

C53904

SUPERIOR COURT OF JUSTICE
(Toronto Region)

5

B E T W E E N :

HER MAJESTY THE QUEEN

- and -

NICOLE KISH

10

Accused

15

TRIAL PROCEEDINGS

20

JANUARY 26, 27 AND 28, 2011

25

VOLUME I

SUPERIOR COURT OF JUSTICE
(TORONTO REGION)

B E T W E E N :

5

HER MAJESTY THE QUEEN

- and -

NICOLE KISH

Accused

10

---heard before THE HONOURABLE MR. JUSTICE

NORDHEIMER, on January 26-28, 31, February 1-3,

8-10, 14-16 and 22, 2011, in courtroom 4-9

15

at 361 University Avenue, Toronto.

TRIAL PROCEEDINGS

20

APPEARANCES:

25

Mr. W. Thompson and
Ms. E. Middlekamp
Mr. J. Scarfe and
Ms. V. Simpson

Appearing for the Crown

Appearing for the Accused

1
Colloquy
January 26, 2011

5
---WEDNESDAY, JANUARY 26, 2011

10
---REPORTER'S NOTE: Some quotes not compared to
source documents. Court
Reporter not provided with any
materials from counsel.

15
---UPON RESUMING (10:06 a.m.)

MR. SCARFE: Good morning, Your Honour.

THE COURT: Good morning.

20
MR. SCARFE: I just want to put something --
two things, briefly, on the record.

25
Yesterday, during the cross-examination of
Detective Sergeant Giroux, near the end, I
asked him about three pieces of disclosure
and I guess I implied that I hadn't got that
disclosure in the past. It turns out that one

2
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

of those three pieces of disclosure, I
discovered last night, I did in fact have
very deep in the file, so I apologize for
that.

5 THE COURT: All right.

MR. SCARFE: I'll try not to make the morning
apology a regular thing.

10 The second thing is an issue came
up around that sort of extradition issue and
we were madly going through the notes trying
to find a reference, and it turns out the
reference was within the notes, but in
another document, and so I provided that to
my friend just to clear that up and so not to
15 think that we were just imagining it.

THE COURT: All right.

MR. SCARFE: Thank you.

THE COURT: Ms. Middlekamp?

20 MS. MIDDLEKAMP: Yes. Thank you, Your Honour.
Mr. Kearon is before the Court and I can
continue with the examination in-chief.

THE COURT: Yes.

25 ---STEPHEN KEARON: PREVIOUSLY

3
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

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

MS. MIDDLEKAMP:

Q. When we left off yesterday I had shown you the knife that you seized from the scene?

5 A. Correct.

Q. And we had talked about how you had handled swabs when you were back at FIS in the early morning hours of August 9, 2007?

A. Yes.

10 Q. If I can take you from that point in time, you told us about placing the cigarette butt into a drying locker?

A. Yes.

15 Q. And after that, I understand that you handled Exhibit 23, the FIS Exhibit 23, which is the knife from the scene, and the water bottle that was seized which was Exhibit 18.

A. Yes.

20 Q. Can you tell us how you handled those items at that time?

25 A. The knife and the water bottle were placed in a banker's box and sealed, and then it and the t-shirt and napkin were placed in a separate box under seal, and both boxes were placed in a locked locker, number 117, which I retained the key to.

4
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Q. Now, in terms of the knife and the water bottle, were they individually packaged and stored in the banker's box that you told us about?

A. Yes.

5 Q. And, now, I understand the next thing that you did is you were dealing with Exhibit Number 18, FIS Exhibit 18, which was the t-shirt that was seized at the scene, is that correct?

A. Yes.

10 Q. And you placed that into a separate banker's box under seal?

A. Yes.

Q. And then you placed the boxes into your secure locker which is locker number 117?

15 A. Yes.

Q. And at that point in time you downloaded the photographs that you had taken at the scene?

A. Correct.

20 Q. You report off-duty and return back on duty on August 9, 2007, this is the evening shift, into August 10, 2007, is that correct?

A. Correct.

25 Q. And in the early morning hours of August 10, 2007, you were dealing with property from this case again?

5
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

A. Ah, yes.

Q. Can you tell us what you did?

5 A. Ah, I withdrew the first box, which
contained the knife, and I ended up breaking the
seal and accessing it. I examined it. It was a 154CN
on the left side of the blade, that's the make and
model, and it's stamped on the left side of the
blade. I then ended up taking swabs, three swabs,
from different parts of the knife of the blood, the
10 dried blood that was on it.

Q. Now, I understand that you labelled those
swabs S23A, S23B and S23C, is that correct?

A. That's correct.

15 Q. What I'd like to do at this time is show
you what's been labelled as Exhibit 28 on this
trial. Can you see it from there?

A. Yes.

THE REGISTRAR: That's 28, Your Honour.

MS. MIDDLEKAMP: Yes.

20 Q. Do you recognize the photographs that are
depicted on Exhibit 28 on the trial?

A. Correct, I do.

Q. And what are they?

25 A. That's the number 23 exhibit, the knife
that was found on the church steps.

6
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Q. Now, contained on this photo board is
four photographs. Knife, correct?

A. Correct.

5 Q. I'm hoping you can use these photographs
to assist the Court with respect to where you took
the swabs from the knife.

10 Now, I understand you also have it
diagrammed in your notes, but if you can use that
photograph to help assist you or describe it for the
record.

15 A. Okay. The first blood sample, swab of the
blood that was taken, S23A, was taken from in or
around the thumb switch, which is depicted in the
lower right -- sorry. Lower left photograph. It's on
the blade towards the upper area.

20 MR. SCARFE: I'm just going to ask you, if we
could, could we move the easel maybe to where
the Juror Number 1 seat is and give the man a
pointer? I'm just looking around Madam Court
Reporter and I can't see the bottom.

THE COURT: Yes.

THE WITNESS: Thank you.

MS. MIDDLEKAMP: So just a brief moment, Your
Honour, and I'll move this over.

25 MR. SCARFE: Thank you.

7
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

MS. MIDDLEKAMP:

Q. Now, you've also been handed a pointer.
That will assist you as well.

5 A. It was taken from that area just in
there.

Q. Okay. So you're describing the lower left
photograph, the area of the knife between where the
black portion meets the metallic blade of the knife?

A. Correct.

10 Q. Okay. That was S23A?

A. That's 23A. 23B was taken, same
photograph, from in or around the back of the hilt
area.

15 Q. So you're pointing to the right most
portion of the knife that's contained in the lower
left photograph?

A. Correct.

Q. And that's S23B?

20 A. Correct. 23C we would have to move to the
upper left photograph. It was in along the handle
area.

Q. Okay?

A. In this area here.

25 Q. So you're pointing to the black portion
of the knife?

8

S. Kearon - in-ch. (Middlekamp)
January 26, 2011

A. The black portion and also the metallic, silver area that borders it there below -- between the back stud and the front clip. The pocket clip. In that area there.

5 Q. Now, you told us about taking swabs at the scene, and that you used --

A. Yes --

10 Q. -- a sealed tube that had a swab on the top of it. Can you tell us about how you took the swabs from the knife when you were back at the Forensic Identification Services?

15 A. They're handled basically the same. The swab would be placed in a tube, which it comes in. It would be placed back in it, it would be left partially open to allow air circulation, and the tube would be placed in a test-tube holder. And then I believe in this particular case they were put in a drying bag, which is just basically a paper bag, and the top of the bag folded over and it
20 sealed. The bag acts as a HEPA filter to allow air circulation, moisture to dry off and the swab dry and they were then placed in a locker to allow that to occur.

25 Q. All right. Now, once you had taken swabs off of that knife, was there any further

9
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

investigation you did in relation to that item,
Exhibit 23 FIS exhibit, but Exhibit 22 on this
trial?

A. 22 is the water bottle?

5 Q. No. Sorry. Exhibit 23, the knife, was
your FIS exhibit, but the exhibit is Exhibit 22 on
the trial.

10 A. Oh. Um, well, I did the photographs of it
and it was placed in a fuming chamber, and it was
fumed with the material referred to as
15 cyanoacrylate. That is commonly referred to as Crazy
Glue. It is a more specialized version of the
commercially sought Crazy Glue. And what you
basically do is put three or four drops of that in
in aluminium foil container, put a quantity of hot
water, and placed in a chamber under heat, and it
fumes, the fumes adhere to the item that you're
examining, and develops any fingerprint that's
present.

20 Q. Now, I understand you did that for both
the knife and the water bottle that was seized at
the scene, correct?

A. Correct.

25 Q. And I also understand that for the knife,
there were negative results.

10
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

A. Correct.

Q. And that means that there weren't any fingerprints that you could locate on that item?

A. Correct.

5 Q. And once you had completed that process, I understand that you placed the Exhibit 23, your Exhibit 23, the knife, back into locker 17 [sic] and you sealed it?

A. Yes.

10 Q. And you also placed the swabs that you had taken off the knife in locker 117 and they were under seal.

A. Correct.

Q. And at that point you report off duty?

15 A. Yes.

Q. You return on the evening of August 10, 2007 into August 11, 2007?

A. Correct.

20 Q. You were taking care of some other things on the case and ultimately you received some clothing from P.C. Calmara (ph) at 14 Division?

A. Um...

Q. That's page 40 of your notes.

25 A. Yes, I'm just going over it here to, ah, yes, those were received by me on that date.

11
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Quantity of clothing belonging to a Nicole Kish,
K-I-S-H. They were taken to handling room number
two, which is the east room -- sorry. I'm getting
ahead of myself here. That clothing had come in and
was delivered by P.C. Calmara that day and was at
FIS, um --

Q. Okay. Well, we'll take you from there
into the early morning hours of August 11, 2007.

A. Yes.

Q. And I understand at that point you had
dealt with clothing that Detective Constable
Parkinson had brought to FIS, and first you dealt
with some swabs that police -- Detective Constable
Parkinson had taken?

A. There were eight swabs taken from various
different persons by P.C. Parkinson at 14 Division,
and I designated them as SP1 through 8.

Q. All right. I'm going to take you through
that. SP1 was a swab from Mr. Wooley of his chest.
SP2 was a swab from Jeremy Wooley, A.K.A. Williams,
of his left hand. SP3, a swab from Jeremy Wooley,
his right hand. SP4, a swab from Faith Watt's left
hand. SP5, a swab from Faith Watt's right hand. SP6,
a swab from Doug Fresh, his head. SP7, a swab from
Doug Fresh, his left hand, and SP8, a swab from Doug

12
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Fresh, his right hand.

Q. And those are contained in your exhibits list on pages 10 through 12.

A. Correct.

5 Q. You placed the swab individually in brown paper bags and placed them into a presto box?

A. Yes.

10 Q. And then you continued on in your investigation and you were looking at other items that were brought. There was property from Ms. McDermitt and property from Mr. Doug Fresh that was all individually packaged and sealed?

A. Yes.

15 Q. Now, you go through items from Mr. Fresh?

A. Ah, there's a quantity. Yes.

Q. All right. And what I would propose to do at this point, you deal with a Leatherman and a knife that was from Doug Fresh?

A. Yes.

20 Q. You noted that that knife was similar in design to Exhibit 23, your FIS Exhibit 23, which was the knife seized at the scene?

A. Yes.

25 Q. You took photographs of the multi-tool and the knife from Douglas Fresh?

13

S. Kearon - in-ch. (Middlekamp)
January 26, 2011

A. Yes.

Q. What I propose to do now is take you through those photographs. I'm showing you what is labelled as JPG 005. Can you tell us what that is?

5

A. That is a Leatherman knife. It's Exhibit Number 28. Came from a bag under seal, transported to FIS drying locker and then taken out on the 11th, photographed, and placed back under seal.

Q. And that was item 28 that you labelled seized from Douglas Fresh, correct?

10

A. Correct.

Q. If we could now turn to JPG 008.

A. That is a Leatherman multi-tool.

Q. And that was labelled as Exhibit 27, another item from Doug Fresh?

15

A. 27, and it's shown with -- opened out with the various different blades and the plier section exposed.

Q. If we could go to the next photograph, 019 JPG?

20

A. That's Exhibit Number 35. They are two pouches and two holders of additional tools that go with the multi-tools. The Leatherman multi-tools.

Q. And those three photos that I've just shown you, do they accurately depict the property as

25

14

S. Kearon - in-ch. (Middlekamp)
January 26, 2011

it appeared to you?

A. Yes, it does.

Q. When you were handling it?

A. Yes, it does.

5 Q. I'm just going to continue on from there.

You have taken photographs of those items, and I understand that you continue to process the clothing that was seized from Douglas Fresh, correct?

A. Correct.

10 Q. What I want to do now is take you through a series of photographs of the clothing. If we could go to JPG 024?

A. It's a pair of black --

15 THE COURT: Just are we going to be marking all of these photographs as one exhibit? Or --

MS. MIDDLEKAMP: Yes.

THE COURT: Sorry. Go ahead.

20 THE WITNESS: That is Exhibit Number 36 that I marked, a pair of black work boots, Vibram soles, heavily scuffed along the lower portion.

MS. MIDDLEKAMP:

Q. If we could go to the next picture, 027?

25 A. That's a brown, you might call it,

15
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

t-shirt, and it has a picture on the front of it,
and it basically says, "If you speak out they will
come". There are some bloodstains appear on the
front of it, below the logo or picture area, and
5 there's also a tear on the right -- sorry. Left
upper shoulder area, and I believe I have it as a --
just as a dirty gray shirt.

Q. All right. And that was labelled as
Exhibit 39 and that's Douglas Fresh's shirt?

10 A. Correct. Correct.

Q. If we could continue to the next
photograph, JPG 028?

15 A. That is the back of the same shirt, again
bloodstains visible, from the top just below the
collar there is a -- a statement,
W-W-W-C-O-N-T-E-M-P-L-S dot net.

Q. Now, I'm going to go to the next picture,
031.

20 A. That is a pair of military camouflage
pants, Exhibit Number 42.

Q. And reviewing the front at this point,
Exhibit 42, Douglas Fresh's pants, correct?

A. Correct.

Q. If we could go to 032?

25 A. That is a back portion of them showing

16
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

some damage. Ah, there's a burn mark in the pocket and the reinforced seat padding is -- has been frayed and coming away from the pants.

5 Q. And do these photographs that I've shown you accurately depict Douglas Fresh's clothing as it appeared to you when you were examining it at FIS?

A. Correct.

Q. Your Honour, I will ask if that series of photographs can be the next numbered exhibit?

10 THE COURT: Exhibit 31.

THE REGISTRAR: 31, Your Honour.

15 ---EXHIBIT 31: Photographs relating to Douglas Fresh - produced and marked for identification.

MS. MIDDLEKAMP:

20 Q. And now I understand that at that point you placed all those items back into a banker's box individually and they were under seal?

A. Correct.

25 Q. You also individually packaged the knife and multi-tool that you've told us about into a gun

17
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

box that you sealed?

A. Correct.

Q. You also had items from Williams and Sarah McDermitt slash Faith Watts. You boxed and sealed those items?

A. Um, yes.

Q. And the items were placed into locker number 117?

A. Um, yes.

Q. And you're back on shift on August 11, 2007 into August 12, 2007?

A. Um, yes.

Q. And at 23:02 you receive a bankers box of the victims clothing from Detective Constable Haley (ph).

A. You're referring to page --

Q. If you're at the bottom of page 55 of your notes into page 56?

A. Yes. Um, unfortunately I am getting -- yes, I received clothing from Detective Constable Haley. She had placed them in a drying locker. I checked the locker and I ended up photographing the items before being placed in the box, ah, that morning. Well, it would be the evening of the 11th before 23:15, which would be 11:15.

18

S. Kearon - in-ch. (Middlekamp)

January 26, 2011

5 Q. So what I propose to do at this time is take you through photographs that you took of that clothing. This is JPG 002, which is a photograph of the right shoe which you had labelled Exhibit 867-1, correct?

10 A. Actually, this has been labelled by Detective Constable Haley. 8671 would be her badge number, and I would have ended up putting it in as that Exhibit 1, and the photographs taken by her. It's of a Bata shoe, brown leather.

Q. And if we go to the next photograph, 008 JPG?

15 A. A man's watch with bloodstains, a leather wrist band.

15 Q. The next photo, 009?

A. The left shoe, number two, again a Bata shoe, brown leather, showing bloodstains on the front toe area.

20 Q. 014?

20 A. Is a blue jean denim pants that had been cut up along the legs and heavily blood stained, a leather belt around the waist.

Q. And the next photo 020?

25 A. Same pants from the back, again showing bloodstains.

19
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Q. And do those photos accurately depict Mr. Hammond's property as it appeared as you processed it at FIS?

A. Correct.

5 Q. If I could also show you at this time what's been labelled as Exhibit 27 on the trial. I ask you if you recognize that property.

A. That is the same as the photographs that we're talking about, and the back.

10 Q. Now you move into the early morning hours of August 12, 2007. You were doing some other investigation, you prepared photographs for the autopsy that was going to be completed, and that's at the top of page 57 of your notes?

15 A. Yes.

Q. And then you report off duty and you're back on duty in the evening of August 12, 2007, correct?

A. Ah...

20 Q. Or sorry. In the early morning hours of August 12, 2007 at about 2:30?

25 A. Yes. 2:30 I entered the evidence handling room number two, which is the east room. I opened a drying locker number six, breaking the seal, and start working with Detective Constable St. Amand on

20

S. Kearon - in-ch. (Middlekamp)

January 26, 2011

the accused's property, opened box with McDermitt's property, um, there was a series of bags contained within the box, and I start going through each bag, examining it, photographing it, and repackaging it.

5 Q. And we've heard from Detective Constable St. Amand. She's gone through the photographs of Faith Watts slash McDermitt's, and Jeremy Williams slash Jeremy Wooley's clothing?

A. Correct.

10 Q. And taking through to page 59, once you had processed all of those items, you then placed them back into individually packaged brown paper bags and into a box that was sealed.

A. Correct.

15 Q. You had also taken some swabs off of those materials and you repackaged them and placed them into a drying bag at that point?

A. Correct.

20 Q. And you receive information on that date as well that Detective Constable Cashing (ph) from the Forensic Identification Service would be attending the postmortem examination.

A. Correct.

25 Q. On August 13th, two thousand -- or the evening of August 12, 2007, you report back on duty

21
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

into August 13, 2007. You receive information that the property that was seized from Ms. Kish was at the Public Property Bureau?

A. Um, yes.

5 Q. And then on August 17, 2007 --

A. Yes?

Q. -- you had ordered that property to be brought back from the Property Bureau to FIS?

A. Yes, I did.

10 Q. And you note that on that date it was brought back, and then you proceed to go through that property.

A. Ah, yes.

15 Q. Sorry. You note that the property is now in locker number 15. That was at 6:50?

A. Yes.

Q. On that date as well there is a second cab that is at FIS?

20 A. Yes. Detective Carbone (ph), at 9:45, attended FIS with the second taxicab, um , AEDV 156 Ontario licence plate, a Ford Taurus from Beck Taxi with Toronto taxicab licence 906, and the driver a Jama, J-A-M-A, middle name of A-B-D-U-L-K-A-H-I-R, and surname of F-A-R-A-H. I took photographs of the
25 vehicle and swabs of the driver's door area in the

22

S. Kearon - in-ch. (Middlekamp)
January 26, 2011

area of the bottom of the window, the rubber surround and that particular area.

Q. And you labelled those SA, SB and SC?

A. Yes.

5 Q. They were placed in a drying bag under seal?

A. Yes.

Q. And then in a locker under seal as well.

A. Yes.

10 Q. And on the 17th you also attend with Greg Schofield to have a planned diagram of the scene prepared?

A. I did. That was at 10:15 to about 11:30 that morning.

15 Q. When you returned to FIS that day, you processed the clothing from George Dranichak?

A. Um, yes. I had attended, after being at the scene, I attended 14 Division to collect George Dranichak's clothing, and I returned it to FIS.

20 Q. And Dranichak is D-R-A-N-I-C-H-A-K?

A. Correct.

Q. And then I'd like you to turn now to August 18, 2007.

A. To August...

25 Q. 18, 2007.

23
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

A. Yes.

Q. At that point you start working on CFS submissions to send items to the Centre of Forensic Sciences?

5 A. Um, yes.

Q. And you're updating the exhibit list?

A. Yes.

Q. And you attend the swab room and you remove some swabs from the drying locker?

10 A. Yes.

Q. And then you box -- individually bag them and box them under seal again?

A. Yes.

15 Q. And then you placed all of the swabs into locker number 17 [sic] under seal?

A. Yes. Locker 117.

Q. On August 19, 2007 you are back on duty?

A. Yes.

20 Q. You assist with taking aerial photos of the crime scene?

A. Ah, yes.

Q. And that's also in conjunction with the Toronto Fire Department?

25 A. Toronto Fire Department and Detective Constable Smissen. It was Detective Constable

24
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Smissen went up into the air and did aerial photographs. I did photographs of him actually doing the work.

5 Q. And at this point you are preparing items, once you return to FIS, you are preparing items for submission to the Centre of Forensic Sciences?

A. Correct.

10 Q. And also on this date, you take swabs from exhibit -- FIS Exhibit 27 and 28, which was the Leatherman multi-tool and knife that was seized from Douglas Fresh slash Cruz?

15 A. I ended up examining those multi -- the Leatherman multi-tools that were taken from Mr. Fresh, found visible ridge detail on blades under -- by use of an alternative light source, and photographed those. Take swabs from areas of blade which had no ridge detail showing. The multi-tools has a couple of blades. One is serrated, while the
20 second is unserrated. I note which swabs I took from which blades. I then placed both knives into the fuming cabinet and fumed them, and endeavoured to develop those fingerprints more fully.

25 Q. Now, S27, swab S27 was from the unserrated blade on the multi-tool, S27A was from

25
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

the serrated blade, and S28 was taken from the
knife, correct?

A. Correct.

5 Q. And you're also working on preparing the
exhibits for submission to the Centre of Forensic
Sciences?

A. Yes.

Q. And you do -- you do develop some
fingerprints --

10 A. Yes.

Q. -- from those items that you examined?

A. Yes.

Q. If I could take you now into August 20,
2007?

15 A. August 20th?

Q. Yes. You're back on duty and you work on
the CFS submission forms?

A. Correct.

20 Q. And you're withdrawing property and
repackaging it and resealing it for submission?

A. Correct.

Q. In terms of the swabs from the knives you
obtain, you open the drying bag they were in and
those are repackaged and sealed for CFS?

25 A. Yes.

26
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

Q. And if I can just take you to 12:35 on
August 18, 2007?

A. August 12th?

Q. Sorry. August 20, 2007 at 12:35.

5 A. Yes?

Q. You extract Exhibit 18, which was the
t-shirt that was seized from the scene?

A. Yes.

Q. And you lay it out for photographing?

10

A. Yes.

Q. And I'd like to show you a photograph at
this point. That's photograph 008?

A. Yes.

Q. Can you tell us what that is?

15

A. That's the t-shirt. It's been very badly
cut up, numerous holes throughout the garment.

Q. Does that photograph, does it accurately
depict Exhibit 18?

A. Yes, it does.

20

Q. Now, Your Honour, I'm not certain I
showed the witness photographs of Mr. Hammond's
clothing earlier and I don't recall if I'd asked for
that to be made an exhibit. That would be Exhibit
32?

25

THE COURT: You now wish it as an exhibit?

27
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

MS. MIDDLEKAMP: Yes.

THE COURT: Exhibit 32.

THE REGISTRAR: Exhibit 32, Your Honour.

MS. MIDDLEKAMP: And at this point I'll be
5 asking for the photograph that was just shown
to the officer to be Exhibit 33 then.

THE COURT: Exhibit 33.

THE REGISTRAR: 33, Your Honour.

10
---EXHIBIT 32: Series of photographs - produced
and marked for identification.

15
---EXHIBIT 33: Photograph - produced and marked
for identification.

MS. MIDDLEKAMP:

20
Q. Officer, I'd like to show you what's been
labelled Exhibit 25 on the trial. Do you recognize
that?

A. Actually, I don't.

Q. Okay.

25
A. Ah, it's the way it's been packaged. It's

28

S. Kearon - in-ch. (Middlekamp)
January 26, 2011

been actually brought back together again in a
format that I'm not recognizing very readily.

5 Q. We've heard evidence from Detective
Constable St. Amand that she packaged this for
appearance in court?

A. It's consistent with the t-shirt in the
photograph.

Q. Okay.

10 A. Um, they've been repackaged and sort of
stitched back together again.

Q. Okay. We'll continue on. On August 20,
2007, you've taken photographs of Exhibit 18, you
placed the -- that t-shirt back into its bag and
then you seal it?

15 A. Yes.

Q. And then you collect the samples from the
swab room fridge?

A. Yes.

20 Q. That were seized by Police Constable
Patching (ph) --

A. Yes.

Q. -- in bag 1059909?

A. Correct.

25 Q. And that contains the samples from the
postmortem examination?

29

S. Kearon - in-ch. (Middlekamp)

January 26, 2011

A. Correct.

Q. And once you've completed all that, you take items down to CFS for commission for testing.

A. Correct.

5

Q. If we could take you to August 22, 2007.

A. Yes.

Q. You're back on duty, and at 7:05 you withdraw property from storage locker number nine?

A. Yes.

10

Q. Two multi-tools that were seized by Police Constable Lee from Sarah McDermitt, A.K.A. Faith Watts?

A. Yes.

15

Q. You label those as exhibits and you photograph them?

A. Yes.

Q. I'd just like to take you through some photographs at this point. This is JPG 002.

20

A. Yes. This shows an evidence bag that was used to transport these items. I open it and in it there is a leather pouch with a marker underneath it of 76, referring to its exhibit number, the tool -- the actual pouch contained a Leatherman multi-tool.

25

The next item over is number 77. It's another multi-tool but it's more designed as a

30
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

camping knife, fork and spoon item.

And then the next item over is number 78,
which is a can opener, also a can opener come bottle
opener, and a compass all on a chain.

5 Q. All right. If we could turn to the next
photograph, 009?

A. This is the camping knife set number 77
taken apart to show how it works.

Q. And the next photograph, 014?

10 A. This is the multi-tool, and it's a pouch
opened out showing the various different tools and
items in it, and number 76 exhibit number.

Q. And the photographs that I've just shown
you accurately depict the property as it appeared at
15 Forensic Identification Services?

A. It does.

Q. Your Honour, if those photographs could
be the next numbered exhibit?

THE COURT: Exhibit 34.

20 THE REGISTRAR: 34, Your Honour.

---EXHIBIT 34: Series of photographs - produced
and marked for identification.

25

31
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

MS. MIDDLEKAMP:

Q. And once, in your processing of those
items, you took photographs of those with alternate
light looking for fingerprints, is that correct?

A. That is correct.

Q. And what was your findings with respect
to that?

A. Negative results.

Q. Now, if we could just move to August 23,
2007?

A. That's August...

Q. 23, 2007?

A. 23rd? Yes?

Q. And in the morning you withdraw a bag of
clothing which had been seized from Ms. Nicole Kish?

A. Yes.

Q. And it was in evidence room number 124?

A. 127.

Q. 127?

A. Yes.

Q. You go into evidence handling room number
two and you examine and photograph the property?

A. Correct.

Q. If we can just show you the photographs

32
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

now? The first photograph is JPG 003.

A. It's a black shirt.

Q. And photograph 008?

A. It's a tan shoe with black toe guard.

Q. And that was labelled Exhibit 103?

A. 103, left runner.

Q. And the next photograph is 015?

A. That is Exhibit 104, black halter top.

Q. And the next photograph is 017?

A. That is the right runner, Exhibit Number
105.

Q. And do the photographs I have shown you
accurately depict Ms. Kish's property as you
examined it at Forensic Identification Services?

A. That is correct.

Q. Your Honour, if they could be the next
numbered exhibit?

THE COURT: Exhibit 35.

THE REGISTRAR: 35, Your Honour.

---EXHIBIT 35: Series of photographs - produced
and marked for identification.

33
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

MS. MIDDLEKAMP:

Q. I'd like to show you what's been labelled
as Exhibit 26 on the trial.

5 A. That is the black halter top that we're
talking about.

Q. Okay. And I'll also show you what's been
labelled as Exhibit 27 on the trial.

A. That is the black dress that we have
spoken about in those photographs.

10 Q. What I'd like to do now is take you
through the items that you submitted to the Centre
of Forensic Sciences. There were several submissions
that you did as part of your role as lead
investigator for FIS, correct?

15 A. Correct.

Q. So first if we can turn to August 20,
2007. FIS exhibit numbers, you submitted the
following items on August 20, 2007: Swab number 1,
so S1?

20 A. Yes.

Q. S12?

A. Um, what was the exhibit number?

25 Q. I'm just going to provide you with copies
of your CFS submission forms that you did and that
might assist you.

34
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

THE COURT: Any issue over what items were sent to the Centre of Forensic Sciences?

MR. SCARFE: You mean in that evidence being led, Your Honour?

5 THE COURT: Yes.

MR. SCARFE: No.

THE COURT: Is there any dispute about what was sent to CFS for testing?

10 MR. SCARFE: No, no, no. She can give him the form and take him through it. You don't have the form with you?

15 MS. MIDDLEKAMP: Your Honour, if we could -- I know it's a bit early but if we took the morning break at this point I could go through the CFS submission forms with my friend and we can hopefully shortchange it and I can read it into the record.

MR. SCARFE: That would be fine.

20 THE COURT: All right. We'll take a recess.

---RECESS (11:06 a.m.)

25 ---UPON RESUMING (11:33 a.m.)

35
S. Kearon - in-ch. (Middlekamp)
January 26, 2011

THE COURT: Yes.

5 MS. MIDDLEKAMP: Good morning again, Your Honour. Thank you for that indulgence. I believe that we've worked out something that we can enter the CFS submissions as exhibits on consent, but I will first confirm with the officer...

10 Q. Can you tell us, did you submit items to the Centre of Forensic Sciences on August 20, 2007?

A. Yes, I did.

Q. Did you make a further submission on August 22, 2007?

15 A. Yes.

Q. August 23, 2007?

A. Yes.

Q. And then finally on September 15, 2007?

A. Yes.

20 Q. And for those submissions to the Centre of Forensic Sciences, you prepared submission forms, correct?

A. Correct.

25 Q. On consent, these have been reviewed with my friend. I will file these as the next exhibit,

36
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

Your Honour, and they detail the exhibit number and the property item that was submitted to the Centre of Forensic Sciences.

THE COURT: Thank you. Exhibit 36.

THE REGISTRAR: 36, Your Honour.

---EXHIBIT 36: Centre of Forensic Sciences
submission forms - produced and
marked for identification.

MS. MIDDLEKAMP: Your Honour, those are my questions for this witness.

THE COURT: Cross-examination?

MR. SCARFE: Thank you, sir.

---CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE:

Q. I've just got a few random points to follow-up on and then I'll get into the photos, but I may have misunderstood you yesterday. Can I see Exhibit 15, Mr. Registrar? The series of five photos, if I'm correct?

37
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

THE REGISTRAR: 15A to E, Your Honour.

THE COURT: Thank you.

MR. SCARFE: Thank you.

5 Q. Just to clear up the record, sir,
yesterday when we were talking about the swabs taken
from the roadway, from the sidewalk, you gave a list
of measurements.

A. Yes.

10 Q. And for measurement -- or for the swab
taken from location seven, and I'm sorry I don't
have the page reference from your notebook.

A. That's okay. Yes?

15 Q. I appreciate you were going very quickly
and stuff, but when you got to seven you said that
it was -- the measurement was a certain distance
south of the sidewalk, and I just wanted to make
sure --

A. For S7 it's six foot even north of the
north curb of Queen.

20 Q. All right. That's great. Thank you. Now
just a couple questions following up from that. I
suppose I should use the Elmo instead. Sorry, Your
Honour. This screen seems to turn itself off after
--

25 THE COURT: Yes, it does.

38

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

MR. SCARFE: Now I know where the power switch is. Sorry about that.

Q. I'm just going to show you three photos and then ask you about them. Are you able to view that on your screen?

A. Yes.

Q. You've got 7, you've got a placard with fairly widespread I guess cluster of blood spatter?

A. Yes.

Q. Is that right? Number 8, that's sort of the same thing?

A. Yes.

Q. And number 9 perhaps not as widespread a cluster.

A. Yes.

Q. But you can see it does spread around for a certain amount of distance. And what we also have is, I think you were shown this yesterday, the DNA map that -- where Mr. Schofield's gone and plotted the --

A. Yes. Yes.

Q. Yes. Okay. And I guess my simple question to you, sir, is when you took a swab from a clustered area in the area of a placard, how close to the placard was the swab?

39

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

A. It's in the vicinity. I -- I didn't turn around and go one inch, two inches from a placard. I basically -- it's just a random, um, droplet of blood that was taken in that immediate area.

5 Q. So would you try to be as close to the placard as you could?

A. Relatively close.

10 Q. And would you try to take the swab from sort of the middle area of a cluster? Or would you -- out on the side? Or --

A. There was no planned technique in taking it. It was just a random sample from the placard area.

15 Q. Mm-hm. Okay. And when you arrived on the scene, the first thing you did before you began your work was you spoke with Detective Scott, who had charged -- was in charge of the investigation at that point?

A. Correct.

20 Q. And he told you that you were there to investigate a stabbing?

A. Yes.

25 Q. And do you recall if he told you that there were two injured parties? Two bleeding persons?

40

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

A. I believe he told me that there were multiple.

Q. Multiple injuries?

5 A. Um, yes. I believe there was -- at that immediate time there was a quantity of confusion as to who was at what hospital, um, and how many people, and how many people were actually at 14 Division. He had told me that there were a number of people that had been brought in to 14 Division for
10 investigation in relation to the issue.

Q. Okay. And did he leave you with the impression that there was more than one person who had been bleeding at the scene?

15 A. I knew that there had been a number of people gone to the hospital. How many and how much bleeding was involved, I don't know.

20 Q. Okay. The practice of coming upon a placard with a big mess of blood scattered around it, the practice of taking one random swab from somewhere in that location, is that always the practice when you come across blood on a street kind of thing?

25 A. It's the general practice, um, and I wouldn't deviate from it unless there is some very, very specific reason to go beyond that.

41

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

5 Q. Okay. So clearly if there had been -- if you were told there was one person bleeding, it would make sense to take one random swab from each spot, but in a case where you know that there are multiple parties and people are at the hospital and there is -- I mean, you know that you're doing all of this for eventual DNA analysis, right?

10 A. I still would go one swab. Um, unless there is a specific request from Detective Scott, or there is something very specific that is brought to my attention to make me deviate from the one sample. Like, the Centre of Forensic Sciences is not going to test every drop of blood that's spilt at the crime scene. It's not practical.

15 Q. Of course not.

A. So we take random samplings, and that's basically where we're -- I proceed from.

20 Q. You've been involved in numerous investigations in your I think it was five, six years you've been at FIS?

A. Yes.

25 Q. And from time-to-time, what happens is you get -- you take a bunch of swabs, right? You take a selection of those and submit them to the Centre of Forensic Sciences, because as you said,

42

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

they won't accept everything, certainly not on the first round, right?

A. Ah, that's correct.

5 Q. And you've had cases where you've done that. You've submitted a selection of the swabs that you've taken and gotten results back, and then there is this -- there is information revealed in DNA analysis that causes you to maybe submit a few other related swabs that maybe you didn't submit before, but you're now submitting because of the results you got back. Have you had that in the past?

10 A. On one or two occasions, yes.

15 Q. Okay. So you know when you take swabs that not every swab that you take is going in the first round to the CFS, right?

20 A. Occasionally they will, ah, depending upon how many and the circumstances and the nature of the offence and what is hoped to be proved by the various swabs, they will take maybe more than the one.

Q. Mm-hm. Once you clear the scene, the fire truck comes along and hoses everything down, right?

A. Yes.

25 Q. Right. He doesn't wait for the next rainstorm, right?

A. Again, it depends upon how dirty and how contaminated the scene is.

Q. And the actual tube with the stick and the Q-Tip-like end on it, those aren't that expensive, are they?

A. I think -- actually this morning I was looking at a catalogue and I worked it out, they're about 50 cents a piece.

Q. 50 cents a piece. And, well, surprise to me but thank you for anticipating my question. Certainly it wouldn't be a waste of material or resources, when you have a particularly large area of blood splatter in one placard, to take, say, three, four swabs but just submit one of them in the first round.

A. It's not usual to do that, but it can be done, as I say, if there is some specific reason.

Q. So I should have said this, but what I showed you before was Exhibit 15B, 15C and 15D with the blood swabs with 7, 8, 9 placards, okay?

A. Yes.

Q. Now I'm going to show you 15E, and do you recall there being that little 7, 8, 9 placards being along the sidewalk?

A. There are a number of placards along the

44

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

sidewalk and there is a couple on the roadway.

5 Q. Mm-hm. When you were measuring with respect to the ones on the sidewalk, you know, the distance from the curb and all, did you ever happen to measure the width of the sidewalk in that area? The total width?

A. I would have left that for Mr. Schofield in the plan drawing.

10 Q. Okay. Thank you. Thank you, Mr. Registrar. This morning I got a little bit confused because my friend was taking you through the process whereby you would take stuff out of the locker and often that would be in a bankers box?

A. Yes.

15 Q. You take more than one in a bankers box.

A. Yes.

20 Q. You don't use one bankers box for one little thing. And it would seem to me, if I'm correct, that the napkin that was seized down by the church and the t-shirt that was seized down by the church, were kept in the same bankers box?

A. It's quite possible.

25 Q. Just so we're clear, how were they separated within the box? Is it just the same paper bag?

45

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

A. They would be bagged separately.

Q. They're separately bagged.

A. Yes.

Q. Okay. Now, luckily we have -- I'll just
5 get the exhibit number, but here on the easel we
have the four pictures of the knives that --

THE REGISTRAR: 28, Your Honour.

MR. SCARFE: Thank you, Mr. Murphy. 28.

Q. And so you indicated the three places
10 that you took swabs, and I just wanted to be clear.
Only one of them was from the blade?

A. One of them from the blade, yes.

Q. Okay. And two of them from the handle?

A. Yes.

Q. And just so it's clear for the record,
15 the two from the handle are as a result of your sort
of visual examination with the naked eye?

A. Yes.

Q. So what was it that you saw on the handle
20 that caused you to take a swab?

A. I saw blood.

Q. On the handle itself.

A. Yes. You can see -- you can actually see
some of it in the photograph there.

Q. Top left photograph here?

25

46

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

A. Yes.

Q. The discoloured area along the silver ridging?

A. Yes.

5 Q. Okay. And I think it's 23C where you use the word pommel, P-O-M-M-E-L?

A. Yes.

Q. And could you just help me identify for the record what a pommel is?

10 A. That's the back end of the knife.

Q. That's the back end of the knife that -- just the structural back end? Or the little screw that --

15 A. Well, it's a technical term that cutlers use in relation to the various nomenclature of a knife, and it refers to the back end. In a more classical knife, the pommel is the back end and it's usually locked -- a bolt area. If you look at a sword, it's sort of the knob end of the -- of the
20 handle.

25 Q. Mm-hm. Now, my friend showed you -- oh hold on. Let me finish with the knife and I'll come back to that. My friend showed you, it was number 28, a second Leatherman knife which you put through the -- I'm not going to try and say it, but the

47
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

fingerprinting glue chamber. The cyanoacrylate
treatment?

A. Yes.

5 Q. And you were able to identify some ridge
detail?

A. Yes.

Q. And a number of photos were taken.

A. Yes.

10 Q. Okay? Now, can I see Exhibit Number 22,
Mr. Registrar?

THE REGISTRAR: 22, Your Honour.

MR. SCARFE:

15 Q. Number 22 is the knife that was found on
the church steps. Not the one I'm talking about. And
this was also put through the cyano...

A. ...acrylate.

Q. ...acrylate, thank you, chamber, and but
I can't seem to find any photos in my disclosure.
Can you help me with that?

20 A. I can't.

Q. Okay. You've told us that there were
negative results, right?

A. Correct.

25 Q. But you know that this knife found on the
church step is alleged in this case to be the murder

48
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

weapon.

A. Yes.

Q. And you try to be as thorough and document your examinations as much as you can.

5 A. Yes.

Q. Wouldn't it be normal, even though you don't see the ridge detail, to take some photos under that altered light setting for all of us to see that there is no ridge detail?

10 A. Not necessarily. Ah, I examine it, I find nothing, and I'm not going to stand there for hours taking photographs to prove a negative.

Q. Okay.

A. Um...

15 Q. So that's just your practice. No -- it's negative for fingerprints, therefore you don't photograph it. Even though it's there under the light.

A. Correct.

20 Q. Thank you. Thank you, Mr. Murphy. You identified the knife found at the church as a Leatherman 154CN.

A. Yes.

25 Q. The other Leatherman that you examined, number 28?

49

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

A. Yes.

Q. That had the same model number, did it not?

A. I believe so.

5 Q. So you described it as similar. Would there be anything that would prevent us from describing it as identical? Or would that be incorrect?

A. Well, no two items are identical.

10 Q. Um...

A. From a forensic point of view, no two items are identical.

Q. Okay.

15 A. Otherwise, we would not be able to turn around and distinguish one item from another. And for instance, you get two pairs of shoes, there will be a distinct difference somewhere from a footprint made by each pair.

Q. Mm-hm?

20 A. It's just like a fingerprint.

Q. Okay. So just so we're clear --

25 A. It will be the same -- you get into the same thing distinguishing firearms by the bullet striations, even though they came off the factory line, one after the other. So they're not totally

50
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

identical.

5 Q. But when you described it as similar, you're speaking from a forensic point of view. For instance, one had fingerprints on it, one didn't. Maybe one had blood in a certain location, one didn't.

10 A. Um, not exactly from that point of view but from the point of view of manufacturer's defects, stuff of that nature. They're the same model and manufacturer in that they're identical.

Q. Okay.

A. But they're not identical as two exact items.

15 Q. For one dissimilarity being, for instance?

A. A tool marking in the grinding process of the blade, between the two items.

Q. Okay. So generally very minute differences.

20 A. Yes.

Q. But from a manufacturer's point of view, the items are identical.

A. Well, it's the same manufacturer, the same model. In that they're identical.

25 Q. Okay. All right. Just going back to Mr.

51
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

Hammond's shirt, and perhaps I'm stating the obvious, Exhibit 25, but you retired at some point during -- a couple years ago?

A. Correct.

5 Q. And Aimee St. Amand now Lukings took over the investigation?

A. Correct.

Q. You're aware that she tried to stitch this back together.

10 A. It would appear that way.

Q. All right. So you accept that this is the same shirt that was shown earlier this morning in a series of photos, but it was all ripped up.

A. Yes.

15 Q. Right. And what wasn't evident to me from the photos, maybe I didn't look closely enough, but that this which has been referred to often in this case as a t-shirt, is really more of a golf shirt, isn't it.

20 A. Yes, it is.

Q. All right. It has that distinctive cotton soft collar that folds over and has three buttons, sort of an opening at the front.

A. Yes.

25 Q. Okay. All right. I'm not sure what's the

52
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

better example, but it's my understanding that these jeans, which have been wrapped and filed as Exhibit 29 in these proceedings, are the same as what we're seeing in the photo of the -- Mr. Hammond's clothes and known on the disk as JPG 020. Have you got that?

5 A. Yes, I'm looking at it.

Q. All right. Could you describe to me in as much detail as you can what you see around the left right pocket? You can look at both the original item and the photograph.

10 THE COURT: Sorry. Mr. Scarfe. You said the left right pocket. It's either left or right. It can't be both.

MR. SCARFE:

15 Q. The right pocket. Right rear pocket.
Thank you for correcting that.

A. Which are you looking at? That pocket.

Q. This pocket over here. The right rear pocket.

20 A. Well, in the photograph I'm looking at, some bloodstains on the upper left corner that are extending up into the waistband area, and discolouring the leather, um, manufacturer's label --

25 Q. Mm-hm.

53

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

A. -- which is in that display, is somewhat
concealed by the belt.

Q. Yes. If I could ask you to focus though
just on the very top of the right here pocket there,
5 where someone might put a wallet or something?
That's a common place for a wallet. Do you see where
I'm looking at here?

A. Yes, there is a bloodstain.

Q. There is a bloodstain that starts near
10 the top of the pocket and seems to go right to the
very top of the pocket, and behind it on the pants
proper, I suppose, not the pocket, there is quite a
lot of blood staining there.

A. Yes.

Q. Did you happen to look inside the pocket?

A. No, I didn't.

Q. You didn't.

A. I didn't. I didn't handle that.

Q. That was Lukings who did that?

A. That was processed by, ah, Detective
20 Constable -- what number is that exhibit number?

Q. It says 8671-3. Isn't that Lukings?

A. Yeah. That's...

Q. I think it's Haley? Is that --

A. Haley. That is correct.
25

54

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

Q. Right. Did Haley do it alone or were you present?

A. I was not present.

Q. Not present. Just look at your notes from August 11th.

A. Yes?

Q. It would be around 55 and 56.

A. 11:02, received bankers box from -- of the victim's clothing from Detective Constable Haley.

Q. So were you present for at least part of this?

A. No. She turned the box over to me.

Q. Mm-hm. Now, I understand that normally in trials like this, there are a selected number of items are sealed, much as these jeans are, and it's referred to as biological sealing?

A. Yes.

Q. What does that mean?

A. One of the problems that you encounter when you deal with any of the biological, particularly blood, is that in its wet stage, it is relatively safe unless you deliberately put your hand or your body into it.

Q. Mm-hm.

55

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

A. However, when it becomes dried and you start to handle the item that it has dried into, there is a high probability of the blood flaking and breaking off and becoming airborne --

5

Q. I see.

A. -- and inhaled.

Q. Mm-hm.

10

A. In which case you would end up with whatever pathogens are in that blood, contaminating you. And to prevent that from occurring, they are placed in a shield, so to speak, to prevent us from contaminating the courtroom.

15

Q. So if there was an issue in this case as to whether or not the blood that we see extending up the pocket and then onto the jeans, actually being present inside the pocket, what would be the safest way to determine that?

20

A. That item would have to go to the Centre of Forensic Sciences and be examined there and determined.

Q. Just to see if there's blood staining inside the pocket?

25

A. Well, if you're looking just for the blood staining, then the -- take it to the forensic lab at FIS and look inside.

56

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

Q. So at FIS they'd have a room and the person would wear a mask, and the pathogens, although they'd be airborne, they'd remain within that room?

5 A. Yes. The room, the examining rooms that we use, are the same standard as hospitals and the Centre for Disease Control uses in that there are HEPA filters that filter the air out, the -- it's a negative atmosphere. When you go into the room, you
10 have to go in through an air lock.

Q. Mm-hm.

A. You just -- it's very much like coming into this courtroom, because there are the outer doors in the hallway, you come into the sort of air
15 lock, and then you come in through the inner doors and the air within the room is then filtered out to the outside. While you're in there you wear appropriate protective coverings such as masks, gloves, and for the prevention of contamination.

20 Q. And those rooms exist at the Centre -- sorry. Forensic Identification Services.

A. Yes.

Q. All right. So if nobody's checked the back pocket, you certainly wouldn't recommend me
25 cutting this plastic open and doing it right here,

57
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

for safety reasons.

A. No. No.

Q. It would have to be something that would have to be done in a proper setting.

5 A. Yes. That is the way I would go about it.

Q. Mm-hm. Certainly by the look of the staining, now that I've brought up the question of whether there is blood extending into the pocket and how deep, you can't look at that and say, Oh, no, I don't think there's any blood in the pocket. The way the stain's formed, it's quite possible that --

10

A. Very possible. In fact I would say probable.

Q. Probable. So if somebody had a knife in their hand and needed their hand for some reason, and the knife was bloody and they stuck it in their back pocket, there is nothing about the pattern of staining in there that's inconsistent with that hypothesis.

15

A. I would have to examine it. Um...

20

Q. I understand that but --

A. Looking at the staining in the photograph and the staining on the actual item from here, I would say that it is more likely blood that has seeped down through the clothing, and I, quite

25

58

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

5 honestly, I would have to examine it. If it was, to follow your hypothesis, the staining would be somewhat different. It would be -- the transfer would be different. You would have to look at it under a microscope or under magnification to determine that. If, on the other hand, it's seepage, it will have seeped throughout the clothing.

Q. Mm-hm.

10 A. If you understand what I'm -- you're going to get it on the inside of the pants and the inside of the pocket.

15 Q. Right. So if I understand what you're saying, forensically, if you were to examine it under a microscope, you would probably be able to determine whether, A, it's just blood that's seeped through, or B, it's actually the result of a smear or a transfer.

A. Correct.

20 Q. Okay. That's very helpful. Thank you. You were shown a series earlier of photographs of clothes that belong to Ms. Watts.

A. Yes.

25 Q. And you participated in an examination of those clothes. I'm just going to try and find the reference and... now, is it on the -- sorry. I'm

59
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

confusing knives and clothes. Can you help me in your notes as to you were present when Ms. Watts' clothes were examined?

A. Does Ms. Watts have another name?

5 Q. McDermitt.

A. McDermitt. Um, they were examined by myself and Detective Constable St. Amanda.

Q. Now Lukings.

A. Yes.

10 Q. And do you have the page reference in your notes? I know I've marked it.

A. Um, the 19th and 20th. Sorry.

Q. Thank you very much.

15 A. Sorry. Sorry. Some of them were 11th and 12th.

Q. All right. So on August 12th, starting at page 57, is sort of the lion's share of the items of Ms. Watts that were examined?

A. Um, I believe so.

20 Q. Showing you Exhibit 23, JPG 005, you have the boots of Ms. Watts, right? And you look at both the right and the left, Doc Martin boots, and I see in your notes there doesn't seem to be a lot of indication as to whether you observed blood; how
25 much. Am I looking in the wrong place? Would that

60

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

have been noted elsewhere?

A. Um...

Q. It's just not clear to me how many swabs were taken, how many spots of blood were seen...

5 A. I don't have any notation, but I remember of -- in relation to those and blood --

Q. So you don't recall.

A. No.

10 Q. And just there at the very bottom of the page, pair of gray cut-offs? There are two photos of that. First is a photograph of the front of them with the pockets pulled out, and then second is a photo of the rear. Does that refresh your memory as to being present for the examination of those shorts?

15 A. Yes.

Q. And it sort of indicates that you took them out, you had a look at them, but then there's nothing in your notes to indicate what you found.

20 A. There's nothing in the notes to say what?

Q. To indicate, well, you know, whether you found blood on these shorts, how much?

A. No, there isn't.

25 Q. There isn't, right? Is there a reason for that? Or would that be in someone else's notes?

61
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

A. I can't give you an explanation exactly as to why.

Q. Okay. The next item in that series of photos that form part of this exhibit is a shoulder bag with what appears to be a -- I guess a bandana or a handkerchief or a shawl that's packed together with it. You do indicate that there is a number of blood spots on the back of the shoulder bag, and that's just about halfway down page 53. Do you see that notation?

A. No. Unfortunately I am not seeing it, but I do have a recollection of what you're talking about.

Q. Do you see on page 53 -- sorry. The numbers are so hard to read. 58. That's what I -- I set you off the wrong way. About four lines down, it's Exhibit 47, green shoulder bag? I'll bring my photocopy up here.

A. Yes. Shoulder bag with the exhibit, ah...

Q. 47?

A. Yeah.

Q. Right. And then you take about five, six lines to describe the item itself?

A. Yeah.

Q. And then right where you get from the top

62

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

half to the bottom half, you say, "I note a number of blood spots on the back of it".

A. Yes.

Q. Right. And "the back of it", you're referring to the shoulder bag or the handkerchief?

A. I believe I am referring to the bag.

Q. To the bag. Okay.

A. To the bag.

Q. And you in fact take a swab of that, S47, for possible submission to the Centre of Forensic Sciences?

A. Yes.

Q. Right? Then you go on to the black sweatshirt?

A. Yes. With the hood.

Q. Did you note any blood on that?

A. Ah, no.

Q. When you say "no", does that mean there was no blood on it? Or does that mean --

A. I didn't note any.

Q. You didn't make a note. There could have been blood all over it.

A. I didn't make a note. If there was blood all over it, I would assume that I would make notation of that as I have on other items.

63

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

Q. And then there is an Old Navy tank top,
right at the bottom of that page?

A. Yes.

Q. And it's just being put up on the screen
for us. Do you recollect that item?

A. Yes.

Q. And again, there's no notation as to
whether you located blood; took a swab?

A. No.

Q. Okay. When -- obviously time is valuable,
and when you are going through the items of five,
six people's clothing, are you doing so with some
direction from maybe a lead investigator or someone?

A. There are consultations, those -- I have
notations where there's conversations between
Detective Constable Smissen, myself, one of the
detectives, um, on another occasion there is a
meeting with the detective sergeant, and we review
what has taken place, what is being done, how we're
proceeding and so on.

Q. Okay.

A. Um, there's a number of times when there
are discussions about how we're going to process
certain things with other people in the office.

Q. Do these discussions tend to lead to a

64

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

sort of list of priorities? You take one item and we want you to scrutinize every inch of it and point out every single blood spot, whereas they might say another item isn't so important?

5

A. No.

Q. So if you could examine an item --

A. That would be a conversation between Detective Sergeant Giroux and myself and CFS, and CFS was leaning more towards the actual item being submitted to them for examination, rather than us taking swabs. They started to, as things progressed, I had some conversations with someone of the biologists and she was --

10

Q. At CFS?

15

A. -- very heavily leaning towards that all items would be eventually submitted and that they would do the examinations.

Q. All right. So one of the explanations for why there doesn't seem to be a lot of observations in your notes with respect to the clothing items of Ms. Watts may be that you knew they're going to CFS anyway. Is that what you're telling us?

20

A. I would have still made notation of them. I am fairly, from my recollections of the examination, there was very little blood found on

25

65

S. Kearon - cr-ex. (Scarfe)
January 26, 2011

her clothing that I remember of.

Q. Ms. Watts.

A. Yes. Um, McDermitt, as I have her documented.

5 Q. Absolutely. Sorry.

A. Ah, I noted the blood staining on the bag, but on other items of clothing, no. I don't recollect them. I know that my practice would have been to document that.

10 Q. So just so I'm clear, no one told you, Don't worry so much about Faith Watts' clothes. That's not really a big issue in this case.

15 A. I think that at this point, when the items were being examined, had been very little conversation as to who did what, and basically at that point, as far as I was concerned, all of the people were involved and were going to be charged with the death of Mr. Hammond. I had no direction at this point that there was one particular person and
20 other people were being excluded, and I treated everything as basically the same. There was no direction from anyone on that.

25 Q. So you examined them with the same level of thoroughness and the same amount of detail essentially.

66

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

A. To my -- to the best of my knowledge,
yes.

Q. They were all -- those four people who
were going to be charged, you looked at their items
with equal priority.

A. As far as I know, yes.

Q. All right.

A. There's no reason why not.

Q. Mm-hm. And the biologist that you spoke
to who was leaning towards submission, was that Ms.
Sloan? Monica Sloan?

A. No.

Q. It was a different biologist?

A. Yes.

Q. Do you happen to remember the name?

A. Ah, the name Joanne is coming into my
mind and I did see it in my notes, but it would take
me a little while to go through them and --

Q. You know what? If Joanne is there that's
specific enough for us. We can find it in our notes.
That's fine.

A. It is specifically mentioned in my notes
as to who, because I had -- and possibly a faster
way might be if you look at the submission notes.
It specifies her name as authorizing the

67
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

submissions.

Q. Okay. Thank you. If you could next turn to page 65 of your notes, that's on Friday, August 17, 2007. Was Almer the last name? A-L-M-E-R?

5 A. Almer. Yes.

Q. Almer.

A. Joanne Almer.

Q. But not with the Y like the town where the police college is.

10 A. That I can't say.

Q. Okay. I think we're close enough. On the 17th of August, 2007, you took a box out from the second victim, Mr. Dranichak, and just to follow up, you had said earlier that the four accused people who were all going to be charged, or at least that's what you understood, you treated those equally with respect to thoroughness and priority. With respect to the second victim, and the items that you examined on the 17th of August, was there -- were you under the impression that you were to be more thorough? Less thorough?

20 A. There was -- by this stage I believe that there had been further conversations with Ms. Almer, and the decision was that the -- Mr. Dranichak's clothing was going to be postponed.

25

68

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

Q. It wasn't going to be submitted.

A. That's correct. We were not going to submit it at this point. It was basically going to go into storage.

5 Q. Okay. But somewhere between putting it in storage, alerting that it's not going to be submitted, you still get the box out, you get all the items out, and you photograph them, correct?

A. Yes.

10 Q. And we have an example of that, and with my friend Ms. Fineberg's assistance, we're going to add three photos and make those the next exhibit. In case I forget. With respect to the t-shirt of Mr. Dranichak, you pulled it out and you laid it on the
15 craft paper, you put some measuring tape along both sides of it?

A. Yes.

Q. And photographed it.

A. Yes.

20 Q. Did you also physically examine it?

A. Yes.

Q. Right. Did you have any instructions as to what you were looking for in the physical examination? Or it was just see what you can find.

25 A. It was basically see what I noted.

69
S. Kearon - cr-ex. (Scarfe)
January 26, 2011

Q. Okay. Were you aware that part of the narrative at that point was that Mr. Dranichak had been beaten up by several people?

A. No.

5 Q. No. Did you make any notes or do you have any recollection as to the state of this t-shirt?

A. No. It just basically says black t-shirt, the seal on the bag and a tag number.

10 Q. Can you see anything in the photo that would differentiate this t-shirt from, say, a brand new t-shirt bought at the store five minutes ago?

A. I don't see anything --

Q. No?

A. -- in the photograph I'm looking at.

15 Q. Could we see the next shot? The rear of it? Thank you. How about there?

A. It would appear to be some damage to the upper collar.

Q. Mm-hm? Any --

20 A. And what would be the right sleeve.

Q. Appears to be some damage? Can you be more specific?

A. Yes. If you look at the top of the collar --

25 Q. Mm-hm?

70

S. Kearon - cr-ex. (Scarfe)

January 26, 2011

5 A. -- and follow the outline down to the tip of the right sleeve, just towards the tip, there seems to be a deformity in the material. Whether that's because of the fold or because of actual, physical damage to it, I don't make notation.

Q. So that what appears to be damage could be explained by a fold you say?

A. It may very well be.

Q. All right. And is there any blood or --

10

A. I have no notation of that.

Q. And had there been dirt? You know, the kind of dirt that would be left by someone sort of being knocked to the street and beaten up, would you have noted that?

15

A. It would be my practice, yes.

Q. All right. Great. Thank you. And just finally, Your Honour, the third photo for Mr. Dranichak is a pair of shoes. Do you have a recollection of photographing these shoes?

20

A. Yes.

Q. Did you have a -- would it be your practice to have a look at them to see if there are any damage that looks recent or blood spatter on them?

25

A. That would be correct.

71
S. Kearon - re-ex. (Middlekamp)
January 26, 2011

Q. That would be your practice.

A. Yes. But I don't -- I don't see anything
in the photographs.

Q. And in your notes?

5 A. Ah, the notes mention right, again, just
the bag number, seal, tag number.

Q. Those are my questions for this witness.
Thank you, Mr. Kearon.

A. Thank you.

10 THE COURT: Re-examination?

MR. SCARFE: Oh. I should have made those
officially the last exhibit? The last three
set of photos.

THE COURT: Exhibit 37.

15 THE REGISTRAR: 37, Your Honour.

---EXHIBIT 37: Series of photographs - produced
and marked for identification.

20 MS. MIDDLEKAMP: If I could have a couple of
questions in re-examination, Your Honour?

THE COURT: Yes.

25

72
S. Kearon - re-ex. (Middlekamp)
January 26, 2011

---RE-EXAMINATION BY MS. MIDDLEKAMP:

MS. MIDDLEKAMP:

5 Q. My friend was asking you questions about
examining the property, and you gave the answer that
it was your understanding that you were viewing all
the property in a similar fashion when you were
looking at it, for each of the property items that
came in, correct?

10 A. Basically, yes.

Q. Now, I just want you to turn, if you
could, to page 57 of your notebook?

A. Yes.

15 Q. I just want to ask you if that assists in
refreshing your memory as to whether or not, when
examining Ms. Watts' -- or Ms. McDermitt's boots,
you took swabs of those boots.

A. If I took a swab, I was taking a swab of
something --

20 Q. As for the --

A. -- which would indicate that there was
something there on the boot.

25 Q. I'm just going to show you a photograph.
That's JPG 007? Does that assist you with respect
to taking swabs of her shoes?

73
S. Kearon - re-ex. (Middlekamp)
January 26, 2011

A. Yes.

Q. And if I can show you now photograph 008?
And does that assist you with respect to taking a
swab of the other shoe?

5 A. Yes. The only explanation I can have with
respect to that is I was working with Detective
Constable St. Amand, and it may very well be
possible that she did the notation in relation to,
and I just put into my book, the fact that I did the
10 shoe and I did the -- the swab, but I had to keep
track of the swab for record purposes.

Q. Now, I understand that, subsequently, you
also examined the property from Jeremy Wooley --
Williams, A.K.A. Jeremy Wooley, and just referring
15 to your notes, if that assists refreshing your
memory as to whether you took any swabs from the
items from him as well.

A. Which page is that?

Q. Page 60.

20 A. 50?

Q. 60.

A. 60? Um, swab 56 from the right breast
pocket area, um, note a large cut on the clothing,
large bloodstain on the clothing, um...

25 Q. Then if you can turn to his shoes?

74
S. Kearon - re-ex. (Middlekamp)
January 26, 2011

A. Shoes, left shoe, and there is a swab from 60. Also item placed back in the respective bags.

5 Q. Okay. Your Honour, if I could ask that the two photographs of the swabbing procedure could be entered as the next numbered exhibit?

THE COURT: Exhibit 58.

THE REGISTRAR: 38?

THE COURT: 38. Sorry.

10 THE REGISTRAR: 38, Your Honour.

15 ---EXHIBIT 38: Series of photographs - produced and marked for identification.

MS. MIDDLEKAMP:

20 Q. Now I have one final question for you. My friend asked you questions about examining the clothing that came from Mr. Dranichak.

A. Yes.

Q. And you were shown photographs of that clothing?

A. Yes.

25 Q. Do you have an independent recollection

75
G. Dranichak - in-ch. (Thompson)
January 26, 2011

of the condition of the clothing? Or was your answers to his -- or were your answers to his questions based on what you were viewing in the photographs?

5 A. To a great extent, upon what I'm reviewing, not from an independent recollection. As I said, by that time, there had been discussions with Ms. Almer and it had been decided that, no, it was not going to get sent into Centre of Forensic
10 Science. That they would look at a later time doing the examination probably themselves in a greater depth than I would.

 Q. Okay. Those are my questions in re-examination, Your Honour.

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

 THE WITNESS: Thank you very much, Your Honour.

20 MR. THOMPSON: Your Honour, I'm going to call Mr. Dranichak now, please.

 THE REGISTRAR: Mr. Dranichak, please.

25 ---GEORGE DRANICHAK: SWORN

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

MR. THOMPSON:

Q. Okay, Mr. Dranichak. Hi.

A. Hi.

Q. How are you today?

A. Fine, thank you.

Q. Can you tell us a little bit about
yourself for a minute or so?

A. I'm 38 years old. I'm an American
citizen. I've been living up here in Canada since
August 2002. I'm on a work permit here. Um, I work
for Virtual Service Inc. as a management consultant.
Um, anything else? Or...

Q. No, no. Just in your capacity with work,
what is it you actually do?

A. I basically train people, um, on the
internet for marketing purposes.

Q. Okay. Does your company that you work
for, did they host a number of sites or operate a
number of sites?

A. Yes.

Q. And are some of those sites adult
entertainment?

A. Yes, they are.

Q. And how long has that been operating for?

A. The company? Or --

Q. The company itself.

A. Around ten, twelve years.

Q. And when you came up here, can you just tell us a little bit about Mr. Hammond?

5 A. Ah, he had been working there a year or two prior, prior to me. Ah, he worked in the human resource accounting department of -- or section of our company. He handled affiliate payouts, fraud, um, customer service, things like that.

10 Q. Okay. But just in terms of your relationship with him.

A. Well, he was, um, we worked very close together and we grew to become very good friends. He was -- he was my best friend since I was kind of new to Toronto and we spent a lot of lunches together and breaks together and things like that.

15 Q. Okay. And would you often stay over at his house? Or was his relationship that close or not?

20 A. Um, I never stayed at his house. He stayed over at my house a few times. He had moved to St. Catharines and the commute was a little bit tiresome for him, and he stayed at my house a few times and whatnot. I don't think I've ever stayed at
25 his house but I've gone over for dinner and, um, you

know, he had shown me stuff that he had -- he had built a deck and things like that, so I was familiar with, you know, his home.

5 Q. Okay. Just a couple other things. Just so it's clear, did you -- you testified at the preliminary inquiry, right?

A. Sorry?

Q. You testified at a preliminary inquiry?

A. Yes, I did.

10 Q. And you've also actually gone back to the scene with a number -- with a couple of the Crown Attorneys, one of which was me, as well as the officer, and that was in early January?

A. Correct.

15 Q. And have you -- have you had any further contact with anybody else in this trial since the preliminary inquiry in any event?

A. Um, no.

20 Q. Have you seen anything on TV with respect to this matter?

A. No, I've been purposely not watching the TV and reading the newspapers.

25 Q. And there's filed as an exhibit, which is now available to the public as well, there is a City TV video. Do you have any knowledge about that or

79
G. Dranichak - in-ch. (Thompson)
January 26, 2011

have you ever seen that?

A. Is that the old video? Or is that from
the crime scene?

Q. The CTV video is of the scene where Mr.
Hammond was found?

A. I saw that during the preliminary hearing
at one time, yes.

THE REGISTRAR: That's Exhibit 11, Your
Honour.

MR. THOMPSON: Thank you, Mr. Registrar.

Q. The nature of the business that you're
in, is it -- is it sort of a bonding building?
Because there was a number of people involved in it
and the work is sometimes very stressful, and you
build a bond and relationship with the people you
work with?

A. Yeah. I work with designers,
programmers, um, people that come up with concepts,
we work with a lot of outside companies to help
market their products, so there's a big
collaboration with -- with things that we work with,
yes.

Q. So is it usual or unusual -- let me put
it this way: It's usual that you go out to drink
and party together?

80

G. Dranichak - in-ch. (Thompson)
January 26, 2011

A. Absolutely, yes.

Q. All right. So I'm going to now direct you to the night in question, which is the August 8, 2007, and can you just go into some detail as to what you were doing that evening?

A. Okay. Well, there was, um, a lot of people had left the company. They were unhappy with the company. Morale was pretty low and we had a lot of new younger guys that were working in the office. We wanted to kind of take them out for a fun night. This was Ross and myself's idea. We used to hang out a lot and play pool, shoot -- play on a pool team, play darts, and we wanted to just take everyone out to the Second City, which is like a comedy improve thing, just have a few drinks, have some laughs and just try to get people focused, because a lot of people in the office were shutting down. And we just -- we had a job to do and we just really needed people to be on our side.

Q. Okay. And just so it's clear, I should have done this earlier, the company that you worked for at that time was located where?

A. It was at 77 Mowat Avenue, which is near the corner of King and Dufferin.

Q. Okay.

81
G. Dranichak - in-ch. (Thompson)
January 26, 2011

A. Parkdale.

Q. And subsequently you moved to another address, but that's where it was at the time.

A. Correct.

5 Q. And so on that evening, did you go out with a group of people? Or no.

A. There was six of us. There was Ross, myself, Cameron, ah, Ben, Gideon and Tony.

10 Q. And can you tell us, did you get to -- where is the first place that you went? Don't go into detail, but give us a rough time when you got there.

15 A. Right. We went to Wayne Gretzky's right after work just to have a couple drinks and some appetizers. There was a seven o'clock show at Second City that we were trying to -- 7:00 or 7:30 we were trying to catch and so we had around an hour or so to kill before going to the show.

Q. All right. And do you get to the show?

20 A. Yup. Yes.

Q. Roughly at that point in time, um, let me put it to you, amongst the group of people, were you and Ross the oldest?

A. Yeah, I would say so.

25 Q. Okay. And in terms of the drinking that

82

G. Dranichak - in-ch. (Thompson)

January 26, 2011

went on between the younger group and yourself, or you and Ross, were you drinking more or less than they were?

A. Um, well, at first, at first much less.

5 We got a couple buckets of, um, mini Coronas at Gretzky's, and we got a couple appetizers like some hamburger sliders and some wings maybe, and so there were -- initially it was even, but when we got to the Second City, the younger guys were drinking a
10 little bit more.

Q. Okay. So roughly, can you just tell me, at that point in time, if you can remember, how much you would have consumed up until that point in time?

A. I think I had two of these little mini
15 beers, maybe even one and-a-half at Gretzky's and Ross was probably the same.

Q. So you get to the show and what happens? Did you drink at the show?

A. Well, I paid for the tickets for everyone
20 so I said, you know -- I think I got the first round of drinks and then after that I said, you know, If you guys want more drinks then you're on your own.

Q. All right ?

A. So I believe I had two double Johnny
25 Walker Blacks, two ounce drinks.

G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. And did you have any -- did you notice how much Ross had to drink?

A. He had one or two rye and Cokes. Singles.

Q. So how long did the show last for?

5 A. Um, I believe a couple hours. It was a couple hours. They had a normal show and then they did -- they do some kind of free improv thing after that. A lot of the people -- a lot of the people that we were with didn't like the show and they were
10 just kind of bringing me and Ross down. They just didn't really appreciate the night. They didn't think it was funny. They were just complaining left and right. So we -- we decided just to go find another place.

15 Q. When you say "we"?

A. Well, it was a collaborative effort.

Q. Okay. So did you all leave, is my question.

20 A. Yeah. We all left together. Yes. And we were kind of walking around trying to find a bar to shoot pool or play darts or something. You know, just to, you know, try to salvage the night. It really wasn't a fun night. We weren't having a good time. Everyone was complaining about work and not
25 really letting go of a lot of things, and me and

84

G. Dranichak - in-ch. (Thompson)

January 26, 2011

Ross were, like, everyone's psychiatrist throughout the night, and it just became really tiresome for us.

5 Then a couple -- a couple of them got a little intoxicated. I don't know how much they drank but they really couldn't hold their liquor at all, and they were just getting a little obnoxious.

10 Q. And -- all right. So approximately -- is this just as you came out of the theatre you noticed this? Or were you -- as you're walking down the street they became obnoxious?

15 A. Well, we were walking down the street trying to get into places and they were being a little loud and they were kind of, ah, we could tell that they were being a little obnoxious, and we tried -- we had tried going into one bar and they had asked one of our guys to take off their hat. They would not take off the hat, so none of us could get in there. We went to a couple other places. Um, 20 we were dressed very casually but a couple of the guys were, um, some of them were -- I don't know if -- they were probably wearing shorts. Um, they just would not really comply too well and we had got refused entrance into one place because one guy was 25 just mouthing off at the, ah, at the bouncer.

January 26, 2011

5 So at that point we decided it was a night and we were, you know, some guys wanted to go -- lived east, me and Ross wanted to end up out west because I lived in Mississauga at the time, and we wanted to end up eventually at Shoeless Joe's, which was right by our office there at Mowat Street.

Q. Okay. So roughly what time is it that you decide to break up?

10 A. I believe it was, like, around -- it was around, like, 9:30, ten-ish. We had walked around -- we were walking around for a good half hour or so, trying to find bars, trying to find, you know, places -- we went into a couple places that were completely empty and people didn't want to stay. No
15 one would agree on where to go or what to do, so it got really frustrating at that point and we just decided to call it a night.

20 Q. Okay. So you and Ross at that point in time break off from the group. Do you remember approximately where it was that you broke off?

25 A. Um, I don't remember the exact location because we were kind of walking around circles and we were walking around King Street, and I don't know if we got up to Queen, but we ended up jumping into a taxi and they dropped us off around Queen Street.

86

G. Dranichak - in-ch. (Thompson)

January 26, 2011

Queen and Bathurst I believe.

Q. So why go to Queen and Bathurst?

A. Well, we were kind of hungry at the time. We didn't really eat a lot of food. We just had a couple appetizers that we split and we knew that we wanted to be back on, um, back towards our office, so we were like, Well, let's just go hit a couple places, have a couple drinks just me and you. Let's salvage the night. Let's have a little fun here and this is a big bust, and we were kind of laughing about it and we were a little annoyed. We wanted to just kind of start fresh and it was still kind of early. We were like, Well, let's just go hang out and we'll either stay at the office, there's couches and futons there, or we can take the train back to my house if we had too much to drink, and because I was pretty close to the Clarkson exit there. Or Clarkson train stop. So we were just trying to play it by ear and trying to salvage the night.

Q. So where did you wind up going?

A. We ended up going to the Big Bop Reverb club. They have live bands there at night and I had gone there in the past and he was up for it. He was up for pretty much anything.

Q. So where is that actually located?

87

G. Dranichak - in-ch. (Thompson)
January 26, 2011

A. I think it's on Bathurst and Queen. It's a purple club.

Q. Do you remember what side of the street it's on?

5 A. It's on the -- let's see. The east, south side?

Q. Southeast? Okay.

A. Yeah.

10 Q. And when you -- the two of you went in there, what did you do?

A. Well, we went upstairs and there was a cover. We paid the cover, and there was a live band playing and ironically, I mean, it was a fluke, that it was his buddy's band from St. Catharines playing. We had no idea that they were playing there and it was -- so he was very excited to see them. Um, he's friends with those guys and I don't remember the name of the band or whatever. I just remember that it was from St. Catharines. And he had stayed with them in the past, like, when they played in Toronto. Like, he stayed at their hotel a couple times and came into work the next day from their hotel.

25 So we watched their set; we each had a couple drinks.

Q. Just I'll stop you for a second. So in

88

G. Dranichak - in-ch. (Thompson)
January 26, 2011

total, how long were you in that bar?

A. I think we were there probably, let's see. Probably around 10:00 to 11:30.

5 Q. Okay. And so when you say you had "a couple [of] drinks", can you be a little bit more specific?

A. I had two double Johnny Walker Blacks. He had two rye and Cokes. Singles.

10 Q. And did you talk with this band at all?

A. Yeah. After their set the guy came over and Ross introduced me and, um, it was just nice to meet them and they were -- they were a good band and it was a fun time. It was -- the music was good, there was a lot of people there and it was fun.

15 Q. Okay. Was it crowded in there?

A. I would say they were probably at one third capacity.

20 Q. Perhaps this would be a good place to pause, Your Honour.

THE COURT: Very well. We'll take the luncheon recess. 2:15.

25 ---LUNCHEON RECESS

(12:59 p.m.)

89
G. Dranichak - in-ch. (Thompson)
January 26, 2011

---UPON RESUMING

(2:20 p.m.)

5 MS. MIDDLEKAMP: Good afternoon, Your Honour.

THE COURT: Yes?

MS. MIDDLEKAMP: Before we continue the
examination in-chief of Mr. Dranichak, we
have placed all of the photographic exhibits
10 that have been referred to on to one CD, and
so I'd like to file them as an exhibit now. I
can indicate the exhibit numbers. They are
reflected on the CD.

15 THE COURT: Sorry. Then when one opens the
CD, what do you see?

MS. MIDDLEKAMP: You see a file folder named
by exhibit, and then the individual
photographs are contained within that file
folder. So for example, when you open the CD
20 you will see Exhibit 31, if you open it the
photographs are contained within that folder.

THE COURT: All right. So for the purposes of
the record then, Mr. Registrar, you should
25 identify the CD as comprising exhibits by
number.

MS. MIDDLEKAMP: And I have them written on the front of the CD for each exhibit number.

THE COURT: Thank you.

THE REGISTRAR: Thank you, Your Honour.

5 MR. SCARFE: I'm fine with all that, but I anticipate there will be another CD or two down the road, so we might want to refer to it as CD 1.

10 THE REGISTRAR: Should I give this a number then, Your Honour? I'm sorry.

THE COURT: Ah, no, just indicate on the front of it the exhibit numbers contained on the actual CD.

15 MR. THOMPSON: All right. Your Honour, if I may get back to Mr. Dranichak, please?

THE COURT: Yes.

MR. THOMPSON:

20 Q. Mr. Dranichak, just before we broke at the lunch recess, your evidence was that -- had you and Ross at the Big Bop Reverb at Queen and Bathurst, and we had just been going through the amount of alcohol you consumed and approximately what time you left the place. And if we could just pick up from there, you indicated you thought you
25 left anywhere between 10:00 and 11:30?

91
G. Dranichak - in-ch. (Thompson)
January 26, 2011

A. It was around 11:00 -- it was around
11:30.

Q. And can I ask you why you think it was
around 11:30?

5 A. I think we wanted to wrap up the night
around midnight or 12:30, so I think we left a
little bit early. We were hungry, we were looking,
um, for a diner, like an all night breakfast place,
and then we were just going to wrap it up.

10 Q. Okay. And did you have any particular
breakfast place in mind? Or diner in mind?

A. No, we thought -- our whole goal was, um,
or our whole strategy was that if we hit Queen
Street there ought to be something open, and we'll
15 run into something, you know, that -- we didn't have
a definite place in mind though.

Q. Okay. So you leave the Big Bop Reverb and
you do what?

20 A. We start walking west on Queen Street on
the south side. We're just looking for -- we didn't
want pizza. I think there was Pizza Pizza there. We
didn't want, well, we were just trying to find a
place. Place to eat and just place to go. So...

25 Q. Okay. And so did you find a place? Or
not.

January 26, 2011

5 A. No, no, we didn't. No. We just thought that we were going to just walk -- we were walking and talking, um, and if we couldn't find anything then we were just probably going to take a taxi for the rest of the way down towards the office. To Shoeless Joe's. Because we figured Shoeless Joe's would serve until midnight or so. So that was our last resort. We didn't want to really eat there but we would have eaten there if nothing -- if we didn't
10 find any other places.

Q. I assume Shoeless Joe's is near your office?

A. Yes. Yeah. On Mowat Street. Mowat and King.

15 Q. All right. So you're walking on the south side. Any particular place? Any particular thing? Any particular roads?

A. No. We were just walking and talking and it was a nice night, and no, we were just -- just
20 walking.

Q. Okay. So does anything -- what -- do you have any money to go buy this food?

A. Well, I had kind of run out of money for the night. Ah, I might have had 8, \$12 in my pocket
25 and so I was -- I was gonna look for an ATM machine

93
G. Dranichak - in-ch. (Thompson)
January 26, 2011

5 or, you know, I figured if we went to a place they would have a machine, so I was checking my pockets and I noticed that I really didn't have any money, so I saw a TD Bank on the outside of -- on the north side of Queen Street, and I said, Oh, I'm going to get some money out.

Q. Okay. And so when you saw the -- and can you just describe briefly what that looks like? That bank?

10 A. Well, it's kind of, like, an outdoor, I think there's two, um, there's two little, um, bank machines on the outside. There's not really an entrance way. It's not a big bank. It's just kind of an outdoor, um, I wouldn't call it a kiosk but I would call it just an outdoor -- outdoor facility.

15 Q. So you don't have to go through a set of doors --

A. Correct.

20 Q. -- to get to the machines. They're right on the street.

A. They're right on the street.

25 Q. Earlier a schematic had been identified by -- as Exhibit Number 1. I'm just going to put it on the board on the Elmo here. And building 686 had been identified as the TD Canada Trust. It's

94
G. Dranichak - in-ch. (Thompson)
January 26, 2011

actually marked as the TD Canada Trust, and it's right at Euclid and Queen Street. It's on the north side. Is that your recollection of where -- that you went?

5 A. Yes.

 Q. Okay. So you go to that bank, and what happens there?

 A. Well, Ross was saying, Don't worry about it. I got money. Don't worry about it. You know, I have it. Geo, don't worry about it. And I was like well, you know, I just -- Let me just get some money out, and I don't remember if I got money out or not. I think he actually talked me out of it, but I had crossed the street to use the ATM machine.

10 Q. So let me ask you, did he cross the street with as well?

 A. Yes, he did, yeah.

 Q. So the pair of you crossed the street.

 A. We both did, yeah.

15 Q. And when you arrived at TD Bank or that kiosk, where the two machines are, let's use that terminology, what's the lighting like there?

 A. Well, it's pretty well-lit. You know, there was a lot of streetlights and there was the TD itself, the sign itself is pretty bright. It's a

20 25

95
G. Dranichak - in-ch. (Thompson)
January 26, 2011

bright green sign and there's lights around there
and it's pretty well-lit for being as late as it
was.

5 Q. Okay. Were there a lot of people around
the area at the time?

10 A. It was a busy night. Yeah. There were a
lot of things going on. There was a lot of traffic.
Traffic was pretty much stop and go, you know? It
was -- like, you had to really navigate to cross the
street and not at a crosswalk.

Q. Okay. Was it any heavier flow either one
direction or the other on Queen?

15 A. No. Pretty much not. It was -- it was
stop and go and then it would ease up and, um, then
it would open up and, I mean, it was -- it was very
sporadic, but it was a busy night.

Q. All right. So you're at the Green Machine
with Ross. Can you tell us what happens.

20 A. Um, I don't remember if I got money out
or not. Um, I go back and forth to whether I did or
not. But I just remember that we got approached by a
girl on a bike, and she asked us for money. She
asked us for \$20.

25 Q. Okay. So just bear with me one second.
You get approached by a girl on a bike. Can you tell

96
G. Dranichak - in-ch. (Thompson)
January 26, 2011

us from what direction she came?

A. I believe she came from the west direction.

5 Q. And when you say she "approached" you, was she riding it or was she walking with it or was she --

A. Um, I think she was riding it. She stopped and then was kind of walking up to us with the bike while still on it.

10 Q. Okay. Sort of, like, sort of hopping with her --

A. Well, yeah. She wasn't on the side of the bike. She was kind of in the middle of the bike and using her feet to kind of come towards us.

15 Q. Okay. And was it a young woman? An old woman?

A. Young.

Q. And was she by herself?

A. She was by herself, yes.

20 Q. And what did she say?

A. Ah, she said, um, Hey, give me some money. Give me \$20.

Q. And can you just give us a bit of a description of the bike?

25 A. Um, it looked like a newer mountain bike.

It didn't look like an old bike. It didn't look -- I mean, it looked like it was a 4-, \$500 mountain bike. Or a crossover bike or one of those. It wasn't a ten speed, it wasn't, like, a full on mountain bike. It could have been one of those in between bikes.

5 Q. When you say "a [new] mountain bike", new condition?

A. New condition. Yeah. It was in great
10 condition.

Q. And so you remember specifically \$20 being asked for?

A. Yeah. Yeah. And it was, ah, it hit us kind of -- I thought it was kind of bold, you know? We -- we work where there's a lot of panhandlers,
15 there's a lot of people begging for money. We were asked for money, you know, three, four times throughout the night, but this girl specifically asked for \$20. We just assumed she was kind of
20 trolling the -- the bank machines or whatever.

Q. Sorry. She what?

A. Well, I thought she was kind of, like, just working the -- the bank machines, you know? Figuring people were getting money out and they
25 would just give her \$20. It was a very specific

January 26, 2011

thing and we thought it was, you know, very odd.

Q. So tell me what happens next.

A. Well, me and Ross look at each other and we're like, we just -- we were just kind of just
5 laughing to ourselves. Like, wow. This is, ah, this is nuts, you know? This girl's asking us for \$20. We just look at each other, like, we're just shaking our heads like, Wow, you know? We've seen everything tonight.

10 Q. Okay. So do you give her the \$20?

A. No, no. We didn't give her the \$20. No.

Q. How long -- I mean, you sit there and sort of have this sort of conversation between yourselves, you and Ross, or --

15 A. It was very short. It was more of a look and it was, like, um, we looked at each other and we said, Wow, do you believe this? And, like, this is -- this is -- this is crazy.

20 Q. Okay. So I've got that. What happens next then?

A. Ross goes sarcastically, you know, ah, Why don't you go and, ah, suck dick.

Q. Mm-hm?

25 A. And then I immediately said, Yeah, why don't you just -- we were just being as matter of

99
G. Dranichak - in-ch. (Thompson)
January 26, 2011

fact, Why don't you just whore yourself like everyone else around here.

Q. Okay? And what was the reaction to that comment?

5 A. She was absolutely livid and psychotic and angry, and immediately started swearing at us. We were just joking around and it was just the context was, you know, it wasn't good.

10 Q. So you say she becomes psychotic and angry and --

A. She starts -- she said, Mother fucker, you, you know, Fuck you, and, Who the fuck do you guys think you are, and started just screaming at us, and...

15 Q. Okay. And how long did that go on for?

A. It was just a couple seconds. I mean, it was just a, you know, ten seconds maybe, 15 seconds.

Q. So what is it you did next then?

20 A. Well, we're just kind of laughing because we thought the whole thing was kind of crazy. I think I even said, This girl's up here on a \$500 bike begging for money and, you know, this is just -- this is insane, you know? These squeegee kids and -- and um...

25 Q. What made you think she was a squeegee

100
G. Dranichak - in-ch. (Thompson)
January 26, 2011

kid?

5 A. I don't know. It just -- I think I was just categorizing her as just, you know, there were so many, um, you know, transient people in that area and, you know, there's people begging for money and I just -- she was just young, she didn't really look down and out, um, I mean, she was a little dirty, but I don't know. It just --

10 Q. Okay. So we have you there at that point. Does she do something or, amongst the three of you, what happens between the three of you then? Who does the next move?

15 A. Well, there's just -- there was a lot of people around, and this -- this guy, um, this guy comes up from, um, the -- from Euclid, around the corner there? The north side of Queen Street.

20 Q. Okay. We have an actual pointer here that may assist you on the Elmo which I refer to the big TV screen here. If you can just point to it? What you mean?

A. Like, somewhere -- kind of came around here. Like, we started arguing, we're arguing right around here, and this guy comes up over here.

25 Q. Okay. So was that -- they would be going southbound on Euclid and go in behind you, is that

101

G. Dranichak - in-ch. (Thompson)

January 26, 2011

what you're talking about?

A. Right.

Q. So it's clear what you indicated.

5 A. I was on the west side, Ross was right next to me on the east side, and this guy came up from Euclid right over here next to Ross.

Q. Okay.

10 A. There was a lot of people in the street and, um, there was this Middle Eastern guy that comes up.

Q. Okay. Just -- when you say he "comes up" next to Ross, I just want you to elaborate on this. Does he say anything to Ross or does he just stand beside him? Or what happens?

15 A. Well, he kind of comes up and it's like he -- he was like, Yo, yo, yo, what's -- what the F's going on and, you know, he was very, um, I don't know. He just materialized out of nowhere, and kind of chimed in with this whole -- this whole thing.

20 Q. And can you just give us a brief description of what he looked like?

25 A. Well, he was kind of like -- he had, like, I thought at the time he had a hat and, like, a jersey on. This was my testimony from before. I didn't really see him that much, like --

Q. Just so it's clear, I mean, we're not so much interested in the testimony. We just want to know what you recall today.

5 A. Okay. Um, he looked like he was an urban, young guy between like 20 and 23, very skinny, ah, around, you know, 150 pounds maybe, 140 pounds. He talked very urban, very street.

Q. Can you tell me approximately his height?

10 A. He was probably around, like, five nine to six foot.

Q. And just so it's clear, from your perspective, at that time, I'm sure your height hasn't change changed, but what was your weight back at that time?

15 A. My weight was 205 pounds, I was five foot ten.

Q. Five foot ten. So you say he was around five nine, so you were fairly close in height?

A. He was pretty close, yeah.

20 Q. And --

A. But he was a lot skinny -- he was significantly skinnier and younger than us.

Q. Any facial hair?

25 A. Ah, he had a lot of patches of, like, blondish, scruffy, you know, like on his chin and

sideburns and stuff like that. He looked unshaven but he didn't look mature enough to grow a full beard.

5 Q. Okay. So what he's saying to Ross at that point in time, does anybody respond to that?

A. What do you mean by that?

Q. Well, you said, Yo, yo, what the F is going on here. Do either you or Ross respond to anything he says?

10 A. Well, Ross kind of talks to him, and the guy was like, you know, What's going on here, ah, you know, What's the fucking problem here. Because, I mean, I guess the, um, the first girl was completely irrational and loud and I thought
15 borderline psychotic, because, I mean, we were literally, I mean, we were just doing some -- some insults, right? And it just escalated to something that was just nothing what we expected. It was just not the normal -- I mean, I expect like a, you know,
20 an F you and I expected the whole thing to be over with within five seconds, and then it just escalated and she would not -- she would not let the situation go. And her being so loud, it brought a lot of attention on the street and it looked like -- that
25 we were being -- it looks like we were picking a

fight with a punch of young girls, and that just wasn't the intention of me and Ross.

Q. Okay. So while we're just on the issue of appearances, can you give a brief description of what she looked like?

A. Well, she was, like, um, she had, like, loose clothing. I believe she had, like, a loose ponytail and her hair was kind of falling out in different places. Um, she was young, um, I don't know, five foot five maybe? Five five?

Q. Any idea of the colour of her hair?

A. Ah, it was like a dirty brownish. Light brown.

Q. Dirty light brown. Okay. And do you know what she was wearing?

A. I don't recall. I don't recall.

Q. While this gentleman who is up there, the what I refer to as the yo yo gentleman, while he is talking to you, is she still there beside you?

A. Oh yeah. Yeah. I'm talking with her, Ross is talking with the guy, this Middle Eastern guy comes up.

Q. Okay?

A. And then, um...

Q. All right. So let me just stop there for

105
G. Dranichak - in-ch. (Thompson)
January 26, 2011

a second. The Middle Eastern guy comes up. Do you know where he comes from?

A. I don't know where he came from.

Q. Okay. When is the first time that you see him?

A. Ah, I see him in front of the bank machine.

Q. Okay. But in relation between you and Ross, is he beside you --

A. He was kind of in between me and Ross, in the middle.

Q. And when you say "Middle Eastern", can you just give us a --

A. Well, he was wearing, like, a really shiny dress shirt, black pants. Um, he looked around 24, 25, his hair was nice, like, he looked shaven.

Q. Just -- just a second. He was wearing a shiny dress shirt?

A. Yeah.

Q. Black pants, sorry, and what else do you think?

A. Um, he was wearing, like, new clothes. He looked shaven. He looked -- he didn't really match the other people, so I don't know if he was just

January 26, 2011

someone that was chiming in or trying to get involved, or friends of them. I don't know.

Q. So I'm going to ask you why you refer to him as "the Middle Eastern guy". Was there something
5 about him that made you think he was Middle Eastern?

A. Yeah, he had dark skin so he was either Persian, Arabic, something like that. Indian maybe.

Q. And did he say anything to you?

A. Oh yeah. He jumped in and -- and was, you
10 know, it was just -- it was just a swearing match back and forth. I -- yeah. I don't know exactly what was said. He was like, you know, Why are you guys picking on these girls, Why are you guys being bullies. It's like, they're asking for money, they
15 won't leave us alone, they're begging out here and it was like -- it was like we were defending ourselves in front of, like, all these people on the street.

Q. Okay?

A. I didn't know if they wanted to fight us, I didn't know what was going on, but we did not want any trouble at any time. It was just a war of words. There was no threats. Um, there might have been threats on their part to us, but we didn't think
25 this whole thing was serious at really any time.

107
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. All right. So right now I've got you -- you and Ross there and now there are three people around you. Is there anybody else in your immediate vicinity?

5 A. Well, another girl on a bike comes up and it was Nicole Kish.

Q. Okay?

A. She comes up.

10 Q. Just another girl that comes up on the bike for now. Where does that girl come from?

15 A. I believe she comes from the west and she goes -- she goes next to her friend on the bike. So I'm standing facing both girls on bikes, and the Middle Eastern guy is in between me and Ross, and to the east of the first girl on the bike, the Sarah girl, and there is a guy completely to the left of me past Ross.

20 Q. Okay. So you're now looking -- did you see the person who was to the left of you?

25 A. I didn't see him that well because Ross was kind of blocking him and he was having -- he was having his own conversation with that guy. But I know Ross. I heard that he was trying to calm him down. He was like, Listen guys, you don't -- we don't want any trouble, you don't know who I am, you

108

G. Dranichak - in-ch. (Thompson)

January 26, 2011

5 don't know where I'm from, you don't know, you know, like, what I'm capable of. This whole thing is, you know, he was trying to -- he was somewhat being like the peace keeper but I don't know if they understood it that way. They might have thought it was being taunting. I don't know.

Q. Okay. But did he in fact indicate to them where he was from?

10 A. No, no. He said, You don't know where I'm from, you don't know who I am, you don't know, you know, he was essentially warning them I guess that he could tear them up. I mean, like, without saying that, you know? Like he could -- I mean, these guys were much younger, much smaller than all
15 of us, and we did not want, on any level, a street fight.

Q. Okay. Was -- at any time was nationality of anybody ever expressed?

20 A. I don't think so. Yeah, it wasn't really a racial -- I don't think there was any of that.

Q. I'm not specifically talking about racial but in terms of --

A. Oh.

25 Q. -- where you were from. In other words, you indicate you are from the United States? Did

109
G. Dranichak - in-ch. (Thompson)
January 26, 2011

anybody indicate they are from Canada or anything like that?

A. Oh. No. No. Not from my conversations, no.

5 Q. All right. So I want to go back to you said this other girl came up to you on a bicycle and I just want you to do the same with that individual. Indicate to me some kind of description of what she looked like.

10 A. Well, um, at the -- I mean, with my testimony, I -- well, or you want me to say from now? Like, I don't remember exactly what she was wearing.

15 Q. And that's all this court can expect from you.

A. Right.

Q. Is that you -- we all appreciate that it happened three years ago.

A. Yeah.

20 Q. If you -- did you have an opportunity to look at your transcript before you came into court?

A. Yes, I did.

25 Q. And if you looked at your transcript, would that refresh your memory with respect to what she looked like, or do you have an independent

110

G. Dranichak - in-ch. (Thompson)

January 26, 2011

recollection?

5 A. If I saw the video again then I would know exactly what she was wearing, but I didn't -- when I saw the video I was physically ill from watching it, so I didn't even pay attention to the details of their clothes watching the video. The whole thing happened so fast that I was matching the girls' descriptions, I was matching the two guys' descriptions together and I felt like I completely didn't remember anything at the time. So I don't want to -- I feel like I don't want to give out wrong information, you know?

10 Q. And that's fine, sir. I don't want you to. So what I would like you to do, sir, is in terms of your memory of what happened --

15 A. Right.

20 Q. -- at the time, you will be shown the video later, but at the same time from now I would ask if you have an independent recollection as to what she was wearing at the time.

A. No, I don't.

25 Q. And do you have an independent recollection with respect to any other features? In other words, height? Weight?

A. Well, I mean, yeah. I thought she was

111
G. Dranichak - in-ch. (Thompson)
January 26, 2011

around 20 years old. 20, 22 years old. I thought she had thick -- um, thicker eye lashes -- or eyebrows. I'm sorry. Like olive skin. She was a lot smaller than the other girl. I remember that. Like, in weight and, you know, stature.

Q. Okay?

A. I don't remember the clothes though. Loose, dirty clothes. I mean, like, that was -- but I can't be specific.

Q. All right. That's fine. And do you remember anything about her hair? That's all.

A. Um, just that it was -- it looked matted and really, like, shaggy. Like, almost like -- like the beginning stages of trying to do dreadlocks maybe? Like where you don't wash your hair for a long time and it was just kind of matted together and unkempt. Uncombed.

Q. Okay. So I now have you there at -- with Ross with two women on bicycles, you have a gentleman who you referred to as a Middle Eastern gentleman?

A. Yeah.

Q. And then there is somebody over your left shoulder?

A. Yes.

112

G. Dranichak - in-ch. (Thompson)

January 26, 2011

Q. What's the next thing that happens?

5 A. Well, the whole thing got absolutely loud and crazy, and it looked like that there was a mob scene -- it looked like it was getting, you know, everyone at Queen Street and I immediately freaked out. I was like, This is -- This is ridiculous. So I screamed to Ross, I said, Come on, Ross. Fuck these squeegee kids, fuck 'em, let's go, and we crossed the street. I was crossing, I was leading the way. 10 I said, Come on, Ross. Come on, Ross. I must have said it 20 times, Come on, Ross. Let's go. Let's go. Fuck these guys. Fuck these guys. Like, We don't need this, and, um, I proceeded to cross to the, um, north side of Queen Street, diagonally.

15 Q. All right. So you have your pointer there. Can you show us approximately where you went?

20 A. I'm going to say I went like that way, diagonally to get away from them and I knew that we wanted to end up, like, down there later on, so I was like, Let's just go. Let's go. Let's get in -- you know, in my head it was like we're going to go into a taxi, we're going to just get out of here. This is nuts. It was -- it escalated so fast and so crazy that --

25 Q. I'm just going to ask you to do that

113
G. Dranichak - in-ch. (Thompson)
January 26, 2011

again. You were kind of jumping there.

A. Sorry.

MR. SCARFE: If I could interject, Your Honour, I don't know how these laser pointers work but I have noticed that if you point at the TV screen, maybe it's just me, but I can't see it.

MR. THOMPSON: Oh.

MR. SCARFE: If you put it on the diagram it's a lot clearer.

MR. THOMPSON: I'm just wondering if His Honour can see it.

THE COURT: I can see it.

MR. THOMPSON: Fair enough.

Q. So this is -- 686 is the TD, Canada Trust building, right?

A. Yes.

Q. And the number there beside it is 686. Okay? That's the street number?

A. This one? Yeah.

Q. That's the street number of Canada Trust. Now, you -- you say you went in a southern westerly direction?

A. Yes.

Q. And you are moving the mark. I appreciate

114
G. Dranichak - in-ch. (Thompson)
January 26, 2011

it's hard.

A. Yeah. It's hard.

Q. So I'm going to mark down here, this is
733 -- 773. Sorry. 775, 777, 779 and so on. Do you
5 have an idea roughly - I'm going to move my pen -
as to where it was that you went?

A. It was around 777.

Q. Okay.

A. Yeah. In that -- that was around the
10 angle that I was walking.

Q. So on Exhibit Number 1 I have marked -- I
haven't marked anything, but you have pointed to
Exhibit Number 1, that you moved from a
southwesterly direction from the north side of the
15 street at 686 to the south side somewhere around
777. Okay.

Is there anything in particular that you
remember about that location --

A. Um...

Q. -- on the south side?

A. I don't really remember, um, I remember a
little bit past that there was, like, a little --
after they attacked me, then -- after I had jumped I
remember I ended up in this little -- little pocket,
25 this little I don't know what you would call it,

115
G. Dranichak - in-ch. (Thompson)
January 26, 2011

but, um, little --

Q. An alcove? Would that be an appropriate word?

A. I guess so, yeah. For one of the stores.
5 But that was a little bit west.

Q. Let's just deal now then, you've walked across there. How do you get across the street in any event? Do you walk? Do you run?

A. Well, I was walking fast, and I was
10 trying to, like, I was trying to get Ross -- Ross was having his own conversation with this guy and he was trying to reason with him. He's doing his own thing. I'm dealing with a couple girls and this little guy and I was like, I just -- I wanted to get
15 us out of there because it was just a no-win situation. First of all, we're not going to get in a fight with a bunch of girls, and I didn't want all of Queen Street to -- to, you know, attack us. I didn't want us to look like we were the bad guys
20 here because it just, yeah, we did some insults and there was a lot of vulgarity, there was a lot of screaming, but the first girl Sarah was just absolutely psychotic and, um, going nuts, like -- like we robbed her or -- like, her reaction was so
25 insane that, um, the whole neighborhood kind of new

116

G. Dranichak - in-ch. (Thompson)

January 26, 2011

what was going on and we just needed to get out of there, so I was like, Ross, let's go. Let's get out of here. You know, F these, you know...

5 Q. When you were walking across, when you were -- which way were you facing when you were walking?

A. Well, let's see. I was -- I was facing west. I go, Come on, Ross. Let's go. So I was kind of going in this direction.

10 Q. Okay. So --

A. Like this.

Q. And my question basically, I'm not trying to be difficult here, but were you walking backwards or --

15 A. No, I was walking forwards, but I was looking back. I go, Come on, Ross. Come on, Ross. I was going like this.

20 Q. So as you're walking forwards across the street, where are the, as you indicated, the two women on the bicycles and the other gentlemen?

A. They stay there. They stay on the street. We were going away from them.

Q. Sorry. You say "we". Who is "we"?

A. What do you mean "we"?

25 Q. Did you just say, "We were going away

117
G. Dranichak - in-ch. (Thompson)
January 26, 2011

from them"?

A. Well, yeah. Ross was behind me.

Q. So both of you were moving at that time?

5 A. Ross was moving backwards, I was walking
forwards. He was, at this point, maybe five, ten
steps behind me talking to the guy. He was, um, he
wanted to get the last word in or something. I don't
know. I mean, he -- he, um, he might have been
protecting me and him. I don't know. He was just
10 walking backwards. I didn't see any reason to not
turn my back on them, because I didn't think they
were going to attack us. I thought the whole thing
was over. I thought it was like, you know, we said
enough, we didn't -- no fists were thrown. I don't
15 want a scene. I'm on a work permit. I don't want
any trouble up in Canada. You know, let's get out of
here. I was hungry, he was hungry, it was a bad
night, we just -- we were trying to leave.

20 Q. Okay. So and as you're leaving, what
happens?

A. Well, they -- they start, ah, they start
screaming at us, Where are you faggots going ?
Where -- you know, they're just screaming at us,
more swearing, and then all of the sudden there was
25 another guy that shows up on the other side, and I'm

118

G. Dranichak - in-ch. (Thompson)

January 26, 2011

walking west, Ross finally gets to the, um, the north side of Queen Street but he's probably ten, 20 steps behind me.

5 Q. Sorry. What do you mean by "Ross finally gets to the...north side of Queen Street"?

A. Well, I'm walking diagonally. I'm walking diagonally here.

Q. Yes?

10 A. Ross is around five -- five steps behind me, ten steps. He's walking backwards, and I'm, like, around here somewhere, and he ends up kind of over here.

Q. Okay. But you said "the north side". I just want to make sure --

15 A. Oh no, I'm saying the south side. Sorry. South side. South side of Queen.

Q. So the both of you are on the south side at that point in time?

A. But I'm around 20 steps in front of him.

20 Q. So just based on what you've marked on there, you would have yourself being west of him?

A. Correct.

Q. So you're both on the south side and you are west of him.

25 A. Mm-hm. And I'm like, Come on, Ross.

119
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Let's get out out of here. Come on. Come on. Come on.

Q. So what's the next thing that happens then?

5 A. Well, the next thing that happens is the, um, the defendant here comes at me with a bike and there is a blonde haired guy that chased -- they come across the street after us.

10 Q. So all right. Just for the record you've --

A. Or after me. They come after me.

Q. You just --

A. Oh.

15 Q. Just for courtroom identification, who are you referring to?

A. Nicole. The defendant. Nicole Kish.

Q. All right. Indicating the accused before the Court. All right.

20 A. She is on her bike, riding her bike, and there is a blonde haired guy that I hadn't seen yet --

Q. Okay?

A. -- that is running with her as she's riding her bike.

25 Q. Sorry. He's running with her?

120

G. Dranichak - in-ch. (Thompson)

January 26, 2011

A. Well, jogging with her, to come jump me.

Q. Okay. So what happens?

A. Um, Nicole runs her bike into my leg or into my knee, I get punched in the stomach --

5 Q. Just slow down.

A. -- okay. By the guy.

Q. When she rides her bike into your knee, at what speed is that?

10 A. It's like a coasting, you know, it's coasting. I don't know the exact speed but, I mean, she's going pretty -- she peddled a few times and coasted into me. I didn't expect it. I didn't expect, I mean, they start -- they came over and I thought they just wanted to keep arguing and stuff,
15 but as soon as, like, the bike hit my knee I got punched and I'm like, wow, I'm getting jumped right now. Like, I'm getting attacked.

Q. When the bike hit your knee, did it cause you to do anything, or not?

20 A. Well, I've had horrible knee pain in the past. I've had a torn ACL and I have, like, two tears in it and this really ruptured it badly. And, um, I've had a lot of knee trouble just throughout the years.

25 Q. So what -- and as a result of being hit

121

G. Dranichak - in-ch. (Thompson)

January 26, 2011

in the knee, I mean --

A. I went down to kind of one knee.

Q. Yes?

A. This guy punches me in the stomach.

5 Q. Okay. When you say --

A. Another guy. It was a different guy.

Q. Was it the guy that came over with
Nicole?

10 A. No, it wasn't the Middle Eastern guy, it
wasn't the first guy, it was another guy.

Q. But you mentioned something about a
blonde guy coming over?

A. This guy was blonde haired, too.

15 Q. Okay. But you originally mentioned
something about a blonde haired gentleman coming
over --

A. Yeah.

Q. -- with Ms. Kish?

20 A. Yeah. He was talking with Ross the whole
time.

Q. Okay. You said he came over with her with
the bike.

A. He wasn't on the bike, she was. Yeah.

25 Q. No, but he was walking beside her or
running beside her, and I just want to know, is that

122

G. Dranichak - in-ch. (Thompson)

January 26, 2011

the gentleman who punched you in the stomach?

A. No, I believe it was a different guy.

There was another guy there.

5 Q. Okay. Do you know what that guy looked like?

A. He was around -- he was similar stature, similar weight. He was dressed in, like, torn jeans, like, you know, ripped jeans. He was around 24 -- he looked a little bit older this guy. Like
10 around 24-ish instead of early 20s.

Q. Okay. So this gentleman punches you in the stomach?

A. Yeah. I had lap band surgery, which is a weight loss surgery, and so I have a -- a rubber
15 tube in my stomach, so when he hit me I completely almost blacked out. I was -- I was in a lot of pain. I saw a lot of stars and I completely dropped down to the ground.

20 Q. Okay. While this is going on, do you know where Ross is at that point in time?

A. Well, I assume he was just -- he was talking with the other guy.

Q. But you had him on the south side of the street. Do you see what happens to him since that?

25 A. No, because once I got hit I went down

123
G. Dranichak - in-ch. (Thompson)
January 26, 2011

and I was seeing stars, and I was kind of in a fetal position. I was getting kicked in the head --

Q. Sorry.

A. Oh.

5

Q. So once you got hit, I'm going to ask the question, did you get any further blows?

10

A. Oh yeah. I got kicked in the -- the girls kicked me in the head, ah, I got kicked in the ribs, punched, Middle Eastern guy came in and -- and got a couple sucker punches on me when I was down, and then the thing that really -- so then even though everyone's hitting me and things like that, I just -- I didn't think our life was in danger at all. I just thought they were going to hit us and then just run and that was going to be the end of it, because they got the best of me and I didn't see Ross throw any punches, I didn't see Ross do anything. He was just talking with the guy and I was like, you know what? I kind of just chalked this up to just a really bad situation that wasn't going to escalate any further. I was worried about the cops coming, and then the guy that punched me, ah, started -- came at me with his thumbs.

15

20

25

Q. And why were you worried about the cops coming?

5 A. Well, just because it was -- there was a lot of screaming, there was a -- it was like a very vocal, very, like, obnoxious, you know, situation, right on Queen Street, so I thought there was a cop like, you know, I just thought the police were going to come. I didn't want anyone to get arrested. I really didn't fight back. I just, um, I don't know. I mean, I didn't want to hurt -- I mean, these guys were a bunch of kids too and there was never any thought that -- that, um, that we were going to fight them.

10 Q. If you had -- if you got arrested by the police, would that affect your status?

15 A. Well, it would affect my work permit, sure, and that's why I -- that's why I never -- I never look for trouble. Like, I'm not out -- I haven't got in a fight since I was, like, seven years old.

20 Q. Anyway, let's deal now with you're on the ground and you said you were kicked a number of times. How long does the whole melee last for?

25 A. I don't know. Maybe 20 seconds, 25 seconds. I took a couple really good kicks to the side of the head and I was seeing stars. Um, the guy came at me with his thumbs and I -- and he tried

125
G. Dranichak - in-ch. (Thompson)
January 26, 2011

gouging my eyes out and --

Q. Who came at you with his thumbs?

A. The blonde haired guy that punched me
and, I mean, he was -- he had my head like this and
he's going like this and --

Q. Just for the record, I have to put this
on the record when you do that.

A. Oh.

Q. For the record, will reflect that you had
your hands I guess in a reverse situation with your
thumbs in your eyes and your fingers sticking
towards the top part of your head in an upper
movement. Okay. So what was --

A. He was trying to pierce my eyeballs and
blind me, and then I knew that this -- this was,
like, I mean, I was kind of fighting for my life
there because the guy really had my eyeballs. He was
pushing them in. And I had a really -- I basically
stood up and I rammed him into the back of, um, one
of the store fronts to get him off and I just got a
huge adrenaline boost. Um, I threw some punches, I
don't know who I hit, um, I shrugged off the Middle
Eastern guy, um, and I was just, like, I immediately
-- I looked up to where I thought Ross was, he
wasn't there, I looked back the other way, I didn't

126

G. Dranichak - in-ch. (Thompson)

January 26, 2011

5 see him. I thought -- I thought I got abandoned. I
thought Ross had taken off. Um, I thought -- I was
like, wow, you know, I was freaking. I was just
absolutely freaking out and I was, um, completely
dizzy from the kicks to the head.

Q. Okay. So just hold it there for a sec.
Once you get up and start fighting back --

A. Mm-hm.

10 Q. -- what happens to the two women and the
gentleman?

15 A. I think I pushed one of the girls off the
bike and just to -- just to get away. Um, I don't
think I punched any of the girls at any time, even
when I was down, but I might have. I was just
swinging and flailing around. I was definitely on
the ground and they were all attacking me.

Q. Okay. Fair enough.

A. So --

20 Q. So but once you get up and start fighting
back, what do they do?

25 A. Well, once they saw me ram the guy into
the store front, ah, into the wall, and I was just
going nuts, they -- they all kind of got a little
bit scared because I was a lot bigger than them.
They could tell that I was going to retaliate

127
G. Dranichak - in-ch. (Thompson)
January 26, 2011

against them, so they kind of just eased back a
little bit.

Um, after I rammed the guy into the
store, he kind of still came at me a little bit but
5 he had lost his wind or something. Like, he was a
little -- little bit hurt from that because I rammed
him as hard as I could to get him off, because I
thought he was going to kill me.

Q. Okay.

10 A. Um...

Q. So but do they eventually leave or do you
leave?

A. Well, no, I leave. I leave.

Q. Okay.

15 A. I look east to where Ross was. He wasn't
there. I looked west, I didn't see him there. I
thought he ran down an alleyway. I saw a couple
people running here and there. I don't -- I thought
that he took off already. I thought he was gone. So
20 as I get up I go, Ross, meet me at the -- I didn't
want to say, Ross, meet me at Shoeless Joe's, so I
said, Ross, meet me at the office, because no one
knew where our office was. Ross, meet me at the
office. I screamed it as loud as I could over and
25 over and over again and I figured he would have met

128
G. Dranichak - in-ch. (Thompson)
January 26, 2011

me there anyway, because that would have been, like, the whole -- that would have been what we would have done. But I had thought he had already left. I didn't see him. I didn't see him anywhere.

5 Q. Okay.

A. So I immediately -- so I'm still kind of fleeing and I'm a little bit scared for my life. Ah, I try getting into a taxi, wouldn't let me in. The traffic was like stop and go too. The first taxi
10 might have had someone in it. I don't remember. I tried getting into a -- I try -- I got into the second or third taxi, and my hands were a little bloody from the concrete. The guy, as soon as I got in I'm breathing hard and I'm holding my head and
15 the guy, the taxi driver was absolutely scared.

Q. And which way was this taxi headed?

A. It was headed east. As I got into the taxi, the blonde haired guy punched the window, the taxi window. Like, he was trying to get me, you
20 know? Or continue to get me. The girls were somewhat afraid.

Q. Where were they at that point?

A. I think one girl was on the ground, and then the other one was kind of off to the side a
25 little bit.

129
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. Can you just -- so what happened with the first two taxis you tried to get?

A. I think the one had someone in them and then the other one just didn't open the door. Because it was -- it wasn't really a stop. It was pretty much stop and go traffic.

Q. And which way -- so sorry. You said the cab was headed east, so what did it do? Did it continue east once you got in?

A. As soon as I got in, I rolled down the window and I was hanging out the window and I was screaming, Ross. Ross. Ross. Thinking that I could help him escape, and I figured there was -- I figured -- there was no doubt in my mind that that was the side that he was on for me because he was around 20, 30 steps east of me, and I never thought in a million years he was on the other side of me. I didn't think it was possible. So I was trying to, like, do a get-away and pick him up and go back to the office and -- and he was going to make fun of me for getting beaten up by a bunch of girls and that would have been the end of it.

Q. While we're on the -- what was the -- like, can you just describe all of your injuries that you had as a result of that?

130

G. Dranichak - in-ch. (Thompson)

January 26, 2011

5 A. Well, my knee was blown up for a good three weeks, and I was puking. I felt like I had -- I've had a concussion before, so it felt like a concussion. The word -- I had migraines for two days. I was nauseous the whole day after.

Q. Did you have any contusions on your body at all? Any cuts? Bruises?

10 A. No, I was just swollen. I had cuts on my hands from the concrete but it was pretty minimal.

10 Q. So what type of bruising did you have?

A. Um, I didn't really -- the side of my head was swollen a little bit but, I mean, it wasn't really anything noticeable.

15 Q. How about your eyes?

15 A. My eyes were all right but they were sore.

Q. And I understand you eventually take the cab back to your place of business.

A. Yeah.

20 Q. And then eventually you -- you become aware of the fact that Ross isn't there?

25 A. Well, he had his dad's car and he was parked right next to me, so I waited in my car next to his car, thinking that he would see me, like, either at Shoeless Joe's or at the office, so and I

131
G. Dranichak - in-ch. (Thompson)
January 26, 2011

was just -- I was in -- I was in rough shape. I was
just nauseous and in a lot of pain so I was in my --
I think I was in my back seat of my car and parked
next to his car, and I passed out for, like, an hour
and-a-half, two hours. Maybe even three hours.

5
Because I went up to my office around 4:00. 4:00
a.m. thinking that, oh, he just went up to the
office and crashed on the futon. And then when --
when I went up to the office, I did the alarm code,
10 I looked all over, because we have a futon there, we
have couches, you know, it's a common -- it's not a
common thing to sleep at the office but we've done
it in the past, you know, four or five times a year.
And he wasn't there. So then I got really nervous
15 and I was like, oh, he went back to the Big Bop, the
Reverb thing, to hang out with his buddies from the
band, because he had spent the night with them in
hotels in the past. And I thought -- for some reason
we didn't have our cell phones this night. He either
20 had a battery issue or I had a battery issue or --
if we would have had our cell phones the whole thing
would have been a lot easier, but for some reason
one of us or both of us didn't have our cell phones.
Um, or I didn't bring it. Or -- but I can't
25 remember. So I was a little worried at first and

132

G. Dranichak - in-ch. (Thompson)

January 26, 2011

then I just -- I was -- I ended up puking in my office, um, and I slept there until probably -- I slept a couple hours. 6:30, seven o'clock in the morning. And I was just in rough shape the next morning. I felt like I -- I felt like I had the worst migraine headache that I've ever had and it was really hard for me to drive home.

Q. So when did you find out what actually happened to Ross?

A. Well, I ended up calling in sick to work. I said -- I just couldn't do it, and then, um, I go home and -- and my wife said that Ross got in a car accident. I go -- I go, No, he didn't. His car was there the whole time. He wouldn't have driven. He didn't get in a car accident. And then I find out he's in the hospital and I was like, What? I freaked out. You know? And then I immediately went to the hospital at, I don't know, 9:30, 10:00? Or maybe -- I don't know. Maybe noon or 1:00?

Q. Okay.

A. But that was the first I heard of -- of any of this stuff. You know, at first I thought -- they said he was in a car accident. I was like, Well, there's no way he was in a car accident.

Q. Did you yourself get any medical

133
G. Dranichak - in-ch. (Thompson)
January 26, 2011

attention to your injuries?

A. No, I didn't, because once I heard Ross was stabbed, I -- I didn't care. I just -- I didn't care about any of my stuff and it really didn't matter.

Q. Okay. All right. Your Honour, what I intend to do now, this exhibit -- the CTV which is exhibit number?

THE REGISTRAR: 11, Your Honour.

MR. THOMPSON: I'm going to play a portion of this and I'm going to ask this witness whether or not he can identify the people that he's indicated. So I'm going to go through that process.

THE COURT: Okay.

MR. THOMPSON:

Q. Okay. I'm just going to stop here right now. Not there. Let's go a little bit further. Okay. And actually just watch a clip starting at about 3:24 and let's go on for about a minute. We'll do this a couple of times, just so it's clear.

---VIDEO PLAYING

134
G. Dranichak - in-ch. (Thompson)
January 26, 2011

MR. THOMPSON:

Q. Okay. I'm just going to stop now and
re-cue it up again. We're stopping at 4:46.

5 Now, you mentioned a number of people.
First of all, do you see in that video what you
referred to as the girl on the bike?

A. The first girl?

Q. Yes.

10 A. Yes.

Q. All right. And we're going to have to
back this up. This may be a bit of a lengthy process
but I think it's the safest way of doing this, all
right? So we're going to play it again and you tell
15 me where it is that you see the person that you say
is the first girl on the bike.

---VIDEO PLAYING

20 THE WITNESS: Right there.

MR. THOMPSON:

Q. Okay.

25 A. So can you just back up for a minute?

135
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Can you see right -- well, I mean, it's better when it's straight on if you can stop it when they're both facing.

Q. We have all the time --

5 A. All right. There's two girls right there next to the cop. Right there.

Q. Which of the two girls?

A. Um, the -- the first girl was the girl on the right.

10 Q. Okay. Just take your -- I will give you a laser pointer. Can you just point, please. All right.

A. First girl.

15 Q. That is the first girl you see on the bicycle?

A. Yeah.

Q. That in previous evidence has been identified as Ms. Watts?

A. As who?

20 Q. Ms. Watts or Ms. McDermitt.

A. Oh.

Q. That's fine. Can we just re-cue that up again? Now, the next person you said you encountered, you referred to as the hip hop guy?

25 A. Mm-hm.

136
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. The yo yo guy, you used the terminology.
Do you see that person in this video?

A. He's in there, yeah.

Q. Okay. Can you tell us when you see that
5 person.

---VIDEO PLAYING

10 THE WITNESS: I think it's that guy -- um...

MR. THOMPSON:

Q. If you're not sure that's fine.

A. Yeah, I mean, those two guys, I'm -- can
15 you play it again, please?

Q. All right. Play it again. Actually, it
continues for a while.

A. Okay.

20 ---VIDEO PLAYING

THE WITNESS: That's the first guy.

25 MR. THOMPSON:

137
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. Okay?

A. To the left of -- or to my left and that came around Euclid.

5 Q. Okay. So just -- there's only one guy on there, but just for the record, if you could put the pointer -- okay. That was earlier identified as Mr. Fresh.

10 Now, you made reference to the Middle Eastern guy. Did you see the Middle Eastern guy in this video? Let's perhaps play it back again.

A. Yeah, perhaps play it back because I don't think I've seen him.

15 Q. Just take your time. This is the best way to do this process and it will take time but it's got to be done properly.

A. This is from the beginning?

Q. Well --

A. Okay.

20 Q. That's fine. Just continue there?

---VIDEO PLAYING

25 MR. THOMPSON:

138
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Q. Okay. And the video basically ends here.
Did you see him earlier in the video and you don't
see him again or --

5 A. I don't see him. Um, I don't see him at
all. So...

Q. Okay. Now, the next thing I would ask you
to do is key it up again. Can you identify the
second woman who came in the bicycle. Do you see her
in this video. So when you're at the TD, you said
10 there was another woman approaching on the bicycle
and I would ask if you can identify that person, or
do you see that person in this video.

15 ---VIDEO PLAYING

THE WITNESS: Right there.

MR. THOMPSON:

20 Q. Well, it comes in and --

A. Yeah. Right there.

Q. All right.

Q. I think it's fair to say that that's Ms.
Kish, before the Court. Okay.

25 Now, the final person I want you to see

139
G. Dranichak - in-ch. (Thompson)
January 26, 2011

whether or not is in the video is when you said you went from the north side to the south side, that the blonde gentleman came with them and I'm not sure if you -- just correct me if -- and there was another gentleman who punched you in the stomach. Is that your evidence?

A. Yeah, that's the guy without a shirt. He's wearing a coat and --

Q. We have to go through and identify it properly. So is it blonde guy that comes south the same guy that punched you in the stomach or not?

A. The guy that punched me in the stomach is also the guy that tried gouging my eyes out. He was the second guy.

Q. Let's play it back and see if you see him in here and whether you can identify him, please.

---VIDEO PLAYING

THE WITNESS: Stop. Right there.

MR. THOMPSON:

Q. So as indicated, he's marked off Mr. Wooley, who's been earlier identified as Mr. Wooley.

140
G. Dranichak - in-ch. (Thompson)
January 26, 2011

Is there anybody else in there that you recognize in that video?

A. Just Ross. That's all.

5 Q. Court's indulgence if I may please, Your Honour?

THE COURT: Would you like the afternoon recess?

MR. THOMPSON: Yes, if I could, please.

10 THE COURT: 15 minutes.

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

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

THE COURT: Mr. Thompson?

20 MR. THOMPSON: Yes. I just have couple other small housekeeping questions.

Q. Mr. Dranichak, did you ever attend and do what's known as a photo line-up with any of the individuals you've just spoken about?

A. Photo line-up, yes.

25 Q. Yes. And were you able to, in that photo

141
G. Dranichak - in-ch. (Thompson)
January 26, 2011

line-up, I'm not going to go into the details of it,
but were you able to identify anybody positively in
those photo line-ups?

5 A. Um, I wasn't given the results, but at
the time I thought I had positively identified two
or three people.

Q. Do you remember in respect to whose photo
line-up that was?

10 A. Yeah. I mean, I don't know the results.
Like, they didn't tell me if that was the person or
not, so --

Q. No, I understand that, but when you say
you -- I mean, did the words come out of your mouth,
That is that person? Or --

15 A. You know, at the time, it seemed like I
-- I found the whole photo -- the line-up thing
completely frustrating to me because there were ten
guys that looked like they could have been identical
twins, um, and -- and at the time I thought I made
20 some very clear choices, but then five pictures
later I would get someone that looked exactly like
him. Exactly like the same person.

25 Q. Well, let's deal just specifically with
Ms. Kish. Did you do a photo line-up with respect to
her?

142

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

A. Yes, I think I did. Yes.

Q. I'm sorry. What is your response in terms of were you able to identify Ms. Kish in your photo line-up?

5 A. I would say that I thought at the time I was 75 percent right.

Q. Okay. Well, I think the best way to do this --

10 A. Yeah, I don't know how to answer that. So I was confused and frustrated and I was, like, overly emotional during that whole thing, so I would have to say there was no definitive yes or no's.

15 Q. Okay. And I'll leave it at that. If my friend wants to go any further than that that's fine. All right. I'm finished my examination. Thank you.

THE COURT: Cross-examination?

20 ---CROSS-EXAMINATION BY MR. SCARFE:

MR. SCARFE: Thank you, sir.

Q. Mr. Dranichak, my name is John Scarfe. You remember me from the preliminary hearing?

A. Yes.

25 Q. Today, if I wrote it down correctly, you

143
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

said that you haven't been in a fight since you were seven years old?

5 A. Well, I haven't been, um, no, I've been in fights since then. I was mis -- I was wrong on that.

Q. You were mistaken?

10 A. Yeah. I -- the type of fight that, like, a bull -- like I meant a -- I meant like a street fight. Like in the playground with kids. That's what I meant.

Q. So when you said you hadn't been in a fight since when you were seven --

A. Mm-hm.

15 Q. -- you were taking that big category of fight and restricting it to a kid's schoolyard fight?

A. Well, yeah, out on the street type. Yeah. A public fight.

20 Q. So you were in a fight when you were seven?

A. Yeah, in the playground. Sure.

Q. And then nothing after that?

A. No, I was -- I was in a fight in college, but it wasn't under the same, ah, you know, context.

25 Q. Do you, sir, have a criminal record?

144

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

A. No criminal record.

Q. And when you say that, you mean anywhere in the world?

A. Yeah, I have no criminal record. Anywhere in the world.

Q. And that would include the United States?

A. Yes. That's in the world.

Q. Mm-hm. What do you mean by a -- maybe we're misunderstanding each other. A criminal record, do you understand that to mean you've never been found guilty or pled guilty to any criminal offence anywhere in Canada or the United States?

A. I -- I had an altercation in college where there was a fight and the records were, um, taken off my -- the arrest was taken off. I never had a prosecution. I was arrested for a fight and it was taken off my record. Exhumered I believe is the term.

Q. It's what? Exhumered?

A. I believe that was the term. Yeah.

Q. Are you trying to say you were pardoned?

A. No, it was taken off my record. Expunged. I'm sorry. Expunged.

Q. Expunged. Thank you, Mr. Thompson. At the preliminary hearing you recall I asked you this?

145
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

A. Yup.

Q. And I can show it to you. If at any time I'm reading something and you're not sure that's what you said, you just tell me to bring the transcript and we can go through it together, all right?

A. Okay.

Q. You testified at the preliminary hearing at the College Park courthouse over three days, January 6th, 7th and 19th, in the year 2009. You recall that?

A. Yes.

Q. You had to come to court three days?

A. I didn't know that was a question. Sure. Yes.

Q. And then in the second day, the first day was all questions by a Ms. Sweeney, a Crown Attorney, examining you in-chief? Do you know the difference between examination in-chief and cross-examination?

A. No.

Q. When you went to court at College Park, first there was a lady from the Crown Attorneys' office who asked you questions for, like, the whole afternoon and into the next day?

146
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

A. Okay.

Q. And then I started asking you questions.

A. Okay.

5 Q. Okay. And the very last thing on the
second day that Ms. Sweeney asked you, and that's
page 13 for my friends, January 7th:

"MS. SWEENEY:

10 QUESTION: I did just want to
ask you, do you have a criminal
record?

ANSWER: No.

QUESTION: In Canada or the
United States?

15 ANSWER: No."

And she said "Okay", and ended her
examination. And I'm going over the next page, line
20. I started asking you questions just moments
later, and I said "my friend", because whether we're
20 friends or not we as colleagues are friends in court
here in Canada:

"My friend just asked you if you
had a criminal record anywhere,
like here or the United States.
25 You said no."

147
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

Then I continued on: "Have you
ever been in trouble with the
police?"

And your answer was: "Have I
ever been in trouble with the
police?"

And I said: "Yeah."

And then you said: "Can you be
more specific? Like, arrested?"

Or --"

And then I asked you: "Yeah.
Arrested, charged."

And your answer was: "I was
arrested in Louisville, Kentucky
--"

"Okay."

"-- when I was 18 years old. I
was attending college there, but
there were no charges or
anything like that."

A. They were erased from my record. Correct.

Q. Let me finish the passage.

"QUESTION: And what was that
about?"

ANSWER: There was just an

148
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

altercation.

QUESTION: Anything else?

ANSWER: No. No."

5 Do you remember being asked those
questions and giving those answers?

A. Yes.

Q. And prior to coming to court today, did
anybody give you copies of your transcripts --

10 A. Yes.

Q. -- from the preliminary hearing? And
you've had a chance to review them?

A. Yes.

15 Q. Okay. I'm going to show you a document
from a person named Jim Ellis, attorney at law,
Louisville, Kentucky, I can't read the street
number, dated September 2, 1992 and addressed to a
Mr. George Dranichak. Have you ever seen that letter
before?

20 A. I don't remember seeing this letter, no.
This was made out to my father, and my father has
the same name and that's his address.

Q. Oh. So maybe he has a criminal record.

25 A. No, I don't believe he has a criminal
record. No. I don't have a criminal record. It was

149
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

expunged from my thing. I did not, um, I had
conditional -- I went through this last year with
Immigration and I had everything completely taken
care of. Everything -- and they would not have
5 renewed my work permit if I had a record. I don't
have a criminal record in the United States or
Canada and I have proven that to Immigration. I
went to the Buffalo Consulate and I had all of this
cleared away and I have proof of that if you need
10 it. Here you go.

Q. Thank you.

A. They wouldn't have let me in this country
if I had a criminal record and if I did not take
care of this. I was actually not allowed in Canada
15 for around six weeks because of this and it was just
a clerical error that my expungement did not go
through. I had to prove that I had an expungement
and no record.

Q. Did you ever live at 9765 Rowan Oak Road
20 (ph) in Pavilion, New York?

A. Yes.

Q. Does your dad live there?

A. Yes.

Q. Okay. And so what we're looking at here
25 is a report from a lawyer that says "Commonwealth of

150

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

Kentucky versus George D. Dranichak". Is your dad's middle initial D?

A. Yes, it is.

Q. For -- what's his --

A. Dwayne.

Q. His middle name is Dwayne?

A. I'm technically a junior.

Q. So you both have the same middle initial as well?

A. Same middle name, same name.

Q. Okay. Says:

"On case number 92F002274A,

Dear George,

On Tuesday, September 1, 1992, I

appeared in Jefferson District

Court on your behalf. As

previously discussed and agreed

to, I entered a plea to a

misdemeanor charge of assault in

the fourth degree on your

behalf. The penalty assessed by

the judge was 365 days in jail,

conditionally discharged for a

period of two years. The

conditions are that you commit

151
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

5 no other criminal offences in
the Commonwealth of Kentucky
during the next two years. Also
you are to have no contact with
Mr. Jeff Keazle. Enclosed you
will find an order of
probation/conditional discharge.
You must sign here", then it
goes on.

10 It says: "There's no court
costs assessed against you, but
I'm still holding your cheque in
the amount of \$12,000. I was not
given a copy of the release
15 against you on September 1st.
However, Mr. Keazle's attorney
is going to forward that to me
within ten days. At that time I
will forward the \$12,000 balance
20 to him."

I guess Mr. Keazle's attorney --

A. Mm-hm?

25 Q. Did your dad have a problem with a guy
named Jeff Keazle back in 1992?

152

G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

A. No.

Q. How do you know? Maybe he didn't tell you about it.

A. Because this was from college. This is 20 years ago. I was attending Louisville, Kentucky --

Q. Hold on. Hold on. Just still on the difference between you and your dad. Does the name Jeff Keazle ring a bell to you?

A. Yes, it does.

Q. It does. And having to pay his lawyer 12,000 bucks, does that ring a bell?

A. No, it doesn't. I don't know the details of that. It was 20 years ago.

Q. Hm-mm. Well, so can we eliminate your dad from this?

A. Sure.

Q. This is about you, isn't it.

A. It's about me.

Q. And how old were you in 1992?

A. Ah, well, I think I was 18. I was born in '73 so what is that, 19? 18, 19?

Q. Okay. And an adult in the U.S. system. You weren't in some sort of juvenile youth court. You were in a regular, adult court, right?

A. Sure. Sure.

153
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

Q. All right. So something happened between you and Mr. Keazle?

A. Mm-hm.

Q. You got arrested?

A. Mm-hm.

Q. Taken to the police station, processed, fingerprinted, right? And then you hired a lawyer named Jim Ellis. Do you remember him?

A. I don't remember him but yeah, I mean, that's probably right.

Q. Yeah. And you told him to go in and make a deal and enter a plea to a misdemeanor charge of assault in the fourth degree on your behalf.

A. Ah, that wasn't the exact details of the thing.

Q. That wasn't the exact details of the thing.

A. No.

Q. Do you want to --

A. Well, all I know is that I had gotten in a fight, defending the honour of a woman that was passed out and was being molested by a guy, and I got in a fight with him because I had seen what happened, and I ended up taking the rap for this whole thing. The girl did not testify on my behalf.

154

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

I had done some bodily damage to Mr. Keazle. They didn't want this thing to go public. I was under the assumption that I was not going to serve any time and nothing was going to go on my record and that everything was going to be expunged and I had no criminal record, and that's what I was under the assumption. I would not have been -- I would not have been allowed into Canada with an assault charge unless I had taken care of this, so I don't know exactly the exact details of everything but I do know that I do not have a criminal record in the United States, and that's all I can really say about that.

Q. Okay.

A. And I have proof of it, so, I mean, it's just --

Q. You have proof?

A. Of course. I have a letter saying I have no criminal record in the United States and that this thing was expunged and I have no record. Absolutely. I would not have been allowed into Canada through the Buffalo Consulate if I did have a criminal assault record.

Q. Hm-mm.

A. And I regret the -- I regret it, but I

155
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

did what I thought was right at the time.

Q. So when you came to Canada in 2002, you left the impression with the Border Services people that you had no criminal record?

5 A. Correct.

Q. Correct. And do you have any idea why -- how I got this letter?

10 A. I don't know. Maybe you had something to do with me getting stopped at the border. I don't know.

Q. Sorry. Me?

15 A. I don't know. I don't know how you got this letter. I don't know how I got stopped at the border after eight years. I had -- I had to spend about \$6,000 in lawyers to clear this up and it was just a strain on my family and on my job and my life.

20 Q. I see. Well, let's just go over that for a quick sec because as you probably know, when there is a criminal case going on the defence gets some disclosure, right? And some of what we get is the notes of the officer in charge. So if we just go back a few months, did you contact Detective Sergeant Giroux a few months ago and say, I'm stuck in the U.S. I can't get back to Canada. Please help

25

156

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

me.

A. Sure.

Q. Yeah?

5 A. Well, not in those exact words but I had reached out to him for help. Yes.

Q. Do you have any idea why it is you got stuck in the United States and couldn't get back over the border?

10 A. Well, when I tried going -- or coming back into Canada, I was at the Rainbow Bridge and all of the sudden this thing came up on my record, and they -- the immigration mentioned that they have updated their, ah, computer systems and that this thing was, you know, on my record or something like
15 that, so I had to prove that I had no record in the United States. I had to prove that these charges were expunged and were off my record and I had no criminal -- criminal history.

20 Q. So when you say this thing came up at the border, you mean this --

25 A. Well, not that letter but just my arrest came up in Kentucky, and I was just, um, I was baffled, because I had been on a work permit for, you know, seven, eight years at the time and I've never had a problem with it. I forgot about the

157
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

arrest. It was 20 years ago. And I was under the
assumption with my lawyer that I had no record. So
to my knowledge I had no -- I had no record.

5 MR. THOMPSON: Your Honour, I just at this
juncture, before -- I'm not stopping my
friend from going into details but in
reality, a conditional discharge is not
viewed as a record, at least not here in
10 Canada, so I don't know why the reference is
continually to he has a criminal record. It's
not such in Canada so I'm curious about the
terms my friend is using and putting to this
witness.

15 MR. SCARFE: Actually a conditional discharge
is viewed as a criminal record in the United
States.

THE WITNESS: But we're in Canada. This is a
Canadian -- I mean, I have no record.

MR. SCARFE: I was talking to His Honour.

20 THE WITNESS: Sorry. Sorry.

MR. SCARFE: Just hold on a sec.

THE COURT: Well --

MR. SCARFE: I have many people who would be

--

25 THE COURT: I'm not familiar with or schooled

in how the United States views a conditional discharge, Mr. Scarfe. I do know how to treat it in Canada, but when conditions are complied with, you don't have a criminal record.

MR. SCARFE: In Canada.

THE COURT: In Canada. But in any event, at 20 years ago, at this point it probably has as much impact --

MR. SCARFE: Having put it to the witness I should probably file it as an exhibit, should I not?

THE COURT: Any issue, Mr. Thompson?

MR. THOMPSON: No. That should be fine.

THE COURT: Exhibit 39.

THE REGISTRAR: 39, Your Honour.

---EXHIBIT 39: Letter - produced and marked for identification.

MR. SCARFE:

Q. You work for a company called Virtual Service Inc.?

159

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

A. Yes.

Q. And who owns that company?

A. I don't know the exact -- I don't know who the shareholders, I don't know any of the particulars of the company.

5

Q. You've worked there since 2002?

A. Yes.

Q. Well, who's the boss?

A. It's different people there. There's a lawyer that I report to, David Worga (ph) that is -- who handles all the legal things, but there's different collaborations, different company -- or there's different people or whatever. I don't know who the directors of the company. I don't know the owners.

10

15

Q. Well, when you went and -- did you apply for the job in 2002?

A. Yeah.

Q. And did you interview with someone?

A. Ah, yeah. I've interviewed with people. Sure.

20

Q. No, no. In respect of this job that you have now?

A. Yeah, of course.

25

Q. Right. So somebody interviewed you and

160
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

presumably made a decision to hire --

A. Well, I was being -- I was sought after. I had a company in California and they -- they wanted me to work for them.

5 Q. You were sought after by this company?

A. Yeah. Yeah.

Q. Is this some big worldwide company with offices all over the world?

10 A. Um, I don't -- well, I don't know. I don't know. I mean, there's offices -- the main office is in Toronto, they were in LA, when I was in LA they had a small office, they I believe were in Santa Fe.

Q. You're a -- you do consulting for them?

15 A. I'm a management consultant.

Q. But are you, like, freelance or are you an employee?

20 A. I don't know the difference between that. I'm a consultant. I train people. I trained people in the marketing, I train sales force, creatives, I work with --

Q. Well, let me put it a different way. Do you get a pay cheque?

A. Yes.

25 Q. On this pay cheque you have this first

161

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

amount listed, at least on the stub, and then there's withholding for CPP, withholding for tax, that kind of thing. Is that what your pay stub looks like?

5 A. No, it gets direct deposit so I don't really see my pay cheque.

 Q. I see. But at the end of the year when you have to do your tax return?

 A. Yeah.

10 Q. Right? Is the money -- has the government already gotten most of the money?

 A. Sure. Of course. Yeah.

 Q. Because the employer withheld it at source?

15 A. Yeah.

 Q. And submit it as opposed to you having to dig deep and come up with --

 A. Correct.

 Q. -- 10-, 20,000?

20 A. Yes, so I guess technically I'd be an employee.

 Q. And who signs for pay cheques?

 A. I don't know. I don't get the pay cheque so I don't know who signs it.

25 Q. Well, if one day the payment didn't show

162

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

up in the bank account, who would you speak to?

A. That's never happened.

Q. But if it did, who would you speak to?

5 A. I would speak to my accountant, Helen --
Helen. She works in accounting.

Q. Helen arranges for you to be paid.

A. Sure. Yeah. She's like an accountant.

Q. Helen who?

A. Her name's Helen Banjery (ph).

10 Q. And she works for Virtual Service as
well?

A. I don't know if she works for Virtual
Service but she probably does, sure. There's
different companies that we work with.

15 Q. Okay. Your position there is a
consultant, I think you run the marketing
department?

A. Yeah, I do marketing and creatives.

Q. Right?

20 A. Advertising, traffic, search engine
placement, creative ideas.

Q. And if -- there was obviously, like, a
boss that you report to who decides if they're happy
with your work?

25 A. No, not really.

163
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

Q. Well, if you did something wrong at work and got in trouble, who would sit you down and tell you, Mr. --

A. Probably the lawyer. David Worga.

5 Q. Oh. So does David Worga own Virtual Services Inc.?

A. I don't think he does. I don't know if he does or doesn't.

10 Q. It's beginning to sound like Virtual Services Inc. is a bit of a shell company to keep your work permit.

MR. THOMPSON: Whoa whoa whoa. You know what? Just because my friend can't figure out the structure, I don't think that's a necessary comment to be made.

15 THE COURT: Mr. Scarfe?

MR. SCARFE: You're darn right I can't figure out the structure. Just about every employee I know has a boss.

20 THE WITNESS: The internet's very -- it's very complicated. I mean, we deal with thousands of websites in different, you know, programs and companies. It's ever changing. It changes every day.

25 MR. SCARFE:

164

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

Q. So you're saying that you worked there for the last eleven years?

A. No, not eleven years. No.

Q. 2002?

5 A. Yeah. It's nine years.

Q. I'm sorry. Nine years. Bad arithmetic. I stand corrected. You don't know who owns the company?

A. No, I don't.

10 Q. You don't report to anybody.

A. I mean, I talk to people. I -- I'm more of a -- I collaborate with people on projects. I try to get funding for things and there's budgets and there's people I report to, I talk to accountants, I talk to programmers, designers.

15 Q. That's part of your work though?

A. Sure.

Q. If you have a problem with the amount of money you're making or the conditions of your employment, you're telling us you don't --

20 A. I have a contract every year where I have a certain amount of money that I make, and I'm under contract and I train people, I have trained, um, dozens of Canadians for -- for marketing purposes and I train people. I train people on how to do

25

165
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

sales, on how to generate business on the internet.
Things like that.

Q. So when you say you have a contract,
you'd agree a contract is an agreement between
5 parties, right?

A. Sure.

Q. And so part of the contract is you agree
to go to work every day, about 40 hours a week and
do what you do, right?

10 A. It's not that specific, but sure.

Q. You agree to go to work. To do your work.

A. It's not in the contract, but yeah, sure.

Q. Is this an employment contract or some
other kind of contract?

15 A. Well, I mean, we're talking about my
employment so I would assume it's an employment
contract.

Q. Yes. And the other part of the contract
says -- agrees to pay you a certain amount of
20 money --

A. Mm-hm.

Q. -- every two weeks, right?

A. It's every year, but sure.

Q. And the other part of the contract is
25 Virtual Services Inc., right?

166

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

A. I guess so, yeah, sure.

Q. You guess so?

5 A. Well, yes. We have dozens of companies,
so they do different things, so it's -- my -- the
official company I work for is Virtual Services
Inc., but we have dozens of companies. We've had
over 50 companies at times, and we have directors
and -- in Barbados, in Gibraltar. I mean, it's a
very complicated thing. It's not my department. I
10 handle marketing and creatives so I don't know all
the details of these things. I assume that it's all
public record. That you can just look up who owns
Virtual Service Inc. and go from there, but I don't
have those details. I just don't have them. And I
15 don't really care. I mean, I'm there to make money
and I'm there to train people and that's what I do.

20 Q. So just getting back to the contract, you
have indicated that you would agree to go to work
and then someone on behalf of Virtual Services would
sign agreeing to pay you. Did you know who has
signing authority at Virtual Services Inc. to sign
your employment contract?

A. No, I don't. I would assume the lawyer,
sure. David Worga.

25 Q. David Worga?

167
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

A. The lawyer. Yeah. He probably has -- I mean, he's signed employment letters for me in the past and things like that.

5 Q. Are you familiar with a company called Uncaged Marketing?

A. Yes.

Q. Who's company is that?

A. I don't know whose company it is. I've worked with that company.

10 Q. Worked for them or --

A. No, I never worked for them. I worked with them.

Q. And Gorilla Traffic?

A. That's a website under Uncaged Marketing.

15 Q. I see. Owned by someone else, it's not yours.

A. Correct.

Q. And you live in Mississauga?

A. Yes.

20 Q. You're married with two kids?

A. I'm divorced right now.

Q. Okay. On the night in question, we've heard that you were out drinking with your friend Ross Hammond and several others, correct?

25 A. Correct.

168

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

5 Q. And you have given us an estimate, if I
can put it that way, of how much you had to drink
that night. My friend took you through that. You had
some mini Coronas at Wayne Gretzky's, a couple of
double scotches at the Second City improv, and a
couple more double scotches at the Big Bop Reverb
where you were for about a couple hours. Do you
recall telling us all that today?

10 A. Is that your question? Yes. Yes.

Q. Yes.

A. Yes.

15 Q. And you indicated that between the Second
City show and before you got to the Big Bop Reverb,
you and Ross and the four younger guys from the
company were sort of wandering around looking for a
place to go and have a few drinks, maybe shoot some
pool or play some darts, correct?

A. Correct.

20 Q. And so was one of the places you went to
a place called Crocodile Rock?

A. Crocodile Rock? Where's the location of
that?

Q. I don't know. I just thought you might
remember.

25 A. I don't remember -- I don't remember the

169
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

names of the places.

Q. Okay.

A. I didn't know there was a Crocodile Rock
in Toronto. I know there's one in Rochester, New
York. But it doesn't sound familiar.

Q. Okay.

A. But it's not out of the realm of
possibility, you know?

Q. Was there a place where you got to and
you were sort of waiting to get in and Ben and
Gideon sort of bumped into each other and the
manager concluded that one of the two of them was
drunk?

A. Yeah, it was -- I don't know if it was
Ben and Gideon. I'm pretty sure Ben was intoxicated.
I don't know about -- I don't know about Gideon, but
one of those guys was being either a little
obnoxious or maybe pushed him or bumped into him or
something like that happened, and the doorman was
like, No, you guys can't come in.

Q. Mm-hm.

A. Yeah.

Q. And there was another place and it had
more to do with the dress code I think?

A. I think so. It was something to do with

170
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

no hats allowed, and one of my guys was wearing a hat. He goes, I'm not taking off my hat, and we were just so frustrated because we all just wanted to go into a place and all hang out and there was so much bantering going on between everyone that it just was, you know, the icing on the cake for a bad night.

5
Q. Mm-hm. Eventually though you did find one bar where you were able to get in and have a drink or two, but it was empty and it was boring, right? No one wanted to stay?

10
A. Yeah, I wanted just to go into an empty place and we went in for maybe two minutes and no one wanted to be there because there was no one there, so that wasn't an option either.

15
Q. You sure you didn't stay for a drink or something?

A. I don't think we did, no.

20
Q. Okay. And how, between the Wayne Gretzky's, the Second City and the Big Bop, how confident are you that you've accurately conveyed to us exactly how much you had to drink?

25
A. I'm like -- I'm 95 percent sure, because it was -- the whole night was -- it was just a big failure, and, um, we -- me and Ross were trying to

171

G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

entertain everyone and trying to be the good hosts,
so it really wasn't -- it really wasn't about me and
Ross, it was more about those guys and us kind of
listening to them and trying to get the morale going
5 back in the office and things like that, so I know
for a fact that I was not, um, that's a pretty
accurate account of my drinks because -- and also on
top of it we were walking. We walked a lot, and not
at any time did I even feel intoxicated throughout
10 the whole night. Even after the Big Bop. I didn't
feel like I was drunk at all. Not even half drunk.

Q. So you're gauging your accuracy by how
you felt?

A. Yeah, and the amount of drinks. Sure. And
15 my, you know, and yeah, and how I felt and, um, I
was functioning, walking around and we were talking
and yeah, everything was -- everything was fine.

Q. And your tolerance to alcohol? Do you,
like, drink every day or --

A. No, I don't drink every day, no.

Q. Once in a blue moon?

A. Well, I mean, I'm a social drinker. I
mean, I'll drink a couple nights a week, have a few
drinks. Sure.

Q. Now, you didn't know what was going to

172

G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

happen later obviously.

A. How would I know that.

Q. And you were asked by my friend here
about how much Ross had to drink.

5 A. Yeah.

Q. And at the time you, I mean, you're not
his baby-sitter. You really didn't have any reason
to monitor exactly how much he had to drink.

10 A. He was right by my side the whole night.
He sat next to me. He was right next to me. Um, we
were kind of chipping in together buying people
stuff, you know, so, like, I bought the tickets, he
bought I think maybe the first round at Second City.
I don't know the exact details but me and him were
15 sort of floating the bill on this.

Q. Okay?

A. So yeah, I mean, I knew exactly what he
was drinking and, um, I knew exactly where he was
at.

20 Q. And did you meet him at Wayne Gretzky's
or did you leave the office together?

A. I think me and him took a taxi together
down there. I think so. Yeah. We went there and then
maybe a couple other guys. I don't remember exactly
25 how everyone got there. I know that two or three

173
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

guys came in a taxi and then, like, me -- maybe --
maybe me and Ross and Tony went together I think?
And then the rest of the guys came together.

5 Q. And how certain are you you went directly
from the office?

A. I'm pretty sure. I'm pretty sure we went
there. Yeah. Because the show was at 7:00 and we
wanted to get down there. Yeah.

10 Q. There's a bar right near your office
called Shoeless Joe's as you referred to.

A. Yeah.

15 Q. And you indicated you didn't want to go
back there later on, and I'm presuming that's
because you're always hanging out there?

20 A. Well, we always hang out there and it's
always, like, sometimes, like, when we've made plans
and we go there, we don't leave, you know? We end
up just staying there and then we just don't do
anything else. The goal of this night was to go see
a show and laugh and have a good time and we didn't
want to be stuck at Shoeless Joe's, so this was kind
of like the anti-Shoeless Joe's night, because that
was our normal neighborhood bar.

25 Q. So the reason you didn't want to go back
there later has nothing to do with whether you'd

174
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

already been there.

A. No. I don't think I -- I don't think we were there at all. I don't believe we were. I don't think we went there afterwards.

5 Q. But it's something you do quite regularly.

A. Yes.

Q. Yeah. Is it possible that you had met there and taken a cab from there?

10 A. No, I don't think so.

Q. Is it fair to say that your assessment of how much Ross had to drink is an estimate?

15 A. No. I would say it's, I mean, he was right by me the whole night, so me and him were like a team that night with these guys, so it was -- it was dead on. I mean, I might have been off by one at the most, but he would have had to have done it when I wasn't looking or something like that. That's just not his style. He's not a fast drinker. He was a
20 very, um, he could have a drink for a whole hour and just -- and just nurse it. So it wasn't -- it wasn't like that.

Q. So the first stop was Wayne Gretzky's and you had a couple of these mini Coronas?

25 A. I think they had buckets, between six and

175
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

eight. So it was --

Q. So you buy a bucket?

A. I think so. It was maybe six, maybe
eight. We get, like, two buckets for everybody, and
5 then we ordered two or three appetizers. I know one
of them was hamburger sliders. Like those little
mini hamburgers. Might have gotten some wings, maybe
a quesadilla. I don't know the exact. I know we had
sliders and we had two, three appetizers.

10 Q. Possibly you had a third bucket?

A. No. No way. Because we didn't have time.
We actually -- I think we might have left two beers
behind too so I don't think we went through all the
beers.

15 Q. Okay. And --

A. Service was very slow there and, like, by
the time we got the food the show was starting in,
like, five or ten minutes, so we had to really eat
the food fast and we had to get down there. Like, I
20 remember I had to go to the bar and pay directly
because we couldn't find our waitress. It was so
busy there.

Q. Okay. And Wayne Gretzky's is attached to
Second City? Or right --

25 A. I think it's right above it.

176

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

Q. Right above it? Same building?

A. Or no. It's attached to it but we were upstairs on the patio, so there is an upstairs part we were at. We were in, like, a little cabana.

5 Q. So some point, did everybody, all six of you, get there at the same time? Or within --

A. Well, I think we got there first. I'm trying to remember now.

Q. "We" being you and Ross and Tony?

10 A. Yeah, I think so. Yeah. I think Tony.

Q. So you had to wait for Cameron and Ben and Gideon.

A. Yeah. I think we waited for them.

Q. Did it seem like a long wait to you?

15 A. Well, they were a little bit late and -- I mean, we were a little bit rushed because the show was, like, 7:00, 7:30, and we were just trying to get things going.

Q. Okay.

20 A. We might have been up in the patio and then come down to meet them. Because they -- they never -- they weren't -- they have never been to that restaurant I think, so --

25 Q. Do you have a recollection of having to bring one or two of these buckets from the patio

177
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

down to meet them?

5 A. No, no, no, no, no. I don't -- we didn't
have any drinks by then. We got drinks all together.
We didn't even get any service. I might have went
upstairs to scope it out and see if there was a
table for us. It was very busy and then we got a
call, like, five, ten minutes later, I came down to
meet them. I kind of yelled at them for being so
late. I'm like, Come on, guys, we've got to get
10 going and we have a show.

Q. All right. Second City, I haven't been
there but it's like a theatre?

A. Ah, yeah. There's a stage and, you know,
there's 100, 200 seats maybe. Yeah.

15 Q. Okay. And it's not like a movie where
you've got to go out to get your pop and popcorn and
come back?

A. No. There was waitresses there that bring
you -- bring you drinks.

20 Q. Okay. No food.

A. I don't think so. I don't think so. Maybe
-- no. No. I don't know. But I don't think so.

Q. And the show was what, did you say a
couple hours?

25 A. An hour, hour and-a-half? They do a free

178

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

show after that.

Q. Did you stay for that? Or part of it?

5 A. I thought we stayed for part of it, but people just weren't into the show. They didn't think it was funny. They weren't having a good time. And it kind of hurt our feelings a little bit because I put out, it was like \$20 a ticket, so I put out over \$100 on these tickets and all they were doing was whining and complaining. So it wasn't, um, it got to a point where we were just sick of everyone complaining. We were like, All right, let's just go somewhere else.

10 Q. So despite the appetizers, the sliders and the wings or whatever it was, by the time you got out of Second City you were hungry again.

15 A. Well, yeah, a little bit. I mean, yeah, I could have eaten. Sure. I wasn't starving but I was, you know, dinner was definitely, you know, on the top of the list of priorities.

20 Q. Right. And do you find that after your surgery with the lap band, that you have to eat more frequently?

A. Yes.

25 Q. And what happens to you if, you know, you just can't get food and you know how some people's

179
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

blood sugar get low or they get annoyed or they
can't think straight? What are the effects on you?

5 A. Well, I mean, it's more of just a stomach
pain. It's like waking up in the morning and you're
hungry. It's more of an annoyance, but it has
nothing to do with my blood sugar or anything. At
the time I was 205 pounds so I ate a lot throughout
the day, so it wasn't, um, it wasn't to the point
where I was completely irritable.

10 Q. Mm-hm? And you hung out enough I guess
with Ross to know how hunger affects him. If he goes
too long without eating did you notice that he gets
a headache or he gets irritable?

15 A. I don't know his particular, you know,
details on that, but not out of the ordinary, like a
normal, you know, person.

Q. So he's not like a diabetic or anything.

A. I don't think so. I don't think so.

20 Q. And so this period of time from when you
leave the Second City and you go through that
frustrating period and you finally -- the four guys
break off from the two of you, can you give us an
estimate of how long that was? You said you walked
a lot?

25 A. We walked a lot. We were walking all over

180

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

5 the place. I mean, it was a good half hour, 45
minutes I think just going to different places, and
we were trying to remember places to go. Like, I
don't know downtown that well so I was just kind of
relying on other people, you know? Some people
wanted to go to a strip club, we didn't want to go
to the strip club. That was in the east end. Some
people wanted to go to Hooters, half the people
didn't like the wings there and we just couldn't
10 agree on really anything, so, um, and then after not
getting into two places, we were just like -- we
just wanted to cut everyone loose.

Q. You had sort of --

15 A. We said enough is enough. All right.
Night guys. Later. And that was about it. Shook
hands and we went on our way.

Q. And so you went on your way and you felt
that this was your last chance to salvage the
evening.

20 A. Well, me and Ross were -- we were just
laughing at how bad the night was and how ungrateful
these guys were, and we said, You know what? Me and
you, let's have some fun. Come on. Because he was
going to spend the night at my house or we were
25 going to crash at the office. Like, we were going to

181
G. Dranichak - cr-ex. (Scarfe)
January 26, 2011

5 have -- I mean, it was still early so we're like,
Let's just have a little fun, let's get something to
eat and you know what? We'll see where it goes.
We'll see where the night takes us. But we knew that
we were kind of, like, we're a little bit tired and
a little bit, um, we were a little bit tired for
that time just because of just all the walking and
all the, you know, we worked all day and then we
went to the show and we did all the things and we
10 were a little bit tired, so we knew that it wasn't
going to be that late of a night. We weren't going
to just really go all night and have it be, you
know, like a --

15 Q. Now, at this point where you've sort of
been through the Wayne Gretzky's, the Second City,
and the half hour to 45 minutes of frustratingly
walking around and not getting anything, right? You
have -- would you have been able to drive at that
point?

20 A. Um...

Q. Safely? Legally?

25 A. You know what? I -- I never test myself
with that because I am, you know, as I said before,
I'm on a work permit and if you get one DUI then
it's just you're done. I would have been kicked out

182

G. Dranichak - cr-ex. (Scarfe)

January 26, 2011

-- I would have lost my job, I would have been
kicked out of the country, so I would -- I would --
I've spent \$70 on a taxi all the way out to
Mississauga before, many times, you know? I mean,
5 not many times but a handful of times where I'd
never risk driving. Like, we were going to get on
the train before midnight and get off at Clarkson
and we could have walked back to my place or taken a
\$5 taxi, so I don't know if I could have driven. I
10 would say that, um, I wasn't legal to drive if I had
to guess at that point. But I don't know. I was
walking around for 45 minutes. But I did have an
empty stomach so, I mean, it could have went either
way. I don't know.

15 Q. Does an empty stomach affect how you feel
after drinking?

A. Of course it does. It affects everyone.

Q. Okay. I note the time, Your Honour. We
have gone over the 4:30 mark. That would be fine?

20 THE COURT: All right. Tomorrow at ten
o'clock.

---COURT ADJOURNED

(4:40 p.m.)

25

183
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

---THURSDAY, JANUARY 27, 2011

5

---UPON RESUMING

(10:06 a.m.)

10

MR. SCARFE: Good morning, Your Honour.

THE COURT: Good morning.

MR. SCARFE:

15

Q. Mr. Dranichak, I just -- I know my friend asked you about this yesterday, but with respect to the media, in the last two weeks, including last night, have you seen this show -- or this trial, this case, reported on any media outlets?

A. No.

20

Q. Newspapers? You didn't see anything on the news last night?

A. No.

Q. Okay. And you've seen some in the past but you haven't really sought it out.

A. Correct.

25

Q. But in fairness, you're not oblivious to

184
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

the case?

A. Correct.

5 Q. Okay. And just so I have the complete inventory, I know we did this at the preliminary so I'll be brief, you've had a chance to review all of your statements that were given to the police prior to coming to court yesterday?

10 A. I reviewed my -- some video testimony and I was given my, um, preliminary evidence I guess, or testimony.

15 Q. Okay. So I'm just going to go through my understanding of your police contacts and then I'll ask you if that's everything and if I've missed anything you'll let me know, all right?

A. Okay.

20 Q. Okay. You guys were out, as you told us yesterday, for the evening on August 8th, which sort of turned into August 9th at midnight, and you ended up back at the office sleeping in your car and you didn't feel very well, you called in sick and went home, right?

A. I went up to the office after the car, yeah, and then -- yes.

25 Q. Looked around for Ross?

A. Right.

185

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

Q. And then went back and slept in the car for a while and eventually drove home.

A. Drove home. Yeah.

Q. And you were feeling really horrible.

5

A. Really bad.

Q. Had to pull over two or three times?

A. Yes.

Q. Dizzy and --

A. Nauseous. Yeah.

10

Q. Nauseous. So you got home, you slept for a few hours? Or a couple hours?

A. Ah, I -- yeah, I think I did. Maybe an hour and-a-half, two hours. I don't know the exact amount of time.

15

Q. But in any event, eventually somewhere midday that sort of very first day after the night out, you get word that Ross is in hospital.

A. Yeah.

20

Q. And so you get in a car and you drive to the hospital.

A. Go right to the hospital.

Q. Okay. You're there for a little while and two detectives show up. Guy named Gord Scott and another fellow named Umbrello?

25

A. I believe so, yes.

186

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

Q. And they ask you if you can come back to
14 Division and give a video statement.

A. Yes.

5 Q. Now, on the way to 14 Division, you
actually drive from the hospital across Queen
Street. Do you remember that? And you actually
stopped and --

10 A. Yeah, I -- I probably did. Yeah. I think
that's the way it went. Yeah. I don't remember, but
it makes sense, yeah.

Q. Okay. Well, I mean, maybe I can refresh
it a little bit. You leave the hospital, you leave
-- you're at the hospital, right? And you --

15 A. I don't remember. I don't remember if I
took a taxi or -- I don't remember what I did that
day.

Q. All right. Do you remember though on the
way to 14 Division, before you gave your statement,
you were with the detectives and they sort of --

20 A. Oh, I rode with them I believe. I think I
rode with them in their cop car. Yeah.

Q. That's right.

A. Okay. Yeah.

Q. That's my information anyway.

25 A. Yeah, that sounds right, yes.

187
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

Q. That sounds right?

A. Yeah.

Q. And you remember before you got to 14
Division you actually stopped somewhere in the
vicinity of the TD Bank that you described
yesterday? And -- the detective wanted you to just
point out where you were?

A. Mm...

Q. You don't remember that?

A. I don't remember that at all.

Q. Okay. That's fine.

A. Yeah, either way. I don't remember.

Q. You're not saying it didn't happen.

A. Yeah, I don't remember either way. Yeah.

Q. And so eventually though you remember
getting to 14 Division and sitting down in an
interview room with Detective Scott and Umbrello?

A. Yes.

Q. And you're probably still feeling pretty
lousy at that point?

A. I was feeling, yeah, physically ill and
emotionally just torn up. Yeah.

Q. Right. But in any event, you sat and you
gave quite a lengthy video statement which you've
now had the chance to review.

188
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

A. Correct.

Q. You've got a transcript version of it?
Or did you --

A. I think I just watched the video. I don't
5 have a transcript of that testimony, no.

Q. They gave you a copy of the video to take
home?

A. No.

Q. And watch on your own time?

10 A. No.

Q. But somewhere in the last month or
something you've had a chance to go over it?

A. I watched the first video, yes.

Q. The first video.

15 A. Yeah.

Q. That's the one with Scott and Umbrello?

A. Correct.

Q. Not the one with Detective Sergeant
Giroux?

20 A. Correct.

Q. Okay. So you were doing your best to help
the police --

A. Absolutely.

Q. -- in the station?

25 A. Sure. Sure.

189
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

Q. And at the end of it, they ask you about your clothes, right?

A. I think so, yeah. I think I brought in my clothes.

5 Q. You brought in your clothes.

A. I think they asked for my clothes and I brought them in.

10 Q. Yeah. Okay. So then you go home and there's a bunch of events that go on for a few days, including Mr. Hammond's funeral that you go to, right? You went to the funeral?

A. Yeah, I don't think it was right after that though, was it?

15 Q. It was a few days later?

A. Yeah, I did go -- yeah, I did. Yeah.

20 Q. And then at some point, I have it as August 14th, so sort of six days afterwards, you go and you give a second interview but to Detective Sergeant Gary Giroux and his partner at the time, I think it was Carbone?

A. I don't remember his name, but yeah, I remember Detective Giroux there. Yeah.

25 Q. And Detective Giroux already had obviously reviewed your first statement, so you didn't have to tell the whole story in as much

190
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

detail, but significant time was taken going through the photo line-ups that were referred to yesterday, right?

A. Yeah. Yes.

5 Q. And so you went, you give that, you went home, we will call that your second police statement, okay?

A. Okay.

10 Q. Then about a year and-a-half almost goes by, and there is the preliminary hearing at College Park, correct?

A. Yes.

15 Q. And just before the preliminary hearing at College Park, which started in January of 2009, you had a couple more contacts with the police.

A. I believe so, yeah.

20 Q. Yeah. The first contact was that you went and you met Detective Sergeant Giroux, you know, a week or two before you testified at the preliminary hearing, you met him at a police station in Brampton. Do you remember that?

A. Yeah.

Q. Or maybe it was Mississauga? I don't know. But --

25 A. Mm... I don't --

191
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

Q. And you sat down with him, I think maybe a Crown Attorney dropped by for a little bit, although I may be wrong about that, but you sit down and you watch your first statement.

5 A. Mm-hm.

Q. The one you gave to Detective Scott and Umbrello.

A. Mm-hm.

10 Q. And it's getting late so you go home and you come back a day or two later and watch your second statement. Do you remember that?

A. Yeah. Yes.

Q. Also at the police station in Peel.

A. Mm-hm.

15 Q. So we'll sort of call that number three, even though it's broken up over a day or two, and then the fourth one is just before you testify at the preliminary hearing, you go to the Crowns' Office and they take you to the Victim/Witness office at College Park and give you a little DVD player and you watch the City TV video.

20 A. Correct.

25 Q. All right. And except for the five or ten second clip that was on the news shortly after Ross died, you hadn't seen that before.

192

G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

A. Correct.

Q. And of course you saw it yesterday,
right?

A. Mm-hm. Mm-hm.

5 Q. So we'll call that number four. And then
of course there's the preliminary hearing
transcript.

A. Mm-hm.

10 Q. Which you testified over I think three
days at the preliminary hearing - January 6th, 7th,
and 19th. And you've been given those transcripts
and had an opportunity to go over them?

A. Yes.

15 Q. Okay. So in no particular order, what I
wanted to do was go over a few things that you
talked about yesterday, and just remind you of some
of the stuff you said before and see if we can help
flush out a little more accurately what happened.
20 You remember yesterday I asked you about the alcohol
and suggested to you that, you know, your
recollection of what you had to drink, what Ross had
to drink, was an estimate?

A. That's what you said, yeah.

Q. Yeah.

25 A. Yeah.

193
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

5 Q. And you seemed pretty clear on what it was that you had to drink that night. And referring to page 14 of your very first statement, the one you gave, you know, within less than 24 hours after the event, you indicated that at Second City, although you told us yesterday you were drinking scotch at Second City you indicated back then that you were actually drinking gin and tonic for some reason.

A. Really?

10 Q. Mm-hm.

A. I find -- I find that -- so from my original testimony I said gin and tonic?

Q. At the Second City part.

A. Hm-mm.

15 Q. Do you remember --

A. I highly -- I mean, I don't know. I might have said that. I doubt I drank it though, but...

20 Q. Perhaps it was Gretsky's you had gin and tonic. The difficulty we have here, and I point this out to Your Honour, this may take a little extra time, the original video, the quality, it's not like you can't figure it out.

A. It's tough.

25 Q. But it's kind of choppy and the sound's not so good and, as a result, the transcript is, I

mean, in places it's every third or fourth word is
unintelligible.

MR. THOMPSON: If I can just ask my friend
where -- I'm looking at the statement from --
5 I have one August 14th, page 14.

MR. SCARFE: No, no. On the August 9th
statement.

MR. THOMPSON: Sorry. August 9th, page 14.

MR. SCARFE: Page 14 of 89 and I've got --
10 did you have maybe an amended statement or
something? Why do I have a -- mine says
Scott Umbrello on unknown date 2007, 3:45
hours. Obviously there's been a -- Court's
indulgence.

MR. SCARFE: We found the problem, Your
15 Honour. There was sort of a cleaned up
version of the statement and mine is 85
pages, my friend's is 89, so he now knows to
look ahead a page or two. But given the
20 unintelligibles I'd like to try but I'd like
to cue it up, it's 16 minutes and 14 seconds.
I think our videos are the same. So this will
all take a little extra time because of this,
Your Honour, but we'll get through it.

25 All right. We're going to try

195
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

again. Thank you for your patience.

---VIDEO PLAYING

5

THE WITNESS: Okay. So yeah, as I said,
normally I'm a scotch guy but it was
summertime and I probably had a gin and
10 tonic, but it's a rare occasion that I would
do that, but that's probably correct because
that was closer to the time that it happened
than now of course.

MR. SCARFE:

15

Q. Right.

A. So I was mistaken about that.

Q. But you accept that that's what you told
the police.

20

A. Well, I would say odds are that it was
more accurate then. It's a rare thing for me to
drink a gin and tonic. It must have been really hot
and, you know, as I said before, normally I'm a
scotch guy and I went back to scotch, so...

25

Q. When you were a teenager, did your mom or
dad, you know, at the early stages of going out with

196
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

your friends and drinking ever remind you, you know,
don't mix your poisons? Ever heard that saying?

A. Yeah, I've heard that. Sure.

Q. Yeah. So clearly you've had some beer,
5 some gin and then a bunch of scotch, right?

A. Sure. Sure.

Q. Is that -- that's not normal for you, is
it?

A. No, no, it's not normal. I mean, it was
10 summer. It was summertime and it was hot and I just
wanted to mix it up a little bit.

Q. Okay. Now, you talked a little bit about
the stopping near the bank machine yesterday, and
I'll just find that reference.

A. And just to be clear, those were mini
15 Coronas and I don't even think I finished my second
one, so they're the small mini bottles. So I just
want to be clear here.

Q. Not the full size ones. I think we've all
20 been to the LCBO and --

A. They're very small.

Q. Maybe eight ounces instead of 12 or
something like that?

A. Probably.

Q. So you're hungry, you're looking for a --
25

197

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

you've been to the Big Bop, right?

A. Mm-hm.

Q. You were hungry before you got to the Big Bop and you spend an hour and-a-half, maybe even two hours there?

5

A. Yeah. Yes.

Q. So you get out and think you're really hungry.

A. Yeah, I'm not starving but I was hungry. Sure.

10

Q. Okay. And you're looking for maybe a diner? Get some breakfast?

A. Yes.

Q. Kind of an all day breakfast place and you're sort of trying to avoid that last resort trip back to what is it, Shoeless Joe's?

15

A. Yes.

Q. Because you always go there.

A. Right.

20

Q. And so you're walking along the south side I think is what you said, and you run out of money. You had maybe \$8 or \$12 in your pocket?

A. I think so, yes.

Q. And you were looking for an ATM. You said you were going to go and get some money and Ross

25

198

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

said, Don't worry. He calls you Geo?

A. Geo, yeah.

Q. He says, I've got money, don't worry.

5 You don't need money. And yesterday you said you
don't recall if you got money out. I think he talked
me out of it.

10 A. Yeah, I can't remember -- when I went
down to Queen Street a few weeks ago, I thought I
got money out but then I -- I think he talked me out
of it, but I really can't remember whether I got it
out or not. I don't think I would have crossed
unless I got money out, but I don't know. So...

15 Q. So you're still kind of not 100 percent
sure about that, right?

A. I think he talked me out of it.

20 Q. Now, for my friend, I'm going to refer to
the preliminary hearing transcript from January 19,
2009 where you were giving testimony at College Park
and you were answering the questions, my questions,
actually, and we were -- I was asking you about
whether you banked at TD and raised the issue that
it's \$1.50 if you don't. You said you bank at CIBC
but so what, there is a TD, and what you said, and I
can show it to you if you like, but you said:

25 "Yeah, and I'm walking, yeah, so

199
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

and we went over there. And he goes, Oh no, don't worry about it. I got -- you know, I got money. Don't worry about it. So I didn't get money out."

At least on the last time you testified you seemed more certain about whether you got money out or not.

A. I -- I don't remember. Even when I went up to the ATM machine a few weeks ago, if -- I was kind of feeling the, um, the memory of the night, and I -- I said, like, I don't even know if I got money out or not. I thought I did, but I think he talked me out of it. I still don't know. It's -- yeah. It's -- it's driving me nuts a little bit whether I did or not, but, I mean, I don't remember.

Q. You don't remember.

A. I really don't remember. I mean, the closer it was to the incident, that's probably more accurate, but to this day I don't remember.

Q. Now, yesterday you talked about having \$8 or \$12 in your pocket, right?

A. Yeah.

Q. And you're inclined to think that in the

200

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

end, that's what happened. And you didn't get money out and that's all you had. But Ross was going to cover --

5 A. Yeah, I mean, I put up more money that night, and he goes, No, Geo, I got it. I got it. So I wasn't really -- I wasn't really that worried about it. And then also there is an ATM at Shoeless Joe's so if I needed money I could have just gotten it out there.

10 Q. Okay. Well, do you remember doing that?

A. No. I didn't go to Shoeless Joe's.

Q. No. Now, I'm going to try not to jump around too much, but after all this was over, you jumped in a cab.

15 A. Yeah.

Q. The first cab wouldn't let you in, there was a second cab, and the third cab let you in. You felt very grateful to that person --

A. Sure.

20 Q. -- because he could see there was trouble going on?

A. Yeah. I felt like at that point he was saving my life.

25 Q. And I think what you added yesterday is someone banged on the taxi window after you were in

201
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

it?

A. Yeah, the guy that was gouging my eyes. He made, like, one last thing and he just slapped his hands against the glass.

5 Q. Okay?

A. Which scared the taxi driver. He goes, What's going on? What's going on? I go, Go. Just go. Go.

10 Q. So you get -- the cab takes you back to your car, right?

A. Um...

Q. Or essentially?

A. Yeah. My car.

15 Q. You don't go anywhere else?

A. No.

Q. Right. And then you have to pay the taxi.

A. Yeah.

Q. Right?

20 A. Yeah. It was probably five -- I mean, it was under \$12 so I, you know, I wasn't worried about paying the taxi when I jumped in the taxi. I would have had him driven me to another ATM machine to -- if -- the thought didn't even cross my mind about the taxi.

25 Q. Do you remember being in the taxi and

202
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

stopping at another ATM machine?

A. No, I don't remember that happening, but, I mean, no, that didn't happen, so...

5 Q. Do you remember giving him a 20 and telling him to keep the change?

A. Hm-mm. No, I don't remember doing that.

Q. All right. The second statement that you gave, which was sort of six days or so after all this happened?

10 A. Mm-hm.

Q. Right? I'm just going to read to you what you told Detective Sergeant Giroux and Detective Carbone, and for my friend I'm at page 21 of the transcript, about two thirds of the way down the page, and we were talking about you getting into the cab, and you said:

20 "I said to the taxi, I go -- go -- I go, king and Dufferin. Go. I'll give you a big tip. And he, I guess the taxi driver, was like, What's going on? And I'm like, I mean, I got hit -- kicked in the head and my head was just throbbing, like, four times, and he was like, What's

25

203

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

5 going on? What's going on? He
was kind of worried. I knew, you
know, they don't want to be part
of -- of any, you know,
shenanigans or whatever on the
street. Like, you know, it
seemed like he was gonna say,
Get out, and I go, I'll give you
a big tip. I'll give you a big
10 tip. And I ended up tip -- it
was, like, \$5 and I gave him,
like, a twenty, and I said, Keep
the change because" --

A. "...like, a twenty...", I said?

15 Q. Sorry?

A. I said "...like, a twenty..."?

Q. I said:

20 "...big tip, and I ended up --
tip -- it was like \$5 and I gave
him, like, a twenty, and I said,
Keep the change, 'cause I felt
like he had saved my ass a
little bit, you know?"

25 Do you remember, in reviewing your

statement before coming to court, does that kind of refresh your memory as to what you said?

A. That sounds about right. Sure.

5 Q. And if you only had \$8 or \$12 in your pocket and suddenly you've got 20 for the cab driver, do you have any explanation for that?

10 A. Then I must have gotten money out. If I gave him -- if -- if I tipped him 20 -- I didn't say -- I said, "...like, a twenty...", so I might have given him \$15, I might have given him \$12 for a \$5 thing. That's still a good tip. So I don't know exactly what I tipped him but I know that I had less than \$20 in my pocket. You know, I was thinking it was around \$8 or \$12. I could have had 17. I don't know. I said, you know, like \$8 or \$12. I know that I had under \$20 for a fact because I, you know, I had change and things like that or whatever. So...

15 Q. You seem --

20 A. I doubt that I gave him \$20, but it's possible. I don't remember that. I was, like, you know, I was trying to find Ross, I was hanging out the window. I told the taxi driver whatever I could so that he would get me out of there because I was worried about, you know, these guys chasing us. I was worried about the traffic because it was kind of

25

205

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

stop and go traffic. I was worried about the guy trying to open up the car and attack me again. I was trying to find Ross and hanging out the window. I was just, you know, screaming out the window for him. Ross, Ross, meet me at the office, meet me at the office. I was screaming as loud as I could. And I have a loud voice. I mean, my voice carries, so I was confident he knew what was going on or that he had heard me.

5
10 Q. Okay. You agree though, six days after you said you gave the guy a twenty?

A. I said "...like, a twenty...", so that could be 15.

15 Q. Okay. And you would agree, just so we're clear, you don't actually have a recollection of using the bank machine and --

20 A. You know, when I went there it felt like -- I'm like, maybe I did get money out because maybe I -- I wanted to have money. It was definitely going through my head. Did I get money out? Maybe I did? So I didn't piece together the taxi driver or whatever, but I really don't remember. I mean, I was kicked in the head and I was nauseous and I was -- it was just a state of panic, so I don't really
25 remember a lot of that.

206

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

Q. All right. So you don't have a recollection of using the TD bank machine, right?

A. Correct.

5 Q. You don't have a recollection of having a cab stop on the way back to the office to get money.

A. No, we didn't -- we didn't stop to get money.

10 Q. Right. You don't have a recollection of somehow getting to Shoeless Joe's and using a bank machine there.

A. I didn't do that.

Q. You didn't do that.

A. No.

Q. Okay.

15 A. I didn't stop to get money.

Q. That whole part of the story is a bit foggy, right?

A. Well, pieces of it are.

20 Q. Yeah. And presumably some of it has to do with the fact that you had been drinking all night?

25 A. No, I think most of it had to do -- I was completely not intoxicated when this incident happened. We did a lot of walking and there was a lot of time that passed from 5:00 or 6:00 p.m. until midnight, and, you know, I'm a big guy and there was

207

G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

no way that I was intoxicated and not knowing what was going on. It was because I was attacked and kicked in the head over and over and over and I had a concussion.

5

Q. Moving on, whatever happens at the TD Bank machine, at some point this first girl comes up, right? The one you told us about yesterday with the sandy blonde hair and the loose ponytail?

A. Mm-hm.

10

Q. She's on a bike?

A. Yeah.

Q. And she was the instigator.

A. Yeah. She was. She was very, um, unstable.

15

Q. And yesterday we watched the City TV video and you picked her out as being McDermitt? Sarah McDermitt?

A. Yes.

20

Q. Now, if I slip up, there is another name we use for her in this case. It's Faith Watts? Maybe you saw it in the newspaper?

A. No, I never saw that in the newspaper. I've heard the name though, but yeah, I don't understand the two names at all. But --

25

Q. Okay. In fairness to you though --

208

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

A. Yeah.

Q. -- they're supposed to be the same person.

A. Okay.

Q. Okay?

A. Okay.

Q. The girl comes up and she wants some money, right?

A. Yeah.

Q. And in your first statement to Scott and Umbrello, that was about the essence of what you said, and again, six days later when you talked to Giroux and his partner, Carbone, you indicated money, and then about a year and-a-half later when you were out at the station in Peel --

A. Mm-hm.

Q. -- viewing your statement, you remembered something new, and that was the part that the girl didn't just ask for a loony or something like that, she actually asked you for \$20.

A. Yeah.

Q. Now, in your first and second statement, right? You were trying to be as clear and as accurate for the police, right?

A. Yes.

Q. And they weren't rushing you or anything. They seemed prepared to sit there for as long as it took to get every possible detail they could to help solve this crime, right?

5 A. Correct.

Q. And are you one of those people whose memory gets better with time? Or are you more like the type of people who remember something when it's fresh and then it kind of fades over time?

10 A. It depends on the situation.

Q. So it could be one thing --

A. Or the other, sure.

Q. All right. There are times when your memory gets better with time?

15 A. I had memory standing at the ATM machine a few weeks ago that I never thought of. Just certain things. Colours or people walking by. But it was very unclear, but things came -- things come back all the time. Sure.

20 Q. So things came back to you at the ATM machine because you were standing there and reexperiencing?

25 A. Yeah, kind of. Part of me was, like, reliving it and I was going through it in my head where Ross was standing, where the girls were

210
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

standing, where I crossed.

Q. But today you're absolutely certain that she asked for \$20.

5 A. It was, you know, it was like a
revelation when it came to me. I put the thing
through my head a million times. I went through the
thing over and over and over, how it could have
possibly -- because I still don't know exactly what
10 happened to Ross. I still don't know the details of
the specifics or what happened after I left. I've
been just trying to keep secluded from that, and
when it came to me, I was absolutely certain that
that was, like, because I'm like, How did this thing
start? How did it escalate so fast? How did this
15 thing just get so out of control? And I remember
that she came up and asked for \$20. And we thought
it was the most outrageous thing that we had ever
heard, because, I mean, we deal with -- there's
street walkers and panhandlers and everything
20 throughout the whole city. It's just part of
Toronto. And we just thought it was just so crazy
that they were upping the ante. Now, people give
these people money all the time. They live off this.
And now, you know, a dollar or two isn't enough.
25 They're asking for \$20. So I do remember that. It

211
G. Dranichak - cr-ex. (Scarfe)
January 27, 2011

was very clear.

Q. So you said you've been over this a million times in your mind.

A. Yeah.

5 Q. And but you're still trying to figure out what happened? Is that kind of the sense of --

A. Well, you know, um, no, I'm not trying to figure out what happened. I know what happened. The order and what was said and the exact words and, I mean, there was a lot of swearing going on and there was, you know, there was a lot of commotion, so, um, you know, I know what -- I know what happened. I mean, I was there obviously, so it's, you know, it's -- but the exact details of the clothes and things like that I'm very -- I don't know. I just -- it didn't absorb into my head.

15 Q. All right. And just staying at this request for \$20 though, I mean, you've been asked for money by panhandlers in Toronto plenty of times?

20 A. Right.

Q. No one's ever had the gall to come up and say, Give me 20 bucks?

A. Well, I mean, I've had a few people that needed gas money and stuff like that and probably wasn't for gas, they wanted \$5 or \$10, but yeah,

25

212

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

5 this particular thing was, yeah, it was like -- it was almost like they were shaking down people at the ATM machine. In hindsight, that's what it looked like. You know, it was just a shakedown to solicit people by the ATM machine.

Q. That's what it kind of looked like?

10 A. Afterwards. To the -- I didn't know what was going on. I just, you know, it happened so quickly, the whole thing lasted probably a minute, minute and-a-half with me, and, ah, but you know, in hindsight it was -- they were shaking people down at the ATM machine.

Q. All right. So the point is, being asked for \$20 on the street is a pretty unusual thing.

15 A. Well, not if they're right at the ATM machine that gives out only 20s. It makes sense.

Q. But for you, it's never happened to you.

A. No, I don't think so. No.

20 Q. And it's part whatever made this whole situation so ridiculous?

A. Correct.

Q. Right. And yet in your very first lengthy statement, the very day after, less than 24 hours after all this happens, you neglect to mention it?

25 A. Well she said, Give me money. The first

213

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

5 thing was, Give me money. Give me \$20. That's what I
remember now. And I remember it, you know, and when
I piece -- throughout the whole process, when I --
when I remember something, it's sometimes it brings
out other memories, you know? And that's just how
the human mind works I guess. I mean, I don't know.
I can't really explain it, but that's what happened
with me.

10 Q. Mm-hm. And you remember certain things,
it helps fill in a gap which may lead you to
remember something else kind of thing?

15 A. Right. I mean, right now just talking
about the bank and the taxi driver, I still don't
know if I took money out. And, you know, because, I
mean, I was kicked in the head and a concussion, so,
um...

Q. Kind of confusing.

A. That part's confusing, sure. Yeah.

20 Q. Mm-hm. Well, what's confusing for me is
that, you know, less than 24 hours afterwards, a
fact that --

25 A. Well, I was in shock. My best friend was
killed. I mean, he was stabbed to death. I was very
emotional, I -- how do you -- you expect me to
remember every single thing? It's just -- it's just

214

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

not possible.

Q. I'm going to get in trouble because what I'm supposed to do is remind you that you've got to let me finish my question before you sort of --

5 A. A lot of what you're saying are not questions. You're just making statements. You're waiting for me to respond so I'm just going to jump in unless you want to ask me a question.

10 Q. All right. Well, we're going to have questions --

A. I'll wait for you.

Q. -- and we're going to have suggestion and there is opportunity to comment on them, but you have to --

15 A. I apologize.

Q. -- let me lay it out for you, okay? So would you also agree that even when you sat down and sort of went over it more briefly, six days later, that you didn't remember about the \$20, being asked for \$20.

A. I don't believe I did, no.

Q. Right. And you don't really have an explanation for why it took a year, almost a year and-a-half for that detail to come to you.

25 A. I'm not sure if it was a year, year

215

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

and-a-half. Is that the time-line? That's the time-line that I recall that particular thing?

Q. Yeah. The bad thing happened on the morning of August 9th?

5 A. I think it was after I watched the video, wasn't it?

Q. And that -- your video? Or the City TV video?

10 A. The City TV video. Isn't that when it came? Or was it right before that.

Q. No. This revelation about being asked for \$20 happened in the meeting that you had with Detective Sergeant Giroux at the police station in Peel.

15 A. Okay.

Q. Before you even got to College Park.

A. Okay.

Q. And you watched your own statements.

A. Okay.

20 Q. And then they asked you to comment if watching your own statements had sort of brought up any -- anything new arose, you know?

A. Mm-hm.

25 Q. Or anything was different or -- and he sort of has an obligation to make some notes when

216

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

something new comes out and so he did that. It's the one thing that seemed to really come back to you, and that was January 3rd and 4th, 2009. So --

5 A. There's no doubt in my mind that that happened. I mean, I'm 100 percent positive that that was what she said. And it's crystal clear in my mind. And our reaction was sarcastic, and her reaction to the sarcasm was she became insane.

Q. Insane.

10 A. She was absolutely livid on the street and screeching and it was like -- it was like we hit a nerve. It was like there was some truth to it.

Q. Yet you described it I think that she was like a screeching witch.

15 A. She was absolutely like, yeah, she was screeching and screaming and swearing and --

Q. And you also said yesterday psychotic.

A. I would say it's psychotic behaviour. My -- I'm not a psychiatrist but she was acting insane. 20 Insanely on the street. Sure.

Q. You couldn't reason with her?

A. No. Well, we were -- it was just -- I don't know. We tried -- we tried walking away. We tried just leaving and -- and they came after us, 25 so...

217

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

Q. And do you think she was on drugs maybe?

A. Or coming down from drugs. She was very oily and I think my testimony was her face was oily and sweaty and, yeah, she was probably coming down from drugs. Or on drugs. I don't know. I mean --

Q. It's hard to say?

A. Well --

Q. But this is --

A. She was definitely impaired on some level. I mean, you know.

Q. This is Sarah McDermitt we're talking about.

A. Yes. Sarah.

Q. Okay. Now, they're at the -- one of the things that happened at the bank machine was a real war of words.

A. Yes.

Q. Right?

A. Mm-hm.

Q. And I don't want to embarrass you, but there were some pretty rotten things said by you and Ross, isn't that right?

A. Yes.

Q. And we sort of went over them at the preliminary, but you called her a whore?

218

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

A. Yes.

Q. And at one point you said, page 62, you corrected yourself and you said, "...or she should whore", you know, suggesting if she wants that kind of money --

A. Sure.

Q. -- she should go sell sex for it, kind of thing, right?

A. Correct.

Q. That's what you meant?

A. Correct.

Q. And then Ross, around the same time, said, Why don't you go suck dick, or whatever?

A. Yeah.

Q. You know, sort of in the sense of, Hey, I got an idea?

A. Hey -- exactly. It wasn't loud or anything like that. It was just a sarcastic, mean thing, and then I jumped on it and then it, you know, it just -- we obviously hit a nerve --

Q. Mm-hm?

A. -- with her.

Q. Well, maybe we'll get to the bottom of why we hit the nerve. You recall calling her a stupid cunt?

219

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

A. Probably. I don't recall it but yeah, I mean, I said a lot of things.

Q. I asked you that at the preliminary and you said yeah, that was probably you?

5 A. That was probably me, yeah.

Q. And I think the term gunt, G-U-N-T, came up? But you weren't sure if that was actually said, right? Hm-mm?

A. Um, it could have been said. Sure.

10 Q. Could have been said. And certainly crack whore?

A. I definitely said that, yeah.

Q. Definitely said that. Jizz bucket?

A. Sure.

15 Q. And hooker?

A. Yeah, that could have been me or Ross or, you know, but Ross kind of toned down with that and it escalated, I mean, we went back and forth three or four times, and Ross just kind of, like, was, All right, enough. Enough. And then the guy came over and was like, Hey, what's going on here and stuff like that. Like, the guy was trying to defend the girl. I don't know if it was his girlfriend or --

20 Q. But you agree at least one of you called her a hooker.

25

220

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

A. Sure. Sure.

Q. Yeah. A speed freak?

A. I don't know if -- I don't remember that.

That's not something I would say, but --

5 Q. I asked you about it on page 63 and --

A. Oh.

Q. -- you said yeah.

A. I mean, it's possible. Sure. Yeah. I -- I used a lot of vulgarity.

10 Q. And then the last one was militant lesbian, and you sort of helped clarify that. That wasn't actually directed at Ms. McDermitt but it was after the second girl came up?

15 A. Right, it was like she was defending her -- it was a joke. It was just a rude joke but, you know, it was weird that we were getting absolutely screamed at by a bunch of these -- these -- these, you know, beggars, you know? And I was just trying to, I don't know. I don't know what I was trying to do. I was just trying to -- I wasn't trying to
20 escalate the situation or -- because it just was -- it went from zero to a hundred in, like, ten seconds. And it was just like, Enough. Enough of this. This is insane. Because it looked like we were
25 picking on these girls and it was just like we just

221

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

5 want to get away. And the whole street was looking at us like we were a bunch of, you know, bullies, and that's just not what, you know, we were just trying to get, like, get out of there and get out of the situation. Just walk away.

Q. Mm-hm. It seems like a lot was said in just ten or 20 seconds, right?

10 A. Well, I'm not going to get yelled at by -- I mean, there is a little bit -- the whole situation was crazy to us. And we couldn't believe that it was happening and it was, I mean, it was just embarrassing on a lot of levels. I mean, I was -- there isn't a day that I live that I don't regret even -- any -- I mean, there's a thousand things
15 that could have been different that night but I definitely regret, um, getting those girls angry, you know? I mean, obviously. If we would have just walked away it would have been fine, but we had to be smart asses and, you know, and Ross died because
20 of it. So...

Q. I'm going to assume you don't normally treat women like that.

A. No. No. Not at all.

25 Q. And I appreciate that you regret it and stuff.

222

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

A. Yeah.

Q. But just as an explanation, this is unusual behaviour for both you and Ross. To come out with this kind of language?

5 A. Well, Sarah was absolutely going nuts. Like, I mean, like I stepped on her puppy or something and killed it. I mean, she was insane, and this wasn't, like, there was -- we were never going to lay a hand on anyone, fight anyone. We thought it
10 was just a war of words and when it got too much we tried walking away, but she just wouldn't let up. She was going nuts. She was just trying to get a mob against us and go after us.

15 Q. Court's indulgence. You just said that everyone was looking at you as though you were bullying these kids?

20 A. Well yeah, because no one -- I mean, there was a lot of people on the street. We're standing there. These girls are much smaller, much younger than us, and, you know, a lot of people are probably friends, you know, on the street or
25 whatever, people just hanging out. I mean, it was late at night and there was all these people hanging out. You know, there's -- they're probably -- we assume that they had friends or there was a group or

223

G. Dranichak - cr-ex. (Scarfe)

January 27, 2011

a gang or something. I don't know. But when a girl is -- when any girl is screaming in public, people -- people's ears, you know, are at attention and they were looking at us.

5 Q. And then yesterday you stated: It looked like we were picking the fight?

10 A. Yeah, from the perception of other people. I mean, if I was across the street and I saw two guys with two girls and this girl was screaming and screeching and stuff like that, I would probably go over and try to help them or defuse the situation or make sure that people were being -- were calming down.

15 Q. In fact you also added that the Middle Eastern guy came up and asked you, Why are you picking on these girls?

A. Correct. Yeah.

Q. Right.

A. Yeah.

20 Q. So you could tell that the impression on the street was that this was somehow your fault, Ross's fault, that you guys had started this.

A. Correct.

25 Q. And I know you don't feel that way, but there were quite a few very nasty things said by you