

E-File Name: 2017-04-03OCPStanleyG

Appeal No.: _____

IN THE PROVINCIAL COURT OF SASKATCHEWAN
NORTH BATTLEFORD, SASKATCHEWAN

BETWEEN

HER MAJESTY THE QUEEN

and

GERALD STANLEY

Accused

PRELIMINARY INQUIRY

Volume 2

(Pages T202 - T386)

April 3, 4 and 6, 2017

North Battleford, Saskatchewan

Royal Reporting Services Ltd.

300-2010-11th Avenue

Regina, Saskatchewan

S4P 0J3

Phone: 306-352-3234

Fax: 306-757-7788

CASSIDY CROSS, Previously Sworn, Cross-examined by Mr. Spencer

Q MR. SPENCER: So Cassidy, who have you spoken to about this incident before today? Can you tell me everybody that you've talked to about --

A Like about the incident?

Q Yeah.

A I don't talk to people, probably just my parents, but I don't tell them much. Probably just my counsellor --

Q Okay.

A -- not about the stuff, but about how it affected me, my psychiatric.

Q Did you -- you spoke to the police, obviously?

A Yeah.

Q You gave them a full statement?

A Yeah.

Q Did you give anybody else a statement? Did you --

A No, not at all.

Q Nobody else interviewed you?

A No.

Q Nobody from the FSIN --

A No.

Q -- interviewed you?

A No.

Q Did you talk to the family about what happened that day --

A No.

Q -- the Boushie family?

A I left it at that. It was too heartbreaking for everyone.

Q Yeah. So --

A I left it alone. Nobody wanted to talk about it.

1 Q -- so you haven't discussed the circumstances of this day with anybody, but
2 perhaps your psychiatrist?

3 A Yeah.
4

5 Q Okay. What were you doing the night before? Were you hanging out with
6 Colton the night before?

7 A Yeah, sober driving.
8

9 Q What is that?

10 A Sober driving.
11

12 Q But you were with Colton?

13 A Yeah.
14

15 Q Yeah, okay.

16 A Mmhmm.
17

18 Q You were the designated driver --

19 A Yeah.
20

21 Q -- the night before? What vehicle were you driving?

22 A The same vehicle.
23

24 Q Your --

25 A The Ford Escape with Kiora, the grey vehicle.
26

27 Q The grey vehicle?

28 A Yeah.
29

30 Q You were driving that?

31 A Mmhmm.
32

33 Q You weren't driving any half-tons at any time in the night?

34 A No. My grandpa owns a half-ton, but that's about it.
35

36 Q Okay. So tell me about that night. You were with Colton the whole night?

37 A Mmhmm. The whole night.
38

39 Q The whole night?

40 A Yeah.
41

1 Q From when to when?

2 A Well, not the whole night, probably me and Kiora were in town, and then --
3 with her vehicle, and then Colton wanted to come, and then he in-boxed Kiora,
4 and we picked him up that day and then he didn't get drunk or anything. He
5 just chilled out with Kiora, and --

6

7 Q Okay. So the three of you kind of hung out that night before this incident --

8 A Yeah.

9

10 Q -- driving around in her vehicle?

11 A Mmhmm, in town.

12

13 Q And then, at the end of the night where did you go?

14 A I went back home.

15

16 Q Okay.

17 A Yeah.

18

19 Q And that was -- what time was that, approximately?

20 A I'm not -- not too late, probably about 8:00.

21

22 Q Is when you shut her down?

23 A Yeah, went back to North Battleford -- I mean, Red Pheasant.

24

25 Q Okay.

26 A Yeah.

27

28 Q Okay. So you weren't with Colton later in the evening?

29 A No.

30

31 Q Oh, okay.

32 A And then later on then -- right in the morning, like where it picked off, I told
33 him like what happened the next morning, right in the morning.

34

35 Q Yeah, I'm just curious what happened the night before because you seemed to
36 testify that you spent the evening driving around with Colton --

37 A Yeah.

38

39 Q -- and now you're saying you didn't?

40 A No, I spent the evening, and then I shut her down at 7:00, 8:00, I don't know,
41 around there.

1
2 Q Okay. Okay. Were you chased by the police at all the night before?

3 A No.

4
5 Q No? Any idea why anybody would think that you had been?

6 A Probably because there's a lot of names going around Red Pheasant, and you
7 can't trust anyone just offhand really.

8
9 Q Okay. Were you ever tested for GSR? Did anybody ever swab your hands after
10 this incident?

11 A Swab my hands?

12
13 Q Yeah. Ask you for a sample of your hands or swab your hands at all?

14 A No.

15
16 Q No?

17 A No.

18
19 Q Okay. The gun, did it go to the river with you?

20 A I'm -- probably, yeah, most likely.

21
22 Q Okay. So when my friend asked you whether there was a gun in the vehicle, in
23 the grey Escape that day, you said, No?

24 A I'm not sure. If it was in there, by the time we got to the house, then it was
25 probably in there all day. I didn't look in the trunk.

26
27 Q Okay. Well, actually in your first statement to the police you said exactly that,
28 is that you looked in the trunk and you saw it under a blanket, the gun?

29 A Well, I -- huh?

30
31 Q Which is right? Did you see it in the trunk under a blanket or not?

32 A Well, just -- it didn't look like a gun, but I thought it was a gun because it had
33 -- it was just black, yeah.

34
35 Q Okay. So do you think there was a gun in the trunk or not?

36 A It didn't look like it, but --

37
38 Q Okay.

39 A -- yeah.

40
41 Q And it wasn't your gun?

1 A Unh unh.
2
3 Q No? Okay. Any explanation why Eric would say it was your gun and that he'd
4 seen it, that you had it previously?
5 A I don't know. I remember him having a .22. Mmhmm.
6
7 Q But the gun that day --
8 A Yeah, he had a .22 that day.
9
10 Q Yeah --
11 A Yeah.
12
13 Q -- but you didn't see it at all?
14 A Yeah, I saw it on Red Pheasant.
15
16 Q You didn't --
17 A He showed me it.
18
19 Q -- see it in the vehicle?
20 A I -- it was -- there was a black piece of -- I don't know what -- what they call it,
21 the middle --
22
23 Q But you never saw --
24 A -- like the magazine and the barrel.
25
26 Q Okay.
27 A Yeah.
28
29 Q Where did you see that?
30 A Like, it -- it wasn't really a gun. Like, it has to be like something supporting the
31 back for -- it didn't look like a gun at all, but if you're asking me it was
32 probably a gun.
33
34 Q Okay. Where did you see this barrel?
35 A In the back. Well, yeah.
36
37 Q It was in the back?
38 A Mmhmm.
39
40 Q Back seat?
41 A Mmhmm.

Q Back seat?

THE COURT: You have to use words, if you would, please.

THE WITNESS: No, right in the trunk.

THE COURT: In the trunk?

THE WITNESS: Yeah.

Q MR. SPENCER: Okay. So was -- the whole gun was not in the back seat all day while you guys were driving around?

A The whole gun?

Q Yes.

A I think, probably just the -- the barrel. That's all I saw when we stopped to pick that thing up. I don't know, I was looking around for that thing.

Q I'm going to show you a picture there. Does that look like part of that gun that you saw?

A I didn't see that part. I saw the -- what's it called, the barrel and stuff.

Q Okay, but you said that --

A I saw the barrel, but before the day -- the day earlier I saw the gun.

Q Right.

A Yeah.

Q And was that the gun?

A Yeah.

Q Yeah. Okay. That's what -- that's all I needed to --

A Well --

Q -- so you saw the whole gun with that --

A Mmhmm.

Q -- stock attached to it?

1 A Yeah, and when -- yeah.

2
3 Q Okay. Now, you're saying now that you saw it the day before, but I think you
4 just finished testifying you saw it that morning on the way between the --

5 A I didn't say I saw it the day before. I said I saw it in the morning. It happened
6 while we were -- that evening, the afternoon, or I think it was in the morning,
7 probably, maybe 11.

8
9 Q So the evening after, earlier in the morning --

10 A Yeah --

11
12 Q -- that you saw it?

13 A -- probably morning, yeah.

14
15 Q Probably morning?

16 A Yeah.

17
18 Q Okay, but you saw the whole gun altogether before the (INDISCERNIBLE)?

19 A Like before, yeah. Mmhmm.

20
21 Q Right. And if it was in the vehicle, how would it get out of the vehicle? Where
22 do you think it went?

23 A I'm not sure.

24
25 Q Okay. And you're saying that you recognize that gun because you were shown
26 it?

27 A I saw it earlier, yeah.

28
29 Q Yeah. Kiora showed you it?

30 A Mmhmm.

31
32 Q Okay, but it's not your gun?

33 A No.

34
35 Q You'd never seen it before that morning when Eric showed it to you?

36 A Probably like a couple of weeks ago, like before that. Yeah.

37
38 Q Okay.

39 A I don't really hang around with that guy after he's been messing around with
40 my whole family. Nobody likes that guy.

41

1 MR. SPENCER: Could I have that marked as an exhibit?

2
3 THE COURT: D-1 for identification. It's a picture
4 shown to Mr. Cross.
5

6 **EXHIBIT D-1 - FOR IDENTIFICATION - Photo shown to Cassidy Cross**
7

8 Q MR. SPENCER: So your evidence is you never saw that
9 gun again after you started heading for --

10 A Mmhmm. I saw the barrel.
11

12 Q Okay. And where --

13 A The barrel.
14

15 Q -- did you see the barrel? You didn't see the gun with the stock on it?

16 A No. Like you said, I saw it in the back because we were looking around for
17 tools.
18

19 Q Okay.

20 A Maybe I cut that part out because I was kind of buzzed, and I told you that I
21 was going to tell you everything I know, and some parts cut out because I was
22 drinking. I had alcohol in my system, so some answers aren't really accurate,
23 but if I was sober I'd guarantee you that I would give you the full statement
24 and tell you everything that happened.
25

26 Q Okay. Well, let's -- let's talk about alcohol for a little bit then.

27 A Mmhmm.
28

29 Q What alcohol did you have that day?

30 A A 26 of apple or something, I don't know.
31

32 THE COURT: A 26 of what?
33

34 THE WITNESS: Apple vodka or apple flavoured, I don't
35 know, something like that, or blueberry.
36

37 Q MR. SPENCER: Or blueberry?

38 A Yeah. One of the two.
39

40 Q Now, do you know where that -- where the liquor came from?

41 A Colton had it when we were -- yeah.

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Q Where did he get it from?

A I'm not sure.

Q Did he tell you anything about how he got the liquor?

A No, I got a -- no, he didn't tell me anything about that.

Q He never mentioned that he --

A No.

Q -- got some free liquor?

A No.

Q It never came up?

A No.

Q Okay. No discussion of --

A He was just drinking -- I thought he -- he probably bought it or -- because I remember going there to go pick up Kiora with the Ford Escape in the morning. I was coming from my grandpa's house.

Q So there was no -- no discussion of a liquor store robbery?

A No.

Q No. Okay, but you were sure that -- are you sure that's all the booze that was there that day?

A All the booze?

Q Yeah.

A I don't know, they might have had a case of beer.

Q Okay. What kind of beer?

A I'm not sure, Lucky's.

Q Okay.

A Lucky's, yeah.

Q I'm going to show you a picture. Does that look like the group of you in the Ford Escape that day?

A Yeah.

1 Q Okay. You can see Colton holding a beer there. Do you recognize that type of
2 beer?

3 A Maybe he got it from his cousin or something. I'm not sure.
4

5 Q Okay. Do you recognize --

6 A I didn't --
7

8 Q -- what kind of beer that is?

9 A Huh?
10

11 Q Do you know what type of beer that is?

12 A You can't turn down free liquor, eh.
13

14 Q Okay. I'm going to show you another one then that looks like -- that's Eric
15 holding a --

16 A Smirnoff.
17

18 Q -- a 26 of Smirnoff?

19 A Yeah.
20

21 Q And --

22 A He's holding a beer.
23

24 Q -- and the beer. What kind of beer does that look like to you?

25 A Anyone could recognize it. It looks like Kokanee.
26

27 Q Kokanee. Yeah.

28 A Yeah.
29

30 Q Okay. Yeah, that's -- so now that you've seen those pictures, you would agree
31 with me that there was more booze there?

32 A Probably. I -- no, there was no booze in the vehicle. There was probably the 26
33 and that beer.
34

35 Q That's all the booze in the vehicle?

36 A Mmhhh.
37

38 Q Okay, (INDISCERNIBLE).

39 A There was probably an empty bottle in there.
40

41 THE COURT: Okay. Can we identify which is the first

1 one you showed to him?

2
3 MR. SPENCER:

Yeah, this is the first one.

4
5 THE COURT:

Okay. D-2 will be for identification, is --
6 well, we'll just mark it as D-2 for identification, and D-3 for identification, photos
7 shown to Mr. Cross.
8

9 **EXHIBIT D-2 - FOR IDENTIFICATION - Photo shown to Cassidy Cross**

10
11 **EXHIBIT D-3 - FOR IDENTIFICATION - Photo shown to Cassidy Cross**

12
13 Q MR. SPENCER:

Okay. So we're -- are you now certain
14 that that's all the booze that you had that day in the vehicle?

15 A There might have been an empty 60 pounder. I'm not sure.
16

17 Q Why would there be an empty 60 pounder in there?

18 A Because we drink. Don't people drink? You know -- you know how people,
19 they usually drink when they celebrate.
20

21 Q I'm going to suggest to you that you -- your statement, first statement to the
22 police indicated that there was a 60 ounce of Crown Royal in the vehicle --

23 A Yeah, but it --
24

25 Q -- and that you guys drank that?

26 A -- was empty, yeah.
27

28 Q Well, did you drink it though?

29 A It was empty when I got in the vehicle.
30

31 Q It was empty when you got in the vehicle?

32 A Mmhmm.
33

34 Q Okay.

35 A Like I said, you asked if there was any liquor in the vehicle, and I told you.
36

37 Q Okay.

38 A An empty bottle.
39

40 MR. SPENCER:

Okay. I'm going to show you -- do you
41 want me to read it to him, Your Honour, or -- it's the statement from the police or

1 show it to him (INDISCERNIBLE)?

2
3 THE COURT: You can show it to him if you'd like.

4
5 Q MR. SPENCER: Sir, I'm going to ask you to read through
6 that and see if you recognize that as a portion of the statement you gave --

7
8 MR. BROWNE: What page numbers?

9
10 Q MR. SPENCER: -- to the police?

11
12 MR. BROWNE: What page number though?

13
14 MR. SPENCER: Fifty-one.

15
16 THE WITNESS: Hmmm.

17
18 Q MR. SPENCER: Okay. Would you agree with me that
19 what your statement to the police indicates that --

20 A Yeah, we were drinking, but the bottle, when we entered the vehicle, was
21 empty --

22
23 Q Okay. (INDISCERNIBLE):

24 A -- but the 26 is -- yeah, the 26 is.

25
26 THE COURT: Gentlemen, you're talking over each
27 other, so just one at a time, please.

28
29 THE WITNESS: Okay.

30
31 Q MR. SPENCER: Okay. So the rest of them had already
32 drank a 60 before you started --

33 A Yeah.

34
35 Q -- but you had the vehicle first thing in the morning?

36 A Yeah, so they must drank it. If I remember, Colton had a 60 is where, that
37 much, but I didn't drink it. They must have finished it.

38
39 Q Okay. So it wasn't empty in the vehicle, it had some in it?

40 A No, not when we got into the vehicle, but when we were -- it was at his
41 kokum's house, that 60, and there was only like this much left, and I guess he

1 put it there a long time ago, he said. So they drank that, and then we still had a
2 full 26, so yeah.

3

4 Q Okay. Do you recall Eric handing you the rifle to attempt to break into a red
5 truck?

6 A Mmhmm.

7

8 THE COURT: I'm sorry, I didn't -- you didn't answer.

9

10 THE WITNESS: No.

11

12 THE COURT: Okay.

13

14 Q MR. SPENCER: Okay. So the first yard you went into,
15 what did you do when you entered that yard?

16 A Went straight to the front --

17

18 Q What's that?

19 A -- the house --

20

21 Q Went --

22 A -- right at the porch.

23

24 Q -- went straight up to the front?

25 A Mmhmm.

26

27 Q Okay. And did you go and knock on the door?

28 A I honked the horn, and then, yeah. I didn't get out of the vehicle.

29

30 Q Okay. So, but this is -- you're saying there was three yards you went into
31 altogether?

32 A Mmhmm.

33

34 THE COURT: Again, no answer.

35

36 THE WITNESS: Yeah.

37

38 Q MR. SPENCER: Yeah. The Stanley one being the third
39 one?

40 A Mmhmm. Yeah.

41

Q You didn't know any of these people?

A No.

Q Okay. So you got the flat tire. Where -- where did you get the flat tire? When was it flat?

A Oh, right before we hit the gravel road --

Q Okay.

A -- and it was just (INDISCERNIBLE).

Q Was it flat when you were leaving (INDISCERNIBLE)?

A No, it wasn't when we got on to the --

Q Okay. You didn't hit a culvert and damage the tire when you were at the bridge?

A No.

Q No. Okay.

A No, I don't think so, no.

Q Have you got that ruler? Can you show me how you -- can you find -- where would Red Pheasant be on this map? This is an RM map, so it's not perfect, but you know the area. Can you show me where the Red Pheasant town site would be on that map? You may need to do an extension of some of the roads there, but they can be --

A I don't know --

THE COURT:

Sorry.

THE WITNESS:

-- (INDISCERNIBLE).

THE COURT:

covering the microphone.

Counsel, he is up off his seat and

THE WITNESS:

can look at this because I can --

I can't -- well, can we take a break and I

THE COURT:

Yeah, go ahead. We'll take five minutes.

(ADJOURNMENT)

1 Q MR. SPENCER: Okay. Can you show me on the map
2 where you live?

3 A I looked at it, and they're all farmers' names, and I don't know the land off of
4 farmers' names. I know it by heart, like --

5
6 Q Okay, but you can't --

7
8 THE COURT: I'm sorry, Mr. Spencer, I can't hear you.
9 Your back is to me and you're speaking quietly, so --

10
11 MR. SPENCER: Sorry.

12
13 THE COURT: -- perhaps you could go by your
14 microphone.

15
16 MR. SPENCER: Okay. Well, (INDISCERNIBLE).

17
18 THE COURT: Yes, if you're going to speak loudly then.

19
20 Q MR. SPENCER: Okay, but you see the roads; right? You
21 see the highway?

22 A I see the highway. I don't see the back roads though.

23
24 Q Okay. Well, the roads are all on the map, it's --

25 A The highways, yeah.

26
27 Q Well, yeah, but those are all gravel roads, and all the roads are there; right?

28 A This part is Red Pheasant, and this part is -- I never heard of that name before,
29 but all I can tell by how the map looks, where the town site is and everything.

30
31 Q Okay. Can you tell me whether you drove on any of those roads that day?

32 A Maybe if you get a satellite description. I can't really tell.

33
34 Q Okay. Well, if I suggested to you that the first farm you went to was the Phoeby
35 farm, and that it was right in this area here, coming from the lake on this road
36 here, it goes from 713 on the right end to 8145 on the left end of that road,
37 there's two -- two farms right there by the 29. Can you see that? Can you stand
38 up and look at it? I'm going to suggest that that's the first farm you stopped at.
39 Would that seem right to you by the roads?

40 A I wouldn't tell, so I couldn't answer that.

41

- 1 Q No idea?
2 A I can't tell. No --
3
4 Q Any --
5 A -- by the maps I can't tell.
6
7 Q You have no idea where the Stanley farm is?
8 A No idea.
9
10 Q Okay.
11 A I can't even -- I don't even know where the hell that is. Sorry for cursing.
12
13 Q Okay. So you went to the first farm. You have no idea where it is on the map,
14 but --
15 A No.
16
17 Q -- you went to the first farm, and you drove right up to the house and you
18 honked your horn?
19 A Honked? That was the second house, the second.
20
21 Q Okay. What did you do in the first yard that you went to?
22 A I -- I was parked in the -- before that farm, and then Eric went walking off,
23 like, how I told you already.
24
25 Q Okay. Let's get the first answer. When -- where did the tire go flat? Where
26 were you when the tire went flat?
27 A By -- just on the gravel road. Didn't you ask me that question already?
28
29 Q Yeah.
30 A Mmhmm.
31
32 Q Can you show -- show me on the map where that would be?
33 A I already told you that I can't read it, so no.
34
35 Q Did it go flat at the bridge, at the river?
36 A It wasn't flat at the river, no. When we were on the highway it just --
37
38 Q And you don't recall hitting a culvert at the river?
39 A No, I don't recall.
40
41 Q Okay. So the first farm you go into tell me exactly what you do there?

- 1 A We go to the front, and then honk the horn on the second farm.
- 2
- 3 Q Okay, the first --
- 4 A Or the first farm?
- 5
- 6 Q -- farm? Yeah, the first farm.
- 7 A Okay. We parked quite a bit aways (sic) from it, and then Belinda and Eric got
- 8 through their fight, so Eric went walking out.
- 9
- 10 Q No. Once you were in the first farmyard? I don't care what you were doing on
- 11 the road, don't care.
- 12 A I can't answer that because I don't know the answer to it.
- 13
- 14 Q So you were driving the vehicle and you don't know what happened in the first
- 15 yard?
- 16 A It was a blur.
- 17
- 18 Q Pardon?
- 19 A You know when people drink, they black out. I thought whatever comes, you
- 20 know.
- 21
- 22 Q So were you blacked-out drunk?
- 23 A I wasn't blacked-out, but I'm a lightweight. I don't drink much, so I get drunk
- 24 easily, but I wasn't -- I was good to drive, I think.
- 25
- 26 Q Okay, well, there's all kinds of statements --
- 27 A I don't think anyone else wanted to drive.
- 28
- 29 Q And are you saying now that you were really drunk that night?
- 30 A I wasn't really drunk, no --
- 31
- 32 Q Okay. So --
- 33 A -- but I was -- I know when I get like a little bit drunk I'll -- I'm not used to
- 34 drinking alcohol, so it'll black out some parts and --
- 35
- 36 Q Okay. I thought you said in your statement to the police you were driving
- 37 because you were relatively sober?
- 38 A That was the day before.
- 39
- 40 Q In your statement to the police?
- 41 A Yeah. No, not that statement, but I was talking to these guys, so the day earlier.

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Q Talking to -- talking to what guys?

A The Crown Prosecutors earlier. You didn't -- if you were here or not, I'm not sure.

Q Yeah. No, I was around the whole morning.

A Well, you must have heard them then.

Q Yeah. Okay. So you have no recollection of what happened in the first yard then?

A No, I -- no.

Q Okay. Okay. Well, then that would be --

A I just -- all I remember is picking up Eric on the road.

Q Okay. And then you went --

A And then we went --

Q -- and picked him up on the road and went into the first yard?

A No, we picked him up on the road from the -- he was walking on the gravel road. Like I told you, I blacked out, so it doesn't matter how many times you ask that question, I'm still going to tell you I don't know.

Q Right, but then I ask you were you blacked-out drunk and you say, No, I wasn't that drunk?

A No, you asked me two times what I was doing when I went to the farm, and I told you I don't know, and then you asked the same question, so --

Q Okay.

A Yeah.

Q Okay. So the first farm you don't have any recollection of that because you were blacked-out?

A Yeah, just on and off, yeah.

Q On and off blacked-out?

A Yeah.

Q Yeah, so when you were -- when you weren't blacked-out were you pretty aware of what was going on?

A No. Everything -- everything all came to me when we went to Gerald's, at his

1 farm. That's when I just think the adrenaline made me kind of sober a little bit.
2 I'm not sure, but I didn't drink much.

3
4 Q Okay. You didn't drink much. Okay, so the first yard you don't have any
5 recollection of that. Is it possible that you went in a vehicle in the first yard and
6 searched through the console?

7 A I don't think so, no.

8
9 Q No, but you were blacked-out, so that could be --

10 A Yeah, so I wouldn't know, so you'd have to ask --

11
12 Q Yeah. Okay. So if Eric said you did that, that you went and searched through
13 the console and vehicle in that first yard --

14 A Mmhmm.

15
16 Q -- you'd say that's possible?

17 A I don't think so. He's a really rank liar, and he -- I don't know, you guys -- I
18 don't know if you guys would know, but his criminal record, he -- I don't
19 know, I just wouldn't trust that guy.

20
21 Q Okay, because --

22 A I wouldn't, no.

23
24 Q -- he indicated that -- that you got out of the vehicle and went to search
25 through --

26 A He got out first. He got out. He -- he kept on getting out.

27
28 Q Okay. Now, we're talking the first yard.

29 A Yeah. Oh, first yard?

30
31 Q The first yard --

32 A This --

33
34 THE COURT: Gentlemen --

35
36 THE WITNESS: -- the second.

37
38 THE COURT: Mr. Cross, you're not waiting for the
39 lawyer to finish asking his question --

40
41 THE WITNESS: Okay.

1
2 THE COURT: And counsel, you're not waiting for him
3 to finish his answer, so --
4

5 MR. SPENCER: Thank you.
6

7 THE COURT: -- perhaps you could both just wait.
8

9 MR. SPENCER: Thank you, Your Honour.
10

11 Q MR. SPENCER: So if Eric said that you searched through
12 a vehicle in the first yard, what's your response to that?

13 A There's a 90 percent chance he is lying.
14

15 Q Okay. Is it possible that he was the one that searched through that vehicle?

16 A It is really possible because I -- I don't like stealing. I don't do that.
17

18 Q Okay.

19 A And --
20

21 Q Do you have any recollection of him going through a vehicle in the first yard?

22 A Recollection?
23

24 Q Do you remember it?

25 A Like I told you for the third time, I don't know.
26

27 Q Okay. So the second yard you do remember what happened there?

28 A Yeah, because it was so --
29

30 Q Okay.

31 A -- long. It was --
32

33 Q Okay.

34 A -- like it was on and off.
35

36 Q Okay. So in the second yard you pull right up to the house and honk the horn?

37 A Yeah.
38

39 Q Okay. How long did you wait before you did anything after that?

40 A I'm not sure. I sit in the vehicle and then honk the horn, and it was a day drunk,
41 so nothing happened. We went back. We were going, and then Eric got out,

1 and then he went to the farm.

2
3 Q Okay. I thought he got out and you picked him up before you went to those
4 farms?

5 A No, after the first farm I picked him up. I remember picking him up after we
6 passed a farm, and then he -- I don't know, it was probably like half-an-hour
7 after we were parked there he took off. I remember we parked there. So half-
8 an-hour later we went to go pick him up, and he wasn't far from us, so he could
9 have got farther if he walked straight.

10
11 Q Okay. So that one was the second farm. The third farm is the Stanley farm --

12 A Yeah.

13
14 Q -- right? We'll get to that, but the second farmyard you pulled into --

15 A Mmhm.

16
17 Q -- tell me exactly what happened then because you said you remembered that?

18 A Like I said, like I remember some parts of it. I remember going there, and then
19 honking the horn and going -- going to the approach, sitting there and yelling at
20 Eric, and then going back and then that's about -- and then that's when we left
21 the (INDISCERNIBLE).

22
23 Q Okay. So if Eric said that you got in the vehicle and tried to start a truck and
24 tried to start it, the lights came on, any recollection of doing that?

25 A It was -- like I said it's a pretty good chance that he is lying because --

26
27 Q Okay.

28 A -- yeah.

29
30 Q So is he just completely lying or is that something that he did?

31
32 THE COURT: Counsel, I don't know if we're going to
33 get very far by him giving an opinion as to what Eric's ability to tell the truth is.
34 We want to know what his recall is, so --

35
36 MR. SPENCER: Right. Thank you, Your Honour. I was
37 trying to get to whether there was another version of the story or whether it was
38 just totally made up.

39
40 THE COURT: Well, you can ask him if, in fact, that
41 happened, and if he doesn't recall it or says it didn't happen, you can ask those.

1
2 MR. SPENCER:

Fair enough, Your Honour.

3
4 Q MR. SPENCER: So do you think Eric got out of the
5 vehicle and tried to start it in that yard?

6 A Like I told you, I don't know.
7

8 Q Okay. And you don't have any recollection?

9 A No.
10

11 Q No. Okay. I thought the second yard you weren't blacked out any more?

12 A Like I told you, it goes on and off. I told you, I remember going to the house,
13 honking the horn, driving to the approach, Eric getting off, me yelling at him,
14 him coming back. I don't think he did anything to -- anywhere. He just -- he
15 didn't go far from the vehicle, (INDISCERNIBLE), then he came back, then he
16 jumped back in, and then that's when we left.
17

18 Q And you're -- you're blacked out so that you don't remember any of this, and
19 you're still driving?

20 A I'm a pretty good driver when I'm drunk, yeah.
21

22 Q So blacked-out drunk you -- you get better then?

23 A Not blacked-out drunk, on and off.
24

25 Q Okay. So --

26 A I don't know, I'm not --
27

28 Q -- you -- you were --

29 A -- from other -- some -- somebody else's perspectives, I'm not sure how I
30 drive, but I say I drive pretty good.
31

32 Q Okay.

33 A I don't know.
34

35 Q Okay. Do you recall passing a bus load of kids by the Bible camp?

36 A No, I don't recall.
37

38 Q Do you recall going by the Bible camp?

39 A No.
40

41 Q Okay. Did you ever consider the -- and you know what I'm talking about when

1 I talk about (INDISCERNIBLE); correct?

2 A Like I say, we were going 30 or 40. We weren't going fast.

3

4 Q Okay. Did -- and you know where the Bible camp is?

5 A No.

6

7 Q No idea?

8 A No, I don't -- I'm not recognized with that area. I never go down that way.

9

10 Q Where did you -- where did you grow up?

11 A I grew up on Red Pheasant, but I -- I don't know if -- do you want me to get
12 into details about how I grew up, where I grew up?

13

14 Q No, I just want to know how it is that you grew up at Red Pheasant, and you
15 don't know where the Ranger Lake Bible Camp is?

16 A Well, yeah, I saw signs pointing towards it, but I don't know exactly where it
17 is.

18

19 Q Okay.

20 A I've never been there before. I've been to Cando Bible Camp. That's about it.

21

22 Q Okay. You had a flat tire at the point you saw those signs?

23 A Aren't those signs going towards Cando? When you go towards Cando it'll be
24 Ranger Lake pointing left. That's the only sign I recall. Other than that, I never
25 seen any signs saying Ranger Lake.

26

27 Q Okay, but do you recall seeing a sign directing to Ranger Lake Bible Camp?

28 A Yeah, about four years ago.

29

30 Q Not this day?

31 A No.

32

33 Q Okay.

34 A Like I said, that sign has been there my whole life, so I can tell you that I've
35 seen it because I have seen it.

36

37 Q Okay, but you didn't see it this day?

38 A No.

39

40 Q No. Okay. So if Eric said that you used the rifle to try to smash the window on
41 the red truck so you could steal it --

1 A You already asked that question, and I told you the answer. There's a 90
2 percent chance he's lying.

3
4 Q Okay. Maybe I can simplify this. Would you accept, sir, that as a group you
5 were going on to those farms looking for things to steal?

6 A No.

7
8 Q You won't accept that?

9 A Unh unh.

10
11 Q Okay. So now we'll talk about the Stanley farm. You have no idea, like from
12 what you've told me, you didn't even really know where you were?

13 A No, but I've heard about where I was, like after everything happened --

14
15 Q Okay.

16 A -- everyone talking about -- about it and stuff like that.

17
18 Q You heard about where you were?

19 A Yeah, like people were talking about it, saying -- like, other farmers saying that
20 they don't like Gerald. Yeah, just stuff like that, so yeah.

21
22 Q Okay. And does that kind of change your opinion of things?

23 A Like in how?

24
25 Q Well, did hearing these stories about Gerald, did that kind of change your
26 opinion?

27 A On what?

28
29 Q On what happened that day?

30 A No. I'm telling the truth.

31
32 Q Okay.

33 A I'm being honest and -- yeah.

34
35 Q Okay. So by the time you get to Gerald's, is your -- are you now not blacked-
36 out? Are you pretty -- you know what's going on?

37 A Sort of. What really sobered me up is when I started running. I heard gunshots.

38
39 Q Okay. This is an overview shot of the Stanley farm.

40 A Mmhmm.

41

- 1 Q And you've been through the other pictures?
2 A Yeah.
3
4 Q So would you agree with me now that you've had an opportunity to work your
5 way through --
6 A Mmhmm.
7
8 Q -- that this appears to be the driveway?
9 A It does. I don't remember the driveway being that long.
10
11 Q Right --
12 A Yeah.
13
14 Q -- but the picture is the picture?
15 A Yeah, the picture is the picture, yeah.
16
17 Q You accept that nobody has doctored the picture?
18 A Mmhmm.
19
20 Q Do you agree that this is --
21 A Yeah.
22
23 Q -- a fair picture? Okay. And certainly this is the vehicle you were driving.
24 That's -- you recall it coming to a stop there?
25 A Yeah.
26
27 Q Okay. And you recall you were driving it. Do you recall it heading straight for
28 the riding lawn mower?
29 A No, after I hit that vehicle the acceleration went down.
30
31 Q Okay.
32 A So it didn't go nowhere, it just --
33
34 Q Okay.
35 A -- was rolling.
36
37 Q Good thing it did, eh, or you would have ran right over that lawn mower?
38 A Yeah. Well, I probably would have dodged it, I don't know, but I was scared.
39
40 Q Okay. And why were you scared?
41 A Because they started yelling, and they hit the window with an axe, all over my

1 face.

2

3 Q Okay. Tell me about that, all over your face.

4 A Okay. Well, what happened was, I told Eric to get back in the vehicle, and then
5 we saw those people, and by the seventh start you just -- he said, To hell with
6 it, and he came back to the vehicle, and I -- I was going to the -- the house, and
7 then I went back, and then as I was shutting the door, I'm not sure if it was that
8 guy or another guy, but they came with an axe and they hit the window and left
9 a big mark like that, and everything just came flying into my face, and I put it
10 in reverse and --

11

12 Q Okay. So the window smashed right in, did it?

13 A Not all the way, no.

14

15 Q Okay, because I'm going to show you a picture of the truck. Does that look like
16 the vehicle --

17 A Yeah.

18

19 Q -- you were in?

20 A Yeah.

21

22 Q You can see where it's been hit?

23 A Yeah, with an axe.

24

25 Q Okay. It doesn't look like it's smashed in though. It looks like it's all spidered
26 and cracked, but --

27 A Yeah. Well, usually when you hit impact, and then on the other side it'll just --
28 a little -- like, it -- it'll give enough pressure for the glass to shatter, if you
29 know what I mean.

30

31 Q Okay. Well, I don't know what you mean because it seems --

32 A Okay.

33

34 Q -- that glass tends to either break or not break. So what you're telling of being
35 -- having a whole bunch of stuff in your face in this picture, they don't seem
36 consistent to me?

37 A It doesn't. Well, it -- you're probably looking on this side. There's probably
38 like -- this is bits --

39

40 Q Yeah, but --

41 A -- little pieces. Yeah, little pieces.

Q Yeah, okay.

A I'm talking -- I'm not talking about big giant glass pieces or anything like that.

Q Okay. Okay.

A I'm talking about little shreds.

MR. SPENCER: Can we get that marked, please, Your Honour?

THE COURT: D-4 for identification, photo shown to Mr. Cross.

EXHIBIT D-4 - FOR IDENTIFICATION - Photo shown to Cassidy Cross of motor vehicle

Q MR. SPENCER: So on the photo here, can you grab the ruler and show me where you pulled up and stopped? Where is the first place you stopped when you got into the --

A Didn't I already tell you, around here?

Q Okay. Now -- and then you walked over to the house?

A Yeah, I was going towards the house, and then --

Q Okay. So where are you saying you stopped? Just put (INDISCERNIBLE) right there?

A Right here.

Q Right in there?

A Yeah.

Q Is that fair?

A Yeah.

Q Okay. Now, when you were testifying with my friend -- to my -- with my friend questioning you, you indicated that you pulled right up to the front of the house?

A Yeah. Like I told you, I was blacked out, and all the houses, they seemed all squished together. They seemed close by.

Q Okay.

1 A Like I told you, when I looked at this image it didn't bring up anything because
2 I didn't recognize it. I can only recognize it when I'm standing on the ground,
3 and I'm looking at it. They look all close, and from here it looks all far apart.
4

5 Q Okay, but this is reality, you understand.

6 A I know it's reality, but --
7

8 Q Yeah, and so now we -- we know what it actually is, so I'm trying to get your
9 evidence to fit into reality.

10 A Yeah, that's what I'm trying to do here, too.
11

12 Q Okay. So you didn't pull up to the house?

13 A Didn't I just tell you, I pulled up right here.
14

15 Q Okay.

16 A Yeah.
17

18 Q Well --

19 A I said I pulled up by the house, like not right in front of it.
20

21 Q How far were you away from the house?

22 A You see that right there, that's where I was parked.
23

24 Q Okay. You can't estimate the distance?

25 A Twenty feet.
26

27 Q Okay.

28 A Yeah.
29

30 Q Okay. So when you -- you would have come in this driveway; right?

31 A Mmhmm.
32

33 Q You were driving the grey SU --

34 A Yeah.
35

36 Q --- or Escape? Do you see that vehicle?

37 A Yeah, I see it.
38

39 Q Okay. Do you know what it is?

40 A It's a vehicle. It's a Ford Escape.
41

1 Q Okay. Why were you pulling into this yard?

2 A For -- to ask for help.

3

4 Q Okay. And what did you need?

5 A I needed to use the phone. I was going to call my Uncle Clint.

6

7 Q Okay. Nobody in the -- in the vehicle had a cell phone?

8 A Kiora did, but she didn't want anyone going on it. She was being stingy. She
9 was -- I think she was on Facebook.

10

11 Q Okay. So you --

12 A And then --

13

14 Q -- were driving around in her vehicle with a flat tire --

15 A Mmhhh.

16

17 Q -- and she wouldn't let you use her phone to call --

18 A She --

19

20 Q -- for help because she was on Facebook?

21 A Yeah, you should imagine her when she is drunk. Like, you should know, like
22 how people, when they're drunk, they're not themselves (sic). When people are
23 smashed they're a different person.

24

25 Q Okay. Well, was --

26 A Like, alcohol --

27

28 Q -- everybody blacked-out drunk or --

29 A I don't know, they --

30

31 Q -- you just told me that people weren't that drunk. You --

32 A They weren't that drunk, but when Kiora drinks she gets blacked out.

33

34 Q Five people got blacked-out drunk on a 26?

35 A I'm not sure. I picked them up. I picked up Kiora and Colton. Like I said, I told
36 you guys, I picked them up from the town site in the morning.

37

38 Q You needed a spare tire and a jack --

39 A Yeah.

40

41 Q -- for a Ford Escape?

1 A A Ford what?

2
3 Q Or sorry -- yeah.

4 A Oh, we weren't planning on fixing the tire.

5
6 Q Okay.

7 A We were going to probably tow it back.

8
9 Q Okay. So isn't that a pretty fortunate thing to pull into a yard when you're
10 driving a Ford Escape with a flat tire, and right in the middle of the yard the
11 first thing you see is a Ford Escape?

12 A Yeah, it is pretty weird, but I thought it was a BT Cruiser at first. All I saw was
13 blue. I thought it was a BT Cruiser because my auntie has a BT Cruiser, and
14 what I remember, in that day, was a BT cruiser, and I'm not sure if it was a
15 Ford Escape or not. So when I pulled in there I was getting (sic) for help, and I
16 wasn't there to steal nothing.

17
18 Q Oh, okay. Okay. So if you needed a phone, where is the phone going to be over
19 here? You're parked here. Where are you going to get a phone?

20 A I don't know, just -- well, I can't see from -- I went towards the house. I was
21 going towards the house, and I didn't get there because Eric --

22
23 Q Do you have any explanation for why --

24 A I'm not --

25
26 Q -- if you wanted to use the phone, why you didn't pull up to the front of the
27 house and go and knock on the door?

28 A That's what I'm trying to remember right now. I blacked out, but I remember I
29 did go there for help. And I don't know, I was blacked out, but I don't know
30 where I would park.

31
32 Q Okay. So in any event, this is where you said you did park?

33 A Yeah.

34
35 Q Okay. Do you recall, did you get out of the vehicle and go through this?

36 A No. I didn't touch that vehicle, no.

37
38 Q Did anybody?

39 A I don't -- no, Eric didn't go towards that vehicle.

40
41 Q Okay. So nobody got out of your vehicle, the grey SUV, and went into this, it

1 looks like a white half-ton here?

2 A All I remember is, Eric going right there. That's all I remember.

3

4 Q Okay. So you pull up and stop here. Nobody goes in this white truck that's
5 right in the middle of these three?

6 A Mmhmm.

7

8 Q Okay. So you are walking to the house?

9 A Yeah.

10

11 Q Okay. And then --

12 A I didn't go to that truck at all.

13

14 Q Okay.

15 A You can put me on a lie detector. I'll tell you the truth. I'll -- but --

16

17 Q Okay. Well, would you pass a lie detector that nobody in your vehicle went in
18 that truck?

19 A Yeah. I --

20

21 Q You'd pass that one?

22 A -- because I remember specifically Eric getting out and going to that quad and
23 starting it up and coming back.

24

25 Q Okay.

26 A He didn't go anywhere else.

27

28 Q Okay, but I'm going to suggest to you that you pulled up and stopped here?

29 A Mmhmm.

30

31 Q Somebody in your vehicle got out and went through that truck, went through
32 the console, dug in -- in the vehicle?

33 A I don't recall, no.

34

35 Q No recollection?

36 A Unh unh.

37

38 Q Okay. So you're saying you got out and started walking to the house?

39 A Yeah.

40

41 Q And why wouldn't you have carried on and knocked on the door?

1 A Because Eric was right there, trying to start up the vehicle, and on his third
2 one, I guess, they saw him and they started yelling, and I was like, fuck sakes
3 -- oh, sorry for my curse language, I got mad and I said, Eric, let's go. And --
4

5 Q Where are you then?

6 A I was about right here.
7

8 Q Okay.

9 A And then I was walking towards there, and then once I --
10

11 Q So you were heading towards the house?

12 A Yeah.
13

14 Q Okay. And this is the grey SUV, and you said nobody went near this vehicle?

15 A Nobody.
16

17 Q Okay. So where was -- where did you see Eric next?

18 A The trailer was right here.
19

20 Q Okay, so the trailer is where the -- it's a Caterpillar, you see the --

21 A Yeah.
22

23 Q -- tracks on it?

24 A Yeah.
25

26 Q It's a big CAT, eh?

27 A Mmhmm.
28

29 Q So the trailer was where the CAT was?

30 A Yeah, and the quad was about right there.
31

32 Q And the quad was on the trailer?

33 A Yeah.
34

35 Q Okay. So which way is the front of the trailer?

36 A The front was on this side. It was parked -- this side was parked in like this.
37

38 Q Okay. So it was backed in to where --

39 A Yeah.
40

41 Q -- the CAT was?

- 1 A And there was the quad, and then there was a bunch of stuff on the other side. I
2 don't know how much stuff.
3
- 4 Q A bunch of stuff on the trailer?
5 A Yeah, it was --
6
- 7 Q So the quad was actually up on top of the trailer?
8 A Yeah.
9
- 10 Q Okay. So where did you go -- so you were yelling --
11 A Yeah, he --
12
- 13 Q -- he's -- he's on the quad over here?
14 A Yeah.
15
- 16 Q And you see him, and you're saying --
17 A Yeah, I got off. So I went walking towards this way, and then that's when he
18 got off. I didn't know he got off and then he --
19
- 20 Q Got -- got out of the vehicle you mean?
21 A Yeah, I -- and I heard a quad starting, so I looked, and then all of a sudden I
22 heard people yelling.
23
- 24 Q So he's on the quad on the trailer?
25 A Mmhmm.
26
- 27 Q Okay.
28 A Trying to start it up.
29
- 30 Q Okay. So at this point do you know if there is anybody else around?
31 A I didn't know. I was going towards the house to go check.
32
- 33 Q Okay.
34 A I was going to go use the phone, and then they started yelling. I don't know, I
35 think they -- they came from around here, and they started yelling, and they
36 started cursing, and then they started running. And then that's when I looked at
37 them, and I was like fuck sakes, man, they're probably going to try and do
38 something, and then --
39
- 40 Q Well, why did they try to do something?
41 A Because I'm trying to ask for help, and then some dumb person tries to steal

1 their stuff while we're trying to ask for help. Like --

2

3 Q Right.

4 A -- how stupid is that? We -- I tried to go there, and I got mad at Eric, and I
5 started calling him names, dumb stuff, and I get back in the vehicle. I pulled
6 out, and then --

7

8 Q The vehicle has a flat tire right here?

9 A Yeah.

10

11 Q Okay.

12 A And I backed up.

13

14 Q Okay. Did you move the vehicle with -- how many times did you park the
15 vehicle?

16 A Once.

17

18 Q Once?

19 A Once.

20

21 Q That's the only place that you ever went was right there?

22 A Yeah. And then -- and then boom, and then --

23

24 Q Okay. So then you backed up --

25 A Mmhmm.

26

27 Q -- and then you left?

28 A Yeah.

29

30 Q Okay.

31 A I'm not sure which way I backed up though.

32

33 Q Yeah, no, I hear that because you wouldn't be able to back up this way because
34 that trailer is there?

35 A Mmhmm. Well, that trailer was right here.

36

37 Q Yeah, no, I know what you're saying.

38 A Yeah --

39

40 Q I know what you're saying --

41 A -- but --

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Q -- but it actually was right there?

A -- really --

Q Yeah.

A It's weird.

Q Yeah. Yeah, it's odd. Now, I'm going to suggest to you that -- that you parked right here, that you actually pulled up, stopped here, somebody got out, went through this truck, nobody went to the house, and then the vehicle, you driving --

A Well, I don't recall.

Q -- pulled up right there?

A I don't recall.

Q You don't recall?

A No.

Q Okay. I'm going to show to you -- show you two black spots on the gravel right there.

A Yeah.

Q Is it possible that those black spots are the marks left by your really hot rim that you've been driving on for over half-an-hour?

A I'm not sure. Like I said I was -- like, in-and-out blackouts. I --

Q Okay.

A -- I can tell you what I remember, but I can't tell you what I can't remember.

Q Okay.

A You know what I'm saying?

Q Okay.

A So I'm trying my best to (INDISCERNIBLE).

Q Yeah. Yeah, but you don't really have any recollection then?

A (INDISCERNIBLE).

Q So if I suggested to you --

A I remember -- I remember like specifically going -- going there for help.

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Q Right. And we -- the one thing we agree upon is that it's kind of foolish to go into somebody's yard to get help --

A Mmhmm.

Q -- and then start stealing their stuff?

A Yeah, it is really foolish.

Q Yeah, and that's what Eric did?

A Yeah.

Q Can you answer --

A I remember, yeah. Yeah.

Q So you remember Eric getting on the quad, starting it up --

A Yeah, he was, yeah.

Q -- and trying to steal it?

A And then everything went all mixed up after that. I --

Q Okay. So if I'm suggesting to you that you actually pulled up right beside the quad, and then Eric got out and got on the quad and you were within feet, within --

A I'm not sure --

Q -- six feet of the quad?

A -- maybe I saw people -- I don't know, I'm not sure where they came out of, but like I said, I told you --

Q Yeah, don't worry about that.

A Yeah.

Q Is it possible that you actually, driving the vehicle, pulled up, right up beside the quad --

A Well, it is possible, yeah.

Q -- to leave those marks there? That's possible?

A Yeah.

Q Okay. So when Eric got out and got on the quad, you knew what he was doing, that he was trying to steal it?

1 A Yeah. Well, I started walking --

2
3 Q I didn't hear your answer. Yes?

4 A Yes.

5
6 Q Yeah, okay.

7 A I knew he was trying to --

8
9 Q You knew he was trying to steal it?

10 A -- that's why I started giving him shit.

11
12 Q Yeah.

13 A I didn't know he was going to steal it, but then once he started doing it, I knew
14 he was trying to steal it.

15
16 Q Okay. And so reasonable for the homeowners that are approaching you guys,
17 the group --

18 A Mmhmm.

19
20 Q -- group of you to say those people are trying to steal our quad?

21 A Yeah, they probably thought that.

22
23 Q Pretty obvious, eh, wouldn't it, that would be the only --

24 A Yeah.

25
26 Q -- rational conclusion?

27 A Yeah.

28
29 Q Yeah. Okay. So whether you're walking --

30 A I wouldn't -- I wouldn't kill a guy if he was trying to steal. That's -- that's
31 dumb. I don't know why someone would think that. Like, would you --

32
33 Q Would think what?

34 A Like, would you kill someone if they tried, like, going to your --

35
36 THE COURT:

Mr. Cross, you're here to answer

37 questions, so --

38
39 THE WITNESS:

Okay. Yeah, there you go.

40
41 THE COURT:

-- perhaps you can just answer the

1 questions.

2
3 Q MR. SPENCER: Okay. So whether you're walking over
4 here, the one version of the story that you only parked there, and you're
5 coming back, and -- and the homeowners are coming up the hill from the blue
6 truck towards the white truck --

7 A Yeah.

8
9 Q -- or whether you're actually over here in the --

10 A Like I said, I told you specifically where I thought I parked. When you go there
11 -- if you go there, everything is all -- it seems like it's all squished and
12 everything seems like it's all close together.

13
14 Q Oh, no, I appreciate that --

15 A Yeah.

16
17 Q -- that's how you kind of recall it.

18 A Yeah, like I'm just telling you that I -- you told me -- you asked me where I
19 thought -- where I think I parked, and where I think I -- like where I parked,
20 and I said, Right there, because that's where I -- like I remember it.

21
22 Q Yeah. And we have a bit of a luxury in this instance because of the rim because
23 the rim tracks exactly where you went, so we've already had a police officer --

24 A Mmhmm.

25
26 Q -- track exactly where you went. So I'm going to suggest to you that he was
27 able to track you pulling up beside this vehicle and stopping, the white vehicle
28 in the middle?

29 A Mmhmm.

30
31 Q And then trace you pulling up beside the quad?

32 A I didn't get out though.

33
34 Q You didn't get -- right, but you would agree with me that that -- that likely
35 happened, that you actually drove up beside the quad?

36 A With the alcohol and that stuff, yeah.

37
38 Q Oh, okay.

39 A Yeah, I remember parking. I just don't remember where I parked.

40
41 Q Okay. So what --

1 A Does that --
2
3 Q -- go ahead. Sorry.
4 A Okay. Sorry. I remember I parked right in the middle of everything, like,
5 because I remember like I -- I remember everything like exactly everything
6 was all there, and I remember parking right here.
7
8 Q Okay, so that's clear -- crystal clear in your mind --
9 A Mmhmm. Maybe --
10
11 Q -- or were you blacked out?
12 A I was blacked out. I'm thinking maybe I parked there, and then Eric went
13 running there, so I went over there to go pick him up. I don't know, that's my
14 only conclusion I have.
15
16 Q Okay. So maybe he jumped out here and went there?
17 A Went running, yeah. And then --
18
19 Q Okay.
20 A -- those guys started (INDISCERNIBLE).
21
22 Q You never left the vehicle? Sorry.
23 A I never -- I went -- this is me right there, see that?
24
25 Q Yeah.
26 A That's me, yeah.
27
28 Q Okay. So if Eric went there to the quad, and then you were going to the
29 house --
30 A Yeah.
31
32 Q -- who was going through the truck?
33 A Huh? I'm not sure. I never touched that truck. Honestly I can say that. I never
34 touched that truck once.
35
36 Q Okay.
37 A I didn't even see it.
38
39 Q Okay. So you're saying it's possible that you got back to the -- to the grey
40 SUV --
41 A Yeah.

1
2 Q -- and drove over --

3 A I heard people yelling, yeah.
4

5 Q You heard -- to pick Eric up or --

6 A No, just yelling and swearing, and then I heard the quad starting, and I -- that's
7 when I -- I got really mad, and I was like getting mad. I gave him shit, and then
8 I went there, went over there, and then that's when I hit it, and then backed up.
9

10 Q Okay. So the -- the homeowners or, I guess --

11 A Yeah, (INDISCERNIBLE).
12

13 Q -- that's fair enough, you know who I'm talking about --

14 A Yeah.
15

16 Q -- they're coming up the hill, and they're yelling because --

17 A Mmhmm, trying to steal something, yeah.
18

19 Q -- you're stealing their -- their vehicle? So what did you do then? Did you
20 consider saying, hey guys, flat tire, need some help here?

21 A I didn't consider it because they're coming at me with an axe. I seen them.
22

23 Q Okay, but what if they didn't have an axe?

24 A Well, yeah, that wouldn't -- I'd stop (INDISCERNIBLE) doing.
25

26 Q Okay. So if they didn't have an axe you would have said --

27 A Yeah, because --
28

29 Q -- hey, guys, I need some help here?

30 A Well, you can never trust anyone. Like, someone coming up to you with -- with
31 an axe, what do you think they're going to do? You're on -- they're going to hit
32 you --
33

34 THE COURT:

Okay. Just --

35
36 THE WITNESS:
37 put it down?
38

-- or do you think they're just going to

39 THE COURT:

-- Mr. Spencer, perhaps this is a good

40 time to break, is this, for afternoon?
41

1 MR. SPENCER: I was hoping (INDISCERNIBLE).

2
3 THE COURT: Okay. Mr. Cross, you'll have to come
4 back. We'll start at around 1:30.

5
6 THE WITNESS: 1:30?

7
8 THE COURT: Okay. If you could go --

9
10 THE WITNESS: Okay.

11
12 THE COURT: -- I just have a few things to talk about
13 with the lawyers. Okay?

14
15 THE WITNESS: Mmhmm.

16
17 THE COURT: So if you'll step out, Mr. Cross, please.

18
19 THE WITNESS: I can step out?

20
21 THE COURT: Okay.

22
23 THE WITNESS: Sweet.

24
25 (WITNESS STANDS DOWN)

26
27 **Discussion**

28
29 THE COURT: If you're on your feet, please leave; if
30 not, please have a seat. Thank you.

31
32 We'll continue at 1:30. Mr. Spencer, when you invite him to speculate as to what
33 he might have done had something else happened, then we usually get him asking
34 you questions, so is there a reason to ask him to speculate?

35
36 MR. SPENCER: Well, I guess, Your Honour, because of
37 the -- the explanation that's been given, and you know, certainly I would like to
38 hear the witness simply, you know, accept certain basic facts that I think are
39 established in the evidence already, and then we could move along fairly quickly,
40 but it's -- it's difficult when, you know, there is explanations that simply aren't
41 confirmed by any of the other objective evidence. So that's -- that's what I'm

1 struggling with.

2
3 THE COURT: Well, I understand that, but the last
4 question was that you asked him if he didn't have an axe what would you have
5 done, so --

6
7 MR. SPENCER: Yeah.

8
9 THE COURT: -- that's into speculation and not a
10 question about what, in fact, happened.

11
12 MR. SPENCER: Yeah, and of course --

13
14 THE COURT: If you're --

15
16 MR. SPENCER: -- Your Honour, my -- my -- that's a
17 good example of -- but there was no axe, and so then the explanation of why 'A',
18 'B' and 'C' followed, but you know, it's based on the axe. Well, there was no axe.
19 We've -- I think that's -- or at least I believe that's --

20
21 THE COURT: Well, we have the one witness saying
22 there was no axe. Maybe, in fact, there was an axe. So I'm just -- I'm concerned
23 about asking him to speculate. You can -- you can say to him, in fact, there was no
24 axe --

25
26 MR. SPENCER: Yeah.

27
28 THE COURT: -- so why did you do that, but rather than
29 say, if there wasn't an axe what would you have done or that type of thing.

30
31 MR. SPENCER: I appreciate your direction, Your
32 Honour. I see those questions as very similar, but I appreciate your direction and
33 I'll try to focus, and I do appreciate the challenge that I -- that I have with this
34 witness, and I'll try over lunch to -- to come up with a better strategy to get it
35 wrapped up sooner.

36
37 THE COURT: Okay. No -- no need to wrap up sooner.
38 You're -- you can go on as long as you need to. 1:30. I do have another matter in
39 another court at 1:15, so hopefully it won't take very long, and we can start at
40 1:30.

41

PROCEEDINGS ADJOURNED UNTIL 1:30 PM

April 4, 2017

Afternoon Session

The Honourable Judge
B. Bauer

The Provincial Court
of Saskatchewan

W. Burge, Q.C.
C. Browne
S. Spencer
S. Yoner

For the Crown
For the Crown
For the Accused
Court Clerk

THE COURT:

Good afternoon.

MR. BROWNE:

Good afternoon, Your Honour.

THE COURT:

Good afternoon, Your Honour.

MR. SPENCER:

Good afternoon, Your Honour.

(WITNESS RE-TAKES STAND)

CASSIDY CROSS, Previously Sworn, Cross-examined by Mr. Spencer

Q MR. SPENCER:
Is it possible it was a hammer?

When we broke, I was discussing an axe.

A It is possible, yeah.

Q Okay. So that one person had an axe or a hammer as they approached the
Escape?

A Mmhmm.

Q And do you know where you were parked at that point?

A Right there. I drove up, and then picked him up, and then that's when it all
happened.

Q Okay. So I'm going to try to help a little, but maybe you'll have to come across

1 here, but His Honour may be (INDISCERNIBLE). Is it fair to say you were
2 parked there?

3 A Yeah, we pulled up there.

4
5 Q Okay.

6
7 THE COURT: There being right in front of the large
8 Quonset?

9
10 Q MR. SPENCER: Right in front of the silver --

11
12 THE COURT: Okay.

13
14 Q MR. SPENCER: -- shed right beside the -- the quad. It's
15 right beside the big yellow CAT. Okay. It looks like you backed up here? Does
16 that make sense to you?

17 A That's correct.

18
19 Q Okay. So now pointing to where the wording starts on the exhibit, 44, P-44
20 (sic) of --

21
22 MR. BROWNE: P-1.

23
24 Q MR. SPENCER: P-1. So is it at that point that the two
25 gentlemen got to the vehicle?

26 A No, not when I was backing up.

27
28 Q Oh, where did -- where did you -- where did they get to the vehicle?

29 A When I go -- went to go get Eric right there, the red line.

30
31 Q Up here then?

32 A Yeah, he was there, and I didn't want to go like in a full circle. I backed up,
33 and I just tried --

34
35 Q Oh, you -- oh, you --

36 A -- I tried getting out of there as soon as I can.

37
38 Q Okay, but where did the -- where did the two landowners, where did they get --
39 get to the truck? When did they get to the truck? Where were you at?

40 A They got there when Eric was almost in the vehicle.

41

1 Q Okay. So right up -- right up here by the quad?
2 A Yeah.
3
4 Q Okay. I would suggest to you that they were yelling and running towards you.
5 Eric jumped in and you backed up here and almost hit them?
6 A No, they were already at the vehicle before I backed up.
7
8 Q So it was right up here?
9 A Yeah.
10
11 Q Okay.
12 A Both of them.
13
14 Q Both of them. Okay. So the one with the axe or the hammer hit the windshield.
15 We seen the photo of that. Agreed?
16 A Yeah.
17
18 Q Agreed. Did the other one have anything in his hand?
19 A I'm not sure, like I said.
20
21 Q Okay.
22 A Everything happened so fast.
23
24 Q Okay. You don't recall a gun?
25 A I don't recall.
26
27 Q Okay. Any reason -- okay.
28 A I thought that that big thing was a gun, like the -- kind of a big axe. It kind of
29 looked like a gun, but --
30
31 Q No, sorry.
32 A Oh, I thought you were --
33
34 Q Sorry.
35 A -- talking about that.
36
37 Q Okay. No, you go ahead and --
38 A Okay --
39
40 Q -- finish. I apologize.
41 A -- but I thought it was, and then after these past months I've been thinking

1 about it, thinking about it, and it probably just was an axe.

2

3 Q Okay, but I'm talking about the other guy. There's one guy with an axe --

4 A Mmhmm.

5

6 Q -- or a hammer?

7 A Yeah.

8

9 Q The other guy, what did he have?

10 A Oh, I didn't -- I don't know.

11

12 Q You don't recall anything?

13 A No.

14

15 Q Okay.

16 A My focus was on that one.

17

18 Q Okay. Did you suggest to the police that he had a -- a rifle?

19 A Yeah, I suggested, yeah.

20

21 Q Yeah. Why would you suggest to the police that he had a rifle with him then?

22 A Because I thought the one with the axe was a rifle.

23

24 Q No.

25 A I didn't see the other.

26

27 Q Sorry, I was cutting you off here because you're -- you're starting a bit -- but
28 I'll give you a bit more time to finish.

29 A It's all right.

30

31 Q In your police statement you suggest one had an axe and the other one had a
32 gun?

33 A Mmhmm.

34

35 Q Do you agree with me?

36 A Yeah.

37

38 Q Okay. So you're now saying that there is one guy that had an axe or a hammer
39 and the other guy didn't have anything?

40 A Like I said, it happened fast and I make -- well, people make mistakes; right?
41 They're not always right. Some people assume stuff, and that's what I was

1 assuming because everything was happening. It's not every day someone gets
2 killed.

3

4 Q But we can't have you assuming stuff; right? You've got to tell us what you
5 know.

6 A I just told you what I know.

7

8 Q Okay. So after you backed up, and you're saying the window was -- was broke
9 before you started to back up?

10 A The -- yeah, the windshield.

11

12 Q Okay. So you backed -- after it was broke you backed up passed -- away from
13 the -- the two gentlemen; right?

14 A Mmhmm.

15

16 Q Backed up -- you backed the back end up to the lettering on the -- on 44?

17 A Yeah.

18

19 Q Agreed? And then you headed out of the yard. And at that point did they chase
20 you?

21 A Well, I didn't look back.

22

23 Q Okay.

24 A Mmhmm.

25

26 Q So at that point you backed away from them. You did a quick turn, and you
27 were heading out of the yard?

28 A Yeah.

29

30 Q No reason to believe they were following you?

31 A They were running after -- they were running.

32

33 Q Okay. Well, that's what I just asked you.

34 A Yeah.

35

36 Q Did they chase you, and you didn't seem to know, but now you're saying they
37 chased you?

38 A When I was parked, yeah, but when I was driving away I'm not sure if they
39 chased me because my eyes were directly on the road.

40

41 Q Okay. So you don't know what's happening behind you. They're standing

1 behind you, you're going away?

2 A At one point they chased me. At one point they came running after --

3

4 Q What point?

5 A Well, you already know. Like, I told you before that he came running --
6 running; right?

7

8 Q Well, they're coming running --

9 A Yeah, there you go.

10

11 Q -- up -- up the hill --

12 A That's what I just -- that's --

13

14 Q -- because Eric is stealing the quad?

15 A Mmhhh.

16

17 Q And then the windshield gets broke, you say here. I'm going to suggest to you
18 it was here when you were backing up --

19 A No.

20

21 Q -- but you say it was here by the quad. When did they chase you after that?

22 A No, not after that. Like I told you, they chased me. I told you they chased me,
23 and after that I left.

24

25 Q Okay.

26 A I wasn't sure if they chased me while I was leaving.

27

28 Q They didn't really chase you. They just ran up to the vehicle and smashed the
29 windshield?

30 A Yeah.

31

32 Q Okay. So you're driving away, and the forensic officer for the -- for the RCMP
33 has determined your path with the blue arrows. Now, you say that you -- the
34 wheel pulled you into the --

35 A Yeah.

36

37 Q -- to the car? So the wheel was pulling you to the right?

38 A I was skidding. Like I pressed the pedal all the way down, and it started
39 spinning, and I -- I'm pretty sure that rim was spinning the most.

40

41 Q Right. Yeah.

1 A Yeah, and --

2
3 Q Well, that made sense.

4 A I was going, and I just -- as I remember it, I had something in my eye, so I was
5 -- I bet you it was like glass. I just tried to get out of there as best I could, and I
6 lost control of the wheel. Like I said, I was drinking a little bit, and it -- yeah.

7
8 Q Okay, but you would agree with me that having driven the vehicle for probably
9 an hour with the -- the tire off, that it would pull to the left; right? It would pull
10 to the way of the flat tire?

11 A Yeah. So like it would make sense for someone to pull you to the other side
12 because it's pointing to -- to the other side, don't you think? Instead of pulling
13 to the left, wouldn't you pull to the right --

14
15 Q Yeah.

16 A -- or would you keep on going to the left.

17
18 Q Oh, and if -- sir, if you were veering way over here, and then corrected, I might
19 agree with you, but you were going straight out the yard until you got to the
20 blue vehicle and then took a hard right?

21 A I don't know, maybe --

22
23 Q Do you have an explanation for that?

24 A I don't know, maybe --

25
26 Q Okay.

27 A -- check the vehicle. Maybe it's a malfunction or a --

28
29 Q Okay. Is it possible that you were driving out of the yard, and you were pissed
30 off that they hit the windshield with the axe or hammer --

31 A I was just trying to get --

32
33 Q -- and you thought you'd slam that vehicle on the way by?

34 A No, I was just scared. I was trying to get out of there. I didn't want to hit no
35 vehicle. I was scared out of my mind. People don't witness that kind of stuff.

36
37 Q Okay. So you -- I think you said you said you nudged the blue vehicle a bit?

38 A Yeah.

39
40 Q How hard do you think you hit it?

41 A Oh, enough to hit the radiator and make it mess up the shifting and stuff. It

1 doesn't take much, probably just a little -- a little hit.

2

3 Q The record doesn't pick up an explosive sound, so can you describe how the
4 impact would have -- like, you were driving, what was it like?

5 A It was a skid. We didn't hit it -- we didn't like right into it. We like kind of hit
6 a little bit.

7

8 Q Just skidded off it, sort of thing?

9 A Yeah.

10

11 Q Okay. So didn't hit it very hard at all?

12 A No, we -- well, enough to hit the -- the radiator --

13

14 Q Okay.

15 A -- because after that it wouldn't -- it just shut down.

16

17 Q Okay. Now, my understanding is it hit it hard enough to skid it about four feet?

18 A Really?

19

20 Q Yeah.

21 A Well --

22

23 Q Does that sound right? Did you hit it hard enough that you moved it four feet?

24 A Well, that's how it looks; right? Well, when you're -- when a person is
25 drinking you can't really tell, like how big the impact is because most of your
26 body is numb. Your -- your brain is numb. You're -- everything goes numb in
27 your body. That's what alcohol does to you. You don't feel much damage. You
28 -- you're not in your right mind. Alcohol is a big factor in a lot of accidents.

29

30 Q Okay. Do you think you should have been driving that day?

31 A No, but I was probably the safest one there. I know I shouldn't have been
32 driving, and I regret that.

33

34 Q Okay.

35 A I --

36

37 Q So then after the impact what did you do?

38 A I tried starting it up, and it started up, and I tried putting it in drive, and it
39 wouldn't move.

40

41 Q You wanted to keep going, but it was disabled. So then what did you do?

1 A I got out, and I started running --

2
3 Q Okay.

4 A -- because I was afraid. Like, if they had an axe or a hammer or whatever,
5 don't you think they would have hit someone? If they got a gun and they shot
6 someone, don't you think they would have hit me with the axe or the hammer
7 or whatever they had?

8
9 THE COURT: Again, Mr. Cross, just answer the
10 questions. Okay? It may be frustrating, but you don't -- you don't have to justify
11 the meaning of your (INDISCERNIBLE). Just answer the questions.

12
13 Q MR. SPENCER: Okay. So you didn't see any gun -- any
14 shots fired that day? You didn't see anybody with a gun that day?

15 A No, but I heard bullets flinging.

16
17 Q Okay. Now, you described those as warning shots in your statement to the
18 police?

19 A Oh, I thought they were warning shots, yeah --

20
21 Q Right.

22 A -- but after what I heard, I knew they weren't warning shots. They were --

23
24 Q Okay.

25 A -- directly at someone. Yeah.

26
27 Q Okay. You see that's the problem is that you gave your -- you give your
28 statement to the police in the first instance, and that's your --

29 A Mmhmm.

30
31 Q -- best evidence, and then if you change everything after you talk to people
32 then that makes it difficult. So who did you talk to, that changed your mind that
33 there was four warning shots, and you told the police there were actually --
34 well, what did you think they were then?

35 A What?

36
37 Q When did you decide they -- what did you think they -- if they weren't warning
38 shots. What did you think they were?

39 A I thought they were warning shots at first, but after -- what changed my mind
40 about the warning shots, that's when I heard what happened.

41

1 Q Okay.

2 A I didn't know anything.

3

4 Q Okay. What did you -- what did you think they were? You thought they were
5 warning shots, and then now you don't they were warning shots. What do you
6 think they were?

7 A I thought -- well, at first I thought they were shooting at us because I heard
8 bullets flinging. It was like (INDISCERNIBLE). I don't know, like it sounded
9 really close, and --

10

11 Q Okay.

12 A -- I heard ricocheting in the second one.

13

14 Q Okay. Why did you not describe any ricocheting to the police?

15 A I don't see what's a big deal. I'm telling you right now, but --

16

17 Q Okay.

18 A -- when you get traumatized like that, like after what happened, you can't
19 remember everything. Everything goes all mixed up. I don't think you would
20 know that because you --

21

22 Q So who did you talk to between believing that they were warning shots and
23 believing you were getting shot at?

24 A When I got back to my --

25

26 Q Who did you talk to?

27 A -- house my mom told me that -- what happened, that's all.

28

29 Q Okay.

30 A So why would I believe that they're warning shots and nobody got shot when
31 somebody did?

32

33 THE COURT:

Again, just please answer the question.

34 Okay?

35

36 THE WITNESS:

Just yes or no questions or --

37

38 THE COURT:

Well, just answer the question rather than

39 (INDISCERNIBLE).

40

41 THE WITNESS:

I'm trying my best.

1
2 THE COURT: If you have to -- if you're not sure about
3 what -- you can ask me questions --
4

5 THE WITNESS: Okay.
6

7 THE COURT: -- but please don't ask the lawyers
8 questions.
9

10 THE WITNESS: Okay.
11

12 Q MR. SPENCER: Okay. So you didn't see any gun. You
13 heard shots. Where were you when you heard the shots? Would you take the
14 ruler and show me exactly where you were standing or -- or is it off the
15 picture?
16

17 A Right there.
18

19 Q Off the picture?
20

21 A Yeah.
22

23 Q So we're perhaps ten inches to the right of the -- the end of P-3?
24

25 A Yeah, and about -- once we got to the approach, we jumped over the fence.
26 And then once we jumped over the fence we heard another one.
27

28 Q Okay. How many did you hear in total?
29

30 A Two.
31

32 Q Okay. And you heard them ricocheting?
33

34 A Yeah, one.
35

36 Q Which one ricocheted? Did you --
37

38 A The second one.
39

40 Q The second one. Okay. So do you know anything about bullets in the grey
41 SUV? Did you see any bullets in --
42

43 A No, not that I'm aware of.
44

45 Q Okay. You didn't see any bullets in there? Any explanation for why there were
46 bullets scattered all over there when the police inspected it after the incident?
47

48 A Usually Res vehicles, they -- they're always full of bullets. Like, they go --
49 everyone goes hunting.
50

Q Okay.

A Everyone around there because it's legal on the Reserve. You don't have to have a licence.

Q Okay. What about the shell casings, the ones that had been -- already been shot, that were in the vehicle, do you know anything about that?

A Probably hunting. I don't know.

Q Hunting out of the vehicle, like shooting --

A Yeah, from a long time ago. Like, she -- you have to know that she had that car for a long time. She didn't just get it.

Q Okay --

A Yeah.

Q -- but you don't know anything about shell casings in the vehicle?

A No.

Q You didn't notice any laying around?

A I don't usually clean up that vehicle.

Q No, but you're driving the car most of the day, and you didn't notice that there is bullets and the casings laying all over?

A I am supposed to look around? I'm the driver. I'm supposed to focus on the road, aren't I?

MR. SPENCER:
Honour.

That's all I have. Thank you, Your

THE COURT:

Any re-exam?

MR. BROWNE:

No, Your Honour. Thank you.

The Court Questions the Witness

Q THE COURT: I have a few questions, Mr. Cross. The windows, were they electricals or were they cranking ones?

A Electric.

Q Electric. And the vehicle, were you -- when the vehicle came to a stop and you

1 couldn't drive it anymore, where exactly was the vehicle?

2 A Exactly right there. It just stopped.

3

4 Q Exactly?

5 A It -- what happened was it just -- once we skidded, it just slowed down and the
6 acceleration, I tried pressing it and then it just (INDISCERNIBLE), and then it
7 just shut off.

8

9 Q So where it's shown in Exhibit P-3, that's where you -- that's where the vehicle
10 came to a stop?

11 A Yeah.

12

13 Q Okay. And you got out of the vehicle. Which door did you get out of?

14 A The driver's side.

15

16 Q The driver's --

17 A The driver's door.

18

19 Q -- door on the other side?

20 A Yeah, the driver door.

21

22 Q Okay. And did you see Eric get out of the vehicle?

23 A Yeah, he was the first one.

24

25 Q Okay. And which door did he get out of?

26 A The passenger.

27

28 Q The front passenger?

29 A Yeah.

30

31 Q Back passenger?

32 A Front.

33

34 Q Front passenger. Did you leave your door open or did you close it?

35 A I think I left it open. I'm not sure. Usually --

36

37 Q Just take your time. Take your time and see if you can think of it.

38 A Yeah. I left it open.

39

40 Q You left it open?

41 A Yeah.

1
2
3
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Q Was the -- do you know if the window was up or down at that point?

A As I -- last I recall, all the windows were rolled up.

Q Rolled up?

A Yeah.

Q Okay. You talk about when you're driving on the roadway, these vehicles pulling as you were driving.

A Mmhmm.

Q This is before you got to the Stanley farm.

A Yeah, I could only --

Q How is it pulling, to the right or to the left?

A To the left.

Q To the left?

A Yeah.

Q And you said when you first came to a stop, you said that you could see down -- down the hill where that blue truck is on P-3; is that correct?

A Well --

Q That (INDISCERNIBLE)?

A -- the green truck? Oh, I could --

Q You said you pulled it far enough forward that you could see down -- down there?

A Yeah, I -- I looked, and I didn't see anyone, and then --

Q Okay. So you didn't see anyone in that area?

A No.

Q Okay. Then you said that you were -- were you in the vehicle or out of the vehicle when you saw the people running towards you, running up the hill?

A I was in the vehicle.

Q You were in the vehicle at that point?

A Mmhmm, yeah, because -- yeah.

- 1 Q And when you got out of the vehicle where was Colton?
2 A He was in the back seat.
3
4 Q And which -- which seat in the back seat?
5 A I'm not sure. I just knew they were all in the back, and I -- yeah.
6
7 Q Okay. And there were two girls in the vehicle?
8 A Yeah.
9
10 Q And where were they?
11 A They were in the back seat, too.
12
13 Q Do you know whereabouts in the back seat they were?
14 A Well, I could -- I think Colton was on the right side in the backseat. Belinda
15 was on the left, and Kiora was in the middle.
16
17 Q Okay.
18 A That is, I believe. I'm not sure.
19
20 Q That's your recollection?
21 A I'm not sure, but that's the best I got, yeah.
22
23 Q Okay. And you said you heard three shots?
24 A Two.
25
26 Q Two, two in total?
27 A Two shots. Two shots.
28
29 Q You never heard three?
30 A No.
31
32 Q Okay. And after you ran, do you know how many seconds it would have been
33 from the time --
34 A From the time I heard the first shot?
35
36 Q -- from the time you opened the car door and started to run, how long was it
37 before you heard the first shot?
38 A Eight -- eight seconds.
39
40 Q What?
41 A Eight seconds.

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Q Eight seconds?

A Yeah.

Q Okay. And then how long after that was it that you heard the second shot?

A Twenty-two seconds, 30 seconds, around there.

Q Twenty-two to 30 seconds --

A Yeah.

Q -- after that? Okay. Do you know how much alcohol you had to drink that day?

A Three shots of alcohol. I didn't have any beers.

Q Three shots of alcohol?

A Mmhmm.

Q You have to use words.

A Three --

Q You can just say yes there. You said, Mmhmm.

A Oh, sorry.

Q So you say it in words.

A Yes.

Q Yes. Okay. And how much is a shot?

A How many ounces in a 26? 26 ounces?

Q Twenty-six in a 26, yes.

A So about two ounces.

Q About two ounces in a shot?

A In a shot --

Q Okay.

A -- in a shot.

Q And was this pouring shots or did you drink it out of the bottle?

A Right out of the bottle.

THE COURT:

Right out of the bottle. Okay Any

questions arising out of what I've asked? Crown, first?

MR. BROWNE: No, thank you.

THE COURT: Mr. Spencer?

MR. SPENCER: Just one question.

Mr. Spencer Cross-examines the Witness

Q MR. SPENCER: When did you have those shots?

A Huh?

Q You said you had three shots?

A Two.

Q Two shots. When did you have them?

A When did I have two shots?

Q Yeah. You mean when did I hear them? When did I have them?

THE COURT: Okay. Whoa, whoa, whoa. We're talking about the drinks, three --

THE WITNESS: Oh, oh. I thought you were talking about the shots.

THE COURT: -- yes, drinks.

THE WITNESS: Oh.

Q MR. SPENCER: It's arising out of what His Honour asked you, so sorry. Sorry, I should have focussed that, but I -- those were the shots we're talking about. So how many -- how many shots of alcohol did you have?

A Three shots at Maymont when we were swimming.

Q Okay. About two ounces each?

A Yeah.

Q Okay. And have you drank before?

A Well, I barely, not -- not at all.

1
2 Q Okay. And do you believe that six ounces of alcohol over the course of several
3 hours would black you out?

4 A I don't know, I really -- I really haven't drank lately. I -- I whenever I drink
5 alcohol, it just hits me and takes over my body. I don't like drinking.

6
7 MR. SPENCER: That's all I have.

8
9 THE COURT: Mr. Browne?

10
11 **Mr. Browne Re-examines the Witness**

12
13 Q MR. BROWNE: Did you have anything to eat that day?

14 A No.

15
16 MR. BROWNE: Okay. Thank you, Your Honour.

17
18 THE COURT: Any further questions?

19
20 MR. SPENCER: No. No, Your Honour.

21
22 THE COURT: Thank you very much, Mr. Cross.
23 You've been very patient. Thank you.

24
25 THE WITNESS: Yeah. That's good?

26
27 THE COURT: You can go. Yeah, you can go.

28
29 THE WITNESS: Sweet.

30
31 (WITNESS STANDS DOWN)

32
33 THE COURT: I assume we're waiting for a witness or
34 are you --

35
36 MR. BURGE: I was watching you writing, and so I was
37 waiting for you to be ready.

38
39 THE COURT: Oh, I'm sorry. I -- I was just making
40 some catch-up notes based on waiting for a witness.
41

1 MR. BURGE: The next witness is Kiora Wuttunee.

2
3 COURT CLERK: Good afternoon. I'll get you just to come
4 up here to the front and remain standing, please. Will you swear on the Bible?

5
6 MS. WUTTUNEE: Yeah.

7
8 COURT CLERK: Take the Bible in your hand, please.

9
10 **KIORA WUTTUNEE, Sworn, Examined by Mr. Burge**

11
12 COURT CLERK: State your name for the court, please.

13
14 MS. WUTTUNEE: Kiora Wuttunee.

15
16 COURT CLERK: Please spell your full name for the court.

17
18 MS. WUTTUNEE: K-I-O-R-A W-U-T-T-U-N-E-E.

19
20 COURT CLERK: Thank you. You may be seated.

21
22 Q MR. BURGE: Good afternoon, Ms. Wuttunee.

23 A Good afternoon.

24
25 Q Ms. Wuttunee, I'll be asking you some questions, and when I do, I notice you
26 have a quiet voice, it seems, and I'm going to ask you to please speak up so
27 that we can all hear you. And this -- does her microphone amplify as well?

28
29 THE COURT: It does somewhat. I'll move this
30 microphone away, so we don't get any feedback, but --

31
32 Q MR. BURGE: Ms. Wuttunee, where do you live now?

33 A Red Pheasant.

34
35 Q And how old are you?

36 A Eighteen.

37
38 Q I'd like to ask you some questions about the incidents that occurred on the 9th
39 day of August, 2016. Do you recall where you were that -- the first thing in the
40 morning that day?

41 A Yes, at his house in the town site.

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Q Whose house?

A Colton's.

Q And I understand you were in a relationship with Colton?

A Yeah.

Q So what time did your day start that -- on that day? What --

A In the morning --

Q Okay.

A -- it would be like 9.

Q And so maybe if you can just take us through that morning and tell us what happened, and then we'll just work through the day, if you -- if you can do it that way, please.

A We were at his house, and then we went to the house next-door, Terry Wuttunee's. And then Cassidy came there, and then we met up with Eric and Belinda, and then we went to the lake, Maymont.

Q Okay. So you went from Terry Wuttunee's to the lake?

A Mmhmm.

Q Okay. What time was it that you went to the lake?

A Maybe like noon, around 12.

Q Okay. What were you doing before you left for the lake? What were the group of you doing?

A Drinking.

Q And so you said there was yourself and Colton? That's a yes?

A Yeah.

Q And you said there was Eric and Belinda --

A Yeah.

Q -- and Cassidy?

A Mmhmm.

Q Yes?

A Yeah.

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Q And was everyone drinking?

A Yeah.

Q And this -- was this at Terry Wuttunee's place?

A Yeah.

Q And did you stay at Terry Wuttunee's place or was there drinking somewhere else?

A We were drinking there, and then we went to the lake and drank there.

Q Okay. Do you know what you were drinking when you were at Terry Wuttunee's place?

A A 26, I think, or a 60.

Q Pardon me?

A I think it was a 60.

Q Okay. You said a 26, and then you said a 60. Do you know which? Was it one or the other or was it both?

A Mmhmm. Maybe both.

Q Do you know for sure?

A Both.

Q Okay. And were these both hard liquor? Is that yes?

A Yeah.

Q Yeah. Okay, thank you.

THE COURT: Ms. Wuttunee, you can't shake -- nod your head. We're recording everything you say, so in order for it to be recorded properly it doesn't -- it doesn't pick up nods or mmhmms, so you have to use words. Okay?

THE WITNESS: Yeah.

THE COURT: Okay, thank you.

Q MR. BURGE: Now, Ms. Wuttunee, had you been drinking before that morning? You're nodding your head; is that --

1 A Yeah.
2
3 Q When you woke up were you sober?
4 A No.
5
6 Q How long had you been drinking for?
7 A Maybe like a week.
8
9 Q And in that week did you ever sober up? What's your answer?
10 A No.
11
12 Q Okay So you -- you said that you got up, you were drinking, or you went to
13 Terry Wuttunee's, there was some drinking there, and then you went to
14 Maymont?
15 A Yeah.
16
17 Q Who all went to Maymont?
18 A Me, Cassidy, Eric, Belinda and Colton.
19
20 Q And how did you get there?
21 A My vehicle.
22
23 Q What kind of vehicle were you -- did you have?
24 A A Ford Escape.
25
26 Q Okay. Do you know what year it was?
27 A 2003.
28
29 Q What condition was that Ford Escape in?
30 A Bad, bad condition.
31
32 Q In what way? What was -- what was bad about it?
33 A I don't know, like the front end was bad and the exhaust pipe was like falling
34 off.
35
36 MR. BURGE: Okay. Madam Clerk, are you picking
37 that up? Thank you. So please keep your voice up so we can all hear you, Miss.
38
39 Q MR. BURGE: When you drove -- when you went to
40 Maymont, who was driving?
41 A Cassidy.

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Q And where were you?

A In the passenger on the way to Maymont.

Q Okay. Which passenger seat?

A The front.

Q Okay. When you were in the front passenger seat, the window in the front passenger door was -- what condition was it in?

A It was okay.

Q And did that window remain okay throughout the day?

A Mmhmm. Yeah.

Q Yes?

A Yeah.

Q Do you remember what you were wearing as you were going to Maymont?

A A black shirt and shorts.

Q Do you remember what Belinda was wearing?

A A purple tank top and leggings, I think.

Q Okay. Do you remember what Eric was wearing?

A A checkered shirt, I think, and red shorts.

Q What colour was the shirt?

A Red.

Q Do you remember what Cassidy was wearing?

A A grey shirt and shorts, I think.

Q Okay. And do you remember what Colton was wearing?

A Not really, no, I -- it would be like a grey shirt.

Q I understand you took some selfies that day; is that right? Is that yes?

A Yeah.

Q And then -- that was even when you were in the vehicle?

A Mmhmm.

1 Q Yes?
2 A Yeah.
3
4 Q Okay. And I understand that you -- you looked at, at least one of those
5 photographs today?
6 A Yeah.
7
8 Q Okay. When you got to Maymont what happened there?
9 A We were swimming.
10
11 Q Were you swimming?
12 A Yeah.
13
14 Q How long -- how long were you there?
15 A I don't know, maybe like half-an-hour or something.
16
17 Q Okay. Were you still drinking? What's your answer?
18 A Yes. It was almost done though.
19
20 Q You were almost done what?
21 A Drinking.
22
23 Q And -- and in the sense that you didn't want to drink anymore or you're out of
24 liquor?
25 A We were out.
26
27 Q Okay. You said you had a -- I think did you say a 66er (sic) and a 26?
28 A Yeah.
29
30 Q Were they both full when you started that morning?
31 A I think so.
32
33 Q How were you feeling by the time you were finished swimming?
34 A Really drunk.
35
36 Q Did you observe what condition your friends were in when you were done
37 swimming?
38 A Yeah.
39
40 Q How -- how was Colton? What condition was he in?
41 A He was drunk, too.

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Q Eric, what condition did you notice about him?

A I don't know, I think they were drunk, too. I don't remember.

Q Pardon me?

A I don't really remember.

Q Okay How about Belinda or Cassidy?

A Yeah, they were drunk.

Q You said they were drunk?

A Yeah.

Q Please tell us about the drive when you left Maymont, what happened?

A The tire popped. I don't know whereabouts it was, but we realized it like when we were by Stewart's and the Phoeys, that's when we stopped and checked.

Q You stopped and?

A Checked.

Q Checked?

A Yes.

Q Okay. You checked the tire?

A Yeah.

Q What did you notice about the tire?

A It was hot. It was on the rim.

Q Okay. And is this -- are you on a paved road or a gravel road when you stopped and checked?

A Gravel.

Q And -- and you said it was by Stewart's. Was that a last name?

A Baptiste.

Q Baptiste?

A Yeah.

Q And do you have any idea what time it would have been that -- after you left Maymont and -- and you stopped and checked the tire?

- 1 A No, I don't think so.
2
3 Q Was it still daylight?
4 A Yeah.
5
6 Q How long were you stopped, checking the tire?
7 A I don't know, like, five minutes.
8
9 Q And then what happened?
10 A And that's when I like fell asleep.
11
12 Q Pardon me?
13 A That's when I fell asleep.
14
15 Q Okay. Where were you when you fell asleep?
16 A There, like by Stewart's.
17
18 Q Okay. Whereabouts in the vehicle were you?
19 A In the back, in the middle.
20
21 Q Okay. Who was in the back with you?
22 A Belinda and Colton.
23
24 Q So if you're in the middle, where is Belinda?
25 A On my right side.
26
27 Q And so Colton?
28 A Would be on my left, yeah, or maybe it was the other way around. He was on
29 my right, and she was on my left.
30
31 Q Okay. Who was driving?
32 A Cassidy.
33
34 Q And where was Eric?
35 A In the front passenger.
36
37 Q What condition did you -- were you in at that time, you yourself?
38 A I was like blacking out and going in and out of blackouts.
39
40 Q And when you say blacking out, what -- what does that mean to you?
41 A Like, you know, like waking up and falling back asleep.

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Q Okay. So you think -- you said you -- I think you said you fell asleep after you checked the tire, once you got back in the vehicle?

A What do you mean? I didn't check the tire. They did. I didn't get out of the vehicle.

Q Okay. Did you notice if anyone was arguing in the van -- or in your vehicle?

A I think Eric and Belinda were, yes.

Q And did anything come as a result of that argument?

A Unh unh.

Q Pardon me?

A No.

Q Okay. After the -- the other people had gone out and checked the tire, you stayed in the vehicle, then what happened?

A I don't know, that's when I woke up to Belinda screaming, and then that's when I seen those boys -- well, they were running and, yeah, that's when I seen him, like, with his head like down, and that's when I jumped out of the vehicle to go see.

Q Okay. Who did you see with his head down?

A Colton.

Q And where was Colton when you saw him?

A In the driver's seat.

Q Did you know where you were?

A I was in the back in the middle.

Q Did you know what location you were at?

A Unh unh. No.

Q Do you have any recollection of arriving at that location?

A No.

Q Do you know how Colton ended up in the driver's seat?

A He hopped over probably to try drive away.

Q Okay. Did you see Colton hop over?

1 A Yeah, I think so.

2
3 Q Why is it you qualify your answer by saying I think so, if you can just please
4 help us with what you remember?

5 A Because I can barely remember it.

6
7 Q What makes you say that you think you saw Colton go over the -- into the front
8 seat?

9 A Because he was probably trying to get away, drive away.

10
11 Q Well, what makes you have that recollection? I'm just trying to see where your
12 recollection started?

13 A I don't know.

14
15 Q You said your first recollection was Belinda screaming? Is that yes?

16 A Yes.

17
18 Q Do you know what Belinda was screaming about?

19 A Because he got shot.

20
21 Q Did you see Colton get shot?

22 A No.

23
24 Q Your answer was no?

25 A No.

26
27 Q Did you hear any sound --

28 A Yes.

29
30 Q -- related to that?

31 A I heard a gunshot.

32
33 Q Okay. And you're in -- still in the centre of the back seat?

34 A Mmhmm.

35
36 Q Is that yes?

37 A Yes.

38
39 Q Can you please tell us what you observed after Colton was shot?

40 A What?

41

1 Q Okay. You've told us that Colton was in the front seat after -- and that was
2 after he was shot?

3 A Mmhmm.

4
5 Q Is that yes?

6 A Yes.

7
8 Q Did you notice where anyone else was when you noticed Colton having been
9 shot in the front seat?

10 A Belinda was beside me, and that's when they were walking away from it.

11
12 Q Who was walking away?

13 A Him.

14
15 Q Okay. Why don't you just tell us, just verbally tell me, what you saw?

16 A I seen Cassidy and Eric, they were running, and then -- and then, I don't know,
17 Belinda was screaming, and then -- yeah, and then he got shot, and then that's
18 when he -- they went walking away.

19
20 Q Okay. Did you see Cassidy and Eric?

21 A Mmhmm.

22
23 Q And where were they when you saw them?

24 A They were in front of -- in front of us, like, leaving.

25
26 Q Okay. What were they -- what were they -- okay, when they were leaving, how
27 were they leaving?

28 A They were running.

29
30 Q Okay. What were they running on? Was it -- was it on a road, on gravel, on
31 grass?

32 A I think it was a road, gravel.

33
34 Q How far away were they from you when you saw them running on gravel?

35 A Just like -- like from here to there, to that wall, maybe.

36
37 Q So the width of this courtroom?

38 A Mmhmm.

39
40 THE COURT:

You'll have to use words.

41

1 THE WITNESS: Yes.

2
3 THE COURT: Okay, thank you.

4
5 Q MR. BURGE: Well, do you know feet? Will that -- do
6 you know metres?

7 A It would be like ten feet maybe.

8
9 Q Okay, maybe ten metres --

10 A Yeah.

11
12 Q -- or ten steps?

13 A Yeah.

14
15 Q Okay. Did you see anyone that hadn't come in your vehicle with you?

16 A No.

17
18 Q Was there anyone around your vehicle that hadn't arrived in the vehicle with
19 you?

20 A No.

21
22 Q Were there any other people there once you realized Colton was shot that
23 hadn't arrived in the vehicle with you?

24 A Just them.

25
26 Q Pardon me?

27 A They were, yeah. They were there.

28
29 Q Okay. How many people? How many other people were -- did you see?

30 A I think there was four.

31
32 Q And were they males or females?

33 A There was one female and there was boys.

34
35 Q Pardon me?

36 A And two boys, I think, or three boys.

37
38 Q So one female and how many males, in total?

39 A I think it was two or three.

40
41 Q Okay. Which do you remember most distinctly, the -- the female or one of the

1 males?

2 A The female and the male.

3

4 Q Okay. Why don't you tell me, who did you see first? Did you see them all at
5 the same time or did you see one before the other?

6 A Just the one who --

7

8 Q Pardon me?

9 A Just him. Just him.

10

11 Q Okay, maybe just -- instead of -- I'm not going to ask you to point to anybody
12 right now, but just tell me did you see a male first -- or one of the males or one
13 of the females -- or the female?

14 A The male.

15

16 Q Where was the male that you first saw, in relation to your vehicle?

17 A He was like on this side of the vehicle.

18

19 Q Okay. You're holding -- you just gestured with your left arm?

20 A Yeah --

21

22 Q So --

23 A -- the left side, the driver's side.

24

25 Q And how far from the driver's side of -- of the vehicle?

26 A I don't know, like -- maybe like four feet, four footsteps.

27

28 Q Okay. And this was a male?

29 A Yeah.

30

31 Q What -- can you describe what the male was wearing or how -- how big the
32 male looked to be?

33 A I don't know what he was wearing, I think maybe a hat, and he was tall.

34

35 Q And did you notice anything else about this male?

36 A No.

37

38 Q Okay. And when you -- this male that you're describing, is this person standing
39 there alone or is there a female and one or two other males there?

40 A It was just him first.

41

1 Q Okay. What was this person doing, this first person that you saw?

2 A Well, he was walking away after he shot him. He walked away.

3

4 Q Okay. Did you see this person shoot anybody? Did you see this person shoot
5 Colton?

6 A No, I didn't see it.

7

8 Q Okay.

9 A He was right there after.

10

11 Q Okay. And apart from walking away did you notice anything else about this
12 person?

13 A No.

14

15 Q What's the next thing that you saw?

16 A That's when the wife came, I think, or the lady came, and she was standing
17 there, and -- and yeah, I don't know.

18

19 Q Okay. This -- this -- so a female arrived, and what did -- is that yes?

20 A Yeah.

21

22 Q Okay. What did the female do when she -- when you first saw her?

23 A She was standing there.

24

25 Q Okay. Where -- where was she standing?

26 A In, like, in front of the vehicle, to the left, like, beside us because that's when I
27 jumped out of the vehicle, and I went around, and I -- I opened the door, and
28 that's when he fell out of the vehicle. And I tried to wake him up. And yeah,
29 she was standing right there.

30

31 Q Okay. So you got out of which door? You're in the back seat?

32 A Yeah, I am. I asked Belinda to get out so I could get out, and I jumped out of
33 the right side, and then I went around.

34

35 Q Okay. So you got out on the passenger side?

36 A Yeah.

37

38 Q And you went around though at the front or the back of the vehicle?

39 A I went around the front.

40

41 Q Okay. What position was Colton in when you went around the front of the

1 vehicle?

2 A He was sitting there.

3

4 Q Okay. Where?

5 A In the driver's seat.

6

7 Q Okay. Was he sitting back in the seat, forward in the seat?

8 A Probably like slanted.

9

10 Q Okay. You just moved your body a bit to the right?

11 A Yeah, slightly to the right.

12

13 Q Okay. What did you notice about Colton?

14 A I don't know. I tried to get him up, and he wouldn't wake up, and that's when I
15 noticed the gun (INDISCERNIBLE).

16

17 Q Okay. Did you say you tried to get him up or wake him up? I couldn't hear
18 your voice.

19 A I tried to wake him up.

20

21 Q Okay. And was he still slumped a bit to his right?

22 A Mmhmm.

23

24 Q And how did you --

25

26 THE COURT: Could you answer with words?

27

28 THE WITNESS: Yes.

29

30 THE COURT: Thank you.

31

32 THE WITNESS: Yes, he was.

33

34 Q MR. BURGE: And how did you try to get him up or
35 wake him up? What did you do?

36 A Well, I opened the door, and then like he fell out of the vehicle, and then that's
37 when I tried to get him up.

38

39 Q Okay. Did you try to get him up or wake him up before he fell out of the
40 vehicle?

41 A Well, when I opened -- that's when he fell out, and that's when I was trying to

1 get him up.

2

3 Q Okay. So he's in the driver's door, in the driver's seat, and he fell to his --

4 A Yeah.

5

6 Q -- it would have been to his left?

7 A Yeah.

8

9 Q Okay. Where was Belinda at this point?

10 A She was behind me. She jumped out with me, and she came around me, so she
11 was behind me.

12

13 Q Okay. You've told us that you saw a male who was, I think you said three or
14 four feet from the driver's side, and then -- and then you saw a female who was
15 at the front of the vehicle?

16 A Yeah, she came -- like, she came up -- we jumped out of the vehicle when he
17 was walking away.

18

19 Q Okay. You also mentioned seeing either one or two other males?

20 A Mmhmm.

21

22 Q Can you tell us when and where you saw them?

23 A They came -- they came walking -- or they came running because, I don't
24 know, Belinda was like -- went up to the wife, and then so they came running
25 back. And then, I don't know, we just -- we took off because we were scared.

26

27 Q Okay. Did you see any weapons? Please tell us --

28 A Yes.

29

30 Q -- please tell us --

31 A He had a gun in --

32

33 Q -- in as much detail as you can --

34 A Yeah.

35

36 Q -- what you saw?

37 A He had a gun in his hand.

38

39 Q Okay. Who had a gun in his hand?

40 A The one who shot him.

41

1 Q Okay. You've described the male that you first saw, and you described other
2 males as well. Which male are you talking about who had the gun?

3 A The one who shot him.
4

5 Q Would that be the first male that you saw?

6 A Mmhmm. Yeah.
7

8 Q And tell us about the weapon that you saw this first male have?

9 A It looked long, like maybe a rifle or a .22. I know it was long though.
10

11 Q Do you know what a rifle looks like?

12 A Yeah.
13

14 Q And how long would you -- do you think that the rifle was. Can you -- can you
15 demonstrate with your arms or can you point?

16 A Okay, this long, maybe.
17

18 Q Okay. You've got your arms, your hands about maybe a little over 18 inches --

19 A Yeah, like that.
20

21 Q -- or maybe now it's 18 inches?
22

23 MR. SPENCER: For my friend I would characterize that
24 as closer to two feet, but perhaps you could redo it, and we could solve that for the
25 record.
26

27 Q MR. BURGE: What did -- what makes you say this was
28 a rifle?

29 A I don't know, it was big. It was a big gun.
30

31 Q Okay.

32 A I don't know guns, so -- but it was big.
33

34 Q Do you know what a handgun looks like?

35 A Mmhmm.
36

37 Q Was that yes?

38 A Yeah.
39

40 Q Okay. Do you know the difference between a handgun and a rifle?

41 A Yeah.

1
2 Q And so if we consider a handgun or a rifle how would -- looking at those two
3 options, how would you describe this weapon?

4 A It was big, long.
5

6 Q Okay. What was this person doing with that long weapon when you saw him?

7 A It was in his hands.
8

9 Q Pardon me?

10 A It was in his hands.
11

12 Q In both hands?

13 A Yeah.
14

15 Q So how was the person holding it? Maybe if you can just demonstrate to us
16 how --

17 A Like this.
18

19 Q Okay. Right now you have both of your hands in front of you at about shoulder
20 width?

21 A Yeah.
22

23 Q And what was the person doing with that?

24 A He -- they were running. They were coming to us.
25

26 Q The person -- what was the person who was holding the gun doing when you --
27 when he was holding it in his hands like that?

28 A It was -- they were coming to us.
29

30 Q He was coming to you?

31 A Mmhmm.
32

33 Q Okay. I think when you first said -- said you first saw him, he was about -- I
34 think you said about four feet away from -- from the driver's side of the
35 vehicle?

36 A Yeah.
37

38 Q So was he coming closer or was he going away from you?

39 A No, like, after -- when I got out of the vehicle he left, went walking. I know
40 there was a Quonset. They were walking towards that Quonset. And that's
41 when his wife came, and she was standing in front of the vehicle. And then, I

1 don't know -- yeah.

2

3 Q You mentioned Belinda having something to do with the female?

4 A Mmhmm.

5

6 Q I think you said Belinda came towards her?

7 A Yeah.

8

9 Q What -- what -- what did you see?

10 A I don't know, I think she was like -- I don't know, yelling at her, maybe.

11

12 Q So Belinda was yelling at the female?

13 A I think, yeah, because she said something. I can't really remember what she
14 said, but I don't know, I think it was something about like her property or
15 trespassing. So I think that got Belinda mad, and then that's when the guys
16 came running or yelling, and then that's when I told Belinda, Let's go. I said
17 that so -- I thought they would have shot us if we did something.

18

19 Q Okay. So how long did you and Belinda remain on that property?

20 A Just like maybe five minutes, and then that's when we just left, and then we're
21 walking down the road, and that's when the cops pulled up.

22

23 Q Okay. Now, remind me, I think you told us that you heard a sound of a
24 gunshot?

25 A Mmhmm.

26

27 Q Is that yes?

28 A Yes, something very close, but I'm pretty sure that it was --

29

30 Q Pardon me?

31 A I'm pretty sure they were shooting towards the boys that went running before
32 they shot him.

33

34 Q Okay. Now, I want you to please think about your answers and -- and just tell
35 us what you, yourself, experienced. Did you see somebody shooting towards
36 the boys who were running?

37 A No, but I heard it.

38

39 Q Okay. And is this before or after you noticed that Colton had been shot?

40 A This was before.

41

1 Q Okay. And when you heard it were you -- okay, well, what did you hear before
2 you were -- what you -- what you say was Colton being shot?

3 A I heard the gunshots first, and then after that I heard Belinda screaming, and
4 that's when I got up and looked.
5

6 Q Okay. So when you heard the gunshots, and then Belinda screaming, which
7 came first?

8 A The gunshots and then Belinda screaming.
9

10 Q And when Belinda was screaming where was Colton?

11 A In the front driver's side.
12

13 Q Okay. Did you, yourself, see anyone shooting the gun at the other boys?

14 A No.
15

16 Q What condition did you consider yourself to be in at this point of -- of the -- of
17 the day?

18 A Huh?
19

20 Q As far as the alcohol you drank, how -- was that still affecting you?

21 A Yeah. I was really drunk until -- like, I was coming out of it after -- like, I
22 realized that he was gone.
23

24 Q Ms. Wuttunee, I'm going to ask you to look to a photograph that's just here to
25 your left, if you can just take -- do you see that, this big photo?

26 A Yeah.
27

28 Q If you can just take a look at it and tell us if there is anything about that?

29 A No.
30

31 Q Does that look familiar to you?

32 A No. Unh unh.
33

34 Q You said that you and Belinda walked away?

35 A Yeah.
36

37 Q And did you walk down a driveway or do you know what you walked down?

38 A I think so, yeah.
39

40 Q And where did the driveway take you?

41 A Just to a road, a gravel road, and then we went right.

Q And do you -- was it a very long driveway that you walked down to get to the gravel road?

A No.

Q Okay. So is there any estimate of how long that driveway was?

A No, I don't remember.

Q How do you feel about your -- today about your memory of that afternoon?

A Huh?

Q How do you feel about your memory of that afternoon right now?

A I can remember some of it.

Q How much do you think you had to drink that day once you got up, you, yourself?

A I don't know, like, those bottles that I told you, the 60 and the 26.

Q Yeah. How much of that do you think you drank?

A I don't know, a lot.

Q Pardon me?

A A lot.

Q Were you drinking out of the bottle? Is that yes?

A Yeah.

MR. BURGE: Okay. You said you -- Ms. Wuttunee, thank you for answering my questions. Please answer any questions that my friend might have.

THE COURT: Cross-exam, Mr. Spencer?

MR. SPENCER: Thank you, Your Honour.

Mr. Spencer Cross-examines the Witness

Q MR. SPENCER: Who have you spoken to about the incident that happened that day on the Stanley farm?

A Huh?

1 Q Can you tell me everybody that you've talked to about what happened that
2 day?

3 A The cops.
4

5 Q Okay. And that was the -- right after the incident?

6 A Mmhmm.
7

8 Q Anyone else?

9 A No.
10

11 Q Okay. Did you ever get together with Eric and Belinda at any time and discuss
12 what had happened that day?

13 A Unh unh.
14

15 Q Were you ever in a discussion with Sheldon about what happened that day?

16 A No.
17

18 Q No? Okay. How much do you think Cassidy had to drink that day?

19 A Maybe not as much as I did. I don't know how much he had.
20

21 Q Any idea? Would you say two drinks or ten?

22 A I don't know, maybe ten.
23

24 Q Because you -- it sounds like you had 20, who knows; is that fair?

25 A Yeah.
26

27 Q Okay. Now, the booze, the alcohol you had that day, can you -- you indicated a
28 -- a 60 of what kind of alcohol?

29 A Maybe Smirnoff.
30

31 Q Okay. The -- the 60?

32 A Yeah.
33

34 Q Okay. And then the 26, what was it?

35 A Smirnoff.
36

37 Q Okay. I'm going to suggest to you that the 60 or 66, I get that wrong the same
38 as my learned friend here, but is it possible that was Crown Royal? Does that
39 ring a bell?

40 A No.
41

1 Q Not possible?

2 A Unh unh.

3

4 Q Okay. Do you know where the booze came from? Oh I guess, firstly, one step
5 back , I'm sorry for jumping, was there any other alcohol there?

6 A Unh unh, no.

7

8 Q None in the vehicle?

9 A No.

10

11 Q What about beer?

12 A No, not that I know of.

13

14 Q Not that you know of. Is it possible there was Kokanee beer in the vehicle?

15 A I don't know.

16

17 Q Did you look at -- I think you told my friend that you had indicated that
18 (INDISCERNIBLE) -- you've indicated that you looked at some selfies that
19 you took that day?

20 A Yeah.

21

22 Q Do you still have those on your phone?

23

24 THE COURT: You're not giving answers.

25

26 THE WITNESS: Yeah.

27

28 Q MR. SPENCER: Yes?

29 A Yeah.

30

31 Q Okay. So I'm going to show you a picture that's been entered. Is that one of the
32 selfies?

33 A Yeah.

34

35 Q -- from that day?

36 A Mmhmm.

37

38 Q Okay. And you'll see folks drinking a Kokanee, does that look right?

39 A Yeah.

40

41 Q Okay. Does that refresh your memory that maybe there was some beer there as

1 well?

2 A Probably, yeah. I don't remember though.

3

4 Q Okay, but that's a selfie that -- that you took?

5 A Mmhmm.

6

7 Q Okay. And that's D-3. Okay.

8 A Can I have a break, please?

9

10 THE COURT:

We'll take a ten-minute break.

11

12 (ADJOURNMENT)

13

14 THE COURT:

Okay.

15

16 Q MR. SPENCER:

So do you know where the booze came

17 from, all the different alcohol?

18 A Yeah, we picked it up.

19

20 Q Picked it up?

21 A Yeah.

22

23 Q Where at?

24 A The liquor store.

25

26 Q Which liquor store?

27 A North Battleford.

28

29 Q When?

30 A The day before.

31

32 Q The day before?

33 A Yeah.

34

35 Q Okay. And you -- you -- who did you go with?

36 A Cassidy.

37

38 Q Okay. And anybody else? Oh, you and Cassidy came to Battleford and got that
39 liquor, purchased that liquor?

40 A Yeah.

41

1 Q Okay. Do you know anything about Colton being involved in a liquor store
2 robbery the night before?

3 A No.

4

5 Q No? You didn't discuss that at all?

6 A No.

7

8 Q No? Okay. Do you know where you got the front tire? You said by --

9 A It was probably like an ugly tire, so yeah.

10

11 Q Okay. Do you think it was flat at the river before you started coming home?

12 A Yeah, it might have been.

13

14 Q When you were leaving the -- the river where were you headed? Where were --
15 if you didn't have another flat tire and everything --

16 A Home.

17

18 Q And home is where?

19 A Red Pheasant.

20

21 Q Okay. Red Pheasant town site?

22 A No.

23

24 Q No. Where is it?

25 A Like, by Mosquito Store, that's where I was going to go home.

26

27 Q That's where you were headed. Okay. Now, I've got a map up there. Can you
28 have a look at that and see if you can give me some idea where -- where you
29 guys started and where you went? This is the Number 4 Highway.

30 A What do you mean, started?

31

32 Q Where were you guys at? I think you were at somebody's place, having some
33 drinks?

34 A In the town site.

35

36 Q Yeah. And where is the town site in relation to that map?

37 A I don't know -- don't know this map. Is this it right here, Red Pheasant?

38

39 Q Okay. Well, I don't know, I -- I understood that to be Red Pheasant land, but
40 not where the town site is.

41 A I don't know where the town site is.

1
2 Q Okay, so if this highway goes over here to Cando, does that help you?

3 A Is that it right here? That goes to Cando?

4
5 Q Yeah, the Number 4 Highway.

6 A And this is Red Pheasant.

7
8 Q Well, it's -- yeah, it's part of the Reserve, but I'm going to -- I don't know
9 where the houses are, but you don't know?

10 A I don't either, no.

11
12 Q All right. Now, do you know where -- you said you knew that the tire was flat
13 by the Phoeey, Stewarts?

14 A Mmhmm.

15
16 Q Do you know where that is on this map?

17 A Unh unh.

18
19 Q Now, after you realized there was a flat tire, do you have any recollection of
20 the vehicle going into any farmers' yards?

21 A No.

22
23 Q You have no recollection of that at all?

24 A No.

25
26 Q Do you have any recollection of Eric or Cassidy getting into some vehicles,
27 rifling through them?

28 A No.

29
30 Q Nothing at all?

31 A No.

32
33 Q Okay. Have you heard anything about that?

34 A No.

35
36 Q No? Okay. I'm going to show you -- it was provided by the Prosecutor here,
37 but I'm advised that that's a printout of your texts from that day. Can you have
38 a look at those and see if those ring a bell with you and you can agree with me
39 those are texts that you would have sent and received on your cell phone?

40 A Unh unh.

41

1 THE COURT: I'm sorry, what's your answer?

2
3 THE WITNESS: No.

4
5 Q MR. SPENCER: You don't recognize any of those?

6 A No.

7
8 Q No. Do you know who Kion (phonetic) might be?

9 A Yes, that's my cousin.

10
11 Q That's your cousin?

12 A Yeah.

13
14 Q Okay. So Kion is your cousin, but you're saying none of those texts are ones to
15 or from your phone?

16 A Well, maybe they're from my phone, but I didn't text him.

17
18 Q Oh, who else would be texting on your phone?

19 A I think it could be anybody.

20
21 Q It could be anybody?

22 A Yeah.

23
24 Q Do you have your phone passworded?

25 A Huh?

26
27 Q Do you have your phone passworded?

28 A Yeah.

29
30 Q Yeah.

31 A Yeah.

32
33 Q Yeah. Who would know your password?

34 A I don't know.

35
36 Q Who?

37 A I don't know, it's pretty easy. It's an easy password.

38
39 Q Okay. Have you told anybody what your password was?

40 A No.

41

1 Q How many digits did it have?
2 A Huh?
3
4 Q How many digits?
5 A Just two.
6
7 Q Two there. Okay. Is it an iPhone?
8 A Mmhmm.
9
10 Q Don't you have to put in four digits in order to have a password?
11 A No, there's only two.
12
13 Q Only two?
14 A Yeah.
15
16 Q You haven't seen any of these texts?
17 A No.
18
19 Q Okay. Okay. I think you testified (INDISCERNIBLE), you didn't see Colton
20 get shot with your own eyes?
21 A Huh?
22
23 Q You didn't see Colton get shot with your own eyes?
24 A No.
25
26 Q You basically woke up to the gun -- the sound of the gun shot?
27 A Yeah.
28
29 Q And then realized that there was a problem, and you went around then -- okay,
30 when you opened the door, you said he was slumped to the right over against
31 the console sort of thing?
32 A Yeah.
33
34 Q Okay. And so did you kind of have to pull him towards you and then he fell?
35 A No, I don't think so. No.
36
37 Q No? Okay. When did you first -- well, I guess I'll go -- go back. Was there any
38 gun in your vehicle that day?
39 A No. Not that --
40
41 Q No.

1 A -- I know of, no.

2
3 Q So what I'm saying on this date that you guys were driving to the river and
4 everything, drove around town, was there any gun in it?

5 A No. Well, not from what I can remember, no.

6
7 Q Okay. So you don't recall sitting in the back seat with Eric and a gun being
8 right between you with the barrel pointed down?

9 A No.

10
11 Q Okay. I'm going to show you part of a stock part of a gun or that's what I think
12 it is, is that -- do you recognize that at all as --

13 A No, I don't.

14
15 Q No? You don't recognize that at all?

16 A No.

17
18 Q No?

19
20 THE COURT: What exhibit number is that?

21
22 MR. SPENCER: That is D-1.

23
24 Q MR. SPENCER: So what about bullets in your vehicle?
25 Are you aware of any bullets being in your vehicle?

26 A No.

27
28 Q No. What about shell casings, bullets that had already been shot?

29 A No.

30
31 Q No. Would it surprise you that there were bullets in your vehicle?

32 A Yeah.

33
34 Q Yeah. So do you have any explanation why there were bullets and shell casings
35 scattered in your vehicle?

36 A No.

37
38 Q No. You don't know anything about anybody shooting out of your vehicle?

39 A No.

40
41 Q No. So you've -- you've never seen bullets in your vehicle before?

1 A No.
2
3 Q You have to -- no?
4 A No.
5
6 Q Did you ever see shell casings, bullets --
7 A No.
8
9 Q -- that have already been shot, so it's just the casing?
10 A No.
11
12 Q You don't know anything about that?
13 A No.
14
15 Q Is it possible that the boys were shooting out of the vehicle while you were
16 passed out?
17 A I don't know. I don't think so.
18
19 Q Okay, but you have no other explanation why there would be bullets or shell
20 casings?
21 A No.
22
23 Q Now, you said that the wife said something to Belinda. Okay. Did she say
24 anything to you or just to Belinda?
25 A I don't know. I think it was to both of us.
26
27 Q Okay. Well, did she say anything to you?
28 A It was to both of us.
29
30 Q And where were you then?
31 A We were standing right beside my vehicle.
32
33 Q Okay. And then what did you do?
34 A Nothing. I was just crying, and then she's, I know, yelling at her or whatever. I
35 don't know.
36
37 Q Belinda was yelling at her?
38 A I think so. I'm not sure though. Well, she said something --
39
40 Q Okay. Sorry, because we're dealing with a wife, a woman, and then Belinda is
41 a female as well, so can you help me, who was yelling at who?

1 A I don't know. I don't know.

2

3 Q Okay. Did you and Belinda assault the wife?

4 A No.

5

6 Q You didn't hit her?

7 A No, I didn't hit her.

8

9 Q No? Sheldon didn't have to come and tell you to get off her?

10 A Well, I don't know, maybe Belinda did, but I didn't.

11

12 Q Oh, but you were both there?

13 A Yeah.

14

15 Q Did you get charged with assaulting her?

16 A Yeah, I think so, but then, yeah, it was dropped.

17

18 MR. SPENCER: Okay. That's all I have. Thank you.

19

20 THE COURT: Any re-exam?

21

22 MR. BURGE: No, thank you.

23

24 THE COURT: Okay. Ms. Wuttunee, thank you very
25 much.

26

27 THE WITNESS: Am I done?

28

29 THE COURT: You are free to go.

30

31 THE WITNESS: Okay.

32

33 (WITNESS STANDS DOWN)

34

35 MR. BURGE: The next witness is Belinda Jackson.

36

37 THE COURT: Okay.

38

39 COURT CLERK: Do you want to just come up here?

40

41 THE COURT: Good afternoon, Ms. Jackson. Just come

1 up there.

2

3 COURT CLERK: Just come up here and remain standing.

4

5 MS. JACKSON: Okay.

6

7 COURT CLERK: Will you swear on the Bible?

8

9 MS. JACKSON: Yes.

10

11 COURT CLERK: Take the Bible in your hand.

12

13 **BELINDA JACKSON, Sworn, Examined by Mr. Burge**

14

15 COURT CLERK: State your name for the court, please.

16

17 THE WITNESS: Belinda Jackson.

18

19 COURT CLERK: Please spell your full name for the court
20 record.

21

22 THE WITNESS: B-E-L-I-N-D-A J-A-C-K-S-O-N.

23

24 COURT CLERK: Thank you. You may be seated.

25

26 THE COURT: Good afternoon, Ms. Jackson.

27

28 THE WITNESS: Good afternoon.

29

30 Q MR. BURGE: Ms. Jackson, I'd like to ask you some
31 questions. I understand you live in Alberta?

32 A Yes.

33

34 Q And in August of 2016 you were visiting at Red Pheasant; is that correct?

35 A Yes.

36

37 Q Do you know how long you were visiting at Red Pheasant?

38 A I was here prior, like two months before.

39

40 Q For two months prior to the incident that you were --

41 A Yeah.

1
2 Q -- about to testify about? Okay. Where were you staying at Red Pheasant?

3 A When I first came it was at Eric's parents, and then that day, when it happened
4 or the day before, I was at his grandma's house. I stayed at his grandma's
5 house.

6
7 Q Okay. So the day before what you're about to testify about, you're at Eric's
8 grandma's house?

9 A Yeah. Well, we'd been staying there, yeah.

10
11 Q Pardon me?

12 A Yeah, we were staying there a couple of weeks before it happened.

13
14 Q Okay. I'd like to ask you about that day, which I understand was the 9th of
15 August. Do you remember how your day started?

16 A Yeah.

17
18 Q Well, why don't you tell us about that? You were at Eric's grandma's house,
19 and I take it you would have woken up sometime in the morning?

20 A Yeah, and I went to his mother's to go shower. No, actually, we went to go run
21 some errands first. We went to the Band office. Then we met up with Kiora
22 and Cassidy there, just by coincidence, I guess. And then they said they were
23 going to come check us out, and we said we'd be at Eric's house. And I --
24 whatever, they waited outside while I was showering. You know, they were
25 rushing me to come and whatever, so from there we left. We left to the town
26 site to go pick up Colton. And then from Colton's house we went to some
27 trailer. We were trying to go, I guess, drink there, but nobody was answering.
28 So then we went to his -- I believe it was his grandma's house where he was
29 staying at the time, and she didn't want us there, but we stayed outside there
30 for a while. And we had this big speaker with us, and we plugged -- plugged in
31 the music or whatever, and that's when she told us she didn't want us there. So
32 I believe we went back to the town site for something, and then somebody told
33 us that there was cops on the Reserve, and that they were looking for a certain
34 vehicle, and that it was stolen. So I was -- it was my suggestion to go to a lake,
35 to go -- just go sit there and drink.

36
37 Q So what time would this have been that you would have suggested let's go to a
38 lake?

39 A I would say about that time it was like maybe -- I'm guessing around like 2 --

40
41 Q So 2 --

1 A -- because they picked us up around like noontime.

2
3 Q Okay. So 2 in the afternoon?

4 A Yeah.

5
6 Q Where were you when you first started drinking that day?

7 A I didn't start drinking until we were leaving the Reserve, and we're stopped
8 from -- we got stopped from this -- well, actually it was these couple that were
9 on the road. It was an older couple, and they kind of looked like they needed
10 help, so they needed directions to Cando, I believe. I'm not good with the areas
11 around here, but now I know them. They needed to go to Cando, and we gave
12 them directions, and then from there I -- leaving the Reserve, that's when I --
13 me and Eric started drinking.

14
15 Q Okay. What kind of alcohol was available to you?

16 A I remember there was vodka, and I believe it was rum.

17
18 Q Okay. Do you know what size the containers were?

19 A I think Kiora had -- I think it was like a 26 of vodka, and then the boy -- Colton
20 had like a -- it was a bigger bottle. I can't remember.

21
22 Q Bigger than a 26?

23 A Yeah.

24
25 Q And was that the rum?

26 A Yeah.

27
28 Q Okay. Were they both -- both bottles full when you first became aware of
29 them?

30 A Yes.

31
32 Q So you started drinking on the road to the -- to the lake; is that right?

33 A Yeah.

34
35 Q And how long would it take for you to get to the lake from where you were?

36 A Well, they told me that we were going to go to some lake. It was supposed to
37 be a lake. It started -- I can't remember what it was called, but I believe it
38 started with an 'M'. We didn't end up going there. We ended up just going to
39 the river.

40
41 Q Okay. And how long did it take you to get to the river?

- 1 A Not that long, I don't --
2
- 3 Q So more or less than half-an-hour?
4 A I would say about a half-hour.
5
- 6 Q Okay. How long would you have stayed once you arrived at the river? Did you
7 go swimming?
8 A Yes.
9
- 10 Q And how long were you there?
11 A I would say about an hour-and-a-half.
12
- 13 Q Okay. Were you drinking at the lake or at the river?
14 A Yes.
15
- 16 Q And what were you drinking?
17 A Both alcohols.
18
- 19 Q And were you drinking out of the bottle or were you pouring into a glass?
20 A Out of the bottle.
21
- 22 Q And do you have any idea how much you would have had to drink?
23 A I know it was quite a bit, but it wouldn't be the first time.
24
- 25 Q It wouldn't be the first time?
26 A Yeah, to drink that much.
27
- 28 Q Okay. How was the alcohol affecting you? How would you describe your
29 condition?
30 A Well, I remember we were swimming, me and Kiora, and I only swam -- swum
31 for so long because I couldn't -- you know, obviously it's a river and it is
32 pushing us.
33
- 34 Q Did you say pushing you?
35 A Yeah, like --
36
- 37 Q Like the current?
38 A Yeah.
39
- 40 Q Okay. And was -- was the alcohol affecting your ability to handle the -- the
41 current as well?

1 A I had asked Colton to get me out of the -- the water because I couldn't do it on
2 my own.

3
4 Q Okay. Once you were done swimming, what happened? And maybe you can
5 just tell us and take us to the very end, and then I'll come back and ask you
6 some questions.

7 A Well, after I was done, I got out of the water and went into the vehicle to try to
8 look for my phone because I seen Eric taking pictures, and I thought, okay,
9 well, you know, I'll take pictures, too, but I couldn't find it, so instead I just sat
10 in there because I was cold. I don't exactly remember leaving the river because
11 I know that we were -- we got out of the water and we just stayed around the
12 vehicle for a while. I don't remember leaving, like, actually leaving the river. I
13 came to it when we were driving though because Cassidy was driving, and he
14 -- he swerved off the road a little, and then I -- I started getting mad and
15 whatever because, you know, like obviously there was alcohol involved, and
16 he didn't want to control his driving, and I was getting mad for somebody else
17 to drive, like Eric, but he didn't want to. So I got out of the vehicle, and I
18 started walking down the road. And when he made that swerve, that's when the
19 tire popped, and we were -- ended -- Eric ended up just coming to grab me, and
20 I got back into the vehicle. And then from there it just -- I don't remember a
21 whole lot until they pulled into the farm of Gerald Stanley's.

22
23 Q Okay. I'll just stop you right here. Do you recall if there were any other farms
24 that the vehicle pulled into?

25 A No.

26
27 Q Is there -- do you have a good memory of the entire ride from the river to the
28 Stanley farm?

29 A No.

30
31 Q Okay. Maybe you can describe that. Why don't you have a good memory?

32 A I don't know.

33
34 Q Were you awake?

35 A I might have been sleeping. I remember, at some points, I was sleeping, and
36 then I came to. It just seemed like we were driving and driving.

37
38 Q Okay. Okay. You said that the vehicle swerved, came to a stop, you got out,
39 and then you got back into the vehicle?

40 A Yeah.

41

1 Q Okay. At that point, where were you in the vehicle?

2 A I was in the middle.

3

4 Q Of?

5 A Kiora's vehicle.

6

7 Q Okay. What part of -- what -- the middle of what, what seat?

8 A In the back seat.

9

10 Q Who was in the back seat with you?

11 A Kiora and Eric.

12

13 Q Pardon me?

14 A Kiora and Eric.

15

16 Q So where was -- if you're in the middle, where was Kiora?

17 A Kiora was right behind Colton, and Colton was in the passenger.

18

19 Q As in the front passenger?

20 A Front passenger.

21

22 Q And so Eric was?

23 A On the left side behind the driver.

24

25 Q Okay. And who was driving?

26 A Cassidy.

27

28 Q And so that's how the vehicle was configured or that's how everyone was
29 seated after you got back into the vehicle?

30 A Yes.

31

32 Q Okay. And --

33 A We were actually supposed to go to some house, I remember that, and it was
34 one of their friend's.

35

36 Q Do you know who that was?

37 A No.

38

39 Q And what was the purpose of going to that friend's house?

40 A To drink there and park the vehicle.

41

Q Did you go to that friend's house?

A No, we ended up being at the farm.

Q Okay. Tell us in as much detail as you can remember about the drive that led to the Stanley farm and what happened at the Stanley farm?

A Well, I remember pulling into the driveway. And I remember seeing somebody mowing their lawn.

Q What kind of a mower, or what style of a mower?

A I don't know. I just remember seeing her in the yard.

Q So this -- this is a female?

A Yes.

Q Okay. As you're driving in, would you see this female to your right or to your left?

A I believe my right. It would be my right side.

Q Okay. And was this a riding mower or a push mower or some --

MR. SPENCER: My friend, if you feel that this evidence is of any value you've gone as far as what style of mower.

THE COURT: Perhaps you could address the court rather than the counsel. What's your objection?

MR. SPENCER: Well, that's a pretty leading question after he tried to lead about three times, and then I appreciate he just wants to get the answer, but to inject riding mower when the witness didn't know is, in my respectful submission, an inappropriate question.

THE COURT: Counsel?

MR. BURGE: Well, I was -- it's a direct question, but it, like, contains a number of answers, and a leading question, frankly, contains an answer.

THE COURT: Yeah, it's -- it doesn't suggest the answer in it. You can ask the question.

MR. SPENCER: Well, if I may address that further, and

1 certainly from my respectful submission it certainly does suggest the answer that
2 the type of mower, she doesn't know, is a riding mower. That question clearly
3 built in an answer.

4
5 THE COURT: Well, let's -- Ms. Jackson, I wonder if
6 you could just step outside for a minute.

7
8 (WITNESS STANDS DOWN)

9
10 MR. SPENCER: Your Honour, I'll withdraw my objection
11 and let the question go. That's fine.

12
13 THE COURT: Well, I'm going address it at this point.
14 She said she didn't know what type of mower it was. Now, does that mean she
15 doesn't know what it looks like? Does that mean she doesn't know the make of it?
16 Is it a Toro? Is it a John Deere? At this point he is now asking the style of it, so I
17 think it's an appropriate question, and I'm going to allow the question.

18
19 MR. SPENCER: Your Honour just closed the loop, and I
20 respect your ruling, but if he'd asked what style, then I wouldn't have objected.

21
22 THE COURT: Okay. I wonder, Deputy, if you would
23 mind asking her to come back. Anything you'd like to say before she comes back?

24
25 MR. BURGE: No, thank you.

26
27 THE COURT: Okay.

28
29 (WITNESS RE-TAKES STAND)

30
31 THE COURT: Ms. Jackson, the only reason I asked you
32 to leave is because we were going to discuss some legal aspects of what we're
33 doing here. It has --

34
35 THE WITNESS: Yes.

36
37 THE COURT: -- nothing to do with the manner in
38 which you're answering the questions. Okay?

39
40 THE WITNESS: Okay.

41

1 THE COURT: Go ahead.

2
3 Q MR. BURGE: Ms. Jackson, I'm going to ask you to
4 address your mind to the style of mower that you saw this woman using, and I
5 -- for example, a push lawn mower, a riding lawn mower, or a mower that's
6 pulled by some other implement, like a tractor?

7 A I understand your question. I just recall her being out there in the yard --

8
9 Q Okay.

10 A -- with something.

11
12 Q Okay.

13 A And it looked like she was mowing the lawn.

14
15 Q And as I said before, please continue and tell us in as much detail as you can
16 what -- what happened?

17 A I don't recall any words being exchanged between the owner saying that it was
18 trespassing. I'm just going to say what I remember. I just remember someone
19 coming to the windshield and smashing it because at that time I didn't think
20 that -- they didn't want us there.

21
22 Q When someone came to the windshield and smashed it, where -- were you still
23 in the same position in the vehicle?

24 A Yeah.

25
26 Q And was the vehicle moving or was it stopped?

27 A We tried to leave, but we backed into another vehicle, a parked vehicle.

28
29 THE COURT: I'm sorry, I didn't hear that.

30
31 THE WITNESS: We tried to leave --

32
33 THE COURT: Okay.

34
35 THE WITNESS: -- the place, but as we were leaving we
36 tried backing up, and we backed into a parked vehicle.

37
38 THE COURT: Okay.

39
40 Q MR. BURGE: Do you remember who was driving when
41 your vehicle struck a parked vehicle?

- 1 A Cassidy was the driver the entire day.
- 2
- 3 Q Do you know if anyone got out of your vehicle before the windshield got
- 4 smashed?
- 5 A Cassidy and Eric, they started running.
- 6
- 7 Q Pardon?
- 8 A Cassidy and Eric.
- 9
- 10 Q So they started running before the windshield got smashed?
- 11 A After.
- 12
- 13 Q Okay. The question that I asked you was, do you know if anyone got out of
- 14 your vehicle before the windshield got smashed?
- 15 A We were all in the vehicle when the windshield was smashed.
- 16
- 17 Q Do you know if anyone got out of the vehicle before the windshield got
- 18 smashed?
- 19 A No.
- 20
- 21 Q Did you see any other people in this farmyard apart from the woman mowing
- 22 the grass before the windshield got smashed?
- 23 A His son.
- 24
- 25 Q Pardon me?
- 26 A His son and his wife.
- 27
- 28 Q This is before the windshield got smashed?
- 29 A I recall seeing the son afterwards.
- 30
- 31 Q After what?
- 32 A After -- I believe it was him that smashed the windshield because after that he
- 33 told -- Gerald told his son to go inside to grab a gun, and then that's when --
- 34
- 35 Q Okay.
- 36 A -- the boys ran.
- 37
- 38 Q Did you know anybody named Gerald at that time?
- 39 A No.
- 40
- 41 Q Okay. You say -- maybe if you can describe -- okay. When did you hear words

1 spoken such as, Go get the gun?

2 A When he smashed -- when his son smashed the windshield.

3

4 Q So after the windshield was smashed?

5 A Yes.

6

7 Q Do you have a memory of what the farmyard looked like?

8 A I recall that I seen a garage, and like these big steel things, what you would
9 usually have on a farm, I guess. I don't know what they're called.

10

11 Q Like a grain bin?

12 A I think so. I recall seeing that.

13

14 Q Okay. Was there any discussion in the vehicle about why you were pulling into
15 this yard?

16 A No, besides getting help.

17

18 Q Okay. Was there a discussion about that?

19 A Not with me.

20

21 Q Did you hear anyone discussing pulling into a farmyard to get help?

22 A Well, that time -- at that time I know I didn't have a phone and Kiora's phone
23 was dead. I believe they were just trying to use the phone or change the tire or
24 something.

25

26 Q The question that I asked you was if there was any conversation in the car?

27 A I didn't hear any conversation.

28

29 Q Was there any conversation in the car after you saw this woman with the lawn
30 mower?

31 A I remember having a few words with Kiora, but that was after Colton got shot.

32

33 Q Okay. So again was -- do you recall if there was any conversation in the car
34 after you saw the woman with the lawn mower?

35 A No.

36

37 Q Did the vehicle come to a stop anywhere in the farmyard?

38 A Yeah.

39

40 Q Do you remember that?

41 A We backed into the vehicle.

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Q Okay. Was this before or after the windshield got smashed?

A It was after.

Q Okay. Did the vehicle come to a stop anywhere in the farmyard before the windshield got smashed?

A I don't recall.

Q Do you have any recollection of what was happening within your vehicle before the windshield got smashed?

A No.

Q Do you know how long your vehicle was in that yard before the windshield got smashed?

A No.

Q Okay. You told us that your vehicle somehow collided with a parked vehicle?

A Yes.

Q Can you -- okay, why don't you start from there and tell us, in as much detail as you can, leading up to that collision, then what happened after that, and please give as much detail as you can remember?

A Well, after he said, Go get a gun, the boys started running. And then as he told his son that, he went in -- he went into the garage.

Q Who went into the garage?

A Gerald.

Q Okay. How do you know who Gerald is?

A I didn't know who he was, but I know who he is now. He's the older-looking guy. I could just tell that was probably his son.

Q Okay. You're saying the older-looking guy said to the younger person, Go get the gun?

A Yes.

Q And what did the younger person do?

A Go inside and get the gun.

Q And what did the older person do?

A Go get his handgun.

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Q Okay. Please continue and tell us in as much detail as you can what happened?

A He came out.

Q Who came out?

A Gerald.

Q So that's the older fellow?

A Yes.

Q He came out of what?

A He came walking back to the car, to the vehicle, to the right side, the passenger side, and he shot Colton.

Q Where was Colton when he got shot?

A He was sleeping in the passenger side.

Q In the passenger seat?

A He was sleeping in the passenger front seat.

Q Okay. And where were you?

A In the back seat, in the middle. Kiora was behind him in the back seat. Eric and Cassidy had already ran off.

Q Okay. Why don't you tell us about Eric and Cassidy running off? When did they run off?

A When they heard he told his son to go get a gun, and that this -- I don't recall if it was Gerald or his son that fired the shots towards them. I don't recall if it was the son or Gerald.

Q Fired shots towards who?

A Eric and Cassidy that ran.

Q Okay. You've told us that the older man -- once the windshield was smashed, the older man told the younger man to get a gun? Is that what you told us?

A Yeah, he came out with a long gun. Like, it looked like a shotgun.

Q Who had the long gun that looked like a shotgun?

A His son.

Q So he -- he came out of where?

1 A His house.
2
3 Q And what did you see that younger person do with that long gun?
4 A I just remember him standing there after he -- after Colton was shot.
5
6 Q Standing where? Where, in relation to the vehicle?
7 A On the right side of the vehicle.
8
9 Q So the passenger side?
10 A Yeah.
11
12 Q And was that -- was that before or after Colton was shot?
13 A That was after.
14
15 Q And how did Colton get shot as far as you can remember?
16 A Gerald came right to the window.
17
18 Q And what did Gerald have?
19 A A handgun.
20
21 Q And tell us what happened?
22 A I don't think Kiora was really aware. I started screaming, and then I told her.
23 Like, she's -- they shot him. And she started screaming towards them, saying,
24 You shot my boyfriend. And we didn't really want to get out of the vehicle
25 right away.
26
27 Q How many times was Colton shot?
28 A Twice.
29
30 Q And who fired those two shots?
31 A Gerald.
32
33 Q So that's the older man?
34 A Yeah.
35
36 Q And did Colton remain in that front passenger seat?
37 A No.
38
39 Q What happened?
40 A We waited after a while to get out of the vehicle. We finally got out, and Kiora
41 opened the door, and he -- his body fell out.

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Q So Kiora opened what door?

A The passenger door, his door.

Q The front passenger door?

A Yes.

Q And you're sure of that?

A Yes, I'm sure of that.

Q Then what happened?

A We just sat there with him for a while, and screaming, and we're crying, and we're asking why.

Q You're asking who?

A They were all standing there.

Q Okay. Who all was standing there?

A Gerald, his wife, and his son, Sheldon.

Q And so where were they standing? It sounds like, okay, where are you? You said you've opened the front passenger door?

A Kiora opened the door. We got out --

Q Okay.

A -- of the vehicle. She opened his door, and just wanted to know like if it was for real --

Q Okay.

A -- if he was really dead.

Q Where were you when that door was opened?

A We both got out together, and she opened the door.

Q Where were you when she opened the door?

A Beside her.

Q Okay. And then what happened?

A His body fell out, and we just sat there for a while. And I started screaming towards the lady that was standing there. I believe her name is Lisa.

1 THE COURT: I'm sorry, I can't hear you.

2
3 THE WITNESS: I started screaming towards Lisa because
4 she said, That's what you get for trespassing. So I approached her, and I started
5 hitting her. And Kiora was screaming that, just stop, he's going to -- he's going to
6 shoot you, too, but I -- I didn't.

7
8 Q MR. BURGE: Okay. When you approached the woman
9 and started hitting her, where was she in relation to the vehicle that you were
10 in?

11 A She was standing away from the vehicle.

12
13 Q Okay. What side of the vehicle was she standing away from?

14 A It was the right side, kind of like towards the front, maybe.

15
16 Q How far away from the vehicle was she standing?

17 A Not far. I just went running towards her, and I started hitting her. She stood
18 there with her arms crossed, watching us cry and scream.

19
20 Q What else did you -- where was the older man and the younger man when this
21 was happening?

22 A They were standing there.

23
24 Q Pardon me?

25 A They were standing there.

26
27 Q Both of them?

28 A All three of them.

29
30 Q Okay. In relation to the vehicle that you were in, where was the older man
31 when --

32 A He was standing closer to the vehicle.

33
34 Q Okay, but what side of the vehicle?

35 A The right side.

36
37 Q So the passenger side?

38 A The passenger side.

39
40 Q So near the front or the back, can you tell me?

41 A The side.

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Q Pardon me?

A The side.

Q The side, so like the middle of the vehicle?

A Yeah, but quite a ways from the vehicle, like.

Q So how far away from the vehicle then?

A I'm not sure how far away from the vehicle.

Q Is there something in this courtroom that would be a distance that you can tell us?

A Probably from here to the TV, maybe a little further.

Q Okay. Would that be about 15 feet?

A I don't know.

Q Do you know feet?

A No.

Q Would that be about five metres?

A Just say from here to the TV.

Q Okay.

THE COURT: Counsel, any distance we can agree on?

MR. SPENCER: I think that's fair, I think we're looking at five metres.

THE COURT: Five metres. Okay.

Q MR. BURGE: Where was the younger man?

A Sheldon, his son?

Q The younger man. You said, An older man and a younger man.

A He was standing there, too, but I don't know how far away he was.

Q How close would he have been to the older man?

A They were kind of close together. His wife was more distance from them.

1 Q How long did you stay in the yard after Colton was shot?

2 A I don't really know after he shot him. The time just went by really slow
3 because it seemed like it took forever for the police to get there.
4

5 Q And -- and the police who shot Colton, how far was he away from Colton
6 when he fired the gun?

7 A Looking away through the window.
8

9 Q Okay. How was the gun held? Can you demonstrate with your hand?

10 A With his right hand.
11

12 Q Okay. You said in his right hand, but how was -- how was -- how was -- how
13 did he hold his hand?

14 A How can I describe that?
15

16 Q Maybe you can demonstrate to us if you can.

17 A Like, I just recall him coming to the window and shooting him twice in the
18 head.
19

20 Q Okay. And did both bullets strike Colton as far as --

21 A Yes.
22

23 Q -- you could tell? Pardon me?

24 A Yes.
25

26 Q At this point how were you feeling because of the alcohol that you had
27 consumed?

28 A It kind of just made me come to, like snap out of it, I guess.
29

30 Q Up until you snapped out of it, how would you describe how the alcohol was
31 affecting you?

32 A I don't know, I kept sleeping and getting up.
33

34 Q Okay. Did you notice Eric? What -- did you notice how the alcohol was
35 affecting him?

36 A I know that he wasn't -- he's not really a big drinker, and he wasn't -- I got
37 drunk faster than he did, but he's -- I didn't start drinking until I seen him start
38 drinking.
39

40 Q Okay. Did you make any observations about how the alcohol was affecting
41 Eric?

1 A I don't understand that.

2
3 Q Do you -- how would you describe Eric's condition?

4 A He seemed okay.

5
6 Q Okay. How would you describe Kiora's condition?

7 A She was pretty drunk.

8
9 Q How would you describe Colton's condition?

10 A Colton was sleeping.

11
12 THE COURT:

Colton was what?

13
14 Q MR. BURGE: Did you say he was sleeping?

15 A I don't really much -- I don't really remember how he was. I just recall him
16 sleeping.

17
18 Q When Eric got out of the vehicle, what door did he get out of, when you say --
19 you said he got out and ran?

20 A Driver's side, back seat.

21
22 Q Do you know how much time went by between when Eric got out and started
23 running and when Colton got shot?

24 A No.

25
26 Q Do you know if it was a short time or a long time?

27 A It was a short time.

28
29 Q Pardon me? Somebody is coughing, I couldn't hear you.

30 A It seemed like a short time.

31
32 Q Could you still see where Eric was when Colton got shot?

33 A No.

34
35 Q And do you know why you couldn't see where Eric was? Was -- was he too far
36 away or was there an obstruction of your view?

37 A It just seemed like everything happened all so fast.

38
39 Q How many shots did you hear in total?

40 A Four.

41

Q Okay. You've described Colton being shot twice?

A Yes.

Q Did you hear Colton being shot first or did you hear the other shots first?

A The other shots first.

Q And how much time would have gone by between when you heard the first shot and then --

A It was not long after.

Q -- the second shot, and then the two -- the last two shots?

A It was not long after.

Q Okay. What do you mean by not long? Are we talking minutes or seconds?

A It's hard to say if it's minutes or seconds, but I recall it was not long after. Like, it seemed like they were so close together.

Q Pardon me? Did you say close together?

A Yeah.

MR. BURGE: Okay. Ms. Jackson, thank you for answering my questions. Please answer any questions that my friend might ask you.

THE COURT: Cross-exam?

MR. SPENCER: Thank you, Your Honour.

Mr. Spencer Cross-examines the Witness

Q MR. SPENCER: Belinda, can you tell me who you've spoken to, everybody you've spoken to about what happened that day on the Stanley farm? Can you tell me, in order, who did you first speak to, and who have you spoken to since, about the incidents of that day?

A I didn't really talk with anybody about it until we buried Colton.

Q Okay. You gave a statement to the police?

A I gave a statement to the police.

Q And was that accurate and to the best of your recollection at that time?

A No.

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Q Why did you lie to the police?

A Why would you say I lied to the police?

Q Well, if it wasn't accurate, to your best recollection, then you must have not told them --

A Well, I couldn't just give as much detail as I could because I hadn't even slept in there. I was held in there for 19 hours. I didn't sleep, I didn't eat, as they were expecting me to.

Q Okay. So you didn't tell them what happened?

A I didn't know as much. You know, when I finally was able to get the rest that I needed, I remembered things on my own. I didn't speak with anybody really until we buried Colton, and that was with Kiora.

Q Okay. So you spoke with Kiora, and then that refreshed your memory?

A Yeah. Well, not a whole lot.

Q Okay, but did you give a statement to the FSIN investigator?

A Yes.

Q Okay. And what was your understanding of that statement?

A What do you mean?

Q Why were you giving that statement?

A Because I just had more to say --

Q Okay.

A -- more to remember.

Q Right, but shouldn't you have told the more stuff you remembered to the police?

A I couldn't.

Q Why?

A Because he treated me like I was a criminal. When I was arrested, they didn't read me my rights.

Q They read you your rights?

A They did not read me my rights. They just told me that I was being arrested for theft.

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Q Okay. You actually got charged with assaulting --

A Yeah, but I didn't know that until I was released.

Q Okay, but you got arrested for beating her up; that's fair, isn't it, if you beat her up?

A I guess so.

Q Okay. So I'm trying to understand why you wouldn't tell the police the additional information that you have?

A So what's your question?

Q Why didn't you tell the police that you had more information?

A I just couldn't figure out why it happened the way it happened, you know.

Q Okay.

A Speaking with Kiora and Eric helped me remember things.

Q Okay, or helped you to create memories?

A No.

Q Okay. So you spoke with both Kiora and Eric about the events of that day?

A Well, I was staying with Eric. I was staying with him. Of course, I'm going to talk to him, but I didn't speak to anybody else.

Q Okay. So you've talked to Eric a fair bit because you were hanging out together?

A He was my boyfriend at the time.

Q And you talked to him --

A Yeah.

Q -- about the events of that day lots?

A Not a whole lot. I just told him what I remember.

Q Did he tell you what he remembered?

A No, he didn't say much.

Q Okay. Did you make some complaint against the RCMP?

A Yeah.

1 Q Yeah?

2 A Yes.

3

4 Q Okay. And who did you make the complaint to?

5 A I talked -- I spoke to so many people, I don't even know whose name is who. I
6 just know they all treated me badly.

7

8 Q Okay. You were awake when you got to the Stanley farm; is that right?

9 A Yeah.

10

11 Q And you saw a woman working on the right side of the road as you went into
12 the farm?

13 A Yes.

14

15 Q Okay. Why did you think you were at the Stanley farm? Why -- why would
16 you pull in there?

17 A I have no idea, and in a way I thought that's where we were supposed to go. I
18 thought that's where we were -- that's the place we were trying to go anyway.

19

20 Q Do you know the name of the person that you were supposed to be going to
21 see?

22 A No.

23

24 Q No?

25 A He had like a nickname, and it sounded weird.

26

27 Q Okay. Can you help us at all?

28 A No.

29

30 Q A weird nickname?

31 A Yeah, like I -- I've heard it before. I heard them mention it before. Like, I
32 heard Eric talk about that name before, but I can't remember. Like, I -- it
33 started with a 'C'.

34

35 Q Okay. Okay. And you don't -- you're not from here, so you didn't know where
36 the guy with the nickname --

37 A No.

38

39 Q -- that started with a 'C', where he lived, so you thought you were getting
40 there?

41 A Yeah.

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Q Okay. When was the first time you realized at the Stanley farm that you weren't at this guy's place, this buddy of Eric or Cassidy or somebody's?

A When the windshield was smashed.

Q When the windshield was smashed. Okay. Do you recall, you were awake at the time before the windshield got smashed, you were awake, were you?

A Yeah.

Q Yes?

A Yes.

Q Okay. Do you recall anybody getting gout of the grey Escape, Kiora's vehicle, and searching through a half-ton truck that was parked in the yard?

A No.

Q You don't recall that at all?

A No, I don't, no.

Q Okay. Do you recall Eric or Cassidy, I guess, getting on a quad and trying to steal it?

A No.

Q No. You don't recall that?

A No.

Q Okay. Any explanation why you -- you were in the truck (sic) the whole time?

A Yeah.

Q Okay. Any explanation why --

A (INDISCERNIBLE).

Q -- both Eric and Cassidy would recall the stealing of the quad and the attempt to steal the quad and you wouldn't? Any --

A No.

Q No?

A There is alcohol involved. I -- I remember being awake and then not being awake.

Q Okay.

1 A And I was aware that I was sleeping.
2
3 Q Okay. Do you recall there being a gun in the grey Escape?
4 A No.
5
6 Q No? You don't recall a gun being in the back seat between you and Eric and
7 Kiora and in -- in the back seat there, with the barrel down on the floor?
8 A No, I was asked that many times.
9
10 Q What's that?
11 A No, I don't recall.
12
13 Q You were asked that what?
14 A Plenty of times.
15
16 Q By who?
17 A I think his name was -- the first guy that I gave a statement to was in the cells
18 was something Boogard, Constable Boogard?
19
20 Q A police officer?
21 A Yeah, he told --
22
23 Q The night after the incident?
24 A -- yeah, he told me that he wasn't able to give me any evidence, but he ended
25 up saying something about a gun.
26
27 Q Right. So he asked you whether you'd seen a gun in the vehicle, and so you
28 didn't?
29 A Yeah.
30
31 Q Did you see any bullets in the vehicle?
32 A No.
33
34 Q Did you see any shell casings? Do you know what a shell casing is?
35 A Yeah.
36
37 Q Yeah. Did you see any of those in the vehicle?
38 A No.
39
40 Q And you didn't see those scattered around the vehicle?
41 A No.

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Q Okay. Not in the console, not on the floor?

A I stayed in the same place the entire time I was in the vehicle.

Q But there was some in the back, you didn't see anything?

A I didn't see any gun shells or gun --

Q Would that -- would that be something that would catch your attention if you saw a bullet laying on the floor?

A Yeah, of course if I seen something or if I seen the gun, yeah, of course I would say so.

Q Right. Okay. So any -- any explanation why Eric would say that there was a gun between you --

A No.

Q -- you and him? No? So you don't recall Eric handing Cassidy a gun to break into a red half-ton?

A No.

Q You don't --

A I don't recall.

Q -- recall them trying to steal a red half-ton?

A No, but I recall there was a red vehicle when I got arrested. I don't know if it was a half-ton vehicle though, but I remember seeing a red truck.

Q Is it possible that the big bottle of booze was a 60 of Crown Royal?

A Yeah.

Q That rings a bell?

A Yes.

Q And do you know where the booze came from?

A No, they had it already when they picked us up.

Q Okay. So you didn't stop and purchase it anywhere on the way to --

A No.

Q -- Maymont or anything?

A They had it already.

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Q Okay. So you've got a 26 of vodka --

A Yes.

Q -- is that right?

A Yes.

Q Was it regular vodka or?

A I don't even know. I don't think it was regular. No, it wasn't regular vodka.

Q What kind of --

A I never drank that kind of vodka before, but I know it was a vodka.

Q And to your best recollection, what kind of vodka was it?

A No.

Q If I suggested a flavoured blueberry vodka, something like that, would that make sense? It might remind you?

A I don't know. It's hard to say.

Q So the two big, the 60 of Crown Royal and the vodka of some sort, those were in the vehicle, and you guys were drinking those as you were going to Maymont?

A Yes.

Q Yeah. Okay. So -- and they were basically full when you head out, and you said you didn't start drinking for a while, a little ways into the trip before you started drinking?

A Yeah.

Q So you saw Eric drinking and you thought well, I must as well, too?

A Yes.

Q Okay. Was there any other alcohol in the vehicle?

A I just recall seeing those two because those are the ones that I drank. I don't recall seeing any other.

Q And I don't think I've asked you this at all, the Crown Royal was full when you started the trip?

A No.

Q No. How much was in it when you started the trip?

A When we picked -- when we picked up Colton, he was with other people, and they were already drinking that.

Q Well, not full, but how full do you think it was, your best --

A I don't know. I just remember that they were already drinking it.

Q Okay. So what was their condition when they picked you up?

A Kiora and Cassidy were already pretty drunk. Colton wasn't. He seemed fine and communicating.

Q I'm going to suggest that there was Kokanee beer in the vehicle as well. Do you have any recollection of that? Does that refresh your memory at all?

A No.

Q No?

A No.

Q You don't recall Kokanee beer? No?

A (NO AUDIBLE RESPONSE).

Q I'm showing you a picture of -- does that look like the group that day? Do you recognize that picture? That's an accurate picture or selfie of the group?

A Yeah.

Q Okay. And you're in there, that's you; right?

A (NO AUDIBLE RESPONSE).

Q Yeah. You can see Colton is holding up a Kokanee there? Do you agree with me?

A I can see that now.

MR. SPENCER: Yeah. Okay. That's referenced to D-2. Your Honour, I think we've -- I've discussed with my learned friend about making those full exhibits. Is that -- I don't know if there's any objection to that?

MR. BURGE: There is no objection, Your Honour.

THE COURT: 'D's 1 through 4 are full exhibits.

1 **EXHIBIT D-1 - Photo shown to Cassidy Cross (Formerly EXHIBIT D-1 - FOR**
2 **IDENTIFICATION)**

4 **EXHIBIT D-2 - Photo shown to Cassidy Cross (Formerly EXHIBIT D-2 - FOR**
5 **IDENTIFICATION)**

7 **EXHIBIT D-3 - Photo shown to Cassidy Cross (Formerly EXHIBIT D-3 - FOR**
8 **IDENTIFICATION)**

10 **EXHIBIT D-4 - Photo shown to Cassidy Cross of motor vehicle (Formerly**
11 **EXHIBIT D-4 - FOR IDENTIFICATION)**

13 Q MR. SPENCER: Okay. So you have no recollection of
14 going into any farmyards other than the Stanley's?

15 A No, I don't recall.

17 MR. SPENCER: Maybe, Your Honour, another five-
18 minute break.

20 THE COURT: Do you need a break?

22 MR. SPENCER: Well, I don't need a break, but I'm
23 thinking --

25 THE COURT: I think the witness would prefer, at this
26 point, to continue on, would you?

28 THE WITNESS: Yes, please.

30 MR. SPENCER: Is that -- okay.

32 THE COURT: Okay.

34 MR. SPENCER: Okay, fair enough.

36 Q MR. SPENCER: So you don't remember going into any
37 other farmyards?

38 A No.

40 Q And the Stanley farmyard, you don't remember anybody getting out of the
41 vehicle or trying to steal a quad?

1 A No. No.

2
3 Q Okay, but you -- is your recollection good about the shooting?

4 A That's when I came more to is hearing the gunshots.

5
6 Q Okay. So -- and I was a little bit confused. Did you -- was your evidence that --
7 that the older fellow shot Colton from 15 feet away?

8 A He didn't shoot him from 15 feet away.

9
10 Q Okay. So that I'm confused then, so tell me about how he -- how he --

11 A After he shot him, he went away from the vehicle.

12
13 Q Fifteen feet. Okay. So how close was he when he shot him?

14 A He -- he was pretty close. He -- he came right to the vehicle.

15
16 Q Okay. To the passenger side?

17 A Yes.

18
19 Q Okay. And where were you sitting?

20 A In the back.

21
22 Q So which seat in the back?

23 A In the middle.

24
25 Q In the middle. So you were right there?

26 A I was right there.

27
28 Q Okay, so you saw two shots to the head very clearly?

29 A Yes.

30
31 Q Okay. Can you explain to me why there were -- there was actually not two
32 bullet holes, there's not two shots that hit Colton?

33 A What do you mean?

34
35 Q Well, you're -- you're saying he got shot in the head twice, and you watched
36 it?

37
38 MR. BURGE: Your Honour, I hate to -- to interrupt my
39 friend here, but I don't think that's a fair question for him -- that question is not a
40 fair one to ask of this witness.
41

1 THE COURT: Ms. Jackson, I wonder if you'd just step
2 out for a moment.

3
4 MR. SPENCER: I can rephrase, Your Honour.

5
6 THE COURT: Okay.

7
8 Q MR. SPENCER: That's the right statement?

9 A (NO AUDIBLE RESPONSE).

10
11 Q Do you remember being asked whether you saw Colton get shot by the RCMP
12 officer?

13 A Do I recall him asking me that?

14
15 Q Yeah, do you recall him asking you that question?

16 A I don't think so, no.

17
18 Q What's that?

19 A No, I don't think so.

20
21 Q You don't think so, but you did an interview with the RCMP right after the --
22 the shooting on August 10th, 2016?

23 A Yeah.

24
25 Q Yeah. Okay. On page 32, I'm going to ask you to -- to review it, from about
26 halfway down there, so just read about halfway down --

27 A From where?

28
29 Q -- and see if that refreshes your memory.

30 A So just from here down --

31
32 Q Yeah.

33 A -- (INDISCERNIBLE).

34
35 Q Okay, you've read that?

36 A Yeah.

37
38 Q Do you recall that now, that that was part of your interview?

39 A Yeah. Well, now I do, but like I mentioned, in my second statement I don't -- I
40 don't -- I don't say a whole lot in there.

41

1 Q Okay. I'm just going to -- going to read it to you. The -- Constable Teniuk is
2 who is interviewing you, indicated,

3
4 Let's go back to what maybe led up to them shooting him
5 in the -- the -- in the vehicle or outside the vehicle. So he's
6 -- he's already out of the vehicle, laying on the ground.
7 Okay. Do you remember when those shots happened?

8
9 A And I said, No, I don't.

10
11 Q And your answer, No, I don't. So would you agree with me that that's
12 inconsistent with what you're saying today?

13 A What are you saying?

14
15 Q I'm saying, at the time you were being interviewed by the police, the night
16 after the incident, or right within 24 hours of the incident, you said you didn't
17 remember the shots happening?

18 A Who shot him.

19
20 Q Okay, can you help me with that, how it is that you remember so well now, but
21 right after the incident you indicated that you did not remember when those
22 shots happened?

23 A I just really wanted to know why it happened. I didn't say a whole lot.

24
25 Q But your --

26 A I didn't -- in -- I just couldn't recall at the time as to who it was.

27
28 Q Okay. And at the time is right after the incident; right, fairly closely after the
29 incident?

30 A Yeah, I was pretty in shock, so I didn't --

31
32 Q Okay. So you're positive that Gerald shot Colton?

33 A I just remember he was the older man, yeah.

34
35 Q Yeah. Okay. So I'm going to refer you to your police statement from the day
36 after, page 42. Read that for me.

37 A No, I don't know which person shot him. I can just think if it was the lady that
38 was standing there.

39
40 Q Okay. So right after the incident you didn't know who shot Colton?

41 A After Colton was shot, I looked to my right, and I seen like, it just looked like

1 they were all armed with something. I remember seeing somebody with a long
2 shotgun. And I recall an older man being there with the handgun, but I didn't
3 put that in my first statement, and I'm aware of that.
4

5 Q Okay. In your first statement you weren't -- you didn't know who had shot
6 Colton?

7 A Yeah, I didn't know if it was the older man, or like, I just know there was two
8 men there, and I didn't know if it was the older one, or you know, now I know
9 that's his son.
10

11 Q Right, but at the time you didn't know who'd shot him, you thought it was the
12 lady?

13 A Yeah, I -- I read my statement. None of it makes sense. I'm aware of that. I
14 know that.
15

16 Q Okay. Well, what do you mean, it doesn't make any sense?

17 A Well, because like the way he was questioning me, at first he -- he tricked me
18 in a question that was saying like -- like I was asking why I was being charged
19 with that, and it just -- he spoke more than I did.
20

21 Q Right, but -- but still, that fundamental question of who shot Colton, you
22 thought it was the lady the day after?

23 A When I was being interviewed, it wasn't the day after. I didn't even sleep in
24 there.
25

26 Q Okay. Well, it's August 10th, the incident occurred August 9th, so it's within
27 24 hours --

28 A Okay. Well, it just --
29

30 Q -- of the incident?

31 A -- seemed like it was all in one day --
32

33 Q Okay.

34 A -- to me. I don't know.
35

36 Q Right, but as soon as you sobered up, the police interviewed you?

37 A Yeah.
38

39 Q And that's when you said you thought it might be the woman?

40 A Yeah, I remember saying that.
41

1 Q Okay. So how is that an unfair question to ask you who you thought shot
2 Colton? I don't understand how that's unfair.

3
4 THE COURT: So what's your question, counsel? You
5 said you don't understand. Are you asking for an explanation?

6
7 MR. SPENCER: Well, she was saying it was unfair, so
8 I'm asking you (sic) what made it unfair.

9
10 THE COURT: Okay. Well, then, please ask the
11 question. I'm sorry, it's -- if she's -- I don't know if she's pausing because you
12 haven't specifically asked the question or just indicated you don't understand.

13
14 MR. SPENCER: Okay. Well, I'll start again.

15
16 THE COURT: Okay.

17
18 MR. SPENCER: I thought -- I just finished asking how
19 this is unfair, but I may have been unclear, so I apologize.

20
21 Q MR. SPENCER: So how is that an unfair question?

22 A It's everything he was asking me and the way he was asking me, I guess. Does
23 that not answer you?

24
25 Q Page 27, read that one.

26 A I just remember being scared. I remember her standing
27 there with what looked like a big gun, and I wasn't too
28 sure if it was her that shot him or if it was somebody that
29 was in the vehicle that shot the boy there. Like, I really
30 don't know.

31
32 Q Okay. Would you agree with me that that's -- would you agree with me that
33 that's totally inconsistent with your evidence today that you saw Gerald shoot
34 Colton?

35 A After I knew who these people were, I was more aware to tell who did what.

36
37 Q Okay. So after Gerald got charged with murder for allegedly shooting Colton,
38 that's when you knew who shot him?

39 A No, it's just when I was fully sobered up, I kind of started remembering things
40 on my own.

41

1 Q Okay, but what's helping you remember things and what would change what
2 you remember? Nothing -- you couldn't go back there. What -- was it talking
3 to people? What would cause you to go from believing it was the woman or
4 maybe somebody in the vehicle --

5 A If anything I talked more with Kiora than anybody else because she was there.
6

7 Q Okay. Now, you're pretty sure it was a handgun?

8 A Yeah.
9

10 Q Okay. Would you agree with me you did not mention any handgun?

11 A In my first statement, yeah, I know that.
12

13 Q No -- no mention of a handgun at all?

14 A Yeah, I'm aware of that.
15

16 Q Okay. The only mention of a gun in your first statement to the police, which
17 was a fairly lengthy interview; right?

18 A I don't know how they expected me to just remember all of this on my own
19 without -- you know, being held in there 19 hours and not getting any rest and
20 still having a lot of alcohol in my system.
21

22 Q Okay, but -- but I don't understand how sobering up changes it from it could be
23 somebody in the vehicle or the woman that you recalled with the gun, to all of
24 a sudden --

25 A I just remember her -- I remember her a lot because I remember her coming
26 into the yard.
27

28 Q So you -- you accosted her. Where was her gun when you went over and
29 started beating her up?

30 A It was her son that was holding it. It wasn't her.
31

32 Q What's that?

33 A It was her son that was holding the long gun. I thought it was her. And I know
34 in my statement I said that it -- it looked like her.
35

36 Q Okay. So you agree with me in your -- in your statement you said it was the
37 woman that had the long gun --

38 A Yeah.
39

40 Q -- nothing about the son having the long gun?

41 A Yeah, but now that I know, like who it was, it was the son. I couldn't recall,

1 like --

2

3 Q So how do you now know who it was if you didn't go back there? Do you
4 understand what I'm saying?

5 A Yeah, I understand. Like, I clearly understand that my first statement doesn't
6 make any sense compared to my second and my -- my second and my third one
7 makes more sense --

8

9 Q Okay.

10 A -- on my own.

11

12 Q What's your third one?

13 A It was just some people come and spoke to me. They just wanted to know if
14 there was anything left out in my first one, and it was nothing really to change,
15 and they just had questions for me and whatever, and --

16

17 Q Okay. So today's evidence, your evidence today is that you're positive he was
18 shot twice in the head in the passenger seat; correct?

19 A Yes.

20

21 Q I'm going to show you, at page 35 in your police statement after, can you read
22 that one?

23 A Which part?

24

25 Q Starting there. Can you maybe read it out loud because (INDISCERNIBLE)?

26 A The constable asks how he got out of the vehicle, and I replied, I just remember
27 him being on the ground. Then he asks, Did you help move him out of the
28 vehicle? And I said, I replied, I'm pretty sure he got shot out of the vehicle.

29

30 MR. BURGE: Which statement is that?

31

32 MR. SPENCER: Hmmm?

33

34 MR. BURGE: Which statement are you referring to?

35

36 THE WITNESS: August 10th.

37

38 MR. SPENCER: Page 35.

39

40 Q MR. SPENCER: So right after the incident you were
41 pretty sure he got shot out of the vehicle?

1 A Sorry, can you repeat that question?

2
3 Q Right after the incident you were pretty sure he got shot when he was outside
4 the vehicle; correct?

5 A No. I knew he was in the vehicle. I knew he was sleeping in the vehicle.
6

7 Q Okay, but at the time you gave the statement -- okay, did you help move him
8 out of the vehicle, that's the question from Constable Teniuk --

9 A Yeah.
10

11 Q -- your response: No, I'm pretty sure he got shot out of the vehicle. So at the
12 time, your evidence to the police was that, as far as you knew, right after the
13 incident, he got shot outside the vehicle?

14 A That's what I said.
15

16 Q That's what you said?

17 A And I know that's different from what I have to say now.
18

19 Q Very different. Okay.

20 A You can't really expect me to be truthful with these police that are like racist
21 and thinking that I was on that farm to steal. I'm just saying what I remember.
22

23 Q Okay. Were you aware that --

24 A After I was being treated badly, it's --
25

26 Q Okay.

27 A -- that was me at the time.
28

29 Q So you're saying you lied to the police?

30 A I wouldn't say lie, it was just I really didn't know what to say. I didn't know
31 how -- how to say it. I didn't --
32

33 Q So --

34 A I was scared. I was in shock.
35

36 Q So your evidence today is you watched Colton get shot twice in the head, and
37 you didn't know how to say that to the police officer that was investigating
38 that?

39 A Yeah.
40

41 Q So you told him all these other stories. You tried to say it might be somebody

1 else in the vehicle, it might be the lady?

2 A Some of the -- some of the questions he asked me, it's like I -- he -- he didn't
3 tell me that if I didn't understand something to just say that I don't understand
4 or whatever, but like just the way he was asking me. I didn't -- like I said, half
5 of it doesn't even make sense.

6
7 Q I don't understand how a question can change the answer of how he got shot.
8 Can you help? Can you explain to me how that would change your answer,
9 how the facts of what actually happened, how that would change based on the
10 question?

11 A It's just remembering afterwards.

12
13 Q Just remembering after. Okay. And after you'd talked to Eric --

14 A Eric wasn't there when he got shot, so I don't know how he would -- how
15 anybody would think that, to say -- to say that.

16
17 Q Okay. So you were a couple of feet away from -- when Colton got shot. I'll ask
18 you to read from that question.

19
20 MR. BURGE: What page is that?

21
22 MR. SPENCER: Oh, sorry, 49.

23
24 THE WITNESS: The constable asks, You're not sure
25 where they ended up really at that point? I said, I don't know. He said,

26
27 Okay. Is there anything else that you can think -- think
28 about going to that yard, whatever you defer as -- that
29 sticks out in your mind. Do you remember hearing
30 gunshots?

31
32 And I said,

33
34 Yeah, that's -- that's the thing. I don't -- I don't
35 remember. I don't remember hearing a gunshot.

36
37 Q MR. SPENCER: So would you agree with me that that's a
38 pretty fair question from the RCMP officer, Is there anything else that you can
39 think of?

40 A Yeah. No.

41

1 Q Okay. And your response to him was that you don't -- you didn't remember
2 hearing a gunshot?

3 A That was my response, I guess.
4

5 Q So if Eric and Cassidy were actually trying to steal stuff on the farm, would it
6 make sense that the police were investigating a theft allegation?

7 A I would have no problem, if I was aware then I'd have no problem saying that.
8

9 Q Okay. That's a fair answer, and if, in fact, you were simply passed out or
10 asleep so you didn't see any of that going on --

11 A No.
12

13 Q -- or weren't aware of it --

14 A No.
15

16 Q -- there wouldn't be much the police could do; right, but if the stealing was
17 going on, or the attempt to steal was going on, and you weren't aware of it, the
18 police have to investigate it; right?

19 A I don't know. That's their job.
20

21 Q Yeah.

22 A I don't know what the question -- I don't know what you're trying to ask.
23

24 Q Well, they investigated, and they didn't charge you with theft?

25 A Well, they put me in handcuffs, and I asked, Why am I being put in handcuffs,
26 I just watched somebody die? And he said, Well, you're being arrested for
27 theft.
28

29 Q Okay. Well, they were investigating theft, so -- and if the other people in your
30 car were attempting to steal stuff, that would make sense?

31 A It would make sense if I recalled seeing anybody making any thefts.
32

33 Q Right, but -- but you just --

34 A Why are you asking --
35

36 Q -- if you're sleeping when the thefts are going on --

37 A Why is it funny?
38

39 Q Well, because you're saying, if you're not aware of it, it didn't happen, and I'm
40 saying to you, if it happened and you were sleeping, the police still have to
41 investigate it.

1 A I guess, if that's their job; right?

2
3 Q Right. And if they investigated and determined you weren't a party to the -- to
4 the thefts, then you don't get charged; right?

5 A I -- that's what I'm trying to -- like, that's what I don't understand, why would
6 he say that to me?

7
8 Q Because --

9 A He still put me in handcuffs and throw me in the back seat of the vehicle.
10

11 Q Right, because there were attempted thefts going on, and he investigated and
12 determined you weren't part of it.

13 A Okay.
14

15 Q So you were charged with assault though?

16 A Yeah, I know, I was aware of that, but I was just -- I'm aware of when I left.
17 He gave me a paper and said that I was charged from Lisa Stanley with theft
18 and -- I mean, with assault, and then it got dropped after a while.
19

20 Q So what part of it is unreasonable and racist to take you into custody and
21 charge you with assault when you assaulted somebody, and then ask you for a
22 statement in relation to a death? What part of that do you consider unfair?

23 A I would -- did I say it was unfair?
24

25 Q Yeah. You said it was unfair. It was racist. You were so --

26 A I didn't care that I was charged for assault, but for theft. When I -- I asked,
27

28 Why am I being handcuffed? Like, can't you just put me
29 in the back seat of the vehicle while he gets handcuffed?
30

31 Q While who gets handcuffed?

32 A Gerald, when I know he was the one that shot him, but he -- they threw me in
33 the back seat of the vehicle.
34

35 Q Oh.

36 A And we went on a high speed after that.
37

38 Q Right.

39 A I just don't understand, like why he would tell me, and not even read me my
40 rights, and still tell me that I'm being -- you know, why am I being handcuffed
41 and thrown in the back seat of the vehicle? Because you're being charged with

1 theft.

2

3 Q Okay, because some of the other people in your party may have been trying to
4 steal things?

5 A But I can't agree with that though. Like, if that was -- if that was it because I
6 don't recall any of that.

7

8 Q Right. You don't know?

9 A Exactly, so --

10

11 Q Okay. Maybe it would help you if I told you Eric and Cassidy indicated that
12 there was an attempt to steal.

13 A Okay.

14

15 THE COURT: I wonder, Ms. Jackson, if you'd step out
16 for a minute, please.

17

18 (WITNESS STANDS DOWN)

19

20 **Discussion**

21

22 THE COURT: Mr. Spencer, where are we going --
23 where are you going with this? She has indicated -- well, perhaps you can indicate
24 where you're going with this. I'm having trouble following.

25

26 MR. SPENCER: Well, the -- the statements that -- the
27 statement that she gave to the police versus what she said to the FSIN investigator
28 based on -- and what she said today, as you've already seen --

29

30 THE COURT: Yes.

31

32 MR. SPENCER: -- is night and day, so --

33

34 THE COURT: Well, there's discrepancies, yes.

35

36 MR. SPENCER: And so I've gone through a few of
37 them --

38

39 THE COURT: Yes.

40

41 MR. SPENCER: -- and the explanation of why there's

1 such a significant difference is it was an unfair investigation. It was, you know,
2 she wouldn't tell the RCMP the truth. And that seems to me to be incredulous.
3 That's what I'm trying to establish is that's not a legitimate reason that would
4 change her material evidence.

5
6 THE COURT: Okay. Well, so you've indicated that --
7 well, perhaps you can tell me how -- how you intend to get where you're going?

8
9 MR. SPENCER: I think perhaps if I can have five minutes
10 to speak to my friend, and we can -- I might be able to wrap up.

11
12 THE COURT: Okay. I don't want to stop you from
13 questioning, but -- but I'm concerned that -- well, you've said -- you've told her a
14 number of times that -- why you think that she shouldn't think that they're racist,
15 that she continues to think that they are, and I'm not sure that we're going to get
16 anywhere by continuing down this road.

17
18 MR. SPENCER: I think you may be right, but I --

19
20 THE COURT: I'm just trying to see where you're
21 going, and I'm not trying to stop you from -- and I'm prepared to have her come
22 back in and you continue on.

23
24 MR. SPENCER: All right. I know where I want to go, but
25 you may be right, Your Honour. I may not be able to get there with this witness
26 today, so --

27
28 THE COURT: Yes.

29
30 MR. SPENCER: -- if I could just have five minutes,
31 perhaps, and --

32
33 THE COURT: Okay.

34
35 MR. SPENCER: -- if I can speak to my friend briefly,
36 then --

37
38 THE COURT: Yes. Okay, thank you.

39
40 (ADJOURNMENT)

41

(WITNESS RE-TAKES STAND)

THE COURT: Mr. Spencer?

MR. SPENCER: I've determined where I want to go is probably argumentative and not going to assist us, so those are all the questions I have.

THE COURT: Okay. Any re-exam?

MR. BURGE: No.

THE COURT: Okay. You're finished your questions. Thank you very much. You've been very cooperative. You're free to go.

THE WITNESS: Thank you.

(WITNESS STANDS DOWN)

MR. BROWNE: That would be our last witness of the day, Your Honour.

THE COURT: Okay.

MR. BROWNE: Your Honour will note, of course, that the Crown previously filed several reports. At this point in time we'd be seeking to have them entered into as exhibits. So the first of those we'd be asking to be marked as P-6 would be the pathologist report of Dr. Ladham.

THE COURT: Okay. Hang on. We're going to move slowly getting through this, so we don't -- and you're -- the ones that were filed with the court --

MR. BROWNE: Yes, Your Honour.

THE COURT: -- are the ones you would like marked?

MR. BROWNE: Yes, Your Honour, please.

THE COURT: Okay. And is this by consent, counsel?

1 MR. SPENCER: For the purposes of the prelim it is by
2 consent, yes, Your Honour.

3
4 THE COURT: Okay. So the report from the -- so the
5 autopsy report is the --

6
7 MR. BROWNE: Yes, the --

8
9 THE COURT: -- is P-6?

10
11 MR. BROWNE: Yes, please, Your Honour.

12
13 THE COURT: Okay. Autopsy report, P-6.

14
15 **EXHIBIT P-6 - Autopsy report**

16
17 MR. BROWNE: And then we'd ask that P-7 be the
18 firearms report dated December 1st, 2016 of Greg Williams.

19
20 THE COURT: December 1st, 2016 firearms report.

21
22 MR. BROWNE: And there's also a March 11th, 2017, that
23 we'd ask for --

24
25 THE COURT: That would be P-7 -- hang on here. So
26 this one had 2016-12-01, that's P-7?

27
28 MR. BROWNE: Yes, please, Your Honour.

29
30 THE COURT: Okay. Madam Clerk, I'm just going to
31 write on the back.

32
33 MR. BROWNE: And then, Your Honour, if P-8 could be
34 the March 11th report from Greg Williams.

35
36 THE COURT: Maybe they're stapled together.

37
38 MR. BROWNE: They may have been.

39
40 THE COURT: That last one I gave you, P-7, the one --
41

1 MR. BROWNE: They are stapled together, Your Honour.
2 It's sufficient to have them as one -- one exhibit then for the purposes of the
3 preliminary hearing.
4

5 THE COURT: Well, perhaps, let's -- perhaps you can
6 give it to Mr. Browne, and he can tell us whether what we've -- what I have
7 written on and you've --
8

9 COURT CLERK: (INDISCERNIBLE).
10

11 MR. BROWNE: Yes, they're both in there, Your Honour,
12 as well as the curriculum vitae of Greg Williams, so perhaps we'll have the
13 entirety of that marked as P-7, Your Honour.
14

15 THE COURT: Okay. So P-7 will be the reports by
16 Williams, is it?
17

18 MR. BROWNE: Yes, Your Honour.
19

20 THE COURT: And his curriculum vitae.
21

22 **EXHIBIT P-7 - Firearms reports dated December 1, 2016 and March 11, 2017 of**
23 **Greg Williams and curriculum vitae**
24

25 MR. BROWNE: And then, Your Honour, if P-8 could be
26 the trace evidence report of Dr. Claude Dalpe and his curriculum vitae.
27

28 THE COURT: P-8 is the trace evidence report of Dr.
29 Claude Dalpe and his CV.
30

31 **EXHIBIT P-8 - Trace evidence report of Dr. Claude Dalpe and curriculum vitae**
32

33 MR. BROWNE: Thank you, Your Honour.
34

35 THE COURT: And I've written on the back of that.
36

37 MR. BROWNE: And then, Your Honour, if P-9 could be
38 the toxicology report of Gillian Sayer's and her curriculum vitae.
39

40 THE COURT: P-9.
41

EXHIBIT P-9 - Toxicology report of Gillian Sayer and curriculum vitae

MR. BROWNE: And then finally, P-10 would be the biology report of Pam Lilly and her curriculum vitae.

THE COURT: Okay, so P-9 is Gillian Sayer's toxicology report and her CV, and P-10 is Pam Lilly's report, from the Biology Services.

MR. BROWNE: Thank you, Your Honour.

THE COURT: And her CV?

MR. BROWNE: Yes, Your Honour.

THE COURT: And that's P-10. Okay.

EXHIBIT P-10 - Biology report of Pam Lilly and curriculum vitae

MR. BURGE: And as I said yesterday, Your Honour, we're out of witnesses until Thursday morning.

THE COURT: Until Thursday?

MR. BURGE: Yes.

THE COURT: Okay. And then at that point you expect to have just one -- one remaining?

MR. BURGE: One, and that will be Greg Williams, the firearms expert.

THE COURT: Okay. And then do counsel anticipate any argument on committal?

MR. BURGE: I was thinking likely not, but I'll discuss that with my friend.

THE COURT: You don't have to tell me now. If you know now you can tell me or save it until Thursday.

1 MR. SPENCER: There's not much further surprises, Your
2 Honour. There -- there will be some defence argument, not extensive because of
3 the context, of course, of jurisdiction. I would lobby for -- or ask for a 10:00 start
4 on Thursday in light of (INDISCERNIBLE). That helps a little bit.

5
6 THE COURT: 10:00 start. Any comment on that? Does
7 that --

8
9 MR. BURGE: I don't think that's likely to get
10 problematic.

11
12 THE COURT: -- we're likely to get finished with the
13 one witness on Thursday?

14
15 MR. BURGE: Yes.

16
17 MR. SPENCER: By noon, I think.

18
19 THE COURT: By noon?

20
21 MR. BURGE: I assume that will be sufficient.

22
23 THE COURT: Okay. And I anticipate us being in a
24 different courtroom on that date, probably courtroom number 1.

25
26 MR. BURGE: Thank you.

27
28 THE COURT: Okay.

29
30 MR. SPENCER: Thank you, Your Honour.

31
32 THE COURT: Thank you. We'll see you Thursday.

33
34
35 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, APRIL 6, 2017
36
37

1	April 6, 2017	Morning Session
2		
3	The Honourable Judge	The Provincial Court
4	B. Bauer	of Saskatchewan
5		
6	W. Burge, Q.C.	For the Crown
7	C. Browne	For the Crown
8	S. Spencer	For the Accused
9	S. Yoner	Court Clerk

10

11

12 THE COURT: Good morning.

13

14 MR. SPENCER: Good morning, Your Honour.

15

16 MR. BURGE: Good morning.

17

18 MR. BROWNE: Good morning, Your Honour.

19

20 THE COURT: Mr. Burge, you have another witness?

21

22 MR. BURGE: Yes, Your Honour. The next witness is

23 Greg Williams.

24

25 THE COURT: Okay. Good morning.

26

27 COURT CLERK: I'll just get you to come up to the front

28 here and remain standing, please. Will you swear on the Bible?

29

30 MR. WILLIAMS: Yes.

31

32 COURT CLERK: Take the Bible in your hand.

33

34 **GREGORY WILLIAMS, Sworn, Examined by Mr. Burge (Qualification)**

35

36 COURT CLERK: State your name for the court, please.

37

38 THE WITNESS: Gregory Williams.

39

40 COURT CLERK: Please spell your full name for the court

41 record.

1
2 THE WITNESS: Gregory, G-R-E-G-O-R-Y, Williams,
3 W-I-L-L-I-A-M-S.
4

5 COURT CLERK: Thank you. You may be seated if you
6 choose.
7

8 THE COURT: Mr. Burge, I've read Mr. Williams'
9 report, and is it my understanding that you will have to be -- he will be giving
10 opinion evidence?
11

12 MR. BURGE: Yes, Your Honour, I -- he is a forensic
13 firearms specialist, and I'll be asking him to give opinions regarding functional
14 assessment of firearms components, ammunition and devices, firearms
15 identification, comparison and identification of firearm tool marks on ammunition
16 components, and impact damage, assessment and range determination. So those
17 are the areas where I'll be asking him for opinion, and I can put him through his
18 qualifications shortly once I begin to question him.
19

20 THE COURT: Okay. Any -- are you taking a position
21 on his qualifications to give evidence -- to give this opinion evidence?
22

23 MR. SPENCER: For the purposes of the prelim we have
24 no -- no objection to his expertise, so -- I want to hear what he has to say, so --
25

26 THE COURT: Okay, so --
27

28 MR. SPENCER: -- to the extent that expedites things.
29

30 THE COURT: -- more than a non-objection, are you
31 agreeing that he has the expertise to give opinion in those areas for the purpose of
32 the preliminary hearing.
33

34 MR. SPENCER: For the purpose of the preliminary
35 hearing, absolutely. Yes, Your Honour.
36

37 **Ruling (Qualification)**
38

39 THE COURT: Thank you. So you can go through his
40 qualifications, if you like; if not, I can, at this point -- well, having read his CV,
41 which was part of his materials you have provided and the consent of the defence,

1 I'm prepared to qualify him as an expert in those areas.

2
3 MR. BURGE: Thank you. Then I'll just move into the
4 (INDISCERNIBLE).

5
6 THE COURT: Okay.

7
8 MR. BURGE: Thank you very much.

9
10 **GREGORY WILLIAMS, Previously Sworn, Examined by Mr. Burge**

11
12 Q MR. BURGE: Mr. Williams, you're employed by --
13 you're a civilian member of the Royal Canadian Mounted Police?

14 A Yes.

15
16 Q And you're -- where are you situated?

17 A I live and work in Ottawa, Ontario.

18
19 Q Okay. And as we've heard here, you're a forensic firearms specialist?

20 A Yes.

21
22 Q Yes. And sir, I am going to be asking you, I understand that you've examined
23 several pieces of evidence, including two firearms, expended shell casings,
24 some clothing, as well as you received other live ammunition; is that correct?

25 A Yes.

26
27 Q Okay. And sir, if we can get right into your examination then, sir. I understand
28 one of the items that you examined was an item that was an Exhibit P-60 in the
29 investigation, in the RCMP investigation, which was a Cooney .22 rifle?

30 A Your Honour, may I refer to my work notes that I created at the time of my
31 analysis?

32
33 THE COURT: Any comment on that?

34
35 MR. SPENCER: No objection.

36
37 THE COURT: Yes, you may at any time refer to your
38 notes if they're required to refresh your memory.

39
40 THE WITNESS: Thank you. So you referred to Exhibit
41 PE060?

1
2 Q MR. BURGE: Yes.

3 A Yes, I did. I received and examined that rifle.
4

5 Q Okay. Why don't you tell us about your observations and your examination
6 and your conclusions?

7 A So as with any firearm, when I receive a firearm for analysis, I'll note the
8 different characteristics, the components, the make, the model, go through the
9 overall description of it as part of sort of my normal workflow in every firearm
10 I receive. And so I did that in this case, and I determined the -- the type and the
11 -- the function. This is a bolt-action rifle. The calibre is .22 long rifle. And the
12 serial number was CG072278. And the most notable thing about this rifle was
13 that it was missing the stock. I also noted that the -- the rifle did not function
14 normally in the condition that it was received. So in order to fire this rifle, I
15 had to straighten the receiver, and I had to use a hammer. Normally, a rifle, you
16 simply load it, close the bolt, pull the trigger, and it fires, but in this case, again
17 it was missing the stock, and there were some components that I had to sort of
18 manually manipulate the -- the tubular magazine was interfering with the
19 action of the bolt, and so I had to manipulate. Normally the stock would be in
20 place to sort of correct that, but because the stock was missing I had to do some
21 extra steps to make this fire, but it did fire, and as a result I was able to classify
22 it as a firearm within Section 2 of the *Criminal Code*, in that it's a barrelled
23 weapon, capable of firing a shot, and that it can -- it's capable of causing
24 serious injury or -- or death to a person. And so, as such, it would be a non-
25 restricted firearm. That would be the specific classification.
26

27 Q Is there anything else you need to tell us about that firearm Exhibit PE-060?

28 A That's the -- the overview.
29

30 Q Okay. If we can move on. I understand that you also received a pistol that had
31 been marked as Exhibit PE-87?

32 A Yes.
33

34 Q Please tell us about your observations and your examination of that item.

35 A So again following the same procedure as I do with all firearms, I identified
36 this as a Tokarev Model TT-33 dated 1947, a semi-automatic pistol, calibre
37 7.62 millimetre Tokarev, and the serial number -- this is Cyrillic. It's Russian.
38 And so there is the letter 'B' followed by what looks a backwards 'N' and the
39 numbers 2903, the serial number. And with that pistol I did discharge
40 conventional ammunition. It functioned normally, and it was a handgun, as it's
41 designed to be aimed and fired with the action of one hand. I measured the

1 trigger pull force weight of this pistol to be 5.25 pounds or 2.38 kilograms.
2 That's required for consistent (INDISCERNIBLE) release on the pistol or
3 consistent firing. And I conducted a series of shock discharge tests to see if this
4 pistol could fire without pulling the trigger. And in those tests it did not
5 discharge. As a result of those -- those steps of analysis, I classified the pistol
6 as a firearm within Section 2 of the *Criminal Code*, and that's a barrelled
7 weapon capable of discharging a shot, and furthermore as a restricted firearm
8 within Section 84 of the *Criminal Code* in that it is a handgun that's not a
9 prohibited firearm. The -- the trigger pull weight is typical of this type of
10 firearm, of semi-automatic pistols, and again it was not found to be susceptible
11 to shock discharge.
12

13 Q When you say it was typical of a trigger pull or the trigger weight was typical,
14 can you describe -- I understand that you actually fired this -- this gun?

15 A I did.
16

17 Q Yeah. And when you say the trigger weight was typical, what -- what does that
18 mean as what are the alternatives to a typical trigger weight?

19 A Sure. So I -- I did comment on this in my notes, so I'm just going to turn to a
20 page where I discussed my trigger pull weight analysis. And so basically I can
21 describe what I did. I used a series of dead weights, so essentially the pistol
22 was pointed upwards in the air, and I hung an assembly with -- with metal
23 weights on it, so the pistol was cocked and ready to fire with no ammunition in
24 it, and I would add weights until it was sufficient for it to pull the trigger. I did
25 that a series of five times, and in the first five trials I attempted using five
26 pounds, so I did some sort of preliminary tests to see what the range would be,
27 and then I used five pounds, and I found that it wasn't consistent. It fired some
28 of the time and some of the time it didn't. So then I added some weight up to
29 5.25 pounds, and found that it was consistent. In that case, five times in a row,
30 with 5.25 pounds, the -- the trigger pull was sufficient to discharge, to let go of
31 the sear, which lets go of the hammer, which fires the pistol. I then -- I then
32 lowered the weight to 4.75 pounds, and did five consecutive trials, and in five
33 times out of five, that weight was not sufficient to fire the gun. And so my
34 conclusion again is that for consistency release, a force of 5.25 pounds was
35 required. And I could further say that at 4.75 pounds it didn't -- didn't fire
36 once. It wouldn't fire -- it wouldn't have fired once. Now, in terms of it being
37 typical, what I used was a -- a database that comes from an American, Jeffrey
38 Scott Doyle. And this has, from my notes, over 27,000 firearms with their
39 trigger pull weight measure been published. And so of those 27,000 firearms
40 there are 12,000 semi-automatic single-action pistols, similar in -- not in exact
41 model and type, but just in design, so that includes things like Glocks and

1 Rugers and all sorts of other regular pistols, semi-automatic. And of those
2 12,543 pistols, the average trigger pull is 6.39 pounds, and the standard
3 deviation was 2.24 pounds, so an average was six-and-a-third pounds, plus or
4 minus 2.25. So there is a normal range of variance from, you know, around
5 four pounds to around seven pounds that I would say is typical for -- for a
6 semi-automatic pistol, and this falls right in that range, so I would say it's just a
7 normal typical weight that you'd have to pull a trigger on a pistol to make it
8 fire.

9
10 Q Okay. You mentioned that you did some testing to determine if it was subject
11 to accidental discharge?

12 A Right. So I -- I never use the word "accidental" in my reports because
13 accidental speaks to intent that I can't test in a laboratory. What I talk about is
14 shock discharge, whether or not the gun can fire without pulling the trigger by
15 jarring it, by dropping it, and so we conducted a series of six tests. I conducted
16 a series of six tests with the pistol. We basically -- I -- I use a rubber mat.
17 There's a rubber mat in our range. I cocked the pistol in the ready-to-fire
18 position and drop it in a series of six tests with every orientation. So if you
19 think of a cube, with the pistol pointed down, the pistol pointed up to the right,
20 to the left, and then the front and back. So those six orientations, and every
21 time that I dropped the pistol the -- the hammer never fell. It never would have
22 fired. So we find sometimes with firearms that in those tests they do fire, and
23 so that's why, especially in cases where only one shot is fired, that's a normal
24 analysis. It was a -- an additional request in this case for me to do this analysis.

25
26 Q Can you just tell us how this -- the Tokarev pistol that you examined, how does
27 it operate? What do you do to fire it?

28 A So the -- the Tokarev pistol is a semi-automatic pistol, and it's a single action,
29 which means that in order for it to fire, the hammer has to be cocked first. And
30 the way that the hammer is cocked is by taking the slide and pulling it
31 rearwards and then letting go. So if you have an unloaded pistol, the first thing
32 you have to do is load it with a magazine that has cartridges in it, then you pull
33 back the slide, that cocks the hammer, and then when you let go of the slide it
34 slides forward, there's a spring, it then picks up a cartridge out of the
35 magazine, loads it in to the chamber, and locks the slide and the barrel
36 together, in that locked position it's now ready to fire. The hammer is cocked
37 from pulling that back. And so when you pull the trigger, that the trigger
38 moves a little part called the sear, and the sear lets go of the hammer, and the
39 hammer falls forward. The hammer hits the firing pin, and the firing pin hits
40 the -- the back of the cartridge, a part called the primer. And the primer is a
41 small explosive. That explosive ignites the powder within the cartridge. The

1 powder burns, expands, releases gas, and the gas is what pushes the bullet out
2 of the cartridge and into the barrel, where it engages the -- the rifling. So every
3 barrel, every rifle barrel, has sort of a spiral -- spiral grooves inside of it, so the
4 bullet hits those grooves and starts spinning, starts rotating. That sort of
5 imparts spin and stability to the bullet, so that when it leaves the -- leaves the
6 end of the barrel, it's going to be spinning and moving forward faster than the
7 speed of sound in this case. So that's the basic firing procedure, so that's sort
8 of going from -- from cocking to firing. Now, what happens after the firing is
9 there's recoil energy, so Newton's Law states that for every force there's an
10 opposite force, so the recoil is the opposite force from the bullet going forward,
11 and that energy pushes the slide rearward again, but for that to happen it has to
12 unlock from the barrel. So there's a little bit of a delay when the barrel and the
13 -- the slide are still locked together, and that delay allows the bullet to get out
14 the -- the end of the barrel first, so the bullet fires, then the barrel unlocks, and
15 the slide is able to move rearward. And as it moves rearward there's an
16 extractor that pulls the expended cartridge case out of the chamber, and an
17 ejector then ejects that -- that expended cartridge case out of the pistol, and it
18 recocks the hammer for the next shot, and then the slide comes forward with
19 recoil energy, picks up the next cartridge from the magazine, reloads it into the
20 chamber, and prepares it for a subsequent shot so that, you know, this is semi-
21 automatic meaning that after the first time that you pull back the slide, all that's
22 required is pulling the trigger for it repeatedly to fire, cock, eject and reload the
23 next cartridge for firing the next shot.

24
25 Q How quickly can the puller -- the trigger be pulled for -- after the first shot for
26 -- for subsequent shots?

27 A So the pistol is fairly light, and so there's -- there's a bit of a kick, and so it just
28 takes for about a second for you to sort of reset -- for it to eject and be ready to
29 fire again. It's not long at all.

30
31 Q Okay. And you say it has a kick, and is this a noticeable kick that would -- a
32 user of this firearm would -- would be aware of?

33 A Oh, absolutely.

34
35 Q Okay. Sir, I understand that you were asked to examine some expended shell
36 casings, including Exhibits P-35 -- PE-35. PE-36 and PE-43 from the police
37 investigation?

38 A Yes.

39
40 Q If you can please take us -- take us through that, starting with Exhibit PE-35.

41 A So I should maybe first start by explaining what an expended cartridge case is.

1
2 Q Okay.

3 A A cartridge of ammunition consists of four things: There's a case; there's a
4 primer in the case; there's a projectile, a bullet; and there's powder. So those
5 four things comprise ammunition, the cartridge. And after a cartridge has been
6 fired, the -- the case is left over. So the primer is still there. It has a mark on the
7 firing pin. The primer is attached to that cartridge case, but the powder and the
8 bullet have blown out the end of the barrel. So that case and primer get
9 extracted and ejected, and so those -- those ammunition components are what
10 I'm discussing, expended cartridge cases, Exhibit PE-35, 36 and 43. And so in
11 my analysis of those, the first thing that I did was a visual examination, where I
12 looked at the cartridge cases and described them. So just from my notes I'll
13 refer to PE-35 first. I noted that it's a centre fire type of ammunition
14 component, that the case shape is bottlenecked, meaning that the mouth of the
15 cartridge is narrower than the -- sort of the rest of the sidewall.
16

17 Q Is that typical of cartridges?

18 A That's more typical of rifle cartridges. It's unusual in pistols. There aren't very
19 many pistol calibres that are bottleneck like this. It's unique -- not unique, but
20 very unusual, so the Tokarev pistol is one characteristic pistol that has this type
21 of bottlenecked cartridge. The case is magnetic, which is not common again.
22 Most cartridge cases are made of brass, but in this case it appears to be steel or
23 an alloy of steel because it's magnetic. The head stamp on the cartridge case,
24 so a lot of manufacturers will mark the cartridge case with a head stamp. It was
25 BXN and then a number 53 and then a number 1. So there was three areas that
26 had markings. The calibre is 7.62 Tokarev. There is a firing pin mark on the
27 primer, in the centre. It had a hemispherical mark with detail. And so I noted
28 all the characteristics. I went through the extractor mark at 3:00, an ejector
29 mark at 9:00 if you were looking at the head of the cartridge cases, if it was a
30 clock sort of describing the locations. I noted that the breach face, which is the
31 -- the -- sort of the surface of the head of the cartridge had some impress marks
32 with distinct character, that there were some scuffs, and those were sort of the
33 physical observations I made. And then I did the same for the other cartridge
34 cases and found them to be similar in design, so same calibre.
35

36 Q So the markings that were stamped on the -- on the cartridge, what do they
37 signify?

38 A So the letters BXN -- let me just pull out my notes on this -- they're used by a
39 Czechoslovakian manufacturer. The company name is more commonly known
40 as Sellier & Bellot, and so that code is just used by them. The number 53 is the
41 year of manufacture. So 1953 is when these were manufactured in

1 Czechoslovakia. And the number 1 was a lot number.

2
3 Q So the firearm you said was manufactured in -- was it --

4 A '47, 1947.

5
6 Q Okay. And the ammunition, in 1953?

7 A That's right. And so should I return to the other cartridge cases or --

8
9 Q Did you do a similar examination of the other cartridge cases?

10 A That's right and described the same characteristics.

11
12 Q And what -- I understand that you were looking to -- or what -- you can tell us
13 what was your objective in looking at these cartridge cases? Did you --

14 A That's right, so --

15
16 Q -- have something in mind?

17 A So at first it was simply to identify the markings, and then it was to compare
18 them to each other and to the pistol that was submitted. And so I generated a
19 series of my own test fires using the pistol, and I looked at the markings that
20 were imparted by that pistol first to see if they were reproducible.

21
22 Q And in this series of tests you test fired the Tokarev pistol, what did you use for
23 ammunition?

24 A I used ammunition from our own RCMP standards collection, but it was
25 similar, had the same head stamp, the same year as the -- as the exhibit
26 ammunition, has the same --

27
28 Q Okay.

29 A -- head stamp, so it was very similar. It was a steel case, and I used that
30 ammunition. I found that those test fires that I made were identifiable to each
31 other in more than one area. If I can refer to my notes I'll tell you exactly what
32 those were. So in -- in microscopically comparison, in comparing the tests that
33 I made, I found that the breach face marks were identifiable with gross and fine
34 impressed detail. The ejector marks were identifiable, the firing pin impression,
35 and the firing pin drag mark, so all of those four different marks on that
36 cartridge case in my tests were identifiable. So that means that those marks
37 were sufficient for me to make a conclusion that they were fired from the same
38 firearm.

39
40 Q Okay.

41 A I knew that because they were obviously fired by that, but if those had been

1 submitted as exhibits, for example, the markings were sufficient in detail and
2 character for me to make that conclusion. I then compared those tests that I had
3 made to each of these exhibits, and I found significant agreement in those same
4 characteristics, so it wasn't all four characteristics, in all cases, but they were
5 agreements sufficient for a positive identification. So just to go from my --
6 from my report, class characteristics and individual characteristics were
7 observed to be in agreement between tests fired in the pistol, Exhibit PE-087
8 and the expended cartridge cases, Exhibits PE-35, PE-36 and PE-43. And so
9 what that means in terms of conclusion is that the expended cartridge cases is
10 Exhibits PE-35, PE-36 and PE-43 were all fired in the pistol, Exhibit PE-87.
11

12 Q And that was -- was that to determine by looking at those four areas that you
13 noticed on the test fired cartridges that you examined?

14 A That's right.
15

16 Q Okay.

17 A And that's -- yeah, that's my opinion as far as the conclusion goes.
18

19 Q Sir, I won't -- you've described the areas that you looked at, and I won't go
20 into further detail at this time on your examination of those three cartridges. I
21 understand you were also presented with some items including a hat, a jacket,
22 that we've told were taken at an autopsy?

23 A Yes. I examined PE-008, one hat and PE-013, one jacket.
24

25 Q And what was your purpose in looking at the hat and the jacket?

26 A So basically I was looking at those to determine if there were any areas of
27 damage to the hat and the jacket that were consistent with gunshot damage. So
28 I was looking at those for damage consistent with gunshot passage of a fire
29 projectile and for any patterns that might be on the fabric near the area of the
30 damage.
31

32 Q Okay.

33 A And what I found was there was at least one area of damage with
34 characteristics consistent with gunshot residue on the hat, and there were at
35 least two areas of damage with characteristics consisting with gunshot damage
36 on the jacket. And in both exhibits, the hat and the jacket, I did not observe a
37 firearms discharge residue pattern.
38

39 Q Okay. And so what does that mean to you?

40 A So whenever a firearm is discharged, the bullet leaves the end of the barrel, but
41 also a lot of unburned or partially burned gun powder leaves the barrel as well,

1 and it's travelling at almost the same speed, you know a significant speed. And
2 so as that -- that gun powder moves it gets deposited on some surface that's
3 close to the end of the barrel. So if, for example, I was to shoot my arm at a
4 distance of six inches, not a wise decision, but it would leave a -- a very
5 distinct pattern around the hole. So if it was my bare skin we call it powder
6 tattooing, and the skin around the wound would be stippled. There would be
7 purple dents all over it from all the impacts of those powder particles. There
8 would also be soot and lead and a residue pattern present. Now, I didn't
9 observe any visible residue on the hat or the jacket, which suggests to me that
10 the distance was farther than in my little example, six inches, but I -- I was a
11 little bit more scientific in determining what that range would be, and so I
12 looked at -- I fired the pistol repeatedly at different distances on -- into paper
13 targets, just blank paper, and looked at the residue patterns to see, sort of, what
14 distance I stopped seeing the residue deposited. And I found -- just going back
15 to my notes -- so at contact, and at six inches and 12 inches there was soot
16 patterns with a lot of particles deposited. At 18 inches there was no soot, but a
17 light pattern of particles. At 24 inches, there was a very sparse spray of fine
18 particles around the hole. And at 36 inches there was only just a very few fine
19 particles, basically nothing that I could observe. They were easily brushed off.
20 And so essentially at 24 inches or beyond there was no observable pattern
21 deposited on those -- on those paper sheets. There was a few sparse particles,
22 but easily brushed off the paper.

23
24 Q So what did that tell you about the exhibits that you examined then and the --

25 A So whenever -- whenever we make a range determination, so whenever we're
26 determining the distance, there's some sort of -- you have to be careful to make
27 a few qualifying statements in that when I make this determination I'm
28 assuming that there is nothing in-between the muzzle and the target at the time
29 of the firing. For example, in my example of shooting my own -- my own arm,
30 if there was a pillow in-between the muzzle and my arm, that pillow would
31 absorb all that pattern, and so whenever I make a statement about range, it is
32 sort of qualified by the fact that we're assuming that there is nothing in-
33 between the muzzle and the target at the time that the firing happens, but in this
34 case I could not determine a definitive range because there -- there was no -- no
35 residue pattern observed, and if I had to give my best estimate it would be
36 greater than 24 inches, based on the fact that in my tests at 24 inches there was
37 still some residue, very light, but --

38
39 Q Now, just to clarify some of your -- and maybe I heard it wrong, but I -- when
40 you examined the hat and the -- and the jacket, was it -- was it your observation
41 that you saw impact damage, but no residue?

1 A Yes. So there was at least one area of damage consistent with gunshot damage
2 on the hat and at least two areas of damage consistent with gunshot damage on
3 the jacket, so that's damage that consists of a hole and immediately around that
4 hole. There is just no pattern around that, so the hole was consistent with
5 gunshot damage.

6
7 Q Okay.

8 A And I did some chemical tests to verify that as well, so those chemical tests --
9 if I just refer to my notes -- so in the -- so the area of damage that I'm talking
10 about are where there are holes present. So in the hat, there was one area of
11 damage. And when I tested that chemically I found traces of copper, which is
12 consistent with the passage of a fired projectile that's copper jacketed. In the
13 jacket, I found in the -- on the exterior of the jacket, both copper and lead
14 traces around the hole, right in the area of the hole. And on the interior of the
15 jacket I found some traces of nitrites and copper. Nitrites are one of the main
16 components of gunpowder. And so the fact that those chemical tests were
17 positive, along with the damage, confirmed that they are consistent with the
18 passage of a fired projectile.

19
20 Q Sir, I'd like to go back and discuss Exhibit PE-43, and that is a -- I understand
21 that's an expended shell casing, and that we have heard was located in -- on the
22 dash on a vent of a particular vehicle. I understand that you made some
23 observations of that particular expended shell casing?

24 A Yes. So the -- the expended cartridge case, Exhibit PE-43, differed slightly in
25 shape from the other cartridge cases that I observed. I -- I mentioned the fact
26 that this -- this calibre, 7.62 Tokarev, has a bottleneck shape, but in this case
27 the bottleneck was completely stretched out, so it was almost -- appeared more
28 like a straight rimmed case like -- something like nine millimetre, where there
29 was no bottleneck. And there was also a very distinct bulge under the head of
30 the cartridge case for several millimetres, less than a centimetre. I didn't --
31 didn't measure it exactly, but that bulge is not present in any of the other
32 cartridge cases that I examined or any of the tests that I performed. So I
33 performed a number of tests with this firearm, both, you know, when I was first
34 assessing the identification, I fired into a water tank to collect the bullets and to
35 collect the cartridge cases, and then I fired those series of tests to determine the
36 range, so I think in total, in the first part of my analysis, I did 19 different
37 shots. And then in a later analysis I did an additional six shots, so a total of --

38
39 Q Twenty-five?

40 A -- 19 plus six, I should be able to do that; right? 25 shots fired. In those 25
41 shots, I -- I didn't see any cartridge cases with a bulge like this. I didn't see any

1 cartridge cases with a stretched-out neck like this, and so it was a unique --
2 unique characteristics.

3
4 Q Have you shot pistols in the past?

5 A Yes.

6
7 Q Have you seen bulged cartridge cases in the past when firing pistols?

8 A Not from firing pistols, no. I've seen bulged cases in a few rare instances from
9 firing sub-machine guns, but I've never seen it in pistols.

10
11 Q From firing a sub-machine gun, do you have any -- can you tell us what would
12 cause a bulged casing?

13 A So the -- the bulged cases that I've typically seen are on British World War II
14 sub-machine guns called sten guns or breach guns. It's basically a cheaply
15 made metal tube with a big heavy block. And when you pull the trigger it's
16 fully automatic, so this bolt just goes back and forth and back and forth as you
17 press the trigger. And in that -- in that case the cartridge isn't well-supported,
18 so it sits in the -- in the chamber, so that half of the cartridge is sort of extended
19 out, and as it fires you get these distinct bulges in cases. So it looks somewhat
20 similar to what I observed here, but a totally different type of firearm. I've
21 never seen it before in pistols.

22
23 Q So you say it's not supported in the chamber of -- of a machine gun?

24 A These sten guns, yeah.

25
26 Q Okay. The Tokarev, is there a chamber that is -- is designed to support the --
27 the ammunition?

28 A Yes. The Tokarev pistol has a chamber that has that distinctive bottleneck
29 shape that supports the cartridge all along as it's fired.

30
31 Q What can you tell us -- did you do anything more regarding the bulged casing
32 that you observed? Did you do any more testing --

33 A Yes.

34
35 Q -- apart from what you described?

36 A Well, so my first thought was that -- that what this suggests is that the cartridge
37 was not in the proper locked position when it was fired. So for some reason
38 this cartridge was not in the chamber fully as -- as it was fired, and normally
39 this doesn't happen because the Tokarev pistol and most semi-automatic
40 pistols have what's called a disconnecter, that makes it so that as soon as the
41 slide is pulled back outside of that locked position pulling the trigger has no

1 effect. The hammer doesn't move. So as soon as you move the slide, and -- and
2 basically it's a safety feature, too; right, because as soon as that's open, then
3 the cartridge isn't supported, and in this case where you have a bulge it could
4 actually have a burst, and it's just a safety feature that once you open the pistol
5 it shouldn't function. And so something had to go wrong for this to -- to
6 happen, to -- I get a bulged cartridge case like this. So either I thought of -- I
7 sort of brainstormed, what could have gone wrong in the pistol for this to have
8 a bulge the way that it does. And I thought of initially four sort of scenarios
9 that could result in a bulged cartridge case like this, and then after that I
10 thought of a fifth, and I shared those with you. I can go through them. And --

11
12 Q Sure, please do that.

13 A -- as a result I went back and did another analysis step that was requested, so --
14 so the first option is a malfunction of the pistol that would allow the firing pin
15 to fall when the trigger was pulled and the slide was slightly out of the battery
16 position. So if -- if for whatever reason the pistol wasn't closed fully, but it was
17 close enough that the ejector was just engaged so it had almost closed, and then
18 the -- the trigger were pulled, that malfunction or malfunction of the
19 disconnecter completely, so if it was sitting not closed, and then the trigger
20 were pulled and the disconnecter for whatever reason was stuck or it didn't
21 function, that would explain how that bulge could happen. So a malfunction of
22 the pistol basically.

23
24 Q And so how would -- how would the bulge happen in that situation? Just
25 maybe --

26 A So in that situation an earlier shot would have worked perfectly normally
27 presumably, but as it loaded that -- that cartridge into the chamber, for
28 whatever reason it wouldn't seat all the way down, it wouldn't go all the way
29 into the chamber and then gets stuck, so that the slide wasn't fully closed. And
30 in that case, if the disconnecter didn't function, if there was a malfunction of
31 the pistol and the trigger were pulled, the hammer could still fall, still hit the
32 firing pin, still fire it, but that cartridge wouldn't be supported and it would get
33 a bulge, and it would -- because the -- the neck of the cartridge wouldn't be
34 into the neck of the chamber then that would explain why it would get
35 stretched. So that's one possibility here. Another thought that I had was a
36 malfunction of the ammunition. So this is old ammunition, and if the -- if the
37 ammunition malfunctioned in a way that's called a hang fire, what happens in a
38 hang fire is the firing pin falls against the primer, but the primer doesn't
39 explode like it normally would. Instead there's a delayed fire, and so in firearm
40 safety training, when you take that course, they'll tell you if ever you fire, if
41 you pull the trigger of a gun and it goes click, if it doesn't go bang, you should

1 keep the gun pointed in a safe direction for about 30 seconds or a minute in
2 case there's a hang fire, in case there's a delayed fire. Now -- now I've never
3 seen one of those in my own tests of this pistol or any other gun, and I've shot,
4 you know, over 5,000 different rounds of ammunition, but it obviously
5 happens enough that we teach it in safety course, so it is a known effect. So if
6 that happened in this case, the trigger was pulled, the firing pin hit the primer,
7 but it didn't fire, and then for whatever reason the slide were pulled back to the
8 point that the cartridge was only half-in and half-out of the chamber and then it
9 fired, that would explain, you know, that bulge again. Now, I couldn't say what
10 would cause -- I mean, you could manually be clearing the chamber. If -- if --
11 if a gun doesn't fire, for example, for a misfire, so you have bad ammunition, it
12 goes click, it doesn't go bang, after you stand, you know, holding the firearm
13 pointed at your target, what you do is you clear the round by pulling that slide
14 back and just ejecting the cartridge. It falls on the range floor and I'll go look at
15 it later, but I'll keep firing. So -- so if, in the process of pulling back the slide to
16 eject it, it did fire from a hang fire, that would explain that bulge in the case. So
17 that was option number 2 or hypothesis number 2. The -- the third thing that I
18 thought of, now this is, you know, a very remote and unlikely possibility, but if
19 the barrel was swapped out in the gun. So if you'd taken out the Tokarev
20 chamber and put in a barrel that was chambered, for example, for a nine
21 millimetre Luger -- a straight cartridge case, and if you fired it in the wrong
22 barrel with that gun, then it would still get the firing pin impression from the --
23 the Tokarev pistol, but it would probably stretch the case though, because there
24 was nothing -- there was be nothing to support that neck and the -- the length is
25 different on a nine millimetre and on a Tokarev pistol. So if the barrel were
26 swapped out, I could imagine that this would give the same sort of effect that
27 I'm seeing, a bulged cartridge case. And the fourth possibility is a bore
28 obstruction. So if there was rust or corrosion or a burr, a little bit of metal,
29 anything, that blocked that cartridge from going in fully, but it almost got in far
30 enough, enough that the disconnector wasn't engaged, then that might explain
31 the -- the observed bulge.

32
33 Q So the disconnector, I understand, is a safety function?

34 A That's right.

35
36 Q And I don't know if you've explained that or --

37 A So as you -- as you pull the slide back, as the slide goes back either by recoil or
38 by manually manipulating it, there's a part called the disconnector that makes it
39 so that pulling the trigger has no effect. Basically, it disconnects the trigger
40 from this -- from the -- the hammer or the sear from the hammer. I'm not sure
41 exactly where, in that process, it disconnects things, but it basically makes it so

1 that the firearm was inoperable from pulling the trigger.

2
3 Q Okay. So you're talking about ammunition in a place that isn't out of place
4 enough to cause --

5 A Right.

6
7 Q -- the disconnecter to not operate?

8 A It takes a few millimetres of travel for that disconnecter to -- to function. And
9 so -- so if it was jammed just a little bit, so that the cartridge hit this -- this bit
10 of rust or bit of things, and it was standing a little bit proud or standing tall out
11 of the cylinder, out of the chamber, but it wasn't quite enough to engage that
12 disconnecter, that would be, in my opinion, a possibility to explain this bulge
13 on the case.

14
15 Q Okay.

16 A And the last thing that I considered was if -- if the -- if the pistol was fired
17 normally, but in a confined space, so that the slide, when it tried to move
18 reward, hit something, then it wouldn't be allowed to extract and eject the
19 cartridge case. Instead, it would be stuck in that position because it was
20 obstructed. The slide was obstructed. So if I fired the gun in this direction, and
21 the slide came and hit something solid, then that could potentially, I thought,
22 cause the -- the observed bulge, and so I tested that hypothesis with the actual
23 ammunition. So this was in a second report that I did.

24
25 Q So if I can -- I understand that you received some ammunition?

26 A That's right.

27
28 Q I understand the gun, the Tokarev, and ammunition that was marked as Exhibit
29 PE-33 was sent to you for further testing?

30 A That's correct. And so I received the -- the same pistol, Exhibit PE-087 and 80
31 cartridges. So these were the same calibre, 7.62 millimetre Tokarev, with the
32 same head stamp as what I observed in the expended cartridge cases. And so I
33 did two steps of analysis. One was, I looked at the ammunition and classified
34 it. Basically, the cartridges, Exhibit PE-033, these 80 cartridges, are of a design
35 that are suitable for use in the pistol, Exhibit PE-87, and I fired a sample of
36 these. In the course of firing, one of those cartridges misfired, so the primer
37 was struck by the firing pin, but it did not discharge. It was -- it may have been
38 defective. And as a result of that, I was able to conclude that those cartridges,
39 Exhibit PE-33, are ammunition within the meaning within the *Criminal Code*,
40 Section 84, in that they are cartridges containing projectiles designed to be
41 discharged from a firearm. And then the additional tests that I conducted were

1 to determine if obstructing the rearward motion of the slide could cause that
2 sort of bulge in a case. So what I did is I set up a big heavy steel stand, metal
3 stand, and I fired the pistol with the slide so that it would hit that stand. And so
4 in the course of those tests, there was no significant deformation observed. I
5 didn't see any of the bulged cartridge cases. I did jam the pistol repeatedly
6 doing that, and in fact, the rear part of the slide of the pistol is now deformed
7 from hitting that metal stand, so that now the -- the pistol will jam regularly
8 upon firing. Every time that the slide fully closes now the pistol will jam
9 because of the -- the slight bend that I put onto those slide in the tests, but --
10 but my conclusion is that obstructing the rearward motion of the slide, which
11 was one of my possible hypotheses here, it did not cause any significant
12 deformation of the expended cartridge cases in my tests.
13

14 Q Mr. Williams, the second quantity of -- or Exhibit PE-33, the -- the
15 ammunition that you received --

16 A Yes.

17
18 Q -- was that the same lot number as -- as on the expended cartridge -- cartridges
19 that you received, PE-35, 36 and 43?

20 A Yes, it had the same head stamp BXN 53 and 1, lot number 1.
21

22 Q Sir, you were carrying along so efficiently, I -- I had intended to show -- to
23 refer to you a couple of photographs that you had taken. Do you have the
24 photographs with you?

25 A I do in my work notes, was I was provided by -- some copies of the
26 photographs from my work notes.
27

28 Q Okay. If -- there's a photograph of PE-035 and PE-043; is that correct?

29 A That's correct.
30

31 MR. BURGE: And I have extra copies for the court.
32 Perhaps I'll just ask him to go through those photographs, Your Honour, and then
33 I'll tender them as exhibits.
34

35 THE COURT: Okay.
36

37 THE WITNESS: So I apologize for the quality of these
38 photos. They are zoomed and cropped, and -- but I think they -- they show sort of
39 the most salient features that I have discussed.
40

41 MR. SPENCER: My apologies, but is there more than

1 one? I think I only received one, a copy of one.

2
3 Q MR. BURGE: Why don't you take us through PE-043
4 and then go on -- or pardon me -- 35 --

5 A Okay.

6
7 Q -- and then go on to 43.

8 A So PE-035 is an expended cartridge case, and it has on the left side you can see
9 the head, the rim under the head, and on the right-hand side you can see the --
10 the narrow point by the mouth of the case where that -- there's that sort of
11 bottleneck. And you can see that the sidewall of the case is straight, so that's
12 PE-35. And compared to that, PE-43 has a very prominent bulge under the
13 head, the rim, and the -- the mouth of the cartridge case here, on the right-hand
14 side, is completely straight. That bottleneck has been stretched out.

15
16 MR. BURGE: Thank you. Your Honour, I'd tender
17 those perhaps as one exhibit (INDISCERNIBLE).

18
19 COURT CLERK: P-11 is the next exhibit.

20
21 THE COURT: P-11 will be two photos taken by Mr.
22 Williams.

23
24 **EXHIBIT P-11 - Two photos taken by Gregory Williams**

25
26 MR. BURGE: Mr. Williams, thank you for answering
27 my questions. Please answer any questions that my friend might have.

28
29 THE COURT: Cross-exam?

30
31 MR. SPENCER: Could we perhaps take a short break, and
32 I can consult with my client? I don't expect to be too long with this witness. I'm
33 thinking 20 minutes, 30 minutes tops, so it may be easier --

34
35 THE COURT: Yes. Take as long as you need.

36
37 MR. SPENCER: Yes, ten minutes will be fine.

38
39 THE COURT: We'll have a short adjournment.

40
41 (ADJOURNMENT)

1
2 THE COURT: Madam Clerk, I forgot my book. I think
3 it's directly ahead on the filing cabinet towards the Judges' door. Thank you.
4 Cross-examine, Mr. Spencer?
5

6 MR. SPENCER: Thank you, Your Honour.
7

8 **Mr. Spencer Cross-examines the Witness**
9

10 Q MR. SPENCER: So Mr. Williams, dealing firstly with the
11 rifle, is there any reason to believe that it wouldn't have fired if it hadn't been
12 damaged? Do you know what I'm asking?

13 A So if -- if it hadn't been bent --
14

15 Q Yes.

16 A -- and if the stock were in place, I expect it would have fired normally.
17

18 Q Okay. And the stock wouldn't -- the lack of the stock wouldn't impact on the
19 ability for that weapon to fire?

20 A I'll just refer to my notes, but I think there was something to do with the
21 tubular magazine. So this particular rifle, the Cooey Model 600, has a tubular
22 magazine that sits under the barrel, and it has a little assembly on it that
23 includes the ejector. And if I'm not mistaken, the ejector on that tubular
24 magazine is -- is held in place by the stock. And so with the stock missing, that
25 -- that piece will obstruct the bolt from closing. So you'll have to just use your
26 hand to manipulate it out of the way, sort of acting as the stock --
27

28 Q Oh, okay.

29 A -- but it would function. It would just take some manipulation.
30

31 Q Okay. And there was a bullet in the chamber of that firearm?

32 A No, not to my knowledge. I was --
33

34 Q Oh, okay.

35 A -- I received it, it was unloaded at the time of my receipt.
36

37 Q Okay. So there is no bullets in the -- in the magazine or the chamber when you
38 got it?

39 A At the time I received it, it was clear and safe and --
40

41 Q Okay.

1 A Yeah.

2
3 Q Okay.

4 A Yeah, for -- for shipping regulations all firearms are always emptied.

5
6 Q Makes -- makes --

7 A Yeah.

8
9 Q -- lots of sense, yeah. So now turning to the Tokarev, and you'll have to bear
10 with me, and I do ask that if -- if I'm using the wrong terminology please
11 correct me so that we -- we get that nailed down, I'm sure I will, but made in
12 1947, this particular one?

13 A Yes.

14
15 Q When were the first ones made? Do you know that offhand?

16 A The model tells you the year, so the Model TT-33 is because 1933 was the year
17 of the first manufacturer.

18
19 Q Okay. A lot of these are around in the world?

20 A Yes.

21
22 Q Yeah. Okay. That's a 7.62 millimetre calibre?

23 A Yes, 7.62 Tokarev, but yes, millimetre, Tokarev.

24
25 Q So curiosity maybe more than anything, 7.62 versus .22, are two different
26 kinds of measure? Is that what's going on there?

27 A Yes, metric versus, you inches and -- and so calibre, like .22, is 2200ths of an
28 inch, and 7.62 is just the millimetre. So if you think about it, .38 is a common
29 calibre of pistol. That's around nine millimetres.

30
31 Q Okay.

32 A So --

33
34 Q Okay. So -- so .31 is pretty close to a nine mill (sic) and the .22 and -- and this
35 would be a very similar size of calibre. The calibres would be very similar?

36 A I think .22 is more like 6.5.

37
38 Q Okay.

39 A So -- I mean, we could use a calculator and figure it out; right?

40
41 Q Okay.

1 A It's just inches and millimetres.

2
3 Q Yeah. Yeah, I'm just trying to get an idea of --

4 A Yeah, so --

5
6 Q -- certainly, we're, you know, the --

7 A So bigger than .22, smaller than .38.

8
9 Q Okay, fair enough. Now, the Tokarev, does it have a magazine disconnect?

10 A Let me just refer to my work notes. From memory, I'm not -- I'm not
11 remembering, so let me just see if I've made any comment on it. So from my
12 notes, I don't see any mention of a magazine disconnect, but I tested it, fired it
13 only with the magazine in place from my notes. I don't have any record of
14 testing it without the magazine in place.

15
16 Q Okay. So you simply --

17 A And so --

18
19 Q -- today don't know whether it has one or not?

20 A That's right. I mean, it's -- it would be design characteristic. We could check
21 and find that out, but --

22
23 Q Okay. Now, can you explain to me what a magazine disconnect is?

24 A Yes. When a magazine disconnect is in place, then when the magazine is
25 removed from a particular handgun or firearm then it won't fire. It again
26 disconnects that firing sequence between the -- the trigger, the sear, and the
27 hammer.

28
29 Q Okay. So regardless of the state of the ammunition, if you pull the -- it's a
30 magazine; right, not -- so it's called a magazine?

31 A That's right, yes.

32
33 Q You pull the magazine out, and that firearm is disabled?

34 A That's right.

35
36 Q Okay. So it can't fire whether it's got a bullet in the chamber or not?

37 A In -- for a pistol that has the magazine disconnect, then when you remove the
38 magazine it can't fire.

39
40 Q Right. That's the purpose of it, is that you can disarm it by removing the
41 magazine. You can disarm that gun by removing the magazine?

1 A That's true in cases where there is a magazine disconnecter --

2
3 Q Right.

4 A -- magazine disconnecter, yes.

5
6 Q All right. And my understanding is some pistols have it and some don't?

7 A That's true, yes.

8
9 Q Okay. Now, is it your experience that those that don't have that often have a
10 stamp on them that says, Will fire without magazine?

11 A No.

12
13 Q You haven't seen that?

14 A I haven't.

15
16 Q You haven't seen that on any of them?

17 A I haven't noted it. I haven't -- don't remember seeing it. That doesn't mean I
18 haven't seen it and just --

19
20 Q Sure.

21 A -- didn't make any mental note of it, so --

22
23 Q Okay. Okay, because it's my understanding that because of that, the difference
24 of the two, whether a particular weapon has one or not, that manufacturers
25 often stamp them so that the user would know that it will fire without the
26 magazine?

27 A I would say that isn't typical.

28
29 Q Okay.

30 A A lot of pistols will fire without the magazine and without having any
31 markings on them, in my experience.

32
33 Q Okay. Yeah, and of course you're the expert and just, you know, have other
34 sources of research. So okay, so if I take that gun, and I don't have any bullets
35 in it, I can pull the hammer back and pull the trigger, and it will go through the
36 cycle, but of course with no bullet in it, nothing will happen?

37 A That's right.

38
39 Q Dry fire?

40 A Dry fire.

41

1 Q Yeah. If I put a bullet in the magazine, insert that --

2 A So we're talking about a cartridge. It's not a bullet, a cartridge.

3

4 Q Okay, thank you. That's why I asked you to correct me, so a cartridge, and I
5 don't know that we've been using that, but that's -- I got, thank you. So I put a
6 cartridge in the magazine, put that into the -- insert it into the gun and get the
7 magazine in place, I pull the hammer back. Can I pull the trigger back?

8 A Yes, but there is no cartridge in the chamber at that point, so the hammer will
9 fall, and it'll just go click.

10

11 Q Correct, yeah.

12 A There is nothing --

13

14 Q Yeah, so it goes through its cycle, but not going to discharge anyplace?

15 A No, no cycle. The cycle requires firing, so you need to have a recoil. There is
16 no recoil. It would just click.

17

18 Q Right. Right.

19 A So the hammer would fall forward, single action, full stop. Nothing else would
20 happen.

21

22 Q Right. So I've still got a bullet and so you're -- and then I could, after doing
23 that, I could rack it --

24 A Yeah.

25

26 Q -- which is what inserts the shell, pull the hammer back, and now I have a
27 loaded weapon?

28 A Yeah. So the cartridge again gets picked up as the slide goes forward. So you
29 rack it backwards, nothing happens except cocking the hammer.

30

31 Q So -- yeah.

32 A And then let going of that lets the -- the recoil spring push the slide forward,
33 pick up the cartridge and chamber it, so then it would be ready to fire.

34

35 Q Right, so -- so three things are -- are necessary to -- to discharge is inserting the
36 cartridge. Well, I guess go the other way, is cocking the hammer, and that's
37 done by bringing -- racking it back, cocks the hammer, that's one?

38 A Yeah.

39

40 Q Going -- racking it forward afterwards, mechanical, that loads the cartridge?

41 A Yes.

1
2 Q So that's two. And the third is pulling the trigger?

3 A I would add a step, the locking step, where the -- the slide and the barrel come
4 together and lock the breach in place. It's a locking step, but yes, I agree --
5

6 Q Okay.

7 A -- with your sequence.
8

9 Q Okay, yeah. Yeah. Okay. So turning then to -- what was the number on those
10 two photos?
11

12 THE COURT:

P-11.

13
14 Q MR. SPENCER: P-11. P-11 is the cartridge, PE-43, which
15 I think just for the record was Exhibit 11 on scene, PE-43 as the exhibit
16 number, and I think you've put a lab number of 0018; is that -- you can check
17 your notes if you want, is that -- have I got those all right?

18 A Yes, PE-043 and a lab number of 0018.
19

20 Q Okay. So we're -- that's the cartridge that I want to talk to you about. The other
21 two seemed normal, and you confirmed they've been fired out of that Tokarev
22 gun?

23 A Yes.
24

25 Q Okay. So certainly you appreciate there must be -- there may be some
26 significance to that bulged cartridge?

27 A Yes.
28

29 Q Okay. And you tried to solve that mystery, or the potential mystery. You said
30 you shot -- what was it -- a dozen rounds -- I guess 25 rounds to see if -- if
31 another casing showed any evidence of bulging?

32 A Well, I got those first 19 just for the course of the regular analysis, and then I
33 shot an additional six to see if I could explain that bulge.
34

35 Q Okay. Okay. So the first 19 --

36 A So the first 19 were with my own ammunition, and the six were with the
37 exhibit ammunition, Exhibit PE-33, PE-033.
38

39 Q Okay. Okay. And I was -- I was confused about that because I thought there
40 was different incidents, but I think you've -- you've clarified that for me. So
41 you took new ammunition, RCMP ammunition, new ammunition, and shot 19

1 rounds off to do your analysis of the gun and the cartridges, the three cartridges
2 that were provided to you that had come from the gun, that's normal practice?

3 A Yes. I can just verify the --
4

5 Q Take your time.

6 A -- exact ammunition I used, so I made a note on that. So the 19 shots that I
7 tested with RCMP ammunition, I used two different types. First I used Sellier
8 & Bellot, 7.62 by 25 Tokarev, full metal jacket, round nose brass jacket bullets.
9 Those cartridges were the ones I used for the identification part. Those were
10 the first shot-down range, and then the next three shots into the water tank.
11 And then I shot three shots, semi-automatic, from the magazine, down range.
12 So that was the first seven shots. Then I did an additional 12 shots using full
13 metal jacket cartridges with cases similar in design to those expended cartridge
14 cases. So -- so the first seven shots I did using one type of ammunition that
15 tends to have good markings, brass case, and then I used 12 shots using new
16 ammunition, but similar in -- in head stamp, so similar age and design. So it
17 was new, but still from 1950's.
18

19 Q Manufactured in 1950?

20 A Yeah, but similar to what --
21

22 Q Okay.

23 A -- was submitted. So I used those for the range determination part. So when I
24 did the tests at those different distances, I used that type.
25

26 Q Okay. And that was one thing, I was assuming that was newer ammunition, but
27 you're saying manufactured at the same time, but --

28 A Yeah.
29

30 Q -- kept in --

31 A It was similar, yeah. From what my notes are, it says, It was similar to the
32 expended cartridge cases.
33

34 Q Okay. So you didn't observe anything there, so it wasn't a regular --

35 A I didn't observe any bulges, no.
36

37 Q Okay. So then you're questioned by the Crown to say, do you have an
38 explanation for the bulges? You didn't. I think you had four theories at that
39 point?

40 A Yeah.
41

1 Q Were -- have you concluded which is the most likely theory now?

2 A No.

3
4 Q Okay. We'll go through them then, but -- so as I understand it then because you
5 were trying to figure out the mystery of the -- the bulging casing, you got the
6 actual same ammunition as from the same lot as the three casings that were
7 involved in the incident, which you wouldn't know that for sure, but that's
8 what you were advised obviously?

9 A Yeah.

10
11 Q You've got the same lot, so basically have the same box of shells?

12 A Yes --

13
14 Q Okay.

15 A -- as far as I know.

16
17 Q Right. Yeah -- no, and that's fair. So and you've only -- you fired six then?

18 A Yes.

19
20 Q Okay. So I was -- I thought there was more than that, so of those six one of
21 them misfired, is that my understanding?

22 A Yes.

23
24 Q Okay. So what did you do with the misfired shell?

25 A So at the time I was conducting these tests with a metal stand, so I'll just have
26 a look at my notes to see if I commented on this. So I can go through exactly
27 what those sequence of shots were and what happened to each one, but I don't
28 have any notes specifically about -- well, I can just go through what I have. So
29 for the misfire, in particular, that was the third shot in the sequence. I was
30 attempting to fire at about one inch in front of the stand. The firing pin stuck to
31 the primer. The pistol jammed shut. After I held it for some time, just in case it
32 was a hang fire, that didn't fire, I then used a hammer and a cleaning rod to
33 unlock the pistol because it had jammed shut, and removed that -- that
34 cartridge that had been marked on the -- on the primer. I'm -- I'm not positive
35 on what I did at that point, but I mean, if I was to do that analysis right now,
36 what I would do is I would return that -- that cartridge with the other cartridges
37 and the expended cartridges back with the other exhibits to the investigator at
38 -- at the conclusion of my analysis.

39
40 Q Okay. So just to close that loop, so when you got the -- the -- I'll call it the
41 original ammunition, which you thought to be the same box of ammunition,

1 did you take any just plain fires to see how those worked?

2 A One.

3

4 Q One?

5 A I did one shot without the stand. The pistol functioned normally.

6

7 Q Oh, good. Okay.

8 A Yeah.

9

10 Q Okay. Two -- two goes fine, three misfires?

11 A So two, the second shot I fired very close to the stand. The pistol jammed shut
12 afterwards, so then I had to use a cleaning rod and a hammer to unlock the
13 barrel.

14

15 Q Okay. And then three totally misfired?

16 A Three totally misfired.

17

18 Q Okay. How long did you wait before you unlocked it after the misfire?

19 A I'd say about 30 seconds.

20

21 Q Okay. And as I understand it, the firearms training says you should wait for a
22 minute to be certain that you don't have a hang fire?

23 A Yes.

24

25 Q Okay. And the difference between a misfire and a hang fire is that a misfire
26 never goes off, and a hang fire does ultimately go off after some period of
27 delay?

28 A That's correct.

29

30 Q Okay. And you're saying, to be safe a minute, but 30 seconds is certainly the
31 minimum that you should allow before you deal with a misfire of ammunition
32 to make that determination?

33 A Well, that's right, so in this case I don't know exactly, I didn't have a
34 stopwatch; right, so I held it down range for some time, just kept it pointed in a
35 safe direction, and then after, you know, I decided I needed to clear it, I had to
36 move, so I was standing with it pointed in the range, so I kept the gun in a safe
37 direction, walked back to the workbench where the hammer was, kept it
38 pointed in a safe direction and got the cleaning rod out and tapped the hammer
39 to unlock the barrel, and -- so I'm not sure exactly on the timing of it, but --

40

41 Q Fair to say you were a little bit anxious about it for several minutes?

1 A Well, this is not entirely uncommon in my line of work, so I'm pretty
2 comfortable with misfires, and as I said I've never had a hang fire in my whole
3 career, so --
4

5 Q Okay. Okay. Now, you talked about a jar-off test, and I think you did that
6 before you started doing the investigation in relation to the bulging cartridge; is
7 that right?

8 A Yes.
9

10 Q Okay. Tell me about that test. I'm envisioning you with a loaded gun, dropping
11 it to see if it goes off. It has to be more sophisticated than that?

12 A Well, it's -- that's a fairly succinct description, only the loaded part isn't
13 correct. So we use a cocked, but unloaded.
14

15 Q Okay.

16 A So it's -- it's cocked, unloaded. And then what happens is in the case that it
17 does go off, what I'll do is I'll take a cartridge, pull the bullet, so I'll just use
18 inertia to pull the bullet out, dump out the gunpowder, so I just have the primer
19 and the cartridge case, and then I'll load that into a firearm, and then I'll drop it
20 again to see if it will fall -- the firing pin will fall within a force to impact the
21 primer and to cause it to fire.
22

23 Q Okay.

24 A So I'll never do what you suggested, have a loaded firearm and drop it in the
25 range and hope it doesn't shoot me.
26

27 Q Okay. So -- so I was wondering how many -- how your assistant feels about it.

28 A Yeah. Yeah.
29

30 Q Okay. So -- so you're doing the jar-off test just to see whether it hitting the
31 floor or getting jarred obviously, will trigger the hammer --

32 A Yes.
33

34 Q -- but -- but you make sure that you have a cartridge that's -- or a cylinder
35 that's empty or a cartridge that's disabled?

36 A Yes.
37

38 Q Okay. So but to have them misfire in the second set of tests, what did you do
39 with that cartridge? Do you still have it?

40 A I'm not 100 percent sure. I -- if I was to do that analysis now, as I said, I would
41 return that exhibit along with all the other unfired exhibits and along with all

1 the brass or the expended cartridge cases. I shouldn't say brass because in this
2 case they're steel.

3
4 Q Okay. And just to make sure I'm not misreading that, has your practice
5 changed or are you saying that's what you believe you did in this case?

6 A That's what I believe I did in this case, but I didn't make any note or mention
7 of it in my report, so we also have a destroy bucket. So we have a bucket in our
8 range where, if we're using our own ammunition, and we have a misfire, then
9 those cartridges that are RCMP that get fired and have a mark on them are
10 unsafe to fire again, and they -- they would be potentially misleading if I tried
11 to do a microscopic comparison after I already had a mark from one other gun.
12 So we have this bucket of destroyed, or you know, fired but unsafe cartridges.
13 And so that's where I would have put RCMP ammunition had it misfired. So
14 I'm not entirely sure that I returned that cartridge with the others. I may have,
15 in fact, put it in that destroy bucket. We can check though because I did return
16 it. I mean, they should be --

17
18 Q Yeah, yeah, if you returned it, that's great --

19 A -- we can verify whether it is --

20
21 Q -- and if you didn't, well, then that's -- that's where we are.

22 A Yeah.

23
24 Q Now, just -- I know you did what you did, but I need something to see about
25 some other options or talk to you about some other options. If I have a misfired
26 cartridge and I get it out, can I reload it, put her back in, and shoot it again?

27 A Yes.

28
29 Q What do you think could happen? What are the options of what could happen?

30 A It could fire the second time around.

31
32 Q Yeah, because if it gets -- gets a clean hit, it could go off?

33 A Yeah. Sometimes the firing pin will be a little bit obstructed, a dirty gun, so the
34 firing pin is not falling all the way far forward it should, and in that case it's
35 not leaving a very deep impression.

36
37 Q Okay. Now, I take it you didn't do any jar-off tests in that second go-around?

38 A That's correct, no jar-off tests.

39
40 Q And you didn't do any jar-off tests with that misfire?

41 A That's correct.

1
2 Q Because that -- that would have potentially given us some information if -- if
3 you had a misfire, and you were dropping that gun to see if that would actually
4 cause that cartridge to fire?

5 A Well, it would be inherently unsafe first. I would never do that. So the first
6 thing I would do is you're going to take that cartridge, pull the bullet, pull the
7 powder, then put it back in, and then I could consider, you know, dropping the
8 hammer on it a second time to see if it would discharge, and then to see if
9 dropping it in different orientations would cause it to fire. I -- I wouldn't expect
10 that to be the case, but --

11
12 Q Okay, but it could be?

13
14 THE COURT: Sorry, it could be what?

15
16 MR. SPENCER: If it was jarred, that could cause that
17 bullet to fire.

18
19 Q MR. SPENCER: On that misfire it jarred that gun and it
20 could cause that bullet to fire?

21 A I hesitate to agree with that statement. The -- the tests that I conducted showed
22 that even with the hammer cocked, dropping the gun in any orientation
23 wouldn't cause it to fire. In the case where the hammer had already dropped,
24 jarring it is something that I haven't tested, and so I think I'm not prepared to
25 comment on something that I haven't scientifically tested. Whether it's
26 possible or not is something we could -- we could evaluate, but the possibility
27 is undetermined.

28
29 Q Okay. So in a scenario where you have a misfire, without the stand jamming it,
30 you have a misfire, and at that point it's not jammed. The hammer is against
31 the firing pin. The cartridge is still there, and it hasn't fired, in that scenario,
32 can I pull the hammer back and fire -- give it another shot, give it another -- let
33 the hammer hit the firing pin again?

34 A So you would have to manually cock it in that case, but yes, you could --

35
36 Q Yeah.

37 A -- because in that case the slide wouldn't have rebounded to recock it.

38
39 Q Right. Yeah. Yeah. I appreciate that. So if it -- I manually cock it, then I can
40 pull the trigger, and I give it another hit, and it might fire?

41 A And it might fire, yeah.

1
2 Q Okay. Now, is there a similar situation where I do have it cocked ready to go,
3 and I pull the trigger, but I hold onto the hammer and ease the hammer forward
4 against the cartridge? That -- that -- I can do that. I'm capable of doing that
5 with that gun?

6 A Yes.

7
8 Q And in that circumstance then, it's essentially disabled?

9 A So it's not cocked.

10
11 Q Right.

12 A I wouldn't say disabled because, I mean --

13
14 Q Okay.

15 A -- you'd simple rack the slide and pull the trigger and --

16
17 Q Yeah, got you, but pulling the trigger isn't going to do anything then --

18 A Right.

19
20 Q -- because the hammer is forward?

21 A The hammer is forward.

22
23 Q And there's a half-cocked, as I understand it, on that gun where you pull it
24 halfway back, and it actually locks, and you can't pull the trigger there. The
25 hammer doesn't go anywhere either way. It doesn't go forward at least?

26 A I believe there is a half-cocked notch on the hammer, but I -- I didn't test it in
27 my own analysis.

28
29 Q Okay, so that's -- you're not sure about that?

30 A I'm not sure about it.

31
32 Q Okay. If I -- if I did that and eased the hammer -- pulled the trigger and eased
33 the hammer forward, and that hammer is then against the firing pin, and I
34 brought it all the way back, but not quite half-cocked and let it go, what would
35 happen?

36 A It would fall forward.

37
38 Q Because it's spring loaded; right?

39 A That's right.

40
41 Q And so then the hammer would, without pulling the trigger, without formally

1 cocking it to either half or full cock, it would then hit the firing pin?

2 A Yes.

3

4 Q And what would happen?

5 A The question is whether or not that firing pin would have enough energy to hit
6 the primer in that kind of a less than half-cocked release. And so it might just
7 hit and nothing, or it might hit the firing pin, which is the primary part of the
8 gun.

9

10 Q Yeah, good fire?

11 A Two options.

12

13 Q Yeah. Okay. So if I -- if I fire and have a misfire, so that it's been -- it's
14 actually been hit with the hammer once, but didn't go off --

15 A Yes.

16

17 Q -- and then I did that same pull -- pulled it back (INDISCERNIBLE) --

18 A Fanned the hammer back a little bit.

19

20 Q -- let the hammer snap against it, same -- same possibilities, it could fire?

21 A Yes.

22

23 Q Is it more likely to fire in that instance if it had already been hit once?

24 A No.

25

26 Q Why do you say that? The cartridge hasn't moved, so wouldn't the hammer
27 and the firing pin basically be on the same spot?

28 A Well, so we're comparing two scenarios to see --

29

30 Q Okay.

31 A -- which is more likely, one scenario is new ammunition that has never been
32 fired and one that's been shown to misfire once already. So the new
33 ammunition, if it were to be lightly fanned, it has a higher probability of firing
34 than the ammunition we already know is defective once. So in my experience,
35 most ammunition that's defective once will be defective -- will -- will not fire
36 if you try to fire it with a full cock more often than just regular new
37 ammunition.

38

39 Q Well, we're certainly dealing with an irregularity here?

40 A Absolutely.

41

1 Q Yeah. So am I wrong there at all in saying that that cartridge that's in there and
2 it's been hit once, would it not be -- get hit the second time in the same spot?
3 The cartridge would hit it in the same spot or am I wrong there?

4 A It would unless it had some reason to move, yes --
5

6 Q Yeah.

7 A -- it would hit in the same spot.
8

9 Q Yeah, and so if it just was a plain misfire, the hammer could essentially go
10 back and forth a number of times and hit that -- that cartridge?

11 A If you were to repeatedly fan the hammer a little bit backwards and let it go, it
12 could repeatedly hit the firing pin, and the firing pin would repeatedly hit the
13 primer in a similar spot; right, the centre of the breach, the centre of the
14 primer --
15

16 Q Yeah.

17 A -- that's where --
18

19 Q Yeah. And so each time there would be a possibility of it firing?

20 A Yes.
21

22 Q Okay. Now, if -- if I were to seriously jar that gun, bang that gun or -- or jar it,
23 even -- even running, does that hammer on -- on that spring would it flutter?

24 A I didn't disassemble or examine the hammer and spring to see how tightly
25 seated it is, specifically, so I can't comment on any flutter really.
26

27 Q Okay. So you didn't do that. Would you agree with me that that's possible if --
28 if you jarred that gun with a hammer against the misfired cartridge that that
29 hammer could cock back and the spring would bring it back against the
30 cartridge?

31 A The hammer is under a fair amount of spring pressure forwards, and so I am
32 having a hard time imagining jarring it hard enough to make that tight part
33 move and then move back.
34

35 Q Okay.

36 A I think that the spring pressure of the hammer would likely be enough, but
37 again I haven't examined that spring specifically to know --
38

39 Q Right.

40 A -- but my expectation would be that that wouldn't be the case.
41

1 Q Okay. And I examined the gun yesterday, and it looked to me like that spring
2 wasn't that solid, that it moved fairly easily, but we can perhaps follow up on
3 that. If -- if I were to have the gun in my hand, and that hammer caught
4 something and started to pull back and then let go, essentially fanning it by --
5 by catching something, that -- that would give us hammer on firing pin which
6 might -- might fire the -- the cartridge?

7 A Potentially, yes.
8

9 Q Yeah. Yeah. So -- and I guess just thinking here now, there is no way to -- to
10 get, even if you had that misfiring, there's no way to -- to get it back in the
11 exact same spot, is there, so we would never be able to finish that test?

12 A (NO AUDIBLE RESPONSE).
13

14 Q Okay, so moving from misfire to hang fire, am I right is the hang fire as simple
15 as I pull the trigger, it doesn't go off, and then sometime in the next 30 seconds
16 directly it does fire?

17 A Yes, that's a hang fire.
18

19 Q And what's going on in the cartridge at that point, between the hammer hitting
20 it and the fire pin striking the cartridge, and the bullet going off?

21 A So we're talking about the sort of internal ballistics that's going on inside the
22 cartridge --
23

24 Q Yeah.

25 A -- so the primer is a high explosive mixture sealed inside of a little metal shell
26 inside of a cup. And so the -- the firing pin hits it, and this is a chemical
27 compound high explosive that's pressure sensitive, so the firing pin hitting it
28 crushing that metal is enough to cause it to spark and to explode, and to
29 produce sort of a very small high explosive blast. That little blast produces a lot
30 of gas, which produces a lot of pressure and heat, and that heat then ignites the
31 powder. So that's the normal function that happens. In the case of a hang fire,
32 you have sort of a fizzle, so the -- the primer gets struck by the firing pin, and
33 some of it ignites, but the -- the material in there has been degraded for
34 whatever reason, so it's been corroded or it's been exposed to liquid or
35 something that has made it mostly ineffective, but slightly effective, enough to
36 just spark and ignite the powder slightly, and then it slowly burns, and then that
37 burn spreads until there's enough pressure to discharge the firearm. So again, I
38 have never seen this happen, but that's just my understanding of how it could
39 happen. It's just sort of a delayed fuse reaction instead of an instant.
40

41 Q Right. And so depending on how that unfolds inside that cartridge it may burn

1 lots of the powder so that the bullet doesn't have much velocity when it comes
2 out of the gun?

3 A I think if it burned less of the powder it would have less velocity. If it burned
4 more it would produce more gas and --

5
6 Q Okay. Okay, but -- okay, so the dynamics within that cartridge could certainly
7 change --

8 A Yes.

9
10 Q -- the bullet's travel?

11 A Yes.

12
13 Q And it would also change how much of the -- the debris would come out with
14 the actual bullet?

15 A So the extent that it's burned would change the amount of debris that comes
16 out?

17
18 Q Yeah.

19 A I agree.

20
21 Q Okay. So looking then at the five theories, you're saying that there was one
22 that the cartridge didn't get into the chamber of the pistol. Is that theory
23 number 1?

24 A So theory number 1 is a malfunction of the pistol, but it has to go along with
25 the cartridge not being in battery --

26
27 Q Right.

28 A -- so --

29
30 Q Any evidence of the cartridge not being in battery?

31 A The bulge, absolutely.

32
33 Q No, no, no, no. We're trying to explain the bulge --

34 A Yeah.

35
36 Q -- so I need to know, is there any evidence that would you confirm your
37 theory --

38 A Ah, so --

39
40 Q -- you know, you can't --

41 A -- so in all my tests, the -- okay, I should be careful and qualify this. So before I

1 damage the pistol through hitting the metal stand, the pistol functioned
2 normally. After I damaged it, that bent the slide a little bit, and then it did have
3 a bit of a hard time getting all the way fully back into the battery, but it
4 worked. So the normal function of the pistol, it locked up properly and closed
5 into the normal firing position for me repeatedly without any difficulty.

6
7 Q Right. So as far as your testing --

8 A Yes.

9
10 Q -- you fired lots of cartridges through the pistol, both RCMP cartridges and
11 then one out of the box --

12 A Yeah.

13
14 Q -- the original box? No problem with that way?

15 A Right. And if we had the pistol we could demonstrate how that disconnecter
16 works, you know, to show that when the slide is pulled back that it doesn't
17 actually -- you know, the hammer won't fall.

18
19 Q Okay, but what I'm getting at is as far as if -- if the theory is pistol
20 malfunction, before you damage the pistol there was no evidence of pistol
21 malfunction?

22 A That's correct.

23
24 Q Okay. So if we're trying to explain the bulge in that one you're saying you
25 can't really explain it that way?

26 A I -- I can't eliminate or confirm that theory because it would be a malfunction
27 that was, you know, transit, not reproducible if it was a malfunction.

28
29 Q Right, but no evidence of a malfunction?

30 A No evidence of a malfunction.

31
32 Q And I appreciate you're trying to solve a mystery, so you have your theory and
33 you test it, and you can just report on the results. Certainly this is an
34 irregularity no matter, that bulged cartridge is -- is an irregularity no matter
35 what.

36 A Yes.

37
38 Q Yeah. Okay. So then the second was -- or sorry, I'll skip to the third, and that
39 your thought was, okay, what possible explanation? Swapping out the barrel, is
40 there -- it's a theory. Would you agree with me there's no evidence whatsoever
41 that the barrel had been swapped out from the incident to it landing on your

1 desk?

2 A I mean, I certainly am not aware of what all happened with the firearm in --
3 before I received it, but I have no evidence that the barrel was swapped, no.

4

5 Q Right. It appeared to be an original piece?

6 A Yes.

7

8 Q Okay. On that you'd -- you'd have tool marks. You'd have -- I think there
9 would be -- you would expect a fair amount of evidence if it had been swapped
10 out?

11 A I -- I don't expect that swapping the barrel would leave any tool marks. You'd
12 simply field strip the pistol, take it apart, put it in a new kit -- well, a kit barrel
13 that you can -- I haven't checked to see if these are available on-line or if
14 they're a thing, but one of my colleagues suggested this is a possibility when I
15 was sort of explaining, trying to explain what this bulge was.

16

17 Q Okay.

18 A And so I'm not aware, I haven't checked on-line to see if you can buy these
19 kits or if they're available, but I can imagine that you can swap a nine
20 millimetre barrel into a Tokarev.

21

22 Q Okay.

23 A I'm sure there's a YouTube video on how to do it, you'd get --

24

25 Q Okay, but reasonable, without Googling it and ordering something off the
26 Internet --

27 A Right.

28

29 Q -- that's not a likely scenario?

30 A Well, I think especially considering that we have two other expended cartridge
31 cases that don't have a nine millimetre barrel and don't have any bulges, have
32 the tapered fit --

33

34 Q Right.

35 A -- and so if those were fired in a sequence, then I agree --

36

37 Q Right.

38 A -- there is no evidence to suggest the barrel was swapped.

39

40 Q Well, there's actually evidence that it probably wasn't, isn't it, because didn't
41 you try to take the cartridges before the misfire or hang fire or the -- the

1 number 11, 38, those were 18 -- you took shell casings from before that, and
2 then you took ones that you fired after that and they matched up; right?

3 A Right. Right. So it would have to be swapped twice. It would have to be --
4 you'd have to fire the two shots, swap the barrel to the nine millimetre, fire that
5 one shot that bulged, swap it back into its original condition, and then submit it
6 to me. That's -- I agree, it's unlikely.

7

8 Q Okay. So we can be reasonably comfortable that's -- that's not likely. Okay.
9 Bore obstruction, that's something in the barrel?

10 A Yes.

11

12 Q Okay. What do you think the likelihood of -- of that would have -- would have
13 been? Did you see any evidence of a bore obstruction?

14 A So at -- at the condition of receipt I noted rust inside the barrel, so let me just
15 look at my work notes. One thing we always do comment on the -- on the
16 inside of the barrel, when we first receive it, before we fire it.

17

18 Q Mmhmm.

19 A And so I noted that the -- the bore condition was worn and very corroded, and
20 that in the bore residue section I noted that, There was a lot of rust, my words,
21 on the -- on the form here. So that rust might be as a result of it sitting in the
22 evidence locker after firing ammunition and it not being cleaned over a period
23 of time because presumably as a gun is fired that corrosion would have been
24 blown out along with the bullet that fits tightly in the barrel, so --

25

26 Q And if -- if the -- the bulged casing relates to the third bullet fired out of that
27 gun in a sequence, then bore obstruction would be less likely?

28 A Less likely than the first shot in the sequence?

29

30 Q Yeah.

31 A Probably. I mean, unless it was the second shot that caused the bore
32 obstruction. You know, if the second shot had some gunk in it along with the --
33 the -- the powder that got sort of jammed up. I've -- I've fired some -- in -- in
34 the course of my training one of our studies is to make guns very dirty, and if
35 you fire a gun enough it will stop working normally because of the build-up,
36 because of the rust, because of the residue that you leave behind. That's why
37 firearms need cleaning. And so eventually, if you fire enough times, a gun will
38 not function properly, and so if that just happened to happen between the
39 second and third shots is what I'm suggesting here, so --

40

41 Q Yeah. Yeah, but you have no evidence of any gunk in-between shots?

- 1 A No.
- 2
- 3 Q No evidence of gunk when it landed on your desk?
- 4 A Just the corrosion.
- 5
- 6 Q The corrosion?
- 7 A Yeah.
- 8
- 9 Q And you're saying that could be before or after the incident, but --
- 10 A And I think if there was any obstruction between the second and third shots, I
- 11 would never see it because that third shot did fire, and that would have blown
- 12 out anything that was there.
- 13
- 14 Q Okay.
- 15 A So again it's a very hard theory for me to test empirically.
- 16
- 17 Q Yeah. And if it fired normally there would be no bulged casing?
- 18 A Exactly.
- 19
- 20 Q Yeah. Okay. So then the fifth theory was this obstruction of the slide, and that
- 21 do you agree with me that -- that those were tested, but your conclusion is that
- 22 that doesn't -- didn't give you any evidence of that being the cause of the
- 23 bulging?
- 24 A Yes, I agree.
- 25
- 26 Q Okay. And in the process of that, unfortunately, you damaged the -- the piece?
- 27 A The slide, yes.
- 28
- 29 Q Yeah. Okay. So then that leaves us with number 2, hang fire. And to be honest
- 30 with you, I'm surprised the RCMP had 60-year-old ammunition for that gun,
- 31 but you're telling me that's not uncommon?
- 32 A Right. Czechoslovakia and eastern European countries produce really large
- 33 amounts, so it's military surplus ammunition, sort of, and it's commonly -- not
- 34 just for this calibre, but also for SKS rifles, so that's 7.62 by 39. That
- 35 ammunition is similar, and we get it in big lots. It's imported from eastern
- 36 Europe.
- 37
- 38 Q A little scary that these warehouses full of bullets are sitting around, but it's
- 39 better there than my -- my neighbourhood, but -- so is there any regulation or
- 40 anything like that, or are those just warehouses with these 60-year-old bullets
- 41 stacked up and if they can sell them, they sell them?

1 A I'm not aware of any regulations regarding the age of ammunition in terms of
2 sales.

3
4 Q So how does the RCMP store its ammunition?

5 A We have two rooms. One is actually part of the range. It's just the walls of the
6 range away from where we're shooting are lined with probably 50 or 60 feet of
7 shelves with all variety of calibres and ages and types, bullet types, bullet
8 weights, brands of ammunition, and we also have a separate storage room
9 where we have sort of a surplus from that row of shelves. And we have a large
10 representative sample to try to match whatever exhibits we are submitted.

11
12 Q And is it temperature controlled and things like that?

13 A It's indoors. I mean, this is a regular room. It does get some humidity because
14 we are, you know, producing a lot of gun powder gasses. There is a powerful
15 ventilation system in the room that actually vents outside air, so it gets a little
16 cold in the winter, a little humid in the summer, but --

17
18 Q I'll cut to the case. If -- if ammunition is stored just in my garage, unheated
19 garage, for years, that will reduce the efficiency of that ammunition? Would
20 you agree with me?

21 A It really depends on the ammunition. I mean, if it's manufactured in a way
22 that's waterproof, then -- then it should be resistant to corrosion, but if it's
23 corrosive or if it's subject to the elements, if it's not lacquered, so just
24 depending on the -- how the ammunition was made, then that would factor into
25 how it -- how it ages.

26
27 Q But storage does go to the effectiveness of ammunition?

28 A It can affect ammunition, yes.

29
30 Q So ammunition that's not stored in any controlled environment, it's just left in
31 a shed, would you agree with me it would be more likely to experience misfires
32 and potentially hang fires?

33 A I would agree with that statement.

34
35 Q Okay. And in this instance, out of nine cartridges, there is evidence that two of
36 them misfired or hang fired?

37 A So the six that I fired and the three exhibit cases, there is evidence that one of
38 them was possibly defective, the one that I misfired. And there is evidence that
39 something went wrong in that -- that bulged cartridge case.

40
41 Q Right. So in the original box that you're aware of, there is irregularities in two

1 -- evidence of regularities with respect to two out of nine?

2 A So I wouldn't say that those two are equal. So in terms of the ammunition
3 being defective or, you know, possibly defective, I would say that that's a very
4 likely scenario for the one that I tested and misfired, but I would hesitate to say
5 that that was the cause of the bulge. It's one option among others; right?

6
7 Q Right. No, and that's I'm -- I'm not saying --

8 A I wouldn't say that they're equally likely to be defective, but I would say that
9 they're possibly defective.

10
11 Q Right. Yeah -- no, and that -- that was my question was more specifically
12 irregularities. And one you're saying, well, definitely it was defective because
13 it didn't fire?

14 A Yeah.

15
16 Q You saw it with your very own eyes. The other one, there's evidence that there
17 was some irregularity in its firing?

18 A Yes.

19
20 Q Okay. Okay. So if I have a hang fire, so if I pull a trigger and I have hang fire,
21 safety rules say keep it pointed in a safe direction and nice and easy, let 30
22 seconds go by, or maybe a minute, according to the book?

23 A Yeah.

24
25 Q Yeah. What if I have a hang fire, and I bang on the table, do you think that
26 might make the difference being a hang fire and a no fire?

27 A That would -- my answer to that would be purely speculative. Do you want me
28 to speculate?

29
30 Q It could cause the hang fire to discharge?

31 A I've never done that sort of a test myself, and so I mean I can say that it's
32 possible, but that's an impossibility that I've never tested, so I hesitate
33 scientifically to say, yes, it's possible when I don't know that for a fact, so --

34
35 Q Right, but you're an expert giving opinion, so --

36 A For -- for it to be possible, it would have to happen at least once, and in all my
37 tests I've never done what you suggested. I've never had a misfire and then
38 banged it, so -- so what I'm saying is that I don't feel comfortable saying it's
39 possible or impossible. In this case I hesitate to give an opinion.

40
41 Q I guess, as an expert we need you to give opinions, so --

1 A So is it possible? I don't know.

2
3 THE COURT: Well, I think, counsel -- I think, counsel,
4 he is entitled to say I don't have an opinion.

5
6 THE WITNESS: I don't know is my answer. So banging
7 the gun in that case is -- and again it's something I've never tested -- could it
8 potentially? I mean, this is -- hypothetically, yes --
9

10 Q MR. SPENCER: Yeah.

11 A -- but that's -- that's beyond my own experience and training. I could certainly
12 test that with misfires, for example, but I'd have to do it very carefully in a
13 controlled way, you know, down range I would --
14

15 Q But what I'm getting at is if you have a hang fire, and you go through all those
16 same scenarios that I put to you with a misfire, the hammer being caught on
17 something and giving it another shot or -- or it being hit and jarring the -- and
18 popping back and the spring snapping against it, giving it another shot to the
19 firing pin, those all would increase the likelihood of a discharge of the bullet or
20 the cartridge going off?

21 A Yes. So you're talking about now a second strike of a firing pin?

22
23 Q Yes.

24 A So a second strike would increase the chance of a discharge, I agree.
25

26 Q Of a hang fire discharge?

27 A So in that case it would be fired due to the second strike of the firing pin. Now,
28 a hang fire is typically a delayed fire from a single strike, not a second strike.
29 So if we're talking about hitting it twice with the firing pin, then that's no
30 longer a hang fire. It's a -- the first one was defective and the second one was
31 effective; right?
32

33 Q I got you, but basically the only difference between the defective and hang fire,
34 the misfire and the hang fire, is that it doesn't go off in that first minute?

35 A Right.
36

37 Q You know, and I'm not --

38 A Yes.
39

40 Q -- being tricky here. And what I'm getting at is if -- if it's -- if the slow burn is
41 going on --

1 A Yes.

2
3 Q -- and then it gets hit again, would that potentially cause it to discharge?

4 A Yes, potentially, and that -- then the -- the slow burn wasn't what caused the
5 discharge at all. It was the second --

6
7 Q Yeah, but we don't know because some slow burns --

8 A Do go off, right.

9
10 Q -- go off, and that makes them a hang fire?

11 A That's right.

12
13 Q And some don't go off, and that makes them a misfire?

14 A Oh, I agree.

15
16 MR. SPENCER: Yeah. Okay. That's all I have.

17
18 THE COURT: Any re-exam?

19
20 MR. BURGE: No, thank you, Your Honour.

21
22 THE COURT: I just have one area of questioning, Mr.
23 Williams.

24
25 **The Court Questions the Witness**

26
27 Q THE COURT: We -- prior to the -- you know, when you
28 first received the pistol, you said it ejects the cartridge. How does the pistol
29 eject the cartridge? Like, where, sideways, backwards?

30 A So the pistol, if I had it, I could demonstrate it, there's a port cut out on the
31 right side, that's the ejection port.

32
33 Q Okay.

34 A And as you slide the slide back that extractor on the right side, inside of this
35 receiver inside of the slide, pulls the expended cartridge case with a hook, and
36 then there's an ejector on the left side. So you have on the right side an
37 extractor pulling, and on the left side an ejector pushing -- well, it's actually
38 just fixed. It's just sitting there, but as it pulls back it hits that ejector and sort
39 of gets tumbled out to the right, so out of the ejection port of the slide.

40
41 THE COURT: Okay. Thank you very much. Any

1 questions arising out of that?

2
3 MR. BURGE:

Yes. Thank you, Your Honour.

4
5 **Mr. Burge Re-examines the Witness**

6
7 Q MR. BURGE: Is there any way to predict where the
8 expended cartridge goes once it's ejected out to the right?

9 A There have been a lot of studies done to look at ejection patterns from pistols,
10 from rifles, and the overall consensus is that there is no good -- it's not good
11 evidence. Those patterns, again because a cartridge case, after it tumbles, can
12 fall into a crease or a fold of fabric, it can fall down a person's shirt, I've had it
13 myself, you know. Sometimes they go up instead of to the right a little bit. It
14 just depends specifically on how that little piece of metal hits that angled
15 surface of that port as it's coming off. And so the -- the exact location that the
16 cartridge case lands is not strong evidence to link to anything, so we don't ever
17 -- we -- we get asked frequently by the RCMP or by other agencies to give
18 opinions on the ejection pattern. And we don't as a -- as a routine practice. We
19 never give an opinion.
20

21 Q Okay. Can it bounce off of something and change directions?

22 A Sure. Yeah, absolutely. So this is a little piece of light steel, so it can bounce, it
23 can hit, it can get carried, like I said, in the cuff of pants or in a pocket, and
24 then move somewhere easily.
25

26 MR. BURGE:

Thank you.

27
28 **The Court Questions the Witness**

29
30 Q THE COURT: I'm sorry, there was one -- before we --
31 before I ask you, Mr. Spencer, if you have questions, there was one other area I
32 have a note here that I forgot to ask about. You indicated that there were two
33 areas of damage in the jacket?

34 A Yes.
35

36 Q Does that -- were you able to conclude whether that is evidence of two -- two
37 shots or one shot or --

38 A So just in brief nothing suggested more than one shot, but just to specify where
39 those areas were and how they related, so the first area was the rear left side of
40 the hood, and that area actually included two holes, so there was two
41 irregularly shaped holes in that first area on the -- the rear left side of the hood,

so on this side. The area 2 was on the right front of the hood, so it's consistent with both being caused by one trajectory.

THE COURT: Okay. Okay. Again, anything arising from what I've said -- asked?

MR. BURGE: No, thank you.

THE COURT: Okay. Mr. Spencer, anything arising --

MR. SPENCER: No.

THE COURT: -- from what I've asked.

MR. SPENCER: No, thank you, Your Honour.

THE COURT: Okay. Thank you, Mr. Williams, you are free to go.

(WITNESS STANDS DOWN)

Discussion

THE COURT: Now, do you have any further evidence?

MR. BURGE: No, that's the case for the Crown, Your Honour.

THE COURT: Okay.

MR. BURGE: And I think all of our exhibits are full
exhibits, if not --

THE COURT: Yes, they are.

MR. BURGE: Okay, thank you.

THE COURT: Is your -- Mr. Spencer, does your client wish to call any evidence?

MR. SPENCER: No, not at the preliminary.

THE COURT: Does he wish to make a statement?

MR. SPENCER: No. No, Your Honour.

THE COURT: Okay. Do either counsel wish to argue at this time or do you want an adjournment to consider that? Mr. Burge, we'll start with you?

(SUBMISSIONS BY COUNSEL)

THE COURT: Mr. Spencer, do you wish to make any argument?

(SUBMISSIONS BY COUNSEL)

THE COURT: So you have no submissions -- further submissions? Okay, thank you.

Order to Stand Trial

THE COURT: Well, the -- as you've just indicated, Mr. Spencer, I do have a limited role. I'm not to weigh the evidence at this point. I'm to determine whether or not a properly instructed jury could find that Mr. Stanley caused the death of Colton Boushie, and whether the properly instructed jury could find, on the evidence, that he meant to cause him death or meant to cause him bodily harm that he knew was likely to cause his death and was reckless as to whether or not death ensued. The evidence of Sheldon Stanley was that he observed the vehicle -- or observed his father with a gun and heard gunshots and saw his father walking back from the vehicle with a gun. When he approached the vehicle, he observed a person who appeared to be dead at that time. That person has been identified as Colton Boushie.

Given that evidence a jury -- a properly instructed jury could come to the conclusion that on the 9th of August, 2016, at or near Biggar, Saskatchewan, Mr. Stanley committed second degree murder on the person of Colton Boushie, contrary to the *Criminal Code*, and I commit him to stand trial at the next sittings of the Court of Queen's Bench, in the Battleford District.

PROCEEDINGS CONCLUDED

IN THE MATTER OF THE QUEEN v. GERALD STANLEYAFFIDAVIT OF COURT TRANSCRIBER UNDER SECTION 31 OF *THE EVIDENCE ACT*.

I, CINDY SCHMUNK), Court Transcriber, HEREBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Three Hundred and Eighty-five (T385), inclusive, contain a true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.

SWORN BEFORE ME at Regina,)
Saskatchewan, this 10)
day of May, 2017)

Cindy Schmunk

M. Leonard
A COMMISSIONER FOR OATHS
for Saskatchewan.
My Commission expires:
August 31, 2021

CERTIFICATE UNDER SECTION 30 OF THE EVIDENCE ACT

I, Sherrill YONER, Clerk of the Provincial Court for the Province of Saskatchewan

HEREBY CERTIFY:

1. That the digital recording(s) stored on the Saskatchewan Justice Z:drive as files, April 3, 2017, & April 4, 2017, held at NORTH BATTLEFORD, SK, Courtroom #2 is the record of proceedings taken before Judge B. BAUER, Provincial Court Judge, in and for the Province of Saskatchewan and pertaining to:

The Queen vs **Gerald STANLEY**

Held at: **NORTH BATTLEFORD, Saskatchewan**

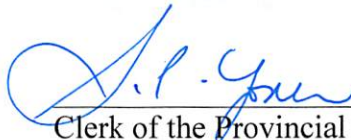
Date: **April 3 & 4, 2017**

Information No.: **90113781**

Section(s): **S. 235(1) CCC**

2. That at the time the said recording was made, I was in charge of the sound recording equipment being a device authorized and approved by the Attorney General of Saskatchewan.

DATED at the City of North Battleford in the Province of Saskatchewan, this 10th day of April A.D. 2017.



Clerk of the Provincial Court in and for the
Province of Saskatchewan



CERTIFICATE UNDER SECTION 30 OF THE EVIDENCE ACT

I, Sherrill YONER, Clerk of the Provincial Court for the Province of Saskatchewan

HEREBY CERTIFY:

1. That the digital recording(s) stored on the Saskatchewan Justice Z:drive as files, April 6, 2017, held at NORTH BATTLEFORD, SK, Courtroom #1 is the record of proceedings taken before Judge B. BAUER, Provincial Court Judge, in and for the Province of Saskatchewan and pertaining to:

The Queen vs **Gerald STANLEY**

Held at: **NORTH BATTLEFORD, Saskatchewan**

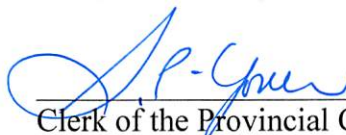
Date: **April 06, 2017**

Information No.: **90113781**

Section(s): **S. 235(1) CCC**

2. That at the time the said recording was made, I was in charge of the sound recording equipment being a device authorized and approved by the Attorney General of Saskatchewan.

DATED at the City of North Battleford in the Province of Saskatchewan, this 10th day of April A.D. 2017.



Clerk of the Provincial Court in and for the
Province of Saskatchewan

