

Superior Court of Justice

BETWEEN:

HER MAJESTY THE QUEEN

- and -

NICOLE YVONNE KISH

Accused

TRIAL PROCEEDINGS

EVIDENCE AT TRIAL

TUESDAY, JANUARY 25, 2011

[Signature]

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

NICOLE YVONNE KISH

Accused

--- Before THE HONOURABLE MR. JUSTICE NORDHEIMER, without
a jury, at the Metropolitan Toronto Court House;
commencing on Tuesday, January 25, 2011.

EVIDENCE AT TRIAL

A P P E A R A N C E S:

W. THOMPSON, Esq. &
E. MIDDELKAMP, Ms.

for the Crown

J. SCARFE, Esq. &
V. SIMPSON, Ms.

for the Accused

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Giroux, cr-ex.
(Scarfe)

UPON RESUMING ON TUESDAY, JANUARY 25, 2011

R v KISH

MS. MIDDELKAMP: Good morning, Your Honour.

THE COURT: Good morning. We seem to be
missing Mr. Thompson.

MS. MIDDELKAMP: We are, and I will just step
out in the hallway. We were all here earlier, I am not sure
where he's gone, but Detective Sergeant Giroux is here ready
to continue with cross.

THE COURT: All right.

MR. THOMPSON: Sorry, Your Honour, I stepped
out, I thought you had another matter to deal with, in any
event I apologize.

THE COURT: That's all right. Sufficiently
shortened.

MR. SCARFE: Oh, your sentencing.

THE COURT: Yes.

MR. SCARFE: Yes. Good morning, Your Honour.

THE COURT: Good morning.

MR. SCARFE: Before we start, I just wanted
to address the court on something that I did yesterday, and I
may have left the wrong impression. Yesterday, I asked
Detective Sergeant Giroux about the two videos that he

Giroux, cr-ex.
(Scarfe)

5 prepared in the last month, with the 13 placards, and I
realized in mid cross-examination that my friend had not
actually played either of the versions. He's since explained
to me why he didn't do that, and I totally accept that. So I
didn't want to cast aspersions or put the Crown in a bad
10 light on this particular point. If it becomes necessary,
we'll do it at the end.

THE COURT: Yes.

15 CONTINUED CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE: Q. Detective Sergeant Giroux,
yesterday we spent the majority of the afternoon on the issue
of the lost evidence, rather than evidence that sort of goes
20 most appropriately to the trial proper, and I'm almost
finished with that, just three or four more questions, and
then we'll move from that area to the, the issues that we are
going to see in the, over the course of the next few weeks.

25 A. Yes, sir.

Q. All right. Yesterday we talked about the
disclosure logs --

A. Yes.

30 Q. -- that you would need to check your
disclosure logs to see when, in fact, the pasta video was
disclosed?

Giroux, cr-ex.
(Scarfe)

A. Yes, and I have the logs here.

5 Q. Can you tell us when, have you got a date?

A. March the 10th of 2008. It's the, as titled the fourth round of disclosure.

10 Q. Fourth round. And there were some other items that came at the same time? Or is that, did that become just the fourth round?

15 A. The other, yes, there were other items actually listed here as well. Do you want me to read them out?

Q. Just the first couple.

20 A. There, the disclosure for that particular day was DVD records of the following surveillance cameras, 711 store, back door, 711 store interior door, 711 store side door, 711 store interior door number 2, 711 store cashier area, 711 store, gas pump area, Pasta Perfection, 748 Queen, clothing store, 744 Queen, clothing worn by accused Nicole Kish, 911 recording.

25 Q. Thank you. That's great. And I think I covered this off, but I just wanted to be absolutely clear. When you received the box from 14, or went and picked the box up from 14 Division and brought it back to your office, the day that you sort of inherited this investigation, are you a
30 hundred percent sure that the VHS from Anne Sportun Jewellery

Giroux, cr-ex.
(Scarfe)

Store was not in there?

5 A. Yes, sir.

Q. Now just turn to page 522 of your notes,
and tell us what the date was when Ms. Middelkamp first
alerted you to the presence of this VHS tape that you've
already told us was in Scott's notes and Umbrello's notes.
10 As being seized.

A. December the 9th of 2010, a Thursday.

Q. Okay.

A. The e-mail that I sent to the officer is
15 the same date. The one I read yesterday.

Q. Right. And do you have a reference to a
date when it was disclosed to defence? Or?

A. The e-mail?

Q. No, the fact of this video?

A. I don't sir, no.

Q. Okay. But it was after January 7th when
you were present in in the Crown's office for a conversation
on a speaker phone where I outlined my visit to the, to the
25 jewellery store?

A. I was present for that, yes.

Q. Right.

A. And I, I indicated to you as well with
30 regards to the suggestion that I was going to do some test
recordings --

Giroux, cr-ex.
(Scarfe)

Q. Mm-hmm?

A. -- at those two locations.

Q. Now, between December 9th and the first or second week of January, when I went to the store and then reported back on my findings, did you, did you make any attempts to contact the owner?

A. No, sir, I didn't.

Q. No? Ah, any attempts of any kind to see if, perhaps, there was still a record at the store of this recording?

A. My impression from, ah, the e-mails that I received back and forth from the officers is pretty much what you had suggested yesterday, is that the physical item is popped out of the machine and turned over to the police. And I have had that experience before in a number of other investigations, and that forms the original.

Q. Mm-hmm.

A. And it's turned over, and oftentimes we often even give one of our VHS recordings to replace the tape that we're taking so that the store owner is not out a tape so that he can put it back in his machine and continue recording. So that was my understanding is that, ah, that was it, and it was turned over to the police, and, ah, I was in the process at that point of looking for it.

Q. So just to finish off this area then, and

Giroux, cr-ex.
(Scarfe)

5 just for the record, did you, in fact, view this evidence and then bury it intentionally?

A. No, sir.

10 Q. Do you understand, given that there are two separately located pieces of video recording, how one might, might look to an outside observer as though the police may have destroyed this intentionally? You understand why this seems so baffling?

15 A. I am not sure I understand your question. That certainly didn't happen, but I am not sure that I understand your question.

20 Q. Well, that's fair enough. The answer is implicit in that. Now, we are going to move on, if I may, Your Honour, to issues not so much related to the lost evidence, but which I anticipate will come up?

25 A. Your Honour, can I just make, make a comment. I am just not sure Mr. Scarfe, I want to be clear before we leave this area, that I'm not sure if you are suggesting that both of these, these recordings, ah, the one that's the VHS recording and the Pasta Perfection were, like, were deliberately not captured or deliberately destroyed by the police. I'm not sure if that's what you are asking me.

30 Q. That was what I was asking, for the record, yes.

A. And I adamantly deny that that's true.

Giroux, cr-ex.
(Scarfe)

Q. Okay. Thank you.

A. Thank you, sir.

Q. Sir, given all that's happened of this pasta video, I take it now you have watched it yourself, the recording of it. We do have that, we played, Mr. Thompson played what you were testifying yesterday, you have watched that several times now?

A. Absolutely.

Q. And you have done so in an effort, as best you can, to identify the various individuals in?

A. Correct.

Q. Yesterday, my friend played it once and then he went back and went through in a series of snippets and asked you to identify certain people.

A. Yes.

Q. And in doing so, you were able to identify, I believe, eight people and, ah, I'll just list them, and at the end of the list, you tell me if I missed anybody. That we had the four originally accused, Ms. Kish, Ms. Watts, Mr. Wooley and Mr. Fresh. Correct?

A. Correct.

Q. And then the other four that you identified was a lady named Dina Raposo?

A. Correct.

Q. Who was the lady with the walking cast?

Giroux, cr-ex.
(Scarfe)

A. Yes.

5 Q. The blonde hair, smoking. You had, ah, you were also able to identify obviously Mr. Ross Hammond at the very beginning of the video?

A. Yes.

10 Q. And, ah, then a little later on, a witness we anticipate to hear from, William Vasilios Patsiopoulos, and I'll help my Madam Reporter at the break, just to keep things flowing. You were able to identify him from the video?

15 A. Yes.

Q. And then finally, there was this person, who, ah, the defence has suggested is Harold Amero.

A. Correct.

20 Q. And perhaps for, he is the 8th person that you were able to kind of identify as that's the person the defence say is Hal. Right?

25 A. Yes. And in addition to that, as a result of, ah, realizing that I haven't, I hadn't shown Detective Chilvers the recording at the Pasta Perfection or the City TV during the time that I asked Detective Chilvers to look for Hal at the time.

30 Q. Mm-hmm?

A. I showed it to him last night, and some of his staff felt that they may have been able to identify

Giroux, cr-ex.
(Scarfe)

5 the individual, who is the baldheaded man on the bicycle, as
a person by the name of Gary Flynn. And my partner Detective
Trimble (phon) is looking for Mr. Flynn this morning.

Q. Lovely. But I was asking you about Mr.
Amero?

10 A. Yes. And as a result of that, I'm saying
the possibility exists that there may be one more person that
we may be able to identify.

Q. Just a moment.

15 A. That's unclear at this point. He is
looking for him now.

MR. SCARFE: Sorry, Your Honour.

THE COURT: That's all right.

20 MR. SCARFE: Q. So with respect to the
eight people we've just listed --

A. Yes.

Q. -- as well as the baldheaded individual,
which may become the 9th person on the video we can identify?

25 A. Not sure at point.

Q. We're not sure at this point, but you'll,
as soon as you find out, you'll disclose it, I am sure?

A. Absolutely.

30 Q. And just before, well, I am going to come
back to the person who, I suppose, some dispute about whether
this person is Hal or not. But for the purpose of this

Giroux, cr-ex.
(Scarfe)

5 discussion, I am going to label him Hal question mark, and
the question mark denotes the fact that, well, the defence
may think it, that that's Hal, it's not necessarily agreed on
by the Crown or yourself?

A. Correct.

10 Q. Right. And just so I can be clear on
your comment from yesterday, when you identified this person
on the video, I wasn't clear on whether you had come to the
conclusion that that's absolutely not Mr. Amero, or whether
you are not sure?

15 A. Well, the difficulty is you don't get an
absolute clear impression of his face from the video. It's a
bit grainy, and having interviewed Mr. Amero, and having had
him attend here in court, his, his physical appearance is
20 substantially different than the individual in the videotape.
Based on his hair, based on the tattoos --

Q. Mm-hmm?

A. -- that he now has.

25 Q. Right. But the items that appear to be
different are things that could have changed in the last
three and a half years?

A. Absolutely.

30 Q. Right? It's not like there is a, a scar
or something permanent. The things that you are focusing on
are things that can change?

Giroux, cr-ex.
(Scarfe)

5 A. The only thing that I would say is, is
the tattoos, which are fairly pervasive on his arms, and you
can see the arms of the individual that's in the videotape.
And Mr. Amero has substantial number of tattoos all over his
body, excluding his arms and his chest.

10 Q. You eventually had him in and interviewed
him?

15 A. Yes. Took me, uhmm, several months to
find him, Detective Chilvers assisted me. Mr. Amero played
in a band called the Hobo Banditos, and I was able to find a
performance that we were engaged in in the Kensington Market
area, and I asked Detective Chilvers, from the Major Crime
Unit at 14 to attend for the sole purpose of identifying Mr.
Harold Amero, and as it turns out, his brother who goes by
20 the name of Twitch.

25 Q. Okay. And I want to be clear, and give
my friend a chance to object if, but I am not in any way
trying to cast any kind of propensity dispersions on Mr.
Amero, but he has had a series of police contacts over the
years?

30 A. He has. I don't believe that he has a
criminal record. He's had contact with the police, I would
agree with that.

Q. And pursuant to those contacts from time
to time, photos have been taken over the years of Mr. Amero.

Giroux, cr-ex.
(Scarfe)

5 Some of them were street contact, but other times he was
investigator or even perhaps charged and charges were
withdrawn subsequently, but --

A. Yes.

10 Q. And I say that only to illustrate the
fact that over the past, they, on the police database, there
is, there are other photographs of Mr. Amero from say two
years ago, four years ago, six years ago, over the last ten
years?

15 A. I can't say with certainty how many times
our RICI system actually photograph Mr. Amero in custody.

Q. Mm-hmm.

20 A. I can check, but I'm not sure if those
dates you are saying, or we have that many pictures of him in
other words, I am not sure.

25 Q. Mm-hmm. You have never actually gone and
sort of done a search for all photos of Mr. Amero within the
records of various police forces across Canada?

A. I, I have.

Q. Oh, you have?

A. With the Toronto Police Service, I have.

Q. Mm-hmm?

30 A. Uhmm, and as I indicated, I don't believe
he has a criminal record. I know he's had some problems with
the police, and I don't believe that's led to a criminal

Giroux, cr-ex.
(Scarfe)

conviction. But we still take their photograph, and that
5 photograph is still part of our RIC I database.

Q. Right?

A. So I've looked at those photographs.

Q. So you've, you've looked at all available
10 photographs, and the Toronto Police Service database that
would give us an idea of what he looked like a few years ago.
So to speak?

A. I looked at all the photographs that we
15 have on our database of Mr. Amero.

Q. Mm-hmm. And would --

A. And I may have, I may have printed those
because I traditionally print them, and then, ah, put them in
my, my memo book notes as I did with Mr. Flynn's photograph
20 that I have here in front of me.

Q. Okay. And just so we're clear, in your
search, if, if there were photographs on record say Calgary
Police Department, Vancouver Police Department, do those tend
25 to be shared and, and come up when you search the Toronto
Police database or would you have had to go and do a separate
search?

A. No, I would have to make an application
to the individual Police Services throughout the country for
30 photographs of him.

Q. Mm-hmm?

Giroux, cr-ex.
(Scarfe)

5 A. And I search the Toronto Police database
for him.

Q. Did you search the RCMP database?

A. No, I didn't.

10 Q. Just so we're clear, you eventually
located this individual, had him in for an interview, and in
essence, he denied being on Queen Street at the material
time?

A. Yes, sir, that's correct.

15 Q. Right?

A. I also photographed, ah, his, person.

Q. Mm-hmm?

20 A. And I photographed him with his shirt
off, so naked from the waist up.

25 Q. Just for the record, not suggesting that
you should have or shouldn't have, but did you at any point
in that interview, or at any other time, show him the sort of
disputed clip in the pasta video of what is being alleged is,
by some, as, that's Mr. Amero?

A. No, sir.

30 Q. Okay. All right. What I'd like to do
over the next few minutes is I'd like to go through the pasta
video again, and essentially what I'd like to do is make a
list of the other individuals who appear on the pasta video,
beyond the eight people we've already identified yesterday.

Giroux, cr-ex.
(Scarfe)

5 And what I guess I propose to do is make a list of unknown
males, starting with unknown male number 1, the same for
females, and I think we may find that there is a person whose
sex can't be determined, so it will be unknown person
number 1. And hopefully by the end of it we can have a
10 little list and be able to identify how many other people
appear on the video, and maybe add a little nickname or
descriptor to it?

A. Okay.

15 Q. Okay? And we know, as well, that you
interviewed a street person named Cynthia Thomas at one
point?

A. Yes, sir.

20 Q. And we won't get into all the reasons
why, but in essence, one of the things that you learn from
Ms. Thomas is that she frequents the Queen West area?

A. That's right.

25 Q. And as a result, you showed her the pasta
video, or at least this 5 or 6-minute clip that we dealt with
yesterday?

A. Yes.

30 Q. And asked her if she knew any of these
people?

A. That's right.

Q. She didn't have a lot of information, but

Giroux, cr-ex.
(Scarfe)

5 you were able to glean from her -- and I'm referring to
page 150 of your notes -- a few names. So, as we go through
the video, I am not going to say that that's definitely the
person's name, but just in being able to distinguish the
various unidentified males, you may put that in brackets,
10 just to help us. Is that okay with you?

A. Yes, sir.

Q. All right. So, I am going to ask that
15 we, Ms. Fineberg for her ongoing assistance, thank you, to
first play 28:07 until Mr. Hammond leaves the scene, and I'll
ask you a, and then we'll stop and ask you a couple questions
about that.

(Clip played)

You saw that?

20 A. Yes, sir.

Q. And based on all of the analysis that you
25 have done with the tape, and I asked you about this at the
preliminary hearing, ah, are you satisfied that that's Mr.
Hammond?

A. Well, I'm satisfied from the testimony
of, because I did not know Mr. Hammond in life.

Q. Right?

30 A. And the photographs that I have of Mr.
Hammond, ah, he, he does not appear to be in, you know, in
this condition.

Giroux, cr-ex.
(Scarfe)

Q. Mm-hmm?

5 A. Obviously. And as a result of the testimony of a friend of his, Mr. Dranichak, he identified his friend, who he described as his best friend --

Q. Mm-hmm.

10 A. -- Mr. Hammond, at this particular time in that video.

Q. And he seemed pretty certain about his ID of that?

15 A. He did. And you know, it's very consistent with Mr. Hammond's build, it's consistent with the large, ah, wrist watch he had with the very thick leather band that he had on. So, my sense is that's Mr. Hammond on the north sidewalk.

20 Q. Not having known him in life, and having really only got that identification from one person, did you ever ask anybody else who knew him in life what they thought of that clip?

25 A. Ah, no. I had a photograph of Mr. Hammond --

Q. Mm-hmm?

30 A. -- that I used to distribute in various rounds of posters in the community.

Q. Mm-hmm.

A. And his photograph appeared to be

Giroux, cr-ex.
(Scarfe)

consistent with this person that's in the video.

5 Q. From time to time, during the preliminary hearing, members of Mr. Hammond's family were present in court, and they would go back and forth to the victim witness room, and I believe they were present in court at one point when, at the point where Mr. Dranichak identified that individual as Mr. Hammond. Were you able to glean any further information or opinions from members of his family that had known him all his life as to whether they thought there was Mr. Hammond?

10 A. I, I don't recall having that specific, ah, conversation with them. In other words, was that, did you see your son in the videotape?

15 Q. That kind of thing?

20 A. Yup, no.

Q. No. Okay. So --

A. And certainly, just to piggyback on that, they certainly never said to me that they saw the individual and they said, that's not my son.

25 Q. Right?

A. They never said that as well.

Q. Never said that?

A. Correct.

30 Q. But you never, basically, sat them down and said, give me your opinion. What do you think?

Giroux, cr-ex.
(Scarfe)

A. I didn't.

Q. No, okay. Fair enough.

A. And vice versa is that they never, they said, I don't know why you think that's my son, that's not my son.

Q. Okay. Fair enough. The next clip that I wanted to show us, and I call this the three people clip. Uhhh, starts at 28:56, and goes to 29:25, and I know that windows media player on the slider is very difficult to operate and get it to exactly the right second, so we're going to start about three seconds early here. And if my friend, to 29:25. And stop it there. Thank you.

(Clip played)

A. That's the clip that Detective Chilvers and his staff saw last evening.

Q. The individual with the white pattern t-shirt and the sort of --

A. You --

Q. Almost bald?

A. Yes. Ms. Raposo.

Q. Okay. Just another ten seconds or so.

(Clip played).

All right. Thank you, Ms. Fineberg. During that clip, I am going to suggest that we saw three separate people. The first one was appeared to be a black male, with

Giroux, cr-ex.
(Scarfe)

5 a dark coloured top with stripes running down the sleeves,
white stripes running down the sleeves. So, just for the
purposes of this exercise, I am going to label him unknown
male number 1, and then just in brackets put black stripes.

A. Okay.

10 Q. So we'll know what we are talking about.
Okay? Then the individual that you spoke of when we were
playing, Detective Chilvers is looking into, we'll call him
unknown male number 2. And he's on a bike. Right.

A. Yes. Correct.

15 Q. Okay. So what we'll do is we'll call him
unknown male number 2. And in brackets we'll put bike. And
this is the individual with the blue jeans, the white
t-shirt, with a sort of design on it. Right?

20 A. Yes.

25 Q. Just for the record, what, what we have
seen in the video is that he, unknown male number 2, with the
bike, and unknown male number 1, with the black stripes,
appear to be looking, during that clip, with some interest in
the direction of the street or the roadway or the
intersection, and then after riding up slow he sort of turns
around and goes the other way, the fellow on the bike?

A. Yes.

30 Q. And in the midst of that, a girl smoking
comes up with a walking cast, and you've already identified

Giroux, cr-ex.
(Scarfe)

her as Dina Raposo?

5 A. Correct.

Q. All right. And then the next, we'll skip to shadows on the street and go to 29:51. Somewhere close to that.

10 MR. SCARFE: Thank you, Ms. Fineberg. So the clip is going to start in about two seconds.

(Clip played)

15 MR. SCARFE: Q. Just in that sort a ten seconds or so we saw three other individuals. Correct?

A. Yes.

Q. So the first one came in and walking in a westerly direction and appeared to be bald. Is that fair enough? We can go back and play it again.

20 A. Yes, I agree. Yeah.

Q. Okay. So we'll call him unknown male number 3, bracket, bald.

A. Yes.

25 Q. Not casting any dispersion on anyone's hairline. Right after that we see another male walking the same direction with a hat?

A. Correct.

30 Q. So we can call him unknown male number 4 and bracket, put a hat. Okay?

A. Yes.

Giroux, cr-ex.
(Scarfe)

Q. And right after that, we see a female.

5 Correct?

A. Yes.

Q. And that's the first female that we can't
10 identify. Correct?

A. Correct.

Q. And was there anything descriptive about
15 her that you noticed? She seem to have short dark hair, and
seemed to be a little heavier set?

A. Ah, I didn't, I didn't really get the
15 impression that she was heavy set.

Q. Okay.

A. She might have been with, uhmm, ah, the
20 man with the baseball cap because she was walking just to his
right and slightly behind.

Q. Sort of appeared that she was with
25 unknown male number 4?

A. She could have been. Or --

Q. All right. So --

A. Could have been walking on the sidewalk
30 at the same time.

Q. We'll call her unknown female number 1.
And in brackets, we'll say, with unknown male number 4, with
the hat?

A. Possibly.

Giroux, cr-ex.
(Scarfe)

5 Q. As her descriptor. Then if we could go to, where are we, 30:22. We have another 23 seconds or so. Perfect. All right. So, that appears to me to be the same female that we looked at before.

A. Yes.

10 Q. Okay. When we said with the guy with the hat, she wasn't really with the guy with the hat there?

A. That's right.

15 Q. But, ah, I think we know who we are talking about. And just for the record, she appears to come back into the screen, walking in an easterly direction, gets to about the centre of the screen and then turns around and goes west.

A. Correct.

20 Q. And it's hard to tell why she does that. But, that's what she does. Right?

A. Yes.

25 Q. Then a lot of this was covered yesterday, so we could actually go and skip ahead to 30:47 and 30:45.

(Clip played)

30 See the shadows on the left, and we watched this yesterday. Eventually, a group of people come into the screen, including Mr. Fresh and Ms. Watts. Okay. Let's stop it. Pause it right there, if we could. Now, we are just at 30:49. I ask you a few questions about that little clip we

Giroux, cr-ex.
(Scarfe)

5 just saw. Uhmm, Ms. Watts at some point turns around and looks into the face of Mr. Fresh. And appears to be looking at something intently on his face. You agree with that?

A. It hasn't happened yet, but I believe it, it comes up in the next few seconds. Is that what you mean?

10 Q. Yeah, I thought we just, we just went over it. Put the clip back ten seconds. Do it again?

A. I recall from yesterday, that that's what happens.

15 Q. At some point, Ms. Watts is, appears to be looking at something particular on the face of Mr. Fresh.

A. Mr. Fresh was just in the last clip wiping his face by taking his shirt and putting it up on to his face.

20 Q. It's just about to come up here. Okay. Pause it right there?

A. Yes. They are looking at each other.

25 Q. Right. So just before that, both sort of focused on events out on the Queen Street to the south, and then she turns around and seems to be scrutinizing something on his face.

A. Yes.

30 Q. But we don't know what. Uhmm --

A. Well, I know Mr. Fresh has some injuries, and it may be those.

Giroux, cr-ex.
(Scarfe)

Q. It would seem logical.

A. It would.

Q. Now, what we have there in the top right of the screen is an individual with, appears to be wearing shoes, dark coloured pants, a t-shirt with a white sort of dress shirt over it?

A. Yes.

Q. Unbuttoned?

A. Correct.

Q. We're going to come back to him. But, you hadn't been able to identify that individual as of?

A. No, I haven't. And again I asked the officers to, I pointed at him, I pointed at the ones last night that I knew. I didn't want the officer's attention to be on those, so I pointed and identified the ones that I knew, and I pointed to this individual because I believe I can see him in the City TV tape as well. Further west on Queen down towards Gore Vale, standing.

Q. City TV tape you have also watched trying to glean as much information as you can?

A. Yes, and I pointed the same individual out. Obviously the image in the City TV tape it clearer than this image, and he appears to be down by the ambulance.

Q. All right?

A. He appears to be wearing a shirt down to

Giroux, cr-ex.
(Scarfe)

his waist.

5 Q. We get another look at him in a little bit. Let's just call him unknown male number 5. Maybe when we see his face in a few seconds, we can add a descriptor?

A. Okay.

10 Q. Okay? If we could go all the way to 30:50 at this point. Although we are already there. So ... the shirtless man you identified yesterday?

A. As Mr. Wooley.

15 Q. Okay. Now, if we just stop it right there. 30:5. The individual we just labelled unknown male number 5 has come into the screen a little bit, and we can see a little bit more of his face?

A. Yes.

20 Q. And obviously you looked at that before sort of also scrutinizing the City TV video in trying to determine if that's the same person, and you are inclined to think it is?

A. It could very well be.

25 Q. It could very well be. Now, not to get into any impermissible hearsay, but you read the summaries of numerous civilian witnesses who have talked about various things that they saw, uhmm, and described in words?

A. Yes.

30 Q. And on more than one occasion there it's

Giroux, cr-ex.
(Scarfe)

5 been referenced to a middle eastern guy. Remember that
coming up in the investigation?

A. Yes.

10 Q. All right. And from what I can tell, and
you disagree with me if not, but it seems to me that that
fellow seems to match the middle eastern guy, as described by
some of the witnesses.

15 A. He could be. He, in the City TV tape, he
could be black, light skin, black or Middle Eastern or he
could be East Indian.

20 Q. East Indian. That's right. And we also
heard somebody describe someone as East Indian?

A. Yes, Indian, Pakistani.

25 Q. Okay. So we are going to add a
descriptor to unknown male number 5. We'll call it, just as
you said, Indian, Pakistani guy. Okay? Now, just I won't
take out the tape from everything, but in the City TV video
clip where you see him later, it's down by the church,
obviously?

A. Yes.

30 Q. And he appears to make an attempt to
speak with one of the officers?

A. Looks like he's speaking to one of the
officers, or --

Q. Right?

Giroux, cr-ex.
(Scarfe)

A. -- or saying something.

5 Q. And, ah, the audio is a little choppy in the computer version that we watched yesterday, but I take it you'd agree with that?

A. Yes.

10 Q. There was some disconnect between the audio and the video?

A. Actually, I find that the moving of the individual's mouths and the words, when I received the tape from City TV, actually never seemed to sort of sync up. You could hear words but their mouths didn't seem to correspond.

15 Q. Certainly what we viewed yesterday was an inferior quality to what you played on your computer several times. You noticed how the --

20 A. Yes.

Q. -- there was a bit of hesitation?

A. Correct.

25 Q. Okay. And in the City TV video that you studied over time, do you recall if the officer asked the gentleman his name, and him respond with something like Richard, or --

A. I don't recall.

30 Q. You don't recall that?

A. No.

Q. Okay. That's fine. I also showed Ms.

Giroux, cr-ex.
(Scarfe)

Thomas this and asked her to put a name?

5 A. Yes.

Q. And she came up with a Rick? Was it?

A. Well, she, she said yeah, she pointed
out a male, Rick or Richard, crack dealer wearing a white
jacket.

10 Q. Okay. So, and, and that's the person she
pointed out?

A. Yes.

15 Q. Right. So, why don't we call him Indian
Pakistani Rick?

A. Yes.

Q. Okay.

20 MR. THOMPSON: Your Honour, I am just going
to rise at this point in time, and perhaps I can just have a
word with my friend before I make my point of objection.

THE COURT: Yes.

25 MR. SCARFE: My friend raises a valid point.
Obviously some of these descriptors and labels are not going
to dovetail perfectly with what each and every witness says
as we go throughout trial. And so for the purpose of this
exercise is to really just create a graph kind of visual aid
30 by which we can compare it when making a final assessment of
all the evidence. So, by no means trying to label somebody
without knowing that, you know, perhaps another witness will

Giroux, cr-ex.
(Scarfe)

say no, it wasn't that guy, it's this guy.

5 MR. THOMPSON: So just so it's clear, Your Honour, I am content that this hearsay evidence goes in for the truth of its contents. However, there are other witnesses that will identify people in other manners. He's heard certain things from certain witnesses, he's also heard 10 other things from other witnesses. And I appreciate where my friend is going and it's a difficult thing to get around, but I just want to formally put my position on the record.

15 THE COURT: Thank you.

MR. SCARFE: Thank you, Your Honour.

MR. SCARFE: Q. Okay. We spent enough time on unknown male number 5, who appears to be of Indian or Pakistani descent, and who might be known by the name Rick or Richard. For the purposes of this exercise, we've got him. We see in the top right corner of the screen there is another fellow.

25 A. I see a pair of legs in the top right-hand corner.

30 Q. All right. So, you've got a pair of what appears to be white running shoes and a baggy pants. Maybe we could just play the next couple of seconds there. I think we get a little bit more. Okay. That's good. Stop there. Person also appears to have a t-shirt that's untucked, and has his arms crossed, and sort of moves towards unknown male

Giroux, cr-ex.
(Scarfe)

number 5.

5 A. Yes.

Q. Have you been able to glean any information to help you identify that person?

A. No, sir.

10 Q. All right. And in fairness, we never see that person's head.

A. That's my recollection, yes.

15 Q. Right. We've had a number of witnesses describe, ah, people that sort of look in that hip hop sort of version, that kind of loose fitting jersey, and, and you know this kind of style of clothing I am talking about?

A. Yes, I do.

20 Q. And based on what we do see, would it be fair to call this person unknown male number 6, bracket hip hop. Maybe you have got a better descriptor. Because you're obviously trying to sort this through with your officers?

25 A. Ah, I, Mr. Scarfe, it's difficult to say. It looks like he has a short sleeve shirt on, and I don't know if those are, uhmm, cargo pants or canvass pants that's, I mean, if you want to call him that, that's fine. But I, I don't really know if that's, if that's necessarily the style based on what I can see here.

30 Q. Mm-hmm. Well, by the way maybe it's fairer to call him white sneaker?

Giroux, cr-ex.
(Scarfe)

A. That's fine.

5 Q. Okay. Okay. We could play the next 10
or 12 seconds. Okay. Let's just stop it right there. You
see in the very left side of the screen, there is a gentleman
that comes in also in white sneakers, appears to have blue
10 jeans on, a dark coloured t-shirt, with a rectangle, light
coloured rectangle pattern in the middle of the t-shirt?

A. Yes.

Q. And appears to have a silver watch?

A. Correct.

15 Q. Ummm, any luck identifying him?

A. No.

Q. No. Ms. Thomas, nobody else has been
20 able to provide any suggestions?

A. Well, she said, ah, I don't know how she
could have, but she said there is a Jed, possibly, in a blue
shirt, male black homeless man. Appears that the date 07 is
25 right over this individual's face.

Q. Mm-hmm?

A. That's what Ms. Thomas indicated.

Q. You asked Ms. Thomas about this person,
30 and she thought it was Jed.

A. Yes.

Q. Okay. So maybe we'll call him unknown
male number 7 and we'll call him rectangle Jed. Does that

Giroux, cr-ex.
(Scarfe)

seem fair?

5

A. Yes.

Q. And we will play the next few seconds, just to see if we get any kind of a look at his face. And clearly, we don't. Correct.

10

A. I would agree.

MR. SCARFE: All right. Just go back five seconds, Ms. Fineberg, either 31, 15, 16.

15

MR. SCARFE: Q. I just want to direct your attention to the very top of the screen. Somewhere about the 15 second point. See the pair of shoes and a pair of jeans there?

A. Ah, I see a pair of shoes and some, what look like blue pants.

20

Q. Right. Behind the fellow that we called white sneaker?

A. Yes.

25

Q. Right. Just play the next two or three seconds? All right. We can assume, that's great, Ms. Fineberg. Thank you. That, in your study of the -- is as much as we know about that person?

A. Correct.

30

Q. And given it's not a dog or a cat or a horse, we'll call him a person, but we don't know if it's male or female?

Giroux, cr-ex.
(Scarfe)

A. I would agree.

5 Q. Appears to have maybe flared jeans at the
bottom?

A. Possibly.

Q. Kind of wide leg, bell bottom jeans?

10 A. Yes.

Q. We'll call him unknown person number 1,
and we'll just put bell bottom.

15 MR. SCARFE: If we just go back five seconds
or so, and do that again. Maybe to 31:15 or so. 31:11,
that's fine. There is another person that's going to come in
in about 19 seconds. Okay. Stop there.

20 See there is a fairly heavy set person that
just walked from the left side of the screen into the, past
the, ah, Pakistani sort of Indian guy.

A. Just underneath the 31, he has his hand
out to the side?

Q. Right.

25 A. Yes.

Q. And he appears to be heavy set with a
very baggy t-shirt and a watch. Have we seen him before?
Sorry, is this the first time we see this individual from
your study of this video?

30 A. I don't recall if he's been seen before.
Seen him from behind and he has a watch on, we saw somebody

Giroux, cr-ex.
(Scarfe)

5 else with a watch. I'm not sure if it's the same person or not.

Q. All right. He's clearly the biggest of all the unidentified males.

10 A. Well, again, it's, it's difficult to say, because the shirt is out, uhmm, it does look like it flares a little at the waist, but his shirt is out of his pants.

Q. Mm-hmm?

A. It's hard to say.

15 Q. Clearly, both the pants and the shirt are baggy?

A. Ah, it would, it would appear so.

Q. All right?

20 A. The shirt out, and it's a bit billowing a little bit, but, again, the video causes a bit of, there is a bit of a distortment as well.

Q. For lack of a better word, we could call him unknown male number 8, just call him baggy clothes?

25 A. Okay.

Q. Fair?

A. Sure.

30 Q. 32:06. Go ahead about 30 seconds. Lovely. Okay. Stop it right there. Now, the person in the screen, just watched a 10 second or so clip, obviously the person in the screen on the right is the individual you

Giroux, cr-ex.
(Scarfe)

5 identified yesterday that we are going to call Hal question
mark?

A. Yes.

Q. Fair enough?

A. Yes.

10 Q. There is a person standing directly to
his left, you can't see it in this particular frame, but in
several of the frames you see that he appears to be carrying
some sort of take-out food.

A. Yes.

15 Q. Right. And, ah, had you had any luck
identifying him, Ms. Thomas or any of the other people that
you've talked to, at least to distinguish him from other
people?

20 A. Ms. Thomas indicated white food bag man,
ah, possibly a guy by the name of Twitch.

Q. Twitch?

A. Yes.

25 Q. Okay. But, of course, we know that there
is a person named Twitch who, uhmm, is kind a like a
stepbrother to Mr. Amero. Hal?

A. They have the same surname.

Q. Mm-hmm?

A. Harold and, ah, Joey Amero.

30 Q. Right. So Harold is known as Hal, and

Giroux, cr-ex.
(Scarfe)

Twitch, Joey is known as Twitch?

5 A. That's correct.

Q. Right. Now, you have since interviewed and met with Joe Amero. And are you able to determine with your skills whether that appears to be Joey Amero?

10 A. Not from the image from behind I can't.

Q. No?

15 A. I interviewed Mr. Joey Amero and Mr. Harold Amero, I photographed Mr. Harold Amero, as I indicated to you, nude from the waist up, front and back, and his tattoos. Detective Chilvers went to the club that they were both playing at. They both play in the same band, as I indicated it was the Hobo Banditos, they were playing at a obscure bar in the Kensington Market, and the Detective went there on a Saturday evening at my request. They were both identified, and it was the following Monday that they came in, ah --

20 Q. Mm-hmm?

25 A. -- and --

Q. So having seen Joey Amero, can you look at that person, say oh no, that's definitely not Joey Amero?

A. Not from behind I can't, no.

30 Q. No? Okay. So why don't we call him unknown male number 9 and then in brackets we'll put sandwich? I mean or take-out or something like that. It

Giroux, cr-ex.
(Scarfe)

appears to be food that he's carrying. Right?

A. It would appear.

Q. All right. So we'll call him sandwich,
comma, Twitch question mark. That seem fair?

A. Sure.

Q. We call Hal, question mark, even though
we're not sure it's Hal.

MR. SCARFE: Go, Ms. Fineberg, ahead about a
minute, 33:20 or so.

MR. SCARFE: Q. As we come up on 33:20 you
see that bike shadow in the bottom corner, what appears to be
a bike, starts to move.

A. Yes.

Q. Then we have what appears to be a female
move very quickly through the left side of the screen?

A. Yes. Just, ah, just north of the garbage
bags.

Q. Yes. So I'll break it down into two
questions. The bicycle that we see, or at least the shadow
we see in the bottom left corner of the screen, which there
is for much of the event, appears to be a bicycle to you?

A. Yes, it does.

Q. And for many of the other, in your study
of this, were you ever able to determine whose bike that was?

A. I know Mr. Patsiopoulos indicated he has

Giroux, cr-ex.
(Scarfe)

a bicycle.

5

Q. That's right.

10

A. And I know that the efforts that I am making now, to trying to find out if Mr., that's Mr. Flynn, he was on a bicycle, and he transitioned through the video, and I guess he could have rested it up against one of the poles. One of the poles or the two streetlights is the street traffic signs are right in that location.

Q. Okay?

15

A. That's why I indicated to you yesterday when the recording was done, moved into those poles as fixed objects to determine how far the video would reach.

20

Q. But that bike never comes into view in a way that we can definitively say, oh, that's so and so on that bike?

A. That's right.

25

Q. Even by our descriptors. Now, my second question about that last clip, there is a female that walks through the screen, uhmm, coming from west going east, just by the garbage bags there. She seems to have jeans on that sort of end just below the knee. Sort of a cargo cut blue jean?

30

A. You can --

Q. Were you able to gather any information about her?

Giroux, cr-ex.
(Scarfe)

A. No, sir.

Q. Who she might be?

A. No. You can see, like, I agree you can see a portion of her skin, in the bottom part of her leg.

Q. Right. So why don't we call her unknown female number 2. We've already got an unknown female number 1, and, when the jeans get cut off down there by the knee, what, and they are not full length jeans, is there a common descriptor you guys use for that? Or, you call them cargo jeans?

A. That I use?

Q. Yeah?

A. No, sir, just jeans maybe that are above the ankle.

Q. Okay. Call her above ankle jeans. Now you've reviewed the next few minutes of the video. Even though we didn't do it yesterday. Correct?

A. Yes.

Q. And just to sum it up, you see Mr. To come out of his restaurant at some point on the video, and walk around?

A. I am not sure that Mr. To, like, I see a gentleman come out from the store. I suspect that's Mr. To.

Q. It's an Asian man?

A. Yes.

Giroux, cr-ex.
(Scarfe)

Q. No reason to say it isn't Mr. To?

A. Correct.

Q. Okay. And we see Mr. Fresh sort of go through the screen one way and come back a little while later?

A. Yes, sir.

Q. Okay. I want to thank you for your patience with respect to that exercise. It helps me a lot.

The last thing that I found in your notes just before page 1, just, maybe what I'll do is I'll establish, and you can turn that off now, Ms. Fineberg, that's great. One of the things you do when you are preparing your notes is instead of write everything out, sometimes you'll put stuff in your notes that you receive, paper forms, or CPIC printouts?

A. Yes, I have some CPIC printouts, maybe some ICAD reports, the 911 reports and so forth.

Q. The first inch or so of your notebook actually doesn't contain any of your handwriting at all?

A. Yes, it's the practice of mine only because a lot of times when you are out, ah, in the field doing investigations I found that, ah, it's easier to have the material right at hand so you can refer to it. So what I do is I minimize it to reduce size that would fit into the notebook.

Giroux, cr-ex.
(Scarfe)

5 Q. I am going to show you, sir, a, a two-
page document, which is typed, and which I made two markings
on. One of them is who wrote this. So maybe you can help me
with that?

A. Okay.

10 Q. It's titled number 14, stabbing
investigation?

A. I'm just going to go to my... does it
come from my notebook, Mr. Scarfe?

15 Q. Pardon me?

A. Does it come from my notes.

20 Q. Yeah. It's the last thing that appears
before page 1 of your handwritten notes. At least in my
file. If --

25 Q. Do you see it there?

A. I do.

30 Q. Can you identify that document for me?
Is that something you received from someone else or something
that you prepared?

A. I believe it's a document that I
prepared.

35 Q. For a, a purpose, maybe a press
conference, or?

A. Ah, looks more like a, like a things to
do list.

Giroux, cr-ex.
(Scarfe)

5 Q. Things to do list? And I've sort of put
a rectangle around one of your, it's basically bullet points,
right --

A. Yes.

10 Q. -- two page list of bullet points and
I've circled one of the bullet points, at least rectangled
it. Can you read that for us?

A. Ah, bullet point is, is, "how did you get
on to the fifth suspect".

15 Q. "How did you get on to the fifth
suspect". So that be something on your to do list.
Something that you are --

A. Something that would have possibly come
up in the briefing with Detective Scott.

20 Q. Okay. Do you recall, does that refresh
your memory the Detective Scott was talking about a fifth
suspect?

25 A. I don't, I don't have a recollection of
it. It must have been something that Detective Scott spoke
about, and I, ah, created this things to do list. And the
reason I say it's a things to do list is it's doctor in
charge of the victim, and not deceased, so at this point
he's still alive. First taxi cab victim tried to flee and
30 cab refused, do we know who that driver is. Other taxi cab
end up at Bellwoods Church. Do we have the cab driver's

Giroux, cr-ex.
(Scarfe)

5 information and name. So it looks like a shopping list to
me.

Q. You've done a shopping list for yourself
to try and determine a variety of things?

A. Yes.

10 Q. And one of those things is how did you
get on to the fifth suspect.

A. It must have been something that
Detective Scott said?

15 Q. Yeah.

A. Yes.

Q. You having trouble recalling it?

A. I am.

20 Q. I can tell by ...

A. And the reason I say that is as I started
to take over the investigation, as the narrative started to
play out, uhmm, it, it is what it is today with regards to
the information that I know.

25 Q. Okay. So then you go in your notes, and
you write page 1 and 2. Correct? And then another typed
document appears.

A. Correct.

30 Q. I thank my friend. The two page document
that we just discussed, I think my friend and I are in
agreement that perhaps it should become the next exhibit?

Giroux, cr-ex.
(Scarfe)

5 THE COURT: That will be Exhibit 17, I believe.

THE REGISTRAR OF THE COURT: 17, Your Honour.

10 --- EXHIBIT NO. 17: Two-page document from Det. Giroux's notes

MR. SCARFE: Q. You found the next typed document, which comes in right after page 2 of your handwritten notes.

15 A. Yes, sir.

Q. I am just going to show it to you and ask you if you can identify it for us.

20 A. This document would appear to be the one that Detective Gallant prepared as a result of his phone call with Detective Scott in the early day or hours of the investigation.

Q. Mm-hmm?

25 A. And the reason I say that is that 7:10 a.m. called by Detective Scott with regards to this event number, and he, he would have provided this to me with regards to a summary of the phone conversation he had with the officer.

30 Q. Okay. And just so everybody understands, an event number is something that's created at the very early stages by the 911 operator?

Giroux, cr-ex.
(Scarfe)

A. Yes.

5 Q. And so the 911 operator gets a call, then she or her colleagues, haven't got before, it's a whole new thing, and they assign an event number to it, and then as best they can, as other calls come in, if it relates to that event number, they sort of put it in that pigeonhole?

10 A. That's right. And in this case, when there is two officers, two detectives from the Homicide Squad on call, Detective Scott would have tried to have reached either one of us. There wasn't, wouldn't have stood on ceremony with regards to reaching me because I was more senior of the two. He got hold of Detective Gallant, and he took this summary of the phone call.

15 Q. And then Detective Gallant, he distributed that at least to you, as his partner, and to anybody else who is going to form part of the investigative team?

20 A. In the event that the case should transition over to our unit.

25 Q. Right. And again on the second page, very close to the bottom I have highlighted a portion. Can you read that out for us.

30 A. "Canvassed, turned up a fifth suspect, CIB aware of him, and looking for him currently".

Q. All right. And does that refresh your

Giroux, cr-ex.
(Scarfe)

5 memory as to sort of the issue that came up early in the investigation?

A. It, it doesn't. Question may be better placed to Detective Scott, but I'm, I'm, I've reviewed the summary that he gave us.

10 Q. Mm-hmm?

A. And that's not referred to. The fifth suspect.

Q. Okay?

15 A. In my memo book notes from the -- I, of course, I would have gotten this summary from Detective Gallant day one. Then he physically appeared in our office on day two on the 10th, and we got an in person summary. And I believe I went through that yesterday. There is a number of pages. It's the, it's the interview that went on for maybe an hour with Detective Scott and I don't recall that being mentioned.

20 Q. Okay. But in essence, what's happened here is everything is sort of flows to you or, in the investigation because you are the lead investigator?

25 A. Yes.

30 Q. And so, eventually, Detective Scott conveys to Detective Gallant, hey, we've got a fifth suspect, CIB knows who he is, we are kind of still looking for him, and then that makes it to your desk. Right?

Giroux, cr-ex.
(Scarfe)

A. Yes.

Q. Do you do any follow up on that?

A. Like I indicated, Mr. Scarfe, by day two, there is no mention of this individual at all. So I don't know if, if the evolution of the investigation is fluid, and this is, isn't an issue any more, it still is an issue? It's better left for Detective Scott to explain it. I'm just not sure where that narrative came from.

Q. Fair enough.

MR. SCARFE: If this could be the next exhibit, Your Honour.

THE COURT: Exhibit 18.

THE REGISTRAR OF THE COURT: 18, Your Honour.

--- **EXHIBIT NO. 18**: Document from Det. Giroux's notes

MR. SCARFE: Q. If you, going to move into another area, I still have time. Page 293 of your notes, sir. I just ask to you turn to that.

A. Yes, sir.

Q. Uhhh, what's the date that we are looking at there. If you can help me out?

A. The 5th of January, 2009.

Q. 5th of January, 2009. Right around when the preliminary hearing was about to start. Correct?

A. Yes.

Giroux, cr-ex.
(Scarfe)

5 Q. All right. And, ah, your notes refer to a discussion you had with a witness we anticipate hearing from, a Dr. Michael Pollanen?

A. Yes. Dr. Pollanen was the forensic pathologist in this case.

10 Q. I understand he's also the Chief Coroner for Ontario?

A. He is the Chief Forensic Pathologist.

15 Q. Chief Forensic Pathologist. And by January of 2009 you had already, he had already performed the autopsy?

A. Yes.

20 Q. Prepared a report, and the report had been disclosed?

A. Yes, sir.

25 Q. And so, I guess, in preparation for the prelim or for some other reason, you, you, you phone him or he phones you. Appears to be ...

A. There is a meeting that's taking place, ah, at the Coroner's Office, with the Crown Attorneys and Dr. Pollanen --

30 Q. Okay?

A. -- with regards to the post mortem findings.

Q. All right. And in that meeting, you

Giroux, cr-ex.
(Scarfe)

5 don't make a lot of notes, but one of the things that you
noted was, "serrated area of wound". You see that reference
in your notes.

A. I do.

10 Q. Maybe you could assist us by flushing out
a little bit your recollection of the meeting and how that
plays into it, would have caused you to make that note. If
you remember?

15 A. I use my notes to assist me. The meeting
was with regards to the post mortem findings. I suspect in
preparation for Dr. Pollanen to testify at the preliminary
hearing.

Q. Mm-hmm?

20 A. And that the issue with regards to, ah,
whether Dr. Pollanen could offer an opinion with regards to
the wound and the serration that's on the murder weapon.

25 Q. So, if I understand this correctly, you,
being the lead investigator, would, you wouldn't formally
have to ask him, but you would make sure that Dr. Pollanen
performed an autopsy and produced a post mortem report.
Right?

30 A. Yes, and it would appear that if he
didn't already have him, have them, I gave him some copies of
the knife, with a scale.

Q. Prior to his preparing the initial report

Giroux, cr-ex.
(Scarfe)

or after you had received his initial report?

5 A. I certainly gave them, I gave him, it says I gave, gave doctor copies of photos re knife, re scale. And the scale is the measuring instrument that's beside the knife, and I gave them to Dr. Pollanen. But I also know that there is a practice that the pathologist gets, get a copy of
10 the photographs.

Q. Mm-hmm?

A. Ah, with regards to, ah, his own individual file, and whether or not he already had copies of
15 those photographs from the forensics identification services, I am not sure, they would come to him on a CD and the knife may or may not have been included in, in that series of photographs.

20 Q. So --

A. But I gave him a copy on this date.

Q. Okay. Is it fair to suggest that at least this part of the meeting was something to the affect of
25 hey Dr. Pollanen, not sure if you've seen the photos of this knife, but, from your findings and your examination of the body, can you provide an opinion and any evidence as to whether this knife could have caused certain wounds. Is that kind of the essence of --

30 A. Yes.

Q. Right. So you are asking to go back,

Giroux, cr-ex.
(Scarfe)

5 having reviewed this knife, and determine if he can find anything in the wounds or a serrated area in the wounds or any evidence that the wound was caused by a serrated knife?

A. Correct. Like on the surface of the skin, ah, did it strike a bone.

10 Q. Mm-hmm?

A. Did it strike cartilage. Ah, is there any evidence of a serration or no serration, or can you say, or can you not say.

15 Q. Fair enough.

A. And I, I've had these discussions with him with regards to other cases.

20 Q. Okay. So the rest of it we'll hear from him. I just wanted to clarify that reason for it appearing in your notes. If you could turn to page 480 and 481 of your notes.

A. Sorry, 481.

25 Q. 480 to 481, that two page section.

A. Yes, sir.

MR. SCARFE: Q. 480, 481 talk about a meeting that took place, ah, I am just looking for the date, on the 2nd of December, 2009.

30 A. Correct.

Q. Correct. So this is well after the preliminary hearing was done. Ms. Kish had been committed to

Giroux, cr-ex.
(Scarfe)

stand trial, and, ah --

5

A. Yes.

Q. Right?

A. Correct.

10

Q. Your recollection. And so you go up to the forensic identification office that we talked about yesterday at 2050 Jane?

A. Yes.

Q. And you take certain people with you?

A. I do.

15

Q. Okay. You take one of the Crown Attorneys, who was working on the case at the time?

A. Yes.

20

Q. Who isn't here today, Ms. Sydelia (phon) Farria?

A. Yes.

Q. F-A-R-R-I-A, Madam Reporter. And in addition, you take a person named Ms. Sloan?

25

A. Yes.

Q. Can you tell us who Ms. Sloan is?

A. Monica Sloan is a member of the Centre of Forensic Sciences and she works in the biology section.

30

Q. She a scientist?

A. Yes, she is.

Q. And she's someone we anticipate will be

Giroux, cr-ex.
(Scarfe)

called as an expert witness in this case?

5 A. Yes, sir.

Q. To provide opinion?

A. Correct.

Q. Of evidence, with respect to DNA
10 attribution, and that sort of things?

A. There is a number of, of rounds of DNA
testing and Ms. Sloan was the one that kept carriage of all
the examinations in this case. From the biology section.

Q. Mm-hmm.

15 A. There was some work done by the chemistry
section as well.

Q. It seems sort of late, we're like a year,
20 two, over two years after the incident. Uhmm, can you
outline for us the purpose of this meeting?

A. Ah, the purpose of the meeting was to,
ah, that I was asking for additional rounds. There is five
25 rounds of DNA testing that I asked for. In this particular
investigation. And I was asking for another round of
examination with regards to items of clothing and footwear,
and in addition, a police officer by the name of Irv Albrecht
joined us along with Detective Constable Lukings, who is the
lead FIS officer, regards to his expertise in bloodstain
30 pattern analysis.

Q. Okay.

Giroux, cr-ex.
(Scarfe)

5 A. And so he joined us. And some of the clothing and footwear was laid out with regards to a request and a triaging of more rounds of biological testing.

10 Q. So this was the first time in the investigation where you actually got an FIS officer together with a Crown Attorney, a blood spatter expert, and the biologist? All --

A. All of those people.

Q. -- all in the same room?

15 A. We had a previous meeting, Ms. Farria, and Ms. Sloan and I had a meeting I believe at a earlier date, and I can try and look for the day. And the reason I say that is I had some coloured photographs of some footwear in my notebook that I put in following the meeting,
20 photographs that the Centre of Forensic Science had taken. So there was a subsequent meeting with regards to another request for additional testing from the Centre of Forensic Sciences.

25 Q. Mm-hmm.

A. And that meeting, the FIS officers were not present.

30 Q. All right. But for this meeting, I was correct in my suggestion, correct?

A. Yes.

Q. Okay. And is it unusual to bring someone

Giroux, cr-ex.
(Scarfe)

5 who is a scientist from the Centre of Forensic Sciences and
involve them, you know, with the investigators like this? Is
there a discussion about the arms length relationship with
the Centre of Forensic Science, and whether this was
appropriate?

10 A. Ah, no. I don't believe so. And I've,
I've done it before.

Q. Mm-hmm?

15 A. The other meeting that took place I was
speaking about took place on the 30th of July, 2009 so we
brought her there with requests to additional work in this
investigation and it had, had a lot of attention already, but
we wanted some more biological testing done, and so I wanted
20 Ms. Sloan's input as to try to prioritize, certain items went
for testing.

Q. And to cut to the chase, is it really,
was there, were you there to try and resolve or further
explore a problem in the evidence.

25 A. No.

Q. No? You've got Ms. Kish here charged
with second degree murder, and the allegation is she's
stabbed Mr. Hammond?

30 A. Right.

Q. By then, we know that there is virtually
no blood of Mr. Hammond on Ms. Kish, maybe a spot on her

Giroux, cr-ex.
(Scarfe)

5 shoes or something, but seems to be a real absence of blood,
and Mr. Hammond all over her, and in contrast, you have Ms.
Watts's clothing which seemed to have a lot Mr. Hammond's
blood?

10 MR. THOMPSON: Your Honour, it's a question
perhaps, but it also sounds like he's giving evidence. I am
not sure if this officer is in a position to really answer
that. I just, just putting that in advance. There may be a
question attached to it, but it does sound like a bunch of
evidence. In any event.

15 THE COURT: Mr. Scarfe, you probably have to
break it down.

MR. SCARFE: All right.

20 MR. SCARFE: Q. Was the purpose of the
meeting have something to do with the blood attribution,
vis-à-vis Ms. Watts and Ms. Kish?

25 A. With, with regards to the investigation,
I was asking for additional rounds of testing to see if we
could determine whether or not Mr. Hammond's blood is on Ms.
Kish, and Ms. Kish's blood is on Mr. Hammond.

Q. Okay?

30 A. And in addition to that, ah, the input of
bloodstain pattern analysis expert, ah, who the Centre of
Forensic Sciences do not have at the current moment, and so I
ask that officer to join us with regards to seeing whether or

Giroux, cr-ex.
(Scarfe)

not he could offer expert opinion on the stains on the
5 clothing, as to how they may have come to be on the clothing.

Q. Okay. So that would necessarily entail
getting out the clothing of Ms. Kish and the clothing of Mr.
Hammond?

10 A. Correct.

Q. Right. But yet we get out the clothing
of Ms. Watts as well. Right?

A. Yes, I believe so. Yes.

15 Q. And isn't that to address the issue that
there is a lot of Mr. Hammond's blood on Ms. Watts, and very
little on Ms. Kish?

20 A. Well, at that point of course I didn't
know that. So in fairness, I ask for other individuals'
footwear to be examined as well. I didn't just say, well
ignore the other ones. I just want to know whether there is
any blood on Ms. Kish. I put other items of footwear in for
testing.

25 Q. And during or at the conclusion of this
meeting, you and the Crown discuss the issue as to whether
Ms. Watts ought to be extradited back to face charges of
second degree murder?

30 A. On the meeting on the 2nd of December?

Q. Yes.

A. Do you have a page reference, sir?

Giroux, cr-ex.
(Scarfe)

5 Q. No. But, I mean, wasn't that sort of the
looming issue that caused you to have that meeting as well as
the follow up meeting? Weren't you and the Crown discussing
the pros and cons or the merits of extraditing another
individual to face these charges.

10 MR. THOMPSON: If I may lodge an objection,
Your Honour. There is one thing with respect to an officer
providing additional evidence with respect to a witness that
now comes forward that has evidence that may have been
15 different than what on an earlier statement, and the Crown is
also in an ongoing obligation to provide that disclosure.
So, as a witness comes in, it changes a story a bit or has
additional information, we do that and it's constantly live.
But to get into discussions as to what the strategy is of the
20 Crown in between whether or not a Crown would be laying
charges is just a conversation between the officer and the
Crown. And those, I would respectfully submit, are work
product, and it's putting the officer in an awkward position.
Those are, I would respectfully submit, something that are,
25 is an improper examination at this point in time.

THE COURT: Mr. Scarfe.

30 MR. SCARFE: No, I am shocked, Your Honour.
It's right here and disclosure that's been given to me. The
first I've heard of any kind of privilege or work product
being asserted over discussions that this officer had with

Giroux, cr-ex.
(Scarfe)

5 the Crown Attorney and a number of the key witnesses in this
event. I think it's fair game. But I am in Your Honour's
hands.

THE COURT: Is the reference of the officer's
notes to this discussion?

10 MR. SCARFE: To a discussion about
extradition?

THE COURT: Yes.

15 MR. SCARFE: Yes. But it's somewhere else,
and I just need a few minutes to find it. It's actually not
his notes, it's in Ms. Sloan's notes, who you will hear from
later. There was a discussion pertaining to the possible
extradition of Faith Watts. So, it is based in the evidence.
20 So that's why, given this is my chance to ask the officer in
charge, I thought I best explore it now rather than after
recall him later after I lay the foundation with Ms. Sloan.

25 THE COURT: Mr. Thompson, even assuming the
point of work product privilege is legitimately made, if it's
in Ms. Sloan's notes and those notes have been disclosed, has
the privilege not been waived?

30 MR. THOMPSON: I will agree to that point.
But I don't know what's in Ms. Sloan's notes with respect to
this. And I am going to say, he technically, if it's an area
in which she has written some notes and her recollection is,
she would be the proper person to ask that question to. The

Giroux, cr-ex.
(Scarfe)

5 question is being directed towards this officer. And just so
it's clear, the Crown is not objecting to anything asked
about witnesses providing evidence. It's just discussions
between the Crown and the officer that I am objecting to.
The fact that some other individual from Centre of Forensic
10 Science has put in there there was a discussion of
extradition, it very well may be there was and what
information she has, I don't know. But I think its best
explored from her.

15 THE COURT: No, but Ms. Sloan puts into her
notes that there is a discussion, that she either witnessed
or participated in, between the Crown Attorney and the
officer about extraditing Ms. Watts, then at that point it
seems to me, assuming, I will give you an opportunity in a
20 moment to check the notes, but assuming the notes are there,
and produced, whatever privilege attached to that seems to me
to be waived, and if Ms. Sloan has a note or discussion
between this officer and the Crown Attorney, then surely, Mr.
Scarfe's entitled to ask him about that conversation.
25

30 MR. THOMPSON: I agree with that, Your
Honour. What I am concerned about is just that if it's just
written in there the issue about extradition, there may be a
number of reasons why that is in there, and my friend is
putting to this officer here that they were going to
extradite her to charge her. My friend is just speculating

Giroux, cr-ex.
(Scarfe)

5 in that point. It may very well be to extradite her for the
purpose of giving evidence because she is technically a
witness on this trial. And that was an issue that was
discussed. So, I would, I would ask at least for a moment to
see what officer --

10 THE COURT: I was just going to suggest I
take the morning recess, and you have a chance to look at Ms.
Sloan's notes?

MR. THOMPSON: Fair enough.

15 --- COURT RECESSED AT 11:26 a.m.

20 -----
--- UPON RESUMING AT 11:48 a.m.

25 MR. SCARFE: I know I read it, we just can't
find it. We had three or four people looking at it on the
break, so I'll move on. Perhaps we'll come back to it.

THE COURT: All right. Thank you.

30 MR. SCARFE: Q. We are getting near the
end, Detective Sergeant Giroux. George Dranichak, he is a
witness in these proceedings.

A. Yes, sir.

Q. And his significance?

Giroux, cr-ex.
(Scarfe)

A. Is?

5

Q. In the case, just basically?

A. He was out that evening with Mr. Hammond, earlier in the evening, and was present at the beginning of the narrative, of this, these events.

10

Q. He testified at the preliminary hearing?

A. Yes, he did.

Q. Subsequent to that, he ran into an immigration problem?

15

A. Yes, he did. In, he is an American citizen, to my understanding.

Q. Mm-hmm?

A. And, ah, he had some problems when he went to visit his parents, I believe, in the United States.

20

Q. He couldn't get back into Canada.

A. Yes.

Q. Is he here now?

A. Yes.

25

Q. Okay. And the, he sought your assistance in helping him get back into Canada?

A. Ah, he --

Q. Ended up preparing a letter for him, or something?

30

A. Actually, I just saw that in my notes. That's right. I, ah, I drafted a letter on the 13th of

Giroux, cr-ex.
(Scarfe)

5 April, 2010 to the Canadian Consult General in Buffalo, New York.

Q. And it's basically he is an important witness, I need him, can you let him back in?

10 A. I am just gonna quickly review what I said.

15 Indicated who I was, and how long I had been with the Toronto Police Service, and that Mr. Dranichak is a witness of mine in a criminal proceedings, criminal prosecution within the City of Toronto, in the summer of 2009. A friend of Mr. Dranichak was stabbed to death in the City of Toronto. He is an important witness in these criminal proceedings, and that I have checked his name with the Canadian Police Information Centre, CPIC, for any
20 existing criminal record or outstanding criminal charges, and I can indicate that Mr. Dranichak does not have an outstanding criminal charge within Canada nor does he have a criminal record of any kind. And then if your department has any additional inquiries or questions that they could contact
25 me. And I, I sent that down to them. By fax, I believe.

30 Q. And did anybody ever call you to follow up about that. Did you ever hear from immigration, have a discussion with them. I don't think there is a reference in your notes.

A. I don't, I don't think I did.

Giroux, cr-ex.
(Scarfe)

5 Q. On the 10th of January, starting at
page 542 of your notes, going over to 544, sorry, I should
have clarified this is this year 2011.

A. Yes.

10 Q. Ah, as with many of the witnesses, you
sort of have a preparation session in the weeks leading up to
court, meet the Crown Attorney, have them go over their
previous statements, and talk about what's gonna happen when
they come to court?

15 A. Yes.

Q. That's standard procedure?

A. Right.

20 Q. In the case of Mr. Dranichak, however, it
wasn't just a meeting in the Crown's office, it turned into a
sort of a walk down the street?

A. That's right.

Q. That's kind of unusual, isn't it?

A. Ah, I've done it before.

25 Q. Have you?

A. Yes.

30 Q. But it's far from the, it's the exception
to the rule. You don't do it with all the witnesses.
Obviously.

A. No, I don't do it with all the witnesses,
but I find that a majority of the community are visual, and

Giroux, cr-ex.
(Scarfe)

5 as a result of taking Mr. Dranichak back to the scene, and he
could, ah, narrate, ah, by actually seeing some maybe
identifying landmarks with regards to the events on that
particular night.

10 Q. Now, he's really the only witness we have
as to the events leading up to, when the altercation, or the
dispute started in front of the TD Bank. Right. There is
no, really no other way to explain to the trier of fact in
this case what Mr. Hammond is doing on Queen Street without
this one witness that he was with?

15 A. There are some other witnesses that are
privilege to the narrative as it transitions in a westerly
direction from their various businesses. Ah, on Queen
Street. But the actual sort of narrative of being approached
20 for the very first time.

Q. Mm-hmm?

A. I would agree Mr. Dranichak has that --

Q. Right?

A. -- part of the evidence.

25 Q. And he can tell us why Mr. Hammond and
Mr., and himself are, are walking west on Queen Street that
night. Where they had been before, why they are out. That
sort of thing?

30 A. Yes.

Q. Exhibit 1. Is it over here?

Giroux, cr-ex.
(Scarfe)

5 THE REGISTRAR OF THE COURT: I believe it's
over there, Your Honour, against the witness box. It should
be the last one, Mr. Scarfe.

10 MR. SCARFE: Q. Now we are going to hear
from him, but just to get to the reason why you take him for
a walk down the street. He's already given two video
statements and testified at the preliminary hearing. Right?

A. Yes.

15 Q. And in his narrative, he, the whole thing
starts at the TD Canada Trust, which is 686, ah, Queen Street
West?

A. Yes.

20 Q. And the story that he seems to keep
telling is that instead of ever ending up anywhere near Queen
and Niagara, he sort of crosses the street in the south
westerly direction and ends up in the store front marked 777
Queen Street West. And that's on page -- to assist you --

A. That's correct, on page 548.

25 Q. 548. And you put that there. Can you
just, I can't read your writing third line-up, something
about a restaurant. Does that say "the Iranian"?

30 A. Just, just below 777 Queen it says
"Iranian Restaurant".

Q. So the business that's there is an
Iranian --

Giroux, cr-ex.
(Scarfe)

A. Restaurant.

5 Q. -- restaurant. We don't have a name of
it, but --

A. I believe it has something to do with,
ah, Iran, or it's an Iranian restaurant.

10 Q. Okay. And this has been a, am I right to
suggest that the reason you take him for a walk is because
all of the other evidence or much of the other evidence in
this case has Mr. Hammond and Mr. Dranichak, or at least the
15 two preppy well dressed guys, as described by the witnesses,
approaching a streetcar at Queen and Niagara, an eastbound
streetcar?

A. I would agree that there is, there is a
20 witness or witnesses that would describe them as preppy guys
that are closer to the Niagara intersection.

25 Q. Yet Mr. Dranichak has been insistent in
his video statements and at the preliminary hearing that he
never even gets west of Manning Avenue. He gets beat up in
the store front, the Iranian restaurant, and then ends up
going east, and that's his entire involvement.

A. Yes.

30 Q. Right. Am I right to suggest the reason
why you took him down and walked him through the scene is to
see if you could resolve that sort of basic conflict in the
narrative?

Giroux, cr-ex.
(Scarfe)

5 A. Yeah, I wouldn't disagree with that, sir.
I just, to take him back so that he, he actually sees things
physically.

Q. Mm-hmm?

10 A. And to see if his positionality is the
same or does he transition in a easterly direction, westerly
direction, just to see what, if anything, may or may not
change from that.

15 Q. So you went out with Mr. Thompson and Ms.
Middelkamp, yourself and Mr. Dranichak, and you basically
walked that whole stretch of Queen Street from Queen and
Niagara, down, or sorry, from the TD Bank being at Euclid,
right?

A. Yes.

20 Q. All the way west to Queen and Niagara?

A. That's right.

25 Q. And the purpose of that was hopefully to
maybe something would twig in his mind, he'd see something
that, ah, might help resolve the conflict in the evidence?

30 A. Well, I would agree with hopefully, but
we wanted to see, you know, whether or not Mr. Dranichak
says, you know, you know you're right, now that I've been
back here for the first time, ah, things look familiar to me
west of where I originally had said. And, ah, I was taking
some notes, some horrible notes in my book as it was so cold

Giroux, cr-ex.
(Scarfe)

5 out, and, ah, whether or not we may, we actually made it that far, ah, down the street, and as it turns out, we did not.

Q. Right. You did get eventually as part of the walk with the Crown Attorneys, at least to the Starbucks, at Claremont?

10 A. Yes.

Q. And then you had Mr. Dranichak go inside and have a coffee so the three of you could talk?

A. Correct.

15 Q. At that point you had to just sort of leave it at that?

A. Yes. And then we walked back to where I had parked the car and we returned to, to this building for continue the witness preparation.

20 Q. All right. And just following up about that, on page 543 of your notes, at the very bottom, after speaking about the narrative that night, the witness made a comment re "not been back to the scene, re start of incident. Witness stated not sure it would be appropriate going back to the scene".

25 A. Is that on page 550?

Q. 543 going over to 544.

30 A. That conversation, my recollection, took place just before we left this building to go there.

Q. Right?

Giroux, cr-ex.
(Scarfe)

A. We had asked him, had you been back.

5 Q. And, okay. I am going to have to ask him about that when he takes the stand and the like. But you were present and there for that. Can you help me flush out that comment a little bit? Was he saying that they were just on principle, it wasn't appropriate for him going back to the scene at any time, or did he elaborate.

10 A. He just, in the interest of I guess the integrity of the process, he didn't feel it was appropriate if he went back and did his own investigation with regards to how far along Queen Street he made it.

15 Q. Right?

A. So we suggested that maybe we should do it, ah, now.

20 Q. Okay. So the comment wasn't you guys suggesting a walk on Queen Street, and him saying, no, that's not appropriate.

25 A. No. I think it was more of, ah, have you been back there since, and him saying I didn't think it was appropriate, and us suggesting why don't we go there now.

30 Q. At some point, you then went and interviewed over the phone a number of his co-workers from, I forget the name of the company?

A. Yes. It was earlier in the investigation, I believe.

Giroux, cr-ex.
(Scarfe)

Q. Right. Sure.

A. Maybe after the preliminary hearing.

Q. You were trying to confirm, if I understand it correctly, and correct me if I'm wrong, but I'm suggesting you have Mr. Dranichak saying he never gets anywhere near Queen and Niagara, but you've got these witnesses saying they see two guys. Is the purpose of those other interviews to determine whether, in fact, there was a third, third co-worker there? Third friend. That he just wasn't telling you about?

A. I am not sure if it was that or just more of the narrative of the evening, to substantiate --

Q. How much people had had to drink, that kind of thing?

A. Exactly. Where they have been. How long they stayed. They left at different intervals during the night. To go home.

Q. Okay. And you managed to track down that whole group of co-workers with the exception of a fellow named Tony Roost. R-O-O-S-T?

A. I have a recollection that one of the individuals may have been in Australia.

Q. Right. Okay. Have you done anything further to follow up as to whether he's back or get his version?

Giroux, cr-ex.
(Scarfe)

A. I haven't, no.

5 Q. Next, I'll start with Mr. Dranichak, but I sort of have the same questions about a number of witnesses here, and if you could turn to page 296 of your notes, please.

10 A. Yes.

Q. On the 6th of January, 2008 you went to College Park because there was a preliminary hearing going on there in regards to this case. Correct?

15 A. Correct.

Q. And at that time you asked, you had a meeting in the Crown's office or somewhere in College Park, with Mr. Dranichak.

20 A. Yes.

Q. And first you asked him about what he had seen in the news. Right?

A. Yes.

25 Q. And then you used your portable -- about 10:25 a.m. you used a portable DVD player and you played for him the City TV video in its entirety?

A. Correct.

30 Q. Okay. And your notes indicate, ah, "I started to record comments re what witness saying on a lined pad of paper"?

A. Yes.

Giroux, cr-ex.
(Scarfe)

5 Q. And I just wonder, do you still have those notes?

A. I am just looking over Ms. Middelkamp's shoulder, I am not sure if that's them sitting on the desk, right behind or --

10 Q. I wasn't able to find any reference to that in my disclosure.

A. I printed them. And, ah --

15 MR. THOMPSON: Perhaps the officer could step down and see if he can find those notes in his books.

THE COURT: Yes.

A. Thank you, Your Honour. I have them here.

20 MR. SCARFE: Q. So you didn't keep those notes with your notes like some of the other documentation?

A. I made notes from the handwritten notes, so I made notes in my memo book from these notes.

25 Q. Right. But I suppose that the next break or something, you could provide us with, with those notes.

A. Absolutely.

Q. They may have been provided, but just have no indication of them. Of seeing them.

30 Now following along on the same topic, this is sort of my last area. If you could just flip back six pages to 291, and that's the 5th of January, the day before?

Giroux, cr-ex.
(Scarfe)

A. Yes.

5 Q. And it looks like somewhere about
4 o'clock in the afternoon, you met with Yani Newman?

A. Correct. At headquarters.

10 Q. Okay. And about three quarters of the
page down, 91, it says that the witness watched recording.
It says re City TV.

Witness watched recording, from start to
finish. And then I requested that if he
wanted to see any part of recording again.

15 And he did.

And, ah, at some point in that process, after watching it
once or twice, at 4:07, he said:

20 I started digital recording re recorder
comments made by Mr. Newman, re City TV,
ah, recording, and my questions, re
persons seen on recording.

A. Yes.

25 Q. And again, I know this is a huge case and
stuff, but it's possible we might have missed disclosing that
recording?

A. I believe the Crown has it.

30 Q. Yeah?

A. And the discs are dupe -- duplicate of
each other when they are disclosed.

Giroux, cr-ex.
(Scarfe)

Q. Mm-hmm?

A. And so --

Q. So?

A. -- I am sorry?

Q. It's not like it got erased.

A. No.

Q. Or lost?

A. I believe it may very well be here, this morning.

Q. Okay. Good. I had asked Mr. Thompson about it a day or two ago. So I'm not surprised, so --

MR. THOMPSON: This morning, at 9:30.

MR. SCARFE: We'll work it out.

MR. SCARFE: Q. And then going to page 309 of your notes, all sort of in the same area, 19th of January, you meet with civilian witness, Molly Staufford.

A. Yes. At headquarters as well.

Q. The bottom of 309, what, she watched her DVD statement, but did you show her the City TV video?

A. No, I didn't.

Q. So --

A. Her, her DVD was the DVD statement that she had given for in, in preparation to testify.

Q. Right. And then you said "I typed out notes re interaction re witness and Crown Attorney re

Giroux, cr-ex.
(Scarfe)

disclosure". You still have that somewhere?

5 A. I am at a loss, sir, whether -- I will have to check my box at the break.

Q. But it's possible that at that witness preparation meeting, what your notes say is you made, you made some typed notes maybe on a laptop or something?

10 A. Ah, I may have. I'll have to check Ms. Staufford's file.

Q. Okay. So instead of it going into your notes, it's more likely in Ms. Staufford's file, may have been an oversight. It didn't get to defence?

15 A. I am not sure whether it was disclosed or not without checking the logs.

Q. Fair enough. The last one I wanted to ask you about, the second last one, is 312, about halfway down the page?

A. Yes.

20 Q. The, ah, this was, I think, the third witness that you showed the City TV video to, Adrien Chen?

A. Yes.

Q. We see her in the City TV video in the area of Mr. Hammond by the church. She's an Asian lady?

A. Yes.

30 Q. Right. And she testified at the preliminary hearing?

Giroux, cr-ex.
(Scarfe)

A. She did.

5 Q. And prior to testifying, you had her watch that City TV video, the morning break, and I am wondering, I know she got upset and started crying, but, was there either a digital recording or a typed or handwritten, ah, recording of that meeting?

10 A. I don't recall doing a digital recording or any other notes other than what's here.

15 Q. But when you are checking Molly Staufford's file, would you also mind checking her file just to make sure there wasn't something that got missed?

A. I will.

20 Q. And then essentially the same question, just out of an abundance of caution, ah, back to page 302, the 7th of January, 20 -- what's that say at the top of, that's probably a typo, top of page 302. You know how early in the year, sometimes for the first month or two you writing cheques and you put the wrong year?

25 A. I could, I could.

Q. It says 2008, and you mean '09, right?

A. Correct. Later in the page, it's nine, January '09, so I probably.

30 Q. Perfect. You contacted Mr. Paget, re watching DVD, gonna meet at headquarters at 2:00 p.m.?

A. Yes.

Giroux, cr-ex.
(Scarfe)

Q. He shows up at headquarters at 2:00 p.m.?

A. Yes.

Q. Spoke to both Crown Attorneys, they left.

And then you showed him, then he's watching DVD. Can we assume that's his prior statement?

A. Yes.

Q. Okay. Showed him some colour copies of the photo boards, some of which had been filed as exhibits here. Correct?

A. Yes.

Q. You asked him about what he had seen on the media. And my question to you is, at any point, did you show him the City TV video?

A. No.

Q. So Mr. Paget, as far as you know, at least until last night, news ran all the, ah, video. As far as you know, Mr. Paget hasn't seen the video?

A. Yes, that's correct.

Q. All right.

MR. SCARFE: Your Honour, thank you for your patience, and Sergeant Giroux, I know that was a long cross-examination, but those are my questions.

THE COURT: Re-examination.

MR. THOMPSON: I do, Your Honour, but if I may just have a word with my friend before I start, please.

Giroux, re-ex.
(Thompson)

5 MR. THOMPSON: Sorry, Your Honour, this is
not something you should be hearing in court. In any event,
I have a number of questions for the officer.

RE-EXAMINATION BY MR. THOMPSON:

10 MR. THOMPSON: Q. I might as well do it in
the order in which we were dealing.

Officer, with respect to the City TV video,
and just so it's clear, I believe that is at exhibit --

15 THE REGISTRAR OF THE COURT: 11, Your
Honour.

MR. THOMPSON: 11. Thank you, Mr. Registrar.

20 MR. THOMPSON: Q. That TV video, to the
best of your knowledge, was it ever played at the time of the
incident back in August of 2007 on the TV?

25 A. I recall seeing it on the television,
certainly not in, in its entirety, ah, in relation to the
subpoena that I served on City TV, so I got from City TV the
entire raw footage of everything that was taken, and I recall
seeing a portion, ah, of that recording on the traditional
media.

30 Q. Okay. So, just so I am clear, at least
you saw it at least once being broadcasted?

A. I saw it more than once, and the reason I

Giroux, re-ex.
(Thompson)

5 say that is that's, that was the reason why I went for it originally to get it.

10 Q. All right. Now, with respect to Mr. Dranichak, I am aware, Your Honour, this is not a judge and jury before the court, but I do want to clarify a few things in terms of what the ongoing processes of interviewing the witnesses are, of interviewing a witness is. Is it, can you just indicate before trial what the normal process is in terms of bringing a witness in for interview.

15 A. That the, ah, the witness comes in to meet with the Crown Attorneys in charge of the prosecution that, ah, police witnesses traditionally there in the event that something was said or done by the witness that required the necessity of it being diarised and disclosed. So, the
20 Crowns don't meet with witnesses on their own, that the police are there for that purpose, and in the event that something new or different is said, it's, it's diarised and disclosed.

25 Q. All right. So let me ask you this. When Mr. Dranichak came for the, his witness preparation, was he ever left alone or any time with the Crown Attorneys?

A. No.

30 Q. And the notes that you took were taken, and when, that you have provided disclosure for, when were those notes taken?

Giroux, re-ex.
(Thompson)

5 A. Well, they were made at the time, and, ah, and the reason I say that is that I, I've made more precise notes with regards to the narrative, but I made some kind of scribble notes because I was walking with my memo book open, kind of in this fashion, and I was writing, no gloves on and it was cold so the handwriting isn't very 10 legible. It's legible to me, and then from those notes, I made sort of more formal notes with regards to the process, and disclosed everything.

15 Q. Okay. And when were they available for disclosure, roughly. Not the day, but just how long after you took the notes. Do you have any idea?

A. Well, they were, they were available like within 24 hours, I suspect.

20 Q. All right. Now, there has been a lot of comment made about Cynthia Thomas, and for the most part, a lot of her evidence has gone through you, in terms of the veracity. But can you give us a little bit of information about Cynthia Thomas, please? 25

A. Well as a result of the information I received from the defence, I spent a tremendous amount of time on Ms. Thomas and comments that had been made by her. She had been interviewed by a investigator who is a former 30 police officer and I received a copy of that interview and reviewed it, and then I interviewed Ms. Thomas under oath, on

Giroux, re-ex.
(Thompson)

5 video at police headquarters. The video lasted for
approximately three hours. As a result of that narrative of
that interview that I set to work to prove or disprove that
the comments that she had made about the investigation and
about Mr. Hammond, and Mr. Hammond's practices with regards
to how he conducted himself.

10 Q. Can you tell me what Ms. Thomas does for
a living?

15 A. Ummm, Ms. Thomas indicated that she was,
ah, a prostitute, and that she was a drug addict and she had
been so for a number of years. Ah, lived largely on the
street.

Q. Do you have any idea her age?

A. Just try to find her photograph, here.

20 Q. Well, you don't have to be exact.

A. Well she was born in, ah, approximately
51, she was born in '59.

25 Q. As far as you are aware, she still living
on the street?

A. As far as I know she is.

30 Q. In terms of all the information that you
were able to obtain from her in the interview, are you able
to determine how much of it actually ever turned out to be
correct or not?

A. Nothing. I spent a tremendous amount of

Giroux, re-ex.
(Thompson)

5 policing manpower to, ah, proving or disprove what Ms. Thomas
had to say. Some of the efforts were, ah, expensive, and
took quite a great deal of time. I enlisted the assistance
of Centre of Forensic Sciences the Forensic Identification
Services to assist me in that process and took several
10 months.

 Q. In terms of the one comment about when we
went through the video at the One of a Kind Pasta, the
comment about a middle eastern, ah, guy, and, ah, as the word
was used, and there was an indication that, I believe that
15 was possibly unknown party, just -- in any event, he's
alleged to be one of, I think, I've got it down as five?

 MR. SCARFE: Five.

 MR. THOMPSON: Yeah.

20 MR. THOMPSON: Q. And alleged to be one of
the, that, in fact, the middle eastern guy was alleged,
according to Ms. Thomas, was possibly what we have now or my
friend has just gone through, as unknown male number 5. She
provided that information to you. Is that correct or not?
25

 A. Yes.

 Q. Okay. Have you also been aware that Mr.
Dranichak identified the middle eastern guy as somebody else?

30 A. I know that Mr. Dranichak describes the
Middle Eastern man in his narrative in his testimony.

 Q. Do you know, were you at the preliminary

Giroux, re-ex.
(Thompson)

5 inquiry where he indicated on the City TV who the Middle Eastern guy was?

A. I was present, but at this point, I'm uncomfortable saying exactly who that was.

10 Q. All right. We'll get that. Also on the videotape from One of a Kind Pasta, the very beginning of it, my friend's cross-examination, he wanted to know how it was that you were able to determine or why you believed that the individual returning at the beginning of that video was, was Mr. Hammond?

15 A. Yes.

Q. And you provided an explanation, but I am going to ask you, did you observe Mr. Hammond, the clothing he was wearing?

20 A. I did.

Q. Okay. And in terms of the clothing he was wearing, and there is no question who Mr. Hammond is, what was your observation as compared to the individual that was running in that video?

25 A. Well, I knew that Mr. Hammond, from the scene examination, was wearing a black t-shirt, and the individual on the recording appears to have a blue t-shirt on.

30 Q. Okay. Did you make any further observations to that at all?

Giroux, re-ex.
(Thompson)

5 A. That the, just based on the description, physically, it appeared to be Mr. Hammond, but the clothing appeared to be different. Ah, I don't know if it was an anomaly in the camera or the recording, but it just seemed to be different, different --

10 Q. Well, was the actual style of it different or was the actual, or is it just the colour different.

15 A. My recollection is the colour was different.

Q. Okay. And in terms, were you able to see anything he was wearing on his hand.

A. I saw that he had a, uhmm, watch and --

Q. Yes?

20 A. -- I knew from the photographs of the items that had been taken from Mr. Hammond at the time of autopsy is he had a large watch with a leather strap that was quite large, and noticeable. He was wearing that.

25 Q. All right. On a totally different area, I am going to get back to the exhibits, if I can please, Mr. Registrar, the photographs.

30 A. The one thing I can say, Your Honour, is that I do have a photograph of a watch, if, ah, if you are interested in that.

Q. Fair enough.

Giroux, re-ex.
(Thompson)

5 MR. THOMPSON: I am just going to ask the
court's indulgence a bit. I just want to clear up any
misconceptions. Could you put the video of the One of a Kind
Pasta on the screen, please? Thank you. And just so it's
10 clear, of exhibit number 10 is the video of One of a Kind
Pasta and it shows both the camera pointing in a westerly
direction, and as well camera three, which points in an
easterly direction. So it's already filed as an exhibit.

15 MR. THOMPSON: Q. All right. So just so
it's clear, this is on Exhibit Number 10. This is the link
in which, let me just hold it for a second please. Right
there. Okay. It is filed as Exhibit Number 10. So I don't
20 have to have the officer identify it. In any event, this is
the camera, I understand, and the officer can correct me if
I'm wrong, I am not trying to provide evidence, I'm just
trying to do this in a precise manner, that is pointing in an
easterly direction. Isn't that correct, officer? ?

A. Yes, sir.

25 Q. All right. Just so it's clear, and I am
referring now to exhibit number, number 6. The easterly
direction of that or at least, let's start this, the corner
post that is to the, to the right, which appears to be a
black porter post which is the bottom corner, this is in a
30 lighter colour, concrete colour?

A. Yes.

Giroux, re-ex.
(Thompson)

5 Q. It's on this picture, is it not? Can you see it on this picture?

10 A. Would be, uhmm, the difficulty -- the best, the best thing I did is, Your Honour, is it's these, it's these posts that, ah, I used to, ah, walk around in the test video, and I touched them and that's why I indicated to you that a portion of a human being may not actually be in that recording at the time. So I went through and I placed my hand on it, and then I would place my hand on this particular wall here, and I would walk in and around this particular area of the recording touching the windows and so forth, to demonstrate how far it would go. And I am in contact with the officers doing the recording, and I'm asking him, how far shall I shuffle the number forensic marker along to the east so that it's just barely visible by the recording. And, it was demonstrated in the photographs, but, as I indicated to you, as you move closer southbound towards the street, maybe to the waist or below the waist of an individual would be visible.

25 Q. Okay. So, let me just go back. Just so it's clear. This is the video of, taken that day that night, but the time is at 1 o'clock.

30 A. Yes.

Q. All right. So, I think what the best thing to do is if I show you -- what I am trying to get, in

Giroux, re-ex.
(Thompson)

5 terms of Exhibit Number 13 E, you have already put the
marker, that number 1, and I just want to be clear, that
that's according to what you could see on the video pointing
in a easterly direction. That's the furthest east you can
see. Right?

10 A. Correct. And at that location, the
number 1 location, you can just, you can just see it in, in
the test video into view, that would be the outer easterly
area, at that location, you would not see the top half of a
human being at that location.

15 Q. Okay. So that is Exhibit Number 13 E. I
am going to show you Exhibit Number 15 E. So, in terms of
where, can you, can you mark on there, where that is, that
marker is?

20 A. Would you be able to provide me with the
other exhibits, just so I can make a comparison.

25 Q. Sure. I just want to make sure this
evidence goes in properly. You are referring to Exhibit 13 E
then?

A. The number, the number 1 marker, and I'm
just going to use this pen on the screen, would be, and of
course now it's not working.

30 Q. Is it not?

A. I am gonna point to it. It would be,
that would be the outer area right there.

Giroux, re-ex.
(Thompson)

Q. Okay?

5 A. There is a, uhmm, hydro or something that the city would have put there, and that's in the photograph, so it was right, right approximately there. That's the outer area. There is two areas, there is two pipes coming out of the ground.

10 Q. Okay?

A. And the further easterly piece of piping equipment is this one right here. The other one is obscured by that traffic pole and that is the further east location.

15 Q. So I am going to, I am now referring to Exhibit Number 16. So, when my friend indicated to you that marker number 7, what you have marked with a circle here, is visible from that camera. Does that make any sense to you at all? It would be, would that camera that's pointed in an easterly direction pick up marker number 7, referring to Exhibit Number 16 as well as the circle that's marked there?

20 A. No, sir, it wouldn't.

25 Q. So, regardless of the video was working at all, sorry, working at all, that camera would not have picked up number 7.

A. That's correct.

30 Q. Now, let's deal with the next one, which is number 9, which is marked over here just in front of the pasta, in front of the front door of One of a Kind Pasta.

Giroux, re-ex.
(Thompson)

5 Can you see that circle there? And that is referred to as
number 9 --

A. Yes.

10 Q. -- marker? All right. Now, in the
photographs that were filed in which you had a series of
markers, and I am referring to 13 A as well as 13 B. Along
the front of One of a Kind Pasta, what was the camera that
was operating that time. What was the furthest out that it
could go to? Just, just so I remember, or?

15 A. In a westbound direction?

Q. Going in a westbound direction.

A. The, the outer marker, similar to the
outer easterly marker was number 13, to the west.

20 Q. Yes?

A. That was, could just be barely visible.
In the recording image, and that would be the much lower part
of an individual like their shoes or their calf.

25 Q. But moving from that westerly direction,
what is the furthest easterly marker that that camera would
pick up?

A. Number 8 seemed to be the common one that
was in both videos.

30 Q. Okay?

A. A little bit more in one than the other.

Q. So where is number 8 in reference to --

Giroux, re-ex.
(Thompson)

5 what's on this, what's that number? Exhibit? 15 E, the
exhibit that's up on the board. Where is that marker. I
know it's not on this board, but where would that, if you
could just point to where that marker would go to. And I
have ...

10 A. Number 8 would be right in that location
there. On the corner of the brickwork of the easterly
portion of the door.

15 Q. Okay. So in terms of blood marker S9
which is on Exhibit 16, would that have been visible from the
camera that was functional?

A. It would have been, it would have been
visible from this camera here.

20 Q. Okay. Which was functional?

A. Yes.

25 Q. Okay. So, neither one of these at this
point in time, neither Section 9 or blood sample, or marker 9
or marker 7 at this point in time, were either lost or were
not been visible. One way or the other?

A. That's correct.

30 Q. Okay. Now, let's deal with marker 8.
Can I key up the video again, please. Now, can you tell me
where marker 8 -- where the blood marker, I am going to show
you this because I just can't put it simultaneously up there.
So, once again, Exhibit 15 E, can you tell me where blood

Giroux, re-ex.
(Thompson)

marker 8 is in relation to this video.

5 A. I am just looking for the second pole to assist me, because I am unclear if this is the first pole or the second pole, and if it's the first pole, then this, the marker would be outside of this.

10 Q. You wouldn't be able to see?

A. You wouldn't be able to see it.

MR. THOMPSON: Q. Okay.

15 A. So I'm really looking for the next pole. If this is, in fact, Your Honour, I don't know if you can see, if it's, in fact, this pole here, that one on the screen, then the next pole is, ah, is to the east, and would be out of view, and that may be just a start of the second pole right there as you can see, ah, on the street, there is a darkened area there. And if that's the case, then that would be, it would, it would not be covered by it.

20 Q. Okay. In any event, even if you could possibly see where that marker, what caused that marker, at that distance out, what would be the height roughly of the individual you could see there?

25 A. Uhmm --

30 Q. How much of that individual could you see?

A. You may see their feet.

Q. Okay. As an investigator, would that

Lukings, in-chf.
(Middelkamp)

assist you in determining who the blood came from by just
seeing their feet?

A. No.

Q. All right. I have no further questions.

Thank you.

THE COURT: Thank you, officer, you may step
down.

THE WITNESS: Thank you, sir.

MS. MIDDELKAMP: Your Honour, the next
witness for the Crown is Detective Constable Lukings.

DETECTIVE CONSTABLE AIMEE LUKINGS, SWORN

EXAMINATION-IN-CHIEF BY MS. MIDDELKAMP:

MS. MIDDELKAMP: Q. Are all set up?

A. I think so, yeah.

Q. I understand that you are a member of the
Toronto Police Service?

A. I am, yes.

Q. And for how long have you been with the
Toronto Police?

A. It'll be nine years in May of this year.

Lukings, in-chf.
(Middelkamp)

5 Q. And currently you are working in the
Forensic Identification Services of the Toronto Police
Service?

A. That's correct, yes.

Q. How long have you been there?

10 A. Four years.

Q. I also understand that at the time of
your involvement in this investigation, your last name was
St. Amand?

15 A. Yes, it was.

Q. And, since that time, you have changed
your last name to Lukings?

A. Yes.

20 Q. Okay. Can you just give us a brief
overview of the roll of the Forensic Identification Service?

A. We go out to major crime scenes for
photographs, video evidence collection.

25 Q. And are there certain precautions that
you would take as a Forensic Identification Service officer,
when you are attending a crime scene?

A. Absolutely. Whenever we're attending a
crime scene it is handling evidence, we always wear latex
gloves.

30 Q. And in terms -- and are there certain
precautions that you take in addition to avoid cross

Lukings, in-chf.
(Middelkamp)

contamination between exhibits?

5 A. When we're dealing with, ah, numerous exhibits or items, at a scene or back at the office, we will change gloves as we handle each item.

10 Q. Now, were those precautions that you've told us about taken in this particular case, in your involvement in this investigation?

 A. Yes, absolutely.

15 Q. And as well, I understand that you were with a partner, and your involvement in this investigation, Detective Constable Kearon?

 A. Yes. That's correct.

 Q. K-E-A-R-O-N?

 A. Yes.

20 Q. Okay. And in your observation in how he conducted himself in the investigation, did he take those precautions that you told us about?

 A. Absolutely, yes.

25 Q. Did you take notes in relation to your involvement in this investigation?

 A. I did, yes.

30 MR. SCARFE: I have no objection to the officer referring to her notes to refresh her memory.

 THE COURT: Thank you. Officer, you may have reference to your notes if necessary in giving your evidence.

Lukings, in-chf.
(Middelkamp)

THE WITNESS: Thank you.

5 MS. MIDDELKAMP: Thank you, Your Honour. I
thank my friend for that.

MS. MIDDELKAMP: Q. As well, can I ask you,
Detective Constable Lukings, there was an exhibit list in
10 this case that was prepared by Detective Constable Kearon
initially.

A. Yes, that's correct.

Q. And I understand that you've continued to
15 update that list, and you've worked with that list?

A. Yes, I have.

Q. Okay.

MS. MIDDELKAMP: And I am going to ask if the
witness could also be able to refer to that exhibit list for
20 the purposes of refreshing her memory?

MR. SCARFE: Absolutely.

THE COURT: Very well.

THE WITNESS: Thank you.

MS. MIDDELKAMP: Q. And just to be clear
25 about the exhibit list, in terms of an officer having
involvement with a particular exhibit, their badge number
would be identified on the exhibit list. Is that correct?

A. Yes, that's correct.

30 Q. Now, I understand that Detective
Constable Kearon was the lead Forensic Identification Service

Lukings, in-chf.
(Middelkamp)

officer in this investigation?

5 A. Yes, that's correct.

Q. And that you were the second.

A. Yes, I was.

10 Q. I also understand that at some point in the course of this investigation, Detective Constable Kearon retired, and you have subsequently taken over the case. Is that correct?

A. Yes, that's correct.

15 Q. Can you give us an idea of when Detective Constable Kearon retired?

A. I don't recall. It's been at least two years.

20 Q. Now, I'd like to turn to your first involvement in this investigation, and if I can just take you to August 9th, 2007.

A. Okay.

25 Q. Can you tell us how you first became involved?

30 A. Ah, we were notified by somebody at FIS, at our actual office, it would have either been a Sergeant or the station duty operator who would have called Detective Constable Kearon to make him aware of the FIS, and at that time he made me aware, I was with him that night so we went together with the call.

Lukings, in-chf.
(Middelkamp)

5 Q. What time did you receive information,
what time did you get that call or receive that information?

A. At 2:08.

10 Q. Okay. And once you received that call,
and you were, you knew you were going to be detailed to the
scene, did you take any steps to prepare yourself, uhmm, at
FIS before leaving?

15 A. We were actually out on the road already,
having attended a previous call, so we just went from our
previous call to this call.

20 Q. All right. What time did you arrive on
the scene?

A. At 2:20 a.m.

25 Q. And where did you arrive?

A. At Queen and Niagara.

30 Q. And what do you do when you get there?

A. Typically we speak to the investigator
that's on scene who will give us an overview of the scene
and, ah, usually we do a walk through where he'll point out
points of interest and evidence and stuff like that. And
then we'll go back to the truck and start getting our gear
together, and then we'll start processing the scene.

35 Q. Okay. Now, I understand your first
notation is at 2:25, where you received some keys to a taxi
cab that we'll hear about later?

Lukings, in-chf.
(Middelkamp)

A. Yes, that's correct.

5 Q. Okay. And then I also understand that you're next detailed by Detective Constable Kearon to mark out the blood trail on Queen Street?

A. That's correct, yes.

10 Q. Can you tell us about that?

A. Ah, I was detailed to mark out, ah, the blood spatter trail that travelled from roughly in front of 734 Queen West. In my notes it says it's along the north side on, at Niagara, along the westbound curb side lane, and the trail travels up on to the north side sidewalk, back on to Queen Street West, across both westbound and eastbound streetcar tracks, and up on to the south side sidewalk.

15 Q. Okay. And did you make any observations about their being a second scene?

A. I did. Yes. Ummm, and I should clarify when I referred to a second scene, there was a gap sort of in the blood spatter, and in the areas of interest for us. So that's why I, I had put second scene in my notes. It was further down on Queen west. Past Bellwoods. In front of St. Nicholas Ukrainian Catholic Church.

25 Q. All right. And what did you observe there?

30 A. Out on the sidewalk, there was a, again some blood spatter. Ummm, bloody napkins, a bottle of water

Lukings, in-chf.
(Middelkamp)

and what appeared to be a black t-shirt.

5 Q. And did you make further observations of the church?

A. On the steps, ah, which were just sort of north of the sidewalk, there were two sets of stairs. On the set of stairs that was the first set, so, south, uhmm, there was some blood on the stairs and on the handrail and on a second set of stairs the one further north there was a knife and again, ah, a quantity of what appeared to be blood.

15 Q. And I also understand that you became aware that there was a taxi cab that was involved?

A. Yes, that's correct.

Q. And where was that located?

A. That was located in a parking lot of 711, at, ah, Queen Street West and Walnut Avenue.

20 Q. All right. And did you do any particular investigation with regards to that taxi?

A. Yes, I did. I am the one that took the swabs. While my partner photographed.

25 Q. Now, I understand that the next thing that you did was you began numbering bloodstains and items of interest?

A. That's correct. Yes.

30 Q. Okay. Did you do that yourself or did Detective Constable Kearon do that?

Lukings, in-chf.
(Middelkamp)

5 A. We were working together, so I actually placed the markers down, but I'm sure he was giving me some guidance as to what he wanted collected.

10 Q. Okay. And I also understand that you were standing by while Detective Constable Kearon took photos?

A. Yes, I was.

15 Q. Okay. And were you present when he took those photographs?

A. Yes, I was.

20 Q. Now the next notation that you have is at 5:35, and I understand that you seize something at that point?

A. Yes, I seize the water bottle that was on the sidewalk out front of the church.

25 Q. All right. And was that labelled with a specific exhibit number?

A. Ah, yes, it would have been. It was labelled item 19.

30 Q. And did you also seize another item subsequently to seizing the water bottle?

A. Yes. The black t-shirt.

Q. All right. And in terms of the precautions that you've told us about that you take when seizing different items --

Lukings, in-chf.
(Middelkamp)

A. Yes.

5 Q. -- uhmm, how did you, how do you deal
with that?

A. I would have changed gloves, ah, between,
seizing the water bottle and then seizing the t-shirt.

10 Q. Okay. And we are also going to hear
about a few other items that you seized. Did you follow the
same practice for those items?

A. Absolutely.

15 Q. Uhmm, I understand that at 5:46 you seize
another item?

A. Yes, a large white napkin that had some
bloodstaining on it.

Q. And at 5:55.

20 A. We seized the knife from the church
stairs.

Q. And was that given an exhibit number?

A. It was. That was Exhibit Number 23.

25 Q. Can you tell us how you seized that item?

A. Ah, I would have had gloves on, and I
would have picked it up from the handle of the knife.

Q. And once the item is seized, where does
it go?

30 A. Ah, I placed it in a paper bag and it was
put in the back of our, ah, Forensic Identification Services

Lukings, in-chf.
(Middelkamp)

van to be transported back to our office.

5 Q. When you refer to it going into a paper bag, would there have been any other items inside that bag?

A. No, it would have been the sole item inside the bag.

10 Q. Once you had seized what you've described as Exhibit 23, the knife from the scene, what's the next thing that you do?

A. Oh, I attended the parking lot. The 711 parking lot with respect to the taxi that was involved.

15 Q. Okay. And do you make any observations of the taxi?

A. Ah, yes. There appeared to be some, ah, blood on the rear passenger side door and window.

20 Q. And I understand that Detective Constable Kearon took photographs of that?

A. Yes, he did.

Q. And you stood by?

25 A. Yes, I did.

Q. And you also swabbed or completed some swabs?

A. Yes, I did.

30 Q. Okay. Can you tell us about that?

A. Uhhh, I took swab T1 which was the window of the exterior passenger side rear door. T2, which was the

Lukings, in-chf.
(Middelkamp)

5 passenger side door, rear exterior, and T3, which were blood drops located on the interior of the front passenger side door.

Q. And I understand that at 6:45, another Forensic Identification Services officer is on scene?

10 A. That's correct, yes.

Q. And what was his purpose for being there?

15 A. Ah, he came out to assist us, and, ah, after doing a walk through of the scene with us, he advised us to do some videotape, and some daytime photos.

Q. Now I understand that Detective Constable Kearon shot a scene video?

A. Yes, he did.

Q. And that you were present?

20 A. Yes, I was.

Q. What I'd like to do at this time is take you through the scene video?

A. Sure.

25 Q. I am going to ask you if you can narrate for us --

A. Absolutely.

30 Q. -- what we are seeing on the video so that we can understand what you observed when you were there.

Now first of all, I am just going to ask you, we see a business card that's being displayed on the screen?

Lukings, in-chf.
(Middelkamp)

5 A. Yes. That's Detective Constable Kearon's
business card. Now we're sort of facing westbound, panning a
little westbound on Queen Street West and we're roughly at
Claremont, which is a street that runs north of.

10 Q. Now, we see that there is some yellow
tape in the forefront of the screen?

A. Yes, you can see that the tape is
cordoning off the scene so there was no vehicular or
pedestrian traffic allowed in this area.

15 Q. Okay.

A. And again now he's panning further west,
and you can see the church rooftop in the background there.
And that's Queen and Niagara, the intersection that we are
looking at right now. And now he's panning further north,
20 and that Starbucks there, that's the corner of Claremont and
Queen Street West. And back here, you can see there is some
homes, so it indicates that there is residential properties
as well as the commercial properties on Queen, along in this
neighbourhood. And now he's panning back west. Okay, now we
25 are at the intersection of Queen Street West and Niagara. So
he's actually in the scene now.

30 Q. And there is also, do we see some yellow
tape?

A. Yes.

Q. In the background?

Lukings, in-chf.
(Middelkamp)

5 A. Yes, there is yellow tape again blocking
off vehicular and pedestrian traffic from entering that area.
So he is looking westbound. And he's closing up on I think
it's the sign for Walnut Avenue. And I think the purpose of
that is to show where the 711 was where the parking lot was
10 located that had the taxi in the parking lot.

Q. So in the upper right hand corner we see
the sign for the 711.

15 A. Yes. Yeah. Now he's panning back
westbound and then sort of northbound. At this point he's
showing us the blood spatter that's along the roadway here on
Queen West. And over to the curb side. And it appears that
he's still in the intersection of Queen and Niagara at this
point. And you can see there is blood spatter along the
20 sidewalk as well. And now he's zooming in on some more blood
spatter that was located on the westbound streetcar tracks on
Queen West. And again showing the same blood spatter area on
the westbound streetcar tracks. And now he's panning to the
25 south side of Queen West and again he's still near the
intersection of Niagara.

Q. Now there is an establishment on the
corner there?

30 A. Yes, the Coffee Time.

Q. Okay.

A. And he is panning back westbound. Now we

Lukings, in-chf.
(Middelkamp)

5 are on the, ah, south side of St. Nicholas Ukrainian Catholic Church.

Q. Now which side of Queen is the church on?

A. It's on the north side.

Q. We can also see yellow tape in the video?

10 A. That's correct. That's to keep the pedestrian and vehicular traffic outside the scene. And now he's going further west along Queen to indicate, and now we are closer to the area on the sidewalk, ah, out front of the church where the items of interest, the napkin, the water
15 bottle and the t-shirt and some blood spatter was located. And this is the first, oh, it was on the sidewalk again. So now you can see the first set of stairs, and then the second set of stairs is further north. So the first set of stairs
20 is where we collected some blood spatter from the, from the stairs. And the second set of stairs is where we recovered the knife and some more blood spatter.

25 And this is just a closer shot of the blood spatter on the stair and on the stair beneath is where we recovered item 23, the knife. And now he's panning out towards Queen West and you can clearly see the 711 gas station and store. On the south side of the street. And
30 there is the taxi parked in the far corner there. So again he's showing the taxi parked in the parking lot.

Q. You see a marker on the taxi?

Lukings, in-chf.
(Middelkamp)

A. The Ontario marker? A Y N J --

Q. Oh sorry, no, the yellow marker?

A. Oh, 25.

Q. Thank you.

A. So now we are focusing on the passenger side of the vehicle, which is where the bloodstaining was located on the rear door.

And there is a closer shot of it. So you can see that it starts on the window and kind of progresses down on to the door.

Q. That's the end of the video?

A. Yes.

Q. Was that, ah, is that video an accurate depiction of the scene as it appeared on the morning of August 9th, 2007, during your investigation?

A. It is. Yes.

Q. Your Honour, I'll ask if, sorry, the scene video could be the next exhibit?

THE COURT: Exhibit 19.

THE REGISTRAR OF THE COURT: 19, Your Honour.

--- EXHIBIT NO. 19: Scene video

MS. MIDDELKAMP: Thank you. I note the time, it's just before 1 o'clock, it's a convenient time to break. Subject to Your Honour.

Lukings, in-chf.
(Middelkamp)

THE COURT: 2:15.

5
--- COURT RECESSED AT 1:00 p.m.

10

--- UPON RESUMING AT 2:16 p.m.

MS. MIDDELKAMP: Good afternoon, Your Honour.

THE COURT: Good afternoon.

15
MS. MIDDELKAMP: I can proceed with
examination-in-chief of Detective Constable Lukings. She is
here before the court.

THE COURT: Yes.

20
MS. MIDDELKAMP: Q. Just before we broke for
lunch, we took you through the scene video, and you narrated
that for us. I just want to take you into your notes now.
At approximately 7:56, I understand that you seize something.

25
A. Yes, at 7:56, I seized a cigarette butt.

Q. And can you tell us how that came to your
attention?

A. It was actually Sergeant Adach who had
pointed it out to us.

30
Q. And in handling that cigarette butt, did
you do it in the same fashion as you've told us about the

Lukings, in-chf.
(Middelkamp)

other items, using a fresh set of gloves?

5

A. Yes.

Q. What I'd like to do now is take you through some photographs that were taken at the scene, and you've testified that Detective Constable Kearon took the photos, but that you were present while he took them?

10

A. Yes, that's correct.

Q. Have you had an opportunity to review the scene photos --

A. Yes.

15

Q. -- from this case.

A. Yes, I have.

Q. And are they accurate depictions of what is contained within the photos?

20

A. Yes.

MS. MIDDELKAMP: At this time, Your Honour, I propose to go through scene photographs. What we will do is have the digital images up on the screens, and we have hard copies of the photographs that I can enter as exhibits.

25

THE COURT: All right.

MS. MIDDELKAMP: It's just if Your Honour wanted an extra colour copy of the photographs, we can make an extra copy, but what we have for the court today is, there will, they will be up on the screen, and I will also hand up printed up copies for the court to label as exhibits.

30

Lukings, in-chf.
(Middelkamp)

THE COURT: How many of them are there?

5 MS. MIDDELKAMP: I think about 30. I have
them all in order, and I just propose that we'll go through
them each one and mark, so they go from, A through to Z and
then double A to, uhmm, ah, we're working on, or we can enter
10 a CD at a later time, and not have the hard copies of the
photographs entered as exhibits.

THE COURT: Does counsel have a different
view? That seems to me to be a little easier if we had a CD
with all the pictures on it. I assume they have specific
15 identifying numbers or you just refer to them as those
numbers rather than marking 30 odd exhibits, in the course of
this.

MR. THOMPSON: Court's indulgence.

20 MS. MIDDELKAMP: What we'll do at this
juncture, Your Honour, I'll go through the photographs, I
will identify for the record the JPEG number for each
photograph, and provide a CD for the copy. If it happens
25 later that we need the hard copy, we have it available, if
counsel needs to have that as well.

THE COURT: Thank you.

30 MS. MIDDELKAMP: Q. I am showing you the
first photograph, and it's displayed on the screen. Can you
tell us what's depicted in that photograph?

A. This photograph shows an image looking

Lukings, in-chf.
(Middelkamp)

5 northwest on Queen West. The street that's running north south there is at Gore Vale Avenue, and, ah, just east of there, you can see the side of the Ukrainian Catholic Church.

Q. Similar to the scene video, we see that there is yellow tape?

10 A. Yes, there is yellow tape, and a police officer standing guard.

Q. And just for the record, Your Honour, that's JPEG 006. If we could go to the next photograph, which is JPEG 010.

15 A. This is a photograph looking eastbound on Queen Street West, the street that you see running south there is Walnut Avenue, and it includes the 711 store, and gas station, with the taxi car. Ah, parked on the parking lot there.

Q. Okay. And the next photograph is 017.

20 A. This is taken westbound on Queen Street West, roughly in the area of Claremont and Queen Street West, and we are facing the intersection of Queen Street West and Niagara.

25 Q. And on the left-hand side or sorry, the right-hand side of the photograph, we see an establishment there.

30 A. Ah, the Starbucks.

MS. MIDDELKAMP: Q. Okay. And then the

Lukings, in-chf.
(Middelkamp)

next photograph is JPEG 021.

5 A. This is a more full photograph of Queen Street West, westbound. Ah, at Claremont. And you can see the intersection of the Queen Street West and Niagara, as well as the numbered placards along the street.

10 Q. The next photograph is 024?

15 A. Again this is a closer shot of the intersection Queen and Niagara, with a number of placards on the street. I should point out at this point as well that it was very windy that night so the placards were, there was a little bit of movement with them, we were having to set them back up once in a while.

20 Q. Now, since we're on that topic, and I should just be clear, I see that this is actually JPEG 023 for the record, you are talking about the placards having moved. So can you just identify those for us in the photograph?

25 A. Uhmm, I know that, I think one moved a little bit, and possibly two. I know that we were having to set a few up again because they would fall over and move slightly.

30 Q. Now, you told us earlier about marking out areas of blood spatter?

A. Yes.

Q. With these markers?

Lukings, in-chf.
(Middelkamp)

A. Yes.

5 Q. The markers that you've referred to as having moved, are they markers that were in relation to areas of blood spatter.

A. Yes.

10 Q. Are you able to tell us whether or not there was any movement with respect to any physical object on the ground, for example, blood. You've talked about the markers having moved?

A. Not the blood, no.

15 Q. The next photograph, if we can move to that is JPEG 024. Now, I understand that that's a photograph with the photographer facing westbound on the north side of Queen Street?

20 A. Yes, that's correct.

Q. And you can see the markers on the, on the road, and you can also see the markers on the sidewalk?

A. Yes.

25 Q. If we could move to the next photograph. The next photograph is JPEG 032?

A. This photograph is facing southbound on Queen Street West.

30 Q. I understand in this photograph, you can see two markers?

A. Yes.

Lukings, in-chf.
(Middelkamp)

5 Q. One is right at the edge of the curb and
the other one is on the sidewalk?

A. Yes, that's correct.

Q. If we could move to the next photo. This
is JPEG 033.

10 A. So these will be the two markers that we
saw in the previous photo, just you are able to see the
numbers now, on the markers. And the street behind there,
that's going to be Queen and Niagara, and we're facing
eastbound.

15 Q. All right. If we can move to the next
photograph, 036?

20 A. And this is facing eastbound looking back
up the, ah, the trail. And with the numbered markers on the
west side.

MS. MIDDELKAMP: If I could have a very brief
indulgence, Your Honour.

25 Q. I am going to ask you to look at what's
been labelled as Exhibit 3 on the trial. I understand that
that's a photo board version of the photograph that we are
looking at, JPEG 036?

A. Yes, it is.

30 Q. Thank you. If we can move to the next
photo. This is JPEG 039.

A. This is a photo of some of the blood

Lukings, in-chf.
(Middelkamp)

5 spatter that was on the roadway Queen Street West, and as you
can see, the number 1 placard has fallen over in the wind, so
it's just a sample of some of the blood spatter that was on
the roadway.

10 Q. And that marker, number 1 is for that
area of blood, of bloodstaining. Correct?

A. Yes, that's correct.

Q. If we can move on to the next photograph,
041?

15 A. And this again is another area of blood
spatter, with a number 2 marker next to it, so we've taken a
sample from that area as well.

Q. Now, I understand that the samples that
were taken from taken by Detective Constable Kearon?

20 A. Yes.

Q. If we can move to the next photograph,
042.

25 A. And this again is the placard number 3,
showing another area on Queen West where there was some blood
spatter.

Q. The next photograph I'd like to show you
is 043?

30 A. And again, this is another area on Queen
West where there was some blood spatter with placard number 4
indicating.

Lukings, in-chf.
(Middelkamp)

Q. The next photograph is 044.

5 A. And this is closer to the streetcar tracks on Queen West. And again, there is some, some blood spatter on the roadway.

Q. The next photo is 045.

10 A. Again this is more blood spatter on Queen Street West with the number 6 placard.

Q. The next photograph is 046?

15 A. And this is, ah, number 7 with some blood spatter that goes up on to the sidewalk, and this is on the north side of Queen Street West.

Q. The next photograph is 048?

20 A. And again, this is for blood spatter along the sidewalk on the north side of Queen Street West with the number 8 placard.

Q. Turning to the next photograph, 049?

25 A. And again this is more blood spatter along the sidewalk on Queen Street West on the north side..

Q. And it's marker number 9?

A. Marker number 9, yes.

Q. The next photograph is JPEG 050?

30 A. And that's more blood spatter on the streetcar tracks on Queen Street West, with placard number 10.

Q. And the next photograph 051?

Lukings, in-chf.
(Middelkamp)

5 A. This is more blood spatter on Queen Street West near the streetcar tracks with placard number 11.

Q. If we can turn to JPEG 052?

10 A. Again this is more blood spatter along the roadway next to the streetcar tracks with placard number 12.

Q. This is JPEG 053?

15 A. And this is some blood spatter with, ah, marker number 13 next to it, and this is on the south side of the road. Queen Street West.

Q. And the next photograph is 054?

20 A. And that's more blood spatter. This is on the south sidewalk of Queen Street West with placard number 14.

Q. The next photograph that appears that we've changed locations, this is JPEG 060?

25 A. Yes. This is now we're looking eastbound, and it's out front of the Ukrainian Catholic Church, and there are some items of interest, and some areas of blood spatter that are marked out.

30 Q. Now, you've previously discussed in your testimony seizing an Evion water bottle and labelling it as Exhibit 19?

A. Yes, that's correct.

Q. Okay. And do we see that in the picture?

Lukings, in-chf.
(Middelkamp)

A. Yes, we do.

5 Q. You also talked about Exhibit 18, which
was a black t-shirt?

A. Yes.

10 Q. And that's contained in the photograph
with marker 18?

A. Yes, it is.

15 Q. And you have also testified about seizing
the bloody napkins as Exhibit 15 I believe?

A. Yes.

20 Q. And those are in the photo?

A. Yes, they are.

25 Q. We see one set of stairs on the left-hand
side of the photograph?

A. Yes.

30 Q. And in the scene video, you talked about
seeing blood, what appears to be blood spatter in those
locations?

A. Yes.

Q. If we could go to the next photo, please.
And that's JPEG 06 -- 062?

A. So now we are looking at the second set
of stairs as well as the first set of stairs, and you can see
there is number of placards, 23 and 24 on the stairs.

Q. And you talked about seizing a knife at

Lukings, in-chf.
(Middelkamp)

the scene, that was labelled as Exhibit 23?

5 A. Yes, that's correct.

Q. And placard 23, does that delineate
Exhibit Number 23, which was the knife?

A. Yes, it does.

10 Q. If we could move on to the next
photograph then, which is 068.

A. This is a closer shot of items 15 and 16,
and 18. Again, on the sidewalk outside of the Ukrainian
Catholic Church.

15 Q. If we can move to the next photograph
which is JPEG 072?

A. And this is another shot of the same area
on the sidewalk, ah, with item 16, 17, 19 and 20.

20 Q. And moving to the next photograph, 073?

A. And this is on the first set of stairs,
ah, with placard 21 and 22 marking off areas where swabs were
taken of the blood spatter.

25 Q. And I understand that the swabs were
taken by your partner, Detective Constable Kearon?

A. Yes.

Q. If we could go to the next photograph,
which is 077, JPEG.

30 A. This depicts the second set of stairs,
outside the Catholic Church, and you can see item 23 is a

Lukings, in-chf.
(Middelkamp)

knife and 24 is more blood spatter on the stairs.

5 Q. Now, in terms of positions of Exhibit 23 and we also see the blood there, does that photograph accurately depict how that appeared when you first arrived on scene prior to seizing that exhibit?

10 A. Yes, it does.

Q. If we could turn to the next photo, which is 080?

15 A. That's a closer photo of the knife itself. Item 23. With a ruler next to it.

Q. All right. And the next photograph?

20 A. That's a picture of the 711 parking lot with the taxi parked in the parking lot. So it's facing southbound.

25 Q. JPEG 082 for the record. If we could continue on then. The next photograph is 086.

30 A. And that's a shot of the taxi parked in the 711 parking lot but now facing northbound. In this picture you can see the rear passenger side and the door with the bloodstaining on it.

Q. If we can move on to photograph 090?

A. And that's the, ah, front passenger side door that's opened on the taxi.

Q. And the next photograph is 092?

A. You can see that there was some blood

Lukings, in-chf.
(Middelkamp)

5 that was seen on the inside of the taxi, and it was
photographed by Constable Kearon.

Q. Was that swabbed?

A. I believe so, yes.

Q. And finally, 110, is the next photograph?

10 A. This is a daytime photo, looking
westbound on Queen Street West, just east of Queen Street
West and Niagara Street.

15 Q. And I understand that Exhibit 4 is a
poster board version of the photograph that we have on the
screen now?

A. Yes, it is.

20 MS. MIDDELKAMP: Your Honour, that completes
that set of photographs that I'd like to enter as exhibits at
this time.

THE COURT: Exhibit 20.

THE REGISTRAR OF THE COURT: Exhibit 20,
Your Honour.

25 --- **EXHIBIT NO. 20:** Scene photographs taken by Detective
Constable Kearon

30 MS. MIDDELKAMP: Q. Now you've told us
about seizing a cigarette butt, and that Detective Constable
Kearon had taken photographs of it. What's the next thing
that you do after that was completed?

A. After that, we cleared the scene and went

Lukings, in-chf.
(Middelkamp)

back to FIS to our office.

5 Q. Was your evidence collection at the scene completed at that point in time?

A. Yes, it was.

10 Q. And what did you do with the property that you had collected on scene?

A. It was put into the back of our van and transported back to Forensic Identification Services.

15 Q. And you arrive back at FIS, I understand, at about 9:15 in the morning?

A. Yes, that's correct.

20 Q. And at that point, you took care of paperwork that you needed to do?

A. Yes, I did.

25 Q. At this point I'd like to ask you some questions about the evening shift of August 9th, 2007?

A. Okay.

30 Q. I understand that you reported back on duty at 2300 hours?

A. Yes, I did.

Q. You were detailed by Detective Constable Kearon to assist him to, with the property that was seized in relation to this investigation?

A. Yes, that's correct.

Q. You attended to the cyanoacrylate lab?

Lukings, in-chf.
(Middelkamp)

A. Yes, that's correct.

5 Q. I understand that at this point that you took photos of the knife that was seized from the scene?

A. Yes, I did.

Q. Which has been labelled as Exhibit 23?

10 A. Yes, that's correct.

Q. What I propose to do at this time is show you a series of photographs. The first photograph I am showing you is JPEG 003. Do you recognize that?

15 A. Yes, I took this photograph inside the CA lab. Uhhh, and it's a photograph of item 23. The knife that we seized from the scene.

Q. And if you can just describe for us the orientation of it in this picture?

20 A. Ah, it's turned on its side so that you can see the belt clip, and the blade is out.

Q. Okay. And when you are referring to the belt clip, is that correct, in the middle of the, ah, knife area?

25 A. Yes.

Q. On the handle?

A. Yes. So it's on the handle part.

Q. And it's --

30 A. Clip portion.

Q. -- metallic coloured?

Lukings, in-chf.
(Middelkamp)

A. Yes.

Q. Okay. If we could turn to JPEG 004.

A. This is the top of the knife, looking down. You can see that there is, uhmm, some staining that looks like, ah, bloodstaining along the metallic portion of the handle.

Q. And if we could look at now at JPEG 006?

A. And this is the opposite side of the belt clip side of the, the same item, item number 23, and again, you can see that there appears to be some bloodstaining along the blade close down to the handle.

Q. And do those photographs accurately depict Exhibit Number 23, which was the knife seized from the scene?

A. Yes, they do.

Q. I'll ask that this series of photographs could be the next exhibit, which would be 24 I believe?

THE COURT: 21.

MS. MIDDELKAMP: 21.

THE REGISTRAR OF THE COURT: 21, Your Honour.

--- EXHIBIT NO. 21: Series of photographs depicting a knife.

MS. MIDDELKAMP: Q. I understand as well that you have brought an item here to court today from FIS.

Lukings, in-chf.
(Middelkamp)

A. I have, yes.

5 Q. Okay. Do you have it with you on the
witness stand?

A. I do not, no.

10 MS. MIDDELKAMP: Your Honour, if I could just
ask for a brief indulgence so the officer can obtain the next
item that I'd like to show her.

THE COURT: Yes.

THE WITNESS: Thank you.

15 --- (*Reporter's Note: Witness leaves courtroom)

MS. MIDDELKAMP: I apologize, Your Honour, I
had anticipated the exhibit was just outside the courtroom.
I am not certain, at this point, I thought the officer would
be right back.

20 MR. SCARFE: Maybe she went to Jane and 401
but I am sure she will be right back.

THE COURT: Hopefully not.

25 While we have this interlude, I can mention a
couple of things. There has been no request for an order
excluding witnesses. Is that intentional or is counsel
intending to deal with that formally or should there be one.

MR. SCARFE: I was waiting until we got to
30 civilians, but now is as good a time as any.

MS. MIDDELKAMP: There is no objection by the
Crown for an order excluding witness.

Lukings, in-chf.
(Middelkamp)

5 THE COURT: Certainly the only exception
would be Detective Sergeant Giroux, and since he's already
given his evidence, we won't need to worry about that. Mr.
Registrar, make an order excluding witness, please.

10 THE REGISTRAR OF THE COURT: Thank you,
Your Honour.

(Order excluding witnesses read by Mr.
Registrar).

15 THE COURT: The other item I was going to
mention, if we could finish today about 4:15 or so, I have to
get across the street to a meeting at 4:30. Thank you.

(Witness returns)

20 MS. MIDDELKAMP: Thank you. If we can
continue then, officer.

MS. MIDDELKAMP: Q. I wanted to ask you
about something that you brought today. Where did you
retrieve it from now?

25 A. It was from the homicide office down on
the second floor.

Q. And did you bring it with you here today
from FIS?

A. Yes, I did.

30 Q. And so in the morning, I understand that
you put it in the homicide office for storage?

A. Yes, I did.

Lukings, in-chf.
(Middelkamp)

5 Q. And when you retrieved it this afternoon,
it was where you left it?

A. Yes, it was.

Q. I also understand that the box that the
object is in is taped up and sealed?

10 A. It's, it's not actually, because the item
itself is sealed within a tube.

Q. Okay. I am going to ask you at this
point, just to remove the object from the box?

A. Sure.

15 Q. And can you tell us what that is?

A. This is item number 23, from the scene.
It's the Leatherman tech knife.

20 Q. Your Honour, I'll ask that this can be
labeled as the next exhibit?

THE COURT: Exhibit 22.

THE REGISTRAR OF THE COURT: 22, Your
Honour.

25 --- EXHIBIT NO. 22: Leatherman tech knife

MS. MIDDELKAMP: Q. I understand that's been
sealed and prepared in such a way that it's safe to be
handled.

A. Yes.

30 MS. MIDDELKAMP: Q. Now, just going back to
the point in time you have told us about on the evening shift

Lukings, in-chf.
(Middelkamp)

5 of August 9, 2007, into August 10, 2007, you took photographs
of that knife that you have just entered as an exhibit,
before the court.

A. Yes, I did.

10 Q. And can you tell me whether Detective
Constable Kearon had done anything in relation to the knife?

A. Yes. He took swab samples from, ah, some
of the bloodstaining that was on the knife, and he also
processed the knife in the cyanoacrylate chamber.

15 Q. Were you present when Detective Constable
Kearon swabbed the knife?

A. Yes, I was.

20 Q. And the precautions that you've told us
about, previously, in order to avoid cross contamination,
were those taken by yourself and Detective Constable Kearon
when dealing with this exhibit?

A. Yes, absolutely.

25 Q. Now, I understand as well at the same
time the bottle of Evion that you told us about seizing, that
was dealt with as well in terms of cyanoacrylate?

A. Yes, it was.

30 Q. Can you just assist us quickly, the
spelling of cyanoacrylate for the record?

A. Sure. It's C Y A N O - A C R Y L A T E.

Q. And I understand that Detective Constable

Lukings, in-CHF.
(Middelkamp)

5 Kearon was responsible or took the responsibility of
determining whether there were any fingerprints on Exhibit
Number 23, the knife?

A. Yes, he did that determination.

10 Q. And at about 9 o'clock that night, once
you had finished dealing with Exhibit 23, which was the
knife, and the Evion water bottle that you've told us about,
which was Exhibit 19, you then reported off duty?

A. Yes, I did. It was at 7 o'clock
actually.

15 Q. If I can now take you to the evening
shift of August 11, 2007, into August 12th, 2007?

A. Okay.

20 Q. I understand that in, into August 12th at
about 2:30 in the morning, you were inside the evidence
handling room, number 2?

A. Yes.

25 Q. And you were in the company of Detective
Constable Kearon?

A. Yes, I was.

30 Q. Did you deal with some property that had
been seized at that point in time?

A. Ah, yes, I did. Ummm, I was assisting
Detective Constable Kearon by photographing Sara McDermitt,
or Faith Watts she is also known as, her property, as well

Lukings, in-chf.
(Middelkamp)

as, ah, Jeremy Wooley, also known as Williams, property.

5 MS. MIDDELKAMP: Now, I understand, Your Honour, that there is no issue that the property from Faith Watts A K A Sara McDermitt was seized from 14 Division and taken to Forensic Identification Services with respect to their processing those items?

10 MR. SCARFE: Yes, that's conceded.

THE COURT: Thank you.

15 MS. MIDDELKAMP: Q. Now, 2:53 in the morning, I understand that the box containing the green shoulder bag belonging to Ms. Watts was opened?

A. Yes, that's correct.

Q. And that box was sealed?

A. Yes.

20 Q. All right. And as well, you noted that other property belonging to Ms. Watts was also packaged individually?

A. Yes, it was.

25 Q. In paper bags?

A. Yes.

Q. And sealed?

A. Yes.

30 Q. And you were detailed by Detective Constable Kearon to photograph those exhibits.

A. Yes, I was.

Lukings, in-chf.
(Middelkamp)

5 Q. What I'd like to do now is take you
through a series of photographs. You can start with JPEG
005?

10 A. That's a photograph of Sara McDermitt,
AKA Faith Watts' boots. They were 14 holed Doc Marten boots,
so both the right and the left, and they are exhibits 43 and
44.

Q. And Exhibit 44 is the right boot?

A. Yes, that's correct?

15 Q. And Exhibit 43 is the left boot?

A. That's correct.

Q. If we could turn to the next photograph,
then, that's JPEG 012?

20 A. This is a photo of Exhibit Number 46,
this is Faith Watts' A K A Sara McDermitt's gray cut off
shorts.

Q. And this photograph shows the front of
her shorts with the belt?

25 A. Yes, it does.

Q. If we can move to the next exhibit, or
next picture, 013 JPEG.

30 A. This is again a photo of Exhibit
Number 46, it's a Sara McDermitt, also known as Faith Watts,
the back of her gray cut off shorts.

Q. And moving on to JPEG 015?

Lukings, in-chf.
(Middelkamp)

5 A. This is, I can't quite see what the exhibit number is, but this is the green shoulder bag and the t-shirt wrapped around the strap of the shoulder bag, and the shoulder bag belongs to Faith Watts, also known as Sara McDermitt.

10 Q. If I can lead on this point, Your Honour. That's Exhibit 47. If we can move on to the next photograph, JPEG 020?

15 A. This is exhibit number, I believe it's 48, and this is the front of a black hooded sweatshirt that belonged to Faith Watts, A K A Sara McDermitt.

Q. And the next photograph is 022?

20 A. And this is a photograph of the back of Exhibit 48, which is Sara McDermitt, A K A Faith Watts, black hooded sweatshirt.

Q. The next photograph is the JPEG 023?

25 A. This I believe is Exhibit Number 49. This is a brown tank top that belonged to Faith Watts, A K A Sara McDermitt.

Q. Just for your assistance, if you want to refer to the exhibit list starting at page 17 of your exhibit list, is the property from Ms. Watts.

A. Thank you.

30 Q. On page 19 of the exhibit list, the tank top that you just referred to is labelled as Exhibit 49?

Lukings, in-chf.
(Middelkamp)

A. Okay. Thank you.

Q. And the next photograph is 024?

A. This is the back of Exhibit Number 49, the brown tank top, and again, this tank top belonged to Faith Watts, A K A Sara McDermitt.

Q. And do these photographs accurately depict Ms. Watts' property as it appeared when you dealt with it on August 12th, 2007?

A. Yes, they do.

MS. MIDDELKAMP: Your Honour, I'll ask this this series of photographs could be the next exhibit.

THE REGISTRAR OF THE COURT: 23.

THE REGISTRAR OF THE COURT: 23 Your Honour.

--- EXHIBIT NO. 23: Series of photographs depicting belongings of Faith Watts AKA Sara McDermitt

MS. MIDDELKAMP: Q. Now after dealing with Ms. Watts' property, I understand that again, with the assistance of Detective Constable Kearon, you went through the property of Jeremy Williams, A K A Jeremy Wooley?

A. Yes, that's correct.

MS. MIDDELKAMP: And again, Your Honour, I understand that there is no issue that Mr. Wooley's property was seized at 14 Division, and taken to FIS for processing?

Lukings, in-chf.
(Middelkamp)

MR. SCARFE: That's correct.

THE COURT: Thank you.

MS. MIDDELKAMP: Q. I understand that you took photographs of Mr. Wooley's property?

A. Yes, I did.

Q. And the property was boxed and sealed and individually packaged?

A. Yes.

Q. I'd like to show you the first photograph, which is JPEG 029.

A. This is a photograph of the front of Jeremy Williams, slash Jeremy Wooley's pants.

Q. And that's Exhibit 55?

A. Yes, it is.

Q. If we can move then to photograph 030?

A. And this is a photograph of the back of Exhibit 55, Jeremy Williams slash Wooley's pants.

Q. Now to photograph 032?

A. This is a picture of Jeremy Williams slash Wooley's shirt that he was wearing.

Q. Okay. And that's exhibit?

A. It's the front of the shirt.

Q. Sorry, that's Exhibit 56?

A. Exhibit 56, yes. Oh, yes.

Q. Turning now to photograph 034?

Lukings, in-chf.
(Middelkamp)

5 A. And this is the back of Exhibit 56, the shirt belonging to Jeremy Williams, also known as Jeremy Wooley.

Q. And in the upper left-hand side corner we see there is some disturbance in the material?

10 A. There is. There appears to be two small tears, and some staining that could be blood.

Q. Moving on to the next picture, if we could, 035?

15 A. And this is a closer photograph of an area of the shirt that is torn, and again, you can see some, some bloodstaining.

Q. And finally, if we can move to JPEG 039?

20 A. These are exhibits 59 and 60, these are the black running shoes belonging to Jeremy Williams, A K A Jeremy Wooley.

Q. And are these photographs, do they accurately depict the property of Mr. Wooley?

25 A. Yes, they do.

MS. MIDDELKAMP: If that can be the next exhibit, Your Honour.

THE REGISTRAR OF THE COURT: Exhibit 24.

30 THE REGISTRAR OF THE COURT: 24, Your Honour.

--- EXHIBIT NO. 24: Series of photographs depicting Jeremy

Lukings, in-chf.
(Middelkamp)

Williams/Wooley's belongings

5 MS. MIDDELKAMP: Q. I understand there was some other property from Mr. Wooley that you processed, for example, Exhibit 57 with a belt with a black silver buckle, Exhibit 58 was a black and white bandana?

10 A. Yes.

Q. And subsequently after taking the photographs, I understand that Detective Constable Kearon had taken swabs of Mr. Wooley's shoes?

15 A. Yes, he did.

Q. Okay. And then once you had taken those photographs, and the swabs were taken, all the items were placed back into the paper bags and put into a property box and stored?

20 A. That's correct, yes.

Q. And sealed?

A. Yes.

25 Q. Turning now to August 17th, 2007. I understand on that date, you attended at the scene with Greg Schofield for the purpose of having a plan diagram of the scene created?

A. Yes, that's correct.

30 Q. I also understand that on that date, you attended at 14 Division to pick up the property of George Dranichak?

Lukings, in-chf.
(Middelkamp)

A. Yes, that's correct.

5 Q. And at that point in time, once you had finished that, you brought it back to FIS?

A. Yes.

Q. And dealt with it?

A. Yes, that's correct.

10 Q. That in September of 2007 completed your involvement?

A. Yes, it did.

15 Q. Now, if I could just take to you April 22nd, 2009.

A. Okay.

20 Q. And at that point, you were detailed to resubmit some of the exhibit items to the Centre of Forensic Sciences?

A. Yes, I was.

Q. I understand that you attended the DLMS?

A. Yes.

25 Q. Which, if you can tell us what that is?

A. That's the divisional locker management system.

30 Q. And you were retrieving property from this case for resubmission?

A. Yes, that's correct.

Q. Your Honour, I understand that my friend

Lukings, in-chf.
(Middelkamp)

5 is allowing me to lead in this portion of the evidence. I
understand that you received, retrieved the following items
and submitted them to CFS. Swab S3?

A. Yes.

Q. S5?

A. Yes.

10 Q. S7?

A. Yes.

Q. S8?

A. Yes.

15 Q. S9?

A. Yes.

Q. S10?

A. Yes.

20 Q. S11?

A. Yes.

Q. S13?

A. Yes.

25 Q. And 1A?

A. Yes.

Q. And when you retrieved those items, they
were all where they should be and were properly packaged and
sealed?

30 A. Yes, they were.

Q. You took them out of those packages and

Lukings, in-chf.
(Middelkamp)

sealed, repackaged and sealed them --

5

A. Yes.

Q. -- for submission to CFS.

A. Yes, I did.

Q. The next item that you retrieved was the boots belonging to Douglas Fresh?

10

A. Yes.

Q. Which were labelled as Exhibit 36 in these, in this investigation?

A. Yes.

15

Q. As well you retrieved the boots belonging to Ms. Watts?

A. Yes.

Q. Which were exhibits 43, the left boot, and 44, the right boot?

20

A. Yes, that's correct.

Q. Mr. Wooley's shoes, exhibits 59 and 60, 59 is the right and 60 is the left?

A. Yes, that's correct.

25

Q. You retrieved a Leatherman multi tool belonging to Mr. Fresh?

A. Yes, that's correct.

Q. Exhibit 27?

30

A. That's correct.

Q. You retrieved a Leatherman multi tool

Lukings, in-chf.
(Middelkamp)

belonging to Ms. Watts?

5 A. Yes.

Q. Which was Exhibit 76?

A. Yes, that's correct.

10 Q. You retrieved an Ozark trail camping tool
of Ms. Watts, which was labelled as Exhibit 77?

A. Yes, that's correct.

15 Q. As well a bottle opener, belonging to Ms.
Watts, Exhibit 78?

A. Yes, that's correct.

20 Q. You also retrieved running shoes
belonging to Ms. Nicole Kish?

A. Yes.

25 Q. Exhibits 103, left shoe, and Exhibit 105
right shoe?

A. That's correct, yes.

30 Q. I understand that you properly packaged
and submitted those items to the Centre of Forensic Sciences.

A. Yes, I did.

Q. As you had indicated earlier in your
testimony, once Detective Constable Kearon had retired, you
had taken over in terms of assisting with the investigation
and, and before it came to court. As part of that, I
understand that you, in conjunction with Greg Schofield, had
a scene diagram prepared with swabs from the scene marked on

Lukings, in-chf.
(Middelkamp)

them?

5

A. Yes, that's correct.

Q. And in terms of the locations of the swabs, you used that from Detective Constable Kearon's notes, which had been transcribed into the exhibit list?

10

A. Yes, that's correct.

Q. And I just want to show you what's been labelled as Exhibit 16, on the trial. It's up on the easel here.

15

A. Okay.

Q. And, ah, to your understanding, this diagram is accurately prepared in terms of the location of the swabs in relation to the scene diagram?

20

A. Yes.

Q. And you can see it's, we have got the swabs on there that were marked S1, S3, S5, S7, S8, S9, S10 through 12, and S13 and 14?

25

A. Yes.

Q. And the swabs that are marked on the diagrams were with ones that were submitted to the Centre of Forensic Sciences for testing?

30

A. Yes, that's correct.

Q. As well in preparation for trial, I understand that you handled Exhibit 18, which was the t-shirt that was seized from the south side of the Ukrainian Catholic

Lukings, in-chf.
(Middelkamp)

Church on Queen Street?

5

A. Yes, I did.

Q. And I understand that you had taken that and reconstructed in a way that it could be presented to the court?

10

A. Yes, I did.

Q. I am showing you an object. Can you tell me if you recognize that?

A. Yes, I do. That's item 18 that we had seized from the scene.

15

Q. And you packaged this up so it could be presented in court?

A. Yes, I did. There was substantial damage done, I am assuming by the paramedics once they arrived on scene, to the t-shirt, so it had to be sort of pieced back together.

20

Q. Okay. And so we've got the front, and then we have the back of that?

25

A. Yes.

Q. And you retrieve that from property and kept it in your possession?

A. Yes, I did.

30

Q. And packaged it for court? Okay. I also understand that you had done the same thing with respect to the clothing that Ms. Kish was wearing?

Lukings, in-chf.
(Middelkamp)

A. Yes, I did.

Q. And was seized from her?

A. Yes.

Q. Okay.

MS. MIDDELKAMP: Sorry, Your Honour, if that
t-shirt could be labelled as the next exhibit.

THE COURT: Exhibit 25.

THE REGISTRAR OF THE COURT: 25, Your
Honour.

--- EXHIBIT NO. 25: T-shirt

MS. MIDDELKAMP: Q. I am showing you an
item and I'll just ask you if you recognize that.

A. Yes, I do.

Q. Okay?

A. It's --

Q. And what is it?

A. Item 104, it's a halter top that was
seized from Nicole Kish.

Q. Okay. So we have got the front and the
back?

A. Yes.

Q. And this was packaged in a way that it
could be presented for court, and there is no issue with
respect to any, ah, deposits that might be on there?

A. No, no issue.

Lukings, in-chf.
(Middelkamp)

5 MS. MIDDELKAMP: If that could be the next
exhibit, Your Honour.

THE COURT: Exhibit 26.

THE REGISTRAR OF THE COURT: 26, Your
Honour.

10 --- EXHIBIT NO. 26: Halter top of Nicole Kish

MS. MIDDELKAMP: Q. And finally I'll show
you another item. I'm showing you this. Can you tell me if
you recognize it and what it is?

15 A. Yes, I do. This is item number 102, this
is the skirt belonging to Nicole Kish.

Q. And similar to the other two items that
we've seen, these are packaged properly so that they can be
in court?

20 A. Yes.

Q. I am showing you some photographs of
Exhibit 23, the knife that we talked about. I just want to
show you this that we looked at. Is that an accurate
25 depiction of the photographs that you took?

A. Yes.

MS. MIDDELKAMP: If that could be the next
exhibit, Your Honour.

THE COURT: Exhibit 28.

30 THE REGISTRAR OF THE COURT: Thank you,
Your Honour. I take it the skirt was 27?

Lukings, in-chf.
(Middelkamp)

5 THE COURT: Sorry. Did you want the skirt.
Exhibit 27 is the black skirt belonging to Ms. Kish, and
Exhibit 28 is the photo board of the knife.

MS. MIDDELKAMP: I thank Mr. Clerk.

10 THE REGISTRAR OF THE COURT: Thank you,
Your Honour.

--- EXHIBIT NO. 27: Black skirt of Nicole Kish

--- EXHIBIT NO. 28: Photo board of knife

15 MS. MIDDELKAMP: Q. We've got one final
item that you packaged up for the purposes of court. I'm
showing you one final object. Can you tell me if you
recognize that?

A. Yes, I do. This is item 8671-3 and these
are the jeans that the deceased was wearing.

20 Q. Your Honour, and that could be labelled
as the next exhibit?

THE COURT: Exhibit 29.

25 THE REGISTRAR OF THE COURT: 29, Your
Honour.

--- EXHIBIT NO. 29: Jeans of deceased

MS. MIDDELKAMP: Just a brief indulgence,
Your Honour.

30 Your Honour, what counsel and I had discussed
is we put in a number of exhibits today, and Your Honour's
heard a number of different items that went in. So what we

Lukings, cr-ex.
(Scarfe)

5 propose to do is give Your Honour a list with everything
that's on there for the assistance of the court, so that you
have a list of every exhibit and what the item was for it, so
I will do that, with counsel, and then we will provide that
to Your Honour.

10 THE COURT: All right. Thank you.

MS. MIDDELKAMP: We can file it as an exhibit
as well, but we will provide a copy to Your Honour for your
assistance. Those are my questions for the witness.

15 THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. SCARFE:

20 Q. Exhibit 23, sorry, item number 23, the
knife that's been filed as an exhibit, I noticed in my
disclosure that a number of knives had been photographed in
the fingerprinting process. Do we have photographs of items
number 23?

A. Item number 23. Yes.

25 Q. And they are part of that series of
photos, I am just having trouble with the labelling.

A. They are -- item number 23 was the knife
that I had photographed.

30 Q. The knife from the scene?

A. From the scene. Correct.

Q. The --

Lukings, cr-ex.
(Scarfe)

5 A. Now there was another knife that had been seized as well.

Q. Yes?

A. And that was Detective Constable Kearon who took those photos.

10 Q. Okay?

A. Of the second knife.

Q. Did you, ah, the knife from the scene, item 23, the one that was found on the church house step?

A. Yes.

15 Q. Was, that item was first swabbed, and then put through the cyanoacrylate, if I have the pronunciation wrong, process?

A. Yes, that's correct.

20 Q. Right? And if I am clear, there were three swabs taken from the knife found on the church steps?

A. Yes, I believe so. I am just going to double check on the exhibit list.

25 Q. 20, A B and C?

A. Yes, that's correct.

Q. And A was taken from the blade. Correct?

A. That's correct, yes.

30 Q. And the reason you take that from the blade is because your naked eye in examining it in the lab, or the Forensic Identification Services evidence room

Lukings, cr-ex.
(Scarfe)

number 2, ah, looked like there was blood on there?

5 A. Yes, that's correct.

Q. All right. And as a result, instead of just swabbing any particular part of the knife, you tried to swab a part where blood was visible?

10 A. That's correct.

Q. Okay. The second swab from that knife is taken from the right rear back of the handle?

A. Yes.

15 Q. I am just gonna grab that recent, ah-hah.

THE REGISTRAR OF THE COURT: Exhibit 28,
Your Honour.

THE COURT: Thank you.

THE REGISTRAR OF THE COURT: Thank you.

20 MR. SCARFE: Sorry, this has a number.

THE REGISTRAR OF THE COURT: 28, Your
Honour.

25 MR. SCARFE: Q. Four photographs, all the same knife.

A. Right.

Q. When you say it's taken from the right rear handle, can you just clarify, is that the knife with the blade down, the blade up?

30 A. I am going to have to tell you at this point that I didn't personally take the swab. It was

Lukings, cr-ex.
(Scarfe)

5 Detective Constable Kearon. So, this is his description of,
from where he had actually taken the swabs. He --

Q. So he -- we know from the handle, we just
don't know from the side?

10 A. I don't want to say definitively because
I don't have it in my notes.

Q. Okay. I'll ask him about that. And I
guess I should ask him about the third swab as well, the
meaning of the word pommel. Do you know what pommel is?

15 A. I, I can't say for sure.

Q. Not to worry. Subsequent to that, this
particular knife depicted in Exhibit 28 is the one found on
the church step, was put in the fingerprint chamber?

20 A. Yes, that's correct.

Q. And if I understand it, it's the way it
works is they sort of heat glue up to the point that it's
vaporous, and let it cool, and it sort of settles on the
ridge details?

25 A. That's correct. It adheres to the
substance.

Q. What role did you play in that process?

30 A. I didn't play much of a role. I stood by
while Constable Kearon did the glue fuming process, and then
afterwards examined the knife.

Q. Did one of you take photos during that

Lukings, cr-ex.
(Scarfe).

process?

5 A. During the cyanoacrylate process? No.
Because its in a chamber.

10 Q. Okay. What I am finding a little
confusing is, got all these photos that are, for instance,
the one on the screen, S28, and has a tinge to it. Uhhh,
this is a photo that's taken at the fingerprinting stage.
Either after it comes out of the chamber, what's JPEG number
is that? 001, from the lab. Call it lab 001. If you can
15 just go through the next two or three. Okay. That's, that's
the one. That's 003 from the lab? You see we have a series
of photos from the lab which seem to be taken in a way to
outline ridge detail.

20 A. Yes. That's correct. But I should
clarify, this is not item 23.

Q. I was coming to this.

A. This is item 28.

Q. Item 28.

25 A. Right.

Q. Which was a matching, it's, it's, how
would I put it. If it's a different knife, but it's the same
type of knife, as far as brand, model number, as the one
30 found on the church steps --

A. Okay.

Q. -- does that accord with your

Lukings, cr-ex.
(Scarfe)

recollection?

5 A. Again I didn't handle this knife, so I don't want to agree definitively to anything.

Q. All right. So if you just help me with the photograph 003 from the lab that's up there --

10 A. Yes.

Q. -- is a, you've seen photographs like that before?

A. I have.

15 Q. And does that appear to be the type of photograph that's taken after the knife comes out of the chamber?

A. Yes.

20 Q. Right. And it's taken in order to identify for the viewer the ridge detail that was obtained as a result of the process?

A. That's correct.

25 Q. Okay. And you, really, FIS officer, now I can ask you about this, but were pictures like this taken of item number 23, as far as you know?

A. I don't think that they were. You'd have to clarify with Detective Constable Kearon. I know that I didn't take photos like this afterwards.

30 Q. Any idea why?

A. I can't say definitively. It could be

Lukings, cr-ex.
(Scarfe)

5 there wasn't ridge detail found on that item 23, so that's
why there were no photos taken.

Q. You only take the photos if you find the
ridge detail? Is that generally the routine?

A. Usually.

10 Q. So, if you don't find ridge detail, you
just, you don't bother photoing?

A. That's correct.

Q. Great.

15 MR. SCARFE: I suppose that the series of
three photos from the lab, 001, 002, 003 should be the next
exhibit, and I'd ask my friend when they are burning that,
the CD full of everything we've looked at if they just simply
add that to the --

20 THE COURT: Very well. Exhibit 30.

MR. SCARFE: Thank you.

THE REGISTRAR OF THE COURT: 30, Your
Honour.

25 --- EXHIBIT NO. 30: Three photographs from the lab of a
knife, 001, 002, 003

30 MR. SCARFE: I know my friend and I are going
to agree on a list, all the items that she just put in, and
I, subject to how Your Honour likes to do things, ah, I
overheard them talking about leaving an exhibit number open
so that they could put that list in, and so when Your Honour

Lukings, cr-ex.
(Scarfe)

5 said Exhibit 30, of course, that's the next exhibit, but, ah,
do you want us to --

THE COURT: I think I prefer to mark that
exhibit as an exhibit when the exhibit is available.

MR. SCARFE: I thought so. Okay. Thank you.

10 THE REGISTRAR OF THE COURT: Thank you.

MR. SCARFE: Q. Now, I just wanted to ask
you a little bit about some of the photos we've put in, that
eventually lead you, us to Exhibit 16 in these proceedings,
which we call the DNA map.

15 A. Okay.

Q. And did you prepare this?

A. No. Greg Schofield did.

Q. Did you assist him?

20 A. I did, I gave him the measurements that I
had from the exhibit list.

Q. Okay. A lot has been talked about before
you got here about this S7, S8 and S9?

25 A. Okay.

Q. And I just wanted to get basic idea from
you when you find a bunch of blood on the ground --

A. Yes.

30 Q. -- and you place an evidence marker on
it, much like we see here in Exhibit 3, right? Do you try
and put the evidence marker in the middle of the cluster of

Lukings, cr-ex.
(Scarfe)

blood spots?

5 A. Well, as close to the sample that we are going to take as possible. Without actually being on top of it.

10 Q. Okay. Sometimes you go along and you see blood on the ground in an area and it's just one, maybe two spots, real close together?

A. Yes.

15 Q. So where do you tend to put the evidence marker in relation to the two spots. You obviously don't want to disturb the spots before they are swabbed?

A. No.

Q. Right?

20 A. So we put them as close to the spots as possible without putting them on top or touching.

Q. Okay. So you try to get it right to the spot?

A. Yes.

25 Q. Obviously when we are looking at photos later, ah, for example in Exhibit 3 here, in the foreground, you see placard number 2, right?

A. Yes.

30 Q. Can we assume that the centre of whatever cluster of blood you found is where the evidence marker is or does it tend to be to the left, to the right?

Lukings, cr-ex.
(Scarfe)

5 A. It, it tends to be as close as possible
to the area from which we are going to take the sample.

Q. But not right in the middle of?

A. No.

Q. Because then you might disturb.

10 A. That's correct.

Q. Okay. So you don't have a habit about
which side you put it on?

A. No.

15 Q. To the north to the south?

A. No, there is nothing like that.

Q. All right. And there has been a lot of
talk about this 7, 8, 9, ah, placards along the sidewalk?

A. Okay.

20 Q. At least with respect to 7 and 8, there
was quite a big area --

A. Yes.

25 Q. -- of blood spatter all over the place.
And we are just trying to figure out whether the marking on
the DNA map, Exhibit 16, would be in the middle of that area,
over to the side, because it's becoming important for reasons
I won't get into.

30 A. Right. Ummm, it, again, ah, the best
that I can say is that it would be as close as possible to
the area that we would be taking the sample from.

Lukings, cr-ex.
(Scarfe)

5 Q. Okay. And one of the ways we can figure out exactly what that means is looking at the photos because there is an individual photo taken of the evidence marker and with the blood, right?

A. Yes.

10 Q. I guess my question to you is, you probably don't remember which placards blew over and had to keep being moved?

A. Yes.

15 Q. Do you remember going along the sidewalk and having to fix placards that had fallen down and the like?

A. I honestly can't, I don't recall specifically, no, but I do recall that it was very windy that night, and that things were blowing around.

20 Q. Mm-hmm. So you put a placard down, you take a local area, a picture of the cluster of blood?

A. Yes.

25 Q. Right? And you leave the placard there?

A. Yes.

30 Q. Move on to the next one. And so maybe what you can give us is like a margin of error. Because obviously you then, did you take the sort of pictures that show a whole bunch of placards before the individual ones or after. Do you recall?

A. Ah, that was, it was Detective Constable

Lukings, cr-ex.
(Scarfe)

5 Kearon who had taken the photos and I know that he took, ah,
the initial photos were of the entire blood spatter track,
like right there, the photo behind there.

Q. Yes?

10 A. And then he came up and did sort of
close-ups but not too close, to give you an idea of the area
in which we were going to be taking the sample from.

15 Q. All right. So, is it fair to say that
when we look at a photo that shows a group of placards, that
each individual placard may not be in the exact location when
it was photographed individually?

20 A. It's fair to say, but it's, I don't think
that even if they were blowing over, they weren't travelling
say half a block, they were within the same little area.

20 Q. Within the same little area?

A. Yes.

25 Q. In the margin of error being what a foot
or two, or --

A. Maybe not even that much.

Q. Less than a foot?

A. Probably.

Q. Okay.

30 A. As you saw in the photo with the placard
number 1, it was just knocked over, it was just a matter of
setting it back up.

Lukings, cr-ex.
(Scarfe)

Q. Okay. Thank you.

MR. SCARFE: Did Your Honour want me to go straight through or were you going to take a brief break.

THE COURT: We can take a recess at this point. 15 minutes.

--- COURT RECESSED AT 3:24 p.m.

--- UPON RESUMING AT 3:40 p.m.

MR. SCARFE: Q. Just four more things. Number 1, just so we all understand, items like the knife, the clothing, are all individually, when seized, put in paper bags?

A. That's correct. Yes.

Q. You never put more than one item in a paper bag?

A. No.

Q. On TV, they seem to use these plastic bags?

A. Yes.

Q. What's the difference?

A. Ah, we use the paper bag because often in cases like this, specially where clothing has blood on it, we

Lukings, cr-ex.
(Scarfe)

5 are going to be taking it back to our office, to our drawing rooms and we are going to be hanging it up there and drying it, and the plastic bags tend to sort of stick to wet material.

10 Q. When you take it back to the drying room, do you dry it in the paper bag?

A. No no, they are removed, sorry, I should clarify. They are removed from the paper bags in a large drying chamber, and the articles of clothing are hung up.

15 Q. So I guess what you found is if you use paper, or plastic bags, you get back there, a wet item, something that was maybe on the knife blade or on a piece of clothing ends up on the side of the plastic bag, once you take it out?

20 A. That's correct.

Q. But you never find that with paper?

A. With paper, no.

25 Q. Okay. Just so we understand, the crime scene video is taken after all the placards are removed from the street?

A. Yes, that's correct.

30 Q. Okay. Sometimes you take crime scene videos at night?

A. Yes.

Q. You have the lighting necessary to do

Lukings, cr-ex.
(Scarfe)

5 that. It wasn't just because you had to wait for the sun to
come up?

A. No.

Q. Was it because it was sort of a last
minute idea to take a crime scene video?

10 A. I think a lot of that had to do with the
arrival of Sergeant Ed Adach, who arrived and indicated to
Detective Constable Kearon that this would be wise to take a
video.

15 Q. Not as the lead instructing, just as a
suggestion?

A. A suggestion, yes.

Q. Okay. But you didn't put all the
placards back up?

20 A. No.

Q. No. Okay. Just wanted to talk, you
clarify, you described for us when Ms. Middelkamp was asking
you questions, the blood trail?

25 A. Yes.

Q. And you described it sort of with a
beginning and an end. At least for the primary scene.

A. Yes.

30 Q. The secondary scene being down by the
church?

A. Right.

Lukings, cr-ex.
(Scarfe)

5 Q. Right? And in actual fact, is it fair to say that although we refer to a blood trail, you didn't really know what's the beginning and the end.

10 A. I wouldn't know that personally, but we do have some blood spatter analysts who would be able to determine that more clearly than I would.

15 Q. When you talk about a blood trail, that implies that a person was bleeding first here then here, then here and here and here. Right?

A. Yes.

20 Q. That's why we call it a trail. But, in fact, even with a blood spatter expert, you don't know where the trail begins and ends.

25 A. No, but they can determine directionality and issues like that with, within the blood spatter.

30 Q. Right. When you talked about a trail, it sort of started over here, and moved down the street, going through the various clusters of blood?

A. Yes.

Q. Right? You can't tell what was deposited first, second, third?

A. Oh, no.

Q. No?

A. No.

Q. So, when you talk about a trail, it's

Lukings, cr-ex.
(Scarfe)

more of an estimation?

5 A. Yes, that's correct.

Q. Okay?

A. Yes.

10 Q. Thank you. This photo that we're,
someone help me with?

MS. MIDDELKAMP: 62.

15 MR. SCARFE: JPEG 62? But it's part of a
series of photos.

MS. MIDDELKAMP: Exhibit 20.

MR. SCARFE: Exhibit 20, JPEG 62.

20 MR. SCARFE: Q. This is what tells us,
uhmm, a little bit about what happened after Mr. Hammond got
off the cab. Right?

A. Yes.

25 Q. And we've had a fairly close look and
description about the knife being found over by placard
number 23 and number 24 representing, ah, an area of
bloodstaining?

A. Yes, that's correct.

Q. Right? Those were all fairly localized?

A. Yes.

30 Q. But can you help with us with 21 and 22?
Do you have a recollection or is there a photo of the
close-up of the front stairway that can assist us with the

Lukings, cr-ex.
(Scarfe)

amount of blood that was on the south stairwell?

5

A. I don't recall specifically an amount.
There may be a photo in there that's a little closer.

Q. Yeah, please.

MR. SCARFE: Court's indulgence, Your Honour.

10

MR. SCARFE: Q. Sometimes the cluster's
very localized.

A. Right.

15

Q. Other times, well, you might look from a
distance and see these two placards quite a distance apart.
It doesn't always show us that, in fact, there is quite a
spread out of cluster of blood that is almost continuous.
Starting over to the left of placard 21, and the spots
continuing up towards 22.

20

A. Yes.

Q. So, this photo helps us to understand how
spread out the blood is. And I am colour blind, so correct
me if I'm wrong, but right in the centre here we have a
lighter coloured staining?

25

A. Yes.

Q. See where I am pointing at?

A. I do.

30

Q. Can you assist me with whether to your
trained naked eye whether that's blood or just dirt?

A. I don't want to say definitively.

Lukings, cr-ex.
(Scarfe)

Q. Hard to tell?

A. It's definitely lighter than the other staining that's, that's visible on the stair.

Q. Okay. And then just below number 22 here, that's clearly blood.

A. It appears to be.

Q. And this big blotch over here to the left? Same thing?

A. Yes.

Q. All right. Thank you. Thanks, Ms. Fineberg, those are my questions for -- oh, I have one more question. You see in the very left top left corner of the photo, there appears to be a handrail?

A. Yes.

Q. When you went and examined that, did that appear to be blood to you as well?

A. Yes, it did.

Q. Okay. But you didn't add a placard or hang one off, that's not your normal practice?

A. No.

Q. Okay. Do you recall how far up the handle it went. Or is that pretty much it?

A. I don't recall definitively how far up.

Q. Thank you.

MR. SCARFE: Those are my questions.

Kearon, in-chf.
(Middelkamp)

THE COURT: Re-examination.

MS. MIDDELKAMP: No questions in
re-examination, thank you, Your Honour.

THE COURT: Thank you officer. You may step
down.

THE WITNESS: Thank you, Your Honour.

MS. MIDDELKAMP: Your Honour, the next
witness for the Crown is Detective Constable Kearon.

THE REGISTRAR OF THE COURT: Detective
Constable Kearon, please.

MS. MIDDELKAMP: I note the time, Your
Honour, so what I propose to do is get started with him, and
then if Your Honour can give me the signal when we get close
to 4:15, I can conclude for the day.

THE COURT: I will. Thank you.

STEPHEN KEARON, AFFIRMED

EXAMINATION-IN-CHIEF BY MS. MIDDELKAMP:

MS. MIDDELKAMP: Q. Now, I understand, Mr.
Kearon that, you were a former member of the Toronto Police
Service?

A. Yes, I was.

Kearon, in-chf.
(Middelkamp)

5 Q. And how long were you with the Toronto
Police?

A. Ah, 32 years.

Q. And when did you retire?

A. The first of April, 2008.

10 Q. And, ah, I understand that the time that
you retired, you were a member of the Forensic Identification
Service at the Toronto Police Service?

A. That is correct.

15 Q. How long were you with Forensic
Identification Services?

A. Approximately four years.

20 Q. And if you could just briefly tell us
about the role of the Forensic Identification Service?

25 A. Ah, the Forensic Identification Service,
primarily its function is the -- relates to fingerprints, but
has been expanded into crime scene management and evidence
collection.

30 Q. Okay. Now, can you just tell us, are
precautions taken when seizing evidence to avoid cross
contamination between items?

A. Could you repeat that, please?

Q. When items are seized, are precautions
taken to avoid any cross contamination between items.

A. Yes.

Kearon, in-chf.
(Middelkamp)

5 Q. And were precautions taken in this case
when you were dealing with evidence?

A. Yes.

10 Q. All right. Now, I understand that you
were called to investigate a stabbing at Queen and Niagara on
August 9, 2007?

A. Correct.

15 Q. And I understand that you were the lead
forensics identification services investigator on that call?

A. Correct.

20 Q. And your partner, Detective Constable St.
Amand, now Lukings, ah, was with you?

A. Yes.

25 Q. Did you take notes in relation to your
involvement in the investigation?

A. Yes, I did.

30 MR. SCARFE: I have no objection to the
officer referring to his notes. Or the exhibit list, to
refresh his memory.

THE COURT: Very well, Mr. Kearon, you can
have reference to your notes and the exhibit list as you need
to in giving your evidence.

THE WITNESS: The one thing I would point
out, Your Honour, is that the notes that I am going to be
referring to are actually photocopies of the originals. I

Kearon, in-chf.
(Middelkamp)

5 don't have access to the original notes, since my retirement.

THE COURT: I assume these are photocopies made, same version as was given to defence counsel, from the originals.

10 MS. MIDDELKAMP: Yes. If we can just go through that.

MS. MIDDELKAMP: Q. When you completed your involvement, you photocopied your memo book and you provided it to the officer in charge of the investigation?

15 A. Yes.

Q. Okay. And you are also called as a witness at the preliminary inquiry?

A. Yes.

20 Q. And at that point in time, did you also use cop, photocopied, photocopied version of your memo book to assist you in testifying at the preliminary inquiry?

A. I did. It's actually the same notes.

Q. Okay.

25 THE COURT: All right.

MS. MIDDELKAMP: Q. The same photocopied notes that you've kept with you?

A. Yes.

Q. Since the prelim?

A. Yes.

30 Q. Okay.

Kearon, in-chf.
(Middelkamp)

MR. SCARFE: I have no difficulty with that.

THE COURT: Thank you.

MS. MIDDELKAMP: Q. And just to be clear, you, you started to create an exhibit list in this case?

A. Ah, yes.

Q. All right. And that was to assist with all of the items that you had seized and were dealing with?

A. Yes.

Q. Okay. And that was to document the continuity of the property seized as well?

A. Yes.

Q. Now, if I can take you to August 9th, 2007. I understand that you received information, you received the call that you would be going to Queen and Niagara regarding a stabbing there at 2:08 in the morning?

A. That's correct.

Q. And then you arrived on scene at 2:20?

A. Correct.

Q. When you arrived, do you, you spoke with Detective Scott?

A. Yes.

Q. Who was in charge of the scene at that point in time?

A. Yes.

Q. And you noted that there was a TTC

Kearon, in-chf.
(Middelkamp)

streetcar that was there?

5

A. Correct.

Q. Okay. And that was heading in a
westbound direction?

A. Yes.

10

Q. Okay. At 2:50 you cleared, cleared the
streetcar to be able to be moved from the scene?

A. Correct.

Q. You noted that, ah, there was a vehicle
that was involved at the 711 gas station?

15

A. Yes.

Q. Okay. And that was a Diamond taxi cab?

A. Ummm, yes.

20

Q. Okay. And then continuing on, you then
detailed Detective Constable Lukings to place markers on the
blood trail along Queen Street?

A. Correct.

25

Q. And that was starting from Niagara Street
and heading west?

A. Correct.

30

Q. And I understand that at that point in
time, once that was completed, you set about swabbing the
blood, ah, trail. For the blood markings that had been
identified.

A. Yes.

Kearon, in-CHF.
(Middelkamp)

5 Q. Now, if you can tell us at this point in time, how do you go about swabbing an area of blood?

10 A. The swabs are in a plastic tube, or basically cotton, similar to a Q-tip, on a long, ah, wooden stick. Uhmm, they are inserted into a tube with a cap down over the stick that seals the cotton inside and prevents any form of contamination. They, each tube is then sealed in a plastic envelope. Uhmm, that envelope is torn open, the, the swab is withdrawn from the tube and it is moistened with
15 sterile water that we obtain by distillation. That we carry with us. Then where each marker has been set along the road, I went, photographed and took a swab of a drop of the blood close to the marker.

20 Q. And --

A. And sealed it back again and it's placed in a bag.

25 Q. Now we've gone through the photographs of the scene that were taken through Detective Constable Lukings, and so, for example, if there were multiple blood drops within an area, uhmm, in terms of what you swab, can you tell us about that?

30 A. I would randomly pick one of the droplets. Ah, it's not really possible to do every one of them. So, each marker would get one swab of a randomly picked droplet.

Kearon, in-chf.
(Middelkamp)

5 Q. All right. And I understand that for each swab that you took, you wrote down the measurement of where that swab was taken from?

A. Yes.

10 Q. Okay. So you recorded that in your memo book?

A. Yes.

15 Q. And I understand that you took those measurements and typed them and put them into the exhibit list.

A. Correct.

20 Q. Okay. Okay. What I am proposing to do at this time is take you through the swabs that you marked in your memo book and the location of each. Starting with swab number 1, I understand that was a swab of blood on the roadway?

A. Yes.

25 Q. And you measured that as 3 feet 10 inches?

A. Yeah.

Q. South of the north curb of Queen?

A. That's correct.

30 Q. And 68 feet, 7 inches?

A. West of the west curb of Claremont Street.

Kearon, in-chf.
(Middelkamp)

Q. The swab number 2 that you took?

5 A. Is 5 foot 2 inches south of the north curb of Queen, and 78 feet 5 inches west of the west curb of Claremont.

Q. Swab --

10 A. Three.

Q. Sorry, swab number 3?

15 A. Yeah, is, ah, 9 feet 7 inches, south of the north curb. And 79 feet even, west of the west curb of Claremont. Four would be 9 foot 6 inches south of the north curb and 91 feet 2 inches west of the west curb of Claremont. Five is 12 feet 7 inches south of the north curb and 69 feet 8 inches west of the west curb of Claremont. Six is 5 foot 3 south of the north curb, and 104 feet 1 inch west of the west curb of Claremont.

20 Q. Okay. Now, I just want to take you back to S5. I believe you said 69 feet 8 inches west of the west curb? But I just wanted to direct you to your notes on page 36. I understand it's 96 feet 8 inches, west of the west curb, from Claremont?

25 A. Ah, 96 feet 8 inches. Correct.

Q. If we can move on then to swab number 7?

30 A. Ah, six feet south of the north curb, 107 feet 10 inches west of the west curb of Claremont.

Q. So --

Kearon, in-CHF.
(Middelkamp)

5
A. 8th is 4 foot 5 inches north of the north curb and 14 foot 10 inches west of the west curb of Niagara. Nine is 5 foot 5 inches north of the north curb, and 22 feet 1 inch west of the west curb of Niagara. Ten is 18 feet 2 inches south of the north curb and 21 feet 10 inches west of the west curb of the Niagara.

10
Q. Okay. Now, I just want to quickly take you back again to swab number 9. For the second measurement.

A. That was 21 feet 1 inch, west of the west curb of Niagara.

15
Q. Okay. Go on to swab 11?

A. Is, ah, 13 foot 2 inches south of the north curb and 27 feet 6 inches west of the west curb of Niagara. 12 is 17 feet 9 inches south of the north curb, and 28 feet even west of the west curb of Niagara. 13 is 10 inches north of the south curb and 45 feet 5 inches west of the west curb of Niagara. 14 is 6 feet 7 inches south of the south curb, and 46 feet 5 inches west of the west curb of Niagara.

25
Q. And does that complete the swabs that you took in terms of what you referred to Detective Constable St. Amand or Lukings marking the blood trail?

30
A. In that particular area, yes. Between Niagara and Claremont area, the, there were others taken down much further down near Gore Vale Drive.

Kearon, in-chf.
(Middelkamp)

5 Q. Okay. So, just referring to Exhibit 16, you pointed to that earlier. That diagram depicts some swabs that are on there? Uhmm, using the measurements that you took of where you located each swab that you took.

A. Yes. That would appear to be accurate.

10 Q. Okay?

A. In accordance with the measurements that I took.

15 Q. And now, you've talked about the scene south or towards the, towards Gore Vale Road. There were some other items that were seized down there. Correct?

A. Yes.

20 Q. And we've got Exhibit 15, that we heard about from Detective Constable St. Amand, the white napkin with blood?

A. Yes.

25 Q. We've seen photographs of that. There is also a couple markings that you made, 16 and 17, which was blood on the sidewalk?

A. Ah, yes.

30 Q. Okay. Just taking you then to Exhibit 18, can you tell us what that was?

A. That was a bloody t-shirt on the sidewalk and it was measured as 1 foot 3 inches north of the north curb, and 39 feet 5 inches east of the east curb of Gore Vale

Kearon, in-CHF.
(Middelkamp)

Drive.

5 Q. Okay. Now, I just want to take you through, there are a couple other bloodstains that you marked. Exhibits 20 and 21, and we've seen photographs of those, and I understand that 21 A was a swab that you took. Can you tell us about that?

10 A. Ah, that was a swab of blood from the handrail just above number 21, which was also blood droplet on the steps and on the west side of the Ukrainian church.

15 Q. And now I understand as well you took number 22 was another swab of blood on a step from the church?

A. Yes.

20 Q. And you took that where the marker number 22 was placed and we've seen pictures of that. Is that correct?

A. Yes.

25 Q. Now, I just want to ask you about what has been labelled as Exhibit 23.

30 A. 23 was a knife, uhmm, blade open on the third step west side church entrance. There are a series of steps that lead up off the sidewalk into the church and there is a lane way between the church and number 780 Queen Street West, and it ends with a set of solid steel gates that go into the backyards, and just by those gates there is another

Kearon, in-chf.
(Middelkamp)

doorway that leads into St. Nicholas' Ukrainian church.

5 Q. Now, I'm just going to ask you, I'm going to show you a photograph, and it's been labelled, a series has been labelled Exhibit 20. If we could show photograph 77. I'm just going to ask you if that photograph assists you with respect to the location of Exhibit 23, the knife that we've talked about?

10 A. On the extreme left, you can see the metal work of the gate. Then there is the steps leading up into the church, and on the second step up is number 23, and a knife with the blade open lying on the step. Above it is a quantity of blood and marked as number 24.

15 Q. Now, I understand that you took a swab of number 24, the blood there?

20 A. Yes.

Q. What I'd like to do at this time is show you what's been labelled as Exhibit 22 on the trial.

25 THE REGISTRAR OF THE COURT: 22, Your Honour.

MS. MIDDELKAMP: Q. Just going to show you this and ask if you you recognize it.

30 A. That is the knife that, ah, came from the steps of the church that's shown in the photograph. Uhhh, it's a Leatherman, with a, you can still see blood on it.

Q. Okay. And I understand that your escort

Kearon, in-CHF.
(Middelkamp)

5 that evening Detective Constable Lukings seized that knife?

A. Ummm, yes. She removed the knife, placed it in a bag, took it back to the van where I believe she placed it in that, ah, tube.

10 Q. And once the knife was seized, did it stay in your custody, in Detective Constable Luking's custody?

A. Ummm, it did. Ummm, when we returned to FIS, ah, it was sealed --

15 Q. Okay?

A. -- with the appropriate seal, that is on it.

Q. Yup?

A. With my signature.

20 Q. All right. We go through that after. But, so it's seized at the scene?

A. Yes.

25 Q. And after the knife was seized, I understand that there were some other things that you did at the scene.

A. Ummm, yes.

30 Q. There were photographs taken of the taxi cab that was parked in the 711 parking lot?

A. Ah, yes.

Q. And Detective Constable Lukings took

Kearon, in-chf.
(Middelkamp)

swabs from the taxi?

5 A. Ah, yes, she did.

Q. And you also have noted that Sergeant Adach attend the scene?

A. Yes, he did.

10 Q. And he provided with you a video camera to take a scene video?

A. Yes, he did.

15 Q. Okay. And you completed that, we've viewed that through Detective Constable Lukings. And that was completed by 7:45 a.m.?

A. Correct.

20 Q. And then as well, I understand that Sergeant Adach brought to yourself and Detective Constable Lukings' attention that there was a cigarette butt that was bloody on the north sidewalk?

25 A. Yes. It had, ah, by 7:45, there was considerably more light to, ah, view the scene, and the three of us walked through and he spotted that cigarette and, ah, I made notations on it, and it was collected.

Q. And did you label an exhibit number for it?

30 A. Ah, yes. Ummm, that was number 26.

Q. And now I understand that Detective Constable Lukings collected that and placed it into the

Kearon, in-chf.
(Middelkamp)

sample jar?

A. Ah, yes.

Q. And subsequently, I understand that the scene was then released to the, to traffic?

A. Yes. Ah, when we cleared that scene at, ah, 8:15 a.m.

Q. And then at 9:15, you arrived back at the FIS?

A. Yes.

Q. And at that point, you are handling the property?

A. Yes. All the property had to be, ah, properly stored and, ah, sealed and, ah, steps taken to try and preserve it.

Q. And just if you can tell us now, tell us what you did with the swabs when you arrived back?

A. Ummm, the swabs are, ah, removed from the bag, ah, the, ah, cap on the plastic tubing is pulled about halfway up the stick to allow air circulate into the tube and dry the cotton in the, ah... That is then stood upright in a test tube container, either a commercially made one or I make up a, one from a gun box and place it in a locked cabinet to dry under seal.

Q. And you also, and you've said it's under seal so you seal it so that you know what the seal number is

Kearon, in-chf.
(Middelkamp)

and that there can't be anyone dealing with that property
without you being aware?

A. That, that's correct.

Q. And you also did the same with Exhibit 26
that we've talked about, which was the cigarette butt that
was placed in a drying locker as well?

A. Ah, yes.

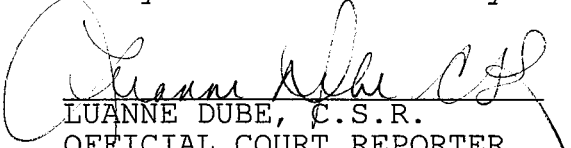
Q. Okay.

MS. MIDDELKAMP: Your Honour, I note the
time, it's an appropriate time within the examination to
break for the day.

THE COURT: Thank you. Tomorrow then,
please.

--- COURT ADJOURNED AT 4:15 p.m. to WEDNESDAY, JANUARY 26,
2011

This is to certify that
the foregoing is a true
and accurate transcript
of my notes to the best
of my skill and ability


LUANNE DUBE, C.S.R.
OFFICIAL COURT REPORTER
SUPERIOR COURT OF JUSTICE