
have to get my bike, so if she was sitting at that
point, then she was sitting. If she was standing,
she could have been standing. These are details that
may be very important but these are the very
memories that I'm having difficulty with. These are
my personal memories during a time, this was three
10 years ago and I'm not trying to opt out of answering
a question. I'm just stressing that these are the
questions that I have the most difficulty with
because those are the ones that I don't remember
very clearly.

15 Q. So if I can characterize your answer to
my question?

 A. Please.

 Q. You're not sure.

20 A. Not 100 percent. I want to say that I
remember asking the young lady, Listen, you have --
I want to say, Please, I have to go get my bike, you
know, I'm putting my hand on what would be a wound
so if -- I want to offer this because I don't want
to dramatasize [sic] and say that -- is this --
25 you're laughing. Is there something funny? I'm

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really -- because do you realize I'm having, every day after that happened, I had not even spoken about the incident.

5 Q. Sorry. I'm not laughing at you. I've got a lot of --

A. No, no. And there's yesterday too. There's something that's funny. Is there an inside joke that I'm not aware of? Because I don't think that there's anything about this that warrants any type of -- I don't even -- I'm -- sometimes I don't sleep at night.

10 Q. Okay. I understand that this is difficult, and there's no inside joke. And we all appreciate that you're doing your best to give your evidence in the most honest and fair way, okay? Sometimes your answers are a little long but that's okay. You're doing your best to try and help us here.

15 A. I'll try to keep my answers more concise. So please. Continue.

20 Q. The answer to my previous question about whether she was already sitting down when you went to get your bike, you're not sure.

A. I'm not sure.

25 Q. And in explaining it, you've gestured by

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holding your arm and I think what you're trying to communicate to us is that at the point you had to go get your bike, it was you that was putting pressure on her wound. You remember that.

5 A. To the best of my recollection.

 Q. You're not sure if at that point you were still standing or you were sitting at that point, or whether Nicole was sitting, but your recollection is that you were putting pressure on the wound.

10 A. To the best of my recollection.

 Q. Okay. And it only took you a second or two to go and get the bike. You came right back to Ms. -- to the lady with the injury?

 A. Yes.

15 Q. And when you -- she had complied with your request to wait? She was still where you left her?

 A. Yes.

20 Q. You didn't have to go looking for her or anything like that. Fair?

 A. Fair.

 Q. Okay. And after you came back, do you recall at that point if you were sitting or standing?

25 A. At the time, no, I don't, because I don't

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remember at what point I lost contact *per se* with the young lady.

Q. Okay.

5 A. Obviously my memory's being jogged because I'm seeing a video that was taken from a store front, I'm seeing that people were obviously all around here, so, I mean, you know, she opted at some point to accept the help of other people and which I did not persist to offer help or help was
10 not needed.

Q. Mm-hm. And I think what you tried to communicate around that yesterday is there was a period of time that you spent with her where it was just you and her. She appeared to be alone. And then
15 eventually some friends came along who seemed to know her and wanted to take care of her, and so you were able to back away from that the situation a little bit because she had other help. Is that fair?

A. Yes.

20 Q. Yes. And again, maybe it may have just been language, like we started this morning with the word "confront", but I think you used the word something to the effect, My help was no longer welcome? Did someone tell you to go away? Or to
25 leave?

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5 A. I got the feeling that, you know, like,
it was just not -- my presence there was not being
effective in the sense that, you know, it wasn't
welcome. I mean, someone is obviously there, there's
a group of people around, obviously it was a
situation that to me seemed just -- if you're asking
if someone asked me to leave, yes, it's possible
because, I mean, it was implied just by the -- by
the -- by the unfolding of events that was, you
10 know, that happened before me. So do I remember
somebody asking me to leave? I can't remember if I
can remember seeing that clearly, but I do recall
seeing -- there's nothing -- I don't need to be
here. I don't need to involve myself any further.

15 Q. So no one said to you, Leave her alone,
you're not welcome here anymore. There was nothing
like that.

A. Not represented in the way that you just
represented. Not to my recollection, and to the best
20 of my recollection.

Q. Thank you. That's helpful. And you recall
that -- this period of time where you're sitting on
the step in front of the store front, putting
pressure on her wound, ah, it was at least 30
25 seconds to a minute? Where it was just you and her?

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A. 30 seconds to a minute? No. You'll recall on the transcript of the 911 call that it had been three minutes that I was on the phone.

Q. Yes. So it's longer than 30 seconds or a minute that you -- you had been sitting on the store front step with her. I know you can't put an exact time on it. I'm just trying to get the range.

A. It was longer than 30 seconds.

Q. Okay. Possibly longer than a minute.

A. I do not want to imply, simply because I cannot recall at what time I had gone to get my bike. I don't -- these are memories that are not clear. Because I don't remember when I left my bike down, I don't remember at what point -- I don't remember at what point I had just left my bike. I'm trying to recall that because it would make sense for me to not have my bike obviously when I -- you know what I mean?

Q. That's okay.

A. Am I -- I'm not trying -- I'm not trying to evade any questions. I'm just trying to understand how -- I'm trying to understand how the events actually happened.

Q. You understand that if I ask you a question and you don't know, that that's a fair

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answer. Right? I don't recall, I'm not sure, I don't remember. I'm not trying to frustrate you with questions and asking you to sort of find an answer inside that isn't there.

5 A. Thank you.

Q. Okay? I know you're doing your best.

We've talked about a sequence where you see the lady on the street and you observe the blood and the wound, right? Then you get some pressure on it, you talk on the phone, you get her -- you may have gotten her to a store front, left her quickly to get your bike, came back, she was where she was, and then a period of time sitting on a front step, just you and her. And my question is do you recall anywhere in that sequence where -- when the arm got wrapped. Do you remember looking around for a wrap and somebody kind of brought something and -- and the arm got wrapped in some sort of cloth or fabric? Do you remember that?

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20 A. Mm-hm.

Q. Are you able to help us where in the sequence of events that happened?

A. When I was sitting down.

Q. So that happened when you were sitting down?

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A. To the best of my recollection.

Q. Do you remember any --

A. I mean, what I'm trying to say is that I've really tried to remember that. I mean, I want to say this just for the sake out of respect, I mean, I'm -- do you -- do you -- when something like that happens, like, when I went home, I hadn't said a word to not even my partner. She asked me what's wrong, I haven't said anything to anybody about this in three years. I haven't seen -- I tried even -- I don't even want to say I tried to for -- I tried to sleep. I at least tried to get some sleep. I'm nocturnal so I work during the night. My job is playing, you know, at gigs at night, so after I'm finished I'd like to get some rest and I have not been getting rest because I question every moment that happened from the time I put -- from the time that I made that turn to the time -- everything, I'm questioning everything that I can remember and I'm -- if -- I'm almost wanting to believe that you can personally come around and say, You know what? There was no cloth and you're crazy, and I would say, You know what? I'm almost ready to believe that at this point. Do you understand how frustrating that is for someone who can't remember

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something?

5 Q. Yes. I think I do. From what you've told us, your only intention that night was to try and help, right? You weren't there to cause any trouble or anything. You're just trying to help someone who was hurt, and I think we all understand that. Do you understand that we understand that?

A. I'm trying to understand that.

10 Q. Okay. And we also understand it's frustrating when you're having trouble remembering things, so my questions are just maybe he remembers this, maybe he doesn't, we just want to know, okay?

A. I remember asking someone to get a cloth, get something to wrap this in.

15 Q. Do you remember --

A. Do I have the ability, do I have the right to ask questions in the stand? Like, do I have the ability to answer your questions with my own questions? I'm asking that -- I'm posing that because I'm unfamiliar with the proceedings in a court and so I want -- I'm retaining the right to at least understand what I'm able to do and what I'm not able to do.

20 Q. Generally the way the procedure works is
25 that we ask the questions and you just try and give

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us the best, honest answer that you can.

A. So I don't have the right to ask the question, is your answer to my question.

Q. If you have a question and you want to direct that to me or His Honour?

A. At any point during the proceedings I have the ability to do so? Is that what I understand?

THE COURT: You have, Mr. Patsiopoulos, the right to ask a question by way of clarification, if you don't understand something that's being asked, if you don't understand what's being pointed to or referred to you can ask a question. I don't understand, did you mean this or did you mean that. You're not in a position though to ask questions about factual matters. Can you tell me this, can you tell me that.

THE WITNESS: I understand.

THE COURT: All right?

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. SCARFE:

Q. Does that help clear things up? What His Honour told you? Yes? We're almost done. I asked

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5 you a little bit about this at the beginning but now that we've been through the whole sequence, the minute or more that -- that you spent sitting on the step assisting the person with the injury, at any point during that period of time did you get any sense of anger or aggression coming from this person?

10 A. The answer is not a simple yes or no answer, and the reason I state that it's not a simple yes or no answer, because I understand emotions. I'm a song writer. I use emotions every day in my line of work. So if you're asking me if she was angry, if she was being aggressive, I was in the presence of someone who was distressed, 15 confused, I can say that with absolute certainty. Was she angry? Was she aggressive? I answered that already in saying she was not aggressive towards me.

20 Q. Okay. In contrast to the fellow who you saw banging on the streetcar who looked like he wanted to fight anybody, she was completely different to that. It was purely fear and panic on her part. Would you agree or disagree?

25 A. You're asking -- if I understand your question correctly, you're asking me to recount the demeanor in which the young lady was directing or

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the -- her attitude towards the late Mr. Hammond?
Is that what I'm understanding? Am I understanding
that question correctly?

Q. Yes.

5 A. I can't say with absolute certainty, um,
Mr. Scarfe, because I can't -- I can't say with
certainty, so let's just say that, because I -- I'm
-- I did not -- I do not recall identifying Mr.
Hammond and the young lady, if this is Mrs. Kish.
10 I'm -- I'm trying to recall in my own memory and I'm
trying to recall if I remember seeing them together
at any point, and that is unclear to me in my
memory. It is unclear.

15 Q. Whether you saw them together at any
point? The first time you saw Mr. Hammond he was --

A. You're asking -- your question, if I
understand it correctly, was if there was any act of
anger or aggression from Mrs. Kish, or the young
lady with the cut, towards the gentleman that was
20 banging on the streetcar. Is that -- was that not
your question?

25 Q. No. My question was more in the entire
time that you spent with her, most of which I guess
is sitting on this step, right? We've got her
claiming that she's bleeding and we've got her

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saying that she's either been stabbed or cut or hurt
or something like that. She's expressing those
things. She's not just sitting there quietly, right?
Fair enough? But you don't have her -- any
5 recollection of her saying, I'm stabbed and the guy
who did it is an asshole, or, The guy who did it
went that way, or, Somebody's got to go and get that
guy and hurt that guy. You didn't hear any of that.

10 A. What -- when the dispatcher asked me is
the guy who stabbed her, is he the guy with the
knife? She -- the dispatcher asked me that
question.

Q. Right?

15 A. And when I'm looking at a guy who's on
the hood of a cab and he's banging on that side and
to my -- and in my view he had a knife, when that
question was at least posed to the young lady in
such a way, she said, Yes, and he's Canadian. So I'm
hoping that that answers your question as it's
20 evident on the transcript of the 911 call.

25 Q. Okay. And so just to be clear, the -- is
that the only reference she makes to the guy? You
don't remember her sitting on the step with you and
going into some -- making any other reference to the
guy with Canadian.

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A. If such a reference was made, I cannot recall other than the fact that she told me that he was Canadian.

Q. Do you recall watching that piece of video footage yesterday?

A. Mm-hm.

Q. When you come into the screen from the bottom with your I guess it's a shoulder bag?

A. A message bag, yes.

Q. Yeah. And do you recall anything about the other people that you see in the screen there? Is there anyone that you saw there that stood out as having played any role in this? For instance, the person who brought you the wrap? Or...

A. As far as who brought me a wrap is unclear in my memory. I remember the gentleman without a shirt, and I remember a young lady who I was speaking to who was asking me for a cigarette, and I found it to be very strange that someone would come to me in such a dire predicament and ask me for a cigarette, so what that person needs to do, whoever is asking for a cigarette, needs to be quiet and they need to go collect themselves and find me something to wrap a wound with. That's what a sane, logical person who is in control of themselves, who is

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not under the influence of any type of narcotic or any type of herb that can be wrapped in paper and smoked, who has any type of hindrance on their judgment or control of their physical person, would do. If they were in a position that I found myself in.

Q. Did you see that person on the video?

A. Again, I do not recall who brought me a wrap. I do not recall.

Q. Just that that same person asked you for a cigarette.

A. I believe that the -- if it was the person -- if it was a young lady, because there was many people around me and there was people interacting with me. When I say "interacting", when I say "interacting with me", I say I'm interacting with Nicole. I'm interacting with one person and there are at least two to three to four to five people that are around me while oncoming traffic. You can't understand that I'm answering your question in a way that is nothing other than the best of my ability. I remember seeing a girl, she asked me for a cigarette. I said, I don't have a cigarette but you can see that I need -- I don't need a cigarette at this point.

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Q. Okay.

5 A. So maybe it would be a good idea so that
I'm -- I can verify that I'm not just making that up
that I did in fact see a girl and where that girl is
and how is it that, you know, it went from me with
someone who is sitting on the ground or sitting with
me, communicating with me, and me saying, Okay, I
don't need to involve myself anymore. I can sit and
wait and talk to someone like a police officer, and
10 going from that to just, you know, someone getting
stabbed and losing their life.

Q. One second. Two more things. Your
recollection of the word "Canadian".

A. Mm-hm?

15 Q. Do you have an independent recollection
of her saying that on the street or do you sort of
get that after hearing the 911 recording?

A. No, I remember her saying that
personally.

20 Q. Okay. And at any time in this few minutes
that you spent with her, did she ever express any
fear of the authorities coming? Of getting in
trouble? Or did she always just maintain that she
wanted an ambulance?

25 A. Yes, she did express that concern.

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Q. What was that? About getting -- about the authorities?

A. Yes.

Q. Do you remember what she said?

5 A. No, I don't remember what she said. I just remember that she wasn't there when -- when blaring lights were there. I say blaring lights were there, I mean -- when I recall -- see, I'm trying to recall who arrived first, an ambulance or a unit. 10 And when I say "a unit", I'm referring to a police car, and I'm remembering wanting to say a police car, because I remember just showing my hands to the officer that got out of the car, and if I can recall correctly, I believe it to be a female, and there 15 should be an officer who would be able to assert that and to verify what I'm saying, and at that point, you know, I had made the call, all right? All I need to do at this point is just go to an ambulance and get cleaned up. There's nothing for me 20 to do.

Q. So back to my question.

A. Mm-hm?

Q. Just to layout the background, when we watch that video yesterday and you can see you with your shoulder bag and the other group sort of taking 25

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Nicole to the -- I guess west? I don't know if you're able to determine from the video which direction. But you see them come from the bottom of the screen?

5 A. Yes, yes, yes, yes, yes.

Q. Go up the sidewalk, and at that point you separate?

A. Mm-hm.

10 Q. All right? And her friends sort of take over and they continue in the direction that they're going when they leave the screen, correct?

A. Mm-hm.

Q. Do you have any further contact with her after that?

15 A. I don't recall.

Q. You don't recall.

20 A. I don't recall, and I'll state why I don't recall just so that you have further clarification on why I don't recall. Because I'm trying to recall bits and pieces of something that happened that was shocking in the sense that I don't -- I don't recall a streamline of events. I recall -- I almost want to say fragments. And the reason that I say that is because that's the way I recall
25 it. Here I am, I'm looking at you but I'm -- what

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I'm trying to visualize is street corner, people
around me, who I spoke with, who asked me for a
cigarette, what time the cops showed up, whether it
was an ambulance, who showed up, the ambulance or
not, did she express concern that the authorities
were there. In my opinion, in my personal opinion,
based on my memory, she did express that concern.

Q. About whether the authorities were
coming? Or that if they came something bad would
happen? Do you have any kind of specific
recollection?

A. If it was evident to the young lady that
I was on the phone with 911 --

Q. Yeah?

A. -- and she -- it was evident to her that
I'm interacting with her and I'm on 911 to call an
ambulance for her, I cannot put myself in the
position to answer on behalf of Nicole's emotions,
so I cannot answer a question that -- that puts me
to answer for Nicole's or the young lady's emotions.

Q. Okay.

A. So it was evident to me that there was a
concern expressed. What kind of concern that was,
that's something that is not for me to say.

Q. Okay. We know we hear her on the

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ambulance -- or on the recording, the 911 recording, talking about how she wants or needs an ambulance. You recall that. Right? And you recall at some point a group of friends came along, one of them eventually brought a wrap and then we see in the surveillance video the group sort of taking them away and you going in a different direction, right? And do you -- and it's okay if you don't, but do you have any recollection of any of the friends saying, We've got to get out of here before the cops come, or, We're going to get in trouble, or anything like that?

A. It wasn't -- see, there was an inference, and I do not want to -- I do not want to draw -- I do not want that to influence my memory. I do not recall words being said. I just remember a direction in which everybody moved. That's what I recall. I can recall movement towards a westerly direction but I -- I'm not going to say that, It's the cops, let's get out of here. I mean, that's not the way my memory serves me.

Q. All right. I'm going to ask you to make my -- your answer to my next two or three questions very short.

A. Please.

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5 Q. You don't have a specific recollection of anybody in the group saying, We got to get out of here, or implying they need to escape before the authorities get there. You didn't actually hear anyone say that. Yes? No?

A. I can't remember.

10 Q. Okay. And again, you didn't hear, at any period of time you spent with Nicole, her indicating anything else than she was hurt, scared, and wanted an ambulance. Yes? No?

15 A. I can say that I agree with what you're saying but I cannot attest to what degree of severity or what degree of panic or guilt that she may have felt at the time that the cops showed up or the police officers with respect to the law, that she felt that she had to remove herself for whatever transpired prior to my arrival or whatever transpired after my involvement was not directly with her.

20 Q. And at that point where you separate off and her friends take over, and we see it in the video and you recall the group moving west, right? Do you have a specific recollection as to whether any emergency vehicles had arrived either at that intersection or in the general area.

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A. Yes.

Q. And had they?

A. Yes.

5 Q. So emergency vehicles were on scene
already. And the movement of the group west, you
don't know if they were running away from the
authorities and the emergency personnel, or towards
them. You don't know.

A. No, I don't.

10 Q. All right.

A. Can I at least say -- can I at least say
that when I was going towards the ambulance, that I
went to clean up, could I at least say that I
remember cops turning that corner on Trinity
15 College? Can I at least say that there were
officers that were -- that were --

Q. On Trinity College?

A. On the -- at the church. Is the church
not called Trinity Church? The church that was on
20 the corner?

Q. The church just before Trinity College
Bellwoods on the north side of Queen?

A. Thank you. Yes.

25 Q. You saw -- you think you saw emergency
vehicles down there.

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A. Well, that's where I went to go clean up, so when I say "emergency vehicle", I'm referring to an ambulance where I entered the ambulance to ask the paramedic for a wipe to wash up, so...

5 Q. Down by the church. West. The church you just described before Trinity College Bellwoods Park? That's where the ambulance was?

10 A. That's the ambulance where I went and entered. There was a paramedic there who said, What happened? You were just helping out tonight? Something like that. And I'm like, Yeah, just helping out. I was asked to go talk to an officer in which I gave a statement to someone who wrote it on a memo book and I went and got -- I went with my
15 bike and I put it down, got cleaned up and then I left.

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

THE COURT: Re-examination?

20 MR. THOMPSON: I have just a couple of short questions, Your Honour.

---RE-EXAMINATION BY MR. THOMPSON:

MR. THOMPSON:

25 Q. William, just so it's clear, earlier in

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this proceedings, the woman that you identified in the video as the woman that you helped has been identified as Ms. Kish. Just so that's clear, all right?

5 Now, I just want to point to this picture here, and this is the only area I really want to discuss with you, is you indicated that when you were assisting Ms. Kish, that it could have been at one of three locations, and can I -- they weren't specifically stated as they were on -- when they were -- when you pointed them out so I'm just going to -- they were to a point.

10 Can you just tell me, I'll move my pen, where it is those three locations are again?

15 A. If you could move your pen down.

 Q. Actually, you should have a marker up there.

20 A. I must have been sitting on something because it had at least the room to sit down and have my feet on the ground, so it wasn't on the ground. So that may cancel out an area where I wouldn't have a step so I want to point to here.

 Q. Okay. And so --

25 A. Because there seems to be enough room for me and another person to sit down.

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Q. So that's just -- that is just west of the Anne Sportun store and into the next store --

A. Well, there's a bit of --

Q. Alcove there?

5 A. An alcove. Thank you. And there's enough room for at least some people to sit down if they're side-by-side.

Q. And where else? The other location you said?

10 A. Well, there is another -- I don't think -- I want to say here but I almost -- it almost seems too far in, so I -- my best -- to the best of my recollection I want to say either here or here, but --

15 Q. Okay. So that's Girl Friday's alcove. You've gone to two different alcoves basically.

A. Well, yeah. I don't recall which of the two it is. It sounds like it would be -- feels, not sounds, but it feels like it would be the too far --
20 it wouldn't make sense for me to go all the way over here and -- I say drag her. You know what I mean. I'm saying --

Q. I understand. And all I really want to ask out of that, I want to make sure I was clear on
25 that, is that in terms of the actual fight though,

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5 you say you went there after the incident had taken
place and you were actually assisting her, but in
terms of the fight, does any of it take place at
those locations that you see? You earlier
identified where you saw the fight but I want to
make sure it's clear that did you see any of the
fight going in where those two areas that I pointed
to? Or that you pointed to me?

10 A. It was -- I had pointed out that the
fight that I saw when I was on my bike and I was
making the turn was right in front of that area more
or less.

15 Q. Okay. I just want to make sure that the
actual fight, did any of it -- did any of the fight
go into the areas that you told me about? You've
just pointed out? The two alcoves?

A. Was -- did the fight go into the alcove?

20 Q. Into that general area. Let me put it to
you this way: To the best of your knowledge, or
ability, in any event, can you tell me the furthest,
and this being north, the sidewalk being north, what
is the furthest part of the fight that you saw that
went -- where would be the line to the furthest
northern point that you saw the fight go to, or can
25 you really tell me that.

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5 A. I can tell you it was spilling onto the street. And, I mean, a fight is not stationary. Two people, when they're in a fight, do not stay in one point and duke it out. There's people around. So there's people separating, there's, you know, there's --

Q. I understand. But --

A. Right. So I'm saying --

10 Q. You were indicating where Ms. Kish came from?

A. Sorry?

Q. You indicated earlier where she came from in your testimony?

A. Yes.

15 Q. I'm referring to that portion of the fight. Where does that take place? Okay. Well, you're doing a circle. But my question is --

MR. SCARFE: Can you put that on the record, please?

20 MR. THOMPSON: Okay.

25 Q. Actually you have it just east of the second post there, the lamp -- sorry. The traffic post. And I want to ask you, what's the furthest north that you see that fight go. Do you understand my question? Are you able to determine the farthest

Ex?
5:15?

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distance north that it went? You've just got it
right at the edge. Right at the -- okay. So what I
have, just so I can mark that down, on the two hash
marks or the cross marks you have the westernmost
5 hash mark and you've got right at that juncture
where the hash mark comes into the sidewalk, so it
is basically just a little bit east of the second
light standard post. All right.

10 And William, that's all the questions I
have for you. Thank you.

THE COURT: Thank you, sir. You may step
down. Just before I ask for the Crown's next
witness, Ms. Kellway, do you have your
matter? Is it able to be addressed?

15 ---REPORTER'S NOTE: Other matter spoken to.

20 THE COURT: Thank you.

THE REGISTRAR: Thank you, Your Honour.

THE COURT: Crown's next witness?

MR. THOMPSON: Yes, Your Honour. The next
witness is a Melissa Gallately.

25 THE REGISTRAR: Melissa Gallately, please.

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---MELISSA GALLATELY: AFFIRMED

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

5 MR. THOMPSON:

Q. Good morning, Ms. Gallately.

A. Good morning.

Q. Would you mind if I called you Melissa?

A. No.

10 Q. Have any difficulty getting to the court
today?

A. No, I was, like, here at quarter after
nine.

15 Q. Okay. Excellent. Because we didn't get to
you yesterday but okay. In any event, I'm just going
to ask you just some preliminary questions. In terms
of preparing for this proceedings today, your
evidence today, I understand you looked at your
preliminary transcript?

20 A. Yes.

Q. And that you also had an opportunity to
look at a memo provided, a memo statement to a
police officer?

A. Yeah.

25 Q. And you met with the crown attorneys and

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the officer in this matter.

A. Yes.

Q. And I'm just going to ask you, back in August of 2007, I don't want to know where you're living now, but can you tell us where you were living then?

A. 843 Queen Street East -- West. Sorry.

Q. Okay. And I'm just going to pull up -- unfortunately our electronic devices aren't working right now so we're going to go the old fashioned way. I'm going to pull up Exhibit Number 9, and can you tell me where that is located on Exhibit 9 and you actually have a marker pen there. Or a laser pen. Can you tell us --

A. Oh. The Select Mart on the second and third floor.

Q. Okay. And you're just kind of moving around there a bit.

A. Sorry.

Q. That's fine. What floor are you on?

A. Ah, we had the second and third floor.

Q. And you've marked, out of the two -- two -- it looks like there's a divider between --

A. Yes.

Q. Over the Select Mart. That looks like a

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balcony up there?

A. Yeah.

Q. So is that an open balcony?

A. Yeah.

5 Q. And just for clarification, when you look
over, I'm just going to show you another exhibit
here. It may be self-evident but I just want to, in
reference to Exhibit Number 8, if a streetcar is
parked in that location, do you have -- is any of
10 your vision of the street blocked off? I'll show
you back Exhibit Number 9 again. Can you tell me if
any of their vision or do you have a clear vision of
I'm going to suggest the entire street?

15 A. Ah, definitely the north side. I can't
see the, ah, south sidewalk from my balcony but
definitely the north side of the street.

Q. Definitely the north side you can see the
entirety of it.

A. Yes.

20 Q. So if a streetcar is parked there, I'm
just going to move my pen. What would be the
furthest north you can start seeing, or can you see
right directly over top of the streetcar?

A. You can see directly over it.

25 Q. So if somebody was beside the streetcar

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here on the north side, let's say pounding on a window, you'd be able to see that?

A. Yes, I believe so.

Q. Okay. So on the evening of August 8,
5 2007, can you tell us just roughly what you were doing? Let's go directly to the -- around about twelve. That would be the 9th then. The morning of the 9th, approximately 12:30 a.m. Can you tell us what you were doing?

10 A. I was upstairs in my bedroom with my baby just -- just trying to relax, get him settled for the night, when I woke up to hearing screaming and yelling outside on Queen Street.

15 Q. And just in terms of that, is that something that happens infrequently or happens a lot?

A. It happened on occasion.

Q. Okay. And after hearing the screaming, what did you do.

20 A. Um, I got out of bed. The screen door was open because it was really hot -- sorry. The glass door was open but the screen door was closed, so I kind of took a quick look outside to check to see where the yelling was coming from. There was usually
25 on occasional fight at the, ah, Bellwoods Tavern or

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-- so we thought that's where it might be coming from. And then when I didn't see that I looked to my right and saw a fight on the street and I went onto the balcony.

5 Q. Okay. We'll just stop there for a second. Probably the simplest way to do it is can you tell us roughly where the Bellwoods Tavern would be in relationship to where you are?

A. This -- that is me.

10 Q. Okay?

A. And that -- I believe that green is the Bellwoods?

Q. So basically just due north of you and perhaps a little bit west?

15 A. Yeah.

Q. All right. And sorry. Did you see anything there? Just so I'm clear?

A. No.

20 Q. And when you -- so where is it you saw something?

A. To the right on the northeast side.

Q. And so can you point that out on the pointer where that would be that you saw something?

A. About this area.

25 Q. Okay. Once again, I know it's very

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difficult to operate that laser but you've sort of circled an area that sort of encompasses, well, it actually encompasses a fair bit of distance. You've got it basically half -- past -- One of a Kind Pasta all the way up to -- actually, I wish we had the screen. Perhaps if I bring it closer to you?

A. Yeah. There is a shoe store there that I remember and then One of a Kind Pasta.

Q. And I'll indicate, so --

A. Yeah. So I guess this area.

Q. Okay. That's fine. So you've indicated an area basically covering about two squares on the sidewalk near where the two posts are for the light standards? Or the traffic lights?

A. Sure.

Q. Is that -- I'm not putting words in your mouth. That's what you saw?

A. Yeah. Yeah.

Q. All right.

MR. SCARFE: Can you just clarify which two squares?

MR. THOMPSON: They would be the two squares in which -- where the two light standards are.

Q. Can you just point that out again so I'm

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100 percent accurate? With your hand?

A. Here.

5 Q. So you've indicated both of the squares that the light standards would be on. What -- what's the -- just in your mind's eye, I think what's the first thing you see when you look out there?

A. Um, I see three people on top of one person.

10 Q. And the three people, were you able to determine whether they were male or female?

A. They were two males and one female.

15 Q. And we'll get into the details of what they were doing, but I want you to think carefully now. Can you remember what in fact, or give a description about either one of the two males?

A. Ah, a taller gentleman with a baseball hat and longer hair, um, his shirt was open.

20 Q. Can you just slow down a little bit? My hands aren't that fast. Sorry. He had a baseball hat and what?

A. Long hair.

Q. How could you tell it was long hair if he had a baseball hat?

A. It was coming out the back of the hat.

25 Q. Okay. And can you tell me when you were

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looking at the baseball cap from that view, was it
directly ahead or turned to the side or --

A. Ah, I can't remember.

Q. Okay. So he has long hair. Did you happen
5 to notice what that particular individual had in
terms of clothing?

A. A shirt that was open, unbuttoned and
there was nothing underneath it.

Q. Sorry?

10 A. A shirt that was unbuttoned and there was
nothing underneath it.

Q. Okay. Did you happen to notice the colour
of the shirt? Or were you able to get that?

A. I don't remember.

15 Q. Okay. And was the shirt totally opened up
or was it --

A. Yes. Open.

Q. Okay. And do you remember what he had on
the lower portion of his body?

20 A. Sorry. Um, ah, I don't remember.

Q. And can you give me a description if you
can of the second gentleman?

A. Um, shorter, male, ah, short hair I
believe, ah, I believe he was wearing shorts.

25 Q. Okay.

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A. And boots.

Q. And just while we're on the boots, can you give us a better description? Were they tall? Were they high boots? Low boots? Could you tell anything about the boots?

A. I believe like a -- like an eight hole Doc kind of. Like a -- like a mid-calf boot maybe.

Q. Okay. And one thing I didn't get off you is do you remember what he was wearing on his top?

A. No, I don't. I don't think he had -- sorry.

Q. All right. Now, you've said that gentleman had shorter hair but were you able to see whether or not he was wearing a cap?

A. I don't believe so, no.

Q. Okay. Now, you've identified the two males, and so just so it's clear, we're going to call the one gentleman the cap -- the man with the cap and I'll call the other man the man with the short hair. How's that.

A. Yeah.

Q. Okay. Now, the female that you see, can you give us a description of what you saw?

A. Um, I noted that she was wearing a longer black skirt.

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Q. She was wearing I'm sorry?

A. A longer black skirt.

Q. Longer black skirt. Now, what is "a longer black skirt"? Longer than?

5 A. Oh. Ah, probably her calf area or longer.

Q. Or longer.

A. Not short. Not a short skirt. A long skirt.

10 Q. Just because I'm not that familiar with skirts, but in any event, can you just tell me in your mind, you say it's around her calf. Is it -- do you have any other description of this skirt at all? What makes you think it's at her calf?

15 A. Ah, I -- I'm not sure. Because most of when I saw her she was kind of crouched down so it seemed like it was covering her calf.

20 Q. Okay. So when you say "crouched down...covering her calf", could you see underneath her skirt at that point when she's crouched down?

A. No. No.

Q. Were you able to get a good look at what she was wearing on the top part of her body?

A. A black tank top.

25 Q. A blank -- sorry?

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A. Black.

Q. A black tank top. Okay. I'm going to show you an exhibit and ask you whether when you say -- refer to a tank top -- just so I'm clear I'm showing you Exhibit Number 26. When you say a "tank top", is that something you're referring to?

A. Yeah. Yeah.

Q. And the head. Do you have any recollection of the hair or the head?

A. Um, I believe it was either dreads or matted hair and it was in a half up. Half of it was pulled up.

Q. Sorry. Half what?

A. It was pulled back and up.

Q. Okay. And I'm sorry. The colour was did you say?

A. Dark.

Q. I just want to be clear, at that location, what is the lighting like?

A. Ah, bright with the store lights and the -- the streetlights it's fairly well lit.

Q. So let's refer to this woman as the woman with the dress. How's that.

A. Sure.

Q. Black dress in case it becomes an issue.

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Okay. Skirt. Is there any -- do you see anybody else around that group at that point in time?

A. Not at that point, no.

Q. Okay.

5

A. Just the man on the ground.

Q. Okay. We're going to get to that man on the ground in a minute. But is your eye focused on that area or looking anywhere else at that point?

A. No, just on that area.

10

Q. Okay. So now let's deal with the man on the ground. Can you give me a rough description of him?

A. Ah, I believe he was an olive skinned gentleman, or at least, you know, not pale.

15

Q. Okay. Now, just -- what makes you say he's olive skinned?

A. I -- just he didn't look very -- didn't look pale. That's all. He didn't look as light as you or I.

20

Q. We need to get outside more. We're working on these cases, that's why. Now, this gentleman, can you just give me a brief description? Before we get into his description, what he was doing?

25

A. He was on the ground.

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Q. When you say "on the ground", is he laying down?

A. Ah, yes. He's --

Q. On his side? On his back?

5 A. I believe kind of almost a fetal position.

Q. I think we all know what a fetal position is but can you give us a little bit better description when -- in terms of when he's tucked up in the fetal position, do you know whether his legs are pointing east, west, north, south?

10 A. Um, I believe his head was, ah, west and his legs were east.

Q. Okay. So he would almost be perpendicular then to the sidewalk.

A. Yeah. To the edge of the sidewalk. Yes.

15 THE COURT: Mr. Thompson, perpendicular or parallel?

MR. THOMPSON: Oh. Parallel. Thank you, Your Honour, for that.

20 Q. All right. And when he's in this position, does he move from that position at all? Or does he --

A. Well --

25 Q. -- stay in that position?

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A. At that point he was trying to cover himself. Like, ah, to protect his head kind of thing because he was being beaten.

Q. Okay. We'll get into that in a moment, so he doesn't lay motionless is my point.

A. No.

Q. So from that view then, can you tell us now, the best you can, in terms of what he was wearing?

A. I believe a dark shirt, a black shirt. I think my statement said shorts but I can't recall.

Q. Whatever your statement was, ma'am, it's what you remember today. If your statement refreshed your memory that's fine but the evidence isn't what's in your statement. The evidence is what you remember today.

A. Okay. Then I can't recall on the bottom.

Q. Okay. You gave me a rough idea and I'm a bit remiss because I didn't ask you about the age of the other people, but while we're on that topic, what was the age of the other people? The gentleman with the cap and the gentleman with the short hair and then the female who was in black, skirt.

A. Um, I would say the gentleman with the cap was about early to mid 20s, the girl looked

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early -- late teens, early 20s, and the smaller guy
with no cap, I think he looked late teens.

5 Q. All right. So in contrast to them, how
old was the gentleman that was on the ground
parallel to the sidewalk?

A. Um, he looked older so mid 20s up.

10 Q. And if you were to compare the term has
been used genre of clothing, I'm not sure that is
the correct term but style of clothing between those
three people and the gentleman on the ground, was
there any difference between the clothing?

A. Yeah, they looked like they were street
kids. Kind of dirty, disheveled clothes.

15 Q. So the three individuals, the two
gentlemen and the woman with the --

A. Black skirt.

20 Q. -- black skirt, you're saying they're
street people? And the gentleman on the ground who
was you said getting beaten up, you would say he was
what?

A. He looked a little more conservative.

Q. Your Honour, I notice --

THE COURT: Oh. Yes. We'll take the morning
recess. 15 minutes.

25

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---RECESS (11:36 a.m.)

5 ---UPON RESUMING (11:57 a.m.)

MR. THOMPSON:

10 Q. Okay. Melissa, just before we broke we
were discussing -- you had just given me a
description of the parties involved and the last
thing I asked, I had gone back and found out the
ages of the individuals, and I'm going to ask you,
15 when you see this scuffle going on, if you can, to
the best of your ability, take one individual at a
time and can you describe to me what that one
individual was doing. So if we take the first guy,
the one with the cap?

A. Yes.

20 Q. Okay? Mr. Cap? Can you tell me what he
was doing in the scuffle?

A. Um, punching and kicking and stomping on
the gentleman on the ground.

25 Q. I'm just going to break that down a
little bit. The punching. Can you give me a better

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description of how that punching was happening? Is he -- let me ask you this: Is Mr. Cap standing up at that point in time?

5 A. No, they're -- since the gentleman was on the ground, they were on top of him so half crouching, half --

10 Q. So are they punching with overhead blows while they're down? To the side? Or -- I know that's very difficult because they're all there at once but the best you can.

A. More of a crouch but over hit.

Q. Okay. And did you actually see the blows land?

15 A. Yes.

Q. And?

A. And then he'd get up and kick and stomp and then go back to crouching and punching.

20 Q. And can you tell me, for the duration of the time that you observed that, and we'll get into that in a minute, but was he there for a length of that time?

A. Yes.

Q. So in other words, he never left.

A. No.

25 Q. And was there any way for you to tell the

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amount of force that he was using with those kicks
and the stomps?

A. I could hear them.

5 Q. Okay. I guess it seems difficult to
describe what it sounds like but when you say you
heard, what kind of a noise did you hear?

A. Like, like, slams. Like, you could hear
fists hitting heads.

10 Q. Okay. All right. And when the stomping
took place, whereabouts on the body was he stomped?

A. He was by his head, so it was his head.

Q. And are you able to determine if anything
is being said at the time by anybody in particular?

15 A. Um, there was yelling and screaming. Um,
the female was screaming and yelling about being
bloody and something about her hand.

Q. Okay.

A. Or bleeding. Sorry. Bloody.

20 Q. Okay. We'll get back to her in a minute.
But in terms of a male voice, were you able to hear
any male voices?

A. I don't know exactly what they were
saying but there was swearing and just yelling. I
would say grunts from the punching and kicking.

25 Q. Now, the other gentleman who was the

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shorter one, and just so I'm clear, is it shorter height or shorter hair?

A. He was shorter -- both.

5 Q. Okay. So that shorter male, let's call him short male, what is he doing? Can you isolate what the actions are that he's doing?

A. Ah, similar. Punching and kicking.

10 Q. And if you were to say either one of the two of them were the more participant, would you be able to distinguish that? Or --

A. Yeah, I noticed the taller gentleman with the cap being more aggressive.

15 Q. And let's deal now with the woman with the black skirt. I want you -- you originally said to me that the woman with the black skirt was crouched down. And can you just -- I'm going to -- can you give me a better description of crouching down? Was she on her knees? Is she bent at the waist?

20 A. I think knees bent but bent at the waist as well.

Q. So something like this?

A. Yeah. Up a little more and more kind of --

25 Q. Like that?

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A. Yeah.

Q. Just for the record, I'm hunched over with my knees bent, my back bent.

A. Yeah.

5

Q. And I'm about a little bit above the height of the side of the juror's box which would be about three and-a-half feet, four feet.

Q. Okay. And in that position, which part of the body was she facing with respect to the gentleman on the ground?

10

A. His stomach, chest area.

Q. Okay.

A. And his side I guess because he was laying on his side.

15

Q. Well, what I'm trying to determine from you, was she facing -- you've already described that the gentleman was face -- was -- his head was to the west, his feet were to the east and his -- he was facing south when he was crouched over.

20

A. No, he was facing north.

Q. Okay. Sorry. All right. When he's doing that, where is she in relation? Is she looking at -- is she looking down at him from the north or -- sorry. Is she hunched down from the north or is she to the south of him?

25

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A. North of him.

Q. Okay. So it's fair to say that his stomach and his chest area would be the area that's exposed to her.

5

A. Yes, because he was covering his head from the blows being thrown at his head.

Q. Now, I want you to sort of isolate her activities. First of all, is she there in the beginning as well?

10

A. Yes.

Q. And I'm going to ask you, I didn't ask you about the other gentleman. Did he stay for the length of time there as well?

A. Yes.

15

Q. Does she stay for the length of time?

A. Yes.

Q. Okay. So what is she doing in terms of her upper body let's say.

20

A. She's kind of flailing, like, her arms are moving.

Q. Okay?

A. Um, she's screaming about being bloody and something about her hand, and she's very angry, and her arms are just moving constantly.

25

Q. Well, I mean, in terms of her arms, are

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they having any -- do they make any contact with the gentleman on the ground? Do the arms make contact?

A. Um, I -- I can't be certain.

5 Q. Okay. Is she doing -- so just let me ask you this. Aside from the flailing, is she doing any other activity?

A. Besides screaming and crouching down on him, no. Just arms moving.

10 Q. And which direction is she flailing at in any event?

A. Down towards his body.

Q. So she's flailing down towards his body but you can't tell from that location whether or not she's making contact.

15 A. No.

Q. And can you give me an idea roughly, and I can assist you in terms of time if you need, just tell me how long that would have gone on for?

20 A. Ah, probably from when I got up and out first hearing the scream, maybe two minutes.

25 Q. Okay. And I'm just, just so it's clear on that, I'm going to -- why don't we do this. I've done this before with other witnesses. I'm going to start my watch and at a time you can tell me how long in your mind?

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A. From when I got out of bed -- from when I heard the screams? Or --

Q. No, no. I want to know how long you saw the beating taking place on the north curb.

5 A. Okay.

Q. Okay? And I'm just going to start you now. Just play it back in your mind.

A. I'd say about now.

10 Q. Okay. So one minute and 40 seconds. 42 seconds but let's just call it one minute 40 seconds. And during that period of time, you've had an idea, you've played it over in your mind, any idea the amount of blows? Can you give us some kind of description? If there's a multitude of blows, there is a pause or it's continual or sporadic or --

15 A. Um, it seemed pretty continuous. I guess because I'd see one guy doing it and then I'd see her arms going, and then I'd see the other guy going so I would say there was -- if it wasn't all at once, it wasn't stopping between the three of them.

20 Q. At any given time, do you see anything in the hands of any of the two males? Not the man on the ground but the two males standing?

A. No.

25 Q. Do you see anything in the hands of the

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female?

A. No.

Q. Now, you indicated to us that she was screaming something about blood?

5 A. Yes. About bleeding and something about her hand and I believe being stabbed or --

Q. Well, did she say that? Or --

A. Yes, I heard something about stabbing.

Q. Something about stabbing?

10 A. Sorry. Yes. Yes. I heard the word stab.

Q. Okay. You heard the word stab. And that's -- just so I understand, are you attributing that to her because you think she's bleeding?

15 A. Yeah, because she's yelling about bleeding and her hand and I heard the word stab.

Q. And to the best of your knowledge, I just want you to think of the scene again because you gave us a minute and 40 seconds. Roughly do you know when it was that you started hearing the -- in the course of the fight you started hearing comments about bleeding, stabbing -- or stab and -- roughly what point of the fight?

A. Ah, close to the beginning, so probably within the first 30 seconds.

25 Q. And when that happens, does the woman

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slow down? The woman who's doing the flailing?
Does she slow down or does she speed up or do you
notice any change in her movement?

A. No, she's -- she's very aggressive.

5 Q. I want you to concentrate now just a
little bit if you can on the gentleman who's on the
ground. The gentleman who's in the fetal position.

A. Yes.

10 Q. You've said he's moving, okay? And when
you say moving, can you give me a better description
as to how he's moving?

A. Um, trying to avoid the blows. Attempting
to get up but he's being held down between punches
and kicks.

15 Q. Okay. So when you say he's "being held
down", is somebody physically holding him down or
are the --

A. The blows are.

Q. -- blows causing him to fall?

20 A. Causing him to.

Q. And does he move his direction at all in
terms of you've got him looking at the north side.
Does he -- when he's trying to do this does he -- in
other words, does he change position? Does he go on
25 his stomach? Does he go on his back? Does he change

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his position on the ground?

A. He's trying to get up so he's using his -- when he's not covering his head from the blows he's trying to push himself up from the side.

5 Q. When he's doing that, is he immediately going -- can you give us a rough idea how many times he tries to do that?

A. Two or three.

10 Q. Okay. He does it a couple -- all right. So couple of times he does it. What is he eventually able to do?

A. He's eventually able to get up kind of with his arms to his knees and get more out on the road and up.

15 Q. Okay. So he gets into sort of a crouching position on his knees?

A. Yeah, like just, I mean, he's clearly stumbling.

20 Q. All right. While he's in that process of getting up, are the blows still landing?

A. They're missing but they're still being aggressive towards him, yes.

Q. And just so it's clear, are all three people being aggressive as he's trying to get up?

25 A. Yes.

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Q. And -- okay. So he eventually gets up.
What does he do?

A. He, ah, runs to --

Q. Okay. Now, just --

5 A. Or not run. Sorry. He gets up and
stumbles quickly.

Q. Which way does he stumble?

A. Ah, I guess, um, southwest.

10 Q. Okay. Just -- and I just want you to take
this slow, step-by-step. When he's stumbling
southwest, we now have the electronics working here
so perhaps you can just use the pointer. Can you
tell us roughly where he is now?

A. Um...

15 Q. That may actually work. Try that pen
on --

A. Oh.

Q. No. Go ahead. Sometimes it works,
sometimes it doesn't.

20 A. He's getting off the ground and stumbling
this way. Is that working for you?

Q. It actually is working in a different way
than it's supposed to work. Is it marking on your
document?

25 A. No.

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Q. Well anyway, that's a good way of pointing it rather than using the laser pointer. So on that cursor, you're moving -- you're on the paved portion of the street on the westbound lane and you've indicated an angle moving towards the centre of the street?

A. Yeah.

Q. Okay. And you see -- are you able to see him by the -- what he does next?

A. He goes to the driver's side of a dark vehicle.

Q. Where is that dark vehicle parked?

A. Ah, in this area I believe. I'm not sure of the distancing but in -- not far from where the -- the -- the fighting was.

Q. Okay. And there is a dark vehicle you say that's there?

A. Yes.

Q. And what does he do at that dark vehicle?

A. Ah, he goes towards the driver's side of the dark vehicle.

Q. Yes? And does what?

A. Ah, at that point the dark vehicle left and he was with it.

Q. Okay. Okay. Um, Court's indulgence if I

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may, please. Well, I'm just going to do it this way.
Just you're going to be asked this in
cross-examination and in your memo book statement
you basically indicate that he got in the car and
drove away, didn't you.

A. Yeah.

Q. Okay. Is that your evidence today? Or
are you -- you've given us a little bit of a
different version. Do you have a recollection of it
or are you changing your evidence or are you
mistaken or can you give us an explanation?

A. Either -- I don't remember, to be honest.
I remember that he got to the dark vehicle, but to
be honest the more I'm thinking about it I was
focused on the girl still screaming on -- about
being bloody and her hand, so I think as I thought
he was going to the dark vehicle, I assumed he got
in and left, but my attention was directed towards
the fight on the sidewalk. Because he went near the
vehicle and he was gone.

Q. Okay. Fair enough. And can you tell me,
do you remember what happened to -- about the woman
who had her hand -- or the one who was in the bulk
of the fight, do you know what happened to her?

A. She was still screaming on the sidewalk

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with the two gentlemen saying that she wanted an ambulance, that she was bleeding.

Q. Okay?

A. And she was still there.

5 Q. Okay. And do you -- and do you see her for the entire time or do you eventually go away or does she go away? Or what happens next?

A. I see her there until the police officer came over to them.

10 Q. Okay. And so the police officer talked to them?

A. Yes.

Q. And all three of them were there present at the time?

15 A. Yes.

Q. Okay. And do you see what happens to her after that?

A. No.

20 Q. Okay. Is there a police car -- did you see a police car arrive?

A. No, it was a police officer on foot.

25 Q. Oh okay. All right. I'm just about finished your evidence, ma'am. You mentioned something about a black skirt and I'm going to show you exhibit number -- unfortunately it's not marked.

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THE REGISTRAR: It is. It's 27, Your Honour,
on the corner.

MR. THOMPSON: Oh sorry. On the back. I
apologize.

5 Q. You mentioned the woman was wearing a
black skirt. Does this look anything like the skirt
at all? Or not.

A. Yeah. Yeah. I remember pleats kind of.

10 Q. Okay. And I guess I was a bit remiss, in
terms of the skin colour of the other three parties
involved in the fight, do you have any recollection
of their skin colour at all?

A. Ah, I believe they were just Caucasian.
White.

15 Q. Okay. And that's the two male and the
female?

A. Yeah.

Q. And do you -- do you ever scream out at
anybody there?

20 A. Yeah. From the balcony I, ah, yelled,
Hey, hoping to get their attention and to cease
maybe for a second the blows to the gentleman.

25 Q. Okay. And if you can just go back, and if
you can answer this, fine, if you can't that's fine
as well. Is there any time in which the woman who is

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actually doing, as you say, the flailing with the arms and is crouched over, does her position ever change or is she always in that position?

5 A. Ah, she's in that position until he stumbles off and then she's upright.

Q. Okay. Is she ever lying prone at any time?

A. No.

10 Q. Okay. Thank you very much, Melissa. This gentleman will have a few questions.

THE COURT: Cross-examination?

MR. SCARFE: Thank you, Your Honour.

15 ---CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE:

Q. Now, have you read about this case in the media?

A. No.

20 Q. Seen anything on the TV?

A. No.

Q. Images? Photographs?

A. No. I don't watch the news.

25 Q. When you first heard the screaming on Queen Street you were asleep?

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A. Not asleep. I was just trying to settle my newborn.

Q. You told us this morning --

A. I was laying in bed but with the newborn.

5 Q. You said to us you were upstairs in the bedroom with your baby?

A. Yeah.

Q. Trying to relax?

A. Yes.

10 Q. And then the next thing you said is "when I woke up to [someone yelling and screaming] on Queen Street."

A. Oh, well, I -- I --

Q. Did you mis-speak?

15 A. I mis-spoke. Yes.

Q. You mis-spoke. And your husband Paul was home?

A. Yeah.

Q. You guys still live together?

20 A. Yeah.

Q. Yeah. And he's still available to come and give us his recollection if we need him?

A. You can ask him but I think so.

25 Q. Okay. He's not away in Ecuador or anything.

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A. No.

Q. No. And when you notice, you were trying to relax and settle your baby, and when you get your attention directed, you're on the third floor.

5 A. Yeah.

Q. And your husband, is the third floor all one room?

10 A. Ah, no. It's a -- the bedroom was in the front with the balcony and then there's a bathroom and the second bedroom up there as well.

Q. Do you know where your husband was at this point?

15 A. He was downstairs in the living room, which is the -- the above balcony has a similar sunroom there so he was just off the sunroom.

Q. Okay. And -- I'll try and find one of the exhibits. Remember my friend Mr. Thompson showed you this which is Exhibit 8, and this was obviously taken from a balcony or somewhere up off the street.

20 A. Okay.

Q. Does that accord with your recollection of the view from the third floor or second floor from your apartment?

A. I would say that's the second floor.

25 Q. That's the second floor.

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A. Yeah. That's not my building, but it looks like the second floor.

Q. And -- that's not your building. Or that's not taken from the unit you used to live in?

5 A. I don't believe so.

Q. It's taken more west or more east?

A. I would say more west.

Q. So you're a little bit east of there?

A. Yeah.

10 Q. And from --

A. That shelter there, my building was above that. The bus shelter.

Q. Oh. Your apartment was above the bus shelter.

15 A. Yeah. I believe so.

Q. Okay. And my friend asked you before, from the third floor you couldn't see the sidewalk or the street down below you?

A. No.

20 Q. No. But the second floor actually has a better view for some reason. There's an alcove or a nook or something?

A. Yeah.

Q. Can you just explain that to us?

25 A. The sunroom, again which is parallel to

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the, um, balcony, has a -- a window right around it
so you can see down.

Q. The sunroom that's parallel to the
balcony?

5 A. Yeah. Parallel. Like, below it.

Q. Has a window that goes what, right to the
floor?

A. Yeah, they're floor to ceiling windows
all of the way around.

10 Q. All of the way around as opposed to the
third floor which doesn't have floor to ceiling
windows? You just have more regular --

A. No, it's a balcony.

Q. It's a balcony.

15 A. Because the balcony sticks out and the
sunroom is under that, so if there was no glass it
would also be a balcony. Does that help you?

Q. I think so.

A. Okay.

20 Q. But from the third floor you can't see
this area in the lower portion of the photograph --

A. No.

Q. -- that you're looking at. And from the
second floor you can see all the way across the
street?

25

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A. I'm not sure. I wasn't on the second floor. My husband was.

Q. But your recollection of --

A. To be honest, I can't recall.

5 Q. You can't recall?

A. Yeah, it was three years ago. I don't remember looking out that window to see what was across the street.

10 Q. Fair enough. I'm just going to leave that there for now. So when you -- your attention is drawn to the screaming, you get out of the bed?

A. Yeah.

Q. And you go out on the balcony?

15 A. Ah, at first I just went to the screen door because it was open -- ah, the glass was open, and took a quick look over at the Bellwood.

Q. Yeah.

A. There was nothing there so then I went onto the balcony.

20 Q. You went onto the balcony.

A. Yeah.

Q. So your view improved as you approached.

A. Yes.

Q. You had to open the screen door?

25 A. The screen door, yeah.

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5 Q. To go out on the balcony. And you've described sort of a sequence of events and my friend had measured the time and thought it was about a minute and 40 seconds, just you're estimating, right?

A. Yeah.

Q. At some point during that minute and 40 seconds, does your husband come upstairs?

A. No.

10 Q. He doesn't come up until after.

A. Yes. Afterwards.

15 Q. Okay. And my friend asked you a lot of questions about the positions of the three individuals and the man on the ground on the other side of Queen Street.

A. Yeah.

Q. They were all on the sidewalk?

A. Ah, yes.

20 Q. And they were a little left of the two sort of light standard poles that are just at the west end of the intersection?

A. Yes.

Q. Okay. And nothing obstructing your view?

A. No.

25 Q. The -- I think you said that at one point

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the male is in a fetal position and you were looking
at his back.

A. Yes.

Q. Because he's lying on his side.

5 A. Yes.

Q. You've also said that he's sort of moving
around trying to defend himself a little bit and
trying to get up and get to the road.

A. Yes.

10 Q. Okay. So that position, that fetal
position, isn't constant throughout the whole minute
and 40 seconds.

A. No, he -- no.

Q. He changes positions.

15 A. Yeah. I mean, he goes to get up, can't,
they're hitting him again so he gets back down to
the fetal position, tries to get up again, back.

20 Q. Right. So there's a point in time when
you can see his back, but is there also a point in
time when you can see his front? Does he roll to
the other side?

A. No. No.

Q. Your recollection is you're always
looking at his back.

25 A. Yeah.

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Q. Okay. And your evidence put the female a little north of him.

A. A little --

Q. Farther away?

5 A. No, they all three of them were on him.

Q. Right?

A. The taller hat guy at his head, her at his midsection, and the shorter guy at his feet area.

10 Q. And his head was to the west, feet to the east?

A. Yes.

Q. And are you looking at the backs of these individuals or fronts?

15 A. Fronts. As much as I could see because they were hovered over top of him.

Q. Okay. So who was closest to you?

20 A. They were all the same really because the gentleman on the ground, as much as the width of one person so they were all similar view.

Q. So the gentleman was -- who is -- as between the three people and the gentleman on the ground, who was closest to you?

A. The gentleman on the ground.

25 Q. Okay. So they're behind him, from your

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perspective.

A. Yes.

Q. Although they're looking at his front because he's lying with his back to you.

5

A. Yes.

Q. Okay. I understand. And you've sort of got the males on each side and the woman in the middle?

A. Yes.

10

Q. But that changes, right?

A. No.

Q. It's not constant.

A. No. That's -- it stays like that.

15

Q. Okay. And you've talked today about her moving her arms and her arms flailing.

A. Yeah.

Q. Okay. And prior to coming to court today, you've had a chance to review your original statement?

20

A. Yes.

Q. That was taken on the night -- or the morning -- the next morning?

A. Yeah.

Q. At your kitchen table?

25

A. Yes.

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Q. And during that statement was your -- was your husband present?

A. Ah, no. I think he was in the shower.

Q. Okay. Your husband was also interviewed about his --

A. Yes.

Q. -- recollection.

A. Afterwards. Yeah.

Q. And the portion of the statement that you were given an opportunity to review before you came to court today, was it like a handwritten statement?

A. A handwritten statement, yes.

Q. It wasn't a typed statement.

A. No.

Q. Okay. We'll work with the handwritten statement. And I'm going to page 22, about half way down. I just want to review with you, when you reviewed this statement subsequently, well, first of all, when the officer came, right? To your house, he had a little memo book in his hand, and when he sat at the kitchen table you talked and he wrote.

A. Yes.

Q. Right. He'd have questions and stuff but he would write.

A. Yeah.

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Q. And from time-to-time he had to ask you to slow down or just hold on a sec because he's trying to write out everything.

A. Mm-hm.

5 Q. And from what you can see from the statement, it's sort of like a word-for-word conversation.

A. Okay.

10 Q. Not that we know that he got everything, but you'd agree that it sort of reflected what you thought you told him.

A. Yeah.

15 Q. And so much as you've told us today, you got up, you looked out at the Bellwoods, and then your attention was directed to the northwest corner of Niagara and Queen, right?

A. Yeah.

20 Q. And then he writes down what you're saying.

I saw guys beating -- two kind of street kids beating on an olive skin guy, and one female kind of -- or --

A. Was kind of on the olive guy.

25 Q. Kind of street punk was kind of

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on the olive guy.

Now, that's right at the beginning of
the story and it goes on and we can go through it,
5 but you'd agree that you don't have the female
beating anybody at that point in your statement.

A. No, and I don't think I said that she was
beating him but I did say her arms were moving, yes.

Q. And you said that here in this statement.

10 A. Here in this, she was kind of on him.

Yes.

Q. Kind of. So if she was on him, obviously
you might not have prefaced it with "kind of". Can
you tell us what it is --

15 A. Well, she was crouched over him. They
were clearly landing blows, she was on top of him
moving and flailing.

Q. Okay. So she was in the area of him?

A. Yes.

20 Q. She wasn't actually sitting on him or
leaning on him, she was kind of on him in the sense
--

A. She was close enough to him, yes, that
she -- if -- yeah, she was.

25 Q. Close to him.

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A. Yeah.

Q. Okay. Is that kind of what you meant by "kind of"?

A. Sure. Yes.

5 Q. All right. And she's yelling and swearing and talking about how she was bleeding, right?

A. Yeah.

10 Q. You can't remember the exact words. Do you remember any of the words? I mean, you've told us stabbed?

A. I believe she said she was bleeding, ah, something about her hand and something about stabbed. Or stab. The word stab, stabbed, stabbing, I'm not sure. Stab was in there.

15 Q. Could you see an injury?

A. Not at this point. Not until --

Q. Could you see blood.

A. Not while they were on the gentleman, no.

20 Q. Could you see her doing anything with her arms that would indicate she's trying to compress or hold an injury?

A. Not at -- not at that point with the gentleman on the ground, no.

25 Q. Could you see anything wrapped around either of her arms?

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A. Not at that point, no.

Q. Not at that point?

A. No.

Q. At any point?

5 A. When she was talking with the police officer and the bystander, she had something on her arm and was grabbing at her arm at that point.

10 Q. Can you say definitively that during the initial thing that you saw with her kind of on and screaming and yelling and moving her arms, can you say definitively whether or not her arm was wrapped at that point?

A. Ah, I didn't see.

15 Q. So it's possible it was wrapped, it's possible it was not wrapped.

A. Fair enough. Yes.

20 Q. Fair enough. Okay. And as we go down through the statement, there's people -- she was bleeding, you can't remember exactly what she said, there were people on the street, um, and then regular people started to yell and --

A. Yell over.

Q. Over?

A. Like in the direction of them.

25 Q. So "regular people". Can you tell us a

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little bit about the regular people and where they were? Or --

A. Um, just people from -- I know there was a guy on a bike.

5 Q. Mm-hm?

A. There was another girl, um, and then me from the balcony were yelling trying to get their attention so maybe they would cease from beating him.

10 Q. Can you recall where the guy on the bike was?

A. Ah, past. Past wherever they were. So just past where they were. He wasn't so close that --

15 Q. Past, you made a motion to the right. Can you just give us a general idea with the pointer? Or do you want to use that?

A. Oh. He was --

20 Q. You can turn the pointer on and point at this photograph.

A. So where they were, he was more to the east. He was close enough to talk to them but not close enough that if they turned it would be on him.

Q. Okay. So first of all, where were they?

25 A. This isn't the better picture but again,

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by the standards, right?

Q. These two light standards? Or farther
down?

A. Ah, again, the same area that I pointed
at originally.

Q. Okay. So in this photo you have two
ladies in coats with their backs to you, right?

A. Yes.

Q. About there?

MR. THOMPSON: There are other photos,
because the problem with that photo of course
is it's on an angle and that could accumulate
between two feet and fifteen feet, so there
are other pictures that she identified.

THE WITNESS: Yeah. 46 and 50 were the
numbers in that direction on the -- on the
mapped out one I believe.

MR. SCARFE:

Q. All right. This map? Exhibit 1?

A. I believe that was it.

Q. And you're saying that the people that
were fighting were in front of 46 or 50? Is that
what you were recalling?

MR. THOMPSON: Well, just so it's clear, she
did identify it earlier on the exhibit that I

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put on the stand. I don't know if it's for the purposes of cross-examination but that's what -- if the accuracy of it is in issue she did identify once before.

5 MR. SCARFE: So you're talking about Exhibit 9, Mr. Thompson?

MR. THOMPSON: Yes.

MR. SCARFE: Okay.

10 Q. And at the time, with the greatest respect to Mr. Thompson, at the time that you identified the two rectangles, I couldn't see, so can we just get those again? So there's a rectangle of concrete that is closer to the street. Do you see how there's two? There's one that --

15 A. The closer to the street.

Q. Right. And at the very bottom of that rectangle you have the westernmost light standard. Right?

A. Sure.

20 Q. And then there's another rectangle just east of that closer to the street?

A. Yes.

Q. Which has the more eastern light standard in it.

25 A. Okay.

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Q. Of the two that are close together.

A. Yes.

Q. And you're saying that the fight was
taking place on both of those squares? Or out in
front of it on the street?

A. It was on the edge closer to the street.
It could have spilled between the two of them. I
can't say that for certain.

Q. So it was more on the left or more on the
right?

A. I can't say that for certain.

Q. Okay. So going back to a more similar
picture of where approximately, more approximating
where you were, or the view that you had, and you've
already said --

MR. THOMPSON: Well, that has never been
established. First of all, those exhibits
went in on consent. That picture was taken
from the second floor balcony so that's not
closer to what her view was, with the
greatest respect, so if he's going to put it
to the witness I think he's got to put it
that this was taken on the second floor.

MR. SCARFE: What I meant, Your Honour, with
the greatest of respect, is that her vantage

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point is more similar to Exhibit 8 than it is to Exhibit 9, because she is above the Select Mart on the third floor looking across toward -- in a northeasterly direction towards the area where the two light standards are.

5

THE COURT: Perhaps we should ask her.

MR. SCARFE: But I don't understand why my friend is objecting to me using that photo.

THE COURT: Perhaps we should ask the witness whether she agrees with that contention.

10

MR. SCARFE: All right.

Q. Your vantage point, ma'am, is it more similar to the photo on the left, Exhibit 9? Or the photo on the right, Exhibit 8?

15

A. Um, I guess similar here but not the same point because it's lower.

Q. Similar in the sense that you're looking --

A. If I was up higher and had the same view, then I could be more certain.

20

Q. Okay. And that's the one on the right which has the label Exhibit 8 on it.

A. Okay.

Q. Right? And so while it's not exactly your vantage point, it's more similar than the other

25

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photo?

A. Sure.

Q. Right. And you've got the fight occurring
somewhere near these two light standards. You're
5 not sure if it's more to the left or more to the
right, but it's out on the street a little bit,
right?

A. They're still -- the aggressors were on
the sidewalk and the victim was half sidewalk, half
10 road.

Q. Okay. Fair enough. So early on in the
process you kind of yelled out just to try and see
if by yelling you could stop it, right?

A. Yeah.

Q. It had no effect.

A. No.

Q. And then what I pointed out to you was
that -- see where it says, Regular people started to
yell and something over? Is that run over?

A. No, I think just come over.

Q. Come over? So you talked about two
people, right? The guy on a bike and a female?

A. Yeah.

Q. And I know it's not the exact angle or
25 height, but on Exhibit 8 you could assist me by

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indicating where those people were.

A. Ah, again, the guy on the bike was to the east of where the fight was.

Q. On the street or on the sidewalk?

5

A. On the sidewalk.

Q. On the sidewalk?

A. Getting close to the street, whatever --
I can't --

Q. Getting close to the street whatever?

10

A. Yeah, I don't see the street object there. It's to the east of where the fight was.

Q. Okay.

A. Closer that way.

15

Q. Getting to the edge of where the photo is.

A. Yes.

Q. Okay. And the girl?

20

A. Ah, she came, ah, after the gentleman had gotten up and she was coming over because this girl was screaming about being bloody and her hand so she was trying to comfort her.

Q. But that's later. That's after the gentleman --

A. Oh.

25

Q. -- got up and went to the car.

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A. Yes. Yes.

Q. Okay. Just going over to the next page?

A. I mean, I could hear people yelling.

They could very well have been on the south side of
5 the street that I couldn't see.

Q. All right. And then so you had, Regular
people started to yell and come over. You're really
referring to the guy with the bike because the girl
came later.

10 A. Yeah.

Q. Right? And when you say "regular
people", that's more plural. If it was just the guy
on the bike you'd say one guy came over. But it's
regular people. There was obviously a crowd
15 gathering or more people.

A. There wasn't a crowd but there were
people scattered one here, one there.

Q. Approaching this whole scene. They were
coming over, right?

20 A. Yeah. Not close enough to them, but...

Q. And then you yelled from the balcony,
cars were stopping?

A. And honking.

Q. And honking?

25 A. But then they'd drive off.

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Q. In between the street kids who were stomping on the olive guy, right? And then over the page to 23, the next thing you tell the officer, if he's writing it all down correctly, is:

5 At this point more regular people come over and the olive guy got up and got into a black car and drove off.

10 Right?

A. Yeah.

Q. So from what I understood from your statement, is this whole thing starts, the three street kids and the guy on the ground, and as it goes on a little bit there's kind of two waves of people coming over. There's the first time some regular people come over, and then the second time more regular people come over, and I suggested to you a moment ago that a crowd was gathering or a --
15 at the very least the group was expanding in numbers as people came over. What did you mean by "regular people"?
20

A. I just meant not street kids. Just people who were I think out walking around and people would walk by and say, Hey, but then keep walking. Like,
25

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no one really stuck around.

Q. So people would come over and they'd
leave.

A. Yeah. I think they -- yeah. Yeah.

5 Q. Right.

A. The only people that I recall sticking
around were the girl, the girl who was trying to
comfort her and the guy on the bike.

Q. Okay.

10 A. But there was people walking around.

Q. Well, just randomly walking by not
noticing or people coming over to this event?

15 A. Well, they would walk by and be like,
Hey, but then keep walking. Like, no one wanted to
get involved is the point.

Q. But you agree you didn't tell the officer
that people would sort of come up for a second,
leave. You just had two waves of people coming over.

A. Okay. Sure. Yeah.

20 Q. That's what you told the officer.

A. Okay. I could have three and-a-half years
ago.

25 Q. Right. And in the three and-a-half years
your memory is sort of focused on these four people
and maybe your memory of what was actually going on

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around them is kind of faded a bit because it's not
as important?

A. Yeah, I was focusing on the victim and
the aggressors. Yes.

5 MR. THOMPSON: No, Your Honour. I just at
this juncture, we have a statement here
that's before the Court. My friend is quite
able to stand over there and ask that person
to read the statement as opposed to climbing
10 right up beside her --

MR. SCARFE: That's fine.

MR. THOMPSON: -- each time he asks a
question.

MR. SCARFE: That's fine. I'll do that.

15 THE COURT: Very well.

MR. SCARFE:

Q. Now, you can grab that statement and we
can go through it together. I guess what I'm
suggesting to you is this flailing of the arms, this
20 moving of the arms and -- does that appear anywhere?
Am I just missing it in here?

A. Ah, you read it? You didn't see it?
Then no. I mean, in my defence, when I'm reading
this I'm just thinking there's a fight outside my
25 house. I'm not concentrating to the police about

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all, you know, everything that's going on. I'm thinking it's a regular fight. I don't know anything about the case so --

Q. So if I suggested --

5 A. Had he told me someone got killed I might have been able to be a little more, you know, diligent about coming up with extreme details.

Q. Okay. So this Officer Armstrong comes to your house?

10 A. Sure.

Q. He wants to know what you saw, but he doesn't tell you that someone got killed.

A. No.

15 Q. If he had told you that somebody got killed you would have given him a more thorough statement?

A. I probably wouldn't have brushed it over as quickly.

20 Q. So you felt when you spoke to the police the first time you brushed it off?

A. Not brushed it off. I just was giving what I thought was a quick overview of what happened.

25 Q. Okay. You'd agree that he took a fair bit of detail from you. That statement goes on for

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several pages, right?

A. Okay.

Q. You can flip through it but you've already done that before you were in court, right?

5 A. Yes. Yes.

Q. And nowhere in your statement do you indicate that there's arms flailing. That you can see her moving her arms. Is that fair?

A. Not in the statement, no.

10 Q. Okay. That comes later. Well, you've told us that today.

A. Yes.

15 Q. Right. Okay. Now, when you came to court in January or -- let me just get the -- do you remember the day?

MR. THOMPSON: March 25th.

MR. SCARFE:

20 Q. In March of 2009, about a year and-a-half after this whole incident, you gave some evidence at College Park, right?

A. Yeah.

Q. And I asked you a bunch of questions and then a female Crown Attorney asked you a bunch of questions? Do you recall that?

25 A. Yeah.

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Q. And you've -- you've been given a transcript of that evidence and had a chance to read it before you came to court today?

A. Yeah.

5 Q. Okay. And starting for my friend's at page 177, I'm going to read a series of questions and answers ending at page 178, line 15, and I'll go slow and if you want to see it I can bring it up. Otherwise I'll stay here.

10 A. Okay.

MR. THOMPSON: We have an extra copy. Perhaps she can read along if my friend wants?

MR. SCARFE: Sure.

THE WITNESS: Sorry. What page was that?

15 MR. SCARFE:

Q. Page 177. Do you see the page numbers at the top?

A. Yeah.

20 Q. 177 of 209? I'm starting right at the top and it's Q, that's me talking.

QUESTION: Okay. And the two guys were kicking and beating on him.

25 And then A is you for answer, and it indicates: Yes. The girl

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was also on the top him.

QUESTION: Did you see the girl
punch or kick?

ANSWER: Well, it was kind of a
scuffle and I know she was on
him. She wasn't helping him.
And then I say question: No. I
understand.

You answer: Yeah.

Then I ask the question: But
it's important that we're clear
here, that there -- you just
reviewed your statement, right?

ANSWER: Yeah. Well, I did -- I
did at twelve.

I guess you'd been sitting there for a
while, is that right?

A. Yeah.

Q. I didn't review it again
Because I thought it was going a
little faster.

So you testified in the later afternoon
of that day.

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A. Yes.

Q. Right? Then I ask the question at line
18:

5 QUESTION: Okay. If the girl had
been doing anything more than
yelling or swearing, would you
have told the police about that?

10 ANSWER: I think in my statement
I said she was on top of him,
did I not?

15 QUESTION: Okay. And so her body
was positioned, like, above him
where in relation to the other
two guys?

ANSWER: Well, I would say the
guy was on the ground, the two
guys were kind of here, and the
girl was on him is all.

20 QUESTION: Okay. So they had
sort of surrounded him?

ANSWER: Yeah.

25 QUESTION: Okay. Did you at any
time see her punch or strike the
male?

ANSWER: I guess not.

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QUESTION: Okay. Did you ever
see her kick the male?

ANSWER: Ah, no.

QUESTION: Okay. Do you remember
what she was saying?

ANSWER: Again, I think she was
just screaming and swearing and
saying something about being
bloody and I believe stabbed. I
can't remember but --

And then I sort of cut you off.

I said: She said something
about being stabbed?

ANSWER: That she, her hand or
something was bloody and she had
been stabbed or something like
that.

QUESTION: All right. Did you
hear anything about a birthday?

ANSWER: No.

Do you remember being asked those
questions and giving those answers?

A. Yeah. Yeah.

Q. And you'd agree that you were certainly

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given an opportunity to tell us anything else you recalled beyond the yelling or swearing when I suggested you would have told the police about that, right?

5 A. Yeah.

 Q. And you've agreed --

 A. I also said both times that I didn't see her strike him, so yeah.

10 Q. Right. You agreed she didn't punch him, strike him or kick him, right?

 A. Yeah.

15 Q. But again, when I asked you if she had been doing anything more than yelling or swearing, you would have told the police about that, it would have been natural for you at that point to say, Well, she was moving her arms. She was flailing. But you didn't tell us that, did you.

 A. No.

20 Q. No. And you know how sometimes things stick in your memory and you think about them over and over again for a period of years?

 A. Yeah.

25 Q. And here we are today three and-a-half years later, and her arms are flailing, and that's new, isn't it.

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A. Ah, sure. Yes. New to this, yes.

Q. New to this. And I'm going to suggest to you that if that was something that you remembered at the time, it would have -- I mean, you were doing your best to try to help the police, right?

5

A. Yeah.

Q. You would have said that, right?

A. Sure. Yes.

Q. Instead, the best you could do is he was kind of -- she was kind of on him. Or on top of him.

10

A. Yes. She was on top of him. Yes.

Q. Now, you remember she had a long black skirt and a halter top?

A. Yes.

15

Q. That was black as well?

A. Yes.

Q. Did you see anything on her feet?

A. Not that I recall.

Q. Not that you saw? No recollection of her footwear.

20

A. No.

Q. No. And when you describe a halter top, and as my friend indicated he doesn't know much about skirts, I don't actually know that much about halter tops, but is a halter top one of these things

25

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with two straps that go over the shoulder like a
bra?

5 A. I saw her from the front. She had like a
tank top so I don't know how it went in the back. I
just know it was no sleeve, black top.

10 Q. Fair enough. My friend asked you about
the male voices and what they were saying. Did you
hear. You said not exactly. You heard swearing and
yelling and maybe some grunts from the punching and
kicking.

A. Yeah.

Q. Did you hear anything that the males had
to say?

A. Ah, no. I don't think so.

15 Q. Do you remember any of the swear words
even that they used?

A. No.

Q. But you know you heard swear words.

A. Yeah.

20 Q. And as per the level of aggression, the
taller guy was the most violent, the most
aggressive, right?

A. Physically, yes.

25 Q. The shorter guy, he was kicking and
punching as well, but he wasn't as aggressive as the

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taller guy with the cap.

A. No.

Q. No.

A. Not that I recall.

5 Q. And I guess of those three the least aggressive person is the girl.

A. No. Maybe physically, but not verbally.

Q. So physically she's --

A. She was quite angry.

10 MR. THOMPSON: Can she answer the question?

MR. SCARFE: Yeah. Sorry.

THE WITNESS: She was quite angry, quite aggressive verbally and her mannerisms towards him were very aggressive.

15 MR. SCARFE:

Q. Okay. So from a verbal point of view, she was not the least aggressive.

A. No.

20 Q. But from a physical point of view she was the least aggressive.

A. Yes. Yes. If you're taking the arm flailing out, yes.

Q. If we're taking the arm flailing out. Well, are we taking the arm flailing out?

25 A. I don't know.

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Q. Do you have some doubt about the arm flailing?

A. No, I have a recollection to it. Just since I didn't say it before. Her motions and arm movements towards him were very aggressive.

Q. And in the period of time that you've told us about, you estimate to be about a minute and 40 seconds, the girl's claims about being stabbed and bleeding and her arm, that came very early in the conversation -- in the incident, right?

A. I believe so, yes.

Q. And do you recall her saying anything else before that?

A. No.

Q. Do you recall any sort of change in what she was doing or her attitude or anything before you started hearing words like bleeding, stabbed, arm?

A. No.

Q. No. And you didn't see anybody attack her.

A. No.

Q. No. And so can we sort of, although you may not have heard that in the very first five seconds of the minute and 40 seconds, it was pretty close to the beginning.

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A. Ah, yeah. In the quick span, yes.

Q. Just because I'm not 100 percent clear about this, I'm going to approach and ask. I'd rather read from the original statement than the summary.

A. Which one is this?

Q. The handwritten statement from the police. If we go over to the next page, and the next page if you could? Right. So now we're at page -- what's that little page number on the bottom there? Two something. Can you tell?

A. Two --

MR. THOMPSON: You know what? If he's going to put a statement to the witness then let him figure that out. What is this? Sorry. I apologize, Your Honour, but this is unnecessary. He's experienced counsel. He can point out the page. He doesn't have to have this witness identify the page number in the photocopy.

MR. SCARFE: I brought with me one copy of the typewritten version of the memo book notes and I brought with me one copy of the handwritten version of the memo book notes.

THE WITNESS: I have a copy of the

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handwritten.

MR. THOMPSON: She's got it.

MR. SCARFE: Right. So I don't have the page numbers in the handwritten on this and I'm going up there and trying not to get into her lap to try and see what the page number is. I just asked her. I don't understand --

THE COURT: All right, gentlemen. Can we just establish what page number we're looking at?

THE WITNESS: What is it saying? What do you want me --

MR. SCARFE: At the very bottom of --

MR. THOMPSON: Well here. I'll give my friend an extra copy.

MR. SCARFE: Why thank you. That would be great.

Q. Page 24.

A. Yes.

Q. Thank you. And you see about nine lines down?

A. From the top?

Q. Yeah.

He was wearing a black shirt that had rips on it, may have been in shorts. All this was in

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a minute. He drove west.

Is it possible that your estimation of how long all of this took is a lot longer than the actual time period?

A. Um, no, I don't think so. I think I was just, again, being general.

Q. Mm-hm. So when you talked to the police officer you thought it was all done in a minute, but when my friend took you through the sort of timing exercise today, we came out about a minute and 40 seconds.

A. Okay. Yeah.

Q. Okay. And I'm just going to suggest that could be a little too long, right?

A. Or my original could have been too short.

Q. Okay. Fair enough. I'm just going to check my notes, Your Honour, so I can -- I'm cognizant of the time.

Do you have an image in your mind's eye of this gentleman driving the black car away? Can you see that in your memory?

A. Do I -- no, I don't.

Q. Today? You don't?

A. No.

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Q. Any explanation why you told the police that the man walked to a black car like a Honda, got in and drove away?

5 A. I think because I saw him go towards the driver's side of a car, I assumed that he got in and drove away, but going over statements and trying to figure out the sequence of events, I don't think I took, after he walked up towards the driver's side, I didn't leave the sight of the three, um, people
10 who were attacking him. Because I was distracted by her screaming and yelling for an ambulance and talking about being bloody.

Q. All right. Do you remember -- do you remember you awoken, you were still lying in your
15 bed and you heard screaming from the street. Can you remember anything about that?

A. Ah, I was just with the baby and I heard screaming so I got up.

Q. Was the baby awake or asleep?

20 A. I had just finished nursing him so I think he was asleep.

Q. Okay. And the screaming that you heard before you got out on the balcony, do you remember if it was male or female?

25 A. Both I believe.

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Q. Both? And do you remember anything about the female voice? Could she have been screaming about being cut or stabbed and stuff before you actually got to the balcony?

5 A. I didn't hear exact words.

Q. Okay. Thank you. Those are my questions.

THE COURT: Re-examination?

MR. THOMPSON: No re-examination.

THE COURT: Thank you very much, ma'am.

10 THE WITNESS: Thanks.

THE COURT: You can step down. We'll take the lunch recess.

15 ---LUNCHEON RECESS (1:09 p.m.)

---UPON RESUMING (2:19 p.m.)

20 THE COURT: Crown's next witness?

MS. MIDDLEKAMP: Yes, Your Honour. Good afternoon. The next witness for the Crown is Taj Desilvia.

25

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---NATAJA DESILVIA: AFFIRMED

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

MS. MIDDLEKAMP:

5 Q. I understand that you go by Taj, right?

A. Yes.

10 Q. All right. I just want to ask you just a couple questions about yourself and then I'm going to ask you about some observations that you made back in August of 2007, okay?

A. Okay.

Q. How old are you now?

A. I'm 29.

15 Q. And are you currently working?

A. Yes.

Q. And what type of work do you do?

A. I am a server in the restaurant industry.

20 Q. And just to take you back to August of 2007, were you working at Terroni at that point in time?

A. Yes, I was.

Q. Do you remember the address of Terroni?

A. 720 Queen Street West.

25 Q. So what I'm going to do now is ask you to look at what's been labelled as Exhibit 1 on the

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trial, and you'll see that there's a map on the
screen in front of you?

A. Yeah.

5 Q. Can you tell us whether or not you see
Terroni, where it's located on Queen West on that
map?

A. Yes.

Q. And is it identified with a number?

A. It's identified with 720.

10 Q. So that's on the north side of Queen
Street West?

A. Yes.

15 Q. Can you take your mind back to the
evening of August 8, 2007, into the early morning
hours of August 9, 2007. Were you working at Terroni
that night?

A. Yes, I was.

Q. And as a server?

A. Yes.

20 Q. And while you were working, or near the
end of your shift, was there something that drew
your attention outside the restaurant?

A. Yes, there was a fight outside the
restaurant.

25 Q. Okay. And more specifically, what did you

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observe yourself, if anything?

5 A. I didn't observe anything right away outside the restaurant. Um, I had been -- had just finished work at around midnight. Um, my co-workers had indicated that there was a fight going on outside between a group of people, some that seemed to be panhandlers and then two others.

Q. Okay. So I'll just get you to stick sort of with your attention is drawn by your co-workers?

10 A. Yes.

Q. That there's something happening outside?

A. Mm-hm.

Q. Do you actually hear anything at that time?

15 A. No. Just -- well, inaudible screaming and yelling from outside, but no words.

Q. And you'd indicated that your -- did you see your co-workers outside just taking a look at what was happening? Or were they towards the front of the restaurant?

20 A. They were towards the front of the restaurant looking outside.

Q. So you hear some screaming and yelling. Do you do anything about it at that time?

25 A. No.

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Q. So you didn't get up to look, correct?

A. Yeah.

Q. And after you hear the screaming and yelling, what are you doing?

5 A. I was getting ready to leave work.

Q. So you're getting your stuff together?

A. Yes.

Q. And you're going to head out the door at some point, correct?

10 A. Yes.

Q. And does something happen a little bit later after that? After you first heard the screaming and yelling?

15 A. Well, after I left work, I left work ten minutes -- about ten minutes later. Um, when I went outside the front door I heard more screaming and yelling coming from up Queen Street to the west, and the fight that had been in front of the store had moved to Queen and Niagara at the lights.

20 Q. So I'm just going to get you to hold there. In terms of the chronology, looking at the diagram that's just before you again on your screen and also up on the map, can you just give us an idea, you mentioned Queen and Niagara? The fight
25 was there?

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A. Yes.

Q. Okay. And can you be more specific for us
in terms of --

5 A. It was at the red lights on the north
side of the street. So the lights at the
intersection of Queen Street and Niagara there.

Q. And on the south side, is there a Coffee
Time there?

A. Yes.

10 Q. So in relation to the Coffee Time?

A. It was across the street.

15 Q. What I want to do now is just show you a
photograph that's been taken. It's labelled as
Exhibit 20 at the trial. It's JPG 021. It will come
up on your screen and also on the bigger screen
there.

A. Mm-hm.

20 Q. And just take a moment to sort of orient
yourself with respect to the picture. But does that
kind of help you describe where you saw the fight?

A. Yes. The fight was at that set of lights
there. It was going across the street at the Coffee
Time and whatever other store that was there it was
right at the red lights there.

25 Q. Okay. And you indicated before on the

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north side of the street, correct?

A. Yes.

Q. Okay. When you first make your
observations of the fight, where are you in relation
to Terroni at 720 Queen Street West?

A. After I had walked out the front door,
heard the fight, I walked up the street to the
corner of Claremont and Queen, so I was on the
northeast corner.

Q. Okay. So just looking again at Exhibit 1,
somewhere around 730? Does that assist you?

A. Ah, yeah.

Q. And did you remain on the east side of
Claremont or did you cross the street to the west
side of Claremont?

A. No, I was there. I stayed there.

Q. So you stayed on the east side.

A. Yeah.

Q. And so you're walking out the door and
you see the fight and you talked about walking more
towards the fight, correct?

A. Yes.

Q. Okay. And you're walking in a westbound
direction?

A. Yes.

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Q. Can you tell us what you see in terms of the fight?

5 A. It, ah, the light was red. There was a streetcar and a taxi stopped at the light. The fight was on the sidewalk and then it was between, what I saw was three or four, five people. There was a female and a few males involved in it. The fight had gone from the sidewalk, um, to people being thrown over the top of the stopped taxicab, across the street and back again, and this went on for the entire duration of the red light.

10 Q. Okay. I'm just going to ask you to break it down a little bit. You said three or four or five people involved in the fight?

15 A. Mm-hm. There were -- there was one male with a black t-shirt and blue jeans, there was another taller, skinnier male wearing more green, like all green, sort of army green, and a backpack. There was also a shorter, stockier guy in a dress shirt that had been ripped in the course of the fight. There was also a shorter younger girl that was wearing a tank top and sort of fatter pants with dread locked hair, and there was also a second girl who wasn't involved in the actual altercation but was with that group of people that stayed on the

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sidewalk while the fight was going on with the other three males and the female with the dread locked hair had been involved in the fight that was going on.

5 Q. Okay. So I'm just going to break it down a little bit. You talked about a guy wearing a black shirt and blue jeans?

A. Yes.

10 Q. And I'm just going to see if we can break it down a little bit more in terms of what he was wearing and what he was doing. So you said a black shirt?

A. Yes.

Q. He was wearing blue jeans?

15 A. Yes.

Q. Can you tell us if you remember what his skin colour was?

A. Um, I remember it being sort of olive tone-ish skin.

20 Q. But a Caucasian person?

A. Yes.

Q. And what about his height?

25 A. Um, not too tall but I was far enough away that my actual perception of specific height may not have been totally correct.

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Q. And were you able to get a sense of approximately how old this guy was?

A. Um, I would say late 20s, early 30s.

Q. And did this gentleman appear to be on his own in the fight?

A. Um, yes, he did seem to be singled out.

Q. And in terms of the way that he was dressed, how did that compare to the other people that you've just described, the other three people?

A. The other three people involved in the fight looked to me to be squeegee kids or panhandlers.

Q. And just so you can help us out, do you get an idea -- can you describe for us a little bit more, when you talk about somebody appearing to be a squeegee kid or a panhandler, what does that mean to you?

A. Well, to me, it being on Queen Street, there are a lot of homeless teenagers and young adults that tend to dress more army fatigues, dreads, sort of punk-ish I suppose you could say, and they definitely, that group definitely looked more like what I would describe as a panhandler in that area.

Q. And this is the group of three that you

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described, including the one female and the two
males?

A. Yes.

Q. Okay. Now, if I can, if we could just go
5 a little bit further through, you talked about a
tall, skinny guy --

A. Yes.

Q. -- that was involved in the fight. In
10 terms of his clothing, are you able to describe that
for us in anymore detail? You'd indicated a lot of
green?

A. A lot of green, sort of army -- army
looking green. Other than that, no.

Q. And what about the colour of his skin?

15 A. He was also white.

Q. And then if we can turn to the other
gentleman who was involved in the fight. Can you
describe him for us?

20 A. The other one that I mentioned that was
in the torn dress shirt, um, I don't remember much
of him other than he was just a shorter, stockier --
the dress shirt had looked dirty and torn. Like, it
was older but it also could have been torn in the
fight.

25 Q. Okay. So you're saying it looked older

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and torn. You're not sure whether it was because of
the fight or whether that was the way the shirt is.

A. Yeah.

Q. Was there anything else that he was doing
that sort of stuck out in your mind?

A. Um, other than during part of the fight,
um, when the fight ended at the red light, um, the
gentleman in the black shirt and the blue jeans had
hooked his arm inside the back passenger window of
the taxicab that took off. At that same moment, um,
the girl with the dreadlocks, ah, had screamed out,
He stabbed me, he stabbed me, and she -- I saw her
at that point with a gash on her arm that was
bleeding. Um, the other girl that had been standing
on the sidewalk at that point throughout the fight
had gone to her and was saying, We need to call her
an ambulance. The girl who was also cut had been
screaming that she wanted an ambulance, that she
wanted to go to the hospital. And the gentleman in
the stockier -- the stockier gentleman in the dress
shirt had been told by the girl that was waiting on
the sidewalk to go look for the other girl's things.
The girl with the dreadlocks. Because she had
apparently dropped her stuff back by the restaurant
that I worked in. So he had been running back and

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forth looking for her things and back again.

Q. Okay. What I want to ask you about, you talked about this girl screaming that she got stabbed?

5 A. Yes.

Q. Did you see where, if at all, she was stabbed? Did you see if she was injured?

A. On the arm.

10 Q. And if we can just break down her description a little bit more. Do you remember the colour of her skin?

A. She was also Caucasian.

Q. And what about her height? Did you get an idea of that?

15 A. She was shortish. Not much taller than myself. I'm five one.

Q. And what about her clothing?

20 A. Ah, like I said before, it was a tank top, her -- like a large pair of pants, what I would call raver pants, so wide-legged raver pants, darker.

Q. And what about her hair?

A. It was blondish. Not super light blonde but not brown either.

25 Q. And anything about the style? I think

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you --

A. It was dread locked. Yeah.

Q. And was it positioned in any way?

A. It was up.

5

Q. And what about did you make an
observation of her approximate age?

A. She was young. I don't know. Early 20s
maybe? Late teens, early 20s.

Q. And you talked about her pants?

10

A. Yes.

Q. And you kind of described them as raver
pants.

A. Yes.

Q. What does that mean to you?

15

A. That's really, really wide legged pants.

Q. Okay. And just turning to this other girl
that you have described came up to the woman who was
injured.

A. Yes.

20

Q. Did you get a good look at her?

A. No. All I can say is that she possibly
had dark hair but she was crouched down on the
ground for most of the night so I couldn't really
see anything.

25

Q. And when you say "crouched down" a lot,

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where was she?

A. She was on the sidewalk.

Q. Okay. You've told us a little bit about what was happening in the fight, but can you tell us a little bit -- in a little bit more detail about what you saw and what people were doing?

A. Ah, the people that were in a fight, it was the three males and the female that were involved in the fight. It was -- seemed to be a very close quarters fight. There wasn't a lot of room in between them. Like I said before, they were throwing each other on top of the car, there were punches and blows being thrown by everyone involved as far as I could see. Um, at points people would break away and then get chased across the street and chased back again, and then back over the top of the cab. Um, it seemed really chaotic and it seemed like every -- it was, like I said before, it was really close quarters fighting with lots of blows being thrown.

Q. And you were talking to us earlier, telling us how you were on the corner of Queen and Claremont --

A. Yeah.

Q. -- when you were observing the fight. Do you have any idea of about how far that would have

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been away?

A. I'm not great with distance but maybe 30 feet.

5 Q. And more specifically, the gentleman who you've talked to us about who looked different than the three you described, what was he doing in the fight?

10 A. Ah, he was also throwing punches, but everyone was throwing punches so I would expect that to happen. Um, he did seem like he at points was trying to break away but then was being chased back and forth across the street by the other three, the two males and the female.

15 Q. And the girl that you described that got stabbed, was she involved in the fight?

A. Yes.

20 Q. You've talked about it being chaotic and punches and blows. About for how long did this go on?

A. As long as the red light lasted, so a couple minutes at most. I don't know how long the red light is.

25 Q. And during the time that you're making observations, did you see anybody on the ground?

A. Not on the ground but they were, like I

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said, up and down, over the top of the car and being chased across the street. If one tripped at some point then maybe, but...

Q. How did the fight end?

5 A. Ah, the fight ended when the light turned green and the man in the blue jeans and the black t-shirt hooked his arm inside the open back passenger window of the taxicab that was stopped at the lights, and the taxicab took him with it down
10 the street. I don't -- didn't see him after that. Um, at that same time, I heard the girl with the dreadlocks yell, He stabbed me, he stabbed me, and that's when she started asking for an ambulance and, um, to go to the hospital.

15 Q. And right before the guy managed to grab onto the cab and get dragged away, what was happening?

A. They were still fighting at that point. Excuse me.

20 Q. When you saw the guy in the black shirt and the jeans get dragged away by the taxi, could you tell whether or not he was injured?

A. No, I couldn't. His back was to me and he was sort of crouched down and he was also wearing a
25 black shirt and it was dark, so I couldn't tell.

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Q. And just continuing on that, you've described the girl with the dreads and wearing the tank top as having been injured in the fight. Do you see if anyone else had any injuries?

5 A. No, except -- no, the stockier guy had also a cut on his arm.

Q. Okay. And where was that on his arm?

A. That I can't remember specifically.

10 Q. And if you can just recall at what point in time you made that observation that he was cut?

A. That was at the same time that she was yelling, He stabbed me. It all happened simultaneously.

15 Q. At any point while you're still on the scene, does the gentleman you described as stockier in the dress shirt, does he come closer to you?

A. Yes.

Q. Okay.

20 A. I actually exchanged words with him. I don't remember what was said, um, but as he was, again, going back to look for her things, I had told him that -- I think maybe we were talking about the ambulance because I had also called an ambulance at that point, that she had yelled that, He stabbed me,
25 I didn't know if any of the other bystanders had

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called one so I had called for an ambulance and we may have been discussing that, but I can't remember.

5 Q. Okay. So you just indicated now that you called 911. Do you recall how many times you called 911?

A. Ah, I believe I called them once. It may have been twice but I know I definitely called for an ambulance when I saw police arrive and not an ambulance.

10 Q. All right. So just to break that down, you're still there when you see police cars arrive?

A. Yes.

Q. Okay. And is it at that point in time that you are concerned because there's no ambulance?

15 A. Yes.

Q. And then you call and say specifically that there's an ambulance required?

A. Yes.

20 Q. If we can just turn to the girl that screamed with the tank top on, that she was screaming about having been stabbed.

A. Yeah.

Q. Did you observe her injuries?

25 A. I saw the cut on her arm, um, because she was quite hysterical and was spinning around the

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street, so there was also quite a fair bit of blood on her arm and the sidewalk around her.

Q. You've talked about hearing her say that she was stabbed. During the fight, did you hear her saying anything?

A. I heard yelling and screaming but I couldn't make out anything coherent specifically.

Q. And thinking back specifically to her in terms of the volume or her screaming, did that form any impression on you?

A. Like I said before, it was quite hysterical and quite chaotic. Um, I think I felt at the time that if, ah, it hadn't been quite so hysterical, that perhaps, like, the situation may not have escalated to the point it was, but it seemed to be an instigating point of the altercation.

Q. And you talked about seeing the police arrive and calling for an ambulance. Did you ever see an ambulance arrive on scene?

A. I did see an ambulance arrive on scene, and when the ambulance got there, that's when I left to go home.

Q. When you saw the ambulance arrive on scene, was anyone who was involved in the fight that

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you've described still there?

A. Yeah. It was the tall guy in the green and the backpack, and the two girls. The one that had been cut and the other one that had been standing on the sidewalk.

Q. And what about the taller -- or sorry. The stockier guy that you described with the dress shirt?

A. I can't remember.

Q. Did you see any weapons during the fight that you observed?

A. No.

Q. And did you see anyone stab anyone?

A. Not specifically with a knife. All I saw were what looked to be punches and blows.

Q. Now, I understand that once the ambulance arrived, you went home?

A. That's correct.

Q. Okay. And subsequently to seeing the events, did you see any news footage in relation to the incident?

A. The only news footage that I saw were stills that I was shown to by Frank D'Souza in the back of his news truck. My boyfriend at the time worked for City Television, Breakfast Television. I

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5 had told him what happened when I got home. He went to work and told his co-workers about it and his co-workers contacted me to appear on the news about it and they showed me some stills of footage that they had shot the night before to confirm that they were looking at the same thing, but the people that I had seen in the footage were people that I had seen the night before. So...

10 Q. And then after you had seen some footage, did you then give a statement to the police and view some photographs?

A. Yes, I did.

15 Q. And prior to testifying today, you had an opportunity to review that statement and also the photo line-up that you did?

A. Yes.

20 Q. And I understand that you recognized some photos as familiar but didn't definitively pick anybody out?

A. Yes. There was one picture though that said "yes" on it.

Q. Okay.

A. Yeah.

25 Q. Just a brief indulgence, Your Honour. And I just want to take you back to the fight that you

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saw. Referring more specifically to the gentleman with the black shirt and the blue jeans, did he appear to you to be trying to get away from the fight?

5 A. At points, yes, he did, but he was also fighting as well, I'm assuming in defence of himself.

 Q. And you had described the fight as being close quarters?

10 A. Yes.

 Q. And what does that mean to you?

15 A. That there was no space in between the people that were fighting. It's not like -- as if there were two people fighting with another ring of people fighting around them. It was a group of four people in a ball, I suppose.

20 Q. And after the fight, you had indicated that there was a woman who had been on the sidewalk who was assisting the girl that got cut in the fight, correct?

 A. Yes.

 Q. Did you see any of her other friends in the area at that point dealing with her or --

25 A. No, I saw only the girl that was on the sidewalk, the girl with the dreadlocks. The tall guy

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in the green and the short stockier one in the dress shirt.

Q. Did you get the sense that anybody wanted to leave the area?

5 A. Ah, after the fight had happened a couple of her friends had been saying that they should just leave. Um, but the girl who was with the other girl who had been cut was more concentrated on getting an ambulance and taking everyone to the hospital, but
10 yes, there were mentions of leaving the scene.

Q. When you leave the scene to walk home, which direction do you go in?

A. East.

15 Q. Your Honour, those are my questions for the witness. My friend will have some questions for you.

THE COURT: Cross-examination?

20 ---CROSS-EXAMINATION BY MS. SIMPSON:

MS. SIMPSON:

Q. Good afternoon. Is Laura Quigley one of your co-workers at Terroni at the time?

A. Yes.

25 Q. Was she one of the people that was

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watching the hubbub earlier?

A. Yes.

Q. Do you remember her going outside onto
the sidewalk or do you remember her in the front
5 window?

A. I don't remember.

Q. You didn't go outside with her?

A. Not with her. We may have left work at
the same time but...

10 Q. Do you remember her yelling into the
restaurant that there was a problem outside?

A. No.

15 Q. So you became aware that there was a
problem outside from hearing noises outside, is that
right?

A. Yes.

20 Q. It's not from any of your colleagues or
co-workers saying anything, it's what's actually
happening on the sidewalk.

A. Yes.

Q. Did you see any of that problem, whatever
it was, on the sidewalk in front of Terroni before
Claremont, before Niagara?

A. No.

25 Q. So you didn't see any people walking west

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along Queen Street on the north side?

A. No.

Q. And Terroni, which is the 720 address,
that's about half way between Manning and Claremont,
is that right?

A. Yes.

Q. And you never got closer to any of the
fight than you said the northeast corner of Queen
and Claremont?

A. Yes.

Q. Is that yes?

A. Yeah.

Q. We both started nodding and we'll both
get in trouble for it. If you could just make sure
to say yes or no. Thanks.

You also stayed on the north side the
whole time?

A. Yes.

Q. So by the time that you first see what's
causing the problems, this group has gathered down
Queen and Niagara, is that right?

A. Yes.

Q. So you're looking down the north side
sidewalk, is that right?

A. Yes.

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Q. And I understand at the time there was some other people that were walking or standing on that same sidewalk, is that correct?

A. What kind of people? I don't understand.

5 Q. Were there other people on the sidewalk?

A. Bystanders? Yes.

Q. You recall there being a bunch of people standing around looking at what was going on.

A. Yes.

10 Q. So people that might not have been affiliated, if we want to use that word, with one or the other -- of anyone involved but people watching?

A. Yes.

15 Q. And you have those bodies along the side. Along the north side.

A. Yes.

Q. Is the traffic also backed up along Queen westbound at that point?

A. No.

20 Q. The red light is at Niagara?

A. Mm-hm.

Q. How many cars have stopped at that red light? Do you recall?

A. A couple cabs and a streetcar.

25 Q. The streetcar's heading eastbound, is

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that right?

A. The streetcar was heading westbound.

Q. The streetcar was heading westbound.

A. Yes.

5 Q. So it's on the north side of the street.

A. Yes.

Q. And that would be in the second lane
then.

10 A. Ah, it's in the lane farthest away from
the sidewalk.

Q. Of the two further north lanes.

A. Yes.

15 Q. The closest northbound street -- or
westbound streetcar stop on the north side is at
Claremont, isn't it?

A. Yes.

Q. Is that where the streetcar was stopped?
Or was it further along?

20 A. No, it was stopped at the light at
Niagara and Queen.

Q. So it's not at a stop where people are
coming on or off. It's just stopped at the light.

A. Yes.

25 Q. Do you recall if the cars were in front
of it? Behind it? Beside it?

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A. Beside it.

Q. So the cars are both in the curb lane then on the north side.

A. Yes.

5

Q. And the fight that you said that was in the street at Niagara and Queen, I understand that starts on the north side sidewalk and sort of moves out into the actual lanes where traffic would be, is that right?

10

A. Yes.

Q. And it's back and forth. It's quite mobile.

A. Yes.

15

Q. So you're looking through people on the sidewalk, at least two cars and a streetcar to see that, is that right?

A. Yes.

20

Q. I've listened to a bunch of recordings. Let's me see if this helps you with your memory. Two 911 calls, one earlier talking about how there's a fight breaking out, and one later which I think was the one you spoke about earlier this afternoon with my friend, about how there are police but you wanted an ambulance.

25

A. Mm-hm.

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Q. Does that ring a bell?

A. Yes.

Q. And I understand as you're on the phone with 911, you're trying to describe what you're seeing play out in front of you, is that right?

A. Yes.

Q. In the first call, I heard you say, and I have the recording so if you don't agree or can't remember just let me know and we'll work out a way to play the recording, but in the first call what I heard you say was:

"Someone seems to be punching someone outside the cab right now."

Do you remember as you're talking to the police trying to narrate that for them?

A. Yes.

Q. So you're doing your best, is that fair?

A. Yes.

Q. And what you said was that it seems to be that someone's punching, so your view, I mean, my suggestion, can't be that clear, is that right.

A. Sure.

Q. And the one kind of consistent noise all

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the way through this is a woman's voice that's hysterical, is that right?

A. Yes.

5 Q. And you heard a woman's voice at the very end saying, He stabbed me. Earlier were you able to make out any words, any comments by the woman's voice that you heard?

10 A. No words. Again, like I said before, it was inaudible. It was just screaming from what I could hear.

Q. So it's also then a different kind of vocalizing that you're hearing. Later you hear the distinct words, He stabbed me.

A. Yes.

15 Q. And before you hear a woman who's screaming.

A. Yes.

20 Q. When you heard the noises from inside the restaurant, could you -- what was it you were hearing?

A. Again, yelling. No specific words but yelling.

Q. And did you recognize it as male or female voices when you were inside the restaurant?

25 A. Both.

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Q. And you can't give us any content to the words.

A. No.

Q. How about this: Call police. This man hit me. Did you hear anything like that?

A. No.

Q. Then the red light changes, and the cars, the taxis and the streetcar start going west, is that right?

A. Yes.

Q. And the fight moves over near to the taxi, is that right?

A. Yes.

Q. And I'm going to suggest that actually the fight ends up in front of the taxi, is that right?

A. I don't recall.

Q. When you last saw the man that you described being in the black shirt, he's being pulled by that taxi as he heads west, is that right?

A. Yes.

Q. And that's the end of the fight.

A. Yes.

Q. Around the same time as he's leaving west, holding himself up on the taxi, that's when

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you hear the woman's voice yell, He stabbed me.

A. That's correct.

Q. Did you see any gestures from her at that time?

5 A. What do you mean "gestures"?

Q. Was she pointing? Was she waving? Did she make any body motions?

A. She was spinning about and flailing about, but nothing specific.

10 Q. And you heard that she wanted an ambulance?

A. Yes.

Q. She wanted to go to the hospital?

A. Yes.

15 Q. The woman that was with her was also saying the same thing?

A. Yes.

Q. Which is why you made your second 911 call.

20 A. Yes.

Q. Is it a fair description that the fight itself was pretty confusing?

A. Yes.

25 Q. It seemed to you at a certain point that the kids that were involved with -- that are

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squeegee kids are actually even attacking each other.

A. I did say that, yes.

Q. You said that when you were speaking to the police?

A. Yes.

Q. And that was within a month or so of the incident, is that correct?

A. Within two weeks.

Q. And that was your best impression at the time?

A. Yes.

Q. So when you recall that from your police statement, is it also your recollection now?

A. Yes.

Q. And you recall people chasing back and forth across the street?

A. Yes.

Q. You recall people being dragged all over the place?

A. Yes.

Q. And you recall people throwing each other over the hood of the taxi.

A. Yes.

Q. It's not just the black shirt man on the

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hood of the taxi, but other people that are involved as well.

A. Yes.

5 Q. I understand it was quite a chaotic scene? I think you used that word earlier this afternoon, is that right?

A. Yes.

Q. You didn't want to get too close.

A. No.

10 Q. So you were close enough to see generally what's going on?

A. Yes.

Q. It's your general impression?

A. Yes.

15 Q. But no specifics.

A. No.

Q. You can't describe any particular tussle that happens, any particular exchange between two people --

20 A. In what way?

Q. -- can you?

A. Other than the fight, no.

25 Q. And the fight, you say it's all these people close together and you can't describe anything because they're so close?

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A. Other than the blows and the punches that I saw being thrown by everyone involved, no.

Q. In the first 911 call, you said that someone seemed to be punching someone outside the cab right now. I suppose you can't help us on who those two people were?

A. Sorry, no.

Q. At the time you're doing your best to describe what you can to the police operator but at this point you don't know who those two are.

A. I don't recall who they were, no.

Q. So it's fair to say then that the fight does separate out at certain points. There you're seeing two people. It's not always the group of four that's together, is that right?

A. Yes.

Q. You never saw a knife?

A. No.

Q. You saw no one get stabbed.

A. No.

Q. You saw no one, conversely, doing any stabbing.

A. No.

Q. And you can't describe any particular actions that you would attribute to any individual

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person, just that you see all sorts of punches going all over.

A. Yes.

Q. So you can't attribute anything in particular to women either, is that right?

A. No.

Q. Now, we talked about how the man with the black shirt left with the cab. I'd like to talk about how the others either stay or leave. The woman with the cut arm, she stayed in the area, is that right?

A. Yes.

Q. With at least one other woman?

A. Yes.

Q. But not everyone that had been there before did stay, is that correct?

A. No, I think one of them left. I don't know.

Q. And that was the person where you observed a cut on his arm?

A. Mm-hm.

Q. He left.

A. Yeah.

Q. You used the words when you were speaking to the police, "he took off", is that right?

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A. Yes.

Q. Where did he take off to? Where was he going?

A. I don't know.

5 Q. You have described the five people who might have been involved and I just have a couple of questions about specifics of those descriptions. Do you recall saying that the tall fellow who was wearing green was possibly high because he was kind of sketchy.

A. Yes, I do.

Q. What does that mean?

A. It means that he wasn't acting like someone who was sober.

15 Q. Um, in what way?

A. He looked sketchy, I don't know, his eyes were darting. I don't really --

Q. So were his eyes moving around a lot?

A. Yeah.

20 Q. And do you remember him behaving in a particularly aggressive way? Or a quiet way or was he withdrawing? What was he doing that was not sober?

A. It seemed incoherent.

25 Q. And then the fellow that you said took

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off, he's the one in the older or just not clean,
ripped dress shirt, is that right?

A. Yes.

Q. Jeans?

5

A. As far as I can remember.

Q. And he's a bigger fellow. A stockier --

A. Stockier, yes.

Q. Apart from the girl with the cut, you
recall one other that you said was more on the
sidelines during the fight?

10

A. Yes.

Q. So we've talked about these five
characters. You agree with me there may have been
more people blocking traffic or involved, is that
right?

15

A. I don't think involved, no.

Q. Do you have your police statement up
there?

A. I do not, no.

20

Q. Would you like a copy?

A. Sure.

Q. Here you go. I'm looking at page 34. This
is your police statement of August 22, 2007, is that
right?

25

A. Mm-hm.

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Q. And Detective Gallant asks a question that is really very much like the questions we have been asking you today. About halfway down the page, just a little way over the halfway point:

5 "So you have one girl and two
guys, plus the guy in the black
shirt, that -- so there's four.
Is there anybody else?"

A. Yeah.

10 Q. And you answer: "Not that I can
remember."

A. Right.

Q. Detective Gallant says:

15 "Okay."
And you said: "But there may --
may have been."

Is that right?

A. I suppose so.

20 Q. And does that help you refresh your
memory about your certainty about how many people
are there? How many people are blocking traffic?

A. If that's what I said then that's --

Q. You would agree that that's --

25 A. That's -- yeah.

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Q. You agree that that's what's said, or you agree that that was also your impression at the time?

5 A. I suppose that was my impression at the time, if that's what I said.

Q. And that's much closer to the events than you are now?

A. I guess so.

10 Q. Is that more likely to be fair than the answer that you gave just now?

A. Sure.

Q. The scene was one of terrific confusion and chaos, is that right?

A. It was chaotic, yes.

15 Q. And it's also really quick.

A. Yes.

Q. You're making all of these observations just during a length of one red light, is that correct?

20 A. Yes.

Q. And then you were asked to look at these photographs of people and pick out anyone that was familiar, is that right?

A. Yes.

25 Q. And you looked at them one-by-one as they

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told you to and you wrote on the back of the
photographs, is that right?

A. Yes.

Q. There's actually just one I'm going to
take you to if I could. Do you recall looking at
four sets of photographs?

A. Yes.

Q. Two sets of photographs that involved
girls, two sets of photographs that involved guys,
is that correct?

A. Yes.

Q. And it is a single photograph, doesn't
appear to have a number, for the record, but do you
remember seeing that photograph?

A. Yeah. Yes.

Q. And this is what you wrote on reverse.
That's your signature, is that correct?

A. Yeah.

Q. That's the date that you looked at it?

A. Yeah.

Q. "Looks like the girl that yelled she was
stabbed".

A. Yes.

Q. And that was your best effort within two
weeks to describe the people that are involved.

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A. Yes.

Q. Of the photographs that you looked at,
that looks most like the one who was stabbed.

A. If that's what it says on the back of the
picture, then yes.

Q. Thank you. I wonder, Your Honour, if I
can mark that envelope as the next exhibit?

THE COURT: We can but we're going to have to
identify it.

MS. SIMPSON: It says on the outside of the
manila envelope number two, witness Nataja
Desilvia. It has inside it the photograph
that I showed to the witness which is number
6 of 12, and at the top of that photograph it
says line-up number 07-002689. Is that
sufficient, Your Honour --

THE COURT: Yes.

MS. SIMPSON: -- in terms of describing it?
Thank you.

THE REGISTRAR: 49, Your Honour.

THE COURT: Exhibit 49.

---EXHIBIT 49: Photograph from photo line-up -
produced and marked for

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identification.

MS. SIMPSON:

5 Q. You have spoken a fair bit about the
woman that had the jury to her arm. The other woman,
I think you said earlier you didn't get a very good
look at her and you can't describe her. She was
crouched down on the sidewalk most of the time, is
10 that right?

A. Yeah.

Q. So the second woman who wasn't as
involved in the fight, you can't tell us much about
her appearance? Her dress?

15 A. No.

Q. Her hair, anything?

A. Maybe dark coloured hair but that's all.

Q. You've described the clothing of the
people involved as best you can so far. Do you
20 remember anything about their footwear?

A. No.

Q. Do you remember any of the girls wearing
large, heavy boots?

A. No.

25 Q. Do you remember any of the men wearing

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large or heavy boots?

A. No.

Q. Do you remember the other end of the
body, any head gear or hats or anything like that?

5

A. No.

Q. Okay. Thank you, madam. Those are my
questions.

THE COURT: Re-examination?

10

MS. MIDDLEKAMP: Your Honour, I'm going to
ask if we can take a break a little bit early
so that I can have an opportunity to focus my
questions for re-examination.

15

THE COURT: You need that much time to focus
questions on a witness who took about 30
minutes to give her evidence? All tolled?

MS. MIDDLEKAMP: Yes. Yes. I just need an
opportunity to organize a few exhibits and
consult with my colleague.

20

THE COURT: All right. I'll give you that
indulgence. 15 minutes.

---RECESS

(3:12 p.m.)

25

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---UPON RESUMING

(3:30 p.m.)

5 MS. MIDDLEKAMP: Your Honour, thank you for
that indulgence. It had provided me with an
opportunity to consult with my colleague just
on a legal issue so I appreciate that. The
witness is now re-entering the stand.

10 THE COURT: All right.

---RE-EXAMINATION BY MS. MIDDLEKAMP:

MS. MIDDLEKAMP:

15 Q. Ms. Desilvia, I have just a couple of
questions for you in re-examination. When my friend
was asking you questions in cross-examination, she
referred you back to your police statement where you
described in the fight that you sort of had observed
that maybe the squeegee kids were fighting each
20 other?

A. Yes.

Q. You'd also, earlier in your testimony,
talked about your impression that the squeegee kids
were ganging up on the guy in the black shirt.

25 A. Yes.

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Q. Can you reconcile that for us?

A. Um, there did seem to be an imbalance in the fight in terms of the panhandlers, squeegee kids being as one and then the gentleman in the black jeans -- or sorry. The black shirt and blue jeans as being more on his own. The reason why I say it looked like they were punching each other at times is because the fight was in such close quarters and they were so close to each other at times it seemed that there were punches landing on people from the same group, perhaps maybe just they had thrown a punch and they had missed the gentleman in the black with the blue jeans, and that it had connected with someone else because they were so close together.

Q. And the second question I'd like to ask you in re-examination, my friend was asking you questions about the location of the streetcar.

A. Yes.

Q. And you had described a streetcar westbound and you'd indicated that it was stopped at the lights?

A. Yes.

Q. Can you just tell us in more detail where that is? Just to clarify?

A. The lights are at the intersection of

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Queen and Niagara. The streetcar tracks run central
down the street so any westbound traffic that's not
street cars that are just actual cars would be on
the northern side of the streetcar, so it would have
5 been cars closer to the curb and the streetcar in
the middle of the street. It was --

Q. Now, in terms of where the set of lights
is that any westbound traffic would be, maybe we
could refer you to an exhibit. I'm just going to
10 refer you back again to Exhibit 21 and I believe it
was JPG 062? 021. Thank you. Now just take a moment
to look at that. If westbound traffic is stopped at
the set of lights, can you just indicate, perhaps
using the pointer that's up there?

15 A. This here?

Q. Yeah. And it's the gold button that you
can press. That one. And just indicate where the
westbound traffic would be stopped in relation to
the lights?

20 A. The streetcar would be here and any
westbound traffic would be here.

Q. So just to describe for the record, you
have the streetcar stopped at the white painted line
in the eastern portion of the photograph, and it
25 would be from there back?

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A. Yes.

Q. Now, using that picture again, in terms of where you were standing, you indicated you're at the corner of Queen and Claremont.

5 A. That's correct.

Q. So where would you be?

A. That's out of frame.

Q. Okay. So you're a bit further back?

10 A. Yeah, I guess over there. Like, behind the picture there.

Q. And you -- in cross-examination my friend talked about blocking the streetcar -- or the streetcar having some block on your view. Were you able, with the streetcar parked, to still make the observations that you've told the Court about?

15 A. Yes, I was.

Q. As well in cross-examination my friend referred you to a photo line-up where you were shown a picture of -- pictures of females.

20 A. Yes.

Q. Were you shown a second set of photographs that contained females in it?

A. Yes.

25 Q. Because my friend had directed you to seeing four photo line-ups, correct?

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A. Yes.

Q. I'm going to ask just to direct you now to a photograph from the second photo line-up with females in it.

5

A. Yes.

Q. Do you recognize that picture?

A. Yes.

Q. I'm just going to refer you to the back. Indicates there, "may be involved", "looks familiar"?

10

A. Yes.

Q. And is that something that you said when you were shown the photo array?

A. Yes.

15

Q. And I want to confirm with you, in cross-examination my friend as well directed you to that photograph that's been labelled as an exhibit that you indicated "maybe was the girl that was cut"?

20

A. Yes.

Q. Was the girl that was cut the one that was involved in the fight?

A. Yes.

25

Q. Your Honour, I will ask if that photo line-up that I just showed the witness could be

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entered as the next exhibit, and that's photo
line-up 07002692.

THE COURT: And the photograph you referred
to is which number within that?

5 MS. MIDDLEKAMP: Photograph 3 of 12, but I'm
content to file the entire array as the
exhibit.

THE COURT: Exhibit 50.

THE REGISTRAR: 50, Your Honour.

10

---EXHIBIT 50: Photo line-up - produced and marked
for identification.

15

MS. MIDDLEKAMP: Thank you, Your Honour.
Those are my questions for the witness.

THE COURT: Thank you, ma'am. You may step
down.

20

THE WITNESS: Thank you.

THE COURT: Crown's next witness?

MS. MIDDLEKAMP: Yes, Your Honour. The next
witness for the Crown is Nelson De Carvalho.

THE REGISTRAR: Nelson De Carvalho, please.

25

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---NELSON DE CARVALHO: SWORN

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

MS. MIDDLEKAMP:

5 Q. Good afternoon, Mr. De Carvalho.

A. Good afternoon.

Q. I'm going to ask you if you can just keep your voice loud so that everybody in the courtroom can hear your testimony.

10 A. Okay.

Q. I want to ask you just a couple questions about yourself. I understand that you're currently working in construction?

A. Yes.

15 Q. And that you've taken a snow day today to come to court?

A. Yeah.

Q. How old are you?

A. I'm 32.

20 Q. And just to take you back to August of 2007, I understand that you were driving in your car on the early morning hours of August 9, 2007?

A. That's correct.

25 Q. And were you driving in the Queen West area?

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A. Yup.

Q. And which direction were you driving in?

A. I was driving east. Oh. Hold on.

Westbound.

5 Q. Okay. And westbound on Queen Street West?

A. Yes.

Q. And while you're driving, does something
sort of attract your attention?

A. Yes.

10 Q. And just if you can look here, this is
Exhibit 2 and it's on the screen in front of you and
it's also up there.

Q. Okay?

A. Okay.

15 Q. Does that -- can that help you assist us
in terms of where you were driving?

A. Sure.

Q. And where is it that you were, if you can
just point to Exhibit Number 2?

20 A. Okay. I was driving toward -- from here
going towards this way.

Q. Okay. And so you've just taken the marker
and drawn a line from Claremont across Queen West
near Bellwoods?

25 A. Yes. I was going through west.

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Q. Okay. So you're going through the area heading west?

A. Yes.

Q. And something attracts your attention?

5 A. Yup.

Q. And what was that?

A. Ah, basically words being exchanged across the street.

Q. And who was exchanging words?

10 A. The lady -- one of the ladies to a gentleman across the street.

Q. All right. And is there anyway that you can sort of further describe them just at this point?

15 A. What do you mean?

Q. Do you see them later on in the night?

A. I saw the lady by the ambulance and the gentleman by the -- by the cab, and by where he was last seen.

20 Q. Okay. And using Exhibit 2, just to orient yourself, does that help you with where the last time was that you saw that gentleman?

A. The gentleman was by the church right about here.

25 Q. All right. So you are pointing to 770

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Queen Street West, which is the St. Nicholas
Ukrainian Church?

A. That's right.

5 Q. And you also talked about the lady that
you had seen initially eventually being at the
ambulance. Where was the ambulance?

A. Just the same. In front.

Q. So the ambulance is parked on Queen West
near St. Nicholas Church?

10 A. Yeah.

Q. Okay. So you heard yelling between the
man who you saw at the church and the woman who
eventually comes down to the ambulance. Was there
anything else? Did you make any further
15 observations of the woman?

A. I noticed that she was crossing the
street.

Q. And crossing the street, which direction
was she going from, to?

20 A. She was going from the south side to the
north side on Queen.

Q. And what else did you notice about her,
if anything?

25 A. She was carrying a bottle with her, and
basically that was it. Like, there was some -- she

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was walking with two or three other gentlemen.

Q. Okay. And carrying a bottle. Did you get any better look at what it was --

A. No.

5 Q. -- that was in her hands? No?

A. No.

Q. And when you're making these observations, are you crossing through the intersection?

10 A. No, I was just driving straight and I would look back.

Q. Sorry. You were just -- I'll ask you to --

15 A. I was driving, I would look back to check and see what was going on.

Q. Okay. So you pass by them and then you look in your rear-view mirror to look back?

A. Yes.

Q. And what do you see?

20 A. I saw the lady going towards him, so I decided to go up further and turn around to come back.

25 Q. Okay. So at this point I'm just going to ask you if you can describe the lady that you're talking about in a little bit more detail. Is there

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anything that stands out in your mind in terms of
this lady that you can tell the Court about?

A. Um --

5 Q. At any point did she appear to be injured
when you see her at the ambulance?

A. At the ambulance, yes.

Q. And the male that you saw on the north
side with the lady walking towards him, do you see
if he's injured at any point?

10 A. No, I only noticed after by the taxi.

Q. Okay. You talked about seeing the
gentleman down at the St. Nicholas Ukrainian Church,
right?

15 A. Yes. Yes. This -- I noticed he was
stabbed on the -- like, on his heart.

Q. Okay.

A. And on his arm.

20 Q. Okay. So you pass by, you make the
observations of the woman crossing to the north side
of the street, you see this gentleman --

A. Yes.

25 Q. -- who's injured later at the church, you
see him on the north side. Do either of them appear
to be injured to you when you're making these first
observations?

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A. No, at first, no.

Q. So you keep driving. Are you continuing westbound?

5 A. I continued westbound up to -- to 7-11, I turned around and I came back and that's when there was already everything --

Q. Okay. If you can, I'm just going to ask you to really project your voice.

A. Okay.

10 Q. You're just trailing off a little bit when you're finishing your answers.

A. All right.

Q. So you decide to turn around when you get to the 7-11?

15 A. That's right.

Q. And you said you came back.

A. I came back and that's when they were already into a fight, so I jumped out of my car.

20 Q. Let's just slow you down a little bit. Why did you turn around?

A. Curiosity.

Q. So something in your mind that you saw when you were --

A. Yes.

25 Q. -- passing by them led you to turn your

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car back around?

A. To wanting to come back around.

Q. So you turn your car around at the 7-11
and now you're going in an easterly direction?

5 A. Yes.

Q. Do you park your car?

A. I just stopped it on the -- on the south
side of Queen and I got out.

10 Q. Did you -- did you stop your car in the
live lane of traffic?

A. Just in the lane, yeah.

Q. Was something in front of you when you
stopped?

A. No. Ah, nothing.

15 Q. Did you see if there was a streetcar in
the area?

A. I don't remember.

20 Q. If you can just help us a little bit,
what sort of made you feel that it was okay to leave
your car in the live lane of traffic?

A. Well, the thing is there was already a
group of people over there, so I just figured let's
go and try to get close to see what happened, right?

Q. Okay. So you stop your car, you get out?

25 A. Yes.

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Q. And then where do you go?

A. I went towards the group of people and that's when I noticed the gentleman was bleeding, and the young -- the lady was saying that, Oh, how could you do this to me, how could you stab me.

5

Q. Okay. I just want to take you back. When you first get out of your car, what is the first observation that you make. You talked about people fighting?

10

A. That the gentleman was getting hit from two -- two or three people.

Q. Approximately how many people were involved in the fight?

15

A. There was -- I seen two gentlemen and the girl there.

Q. And did you describe the people you saw fighting in any particular way?

20

A. One of them -- one gentleman was wearing the light green, like, army colour pants with pockets.

Q. All right. Let's just -- we'll break it down a little bit, okay? So you're describing one gentleman who had the army pants on?

A. Yes.

25

Q. Okay. What colour was his skin?

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A. White.

Q. And did you see him again after the fight?

A. By the ambulance.

5 Q. So he stayed around?

A. Yeah.

Q. And I'm just going to ask you about the male that you saw later on at the church. Do you recall anything about him?

10 A. Not really. Just that he was about 33 or so.

Q. What colour was his skin?

A. White.

15 Q. Was he involved in this fight that you're telling us about?

A. Yes.

Q. And what was his -- what was happening to him or what was his role?

20 A. He -- like I said, I saw him getting beaten to the face by two gentlemen.

Q. You described a girl?

A. Yes.

Q. Was she involved in the fight?

25 A. Well, she was there, right? And, like, she was saying, How could you do this to me. I'm a

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girl.

Q. And do you know what the -- what -- do you recall specifically what her words were?

A. I don't remember now.

5 Q. Just if I could ask the Court's brief indulgence. I'm going to move on but I at some point would like to refer the witness to his statement. He indicated he doesn't remember the words that were used but we're going to use his video, so I'm going to ask Ms. Fineberg to cue it up for us and then I'll move on and come back to it.

10 When you described the girl that was involved in the fight, did you say, "The girl [over] there"? When you were describing that there was a girl involved in the fight, did you say, "The girl [over] there"?

15 A. Over there in the courtroom? Is that what you're referring?

Q. Is that what you said?

20 A. Yes.

Q. Okay. And what do you mean by that? Can you just tell us what you mean?

A. Well, I know who she is. Like, I can see her in the courtroom.

25 Q. And --

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A. There.

Q. Just to be clear, can you describe where she is in the courtroom for us?

A. On my right.

5 Q. Okay. And what is she wearing?

A. Pink scarf, brown --

Q. Okay. Your Honour, just for the record, indicating Ms. Kish. Okay. So you're indicating this is the girl that you saw in the fight.

10 A. At the fight, yeah.

Q. Sorry, Your Honour. I just put something down -- I've got it. Thank you. The group of people that's involved in the fight, do you describe them as being any particular genre or --

15 A. To me they appeared as like squeegee kids.

Q. And did everyone in the fight appear to you to be squeegee kids or was there somebody who wasn't?

20 A. The gentleman didn't appear to be.

Q. When you're talking about "the gentleman", is that the gentleman that you saw at the church?

A. Yes.

25 Q. And in terms of describing the ones who

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were involved with the gentleman who ends up at the church, did you get the impression that they were together?

A. Yes.

5

Q. And when you were watching the fight, what was your impression regarding this man and the squeegee kids?

A. I don't...

10

Q. Sorry. I'll just move on on that. We'll get back to it. In terms of exactly what you saw, can you tell us what -- what people were doing?

A. What people were doing?

Q. In the fight.

15

A. In the fight? Like I said, the gentleman was getting hit to the face, and the girl was saying, How could you do this to me? How could you hit me? I'm a girl.

Q. And how did the fight end, if at all?

Did it end?

20

A. Once he got himself into, like, in front of a taxi, he was trying to get into the taxi, the taxi wouldn't let him in, and he jumped onto the next taxi being dragged down to the church.

Q. And did you see him -- you talked about him getting in front of another taxi?

25

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A. Yes.

Q. Or in front of the first taxi.

A. The first taxi.

5 Q. And if you can just break it down in
detail. What do you see him doing with that taxi?

A. He was trying to get him to stop. He hit
the windshield a few times and he was showing him
the knife. He had a knife with him.

10 Q. All right. You said that he had a knife
with him.

A. Yes.

Q. When is the first time that you make
observations of a knife?

A. By the taxi.

15 Q. So this is when the gentleman has the
knife at the taxi?

A. Yes.

Q. Can you tell us how he was holding the
knife?

20 A. He just had it on his hand. He wasn't
really pointing it or anything.

Q. So he's at the taxi and he's trying to
stop that taxi?

A. Yes.

25 Q. And what did you think he was doing?

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A. Just trying to get away from the crowd.

Q. And so he's at the hood. Does he approach any other part of the taxi?

5 A. No, he didn't. He was trying to get to the doors but once he saw the other one he jumped on it, he kept on going, holding on to --

Q. Okay. So you have him at the front at the hood and then you also said he went and tried the door?

10 A. Well, he went for the door, the door was locked so that's when he tried to go --

Q. Okay.

A. -- from there.

15 Q. Do you remember which side of the cab it was that he tried the door on?

A. The passenger side.

Q. Okay. And then you see a second taxi, and how did he end up with that taxi? What did he do?

20 A. The taxi had the window open and he held by the side of the door and he got dragged down to where the church is.

Q. All right. Was his body inside the cab?

A. On the outside.

Q. And outside?

25 A. Outside.

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Q. Now, when you see him at the taxi, and you've talked about him getting dragged, what do you do at that point?

5 A. I followed the taxi to see where he was going.

Q. All right. And where did he go?

A. He stopped at the church. He --

Q. And is that 770 that you pointed out to us earlier?

10 A. 770. Yes.

Q. You've talked about him getting dragged on the cab?

A. That's right.

Q. And he gets down to the church?

15 A. He walked towards the church, he sat down, he left the knife there and he came to the sidewalk and that's where he -- paramedics showed up.

20 Q. Okay. When you're -- you said you followed behind in your car?

A. Yes.

Q. And do you at some point leave your vehicle?

A. Yes, I did.

25 Q. Where did you park or where did you leave

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your vehicle?

A. Just besides 7-11.

Q. So when you were following behind, you're driving in a westbound direction?

5 A. I was driving also, yes, westbound.

Q. Do you park your car on the north side or south side of Queen?

A. I just parked it into -- what's -- the parking lot there beside 7-11.

10 Q. So you pull into the 7-11 parking lot. Do you get out of your car?

A. Yes, I did.

Q. And where do you go?

15 A. I walk towards him but I didn't know where he had the knife so I didn't really approach until I saw the knife on the side, then I went closer.

20 Q. When you saw him, you said that he fell down on the sidewalk by the church. Was anyone with him when that happened?

A. Ah, a girl approached him to try to help him.

Q. Do you end up going up to that girl and saying anything to her?

25 A. I said, Be careful, at first, right?

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Because I didn't -- I thought he had the knife still with him. But once I noticed the knife then that's when I didn't say much.

5 Q. Can you describe the knife that you saw for us?

A. It was about three inches.

Q. Okay. And you've just made a motion with your fingers to demonstrate three inches?

A. Yeah, three inches.

10 Q. All right. And what about the handle of the knife?

A. And it was black.

Q. Did you see -- you've said you stayed on scene until police arrived?

15 A. Yes.

Q. Did you see whether they recovered the knife?

A. Yes, they did. I pointed it out.

20 Q. Do you remember around what time this incident happened?

A. Ah, not really. Not right now.

Q. Your Honour, I believe we have the video cued up, so what I propose to do at this time is just attempt to refresh the witness's memory.

25 I asked you if you could recall the

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specific words that the woman said.

A. Okay.

Q. And do you remember what you told the police at the time that you gave your statement, what the words were?

A. No.

Q. When you gave your statement to the police --

A. Okay.

Q. -- on August 9, 2007, were the events that you just witnessed fresh in your mind?

A. Yes.

Q. Would it help you to refer back to your statement to remember what the woman had said?

A. Okay.

THE COURT: Any issue, Ms. Simpson?

MS. SIMPSON: No. Thank you, Your Honour.

MS. MIDDLEKAMP: Sorry, Your Honour. Very brief indulgence. We're just going to cue up the video now. I have advised my friend of the reference using the transcript. And on the video, for the record, it's showing that it's 2:47:57.

Q. And do you recognize who's on the camera there?

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A. Me.

Q. Okay. So we're just going to start the
video at 2:47:57.

5

---VIDEO PLAYING

MS. MIDDLEKAMP:

10

Q. So we're going to stop the video at
2:48:29. Did you hear the audio on that? Did you
hear your words?

A. Yes.

15

Q. Does that assist you in refreshing your
memory with respect to the words the woman said at
the time?

A. Yes.

Q. Okay. And what did she say?

20

A. She said that, How could you stab me. How
could you stab me. I'm a girl.

Q. Okay. When you were watching this fight
that you talked about on the north side of the
street, did you see anyone stab anyone?

A. No, I didn't.

25

Q. Just a brief indulgence to check my

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notes.

THE COURT: Yes.

MS. MIDDLEKAMP:

5 Q. Another question I want to ask you, in terms of you making observations of this fight that you talked about when you got out of your car and you came back, for about how long did that go on before the guy got on the cab?

A. About five minutes, not even.

10 Q. Okay. You talked about staying down near the 7-11 and the man was on the sidewalk right in front of the church?

A. Yes.

15 Q. Did you see whether anyone who was involved in the fight came down to the church where the ambulance was?

A. The lady and one of the guys that she was with.

20 Q. When you're referring to the lady, is that the woman that was injured in the fight?

A. Yes.

Q. That was stabbed? And what are the other guys -- which of the males that you described were in the fight did you see down by --

25 A. The guy with the baggy pants. Green

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pants.

Q. The army green?

A. Yes.

Q. And what were they doing when you saw
5 them?

A. They were trying to get the lady into the
ambulance.

Q. And you'd also talked about seeing the
gentleman get dragged by the cab?

10 A. Yes.

Q. Was there anyone else who was involved in
this who you saw come on scene after?

A. No.

Q. No? Did you see the cab driver there?

15 A. The cab driver stayed there.

Q. And did you also make observations of a
gentleman on a bike?

A. Yes.

Q. I'm going to ask you, if you can, just
20 going back into your recollection, just to give us a
bit more detail. You talked about the guy that got
dragged by the cab so we'll call him the male
victim?

A. Yes.

25 Q. And do you see him go over by the church?

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A. Yes.

Q. And what does he do?

A. He was by the church, he left the knife
on the ledge and then he came back to where the
sidewalk was.

Q. I'm just going to show you a photograph,
and this is Exhibit 20. I'm showing you JPG 062.
It's just going to come up on that screen and your
screen as well. And does that help you describe
where the gentleman went?

A. He came towards I think it was -- I'm not
100 percent sure now but I think it was this set of
stairs.

Q. Okay. And so you've got the pointer on
the screen pointed towards the first set of stairs
that you see in the picture?

A. Yes.

Q. On the right-hand side?

A. Yes.

Q. And did you see him go anywhere else?

A. There was a little ledge on the side
where I guess it's probably this stairs here where
the knife was.

Q. Okay. Yes. Pointing to the first set of
stairs on the left-hand side. And after that you see

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him come towards the sidewalk?

A. And then he came towards the sidewalk and the ambulance showed up not too long after.

Q. Your Honour, those are my questions for the witness.

THE COURT: Thank you.

MS. MIDDLEKAMP: My friend will have some questions for you.

THE COURT: Cross-examination?

---CROSS-EXAMINATION BY MS. SIMPSON:

MS. SIMPSON:

Q. Good afternoon, Mr. De Carvalho.

A. Good afternoon.

Q. Thank you for waiting for us today.

A. No problem.

Q. So as you're driving west on Queen Street that night, what is it that very first drew your attention to there being a problem? An issue?

A. I heard yelling across the street.

Q. When you say "across the street", I understand you mean on the south side?

A. From the south side.

Q. And you heard yelling and screaming?

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A. I just heard yelling, and then the lady,
I seen her crossing towards him.

Q. And so she's moving from south to north?

A. Yes.

5 Q. Is she by herself or does she have other
people around her?

A. She was with three -- two or three other
people.

10 Q. Are they crossing at the light or are
they in the middle of the block?

A. In the middle more or less.

Q. Are they east or west of Niagara?

A. It would be east.

15 Q. Are they east or west of Claremont, which
is the next street.

A. They would be east of Claremont.

Q. East of Claremont also?

A. Yeah.

20 Q. So it's a fair distance back from Niagara
when you see them crossing the street, is that
right?

A. Yes.

Q. And what's the next street after
Claremont. Is that Manning?

25 A. Bellwoods.

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5 Q. I'm looking eastwards on the map. Or
heading in the eastern direction. I'm just going to
-- all right. I'm just going to point here on
Exhibit 1. We've got Queen Street running along
here, is that correct?

A. Correct.

Q. And then Niagara is that little street
running south?

A. Okay.

10 Q. Is that right?

A. Yes.

Q. And then Claremont is the next street
east?

A. Okay.

15 Q. And then Manning is the next street after
that, is that correct?

A. Yes.

20 Q. So when you said you thought the next one
was Belmont [sic], you're heading in the opposite
direction?

A. Oh. Oh.

Q. It's the next one next.

A. All right.

Q. Is that correct?

25 A. Yeah.

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Q. So when you saw the people crossing, you said it wasn't at the intersection. Was it further in this direction heading east from Niagara, or was it further west in the other direction from Niagara?

5 A. Right around here.

Q. So between Claremont and Manning.

A. Yes.

Q. And you've just pointed that out yourself.

10 A. Yeah.

Q. Okay. And you keep on driving towards the 7-11, is that correct?

A. Correct.

Q. And that 7-11 is across from the church.

15 A. Yeah.

Q. Then you turn around in the 7-11 parking lot, head back east again?

A. That's right.

20 Q. And you wanted to see if anything had happened or was going to happen, is that right?

A. That's right.

Q. So by that point, it's fair, all you'd seen is people crossing the street and some yelling.

A. That's right.

25 Q. Nothing had happened yet.

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A. No.

Q. Is that correct?

A. Correct.

5 Q. And then eventually when you get back in
your car, you follow that taxi west again back to
the church and the 7-11?

A. Correct.

10 Q. You follow the same route along Queen, so
it's actually two turns that you make. One in the
7-11 parking lot and another one off between
Claremont and Manning, is that right?

A. Yeah.

15 Q. So with the two turns, you'd agree with
me a fair period of time that you just can't see
what's going on because you're busy turning, yes?

A. Okay.

Q. And you've described some people
fighting, is that right?

A. Correct.

20 Q. And is that fight also in the area
between Claremont and Manning? Or is that further
along?

A. Around Claremont and Manning.

Q. The fight's around Manning?

25 A. Yeah, right where -- in between Claremont

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and Manning.

Q. And I understand you see some people fighting and also some people trying to break them apart, is that right?

5 A. That's right.

Q. So all of the people involved -- let me try and rephrase it. Not all of the people involved have the same goal, is that correct? Some people are trying to fight, some people are trying to stop the fight.

10

A. Yeah.

Q. Fair? And is it fair to say it is men you see fighting.

A. Correct.

15

Q. It's the male squeegee kids who are beating up on the person that gets taken away in the taxi. Or on the taxi, is that correct?

A. Correct.

20

Q. The woman had been yelling before, but when she crossed the south to north, it was the men she crossed with that got involved in the fight, is that correct?

A. Correct.

Q. Not her.

25

A. Not her.

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Q. And the taxi left with the fellow immediately afterwards with the man holding onto the side, is that right?

5 A. Yes. But he also had to go to the first taxi.

Q. You're right. I apologize. He went onto the front of the first taxi or tried to get into the first taxi?

A. Yes.

10 Q. That wasn't successful, he went to the second taxi?

A. Yes.

15 Q. I apologize. I wasn't trying to mislead you. I just actually left it out myself. I'm sorry. And the words that you recall from her most clearly are, How could you stab a girl. You stabbed me. How could you stab a girl. Is that right?

A. Yes.

20 Q. So she doesn't understand why this has happened to her. That's what she's expressing that you heard?

A. That's right.

25 Q. Then you get back in your car, you do the other turn, the second turn, you head back down towards the church. I'm just going to ask you a

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couple of questions about what you see there.

A. Okay.

Q. You see the gentleman first leave the taxi onto the sidewalk, is that correct?

5 A. Correct.

Q. Then he goes up onto the stairs of the church?

A. Yes.

Q. He sits on the steps at that point?

10 A. Yes.

Q. He goes into the corner where he leaves the knife, is that right?

A. Correct.

15 Q. And then he goes back out again to the sidewalk.

A. To the sidewalk.

Q. Now, at this point there are some other people around, but they're all helping him, is that correct?

20 A. Yes.

Q. So there's no danger to him at that point.

A. No.

Q. All you saw was people being helpful.

25 A. Yes.

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Q. There's no yelling when you see him at the stairs of the church, there's no aggression?

A. No.

5 Q. There's no problem down there at all. He just goes into the corner and puts the knife there and then comes back out again all on his own. You'd seen that knife in his hand earlier?

A. Yes, by the taxi.

10 Q. The first time you saw that knife was when he was trying to get onto the first taxi, is that right?

A. The first taxi.

Q. You didn't see where he produced it from.

A. No.

15 Q. How he got it. You didn't see anybody else with a knife, did you.

A. No.

Q. You didn't ever see it used in the fight.

A. Nothing.

20 Q. You didn't see any knife being used by anyone in the fight, is that correct?

A. Correct.

Q. I think I'm done. Just let me double-check, if I may.

25 Returning to the gentleman at the steps

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at the church, can you describe what kind of
gestures he's making when he's on the stairs? Is he
looking around at all? What is he doing?

A. He was just -- he had his head down.

5 Q. And where he put the knife, it wasn't
just on the sidewalk. He put it away in sort of the
corner, is that right?

A. Yeah.

10 Q. And do you remember him doing any looking
around? Or did he have his head down the whole
time?

15 A. He just looked down and then that was
where he put the knife down and went back to the
street. Which I didn't even -- I wasn't aware that
he was even cut, right?

Q. So when he looked down it was like he was
looking down at his feet? Looking down at the
stairs he was at?

A. Yeah.

20 Q. And then he tucked the knife away on one
of those stairs?

A. And came to the sidewalk.

Q. And he moved the knife off with his right
hand? Is that correct? Do you remember? Okay.

25 Thank you, sir. Those are my questions.

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THE COURT: Re-examination?

MS. MIDDLEKAMP: Your Honour, I don't have
any questions in re-examination.

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

MS. MIDDLEKAMP: Your Honour, unfortunately
actually that completes the witnesses that we
have here today but I note it's about 4:15.
We were just 15 minutes shy.

THE COURT: Yes. Fine. Thank you. Tomorrow
ten o'clock.

---COURT ADJOURNED

(4:15 p.m.)