

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF BATTLEFORD

BETWEEN

HER MAJESTY THE QUEEN

and

GERALD STANLEY

Accused

TRIAL
Volume 3
(Pages T401 - T600)

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Battleford, Saskatchewan

Royal Reporting Services Ltd.
300 - 2010 - 11th Avenue
Regina, Saskatchewan
S4P 0J3
Phone: 306-352-3234
Fax: 306-757-7788

1 Proceedings taken in the Court of Queen's Bench, Battleford, Saskatchewan

2

3

4 February 1, 2018

Morning Session

5

6 The Honourable Chief Justice

The Court of Queen's Bench

7 M. Popescul

for Saskatchewan

8

9 W. Burge, QC

For the Crown

10 C. Browne

For the Crown

11 S. Spencer

For the Accused

12 D. Gillanders

For the Accused

13 K. Christopherson

Court Clerk

14

15

16 **BELINDA JACKSON, Sworn, Examined by Mr. Burge**

17

18 Q MR. BURGE: Okay. Tell us about -- tell us what
19 happened on the way back to the reserve.

20 A Well, as we were driving, like, Cassidy was -- wasn't driving the way he was
21 supposed to be. He was driving reckless. So as he was driving, like -- like, we
22 swerved. Like -- like, I don't know. Like, we -- we swerved off the road a little
23 bit, and it caused our tire to pop off the rim. So we were riding on the rim for
24 quite some time, I believe.

25

26 Q Okay. And did you stop and discuss this?

27 A Yeah. We ended up stopping, pulling over, because I was upset and I wanted to
28 get out of the vehicle. And I started walking -- walking down the road. And
29 Eric came running after me, and he -- he brought me back to the vehicle. And I
30 was getting mad. I was getting mad. I wanted him to drive.

31

32 Q Eric?

33 A Yeah.

34

35 Q Why?

36 A Because I didn't want Cassidy to drive anymore.

37

38 Q Because of the way -- the recklessness that you saw?

39 A Because of the way he was driving.

40

41 Q Okay.

- 1 A It's, like, every time, like, we were talking, like, he was looking back, talking
2 to us, and, like, he just didn't care.
3
- 4 Q So you wanted Eric to drive. And did Eric drive?
5 A No.
6
- 7 Q So what happened?
8 A We just continued driving until -- until we ended up on the farm.
9
- 10 Q How many farms did you stop in that afternoon?
11 A I only recall one.
12
- 13 Q So after you got back in the vehicle -- and who was the driver when you got
14 back in?
15 A Cassidy.
16
- 17 Q Where were you seated?
18 A In the back. In the middle.
19
- 20 Q In the middle? And who -- who else was in the back with you?
21 A Kiora and Eric.
22
- 23 Q And where was Colten?
24 A In the front passenger.
25
- 26 Q How were you feeling as a result of the alcohol that you had consumed that
27 day?
28 A How was I feeling?
29
- 30 Q Yeah, how was it making you feel?
31 A Well, I was tired from swimming and drinking during the day.
32
- 33 Q Pardon me?
34 A I was tired.
35
- 36 Q Yes. Well, I just couldn't hear you. Because of the drinking?
37 A Yeah, and from swimming and drinking during the day, yeah.
38
- 39 Q Okay. I'll ask you, then, when you got back in the vehicle and started driving
40 again, did you -- did you stay awake? Were -- do you know?
41 A No, I think I might have fell asleep.

1

2 Q What's the next thing that you remember?

3 A Pulling into the farm.

4

5 Q Okay. Please -- please tell me in as much detail as you can remember what
6 happened.

7 A I remember driving into the farm, and I remember seeing somebody on the
8 right side of me, mowing their lawn. And then I just remember being in the
9 back of the seat, and for some reason I kept trying to look for my phone.

10

11 Q Okay. Where was your phone?

12 A I had left it at Cassidy's house that day I went to go get swimming trunks.

13

14 Q Okay. And you were --

15 A Kiora's house.

16

17 Q -- looking for the phone when you pulled into this farm?

18 A Pardon me?

19

20 Q Were you looking for the phone when you pulled into the farm?

21 A Well, I remember pulling into the farm, and I remember, like, just being in the
22 back of the vehicle for a while, and I didn't know, really, what was going on.
23 So I started -- I don't know, just looking for my phone. In the way back.

24

25 Q Okay. Where were you looking for your phone?

26 A In the way back.

27

28 Q You said you'd pulled into the farm?

29 A Yeah.

30

31 Q And you started looking for your phone? Is that a "yes"?

32 A Yes.

33

34 Q Where were you looking for your phone?

35 A In the way back.

36

37 Q I --

38 A Like, in the back of the vehicle.

39

40 Q Oh.

41 A Like, the SUV.

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Q Okay. So behind the back seat?

A Yes.

Q So did you have to do something to look in that area of the vehicle?

A What do you mean by that?

Q Well, I take it you were seated in the back seat.

A Yeah.

Q And what -- did you have to do something to allow yourself --

A I just -- I just reached over to grab and look around, because I -- I brought a purse with me.

Q Okay.

A And I -- like, halfway realized, and I -- not even my purse was in there, and my phone was inside my purse.

Q Okay. So you -- you were seated in the back seat, and did you turn and look or just reach with your arm?

A I turned and looked.

Q Okay. So please continue and tell us what happened.

A I don't really much -- I don't remember much after being there. I just remember up to the incident, like, where -- where Colten was shot -- when Colten was shot.

Q Okay. You remember looking for your phone?

A Yeah.

Q And that's when you -- you've already turned into the farmyard?

A Yeah.

Q And you wanted to do something with your phone?

A Yeah. Like, I knew something was wrong.

Q Pardon me?

A Like, I knew -- like, I felt like something was wrong just being there.

Q What made you think something was wrong?

A Well, when somebody smashed the windshield.

1

2 Q Okay. Do you remember somebody smashing the windshield?

3 A Yeah.

4

5 Q Do you remember anything else happening after you turned into that farm and
6 before the windshield was smashed?

7 A Just other than looking for my phone.

8

9 Q Okay. Was there any discussion in the car before the windshield was smashed?

10 A No.

11

12 Q Did anyone -- okay. Before -- before the windshield was smashed, were you
13 still in the middle of the back seat?

14 A Yes.

15

16 Q And who else was in the -- were the people in the back seat still there with
17 you?

18 A Before the windshield got smashed?

19

20 Q Yeah.

21 A Yeah.

22

23 Q Did anybody ever get out of the vehicle?

24 A No, just -- only after.

25

26 Q And before the windshield got smashed, who was driving?

27 A Cassidy.

28

29 Q And where was Colten?

30 A In the front seat.

31

32 Q Do you know how much time would have gone past between when you were
33 looking for your phone and when the windshield got smashed?

34 A No.

35

36 Q Were you awake and alert the whole time?

37 A I wouldn't say I was alert, aware of everything that was going on, but there are
38 some parts that I do remember.

39

40 Q Okay. Tell us about the next thing you remember.

41 A Well, when he -- somebody smashed the windshield, Cassidy and Eric got out

1 of the vehicle, and they started running.

2

3 Q How quickly after the windshield was smashed did Cassidy and Eric get out
4 and run?

5 A Almost quickly.

6

7 Q Pardon me?

8 A Like, almost quickly.

9

10 Q Did anything else happen before Cassidy and Eric got out and ran?

11 A Not that I recall.

12

13 Q When Cassidy and Eric got out and ran, who was left in the vehicle and where
14 were those people?

15 A I was in the back seat in the middle. Kiora was in the back seat of Colten.
16 Colten was in the passenger.

17

18 Q Okay. And what was Colten doing in the passenger?

19 A He was sleeping.

20

21 Q And how do you know he was sleeping?

22 A He just looked like he was sleeping.

23

24 Q Did you look at him at that time to -- and notice he was sleeping?

25 A Yeah, because I remember getting in front -- getting -- getting in the passenger
26 after they ran. I remember trying to start the vehicle and trying to leave.

27

28 Q So after Eric and Cassidy left, you got in to start the vehicle?

29 A I tried to, like, after he was shot.

30

31 Q Okay. Well, why don't -- why don't we go through this step by step and you
32 tell us what happened.

33 A Okay. So after they ran, I heard an old -- like, a voice, saying, Go get a gun.
34 And somebody went and -- went in the house or somewhere to go get a gun.

35

36 Q Did you see that?

37 A Yes.

38

39 Q Okay. Tell us what you saw.

40 A I seen, like, a younger-looking man go inside the house, walk inside the house.

41

1 Q Okay.
2 A And then shortly after that, meanwhile, the person that said "go get the gun"
3 went and grabbed his own handgun.
4
5 Q And did you see that?
6 A And -- yeah.
7
8 Q Okay.
9 A But he went into, like, I think it was his garage or something.
10
11 Q Why don't you describe what you say this person went into, if you can -- what
12 did it look like?
13 A What do you mean what did it look like?
14
15 Q When you said it looked like a garage or something --
16 A Yeah.
17
18 Q -- what -- what makes you say that?
19 A I don't know. It was, like, smaller-looking than the house. I don't know.
20
21 Q A building that was smaller than --
22 A Yeah.
23
24 Q -- the house there?
25 A Yeah. It just looked --
26
27 Q And you saw this person --
28 A -- like a -- like a garage would.
29
30 Q Pardon me?
31 A It just looked like -- like a garage would. I don't know.
32
33 Q Okay. Continue and tell us what happened.
34 A So shortly after that, he -- he came out with his -- his own handgun.
35
36 Q Okay. This person came out of which --
37 A Like, the garage.
38
39 Q Okay.
40 A Yeah. And he came around the -- the car, the vehicle, the passenger.
41

1 Q Okay. Please tell us what happened.

2 A And he shot Colten in the head.

3

4 Q Can you tell us in as much detail --

5 A I'm not comfortable describing, like, how he shot him.

6

7 Q Okay. You said a person came out of a garage?

8 A M-hm.

9

10 Q And you saw this person go into the garage?

11 A Yes.

12

13 Q And he -- and he came out with a handgun?

14 A Yes.

15

16 Q And how long was the person in the garage before he came out with a
17 handgun?

18 A It wasn't long. It wasn't that long.

19

20 Q More than a minute or less than a minute?

21 A I would -- I don't know. Like, a minute. I don't know.

22

23 Q Did the person walk into the garage or run into the garage? These are details
24 that we would --

25 A Yeah, he --

26

27 Q -- like to hear, please.

28 A -- he walked into the garage.

29

30 Q At a regular pace?

31 A Yes.

32

33 Q And how far was the garage from where --

34 A I didn't --

35

36 Q -- how far did you see the person walk when he went to the garage?

37 A I didn't see him that far from the vehicle.

38

39 Q Pardon me?

40 A It didn't seem that far from the vehicle, from where I was, from where we
41 were.

1
2 Q Okay. Is there some distance within this courtroom that seemed like the
3 distance that you saw this person walking?
4 A I don't know. Like, maybe from here to there.
5
6 Q Okay. From --
7 A It's hard to say.
8
9 Q -- what -- pardon me?
10 A Like, from the wall from one side to the other, maybe, like half -- half of that.
11
12 Q Half of the width of this room?
13 A Yeah, I would say so.
14
15 Q Okay. Am I standing in about the middle of the room?
16 A Maybe, like, a little bit more. Yeah.
17
18 Q Over here?
19 A Yeah.
20
21 Q And then is this the distance or is this the distance?
22 A From here. From here to there.
23
24 Q Oh, from you?
25 A Yeah. From, like, where you are to the wall.
26
27 Q Okay. So that would be about maybe six paces, if I went all the way to this
28 window?
29 A Pardon me?
30
31 Q Would that be about six paces from where I was if I went all the way to that --
32 to the wall? Did you say he just walked that?
33 A Yeah.
34
35 Q And is that the distance that you saw this person walking?
36 A I don't know the exact distance.
37
38 Q Pardon me?
39 A It's hard to say.
40
41 Q Okay. (INDISCERNIBLE) And did you say that the person was in the garage

1 for about a minute?

2 A Yeah.

3

4 Q And then when you saw this person again, please tell us in as much detail as
5 you can what happened when the person came out, where this person went,
6 especially in relation to the car.

7 A He came directly to the window. He came walking towards the vehicle up to
8 the window. And I don't know, like, if that answers your question, if that's
9 good enough detail for you.

10

11 Q So he -- you say he walked -- did he have to walk around the car or was -- or
12 was the passenger's side of the car closest to the -- this garage?

13 A He came, like, walking, like, around, like, by the driver this way.

14

15 Q So are you --

16 A To the -- he had to go in front of the vehicle around.

17

18 Q Okay.

19 A Because, like, it seemed like the garage was on this side of where the vehicle
20 was parked.

21

22 Q Okay. And when this person walked around the car, where did the person stop?

23 A At the passenger window.

24

25 Q And where were you?

26 A In the back seat.

27

28 Q All right. And where was Kiora?

29 A She was in the back seat with me. She was behind Colten.

30

31 Q Okay. Were you saying anything to -- to Kiora?

32 A No.

33

34 Q You told us that the other person went into -- was told to go in and get a gun?

35 A Yes.

36

37 Q And you said this other person went to the house?

38 A Yes.

39

40 Q Did this other person ever come back from the house within that minute?

41 A Yes.

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Q Okay. Please tell us about that.

A He came out, and he came out, like, with a shotgun. Like, a longer gun, it looked like.

Q Okay. What did this person look like who came out of the house with something that looked like a shotgun?

A He looked slim. For some reason, at that time I thought he had, like, longer hair, but it was just -- I don't know. Probably must have had a hat on or something.

Q So at the time, you thought he had longer hair?

A Yeah. He was tall.

Q Okay. And don't -- you no longer think he had longer hair?

A No.

Q Why is that?

A I don't know. I'm just thinking he might have been wearing a hat or something.

Q And did this person come out of the house with this shotgun before Colten was shot?

A He came out after he was shot.

Q Where was Colten when he was shot?

A Colten was in the passenger seat.

Q And how close were you to Colten when Colten was shot?

A I was in the middle.

Q Of the back seat?

A Of the back seat.

Q So within an -- an arm's-length, almost?

A Arm's-length, yes.

Q How many times was Colten shot?

A Twice.

Q Are you sure?

A I'm sure. For some reason, in total I felt like I heard four gunshots.

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Q Pardon me?

A In total, it seemed like I heard four gunshots.

Q Okay. Tell us about the first gunshots that you heard.

A The first gunshot was when Colten was shot.

Q Okay. And how quickly was the second gunshot?

A It seemed very close together.

Q And where were these two shots fired towards?

A The first ones?

Q Yeah.

A Were towards Colten.

Q And the second one?

A The other gunshots?

Q Yes. The second gunshot.

A Were towards Eric and Cassidy at -- when they were running.

Q So the first was towards Colten?

A Yeah.

Q You told us?

A I believe so, yeah.

Q Okay. Is there something making this difficult for you to remember?

A Yeah, in a way.

Q Pardon me?

A Yes.

Q What's that?

A Just -- I don't know, trying to remember everything all over again.

Q Okay. Well, we have to go through these details, Ms. Jackson. So I'm sorry, but we have to do this.

A Yeah, I understand.

1 Q Now, you've told us you heard four gunshots?

2 A Yes.

3

4 Q And you said the first one was at Colten? Is that a "yes"?

5 A I believe so, yes.

6

7 Q The second shot was where -- was fired where?

8 A Towards Eric and Cassidy.

9

10 Q And do you know where Eric and Cassidy were when the second shot was
11 fired?

12 A They were just running.

13

14 Q Okay. Do you -- do you know -- could you see them?

15 A No.

16

17 Q So do you -- so do you know where they were or do you not know where they
18 were?

19 A I don't know where they were. I just knew that, like, they were running after
20 they heard the shots fired.

21

22 Q Okay. So the second shot was fired towards Eric and Cassidy, you told us?

23 A Yeah.

24

25 Q Where was the third shot fired?

26 A Towards them -- I believe he shot twice towards them.

27

28 Q Okay.

29 A Yeah.

30

31 Q You said that there was four gunshots that you heard?

32 A Yeah.

33

34 Q Can you tell us about the fourth gunshot?

35 A The first gunshot and the second gunshot was towards Colten. The third and
36 fourth was towards Eric and Cassidy.

37

38 Q Okay. After Colten was shot, did he move?

39 A No.

40

41 Q What position was he in? Like, how was he -- you said he was in the

1 passenger's seat?

2 A Yeah.

3

4 Q How -- what position? How was he seated or was he seated?

5 A He was, like, looking, like, to the right side, like, throughout the window.

6

7 Q That's how he was sleeping?

8 A That's how it looked like he was sleeping, yes.

9

10 Q Looking to his right, to Colten's right?

11 A Out the window, passenger window. I would say that would be, like, looking
12 towards his right, yes.

13

14 Q Okay. The person that -- that you described as shooting Colten, how close was
15 that person to the -- to the car?

16 A Very close.

17

18 Q Would he be touching the car or would he be close enough to touch or not
19 close enough to touch?

20 A I would say close enough to touch the car, yeah.

21

22 THE COURT: Mr. Burge, just before you go further --

23

24 MR. BURGE: Yeah.

25

26 THE COURT: -- it is close to our lunch break. And I
27 realize we are at a critical piece, so I don't want to interrupt you, but I have. But
28 you tell me when it's time --

29

30 MR. BURGE: This is fine. This is fine, My Lord.

31

32 THE COURT: It's --

33

34 MR. BURGE: It is, yes.

35

36 THE COURT: It's a good -- a good time? Okay.

37

38 Ms. Jackson, we are going to take a lunch break. And in the meantime, you are
39 able to leave the witness stand and go for lunch or whatever you would like to do.
40 And you have to come back here at 2 o'clock, so make sure you are here on time.
41 And then Mr. Burge will finish his questioning. In the meantime, you are not

1 allowed to speak to anybody about your testimony. You understand that?

2

3 A Correct.

4

5 THE COURT: Okay. So with that, ladies and
6 gentlemen, we are adjourned until 2 o'clock.

7

8 (WITNESS STANDS DOWN)

9

10 (JURY RETIRES)

11

12

13

14 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

15

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17

18 February 1, 2018

Afternoon Session

19

20 The Honourable Chief Justice

The Court of Queen's Bench

21 M. Popescul

for Saskatchewan

22

23 W. Burge, QC

For the Crown

24 C. Browne

For the Crown

25 S. Spencer

For the Accused

26 D. Gillanders

For the Accused

27 K. Christopherson

Court Clerk

28

29

30 **Discussion**

31

32 THE COURT:

Is there anything we need do before we

33 bring the jury back?

34

35 MR. SPENCER:

Yes, My Lord. I don't know how much

36 longer my friend is going -- my learned friend is going to be. And I've never rose

37 on this point, ever, but I believe this witness should be cautioned about perjury.

38 That is, as I say, I would never have imagined that I would be in a situation where

39 I would feel that's necessary. But with this witness, I believe it is. I certainly will

40 do my job to set out inconsistencies, but it goes significantly beyond

41 inconsistencies, and I think this witness should be cautioned about perjury.

1
2 THE COURT: Well, I -- I hear what you have to say,
3 and I am not prepared to do that.

4
5 MR. SPENCER: Fair enough, My Lord.

6
7 THE COURT: Put the witness back on the stand. And
8 you can bring the jury in.

9
10 **BELINDA JACKSON, Previously Sworn, Examined by Mr. Burge**

11
12 (JURY ENTERS)

13
14 THE COURT: Now, Ms. Jackson, you understand you
15 are still under oath?

16
17 A Yes.

18
19 THE COURT: Okay. Continue on, Mr. Burge.

20
21 MR. BURGE: Thank you, My Lord.

22
23 Q MR. BURGE: Ms. Jackson, I believe when we broke,
24 you had told us that this person walked out of the garage and around the
25 vehicle you were in to the passenger door?

26 A Correct.

27
28 Q And was standing close enough to touch it, I -- is that -- is that what you told
29 us?

30 A That's what I said, yeah.

31
32 Q Okay. And is this the position that this person was in when the shots were
33 fired?

34 A Facing outside the window, the right side of --

35
36 Q That's Colten, you mean?

37 A Yeah.

38
39 Q Okay.

40 A Or who are you talking about?

41

1 Q Is that the position that the person who fired the gun was in when the shots
2 were fired?

3 A Yes.

4

5 Q And just -- just so I can get my -- I guess maybe my mind back on track, you --
6 you said the first two shots were fired at Colten, and the next two shots were
7 fired towards the other guys?

8 A Yes.

9

10 Q Now, from there, and I would like you to please tell us in as much detail as you
11 can, what happened immediately after that.

12 A After Colten getting shot?

13

14 Q Okay. Let's start there.

15 A Well, I panicked and I woke up Kiora because she didn't -- she didn't -- she
16 wasn't aware of that happening. I woke her up because I was screaming, and I
17 told her what happened. And then she started reacting to it, and -- and we
18 didn't get out -- none of us got out of the vehicle right away. And a while after,
19 we -- we managed to get out, and we got -- we both got out of the vehicle. She
20 got off on her side, and we both -- well, yeah. We both got out, and she -- she
21 opened the door, and he fell out of the -- he fell out of the vehicle.

22

23 Q Okay. You -- she -- you said she got out of her side?

24 A Yeah.

25

26 Q What side was -- was --

27 A I got outside on -- on the left side, the driver's side.

28

29 Q You got out on the driver's side?

30 A Yes.

31

32 Q And how about Kiora?

33 A She got out on the passenger's side, back side.

34

35 Q So now you're both outside of the vehicle?

36 A Yes.

37

38 Q Is there anyone else around?

39 A There's -- there was the person who shot him standing quite a ways -- well,
40 away from the vehicle.

41

- 1 Q Okay.
- 2 A And there was the wife and the son, standing there.
- 3
- 4 Q Okay. When did you see the son? Is this -- is this a person you've already
- 5 described to us, the person you're now calling the son?
- 6 A What's the question?
- 7
- 8 Q You -- you said the son was standing out there.
- 9 A Yeah.
- 10
- 11 Q I don't know that you've mentioned a son previously.
- 12 A Yeah. Yeah, I recall him standing there. That's where I recognized, like, he
- 13 was standing there with something long, and he was holding something like a
- 14 shotgun, I believe it was.
- 15
- 16 Q And when did you see this person standing there with a shotgun?
- 17 A As I got out of the vehicle.
- 18
- 19 Q Did you see this person with the shotgun before Colten got shot?
- 20 A No.
- 21
- 22 Q So you got out of the driver's side or -- did you say?
- 23 A I got out on the driver's side.
- 24
- 25 Q Okay. And where was this person who was holding the shotgun?
- 26 A They were just standing outside around the vehicle.
- 27
- 28 Q Okay. What -- what's -- or what do you mean, around the vehicle?
- 29 A Well, like, near the -- well, I wouldn't say near the vehicle, but I could see
- 30 them -- I could see them there.
- 31
- 32 Q Okay. Near what side of the vehicle?
- 33 A I don't know how far. Like, they were standing, like -- I recall the person who
- 34 shot Colten on the -- on the right side of the vehicle, the passenger's side of the
- 35 vehicle.
- 36
- 37 Q Okay.
- 38 A And then I can kind of see, like, the -- the wife -- the person that I seen the --
- 39 coming into the yard, standing kind of, like, in the front there.
- 40
- 41 Q The front?

- 1 A Yeah, the front side.
2
3 Q The front of the vehicle?
4 A The front side of the vehicle.
5
6 Q Okay.
7 A Like, not directly, but, like, in the area of it.
8
9 Q Okay. And where was the person with the shotgun?
10 A He was standing between the mom and -- well, the -- the older person, the
11 person who shot Colten.
12
13 Q Okay. You said that Kiora got out of the passenger's side?
14 A Yes.
15
16 Q And what did she do?
17 A She got out and -- well, I went around the vehicle.
18
19 Q Okay.
20 A She was standing there, and she opened the door.
21
22 Q Opened what door?
23 A The passenger door.
24
25 Q The front passenger door?
26 A The front passenger door.
27
28 Q And were you there when the front passenger door was opened?
29 A Yeah.
30
31 Q What happened or what did you see when the front passenger door was
32 opened?
33 A Well, he fell out of the vehicle.
34
35 Q That's Colten?
36 A Yeah.
37
38 Q And he fell out of the front passenger door?
39 A Yes.
40
41 Q And you're -- are you certain of that?

- 1 A Yes. Yes, I'm certain of that.
2
3 Q And what happened after Colten fell out of the vehicle?
4 A We kind of just stood around there, like, we just sat there, crying, for a while.
5
6 Q Okay. Where? Where were you in relation to Colten, where were you?
7 A Like, near -- like, beside him. And she was beside him, too.
8
9 Q And how long were you -- you said you were crying for a while?
10 A Yeah.
11
12 Q How long would that be?
13 A I don't know.
14
15 Q The other people that you said were -- the two people that you said who had
16 guns and the female, where were they when you were standing -- or when you
17 were around Colten for some time?
18 A I just recall them, like, once I -- like, once that happened, they just stood
19 around there. Nobody moved.
20
21 Q Okay. What -- did you do anything?
22 A Yeah.
23
24 Q What did you do?
25 A I assaulted the -- the lady there that was -- I seen mowing her lawn.
26
27 Q Okay. And then how did you -- what did you do that was an assault?
28 A Like, I punched her.
29
30 Q And where was she when you punched her?
31 A She was standing there.
32
33 Q And -- and was she doing anything?
34 A She was standing there with her arms crossed.
35
36 Q And how many times did you punch her?
37 A I don't really recall how many times I punched her, but I remember hitting her.
38
39 Q Okay. How -- how did it come to an end that you were hitting her?
40 A When Kiora was telling me to stop because she said that he was going to shoot
41 me or something.

1

2 Q So you said there were two males with guns standing outside?

3 A Yes.

4

5 Q Were they still there with their guns when you were assaulting this woman?

6 A Yes.

7

8 Q Did either of these males do anything to stop you from assaulting this woman?

9 A No.

10

11 Q Did the males say anything to you when you were assaulting this woman?

12 A No.

13

14 Q And they -- did they just stand there?

15 A They just stood there.

16

17 Q Okay. After you -- after Kiora told you to stop, please tell us in as much detail
18 as you can what happened next.

19 A I just remember standing around the vehicle and trying to figure out how to get
20 away from there, to get out of there. For some reason, I was still trying to look
21 for my phone, so I can call somebody.

22

23 Q Okay. Did -- did you do -- apart from standing around and thinking about what
24 to do next, did you do anything?

25 A Yeah, I went walking down the road.

26

27 Q I think at one point this morning you said something about that you tried to
28 start the vehicle?

29 A Yeah, I recall that, too.

30

31 Q Okay.

32 A I remember trying to start the vehicle.

33

34 Q Tell us, when did that happen within this sequence of events that you've
35 described.

36 A It was after -- standing around the vehicle -- well, after Colten got shot and we
37 were standing around the vehicle for a while. And then they went back in, and
38 I tried to start -- I was trying to start the vehicle.

39

40 Q So was this before you assaulted this woman?

41 A That was before I assaulted her.

1

2 Q And how long did it take you to try -- how long did you try to start the vehicle
3 for?

4 A Well, it wouldn't even turn. It wouldn't even make a sound or anything like
5 that. So I just gave up, and I stopped.

6

7 Q How were you feeling at this time as -- you had been drinking throughout the
8 day.

9 A Yeah.

10

11 Q You told us that you were --

12 A Yeah.

13

14 Q -- sleepy because you were drinking during the day.

15 A Yeah.

16

17 Q So how -- how was the alcohol affecting you?

18 A After that, I was more -- I was more alert, aware of my surroundings, in a way.
19 I was just trying to figure out why things happened the way they did. I --

20

21 Q You were trying to figure out at the time?

22 A Yeah, like I couldn't understand, like, why -- why did this happen.

23

24 Q Were there any weapons in the vehicle that you were in?

25 A No, I don't recall any weapons.

26

27 Q And in particular, I'll ask you. Were there any -- any guns?

28 A No.

29

30 Q Did you see any of the group that you were with shooting guns that morning?

31 A No.

32

33 Q When Colten came out of the vehicle, did you see any -- any guns at that time?

34 A No.

35

36 Q Did you ever pick up a gun that day?

37 A No.

38

39 Q And you say Colten came out of the front passenger's seat?

40 A Yes.

41

- 1 Q And -- and did he fall out or did he need to be pulled out?
2 A It's like he fell out.
3
4 Q Were you --
5 A When the door opened.
6
7 Q Okay. And were you standing there when -- when the door was opened?
8 A Yes. And he landed -- he was, like, laying on his stomach. He was faced on his
9 stomach.
10
11 Q Did anybody move him after he fell out that door?
12 A I think Kiora was trying to, like, hold him. And that would explain all the
13 blood that was on our clothes.
14
15 Q On whose clothes?
16 A Our clothes.
17
18 Q You said our clothes?
19 A Yeah.
20
21 Q Okay. How did you get blood on your clothes?
22 A I don't know. Being around, laying around his body.
23
24 Q Did you -- did you touch him?
25 A I don't recall. I just remember a bunch of blood all over me. And for some
26 reason, like, I had a big -- a big gash on my knee from I don't know what.
27
28 Q You said that this person, the one person said to another person -- and I'm
29 backing up here -- said go to the house and get your gun? Were those the
30 words that you heard?
31 A Yeah.
32
33 Q And then you said this person went into a garage?
34 A Yes.
35
36 Q And was in there for about a minute?
37 A I believe so, yeah.
38
39 Q So what did you do during that one minute that this person was in the garage?
40 A I just seen, like, it happened all so fast. I just stood there. I just sat there.
41

- 1 Q Okay. Well, you told us that it -- was it less than a minute or was it around a
2 minute?
- 3 A I would say, like, around a minute.
4
- 5 Q And so you sat in your -- in that back seat for around a minute?
6 A It seemed like it.
7
- 8 Q Did you wait -- did you say anything to Kiora or try to wake her up?
9 A She just kind of woke up on her own from me screaming, me telling her that
10 they shot him.
11
- 12 Q Okay. But in that minute or so before he was shot, did you say anything to
13 Kiora or try to wake her up?
14 A I don't recall, no.
15
- 16 Q After Colten -- after Colten's body was on the ground, how long do you think
17 you remained at the scene?
18 A I don't even know.
19
- 20 Q I take it at some point you left?
21 A Yeah, I ended up walking down the road, me and Kiora waiting for -- because I
22 heard, like, a chopper coming. So I just -- we went to go wait down the road
23 for it to come, or somebody.
24
- 25 Q The person that you say went into the garage and came out with a gun and shot
26 Colten, can you describe that person for us? What did that person look like?
27 A I know he was an older man, an older --
28
- 29 Q Okay. Anything more you can tell us?
30 A No.
31
- 32 Q Do you know how tall he was, how -- what his body size was? Was he short?
33 Was he fat? Was he skinny, muscular?
34 A I just remember kind of seeing his face. Like, just his face.
35
- 36 Q Okay. Tell us -- tell us what you saw about his face, then.
37 A He was old.
38
- 39 Q Pardon me?
40 A He was old.
41

1 Q Anything -- anything else that's -- that's -- was -- that stands out about his
2 face?

3 A Not really, no.

4

5 Q What -- anything about the clothing the person was wearing?

6 A I don't really remember what he was wearing.

7

8 Q Did the person have anything on his head?

9 A I think maybe a -- no. It was the other person that I -- I think I recall wearing a
10 hat.

11

12 Q So are you saying he didn't have anything on his head?

13 A No.

14

15 Q Then is there anything you could tell us about his hair?

16 A I just remember he looked old. That was it. Like, he was an older version
17 compared to the person that I seen with the longer gun.

18

19 Q Have you ever seen this person before?

20 A No.

21

22 Q And was -- and so does nothing stand out apart from the fact that he was old or
23 older?

24 A No.

25

26 Q So they -- there was -- you've described an older male and a younger male?

27 A Yes.

28

29 Q And a female?

30 A Yes.

31

32 Q And apart from the people in your vehicle, were there any other people around
33 that farm that day that you saw?

34 A No. I was with the same group the entire day.

35

36 MR. BURGE: Thank you, Ms. Jackson. Those are my
37 questions. Please answer any questions that my friend might ask you.

38

39 THE COURT: Mr. Spencer.

40

41 MR. SPENCER: Thanks, My Lord.

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Mr. Spencer Cross-examines the Witness

Q MR. SPENCER: Ms. Jackson, is it -- is it possible that you were actually the one that had to get woke up in order to know what was going on?

A No.

Q That's not possible?

A No.

Q Okay. So you're saying that an older gentleman walked up to the passenger window of Kiora's vehicle; is that what you're saying?

A Yes.

Q With what kind of gun?

A Like a handgun.

Q Okay. Do you agree with me that when you initially gave your statement to the police, you made no mention of a handgun?

A Yeah.

Q You agree with me?

A Yeah.

Q And you agree with me that the only mention of a gun was in -- that a woman had a gun?

A I remember saying that, too, for some reason, yeah.

Q For some reason?

A Yeah.

Q Okay. And that would have been within 24 hours of the incident, right?

A With my second statement or my first statement?

Q No, let's just go with the first one that you -- comprehensive statement you gave to the police right after the incident.

A Okay. So what's the question?

Q Do you recall that in that statement that you gave at the police station within 24 hours, that you clearly said "the only person with a gun was a woman"?

- 1 A Yeah, I recall saying that.
2
- 3 Q Okay. And do you recall saying that you don't know who shot Colten?
4 A Yeah, I remember that.
5
- 6 Q And do you recall saying, "It must have either been that woman or one of the
7 boys in the vehicle"?
8 A Yeah, I remember reading that -- over that, too.
9
- 10 Q Okay. So right after the incident, you either thought it was the woman with a
11 long gun; do you agree with me there?
12 A Yeah.
13
- 14 Q Okay. But you didn't see her shoot Colten?
15 A No.
16
- 17 Q Pardon?
18 A No.
19
- 20 Q Okay. Or it was one of the other people that were in the vehicle with you?
21 A Yeah. I don't know why I would have said that when I knew that we -- that
22 wasn't -- that wasn't the case.
23
- 24 Q Yeah. What would the -- how would the people that were in the vehicle with
25 you not have shot Colten if there wasn't a weapon in the vehicle?
26 A Yeah. I don't know. I don't understand, like, why I would even have said that.
27
- 28 Q M-hm.
29 A I mentioned that already.
30
- 31 Q Okay. So your original statement, no mention of a handgun, no mention of the
32 older gentleman approaching the vehicle, that you thought it might have been
33 one of the people that you were with --
34 A M-hm.
35
- 36 Q -- and then you also agree with me that during your statement, you consistently
37 repeatedly said, "I didn't see it, I didn't hear any shots, I don't remember
38 anything"?
39 A Yeah. And I also mentioned that I wasn't comfortable speaking of what -- you
40 know, what I knew. It's not that I was lying to the police.
41

1 Q Well --

2 A I mean, I don't even know why I said that, "It must have been one of the
3 people that were in the vehicle", when I knew, like, it couldn't have been one
4 of us in the vehicle that had shot Colten.

5

6 Q Well, if you were sleeping, how would you know?

7 A I was sleeping at some points.

8

9 Q Okay.

10 A I remember waking up at the Stanley farm, pulling into the Stanley farm.

11

12 Q Okay. So do you remember pulling into other farms and the boys checking out
13 vehicles?

14 A No. I don't remember that.

15

16 Q Well -- what's that?

17 A No.

18

19 Q Okay.

20 A I never -- I never mentioned that. I never --

21

22 Q Well, I know you didn't mention it.

23 A -- I don't recall even saying that, yeah.

24

25 Q Do you remember it?

26 A No.

27

28 Q Okay. And you don't remember anything about a gun, a gun being in the -- in
29 Kiora's vehicle?

30 A No.

31

32 Q No? Do you remember when Kiora opened the door for Colten to fall out, do
33 you remember a gun coming out with him at that point?

34 A No.

35

36 Q You don't remember -- okay.

37

38 MR. SPENCER: Can I get D-1 for the witness?

39

40 Q So you don't remember anything about a firearm being right there beside
41 Colten?

1 A What is this?
2
3 THE COURT CLERK: Exhibit D-1.
4
5 THE COURT: Which tab do you want?
6
7 MR. SPENCER: Well, I just -- I just want to get the
8 answer first, and then --
9
10 THE COURT: Okay.
11
12 MR. SPENCER: -- yeah.
13
14 A Okay. Can you repeat that?
15
16 Q MR. SPENCER: I -- I'm just confirming that your
17 evidence is you don't remember there being the barrel of a gun laying beside
18 Colten?
19 A No, I don't -- I don't remember a gun being in the vehicle or near Colten.
20
21 Q Okay. So can I get you to -- to just open to the first picture there?
22 A Am I looking at a picture of --
23
24 Q Yeah.
25
26 THE COURT CLERK: In the book.
27
28 THE COURT: I think she's concerned that --
29
30 A I don't want to see --
31
32 THE COURT: -- she doesn't want to look at a picture of
33 the deceased.
34
35 MR. SPENCER: Yeah, which concerns me a little bit that
36 there's been some talking, but it doesn't have -- it's -- it's a pretty neutral picture.
37
38 THE COURT: So you want photograph number 1?
39
40 MR. SPENCER: Number 1.
41

1 THE COURT: That's photograph number 1.
2
3 A Okay. What is --
4
5 Q MR. SPENCER: You don't recognize that gun?
6 A No, I don't recognize it.
7
8 Q Did you pick up that gun that day?
9 A No.
10
11 Q Did Kiora pick up that gun that day?
12 A No.
13
14 Q Any idea how that gun got --
15 A No.
16
17 Q -- moved? No?
18 A No.
19
20 Q Nothing? Okay. So you say that this older gentleman shot Colten twice in the
21 head?
22 A Yes.
23
24 Q And both shots struck Colten?
25
26 THE COURT: You are going to have to answer in
27 words for me.
28
29 A Yes. Yes.
30
31 Q MR. SPENCER: Yeah. So two shots. How far was this
32 handgun away from the passenger window?
33 A Like -- like, arm's reach of him being inside the window.
34
35 Q Sorry?
36 A Like, arm's reach of, like, the window just being right there. His arm being
37 inside the window, shooting him.
38
39 Q Okay. So was the -- was the barrel of the -- of this handgun, was it inside the
40 vehicle or outside?
41 A Just a little bit, like, out of the vehicle, like --

1

2 Q Okay.

3 A -- close enough.

4

5 Q How many inches outside the vehicle --

6 A I don't know.

7

8 Q -- or how many feet?

9 A I don't know.

10

11 Q You don't know? What did the gun look like?

12 A A handgun.

13

14 Q M-hm?

15 A A handgun.

16

17 Q Yeah. Can you describe it?

18 A No.

19

20 Q No? Nothing about it at all?

21 A No.

22

23 Q What hand was it in? Which -- which --

24 A In the right hand. In the right hand.

25

26 Q In the right hand?

27 A Yeah.

28

29 Q Okay. How was he holding it?

30 A You asked me that before, and I said I'm not comfortable describing how he
31 was holding the gun.

32

33 Q Well, you -- you understand that your original statement made no mention of
34 this. So I -- I want to --

35 A Like, I don't know what you're asking me. To put my hands up in how he was
36 holding the gun or --

37

38 Q Yes. Yeah. Yeah, tell us whatever way you can communicate this.

39 A I -- I'm not comfortable doing that, I said.

40

41 Q Or it didn't happen? You didn't see it?

- 1 A I -- I did it before. I just don't see why I'd have to do it again. I don't know.
2 It's --
3
- 4 Q Well, because we have 12 people here that are listening to your evidence, and
5 they need to know. And I'll tell you right now, I'll be candid with you, I don't
6 believe you're telling the truth. So I'm -- I want to test your story. So if you
7 won't tell me what -- what you saw, it makes it pretty tough for -- for our 12
8 jurors to make an assessment of your credibility. Do you refuse to answer that
9 question?
- 10 A To how he was holding the gun?
11
- 12 Q Yeah.
13 A Just with his right hand.
14
- 15 Q Okay. Can you explain to me how -- did you guys have to -- did you and Kiora
16 have to pry the passenger door open?
17 A No.
18
- 19 Q Okay. Would you be able to -- would you have any explanation why the
20 RCMP officer had to pry the door open to get it open?
21 A No.
22
- 23 Q No. Are you still sure it was the passenger side?
24 A Yeah, I'm --
25
- 26 Q Positive?
27 A -- positive it was passenger side.
28
- 29 Q Positive.
30 A Yeah.
31
- 32 Q And two shots right in the head?
33 A Yes.
34
- 35 Q Okay. So tell me about your other statements. Who -- who else have you made
36 statements to?
37 A One to the police officer when I was being held in there, and then the other
38 one, I believe -- I can't remember his name, but he came to Eric's grandma's
39 place, and he came and got a -- a statement from me. He recorded it.
40
- 41 Q Okay. Was he an RCMP officer?

- 1 A He used to be apparently, or something like that.
2
- 3 Q Okay. When he took your statement, was he an RCMP officer?
4 A No. I can't -- I can't even remember his name.
5
- 6 Q Okay. Who did you -- what -- what did he explain to you? Who -- tell me about
7 this. Who approached you? So somebody you didn't know approached you?
8 A I don't know. I think he said he was working with FSIN or whatever that is.
9 I'm not sure.
10
- 11 Q Okay. And so there was this -- like, some type of collateral investigation?
12 A What is that?
13
- 14 Q A -- a separate investigation from the police?
15 A That's what I was -- that's -- I questioned that, too, because I don't understand
16 why I had to make another statement with someone I didn't even know.
17
- 18 Q Well --
19 A I was just going by what he said.
20
- 21 Q Okay. So this stranger shows up, says he represents the FSIN, and you're not
22 sure who the FSIN is?
23 A Yeah. I guess.
24
- 25 Q Well, were you aware who the FSIN were?
26 A I don't know, like, what their job is, but he said he was working for them.
27
- 28 Q Okay. Does it strike you as odd that there would be this separate investigation?
29 A In a way, now that I think of it, yeah.
30
- 31 Q Yeah. So did you tell the police that there was somebody else investigating
32 you?
33 A I believe I told Constable Boogaard.
34
- 35 Q Okay. When did you tell him?
36 A When he came to see me in St. Paul, Alberta.
37
- 38 Q Okay. But he came to see you in St. Paul, Alberta, because he was aware you'd
39 given some other statement, right?
40 A Yeah. I don't -- I guess so.
41

1 Q Yeah. The reason he came to see you was that -- that there were differences in
2 the statement you'd given the FSIN and the statement you'd given to the
3 RCMP. Right?

4 A I just knew whatever I said to the police wasn't -- wasn't the full truth.
5

6 Q Okay. Well, let's go back to that. Do you know how many times you said that
7 you did not know who shot Colten, that you didn't hear a gunshot? Any --do
8 you have any idea how many --

9 A I recall reading that once in -- in one -- I think that was my first statement.
10

11 Q Okay. I'm going to give you your first statement. Have you reviewed it
12 recently?

13 A What am I reading?
14

15 Q I'm just giving you your first statement, then I'll -- have -- have you reviewed
16 this -- sorry -- have you reviewed the first statement you gave to the police
17 recently?

18 A The --
19

20 THE COURT: Okay. First of all, you should probably
21 establish that that is her statement.
22

23 MR. SPENCER: Yeah. No, yeah.
24

25 A Okay. What is your question?
26

27 Q MR. SPENCER: Have you reviewed the statement you
28 gave to the RCMP recently?

29 A My first one or my recent one?
30

31 Q Your first one.

32 A No. I never -- I -- the only one I've went over was my recent one.
33

34 Q Recent one?

35 A I've never -- yeah. My --
36

37 Q Okay. So I've given you a document there. Can you have a look at that and tell
38 me whether you believe that's a transcript of the first interview you gave to the
39 RCMP within 24 hours of the incident?

40 A So what I -- what are you asking me? I'm not sure.
41

- 1 Q Well, I want -- I want you to tell me whether you believe that that's a transcript
2 of the interview. Have a look at it and see if it looks familiar to you.
- 3 A Yeah, I -- I -- yeah, I've seen this before.
4
- 5 Q Okay. So you'd agree with me that that's a transcript of the first statement you
6 gave? Because we have a video of it. We can show the whole video of you
7 being interviewed, or we can use the transcript. Which is better for you?
- 8 A Like, the video of me in -- like, my first -- I mean, I don't -- I don't know
9 which one you're talking about.
10
- 11 Q Well, I guess let's deal with -- if -- if you're not -- if you don't believe that's a
12 transcript, then we can --
- 13 A No, I believe. Like, I see it.
14
- 15 Q Okay.
- 16 A I remember saying this.
17
- 18 Q Okay. Good.
- 19 A I guess, at some point.
20
- 21 Q Okay. Good. So -- so can you refer to page 10 there? Because now, today
22 you've said that you clearly saw an older man shoot Colten in the head from a
23 couple feet away in the passenger's side. Now, was the passenger window
24 open?
- 25 A Was the passenger window open?
26
- 27 Q The front passenger window or --
- 28 A Yeah. It was opened.
29
- 30 Q Was it rolled all the way down?
- 31 A I don't think it was all the way down, but I remember it being opened.
32
- 33 Q Okay. So how was Colten positioned, then, in the passenger's seat?
- 34 A His face was looking out like this to the right of the vehicle.
35
- 36 Q So he -- he was looking out? Okay.
- 37 A Yeah.
38
- 39 Q So where was Colten shot, then? Like, where did the -- where did these two
40 bullets hit him?
- 41 A It looked like he got shot in the head.

- 1
2 Q Yeah. Yeah. Where did the two bullets hit him?
3 A I don't know.
4
5 Q If he was looking out the window?
6 A I don't know. I just know that he was shot in the head or, like, in the -- it kind
7 of looked -- almost looked by the arm, too, but I don't -- I don't think, no. Just
8 by the way he was standing -- the way his body was turned.
9
10 Q Okay. But -- but I -- I want to know what you saw. So he's looking out the side
11 window. So his nose would be pointing out the side window?
12 A Yes.
13
14 Q And Gerry came around from the front --
15 A Who?
16
17 Q Mr. Stanley.
18 A Yeah.
19
20 Q The older gentleman. So older gentleman.
21 A Yeah.
22
23 Q Where did -- so how -- how did he go from coming around the front of the
24 vehicle to shooting Colten in the head, if Colten was facing him?
25 A What do you mean? I don't get --
26
27 Q Well, where -- where did he get hit with these two bullets?
28 A In the head.
29
30 Q Where in the head?
31 A I don't know. Just, like, by the ear.
32
33 Q Okay. So how did he -- you just motioned to the left side of your head. If he's
34 facing out the window, how does he get shot in the left side of the head?
35 A Because he's -- his face is towards the window. Like, facing --
36
37 Q Well, I'm facing --
38 A -- the passenger.
39
40 Q -- you. How could you shoot me here if I'm facing you?
41 A I'm speaking from, like, the way I'm positioned, and the way -- how I seen it.

- 1
2 Q Right. And I want you to describe that, but what you're -- I need you to tell me
3 how, if we're facing each other --
4 A Well, I don't know what I'm saying, like, wrong, like, if that doesn't answer
5 your question.
6
7 Q Well, it doesn't make any sense. So I need you to explain how it's possible that
8 he could get shot twice in the left side of the head if he's looking out the
9 passenger's side window.
10 A I don't see why that wouldn't make any sense, though.
11
12 Q Yeah. It doesn't make any sense. And it's inconsistent with all the other
13 evidence. But I'm asking you. I'm giving you a chance to explain how it could
14 have happened. From -- from my perspective, I don't see -- I can't imagine
15 how that could possibly be true. Help me.
16 A Just the way I told you. I don't know how much more I can describe it.
17
18 Q Well, can you describe what you saw in a way that would make sense to even
19 you?
20 A I don't know. I don't know, like, any other ways to describe how he shot him.
21
22 Q Well, you haven't described how he shot him. You've just said that he came
23 around, and he shot him twice in the head. And --
24 A Yeah. It seemed like it all happened so fast as it happened, you know?
25
26 Q Okay. So can you turn to page 10 there of the -- of your statement? And you
27 remember being interviewed by Constable Teniuk?
28 A And this is when I was still being held in the cells, right, when he -- when he
29 did this interview? This is the first one, right?
30
31 Q Yeah. It's the day after, yeah. Do you think your memory was better the day
32 after or months later?
33 A On my own, not being held in the cell for 19 hours, being questioned.
34
35 Q Okay. But it would make sense for the RCMP to question you as a witness to
36 see what you saw or didn't see right after the incident; would you agree with
37 me?
38 A Yeah.
39
40 Q There's nothing wrong -- it would be --
41 A No. Just -- no.

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Q Okay. So --

A Doing their job.

Q So did you lie to the police?

A I wouldn't say I lied to them.

Q Did you tell them the truth?

A I didn't tell them the whole truth. I didn't tell them a whole lot.

Q Okay.

A But there were some things I also mentioned that -- that's I know isn't the same as what I'm saying now.

Q Some of it's the same? Is that what you just said?

A I -- I know that what I mentioned in my first statement isn't, like -- it's not the same to what I'm saying now.

Q Yeah. I understand that, yeah. So let's look at paragraph 10 there. Justice [sic] Teniuk says some shock at the top there? Are you following with me?

A Yeah.

Q And then your answer, Belinda Jackson: I don't know who -- I don't know who shot him or why he was shot.

A Yeah.

Q That's what you said then?

A Yeah. And I also mentioned that it looked like a woman that shot him.

Q Right. And so then let's move ahead to page 22. Can you go to page 22? And Constable Teniuk says: Okay. Can you describe it to me? Do you see that? Do you see that?

A Yeah.

Q Okay. And then your answer, Belinda Jackson: For some reason, I -- I remember, like, uh, I think it was a girl. She was white, maybe. And then he -- Constable Teniuk says: Okay. And then you go on to say: And, like, she was standing there, like, with a gun.

A Yeah.

Q So do you remember that?

- 1 A I remember mentioning that.
- 2
- 3 Q Okay.
- 4 A In a way.
- 5
- 6 Q So how is it that now you clearly see an older gentleman shooting Colten twice
- 7 in the head with a handgun when at that point, the only thing you thought there
- 8 was a woman, maybe, with a gun?
- 9 A M-hm.
- 10
- 11 Q Can you explain that to me?
- 12 A When I seen Gerald, like, it -- it's like I seen him the night --
- 13
- 14 Q It was night?
- 15 A -- when I went to -- when I went to my prelim hearing. When I finally seen his
- 16 face --
- 17
- 18 Q Yeah? So once you -- you saw him, then --
- 19 A It made more sense when I seen him.
- 20
- 21 Q Okay. Or is it that once you knew he was the person that had been charged,
- 22 that then he must have been the one to shoot Colten?
- 23 A No.
- 24
- 25 Q Okay. So paragraph -- or sorry, page 24. Can you go to page 24? Constable
- 26 Teniuk asks: Tell me more about that, what you can remember about that. And
- 27 Belinda Jackson, your answer:
- 28
- 29 But he was already laying there, like, dead. Like, I don't --
- 30 I don't even know where Eric left to, and I don't know
- 31 where Cassidy went. I just remember me and Kiora being
- 32 there.
- 33
- 34 A Yeah.
- 35
- 36 Q Okay. Page 27. Can you turn to that? And I think this is where you were saying
- 37 that -- that you recall -- well, I'll go through it with you. Constable Teniuk --
- 38 are you at 27?
- 39 A Yeah.
- 40
- 41 Q Okay. So Constable Teniuk says: Okay. Tell me more about that. Tell me

1 everything you can remember about that. Your answer, Belinda Jackson:

2

3 I just remember being scared. I remember her standing
4 there with a -- like, it looked like a big gun. And I wasn't
5 too sure if it was her that shot him or if it was somebody
6 that was in the vehicle that shot the boy there. Like, I
7 really don't know.

8

9 Why would you say that to the police the next day if you have all this clear
10 evidence of a --

11 A I'm not sure.

12

13 Q -- point-blank shooting?

14 A I'm not sure.

15

16 Q Okay. Constable Teniuk goes on:

17

18 Okay. Okay. I know adrenaline is flying and things are,
19 and I mean, I would imagine it probably didn't take a very
20 long time when you got on that property. Did anyone get
21 out? Do you remember the vehicle stopping or anyone
22 getting out of the vehicle?

23

24 No, I don't remember.

25

26 That's your answer. Constable Teniuk:

27

28 Okay. So you remember going to the -- you -- you
29 remember going on the property. So do you remember
30 seeing that woman before he gets shot or after?

31

32 Belinda Jackson: After. Constable
33 Teniuk: Okay. Do you remember when he gets shot what happens? Your
34 answer: No.

35

36 It seems that the officer is -- is giving you every opportunity to say you saw
37 something. Can you explain to me why you wouldn't have said --

38 A I don't know. For some reason, like, the way he was talking to me in -- it felt
39 like he made it seem like I was -- I did something wrong. So I didn't know how
40 to answer him.

41

- 1 Q But he started the interview, Constable Teniuk, by telling you you essentially
2 had -- didn't have to worry about being charged. He gave you immunity on
3 anything that was going on. Do you agree with that?
- 4 A Yeah. But --
- 5
- 6 Q Yeah.
- 7 A -- still, like, I --
- 8
- 9 Q So the officer started by saying, whatever you guys were up to that day, don't
10 worry about that, tell me about how Colten got shot, right? Do you agree that
11 that's what the officer did? He told you don't worry about --
- 12 A I just didn't have -- I didn't have a whole lot to say at that time.
- 13
- 14 Q Okay.
- 15 A I didn't know what to say or how to say it.
- 16
- 17 Q You didn't know how to say you saw --
- 18 A I didn't know how to say the -- how -- yes.
- 19
- 20 Q Okay. So he keeps asking you, What did you see? Let's do another one. Oh. I
21 guess. Where was Colten sitting?
- 22 A The passenger's seat.
- 23
- 24 Q Which? Front or back?
- 25 A The front.
- 26
- 27 Q The what?
- 28 A In the front.
- 29
- 30 Q Okay. Page 28 there, just --
- 31 A But in the -- when we -- okay.
- 32
- 33 Q So your statement there: As far as I remember, he was in the back seat. Do you
34 agree that that's what you told the officer --
- 35 A Yeah.
- 36
- 37 Q -- the day after?
- 38 A He was in the back seat majority of the time, but for some reason when we
39 were at that farm, he was in the front seat, and Eric was in the back seat. Kiora
40 was in the back seat with me, and Cassidy was driving.
- 41

1 Q Okay. But you didn't think the RCMP officer wanted to know where Colten
2 was when he was shot as opposed to --

3 A I never --

4

5 Q -- earlier in the day? Okay. Paragraph -- or page 30. Constable Teniuk says:
6 Okay. Okay. And what do you do when she's screaming about her boyfriend?
7 Belinda Jackson, answer:

8

9 I go -- I'm just standing there, and I'm screaming, and I'm
10 scared because I don't know how it happened.

11

12 Do you remember giving that answer? Ms. Jackson, do you remember giving
13 that answer?

14 A No, I don't remember saying that.

15

16 Q What's that?

17 A No, I don't remember saying that.

18

19 Q Well, do you say you -- are you suggesting you didn't say that, what's in the
20 transcript isn't accurate?

21 A I can't say I didn't say it. I just don't recall saying it.

22

23 Q Okay. But you would agree with me, if it's in the transcript --

24 A Yeah.

25

26 Q -- that's what you said? Would you agree with that?

27 A Yeah.

28

29 Q Yeah. Okay. So then page 32, can you flip -- flip to that? Constable Teniuk
30 says:

31

32 Let's go back to what maybe led up to them shooting him
33 in the -- in the vehicle or outside the vehicle. So he's --
34 he's already out of the vehicle, laying on the ground.
35 Okay. Do you remember when those shots happened?

36

37 Belinda Jackson: No, I don't. Constable Teniuk: You don't recall any
38 gunshots? Belinda Jackson: Mm -- which has been interpreted as negative, and
39 we can put the video in if -- if you -- you agree with me at that time you were
40 denying knowing anything about the shooting?

41 A Yeah.

1

2 Q Okay. All that happened, negative visual response from Belinda, or who had a
3 gun? And then turning to page 33, Belinda Jackson: I just remember, like, a
4 lady. It looked like a lady. Constable Teniuk says: Okay. Belinda Jackson says:
5 Standing there. Constable Teniuk says: And that was already after he was on
6 the ground? Belinda Jackson: Yeah.

7

8 So again, you would agree with me through this entire interview, and now
9 we're going on quite a while, you're getting a fifth and sixth chance to tell him
10 what you remember, none of which you said today is in there. Do you agree
11 with me?

12 A Yeah.

13

14 Q Okay.

15 A I just wasn't comfortable telling him, I guess.

16

17 Q Okay. Page 35. Can you flip to that for me? Have you got that in front of you?
18 Constable Teniuk says:

19

20 Yeah. The -- the person that's shot -- like, Kiora's
21 boyfriend, how did he get out of the vehicle? Do you
22 remember that?

23

24 Belinda Jackson: No. I just remember him being on the ground. Constable
25 Teniuk: Okay. Did you help move him out of the vehicle? Belinda Jackson:
26 No, I'm pretty sure he got shot out of the vehicle. Constable Teniuk: Okay.
27 Belinda Jackson: Like, it -- it happened out of the vehicle.

28

29 So now it's a lady with a long gun, outside the vehicle, on the passenger's side.
30 Can you explain how any of that adds up to what you're saying today?

31 A Well, when I seen the guy come out with the long gun, I figured the one I
32 thought mistaken for a girl could have been him that shot him.

33

34 Q This is the tall guy with the hat --

35 A Yes.

36

37 Q -- you thought was the lady?

38 A Yes.

39

40 Q Okay. And you describe it as an older, bigger lady?

41 A I said, like, taller.

1

2 Q Hm?

3 A Like, tall.

4

5 Q Tall? Okay. So when we're talking about the lady, can you please turn to page
6 42 of your interview there? Constable Teniuk says: Do you know who? Do you
7 know which person shot Kiora's boyfriend?

8

9 Any doubt what he was asking you, Ms. Jackson?

10 A He was asking me who shot Colten?

11

12 Q Right. Your answer. Do you have it in front of you there? No, I don't know
13 which person shot him. Constable Teniuk: Okay. Belinda Jackson: I can only
14 just think that maybe it was the lady. Constable Teniuk: Okay. That was
15 standing there. Belinda Jackson. Constable Teniuk. Okay. And the reason --
16 and the reason being is because she's the only one you remember seeing there?
17 Belinda Jackson: Yeah. Constable Teniuk: Okay. Do you remember seeing
18 anyone else on the property? Belinda Jackson: No.

19

20 So now the guy with the shotgun, the young guy with the shotgun and the
21 ballcap, you didn't remember him the day after, either, did you?

22 A Everything just started coming to me on my own later.

23

24 Q On your own? Oh. Did -- did you get together with any of the other witnesses
25 and talk about what happened?

26 A I talked with Kiora.

27

28 Q Yeah. About what happened?

29 A She just wanted to know if Colten was sleeping when he got shot. That was the
30 day we buried him. That's --

31

32 Q Okay.

33 A -- we didn't discuss a whole lot.

34

35 Q So she didn't know anything that had -- really, what had happened?

36 A No.

37

38 Q Like, how it happened? Okay. And did that help you, once you started talking
39 with the other witnesses? Did that help you start to remember things?

40 A No.

41

- 1 Q No?
- 2 A I mean, other than being with Eric, because I was still living with him a month
3 after that -- all that happened. But we didn't talk a whole lot.
4
- 5 Q Okay. Have you talked to Mr. Murphy, the family's lawyer? Have you spoken
6 to him?
- 7 A Chris -- who?
- 8
- 9 Q Mr. Murphy, the family's lawyer? Have you spoken to him about --
- 10 A I don't -- I don't think so. I don't know.
11
- 12 Q No? No?
- 13 A I don't know.
14
- 15 Q Did you speak with Sheldon Wuttunee or with Tony Wuttunee?
- 16 A Yeah, I believe I spoke with him.
17
- 18 Q Did you speak to him about this incident?
- 19 A Yeah.
20
- 21 Q Yeah? And was he at the celebration for Colten, and you guys all talked about
22 what had happened that day?
- 23 A We spoke, but I don't think we spoke about what I'm saying now.
24
- 25 Q Okay. Well, let's finish what you remembered at the time. Okay. Page 63. Can
26 you go to that for me? Okay. At the top there, Belinda Jackson:
27
- 28 Like, say, like, if I, like -- like, the gunshots, that probably
29 would have scared me or, like, I would have, like, came to
30 it.
31
- 32 Constable Teniuk says: Yeah, okay. Then you said, Belinda Jackson: But I
33 don't even remember hearing gunshots. And I'd -- Constable Teniuk: Okay.
34 Belinda Jackson: I just remember him just honestly, just laying there.
35 Constable Teniuk: Okay. And he was out of the vehicle? Belinda Jackson: He
36 was laying on the ground beside the vehicle.
37
- 38 So again, pretty clear that you didn't hear a gunshot, you didn't see him get
39 shot?
- 40 A Yeah. I -- I recall saying all of that. It's just -- I was still very intoxicated when
41 I was still held in there. I didn't sleep while I was in there. I didn't eat or

- 1 anything like that. And nobody really talked to me, other than the -- the person
2 that's interviewing me. I didn't know really what was happening.
3
- 4 Q Okay. I think that's enough of those. I don't know if it's all of them, but can
5 you try to explain to me why you wouldn't have told the police the truth then?
6 A Maybe I was just scared.
7
- 8 Q So after --
9 A I mean, it's understandable.
10
- 11 Q What's that?
12 A It's understandable to why I'd be scared, though.
13
- 14 Q Well, I'll -- I'll be honest with you. It's beyond belief that you saw somebody
15 get shot --
16 A Yeah, and it's not --
17
- 18 Q -- and you wouldn't tell the police officer?
19 A It's not something I deal with every day, watching somebody get shot and be
20 able to tell what, you know -- or even try to remember and being pressured
21 about it right then and there. You know, not having any rest or sleep and I
22 didn't even -- you know, I was confused a lot of the time. At that time I was
23 being interviewed.
24
- 25 Q Okay. So how is it from the 10th of August when you get interviewed by the
26 police officer for -- the transcript is over -- or is around 100 pages, how is it
27 from then to August 21st when you get interviewed by the FSIN investigator,
28 how is it that you now know that it was Gerald Stanley?
29 A I seen his picture.
30
- 31 Q Okay. So you were following the media? So now you knew who shot Colten?
32 A I've seen his picture. And then I -- it -- it's like it almost -- I started
33 remembering things. Seeing his face right there.
34
- 35 Q Okay. Is it possible that after you knew who he was, that then you created a
36 story about him shooting Colten?
37 A No.
38
- 39 Q Okay. That's not possible?
40 A No.
41

1 Q Okay.

2 A And I wasn't following the social media. There's a reason I'm not on social
3 media.

4

5 Q Okay, well, I'm not worried about social media. There's other media --

6 A Well, I'm just saying.

7

8 Q -- but -- so --

9

10 MR. SPENCER: Do you have the transcript from the
11 prelim?

12

13 THE COURT CLERK: Do you want this other one now?

14

15 MR. SPENCER: Not yet. (INDISCERNIBLE). The
16 transcripts of the prelim? Okay. Thank you. Okay.

17

18 Q MR. SPENCER: I'm going to show you a statement. Do
19 you -- do you recall testifying at the preliminary hearing?

20 A Yes.

21

22 THE COURT: Are you showing her a transcript from
23 the preliminary inquiry?

24

25 MR. SPENCER: Yeah.

26

27 THE COURT: I wonder, Madam Clerk, if I could have a
28 copy of the transcript, please?

29

30 THE COURT CLERK: Two volumes.

31

32 THE COURT: Okay. Okay. Go ahead.

33

34 MR. SPENCER: And, My Lord, her portion --

35

36 THE COURT: Well, you --

37

38 MR. SPENCER: -- the portion I'm referring to is page
39 T326.

40

41 THE COURT: Okay. Go ahead.

1

2 MR. SPENCER: Okay.

3

4 Q MR. SPENCER: So do you recall testifying there? At the
5 other courthouse?

6 A Yeah.

7

8 Q Yeah? Okay. And do you recall me asking you: Okay. Would you agree with
9 me that that's -- would you agree with me that that's totally inconsistent with
10 your evidence today and that you shot -- that -- that you saw Gerald shoot
11 Colten? And your answer: After I knew who these people were, I was more
12 aware to tell who did what.

13

14 So I'm suggesting to you once you knew who the people were, who Gerald
15 was -- you knew his name and saw his picture, that you now were telling a
16 story about him shooting Colten. Is it possible that you made the story up
17 after?

18 A No.

19

20 Q And did you talk with the other witnesses about what -- what to say?

21 A I spoke with Kiora and Eric.

22

23 Q Okay. So you and Kiora have talked about what happened that day quite a bit?

24 A No. Not, like, to why we ended up there or why that even happened. We never
25 -- I was just more to why -- like, why it happened and why he left me there.

26

27 Q Okay. So changing -- switching a little bit. Do you remember why you decided
28 to go swimming that day?

29 A Say that again?

30

31 Q Do you remember why you decided to go swimming that day?

32 A It was more of my idea to go to a lake or somewhere to just go sit there
33 because I remember somebody telling us that there was cops in the reserve, and
34 they were looking for somebody. And I remember at one point -- I don't know
35 who that lady was, but she said that her son was on conditions or something,
36 and I don't know. And we just ended up leaving the reserve.

37

38 Q Okay. So you were drinking on the reserve at a residence, right?

39 A I wasn't drinking until I left the reserve.

40

41 Q Okay. The other -- the group were. Agreed?

- 1 A Yeah.
- 2
- 3 Q Okay.
- 4 A The people that picked us up, yeah.
- 5
- 6 Q Yeah. But then you went to Colten's grandma's house, and you were drinking
- 7 there?
- 8 A I didn't --
- 9
- 10 Q Or they were drinking there?
- 11 A Yes.
- 12
- 13 Q And as -- I'm talking a group, so --
- 14 A Okay.
- 15
- 16 Q So you're listening to music, you're drinking. So why would you decide,
- 17 because the cops were on the reserve --
- 18 A Because we were drinking and driving, and --
- 19
- 20 Q Well, no, you were sitting around Colten's grandma's house. Why would you
- 21 then decide to go driving drunk?
- 22 A We weren't wanted there, and we were -- I was, like, just suggested that we go
- 23 to a lake.
- 24
- 25 Q Okay. And were the cops looking for stolen vehicles?
- 26 A From what that lady had mentioned, she said that they were looking for a
- 27 stolen vehicle, yeah.
- 28
- 29 Q Okay. And that's why you guys wanted to get off the reserve?
- 30 A Yeah, because there was cops driving around, I guess, looking for -- and I --
- 31 and that's another reason why I wanted to leave because there was a vehicle
- 32 that -- it was red, and I remember -- I recall seeing that red truck drive past --
- 33 drive past us. And I remember -- I can't remember who said what, but they
- 34 said, yeah, they were being looked for, and -- I don't even know who those
- 35 people were, though.
- 36
- 37 Q Okay. Can you help me with what difference would that make? If you're
- 38 sitting around listening to music and the cops are looking for stolen vehicles,
- 39 why would your group think that you should get out of town?
- 40 A Well, it's just the way, like -- the vehicle was really loud. And we were driving
- 41 -- even just on the reserve, we were driving really fast.

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MR. SPENCER: Okay. My Lord, I think that might be a good time to break. I'm going to check my notes, and I should be able to finish up with the witness relatively quickly after a short break, just once I've --

THE COURT: Okay. Okay. I will have just a word with counsel. I will ask the witness to leave and the jury to leave.

We will take a 20-minute break now.

(JURY RETIRES)

THE COURT: Okay. Ms. Jackson, I am going to -- Ms. Jackson, I am going to direct that you come back in 20 minutes. And in the meantime, you are not permitted to talk to anybody about your testimony, okay?

A (INDISCERNIBLE).

(WITNESS STANDS DOWN)

THE COURT: Everyone can be seated.

I was just going to -- to raise a relatively small point, and that is, Mr. Spencer, when questioning the witnesses, you have on occasion injected your opinion into things such as "I don't believe you're telling the truth" and "from my perspective, I can't believe how this can be true." Generally speaking, I don't think that's an appropriate thing to do in front of the jury. You can submit to them. You can do all sorts of things. But injecting your own personal views into it is generally considered to be inappropriate. Not horribly wrong, but I'd ask you to try to rephrase in different ways, if you would.

MR. SPENCER: Fair enough, My Lord. And extreme circumstances. I appreciate the direction. Thank you.

THE COURT: Thank you very much. Adjourned for 20 minutes.

(ADJOURNMENT)

THE COURT: Is there anything before we bring the jury back?

1
2 MR. BURGE: No, My Lord.
3
4 THE COURT: Okay. You can bring the jury back in.
5
6 (JURY ENTERS)
7
8 (WITNESS RE-TAKES THE STAND)
9
10 THE COURT: Okay. You understand you're still under
11 oath?
12
13 A Yes.
14
15 THE COURT: Okay. Can proceed.
16
17 MR. SPENCER: Thank you, My Lord.
18
19 Q MR. SPENCER: Just a couple quick questions to finish
20 up, Ms. Jackson. Do you recall at the police station that night saying to Eric
21 Meechance, "she shot him"?
22 A No.
23
24 Q No? Did you use Kiora's phone that day at all, her cell --
25 A Kiora's phone?
26
27 Q Yeah.
28 A Did I use her phone?
29
30 Q Yes.
31 A No. I don't recall using it.
32
33 Q And you -- and what was her -- do you know what her phone looked like?
34 A If I can remember, her phone had, like, a pink phone case. It was an iPhone.
35
36 Q Pink -- pink iPhone?
37 A Yeah.
38
39 Q Okay. And you didn't use it to -- to make any calls or send any texts?
40 A No.
41

1 Q Okay. And then I asked you whether talking with Kiora and Eric helped you
2 remember things. And did you agree with me or did you say -- did you
3 disagree with that?

4 A I think I agreed with you.

5

6 Q You agreed with that?

7 A I'm pretty sure I agreed with you.

8

9 Q Okay. Fair enough.

10

11 MR. SPENCER: That's all I have, My Lord, for the
12 witness.

13

14 THE COURT: Okay. Mr. Burge, do you have any re-
15 examination?

16

17 MR. BURGE: No, thank you, My Lord.

18

19 THE COURT: Witness, you are free to go. Thank you
20 very much --

21

22 A Thank you so much.

23

24 THE COURT: -- for all of your testimony today.

25

26 A Thank you so much.

27

28 (WITNESS STANDS DOWN)

29

30 **Discussion**

31

32 THE COURT: Next witness.

33

34 MR. BURGE: The next witness, My Lord, is Greg
35 Williams.

36

37 MR. SPENCER: Just -- Mr. Burge, could I maybe deal
38 with just a couple --

39

40 MR. BURGE: Yeah.

41

- 1 MR. SPENCER: -- record-keeping? My Lord, with
2 Mr. Meechance leaving, part of our understanding there was that I would be able
3 to file his CPIC with the convictions, certificates of conviction.
4
- 5 THE COURT: Okay.
6
- 7 MR. SPENCER: And that is, I think, with consent.
8
- 9 MR. BURGE: That's correct, My Lord.
10
- 11 MR. SPENCER: So --
12
- 13 THE COURT: Okay. So by his CPIC, for those of us
14 that aren't familiar with the lingo, that would be essentially his criminal record?
15
- 16 MR. SPENCER: That -- that is correct, My Lord, and --
17
- 18 THE COURT: And the --
19
- 20 MR. SPENCER: -- consistent with trying to educate along
21 the way, I'll do a quick summary of the offences and then tender it as an exhibit, if
22 that's acceptable.
23
- 24 THE COURT: Okay. Witness, you can come up here,
25 just doing some housekeeping as you get settled in. So please come in and make
26 yourself at home.
27
- 28 Okay. Go ahead, Mr. Spencer.
29
- 30 THE COURT CLERK: (INDISCERNIBLE).
31
- 32 MR. SPENCER: Okay. There's a March -- March 25th,
33 2015, a conviction for take motor vehicle and fail to comply with a recognizance.
34 Same date, careless use of a firearm, weapon, prohibited device or ammunition,
35 and that was what generated the firearms prohibition that I did get a chance to
36 speak with Mr. Meechance about or that he admitted. Unauthorized possession of
37 a firearm, possession of property obtained by crime over 5,000, fail to comply with
38 undertakings, and then again break, enter, and commit -- I think that's an
39 indictable offence, but the record speaks for itself. Fail to comply with a probation
40 order. And then I think the remaining ones are subsequent, so it's not --
41

1 THE COURT: So the CPIC record would be what
2 exhibit, Madam Clerk?

3

4 THE COURT CLERK: D-6.

5

6 THE COURT: D-6.

7

8 **EXHIBIT D-6 - Criminal Record of Eric Meechance**

9

10 MR. SPENCER: And I have the corresponding Provincial
11 Court certificates. I think they were all Provincial Court convictions.

12

13 THE COURT: And the certified copies of convictions
14 will be collectively Exhibit D-7.

15

16 **EXHIBIT D-7 - Certified Copies of Provincial Court Convictions of Eric**
17 **Meechance**

18

19 MR. SPENCER: Thank you. And then one other
20 housekeeping matter. And, Mr. Burge, do you want to speak to the witness not --
21 the --

22

23 MR. BURGE: Let's deal with this at the end.

24

25 MR. SPENCER: Okay. Fair enough. And that's all we'll
26 do for now. We have other work to deal with --

27

28 THE COURT: Okay.

29

30 MR. SPENCER: -- once we've had a chance to speak.

31

32 THE COURT: You can swear the witness, Madam
33 Clerk.

34

35 THE COURT CLERK: Sorry. Please stand. How do you take an
36 oath? Will you swear on the Bible or do you wish to affirm?

37

38 MR. WILLIAMS: On the Bible.

39

40 THE COURT CLERK: Okay. Can I get you to stand in front of
41 the mike, please? Thank you. Take the Bible in your right hand. State your full

1 name.

2

3 MR. WILLIAMS: Gregory Alexander Williams.

4

5 THE COURT CLERK: Spell your first and last name for the
6 record.

7

8 MR. WILLIAMS: Gregory, G-R-E-G-O-R-Y, Williams, W-
9 I-L-L-I-A-M-S.

10

11 **GREGORY WILLIAMS, Sworn, Examined by Mr. Burge (Qualification)**

12

13 THE COURT CLERK: Thank you. Do you wish to stand or sit?

14

15 A I'll sit.

16

17 THE COURT CLERK: (INDISCERNIBLE).

18

19 THE COURT: You can take that transcript away, too,
20 Madam Clerk. Or did you put that --

21

22 MR. SPENCER: Sorry.

23

24 MR. BURGE: He doesn't need that transcript.

25

26 THE COURT CLERK: Oh, okay.

27

28 MR. SPENCER: No.

29

30 MR. BURGE: My Lord, Mr. Williams is -- we're
31 tendering him as an expert witness. He is a forensic firearms specialist. And his
32 areas of expertise where he will be offering opinions in this trial are in firearms
33 identification, functional assessment of firearms components, ammunition and
34 devices --

35

36 THE COURT CLERK: Devices?

37

38 MR. BURGE: -- comparison and identification of
39 firearm tool marks on ammunition components --

40

41 THE COURT: Identification of firearm components?

- 1
2 MR. BURGE: Of firearm tool marks on ammunition
3 components.
4
- 5 THE COURT: Okay.
6
- 7 MR. BURGE: And impact damage assessment and
8 range determination.
9
- 10 THE COURT: Okay. And I -- I am going to ask you to
11 go through his qualifications --
12
- 13 MR. BURGE: Yes.
14
- 15 THE COURT: -- but you agree, Mr. Spencer, that he
16 ought to be so qualified?
17
- 18 MR. SPENCER: Yeah. I -- I'm good with -- the impact
19 damage assessment, maybe we can hear him a little bit on that. But I think we will.
20 But -- but yes, I am consenting to the expert for --
21
- 22 THE COURT: Okay.
23
- 24 MR. SPENCER: -- (INDISCERNIBLE).
25
- 26 THE COURT: The reason I ask you first is that if -- if
27 it's a contest, then Mr. Burge will have to do more groundwork. If it's not a
28 contest, then he can just give us a broad overview.
29
- 30 MR. SPENCER: Agreed, My Lord, and we've certainly
31 had disclosure, and we're good with that, so ...
32
- 33 THE COURT: Mr. Burge.
34
- 35 MR. BURGE: Thank you, My Lord.
36
- 37 Q MR. BURGE: Mr. Williams, you're a civilian member
38 of the Royal Canadian Mounted Police?
39 A I am.
40
- 41 Q And you are -- you work in Ottawa; is that correct?

1 A Yes.

2

3 Q And -- and we've described you as a forensic firearms specialist. Is that your
4 title?

5 A It is.

6

7 Q And how long have you been in that position?

8 A I first joined the RCMP in September of 2011, so I guess six years and a bit.

9

10 Q Why don't you tell us, sir, about your qualifications to -- to get into the
11 position that you're now in?

12 A So to become a forensic specialist in firearms with the RCMP, the requirement
13 is a university science degree. And I studied physics at the University of
14 Regina. I graduated in 2003, so I have an undergraduate degree in physics, an
15 honours degree, and that was the -- the main educational requirement. Then to
16 become a qualified specialist, there's a period of an understudy, several years
17 of training, and that's specific to firearms and to using the microscope to do the
18 identification work that you've spoke of. So I -- I successfully completed that
19 understudy program in September of 2014. So since then, I've been doing
20 casework where I receive exhibits and do the analysis and write reports, as I
21 did for this case.

22

23 Q Okay. Maybe if you could -- if you could touch a bit on the areas of expertise
24 where you'll be providing opinions today, such as firearms identification,
25 functional assessment of firearms or firearms components and ammunition and
26 devices.

27 A Okay.

28

29 Q I'll go through each of these in turn.

30 A Sure.

31

32 Q So why don't you start with firearms identification.

33 A Firearms identification is -- if I had to summarize in -- in one phrase what we
34 do is firearms identification, and that is looking at the ammunition
35 components, so bullets and cartridge cases, under the microscope, and
36 comparing them to tests that we fire from known firearms or to other
37 unknowns, to see if they have matching microscopic characteristics and are
38 able to draw a conclusion about a common origin. In other words, the same
39 tool or the same firearm made the marks on the same cartridge cases, and so
40 you could say that those were fired in the same gun. And so that's the -- the
41 biggest part of what my -- my training and -- and expertise is in, firearms

- 1 identification.
- 2
- 3 Q Okay. And so this is part of your understudy program?
- 4 A That's right.
- 5
- 6 Q And is it part of your practice now? I guess if it's the biggest part of your
- 7 workload.
- 8 A That's correct.
- 9
- 10 Q Okay. The functional assessment of firearms components, ammunition, and
- 11 devices.
- 12 A So the functional assessment of firearms is evaluating the mechanical condition
- 13 of firearms to see whether or not they -- they fire, whether or not they meet the
- 14 -- the definition of the firearm in the *Criminal Code*. And so depending on the
- 15 type of firearm, sometimes we look at things that are improvised devices,
- 16 homemade firearms, homemade devices that we'll have to test to see whether
- 17 they do meet those *Criminal Code* criteria. We also look at firearms that are
- 18 recovered in all different types of conditions, things that have soaked in a river
- 19 for a while or things that are sawed-off and unsafe to shoot outside of a
- 20 specialized laboratory. So we have remote firing devices and other tools that
- 21 we can use to shoot these guns and to evaluate that they are, in fact, firearms.
- 22 So we assess the -- the mechanical condition of firearms and write a report to
- 23 those effects.
- 24
- 25 Q Okay. Another area is the comparison and identification of firearms tool marks
- 26 on ammunition components. Please tell us about that area and how you --
- 27 you're involved in that.
- 28 A Yes. And so I mentioned that. That's this -- essentially the same as firearms
- 29 identification. Those are the synonyms. The identification that ammunition
- 30 components have been marked by the -- the tools that -- the working surfaces
- 31 of the parts of the inside of the firearm.
- 32
- 33 Q And maybe you can elaborate a bit on this last point as my -- my friend has
- 34 suggested. The impact damage assessment and range determination. What is
- 35 involved in that and -- and how are you -- how are you qualified to -- to
- 36 provide that opinion?
- 37 A Okay. I can talk a bit about my training and how it was divided. So the first
- 38 unit was on firearms and function and classification. The second unit was on
- 39 the microscope work. That's the identification part. And the third unit was a
- 40 few -- a variety of topics, including impact damage assessment, which is --
- 41 which is to look at clothing or to look at other surfaces that might be -- might

1 have possibly been shot with firearms and to evaluate those surfaces to see
2 whether or not the characteristics agree with what has been established to be
3 the -- the characteristics of things that will have gunshot damage. So to tell, for
4 example, a hole in a wall from a gunshot hole in a wall because a hole might
5 just be a hole sometimes. It isn't necessarily going to be caused by a gunshot.
6

7 And so what we do is we run a series of chemical tests and do analyses on the
8 characteristics that are typical in gunshot damage in clothing, in walls, in -- I
9 was just recently working on a case out of Saskatoon that involved ceiling,
10 drywall pieces, and door pieces. So I was looking at wood and looking at
11 drywall and looking at the -- the characteristics. So what I'm looking at is the
12 -- the hole itself. If it has a regular or irregular shape, measuring the
13 dimensions of it. Sometimes we're able to reconstruct some angle information
14 about an impact, if the hole is an ellipse instead of a circle. And so basically
15 we're assessing the damage. We're looking at the damage to see if it's -- if it
16 chemically matches up with firearms, as well, because firearms are usually
17 associated with lead, sometimes with copper, depending on the composition of
18 bullets. So we can do those chemical tests around the margin of those holes to
19 see if trace amounts of -- of lead or copper have wiped off onto that surface.
20 And so when a piece of clothing has a hole that tests positive for lead and
21 copper, it's a good indication that that hole is caused by gunshot damage, if the
22 rest of the evidence supports that. So we sort of evaluate those impact surfaces
23 to -- to make a conclusion about the likelihood of them being caused by a
24 gunshot.
25

26 The -- the special case of that is range determination where we're looking at
27 damage on a -- on clothing or on an article to determine the distance from the
28 muzzle to the target that the firearm was at the time it discharged. So in the
29 case of shotguns, that's very straightforward because with shotguns, there's a
30 pattern of small pellets that separate over distance. And so based on the spread
31 of those particle holes in a shirt or in a car bumper -- I looked at one car
32 bumper -- you can again do chemical tests and evaluate whether this damage
33 was caused by lead or projectiles, and then you can also evaluate the distance
34 at which, if you have the firearm and the ammunition, that would be consistent
35 with having been fired at a certain range or distance from the muzzle to the
36 target. With -- with firearms that don't have multiple projectiles, so not
37 shotguns, when we're looking at revolvers, pistols, rifles, what we use for
38 range determination in those cases is a pattern of powder that gets deposited.
39 Because as a -- as a gun is fired, it's not just a bullet that travels out the end of
40 the barrel. There's also a lot of unburned and partially burned gunpowder, and
41 that powder travels at almost the same speed as the bullet and leaves a very

1 distinctive pattern around the bullet entrance holes. And so we use those
2 patterns to evaluate distance in -- in the case of firearm range determination,
3 and we can make a -- a different range of conclusions, that it could be contact
4 or a near-contact, or intermediate or a distance shot, which is beyond the range
5 of gunshot residue.

6

7 Q Okay. Sir, I'll -- I'd like to show you -- I believe this is your resume. I'd just
8 like to show it to you, sir?

9 A Yes, it is.

10

11 Q Okay. And perhaps -- would you like, for the benefit of the jury, just to -- to
12 tell us what's on your resume?

13 A Yes. The -- the education I've already mentioned, the University of Regina
14 bachelor of science in physics, high honours. I've been employed since
15 September 2011. I've taken some training courses in addition to my understudy
16 program on different characteristics and aspects of firearms identification from
17 2014 until just this past month. And as -- as part of my roles as a forensic
18 specialist, I've attended court and testified as an expert witness six times
19 previous to this. Those six instances were in a -- at a variety of levels in
20 different jurisdictions: the Provincial Court in Prince Albert, Saskatchewan; the
21 Court of Queen's Bench in Moncton, New Brunswick; Provincial Court in
22 Dartmouth, Nova Scotia; and in Battleford, Saskatchewan, which was the
23 preliminary hearing to this case. And in Winnipeg, at the Court of Queen's
24 Bench, and also in Fredericton just earlier this month.

25

26 Q Okay. Perhaps the -- the -- I'm not sure if I -- is that -- would you call it your
27 CV or is that a --

28 A I would call that my CV, yes.

29

30 MR. BURGE: Yes. If the CV could please be marked,
31 My Lord?

32

33 THE COURT: Any objection?

34

35 MR. SPENCER: No.

36

37 THE COURT: And the next number, Madam Clerk?

38

39 THE COURT CLERK: P-18.

40

41 THE COURT: P-18.

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EXHIBIT P-18 - Curriculum Vitae of Gregory Williams

THE COURT: Mr. Spencer, any comment?

MR. SPENCER: We accept Mr. Williams as an expert in the -- the fields put forward.

Ruling (Qualification)

THE COURT: Okay. Thank you. I will therefore qualify Mr. Williams as an expert in the area of firearms identification, functional assessment of firearm components, ammunition and devices, comparison and identification of firearms tool marks on ammunition components, and impact damage and assessment and range determination. And, ladies and gentlemen of the jury, as I mentioned before when we dealt with a different expert, generally speaking, opinions from people are not provided. We rely upon your opinions. But in certain areas where they're so specialized, we do on occasion rely upon expert opinions. And I'll talk more about what you make of that later on in the trial.

Okay. Go ahead, Mr. -- go ahead, Mr. Burge.

MR. BURGE: Thank you.

GREGORY WILLIAMS, Previously Sworn, Examined by Mr. Burge

Q MR. BURGE: And, Mr. Williams, I'll -- I will tell you that there has been an admission in this proceeding that three expended cartridges which were Exhibits PE035, PE036, and PE043 were fired in the Tokarev pistol which is PE087. So that -- that may allow you to limit in some ways your explanation for your -- your conclusion on that -- in that area.

A I understand.

Q Now, Mr. Williams, I understand that you were involved in at least three different distinct areas of -- of analysis in this particular case; is that correct?

A Yes.

Q And -- and in the first case, I understand you examined a Cooley .22 rifle, which was -- is Exhibit PE060, the Tokarev that I just mentioned, as well as the expended cartridges that I just mentioned, as well as a -- a hat, which is PE008, a jacket, which is PE013. Could you -- do you recall that -- that distinct

1 analysis --

2 A Yes.

3

4 Q -- or series of analyses that you did? And perhaps you could just tell us about
5 that.

6 A My Lord, may I refer to my notes?

7

8 THE COURT: Certainly, sir.

9

10 A So as you said, I -- I wrote three reports on these exhibits. So the first, I
11 received these -- these exhibits on the 16th of November, 2016. And at that
12 time, this was the first time that I've -- I analyzed these exhibits. I looked at the
13 -- the firearms in question. So there was one Cooney Model 600 bolt-action
14 rifle, calibre .22, long rifle, serial number CG072278, and it was missing the
15 stock. That exhibit number was PE060. And my analysis of that rifle was to
16 determine its -- its function, a mechanical assessment, and also classification.

17

18 Similarly, I did the -- I looked at the Tokarev pistol, so this was the handgun. It
19 is a -- it is a Tokarev model TT-33 dated 1947, semi-automatic pistol, calibre
20 7.62 millimetre, Tokarev, with serial number -- now, the letters on a Tokarev
21 pistol serial number are Cyrillic, but what they look like is the letter B and a
22 letter N that's a mirror image. It's a backwards N. And then the numbers 2903.
23 So in that pistol, I looked at, again, the mechanical assessment of it, so how it
24 functioned, as well as its legal classification.

25

26 So I can go through the results for those two firearms first, if that would be --

27

28 Q MR. BURGE: Sure.

29 A -- straightforward. So during testing, both the rifle and the pistol discharged
30 conventional ammunition in a normal way. They met the *Criminal Code*
31 definition for what a firearm is. The -- the pistol, Exhibit PE087, the Tokarev
32 pistol, is a handgun, and it can be operated and used with one hand, whereas
33 the -- the rifle, it did not function normally. It -- in the condition that it was
34 received, it required some work. And so the receiver was bent. The receiver is
35 the main sort of firing mechanism of the firearm. And so that had to be
36 straightened. And even when I did straighten it, to some extent, the firing pin
37 didn't fall with enough force to -- to discharge a cartridge. And so in order to
38 make it fire, I used a hammer and tapped the back of the -- the bolt. And so
39 that's after the trigger was pulled. So the trigger was pulled, the firing pin fell,
40 and then I tapped it with a hammer to have that -- that rifle fire.

41

1 And so with -- with that initial analysis, I was able to conclude that the rifle,
2 PE060, is a firearm within Section 2 of the *Criminal Code* in that it's a barreled
3 weapon that's capable of -- can -- can shoot a bullet or other projectiles, and
4 that it's capable of causing serious bodily injury or death to a person, and it
5 includes the frame or receiver of such a barreled weapon. Because of the -- the
6 condition that it was in, I -- I just made that note. The *Criminal Code* doesn't
7 require that a firearm be in a functional state to be classified as a firearm, only
8 that it includes the receiver or frame of one.

9
10 The pistol, Exhibit PE087, is a firearm within Section 2, again.

11

12 Q Can I stop you here, sir?

13 A Yes.

14

15 Q At some point, just so you know, we have that pistol here in the courtroom
16 today. And when you're talking about the pistol, if it becomes -- if you think it
17 becomes important that you have it presented to you, we will do so.

18 A Thank you. At this point, I don't think I need to examine it, but when we
19 discuss the details of the functions and some of the questions about it, I think it
20 might be instructive to -- to illustrate how it fires and what sequence of parts
21 move in what order. Can I go back to --

22

23 Q Yes.

24 A -- my conclusions? So in -- in the case of the pistol is that it -- it again is a
25 firearm within Section 2. And furthermore, it's a restricted firearm in that it's a
26 handgun, not -- not a prohibited firearm. And I also analyzed and measured the
27 trigger pull, the weight of the trigger, and evaluated that pistol to see if it was
28 susceptible to shock discharge. So the trigger weight is measuring how much
29 force is required to pull the trigger to make the gun operate, to fire. And shock
30 discharge testing is -- is to evaluate whether the firearm can release the
31 hammer and fire the firing pin without pulling the trigger. And so we do that
32 test by taking the pistol and cocking it, which is to prepare it for firing, having
33 the hammer in the firing position, and then dropping that pistol in -- in the six
34 different cubic orientation. So you can think of it like with the muzzle pointed
35 forwards, the muzzle pointed backwards, the muzzle pointed down and up and
36 left and right. In those six orientations, we drop the firearm onto a rubber mat
37 when it's cocked and then check to see whether the hammer has fallen,
38 whether the -- the gun might have fired in that -- in that test.

39

40 And so in all those tests, I have some results. The trigger pull weight was 5.25
41 pounds for the pistol, and that's 2.38 kilograms, for a consistent sear release.

1 The sear is the part that connects to the hammer. It's an internal part of the
2 firearm. The pistol did not discharge during any of my drop-off tests. So those
3 shock discharge tests were -- were negative for -- for whether the -- the pistol
4 could fire without pulling the trigger. And the trigger pull weight of 5.25
5 pounds is -- is typical of this type of firearm, a semi-automatic pistol.
6

7 So those are the -- the basic analyses and results that I found for those two
8 firearms.
9

10 Q Okay.

11 A And now, the -- the three expended cartridge cases were PE035, PE036, and
12 PE043. And those cartridge cases, I compared to microscopically to the tests
13 that I fired out of the pistol, the Tokarev pistol. My initial tests showed that
14 they were the same class, the same calibre. So they were consistent, and it
15 warranted a microscopic comparison. So initially, we just look at whether or
16 not it's the same calibre or the same type, the -- the same fit. And in this case,
17 those matched, and so I looked at the microscopic comparison. And they were
18 found to agree significantly. In my words, in -- in -- there were class and
19 individual characteristics that were in agreement. And the class characteristics
20 are the calibre and the type, the manufacturer-specific characteristics. And the
21 individual characteristics are the ones that are due to a firearm's unique wear
22 and the -- the character of the firearm that evolves over time from
23 manufacturing processes and from abuse and wear over time, corrosion, rust.
24 And the -- the agreement was significant, and I was able to identify that those
25 expended cartridge cases were fired in the pistol, based on those comparisons.
26

27 Q Okay. Thank you.

28 A I also looked at, as you said, one hat and one jacket. And I evaluated those --
29 those two items of clothing for the -- the presence of gunshot damage, and also
30 the muzzle to target distance at the time of discharge. So that was the impact
31 damage assessment and range determination. So this analysis included visual
32 examination, chemical testing, comparison to test firearm discharge patterns.
33 And what I found is that on the hat, Exhibit PE008, there was at least one area
34 of damage with characteristics consistent with gunshot damage. And on the --
35 the jacket, Exhibit PE013, there were at least two areas of damage with
36 characteristics consistent with gunshot damage.
37

38 On both of those exhibits, I did not see, observe, or detect chemically a
39 discharge pattern. So there's no firearms discharge residue pattern on either
40 item.
41

1 The conclusion I drew from those results was that the hat, Exhibit PE008, has
2 damage to the right left -- no, no. The rear left. My apologies. Right-left, that
3 didn't mean much. The -- the hat has damage to the rear left that's consistent
4 with having been caused by the passage of a fired bullet. And the jacket has
5 damage to the rear left of the hood and the front right -- right of the hood that is
6 also consistent with having been passed by the -- having been caused by the
7 passage of a fired bullet. A definitive muzzle to target distance could not be
8 determined due to the absence of firearms discharge residue patterns. And so
9 not seeing any patterns, I concluded in this case that I could not determine
10 what the range was of the firearm.

11

12 Q Okay.

13 A So that sums up the first report that I wrote. So those are the exhibits I looked
14 at and the -- the conclusions I drew. And I submitted this report on December
15 -- December 1st after receiving those exhibits on November the 16th. So about
16 two weeks after I had them, I submitted this finalized report, the first one. And
17 I can tell you then about the second report of analysis.

18

19 Q Please.

20

21 THE COURT: Just before you go further, just so it's
22 clear for me, the hat -- essentially you're saying there's a hole, a bullet hole, in the
23 rear left of the hat; is that right? Consistent with a bullet passing through it?

24

25 A Yes.

26

27 THE COURT: And as far as the hoodie, could you just
28 go through that again for me --

29

30 A Yes.

31

32 THE COURT: -- just to make sure I've got it -- a visual?

33

34 A So I'm going to go right to my notes and photos on this one, and then I'll go
35 back to my conclusion, just to make sure. So there -- there are two areas of
36 damage on the hood, one on the left side in the rear and one on the front side,
37 sort of by the jaw of the hood on the right side. So yes. The rear left of the
38 hood and the front right of the hood. Those two areas of the -- of the jacket had
39 holes that are consistent with the passage of a fired bullet.

40

41 THE COURT: Okay. Thank you very much.

1

2 Q MR. BURGE: Mr. Williams, could you just tell us
3 about the analysis you did of that jacket to see the holes on both the left side
4 and right side?

5 A Yes. So initially with clothing, what I do is I -- I take an article of clothing and
6 take some photos of it. So I'll put it on a -- a bench that I have in a special
7 room. Typically these articles of clothing are -- they're not clean. They have
8 blood and other body fluids and fragments of bone accompanying those holes.
9 And so we wear protective equipment, and we work in a ventilated space. And
10 I take photos of those areas of damage. I'll look over the whole article of
11 clothing to see -- sometimes holes can be very small for firearms damage. And
12 so I'll look over the article of clothing to try to assess how many areas of
13 damage there are. I believe I was looking at one article of clothing that had
14 some 50 areas of damage one time, all the different holes that we -- we tested.
15 In this case, there was only the two.

16

17 And so I took some photographs of those under a series of different conditions.
18 We use a variety of different lights with different wavelengths of light because
19 partially burned gunshot powder can fluoresce under certain lighting
20 conditions and filters. And also, using infrared lights, you can look at patterns
21 and sort of subtract away the colour of the fabric when you look at them under
22 infrared light. And so I looked at them under a variety of light conditions and
23 looked at those holes. In the case of the -- what I called the area one, that is the
24 left side of the hood, the rear. There are actually two holes, not just one, and
25 they're quite irregular in shape.

26

27 And so I looked at those in a variety of different lights, as I said. I made some
28 notes about them. So I noted there was some tearing. The approximate size of
29 the holes is, combined, 35 millimetres by 20 millimetres. There were -- there
30 was blood, bits of bone and tissue on the interior side of that rear left side of
31 the hood. So the -- the second area was the front right side of the hood, and
32 there was one small irregular cross-shaped hole. There were some small tears,
33 also blood present, and the hole was approximately 7 millimetres in length and
34 width.

35

36 Q That's on the right side?

37 A That is on the front right side of the hood. So the -- the larger hole was on the
38 left side, the smaller on the right.

39

40 I looked at characteristics. And so I was looking for cratering, gas damage,
41 melting, powder fragments, all of these things that are characteristic with very

1 close discharge or different distances, and I didn't observe any of those sort of
2 range-specific phenomenon, like an abrasion ring or ammunition fragments,
3 bullet wipe, cratering, gas damage.

4
5 One complication is that this is a -- a dark-coloured jacket. So I believe it's
6 navy blue or black. It depends on my lighting, right, what colour of light I was
7 looking at. But the dark colour of the jacket can sometimes obscure the -- a
8 visual pattern of these particles. So that's why we -- I also conducted chemical
9 tests on these holes. And so I did a series of chemical tests on the inside and
10 outside of these areas of damage on the jacket, and found -- so area one tested
11 positive on the exterior and the interior for copper. It also tested positive on the
12 exterior for lead. And there was a very trace -- sort of a speck of positive in a
13 nitrite test that I did, which is one of the components of gunpowder. So there
14 was a very slight amount present, but not a pattern like you would see if it was
15 a very close discharge at, say, six inches. I also noted on hole number 2 that the
16 interior side tested positive for lead, but the exterior did not.

17
18 Q So this is -- this hole 2, again, is on the right side of --

19 A That's right.

20
21 Q Okay.

22 A And, sorry, my -- my naming is a little bit different here than -- but yes. That's
23 -- those were my findings. And so those chemical tests confirming the presence
24 of lead and copper in those two areas and the trace amount of nitrites are what
25 led me to make the conclusion I did about these being consistent with a -- a
26 gunshot passage. I was not able to determine directionality based on that.

27
28 Q Okay. Thank you. Now, I believe you were about to move on to --

29 A I was.

30
31 Q -- number two.

32 A The second report. So the second report was in -- I received the exhibits in
33 March of 2017, March the 10th, and I issued the report on March the 11th, so it
34 was just a one-day analysis. And in this case, I received the Tokarev pistol, and
35 I received 80 cartridges. So it was the same pistol as I looked at before. An
36 analysis was done in this case to determine whether the cartridges, these 80
37 cartridges, are ammunition as defined in the *Criminal Code*, and to determine
38 whether they could be discharged in the pistol, Exhibit PE087, the Tokarev
39 pistol. And this -- this analysis included examination of the cartridges and test-
40 firing a sample in the pistol. Additional firing tests were done using the pistol
41 to determine if obstructing the rearward motion of the slide would cause

1 deformation of the expended cartridge case.

2

3 So at this point, I should probably go back and explain why I was interested in
4 deformation in the expansion of the cartridge case, and that was because one of
5 the cartridge cases that I was able to identify that were fired in the Tokarev
6 pistol had an unusual bulge shape to it. And so in the course of my analysis, I
7 suggested some possible explanations for what could cause a bulge.
8 Ultimately, I don't know what caused it. But our analysis of that -- do we have
9 a photo? Yeah.

10

11 MR. BURGE: My friend has been kind enough to
12 provide a photo that they have prepared, My Lord.

13

14 Would this help you at this time to look at that --

15

16 A Yes.

17

18 MR. BURGE: -- large photo?

19

20 THE COURT: Okay. Which cartridge was it that had
21 the bulge in it? Mr. Burge, you can just help me out.

22

23 Q MR. BURGE: Was it PE043?

24 A That's right. PE043.

25

26 THE COURT: And for those of us that are keeping
27 score, which one of those cartridges would it be?

28

29 MR. BURGE: For --

30

31 THE COURT: We had -- I think we had a number of
32 photographs.

33

34 MR. BURGE: From the dash of the --

35

36 THE COURT: Okay. So the -- the one with the bulge is
37 the one on the dash?

38

39 MR. BURGE: Yes.

40

41 THE COURT: Okay. Thank you.

1

2 Q MR. BURGE: Mr. Williams, I will show you this
3 photograph, and if -- if it's -- first of all, if you can look at that and tell us if
4 you recognize that?

5 A Yes. This is the expended cartridge case, and this is the -- the bulge area, this
6 part, by the head. The mouth of the cartridge case is also deformed. It looks
7 straight, but a 7.62 Tokarev is actually a bottlenecked cartridge case. And so a
8 normal cartridge case here would have a narrowing near the mouth, which is
9 not present here. So the -- the mouth is stretched, and there's a bulge by the
10 head. Both of those were indicative that something unusual happened during
11 firing. And so they warranted further analysis and testing. And that's why I
12 issued this second report was to test if the pistol, when the slide was
13 obstructed, would still -- would fire in a way that could -- could generate this
14 bulge. And so now it might be useful to use the pistol to demonstrate what I
15 mean by that.

16

17 MR. BURGE: I wonder if we should have the photo
18 marked at -- at some point, as well.

19

20 THE COURT: It is your photo, Mr. Spencer. Do you
21 want it as a D or Mr. Burge as a P exhibit? I suppose it doesn't matter.

22

23 MR. SPENCER: Well, it came from the Crown. It's the
24 disclosure. So if we start with the Crown, we can do it that way. It doesn't --

25

26 THE COURT: Okay. Thank you.

27

28 MR. SPENCER: -- I don't think there's any magic in it.

29

30 THE COURT: So that will be Exhibit P --

31

32 THE COURT CLERK: 19.

33

34 THE COURT: -- 19.

35

36 **EXHIBIT P-19 - Blown-up Photo of PE043, Expended Casing from Dash of Grey**
37 **Escape**

38

39 A Is it okay if I stand?

40

41 THE COURT: Yes, certainly.

1
2 THE COURT CLERK: Just the -- do you want the --
3 (INDISCERNIBLE) --
4
5 MR. BURGE: Pardon me?
6
7 THE COURT CLERK: Do you want the cartridges as well or
8 just --
9
10 MR. BURGE: Mr. Williams, what would you like at
11 this time?
12
13 A Just the firearm.
14
15 MR. BURGE: Just the firearm?
16
17 A Yes.
18
19 THE COURT CLERK: (INDISCERNIBLE).
20
21 A Okay.
22
23 MR. BURGE: And you've been given a firearm that I
24 believe is marked in this proceeding as --
25
26 THE COURT CLERK: P-10.
27
28 MR. BURGE: -- Exhibit P-10.
29
30 A P-10. And in my -- with my initials, it's marked Exhibit PE087. And I've
31 marked it three separate times: the 16th of November, the 10th of March, and
32 the 30th of May. So those were the three times I received it.
33
34 The first thing I do whenever I handle a firearm is to evaluate and prove that
35 it's safe. And so I'll just do that very quickly. So the pistol is unloaded and
36 safe.
37
38 THE COURT: Okay. If we can't trust you, I don't know
39 who we can trust with a gun.
40
41 A All right. So just to demonstrate how a pistol works and operates, to explain

1 why I did this test that I did, the normal firing sequence is that the -- a cartridge
2 is loaded into the barrel. This is the barrel right here. That's the chamber inside
3 of that. And normally the way that that's done is through the magazine. So a
4 cartridge is first placed into the magazine, and it holds up to eight of them. You
5 can stack them down. There's a spring. And this magazine is then inserted into
6 the pistol like that, and then the slide is pulled rearward -- that's the top of the
7 pistol. And when it's released -- so right now it's held open because the
8 magazine is empty. But when it's released, it comes forward, and it picks up
9 the top cartridge and inserts it into the chamber. Now, in that condition, when
10 you pull the slide -- when you pull the slide rearward, it cocks the hammer.
11 The hammer is this point in the firearm right here. And that hammer is what
12 will be released to hit the firing pin which then hits the -- the primer of the
13 cartridge. And that's what fires -- fires the gun, essentially.

14

15 And so in this case, to have the cartridge case come out bulged like that, the --
16 the best explanation I can come up -- again, I don't know exactly what
17 happened, but my best explanation is that it was fired out of battery, which
18 means it wasn't securely in the chamber when it was fired. And so for that case
19 to be, this slide would have to be slightly rearward like this with that thicker
20 part of the cartridge case, that bulged part, outside of the -- sort of the
21 protected, the strong area of the chamber.

22

23 THE COURT CLERK:

Do you want the picture?

24

25 A No, it's okay. And so one of my theories about this was that possibly the slide
26 was obstructed, and so that when the pistol was fired, it hit something, and it
27 wasn't allowed -- it didn't allow that cartridge to get fully extracted. Because
28 what happens after -- after a gun is fired is the slide is -- it moves rearward
29 with the force of recoil from that firing. And as it moves rearward, it unlocks,
30 and it -- the -- the cartridge that was fired is extracted. There's a case, and that
31 case get ejected out of the gun, out this port. So this hole is the ejection port.
32 And so I -- I performed this second analysis to test whether obstructing the
33 slide would allow me to reproduce in a laboratory setting that kind of a bulged
34 cartridge case, and what I found in my tests was that they were not bulged like
35 that. I could not reproduce that bulge with this test.

36

37 So I also noted the ammunition. I'll just go back to my notes. So the
38 ammunition that was submitted to me on that -- March the 10th, it was suitable
39 for use in this pistol, and I did discharge a sample of those cartridges.

40

41 Q MR. BURGE:

What was the police exhibit number for

1 that sample?

2 A The cartridges were Exhibit PE033. And I received 80 cartridges. I discharged
3 a number of them. One of the cartridges of those -- that exhibit misfired when
4 the primer was struck by the firing pin. And so it's not uncommon in firing a
5 firearm for a cartridge to misfire in that the -- the primer -- well, maybe I
6 should explain what a cartridge of ammunition is. And so this is an illustration
7 or a picture of the cartridge case. But a cartridge consists of four things. The
8 case is one of them. There's also a primer. That's at the back in the base, and
9 that's the part that gets struck by the firing pin. At the nose of the -- or at the
10 front of the cartridge case is -- is a bullet. That's the projectile that goes down
11 the barrel. And inside of the cartridge case is the propellant powder, the
12 gunpowder. So there's four components. And in -- in a defective or a misfire,
13 what happens is the -- the primer is struck by the firing pin, but the bullet
14 doesn't fire. So you -- you pull the trigger, click, but there's no bang. There's
15 no bullet discharged. And so that happened in one of the cases in one of those
16 tests that I did. That is not uncommon for ammunition, and those misfires
17 happen as -- as a routine of firing.

18

19 Q How much of your job involves firing guns?

20 A It's a significant part of being a firearms expert. So I've fired over 5,000
21 cartridges in a whole variety of different firearms of different types.

22

23 Q Would you like to go further explaining, I guess, either your thoughts on -- on
24 this bulged cartridge or -- or would you like to move on to another area first?

25 A That's totally up to you. I -- I can say -- the most important point I'd like to
26 highlight is that I don't know the origin and cause of the bulge in the cartridge
27 case, but I do note that it is unusual and it is a sign of something not normally
28 occurring, because in all my tests, I wasn't able to reproduce that.

29

30 Q Okay.

31 A Would you -- would you like to go into more detail?

32

33 Q Sure. Please -- please take us through -- through that.

34 A So in -- in the course of my analysis, I --

35

36 THE COURT CLERK: Sorry. I'm just going to move this so
37 they can see it.

38

39 A Okay. I consider what other causes might have resulted in a bulged cartridge
40 case like that, and I came up with a list of just some brainstormed ideas. Now,
41 again, this is -- I just want to say again that I do not know which one of these

1 may have caused it, but I came up with some possible scenarios. And so one
2 would be that there was a mechanical malfunction in the pistol that allowed
3 this occurrence to happen that the -- the cartridge wasn't fully in battery, fully
4 closed, when the firing pin struck it.

5

6 The second theory or second possibility I came up with was that the
7 ammunition might be defective, and one example of that would be a hang fire
8 where the -- there's a delay from the time that a cartridge is struck by the firing
9 pin and when the bullet fires.

10

11 The third idea that I posed or brainstormed was that -- that the bullet -- or the
12 cartridge case was fired in a -- in a gun with a different-sized barrel. I looked
13 up some other examples of this kind of bulging and stretching, and if you fired,
14 for example, a .32 calibre cartridge in a .38 calibre pistol, that kind of a
15 mismatch in calibre can cause a bulge in a cartridge case.

16

17 And a fourth possibility I came up with was that there was some kind of a
18 barrel obstruction, so something that prevented the cartridge from fully
19 chambering, and that obstruction may have caused it to stand out of the
20 chamber that slight amount, a few millimetres, and not allow that slide to lock
21 up properly, so that when the fire -- when the firing happened, the cartridge
22 could move slightly and then expand in this way.

23

24 So those are the -- sort of the first four scenarios, in addition to the one where I
25 talked about the slide being -- being blocked. And so I considered those --
26 those possibilities, and we discussed them at the preliminary hearing.

27

28 Q MR. BURGE: Okay. So a firearms malfunction. What
29 could be a firearm malfunction that could have resulted in this -- this bulged
30 cartridge?

31 A I'll -- I'll be careful here and qualify my answer again to say that I don't know
32 what -- what caused it. And so anything that I say is -- is speculative at some
33 point. The one example that I saw in the literature -- I was researching some
34 other examples where firearms that fired out of battery, and they'd been
35 written up in -- in publications. And in one instance, a firearm had a broken
36 slide and was missing some parts, and in this case it was mechanically not in a
37 sound condition, and at the time of firing, the cartridge case backed out of the
38 chamber and was able to stretch and get distorted. In fact, it burst in that
39 instance. The cartridge case actually burst. And in another instance, I read
40 about a rifle that had a -- a malfunction where the -- there was grime built up
41 on the inside, grime or I think some sort of oil built up on the inside of the

1 barrel so that a cartridge wouldn't seat all the way into the chamber. And that
2 caused it to fire before the -- the action was fully closed, and caused another
3 stretched and deformed cartridge case.

4

5 Q Is that related to your -- the other heading that you've described as barrel
6 obstruction?

7 A Yes. Yes. So the first would have been an example of a malfunction. The
8 second, a barrel obstruction.

9

10 Q Okay. You mentioned in -- in the list that you gave us, you mentioned an
11 ammunition -- defective ammunition. And you'd mentioned one example as --
12 of defective ammunition as being a hang fire situation. What -- what is a hang
13 fire situation?

14 A A hang fire is a -- a perceptible delay, so that means a delay that's long enough
15 you can notice it, between the time that the firing pin strikes the primer and the
16 time that the bullet is discharged out the firearm. So you have a -- a noticeable
17 delay from click until bang.

18

19 Q Okay. I understand you've done a fair bit of research on hang fires lately; is
20 that correct?

21 A I have looked at several articles.

22

23 Q And -- and perhaps you can tell us how common they are and -- and what is --
24 what is observed in hang fire situations.

25 A From the references that I read, hang fires are exceedingly rare. And the --
26 there's a common misconception about the length of time between the time
27 that the firing pin is struck and the -- the time that a bullet is discharged. In --
28 in modern ammunition, hang fires tend to be less than half a second from the
29 time that the -- the primer is struck until the bullet goes. And so it's -- it's not a
30 long time. You click, and then bang, not a 10-second delay, and not a 20-
31 second delay, but less than half a second.

32

33 Q And you say that's in modern ammunition?

34 A That's right.

35

36 Q And what -- what would you call modern ammunition?

37 A Modern ammunition would mean specifically about the primers being made
38 based out of lead styphnate, and that is sort of the modern chemical
39 composition concoction of primers, priming compound.

40

41 Q Okay. Do you -- can you comment on the primer involved in this ammunition

1 that we're talking about?

2 A I -- I don't know in exactly what composition this primer has, and that was a
3 question that was raised after the preliminary hearing. And so I suggested that
4 we consult with the Trace Chemistry Department at the RCMP, and they did
5 run some tests on the residue on the inside of the cartridge case, but the -- those
6 results were inconclusive about the type of primer being used.

7
8 Q You've -- you've told us what kind of a -- I guess a brief delay you might
9 expect from modern ammunition. How quickly would -- would a bullet pass
10 through a muzzle of a gun once -- once the firing pin strikes the primer, if
11 there's -- if there's no hang fire?

12 A It's quite fast. It's measured in milliseconds, so 4 or 5 milliseconds. So
13 thousandth of a second.

14
15 Q In -- in your career as a -- as a firearms specialist, have you ever experienced a
16 hang fire?

17 A No, I have not.

18
19 Q Now, if, for some reason, there is a delay in the -- I guess in -- in the discharge
20 of the -- of the cartridge, would that alone account for a bulge that we see in --
21 in this -- this cartridge?

22 A No. You also would have to have the cartridge out of battery, out of position.
23 And so it would have to be in combination with a manipulation of the firearm.
24 As -- as an example, we've put the pistol back, but --

25
26 Q Would you like to have it?

27 A If --

28
29 THE COURT:

It's right there.

30
31 A So if -- if there was a hang fire and the -- the pistol was fully closed and then
32 locked in the correct firing position, then the cartridge case would fire
33 normally and there would be no bulge. There would be nothing to observe. So
34 if a hang fire were the cause, a person would have to manually pull this back in
35 the time between when the trigger was pulled and then the -- the bullet
36 discharged, or some other cause to put that out of battery. And so that would be
37 -- it would have to be two things at the same time, a hang fire and a -- a
38 manipulation to cause that to move backwards enough to cause the bulge in
39 that cartridge case.

40
41 Q MR. BURGE:

And how long did you say the -- the

1 typical delays seems to be if you're in a hang fire situation with modern
2 ammunition?

3 A It's less than half a second.

4

5 Q And that's -- would that be from the time that you pull the trigger?

6 A Yes.

7

8 Q And so if there was -- if there was an ammunition malfunction, you pull the
9 trigger, and within half a second of that, there would have to be something
10 done to the -- to the gun to cause the cartridge to be out of battery?

11 A Yes. But this is, again, very speculative. I'm -- I'm --

12

13 Q Okay.

14 A -- I don't know for a fact this is what happened. In fact, I don't know what
15 caused this bulge. I'll just highlight that point again.

16

17 Q What other thoughts did you have when you were doing your -- your
18 brainstorming? Were there anything -- was there anything further? I think
19 you've given us the four scenarios.

20 A I think -- I think I've covered everything the -- the second report was sort of a
21 result of these conversations and these -- this thought experiment and questions
22 that I made. And then there was a third report. Would you -- would you like me
23 to discuss that?

24

25 Q Sure.

26 A And so on -- on May the 30th of 2017, I received the -- the pistol again, the
27 Tokarev pistol, PE087. I received the -- this cartridge case, PE043 with the
28 bulge, and I received those 74 cartridges, PE033. So the same cartridges that
29 I've already tested. And in this case, in this report, what I was doing was I was
30 looking at -- a specific question about the function of the pistol and to
31 determine if the cartridges are prone to misfire because I did have the one
32 instance of a misfire, and I was asked to determine if it was -- was likely to
33 happen again. And so I examined the pistol and found that it is capable of
34 discharging with the magazine removed, which is typical for this type of -- of
35 pistol. That originated from a question at the preliminary hearing. And I also
36 determined that a significant sample, 36 of those cartridges, I discharged in the
37 pistol and another suitable reference pistol, and I found that the -- the pistol,
38 Exhibit PE087, as I said, does not have a magazine disconnect, and that the
39 cartridges that I tested, these 36, were not prone to misfire.

40

41 Q Okay. Why don't we just elaborate a bit on what -- I know you've mentioned

1 the magazine disconnect. Just -- just so the members of the jury understand
2 exactly what you mean when you -- when you say that.

3 A I'll -- I'll use this pistol again as a -- as a model. In some semi-automatic
4 pistols, if you remove the magazine by pressing -- there's a button on this side.
5 You press this button and remove the magazine, it disables the pistol in some
6 models, but not in this model. So in this case, with the magazine removed, you
7 can still pull the trigger and it will -- it will fire. And so that was a question that
8 was raised in the preliminary hearing, and we did this extra analysis just to -- to
9 determine that fact.

10

11 Q Is there any other kind of a disconnect that's on pistols and -- and -- including
12 that one?

13 A There is a disconnect that prevents -- it is unsafe for a cartridge to fire out of
14 battery when the slide is moved rearward. And so after the slide just moves a
15 few millimetres, a disconnecter engages which -- which disconnects the trigger
16 from the -- the hammer. So if I pull the trigger now, the hammer doesn't move,
17 because I've pulled the slide back a few millimetres. If I push it forward, then
18 when I pull the trigger, it goes click. The hammer falls, the firing pin gets
19 struck. And so that's -- that's what needs to be overcome in order for the -- for
20 the firing pin to fall, for the hammer to fall. That disconnecter has to be not
21 engaged because when it's engaged, when the slide is pulled back, it won't
22 fire, because the trigger is now separated or disconnected from the --

23

24 Q You -- you said it would be dangerous if the -- if it were fired with the -- with
25 the chamber open?

26 A Yes.

27

28 Q Okay. And -- and why is that?

29 A So the -- the chamber is this rear part of the barrel right here, and it's a thick
30 piece of steel. It's what supports the cartridge case. There's a lot of pressure as
31 the bullet gets pushed down the barrel, and the steel of that chamber is what
32 supports it. If you fire a firearm out of battery, then that -- all that's holding
33 that pressure is the brass or the steel of the case. In this case, it's steel. And
34 that's an unsafe condition. As I said, I've read some instances where people are
35 injured when these types of scenarios happen due to cartridge cases or shot
36 shells bursting.

37

38 Q What kind of injury might a person receive if -- if it was out of battery?

39 A I would hesitate to be too definitive on that. I would say that -- that the
40 anecdotes that I read about were injuries to the hands. So the partially burned
41 powder and the shot pellets from a shot shell struck a person on the hand and

1 injured them. But one example is not, perhaps, indicative of a rule, so...

2

3 Q Okay. So just -- just so I'm clear, and -- and I might need a few go-rounds to
4 be real clear for myself, but when we talk about a possible hang fire situation
5 where there -- where for some -- where there's a delay before the cartridge
6 actually discharges, but for there to be a bulge in the cartridge, for some reason
7 it must be out of place at the time of discharge?

8 A Yes.

9

10 Q And the slide disconnect, would that limit the amount that -- that the slide
11 could be out of place at that exact time?

12 A Yes.

13

14 Q So there's -- so there's three factors that have to be taken into account, if -- if
15 we look at a hang fire situation?

16 A I -- I would say two. The ammunition being defective and the slide being out of
17 battery just enough to not engage that disconnect.

18

19 Q Okay.

20 A But you're right. It just depends on how you count, I suppose.

21

22 Q Okay. Is there anything else you'd like to say on this narrow topic?

23 A There was one further test that I didn't discuss in my third report, and that was
24 when I used a different pistol to fire one of these cartridges. So just referring to
25 my notes. So I found -- the RCMP has a reference collection of firearms, like a
26 library for guns. And I found in that -- in that collection, we had a Chinese-
27 made Tokarev-designed pistol. So it's a similar pistol to this one in -- in its
28 shape, in its form, but it had a different calibre barrel. It had a 9-millimetre
29 barrel instead of a 7.62 by .25 calibre barrel. And I attempted firing one of
30 these Exhibit PE033 cartridges. I -- I attempted firing one of those in this
31 Chinese Tokarev with a different calibre size. And when I found -- what I
32 found was that they -- the expended cartridge case fired in the wrong calibre
33 barrel was not visibly bulged. And so this is, again, just one instance. It doesn't
34 prove a rule. But I did not find that using the wrong calibre barrel caused a
35 visible bulge.

36

37 Q Sir, when one fires -- well, this particular Tokarev pistol, does there have to be
38 a distinct pulling of the trigger for each firing?

39 A Yes.

40

41 Q And you've told us about the -- I guess the -- the weight for the trigger pull.

1 indicates the manufacturer. The code is BXN, and that indicates Sellier and
2 Bellot, which is a Czechoslovakian company. And the -- the number 53 is on
3 the cartridge case, indicating the year of manufacture. So 1953.

4

5 Q And is that -- was that -- were the same markings on the -- that was on the --
6 like, the expended casing; is that --

7 A Yes.

8

9 Q And was it -- were the same markings on the live ammunition that you tested?

10 A I'll just verify that in my notes to make sure, but I believe so. So yes. Exhibit
11 PE043, PE036 -- sorry. My pages are a little bit out of order. I've got lots of
12 photographs. And PE035 all have the same head stamp, the BXN53, and then
13 the code 1, as well. And then comparing that to the cartridges that I analyzed
14 that was in my second report, yes, I have a photograph in my notes with
15 BXN53, the same -- the same head stamp on all of those.

16

17 Q Now, you -- you described the process of firing -- of loading this pistol, of
18 firing this pistol, and I think you told us that it will automatically eject the
19 spent cartridge and reload a fresh cartridge --

20 A Yes.

21

22 Q -- a live cartridge? When the spent cartridge is ejected, roughly -- how does it
23 -- how does it get ejected and -- and what general direction would you expect it
24 to be ejected in?

25 A Okay. I'll just demonstrate again with the -- with the pistol. So as the slide
26 moves rearward, there's a -- a part called an extractor that hooks underneath
27 the rim of the cartridge case and extracts it out of the chamber. Because of the
28 pressure involved, the -- the cartridge case swells a little bit, even in normal
29 firing, and that extractor pulls it out, overcomes that -- that sticking. The
30 extractor pulls it, and then there's an ejector that pushes it out of this port. So
31 this port right here is the ejection port. And as this moves backwards, the -- the
32 extractor pulls it until it reaches a point, and then in the back right here where
33 my finger is, there's an ejector. And that ejector makes it tumble out to the
34 right. So this -- this port is on the -- sort of the right side of the slide, and as it
35 comes backward, that expended cartridge case tumbles out. And then there's a
36 spring in the back that keeps pushing this slide forward. So when I let go, the
37 slide comes forward and picks up the next cartridge, loads it into the chamber,
38 ready for firing with the hammer cocked. Now, each one of those subsequent
39 shots requires that the trigger be pulled another time. That's what semi-
40 automatic means. It's not fully automatic where you pull the trigger and all the
41 bullets would come out. In this case, just one for each time that you pull the

1 trigger.

2

3 Q Okay. And it only has to be cocked once; is that --

4 A The first time --

5

6 Q Yes?

7 A -- that the -- that the magazine is loaded, the slide has to be pulled back
8 manually. And then that picks up the first cartridge. After that first shot, the
9 recoil energy is what pushes the slide backwards, and then the -- the spring
10 picks up the next one. So the only time you have to manually manipulate the
11 slide is for the first shot.

12

13 Q Okay.

14 A So in answer to your question, it tumbles to the right, but where it goes from
15 there -- I mean, I've had these end up in my shoes or down my shirt collar. It --
16 it bounces. These metal pieces aren't -- it isn't uniform. We don't do analysis
17 to determine where a shooter was standing based on where the cartridge cases
18 ended up because it is an uncertain thing about how those will tumble out of
19 the -- out of the pistol.

20

21 Q Is there a safety on that Tokarev?

22 A So there's no manual safety. There's no switch to -- to flip or a button to press.
23 I'll just look at my notes to see if I commented on that at all. Yeah. So I just
24 have in my notes that there's no external safety.

25

26 Q And an external safety would do what?

27 A It would prevent the firing pin from firing before the safety is disengaged. So a
28 safety is a method of disabling the firearm.

29

30 MR. BURGE: Okay. Thank you, Mr. Williams. Those
31 are my questions. And please answer any questions my friend might ask you when
32 he gets the chance.

33

34 THE COURT: Okay. Mr. Spencer, I know the witness is
35 from -- where?

36

37 A Ottawa.

38

39 THE COURT: Ottawa. I know it's five to five. Do you
40 have any idea about how long you're going to be? I don't want to rush you.

41

1 MR. SPENCER: Well --

2

3 THE COURT: I don't want to inconvenience the
4 witness. I don't want to keep people too long. So I am going to have to make a
5 judgment call.

6

7 MR. SPENCER: Sure. And there's certainly a lot of
8 information there, which will take some time to work through. And I do have a
9 couple other areas of concern on our end of it. My understanding is the witness
10 was planning to be here tomorrow, so that's not an issue.

11

12 A Yes.

13

14 MR. SPENCER: So my certain -- my distinct preference
15 would be that we break now, I digest some of the additional information we -- we
16 received, and I think we likely will take less time tomorrow if I get an opportunity
17 to do that than it would take this evening, and certainly we wouldn't finish before
18 6 o'clock.

19

20 THE COURT: Okay. Well, then that would just be too
21 long. So what we're going to do, then, is, witness, you are free to go until
22 tomorrow. Because you are partway through your testimony, I am going to caution
23 you that you are not to speak to anybody, the Crown or defence, about your
24 testimony because you are a live witness at this point. You can talk to people about
25 whatever else you want, but not about this.

26

27 And as far as the jury is concerned, 10 o'clock tomorrow morning works for
28 everybody. And then it looks, lawyers, as if we're going a little faster, and this
29 may be closer to a two-week trial as opposed to a three-week trial. Is that possible?

30

31 MR. BURGE: Yes, My Lord.

32

33 THE COURT: Okay. So the good news is is we might
34 be going a little faster, although I've presided over many trials, and sometimes
35 things take a turn, and you never know what's going to happen. So with that --

36

37 MR. SPENCER: And -- and, My Lord, I could perhaps
38 address that as well. My expectation is I have one witness for tomorrow if I'm
39 asked to start. So we'll finish with this witness. And I have one tomorrow, which
40 is the critical witness that I was worried about scheduling on, and then a couple
41 other ones. I'm anticipating we may be done early on Friday, but certainly are on

1 track to complete our case early next week.

2

3 THE COURT: Okay.

4

5 MR. SPENCER: If that's of assistance.

6

7 THE COURT: Well, there we go. So with that, you have
8 a good evening, and we will see you tomorrow at 10 o'clock.

9

10 (JURY RETIRES)

11

12 THE COURT: And, witness, you can go. I'm just going
13 to speak to the lawyers for a few minutes here.

14

15 A Thank you, My Lord.

16

17 THE COURT: Thank you.

18

19 A Would you like me to package that back up?

20

21 THE COURT CLERK: No, I can (INDISCERNIBLE).

22

23 A Okay.

24

25 (WITNESS STANDS DOWN)

26

27 **Discussion**

28

29 THE COURT: If you'd just close the door? Thank you.
30 Again, are you able to give me a bit of an indication as to where we're at? At some
31 point I'm going to have to charge the jury. At some point we're going to need to
32 have a pre-charge conference, a meeting, of course, where we can talk about the
33 nuts and bolts of the charge. I didn't want to mention it too early in the process.
34 But it's something that we're going to need to think about.

35

36 MR. BURGE: We're very close to the end of the
37 Crown's case. But my friend and I have had some discussion this afternoon, and
38 we pretty much have it worked out that this might be the last witness.

39

40 THE COURT: Okay. This witness here --

41

1 MR. BURGE: Yes.

2

3 THE COURT: -- might be the last witness. And then
4 again, I'm not asking you -- you've already disclosed that you're planning on
5 calling evidence, although, of course, you don't have to. You make that call once
6 the Crown has closed its case. And I guess we're probably looking a lot closer to
7 two weeks than three weeks; is that fair to say?

8

9 MR. BURGE: Yes.

10

11 MR. SPENCER: Well, and certainly, My Lord,
12 (INDISCERNIBLE) criminal defence. Yes, I have to make my decisions as I go,
13 but on the other hand, for scheduling purposes, you know, I need to be candid with
14 the Court. My expectation is that we would be Tuesday at the latest as far as
15 evidence would go. And that's my expectation. Again, it can change, but right
16 now, that's my sense.

17

18 THE COURT: Okay. Good enough. Well, thank you
19 very much. And we will see you tomorrow at 10 o'clock.

20

21 MR. BURGE: Thank you. Oh, excuse me. My Lord,
22 could I ask that the witness -- the warrant for the witness be cancelled, that --

23

24 MR. BROWNE: And I will return the original, My Lord. I
25 do have it.

26

27 THE COURT: Okay. The warrant will be cancelled.

28

29 MR. BURGE: Thank you.

30

31 THE COURT: At the Crown's request.

32

33 _____

34

35 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, FEBRUARY 2, 2018

36

37 _____

38

39

1	February 2, 2018	Morning Session
2		
3	The Honourable Chief Justice	The Court of Queen's Bench
4	M. Popescul	for Saskatchewan
5		
6	W. Burge, QC	For the Crown
7	C. Browne	For the Crown
8	S. Spencer	For the Accused
9	D. Gillanders	For the Accused
10	K. Christopherson	Court Clerk

11

12

13 **Discussion**

14

15 THE COURT: Good morning.

16

17 MR. BURGE: Good morning, My Lord.

18

19 MR. BROWNE: Good morning, My Lord.

20

21 MR. GILLANDERS: Good morning, My Lord.

22

23 MR. SPENCER: Good morning, My Lord.

24

25 THE COURT: There's a few things I thought that we
26 need to do prior to the jury coming back in. And the first is that it has been brought
27 to my attention that some people sitting in the gallery are not being passive
28 observers. In particular, some are muttering comments under their breath, even out
29 loud, respecting their views concerning some of the evidence as it's being
30 presented. This must stop. At the beginning of these proceedings, I outlined my
31 expectations regarding the conduct of everyone during these proceedings, and let
32 me remind you what I said. The Court endorses the open court principle and
33 welcomes and encourages everyone to attend court to observe the proceedings.
34 The Court reminds all members of the public that observers may not conduct
35 themselves in any way that could affect the court proceedings. This would include
36 acting in any way that is disruptive or could directly or indirectly influence the
37 court proceedings and would include wearing articles of clothing that in any way
38 refers to the proceedings and/or bearing or holding signs of any nature whatsoever.
39 Any person violating the sanctity of the proceedings will be asked to stop, failing
40 which they will be removed from the courthouse. So I think for the most part,
41 everyone has been pretty good and -- but it's come to my attention. So I thought

1 that I'd better just make those comments again to make sure that we who are up
2 here trying to do our job are not distracted by things that are happening in the
3 gallery. Understood? Thank you.

4

5 The next thing is during the testimony over the past couple of days, there were a
6 few things that have arisen that might justify a mid-trial instruction. And there's
7 five areas that have come up that it may be appropriate, and I will hear counsel as
8 to whether or not I should provide a mid-trial instruction respecting these matters.

9

10 The first one is there's been the admission of fact, and I did mention that briefly.
11 But it may be appropriate to again remind the jurors that they have to accept those
12 facts as proven. The other one is previous convictions of a couple of the witnesses.
13 Another one is prior inconsistent statements. Another one is the expert opinion
14 evidence. And I touched on that briefly, although there's a more fulsome thing that
15 I can say. And the other is that there was comment about the preliminary inquiry.

16

17 Now, Mr. Spencer, you raised the preliminary inquiry with one or two witnesses?

18

19 MR. SPENCER: I think two, although the one might have
20 agreed with me when I rephrased it.

21

22 THE COURT: Right.

23

24 MR. SPENCER: So I'm not sure. But I think --

25

26 THE COURT: Right. So --

27

28 MR. SPENCER: -- I had it (INDISCERNIBLE).

29

30 THE COURT: In any event, there was reference to the
31 preliminary inquiry, and the jury might not know what we're talking about there.

32

33 MR. SPENCER: Yeah. Oh, yeah, and I think it was more
34 -- it was two or more, I think, now that I think, witnesses.

35

36 THE COURT: So, Mr. Burge, or Mr. Browne, do you
37 have any comment as to whether I should provide a mid-trial instruction with
38 respect to those five areas?

39

40 MR. BURGE: Well, it seems to me, My Lord, if -- if
41 you've identified them, then I would say yes.

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THE COURT: Okay. Mr. Spencer?

MR. SPENCER: (INDISCERNIBLE). Certainly appreciating the challenges that the jury have on the law, I think it's completely appropriate, My Lord.

THE COURT: Okay. I will do so at this point. And then we will bring the witness back in.

Okay. If you'd bring the jury in? Madam Clerk, could I have the agreed statement of fact? Thank you.

(JURY ENTERS)

THE COURT: Good morning. So Happy Groundhog's Day to you. It looks like six more weeks of winter, but here, that's actually not a bad thing.

There's a few things that I wanted to do just before we get started and bring the witness back on, and that is that during the course of the evidence the past few days, a few things have arisen that I thought that it might be appropriate for me to just tell you about at this point called mid-trial instructions, just to give you a little bit of a heads-up as to some of the things that we're dealing with.

The first is with respect to the admission of facts. Certain facts have been admitted in this case, and this means that you have to accept those facts as proven. And I think I've referred to that already. And there is an agreed statement of facts. There were some reports that were submitted, and those are -- are facts agreed to by both the Crown and defence, so that means you have to accept those as -- as proven.

The next thing is you have heard the -- that Eric Meechance and Cassidy Cross have been previously convicted of criminal offences. You may use those convictions to help you decide how much or how little of their evidence you will believe or rely on. Some convictions, for example, ones that involve dishonesty, may be more significant than others. Consider, as well, whether the previous convictions are recent or happened a number of years ago. A previous conviction does not necessarily make the evidence of Mr. Meechance or Mr. Cross unbelievable or unreliable. It is only one of the many factors you have to consider in assessing their testimony.

1 Also, you've heard Eric Meechance, Cassidy Cross, and Belinda Jackson's
2 evidence regarding previous statements that they had given to police. Common
3 sense tells you that if a witness says one thing in the witness box but has said
4 something quite different on an earlier occasion, this may reduce the value of his
5 or her evidence. You will have to decide whether Mr. Meechance, Mr. Cross, and
6 Ms. Jackson, in fact, gave an earlier and different version from their testimony of
7 the same events. If you do not find that they gave an earlier and different version
8 of events, you may not use the alleged statement in assessing their credibility. If
9 you find after you've heard all the evidence that they gave an earlier and different
10 version of events, consider whether the differences are significant. You should
11 consider any explanation that the witnesses gave for their differences. You should
12 also consider the fact, nature, and extent of any differences when you decide
13 whether to rely on their testimony.

14

15 You may not use the earlier statements as evidence of what actually happened
16 unless you conclude that they accepted it as true while in the witness box. Even
17 then, as with any evidence, you will decide whether or how much to rely on it.

18

19 I am going to talk to you about expert witnesses again. Normally, witnesses may
20 only testify about what they have seen or heard and may not testify about their
21 opinions. Several experts have testified, and several expert reports have been
22 provided to the Court, which you will be able to review, if you have not done so
23 already. Because of their special training, education, and expertise, they have been
24 permitted to give their opinion about the things that they have talked about.
25 Although they have been permitted to give their opinion, it is still up to you to
26 decide the extent to which you will rely upon it. Here are some of the things that
27 you might want to consider: their qualifications and expertise; the reasons given
28 for their opinion; the suitability of the methods used; whether they are impartial;
29 and the other evidence in this case. It is up to you to decide how much or how little
30 to rely upon their opinion. The experts may be asked and have been asked to
31 assume or rely on certain facts in giving their opinions. Those facts may be the
32 same or different from what you later find as facts on the basis of all the evidence
33 in this case. The closer the facts assumed or relied upon by the experts are to the
34 facts as you find them, the more helpful their opinions may be to you. To the
35 extent that the expert relies on facts that you do not find are supported by the
36 evidence, you may find that their opinions will be less helpful.

37

38 And the final thing is about preliminary inquiries. Counsel has questioned
39 Mr. Cross and Ms. Jackson regarding evidence they gave on an earlier occasion at
40 a preliminary inquiry. A preliminary inquiry is a routine procedure where some
41 witnesses testify under oath or affirmation. Their evidence is recorded and

1 produced in the transcript to assist the lawyers in preparing their trial. The fact that
2 there was a preliminary inquiry in this case has nothing to do with your
3 determination of Mr. Stanley's guilt or innocence.
4

5 So with that, we will -- anything to say about my comments, Mr. Burge?
6

7 MR. BURGE: No, thank you.
8

9 THE COURT: Mr. Spencer, anything to say with
10 respect to those comments?
11

12 MR. SPENCER: No, no. Very good, My Lord.
13

14 THE COURT: Okay. You can bring the witness back in.
15 Good morning.
16

17 **GREGORY WILLIAMS, Previously Sworn, Cross-examined by Mr. Spencer**
18

19 A Good morning.
20

21 THE COURT: You understand you're still under oath?
22

23 A Yes.
24

25 THE COURT: Okay. Proceed, Mr. Spencer.
26

27 MR. SPENCER: Thank you, My Lord.
28

29 Q MR. SPENCER: So, Mr. Williams, dealing firstly with the
30 rifle, PE060; is that the number that you'd be familiar with?

31 A Yes. May I just refer to my notes again?
32

33 THE COURT: Certainly.
34

35 A Yes. PE060.
36

37 Q MR. SPENCER: Okay. Pretty basic Cooley .22 rifle?
38

38 A Yes.
39

40 Q Okay. It was bent at the time you received it?
41

41 A Yes.

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Q Okay. And all ammunition had been removed?

A Yes.

Q And that would be standard practice before shipping a gun?

A I agree.

Q Yeah. You've never -- you've never received one with ammunition in it?

A Well, I have, but that's not -- not the normal.

Q Right. As ill-advised as pointing the gun at you while you testify?

A Very much so, yes.

Q Yes. Yeah. Good. You were able to determine that it was a firearms by *Criminal Code* standards?

A Yes.

Q And although it had been damaged, that there's no reason to believe it was not functional immediately before it was damaged?

A It's -- it's really difficult for me to comment on the function before it was damaged because I didn't examine it before it was damaged. So I can only really speak to the function of it as I received it, which is after it was already bent.

Q Okay. Fair enough. But all the parts were there? Bolt -- bolt was in it?

A The stock was missing, so the wood part.

Q Yeah.

A And the stock is actually involved in holding the ejector in that place. And so I had to manipulate it somewhat unusually in order to get everything to lock up properly.

Q Right. But if -- if you'd put it and the stock together, all the parts would be there?

A Yes.

Q The RCMP had all the parts?

A I -- I was not sent the stock.

Q Oh, okay. Were you sent the casings, the .22 calibre casings?

A No.

1

2 Q Okay. So you weren't asked to -- to match the casings with the rifle?

3 A I was not.

4

5 Q Okay. And you weren't asked to match the stock with the rifle?

6 A I believe there was some discussion about the stock. I can just review my --

7

8 Q Sure.

9 A -- my notes. There's some correspondence. Usually at the start of all my -- my
10 working notes, I keep a record of all the emails and things that get exchanged.
11 And so I have a copy of some correspondence, some discussion. I don't have
12 any record of those -- those emails or communications, just the documentation
13 I have is relating to the requests to do the trigger-pull analysis, which is not a
14 normal request on a case where three shots are fired. Normally we only look at
15 the trigger pull and the shock discharge if there's one shot fired in cases. And
16 so that was the -- the nature of this correspondence. And so there may have
17 been a discussion that went on in a separate sort of thread of emails to do with
18 the stock of the rifle, but I -- I don't have that with me, and I don't recall
19 exactly what I read about that.

20

21 Q Okay. But your recollection is there was some email discussion about putting
22 the stock together and matching it to the barrel?

23 A There is an analysis we can do called physical matching where you'd have two
24 things that are broken that have a fracture pattern, and looking at the -- the
25 pattern of the fractures microscopically, you can tell that those things at one
26 point were attached. So you might look at a broken piece of plastic from a
27 headlight that was found at a scene, that sort of thing.

28

29 Q Right. But so -- some discussion of that, but it was never done?

30 A That's correct.

31

32 Q Okay. Okay. So then talking about the Tokarev. And is that PE087? Am I right
33 there? Have I got --

34 A Yes.

35

36 Q Okay. So that's the handgun that you have beside you in the box, and I'll ask
37 you to refer to that as we work through things here. But firstly, the first thing
38 you did was determine that the three casings, PE35, PE36, and PE43, had been
39 fired in PE87?

40 A Not the first thing, but that was --

41

- 1 Q Okay.
- 2 A -- one thing that I did during the course of my analysis.
- 3
- 4 Q Fair -- fair enough. Timing is your role, but you did that?
- 5 A Yes.
- 6
- 7 Q Okay. Now, would you agree with me that certainly there's significance in that
8 it appears that PE43 was misfired somehow in PE87? There was an
9 ammunition malfunction?
- 10 A There -- there was an abnormal bulge in that cartridge case.
- 11
- 12 Q Okay.
- 13 A Which indicates it was fired in an -- yeah, unconventional way, not in a
14 standard position.
- 15
- 16 Q Okay. And I think you were clear as far as saying no conclusions on some
17 aspects of what happened with that cartridge. But you would agree with me in
18 your expert opinion, there was no doubt it was out of battery?
- 19 A That's correct.
- 20
- 21 Q Okay. How far was it out of battery, in your opinion?
- 22 A It's difficult to say exactly how far out of battery it was at the time of the firing
23 because during the process of firing, even if it's slightly out of battery, the
24 pressure that's exerted from that burning gunpowder will push the bullet
25 forwards, and it'll push the slide backwards. And so if the -- the slide isn't
26 locked up, if the barrel and slide aren't locked together, then the pressure will
27 make the slide move. And so it's a question of -- it's not a fixed and -- the parts
28 move. And so the -- the position at the start of when the trigger is pulled or
29 when the -- when the cartridge is discharged might change. The slide might
30 move during that firing process. And so that bulge, even though the bulge has a
31 size, that doesn't mean necessarily that's the position of the cartridge when the
32 firing was first initiated. Does that make sense? If I'm being confusing there,
33 let me --
- 34
- 35 Q It -- yeah. It -- I'm having a little bit of trouble how -- how you're ever going
36 to measure that. So -- but -- but I hear what you're saying is it's -- it's not an
37 absolute.
- 38 A Well, parts are moving is what I'm saying. So --
- 39
- 40 Q Right.
- 41 A -- at the end of the process, we see how -- where the bulge position was. So

- 1 A (UNREPORTABLE SOUND).
2
- 3 Q Okay. So that's fully forward?
4 A That's fully forward.
5
- 6 Q Well --
7 A The slide is fully forward.
8
- 9 Q Okay. And ordinarily, that's where it would be in an ordinary discharge cycle?
10 A Yes. And so the hammer is cocked.
11
- 12 Q Yeah.
13 A And in this position when I pull the trigger, the hammer falls and would fire.
14
- 15 Q Okay. Well --
16 A And so --
17
- 18 Q -- the hammer falls, hits the firing pin, hits the primer, the primer shoots flame
19 into the powder --
20 A That's right. The powder ignites.
21
- 22 Q In a hang fire, that's the end of the cycle for -- for the time being. We'll talk
23 about that later. But -- okay. So how far out of battery does it have to be?
24 A So right now I have it I would say about 3 millimetres out of battery. So I've
25 pulled it back. And so instead of it being quite flush here at the back of the
26 pistol, it's pulled back a little bit. And so now if I pull the trigger, the hammer
27 is cocked. Nothing happens. The hammer doesn't fall forward because at this
28 point the -- the trigger has been disconnected from that firing process.
29
- 30 Q Okay. And what I'm -- what I'm trying to get is that the minimum distance
31 where that disconnect actually comes into play. So you're saying at 3
32 millimetres, it's not -- it --
33 A So yeah, let me move it forward a little bit.
34
- 35 Q Yeah.
36 A So now maybe that's 2 millimetres. Now it fired, so --
37
- 38 Q Around --
39 A -- one and a half or two or three. It's in that range, but --
40
- 41 Q Okay. You may have come -- come to know I'm -- like, I'm looking for as

1 exact as you can get because this is pretty important. How far with your -- in
2 your opinion, how far would the -- to use layman's terms, the ass end of that
3 cartridge, be hanging out of the chamber when it went off in this instance,
4 based on PE43?

5 A I don't know.

6

7 Q Okay.

8 A As I described.

9

10 Q Would you believe -- is your best opinion that it would be more than the one
11 and a half, two and a half millimetres we've been discussing?

12 A No.

13

14 Q You'd say not?

15 A No.

16

17 Q Okay.

18 A Not necessarily. I -- I don't know, but I wouldn't say --

19

20 Q Right. You're not saying it wasn't. You're saying you don't know.

21 A Precisely.

22

23 Q Okay. Got you. Because I -- yeah. Okay. Fair enough. Now, when we talk out
24 of battery, there's two components to that. The one is the slide not being
25 locked in, so once the slide opens up, you say that's out of battery, that gun is
26 out of battery?

27 A Yes.

28

29 Q And then the second term of out of battery would be if we're talking about the
30 actual cartridge not being right in the chamber?

31 A So when we're -- yes.

32

33 Q Yeah. So there's two -- when we talk out of battery, that duped me for a while
34 there, but there's two types of out of battery?

35 A The slide position and the cartridge position.

36

37 Q Right.

38 A I agree.

39

40 Q And practically, the slide has to be more out of battery than the cartridge?

41 A So the slide and the cartridge move together. The slide is what picks up the

1 cartridge and puts it into the chamber. So if the slide doesn't go into battery,
2 the cartridge won't be in battery either.

3

4 Q Right. But if the -- if the slide comes out of battery and the cartridge comes out
5 of battery, they don't have to be exactly the same distance, right? The slide
6 can't be less out of battery than the cartridge, right?

7 A Right.

8

9 Q Yeah. Okay.

10 A I'm just trying to think if the opposite can be true. Can the cartridge be out of
11 battery -- can the slide be out of battery more than the cartridge?

12

13 Q Well, of course, it could be.

14 A I think --

15

16 Q The slide could --

17

18 MR. BURGE: Perhaps the witness could finish his
19 answer, My Lord.

20

21 THE COURT: Yes. Just let him finish, and then you can
22 ask another question.

23

24 MR. SPENCER: Okay.

25

26 A It would take some manipulation. I think I could do that. I could -- I could
27 position them in that way so that the slide was more out of battery than the
28 cartridge, yes, but not the vice versa.

29

30 Q MR. SPENCER: Right. Yeah. Yeah.

31 A Yeah.

32

33 Q And (INDISCERNIBLE) but practically, the slide can be locked all the way
34 back, and the cartridge could be one millimetre, two millimetres, an inch out,
35 right, out of battery?

36 A So for that to happen, the extractor would have to fail to extract, because
37 normally the extractor locks onto the rim of the cartridge --

38

39 Q Right.

40 A -- and they move together, the cartridge and the slide. They're -- the -- there's a
41 hook on the extractor that clicks into that little rim on the head of the cartridge.

1 And so it can happen that the extractor slips off of the cartridge, and then you
2 have what you described.

3

4 Q And there's no way of knowing how far out of battery the cartridge would be
5 versus the slide in that instance?

6 A There's no way of knowing after the fact when I looked at -- when I examine a
7 cartridge casing --

8

9 Q Right.

10 A -- I agree.

11

12 Q Yeah. Okay. And at a certain point, if the slide is too far out of battery and the
13 cartridge too far out of battery, and it discharges, the gunpowder explodes,
14 you're going to have a -- the gun will blow up or come -- it'll come out the --
15 what is it, ejection slot or the --

16 A The ejection port?

17

18 Q Yeah.

19 A So the -- so if -- if the pistol discharges while the slide is far enough out of
20 battery, then the cartridge -- even if it's out of battery, as well, if it isn't
21 supported -- then that pressure that's being generated inside that cartridge case
22 will try to escape out the barrel, as well as out the side of the cartridge, which
23 would cause the bulge. Now, it could also burst, and I've seen examples of that
24 in other people's research.

25

26 Q Right. Probably more likely to burst with brass casing than this -- is this -- is
27 this steel?

28 A It's magnetic, and so it probably has steel alloy.

29

30 Q Okay. So -- so brass would be softer metal, more likely to split than this one?

31 A I agree.

32

33 Q Okay. It takes a fair bit of pressure to create the bulge that we're talking about
34 here?

35 A I agree.

36

37 Q Okay. Any way of knowing how much pressure?

38 A A metallurgist perhaps could tell you.

39

40 Q Yeah.

41 A I'm not --

1

2 Q Right. But -- but that -- and what I'm getting at lots, but very difficult to know
3 whether it's all the gunpowder, like a full blast, or -- or half a blast or
4 comparatively very difficult to know?

5 A Perhaps an ammunition manufacturer would have to pay attention to details
6 like that, so it's -- it's a knowable thing. We could determine that, but I -- I
7 personally couldn't. We don't have any sort of analysis at the laboratory to test
8 the pressure within a cartridge or the -- the pressure that would be required to
9 cause that kind of a deformation.

10

11 Q Okay. So from your perspective, you don't -- you don't know?

12 A I don't know. And I couldn't do that analysis myself.

13

14 Q Right.

15 A Yeah.

16

17 Q Yeah. But certainly we're -- we're a long way from a dud? The primer
18 wouldn't do that?

19 A The primer alone?

20

21 Q Yeah.

22 A With no powder, wouldn't cause that kind of deformation.

23

24 Q Yeah. Right. So some powder, how much, don't know. Okay. So your initial
25 go-around was -- correct me in time if you want, but it's -- for my purposes,
26 what's of significance is match the cartridges. That's fine. And then you did
27 some shooting with PE33, and those were cartridges provided?

28 A Yes.

29

30 Q And you got a bag of 80 of those or -- or --

31 A I'll just check the number. Yes, 80 cartridges.

32

33 Q And so as I understood it, you fired some of your RCMP cartridges, which
34 were similar?

35 A In the initial analysis, yes.

36

37 Q Yeah. And then you fired six of the ones that you understood came from the
38 investigation?

39 A That's correct.

40

41 Q Okay. So those would be Mr. Stanley's cartridges?

- 1 A Presumably, yes.
2
- 3 Q Okay. How many cartridges in a box?
4 A I'll just review some photographs I took of those -- that ammunition to see how
5 it was packaged. So those -- those 80 cartridges came in two boxes. And so it
6 appears there were 40 cartridges per box.
7
- 8 Q Okay. Okay. And of the six -- so you fired 6 of the 80 from two different boxes
9 or from one box or do you recall?
10 A I don't recall.
11
- 12 Q Okay. And of those six, one was a dud?
13 A One misfired, yes.
14
- 15 Q And by "dud", you understand one that was struck in the ordinary course from
16 your expert opinion, should have gone off, but didn't?
17 A Yes.
18
- 19 Q Okay. So -- so you got two full boxes? Is that what happened there?
20 A So I can go through exactly what I received, if you'd like.
21
- 22 Q Okay. I just want to know about -- about PE33 because if -- if they're 40 per
23 box and you've got 80 of them, my -- my thought is you've probably got two
24 full boxes.
25 A Well, I can just go through my description of what I received.
26
- 27 Q Sure.
28 A So I received one large plastic bag which contained two plastic bags. The
29 larger of those two bags contained a cardboard box, which contained a holster
30 that contained a pistol. So that was one item. The second item, the smaller of
31 the two plastic bags, contained three cardboard boxes, six empty clips, eight
32 cartridges on a clip, and four expended cartridge cases on a clip. One of the
33 boxes was crushed and empty. One of the boxes was sealed and contained 40
34 cartridges on five clips, eight per clip. And one of the boxes was not sealed and
35 contained 32 cartridges on four clips, eight per clip. And so I marked all of
36 those boxes and layers with my initials and --
37
- 38 Q Got you. So a bit of a mishmash?
39 A Yeah.
40
- 41 Q Okay. And you also got -- some casings were provided, as well?

- 1 A There were.
- 2
- 3 Q Okay. And -- and just to close that loop --
- 4 A Four.
- 5
- 6 Q -- those casings were all regular?
- 7 A I have a note that I did no analysis on the clips or on the four expended
- 8 cartridge cases.
- 9
- 10 Q Okay.
- 11 A So I didn't make any notes on them. I have a photograph, but it's a -- sort of a
- 12 shot of everything. I can't see the details of those.
- 13
- 14 Q Okay. Sitting here today, your evidence is that's -- that PE43 is the only
- 15 Tokarev casing you've seen distorted in that way during your entire
- 16 investigation?
- 17 A Yes.
- 18
- 19 Q Okay. So any of the ones you shot appeared regular?
- 20 A Yes.
- 21
- 22 Q Yeah. And certainly, once PE43 became an exhibit of interest, you were
- 23 looking for any other signs?
- 24 A Yes. There may have been some very slight distortion to the one that I shot in
- 25 the wrong calibre. So that was slightly more distorted, but nothing close to the
- 26 bulge in this cartridge case.
- 27
- 28 Q Right. And -- and I think your evidence was microscopically, every casing
- 29 expands a little tiny bit?
- 30 A Yes.
- 31
- 32 Q Yeah. But if it's supported, it only expands to the extent of the barrel?
- 33 A Yes.
- 34
- 35 Q Okay. Or the chamber it's in? Okay. Which brings me to your first theory. So
- 36 as by what -- what caused PE43, you're a scientist of -- in nature, so you're
- 37 trying to solve the riddle. Your first theory, and this may not be your order, but
- 38 we'll -- we'll go through them and make sure I don't miss one -- was the
- 39 oversized barrel theory. Correct?
- 40 A That was a -- a theory.
- 41

1 Q A theory.

2 A Yeah.

3

4 Q Okay. So let's -- that's one of your theories. So you're thinking there was, if
5 you had an oversized barrel, the casing would -- would distort to the size of the
6 barrel, and that would give you some evidence?

7 A Yes.

8

9 Q Okay. And I think you did your experiment, and it turned out it wasn't very
10 good evidence. It actually didn't expand as much as you thought?

11 A That's correct.

12

13 Q Okay. Any evidence of -- and I guess I now know you don't need wrenches to
14 change out a barrel, but you'd need another barrel, and it would have to fit in
15 the gun. You can't just take parts of different manufactured guns and put them
16 together?

17 A That's correct.

18

19 Q Right. So that's pretty difficult to put an oversized barrel on a handgun?

20 A It really depends on your experience.

21

22 Q Okay.

23 A It's not a complicated procedure if you have the right tools and the right parts.

24

25 Q But you've got to have the right parts?

26 A Yes.

27

28 Q Yeah. And even that wouldn't explain the distorted casing, based on your
29 experiment?

30 A I agree.

31

32 Q Okay. So we can eliminate that one, correct? You agree?

33 A Yes. That's not a likely scenario.

34

35 Q Okay. And -- and I'm not being critical there. I understand you're trying to
36 come up --

37 A Yeah.

38

39 Q -- any possible theory?

40 A Well, and -- and my -- my evidence is one anecdote. And so for me to say
41 "eliminate a theory", I would say that it makes it less likely, certainly.

1

2 Q Okay. So -- but for our purposes, you don't believe that's relevant to PE43?

3 A No.

4

5 Q Okay. Good. So your next theory was -- what's your -- the next theory that you
6 -- and I think you said you're brainstorming with guys around the lab?

7 A That's correct.

8

9 Q Trying to come up with any explanation?

10 A Yes.

11

12 Q What's the next one? You pick one.

13 A The mechanical malfunction.

14

15 Q Okay. So explain that to me, what your -- what your thought was, or is that --
16 or have you eliminated that one? If you've eliminated it, then that's fine.

17 A No, I haven't eliminated it. The mechanical malfunction would involve some
18 of the parts of the firearm not functioning in the normal way. And so the -- the
19 interrupt would have to fail, for example, when it was out of battery, or it
20 would require that -- you would have to have it -- sort of two things go at the
21 same time. If, just as a scenario, one possible mechanical malfunction would
22 be if there was a -- a misfire first, so the -- the firing pin fell and was sitting
23 forward, but the gun did not fire, and then mechanically the -- the slide were
24 pulled backwards just slightly -- not far enough to engage the sear and to lock
25 that hammer back, but just to put some spring tension on the hammer and then
26 release that, it could follow forward. The hammer would follow the slide
27 forward and hit a second time. And so it would be a misfire in combination
28 with manipulation, mechanically, to cause that firing out of battery.

29

30 Q Okay. So --

31 A Or a broken part. I've seen examples where broken springs and things like that
32 can cause a mechanical.

33

34 Q Yeah, and I think you were talking about an anecdote yesterday of missing
35 parts created that --

36 A Yes.

37

38 Q -- type of scenario.

39 A Yes.

40

41 Q Okay. Were any parts missing on this Tokarev?

- 1 A No.
- 2
- 3 Q Did you see any -- is it -- was it broken in any way?
- 4 A Not to my knowledge.
- 5
- 6 Q And what -- what was the -- the third option you said? Oh. Any evidence of
7 malfunction whatsoever? Like, you say you needed a failure of the trigger
8 disconnect.
- 9 A So the -- the details of the firing of the pistol. I do have some notes on -- on the
10 two sort of notable cases that happened while -- during my test-firing were the
11 -- the misfire, when I pulled the trigger and it went "click" and did not fire, and
12 also -- just going back to my notes on the -- on the firearm itself. So from my
13 count in -- after one shot in the range determination, the expended cartridge
14 case failed to extract or eject. This prevented a subsequent shot from
15 chambering and the pistol jammed. I used a hammer to force the slide back,
16 unlock the barrel, and observe the chamber. The extractor had sheared off the
17 edge of the case, the cartridge case, and I used a cleaning rod to extract the
18 head. So in that case, the -- the extractor sheared off the edge of the cartridge
19 case in one of my tests. And so the -- the cartridge case stayed jammed in the
20 chamber.
- 21
- 22 Q Okay. Any malfunction with the trigger disconnect?
- 23 A No.
- 24
- 25 Q You didn't observe anything that way?
- 26 A I did not.
- 27
- 28 Q Okay. Now, we agree that the cartridge was some distance out of battery when
29 it exploded, when the gunpowder exploded?
- 30 A Yes.
- 31
- 32 Q Okay. Can we agree that it was in chamber at some -- fully in chamber at some
33 point when it was struck by the firing pin?
- 34 A No. I don't know whether or not it was fully in chamber or whether it was out
35 of battery at the point when the firing pin struck.
- 36
- 37 Q Right. But -- but for you to -- to match the three casings as having been fired in
38 that gun, you would have matched that they were all struck similarly on the
39 primer, right?
- 40 A I don't believe that I used the same markings for all the identification of those
41 cartridge cases.

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Q Okay.

A So there are different surfaces on the inside of the gun that all can leave marks on the ammunition components. So I believe in one instance, I used the breach face marks, which are the marks that are imparted by the -- the flat area that supports the head of the cartridge. And in another instance, I used the firing pin drag mark, which is a drag mark that the firing pin leaves as the -- typically as the barrel unlocks, the firing pin slides a little bit and leaves a drag mark in semi-automatic pistols.

Q Okay.

A So I used a variety of different marks.

Q Okay. So theories of what malfunctions might have occurred, you had one failure to eject. You had a dud. But no evidence of a trigger disconnect malfunction?

A I agree.

Q Yes. And as soon as we're over -- it looks like over -- let's use -- we don't have an exact, but let's say once you go over 2 millimetre of out of battery, the slide out of battery, whether the casing is fully flush or it comes with it, the trigger won't pull. The trigger is useless to you?

A I agree.

Q Okay. And I guess I've got to be careful there. The trigger will pull, but it doesn't do anything?

A Yes.

Q Right. Okay. Okay. So mechanical malfunction was a possibility --

A Yes.

Q -- but you don't have any evidence that that played a part in PE43. Can't rule it out, but certainly no evidence that that's what caused it?

A I agree.

Q Okay. What was your next theory that you investigated?

A The possibility of a malfunction of the ammunition.

Q Okay. And is -- is that hang fire theory?

A Yes.

- 1 Q Okay. Is there another one -- let's --let's put hang fire to the bottom.
- 2 A Okay. The other was a barrel obstruction.
- 3
- 4 Q Okay.
- 5 A So this is sort of related to the idea of a mechanical malfunction, just the cause
- 6 of this malfunction or the cause of the cartridge being out of battery in this case
- 7 would be that something else was preventing it, something was blocking it. So
- 8 I read of an instance where there was a lot of grime or -- or oil in a barrel, and
- 9 then that -- at the point when the cartridge was trying to enter, it just got
- 10 jammed up. It got hung up on that grime. And so it didn't quite fully chamber,
- 11 and it resulted in a --
- 12
- 13 Q Okay. Where -- where did you read about that?
- 14 A So that was in -- in an article from the Association of Firearms and Toolmarks
- 15 Examiners.
- 16
- 17 Q Okay. Would that have been a first round in a gun or would it have been
- 18 subsequent?
- 19 A I don't recall the exact circumstances of the firing. It was a -- a rifle, not a
- 20 handgun in this case.
- 21
- 22 Q Okay. So is that a -- what you're reading, was that a -- was that a manual or
- 23 something? Or is it a --
- 24 A This is -- it's a journal, it's a professional journal for firearms examiners and
- 25 forensic specialists.
- 26
- 27 Q Okay. So the PE43 that we're concerned of -- and I guess you may not know
- 28 this. You're just dealing with what was provided to you, but assuming it's the
- 29 third round in a series, it would be more likely the first one would jam in that
- 30 way than the third one; would you agree with that?
- 31 A No.
- 32
- 33 Q Oh, why is that?
- 34 A Mechanical jams and malfunctions in the course of firing do happen, and they
- 35 could happen on the first shot or on the third shot. It would have to be the
- 36 result of something transient, though, because when I received it, there was no
- 37 evidence of an obstruction, and I was able to fire it successfully. And so
- 38 presumably, if there was an obstruction, when it did fire, that obstruction went
- 39 out the barrel with it.
- 40
- 41 Q Okay. And that's all I was getting at is if there was an obstruction at the start of

1 shooting that day, the first round would likely clear it?

2 A Well, if the obstruction was due to something in the second shot, so if a little
3 clump of something broke off as it was getting extracted, and then that clump
4 jammed it in the third shot, and then the third shot blew that clump out, I would
5 never see it. So it would have to be something transient that occurred between
6 the second and third shots.

7

8 Q A little clump of something?

9 A Rust, debris, dirt, oil.

10

11 Q Okay. So I think you -- you said you personally have absolutely no evidence of
12 any little clumps of anything?

13 A I agree.

14

15 Q Okay. So from your perspective, that's something you had to investigate, but
16 you have no evidence to support that?

17 A There -- there's no evidence that there was an obstruction.

18

19 Q Right. Okay. So theoretically, it could explain, but there's no evidence?

20 A Yes.

21

22 Q Okay. Your next -- the next theory that you investigated?

23 A That was the -- so besides ammunition malfunction was the possibility that if
24 the slide, the rearward motion of the slide were blocked, then the cartridge case
25 could not be extracted, and that pressure might deform the case. So I tried
26 firing the gun with the -- with the slide blocked by a big metal stand.

27

28 Q Okay. The -- the other ones, the other theories, I get what you were looking
29 for, but this one I don't understand because the bullet -- if the bullet -- the
30 cartridge is fully chambered, and then the hammer strikes the firing pin which
31 strikes the primer, and it goes off in the usual cycle, that's all done. The bullet
32 is gone before there's any backwards movement, right? Like, I don't
33 understand how that one would even possibly -- like, even theoretically be
34 relevant, but can you help me?

35 A The timing is -- is close. So as -- as the bullet is moving down the barrel, the
36 force is already acting on that slide and starting to move it rearward. I mean,
37 there is a lock in place that delays that, but I thought that was a possibility if
38 that --

39

40 Q Okay.

41 A -- if the -- if the extraction were prevented, that the residual pressure that was

1 still in the barrel as the bullet is moving out could cause that bulge.

2

3 Q But not if it's right in the chamber, fully supported?

4 A Well, but as soon as that bullet is going, the -- the extractor will then move to
5 act and pull that out. And so what I tried to do is to have that extraction occur
6 to about the same distance, you know, for -- for a centimetre or so, so that the
7 slide can only move one centimetre, pull it back, and see if the residual
8 pressure in that barrel was enough to cause a deformation.

9

10 Q But in an ordinary cycle, the back pressure doesn't even start until it -- the --
11 the pressure has to start to release or go down before it will release, right?
12 Like, isn't that part of the locking -- when it explodes, it's locked. The bullet's
13 gone, and then the pressure starts to go down, and that's when it releases and
14 the barrel drops down and you start the cycle, right?

15 A Yes.

16

17 Q So delaying that would actually keep the cartridge -- the casing now, because
18 the bullet's gone, would actually keep it in battery longer, right?

19 A So in the case of blocking the rearward motion of the slide?

20

21 Q Right, yeah.

22 A So I attempted to block it after it moved. So I didn't block it flush up against.

23

24 Q Okay.

25 A But I allowed it to move one centimetre and then stop so that it couldn't be
26 fully extracted.

27

28 Q Okay.

29 A So it was a timing issue, and I -- I'm not exactly sure on the time cycle of the
30 development of pressure and how exactly --

31

32 Q Well --

33 A -- this is milliseconds, right? The pressure develops over time and then
34 decreases over time. I thought it was a possibility worth investigating.

35

36 Q Okay. In any event, you eliminated that as a -- you did your testing, and --

37 A Yes.

38

39 Q -- you would agree with me that whether it was theoretically sound or not, no
40 evidence of that?

41 A I agree. The --

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Q Okay.

A No evidence.

Q Okay. Now, have I covered everything except hang fire?

A Yes.

Q Okay. So the anatomy of a hang fire. And it -- I guess first thing. If I have a cartridge and I hold it in the air and I am able to somehow hit the primer hard enough, that cartridge will explode?

A Yes.

Q So I don't need a gun, in theory -- pretty tough -- but I don't need a gun to fire a bullet in -- or a cartridge, in theory?

A I agree.

Q All right. So, you know, the whole -- guns don't really fire cartridges, they cause them to be struck and provide a direction for the bullet to go; agree?

A I agree.

Q Okay. So anatomy of a hang fire is a cartridge is in place, ordinary cycle. The primer is struck by, in this case, a firing pin, correct?

A Yes.

Q I watch too many western movies, so I always thought the hammer struck the cartridge, but in this case, the hammer struck -- strikes the firing pin, and then the firing pin strikes the primer?

A Yes.

Q And then -- so that's the -- so any bullet discharged requires two explosions, correct?

A One explosion, I would say, and one burning event, one --

Q Okay.

A -- deflagration.

Q Okay. So the primer would be the explosion?

A Yes.

Q Okay. So that explosion, then, in a good fire, lights the gunpowder?

A Yes.

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Q Whatever that -- and you're saying that varies. And then when that gunpowder burns very quickly, that creates pressure?

A Yes.

Q Gases. Bullet goes one way, casing comes back, goes the other?

A Yes.

Q Right? And the bullet goes first, right?

A Yes.

Q Which is what we're talking about. The bullet will be gone before the pressure comes down enough to start the backwards cycle; agreed?

A Yes. It's -- the timing is -- these things are happening at the same time. That -- the locking of the barrel delays the -- the movement of the slide.

Q Right. Backwards?

A Yes.

Q Forwards. Split-seconds. I get, you know --

A Yes.

Q -- what we're talking here, but -- so in a dud, hammer hits the firing pin, the firing pin hits the primer, the primer does not explode?

A Yes.

Q So over? If you re-hit it, you might get the primer to explode?

A Yes.

Q Has that been your experience? That happens?

A Yes.

Q Probably more often than not, but is not irregular -- not unusual?

A I agree.

Q Yeah. Okay. In a hang fire, the primer explodes, but the gunpowder doesn't immediately explode? Or doesn't immediately catch fire?

A So -- so it depends. Either the primer is delayed in its own reaction or the powder is delayed in its reaction.

Q Okay. That's a maybe a different twist, then. So you're saying that you could

- 1 have the strike and the primer might not explode right away. There might be a
2 delay from the strike to the primer going off?
- 3 A Yes. That's a possibility. The other possibility would be a delay in the powder.
4
- 5 Q Okay. Okay. So of that cycle, you need the -- this primer has to be struck, then
6 it has to explode --
- 7 A Yes.
8
- 9 Q -- and then the gunpowder has to catch fire?
- 10 A Yes.
11
- 12 Q I appreciate I'm dummying down your expert opinion here, but I'm trying to
13 get it so I can understand it, and if I can, then I --
- 14 A Yeah.
15
- 16 Q -- expect the jury will be -- be there. So either the -- there's a delayed primer
17 explosion. That would be -- create a hang fire, technically?
- 18 A Yes.
19
- 20 Q Or it does explode, and the gunpowder doesn't catch fire?
- 21 A Yes.
22
- 23 Q Okay. Is it possible for that primer to light some of the gunpowder and create a
24 smoldering in the cartridge?
- 25 A Yes.
26
- 27 Q Okay. Is there any way to determine how long it would -- could smolder before
28 it would either catch fire or go out?
- 29 A Well, I was thinking more in terms of a possibility that half or some -- a
30 portion of the powder was degraded, so you had contamination from water,
31 from oil, and a portion of the powder was defective. In that case, the part of the
32 powder that wasn't defective would burn normally, right away, but the rest of
33 it would all remain unburned.
34
- 35 Q Right. And --
- 36 A So you'd have partial burning.
37
- 38 Q Right. And so you could have a portion of it burning slowly, not enough to --
39 to create the discharge pressures necessary. So some of the gunpowder could
40 be burnt off before you have an explosion; agreed?
- 41 A I'm sorry. I just -- can you just repeat the question? The explosion part

- 1 confused me.
- 2
- 3 Q Okay. You could have a situation where some of the gunpowder did catch fire
4 and smolder, so it was burning off slowly, but not the -- the -- not sufficient
5 enough to cause the explosion necessary to cycle the weapon.
- 6 A Oh, I see. So if it was burning slowly and it would just produce the pressure
7 slowly, in which case you would -- there isn't so much an explosion of the
8 gunpowder as it just expands. As it burns, it produces a lot of gas, and that gas
9 creates pressure, and that's what pushes the bullet out.
- 10
- 11 Q Okay. But if -- if a small portion of the powder is burning slowly, you'd start to
12 build pressure, but again, not sufficient to cause the -- the regular discharge
13 cycle?
- 14 A Right.
- 15
- 16 Q So in a dud, that might very well occur, and it fizzles out before it ever gets to
17 enough pressure, and you throw it in the dirt?
- 18 A So yes. And I -- I would say -- I would just qualify that these answers about
19 hang fires are speaking about all different types of ammunition and not
20 specifically to the ammunition in this case. This is just general hang fire
21 information.
- 22
- 23 Q Right. Because we don't know any specifics about that PE43? We don't know?
- 24 A That's correct.
- 25
- 26 Q Right. But we have to take the theories to try to figure out what could have
27 happened?
- 28 A Yes.
- 29
- 30 Q Okay. How long did you wait before you removed the dud you had?
- 31 A The -- it would have been a period of time, five to ten seconds. I don't know
32 exactly how long.
- 33
- 34 Q Are you a firearms instructor?
- 35 A I am not an instructor.
- 36
- 37 Q Okay.
- 38 A But I -- I do sometimes help to assist new examiners in firing guns.
- 39
- 40 Q And what is the rule on how long you wait after a click?
- 41 A It depends where you read it, but I've read both 36 seconds and 60 seconds as

1 recommended for --

2

3 Q Okay. Well, let's restrict it. We're talking about a handgun.

4 A Yes.

5

6 Q So what's the rule for a handgun?

7 A For -- for the -- the safety restricted course, I believe 60 seconds is the
8 prescribed length of time to keep the pistol down range.

9

10 Q Okay. So that's the comfort zone for -- that's what we're teaching people? The
11 comfort zone is 60 seconds?

12 A Yes.

13

14 Q And you're saying some would say 30 seconds would be adequate?

15 A Yes, some -- some would.

16

17 Q Okay. You had talked about doing research on hang fires?

18 A Yes.

19

20 Q And would you agree with me it's very difficult to recreate a hang fire?

21 A In -- in what?

22

23 Q Or I guess to create a hang fire, to simulate a hang fire?

24 A It is. And so I -- I read two -- two main articles on this topic. One was called
25 "To Create a Hang Fire", and it dates back to, I believe, 1991. And the author
26 in that case attempted to create hang fires by deliberately contaminating the
27 ammunition. The other article I read on the topic was -- it's called "Why Hang
28 Fires Never Happen or Hardly Ever Happen", and that was by a Colonel
29 Crossman in 1971, the *American Rifleman*.

30

31 Q Okay. So what was that? 1971?

32 A 1971.

33

34 Q Okay. Did you do any Internet searches on hang fires?

35 A Perhaps I did. I don't have any recollection of exactly what methods I
36 searched. I -- there is a database of articles that the Association of Firearms and
37 Toolmark Examiners has that's searchable, and so it -- as part of my research,
38 I'm sure I looked in there, which is online.

39

40 Q Okay. By their -- by definition, a hang fire is a malfunction, right?

41 A Yes.

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Q So did the article about creating a hang fire, does it -- do they figure out some way to do it consistently?

A They did.

Q Using regular ammunition?

A Using ammunition that they deliberately contaminated with oil or with ethanol or with acetone or with a mixture of different chemicals. I think they used gun oil, as well.

Q Okay. So just going back, the Tokarev handgun, would you consider it a quality firearm?

A I don't really think about firearms in terms of quality. I would say that it's a functional firearm.

Q Okay. What about the ammunition available for that firearm?

A The -- the ammunition appeared to be surplus military.

Q Okay. Is -- from when?

A 1953, I believe I testified yesterday, the head stamps indicate.

Q So it's surplus from where?

A Czechoslovakia.

Q So surplus Czechoslovakian ammunition that's over 60 years old?

A Yes.

Q Would that raise -- with those facts, would that raise some concern with whether that ammunition might be somewhat degraded?

A Yes. Age and storage would be factors.

Q Okay. Now -- (INDISCERNIBLE) do you have a storage cycle that you feel is adequate, obviously, to -- to maintain the integrity of ammunition?

A Yes.

Q Okay. What if the ammunition, the surplus Czechoslovakian 60-year-old ammunition, was stored in a shed -- in a garage?

A It would be more likely to rust.

Q Okay. And we have -- we're dealing with a steel casing?

A Yes.

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Q Okay. Were you provided with -- what do you call the -- the cartridges in the same box? I'd call them a cohort, but I don't know if that's right.

A I would call it a lot.

Q A lot? Okay.

A M-hm.

Q So the one -- a box. Were you provided additional cartridges from the same lot as PE35, 36, and 43?

A The head stamps on the cartridge cases were the same. But I'm not sure about how those lots are named and how those head stamps were changed. It could be millions of cartridges with those same stamps.

Q Right. It would be hard for -- for you to know without having some other information?

A Yes.

Q Okay. Did you receive another one of those cartridges that appeared to have been struck with -- what looked like a dud?

A Let me just refer back to my --

Q Yeah, absolutely.

A -- my notes. The -- in the initial submission --

Q M-hm?

A -- I did not receive any live ammunition.

Q Okay. And I can help you there. After August of 2017, did you receive additional Tokarev cartridges and a dud?

A So this was when I was doing the third report. Yes. I received one misfired cartridge. This was --

Q When did you receive that?

A Oh, this is -- oh, I'm sorry. May the 30th. So you said in August 2017?

Q Yes.

A So I don't see a record of receiving exhibits on that date.

Q Okay.

A In -- in this case.

1

2 Q But the best comparables for you to do your expert analysis would be
3 cartridges from the same box; agreed?

4 A For which analysis? For the microscopic analysis?

5

6 Q Well, for the firing analysis and any comparables, that the best thing would be
7 more -- other cartridges from the same box, right?

8 A The same box, but that's not really essential. As long as they have the same
9 composition, the same metal.

10

11 Q Well, but if they're from a different lot, how do you know they've got the same
12 composition? These -- these are all over the place. These bullets are all over
13 the place, aren't they?

14 A Well, I'm looking -- I'm looking at the reproducible marks being left by the
15 firearm. And so sometimes, even using a different type is -- is instructive
16 because brass picks up the marks a little bit differently than steel. But you're --
17 I agree that in -- in most instances, I would try to pick the type of ammunition
18 that most closely resembles the -- the type that I'm examining, the questioned
19 exhibits.

20

21 Q Right. But we're trying to, like, figure out what happened with PE3 [sic], that
22 casing. The -- the best cartridges for you to be using for that -- I'm not worried
23 about the toolmarks, you know, that -- we're way past that, but it was -- it was
24 being struck by the same firing pin. I'm good with that.

25 A Yeah.

26

27 Q But if we're doing a comparison to try to get some information about PE43,
28 ideally you would use the next cartridge from the box, wouldn't you? Because
29 it's got the same -- it's most likely the identical composition because it went
30 into the same box. So whatever factory it was created in 60 years ago, it would
31 be similar that way. The storage would likely be similar, that the -- they'd all
32 be together. The -- the corrosion, exposure, all those other factors would be
33 equivalent with the same box, right?

34 A I agree that -- if the question is, you know, is the ammunition functional, then
35 examining the specific ammunition in question is appropriate, the specific box
36 of ammunition, for example. But I don't think it would have to be exactly the
37 next cartridge, as you suggest, in a strip or in a -- in a collection. For me, the
38 question -- it depends on what the question you're asking. And so for me in
39 this analysis, the question was -- at the time that I did this repeated analysis
40 was does this ammunition appear to be functional or is it prone to misfire. And
41 so I did that -- that last analysis of an additional 36 shots, I believe? Let me just

1 double-check. So my question really wasn't, is there -- which one of these
2 cartridges is most like these last shots. It was a question about looking at all of
3 this lot of ammunition together, is it functional or not. And so I chose to
4 discharge about half of it. Yeah. So I received 74 cartridges, and I discharged
5 36 of those.

6

7 Q Okay. So if we're looking for -- for malfunctions of ammunition, you probably
8 should have a look at any other duds or other malfunctions; would you agree?

9 A Yes.

10

11 Q All right. So if the RCMP were provided a cartridge from that lot that appears
12 to be a dud, that's something you should have had a look at?

13 A To what end?

14

15 Q Well, to try to figure out what happened.

16 A If it was a dud, then to identify that the firing pin had been struck by the same
17 firearm? It depends --

18

19 Q No, no, not to -- not to match it with the firearm. To say here's another
20 cartridge from that same box that was a dud. Isn't that, like -- am I missing
21 something or when -- as we start -- doesn't it pique your interest that you got a
22 dud and I got a dud, and then we have this irregularity?

23 A So --

24

25 Q Like, doesn't that help you that there's a problem with that ammunition?

26 A It's not unusual to have misfires with firing ammunition, especially old
27 ammunition like this. It's not uncommon. And so for me, I would -- if -- if an
28 investigator asked me if he should send in defective ammunition that he found,
29 a cartridge, I would only suggest it in the case if they wanted me to do the
30 microscopic comparison. That would be how I could sort of use that to provide
31 information to the investigator. But a misfired ammunition component, a
32 cartridge, could have happened 20 years ago. I don't know what context that
33 was -- what it came from.

34

35 Q Okay.

36 A What firearm it was fired in. And a misfire like that could just be a dent in the
37 cartridge, too, from storage. And so I -- I couldn't say over the phone -- and I
38 don't know that I would be able to examine a misfired cartridge and provide
39 much value. I could pull it apart and look at the powder and say that those
40 components are all there. But there's not a lot of forensic analysis in a misfired
41 cartridge.

- 1
2 Q Right. But if you had a -- a dud from the same lot, isn't that exactly what you'd
3 do is pull it out and have a look at the gunpowder? Isn't that a -- you've got a
4 -- a cartridge -- a comparable cartridge that didn't go off. Why wouldn't you
5 open that up to see if the -- the gunpowder had been burnt a little bit, what --
6 what's going on in that comparable cartridge?
7 A It's not a typical analysis that we do in the forensic lab.
8
9 Q Okay. Did anybody tell you that there was a -- a dud that came from the same
10 -- came from Mr. Stanley?
11 A So you -- there was a misfired cartridge besides the ones that I examined? I
12 wasn't --
13
14 Q Yes.
15 A -- aware of that, but --
16
17 Q Nobody talked to you about that?
18 A I don't recall it. I've had a lot of conversations about this case over the last few
19 years.
20
21 Q Okay. It certainly wasn't provided to you?
22 A Not -- not to my knowledge.
23
24 Q If you were aware of that, would you have wanted to have a look at it?
25 A No.
26
27 Q Considering -- no, you wouldn't have?
28 A Well, I wouldn't have been able to do much with it. I could have, if -- if it was
29 important to, you know, someone's questioning, I could have pulled it, like I
30 said, just to examine if those components are there. But I don't -- this is not the
31 normal type of analysis that I've done. I've done about 200 different cases, and
32 this is not a typical type of analysis that we do, analyzing a bulge like this or
33 describing it. This is a unique case.
34
35 Q Right. But that's my point. You -- this is a really unique case. It doesn't fit into
36 all -- don't you have to do -- make more inquiries when you don't know what
37 the answer is? Don't you think it would have been pretty valuable to pull that
38 dud apart and see if that powder is partially burnt in there? Doesn't that help
39 you say, well, I bet you -- P40 -- it would make it more likely that PE43 had a
40 partial burn in there and that it was, in fact, a hang fire?
41 A No, I would say that it does not make it more likely. I would say that it would

1 be -- again, information that wouldn't -- I wouldn't expect that information to
2 be useful. I wouldn't have requested it myself as an extra analysis, had I been
3 aware that there was a misfired cartridge.

4

5 Q Okay. But I don't understand how you're concluding it won't be useful when
6 you don't do it, when nobody even told -- like, isn't -- isn't that your job as a
7 scientist? Don't you gather as much information as possible and if it's a dead
8 end, fine. But wouldn't you like to know whether that gunpowder is defective
9 in the actual cartridges? Wouldn't that help you?

10 A So the -- the question would be is if -- if the gunpowder were slightly burned or
11 if it weren't slightly burned, that really wouldn't inform the rest of the analysis
12 that I did in this case. And so in either event, if I pulled the cartridge case and
13 examined it, if I saw partially burned powder or if I didn't, it wouldn't change
14 any of my other conclusions or results. There was no forensic value in that
15 analysis that I can see.

16

17 Q Well, what if you pulled it and you found that that fire -- the gunpowder in that
18 comparable cartridge was severely degraded, such that it very well may receive
19 a primer charge and take a long time to get -- to burn? Wouldn't that help you
20 to know what kind of powder was in the actual cartridge?

21 A No. I don't believe it would.

22

23 Q So you're just assuming that the powder was -- was good quality, bad quality?
24 Because you just said that -- that the only tests for determining about a hang
25 fire was where a guy actually degraded the gunpowder intentionally and
26 experimented that way.

27 A So the other -- the other article that I mentioned, the -- Colonel Crossman was
28 able to find several examples of hang fires and to -- to measure the time in
29 which they took to -- to exit the barrel from the time they were fired. And --

30

31 Q Where did he find these?

32 A So he -- he experienced some himself, just in shooting ammunition, old
33 ammunition. And he also sort of made it known to the community of firearms
34 examiners that he was interested in the topic and asked people to send samples
35 of ammunition that they encountered that were prone to misfire and hang fire.

36

37 Q So although rare, it's enough that if you send the word out to find -- to ask
38 about hang fires, you're going to get some responses?

39 A Yes. And so in his case, he cites in the article that he'd shot millions of
40 cartridges in the course of his 40-year career, and he had a few examples of
41 hang fires. And those hang fires that he timed were in duration about 200 to

1 250 milliseconds, so a quarter of a second in delay from the time that the
2 trigger was pulled until the discharge.

3

4 Q So what did that -- what does that prove?

5 A Just the nature of hang fires. When they do occur --

6

7 Q Okay. What's -- what's the longest a hang fire could be, in your opinion?

8 A The longest example cited by --

9

10 Q No, no, no, your opinion. You're an expert. So I know you're saying --

11

12 MR. BURGE: Well, I think he was answering that
13 question, My Lord, if he could be given the opportunity?

14

15 THE COURT: Yes.

16

17 MR. BURGE: He was interrupted.

18

19 A The longest example I read about was --

20

21 THE COURT: The --

22

23 A -- 280 milliseconds delay.

24

25 Q MR. SPENCER: Okay. Sorry, two?

26 A 280 milliseconds. So .28 seconds.

27

28 Q Okay. So with respect to my friend, the question I'd asked you is was in your
29 opinion, theoretically, what's the longest time there could be -- longest delay
30 there could be between the primer and discharge?

31 A So based on the research that I've read, I would say that the upper limit of that
32 would be -- to be generous, half a second. To say that if the -- the longest delay
33 that these people who spent an extensive amount of time studying the -- the
34 phenomena of hang fires and were able to identify some actual ammunition
35 that hang fired and reproduced those, they found it to be just over one quarter
36 of a second. So my estimate would be half a second at the most.

37

38 Q Okay. Are -- are you unaware of longer hang fires?

39 A So I am.

40

41 Q Are you honestly saying the longest it could be is a second?

- 1 A The -- the -- these articles do go into detail about some of the -- the -- the
2 recollections of other people having experienced long hang fires, and those
3 were specific to very -- very specific types of primer: mercury fulminate and
4 potassium chlorate primers that were prone to degrade over time.
5
- 6 Q So you would agree with me, there's a lot -- lot -- there's lots of hang fire
7 stories out there way beyond a second?
- 8 A There are.
9
- 10 Q Yeah.
- 11 A And what these articles attempted to do is to try to analyze these systematically
12 to determine whether they are, in fact, multi-second long hang fires or whether
13 they were caused by other things. Both of the authors agreed that in their
14 opinions, the -- the most likely cause of these long hang fires, seconds in
15 duration, were mechanical problems with the firearms, and that it was not, in
16 fact, ammunition that was causing that long delay of seconds of time.
17
- 18 Q You personally have no experience with hang fires whatsoever?
- 19 A I agree.
20
- 21 Q And you read two articles, one from 1971, and one from '90?
- 22 A '91, yeah.
23
- 24 Q '91. Okay. And did -- did you not go on the Internet and look at all the stuff on
25 hang fires?
- 26 A So these two articles were the most respected and scientific approaches to hang
27 fires that I could find.
28
- 29 Q Okay. But because of the very nature of an ammunition malfunction, the only
30 way you can really effectively gather accurate information is if you have
31 somebody that has a hang fire, and you get their information, right?
- 32 A What I would say is that -- just going back to the earlier point is that studying
33 misfired ammunition does not inform my opinion of hang fires, because
34 misfires and hang fires are different things. And so that's again why I think
35 that analyzing a misfired cartridge doesn't really provide me with extra
36 information that I can use to apply to a -- a possible hang fire situation.
37
- 38 Q Would you agree with me that if the other bullets from the exact same box
39 were available, that you should have tested them?
- 40 A I believe that's what I did with PE033, and I agree that at the time of doing this
41 analysis, that it was warranted to investigate whether or not these cartridges

1 A Yes.

2

3 Q Okay. And you testified that there was a hole in the left side of the hood of the
4 jacket?

5 A Yes.

6

7 Q And how big was that hole?

8 A So measuring holes in cloth is tricky. This is a very irregular hole, but just
9 based on the -- on my notes, so there was two areas of damage. The rear left
10 side of the hood, I identified that there was two irregular holes in that area, and
11 there was tearing. And so the holes combined, I measured an approximate size
12 of 35 millimetres by 20 millimetres. So that would include both of the holes
13 and the area of tearing that that included.

14

15 Q Okay. And then you said there was something -- you noted something on the
16 right side?

17 A On the front, yes.

18

19 Q Yeah. Can you give me that again?

20 A That was one small irregular cross-shaped hole with small tears, 7 millimetres
21 length and width, approximate size.

22

23 Q So how big is 7 millimetres? Can you show -- 'cause --

24 A Yeah.

25

26 Q Okay.

27 A If -- if my pinkie is about 1 centimetre, that's 10 millimetres. So if 7 is two-
28 thirds of my pinkie width.

29

30 Q Okay. I'm going to ask you at the -- okay. And so based on that, you indicated
31 yesterday you couldn't determine directionality?

32 A Yes, I cannot.

33

34 Q So I'm struggling with that a little bit. How do you get something 35
35 millimetres is this big. How does something that big go to something this
36 small?

37 A So damage by projectile is sometimes tricky in a sense that clothing doesn't
38 always sit flat. And so if -- if my collar were folded like this and a bullet were
39 to go through it, there could be a very large hole, irregularly shaped, because of
40 the folds in the fabric. There could also be two holes or three holes from one
41 layer of fabric, just depending on how it's laying.

1

2 Q Okay. I'm going to ask you to have a look at that jacket again to see where you
3 can get a seven -- like, a hole almost as big as your pinky. I think my pinky is
4 probably less than a centimetre. But can you look at that jacket again, outside?

5 A We have the exhibit?

6

7 Q Yeah, because I haven't seen a hole anywhere near the width of your pinky.

8

9 MR. BURGE: Perhaps my --

10

11 THE COURT: Yes.

12

13 MR. BURGE: -- he shouldn't be --

14

15 THE COURT: Yes. Unless you want to testify, you
16 probably shouldn't give evidence.

17

18 MR. SPENCER: Okay. Well -- and -- and -- well, we -- I
19 brought it here for that purpose, so you're fair -- fair enough, My Lord. So --

20

21 THE COURT: So is this a good time to take a break?

22

23 MR. SPENCER: Excellent time to break.

24

25 THE COURT: We will take an approximately 20-
26 minute break at this time.

27

28 (JURY RETIRES)

29

30 (ADJOURNMENT)

31

32 THE COURT: Be seated. Just before we get started,
33 maybe what I'm going to do first, sir, is I'm going to -- I've got a matter I need to
34 discuss with the lawyers.

35

36 A Yes.

37

38 THE COURT: I'll ask you to take your leave for a
39 moment.

40

41 (WITNESS STANDS DOWN)

1

2 **Discussion**

3

4 THE COURT: During my opening instructions to the
5 jury, I had indicated to them that they should listen, and that if they had a question,
6 just to be patient and it might get answered. And if it was -- if they did end up with
7 a question, they should put it in writing and provide it to me. The sheriff did
8 provide to me a question that the jury had about this witness's testimony. It's a bit
9 of an odd situation. I don't think I've had a situation where a juror has asked a
10 question about a witness's testimony partway through, and I invite counsel to
11 address me as to what we should do about it. It's a question about -- a question that
12 they would like to ask this particular witness. And I know Mr. Spencer is not
13 finished his cross-examination.

14

15 MR. SPENCER: Well, My Lord -- or maybe I'll address it
16 first. I can advise that we will also have a firearms ammunition expert, as well, so
17 this -- there will be a re-tilling of the soil to a certain degree. I don't know what the
18 question is, obviously, but there's a couple areas where I think our expert will --
19 will fill it in. But it's -- I don't know what the easiest way to deal with it is. If it's
20 not done, then where are we at?

21

22 MR. BURGE: Well, I just -- I guess, I'm trying to think
23 of possibilities. I guess one is -- I've never had -- I guess I've seen coroner's juries
24 ask questions. I haven't seen a jury in a criminal trial ask questions. Maybe you
25 have, My Lord. I -- I haven't.

26

27 THE COURT: No, I haven't either.

28

29 MR. BURGE: Another way -- another possibility is you
30 could share it with counsel, and if my friend wishes to ask the question, he could,
31 and if I wish -- if I wish to ask it in re-examination, I could. That's -- that's a
32 possibility. And if nobody wants to ask the question, then maybe it doesn't get
33 asked. I'm not sure what other possibilities there are.

34

35 THE COURT: Well, I guess the possibilities would be
36 for me to say to the jury that we've -- we have your question, and it -- it may or
37 may not be answered, and that's that. Or I could share it with you, the counsel, and
38 you could look at it. And then I could tell them that I did share it with both
39 counsel, and it's up to you to decide whether or not you wish to ask it or not.

40

41 MR. SPENCER: Well, genie out of the bottle, but once --

1 I think once we look at it, my expectation is we'll be able to solve it relatively
2 quickly and ensure the information gets to the jury in some way. That's my
3 expectation.
4

5 THE COURT: I have -- or would you like to look at it?
6

7 MR. SPENCER: I -- I think I might as well.
8

9 THE COURT: Okay. Madam Clerk, if you could show
10 counsel?
11

12 MR. BURGE: Just --
13

14 MR. SPENCER: (INDISCERNIBLE). Yeah. Yes, we
15 have it. Yes. I'm sorry. Yes. Well, I think -- I think there's a -- if my interpretation
16 is accurate, I can tell you right now that's absolutely going to be covered by our --
17 by our expert. So ...
18

19 THE COURT: Well, what I can do is tell them, which is
20 true, that I have shared the question with you, with both counsel, and you are both
21 aware of it, and I leave it in counsel's hands as to how they're going to deal with
22 it. And it may be that they will have to wait to see how things unfold. Is that fair?
23

24 MR. BURGE: Yes.
25

26 MR. SPENCER: Yeah. I --
27

28 THE COURT: Okay.
29

30 MR. SPENCER: -- I think that's (INDISCERNIBLE).
31

32 THE COURT: What we'll do, Madam Clerk, is we'll --
33 we'll put this in the file, and you will mark it as -- I guess we will mark it as a
34 court exhibit, not to go in with the jury, though. Do you have any problem with
35 that?
36

37 THE COURT CLERK: So for identification only? Or how do
38 you --
39

40 THE COURT: Well, I just think that I want to make a
41 record of everything that -- that happens here, and so this will be --

1
2 THE COURT CLERK: So the court exhibits don't go in?

3
4 THE COURT: Yes. Yeah, the court exhibit would not
5 go into the -- into the jury room. And this would be something that happened in
6 the absence of the jury, so it would not be something that would be shared outside
7 of the courtroom, other than what I'm going to tell them at this point.

8
9 THE COURT CLERK: And is this C-1?

10
11 **EXHIBIT C-1 - Question from Jury**

12
13 MR. SPENCER: And, My Lord, I'm not sure anything
14 would turn on it, but is -- is this just a single juror or was -- or was this coming
15 from the jury? You know what I'm --

16
17 THE COURT: I -- I have -- I have no idea. And I don't
18 want to know.

19
20 MR. SPENCER: Yeah. Okay. Fair enough, My Lord. I
21 think we've got a plan that will work.

22
23 THE COURT: Okay. You can bring the jury back in.

24
25 THE COURT CLERK: Do we want the witness first?

26
27 THE COURT: Pardon me?

28
29 THE COURT CLERK: Do we want the witness first?

30
31 THE COURT: Oh, yes. We can bring the witness in and
32 the jury at the same time. We will multitask.

33
34 THE COURT CLERK: Do I need -- can I put this in the back or
35 do I need to put it on a separate sheet and put the --

36
37 THE COURT: What you can do is put it in an envelope.

38
39 THE COURT CLERK: Okay.

40
41 (WITNESS RE-TAKES THE STAND)

1

2 (JURY ENTERS)

3

4 THE COURT:

Just before we get started, I know that a
5 note was passed to the sheriff about a question that -- that was in the minds of one
6 or more of you. And what I have done is I -- I shared that question with the
7 lawyers, and so they're aware of what your question is. And with that in mind, I
8 am just going to leave it to the lawyers to let them conduct their cases as they see
9 fit, knowing full well that you have that -- that question. I would also remind you
10 that sometimes things that are not clear or you have questions at a certain point, as
11 the trial progresses, those things are filled in. So with that, I will let Mr. Spencer
12 continue with his cross-examination of this witness.

13

14 MR. SPENCER:

Okay.

15

16 **Mr. Spencer Cross-examines the Witness**

17

18 Q MR. SPENCER:

So with respect to the -- the jacket,

19 firstly, you have --

20

21 THE COURT CLERK:

(INDISCERNIBLE).

22

23 Q MR. SPENCER:

-- you had an opportunity to have a

24 closer look at that during the break?

25 A I did.

26

27 Q And would you agree with me that just laying there, there's no visible void of
28 fabric?

29 A There is a hole, but it is like a cross. And so laying flat, you don't see through
30 unless you -- you have to manipulate the cloth to see the hole.

31

32 Q Right. So just sitting there, you wouldn't see a -- a hole of seven by seven or
33 whatever? You'd have to put light or pressure on it before you'd see the hole?

34 A I have photographs of the hole in my notes.

35

36 Q Okay. Well --

37 A So you can see the -- the tears.

38

39 Q Okay. Okay. But would you agree with me that -- that you need to put some
40 light or pressure on it in order to see the hole?

41 A The torn edges are visible. So I don't think you have to. I -- I agree that it helps

- 1 to visualize it with light and with a bit of pressure to stretch those -- those bits
2 of cloth so you can see it.
3
- 4 Q Not a very big hole?
5 A Not a very big hole.
6
- 7 Q Okay. So can you explain to me how you wouldn't know directionality with
8 those two holes? Like, I'm just more curious than anything.
9 A Neither one of the holes really matched the classic characteristics of an
10 entrance or primary impact.
11
- 12 Q Okay. Okay. So back to hang fires. Would you agree with me that -- that as far
13 as trying to research hang fires, what you really need to do is find somebody
14 that's had one and get the details of that -- of what their hang fire entailed;
15 would you agree with me?
16 A No.
17
- 18 Q Oh, why is that?
19 A There is a lot of lore about hang fires. People have sort of myths of these
20 accounts of hang fires happening at the range or happening, and so I think the
21 best place to look for information on hang fires is scientific research. And
22 that's the examples I -- I posed.
23
- 24 Q And how -- how do you know they're myths? What if they're true? Like,
25 you're -- that's -- that's how you'd gather information. If somebody's -- you
26 haven't experienced a hang fire, right?
27 A That's correct.
28
- 29 Q So if somebody does experience a hang fire, wouldn't you want to know from
30 them what it entailed?
31 A I -- I trust the sources that I have -- I have researched extensively. They -- they
32 have a very extensive body of published research in firearm science, a great
33 deal of experience firing firearms of a variety of different types, and studying
34 them systematically from a scientific point of view.
35
- 36 Q Okay.
37 A And what I find is that -- I wouldn't trust just Wikipedia or outside sources of
38 information for a scientific question about an experience.
39
- 40 Q Okay. So you just ignore this other information? Is that --
41 A Well, I think that the -- the literature that I've -- that I've read and discussed, it

1 -- it describes how there are many other accounts of hang fires of these
2 delayed, long -- long durations. And it explains them as most often being
3 explained by other explanations than a hang fire, that there are mechanical or
4 other causes that can result in what seemed like a hang fire, but, in fact, was
5 not. Now, I -- I have brought these articles with me. I'm not sure -- I don't
6 want to delay the proceedings, but if it would be useful for the -- for the jury or
7 the Court, I can provide these to have copies.

8
9 Q Okay. Well, what I'd like to do is show you -- that's an Internet reference or
10 source. Can you read that for me?

11 A Okay. Just the highlighted portion?

12
13 Q Sure.

14
15 THE COURT: Well, are -- are you trying to put in
16 evidence that comes from the Internet?

17
18 MR. SPENCER: Yes.

19
20 THE COURT: From an unknown source?

21
22 MR. SPENCER: Well, it's -- it's from an Internet source.

23
24 THE COURT: Well, the Internet has lots of information
25 on it, some of which is reliable, some of which is not.

26
27 MR. SPENCER: Right. Yeah.

28
29 THE COURT: I'm not sure that we should be getting
30 into just reading pieces of information that comes from an unknown source from
31 the Internet.

32
33 MR. SPENCER: Well, My Lord, I think -- I think he's an
34 expert, so to put this to him -- he's got his most recent source is '91. So I think it's
35 fair to put this to him, and if he says he doesn't agree with it, that's fine. But it's --
36 you know, I -- I think he's going to have his opinion on it. But I -- I don't -- I
37 agree with you. I can't just start filing stuff, but I think if I have an expert witness,
38 I can put it to him.

39
40 THE COURT: Okay. Mr. Burge, do you have a
41 comment?

1

2 MR. BURGE: Well, I -- I do, My Lord. And -- and
3 looking at this, it looks like commentary following an article where people say,
4 this is what happened to me. And like, this -- it's -- frankly, it is hearsay from
5 unknown people with unknown experiences or qualifications. And to introduce
6 this in any fashion into a proceeding like this would be wrong on so many levels.

7

8 THE COURT: That's -- that's my initial inclination.
9 Unless -- and maybe -- is this something that we should be dealing as a legal
10 matter in the absence of the jury or do you have -- given the concern of the Court
11 and the concern raised by the Crown, do you wish to push the point?

12

13 MR. SPENCER: Oh, I think so, My Lord. As I say, this is
14 an expert witness. So if this is just commentary, he can summarily reject it. But I
15 think he talked about anecdotes in his evidence, and that's exactly what we have
16 here. So I -- I think the -- the law is that he's entitled to comment on it. And yes, if
17 I want to contradict him, I may have to call somebody else, but I don't see any
18 problem with it being put to him and him providing an opinion.

19

20 THE COURT: Okay. What I think we are going to do is
21 you are going to get an early lunch break. So we will ask you to depart, and the
22 lawyers and I will deal with this legal question, and when you come back at 2
23 o'clock, we will have an answer for you.

24

25 (JURY RETIRES)

26

27 THE COURT: Mr. Williams, you might as well have a
28 seat outside of the courtroom while we get rid of this legal issue. Yes.

29

30 MR. BURGE: Well, should he be excused for lunch or
31 should he --

32

33 THE COURT: Yes. You can be excused for lunch, too,
34 Mr. Williams. You won't be coming back until 2 o'clock.

35

36 A Thank you, My Lord.

37

38 (WITNESS STANDS DOWN)

39

40 THE COURT: Thank you.

41

1 So, Mr. -- I will wait. Mr. Spencer, are you able to articulate the basis upon which
2 you are able to pull material off the Internet from an unknown source and place it
3 before a witness, be it an expert or not?
4

5 **Submissions by Mr. Spencer (Other)**
6

7 MR. SPENCER: Well, he -- the -- there's an article in
8 *Canadian Lawyer*. But the most recent is *R v. Nguyen*, N-G-U-H-Y-E-N [sic],
9 2017 ONCJ --
10

11 THE COURT: Okay. Well, do you want --
12

13 MR. SPENCER: Sorry.
14

15 THE COURT: -- to give to me slower than that? R
16 versus what?
17

18 MR. SPENCER: N-G-U-Y-E-N. I'm not entirely sure how
19 to pronounce it.
20

21 THE COURT: Okay.
22

23 MR. SPENCER: 2017 ONCJ 93. *R v.* -- again an odd
24 name. R -- or S-R-I-S-K-A-N-D-A, 2016 ONCJ 666. Another one -- I've got some
25 other ones I haven't had a chance to look at, but --
26

27 THE COURT: Okay. What do they stand for the
28 proposition of?
29

30 MR. SPENCER: My understanding is you can't simply
31 file Internet evidence, but if you have a qualified expert, it is certainly appropriate
32 for them to review it and then provide their opinion on it. So that's -- I guess
33 another one is *R v. Klassen* my associate has referred me to, K-L-A-S-S-E-N, 2003
34 MBQB 253. And the comment there is -- the quote that -- that our students have
35 pulled is:
36

37 A properly-qualified expert is entitled to rely on a mixture
38 of admissible and inadmissible evidence. Most experts
39 incorporate some hearsay evidence into the opinions that
40 they provide. However, personal experience, scientific or
41 statistical information usually supports the opinion.

1

2 And my point is this individual has no firsthand information, and he's testified as
3 to creating his opinion around anecdotes which are exactly what I'm talking about
4 here is third party unverified information. So he's already relied on that to give his
5 evidence so far.

6

7 With respect, it's somewhat of an extraordinary opinion, and I think if there are
8 numerous instances that contradict his opinion, if -- if he says, well, I don't believe
9 any of those are true, well, then so be it. I'll have to live with that answer. But I
10 think it's fair enough to say, particularly when his sources are as old as '91, and
11 it's this simple, My Lord. There's -- hang fires aren't going to be determined in a
12 laboratory. They are a unique situation. So the suggestion that -- that there is a
13 maximum time on a hang fire, that's --

14

15 THE COURT: So let's say that in the -- the next day, 75
16 people put on the Internet that they've all experienced hang fires in the past day.
17 What good is that?

18

19 MR. SPENCER: Well, I guess if it's in response to what
20 we're doing, then that would be something which you might be suspicious of, and
21 you would direct the jury on weight. But if these are pre-existing, post his
22 research, pre-existing --

23

24 THE COURT: The --

25

26 MR. SPENCER: -- statements of hang fires, I think,
27 particularly when he says I might have done some research on the Internet, I don't
28 see the harm in putting it to him to say, these are anecdotes, exactly what you've
29 relied on, of lengthy hang fires.

30

31 THE COURT: I -- I know that I have written a decision
32 dealing with Internet admissibility. And I don't remember the precise details, but I
33 think the gist of it is that the Internet contains lots of valuable information, and it
34 contains lots of garbage. And it's very difficult to -- if you are putting forward a
35 recognized source from a Statistics Canada or something of that nature, then that
36 might be admissible. If -- and there's a number of criteria. The Federal Court
37 wrote a decision about Internet use and admissibility. And the fact that you put it
38 to this witness, how is he going to look at a bunch of Internet material and then
39 make some sort of decision on it?

40

41 MR. SPENCER: Well -- well, My Lord, because he's an

1 expert, and that's -- that's if they're right is if he says that's garbage, that it's
2 impossible --

3

4 THE COURT: How is he going to know from a -- you
5 have given him one sheet of paper, right?

6

7 MR. SPENCER: So far. I've got -- there's dozens of them.
8 Like, that's -- that's my problem, My Lord, is, you know, we've got an opinion
9 that it can only be a second, and there's reams of it.

10

11 THE COURT: Well, call -- you -- you can call your own
12 expert that can say something different if you wish. But I just have a lot of
13 difficulty with pulling material off the Internet that could be extremely unreliable,
14 inaccurate, from unknown sources, and putting it to this witness and saying, well,
15 what do you think about that?

16

17 MR. SPENCER: And I see no harm in that. If this witness
18 says, That's impossible, then -- then fine. That's his opinion. I have to live with it.
19 And yes, I will have an expert coming up which I didn't have to declare, but I have
20 done. But I don't see the harm in it, My Lord. If -- if he says "that's garbage", then
21 fine. But if he says, okay, yeah, I was unaware of that, yeah, I was unaware of that,
22 then I think that goes to the expert. And I think it's totally appropriate to ask him,
23 is -- are these longer instances -- are they impossible in your expert opinion?

24

25 THE COURT: Well, he's already provided his expert
26 opinion. Has he not?

27

28 MR. SPENCER: Well, yes, based on anecdotes. And he
29 says, yes, I looked at the Internet.

30

31 THE COURT: So you're going to change his opinion by
32 showing him stuff you got off the Internet?

33

34 MR. SPENCER: I'm going to ask him whether he can,
35 with absolute certainty, say that there's a maximum time for a hang fire.

36

37 THE COURT: Well, I think you already asked him that.
38 He provided his information. Now what it appears that you're trying to do is cause
39 him to change his opinion based upon material that you've pulled off the Internet.

40

41 MR. SPENCER: Bearing in mind --

1

2 THE COURT: Is that really it?

3

4 MR. SPENCER: -- bearing in mind that -- that he searched
5 the Internet. And I think it cuts both ways because there is valuable information on
6 the Internet. Quite frankly, if the expert didn't bother looking at any of the
7 information available on the Internet and came and testified to a maximum time
8 frame, that's a concern.

9

10 THE COURT: Okay.

11

12 MR. SPENCER: And it would go to weight, My Lord. So
13 I don't see any harm. He can -- I don't see any harm with putting it to him, him
14 providing his expert opinion. Again, particularly when he's providing an
15 explanation about -- that the -- that the guy that did the research -- he didn't do any
16 research. The guy who did the research has explained away -- he's aware of longer
17 ones, but those have been explained away.

18

19 THE COURT: Okay. But the -- the whole concept of an
20 expert witness is the expert witness is entitled to look at research papers that are
21 done by sources that he considers to be reliable. He's done that. And he's -- he's
22 found a couple of articles, which he's brought with him, and he felt that those
23 articles were sound enough for him to rely upon. And that's where we're at. Do
24 you have anything else to say?

25

26 MR. SPENCER: Well, that's -- those are my submissions.

27

28 THE COURT: Mr. Burge.

29

30 Submissions by Mr. Burge (Other)

31

32 MR. BURGE: Well, as you obviously understand, My
33 Lord, and that's how you cross-examine an expert, by drawing his attention to
34 sources that are respected and relied upon within that particular field. And -- and
35 here, this is like a chat line. It's like reading a recipe and somebody saying, oh, it's
36 a good recipe, but I'd double the garlic. That's -- that's sort of what we have here.
37 It's -- it's nothing that -- once it goes to the witness, it goes to the jury. And it's -- I
38 guess for the reasons -- for all of those reasons, My Lord, it's just -- it's just an
39 improper way to introduce irrelevant hearsay that may be totally unreliable.

40

41 THE COURT: Madam Clerk, can I see the copy of the

- 1 document that's on the witness stand, please? So this -- this sheet of paper that's
2 got the highlighting on it, where does it come from other than the Internet?
3
- 4 MR. SPENCER: Well, the -- the website is -- is identified
5 there as -- the search criteria is "anyone had a" --
6
- 7 THE COURT: It's Reddit.com.
8
- 9 MR. SPENCER: Yeah. That's the source, yeah.
10
- 11 THE COURT: Okay. So that's some kind of a chat line,
12 is it?
13
- 14 MR. SPENCER: I --
15
- 16 THE COURT: Or social media of some sort?
17
- 18 MR. SPENCER: It's certainly social media. I fear that I
19 am not going to be particularly helpful on the terminology, but I guess it is -- I
20 guess it would be a chat line, a place for people to share information.
21
- 22 THE COURT: Well, what I intend to do is provide to
23 you the courtesy of at least reading the cases that you have cited to me. I will
24 review them. And then we will -- the lawyers will reconvene at 1:45, and I will
25 provide my ruling at that time. And then we will get back on it at 2 o'clock.
26
- 27 MR. SPENCER: Okay. My Lord, would you like to --
28
- 29 THE COURT: Okay.
30
- 31 MR. SPENCER: -- look at the series of other --
32
- 33 THE COURT: Well, are they similar in nature?
34
- 35 MR. SPENCER: Well, I guess generally, but they're all
36 unique.
37
- 38 THE COURT: Okay. Well, this one is Reddit. What are
39 the other ones about?
40
- 41 MR. SPENCER: Reddit, The Firing Line,

1 DefensiveCarry.com.
2
3 THE COURT: So they -- they are similar in nature? It's
4 not Statistics Canada?
5
6 MR. SPENCER: No, no.
7
8 THE COURT: It's not a government website?
9
10 MR. SPENCER: No, no.
11
12 THE COURT: It's not --
13
14 MR. SPENCER: No. You're never going to have those for
15 little freak things.
16
17 THE COURT: Okay. I know the -- the witness talked
18 about some firearms organization that he belongs to and some magazines. It's not
19 a journal of forensic firearm experts or anything like that?
20
21 MR. SPENCER: No, I don't think you could say forensic
22 expert, but, of course, once you get into the firearms community, these are all
23 firearms enthusiasts that are quite familiar with guns --
24
25 THE COURT: Okay. But they are enthusiasts, not
26 experts?
27
28 MR. SPENCER: Absolutely right, yes. There's no expert,
29 yeah. They don't have expertise.
30
31 THE COURT: Okay. Okay. So being as Mr. Burge has
32 -- has indicated, sometimes if there's a medical expert giving medical testimony,
33 they can find an article from the *New England Journal of Medicine* and refer that
34 doctor to that and say, do you recognize this as a legitimate source, and he would
35 say "yes," and then you can ask him questions about that. That's much different
36 than pulling stuff off the Internet.
37
38 MR. SPENCER: I -- I agree, My Lord. And, of course, the
39 principle is the best evidence, and that's why I spent a fair bit of time with this
40 witness going over that, that you can't create hang fires, they are malfunctions. So
41 when we do look at --

- 1
2 THE COURT: Well, again, you are going to -- you have
3 got to be careful, as well, that when you -- you can put things to him, but you can't
4 say, I got this hang fire and I sent it to you. That gets a little bit beyond where
5 we're at. There's some conversation about after August 17th of 2017, that some
6 misfired cartridge was sent to him. He said it -- he didn't get it.
7
- 8 MR. SPENCER: Right.
9
- 10 THE COURT: So I don't know where that leaves us.
11
- 12 MR. SPENCER: Okay. I -- I believe I will close that loop,
13 My Lord.
14
- 15 THE COURT: Okay. Well, I assumed that you would.
16 But I think I have got the gist of what it was that you are planning to do, and I will
17 look at the cases that you have cited. And just to be clear, we are 2017 ONCJ 93?
18
- 19 MR. SPENCER: Yes, that's the first one.
20
- 21 THE COURT: And 2016 ONCJ 666?
22
- 23 MR. SPENCER: ONCJ 666, yes.
24
- 25 THE COURT: And 2003 MBQB 253?
26
- 27 MR. SPENCER: Okay. And then one additional one, and
28 again, I'm -- we're scrambling our research here, but *R v. Lavallee*, L-A-V-A-L-L-
29 E-E, [1990] 1 SCR 852.
30
- 31 THE COURT: 19-what?
32
- 33 MR. SPENCER: 1990.
34
- 35 THE COURT: Did they even have the Internet then?
36
- 37 MR. SPENCER: Well, but --
38
- 39 THE COURT: But anyway, I will look at it. 1990.
40
- 41 MR. SPENCER: Well, My Lord, it's on the principle of

1 the expert opinion is admissible if relevant, even based on second-hand
2 information.

3

4 THE COURT: Okay. 1990?

5

6 MR. SPENCER: [1990] 1 SCR 852, at 893. And --

7

8 THE COURT: Was that 1991 or --

9

10 MR. SPENCER: [1990] 1 SCR --

11

12 THE COURT: 352?

13

14 MR. SPENCER: 852, My Lord.

15

16 THE COURT: 852. At?

17

18 MR. SPENCER: 893.

19

20 THE COURT: Okay. We will adjourn until --

21

22 MR. SPENCER: Okay.

23

24 THE COURT: -- 1:45.

25

26 _____

27

28 PROCEEDINGS ADJOURNED UNTIL 1:45 PM

29

30 _____

31

32

1	February 2, 2018	Afternoon Session
2		
3	The Honourable Chief Justice	The Court of Queen's Bench
4	M. Popescul	for Saskatchewan
5		
6	W. Burge, QC	For the Crown
7	C. Browne	For the Crown
8	S. Spencer	For the Accused
9	D. Gillanders	For the Accused
10	K. Christopherson	Court Clerk

11
12

13 **Discussion**

14

15 THE COURT: Good afternoon.

16

17 MR. SPENCER: Good afternoon.

18

19 MR. BURGE: Good afternoon, My Lord.

20

21 MR. BROWNE: Good afternoon, My Lord.

22

23 MR. GILLANDERS: Good afternoon, My Lord.

24

25 **Ruling (Other)**

26

27 THE COURT: So I am prepared to render my decision
28 with respect to the legal matter that we had discussed prior to the lunch break, and
29 my decision is as follows: Counsel for Mr. Stanley seeks to cross-examine a
30 witness who has been qualified to give opinion evidence as a firearms expert on
31 material that he has pulled off the Internet. In essence, he wishes to show the
32 witness pages printed from the Internet and challenge the witness by suggesting
33 that the comments on the pages from unknown sources do not square with the
34 opinion that he has provided. The sources come from a variety of social media
35 websites, including one called Reddit. According to defence counsel, Reddit and
36 the other sources he wishes to rely upon contain postings from anonymous persons
37 from around the world.

38

39 Defence counsel have cited four decisions in support of their position: *R v.*
40 *Klassen*, 2003 MBQB 253; *R v. Nguyen*, 2017 ONCJ 93; *R v. D.R.*, 2016 ONCJ
41 666; and *R v. Lavallee*, 1990 [1] SCR 852. It is noteworthy that these decisions --

1 that one of these decisions, *R v. Klassen*, has recently not been followed. Perhaps
2 more importantly, none of these cases are of relevance to whether or not the
3 defence can tender as evidence Internet sources that have no indicators of
4 reliability for the purpose of cross-examining an expert witness. If a principle can
5 be gleaned from the collection of cases, it is that expert -- is that the expert is able
6 to rely on second or third-hand hearsay that is accepted within their field of
7 expertise.

8
9 What counsel is attempting to do will not be allowed for several reasons. Firstly,
10 there is little utility in having Internet-based hearsay put to this witness. The
11 Internet is an abundant source of information. Some of the information is
12 impeccably accurate, while other information is pure garbage. Internet information
13 may be admissible in court proceedings, depending upon a variety of
14 circumstances relating to reliability, which include but are not limited to whether
15 the information comes from an official website from a well-known organization;
16 whether the information is capable of being verified; whether the source is
17 disclosed so that the objectivity of the person or organization posting the material
18 can be assessed.

19
20 Here, I have many concerns about the reliability. The individuals who posted the
21 statements being presented are not identifiable. They are identified using online
22 user names. There is no way of knowing whether each user name is a separate
23 person. There is no assurance that the pages printed are complete reproductions of
24 the discussion threads they purport to represent. Some of the postings appear to
25 contain abbreviations that are subject to interpretation. The postings might contain
26 statements detailing what the individual making the posting has been told. As
27 such, it would be double hearsay. Some of the postings appear to contain
28 statements that might be argumentative or inflammatory, and some of the postings
29 contain statements that are an expression of opinion.

30
31 If the Internet-based material tendered does not contain sufficient badges of
32 reliability, it ought to be rejected as worthless and, hence, inadmissible. Second,
33 the material sought to be provided, in my view, is more prejudicial than probative.
34 And third, there is little point to purportedly cross-examine Mr. Williams on
35 statements purportedly made by anonymous people who have posted things online.
36 This would be both unfair and of no value.

37
38 Now, this is not to say that the various scenarios found by defence counsel online
39 could not, within reason, be put to the witness for comment. So with that, I am not
40 going to permit the line of questioning whereby, Mr. Spencer, you are putting
41 Internet excerpts to the witness.

1

2 MR. SPENCER: Thank you, My Lord.

3

4 THE COURT: And what we should do is the -- the
5 Reddit page, I am going to mark this as a court exhibit so that it is on the file for
6 further reference if necessary.

7

8 **EXHIBIT C-2 - Excerpt from Reddit.com**

9

10 MR. SPENCER: Same as the jury note. That's fair
11 enough, My Lord.

12

13 THE COURT: Yes.

14

15 MR. SPENCER: Makes sense.

16

17 **Discussion**

18

19 THE COURT: Thank you. Is there anything else that we
20 need do?

21

22 MR. SPENCER: I've got one housekeeping, before I
23 forget, with how --

24

25 MR. BURGE: We should do that in front of the jury, I
26 think.

27

28 MR. SPENCER: Okay. Sure.

29

30 THE COURT: What might that be?

31

32 MR. SPENCER: It's extracts from a cell phone text
33 message --

34

35 THE COURT: Okay.

36

37 MR. SPENCER: -- that has been pulled off a cell phone,
38 and we have agreed that it's accurate for as far as what was on the -- on the phone.

39

40 THE COURT: While I was in my office, the Registrar
41 brought to me an excerpt from a decision out of the Court of Appeal for Texas. I

1 did read it. Was that supposed to be -- is that a new argument or was that to bolster
2 your previous argument?

3

4 MR. SPENCER: I guess it was to bolster, but if you've
5 read it, then the decision is the same. So --

6

7 THE COURT: Yes. Well --

8

9 MR. SPENCER: -- you know, I think it had some relevant
10 comments, and obviously you've -- you've considered the gambit, so --

11

12 THE COURT: Yes. I -- I did read what was put in here,
13 and the -- the basis for rejecting this would be different than the Internet. What you
14 have here is you have a Court of Appeal of Texas decision upholding another
15 decision of a lower court in which there was reference to hang fire. And whatever
16 happened in Texas in 1999 and what evidence was called there really is no
17 relevance to the evidence that I am hearing here. So their evidence is their
18 evidence on that case, and the evidence is the evidence here on this case. So I
19 reject that for a different reason.

20

21 MR. SPENCER: Okay. Fair enough, My Lord.

22

23 THE COURT: Anything else?

24

25 MR. BURGE: No, thank you.

26

27 THE COURT: And maybe what I'll do is since I made
28 reference to this, this will be the next court exhibit, as well, this being the Court of
29 Appeal of Texas decision with yellow highlighting.

30

31 **EXHIBIT C-3 - Court of Appeal of Texas Decision with Yellow Highlighting**

32

33 THE COURT: And we can bring the witness back in.
34 Oh, we need the jury, don't we? And maybe what we should do is you can see if
35 the jury is ready, and if they're ready five minutes early, we'll bring them in. And
36 if they're not, we'll take a five-minute break. We could probably get the witness
37 up. They're ready? Okay.

38

39 (JURY ENTERS)

40

41 THE COURT: Good afternoon. Hope you enjoyed your

1 slightly longer break. I had a slightly shorter break.

2

3 Go ahead when you're ready.

4

5 (WITNESS RE-TAKES THE STAND)

6

7 MR. SPENCER: That's -- I'll -- I'll be finished with that,
8 then, My Lord.

9

10 THE COURT: Okay. Thank you. Oh, you are finished
11 with this witness?

12

13 MR. SPENCER: Yeah, that's --

14

15 THE COURT: Okay.

16

17 MR. SPENCER: -- yeah, that's --

18

19 THE COURT: Okay. Mr. Burge, did you have any re-
20 examination?

21

22 MR. BURGE: Would it be appropriate, My Lord, if
23 Mr. Browne re-directed on an issue that has come up in cross-examination?

24

25 THE COURT: Oh, certainly.

26

27 MR. BURGE: Thank you.

28

29 MR. BROWNE: Thank you, My Lord. I just -- perhaps
30 I'm a little slower than some of my friends on this issue.

31

32 **Mr. Browne Re-examines the Witness**

33

34 Q MR. BROWNE: So if you could help me, Mr. Williams.
35 So there was some discussion about the firearm being locked and what would
36 happen to the gases at the time it was locked. Now, my question is if it's
37 locked, is that firearm in battery?

38 A Yes. I can -- I can demonstrate with the firearm to explain those different
39 terms, locking, unlocking, battery.

40

41 Q Thank you. If you could, please?

1 A Now we're safe.

2

3 THE COURT: Thank you.

4

5 A So the way that the -- the firearm locks is that when the barrel -- when the
6 slide moves fully forward, it engages some little parts in the barrel to sort of
7 lock that barrel into place so that the barrel and the slide are then connected,
8 one unit. And as that moves rearward, so it can travel this short distance
9 together. Just -- there's a short period of time -- I'm just pushing on the end --
10 that the barrel and the slide move in unison. And then as that force continues to
11 push the slide rearwards, they have to unlock. And so the -- the slide
12 disconnects from the barrel. The slide keeps moving, and the barrel stands still.
13 And so during the time that they're together, that it is the time that the bullet is
14 travelling down out the barrel. So the -- these things are happening at the same
15 time. And the reason that the slide moves rearward is because of the forces that
16 are involved inside that little cartridge. And so the unlocking happens right at
17 that stage when the -- when the barrel separates from the slide. Then the slide
18 continues onward where the barrel stays put. The slide then hits the -- the back.
19 The expended cartridge gets sort of tossed out that -- that port. And then
20 there's a spring that's pushing it forward. So the springs only push the slide
21 forward, and it's the force of recoil that pushes the slide backwards.

22

23 Q MR. BROWNE: So when -- when that firearm goes into
24 lock, is it in battery?

25 A Yes.

26

27 Q Okay. Is it possible for it to be in -- in lock and not be in battery?

28 A No.

29

30 Q Thank you.

31

32 THE COURT: Okay. Nothing arising out of that?

33 Mr. Williams, thank you very much for your testimony, and you are free to go, sir.

34

35 (WITNESS STANDS DOWN)

36

37 **Discussion**

38

39 MR. SPENCER: And I will now, My Lord, attend to the
40 housekeeping matter of filing a series of text messages which have been extracted
41 from the pink iPhone that's been referred to in evidence of Kiora Wuttunee. Is that

- 1 right, my friend?
2
- 3 MR. BURGE: Yes.
4
- 5 THE COURT: Okay. Now, is this going in as part of the
6 Crown's case?
7
- 8 MR. BURGE: Well, it's -- we're within the Crown's
9 case. And this would have gone in -- yes, it'll be part of the Crown's case.
10
- 11 THE COURT: Okay.
12
- 13 MR. SPENCER: And -- and, My Lord, just so that there's
14 no confusion, by agreement we have the original extraction report which would be
15 the evidence, but we've also prepared an aid. All the "to's" are in one set, and the
16 "from's" are in another, and we've prepared an aid where they go by timing. So I
17 think it's of some assistance, but, of course, the extraction report will be the
18 evidence.
19
- 20 THE COURT: Okay. Did you want to read that in as to
21 -- is it -- is it important to you to have it read in? Because, of course, the lawyers
22 are quite familiar of what's going on and the text messages and all that. The jury
23 and I are hearing all this for the first time. And I leave it to you to present your
24 case or part of the Crown's case as you see fit.
25
- 26 MR. SPENCER: Yeah.
27
- 28 THE COURT: Did -- are you content to just file it?
29
- 30 MR. SPENCER: I'm content just to file it, and it'll be
31 available, and I'm sure will be read or referred to in argument or not or in your
32 charge or not. So I don't think we need to spend the time for me to read it all in.
33
- 34 THE COURT: Okay. So if I may just see them, Madam
35 Clerk, first? So the first document, which is a four-page document, is entitled
36 "Extraction Report", and that will be -- the next exhibit is what, Madam Clerk?
37
- 38 THE COURT CLERK: P-20.
39
- 40 THE COURT: P-20. And then the --
41

1 MR. BURGE: So is this D-20?

2

3 THE COURT: -- then the summary where the "to's" and
4 -- and "from's" on the text messages are put together are Exhibit P-21.

5

6 THE COURT CLERK: Sorry. Are you -- is it the Crown's --

7

8 THE COURT: Yes. Or I am sorry. Yes, I think it is the
9 Crown exhibit, right?

10

11 MR. BURGE: Well, it's going in during the Crown's
12 case, but I think it's a defence exhibit, My Lord.

13

14 THE COURT: Okay. Fair enough.

15

16 THE COURT CLERK: Okay. So then we are at D-8?

17

18 THE COURT: D-8 and D-9.

19

20 **EXHIBIT D-8 - Extraction Report of SMS Messages from Pink iPhone**

21

22 **EXHIBIT D-9 - Summary of To's and From's on Text Message from Pink**
23 **iPhone**

24

25 THE COURT CLERK: Sorry. I have to get them in the right
26 order, then.

27

28 THE COURT: The extraction report is the first one. It's
29 got "Extraction Report" on the top left-hand corner, I believe, Madam Clerk.

30

31 THE COURT CLERK: Okay. Thank you.

32

33 THE COURT: Mr. Burge.

34

35 MR. BURGE: My Lord, that's the case for the Crown.

36

37 THE COURT: Now, Mr. Spencer, are you able to
38 declare your intention at this time?

39

40 MR. SPENCER: Yes. Yes, certainly we will be calling a
41 number of witnesses. I have a request. I've spoken to my friend, and I think he's

1 going to leave it in the hands of the Court. I would ask I be -- I have an expert
2 witness here. We have three hours, which is probably about right. I would ask the
3 indulgence to make my opening statement on Monday and go right into the expert
4 witness.

5
6 THE COURT: Okay.

7
8 MR. SPENCER: For timing purposes.

9
10 THE COURT: Okay. If you don't have any objection.
11 And what -- what that means, ladies and gentlemen of the jury, at the beginning of
12 this case, the Crown prosecutor made an opening statement to you. And the
13 defence counsel is entitled to decide whether he wants to call evidence or not. He
14 has chosen to call evidence, and normally he would give that opening statement
15 right here today. But I think he wants to make sure that we finish this one witness,
16 so he's going to put that witness on and wait until Monday morning to give his --
17 his opening address to you. So if he has no objection, I don't have any objection,
18 the Crown has no objection, we'll do things a little differently than we normally do
19 it, but call your next witness.

20
21 MR. SPENCER: Thank you for that indulgence, My Lord.
22 Sandy Ervin.

23
24 My Lord, Mr. Ervin is being called -- presented -- tendered as an expert. The area
25 that we are proposing of expertise is functional assessment of firearms,
26 ammunition, and devices, and secondly, comparison and identification of --

27
28 THE COURT: If -- if -- I'd like to make particular note
29 of exactly what he's being qualified in --

30
31 MR. SPENCER: Sorry.

32
33 THE COURT: -- because sometimes it makes a
34 difference and sometimes it doesn't. But -- so go ahead, and read it to me again
35 slowly.

36
37 MR. SPENCER: I apologize for --

38
39 THE COURT: No problem.

40
41 MR. SPENCER: -- rushing. Functional assessment of

1 firearms, ammunition, and devices.
2
3 THE COURT: Okay.
4
5 MR. SPENCER: And comparison and identification of
6 firearm and ammunition components.
7
8 THE COURT: Comparison and identification of firearm
9 and --
10
11 MR. SPENCER: Ammunition components.
12
13 THE COURT: Okay.
14
15 MR. SPENCER: I've plagiarized it a little bit. It's
16 supposed to be the same as Mr. Williams, but not the areas -- it's -- it's tighter than
17 -- than Mr. Williams, so ...
18
19 THE COURT: Now, Mr. Burge, are you going to be
20 objecting to this man being qualified as an expert?
21
22 MR. BURGE: I take it those are the two areas that my
23 friend --
24
25 THE COURT: That's what he's indicated.
26
27 MR. BURGE: Okay. No, My Lord.
28
29 THE COURT: Okay. So with that, again we can go --
30 go through the abbreviated version because it's not going to be a contested expert.
31 So if you'd just like to highlight his testimony.
32
33 MR. SPENCER: Okay.
34
35 THE COURT: And we'd better swear the witness first.
36
37 THE COURT CLERK: How do you take an oath, sir? Will you
38 swear on the Bible or would you like to affirm?
39
40 MR. ERVIN: Yes. On the Bible.
41

1 THE COURT CLERK: Take the Bible in your right hand. State
2 your full name.

3

4 MR. ERVIN: John Robert Ervin.

5

6 THE COURT CLERK: Spell your first and last name for the
7 record.

8

9 MR. ERVIN: J-O-H-N E-R-V-I-N.

10

11 **JOHN ERVIN, Sworn, Examined by Mr. Spencer**

12

13 THE COURT CLERK: Do you wish to stand or sit?

14

15 A Probably sit. I have some back issues.

16

17 THE COURT CLERK: Okay. Well, it might not be very
18 comfortable.

19

20 A I may have to move around a bit just to --

21

22 THE COURT CLERK: We'll just adjust the mic accordingly.

23

24 A Yeah.

25

26 MR. SPENCER: (INDISCERNIBLE).

27

28 THE COURT CLERK: Okay. This is -- are they all copies?

29

30 MR. SPENCER: They're all -- yeah, they're all copies,
31 maybe probably more than we need, but --

32

33 Q MR. SPENCER: Sandy, I've presented or provided you
34 with a copy of a CV. Does that --

35

36 THE COURT CLERK: Are there 12 here?

37

38 MR. SPENCER: I think there is. Is there --

39

40 THE COURT CLERK: (INDISCERNIBLE).

41

- 1 Q MR. SPENCER: So, Sandy, does that look familiar?
2 A Yes, it does.
3
4 Q That's your CV?
5 A Yes, it is.
6
7 Q And is that up to date?
8 A Yes.
9
10 Q Okay. The -- you've been an expert before?
11 A Yes.
12
13 Q Can you give us the abbreviated version of why you think you're an expert in
14 firearms and ammunition?
15 A Well, I've been dealing in -- with firearms for over 38 years. I was a firearms
16 instructor for several years at the RCMP depot training academy. I was also a
17 certified armourer with the RCMP. I have partaken in various testing and
18 functionality testing with firearms unique to the RCMP, and documented
19 quality control on over 25,000 pistols in 1995 where we checked for functions,
20 testing. I've been to Heckler & Koch in Germany. I've been to Sig Sauer in
21 Switzerland to take small arms training in semi-automatic pistol and semi-
22 automatic or machine pistol. I've been also been to Smith & Wesson, to Colt,
23 Beretta, and some HK in North America, Heckler & Koch, and taken factory
24 courses from -- from them in semi-automatic pistols, revolvers, and
25 Remington, all the firearms that Remington produced.
26
27 Q Okay. So you've been practically doing it in your job as an RCMP officer?
28 A Yes.
29
30 Q And then as a firearms instructor?
31 A Yes.
32
33 Q And then you were at the armourer -- armoury -- how do I --
34 A The armourer shop, yeah.
35
36 Q And that's --
37 A The armourer shop is responsible for quality assurance and maintenance and
38 repair, and also the building of special -- special firearms for special units of
39 the RCMP such as sniper rifles, et cetera.
40
41 Q And then you've been to half a dozen gun factories?

1 A Yes.

2

3 Q Okay. How many rounds have you fired?

4 A It's difficult to say, but hundreds of thousands. Probably could be approaching
5 a million over the years.

6

7 Q Okay. Is that part of reason you've got hearing aids?

8 A Yes, it is.

9

10 Q Okay. Those --

11

12 MR. SPENCER: Those -- that's all I have on qualification,
13 My Lord, unless you have something -- a specific issue.

14

15 **Ruling (Qualification)**

16

17 THE COURT: No -- no objection. I think that I find that
18 the witness is amply qualified to be qualified as an expert and entitled to provide
19 opinion evidence in the area suggested by counsel for the defence.

20

21 MR. SPENCER: Thank you, My Lord.

22

23 **JOHN ERVIN, Previously Sworn, Examined by Mr. Spencer**

24

25 Q MR. SPENCER: Sandy, can you tell me how you got
26 involved in this -- this trial, this file?

27 A I -- I received a call from yourself, requesting that I examine some firearm
28 ammunition components and firearm, and provide an opinion to you as to what
29 my thoughts were after I examined and completed some testing.

30

31 MR. SPENCER: Okay. Madam Clerk, can you just
32 provide the Tokarev there to Mr. Ervin?

33

34 Q MR. SPENCER: Now, at some point did you come in
35 possession of firearms, ammunition, casings, things of that nature? Can you tell
36 me about that?

37 A I did. I received a court order allowing me to take possession of these -- or
38 these -- the firearms and components and the ammunition, and I received those
39 from -- I think -- may I refer to my notes, Your Honour? Or My Lord?

40

41 MR. SPENCER: My Lord?

1
2 THE COURT: What's that?
3
4 A May I refer to my --
5
6 THE COURT: Oh, certainly. Certainly.
7
8 MR. SPENCER: All right.
9
10 A Yeah. So on October 3rd at 1003 hours, I received six exhibit bags from
11 Sergeant David McClarty at White Butte detachment in -- just outside Regina.
12 And then the following day, I received another package of exhibits from --
13 from Ryan Boogaard. He drove an exhibit down from Saskatoon, and we met
14 and he turned it over to me.
15
16 Q MR. SPENCER: Okay. So pursuant to court order, you
17 had access to the exhibits that -- that have --
18 A That's correct, yes.
19
20 Q -- been entered in the trial? The second exhibit, there's a second delivery. Do
21 you recall what that was?
22 A It was PE043. It was an expended cartridge case from a 7.62 by 25 cartridge
23 case which contained a significant misshapen bulge in the -- near the case head
24 of the cartridge.
25
26 Q Okay. Do you see it in --
27 A That, I believe, is a depiction of it in -- on the easel in front of me here.
28
29 Q On the easel.
30
31 THE COURT: Okay. Now, maybe we should just refer
32 to them as P-numbers, if you would? So the -- the firearm has been marked as
33 what exhibit?
34
35 THE COURT CLERK: P-10.
36
37 THE COURT: P-10, and the photograph?
38
39 MR. SPENCER: 19. P-19.
40
41 THE COURT: P-19. Okay.

1

2 MR. SPENCER: Thank you, My Lord. I appreciate that.

3

4 Q MR. SPENCER: And, Sandy, you know, we have the
5 original casings and that. So what -- what you need to provide your -- your
6 evidence, if you want to look at the original casing, just ask and we'll make
7 sure you --

8 A Okay.

9

10 Q -- have that. So what'd you do with that stuff?

11 A Well, I -- I conducted a series of -- of tests to determine -- I -- I broke down
12 basically the testing that was -- into categories, which -- which I believed came
13 from your request as to what you wanted me to -- to look at and -- and offer
14 opinion on. And so basically, the five categories that I broke it down into was
15 is the pistol functioning normally, has the pistol been altered in any way, what
16 are the characteristics of the ammunition? In other words, is it a steel case or is
17 it brass casing. What are the -- the characteristics of the powder? Was it
18 cordite, which is an older version of powder used in older ammunitions in
19 European ammunition, or was it modern powder such as flake, ball, spherical,
20 or extruded. Was it a straight wall case or was it a bottleneck case. Then was
21 there excessive wear on the pistol, and number five is is it possible to
22 determine the cause of the deformed cartridge case, which I have as PE043.
23 I'm not sure of the prosecution.

24

25 Q P-19 on the easel is a blown-up photo of it.

26 A Yes, it appears to be a photographic --

27

28 Q Okay.

29 A -- depiction of that cartridge.

30

31 Q And were you able to reach conclusions on those items, and if so, can you walk
32 us through them?

33 A I was. I think it is important to -- and I may be retracing some steps from
34 previous evidence, but I think it's very important to understand the
35 functionality of -- of what happens in a semi-automatic pistol when it's
36 discharged. So what I propose to do is go through the firing cycle of a semi-
37 automatic pistol, and at each stage of that, explain exactly what is happening
38 both externally and internally, and then move on to the actual testings that I did
39 in regard to which -- in regard to Exhibit PE043 and PE087, I believe, the
40 pistol.

41

1 Q Okay.

2 A So in order for a semi-automatic pistol -- all semi-automatic firearms are -- are
3 similar, if not exactly in the same in their function. And there's a cycle, a four-
4 piece cycle, that actually occurs for that pistol to function, and it's called feed,
5 fire, extract, and eject. And so when the ammunition is inserted into the
6 magazine, the magazine is inserted up through the handle. The slide is pulled
7 back. And when the slide is released, it strips a cartridge out of the magazine
8 and into the chamber in the barrel. And that it is the feed portion of that cycle.

9

10 Then it has to fire. So when it fires, they either are striker-fired, as in this case,
11 where the hammer strikes a firing pin, comes forward, and strikes the primer.
12 The primer then is made of a very explosive compound. There are two types in
13 primer. In particular, the one we're dealing with here is called a Berdan primer.
14 It's very common in England and Europe, and it differs from the North
15 American primers, which are called boxer primers in that in the cartridge case
16 itself, it has a small dimple between two holes, and when the primer is struck,
17 it forces the explosive compound forward onto this -- it's called an anvil, this
18 dimple, and that's what ignites the chemical compound in the primer. That
19 chemical compound then explodes. If there is any portion of a -- of a cartridge
20 discharge that could be called explosion, that's when it happens. It's the primer
21 that actually explodes. It shoots fire through these two holes in the cartridge
22 case into the actual interior portion of the cartridge, which contains the powder.

23

24 The powder does not explode. The powder burns. And as the powder burns,
25 it's, I guess, back to high school chemistry. When a solid burns, it turns to gas
26 and creates pressure. So it's this pressure that then forces the expansion of the
27 cartridge. And in -- in that case, in -- the cartridge is designed to be slightly
28 smaller than the actual chamber of the barrel, usually somewhere between 3
29 and -- and 4 thousandths smaller, sometimes 6 thousandth in military or
30 cartridges. The target shooters will want closer tolerances, but mostly in
31 particular in a military-grade firearm like the Tokarev, it will be as much 6
32 thousandths difference into the -- in the outside dimensions of the unexpanded
33 cartridge and the inside dimensions of the chamber. That allows for expansion
34 inside the chamber.

35

36 So when that powder burns, it wants to take the path of least resistance with the
37 pressure. So the path of least resistance in a cartridge case is obviously the
38 bullet. So that's what pushes the projectile out through the rifling in the barrel
39 and then -- then it exits the end of the barrel, and that's when you hear the
40 bang. The actual bang you hear from a firearm is actually the hot oxygen -- or
41 hot gases hitting the oxygen at the muzzle of the barrel, and that's the bang you

1 hear, other than if it's a -- if it's supersonic, then you'll hear it break the sound
2 barrier, as well, but that's initially the bang that you hear.

3

4 So while all this is happening, there is pressure going not only out the end of
5 the barrel, but there's also pressure going in this fashion. And cartridges are
6 designed to actually weld themselves to the inside of the chamber for a
7 millisecond, split-second, so that it holds it in that locked position before it's
8 discharged. And I'll explain a little bit about the action of this one once I get
9 through the -- the cycle.

10

11 So that's all happening inside the cartridge at the time of discharge. So this
12 pressure then --

13

14 THE COURT CLERK: (INDISCERNIBLE).

15

16 A Okay. This pressure not only pushes the projectile out the barrel, it pushes the
17 case outward in this fashion so that it expands that 6 thousandths of an inch.
18 And this might be a good time -- actually, because I'm going to refer to
19 thousandths of an inch, I actually this morning -- it's not very professional, but
20 I made -- took digital calipers, and I actually put marks on a paper that -- that
21 will show you what 403 thousandths of an inch are, what -- I'm not sure if it
22 would help the jury or the Court.

23

24 THE COURT: Well, it's up to Mr. Spencer whatever --
25 it's his case, his witness. Would you like to --

26

27 MR. SPENCER: Oh, yeah.

28

29 THE COURT: -- have that marked?

30

31 MR. SPENCER: No, I think if -- if Sandy thinks that will
32 assist, I think I gave you all of the copies back.

33

34 A I believe you did.

35

36 MR. SPENCER: I'll still --

37

38 A I'll keep one, and --

39

40 MR. SPENCER: And leave one for Mr. Burge, as well.

41

1 A Okay.

2

3 THE COURT: Thank you.

4

5 THE COURT CLERK: (INDISCERNIBLE).

6

7 A So what I did with those is I took a digital -- oh. Sorry.

8

9 THE COURT: Just -- just wait for a moment.

10

11 MR. SPENCER: Yeah. Just --

12

13 A I'm sorry.

14

15 THE COURT: Okay. So we will have this marked as the
16 next exhibit.

17

18 MR. SPENCER: Yes. And it would be a full exhibit.

19

20 THE COURT: Okay. Madam Clerk, we are at D --

21

22 THE COURT CLERK: 10.

23

24 THE COURT: D-10.

25

26 **EXHIBIT D-10 - Measurement Comparison Chart by Sandy Ervin**

27

28 THE COURT CLERK: What do I call it?

29

30 THE COURT: We will call it measurement
31 comparisons.

32

33 A Excuse me.

34

35 THE COURT: Go ahead.

36

37 THE COURT CLERK: Is there -- do you have a copy, sir?

38

39 A This is my copy, yes. Thank you. Be more than happy to donate.

40

41 Q MR. SPENCER: Okay. Go ahead, Sandy.

1 A So what I essentially did to make these marks is I took a digital dial caliper,
2 and I opened it to 22 thousandths of an inch. And then as best that I could, I -- I
3 marked how wide that would be. As you can see, the -- the -- I wasn't very
4 successful in that because it's so small that I -- the dot itself pretty well makes
5 up 22 thousandths of an inch. And then I went on and did the same thing with
6 49 thousandths of an inch, 90 thousandths of an inch, 119 thousand, 192, 411,
7 403, and 432 thousandths of an inch so that when I'm referring to these
8 measurements, you have some idea of distance. This is as opposed to --
9 sometimes it's difficult to -- to picture that.

10

11 So all this is happening. And -- and as I said, as the cartridge case expands, it is
12 actually gripping the side of the wall. And so in what we call head space is
13 there's a mark on the taper portion of the shoulder, though it's not -- not a
14 visible mark, but there's a spot on that called the datum line. And then the base
15 of the cartridge, and that is called head space. So that's the factory -- when
16 they build the chamber, those are tolerances that they allow for expansion
17 within that chamber. And so in most cases, it's around 4 to 6 thousandths of an
18 inch. So -- and I did actually measure some expended cartridges that I had
19 received and some live cartridges that I received, and I believe it was PE033.

20

21 I -- I received one package that had PE033 -- or half of PE033, and I extracted
22 some cartridges from that bag, and I measured the diameter at the -- I'll just
23 have a look again. I measured the diameter at the neck, the shoulder, and the
24 base, and came up with some measurements within the tolerance of the -- yeah.
25 So the exhibit that I took out of PE033, the neck measurement was 329
26 thousandths of an inch. And that was in an unfired cartridge. That was the
27 cartridge, a factory cartridge, if you will, as it came out of the manufacturer.
28 The shoulder measurement I took was 374 thousandths of an inch. The base
29 measurement was 380 thousandths of an inch, and I used that as my standard
30 when I measured the other ones.

31

32 So then I measured PE035, PE036, and PE037, and the measurements I got
33 there were all within that -- that standard of a few thousandths of an inch. In
34 other words -- in PE035, for instance, the neck measurement was 339
35 thousandths of an inch, so it was 10 thousandths of an inch expansion in that
36 one. Three hundred and -- off the shoulder was 378 thousandths of an inch, so
37 only 4 thousandths of expansion at the shoulder. And -- and the base
38 measurement was 386 thousandths of an inch, so it was 6 thousandths of an
39 inch expansion from an unfired case to a fired case that was fired in this
40 particular firearm. So those were within what I would expect to see in a normal
41 cartridge being fired from a normally-functioning firearm.

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So now that we have the -- the cartridge case grabbing the walls, the powder, the pressure, and the bullet being pushed out through the muzzle, once the bullet exits the muzzle, the pressure in there is starting to release. Now, in a Tokarev pistol or Tokarev ammunition, the pressure inside that chamber at the time of ignition is between 36 and 37,000 pounds per square inch. It's a very high-pressure round. By comparison, for instance, a nine-millimetre, which is used in a lot of police agencies and a common firearm, the specs for that are between 30,000 and 35,000 pounds per square inch inside the chamber at the point of discharge. That's the type of pressure that you're dealing with.

So once this pressure is relieved by the bullet exiting the barrel, then the firearm is in the extraction process. The slide -- the initial portion of this particular one, and this is probably a good time to describe the type of action that this pistol uses. It's a Browning short recoil action. Very common. The Colt 1911 uses it. It's a very common pistol designed by John Moses Browning, and a lot of companies have copied his patent and use it. And this is a Browning short recoil action. So what I mean by that is when -- and if I may refer to Mr. Williams and the way he explained it?

THE COURT:

Go ahead.

A He explained that the barrel and the slide come back, and then the barrel is tipped down. What happens when that discharge -- we have all this pressure inside the chamber, so we have the -- the cartridge case -- well is probably not the correct term, but -- but freezing itself to the inside of the -- of the cartridge -- of the barrel chamber. We have the slide, the -- the lugs on the inside of the barrel. There's two rings around the barrel. These two rings, they're protruded from the outside diameter of the barrel. They match up with two depressions inside the slide. So we now have the pressure of the cartridge in the chamber, and we have the pressure of these lugs coming against the slide.

So for the first portion of this fire cycle, the slide and the barrel are moving as one. On the bottom of the barrel, there is a link, and it's just what it looks like. It's like a little piece of -- if we need to clarify, I could probably dismantle the pistol and show you, but perhaps -- like, it's just a link with two holes drilled in it, a piece of metal that's probably that long. One hole is on -- pinned on the bottom of the barrel. The other hole is pinned through the frame when you put the top of the pistol on, like if you took the pistol apart, the barrel spring, recoil spring, all goes back onto the pistol. Then there's a pin goes through, and the pin goes through the bottom hole in that link.

1

2 So as the barrel and the slide are moving backwards under pressure, the
3 Browning short recoil design is designed so that the barrel and the slide lock up
4 until the pressure is low enough to release the lock. So all this is happening, as
5 Mr. Williams said, in milliseconds. So the bullet is going out the barrel. The
6 slide and the barrel are moving back together. Then it gets -- the barrel gets the
7 link, gets to the limit of its travel. It can't go back anymore because it's
8 pivoting on this pin. At that point, the barrel is tipped downward, and that
9 allows this -- so the barrel then becomes stationary. That allows the slide to
10 bypass the lugs, come all the way back until the recoil pressure is overcome by
11 the recoil spring pressure that is contained within the slide, and this coiled
12 spring that's inside the slide then pushes the slide back forward, and that
13 causes it to strip another round out of the magazine and insert it into the
14 chamber.

15

16 So that's -- that rearward movement, once it unlocks and the slide starts
17 coming back, the extractor, which is -- for lack of better terminology, it's like a
18 little bird's beak that hooks into the rim of the cartridge, and as it extracts, it
19 pulls that cartridge back. And that's the extraction force of the feed -- portion
20 of the feed, fire, extract, and eject. It gets to a certain point where the case
21 mouth is inside what we call the ejection port, which is that oblong hole in the
22 side of the slide. It then, in this -- this particular pistol, strikes a solid object.
23 It's like a little pin milled right into the slide on the bottom left-hand side of the
24 cartridge case. And the velocity of the slide coming back, combined with the
25 hook on the top right side of the extractor, then hits the bottom of the cartridge
26 case and kicks it out the ejection port. And that is the ejection portion of the
27 feed, fire, extract, and eject.

28

29 So that's -- that's basically what happens when you fire any semi-automatic,
30 even, you know, a submachine gun pistol, that is the basic functionality of a
31 semi-automatic pistol.

32

33 So when I received the exhibits, I first examined the pistol. And I did a
34 physical examination of it, and found that the slide was actually very tight.
35 And as a matter of fact, I couldn't move the slide out of its battery position. I
36 wasn't quite sure what it was, so I was -- it was to the point where I -- I was -- I
37 had a hard time, like -- because I didn't know if it was unloaded or not. I
38 assumed it wasn't, but I didn't really want to take that chance. So I actually
39 took the grips off, placed it in a vice, and I used a non-marring hammer to tap
40 the slide back. So then I took some measurements on the -- on the slide, and I
41 could see there was a small amount of damage on the rear of the slide. Likely it

1 had been pinched together, and that was what was causing the -- the slide to
2 stick in -- in the -- when it was locked up in that -- in battery position. I took
3 some measurements and found there to be about 22 thousandths of an inch
4 difference between the centre portion of the slide, which would be -- I would
5 determine as the normal width it should be, and the rear of the slide. So it
6 looked to me like there had been some damage at some point to cause this to
7 pinch in.

8
9 So then I -- I worked it back and forth to the point where I got it so I could get
10 it to go into battery and come out of battery with muscle power. But if it was
11 eased forward, then that pinch in the back would stop the pistol from going
12 into battery. So I took some measurements there to see how far I could get it to
13 go without -- and still fire it, because the disconnect in the -- in the pistol, as
14 you have heard, disconnects the trigger from the sear so it can't fire the pistol
15 when it's out of battery. So I was able to get it to fire out of battery -- just let
16 me flip forward here. I think between 49 thousandths of an inch and 90
17 thousandths of an inch. I'll just double-check that here. Yes. By easing the
18 slide forward until it came to that stop where the slide was pinched, I was able
19 to get the hammer to fall anywhere between 49 thousandth and 90 thousandths
20 of an inch. And after that 90 thousandths, the disconnect in the trigger kicked
21 in, and I was unable to drop the hammer from a cocked position by pulling the
22 trigger.

23
24 So having done that, the next testing that I did was I went to the range, and I
25 did some live-fire testing. So I took examples from the bag marked half PE033,
26 and I discharged rounds, checked the brass once they came -- or not the brass,
27 but the cartridge case when it came out, and found no abnormalities. It -- when
28 I put rounds into the magazine and I pulled the slide back, I released it, it went
29 all the way into battery, and when fired, produced a normal-looking cartridge
30 case.

31
32 I then tested it with stopping the slide in that area where it pinched in the back
33 so it wouldn't go all the way into battery, and I tried it at that point. And I was
34 able to get it to discharge live ammunition at -- live fire -- yeah, right around
35 the -- I actually didn't measure it, but I stopped at the -- where the pinch was,
36 where the impingement was that prevented it from going forward. The
37 disconnect was engaged the first time I tried it. Then I just took my thumb, and
38 I just eased it forward a little bit, and then I pulled the trigger again, and I was
39 able to discharge it slightly out of battery somewhere within -- I don't have the
40 measurement, but somewhere within that 49 to 90 thousandths of an inch
41 where the slide was actually slipped out of battery. When I examined the

1 cartridge cases from that live firing, there was nothing abnormal about them.
2 They looked like normal cartridges fired when the -- when the -- a gun was in
3 full battery.

4
5 The -- so once I had done the live firing, I asked myself questions. If it was out
6 of battery by that far, obviously it didn't make any difference to what the
7 cartridge case looked like. In fact, by firing it as far out of battery as I could, I
8 was trying to see if I could reproduce this bulge, and I was unable to do that.

9
10 So then I thought, well, what happens -- in order for that cartridge to be in that
11 case, it had to be out of battery significantly to cause that bulge because there's
12 -- my measurements, I believe, to the forward edge of the bulge are 403
13 thousandths of an inch. So roughly -- just under half an inch of that cartridge
14 case had to be unsupported at the time of discharge in order to get those -- that
15 bulge on the cartridge case.

16
17 The other -- the other marks on there which indicate that the cartridge was that
18 far out of -- there were two significant marks on what I'll call the bottom
19 portion of the cartridge case. And if you look at the cartridge case and look at
20 those marks, they are a match -- and I'm not a toolmark expert, but from seeing
21 many thousands of rounds come out of semi-automatic pistols and -- and
22 scrapes on the feed ramp, in my view, those marks are made by the lips of the
23 feed ramp on the frame of the pistol. And so that would indicate to me that that
24 -- that cartridge was in that position at the time of ignition.

25
26 So the next test I performed was I took three -- I took cartridges, and I took
27 them apart. I pulled the bullets from the cartridge, and I dumped the powder
28 out of the cartridge to make it safe. And then what I did was I opened the slide
29 up out of battery, and then I clamped it out of battery so that it was -- if you
30 looked at the actual -- and actually, in this report which I believe you will get a
31 copy of, there you can see significant -- there, where the slide is back, and you
32 can actually see the cartridge in the ejection port. So I clamped it in that
33 position, and I knew that the trigger was in disengage. I tried it. The trigger
34 would not drop the hammer, and this is where the -- and so then I put it back in
35 battery. I released the hammer. Then I brought it back out, and at that point,
36 with the trigger pulled, if you pull the hammer back and release it, it will -- if
37 you -- that would be like fanning it. If you're thinking of the old cowboy
38 movies where they just hold the trigger and they pull the hammer back and let
39 it drop, and that's what I did. And in those tests, at 411 thousandths of an inch
40 out of battery -- and this -- this measurement was taken from the rear portion of
41 the frame to the rear portion of the slide. So in other words, if the slide is

1 pulled back -- if I may use the pistol to demonstrate?
2
3 THE COURT: Certainly.
4
5 MR. SPENCER: And, My Lord, the witness would like
6 the report filed with the Court. It makes probably much more sense for me to file it
7 and -- and you have access to (INDISCERNIBLE) --
8
9 THE COURT: Well, it's not only me, but it's these 12
10 good men and women that might want to take a look at it as well --
11
12 MR. SPENCER: Okay.
13
14 THE COURT: -- because they're going to be making
15 the decision.
16
17 MR. SPENCER: Okay. What I would suggest is that I file
18 it as an exhibit now, have access to it, and then when we do break in the usual
19 course, I will make all of the copies, and I'll get them done by then. But I think
20 that's the most efficient way.
21
22 THE COURT: Okay. I take it you have no objection,
23 Mr. Burge?
24
25 MR. BURGE: No.
26
27 THE COURT: Indicating no? All right.
28
29 MR. SPENCER: And I apologize. We should -- we were
30 scrambling a little bit. We should have had those copies made.
31
32 THE COURT: Exhibit D-11.
33
34 THE COURT CLERK: 10?
35
36 THE COURT: I think this is 10.
37
38 THE COURT CLERK: Oh, you have got it here. Okay.
39
40 MR. SPENCER: The same one. The same one.
41

1 **EXHIBIT D-11 - Investigative Report, Physical Evidence Examination by John**
2 **Ervin**

3

4 MR. SPENCER: Point it at the wall.

5

6 A I've proved it safe, Your Honour -- My Lord.

7

8 THE COURT: Yes, go ahead. You checked. It is safe?

9

10 A It is safe.

11

12 THE COURT: Thank you.

13

14 A I need to hold some things down here. So this is proved safe. I'll keep it
15 pointed in that direction. So when the slide comes forward, as Mr. Williams
16 explained -- and there you can see there is that small right there. As I ease it
17 forward, you can see -- and I'll turn it this way so that I'm not pointing it at
18 anybody, but you can see there's a small -- you can see how it's out of battery
19 at that point, and that's what I was referring to earlier with the pinched portion
20 of the slide, and how it was. So when it's in battery --

21

22 THE COURT CLERK: Sorry. The -- I'm not sure that the mike
23 can pick you up when you're leaning that way.

24

25 A I'll stand back. How is that?

26

27 THE COURT: Okay.

28

29 A So when I did the testing, I brought the slide back in this fashion, and I used a
30 clamp to keep it in that position. And the measurement that I was taking was
31 from the rear of the slide here to the -- this flat portion on the back of the
32 frame. So when I say it's at a hundred -- 411 thousandths of an inch, it's 411
33 thousandths of an inch from the back of this slide here to the back of the frame
34 on the pistol. That's the -- the measurement that I'm -- I'm referring to. So
35 when I did that, I clamped it out of battery.

36

37 And then the ammunition I was using, I had -- I had taken the components out.
38 There was no bullet, and there was no powder. I then put the cartridge case into
39 the chamber, allowed the slide to come forward, allowed it to be grabbed by
40 the extractor. I pulled it back to 411 thousandths of an inch. With the trigger
41 released so the hammer would fall, I then brought the hammer back, and I let it

1 drop.

2

3 Now, in the first test at 411 thousandths, I found that the hammer would not
4 make contact with the firing pin. Because as the pistol comes back in the angle
5 in this portion like this, the angle becomes greater to the bottom than if you --
6 you probably can't see, but there is flat portion that surrounds the firing pin
7 tunnel where the firing pin is -- is housed with the spring. So what was
8 happening was the hammer was striking the bottom of that flat portion and was
9 unable to make contact with the firing pin.

10

11 So then I -- I kept moving in, and the process was I did five hammer drops. I
12 would start at a third of the way back, then I would come halfway back, and
13 then I would come all the way back and release the hammer. And at 411, the
14 hammer would not make contact with the -- with the firing pin.

15

16 So at 411, the pistol would not fire. The hammer is striking the bottom of the
17 slide. So the second test was done at 192 thousandths of an inch, the same
18 measurement from the back of the frame to the back of the slide. The pistol
19 would not fire. The hammer was brought back five times with the last three
20 being pulled all the way back, still no discharge. The hammer did enter the
21 firing pin tunnel, but I don't think it was making contact, complete contact,
22 with the firing pin at that time.

23

24 The third test I did in that particular area was at 119 thousandths of an inch.
25 And I did achieve ignition at 119 thousandths of an inch. I did get that case to
26 discharge. It fired at that point.

27

28 So from there, the next testing that I did was I -- I achieved access to a
29 comparison microscope, and I went and looked at it underneath the
30 microscope. And then I compared it to cartridges. And from looking -- or the
31 expended cartridges that -- that came. I think it's 35 and 36? 37?

32

33 Q MR. SPENCER: PE35 and 36.

34 A And so I looked at the marks on the case head and on the primer. In PE043 in
35 particular, there were two indentations, one in the centre of the primer, one
36 actually partially on the edge of the primer and partially on the rim of the
37 cartridge. There was also a pressure mark which, in my view, is caused by the
38 breech face of the -- of the cartridge at ignition where -- when it discharged,
39 because all that 36,000 pounds per square inch is pushing in all directions at
40 one time.

41

1 So that mark, from what I think is the breech -- breech face of the pistol, the
2 marks on the bottom of the cartridge where it made contact with the lips of the
3 feed ramp and the bulge in the cartridge indicates to me that that cartridge case
4 was in that position at the time of ignition.

5
6 So the next thing I did is I measured from the base of the cartridge to the
7 leading edge of the bulge. And that figure was 403 thousandths of an inch. So
8 at the -- pressure marks on the base -- on the case head, the marks from the
9 feed lip, and the bulge indicate to me that that cartridge was, at the time of
10 ignition, 403 thousandths of an inch out of battery.

11
12 So then I noted the irregular marks on the -- the toolmarks on Exhibit PE043,
13 and that's the case that's -- that's bulged. And so I did a series of tests to see if
14 I could duplicate those marks. So what I did is after I made my measurements
15 at 403 thousandths of an inch, I again disassembled some cartridges from the
16 package marked half PE033, and again left the primer live. The first one I did,
17 I did a series of four tests on that. The first one was the cartridge case that --
18 that I had discharged in the fanning test, the -- the test I had just told you about.
19 And so at that point, the Tokarev is unique in that the hammer group, when
20 you take the pistol apart, you can actually just take that whole unit out and
21 eliminate the hammer altogether.

22
23 THE COURT CLERK: Sorry. Your arm is hitting the
24 microphone.

25
26 A Oh, I'm sorry. How's this? So that's what I did is I disassembled the pistol. I
27 removed the hammer, the hammer group, from the pistol. Then I reassembled
28 the pistol. And first off, I took the fired case from the previous test. And I
29 marked each one of these cases at 403 thousandths of an inch. Then I inserted
30 them in the magazine, and I fed them into -- into the chamber. Now, it's
31 difficult sometimes. It'll want to tip and jam because there's no bullet to help
32 guide it into the chamber or no projectile, but I was able to get it in and get the
33 -- into the chamber and get the extractor engaged. Then I moved the slide
34 rearward until I could see my mark at 403 thousandths of an inch on the
35 cartridge that was in the case. Then I took a brass punch, and I believe a 14-
36 ounce hammer, a ball-peen hammer, and I struck the firing pin with the
37 hammer and the punch.

38
39 And when I looked at the first cartridge, the one that I had already fired, the
40 mark at the top of the cartridge case was almost a mirror image of the mark at
41 the top of PE043. It's in the same area. It's -- it's -- the firing pin struck it on

1 the edge of the primer, and the edge where the primer meets the edge of the
2 cartridge case, the head stamp. So to me, that was significant and support that,
3 you know, if ignition occurred at 403 thousandths of an inch out of battery,
4 then I had -- I couldn't figure out what made that second mark or what made
5 either one of the marks, other -- and I'm -- and so when I did the hammer and
6 punch, I hit the same area as that top mark.

7
8 So then I thought, I need to take this further. So I did three more tests, only this
9 time with the live primer. And I was able to -- I started at 403 thousandths,
10 again --

11
12 THE COURT: Okay. Well, before you start putting
13 things up, we might want to just identify it.

14
15 MR. SPENCER: Okay.

16
17 Q MR. SPENCER: Mr. Ervin, you had been referring to the
18 -- the head of that casing, PE043? Is that a photo that you recognize?

19 A That's a photographic --

20
21 Q Yes.

22 A -- depiction of that particular case, yes.

23
24 Q Okay. Would it help you to have that up --

25 A Yes.

26
27 Q -- for your explanation?

28
29 THE COURT: Okay. Any objection to this going in as
30 an exhibit?

31
32 MR. BURGE: No, My Lord.

33
34 THE COURT: Okay. That will be Exhibit D-12.

35
36 **EXHIBIT D-12 - Enlarged Photo of Head of PE043 Casing**

37
38 MR. SPENCER: Do you need it or not? If you don't,
39 that's fine.

40
41 A So as you can see in this, this is the mark that I'm referring to, in this area

1 here. And the pressure mark I referred to earlier is this mark here, which I
2 believe was caused by the -- the breech face of the slide, the forward -- where
3 the firing pin is housed. So this is a -- what a normal-looking hit would be on
4 the -- from the firing pin to the primer --
5

6 THE COURT: Is there -- having difficulty --

7
8 THE SHERIFF: I'm sorry, My Lord, to interrupt.

9
10 THE COURT: Yes?

11
12 A This --

13
14 THE COURT: Okay. Just --

15
16 THE SHERIFF: We have a few jurors that are not able to
17 see. The computer screen is in the way.

18
19 MR. SPENCER: Oh.

20
21 THE COURT: Okay.

22
23 THE SHERIFF: Is there any way we could maybe put it
24 on top?

25
26 THE COURT CLERK: Can we move it over a bit?

27
28 MR. BURGE: I wonder if we could use the clips on the
29 top to clip the photo to it.

30
31 THE SHERIFF: Flip it up. (INDISCERNIBLE).

32
33 THE COURT: Is that better? Indicating yes? Good.

34
35 THE SHERIFF: (INDISCERNIBLE).

36
37 MR. SPENCER: Thank you, Madam Clerk.

38
39 A I'll just go over that again for the -- that -- this is what would be a normal
40 firing pin strike. This is the mark that I'm referring to at the top, the one that,
41 when I recreated it with the hammer and punch, matched. And this mark here

1 is separate. This is a mark from what I believed to be pressure. In other words,
2 when the cartridge discharged, that pressure that's going in all directions
3 pushes it back against the breech face of the cartridge. And if at the time the
4 cartridge is out of battery, then the barrel is tipped down to allow for that slide
5 to go past those lugs. And so that accounts for the mark higher on the -- on the
6 case head than they would normally be.

7
8 So the second test I did in this area was the same as -- as the initial one, but I
9 used live -- a cartridge with a live primer. And -- so I wanted to see if, by
10 striking -- this is on page 8, Your Honour -- or My Lord.

11
12 MR. SPENCER: And, My Lord, (INDISCERNIBLE).

13
14 THE COURT CLERK: Do you want me to give him the court
15 exhibit?

16
17 THE COURT: Yes. We can give the witness the court
18 exhibit.

19
20 THE COURT CLERK: Okay. Please use this one.

21
22 A Oh, okay.

23
24 THE COURT CLERK: Oh, I'm one short.

25
26 THE COURT: Okay. So you're looking at page 8?

27
28 A Page 8, table 2.

29
30 THE COURT: Thank you.

31
32 A So number one in -- in that table shows the -- the firing pin strike in the centre,
33 and it also shows the firing pin strike from the hammer and punch. It's not --
34 it's -- the original one is from the cartridge that I used in the hammer fanning
35 test, and then I just inserted it into the chamber and did the first test with the
36 hammer and punch. And that was with the cartridge extracted out of the
37 chamber to that mark which I had put on the cartridge case at 403 thousandths
38 of an inch.

39
40 So in number 2 of this one, I -- the reference mark again was at 403
41 thousandths of an inch, only this time was using a live primer. So I

1 disassembled the cartridge, left the primer live to see if I could get ignition. So
2 again, I had struck it with the hammer and punch. And you'll see I -- I used the
3 same cartridge for all these tests. So in number 2, you'll see there's an arrow
4 pointing to exactly where the firing pin struck the head of the case. In number
5 3, what I did in that case is I just rotated the case 90 degrees, and then I struck
6 it with the hammer and punch. And you can see there's a blue arrow or a line
7 pointing to where the firing pin struck the case head in that case.

8
9 Third -- the third test was I moved it further in. And what I was doing was
10 when I initially did test 1, I could see the black -- I used just a black Sharpie to
11 mark that -- that measurement, the 403 thousandths of an inch. This test 2, I let
12 the slide go forward so the black mark disappeared. So it was further into
13 battery. And in test 3, I went further yet into the battery to -- to make that test.
14 And I was not able to achieve ignition in any of those hammer and punch tests.
15 And you can see that the firing pin struck in each occasion on the very edge of
16 the primer. And in one, actually denting and -- one, two, all of them have a bit
17 of a mark on the -- on the edge of the case head, as well.

18
19 So that -- that happens because now the barrel is not locked up. It's come to the
20 end of its travel that it can go with that particular link on the bottom of the
21 barrel. So the barrel is now tipped down. So then you typically get firing pin
22 marks that are higher, if it's able to strike it at all.

23
24 So in these tests, I was not able to achieve ignition by striking it with a -- with
25 a hammer and punch. And with a considerable amount of force on the hammer.

26
27 THE COURT: And maybe you could just help me.
28 When you say strike it with a hammer and punch, can you maybe demonstrate
29 with the -- the gun what you're talking about?

30
31 A So in this case, the hammer was -- wasn't in there. I had taken the hammer
32 out.

33
34 THE COURT: So you've taken the hammer out.

35
36 A So then the firing -- or the pistol was locked in a vise and clamped at the
37 various positions out of battery.

38
39 THE COURT: Right.

40
41 A So then what I did -- I'll just put it forward for -- then while it was in the vise,

1 I took a punch that was a smaller diameter than the firing pin head --

2

3 THE COURT: Gave it a tap.

4

5 A -- and I gave it --

6

7 THE COURT: Okay.

8

9 A -- a little bit more than a tap, actually.

10

11 THE COURT: That's what I thought, but I thought I'd
12 just --

13

14 A Yeah.

15

16 THE COURT: -- be clear.

17

18 A And so I wasn't able to achieve ignition in any of those tests which, to me,
19 was not surprising because the nature of a Berdan primed cartridge case is that
20 that anvil is in the centre of the cartridge case between those two little holes
21 that I referred to earlier that allow for the fire to go through into the cartridge
22 chamber. And by striking it on the edge like that, the -- the chemical compound
23 in the primer is not likely to strike the anvil. So it wasn't surprising to me that I
24 didn't get ignition, but what I thought was significant is that the marks that I
25 reproduced or that I produced in these tests are very similar to the marks that
26 you see here in PE043 in -- in location.

27

28 If you move to page 9 of that report, you'll see the pistol in the vise with a
29 clamp on it to keep it in that position. And it's difficult to see, but if the -- it's
30 lined up with the mark at 403 thousandths of an inch when I took that picture.
31 So that's how far how far out of battery I -- the pistol was at that particular
32 time.

33

34 So if -- if it'll help, I mean, I have a dissected barrel that shows the chamber
35 and the rifling. And it's -- it's not a 7.62 by 25, but it's a 7.62 NATO, which is
36 commonly referred to as .308 rifle, and it shows the chamber when it's fully in
37 battery. And I also have a cartridge case component with no bullet, no powder.
38 It's safe. If that would --

39

40 Q MR. SPENCER: Please.

41 A -- help to sort of explain sort of how --

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Q I think that would assist --

A -- things --

Q -- because we're talking about a tapered shell or --

A Yes.

Q -- a tapered cartridge, and a tapered chamber. So --

A Yes.

Q -- if -- if you can let us have a look at that, it would certainly help me get a handle on it. Sandy, you know you're going to have to leave this here if you put it in?

A Pardon me?

Q You have to leave it here when you -- if you put it in as an exhibit. You've done this before.

A It's -- it's a borrowed model, so perhaps at the end of the appeal period, if it could come back, that would be wonderful.

Q You'll have to settle up with Tony.

A I'm not sure. Like, this is a disassembled cartridge with a -- with a fired primer, so there is no propellant. There is -- it's -- it's safe. So there's the bullet and the cartridge.

Q And I think we're relying on you to keep us safe, Sandy, so --

A Yeah, it's --

THE COURT: And just to be clear, this has nothing to do with the case. It's just for illustration purposes?

MR. SPENCER: Absolutely.

THE COURT: All right. A demonstrative aid.

MR. SPENCER: Yes, My Lord.

A It's not likely that you'll be able to see it, so if -- I mean, if the jury wants to pass it --

THE COURT: Well, what you can do is you can

1 describe it, and then we'll just pass it along, and they can take a look at it.

2
3 A Okay. So if you look at this, this is a typical bottlenecked tapered case, which
4 is the same diameter at the neck and bullet diameter as a Tokarev. It's a -- in
5 North America, we would describe it as a .30 calibre, like a .30-06, .308, and
6 this in particular is a .308 cartridge. The 7.62 NATO round is simply a .308
7 hunting cartridge here in North America. So you can see back here, it's a
8 rimless case, the same as the Tokarev. So you can see the taper inside. As -- as
9 the cartridge comes out, it tapers down, and then just before it gets to where the
10 bullet is seated, it actually has a shoulder that tapers in to the diameter of the
11 neck of the bullet. And so -- actually, you could actually take this -- again, this
12 is expended. The primer has been exhausted. There's no powder in it. You can
13 actually take this, and it will actually enter into there, although the -- the
14 diameter of the Tokarev cartridge is much smaller than the .308, but you can
15 see how it works. That would be exactly the same as the function in this
16 particular pistol as far as the relationship for the -- to the -- the cartridge case
17 and the chamber.

18
19 THE COURT: Okay. Would you like me to get the clerk
20 to show the jury that with that --

21
22 A Yeah.

23
24 THE COURT: -- cartridge in there?

25
26 A Uhm --

27
28 THE COURT: I would get you to do it but it is almost
29 impossible for you to get out of there.

30
31 THE COURT CLERK: (INDISCERNIBLE).

32
33 A Well, I can put it in or -- or -- I mean, I can --

34
35 THE COURT CLERK: (INDISCERNIBLE) they can see you --

36
37 A Yeah.

38
39 THE COURT CLERK: Okay.

40
41 A And you have to bear in mind that this is a rifle cartridge, and -- and the

1 Tokarev cartridge is much smaller in diameter. But it's the same basic design.
2

3 MR. SPENCER: So, My Lord, would it be a good time to
4 break and -- and let the -- the jury look at the exhibit, and then --
5

6 THE COURT: That might not be a bad idea. What we
7 should do is mark it as an exhibit --
8

9 MR. SPENCER: Yes.
10

11 THE COURT: -- and then we will let the jury take it
12 back in the room with them, if that works for everybody. So what I am going to do
13 is we will mark this as the next exhibit.
14

15 THE COURT CLERK: Okay.
16

17 THE COURT: And again, I just want to make it clear
18 that this has nothing to do with the case. It's for illustration purposes so that we
19 know what we're talking about.
20

21 THE COURT CLERK: The Crown was just asking if there's --
22

23 MR. BROWNE: No. That's -- that's fine.
24

25 THE COURT CLERK: Okay.
26

27 THE COURT: Okay.
28

29 THE COURT CLERK: So just these two are marked, one --
30

31 THE COURT: I --
32

33 A This is --
34

35 THE COURT: And that's the bullet part or the
36 projectile?
37

38 A That's the projectile that -- that was in either that case or this case.
39

40 THE COURT: Okay. Well, we will put them together in
41 a baggie of three, and -- and do we have any objection having the jury leave, we'll

1 mark the exhibit, we'll take a break, and then we'll send that into the jury room for
2 them to take a look at? Is that all right?

3

4 MR. BURGE: That's fine, My Lord.

5

6 THE COURT: Okay. So what we'll do is we'll take our
7 20-minute break now so that the jury can leave. We'll have that marked as an
8 exhibit as we speak.

9

10 (JURY RETIRES)

11

12 **EXHIBIT D-13 - For Illustration Purposes - Bisected Rifling with Bullet and**
13 **Empty Casing**

14

15 THE COURT: Just send it in like that for now.

16

17 THE COURT CLERK: Do you have an extra baggie?

18

19 A You can put this in, too. It's just -- it's the second one of that. It doesn't matter
20 to me. If they want two, it might be --

21

22 THE COURT CLERK: Can you maybe just --

23

24 A Or I can --

25

26 THE COURT CLERK: Can I use this one?

27

28 A Yeah. Oh, yeah. That's the one that the rifle barrel was in, so --

29

30 MR. BURGE: Is court adjourned?

31

32 MR. SPENCER: (INDISCERNIBLE) the cross.

33

34 THE COURT CLERK: So now I missed what he said about
35 marking it.

36

37 MR. BROWNE: Do we need to adjourn court, Madam
38 Clerk?

39

40 (WITNESS STANDS DOWN)

41

1 (ADJOURNMENT)
2
3 THE COURT: We will get the jury.
4
5 MR. BROWNE: Yes, My Lord.
6
7 MR. SPENCER: Madam Clerk, what would we be at for
8 this?
9
10 THE COURT CLERK: 14. (INDISCERNIBLE) there was
11 enough.
12
13 MR. SPENCER: What's that?
14
15 THE COURT CLERK: I need one to mark.
16
17 (JURY ENTERS)
18
19 THE COURT: Okay. We are in the home stretch for the
20 week. Mr. Spencer.
21
22 MR. SPENCER: One more housekeeping. I know I keep
23 housekeeping. It's not like me. But the CV that the jury has seen, I realize it hasn't
24 been marked, so I think it should be marked, having been --
25
26 THE COURT: Okay. Do you have the court copy?
27
28 THE COURT CLERK: I have one here, My Lord.
29
30 THE COURT: Okay. And what number are we at?
31
32 THE COURT CLERK: D-14.
33
34 THE COURT: The CV of Mr. Ervin will be D-14.
35
36 **EXHIBIT D-14 - Curriculum Vitae of John "Sandy" Ervin**
37
38 MR. SPENCER: And that came to my attention because
39 there was a question about who's "Sandy" when the expert is John Robert, but you
40 go by Sandy?
41

1 (WITNESS RE-TAKES THE STAND)

2

3 A I do.

4

5 MR. SPENCER: Yeah. So sorry. I should have made sure.

6 If I confused anybody, I apologize.

7

8 Q MR. SPENCER: So, Sandy, you're getting through your
9 testing. Is there any other testing relevant to your opinion?

10 A I -- I think observations, perhaps, as opposed to testing.

11

12 Q Okay. Is it easier to do those up front or to get to what your conclusions and
13 observations at the same time? Whatever -- what's easiest for you?

14 A I think probably we should clarify the observation in regard to the -- and I'm
15 speaking specifically in regard to PE043.

16

17 Q And that is -- and just again, to pick up my error, that's P-9 in these
18 proceedings?

19

20 THE COURT CLERK: (INDISCERNIBLE).

21

22 A Yes.

23

24 Q MR. SPENCER: Okay.

25 A So before I mentioned the fact of the two marks on the bottom of the case, the
26 two marks, one on the primer and one on the edge of the primer and the edge
27 of the head stamp, what I didn't mention was -- and if you have -- you've had
28 the opportunity to look at the -- a 7.62 by 25 empty cartridge case, and you can
29 see the taper and the bottleneck in the cartridge. And as you see, where it goes
30 into the chamber, that cartridge case would then fit in and be within 6
31 thousandths of an inch of the inside diameter of that cartridge -- or of that
32 chamber. So normally when a firearm is discharged, you will get that 6
33 thousandths of an inch expansion that brings it to the internal dimensions of the
34 chamber. And if you look at -- at this -- was it P-9?

35

36 THE COURT: Yes.

37

38 Q MR. SPENCER: Yeah.

39 A P-9, you will see there's virtually no bottleneck left.

40

41 THE COURT CLERK: P-19?

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THE COURT: Oh, P-19. I'm sorry.

A Oh, sorry. P-19.

Q MR. SPENCER: Yeah, P-19, which is a picture of --

A Which was --

Q -- P-9, which is the cartridge, which is in evidence. But I just want to make sure those ties, for our purposes, with the PE043. Go ahead.

A You'll see that the -- the bottleneck is virtually non-existent anymore in this cartridge. So as we mentioned earlier or I mentioned earlier, when that expansion, that 36,000 pounds per square inch expands inside the chamber, it's pushing out in all directions. And in this case, it's fire-formed to the larger portion of the chamber behind the bottleneck. So -- and I did not measure that to see what the actual dimensions are, but it's clear that the bottleneck is missing and that it's expanded more than it would normally expand in normal firing. That also indicates to me that it had to be that far out in order for that case to expand to the larger portion of the chamber.

So having done this, looking -- looking at the marks, test-firing the pistol, taking the measurements that I did, the question, if I can return to my five categories that I had looked in. And now referring to page 2 --

THE COURT CLERK: D-11. Your report, D-11?

A So it may be just as easy to -- to read my findings as -- or I can --

Q MR. SPENCER: Yeah.

A -- however --

Q Yeah. Whatever works for you. Yeah.

A So basically, the opinion expressed in this report of mine, based on my examination of physical evidence supplied to me by the Court -- I was also provided with limited documentation and a general overview of the case. So then in the background, I've listed, is the pistol exhibit, PE087, functioning normally, has the pistol been altered in any way, what are the characteristics of the ammunition, steel or brass casing, cordite or modern powder, straight wall or bottleneck case, is there excessive wear on the pistol, if possible, determine the cause of the deformed cartridge case.

1 So my findings, basically, and still on page 2 under the heading "Findings", is
2 the pistol, Exhibit PE087, functioning normally? The answer to that question is
3 the pistol functioned as designed in all live-fire testing where the slide was
4 allowed to go fully into battery. The damage to the rear of the slide rails did
5 cause the slide to stop out of battery if the slide was eased forward and not
6 allowed to use the full energy of the return spring. This allowed me to
7 discharge the pistol between 49 thousandths and 90 thousandths out of battery.

8
9 Number 2. Has the pistol been altered in any way? I found no evidence that the
10 pistol had been altered from its original design.

11
12 What are the characteristics of the ammunition? Page 3 now. The ammunition
13 is constructed of steel bottlenecked case, marked BXN-53, and uses a Berdan
14 primer. The powder is standard flake powder commonly found in -- in pistol
15 cartridges.

16
17 Is there -- and number 4. Is there excessive wear on the pistol? There was
18 corrosion noted in the interior of the barrel, but not to the point that it would be
19 considered excessive. The locking lugs on the slide and the barrel were
20 rounded off. And what I mean by that is normally out of the factory new
21 pistols, those locking lugs that I was referring to before are very sharp with a
22 bevel on the edge to allow them to come off the -- the lugs on the slide, if you
23 will, or the recess on the slide. In this case, both the slide and the lugs on the
24 barrel showed wear and rounding, which would allow it to come out of battery
25 early, maybe, or -- or come out of battery easier than it normally would. This
26 type of wear can contribute to the slide unlocking slightly early and may be the
27 reason for the smear drag marks on the primers of the fired cartridges.
28 Mr. Williams referred to drag marks on the cartridge where the barrel is in
29 motion and the firing pin is still in contact with it. And I did notice smear
30 marks when I did the live firing testing. In my opinion, this wear was not
31 considered excessive in a pistol of this age.

32
33 And the last determine -- or the last was if possible, determine the cause of the
34 deformed cartridge -- deformed cartridge case, Exhibit PE043. The answer
35 there is a physical examination of Exhibit PE043 found severe bulging at the
36 base and an expanded case mouth and neck which virtually eliminated the
37 bottleneck. The expansion can only occur when the pistol is out of battery. The
38 rear portion of the cartridge case is then unsupported and found -- and the front
39 portion of the cartridge case is supported by the rearmost portion of the
40 chamber. The 12 o'clock mark on the case, combined with what I believe to be
41 an impression made by the breech face of the slide, is an indication to me that

1 the pistol was out of battery and in a position where the barrel was tipped down
2 enough to create the impression at this point.

3
4 This evidence, along with the measurements of the case and the rearward slide
5 travel, provides strong evidence that the cartridge detonated while the pistol
6 was at least 432 thousandths of an inch out of battery. And that's measured
7 from the rear of the slide to the rear of the frame. So the 403 thousandths of an
8 inch measurement I referred to earlier was the base of the cartridge head to the
9 leading edge of the bulge on the cartridge case. This measurement of 432
10 thousandths is the measurement, again, taken from the rear of the slide to the
11 rear of the frame in that position.

12
13 The knowledge that the pistol was out of battery when the firearm discharged
14 raises the question, what caused the detonation? In normal pistol operation, the
15 trigger is pulled, the sear releases the hammer, the hammer strikes the firing
16 pin, and the firing pin strikes the primer. The primer is compressed against the
17 anvil. The primer ignites. Flames push through the holes in the end of the
18 cartridge case and ignites the powder in the case. The powder burns, creates
19 gas pressure, which in turn pushes the projectile out the end of the barrel. In
20 this case, however, the pistol and cartridge functioned in a manner that was not
21 normal. The hard answer to what caused the detonation of the cartridge is I
22 don't know. I was unable to achieve detonation with the hammer and punch
23 test. I -- I simply don't know what, in fact, caused that firearm to discharge.

24
25 Having stated that, however, I have compiled a short list of possibilities that
26 could cause an out of battery discharge, along with testing references that were
27 conducted in an effort to duplicate the scenarios.

28
29 Theories. And these are theories because I -- just based on my experience,
30 because I -- I don't know what caused that detonation. It is my experience --
31 and the first one is hang fire at the bottom of page 3. It is my experience that
32 hang fires are extremely rare and usually occur within seconds of the initial
33 strike of the primer. Hang fire situations are usually associated with older
34 ammunition. Hang fires are a result of either the primer or not detonating
35 properly, contaminated powder, or old powder. There are many factors that
36 could contribute to this, such as poor storage, poor quality control by the
37 manufacturer, and even extreme fluctuation in temperature. I have experienced
38 incidents where the primer just ignites enough powder to push the projectile
39 out of the end of the barrel but does not burn all of the powder. And what I'm
40 referring to there is I was hand-loading an old cartridge, a .44-40, using old
41 powder, and I loaded the components in, inserted new primer. I inserted the

1 powder in, and then loaded a bullet on top, and then inserted it into the firearm
2 to discharge the firearm. When I discharged the firearm or pulled the trigger,
3 the hammer fell, and I heard a click. And I actually looked at my friend and
4 said, oh, that's -- I have a misfire. And then I heard a "tink" or a clink at the
5 end of the range where the projectile actually hit the backstop in the 25-metre
6 range that we were using. So we were both surprised at that. We tried it again.
7 I did it for a total of five rounds with the same result. Whether you'd call that a
8 hang fire or delayed ignition, what happened was the powder that was in the
9 case did not ignite the way it was supposed to, partially burned, in my view,
10 but with enough pressure to push the projectile out the end of the barrel, but it
11 didn't do it initially when the hammer struck the -- the -- or the firing pin
12 struck the primer.

13

14 Q And no bang at all?

15 A No bang.

16

17 Q Because --

18 A It was --

19

20 Q -- it's probably slow?

21 A Pardon me?

22

23 Q Because it would be coming out slow?

24 A Yes.

25

26 Q Too slow to get the --

27 A Yeah.

28

29 Q -- sonic reaction?

30 A And, of course, below the speed of sound, so there was no sonic crack.

31

32 Q Okay.

33 A So in this case, there was not enough evidence to say that it was a hang fire,
34 nor is there enough evidence to say that it was not a hang fire. It's -- it's again
35 -- I -- I don't know the answer to that question. So then I thought, what could
36 have caused that detonation? What could have caused the -- the cartridge to
37 discharge in that scenario? So in this scenario, the firing pin could possibly
38 strike the primer. And the -- and the heading there is poor strike on the back of
39 the firing pin. In this scenario, the firing pin could possibly strike the primer if
40 something or someone struck the back of the hammer or a direct strike to the
41 firing pin, causing the firing pin to move forward and strike the primer. The

1 live primer testing was done with this theory in mind. I was unable to achieve
2 detonation of the primer in any test where the slide was more than 1,925
3 thousandths of an inch out of -- or 192 thousandths of an inch out of battery. I
4 know from the hammer drop test that the hammer strikes the bottom of the
5 frame at 411 thousandths, and it did not achieve ignition anywhere between
6 192 thousandths and 411 thousandths. In the hammer and punch testing, I
7 could not achieve the ignition anywhere at all.

8
9 The interesting point that comes from the hammer and punch test is that the
10 firing pin strike on the primer on the edge of the primer pocket on the case is
11 almost a mirror image of the 12 o'clock mark on PE043. With the pistol in this
12 position, if something did strike the firing pin, the object would have to bypass
13 the hammer, which could have been in any position from resting on the back of
14 the slide to full cock, if the object was successful by bypassing the hammer, it
15 would have to be able to enter the hammer slot and the slide. I did not measure
16 the width of the hammer slot or the exhibit -- on the Exhibit PE087. I did,
17 however, measure the width of the hammer slot in a similar firearm. The T-33
18 Tokarev pistol I measured was the same make and model that was
19 manufactured in 1944. I took four measurements at different increments which
20 produced an average measurement of 331 thousandths or 5/16ths of an inch, so
21 a 16th of an inch over a quarter-inch, if that helps. I cannot think of any other
22 possibilities that would cause the pistol to fire far enough out of battery to
23 produce the irregularity found in PE043.

24
25 So the condition of PE043, compiled with the testing and microscopic
26 examination, clearly indicates the pistol was out of battery to the point where
27 403 thousandths of -- of the case was unsupported. The testing also indicated
28 that the hammer could not strike the firing pin when it was that far out of
29 battery. In my opinion, although there could be other possibilities that caused
30 the discharge, the two theories presented above are the most probable. I cannot
31 conclude, however, which one, if either, caused the discharge at PE043.

32
33 Q Okay. If the -- at the point of detonation the cartridge is out -- you said the --
34 the lower number is 403 one-thousandths of an inch?

35 A Yes.

36
37 Q If the cartridge is out that much, the hammer hits the frame?

38 A Yes.

39
40 Q What happens to the trigger? What happens if I pull the trigger?

41 A The trigger disconnect would be engaged, so the trigger would just move freely

- 1 without touching the sear.
2
- 3 Q Oh, okay. Any idea how it could get out of battery?
4 A Again, the possibilities are endless. It could be scraped against something,
5 because there's no lockup. If there's no pressure in there, it's going to be able
6 to be pulled to the rear. By an obstruction, manually somehow. In some cases,
7 there could be a failure to feed. But it's -- it's difficult to say. It's -- anything
8 could have caused it to be that far out of battery.
9
- 10 Q So you -- you know it was out of battery for sure, don't know how it got out of
11 battery, and don't know how it detonated?
12 A That's correct.
13
- 14 Q Okay. The nature of a hang fire, the fundamental nature of a hang fire, is that
15 the primer explodes. Now -- or ignites. Am I -- which is the best word -- the
16 better word? The proper word
17 A Either works.
18
- 19 Q Either works?
20 A Probably explodes would be --
21
- 22 Q Yeah. So you get a strike on the primer. And there's such a thing as a delayed
23 -- a hang fire would be a delayed primer?
24 A Yes.
25
- 26 Q The second type of hang fire would be the primer would explode in the
27 ordinary course but not light the powder?
28 A Yes.
29
- 30 Q Okay. So in that scenario, is it possible that the primer explosion, if the weapon
31 is rounded off or is -- is -- would come out of battery easier, is it possible that
32 that primer strike could -- it would generate energy?
33 A Yes.
34
- 35 Q So that energy goes forward, bullet stays in place, by the nature of a hang fire.
36 Would you get backward pressure, then, that could take it out of battery?
37 A It's possible, but I would be surprised if the primer itself had enough energy in
38 it to push it back. Certainly to that extent, it -- there may be some slight
39 movement, but I -- I would -- it would be difficult to say that it would or it
40 wouldn't. I know in circumstances where I've had that type of situation, I have
41 -- you've -- end up with the projectile -- if the primer fires or explodes, if we

1 will, to keep it separate from the ignition of the -- of the powder, and there is a
2 bullet in there but the powder does not go, hand-loaders have this happen to
3 them quite often where maybe they miss a step and they don't get the powder
4 in the cartridge. So when they fire the primer, they hear a subdued sound, more
5 of a pop than a -- than a bang, and more often than not, they'll find that the
6 projectile is lodged in the barrel. So the primer has enough energy to push the
7 projectile into the barrel, and, of course, any pressure that's built up, which is
8 nowhere near the pressure from if the powder ignites, goes forward, hits the
9 base of the bullet, and then actually returns and ...

10

11 Q Right. Now, if, in fact, that bullet is lodged, rusted in, somehow lodged, then
12 that would scientifically push more pressure backwards?

13 A Yes, that's correct. Yeah.

14

15 Q So if it didn't --

16 A I mean, it -- it --

17

18 Q -- pop out and stove -- sorry.

19 A The gas pressure has to go somewhere.

20

21 Q Yeah.

22 A And if the bullet gets lodged in the barrel, then the barrel, if you recall, when
23 you -- when you looked at this particular cutaway, you see the lands and
24 grooves. So in -- in the actual barrel. So lands and grooves are in there to create
25 a spiral effect when the bullet comes out, which -- which helps with accuracy.
26 They're also there because the diameter of the bullet is actually the diameter of
27 the groove in the barrel. So when the bullet comes out, the lands are slightly
28 smaller than the groove. So the bullet, being either, you know, copper or -- or
29 lead, is very malleable, and it pushes through and fills up those grooves and
30 traps the gas behind the bullet, and that's how you got the pressure to push it
31 out of the barrel. So if the bullet is dislodged from the case mouth and goes
32 into the barrel of the pistol, then that gas can't escape if it doesn't have enough
33 energy to push the projectile right out the barrel, it will virtually make a U-turn
34 and come back and -- and just cover the -- like, you'll see black marks and --
35 and powder residue on the actual case itself. And that usually is an indication
36 that something like that has happened.

37

38 Q Okay.

39 A If --

40

41 Q So if the bullet doesn't go out, either because it's stove piped, it sticks in the --

- 1 in the barrel --
- 2 A Yeah.
- 3
- 4 Q -- or is lodged in the casing, that's going to push more force back?
- 5 A Yes. The -- the pressure has to go somewhere, yeah.
- 6
- 7 Q Right. Okay. So if -- if the primer explodes, if the primer works, it forces the --
- 8 the flame into the powder, and the powder -- is it possible for the powder to
- 9 catch fire but not burn quickly?
- 10 A It's possible. It's --
- 11
- 12 Q Okay. So is it --
- 13 A And as a matter of fact, when -- when -- if you look at my example with the
- 14 old .44-40 cartridge, that's exactly what I believe was happening there is just
- 15 partial ignition of the powder, but it -- it burned enough that when we did the --
- 16 you know, after the first two and we realized we were duplicating things, then
- 17 we can actually see unburned powder fall out the end of the barrel after we
- 18 pulled the -- pulled the trigger and the hammer struck it. So in that case, the
- 19 primer itself would not be enough to push, you know, a 200-grain lead bullet
- 20 18 inches down the barrel or 20 inches, whatever that barrel was. And so there
- 21 had to be some propellant ignite somewhere in order to get that out the end of
- 22 the barrel. So in that case, there was some ignition, but not complete ignition.
- 23
- 24 Q So the powder is smoldering?
- 25 A Yeah. It -- it's very hard to determine, like, what goes on inside that cartridge
- 26 case, you know, but it -- the whole purpose is to ignite that powder. So if you
- 27 have -- I like to refer to it as delayed ignition. Then it could be the powder is
- 28 smoldering, and it could be the primer didn't quite, you know, hit the anvil, but
- 29 the chemical compound didn't react. And then something else caused it to --
- 30 what caused it, I -- I don't know what would --
- 31
- 32 Q Okay.
- 33 A -- cause it. But it could be, like I say, partial powder burn, and it could --
- 34
- 35 Q Okay.
- 36 A -- like, I'm trying to think of an analogy that might assist --
- 37
- 38 Q Yeah.
- 39 A -- but I'm not drawing one.
- 40
- 41 Q But to be a true hang fire, there has to eventually be the -- the gunpowder must

1 catch eventually?

2 A Yes.

3

4 Q Yeah.

5 A Yeah. Or -- yeah. There has to be ignition.

6

7 Q Right. So --

8 A Otherwise it's going to be on a misfire or just --

9

10 Q Dud?

11 A Yeah. Just not going to happen.

12

13 Q Okay. So -- so in that delay period, if -- if it's -- you know, I use smoldering.

14 The -- you said powder burn, slow powder burn, or --

15 A Yeah.

16

17 Q -- if -- if that cartridge, which is probably going to be in a firearm, but if that's
18 shaken or hit something or rattled, would that potentially cause the powder to
19 catch?

20 A It's possible. I mean, it's -- again, we're dealing with what's going on in the
21 unknown inside the cartridge, but it -- I mean, it has to be possible that it could
22 happen.

23

24 Q Okay. Can you give opinion on the maximum time of a -- what did you -- you
25 called it a hang fire. You called it a delayed discharge or --

26 A Delayed ignition.

27

28 Q Delayed ignition.

29 A Hang fire.

30

31 Q Can you tell us -- give an opinion on the maximum time for one of those?

32 A No.

33

34 Q Why not?

35 A I -- it's impossible to determine. There's so many factors going on at the time,
36 it could be -- it could be a bad primer. It could be deteriorated powder. It could
37 be the -- it could be almost anything that's going on in there at the time. It
38 could be mechanical.

39

40 Q Okay. So you can't give an expert opinion on maximum. What's a reasonable
41 estimate?

1

2 MR. BURGE: My Lord, I wonder if we should have --
3 if we should have something in the absence of the jury, if we could, please, at this
4 time?

5

6 THE COURT: Okay. We have got a legal question we
7 have got to deal with, so if you would excuse us for a moment?

8

9 (JURY RETIRES)

10

11 MR. SPENCER: Probably in the absence of the witness,
12 too, I suspect.

13

14 MR. BURGE: Yeah.

15

16 MR. SPENCER: Yeah.

17

18 THE COURT: Yes, you can step down, too.

19

20 THE COURT CLERK: (INDISCERNIBLE).

21

22 A There was a time (INDISCERNIBLE).

23

24 (WITNESS STANDS DOWN)

25

26 **Discussion**

27

28 THE COURT: Mr. Burge.

29

30 MR. BURGE: My Lord, I -- I just wanted to be sure
31 that there's a proper foundation for this opinion, and that we're not perhaps going
32 into Internet sources again.

33

34 MR. SPENCER: Oh, sorry, no, no. I just wanted his
35 opinion on what was reasonable. No, I'm sorry. I should have told you that.
36 That's --

37

38 THE COURT: Okay. So --

39

40 MR. SPENCER: Yeah. He's an expert. He's my expert, so
41 I'll just use --

1
2 THE COURT: What -- what question are you going to
3 ask?
4
5 MR. SPENCER: Well, what is a reasonable -- can't say --
6 can't give an opinion, a definitive opinion, but --
7
8 THE COURT: Right.
9
10 MR. SPENCER: -- what's a reasonable estimate of the
11 length -- maximum length of a -- of a hang fire?
12
13 THE COURT: Based on what?
14
15 MR. SPENCER: His expertise as firearms ammunition
16 expert.
17
18 THE COURT: Do you have a problem with that?
19
20 MR. BURGE: Well, if it's -- I guess I wouldn't have an
21 opinion if he -- I guess he's told us about when he's doing some reloading with old
22 powder, which -- which -- I'm not sure how relevant that is. But if it's based on
23 either his personal experience, his reference to accepted sources of information
24 within his field, that would be appropriate. But if it's from the Internet ...
25
26 THE COURT: Yes. I guess that's a fair point,
27 Mr. Spencer. You've already asked him what is the maximum time. He says he
28 doesn't know.
29
30 MR. SPENCER: It's -- it's impossible to give an opinion.
31
32 THE COURT: Right.
33
34 MR. SPENCER: Right.
35
36 THE COURT: And if it's impossible to give an opinion
37 on that, one wonders if you go to say, well, what's a reasonable time? If you don't
38 know the maximum, how do you know the reasonable? So I think in fairness, you
39 should perhaps qualify what his -- what his knowledge is before he gives the --
40 that opinion.
41

- 1 MR. SPENCER: Okay.
- 2
- 3 THE COURT: So in other words, ask him whether he
4 has any personal experience with hang fire, and -- or tell him what you're about to
5 ask him, and then before you ask him, you could outline the basis for his belief, if
6 he is able, because he might say no, that he doesn't know.
- 7
- 8 MR. SPENCER: Yeah. And I -- I guess, My Lord, I -- I
9 have to look at my friend's argument. And if it's something that can't be
10 measured, and then my friend is saying, well, and we won't then use practical
11 evidence -- no, that's -- that's a bit of a catch-22 to say a good expert can't give an
12 opinion on the maximum. It's impossible. But --
- 13
- 14 THE COURT: Well, the -- I think the point of the
15 objection, which is a fair one, is that you can't ask the witness to guess.
- 16
- 17 MR. SPENCER: Well, but that's an opinion, though.
- 18
- 19 THE COURT: Well --
- 20
- 21 MR. SPENCER: That's --
- 22
- 23 THE COURT: -- an opinion is different than guessing. I
24 could guess.
- 25
- 26 MR. SPENCER: But an --
- 27
- 28 THE COURT: You could guess.
- 29
- 30 MR. SPENCER: -- an expert giving a reasonable opinion,
31 I -- I think is the --
- 32
- 33 THE COURT: But what is it based on?
- 34
- 35 MR. SPENCER: -- answer. What's that?
- 36
- 37 THE COURT: What is it based on?
- 38
- 39 MR. SPENCER: On his experience. So you say, can't say
40 with certainty, but then we have to go the next step is what's a -- so if you can't --
41 and it's like saying give me a range. We do that all the time, because we say, give

1 -- give me a range. What's a reasonable range?

2

3 THE COURT: Well --

4

5 MR. SPENCER: They say, I don't know how fast the
6 vehicle was going, but, like, those -- that's very common, My Lord.

7

8 THE COURT: What I am going to do is you can -- you
9 can ask the question, but I think that you should qualify it because if you don't, it
10 might mean that I will eventually have to say that -- for them to disregard it
11 because it was speculation. So if you don't lay a proper foundation, then there may
12 not be any weight given to this opinion. And then, Mr. Burge, you can cross-
13 examine, as well. So that's the other side of it.

14

15 MR. BURGE: Thank you, My Lord. Yes.

16

17 THE COURT: Okay. Bring the jury back in. And the
18 witness, too.

19

20 THE COURT CLERK: Yes, he went to get him.

21

22 THE COURT: Good. Thank you.

23

24 (WITNESS RE-TAKES THE STAND)

25

26 (JURY ENTERS)

27

28 THE COURT: Thank you very much. We appreciate
29 your indulgence. Sometimes there's legal matters that we need to get sorted out,
30 and we've got it sorted out.

31

32 Mr. Spencer, go ahead.

33

34 **Mr. Spencer Examines the Witness**

35

36 Q MR. SPENCER: Mr. Ervin, you were a firearms instructor
37 for the RCMP?

38 A That's correct.

39

40 Q And what is the -- can you tell us about the instruction with respect to hang
41 fires in the RCMP?

1 A We have -- and it's fairly standard with most -- most police agencies and also
2 within the Canadian Firearms Program, Canada safety test, which everybody
3 has to pass in order to get a firearms licence in -- in Canada. So basically, if
4 you have what you think is a misfire or a click when you should get a bang, for
5 lack of a more glorified expression, you wait 30 seconds to 60 seconds. After
6 you do that, you open the bolt, take the -- the cartridge, and put it into some
7 kind of a container, away from the range.

8

9 Q Okay. So even after the --

10 A Or in --

11

12 Q -- even after the minute, you -- the minute has expired, you contain it?

13 A Yes. We put it in a -- in a box for -- if you were to go to the -- excuse me -- the
14 RCMP range, for instance -- ranges, you would see in the back of the range,
15 the indoor ranges, there's containers there for misfires. And --

16

17 Q Okay. And why -- why would you need to contain it?

18 A Pardon me?

19

20 Q Why would you need to contain it?

21 A Well, if, in fact, the cartridge -- when a cartridge case is in a chamber and
22 supported, back to the pressure and the pushing it through the path of the least
23 existent -- or resistance, it's -- it's contained and -- and controlled. And so it
24 pushes the projectile out. If the cartridge is not contained, it could become like
25 a frag -- you know, it would disintegrate because the pressure is going all this
26 way, and most likely the projectile wouldn't even -- it may eject, but it could
27 just explode.

28

29 Q And the -- basically, it could still go off after the minute?

30 A Yeah. It would be -- it would be rare, but that's --

31

32 Q But --

33 A -- that's the training. That's what we teach.

34

35 Q Okay.

36 A Yeah.

37

38 Q And -- and the policy, where does that come from?

39 A Well, it's -- the policy in the -- in the force has been there since -- and we teach
40 hang fire procedure just for the simple reason that if in military ammunition,
41 old military ammunition, hang fires did occur. And so especially with the rifle,

- 1 THE COURT: About how long do you think you might
2 be?
3
- 4 MR. BROWNE: I suspect 20 minutes to half an hour tops,
5 My Lord.
6
- 7 THE COURT: Okay. Bring the jury back in.
8
- 9 MR. BROWNE: That -- that would be a high estimate, I
10 think, My Lord.
11
- 12 THE COURT: Okay. It's better to have a high estimate
13 than a low one at this point in the day.
14
- 15 MR. BURGE: So much for my early start home.
16
- 17 MR. SPENCER: You're going to miss curling.
18
- 19 (JURY ENTERS)
20
- 21 (WITNESS RE-TAKES THE STAND)
22
- 23 THE COURT: I realize it's quarter to five, and I
24 understand that -- one never knows for sure how long things are going to take. But
25 it appears that we've got maybe 20 minutes or so in there. So if that's the case, we
26 should be finished around 5 o'clock. I know that's a little later than what we might
27 go, but with that in mind, you can proceed, Mr. Browne.
28
- 29 MR. BROWNE: Thank you, My Lord. And thank you to
30 members of the jury for that time for my notes. I do appreciate it.
31
- 32 **Mr. Browne Cross-examines the Witness**
33
- 34 Q MR. BROWNE: So can I call you Sandy? Is that okay?
35 A Absolutely.
36
- 37 Q Thank you, Sandy. So, Sandy, you received the reports of Dr. Williams -- or
38 Greg Williams when he -- his forensic reports from the rifle -- or from the
39 Tokarev?
40 A I received, yeah, some reports from him.
41

1 Q Okay. And you were aware that the damage to the Tokarev was caused during
2 his testing?

3 A I -- I wasn't until -- like, I just got the pistol, and I found the damage, and I
4 commented. And -- and I believe Mr. Spencer said that there was some testing
5 with the blocking and -- which would -- could attribute to the --
6

7 Q But prior to testifying today, you were aware of that?

8 A Yes. Yes, I'm sorry.
9

10 Q Thank you. And that explains the difficulties you had when you manipulated
11 the firearm when you first got it?

12 A Yeah, it would -- I would assume that's what caused it. I -- I don't -- I didn't
13 see anything in Mr. Williams' report that would indicate that that was
14 happening when he tested it, so ...
15

16 Q Okay. So you're aware that it struck a metal stand and caused some damage to
17 the Tokarev?

18 A Well, I was unaware now what it struck, but I knew it had to strike something
19 hard in order to do that damage, so ...
20

21 Q Okay. But that damage you see on the unit, you've seen the Tokarev, you've
22 seen the damage. That damage is consistent with it striking a metal stand?

23 A Yes.
24

25 Q Okay.

26 A Yes.
27

28 Q Okay. Thank you. So we've talked a lot about this .403 inches out of battery?

29 A Yes.
30

31 Q Okay. But through all of your testing, you were never able to get it to fire at
32 that point?

33 A That's correct. It -- with the hammer test -- or hammer and punch test, I was
34 not able to achieve an ignition.
35

36 Q And the trigger wouldn't have worked?

37 A No.
38

39 Q And you said you tried to make the hammer itself of the -- of the pistol move,
40 and that didn't work, either? The hammer drop test?

41 A That's correct.

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Q Okay. So it doesn't really explain why the casing is the way it is, then? Any of that testing doesn't really explain that?

A No, it -- it just -- I was unable to achieve ignition.

Q Okay. So it's fair to say that if you had that handgun and it was that far out of -- it was the .403 out of battery, you're not able to fire that firearm?

A Under normal circumstances, no.

Q And you're assuming normal circumstances because when the firearm made it to you, it exhibited normal circumstances?

A Yes.

Q Okay. So even when you were trying very hard to make that firearm go off, you couldn't?

A That's correct.

Q Okay. So on -- I believe it's P-19 -- sorry. The top photo there, D --

THE COURT CLERK: D-12.

Q MR. BROWNE: -- D-12. There's two marks on that primer, right?

A Yes.

Q Okay. And one appears to be quite significant in the middle?

A Yes.

Q Okay. So it's possible that that was what caused the -- the casing to expel the projectile?

A Well, at the angle -- if it's 403 thousandths out of battery, the firing pin couldn't strike it at that angle. It would strike it at the -- nearer to the top mark.

Q Right. So for it to get that hole or that mark, it would have to be in almost normal seating?

A That's correct.

Q Okay. So likely, when that casing was seated normally or very close to it, the trigger was pulled, the hammer came down, it hit the firing pin, and the firing pin struck right there?

A I can't say likely, but it is -- that's a possibility, yes.

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Q Okay.

A It -- it -- in order for that mark to appear where it is, the -- the firearm would have to be either in battery or not very far out.

Q Okay. But it's possible it might have been slightly out of battery?

A Yes.

Q Okay.

A I mean, in the -- with the testing I did, I was able to fire it slightly out of battery.

Q And in your testing, when it was slightly out of battery or in battery, your mark was approximately where it is on that --

A It was -- it was a little higher, but so were the cases that I tested normally. It was just --

Q So --

A Yeah.

Q -- but we're talking a circular casing?

A Yeah.

Q Higher is relative, right?

A Yeah.

Q We could be looking at that casing upside down. Really, that point could have been the top point?

A No, not really, because the lips of the feed ramp, the marks on the bottom of the cartridge, indicate that that cartridge was -- when it expanded, it contacted the feed ramp. So --

Q Okay.

A -- it had to be oriented in that particular direction.

Q So -- but by normal indications, the trigger on this gun as it's in a normal working order, the trigger was pulled, the hammer came down, it struck the firing pin. The firing pin struck there?

A Are you saying --

Q That's correct, right?

- 1 A That -- that's -- in a normal situation --
2
- 3 Q Okay.
4 A -- that's exactly what would happen, yes.
5
- 6 Q And this -- this firearm works normally?
7 A Yes. Yeah.
8
- 9 Q Okay.
10 A I had no issues with it, other than the impingement at the rear of the slide.
11 That's the only issue I had.
12
- 13 Q So it's possible that it was slightly out of battery. Now, we've talked about
14 what those gases would do. It's possible that those gases would push the slide
15 backwards if it's not locked and out of battery?
16 A Yes, it's possible, but you also have those gases that are -- are expressing
17 pressure on the inside walls of the chamber, as well. So the -- when you
18 achieve that freeze to the inside of the chamber, that also stops the cartridge
19 from coming back in the slide -- or in --
20
- 21 Q So the slide will move pretty easily if it's out of battery, right?
22 A That's correct.
23
- 24 Q Okay. Whereas that's a steel casing. It's got a fair bit of resistance?
25 A In?
26
- 27 Q In comparison. To that -- to that expanding gases.
28 A In a -- in a fired --
29
- 30 Q In a fired --
31 A -- case or --
32
- 33 Q In -- in a fired case, it --
34 A So --
35
- 36 Q -- in a fired Tokarev case similar to the ones we're using with a steel casing --
37 A Yes.
38
- 39 Q -- that steel casing, it's stronger than brass?
40 A Yes.
41

- 1 Q So -- and its resistance would be higher than brass?
2 A Not necessarily, because brass is so malleable, and that's one reason they use it
3 in cartridge cases is because it is malleable. When it heats up under the
4 pressure -- because if you can imagine the heat that's in there, as well as the
5 pressure, the brass -- the -- the properties of the brass allow it to stick to the
6 chamber actually easier than --
7
8 Q That's what I'm saying.
9 A Yeah.
10
11 Q Is that if this were brass, we'd expect that to be kind of the first thing that
12 expanded because the brass is so malleable?
13 A I'm not sure I understand your question. I'm sorry.
14
15 Q Okay.
16 A The -- like, the brass -- what would be the first thing to expand?
17
18 Q If we were using a brass casing --
19 A Yes.
20
21 Q -- the brass casing would be the first thing to heat up, due to that --
22 A Yes.
23
24 Q -- explosion going on --
25 A Yes.
26
27 Q -- in there?
28 A Yeah.
29
30 Q Okay. And normally, the steel casing here is also the first thing heating up?
31 A Yeah.
32
33 Q But it's not going to expand as quickly as the brass would?
34 A I wouldn't say.
35
36 Q Okay.
37 A I -- I don't know the chemical properties of the brass versus the steel, so ...
38
39 Q Fair enough. Okay. So as the -- let's assume that this is fired, and the projectile
40 is headed out the front of the gun.
41 A Yes.

- 1
- 2 Q And there's nothing really holding that slide from moving backwards? That
- 3 slide is going to come backwards, as well, right?
- 4 A Once it reached -- yes, once it reached the limit of the link and the barrel is
- 5 tipped down.
- 6
- 7 Q Okay. So at that point, is it possible that this expansion in the casing continues
- 8 as if it -- because it was out of battery?
- 9 A I would say no because of the pressure mark on the -- on the base of the
- 10 cartridge. And if the cartridge was -- if the slide was out of battery and the
- 11 cartridge was still in the chamber, if I understand your question correctly, then
- 12 the extractor would not be engaged in the rim of the cartridge. And if it came
- 13 with a lot of pressure to the rear and then slammed into the face of the -- the
- 14 breech face of the slide, I would expect to see extractor marks on the rear
- 15 portion of that cartridge case, and I -- I didn't find any.
- 16
- 17 Q Okay.
- 18 A As with Mr. Williams when he talked this morning when he had the -- the case
- 19 that stuck in to -- in the chamber, and the slide came back, and it actually tore a
- 20 hole in the rim. I would expect the reverse of that if the slide was moving
- 21 backwards with velocity or the -- the bullet was coming backwards -- cartridge
- 22 case, I'm sorry -- coming backwards and then slammed into the -- the forward
- 23 portion of the breech.
- 24
- 25 Q So you really can't -- you don't have any real ability to say what caused the
- 26 bulge in the casing, other than it was out of battery at some point?
- 27 A Yes. It was unsupported to that degree at the point of ignition, in my view.
- 28
- 29 Q And you have no idea what caused the projectile to ignite and fire?
- 30 A The -- the cartridge case itself, yes.
- 31
- 32 Q Okay.
- 33 A I --
- 34
- 35 Q The most reasonable explanation for that would be that someone pulled the
- 36 trigger, the hammer fell, the firing pin landed, hit the primer, and started the
- 37 cartridge?
- 38 A And --
- 39
- 40 Q In a normal chemical reaction at that point?
- 41 A In a normal reaction, yes.

1

2 Q Okay.

3 A Yeah.

4

5 Q But that's still the most reasonable way that that cartridge was fired?

6 A Well, if it was fired in a normal reaction, you wouldn't have that bulge
7 because --

8

9 Q Other than it was -- okay. So the only exception being it was somewhat out of
10 battery? That's all we can say?

11 A It was out of battery, yes.

12

13 Q We don't know that it was any particular distance out of battery?

14 A Other than the leading edge of the bulges at 403 thousandths of an inch.

15

16 Q But you were unable to replicate the firing of that weapon at that distance at
17 all, right?

18 A I was not.

19

20 Q So you have no reason to believe that that could happen that way?

21 A That something --

22

23 Q In your testing, nothing in your testing would lead you to conclude that at .403,
24 that firearm can fire?

25 A In a normal fashion?

26

27 Q In a normal fashion?

28 A That's correct.

29

30 Q Or even fired -- you couldn't get it to fire at all --

31 A I couldn't, even using the --

32

33 Q -- at .403?

34 A -- hammer to hit the firing pin. That's correct.

35

36 Q So we've talked a little bit about hang fire. I want to make sure I've got that
37 kind of correct here. So hang fire, the way I think of it -- and you can correct
38 me if I'm wrong -- the chemical reaction is happening. It just isn't happening
39 as fast as it should?

40 A Yeah. In an ammunition. That's why I like to refer to it as delayed ignition
41 because there are other things, as -- as Mr. Williams testified to, mechanical,

1 that could cause that delayed ignition. But in -- I think from where your -- from
2 your perspective, where you're coming from is yes, there's something ignites,
3 whether the primer doesn't give its full charge in there, whether the powder
4 does not ignite when -- when the flash comes through the firing pin holes,
5 something delays that, whether -- and whether it's -- it could be oil. Like, hand
6 loaders experience misfires often because they handle their primer, so even the
7 oil from your finger can contaminate a primer and make it not ignite. And --
8

9 Q But you have no reason to believe that these are hand-loaded?

10 A These are -- no. These are factory.

11

12 Q These are factory? Okay.

13 A Yeah.

14

15 Q So really, that doesn't help us either in terms of -- that's not going to explain
16 what's going on in this --

17 A No. And the --

18

19 Q -- bullet?

20 A -- other things that can cause that are -- are, like I mentioned in the report,
21 extreme temperature fluctuations where you may get condensation. And so the
22 primer pockets are traditionally sealed around the edge of the primer and the
23 case to prevent moisture or contamination from getting at the primer. And I --
24

25 Q So you --

26 A -- I suppose the older the ammunition, the more chance that there is some
27 contamination.

28

29 Q But you fired some of that ammunition that's similar in age to this?

30 A Yeah. I fired it -- I think from the same lot that Mr. Williams fired from.

31

32 Q And you had no issues with that?

33 A No, it functioned.

34

35 Q Okay.

36 A I had no malfunctions.

37

38

39 EXAMINATION-IN-CHIEF CONTINUES AT VOLUME 4, PAGE T601

40