

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

BETWEEN

HER MAJESTY THE QUEEN

and

GERALD STANLEY

Accused

TRIAL
Volume 4
(Pages T601 - T800)

January 29, 30, 31, 2018
February 1, 2, 5, 6, 8, and 9, 2018
Battleford, Saskatchewan

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

2

3

4 February 2, 2018

Afternoon 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 **JOHN ERVIN, Previously Sworn, Cross-examined by Mr. Browne**

17

18 Q MR. BROWNE: Okay. So we've talked a little bit about
19 your experience that it just kind of popped out the end? You didn't really hear
20 anything --

21 A Yes.

22

23 Q -- when -- when the misfire you had? You've also talked about that sometimes
24 you hear a pop from the primer --

25 A Yes.

26

27 Q -- and that kind of gives you an audible --

28 A Yes.

29

30 Q -- note that something wrong is going on? Okay. So you also talked about the
31 procedure that you kind of learned and taught when you were a firearms
32 instructor of 30 to 60 seconds, keeping the firearm safe?

33 A Yes.

34

35 Q So what does that mean?

36 A Well, it's simply -- in simple terms, it just means that if you hear a click, you
37 have to realize that there's a possibility that there's something going on inside
38 that cartridge, either propellant could be burning or the -- and it could ignite at
39 any time. So the common rule of thumb in both the Canadian Firearms Safety
40 course and most police agencies or most ranges is you wait that period of 30 --
41 30 to 60 seconds before you open the action so that you don't end up holding a

1 live round in your hand when -- when it does decide to ignite and then you get
2 that explosion.

3

4 Q You'd agree with me that as you've showed us and Mr. Williams showed us,
5 that you point that in a safe direction?

6 A Absolutely.

7

8 Q So you wouldn't be pointing it at someone's head?

9 A No.

10

11 MR. BROWNE: No further questions, your -- My Lord.

12

13 THE COURT: Thank you very much. I take it there's no
14 need to keep this witness any longer?

15

16 MR. SPENCER: No. And I -- I do thank the Court, my
17 friends, everybody, for staying a little bit later to get this witness done, so ...

18

19 THE COURT: Well, we've got just under two minutes.

20

21 MR. SPENCER: While we scrambled. Yes.

22

23 THE COURT: All right.

24

25 MR. SPENCER: Thank you.

26

27 THE COURT: Thank you very much, sir. You are free
28 to go.

29

30 A Is this an exhibit now?

31

32 THE COURT: Yes, it is. Madam Clerk, if you would
33 take that?

34

35 (WITNESS STANDS DOWN)

36

37 THE COURT: Now, ladies and gentlemen of the jury,
38 that's it for this week. We're going to start back up on Monday at 10:00 AM.

39

40 THE COURT CLERK: Sir -- sorry, My Lord.

41 (INDISCERNIBLE).

1
2 THE COURT: And at that time we are going to have
3 Mr. Spencer provide his opening statement to you. It seems as though, but don't
4 quote me, that we're going a little bit quicker than normal, and -- or I shouldn't say
5 normal -- than anticipated. And it could be that we will be done next week or early
6 the following week. So what that means to me is we'll just play it by ear and we'll
7 see how long things take. But for those of you that are living outside of Battleford,
8 you might want to bring a change of clothes or prepare for the situation if we
9 become sequestered. So what that means is once the evidence is in, then the
10 lawyers will make their closing submissions to you, and then I have to provide a
11 charge to you, which are the instructions. And then once I provide that charge to
12 you, you will be sequestered. So you have to remain together, and you deliberate,
13 and then sometimes you might have to spend a night in a hotel or however long it
14 takes. So that's the best guesstimate that I can provide to you at this time.

15
16 Counsel, do you have any comment on -- on what I have just said as far as
17 estimates of time?

18
19 MR. SPENCER: I think that's -- that's as good as we can
20 do right now.

21
22 THE COURT: Okay.

23
24 MR. SPENCER: I think that's a pretty good synopsis.

25
26 THE COURT: So again, we're all aware that this is
27 taking some time out of your -- your life, but as you can see, it's a very important
28 situation. And it's always important when we have a case, criminal case, that
29 comes before a jury.

30
31 I would remind you, as well, that again, don't pay attention to any media. Don't
32 read any newspapers. Don't listen to any television newscasts. Watch the Super
33 Bowl. I suspect that won't be on, so you can do things like that, but stay away
34 from this. It's just better so it doesn't contaminate your mind with anything else
35 because as I have said many times, it's only what happens here that counts.

36
37 So with that, I bid you a good weekend, and we'll see you Monday at 10 o'clock.

38
39 (JURY RETIRES)

40
41 THE COURT: Do either of you need to speak to me in

1 the absence of the jury, either side?

2

3 MR. SPENCER: I don't believe so.

4

5 MR. BURGE: No, My Lord. Thank you.

6

7 THE COURT: Okay. 10 o'clock Monday.

8

9 MR. BURGE: Thank you.

10

11 MR. SPENCER: Thank you, My Lord.

12

13

14

15 PROCEEDINGS ADJOURNED UNTIL 10:00 AM, FEBRUARY 5, 2018

16

17

18

19

1 February 5, 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. GILLANDERS: Good morning, My Lord.
18
19 MR. BURGE: Good morning, My Lord.
20
21 MR. BROWNE: Good morning, My Lord.
22
23 MR. SPENCER: Good morning.
24
25 THE COURT: Is there anything we need do before we
26 bring the jury back in? Bring the jury in.
27
28 MR. BURGE: My Lord, I believe that my friend wishes
29 to stand right here when he makes the address, so I'll just move back next to the
30 corporal.
31
32 THE COURT: Okay. It's kind of you to do that.
33
34 THE COURT CLERK: I'll just move the microphone over
35 (INDISCERNIBLE).
36
37 (JURY ENTERS)
38
39 THE COURT: Good morning. The next step in the
40 process is normally the defence is entitled to provide their opening statement right
41 at the beginning of their case, but I think that Mr. Spencer wanted to have that

1 expert witness of his in and out by Friday, so he asked if it would be appropriate to
2 start his opening statement today. Of course, it is. So, Mr. Spencer, I turn it over to
3 you.

4

5 MR. SPENCER: Thank you, My Lord.

6

7 **Opening by Mr. Spencer**

8

9 MR. SPENCER: I'm going to start by echoing what
10 Mr. Burge and His Lordship have already said. We really appreciate your service.
11 It's very easy for those of us that are in the system to say it's your civic duty, but
12 we understand that you really do have to put your life on hold for three weeks,
13 hopefully two weeks, and I just want to say we appreciate that. We appreciate your
14 attention to this very serious matter.

15

16 Colten Boushie's death is a tragedy. There is no doubt about that. And we can
17 never lose sight of that. No one will lose sight of that. And I'll also say right now,
18 this isn't a justified death. This is not -- it's not -- this death is not justified legally
19 or morally. It is never, never right to take somebody's life over property, but that's
20 not what this case is about. It is perhaps in the rarest of circumstances appropriate
21 to use lethal force to defend you or your family. But this isn't that case, either.

22

23 Colten had a rifle between his legs, essentially pointing at Gerry, but Gerry wasn't
24 aware of that in his panic. So just so you know where our case is going, this isn't
25 about using lethal force to repel a threat. It's not about that.

26

27 This is really not a murder case at all. This is a case about what can go terribly
28 wrong when you create a situation which is really in the nature of a home invasion.
29 For farm people, your yard is your castle. And that's part of the story here, and
30 you've heard a lot of the evidence. You know, the Crown called Sheldon, and that
31 brings out a lot of the evidence. You probably have about 75 percent of the -- of
32 the picture painted with some inconsistencies, but I'm sure you can work through
33 those. But that's what we have here is we have a family. And Gerry -- Gerry didn't
34 go looking for trouble on August 9th, 2016. He was doing what he does every day.
35 He was working on his ranch. And that's what they were all doing. They were
36 working on the ranch, cutting the grass. The son comes home, he gets put to work.
37 I don't even think he got put to work, just naturally went to work. That's what the
38 day started like for Gerry and the Stanleys.

39

40 But what happened is they faced essentially intruders. And we can debate about
41 what the intention of some or all of the -- the young people were. And they were --

1 they were young people, not kids, but -- but young people that came to the yard
2 that day. But you have to view it from Gerry's perspective, what he felt, what he
3 thought when he was faced with this sudden intrusion. The fear of the unknown.
4 Really, in the -- really, in the -- the nature of -- of being terrorized.

5
6 Now, when we back it off and you hear, you know, what -- what the young people
7 were up to and that, now, they're not terrorists in what we think of in the news.
8 But that's what Gerry faced, and that's what this case comes down to is when
9 you're in a -- excuse me -- when you're in a situation where you have intruders,
10 and you don't have the luxury of being able to wait for police assistance that's not
11 reasonably going to get there to deal with that situation, this case comes down to
12 what's reasonable in that circumstance. And it's not reasonable to start shooting
13 people, but that's not what happened.

14
15 So the question is is it reasonable to yell at them? Absolutely, in my respectful
16 opinion. Is it reasonable to hit the windshield? That might be more debatable, but
17 Gerry didn't do that, but still, that's a factor here. Is it reasonable to fire warning
18 shots when they won't leave? And they're not on trial. The young people aren't on
19 trial. But they created this panicked situation. They created a high-intensity fear-
20 filled situation. So that's why all that is relevant, because that's what Gerry faced.
21 That's what he had to deal with. So is it unreasonable to fire warning shots when
22 the intruders have tried to steal, in your view, taken a run at you with their vehicle,
23 crashed into your vehicle -- from Gerry's perspective, intentionally -- almost run
24 over your wife, is it reasonable to fire warning shots to get them to just leave?
25 That's what it comes down to, in many ways.

26
27 Now, what is the defence? So as I said, it's not a self-defence, that the shooting is
28 not justified in -- in self-defence. I've already said that. But there is a self-defence
29 factor. And that part of it is, that whole reasonableness, is what can you do to
30 protect yourself in those circumstances? You can't use lethal force, but is it
31 reasonable to attempt to deal with the circumstance to defend you and your
32 family? And it's not about property. It's about injury. That was the fear. So that's
33 what it comes down to.

34
35 Ultimately, ultimately, this case comes down to a freak accident that occurred in
36 the course of an unimaginably scary situation one afternoon. Nobody thought it
37 was going to go this way. The young people, they're -- they're out goofing around.
38 They were stealing. They were vandalizing stuff, but they didn't think they were
39 really threatening anybody. But when you start doing that stuff and the crash,
40 whether the crash was intentional or not, when you start doing that stuff, you ramp
41 up all those fears. So that creates a situation where it's reasonable to fire a warning

1 shot. How did he get shot? It's a freak accident. Hang fires happen. As Mr. Ervin
2 testified, delayed discharge. It happens. How long? Nobody can say. That's why
3 the guide book for hunting says you wait 30 seconds after a misfire in case it's a
4 hang fire. I think it says minimum 30 seconds. 60 seconds -- which is the
5 testimony you've heard -- 60 seconds for a handgun. That's the reality. Hang fires
6 happen. And that's what happened here.

7
8 Now, you might say, well, why didn't Gerry wait -- if -- if that's the rule, why
9 didn't he wait 60 seconds? And the reality is he didn't have -- unfortunately, he
10 didn't have the opportunity to wait 60 seconds because he looks up, disarms his
11 gun, takes the magazine out, disarms his gun, believes it's empty, and he sees the
12 lawn mower right in front of the visitor vehicle. That's what he sees. So what does
13 he do? He doesn't have a minute to wait. He believes his wife is under that truck.
14 So he's got to do something. He can't just stand around. What would you do?

15
16 So he had to go over to that -- to that vehicle. The driver of that vehicle, trying to
17 get it running again, trying to get it going again to wreak more havoc. He's got to
18 stop that vehicle. The vehicle is the weapon that was the -- creating the most fear
19 at that moment in time. He's got to go over and try to get that thing stopped, and
20 he's got to get the keys out of that. If they would have just stopped, stopped
21 drinking, stopped drinking and driving, stopped breaking into people's places,
22 stopped vandalizing stuff, stopped crashing into things, just walk away, he
23 wouldn't have had to go over to that vehicle at all. But the driver is trying to get it
24 going. And as far as he knows, he can't see his wife -- she's under that. He had to
25 get those keys out. And the tragedy is the gun just went off. The delayed discharge
26 happened potentially at the worst time -- obviously. But that's the reality of this
27 case.

28
29 His Lordship may be looking at me and saying, how are you going to prove all
30 that, Mr. Spencer? The answer, of course, is what I said last week is Gerry has to
31 come here and answer. He has to answer in the sense that he has to look you in the
32 eye and tell you what happened. So no games. Gerry is going to testify. He has to
33 explain it to you. So the defence is ready to start our case.

34
35 Again, you've probably gathered, I'm all about the facts. And so I'm going to try
36 to fill in as many of the remaining facts, doubts, that you might have, in the next
37 couple days. Thank you for your attention. Thank you for your service.

38
39 That's all that I have, My Lord.

40
41 THE COURT:

Okay. Mr. Spencer, are you ready to call

1 your first witness?

2

3 MR. BURGE: I'd ask for an exclusion order, My Lord.

4

5 THE COURT: Okay. I think it's appropriate that all the
6 witnesses that you intend to call shall be excluded from the courtroom. Of course,
7 the accused is not excluded because he's entitled to be here. But for the accused,
8 Mr. Stanley, all your other witnesses should be excluded until after they have
9 testified.

10

11 (WITNESSES EXCLUDED)

12

13 MR. SPENCER: And I agree, of course, My Lord, and
14 they have been excluded at my request. And can you make sure that nobody
15 sneaks in? Sure. I'll have my colleague call the first witness -- or the second
16 witness, I guess, for the defence.

17

18 MR. GILLANDERS: The defence calls Kim Worthington.

19

20 THE COURT CLERK: How do you take an oath, sir? Do you
21 swear on the Bible or do you wish to affirm?

22

23 MR. WORTHINGTON: The Bible is good.

24

25 THE COURT CLERK: Take the Bible in your right hand. State
26 your full name.

27

28 MR. WORTHINGTON: My name is Kim Worthington.

29

30 THE COURT CLERK: Spell your first and last name for the
31 record.

32

33 MR. WORTHINGTON: K-I-M W-O-R-T-H-I-N-G-T-O-N.

34

35 **KIM WORTHINGTON, Sworn, Examined by Mr. Gillanders**

36

37 THE COURT CLERK: There's some water for you.

38

39 A Thank you.

40

41 Q MR. GILLANDERS: Good morning, Mr. Worthington.

- 1 A Hello.
- 2
- 3 Q Can you tell the Court where you're from?
- 4 A I live on an acreage near Waldheim, Saskatchewan, which is about 35 minutes
5 north of Saskatoon.
- 6
- 7 Q Absolutely. How long have you lived there?
- 8 A About six years now.
- 9
- 10 Q Okay. And do you have any family?
- 11 A Yeah, I have a wife and two children. Ages -- my son is 12 years old, and my
12 daughter is 10.
- 13
- 14 Q Okay. And what do you do for a living, Mr. Worthington?
- 15 A I'm an executive director of a youth ministry in Saskatoon called Youth for
16 Christ.
- 17
- 18 Q Okay. And what -- what are the responsibilities involved with -- with that --
19 that job?
- 20 A I oversee staff. I meet with, you know, various people through, you know,
21 fund-raising. We're a non-profit, so fund-raising efforts, stuff like that. But
22 largely our staff interact with youth in the city and surrounding area, so ...
- 23
- 24 Q Okay. And do you travel much for work? Or is it all in Saskatoon?
- 25 A Yeah, I do. Yeah.
- 26
- 27 Q Okay.
- 28 A Yeah.
- 29
- 30 Q Where -- where do you get out to outside of Saskatoon?
- 31 A Well, I go -- in the past more -- I've just been appointed as executive director
32 about six months ago. Previous to that, I would go speak at, you know, Bible
33 camps in the summertime, stuff like that. Now I travel, you know, for
34 executive director meetings over Canada and that kind of thing, so ...
- 35
- 36 Q Okay. And I guess turning to the issue at hand, do you remember what you
37 were doing on August 9th, 2016?
- 38 A Yeah. I was speaking at Ranger Lake Bible camp. They have a -- it's kind of a
39 separate camp. It's a paintball camp. And so I was speaking at that. And that
40 began on a Sunday -- I guess the 14th. Yeah.
- 41

- 1 Q Okay.
- 2 A Or sorry. Not the 14th. The 7th.
- 3
- 4 Q The 7th?
- 5 A Yeah. Yeah.
- 6
- 7 Q Okay. And so you were there for a few days?
- 8 A Sunday to Friday was the -- yeah, you're generally there for just under a week,
- 9 so yeah.
- 10
- 11 Q Okay. Whether -- what kind of facilities do they have at the Ranger Lake Bible
- 12 camp?
- 13 A They have -- well, they have a large dining hall, a bunch of different cabins
- 14 where -- where the -- the campers will stay at. The paintball is a little bit
- 15 separate. The paintball campers sleep in large tents. It's a little bit more of a
- 16 rustic kind of week, I guess you could say, so ...
- 17
- 18 Q And can you estimate how many people were at the camp during your stay?
- 19 A Oh, I would imagine, like, 150. I know for the paintball side of things, there
- 20 was 17 paintball campers, and then, you know, probably four or five additional
- 21 staff that -- or counsellors, if you want to call them that, so yeah.
- 22
- 23 Q Okay. And you said the -- the paintball was a little more rustic separate. Is
- 24 there more than -- can you describe the layout of the -- of the Bible camp?
- 25 A Yeah. Well, there -- like, Ranger Lake, there -- you know, everything is kind of
- 26 all in kind of one large area there. The paintball campers sleep in tents, still on
- 27 the camp -- campground, if you will. But we don't eat with the rest of the
- 28 camp. We don't really interact a bunch. Like, we were -- the paintball camp is
- 29 on a community pasture. I would -- I think it's north of the camp, a mile or
- 30 two. And so we spend most of our time in the bush, actually separate from the
- 31 regular camp activity, so ...
- 32
- 33 Q Okay. And can you -- can you see the camp from the main road? How far --
- 34 let's start here. How far off of the highway is the camp?
- 35 A From, like, the main highway?
- 36
- 37 Q The main highway, yeah. So --
- 38 A Oh, that's a good -- I'm not even sure, to be honest. I know from where the --
- 39 the paintball camp is, it would be a mile or two away from the main camp.
- 40
- 41 Q Okay.

1 A I would say north of -- of the main camp, yeah. Yeah.

2

3 Q Okay. And can you tell me why -- why you remember this day in particular?

4 A Yeah, it was -- it was a strange week in that that Tuesday was the actual only
5 good weather day that we -- we had. And that was actually forecasted. The
6 Sunday was -- was rainy. The Monday was rainy. It was miserable to paintball
7 in. And -- and Tuesday was a really nice day, so we were -- we actually stayed
8 at the camp -- at the paintball range a little bit longer than normal because of
9 the nice day and the forecast for the next couple of days were looking not so
10 good, so we thought we'd maximize our time there, so yeah.

11

12 Q Yeah.

13 A And obviously, seeing the vehicle that, you know, it was memorable as I look
14 back, and obviously why we're here today, so ...

15

16 Q Okay. Tell me a little bit about -- about the vehicle and the events that led up to
17 when you saw it.

18 A Yeah. So we were -- we had stayed a little bit longer at the paintball range
19 because of the nice day. And so we -- like I said, the -- the paintball range is on
20 a community pasture in the bush, and so we -- we drive up there in a school
21 bus. And we were packing up, getting ready to go home or go back to the
22 camp. And so we -- every time we enter the community pasture, there's a gate
23 that we lock every time we enter or -- or leave. And so we were approaching
24 the -- the main road to go back to camp. And the bus was stopped, and one of
25 the counsellors was getting out to open the gate.

26

27 And I just remember a Ford Escape really cruising pretty fast, zipping by us.
28 And I remember it just left an impression on me because of the state of the
29 vehicle. Like, it was pretty rough. And I just thought to myself, wow, that
30 vehicle is going pretty fast for the -- the state it's in. Like, it really shouldn't be
31 going that fast. And just -- you know, obviously, I remember a tire. I remember
32 just the tire was really, really in rough shape. One of the wheels there was --
33 was in really rough shape. And the muffler in the back was -- was -- was kind
34 of dragging in the back. And it was loud. And I think that's what got my
35 attention was the fact that it was, you know, it was just -- all of a sudden they
36 were there, and then they weren't there -- or they weren't there, and then they
37 were there. Like, it was just -- they were zipping by pretty quick. And so it just
38 left an impression. And -- and I remember on the bus a lot of the students were
39 kind of chuckling because it was just, like, wow, you know, that vehicle was in
40 bad shape. And so yeah. That just left an impression on -- on most of us who
41 could see, yeah.

1

2 Q Yes. Do you have any idea how fast the vehicle was going? Could you --

3 A I would say, like, probably 90K would be my guess, 80 to 90K, maybe a little
4 quicker. You know, with -- with -- on a grid road like that, I just thought, wow,
5 you know, that's -- with the wheel and the -- the muffler dragging, it was --
6 yeah, it was pretty quick for -- for the state of the vehicle, so ...

7

8 Q All right. And can you describe who was on the bus with you?

9 A Yeah. So like I said, it's -- we had 17 campers that week, I believe, and the
10 four counsellors, and then myself, four or five counselors and myself. Kobe,
11 Kobe Wiebe was our -- kind of our paintball leader. He was driving the bus.
12 And I was in the -- the front seat kind of in the middle, right at the front of the
13 bus there, so yeah.

14

15 Q Okay. And I guess -- and I'm still haven't -- for the layout, for -- just for
16 clarity, when the -- you saw the vehicle travelling, you saw it go towards the
17 Bible camp after you saw it, or --18 A Yeah. Yeah. So when we were coming up to the gate, we would have to make
19 a right turn which I believe is south -- to get back to the camp, and they were
20 heading in that same direction, yeah.

21

22 Q And would there be anyone -- when you -- so you followed closely behind or --

23 A Oh, no. Like, so what -- you know, like I said, one of the guys was opening the
24 gate. So the vehicle goes by. And so the bus goes through. And then someone
25 has to get out, close the gate. So we were -- we were not in close -- you know,
26 once they went by, they were kind of out of sight there fairly quickly, so yeah.

27

28 Q When you arrived back at the Bible camp, can you see the main buildings from
29 the road?30 A Pretty much, yeah. There's a -- so you come in, and there's a larger parking
31 area, and then you kind of come down, I would say, seven, eight stairs, and
32 then you would see the dining hall. But it's an A-frame, fairly tall. So you
33 would see that. And I think off to the -- just off to the north a little bit would be
34 -- like, they have horses and stuff like that, so you would see kind of like a
35 barn and stuff like that and a Quonset of -- of some sort there --

36

37 Q Sure.

38 A -- so yeah.

39

40 Q And you've described that there was roughly 25 people in the bus with you?

41 A M-hm.

1

2 Q And 150 people at the camp that day. Would -- would there have been anyone
3 in the main campground when you returned?

4 A Oh, yeah. Lots of people, yeah. Like, I -- yeah. Everyone would have -- like
5 the main campers to the Bible camp don't leave like we do. Like, we left every
6 day. We would leave probably nine in the morning to go to the -- the paintball
7 range and return at suppertime, which was around 5:30.

8

9 MR. GILLANDERS: All right. Thank you, Mr. Worthington.
10 Those are all of my questions. Please answer any questions that my learned friend
11 may have.

12

13 THE COURT: Cross-examination?

14

15 MR. BURGE: No questions.

16

17 THE COURT: Mr. Worthington, you are free to go.

18

19 A Thank you.

20

21 THE COURT: Thank you very much.

22

23 (WITNESS STANDS DOWN)

24

25 MR. SPENCER: Another witness right here.

26

27 THE COURT CLERK: Sir, right over here. Do you need help?

28

29 MR. SPENCER: Wayne Popowich.

30

31 MR. POPOWICH: (INDISCERNIBLE).

32

33 THE COURT CLERK: How do you take an oath, sir? Will you
34 swear on the Bible or do you wish to affirm?

35

36 MR. POPOWICH: I'll swear on the Bible.

37

38 THE COURT CLERK: Take the Bible in your right hand. State
39 your full name.

40

41 MR. POPOWICH: Wayne Popowich.

1
2 THE COURT CLERK: Spell your first and last name for the
3 record.

4
5 MR. POPOWICH: W-A-Y-N-E P-O-P-O-W-I-C-H.

6
7 **WAYNE POPOWICH, Sworn, Examined by Mr. Spencer**

8
9 THE COURT CLERK: (INDISCERNIBLE).

10
11 A Okay.

12
13 Q MR. SPENCER: Mr. Popowich, do you -- do you know
14 Gerald Stanley?

15 A Pardon me?

16
17 Q Do you know Gerald Stanley?

18 A No.

19
20 Q Ever -- ever hear of him before -- well, ever hear of him?

21 A No.

22
23 Q Okay. How do you come to be here today, Mr. Popowich?

24 A Well, Saturday morning, I was having coffee at the kitchen table, reading the
25 news, talking on the phone with my girlfriend, and just making small talk
26 about the news. And I saw this gun expert evidence. There was a little news
27 blurb there, and I was reading through it, and I told her -- I said, you know, I
28 don't agree with this one statement where the gun expert said that, you know, a
29 delayed fire couldn't cause a bulge in a cartridge. And I said, many years ago
30 when I was hunting gophers, not only did I have a bulge, it split wide open on
31 me. So I highlighted your name, right-clicked on it, and Googled it and sent a
32 note, and I said, I don't agree with your gun expert.

33
34 Q Okay. And you would -- you're not an expert?

35 A No.

36
37 Q But you've had a personal experience?

38 A Yes.

39
40 Q Okay. Can you walk me through your personal experience?

41 A Okay. So many years ago, I was 15, hunting gophers at the family farm south

1 of Wynyard, and sitting on the dirt, plinking away at the gophers. And it was --
2 I had a single-shot .22. So I took a -- aimed at a gopher, took a shot. Nothing
3 happened. Put the gun down, pulled the pin back again, aimed again, took
4 another shot. Nothing happened. Thought, okay, must be a bad bullet. Put the
5 gun down in my lap, reached over, got another bullet out of a box, put it in my
6 mouth, lifted the gun up, and I had just pulled the bolt over to pull it back, and
7 bang, it went off. And my eyes were burning. My ears were ringing. And after
8 that experience, I go and look down at the shell, and -- and it was a .22 long, so
9 there was about -- I'd say about a quarter of an inch of it must have been
10 outside of the barrel because it was just bulged and split wide open right there.

11

12 Q Okay. So you described the casing. You described how it unfolded. How long
13 do you estimate it was from the first click to that gun -- or that cartridge going
14 off in your face, essentially?

15 A Well, because I knew I was going to be here today, I took the stop watch on
16 my phone, and I'd say from the first click, the very first click to the second
17 time I pulled the firing pin, aimed again would be about seven or eight
18 seconds.

19

20 Q Okay.

21 A Then I did it again a few times from the second click to putting the gun down,
22 getting the bullet, and then pulling. And it was about 10 to 12 every time I did
23 it.

24

25 MR. SPENCER: Okay. Those are all the questions I have.

26 Thank you for coming.

27

28 A You're welcome.

29

30 THE COURT: Mr. Burge, do you need a moment to
31 consider what your position is?

32

33 MR. BURGE: Yes. Actually --

34

35 THE COURT: I take it you probably were not aware
36 that this witness was going to testify?

37

38 MR. BURGE: That's correct. If we could have a short
39 break, My Lord, that would be ...

40

41 THE COURT: Okay. Let's take a 15-minute break at

1 this time.

2

3 (JURY RETIRES)

4

5 THE COURT CLERK: Sir, can you move the mike away from

6 (INDISCERNIBLE) --

7

8 A Sorry.

9

10 THE COURT CLERK: (INDISCERNIBLE).

11

12 THE COURT: Mr. Popowich, you're still midway
13 through your testimony, so I am going to direct that you not discuss your
14 testimony with anyone during this break. Okay.

15

16 A Sure.

17

18 THE COURT: Thank you.

19

20 (WITNESS STANDS DOWN)

21

22 (ADJOURNMENT)

23

24 THE COURT: Mr. Burge, you have had a chance --

25

26 MR. BURGE: Yes.

27

28 THE COURT: -- to do what you need to do?

29

30 MR. BURGE: Yes, thank you.

31

32 THE COURT: Ready for the jury?

33

34 MR. BURGE: Yes.

35

36 THE COURT: Okay.

37

38 (JURY ENTERS)

39

40 (WITNESS RE-TAKES THE STAND)

41

1 THE COURT: Mr. Burge, when you are ready.

2

3 MR. BURGE: Thank you, My Lord.

4

5 THE COURT: You understand, Mr. Popowich, you are
6 still under oath?

7

8 A Yes.

9

10 THE COURT: Thank you.

11

12 **Mr. Burge Cross-examines the Witness**

13

14 Q MR. BURGE: Mr. Popowich, this happened -- you said
15 south of Wynyard?

16 A Yeah, at the family farm.

17

18 Q Okay. Is that where you live?

19 A Not right now, no.

20

21 Q Okay. Did you live there 15 years ago when this happened?

22 A Yes.

23

24 Q Okay.

25 A It was actually 40 years ago.

26

27 Q Oh, 40. Okay.

28 A 40.

29

30 Q I'm sorry. I -- I thought I heard 15.

31 A No, I was 15 at the time. Around 15, 14.

32

33 Q Okay. That was my next. So you're around 55 years old?

34 A Yeah.

35

36 Q And where do you live, sir?

37 A Weyburn.

38

39 Q Weyburn? Okay. How long have you lived there?

40 A 12 years.

41

1 Q And what do you do in Weyburn?

2 A I'm a manager for a manufacturing firm.

3

4 Q Okay. Was this your gun or was it just a gun in the family?

5 A A family gun. It was just -- we had one .22 on the family farm, used it to take
6 care of skunks --

7

8 Q Yeah.

9 A -- pigs when we butchered, that kind of thing.

10

11 Q Okay. And would it be used very often, this .22?

12 A No.

13

14 Q And would everybody have access -- okay. Who else lived on the farm at the
15 time?

16 A I had -- well, my younger brother would have been too young, so it would have
17 been my older brother and my sister and my mom and dad.

18

19 Q Okay. And if somebody was confronted with a pest, they might grab the .22?

20 A It would depend if -- what it was, I suppose, yeah.

21

22 Q Okay. And was it kept in a location where it would be accessible to everyone?

23 A Yeah.

24

25 Q And --

26 A Just outside in the milk house.

27

28 Q Okay. And there would be a box of ammunition somewhere?

29 A (NO AUDIBLE RESPONSE)

30

31 Q Okay. Was this gun regularly serviced?

32 A No. I probably -- what do you mean by serviced? Like, we wouldn't take it to a
33 gun shop or anything like this or --

34

35 Q Would you clean it after every time -- every time you used it?

36 A If I got it dirty, yeah, I'd clean it off, but I don't think we had, you know, the
37 brushes that gun guys use and --

38

39 Q Yeah.

40 A -- all that stuff.

41

- 1 Q So dirty, and you'd clean it off. You mean the outside?
2 A Yeah.
3
4 Q Like, if it got some mud on the stock or something?
5 A Yeah, maybe --
6
7 Q Okay.
8 A -- lube it up with some oil, shoot some oil on it so it wouldn't rust, that kind of
9 thing.
10
11 Q Okay. So I take it -- it sounds like if -- if you don't know if there was a gun
12 cleaning kit around, you likely never cleaned that gun?
13 A Probably not.
14
15 Q Okay. And did -- and I presume you might not have ever seen any family
16 member cleaning that gun if you don't even know if there was a kit to clean it?
17 A No.
18
19 Q Okay. After this happened, I expect that would be kind of a scary
20 circumstance?
21 A It scared the crap out of me, yeah.
22
23 Q Yeah. Did you -- you or your parents do anything to check the gun out to see if
24 -- if there was a malfunction with the gun?
25 A The only thing I did was take the bolt out and look down the barrel to see if it
26 was empty, and that was it.
27
28 Q Okay. So being 15, if that's all you did, I take it you never would have found
29 out if this was a problem with -- that this was a problem with the firearm or a
30 problem with the ammunition?
31 A Don't know.
32
33 Q Okay. So you told us you pulled the trigger, likely pointing at a gopher?
34 A Yeah.
35
36 Q And you pulled the trigger. It goes click. Was that a surprise?
37 A It was kind of like you -- you know, what happened here? Take the gun down.
38 Pull the firing pin back again. Slide it in and do it again.
39
40 Q Okay. Are you familiar with guns? Do you have -- have you had a history with
41 guns since then?

- 1 A I -- I'm -- no, I'm not a hunter at all. I mean, just -- like I said, .22 on the
2 family farm.
3
- 4 Q Yeah. I -- I -- I got you, sir.
5 A Yeah.
6
- 7 Q When you -- so you said you pulled the trigger. It went click. And you set the
8 gun down? Or you -- or you opened the bolt first?
9 A No, because it's -- it's a single shot --
10
- 11 Q Yeah.
12 A -- you have to pull the firing pin back every time.
13
- 14 Q Yeah.
15 A So I would have -- I would have loaded the gun so I could pull the pin, and
16 then re-sighted again.
17
- 18 Q Okay. After you -- after the click, you opened the bolt. You -- you opened the
19 chamber by pulling the bolt back?
20 A After -- you're talking the second click now.
21
- 22 Q Well, I'm just -- I'm at the first click so far.
23 A Oh. No, I just lowered the gun, pulled the firing pin back --
24
- 25 Q Yeah.
26 A -- and then click again.
27
- 28 Q Okay. So you re-cocked the gun?
29 A Yeah.
30
- 31 Q And so you didn't open the bolt to look at the -- at the cartridge?
32 A No, you don't have to. You just pull the --
33
- 34 Q Okay. And so this -- is this what you said was maybe seven or eight seconds
35 between the first click and the second click?
36 A Yeah.
37
- 38 Q And is that when you put the gun down?
39 A Yeah. I put -- put in my lap after the second click, and I would have reached
40 over. So I would have had the box of shells on the ground beside me. Grabbed
41 one out, stuck it in my mouth -- I always did that -- pulled the gun up, grabbed

- 1 it again, and then I -- like I said, I'd just pulled the lever open and back, and
2 then bang, it just went off.
3
- 4 Q Okay. So you pulled the trigger, nothing happened, and then you manipulated
5 the action of the gun by opening the bolt a bit and -- and you started to pull it
6 back?
7 A You mean right after the second?
8
- 9 Q The second time.
10 A Well, I went and grabbed a --
11
- 12 Q Yeah?
13 A -- went for another bullet.
14
- 15 Q Yeah.
16 A I figured it's a dud bullet, so --
17
- 18 Q Yeah.
19 A -- grabbed another one, stuck it in my mouth like I always did, and then picked
20 up the gun. It was in my lap. And -- so I was sitting -- sitting on the dirt with
21 the knee position, shooting these gophers. And that's when I pulled the bolt
22 over and back.
23
- 24 Q And what happened?
25 A Oh, just bang. And then it was like I couldn't see anything. My eyes were just
26 burning. My ears were ringing. And --
27
- 28 Q Did you get any soot on your face or on your hands, do you know?
29 A That I don't remember. I remember feeling heat on my hands, and then I
30 remember once, you know, I rubbed my eyes and that, I remember thinking,
31 oh, thank goodness, I got my fingers.
32
- 33 Q Yeah.
34 A Which was good. And then, you know, cleared up my vision. The tears were
35 running and that, and that was good. So at that point, it was, like, you know,
36 what happened? And I looked down, and that bullet was -- like I said, there
37 was a bulge in the -- probably the back third, and it was actually split. The
38 casing was split open a bit.
39
- 40 Q Were you by yourself that day?
41 A Yeah.

1

2 Q When you -- so you put it on your lap, so -- to get a bullet?

3 A Yeah.

4

5 Q To get another cartridge --

6 A Yeah.

7

8 Q -- so that you could eject this -- the first one and put a new one in?

9 A Yeah.

10

11 Q And the gun was pointed in what direction, or do you even know?

12 A Well, if I was on my knee, and then I -- the bullets would have been on my
13 right. I just put it down on my -- probably facing that way.

14

15 Q Okay.

16 A And reached over, and that's when I said I grabbed it.

17

18 Q So was it in a -- in a safe direction that the gun was pointed when you were
19 doing this?

20 A Well, there wasn't anyone -- wasn't anyone there. I mean, I remember where I
21 was sitting.

22

23 Q Yeah.

24 A Just east of the house, by the garden. The power pole was over there. Slope.
25 Gophers. Holes.

26

27 Q So no concerns about hurting anyone?

28 A No.

29

30 Q On your part?

31 A No.

32

33 Q Because there was no one there?

34 A No one was there.

35

36 Q Yeah. Okay.

37

38 MR. BURGE:

Mr. Popowich, thank you very much.

39 Those are my questions.

40

41 A Okay. You're welcome.

1
2 THE COURT: Any re-examination?
3
4 MR. SPENCER: No, My Lord.
5
6 THE COURT: Thank you very much, Mr. Popowich.
7 You are free to go.
8
9 A Okay. Thank you.
10
11 (WITNESS STANDS DOWN)
12
13 MR. GILLANDERS: The defence calls Nathan Voinorosky.
14
15 THE COURT CLERK: (INDISCERNIBLE) here.
16
17 MR. VOINOROSKY: Thank you.
18
19 THE COURT CLERK: Stand, please, here. How do you take an
20 oath? Will you swear on the Bible or do you wish to affirm?
21
22 MR. VOINOROSKY: I wish to affirm.
23
24 THE COURT CLERK: Okay. Raise your right hand. State your
25 full name.
26
27 MR. VOINOROSKY: Nathan Voinorosky.
28
29 THE COURT CLERK: Spell your first and last name for the
30 record.
31
32 MR. VOINOROSKY: N-A-T-H-A-N V-O-I-N-O-R-O-S-K-Y.
33
34 **NATHAN VOINOROSKY, Affirmed, Examined by Mr. Gillanders**
35
36 THE COURT CLERK: You can have a seat if you want.
37
38 A Thank you.
39
40 Q MR. GILLANDERS: Nathan, have you been subpoenaed to be
41 here today?

- 1 A Yes, I have. I have the subpoena right here.
2
- 3 Q Okay. Well, thanks for coming. Do you know what a hang fire is?
4 A Yes, I do.
5
- 6 Q And where do you get that information from?
7 A I have the information on a hang fire from the hunter safety manual. I actually
8 brought it with me so I can read it to you. Hang fires. Hang fires occur --
9
- 10 THE COURT: Just -- just hang on. You have a --
11
- 12 MR. BURGE: Well, I guess we'll see where it goes, but
13 I have -- I'm starting to have some real concerns.
14
- 15 THE COURT: Do we --
16
- 17 MR. SPENCER: Well, (INDISCERNIBLE).
18
- 19 MR. GILLANDERS: That's -- I'll back up.
20
- 21 THE COURT: Maybe you want to tell us where you're
22 going so we know if there's something we need to do with the jury here or outside
23 the jury, and I guess --
24
- 25 MR. GILLANDERS: I don't think the evidence is going to be
26 terribly controversial. It's going to be leading in the same direction as the -- the
27 last witness. We're talking --
28
- 29 THE COURT: So this witness has personal information
30 about something?
31
- 32 MR. GILLANDERS: Yes, My Lord.
33
- 34 THE COURT: Mr. Burge.
35
- 36 MR. BURGE: I'm certainly happy to hear whatever
37 personal information this witness has. I have -- I'm a little concerned about him
38 coming here and reading things to us, but that's -- we'll see where it goes.
39
- 40 MR. GILLANDERS: And I can -- I can perhaps help the Court
41 -- clarify that with a couple of questions.

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THE COURT: Okay.

Q MR. GILLANDERS: Nathan, are you a gun expert?

A No, I am not.

Q Okay. And when you said you knew what a hang fire was, can you tell me where you learned the procedure for dealing with a hang fire?

A So I learnt the procedure for dealing with a hang fire through hunter safety, when I took hunter safety to get my possession and acquisition licence.

Q Right. And so I believe you've brought that with you here today. Can you please read for the Court what the procedure is for dealing with a hang fire?

A Exactly. Because I'm not an expert, I have this to read verbatim. (As read)

Hang fires occur when, after the firing pin has struck the primer, there is a delay before the cartridge fires. This can occur for several reasons such as faulty firing pin or spring, a defective primer, or other cartridge-related problems. If this occurs and you have failed to follow safe handling practices, the results can be tragic. Always treat a misfire as if the firearm is going to discharge at any second. Leave the action closed and retain your shooting position. Above all else, maintain muzzle control in a safe direction for at least 60 seconds.

Q Okay. So it says -- it suggests a time that you should wait?

A Yes, 60 seconds.

Q All right. Now, is that hunter safety -- now, I -- I took hunter safety as well. That was mostly, I think, for rifle. Is there a different set of rules for other types of guns?

A No, I don't believe so.

Q Is there --

MR. BURGE: Perhaps, My Lord, I -- I don't really like to object. But this witness says he's not a firearms expert, and to be asking him about other rules for other guns, I would -- if he has something to say, maybe we should get to that.

- 1 THE COURT: Yes. I think that Mr. Burge makes a fair
2 point.
3
- 4 MR. GILLANDERS: Yeah. Thank you, My Lord. I would ask
5 that the Firearms Saskatchewan Hunter Education Manual be marked as an
6 exhibit.
7
- 8 THE COURT: Do you have any difficulty with that?
9
- 10 MR. BURGE: No, I don't.
11
- 12 THE COURT: So the -- the hunter safety manual that
13 you have there, is it a new one, an old one? Where did you get it from?
14
- 15 A This one's --
16
- 17 THE COURT: Maybe just cover that up.
18
- 19 A -- quite old, My Lord. 2007.
20
- 21 THE COURT: Okay. Go ahead. Just lay the foundation
22 and --
23
- 24 MR. GILLANDERS: Okay.
25
- 26 Q MR. GILLANDERS: All right. So --
27
- 28 THE COURT CLERK: Am I marking it?
29
- 30 THE COURT: Well, I think we need to find out where
31 he got it from and --
32
- 33 MR. GILLANDERS: Absolutely. So --
34
- 35 THE COURT: -- whether that's the one he used during
36 his hunter safety course.
37
- 38 Q MR. GILLANDERS: Can you tell me where you got that
39 hunter safety manual?
40
- 41 A Yes, I got this when I took the course with the Wildlife Federation in
Saskatoon.

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Q Absolutely. And so you've had possession of that since then?

A Yes.

THE COURT: Okay. Any objection, Mr. Burge?

MR. BURGE: No.

THE COURT: Okay. That will be the next defence exhibit, which is Exhibit D-what?

THE COURT CLERK: 15.

THE COURT: 15.

EXHIBIT D-15 - Saskatchewan Hunter Education Student Handbook, 2007

THE COURT CLERK: (INDISCERNIBLE).

A (INDISCERNIBLE).

Q MR. GILLANDERS: All right. Have you ever personally experienced a hang fire?

A Yes, I have. I was out shooting, target shooting with my cousin. I had fired -- previously fired three rounds when the hang fire did take place, I pointed my weapon at the target. I pulled the trigger. I heard the hammer hit the pin, and the gun did not go off. So at that point, I -- I waited. I know the manual says 60 seconds, but I was using old ammunition, so I thought it was a dud. So I waited for approximately five seconds. Then I lowered the muzzle of the rifle towards the ground, and it went off into the ground, expending the rest of the ammunition in the cartridge.

Q Can you describe the ammo that you were using?

A Yes. The ammo that I'm -- I was using -- actually, I have it here. It was 7.62 by 39 millimetre -- millimetre round, 1981 Army surplus ammunition.

Q All right. Thank you. Can you tell me how long it was from the time you pulled the trigger until the gun -- the bullet fired?

A I would say approximately seven seconds, because I held my aim for approximately five seconds, and then lowered the weapon towards the ground, and it fired into the ground.

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Q All right. And if you were to experience -- I guess now if you're -- if you're doing any shooting, do you -- how long do you think you'd wait now?

A Well, with that weapon especially, I would wait the recommended time, 60 seconds, especially in that case. If I took the round out and it exploded, it could cause serious injury.

MR. GILLANDERS: All right. Thank you. That's all the questions I have for this witness. Please answer the questions -- any questions my friend may have.

Mr. Burge Cross-examines the Witness

Q MR. BURGE: Was this on a range?

A Pardon me?

Q Were you shooting on a range?

A No, I was not.

Q Okay. You were with your cousin?

A Yes.

Q Were you shooting targets? Were you hunting?

A Shooting targets.

Q Okay. What kind of a gun was it?

A It is a Soviet-made SKS.

Q So this is a rifle?

A Yes, it is a semi-automatic rifle.

Q You said you lowered the muzzle to the ground?

A Yes.

Q Okay. And -- and why did you lower it to the ground?

A To keep it in a safe direction. I was going to --

Q Okay. You didn't point it at your cousin?

A No, of course not.

MR. SPENCER: My Lord, I'm not sure that's an

1 appropriate comment.

2

3 THE COURT: Well, it's a fair question.

4

5 MR. BURGE: Thank you, sir.

6

7 THE COURT: Any re-examination?

8

9 MR. GILLANDERS: No, My Lord.

10

11 THE COURT: Sir, you are free to go. Thank you very
12 much for your testimony.

13

14 A Thank you, My Lord.

15

16 THE COURT: So the -- your manual is now a court
17 exhibit, so you will have to leave that behind.

18

19 A Yeah. (INDISCERNIBLE).

20

21 (WITNESS STANDS DOWN)

22

23 MR. GILLANDERS: The -- the defence calls Murray Fouhy.

24

25 THE COURT CLERK: I'll just ask you to stand
26 (INDISCERNIBLE) please. How do you take an oath, sir? Do you swear on the
27 Bible or do you wish to affirm?

28

29 MR. FOUHY: On the Bible.

30

31 THE COURT CLERK: Take the Bible in your right hand. State
32 your full name.

33

34 MR. FOUHY: Murray Jason Fouhy.

35

36 THE COURT CLERK: Spell your first and last name for the
37 record.

38

39 MR. FOUHY: M-U-R-R-A-Y F-O-U-H-Y.

40

41 **MURRAY FOUHY, Sworn, Examined by Mr. Gillanders**

1
2 THE COURT CLERK: You can have a seat if you wish.
3
4 Q MR. GILLANDERS: Hi, Murray. Where are you from?
5 A I'm from Spinney Hill.
6
7 Q And whereabouts is that?
8 A It's about 40 miles -- let's see. From -- go east to Maymont and go about 11
9 miles southwest, across the river.
10
11 Q And how long have you lived there?
12 A All my life.
13
14 Q Do you have any family?
15 A Yeah, a wife and two kids.
16
17 Q And do they live on the farm with you?
18 A Yeah.
19
20 Q Anyone else?
21 A Mom and Dad live in the same yard in another house.
22
23 Q Okay. August 9th, 2016. Do you remember that day?
24 A Yeah.
25
26 Q What were you doing on that day?
27 A Dad and I were in the pasture. We were putting a water trough up, and we were
28 just -- we came home, and Mom -- Mom came and said what was going on.
29 And I went -- she didn't know how it went in the -- in the yard, if it was in our
30 driveway or from down below, up, but she didn't know they were at our place
31 first. And so I went over and --
32
33 Q So just to -- just a second. If you'd just clarify. You said your mother told you
34 what was going on?
35 A Yeah. Yeah.
36
37 Q Well, what does that --
38
39 THE COURT: Well, I think that you have to be careful
40 not to get into hearsay.
41

- 1 MR. GILLANDERS: Apologies, My Lord.
2
- 3 THE COURT: So what you can do is you can ask him
4 what he did as a result of what he was told.
5
- 6 MR. GILLANDERS: Absolutely.
7
- 8 Q MR. GILLANDERS: If you continue, just tell us what you did
9 after you spoke with your mother.
- 10 A Well, just -- when I wanted to see if -- well, I just walked over to my truck,
11 over to my place. And I seen tracks. And it was an awful wide track on one
12 side, and they must have had a flat tire, I thought. I don't know. And then I
13 looked at my truck, and they had -- they ripped the top off the console, and it
14 had my keys in it. And they put it in the ignition, and it wouldn't start. It's a
15 standard transmission. And all they had to do was put the foot on the clutch
16 and it would have started, but the radio was blasting and everything. I shut that
17 off. And then I just walked over to Dad's truck in that shed and seen all the
18 damage they did on his truck. And then I -- I went over to Mom and Dad's
19 there and -- or where that SUV -- Mom's SUV was parked. And they had the --
20 the console was open, and the glove compartment was open, and they had been
21 digging around in there for keys, I guess.
22
- 23 Q Okay.
- 24 A And that's --
25
- 26 Q Do you -- do you know how much damage was done? Did you put it an
27 insurance claim in?
- 28 A Well, I -- I would have -- I could have, with my truck, but it was just the
29 console, the -- the lid, they ripped it off. But Dad's, I think it was over 4,000
30 bucks damage.
31
- 32 Q All right. I'm going to give you a set of pictures, defence exhibit number 2.
33
- 34 THE COURT CLERK: It's not the blue binder one.
35
- 36 THE COURT: It would be the -- D-2 would be the
37 booklet -- this booklet here.
38
- 39 Q MR. GILLANDERS: All right. Murray, can you tell me what
40 you -- does -- does this photo look familiar to you?
41 A Oh, yeah.

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Q Yeah?

A Yeah. That's my yard. Yeah.

Q And you told a story about your truck. Is that truck in this picture?

A Well, you can -- the first one, that's my old truck. But then my son's truck, that Dodge, and then mine is beyond. It's just parked right beside it in the first picture. Yeah. But then -- yeah. The cab of my truck.

Q And just maybe if you're -- if you're turning the page, maybe just --

A Yeah.

Q -- let us know that you're flipping through.

A All right. I'm just at the next -- the next picture.

THE COURT: Okay. The -- the -- there's lots of -- it's up to you, but there's lots of trucks here. And if you want to identify which --

MR. GILLANDERS: Yeah. I'll clarify a little bit.

THE COURT: -- one is which.

Q MR. GILLANDERS: Back to the first one there.

THE COURT CLERK: There's page numbers on the bottom of the corner.

A Okay. This is number 2.

Q MR. GILLANDERS: Number 1?

A Oh, okay.

Q Yeah.

A Yeah.

Q And so was the truck that you described as being a standard in this picture?

A Yeah. You can see it just the --

Q And --

A -- the end of the box there and see the -- the cab.

1 Q And maybe for the jury, if you could just point at it so --

2

3 THE COURT: Well, just describe which one it is.

4 There's three trucks in this picture.

5

6 A Yeah. Well, I --

7

8 Q MR. GILLANDERS: Okay.

9 A -- the one that's closest, that's my old -- my old farm truck. And then the red
10 truck is my son's. And then the truck beyond it is mine that they did some
11 damage to it.

12

13 Q Okay. And then -- so on the second picture, did you see this with your own
14 eyes?

15 A Oh, yeah. I did so. I went in there.

16

17 Q And --

18

19 THE COURT: Okay. Now, which truck is this in the
20 second picture?

21

22 Q MR. GILLANDERS: And so which -- yeah. Which truck --

23 A It's a 2004 Duramax.

24

25 THE COURT: Is that the one that you referred to as
26 your truck?

27

28 A Yeah.

29

30 Q MR. GILLANDERS: So there's a -- a few pictures there. On 3
31 and 4 --

32 A Yeah.

33

34 Q -- can you -- you saw that with your own eyes, too, that --

35 A Oh, yeah.

36

37 Q -- that's accurate?

38 A Yeah. Yeah.

39

40 Q All right. So picture number 5, and we're just going to walk through a
41 progression, just to orientate ourselves in the yard a little bit. What direction is

1 this facing?

2 A You're looking north.

3

4 Q Okay.

5 A Right here.

6

7 Q And at the very end, there's -- can you describe the -- the road system,
8 perhaps?

9 A Well, one of the main roads is right at the end of the driveway. You can see it
10 -- see it right from our driveway.

11

12 Q And which direction does that run?

13 A And then -- that's -- that's east and west.

14

15 Q Okay.

16 A Once you get to the end of the driveway.

17

18 Q And the -- the -- your truck, where would it have been parked in relation to
19 where this picture was taken?

20 A East of it.

21

22 Q Okay. All right. If you go to the next picture, which I believe is number 6?

23 A M-hm.

24

25 Q Can you describe where that is in the yard?

26 A Well, it's just about the same place, but you can see where Mom's SUV in that
27 little shed there -- well, the little garage. And --

28

29 Q Okay.

30 A -- you can see where you go into their place. Their house is just beyond it,
31 west.

32

33 Q All right. And one more.

34 A Oh, yeah, I can see --

35

36 Q Describe that, and that's -- what else is in the picture?

37

38 THE COURT: Okay. Now, which --

39

40 MR. GILLANDERS: Number 7.

41

- 1 THE COURT: -- maybe just -- okay. Thank you.
2
- 3 A Well, you can -- you can see their house now. And it's still the same.
4
- 5 Q MR. GILLANDERS: Okay. If we turn to picture number 8?
6 A M-hm.
7
- 8 Q Is -- can you -- on the day -- on August 9th, is this what it looked like?
9 A Yeah. Yeah.
10
- 11 Q Okay. And picture number 9?
12 A Oh, yeah. M-hm.
13
- 14 Q Do you recognize that picture?
15 A Yeah. That was his flat tire. That's what I was thinking. It was -- so -- so you
16 could see it. It was so wide. And it's not like we drive around with flat tires.
17
- 18 Q If we -- one more to picture number 10?
19 A M-hm.
20
- 21 Q Can you tell me, do you recognize that picture?
22 A Yeah. That was in, what, Mom's SUV.
23
- 24 Q And you saw it --
25 A Yeah.
26
- 27 Q -- like that?
28 A Oh, yeah. M-hm.
29
- 30 Q All right. Picture number 11, can you tell me what -- do you recognize that
31 picture? It's a little close up. If you need --
32 A Well, that's -- well, is that Dad's truck?
33
- 34 Q It might be helpful if you turn to 12, as well.
35 A Yeah. Okay. Oh, yeah. Yeah, it's his truck.
36
- 37 Q Okay. And tell me -- tell me about your dad's truck.
38 A Well, he had some -- well, they tried to get in the cab. You could see the --
39 they hit the -- well, actually, we went in there. We were looking at the truck,
40 and we seen the box was ripped down, and there was a dent in it. And then we
41 noticed the stock -- the barrel -- or the gun was on the ground, and that's what

1 in this picture?

2 A Yeah. It's -- it's Dad's truck. Those are his running boards.

3

4 Q Okay. And you've said that the -- you found this on -- where in relation to the
5 vehicle?

6 A Well, it was not far from the -- the driver's door.

7

8 Q Okay. So would you say that this is the correct orientation of what you saw?

9 A M-hm.

10

11 MR. GILLANDERS: I believe that's helpful. I'll get that
12 marked. D --

13

14 THE COURT CLERK: 16.

15

16 THE COURT: Any objection?

17

18 MR. BURGE: No.

19

20 THE COURT: D-16.

21

22 **EXHIBIT D-16 - Blow-up of D-2, Picture 17, Reversed**

23

24 THE COURT CLERK: Just set it down here. Certainly. So that's
25 a blow-up of the picture number 7 reversed, but that's the --

26

27 MR. GILLANDERS: Picture number --

28

29 THE COURT CLERK: -- the right direction?

30

31 MR. GILLANDERS: -- is 17.

32

33 THE COURT CLERK: 17.

34

35 MR. GILLANDERS: Yeah.

36

37 Q MR. GILLANDERS: All right. I'll get you to turn to picture
38 number 18 in the book, the very last page.

39 A M-hm.

40

41 Q Can you tell me what you see in that picture?

1 A Well, the door was open. I guess they were in it, looking around. I --

2

3 Q And did you -- did you see if that's how -- did you see that when you
4 approached?

5 A Yeah. That's -- yeah.

6

7 Q Okay. Yeah. All right. Murray, I'm going to show you a map, which I put
8 together of the RM, and I'm going to get you perhaps to mark --

9

10 THE COURT CLERK: (INDISCERNIBLE).

11

12 Q MR. GILLANDERS: -- with a pen the location of your farm, if
13 you could.

14 A Okay.

15

16 Q So take a moment to get yourself oriented. And we'll mark it with a blue X, the
17 location.

18 A Should I just mark it with a pen?

19

20 Q Yeah. So you've marked it with a blue circle.

21

22 THE COURT CLERK: (INDISCERNIBLE).

23

24 MR. SPENCER: Sure.

25

26 THE COURT: Okay. That's an RM map of which RM?

27

28 MR. GILLANDERS: It's -- it's a combination of three RMs,
29 which we've done our best to tape together.

30

31 THE COURT CLERK: Sorry. Can you (INDISCERNIBLE)
32 circled?

33

34 THE COURT: And which three RMs would that be?

35

36 MR. GILLANDERS: Sunnydale [sic], Glenside, and Eagle
37 Creek. While you have it, Madam Clerk, I will get it -- ask to have it marked as an
38 exhibit.

39

40 THE COURT CLERK: Are we pinning it up?

41

1 MR. GILLANDERS: I'm actually -- we'll hold it up again to
2 do one more.
3
4 THE COURT CLERK: Okay.
5
6 THE COURT: Any objection, Mr. Burge?
7
8 MR. BURGE: I don't object, My Lord.
9
10 THE COURT: That will be Exhibit D-17.
11
12 **EXHIBIT D-17 - Combination Map of Three RMs Taped Together**
13
14 Q MR. GILLANDERS: Murray, are you aware of where the
15 Ranger Lake Bible camp is?
16 A Yeah.
17
18 Q Okay. I'm going to give you a red marker and ask that you ...
19
20 THE COURT CLERK: You -- you don't need this up there?
21
22 MR. GILLANDERS: No. No.
23
24 THE COURT CLERK: Okay.
25
26 Q MR. GILLANDERS: The red marker, and ask that you mark
27 the Ranger Lake Bible camp.
28 A Okay.
29
30 Q (INDISCERNIBLE). All right. So we've marked that with a red circle.
31
32 THE COURT: Thank you.
33
34 MR. GILLANDERS: All right. Those are all of my questions.
35 Please answer any questions that my learned friend may have.
36
37 THE COURT: Mr. Burge.
38
39 MR. BURGE: None, My Lord.
40
41 THE COURT: Thank you, sir. You are free to go.

1

2 (WITNESS STANDS DOWN)

3

4 MR. SPENCER: My Lord, my friend's short questioning
5 is getting us out of synch a little bit with our witnesses, but if I could perhaps have
6 five minutes, I think I could get one more witness on before lunch here? So if I
7 could just have five minutes and I'd try to organize that, but I think we could --

8

9 THE COURT: Okay. Well --

10

11 MR. SPENCER: -- make use of the time.

12

13 THE COURT: -- I don't think we can do anything
14 within five minutes, so we'll -- we'll say 10. How's that?

15

16 MR. GILLANDERS: Fair enough, My Lord.

17

18 THE COURT: So ...

19

20 (JURY RETIRES)

21

22 (ADJOURNMENT)

23

24 THE COURT: Ready for the jury?

25

26 MR. GILLANDERS: Yes. Yes, My Lord.

27

28 THE COURT: Bring the jury back in.

29

30 (JURY ENTERS)

31

32 THE COURT: Next witness, Mr. Spencer.

33

34 MR. GILLANDERS: Thank you, My Lord. The next defence
35 witness is Glennis Fouhy.

36

37 THE COURT CLERK: Can you stand up here, please?
38 (INDISCERNIBLE) how do you take an oath, ma'am? Do you swear on the Bible
39 or do you wish to affirm?

40

41 MS. FOUHY: I'd swear on the Bible.

1
2 THE COURT CLERK: Put the Bible in your right hand. State
3 your full name.
4
5 MS. FOUHY: Glennis Karendale (phoentic) Fouhy.
6
7 THE COURT CLERK: I'm sorry?
8
9 MS. FOUHY: Glennis Karendale Fouhy.
10
11 THE COURT CLERK: Spell your first and last name for the
12 record.
13
14 MS. FOUHY: G-L-E-N-N-I-S F-O-U-H-Y.
15
16 **GLENNIS FOUHY, Sworn, Examined by Mr. Spencer**
17
18 THE COURT CLERK: You can be seated.
19
20 A Thank you.
21
22 THE COURT CLERK: (INDISCERNIBLE).
23
24 Q MR. SPENCER: Glennis, I'll -- I'll start by apologizing
25 for mispronouncing your name for a year. I've been saying Fouhy, and I
26 apologize for that. Where do you live, Glennis?
27 A I live on a farm in the district of -- in the Spinney Hill area, seven kilometres
28 west of number 376 on the Baljennie grid.
29
30 Q Okay. And who do you live with there?
31 A My husband, Marvin.
32
33 Q Okay. And is there anybody else in the immediate vicinity?
34 A My husband [sic] and his wife and two children live in the same yard.
35
36 Q Okay. I'm going to, I think, maybe get away with a little leading. I think you
37 said your -- your husband and his wife. I think -- did you mean --
38 A My son and his wife.
39
40 Q Sorry.
41 A Sorry.

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Q Yeah. I -- I think we all knew what you were saying. But for the record. August 9th, 2016. Do you recall that day?

A I do.

Q Okay. Can you tell us what is of significance to you about that day?

A Well, first of all, I heard a very loud vehicle over in the other yard. And then I wasn't concerned about that at all because that -- there's always vehicles over there, until it came across my lawn at an angle too quickly. And my first thought was there's been an accident, something's wrong. So I -- I actually went to the window and opened it to call out, is there -- do you need help? And then when I saw the young man get out of the car and run into our car, I -- I quickly closed the window. And then I just watched what went on.

Q Okay. So you were going to offer help?

A I was going to offer help. I thought something had happened.

Q Okay. And why did you think something had happened? What was your --

A Because of the -- the speed they were travelling, and they drove kitty-corner across the lawn rather than going a few more feet and coming up the driveway.

Q Okay. So you thought there had been an accident when they first pulled up?

A Or someone very ill.

Q Okay. Okay. So then where are you watching from at this point?

A From my dining room window.

Q Okay.

THE COURT CLERK: D-2?

MR. SPENCER: Yes.

Q MR. SPENCER: I've put photo number 7 of D-2 in front of you. Does that look familiar?

A Yes. That is my yard.

Q Okay. So a vehicle cuts across your grass?

A Yes. Yes.

Q And -- and parks -- or -- well, tell -- you tell me what happened then. And you

1 may have covered --

2 A Well --

3

4 Q -- some of it, but I --

5 A -- they came across the lawn and pulled at an angle up kind of behind my car in
6 the garage there.

7

8 Q Okay. And someone got out?

9 A Yes. A young man got out of the back seat on the driver's side -- or on the
10 passenger's side, rather, and scooted into the garage to where my car was
11 parked.

12

13 Q Okay. And the car you're referring to, well, I'll ask you to flip over to number
14 8. Does that look familiar?

15 A That is my car.

16

17 Q Okay. From your house, do you have a good view of your vehicle sitting out
18 there?

19 A Yes. Both from the dining room window and then the bay window at the -- at
20 the east end of the house there.

21

22 Q Okay. Did you recognize the vehicle that pulled up?

23 A No, I did not.

24

25 Q Did you recognize the person that got out?

26 A No.

27

28 Q Okay. So it was nobody you knew?

29 A No.

30

31 Q Okay. So you indicated that the individual got out of the back passenger door?

32 A Yes.

33

34 Q And were you able to see that clearly?

35 A Not -- I -- I knew it was a young man, but I couldn't see that side of the car.
36 But there was a young native man, well-dressed and clean-cut. But I didn't
37 really see his face.

38

39 Q Okay. Fair enough. But you had a -- a pretty good look? It was right in front of
40 you?

41 A Yes. When he came out.

1

2 Q Okay.

3 A The car had moved, and then I saw him full --

4

5 Q Okay.

6 A -- bodied.

7

8 Q So you may not be -- you didn't get a good enough look to necessarily
9 recognize him, but what can you tell us -- can you tell us as much as you can
10 about what you saw, about that -- the individual you saw?

11 A About the individual?

12

13 Q Yeah.

14 A He was a young native man, clean-cut, nice short hair, nicely dressed, neat,
15 tidy.

16

17 Q What do you mean by "nicely dressed"?

18 A He was wearing a shirt and a pair of pants, and --

19

20 Q Okay.

21 A -- a cap.

22

23 Q What kind of shirt?

24 A It was a beige -- beige-coloured shirt, a normal shirt, you know, a shirt -- a
25 collar and cuffs and --

26

27 Q Okay. So --

28 A -- long-sleeved.

29

30 Q Okay. So a collared, beige shirt, long-sleeved?

31 A Yes.

32

33 Q Okay. So then what happened? So this -- this individual gets out and goes to
34 your Lexus?

35 A Yes.

36

37 Q Okay. Then what happens after that?

38 A While he was in there at my car, the -- the -- that -- their car backed up and
39 pulled up beside the garage that the Lexus was in.

40

41 Q M-hm.

1 A And then he backed out of there and backed the other way. And then when the
2 young man came out of my garage, he got in the back seat of -- on the -- the
3 back seat of the passenger's side of the car.

4

5 Q So he got back into the same door he got out of?

6 A Yes.

7

8 Q But this time, he's right in front of you because they had backed around?

9 A Right.

10

11 Q Okay. Then what happened, Glennis?

12 A They drove back across the lawn to the other yard. And -- and then I heard a lot
13 of banging going on, like metal. And then they -- the car went down the
14 driveway and headed west.

15

16 Q Okay. What did you think the banging was?

17 A I didn't know. Our other vehicles were in -- it's like a Quonset type of thing,
18 like a granary metal. And so I wondered why would they be banging on that.
19 Our truck was also in there, and it's metal, so ...

20

21 Q Okay. So did you subsequently determine what the banging was?

22 A After -- after they were gone, when I went over to check, I could see that there
23 was damage to the truck and assumed that's what they were banging on.

24

25 Q Okay. And did you notice anything else? And the -- and the truck -- can you
26 describe the truck, whose truck and what colour?

27 A It's our truck. And it's -- was a red Dodge.

28

29 Q Okay. Did you see anything else around the truck? Or --

30 A Well, there was also another vehicle in there.

31

32 Q Okay.

33 A A Suzuki.

34

35 Q Okay. Tell me about that.

36 A It -- the door was opened, but I didn't see any damage or anything in there.

37

38 Q Okay. Do you know how much damage there was to your red truck?

39 A Yes.

40

41 Q How much?

- 1 A 4,000 -- roughly \$4,000.
2
- 3 Q Okay. What did you do after the vehicle -- well, I guess I'll back up a little bit.
4 Do you recall when the vehicle first drew your attention?
- 5 A It was just after 5 o'clock, five after five, seven after five, in -- in that -- in that
6 time.
7
- 8 Q Okay. And your -- your evidence was that you heard noise over on Murray's
9 side?
- 10 A Yes, the loud -- it -- it was like a vehicle that isn't getting fuel properly, you
11 know, when it roars and rattles. And then, of course, the muffler was dragging.
12 The tailpipe was dragging, so that was the reason for that noise, I guess.
13
- 14 Q Okay. And again, you're -- that -- that didn't startle you in any way? That
15 wasn't a particular concern, the noise?
- 16 A No.
17
- 18 Q Yeah. So --
- 19 A No.
20
- 21 Q -- then it came to -- to right in front of your window? That's the next --
- 22 A When the car drove in?
23
- 24 Q Yeah.
- 25 A The first time?
26
- 27 Q Yeah.
- 28 A Yes.
29
- 30 Q Okay. So -- and you think that was around 5:05 that you first saw them at the
31 Lexus?
- 32 A Yes.
33
- 34 Q Okay. What did you do after they left? And --
- 35 A I -- I -- when I was sure that the car was on its way west and not stopping or
36 anything, I ran out to my car and checked the vehicles, and I phoned -- I tried
37 to phone my husband and son, but they -- they were out of range. And I called
38 the police.
39
- 40 Q Okay. And do you know what time that was?
- 41 A That would be 10 after 5, 10 to 15 after 5 or --

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Q Okay. And then did -- did you call anyone else at that point? You tried to get your husband and son, and then called the RCMP. Did you call anybody else at that time?

A Not at that particular time.

Q Okay. When was the next call that you would have made?

A I made a call to our -- my husband's cousin, who lives -- he's a neighbour. Just lives a mile south of us.

Q Okay. Did you -- I guess did you -- did you call anyone else?

A No.

Q Do you know -- sorry.

MR. SPENCER:

Thank you, Madam Clerk.

Q Do you know the Stanleys?

A Do I know what?

Q The Stanleys?

A No, I do not.

Q Okay. And you didn't call them that day?

A No, I did not.

Q Okay. When you called the police, did you call 911 or can you tell me about that?

A I called -- I called North Battleford, and I called Warman. We're in Warman district, apparently, and -- and I didn't get an answer to either of those places. And I called Biggar, and I spoke to someone there.

Q Okay. So it took you a little while to get through to RCMP people?

A Yes.

Q Okay. And I apologize. I know it's not cool to ask a lady her age, but how old are you, Glennis?

A I am 74.

Q How did you feel when this was going on?

A I was -- I was terrified. I was afraid they'd come to the house and then what?

1
2 MR. SPENCER: That's all I have. Thank you, Glennis.
3
4 THE COURT: Cross-examination.
5
6 MR. BURGE: No, thank you, My Lord.
7
8 THE COURT: Ms. Fouhy, you are free to go. Thank
9 you very much for your testimony.
10
11 A Thank you.
12
13 (WITNESS STANDS DOWN)
14
15 THE COURT: Mr. Spencer.
16
17 MR. SPENCER: My Lord, those are all the witnesses I
18 had arranged for this morning. I know we're a little bit earlier than ideal. We're
19 not ready to -- to close our case yet, of course. But there might be a couple issues
20 we could speak to you about to get those out of the way without the jury this
21 couple --
22
23 THE COURT: Okay. So what you are suggesting is that
24 we adjourn until 2 o'clock for the jury, and that between 12 and 12:30, we can talk
25 about legal things in the -- that are appropriate to talk about in the absence of the
26 jury.
27
28 MR. SPENCER: Exactly, My Lord.
29
30 THE COURT: Okay. Any problem with that?
31
32 MR. BURGE: No.
33
34 THE COURT: Okay. Ladies and gentlemen, we will let
35 you take your leave until 2 o'clock today.
36
37 (JURY RETIRES)
38
39 THE COURT: Okay. The jury is -- is gone.
40
41 MR. SPENCER: My Lord, I have one witness I intended

1 on calling for a very finite purpose. I think my friend and I would be able to avoid
2 that witness, but we are not -- assuming that they could be called, we can deal with
3 it by reason of an admission, but we disagree as to admissibility of the evidence.
4 So we would need a -- my friend is fairly asking for your ruling on whether it's
5 admissible, and if so, then we would probably be able to work it out.

6
7 The witness is the owner of Doogie's Liquor. This may ring a bell for My Lord.
8 That's the liquor store robbery that we had spoke about in relation to a *Charter*
9 argument. I determined that -- that it didn't fit the *Charter* criteria, but I -- it's my
10 submission that it's still relevant. It's an incident that occurred the same day. Not
11 -- not to ground a self-defence argument, per se, but it's part of the narrative,
12 which is essentially the start of -- of this misadventure that ended in the tragedy. It
13 would be, from my perspective -- my -- I'm not looking to put the video in
14 because I -- I have -- I am not willing to ask anybody to identify anyone, but I
15 would like to, if it's ruled admissible, simply file the inventory of liquor that -- that
16 was stolen in that -- in that robbery. And I think my friend, if admissible, we could
17 probably work that out. But those are my submissions. I believe it's relevant. It's
18 probative, not hugely. I'm not going to look you in the eye and say it's a huge
19 probative issue. But I think I've handled it in a way that is the -- the least negative.
20 So it's an attempt to balance -- balance that out.

21
22 THE COURT: Okay. When -- when do you say that this
23 liquor store robbery occurred? And are you -- and again, I -- I distinguish a theft
24 from a robbery, as well. A theft occurs without any people essentially being
25 involved. A robbery is where there's people involved, and there's a certain degree
26 of violence, I guess.

27
28 MR. SPENCER: Oh.

29
30 THE COURT: So first of all, when is this alleged to
31 have happened?

32
33 MR. SPENCER: I believe it's approximately 1 AM of
34 August 9th, 2016. So it is, you know, the -- the same day, but the early -- early
35 morning hours of the start of it.

36
37 THE COURT: So there was -- and -- and where is
38 Doogie's Liquor Store?

39
40 MR. SPENCER: Cudworth?

41

1 MR. BURGE: It's Cut Knife.
2
3 MR. SPENCER: Cut Knife. Sorry.
4
5 THE COURT: Cut Knife.
6
7 MR. SPENCER: Sorry. I mix those up. Thank you.
8
9 THE COURT: And where is Cut Knife in relation to any
10 of the areas that we've talked about?
11
12 MR. SPENCER: I think it's about 40 miles away,
13 approximately 40 miles away from the -- the immediate area of --
14
15 THE COURT: From the Stanley farm or from the --
16
17 MR. SPENCER: Yeah, probably. Yeah, probably 40 miles
18 from the Stanley farm. Yeah.
19
20 THE COURT: And are you alleging that -- who are you
21 saying was involved in this robbery?
22
23 MR. SPENCER: It's my belief that -- that --
24
25 THE COURT: Well, again, not your belief.
26
27 MR. SPENCER: Sorry.
28
29 THE COURT: What is the evidence that you tend -- are
30 intending to submit?
31
32 MR. SPENCER: Well, firstly, I'll address -- before I
33 forget, your -- your distinction between theft and robbery. There was nobody -- it
34 was an after-hours snatch and --
35
36 THE COURT: Okay. So it would be a theft.
37
38 MR. SPENCER: -- snatch and grab type thing. So, you
39 know, on your -- on your definition, I accept there's no people involved in that, so
40 we have no eyewitnesses. We have the video.
41

1 Mr. Boushie was implicated in that -- that robbery. I don't -- I don't really want to
2 get into that. All I want to do is put in the inventory from the robbery for what I
3 believe to be a small probative value that -- what the connection between the --
4 what they were drinking that day and what's on the inventory list is beyond
5 coincidental. And I think that's adequate for my purposes. And again, balances off
6 any concern on undue prejudice.

7

8 THE COURT: So what -- what liquor do you say was
9 stolen?

10

11 MR. SPENCER: We have a full inventory. Oh. But of --
12 of note is Smirnoff blueberry vodka, and you can't match an individual bottle to a
13 -- to a seller, and then a 66 [sic] of Crown -- or a 60 of Crown Royal, and Kokanee
14 beer. And, you know, very -- other than that -- well, there's two different Crown
15 Royals, but one's a 60. There's three kinds of vodka. One is the blueberry that we
16 have, some other vodka, and -- and only Kokanee beer. And I appreciate the
17 probative value is not huge, but certainly I think it is just too coincidental that
18 that's the liquor stolen the same day, and that's the liquor they're drinking.

19

20 THE COURT: So how does that bear upon anything we
21 have to deal with here today?

22

23 MR. SPENCER: Well, I -- I believe it's the start of the
24 misadventure that resulted in the tragedy. Certainly we are going to get down to
25 the critical portions of August 9th, 2016, very quickly, but it's my submission that
26 that is a relevant piece of information that the jury should be aware of.

27

28 THE COURT: Okay. And are you saying that the -- you
29 said that Mr. Boushie was implicated?

30

31 MR. SPENCER: Yes. And the --

32

33 THE COURT: And assuming he -- he was, how does
34 that bear upon whether or not what happened in the Stanley farm had anything to
35 do with anything?

36

37 MR. SPENCER: Well --

38

39 THE COURT: I am just -- you said the probative value
40 is limited. I am struggling to see what the probative value is at all.

41

- 1 MR. SPENCER: Well, and -- and, My Lord, being totally
2 candid, it is in my respectful submission that robbery was the start of the
3 misadventure that resulted in the tragedy. And, you know, so many times defence,
4 you know, object to the narrative, but we -- we tell the whole story so the jury
5 knows what happened. If it was two days before, I wouldn't be on my feet. It's the
6 same day. So that's -- that's my belief is that that's -- that it's a -- it's relevant
7 because it's part of the story of that day.
8
- 9 THE COURT: Okay. And by probative and proof, it --
10 the concept of putting admissible evidence in is it tends to support one set of facts
11 or another. How does this advance your case or -- or cast doubt on the Crown's
12 case whether or not this event happened or did not happen?
13
- 14 MR. SPENCER: If the question is is it determinative --
15
- 16 THE COURT: No, not determinative, but --
17
- 18 MR. SPENCER: -- or of --
19
- 20 THE COURT: -- how does it even move the yardsticks a
21 yard or a feet or how does it move the yardsticks at all?
22
- 23 MR. SPENCER: Well, and -- and, My Lord, I -- I have
24 nothing further beyond my submission that it's part of the narrative of that day.
25 And as I say, it's the start of the misadventure. You know, obviously I've risen
26 because I feel it does have probative value, but I --
27
- 28 THE COURT: Can you articulate what that probative
29 value would be?
30
- 31 MR. SPENCER: Well, again, describing the
32 misadventure. So, you know, My Lord, I'm -- I'm making my argument. I have
33 timed it so that we can get --
34
- 35 THE COURT: Okay. Well --
36
- 37 MR. SPENCER: -- a ruling on it from you, and -- and I
38 don't know that I can help you much more. And I'll, you know -- but we need a
39 ruling.
40
- 41 THE COURT: And as -- as far as the -- you say there's

1 -- that they might be implicated. What type of evidence would you put forward?
2 That somebody said that a liquor store was robbed -- or correction, that there was a
3 theft from a liquor store, and that -- and the -- some of the liquor that was allegedly
4 stolen or was, in fact, stolen ended up in the -- similar liquor ended up in the -- the
5 grey Escape?

6
7 MR. SPENCER: Yeah. There's -- My Lord, there's a
8 video. As I say, I'm not prepared to use that. That's -- I have to live with that
9 decision. There's also a co-conspirator. One of the other individuals has indicated
10 Mr. Boushie was present. I'm not going to call that witness. So I'll be very candid
11 with you. I'm not going to track them down and bring them here, both for -- you
12 know, what's -- it's not significant enough to put somebody through looking at
13 that video, nor is it to track down somebody that -- that was involved. So --

14
15 THE COURT: Okay. Fair enough. Mr. Burge, your
16 comments?

17
18 MR. BURGE: Well, yes, My Lord. I guess looking at it
19 from a prosecution standpoint, the allegation would be of a break, enter, theft. The
20 evidence suggesting Mr. Boushie was involved is frail. So if my friend wants to
21 put in an inventory of this kind of liquor which is of a similar brand to some of the
22 liquor or some of the liquor taken is of the similar brand to what is seen in -- in --
23 or what's been described in these proceedings, it -- it could only be for the purpose
24 of, frankly, attacking Mr. Boushie in what I would suggest is an inappropriate way
25 to get some -- some adverse reaction from the jury about something that has
26 nothing to do with what happened at the Stanley farm. And so even if the evidence
27 was a hundred percent clear, I would be making the same objection. It has nothing
28 to do with what happened at the Stanley farm, and this evidence is far from that
29 clear.

30
31 THE COURT: Okay. I -- anything further?

32
33 MR. SPENCER: I'll -- I'll withdraw my application. I'll
34 walk away from that witness.

35
36 THE COURT: So you are withdrawing your
37 application?

38
39 MR. SPENCER: Yeah. Yeah.

40
41 THE COURT: Okay. Well, that makes it clear, then,

1 that there's nothing further that need be dealt with on that basis. So --

2

3 MR. SPENCER: Yes. Thank you, My Lord.

4

5 **Discussion**

6

7 THE COURT: -- thank you for raising that. As far as --
8 while I have you here, a captive audience, as far as timing, are you able to give me
9 a bit of an indication as to where we're -- where we're at as far as timing? Because
10 at a certain point, we're going to have to spend some time together in open court
11 and in the absence of the jury, talking about the legal principles that should go into
12 my charge. And then I am going to have to deliver a charge. You are going to have
13 to present your closing addresses, as well. And do you have any sense as to how
14 this might shake down?

15

16 MR. SPENCER: I -- I do, My Lord. My expectation, and
17 I've spoken to my friend about that, is that our evidence hopefully will -- will
18 conclude today, the evidence. There's a couple of additional loose ends that we
19 would need to discuss, so I would not close the evidence necessarily today, but
20 allow my friend and I speak to a couple agreed facts which may close up some
21 loose ends. So I -- my belief is that we would have the majority, if not all, the
22 evidence in today, subject to those cleanup matters which will be dealt with
23 relatively quickly by agreement. If not, we may have to call somebody to clean it
24 up, but I -- I think we'd be pretty close to being done today on the evidence part of
25 it. And then I guess we would be in your hands as far as what your preferred
26 procedure is as far as the -- the charge meeting, as you indicated, closing
27 arguments, and the timing of that. I think we've done very well to get to where
28 we're going to be by the end of today, which should allow us the luxury of
29 scheduling those to counsel and the Court's convenience. So, you know, I'm not
30 sure the charge meeting, how long you'd anticipate that, where you'd want to slot
31 that in in the process, but we're in your hands that way.

32

33 THE COURT: Okay. So you are thinking that the
34 evidence might be done today, again, subject to cross-examination, of course, and
35 that type of thing. But -- and if not done today, tomorrow morning, perhaps?

36

37 MR. SPENCER: Absolutely. I -- yes. Yes.

38

39 THE COURT: So if we were to conclude all the
40 evidence tomorrow morning, that would leave us tomorrow afternoon to deal with
41 -- talk about legal matters. Is that fair?

- 1
2 MR. SPENCER: I think that's right, My Lord.
3
4 THE COURT: And you'd want to deal with those -- the
5 pre-charge discussions prior to you delivering your closing addresses, I presume?
6
7 MR. SPENCER: That's what I anticipated, My Lord. And
8 I know there's some --
9
10 THE COURT: Okay.
11
12 MR. SPENCER: -- variation with different -- different
13 courts, but that -- that was my expectation. And I think that's the right way to go at
14 it.
15
16 THE COURT: Okay. So if we were to talk about legal
17 matters tomorrow afternoon, I think that -- I have read a number of decisions and
18 -- as this case has been going, I've been reading more decisions than probably
19 what I need because, of course, I don't know where the evidence is going, but I'm
20 trying to be as prepared as I can for everything and as fair as I can on -- on all
21 aspects. I may need a day to put everything together. And then if -- if that's
22 Wednesday, then would that mean we'd come back on Thursday for your closing
23 addresses and charge the jury in the afternoon or charge them Friday? Or -- or do
24 we go over to Monday? Any thoughts?
25
26 MR. SPENCER: Well, certainly I respect that our
27 speeding up puts you in a -- in a situation where you have to scramble a little bit,
28 and -- and that's --
29
30 THE COURT: Well, I am not scrambling. Everything --
31 everything is good.
32
33 MR. SPENCER: Good. I think we likely could -- could
34 start meeting in the morning, but if the suggestion is it might be better to schedule
35 it in the afternoon, and if we don't have very much in the morning, so be it.
36
37 THE COURT: Or we could just continue on. Like, once
38 the -- everything is -- once the evidence is in, the Crown would be asked if they
39 have any rebuttal evidence to call.
40
41 MR. SPENCER: Yes. That's right.

- 1
2 THE COURT: And then once the evidence is in, then
3 we would let the jury go home, and we would deal with the pre-charge matters.
4
- 5 MR. SPENCER: Okay.
6
- 7 THE COURT: Talk about the -- the various cases that
8 might apply and principles and the verdicts that are open and that type of thing.
9
- 10 MR. SPENCER: Yes.
11
- 12 THE COURT: That might take Tuesday.
13
- 14 MR. SPENCER: Okay.
15
- 16 THE COURT: And then where does that put us for --
17 and again, I may wish to prepare something on -- on Wednesday. And by that, I've
18 got a certain amount of it prepared, but there's only so much I can do until I hear
19 all the evidence. That -- and also, it's my intention to give the jury a written
20 charge. And ideally I would share that written charge, the template or the draft,
21 with counsel and say, Here's what I'm planning on providing to the jury, do you
22 have any comments on it?
23
- 24 MR. SPENCER: Yeah. I think -- I think we're on the same
25 page, My Lord. It's just that fine timing. I'll tell you, my -- my preference would
26 be that the jury be charged this week. If you feel that -- that to get everything done
27 properly would get us to Friday during the day before they would be charged, then,
28 you know, I certainly, you know, would accommodate. But my preference would
29 be if we could get them -- if we can finish up today, get them charged by
30 Thursday, and, you know, let the -- let the process play out, My Lord.
31
- 32 THE COURT: Okay. Mr. Burge, what comments do
33 you have, if any, about where we're at?
34
- 35 MR. BURGE: I -- I think you've -- you and my friend
36 have -- have covered the whole range. So whatever works, frankly, for Your
37 Lordship, that's --
38
- 39 THE COURT: Is it within the -- the realm of possibility
40 that you would -- everything is kind of lining up for a charge on Thursday or
41 possibly Friday. And I wonder. I -- I hate to put it off to Monday --

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MR. BURGE: M-hm.

THE COURT: -- but I wonder if the jury -- if it's fair to them to have them start to deliberate on a Friday. That's what's going through my mind, as well. And I guess it depends to a large degree on how close we are on the law and whether we have -- I presume that counsel are -- are briefed on the -- the various legal issues that we have to encounter. And there's some -- certainly there's some nuances with some of these matters --

MR. BURGE: Yes.

THE COURT: -- given that the -- the defences that have arisen. So I guess what we do is we just play it by ear and see -- see where we go. I don't know that we can do anything more than that. I'd rather be careful and do it right than rush it and not be fair to either Crown or defence.

So with that in mind, I guess that helps as much as it can help, given all the circumstances. And anything further that need be done at this point?

MR. BURGE: No, thank you.

THE COURT: Okay. Thank you. We will adjourn until 2 o'clock.

PROCEEDINGS ADJOURNED UNTIL 2:00 PM

1 February 5, 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: Are we ready for the jury?
16
17 MR. SPENCER: A short update. We made -- thank you so
18 much. Well, we made headway on the additional evidentiary issue, so I'm now --
19 we've -- I think we have an understanding. We just have to document it, so I think
20 that will come together, which means we likely will finish evidence today, which
21 is good. I forgot about the *Charter* application in our timeline. My suggestion
22 would be that it should be argued after the evidence, but before we go through the
23 jury preparation stages. So my -- my suggestion might -- would be that that would
24 probably be argued tomorrow morning. I don't expect it to take too long. The
25 evidence is the evidence, and the law is relatively focussed, so ...
26
27 THE COURT: Okay. So what is about to happen now?
28
29 MR. SPENCER: We're good to go with our last witness.
30
31 THE COURT: Okay. Bring the jury in.
32
33 (JURY ENTERS)
34
35 THE COURT CLERK: (INDISCERNIBLE).
36
37 THE COURT: Okay. Mr. Spencer, proceed when you're
38 ready.
39
40 MR. SPENCER: Thank you. Thank you, My Lord. The
41 next defence witness is Gerry Stanley.

1
2 THE COURT CLERK: How do you take an oath, sir? Will --
3
4 THE ACCUSED: I'll affirm.
5
6 THE COURT CLERK: Affirm? Raise your right hand. State
7 your full name for the record.
8
9 THE ACCUSED: Gerry Stanley.
10
11 THE COURT CLERK: Spell your first and last name for the
12 record.
13
14 THE ACCUSED: G-E-R-R-Y S-T-A-N-L-E-Y.
15
16 THE COURT CLERK: Is that your proper name, Gerry?
17
18 THE ACCUSED: Oh, Gerald. Sorry.
19
20 THE COURT CLERK: (INDISCERNIBLE).
21
22 THE ACCUSED: G-E-R-A-L-D --
23
24 THE COURT CLERK: Okay.
25
26 THE ACCUSED: -- S-T-A-N-L-E-Y.
27
28 **GERALD STANLEY, Affirmed, Examined by Mr. Spencer**
29
30 UNIDENTIFIED SPEAKER: (INDISCERNIBLE).
31
32 Q MR. SPENCER: Gerry, how -- how old are you?
33 A I'm 56.
34
35 Q And where do you live?
36 A I live in the RM of Glenside.
37
38 Q Okay. Do you have family, Gerry?
39 A Yes, I have a wife and two sons.
40
41 Q Okay. And are they at -- living at home?

- 1 A My wife lives at home, and my two kids work both in Alberta.
2
- 3 Q Okay. What's your occupation, Gerry?
4 A I'm a rancher and a truck driver and a part-time mechanic.
5
- 6 Q Okay. Tell me about part-time mechanic.
7 A Well, mostly people in the community. I fix vehicles. They'll bring their car or
8 truck to me, and then I'll diagnose what the problem is and tell them what parts
9 they need, and then they will go pick up the parts and bring them back, and I'll
10 fix their truck or car.
11
- 12 Q Okay. So you don't do a markup on parts? You're not a real mechanic?
13 A No, it's just -- it's more honest this way if they get their own parts.
14
- 15 Q Fair enough. Do you ever help people off the road?
16 A Oh, yeah.
17
- 18 Q Tell me about that.
19 A Well --
20
- 21 Q Those types of things.
22 A -- probably twice a year, people will have trouble with their vehicles and stop
23 in, and I'll help them however I can.
24
- 25 Q Okay. What types of things have you helped people with?
26 A Fan belts, overheating, and flat tires and getting stuck, stuff like that.
27
- 28 Q Getting stuck?
29 A Yeah.
30
- 31 Q Yeah. Okay. Now, a flat tire, do you -- do you have tires in stock?
32 A I have used tires from -- I don't know where they all came from, but --
33
- 34 Q Okay. But -- so you have a supply of used tires?
35 A Yeah.
36
- 37 Q So you'd be able to probably get somebody back on the road?
38 A Oh, yeah.
39
- 40 Q Yeah? Okay. So a couple miscellaneous things here that I'll get. What -- why
41 do you have shells around your deck, Gerry?

- 1 A Well, we have a cow-calf operation where we have babies in the spring. So I
2 have a pen set up fairly close to the yard where they all have their babies. And
3 a lot of times coyotes and other things will come and try to either take the calf
4 or bother the cattle in the night or even during the day. And by just shooting
5 off the deck, making noise, they will generally run away and leave the cows
6 alone.
7
- 8 Q Okay. And -- and what guns do you use for -- for that purpose?
9 A I use a .22 or that Tokarev.
10
- 11 Q Okay. And why those?
12 A Well, the .22 because it's handy. And it's -- the other one because it's super
13 loud.
14
- 15 Q Okay. And that -- the other one is?
16 A The Tokarev.
17
- 18 Q Okay. The gun that we've been dealing with here?
19 A Yeah.
20
- 21 Q Okay. Okay. So then for your -- dealing with the Tokarev, then, for a little bit,
22 where do you get your ammo?
23 A Sometimes I would pick it up at a store, and -- or you can just order it over the
24 phone and they'll mail it to you.
25
- 26 Q Okay. And so you can just get bullets sent to you in the mail?
27 A Yeah.
28
- 29 Q Okay. And where do you -- where do you usually get your -- your ammo, then?
30 The ammo we're talking about, where would you have got it from?
31 A That stuff I would have got it in Lloydminster through the mail.
32
- 33 Q Okay.
34 A It's -- you can get brand-new stuff or surplus is what I had because it's cheap.
35
- 36 Q Okay.
37 A And it's just for making noise, anyway.
38
- 39 Q Okay. So you get the surplus stuff?
40 A Yeah.
41

- 1 Q Okay. Okay. Where do you store the ammunition for the Tokarev?
2 A I would have some in the -- in the house, some in -- in the tack room. And I'd
3 have some in the toolbox in the shop.
4
- 5 Q Okay. What are the -- is your shop heated?
6 A Just during the day.
7
- 8 Q Okay. So what would the temperature fluctuations be in your shop?
9 A Well, anywhere from 30 above to 30 below.
10
- 11 Q Okay. Okay. So the Tokarev -- I'm probably using the wrong word here. The
12 ejection pattern for the Tokarev? Do you know what I'm talking about? The --
13 A Yeah.
14
- 15 Q Okay. Can you tell me about that, from your experience with it?
16 A Usually it would go somewheres out the right. Sometimes it would go straight
17 up. And sometimes it would be 10 feet, 20 feet, 15 feet. You never really
18 knew.
19
- 20 Q Okay. So the -- there is no ejection pattern for it?
21 A No.
22
- 23 Q One will go flying behind you, one will go --
24 A Yeah, they land on top of your head and --
25
- 26 Q Okay.
27 A -- everywhere.
28
- 29 Q So not much -- okay.
30 A Right.
31
- 32 Q So inconsistent. Okay. The rounds you used on August 9th, where did you get
33 those from?
34 A I grabbed those out of the -- out of my toolbox.
35
- 36 Q In -- in the shed?
37 A In the shop, yes.
38
- 39 Q Okay. And can you tell me about those? Were they in a box? Or tell me about
40 those rounds that you used that day.
41 A One -- one time I bought some ammo, and it came in a box. And they were on

1 little strips that would hold -- I think they held eight bullets. So anyway, I
2 would keep them around, and I would -- I would put bullets on them so that
3 they were easy to pull off, just the -- so they weren't rattling around loose.

4

5 Q Okay. So that day, the bullets you put in the Toke were on one of these strips?

6 A Yes. Yes.

7

8 Q And about -- approximately how many were on the -- were on the strip?

9 A I think there was probably six on there.

10

11 Q Okay. And there's a book in front of you, just to the -- some of the stuff I'm
12 familiar with, but just so the jury appreciates it. The book -- book in front of
13 you is --

14

15 THE COURT CLERK: P-1.

16

17 Q MR. SPENCER: -- P-1. If you could turn to photograph
18 92 in front of the first tab.

19 A Yeah.

20

21 Q Okay, 92 is the bottom picture on that page there. Can -- can you tell me
22 what's in that picture there?

23 A That's the strips I was just talking about that hold the bullets.

24

25 Q Okay. So that would be consistent with what you used that day to -- to get
26 the --

27 A Yes.

28

29 Q -- to load the Toke. How many of those -- and is that -- those bullets look
30 similar to the ones you used that day?

31 A They look similar, yeah.

32

33 Q Yeah.

34 A They were dark-coloured like that.

35

36 Q Okay. So you took one of those strips. How many bullets did you take off the
37 strip?

38 A Well, I thought I took two.

39

40 Q Okay. Do you know what happened to the rest of the strip, the ones that were
41 left on it?

1 A Yeah, I just put it right back in the toolbox.
2
3 Q Okay.
4 A In -- in the drawer, like --
5
6 Q Okay. And have you -- did you -- have you seen those since August 9th, 2016?
7 A Yes, I did. After I -- I spent a little time in remand, I got out, and I was back
8 home. And I was looking for something else in the shop, and I just pulled that
9 drawer open, and they were still laying there.
10
11 Q Okay. So the rest of the strip was still in the toolbox?
12 A Yeah.
13
14 Q Okay. What -- what did you do with it?
15 A Well, I notified you, because I didn't know what to do with it. And then we
16 took them to the RCMP in Biggar.
17
18 Q Okay. And what did you do with them at the RCMP in Biggar?
19 A Then I handed them -- handed it -- what I had to them.
20
21 Q Okay. And was there anything other than the rest of the strip?
22 A Yes. I had also found a -- a dud in a different location, also in the shop.
23
24 Q Okay.
25 A A full bullet with a dud.
26
27 Q Okay. How did you know it was a dud? Tell -- explain.
28 A It was a full cartridge, but it had a firing pin mark on the primer.
29
30 Q Okay. So it had been struck?
31 A Yes.
32
33 Q And didn't go off?
34 A Right.
35
36 Q Okay. What'd you do with that?
37 A I also handed it in to the RCMP.
38
39 Q Okay. Is that the only dud you've experienced with that ammunition?
40 A No, I've had other duds.
41

- 1 Q Okay.
- 2 A In the past.
- 3
- 4 Q How many?
- 5 A Probably one per box, whatever a box holds. Yeah. One -- one dud per box.
- 6
- 7 Q Okay. And what's a box hold?
- 8 A I'm not even sure. 30, 40, maybe.
- 9
- 10 Q Okay. Okay. And have you ever had a hang fire?
- 11 A Yes, I have.
- 12
- 13 Q When was that?
- 14 A August 16th, 16 -- August 9th, '16, sorry.
- 15
- 16 Q August 9th, 2016? Okay. Okay. Do you know what date you turned those --
- 17 those -- that dud and the rest of the strip over to the RCMP in Biggar?
- 18 A Yeah, I believe it was August 9th, '17.
- 19
- 20 Q Of 2017?
- 21 A Yeah.
- 22
- 23 Q Yeah. Okay. So August 9th, 2016, can you tell me -- tell me about that day,
- 24 Gerry?
- 25 A I can.
- 26
- 27 Q Start in the morning.
- 28 A Well, I did what I do every day. I got up and had a couple cups of coffee and
- 29 then went outside to start the day.
- 30
- 31 Q Okay. What were you doing that day?
- 32 A Well, we were building a fence for the last two -- three -- two or three days
- 33 there.
- 34
- 35 Q Okay. So you had a fencing project that was ongoing?
- 36 A Yes.
- 37
- 38 Q Okay. Do you recall the weather that day?
- 39 A Yeah. It was hot and humid.
- 40
- 41 Q Okay.

1 A It had rained the day before.
2
3 Q Okay. What were you wearing?
4 A I was wearing a T-shirt, jeans, and a hat, safety glasses, and rubber boots.
5
6 Q Okay. Did anybody come to the farm that day?
7 A Yes. A fellow came there to drop parts off for his truck that I was working on.
8
9 Q Okay. And can you describe that truck for me?
10 A Yeah, it's a gold Ford truck, about a 2000.
11
12 UNIDENTIFIED SPEAKER: (INDISCERNIBLE).
13
14 THE COURT CLERK: Pardon me? Just down there?
15 (INDISCERNIBLE).
16
17 MR. SPENCER: Okay.
18
19 Q MR. SPENCER: And you can use that to point to the
20 Biggar --
21
22 THE COURT CLERK: (INDISCERNIBLE).
23
24 MR. SPENCER: What I'll do is I'll get him -- I'll just get
25 him to mark the map first, and then I'll take it down. So I should have done that
26 earlier.
27
28 Q MR. SPENCER: So, Gerry, just to clean something up
29 here quickly, can you use the stick and show me where --
30
31 THE COURT CLERK: (INDISCERNIBLE).
32
33 MR. SPENCER: Oh.
34
35 Q MR. SPENCER: Can you use the stick and point to where
36 your farm is, your land is?
37
38 THE COURT CLERK: (INDISCERNIBLE).
39
40 THE COURT: He can come out of the box and look.
41

- 1 MR. SPENCER: Yeah. If you -- okay. Okay.
2
- 3 Q MR. SPENCER: Can I get you to put a circle there?
4 A Can I go circle it?
5
- 6 MR. SPENCER: Yeah. I think His Lordship is okay if you
7 come out. Okay.
8
- 9 Q MR. SPENCER: So just put a --
10 A Right on the map there?
11
- 12 Q -- 'S' and circle where the yard is. Okay. You can just hop back in.
13
- 14 THE COURT CLERK: Do you want me to show it to the jury?
15
- 16 THE COURT: We will let Mr. Spencer handle that.
17
- 18 Did you want the jury to see that at this point or at some later point?
19
- 20 MR. SPENCER: I was just -- I think we will at some other
21 point, My Lord. It will be more convenient. I just wanted to get it marked before I
22 took it down, so ...
23
- 24 THE COURT: Okay.
25
- 26 Q MR. SPENCER: So, Gerry, I'm going to set --
27
- 28 THE COURT: So he has marked it with a -- a blue
29 circle with an 'S' in it?
30
- 31 MR. SPENCER: Exactly, My Lord.
32
- 33 THE COURT: Thank you.
34
- 35 MR. SPENCER: Thank you.
36
- 37 Q MR. SPENCER: So, Gerry, I'm going to ask you to look
38 at P-2, which is an enlarged photo. Does that look familiar to you?
39 A Yes.
40
- 41 Q Okay. Can you describe what it is?

1 A It's our -- our yard.

2

3 Q Okay. And is that how it looked that day?

4 A Yeah.

5

6 Q August 9th, 2016?

7 A Yeah.

8

9 Q Is there anything missing?

10 A Yeah. There was a -- a white truck sitting right in here.

11

12 Q Okay.

13 A Like, a white Chev, a newer truck.

14

15 Q Okay. So can you use the stick to point exactly where that is?

16 A Right about here.

17

18 Q Okay. So just by the -- the blue Escape?

19 A Yeah. It was on the -- I think --

20

21 Q Closer to the trees?

22 A Yeah, closer to the trees.

23

24 Q Okay.

25

26 THE COURT: So there's -- it is the midway point
27 between the blue vehicle and the white vehicle, closer to the trees; is that where
28 you're saying, Mr. Stanley?

29

30 A Yes. Right here, there's a power pole right here.

31

32 THE COURT: Okay.

33

34 A And it was sitting on the other side of it.

35

36 THE COURT: Okay.

37

38 Q MR. SPENCER: Okay. Now, what I'm going to do to
39 create an exhibit that we can file without marking on the Crown's P-2 is I have
40 an identical enlarged, but not quite as large photo. So it is identical.

41

- 1 THE COURT: Okay. That one, the one that the Crown
2 had in our booklet was upside down. So this one is not upside down.
3
- 4 MR. SPENCER: Well, sadly, it is.
5
- 6 THE COURT: Oh, it is upside down, as well?
7
- 8 MR. SPENCER: It is. It's that number 6 from the book --
9
- 10 THE COURT: Okay.
11
- 12 MR. SPENCER: -- which is P-2, which is the enlarged
13 version. And --
14
- 15 THE COURT: So it actually makes it a little bit hard to
16 follow because it's -- the P-6 and the P-2 are not quite the same.
17
- 18 MR. SPENCER: Yeah. And I understand that, My Lord.
19 And --
20
- 21 THE COURT: Okay.
22
- 23 MR. SPENCER: -- I don't have access to an aerial photo,
24 so this is the best we have. So --
25
- 26 THE COURT: Okay.
27
- 28 Q MR. SPENCER: So, Gerry, I'm going to ask you to take
29 the blue marker and mark on there exactly where Sheldon's truck was, just so
30 that we have a record of that, the white truck. Make a rectangle. Try to make it
31 proportionately the size of his truck, and -- and then if you can just colour it in
32 so that we can distinguish that from anything else as we go through here. You
33 didn't know you'd be colouring today.
34 A No.
35
- 36 Q So just hang onto that if you can because I'll be asking you to mark on some
37 other things, so -- okay. So you indicated the -- before I got off track there, you
38 referred to the gold truck, which is in the photo there.
39 A Yes.
40
- 41 Q The P-2 that everybody is -- a little easier to see. Can you just point that out

- 1 with the stick again? I think you did, but I just want to make sure that -- that
2 we're --
- 3 A This truck right here.
- 4
- 5 Q Yeah. Okay. So the owner of that vehicle stopped by that day?
- 6 A Yes.
- 7
- 8 Q Okay. Tell me about that.
- 9 A He stopped by, and I had told him which parts the truck needed before, so then
10 he just stopped by to drop the parts off.
- 11
- 12 Q Okay. About what time was that in -- on the -- in the day?
- 13 A I think it was shortly after noon.
- 14
- 15 Q Okay. Anybody else at the farm that day before we're getting to late afternoon?
- 16 A No.
- 17
- 18 Q Okay. So you're working on the fence. Anybody helping you?
- 19 A Yes. My wife was helping me.
- 20
- 21 Q Okay. And tell me about that. You're working on the --
- 22 A Yeah. Yeah. We were in this area here, back here. And we were just putting
23 these rails on.
- 24
- 25 Q Okay.
- 26 A And I was -- she would have to help me hold the wood up while I sawed it off
27 with the chain saw.
- 28
- 29 Q Okay. So Dee is helping you?
- 30 A Yeah.
- 31
- 32 Q Okay. Then what happened?
- 33 A And then my son came home. He was at an appointment he had to go to that
34 day.
- 35
- 36 Q Okay. What -- what time did -- and this is which son?
- 37 A Sheldon.
- 38
- 39 Q Okay. What time did Sheldon get home, approximately?
- 40 A He got home about 4, I think, or 3:30 or 4.
- 41

- 1 Q Okay. And then -- then what happened once Sheldon got home?
2 A Then Dee was happy, so she got to go do something else. She wanted to go
3 mow the grass, so --
4
5 Q Okay.
6 A -- we let her go.
7
8 Q Okay. So she ditched right away?
9 A Yeah.
10
11 Q Yeah. Okay. Did you have -- did someone else come to the farm that day?
12 A Yes. Someone else did come.
13
14 Q Okay. So tell me that, starting from the first -- first recollection related to
15 somebody else coming to the farm that day.
16 A Okay. Me and Sheldon were over here in this area, working on the fence,
17 getting it finished up. And the road -- the grid road kind of runs this way, and
18 we could hear a car coming down the road, like, fast and loud, and it was
19 dragging something. And you could hear popping noises. And we just kind of
20 looked at each other and, you know -- and I thought it went right by.
21
22 Q Okay. Now, His Lordship is right as far as making sure we've got -- we're
23 oriented properly, but this is your farmyard, and the grid road runs below that
24 photo?
25 A Yeah, it kind of -- I tried to line the house up when we put the house there. I
26 don't know how perfect it got, but the grid road runs parallel with it --
27
28 Q Okay.
29 A -- more or less.
30
31 Q So -- so you're thinking more or less parallel. Something like that would be the
32 road?
33 A Yeah. Something like that.
34
35 Q Okay. So you actually have to go past your farm going west --
36 A Right.
37
38 Q -- to turn into your farm?
39 A Yes. The entrance is over here.
40
41 Q Okay. And you're indicating about an extension of the --

- 1 A Yeah.
- 2
- 3 Q -- driveway by about 10 inches or a foot or so?
- 4 A Yeah.
- 5
- 6 Q Okay.
- 7 A Yeah.
- 8
- 9 Q So you thought the vehicle had gone all the way -- was -- was just going down
10 the road past?
- 11 A Yeah. That's what I thought.
- 12
- 13 Q Okay. So that's fine. Loud -- loud vehicle going down the road. Farm country.
14 That's not a big deal?
- 15 A No, it's common.
- 16
- 17 Q Okay. What's the next thing you remember?
- 18 A Well, we turned around, and I cut a couple more -- or rails off there. And then I
19 shut the chain saw off. And then I heard a car, like -- you could tell it was in
20 the yard. And then I heard and seen it slide up beside the gold truck.
- 21
- 22 Q Okay. If you still have the black marker that I gave you, if you can use -- or a
23 blue marker, I guess --
- 24 A M-hm.
- 25
- 26 Q -- if you can just tilt up the -- the picture we're using to mark on, to mark up?
27 Can you, as accurately as you can, show us where the vehicle -- where you first
28 saw the vehicle -- and did you say that it stopped at some point?
- 29 A Yeah. The first time I seen it was just when it came to the front of this gold
30 truck.
- 31
- 32 Q Okay. So can you kind of draw a box on there in blue?
- 33 A I think it was about here.
- 34
- 35 Q Okay. And then if you can draw a line of the front of the vehicle, where it --
36 where you recall it stopping.
- 37 A Okay. This is the front.
- 38
- 39 Q Okay. Okay. So tell me what you observed. Where -- where were you at this
40 point?
- 41 A We were still down here between this side by side and the truck.

1

2 Q Okay.

3 A Right in this area.

4

5 Q So can I get you to mark -- I used 'S' already. Use 'G', and circle it for
6 yourself where you were standing. And then 'SS', Sheldon Stanley, and circle
7 that, to distinguish it from --

8 A Okay.

9

10 Q Okay. So you're down by the gate?

11 A Yeah.

12

13 Q You're looking -- can you -- between where you've marked the -- the vehicle,
14 the visitor vehicle, and where the two of you are standing, can you describe
15 that for me?

16 A What -- what was -- what did you say?

17

18 Q Well, I'm getting -- is it level ground --

19 A Oh, no. It's uphill. It's an uphill grade right there.

20

21 Q Okay.

22

23 MR. SPENCER: And I'm -- I'm going to ask the -- My
24 Lord, if -- if the jury can turn to -- to picture 45 in the P-1.

25

26 Q And, I guess, Gerry, if you can just set -- set that diagram down and turn to
27 picture 45 in that book there. So picture 45, is that what it would have looked
28 like that day?

29 A Yes. Yes.

30

31 Q So describe what you see there and -- and give the jury some sense of what
32 you're telling us.33 A So in picture 45, you can see the gold truck up on the hill. And the car stopped
34 about a -- the front fender width length ahead of the truck.

35

36 Q Okay. So would it --

37 A Like, I can see the -- the driver door.

38

39 Q You could see the -- the driver front door?

40 A Yes.

41

1 Q Could you see the -- the second door on the driver's side?

2 A No.

3

4 Q Okay. So what are you thinking at this point, Gerry?

5 A Well, I thought it was somebody that this person knew and had just came back
6 to get parts or drop more off or they had forgot something in their truck.

7

8 Q Okay. So you just thought it was somebody related to the gold truck?

9 A Yeah.

10

11 Q Okay. What did you see then?

12 A Then I saw a person get out. I don't know where he got out, but he got into the
13 gold truck and was looking around for something, like, looking down.

14

15 Q Okay. Did he get out of the driver's door?

16 A No, not the driver's door.

17

18 Q Can you say whether it was the driver's side or the far side?

19 A I'm not sure.

20

21 Q Okay. So an individual gets out, not the driver, but another individual gets out
22 and is in the gold truck?

23 A Right.

24

25 Q Okay. And you may have said what he was -- what they were doing. But can
26 you repeat that for me, what -- what was going on?

27 A It looked like he was looking around on the seat and -- and he flipped the sun
28 visors down.

29

30 Q Okay. And you're -- you and Sheldon are still down at the -- at the gate?

31 A Yeah. We were just standing there.

32

33 Q Okay.

34 A We thought, like, they would come down and talk to us, you know, whatever.

35

36 Q Okay. So what happens next?

37 A Then the vehicle revved up, and another person got out of the vehicle and was
38 on the passenger's side. And the vehicle was, like, red lining, like right to the
39 floor, and moving ahead. And the person was kind of jogging beside the car on
40 the far side of the car. And the person in the truck jumped out of the truck, and
41 they were all headed for the shop.

- 1
2 Q Okay. So the vehicle itself revs up, and you said red lining. What do you mean
3 by that?
4 A Like, 6000 RPM, like as fast --
5
6 Q All right.
7 A -- hardest you'd go.
8
9 Q Okay. So --
10 A That's when I noticed there was no tire on the wheel, because it was just
11 making a lot of racket.
12
13 Q Okay. So the vehicle starts moving towards the shed?
14 A Yeah.
15
16 Q There's still an individual in the gold truck?
17 A Yes.
18
19 Q And then you said there's a third person walking beside the vehicle?
20 A Yes, on the far side of their vehicle, and keep -- kind of keeping up with it, it
21 looked like.
22
23 Q Okay. Gerry, I'm going to ask you to go back to the photo that we're writing
24 on.
25 A M-hm.
26
27 Q And draw where the vehicle went. You -- you have it boxed there, and it
28 stopping. So show me or draw on there exactly where the vehicle went when it
29 was moving across the yard.
30 A Okay. It went this way and pulled up and stopped about here.
31
32 Q I'm going to give you a couple more colours so that we can distinguish when
33 necessary. So what are you thinking now, Gerry?
34 A Well, as soon as the car took off spinning and slinging gravel, we knew
35 something was wrong.
36
37 Q Okay.
38 A Because it's just so -- not ordinary.
39
40 Q Okay. At that point, would you be -- did you see the individuals -- how well
41 could you see the individuals at that point?

- 1 A I couldn't tell.
- 2
- 3 Q Okay.
- 4 A I couldn't tell who they were or what was going on.
- 5
- 6 Q Okay. Okay. So once you see the vehicle red lining and the people going
7 across the yard, you're -- you're thinking something's not right?
- 8 A M-hm.
- 9
- 10 Q What does Sheldon do then?
- 11 A Sheldon looked at me and said, what the hell is going on here?
- 12
- 13 Q Okay.
- 14 A I said, I don't know.
- 15
- 16 Q Maybe use the red marker, and starting where Sheldon was down with you
17 down by the gate, draw where he went.
- 18 A He took off running up the hill in picture 45, I guess. And he just kind of ran
19 up here. And he went right in to there and around the Cat.
- 20
- 21 Q Okay. What did you do?
- 22 A Well, I dropped the chain saw or set it in the back of this buggy here, and then
23 I turned around and I followed him. Do you want --
- 24
- 25 Q Okay.
- 26 A -- a different colour?
- 27
- 28 Q Yeah. Mark yourself in black where you're going. So the best -- the best of
29 your recollection.
- 30 A It was pretty much the same path 'cause everywhere else was pretty muddy
31 that day. I got to about here, and I heard --
- 32
- 33 Q Okay.
- 34 A -- the quad start.
- 35
- 36 Q Okay. So just make an 'X' in black there. You're the -- we're using black for
37 your path. So just make an 'X' where -- where you stopped. So you're a little
38 bit -- because you have the chain saw, you're a little bit behind Sheldon?
- 39 A Yeah.
- 40
- 41 Q You might have lost a step on Sheldon?

- 1 A Over the years, yeah.
2
- 3 Q Yeah. So he's -- he gets up there first?
4 A Yeah.
5
- 6 Q Okay. So then you said you -- you heard the quad?
7 A Yeah. I heard the quad start.
8
- 9 Q Okay. So explain that to me. How -- how do you know it was the quad or --
10 A It's -- it's a 700 Twin, and it has a real distinct sound. And I just know what it
11 sounds like.
12
- 13 Q Okay. Is the visitor vehicle, is it revving now, or what -- what --
14 A No, it's quiet.
15
- 16 Q Okay. So it's not red lined now?
17 A No.
18
- 19 Q Okay. And it's -- yeah. Did you -- did you mark on where it stopped there?
20 You've got it --
21 A Yes, it's over here.
22
- 23 Q Okay. Essentially beside the quad; is that right?
24 A Yeah.
25
- 26 Q Okay.
27 A Yes.
28
- 29 Q So what happens -- well, I guess I'll ask my same question. What are you
30 thinking now when the quad starts up?
31 A Well, I'm thinking I'm pretty sure Sheldon is not on it, so -- and I could hear
32 him hollering something. And I'm still hoofing her over here. By the time I get
33 here to the back of the Cat here, I could hear the quad revving up a little bit and
34 off idle and stuff. And I -- I stopped about at the track here on the --
35
- 36 Q Okay.
37 A -- Cat.
38
- 39 Q So put another 'X' where you -- you next stop. Okay.
40 A And Sheldon is hollering at this person to get off the quad.
41

- 1 Q And what -- what's he saying to the best of your recollection?
2 A He was saying, what are you doing, get off the quad, what the hell is going on,
3 you know.
4
5 Q Okay. So Sheldon is right up there?
6 A Yeah.
7
8 Q And you're -- you're at the back of the vehicle?
9 A I'm at the back of the Cat right there.
10
11 Q Right. Okay. Any doubt what's going on now?
12 A No. It looked like somebody was trying to get the quad into gear and take off.
13
14 Q And you said you heard the quad running?
15 A Yeah.
16
17 Q And you heard it rev?
18 A Yeah.
19
20 Q Okay. What did you -- tell me what you saw after that. So move -- tell us --
21 move on..
22 A Well, the person turned and kind of looked right at me, and then he jumped off
23 the quad. And another person ran out of the shop, and they -- they both got into
24 the passenger's side of the -- their car.
25
26 Q Okay. Do you know which passenger door?
27 A No.
28
29 Q So --
30 A I --
31
32 Q -- the passenger's side, but front or back, you don't know?
33 A I don't know.
34
35 Q You can't recall?
36 A No.
37
38 Q Okay. Do you know who the individual on the quad was?
39 A I didn't at the time, but I -- I do now.
40
41 Q Okay. Who do you believe was on the quad?

- 1 A It was Eric.
2
3 Q Okay. And how do you know it's Eric?
4 A Well, he's dark, and he was -- he's -- he looked different.
5
6 Q Okay.
7 A Than the others.
8
9 Q The fellow that testified?
10 A Yes.
11
12 Q Okay. Now, did you see the other occupants of the vehicle?
13 A I couldn't really see their faces. Their hoods were up.
14
15 Q Okay. So the individual that came out of the shed --
16 A Yeah.
17
18 Q -- did you get a good look at that person?
19 A No.
20
21 Q Okay. Male or female?
22 A I couldn't say.
23
24 Q Couldn't -- couldn't say?
25 A No.
26
27 Q Well, did you -- do you have an assumption or what -- what was --
28 A Well, I would assume male. It was pretty slender-looking.
29
30 Q Okay. But -- but couldn't really -- didn't get a good look?
31 A No.
32
33 Q Okay. So -- so the -- the fellow off the quad who you believe is Eric who
34 testified here --
35 A Yes, I'm sure it was him.
36
37 Q Had -- had you ever met him before?
38 A No.
39
40 Q No? Okay. The other person, they get into the passenger's side. What happens
41 then?

- 1 A Then Sheldon was at the driver window. I don't know what he was talking --
2 hollering at them still to leave. And then they put the car in reverse and started
3 backing out of here.
4
- 5 Q Okay.
6 A I --
7
- 8 Q And you're using black. So yeah, if you can -- now it's stopped by the quad.
9 And now it's --
10 A Or do you want --
11
- 12 Q -- moving?
13 A -- the car is blue. Do you want me to use the blue?
14
- 15 Q Sure. Yeah. Probably -- thank you, Gerry, for helping me do my job here.
16 A Yeah.
17
- 18 Q It's good. I think blue is a good idea. Okay. So you can draw. Now it's going,
19 backing out and going --
20 A Yeah.
21
- 22 Q -- well, you -- you tell me where it went.
23 A The car starts to back up, and it's to -- to the floor again and it's slinging
24 gravel, and -- but it keeps going and going and going. I kind of moved over this
25 way, and --
26
- 27 Q Okay. Why are you moving over?
28 A Well, I didn't know if he was coming over too close or what.
29
- 30 Q Okay.
31 A And he kept coming. Keep coming. And then he stops about here.
32
- 33 Q Okay. Can you put a line on there in blue to indicate where he stopped once he
34 was backing out?
35 A Yeah, stopped about there.
36
- 37 Q Okay. What happens at that point? So he -- the -- the driver of the vehicle, the
38 vehicle -- we don't know who the driver is, but the vehicle backs up towards
39 you?
40 A Yeah.
41

- 1 Q Okay.
- 2 A So he stopped, and then I gave his taillight a kick. I didn't think he had to come
3 that far, but that was -- and then it went into forward, and right to the floor
4 again.
- 5
- 6 Q Okay.
- 7 A Now Sheldon was in this area here.
- 8
- 9 Q Okay. So put another 'SS' with a circle of where you're saying Sheldon was.
- 10 A He was, like, there somewheres.
- 11
- 12 Q Okay. So then what we'll do to -- just for the -- the flow of it is if you can draw
13 where the vehicle went once it started going forward. So you have it backing
14 up?
- 15 A Yeah. It backed up to here.
- 16
- 17 Q Okay.
- 18 A And then back to -- as hard as it could go, and then it went this way. And then
19 it turned and was -- it looked like it was heading out the driveway.
- 20
- 21 Q Okay.
- 22 A And --
- 23
- 24 Q So -- so just draw that. You watched it head out the driveway?
- 25 A Yes.
- 26
- 27 Q Okay. So can you draw that on there, to the best of your recollection?
- 28 A It looked -- it just turned, and it was just heading out.
- 29
- 30 Q Okay.
- 31 A A little straighter than that.
- 32
- 33 Q Okay. So you -- you've got Sheldon where Sheldon is standing there. And can
34 you mark on there with -- what were you using for you? Were you --
- 35 A I'm black.
- 36
- 37 Q Okay. Can we use black and have you put a 'G' and a circle of where you're
38 standing when the vehicle's -- it looks like it's heading out the driveway?
- 39 A Yeah. After it started taking off, I moved back over here. And I was standing
40 about here.
- 41

- 1 Q Okay.
- 2 A Kind of kitty-corner to the quad, a little bit.
- 3
- 4 Q Okay. So as the vehicle backed up towards you --
- 5 A M-hm.
- 6
- 7 Q -- you took a kick at the taillight. Anything else happen at that point that you
- 8 can recall?
- 9 A Yes. When it took off this way, from where I was standing, it looked like it
- 10 was going right towards Sheldon. And when it got close to him, he swung out
- 11 with his hammer and hit the windshield.
- 12
- 13 Q Okay. And as it's pulling away, once it gets going forward again, the vehicle
- 14 gets going forward --
- 15 A Yeah.
- 16
- 17 Q -- what do you do? I guess firstly, do you -- do you chase it?
- 18 A No, we didn't chase it.
- 19
- 20 Q Okay. So what -- what do you immediately? As it's driving away, you're
- 21 standing in the two spots you've marked --
- 22 A Yeah.
- 23
- 24 Q -- to the best of your recollection. Okay. You're not moving?
- 25 A No. We're just standing there.
- 26
- 27 Q Okay.
- 28 A Kind of watching it.
- 29
- 30 Q What are you thinking then, Gerry?
- 31 A I'm thinking, well, that was pretty exciting. There they go, you know. I thought
- 32 they were just going to continue moving out the road.
- 33
- 34 Q So it's over?
- 35 A Yeah.
- 36
- 37 Q Okay. What happened next?
- 38 A Their car came up this way, and then turned hard into this car.
- 39
- 40 Q Okay. And what's that car?
- 41 A This is Dee's SUV.

- 1
2 Q Okay.
3 A It's also an Escape.
4
5 Q Okay. And then what happened after that?
6 A They hit there and then went over here to this area.
7
8 Q Okay. So where it's showing on the -- the big picture there, the big version of
9 it, you can see the grey vehicle. That's where -- is that where it stopped?
10 A This, yes.
11
12 Q Okay. Okay. So you and Sheldon are standing back by the shop?
13 A Yeah, back here.
14
15 Q What are you thinking now, after it's hit Dee's SUV?
16 A I'm thinking they're not leaving, and what is happening? And then Sheldon
17 just took off running over to this area.
18
19 Q Did you and Sheldon say anything to each other?
20 A No.
21
22 Q Okay. Nothing at all?
23 A Nothing.
24
25 Q Anything about getting car keys?
26 A No.
27
28 Q Anything about getting a gun?
29 A No.
30
31 Q Okay. So what do you think Sheldon is doing?
32 A I think he's going over here to -- I don't know. Confront these -- the people.
33
34 Q Okay. And what did you think about that?
35 A Well, I thought -- I still was in disbelief of what was going on here. So I knew
36 -- I thought I should -- I wanted to help him.
37
38 Q Okay.
39 A So I'm here. This door --
40
41 Q I'm just -- I'm just going to stop you and finish one thing, mostly so --

- 1 A Oh, okay.
2
- 3 Q -- I don't forget it, but how fast do you estimate they were going once they got
4 wound up? So at the point of hitting Dee's SUV, how fast do you think they
5 were going?
6 A Oh, probably 40 miles an hour, 30.
7
- 8 Q Miles or kilometres?
9 A Miles.
10
- 11 Q Miles? You're an old guy, so you're talking in miles. Okay.
12 A Yeah.
13
- 14 Q Okay. So they were wound up pretty good by then?
15 A Yeah. It was moving.
16
- 17 Q And still red lining?
18 A Yeah.
19
- 20 Q Still spinning?
21 A Yeah.
22
- 23 Q Okay. So -- so Sheldon takes off running towards the -- the visitor vehicle. You
24 think he might be going to confront them?
25 A Yes.
26
- 27 Q Okay. So what do you do?
28 A Well, I knew I had -- my two handguns were just inside the door here.
29
- 30 Q Of the shop?
31 A Yes.
32
- 33 Q Okay.
34 A And the one I use for noise-making was right in there, also.
35
- 36 Q Okay. Which one is that?
37 A The Tokarev.
38
- 39 Q Okay. Why are the guns in the shop, Gerry?
40 A After -- me and Sheldon like to go shoot targets, like, in the evening or
41 whatever, the -- we do it quite a bit. And I would -- I just had them in here, just

1 getting ready for when we had this -- got this fence done, we were going to go
2 shoot some targets.

3

4 Q Okay. So handguns are in the shop for -- they were there?

5 A Yeah.

6

7 Q What do you do now, Gerry?

8 A I thought, well -- well, I grabbed it, the gun. And then I went over -- here is my
9 toolbox, is about right here on the inside. I opened the drawer. I had a
10 magazine and some bullets on one of those strips in there.

11

12 Q And that's the strip we talked about before?

13 A Yeah.

14

15 Q Okay. Go ahead.

16 A So I grabbed the strip, and I peeled what I thought was two off, put them in the
17 magazine. And then I walked out of the door.

18

19 Q Okay. So using black, you're now coming out of the shed?

20 A Yeah. I come out here.

21

22 Q And how fast are you going, Gerry?

23 A Oh, just a -- a brisk walk.

24

25 Q Okay.

26 A At that time.

27

28 Q Okay. At that point, you're -- you're walking?

29 A Yeah. Just walked out into this open area here.

30

31 Q So that's between the trailer and the Cat on the diagram?

32 A Yes.

33

34 Q Okay.

35 A And then down here, I could -- I could start to see there was two people
36 standing here.

37

38 Q Okay. Mark them on there. Why don't we put V-1, visitor 1, and visitor 2 and
39 circle them?

40 A All right.

41

1 Q I'm making you do a lot of work here, Gerry.

2 A Yeah. V-1, V-2.

3

4 Q Okay. So that's in blue to indicate the two individuals. Where did you think
5 they came from?

6 A Well, they obviously came from the car.

7

8 Q Okay.

9 A But it looked like they were looking back at the car.

10

11 Q Okay.

12 A I don't know what -- I couldn't --

13

14 Q So --

15 A -- hear anything.

16

17 Q Okay. So I'm going to stop you there. So you're -- have you -- have you
18 marked where you -- you've got where the visitor 1 and visitor 2 are?

19 A Yes.

20

21 Q And then where are you at this same time?

22 A Well, I had continued walking. So I'm probably up here, about there --

23

24 Q Okay.

25 A -- by now.

26

27 Q Okay. So you're getting up almost to the nose of the gold truck there in the
28 middle of the yard?

29 A Yeah.

30

31 Q What are you thinking now, Gerry?

32 A Well, I'm glancing around, trying to find out where Sheldon went. I couldn't
33 see him. So I thought maybe I'll just move ahead here, and I'm going to make
34 some noise and hopefully they'll run out of the yard.

35

36 Q Okay. Anything else that you're thinking of as you're walking towards this
37 vehicle that had just crashed?

38 A Yeah. I'm thinking of when you turn the news on and people use their vehicles
39 to crash into crowds, and I'm thinking about when we first moved there, a
40 couple murders took place just down the road from us. It's always on your
41 mind.

- 1
2 Q Okay. Tell me about that, murders down the road.
3 A I don't know much of the details. When we first moved, it was about 30 years
4 ago, two farmers got murdered about nine miles west of us.
5
6 Q Okay. Did you -- did you know who they were?
7 A I just knew one name, Tetarenko, I think. I didn't know them, though.
8
9 Q Okay. And you had just moved there?
10 A Right.
11
12 Q Yeah. So -- and -- and this is literally on the -- on the same road that goes by
13 your place?
14 A Yeah, the same road.
15
16 Q Okay. And -- and you said -- how far down the road? And this is -- and the
17 road that goes by you is Sonningdale Road; am I right? Or what's it called?
18 A Ranger Lake Road, it's called.
19
20 Q Sorry?
21 A It's called Ranger Lake Road.
22
23 Q Okay. Your farm is on Ranger Lake Road? And these --
24 A Yeah.
25
26 Q -- the two people were murdered on --
27 A Right on that road, yeah.
28
29 Q Okay.
30 A About nine miles, I think.
31
32 Q About nine miles from your farm?
33 A Yes.
34
35 Q Okay. I'm -- I'm going to show you a little map of the area, and I -- I didn't do
36 a great job. It's the best one I've got, but can I get you to mark on with the blue
37 marker on this diagram your farm and the farm where the murder occurred?
38 A Where is the -- this must be my road here, right?
39
40 Q We have Cando there, but (INDISCERNIBLE) --
41 A This is the road here.

1

2 Q So take -- take your time, because certainly I don't know where your farm is.
3 And so draw -- maybe draw the road on there in blue, and then put "Ranger
4 Lake Road" on there if you can.

5

6 THE COURT: In the meantime, the map that he has
7 been -- or the photograph that he has been drawing on, we probably should mark
8 that as the next exhibit.

9

10 MR. SPENCER: Before I forget. Thank you, My Lord.

11

12 THE COURT: I take it there's no objection, Mr. Burge?

13

14 MR. BURGE: No, My Lord.

15

16 MR. SPENCER: Madam Clerk, what are we at?

17

18 THE COURT CLERK: D-18.

19

20 THE COURT: So the enlarged photograph will be
21 Exhibit D-18.

22

23 **EXHIBIT D-18 - Enlarged Photograph of Photo 6 in P-1 (Smaller Version of**
24 **P-2)**

25

26 MR. SPENCER: Thank you, My Lord.

27

28 A This must be it.

29

30 MR. SPENCER: And as -- as Gerry reviews that, I have
31 one more that I have got to remember to put in.

32

33 Q MR. SPENCER: Okay.

34 A That's about right there.

35

36 Q Okay. So just on there, can you put a 'T for -- is it Tetarenko?

37 A Yeah.

38

39 Q And then 'S' for Stanley on that. Okay. Okay.

40

41 MR. SPENCER: And if I can get that marked, as well, My

1 Lord.

2

3 THE COURT: Have you seen this, Mr. Burge? Do you
4 have any objection? I take it that that --

5

6 MR. BURGE: No.

7

8 THE COURT: -- is a -- a blow-up of the RM map; is
9 that right?

10

11 MR. SPENCER: It's a -- it's a blow-up of the grid map.
12 And I needed one more RM to have it all on one map, so ...

13

14 THE COURT: Any problem with that?

15

16 MR. BURGE: No.

17

18 THE COURT: Exhibit D-19.

19

20 **EXHIBIT D-19 - Blow-up of Grid Map Handmarked by the Accused**

21

22 MR. SPENCER: Thank you.

23

24 Q MR. SPENCER: Okay. So you're a little stressed?

25 A M-hm.

26

27 Q What do you do next?

28 A Well, I kept going. I -- I still didn't know where Sheldon went to, and I guess I
29 got to probably about here.

30

31 Q Okay. What'd you do there?

32 A I just raised the gun in the air and fired.

33

34 Q Okay. Can you put an 'X' where you're saying you were at that point? Okay.
35 Can you demonstrate for me what you mean by that -- what you did?

36 A Just with my arm?

37

38 Q Yeah.

39 A Just went up, boom.

40

41 Q Okay. So straight up?

- 1 A Straight up, yeah.
2
3 Q Okay. What did you do next?
4 A And then I -- I watched these two fellows, they just kind of spun around, like,
5 looking for where the noise came from.
6
7 Q Okay.
8 A They didn't really take off.
9
10 Q Okay.
11 A And I was -- I was still walking. So as I -- as I kept walking, I did it again. This
12 time I wanted them to really run, so I just put it up in the air, and I just pumped
13 the trigger.
14
15 Q Okay. So you're demonstrating how many times do you think you pulled the
16 trigger?
17 A Oh, two or three times.
18
19 Q Okay. What happened? The first time you pulled the trigger back, did the gun
20 go off?
21 A Oh, yeah.
22
23 Q Okay. And you move up. They're not leaving. They looked at you, but they're
24 not leaving?
25 A Right.
26
27 Q So then you're firing additional warning shots at that point?
28 A Yes.
29
30 Q Okay.
31 A When I --
32
33 Q And are those the same as what you've described here, which you
34 demonstrated the first one. Is it -- is the second one the same?
35 A Yeah.
36
37 Q Okay. So straight up?
38 A Straight up, yes.
39
40 Q Okay. At any point did you shoot -- aim or shoot overtop of the visitor vehicle,
41 V-1, V-2, anyone?

- 1 A No.
- 2
- 3 Q Okay. So you pulled the trigger how many times? Sorry, I think you said, but I
- 4 was --
- 5 A I -- well, just -- it the -- two or three times.
- 6
- 7 Q Okay. And what happened then? Describe that to me, to the best of your
- 8 recollection.
- 9 A Well, it just went boom. These two turned and ran hard out the driveway.
- 10
- 11 Q Okay. So you pulled the trigger, it went boom. Did you pull the trigger again?
- 12 A Yeah, I pulled it again.
- 13
- 14 Q Did it go boom?
- 15 A I don't believe it did, no.
- 16
- 17 Q No? Okay. So you believe multiple trigger pulls, two booms?
- 18 A Yeah, I don't know. I just kept -- as I watched these guys run.
- 19
- 20 Q Okay.
- 21 A It was --
- 22
- 23 Q Okay. So what did -- what did you do then?
- 24 A By then, I'm right here, about.
- 25
- 26 Q Okay. So put an 'X' there for the -- the next spot where you're -- you're at.
- 27 And this is where you would have fired the additional warning shot, and they
- 28 took off, the two -- V-1 and V --
- 29
- 30 MR. BURGE: Perhaps, My Lord, we're at a spot where
- 31 my friend shouldn't be leading.
- 32
- 33 THE COURT: Yes. I think that characterizing the shots
- 34 in the way you did may be --
- 35
- 36 MR. SPENCER: Okay. Oh --
- 37
- 38 THE COURT: -- might be leading.
- 39
- 40 MR. SPENCER: -- certainly not the intention. I thought
- 41 I'd established that, so then I was moving him along. So --

1
2 THE COURT: Okay.
3
4 MR. SPENCER: -- but I appreciate the sensitivity. No --
5 no issue there at all.
6
7 Q MR. SPENCER: So what did you do next?
8 A This -- these -- this is where the second shots were, but I was still walking. So
9 in this area somewhere. And then these guys took off running. And I brought
10 the gun down. And the barrel was sticking out the end, as if it was empty.
11
12 Q Okay.
13 A As it has a hundred times before. So --
14
15 Q So --
16 A -- then I took this hand and popped the clip out, the magazine.
17
18 Q Okay.
19 A To ensure that it was disarmed or what I thought.
20
21 Q Okay. And where are you standing there? Mark an 'X' on there.
22 A I'm about here.
23
24 Q Okay. What -- okay. The next 'X'. So just for a descriptor, basically almost in
25 front of the blue -- Dee's Escape?
26 A Yes.
27
28 Q Okay. V-1 and V-2 are now gone?
29 A Yeah.
30
31 Q Okay. So we've got that on there.
32
33 MR. BURGE: I can't see.
34
35 THE COURT: No. Yes, and I have no difficulty,
36 Mr. Burge, with you standing here so you can see what's going on. As long as the
37 jury can see, and so by all means, you can come up to the desk and look.
38
39 MR. SPENCER: Yeah. No, you can come right up if you
40 want, Mr. Burge. Go ahead.
41

- 1 THE COURT: No, I think everyone is happy here. So
2 just go ahead.
3
- 4 MR. SPENCER: Okay. Okay. So -- and this might be a
5 good time, My Lord, with respect to -- for --
6
- 7 THE COURT CLERK: You're moving from the mike.
8
- 9 MR. SPENCER: -- timing -- sorry. For -- for timing, I
10 haven't been running back and forth from the jury, but I think now might be a
11 good time for them to look at this --
12
- 13 THE COURT: Okay.
14
- 15 MR. SPENCER: -- directly. And if my friend wants to --
16
- 17 THE COURT: Madam Clerk, would you like to show
18 that to the jury, please? Thank you.
19
- 20 MR. BROWNE: I'm just going to step out of the room for
21 a second, My Lord.
22
- 23 THE COURT: Certainly.
24
- 25 THE COURT CLERK: (INDISCERNIBLE) see them?
26
- 27 THE COURT: I could see quite well from where I am
28 at.
29
- 30 Q MR. SPENCER: What's -- what's the status of the gun at
31 that point in time? Explain that to us.
- 32 A Well, as far as I was concerned, it was empty. It had fired its last shot because
33 the slide was back and the barrel was extended out the end, and the clip now
34 was out.
35
- 36 Q And -- and the what?
- 37 A And the magazine was out.
38
- 39 Q Okay. And what was your understanding of the magazine being out?
- 40 A Well, I -- I understood that when the magazine was out, it's disarmed even if
41 there was -- happened to be something in it.

1
2 Q Okay.
3 A But --
4
5 Q Did -- did you think anything was in it?
6 A No.
7
8 Q Okay.
9
10 MR. SPENCER: I'm -- I'm going to ask -- we have an
11 officer here that would be able to clear the gun to demonstrate with the -- with the
12 actual weapon, but for safety purposes, you're -- yeah.
13
14 THE COURT: Okay. Come forward.
15
16 MR. SPENCER: It's P-10.
17
18 MR. BURGE: Oh, there's -- where is the gun?
19
20 THE COURT: I think --
21
22 UNIDENTIFIED SPEAKER: It's in the white case.
23
24 THE COURT CLERK: I have it here.
25
26 THE COURT: Okay. You can --
27
28 THE COURT CLERK: (INDISCERNIBLE)?
29
30 THE COURT: No. No, he's just going to --
31
32 THE COURT CLERK: Okay.
33
34 THE COURT: -- check the gun for us.
35
36 UNIDENTIFIED SPEAKER: My Lord, the firearm is safe.
37
38 MR. SPENCER: Okay.
39
40 THE COURT: Okay. So you can give that --
41

1 MR. SPENCER: And this --
2
3 THE COURT: -- directly to the witness at this point.
4
5 MR. SPENCER: Is the magazine in it, Officer?
6
7 THE COURT: Do you want to check the magazine, as
8 well?
9
10 UNIDENTIFIED SPEAKER: Sure.
11
12 MR. SPENCER: Yeah. He'll need both, so ...
13
14 UNIDENTIFIED SPEAKER: Yes. The magazine is safe, as well.
15
16 THE COURT: So I don't think we need the holster.
17
18 MR. SPENCER: No, no.
19
20 MR. BURGE: No.
21
22 THE COURT: Just the magazine and the pistol itself.
23 And give that to the witness. Thank you very much, sir.
24
25 UNIDENTIFIED SPEAKER: You're welcome.
26
27 MR. SPENCER: Okay.
28
29 Q MR. SPENCER: Okay. So can you demonstrate, Gerry,
30 how you were holding -- demonstrate what you were doing at that time.
31 A I just released the -- the clip --
32
33 Q Okay.
34 A -- the magazine. Then I was holding it like this.
35
36 THE COURT CLERK: Sorry.
37
38 A I just released the magazine and I had a quick look, and then I was holding it --
39
40 Q MR. SPENCER: Okay.
41 A -- like -- like this.

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41

Q So what do you do then?

A Then I was in close enough now that I'd looked ahead, and I could see the lawn mower.

Q Okay. Can you set the -- the gun and the -- and the magazine on the back there, facing away from everyone? Because I'm a scaredy-cat. So where are you now?

A I'm -- I'm just slightly ahead of where I was here.

Q Okay. So you're now past Dee's SUV?

A Yes.

Q Okay. So what do you see?

A I can see -- now I can see the -- the lawn mower.

Q Okay. And what are you thinking?

A Well, I just -- pure terror. I thought the car had ran over my wife.

Q Okay. Could you see your wife?

A No, I couldn't see her.

Q Okay. What'd you do?

A From here, I ran as hard as I could to the front of the car. I went right to the front of the car.

Q Okay. So --

A I looked down. Then I was going to kneel down to look under, and the car revved up.

Q Okay. Describe that for me.

A I thought the car was going to run me over.

Q Okay. So how high did it rev? Was it --

A Oh, it was like -- like it had been, right to the floor.

Q Oh, back to red line?

A Yeah.

Q Okay. What did you do?

A So I jumped up and looked, and the -- there was a driver in the seat. So --

1

2 Q Had you noticed the driver when you were approaching the vehicle?

3 A No, I didn't even look that way.

4

5 Q Okay. So --

6 A I wanted to know what was under --

7

8 Q You were going -- okay. Okay. Fair enough. So what did you do then, Gerry?

9 A Then I jumped back, startled, and I ran to the driver's window.

10

11 Q Okay.

12 A And there was a -- a bar or something metal sticking out the window.

13

14 Q Okay.

15 A Towards me, I suppose.

16

17 Q Did -- did you know what that was?

18 A I didn't at the time, no.

19

20 Q Okay. What did you think it was?

21 A I thought it was a bar or a piece of rebar or something.

22

23 Q Okay. Pipe or something?

24 A Yeah.

25

26 Q Okay. What happened?

27 A So I took my left hand, and I banged that piece of pipe ahead, and I wanted to
28 turn that car off so he couldn't move again.

29

30 Q Okay.

31 A So I reached for the keys.

32

33 Q Okay. Can you demonstrate for us how you were holding what -- what you had
34 in your hands?

35 A I had them like this.

36

37 THE COURT CLERK: (INDISCERNIBLE) turn this way.

38

39 MR. SPENCER: Okay.

40

41 MR. BURGE: Perhaps he can look towards us?

1
2 THE COURT: Well --
3
4 MR. BURGE: Well, I guess he has to hold the gun
5 safely, so --
6
7 THE COURT CLERK: Okay.
8
9 MR. SPENCER: I'd rather he look backwards, but --
10
11 THE COURT CLERK: Okay. I don't know if they can see is all.
12
13 MR. SPENCER: Yeah. And that's a very good point.
14
15 Q MR. SPENCER: Gerry, can you maybe point at the back
16 wall there and see if you can -- can put the -- put your hands out so that the
17 jury can see -- move them up and down a little bit so the jury can see exactly
18 how you're holding them? Okay.
19 A Like that.
20
21 Q Okay.
22 A They were lower, but --
23
24 Q Okay. Fair enough.
25
26 THE COURT CLERK: Hang on.
27
28 UNIDENTIFIED SPEAKER: (INDISCERNIBLE).
29
30 THE COURT CLERK: (INDISCERNIBLE).
31
32 A Looking back?
33
34 Q MR. SPENCER: Okay. So --
35 A Keep going?
36
37 Q -- that's how you were holding them?
38 A Yes.
39
40 Q Okay. That's -- so what happened, Gerry?
41 A I moved that bar or pipe, whatever it was, out of the road, and I was reaching in

1 kind of across the steering wheel to turn the keys off, and boom, this thing just
2 went off.

3

4 Q Okay. What were you doing with your right hand? The left hand is -- is at the
5 keys; is that right?

6 A That's right.

7

8 Q Okay. What are you doing with your right hand?

9 A Well, I'm not even sure. I'm not exactly sure what I was doing with it.

10

11 Q Okay. Okay. So put the gun down on the back there, faced away again, please.
12 Was your finger on the trigger?

13 A No.

14

15 Q Did the deceased bump or pull the trigger or anything of that nature?

16 A If -- I can't say for sure. There wasn't -- I didn't feel a lot of struggling on my
17 right hand.

18

19 Q Okay. Did you point the Tokarev at the deceased?

20 A No, I didn't.

21

22 Q At any -- at any time?

23 A No.

24

25 Q Did you point it at anyone that day?

26 A No.

27

28 Q Did you have any intent to hurt anyone?

29 A No. I just wanted them to leave.

30

31 Q Any intent to use the gun as a weapon?

32 A No.

33

34 Q Did you threaten anybody with it?

35 A No.

36

37 Q When did you last pull the trigger?

38 A When I was back at our SUV, near it.

39

40 Q Okay. What did you do after the gun went off?

41 A I couldn't believe what just happened. And everything seemed to just go silent.

1 Like, the mower quit running. It was wide open, also, at the same time. And I
2 just backed away, and I looked over, and Dee was standing there.

3

4 Q After the gun went off, you found her?

5 A M-hm.

6

7 Q Okay. What did you do then?

8 A Then I -- I just turned and walked to the shop.

9

10 Q Okay. Did you go by the quad?

11 A Yeah. It was still idling, so I reached over and shut it off and went in and sat
12 down.

13

14 Q Okay. Did you move the quad?

15 A Not that day, no.

16

17 Q Did you ultimately -- eventually move it?

18 A I did, yeah.

19

20 Q What did you find?

21 A I found the shift fork in the transmission was broke from trying to ram it into
22 gear.

23

24 Q Okay. How much damage was there to your SUV?

25 A It was between 4 and 5,000, I think.

26

27 Q Okay. Did anybody else have a gun that day in your yard?

28 A Yes. I know now they did.

29

30 Q Did Sheldon have a gun?

31 A Sheldon, no.

32

33 Q Did Dee have a gun?

34 A No.

35

36 Q Long gun?

37 A No.

38

39 Q Handgun? No gun?

40 A No.

41

1 Q Okay. So you say what other gun are you talking about, Gerry?

2 A The one they had in their car.

3

4 Q Okay. But you didn't know that until --

5 A No, I didn't.

6

7 Q -- after the --

8

9 THE COURT CLERK: (INDISCERNIBLE).

10

11 MR. SPENCER: My Lord, I think that's a good time to
12 break. I'll be candid. I just want to check my notes. I don't think I'll be much
13 longer, so I'll be turning it over to my friend relatively quickly, but --

14

15 THE COURT: So what you would like to do is take a
16 break. You might have a few more questions, and then turn it over to Mr. Burge
17 for cross-examination?

18

19 MR. SPENCER: I think that's -- yeah. Yes, My Lord.

20

21 THE COURT: Okay. Before we break, Mr. Stanley, I
22 am going to remind you as I have all the other witnesses that have been testifying
23 during a break, I am directing you not to discuss your testimony with anyone,
24 including your lawyer, during this break, because you are currently under
25 questioning. Okay.

26

27 A Okay.

28

29 THE COURT: Yes?

30

31 MR. BURGE: My Lord, if -- we'll be doing our
32 preparation for cross-examination during this break. If we need a few more
33 minutes, can I just advise Madam Registrar?

34

35 THE COURT: Before Mr. Spencer -- yes. Yes.

36

37 MR. BURGE: Thank you.

38

39 THE COURT: So we will take a 15 or 20-minute break,
40 and the Crown might need a little bit more extra time, so we might have a little
41 longer break. So we will adjourn for about 20 minutes or so, and you check with

1 the Crown first.

2

3 (WITNESS STANDS DOWN)

4

5 (JURY RETIRES)

6

7 (ADJOURNMENT)

8

9 **Discussion**

10

11 THE COURT:

Okay. Before we bring -- the audience can sit down. Before we bring the jury back, there are a few matters that have come up. And they are as follows. The jury foreperson has indicated to the sheriff -- she raised three points. The first point, and this is in the order that they were provided to me, the jury was saying that when Mr. Stanley was demonstrating what was occurring, they really couldn't see. And I think that that is probably fair. What they were wondering is if he could do the same demonstration over again, but this time not using a -- the -- the gun because everyone is concerned about pointing and whatnot, but instead use a sharpie or some other item. So this is what the jury has passed on to me, and I pass it on to the lawyers, and I say to the lawyers, you are both experienced. I will let you deal with it how you see fit. I am simply relating to you what they have told me -- or not -- they have told the sheriff.

24

The second point is the jury has made an inquiry about the feather being waved in the courtroom. And, sir, you and I had a discussion, I think maybe on the first day, about the -- the eagle feather, the eagle wing.

28

29 UNIDENTIFIED SPEAKER: Yes.

30

31 THE COURT:

And you explained to me what that was about. And I thanked you for that. I told the jury what that was about. And they understand that, as well. So that's good. The lady sitting next to you, if you might stand, ma'am? What they have indicated to me is that it appears to them that you are motioning or shaking the feather at Mr. Stanley. And --

36

37 UNIDENTIFIED SPEAKER: For the truth to be told.

38

39 THE COURT:

Okay. Well, I think that that perhaps might not be appropriate for you to be motioning in that factor. I think -- I see a little bit of distinction between the two, and I want to respect culture, and I want to

41

1 do what's fair. But I think to -- to motion in the way that you are doing is
2 distracting the jury, and I don't know if it's doing any good for anybody. So I
3 think that we -- we are probably -- it is probably better that you not do that, if you
4 wouldn't mind. If you want to hold it, that's fine. But I would respectfully request
5 that you not wave it at Mr. Stanley. Okay. Is -- is that fair?

6

7 UNIDENTIFIED SPEAKER: Yes. The Creator is here.

8

9 THE COURT: Okay. The Creator is here, and that's --
10 that's good. So if you would be kind enough to do that, that would be most
11 appreciated, because the jury is being distracted by that. So the two of you can sit
12 down, and thank you very much.

13

14 The third thing is that the jury has reported to the sheriff that they are hearing
15 snickering from the gallery. And I know that this is a -- an emotional case, and I
16 know that people are very vested in what's happening, but that can't happen. They
17 are being distracted, and they are reporting to the sheriff, who is reporting to me,
18 that they are being distracted. And I must say that I've been doing this a long time,
19 and I've never had to warn a gallery to not do that. And I don't think it really helps
20 anyone. It doesn't help one side or another. And as a matter of fact, it might do the
21 opposite. So I would, again, respectfully request that you keep your emotions to
22 yourself within the courtroom and try to contain yourself as best you can, because
23 it is a courtroom. It's not a sporting event where we're rooting for one team or
24 another. It -- we have to be very -- respect the sanctity of the courtroom. So if
25 everyone would be kind enough to do that, it would be most appreciated by the
26 Court.

27

28 So with that, I will call the jury back in, and we will continue to move forward.

29

30 MR. SPENCER: My Lord, I think I have solved, perhaps,
31 number one or at least the best we can do is I have a toy that's --

32

33 THE COURT: What I have done is I have reviewed it to
34 you.

35

36 MR. SPENCER: Okay.

37

38 THE COURT: What the jury had indicated to me is they
39 suggested a sharpie.

40

41 MR. SPENCER: Okay.

1
2 THE COURT: And I -- I have reported that. And,
3 Madam Clerk --
4
5 MR. SPENCER: Okay.
6
7 THE COURT: -- I just want you to confirm that the
8 three areas -- or Madam Sheriff -- that the three areas that I've just raised are ones
9 that the jury raised with you, and you -- you brought them to my attention?
10
11 THE SHERIFF: That is correct, My Lord. That's what I
12 have in my notes.
13
14 THE COURT: Okay. Thank you very much. Okay. We
15 will bring the jury back in.
16
17 (WITNESS RE-TAKES THE STAND)
18
19 (JURY ENTERS)
20
21 THE COURT: Ladies and gentlemen of the jury, you
22 raised three matters with the sheriff, and the sheriff has raised them with me, and I
23 have addressed those matters. So with that, I will just say that I am going to turn
24 the -- the case back over to Mr. Spencer, and we are going to proceed. So thank
25 you very much for bringing those matters to my attention.
26
27 MR. SPENCER: Thank you, My Lord.
28
29 THE COURT: Mr. Spencer.
30
31 Q MR. SPENCER: Gerry, I'm going to ask you to turn to
32 picture 54. On the first -- first tab.
33 A Okay.
34
35 Q Okay. So in -- we have your -- your sketch, and your evidence. Can -- can you
36 -- looking at that photo, tell me where you are there and what stage of the
37 process that represents?
38 A I'd be right in the middle of the blue SUV, and my last shot was fired, and the
39 gun was disarmed.
40
41 Q Okay. So you're saying, if you're looking at 54, you would have been in beside

1 the blue SUV or in front of it?

2 A I'd say closer to the front tire.

3

4 Q Okay. So not from where the picture is taken, but up first -- closer to that?

5 A Yeah.

6

7 Q Okay. The demonstration with the gun was -- was difficult to see.

8 A Oh.

9

10 Q So since I'm a scaredy-cat, I'm going to give you a toy.

11 A Okay.

12

13 MR. SPENCER: Now, My Lord, I'm thinking perhaps it
14 would be for the -- your call, of course, but for the jury's sake, I think if everybody
15 is comfortable with the toy, he could go over right in front of the jury and
16 demonstrate how he was holding it. Is that --

17

18 THE COURT: Sir, if you'd like to come up, perhaps,
19 over here next to me, that would be fine.

20

21 A M-hm.

22

23 THE COURT CLERK: (INDISCERNIBLE).

24

25 A Around the back there.

26

27 THE COURT: You can just come out the front there.

28

29 THE COURT CLERK: This way, sorry.

30

31 THE COURT: You can just come right up here.
32 (INDISCERNIBLE).

33

34 THE COURT CLERK: You can go up right this way.

35

36 THE COURT: You can use my microphone, too, if you
37 wish.

38

39 THE COURT CLERK: That one won't come off.

40

41 THE COURT: Okay.

1
2 THE COURT CLERK: Just -- so that's there.
3
4 THE COURT: Okay. So don't fall off the stairs.
5
6 A Okay.
7
8 THE COURT: And you can face the --
9
10 MR. SPENCER: I think you can face the --
11
12 THE COURT: -- face the jury, if you would.
13
14 A Okay.
15
16 MR. SPENCER: Yeah.
17
18 A It's a toy.
19
20 MR. SPENCER: Okay.
21
22 A Do you want to know how I was holding it after I unloaded it?
23
24 THE COURT CLERK: (INDISCERNIBLE).
25
26 A Yeah. Like this. I had the magazine here, and this was here. But it was back
27 like this. It won't stay there, so I'm just holding it.
28 Q MR. SPENCER: Okay. I think that's good, Gerry. If --
29
30 THE COURT: That's --
31
32 A That's good?
33
34 Q MR. SPENCER: Yeah. Yeah, sorry.
35
36 THE COURT: Okay.
37
38 THE SHERIFF: My Lord, I'm sorry. There is a -- a
39 question from the jury. Something about when he was reaching into the vehicle,
40 more so.
41

- 1 THE COURT: Okay. Do you want to cover that,
2 Mr. Spencer?
3
- 4 MR. SPENCER: Sure.
5
- 6 Q MR. SPENCER: So you demonstrated how you were
7 holding the magazine --
8 A Yes.
9
- 10 Q -- and the gun.
11 A Yes.
12
- 13 Q As you approached the -- the -- why don't you tell it? So you checked the
14 front, and then as you approached the driver's door.
15 A Yeah. I went to the front of their vehicle. It revved up, like, wildly. It startled
16 me. I turned to it, and then went up to the driver window. I had to move their
17 stuff out of the way, and I reached in to turn the key off.
18
- 19 Q So your left hand was inside the vehicle, obviously?
20 A Yeah.
21
- 22 Q Okay. Did you reach the keys? What -- what exactly did --
23 A Yeah, I got to the keys.
24
- 25 Q Okay.
26 A I think just my finger flipped them back --
27
- 28 Q Okay.
29 A -- because everything was quiet when we were done.
30
- 31 Q Oh, so you -- you turned the vehicle off?
32 A Yeah.
33
- 34 Q Okay. Sorry. I didn't -- okay. So then your right hand, describe it, what you
35 recall, where it was at this time. Is it in the vehicle?
36 A Yeah, it was in the window. I was like this. I was concentrating here. And then
37 about the same time the car shut down, just boom, and it kicked back like this.
38
- 39 Q Okay. Okay. I'm going to show you one more photo that I -- that we've had
40 blown up. Does that look --
41 A Yes.

1

2 Q Do you recall that from that day?

3 A Yes.

4

5 Q How that looked from the lawn mower side?

6 A Yes.

7

8 MR. SPENCER: Okay. My Lord, that's a disclosure photo
9 that I referred to in front of the jury, but -- so -- but it's not in the book, so I think I
10 should mark that since I have referred to it. And I think my friend is fine with that?

11

12 MR. BURGE: I can't see what -- what photo are we
13 looking at? That's fine.

14

15 THE COURT CLERK: D-20.

16

17 THE COURT: P --

18

19 THE COURT CLERK: D-20.

20

21 THE COURT: D-20.

22

23 **EXHIBIT D-20- Blow-up Photo of P-1, Photo 81**

24

25 MR. SPENCER: Those are all the questions I have, My
26 Lord.

27

28 THE COURT: Okay.

29

30 THE COURT CLERK: So, I'm sorry. How do I --

31

32 THE COURT: It would be a blow-up photograph,
33 Exhibit D-20. So it's not in the P-1 at all?

34

35 MR. SPENCER: No, I -- I had -- I had thought it was, but
36 I was wrong.

37

38 THE COURT: It looks pretty close to photograph 81. Is
39 it not the same?

40

41 THE COURT CLERK: It says 81 in the bottom.

1

2 MR. SPENCER: Okay. Well, then, my apologies, My
3 Lord. Oh, it is. Sorry.

4

5 THE COURT: Okay. So it will be a --

6

7 MR. SPENCER: I looked quickly.

8

9 THE COURT: -- a blow-up of Exhibit P-1, photograph
10 81.

11

12 MR. SPENCER: Okay. I had thought it was in there, and I
13 just -- we couldn't find it this morning. Thank you.

14

15 THE COURT: Okay.

16

17 MR. SPENCER: My apologies.

18

19 THE COURT CLERK: Okay.

20

21 THE COURT: Mr. Burge.

22

23 MR. BURGE: Thank you, My Lord.

24

25 **Mr. Burge Cross-examines the Witness**

26

27 Q MR. BURGE: Mr. Stanley, I might end up jumping
28 around a bit in my questioning of you, and it's not to try to trick you. It's
29 because we're just getting organized to deal with your evidence, and -- you had
30 a lot of guns in your house; is that correct?

31 A There was a few, yes.

32

33 Q Yeah. How many?

34 A Hmm. Well, I'm not sure how many. I know how many worked, I can tell you.

35

36 Q How many worked?

37 A About five.

38

39 Q And are you an avid hunter?

40 A I used to hunt. I don't anymore.

41

- 1 Q And how long have -- how long have you -- when did you start hunting?
2 A When I was just a child.
3
4 Q Do you know how old you would have been when you were -- when you
5 started hunting?
6 A Oh, probably grade 5 and 6.
7
8 Q Okay. Would your father take you out hunting and you'd -- you would go
9 along with him? Is that how it happened then?
10 A Yeah. That type of thing, yeah.
11
12 Q So you weren't a licensed hunter? You were just tagging along?
13 A Right.
14
15 Q And likely got to --
16 A Well --
17
18 Q -- shoot a gun?
19 A -- not shooting deer or anything.
20
21 Q No?
22 A I mean gophers and stuff, you know.
23
24 Q Okay.
25 A Yeah.
26
27 Q You -- did you ever get a hunting licence?
28 A Have I ever had one?
29
30 Q Yeah.
31 A Yes.
32
33 Q And you have a licence to hold restricted firearms?
34 A Yes.
35
36 Q In either of those processes, did you have to go through any firearms safety
37 programs?
38 A Yes.
39
40 Q Tell us what you learned in the firearms safety programs.
41 A Well, they tell you the actions of your firearm and safety aspects of it.

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Q Okay. Why don't you tell us about the safety aspects that -- that you learned about handling firearms.

A I mean, don't crawl through a fence when it's loaded, that type of thing? Is that --

Q Don't -- didn't you receive any instruction about what to do or what not to do with a firearm?

A In the booklet, I guess, yeah.

Q Well, did you learn not to point a gun at somebody?

A Yes.

Q And that's in the book?

A Yeah. I believe so.

Q And did you learn that if you pull the trigger and it doesn't go off, that you better treat this gun as something that is very dangerous and it might go off?

A Yeah. Yes.

Q So you were aware of that?

A Yes.

Q Okay. And how long had you been aware of -- of those kind of safety features?

A Oh, 20 years, I suppose.

Q Yeah. You told us when you first started testifying, my -- my friend Mr. Spencer asked you about delivering some ammunition to the RCMP in Biggar?

A Right.

Q In August of 2017?

A Yes.

Q So you remember that?

A Yeah.

Q And did you -- did you go there by yourself?

A Well, I met an officer there.

Q Okay. Did you go there by yourself?

- 1 A I -- I went by myself, but I met Scott there.
2
- 3 Q Okay. When you turn this over to -- did it -- was it Constable Mark Wright
4 (phonetic)?
5 A I'm not sure what his name was, but --
6
- 7 Q Okay. Did you turn things over to him?
8 A Yes.
9
- 10 Q What did you turn over?
11 A A white bag with some bullets in it.
12
- 13 Q What did you say to Constable Wright when you gave him this white bag?
14 A I never said a word.
15
- 16 Q Not a word? So you never said, Constable Wright, this bag has the ammunition
17 from which I drew --
18 A I might have said --
19
- 20 Q -- the cartridges -- let me ask the question, please. From which I drew the
21 cartridges that I used when Colten Boushie was shot? You never told him that?
22 A No.
23
- 24 Q So you never said to him, It's really important that you get this tested because
25 you'll find this to be really important to this case?
26 A No, I never said that.
27
- 28 Q You never told him that? Okay.
29 A No.
30
- 31 Q You just gave him some ammunition, never said a word about where it came
32 from?
33 A No.
34
- 35 Q Never said how long you had it?
36 A No.
37
- 38 Q You never said, I picked it up from a neighbour yesterday?
39 A No, I never said nothing.
40
- 41 Q Okay. You never said anything to clarify what you were doing?

1 A No.

2

3 MR. SPENCER: My Lord, perhaps we should discuss this
4 away from the jury, these unfair questions.

5

6 THE COURT: Okay. Ladies and gentlemen, I'll ask you
7 to take your leave for a moment.

8

9 (JURY RETIRES)

10

11 THE COURT: Mr. Spencer.

12

13 MR. SPENCER: I arranged this all with my friend. It took
14 me the better part of a month, maybe longer, to get them to receive this evidence.
15 So for my friend to be beating up on Mr. Stanley saying he didn't explain it all to
16 the police officer, I'd made the arrangements with Crown counsel to deliver
17 valuable evidence to them. I had to hound them to accept it. So it is what it is. But
18 to use that to criticize an individual that's been charged is -- is totally
19 unacceptable. So it's not a big deal, but for my -- my friend knows darned well,
20 and we can go back through our emails where I arranged it. He set it up for us to
21 meet with the RCMP officer. So this -- this is not fair.

22

23 THE COURT: Mr. Burge.

24

25 MR. BURGE: This -- this was a long time coming. It
26 was never said to me, and obviously not to the constable, that this is the
27 ammunition from which the fatal bullet was drawn. What was said was that
28 Mr. Stanley has a box of ammunition, and he wants to take it to the RCMP.

29

30 THE COURT: Do you agree with that, Mr. Spencer?

31

32 MR. SPENCER: No, I don't. The -- the only reason I
33 cared about getting those rounds to the RCMP is so that they could be tested.
34 Those were valuable -- that's -- was the entire reason that I'm hounding them to
35 come and get evidence. So as far as that officer, he didn't know what was going on
36 at all. So we delivered it to him. So I don't accept the characterization that this was
37 somehow just a gratuitous dropping-off of four cartridges.

38

39 THE COURT: Well, I suppose what I have is I have two
40 experienced ethical lawyers before me that are talking about a conversation they
41 actually had with each other, and I mean conversation by email or otherwise, that

1 are being characterized quite a bit differently. And I -- I suppose it does make a bit
2 of a difference in the event that Mr. Spencer is -- is suggesting that they handed
3 over ammunition that they thought was valuable and said, this is valuable
4 information that you should check, and from the Crown's point of view, it sounds
5 as if they showed up out of the blue, more or less, and provided some -- some
6 bullets that really didn't have any sort of foundation, and there would be no reason
7 to test them based upon that.

8

9 MR. BURGE: My Lord, until my friend examined
10 Mr. Ervin last week, that's the first indication I had that perhaps this -- this PE043
11 might be associated with this. So that's --

12

13 THE COURT: So you're saying that there is -- you
14 don't have any recollection of that conversation or you don't have any emails?

15

16 MR. BURGE: Well, I -- nothing -- nothing about what
17 this related to, My Lord. And -- and for that reason, the RCMP were -- they saw no
18 purpose in doing any examination.

19

20 THE COURT: Well, again --

21

22 MR. BURGE: If it was important, at least -- and it -- it
23 wasn't brought home to me that it was -- or what the importance was, but that he
24 had -- he had ammunition that he wanted to turn in to the RCMP. That's -- and
25 there was certainly no discussion about a dud that came from somewhere which
26 I'll have to find out by further questioning Mr. Stanley.

27

28 THE COURT: Well, how do you propose I deal with
29 this? Because we are a little far in the trial to have the two of you testify.

30

31 MR. BURGE: Yeah, we are.

32

33 THE COURT: Obviously you can't do that. And if there
34 is a dispute, is there some way that we can show each other emails or try to look
35 into it and --

36

37 MR. BURGE: I'd be happy to look at any emails my
38 friend wants to show me about any elaboration about the importance of this box of
39 ammunition.

40

41 THE COURT: Would you --

- 1
2 MR. BURGE: And it might jog my memory, but I
3 would be surprised if it does, but I'd be happy to see it.
4
- 5 THE COURT: Okay. Mr. Spencer, what would you like
6 to say in response to that?
7
- 8 MR. SPENCER: Well, certainly it was nothing about
9 Mr. Ervin because -- certainly in hindsight I wish I'd given it to him because he
10 could have done some testing. He would have actually done testing. We need to
11 move forward. I -- my recollection of events -- and, certainly, it was significant to
12 me. Like, there's no doubt about it. These were -- these were the sister shells. I
13 have no doubt in my recollection that that was conveyed. My friend says he didn't
14 get it, and I guess I accept that. But my concern -- I didn't want to interrupt. It's --
15 it's probably collateral, so I'm prepared for us to -- to proceed. So I've made my
16 point about how I felt --
17
- 18 THE COURT: Mr. Burge.
- 19
- 20 MR. SPENCER: -- it was unfair, based on my
21 understanding.
22
- 23 THE COURT: Well, it is unfair if it is -- if your version
24 of events is true.
25
- 26 MR. SPENCER: Right. Yeah.
27
- 28 THE COURT: It's not unfair if Mr. Burge's version of
29 events are true. I have two lawyers that I know have reputations of being honest
30 and reputable people, and I don't know how I can break the deadlock, given --
31
- 32 MR. SPENCER: Right.
33
- 34 THE COURT: -- what's been said.
35
- 36 MR. SPENCER: The unfairness, My Lord, in -- in my
37 submission is criticizing Mr. Stanley for that. The reality is -- and we may -- we
38 may never know, but if there's criticism to be had, I guess it's either me for failing
39 to convey it or Mr. Burge for failing to pick up on it, but I -- the unfairness is to, in
40 front of the jury, be beating up on Mr. Stanley for not having conveyed that
41 information. So perhaps where that leaves us it is for just argument, and we can

1 discuss that there. But I think I've -- you know, I've made my point, and to the
2 extent it was an objection, I withdraw it so we can move along.

3

4 THE COURT: Mr. Burge.

5

6 MR. BURGE: If we could have a moment? I don't --
7 there's some things that I'd like to sort out with my friend, and I -- I'm not being
8 critical of him, but I'd just like to point out something to him in relation to what's
9 -- some comments that have just been made, and it might require a very brief
10 adjournment.

11

12 THE COURT: Okay. Well, the jury is out, so that makes
13 it a little easier. So we will stand down until you advise --

14

15 MR. BURGE: Thank you.

16

17 THE COURT: -- the clerk that you are ready to go.

18

19 (WITNESS STANDS DOWN)

20

21 (ADJOURNMENT)

22

23 THE COURT: Okay. Where are we at, counsel?

24

25 MR. SPENCER: Well, I have a little crow to eat, My
26 Lord.

27

28 THE COURT: Pardon me?

29

30 MR. SPENCER: I have a little crow to eat.

31

32 THE COURT: Okay.

33

34 MR. SPENCER: Our -- our discussion, we haven't got
35 who's right and wrong on that, but my friend has pointed out that there is
36 documentation of -- of those bullets being available to Sandy Ervin. They're in the
37 order. So I was in error there. So that was -- I had misstated that or overstated that.
38 We have had a discussion, and I think we have a way to allow us to move forward
39 to -- in a way that we both consider fair and reasonable. So I think we have --

40

41 THE COURT: Okay.

1

2 MR. SPENCER: -- resolved a way moving forward. But
3 certainly I apologize for -- for my -- my error.

4

5 THE COURT: Bring the jury back in.

6

7 (JURY ENTERS)

8

9 (WITNESS RE-TAKES THE STAND).

10

11 THE COURT: Okay. I think we have got things
12 resolved. So, Mr. Burge, you can proceed.

13

14 MR. BURGE: Thank you, My Lord.

15

16 UNIDENTIFIED SPEAKER: Excuse me?

17

18 Q MR. BURGE: Mr. Stanley, just so you know and for the
19 ladies and gentlemen of the jury know, I'm not suggesting that you were trying
20 to leave something unsaid with -- with the constable. I presume you expected
21 that communications would take place between Mr. Spencer and myself?

22 A Oh, yeah.

23

24 Q Okay.

25 A Oh, yeah.

26

27 Q But you also gave a -- the police a bullet that you described as a dud?

28 A Right.

29

30 Q Is that your word? A dud?

31 A Yeah, a dud.

32

33 Q Okay. And you found this in your toolbox?

34 A It was in a different storage place, yeah.

35

36 Q Okay.

37 A Where I keep some books.

38

39 Q And do you know when you would have fired this shell and found that it was a
40 dud?

41 A I'm not -- I couldn't be sure, no.

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Q Could -- how long have you had the Tokarev?

A I think three or four years. Something like that.

Q And this -- so this dud could have been three or four years old or three or four weeks old?

A Yes. Yeah.

Q And you don't know?

A I don't know, no.

Q Okay. And you don't know what -- how many times have you brought ammunition for the Tokarev?

A Oh. I would buy four or five boxes at a time probably once a year, like four or five once a year.

Q So 160 to 200 rounds once a year?

A Yeah.

Q Why did you include that dud in this -- in this -- this ammunition that you were delivering? Or was that your decision?

A Well, I didn't know what to do with it. I didn't even know I had it until I found it one day when I was looking for a manual in that cupboard there. And I just turned it in with the rest.

Q Okay.

A I'd actually thought they took it all, but I was surprised to see that some was still laying around.

Q Sir, getting back to the 9th of August, 2016, you -- you described what happened. You were standing near the quad by your shop, and the vehicle was driving away as if it's heading out of the -- out the driveway?

A Right.

Q At that time, did you know where your wife was?

A No. I wasn't really thinking of her at that moment.

Q Okay. You saw the vehicle head towards the driveway and strike your wife's Escape?

A Yes.

- 1 Q And then you saw the vehicle, I guess, slowly come to a stop?
2 A Well, quickly came to a stop after it went another -- kind of like it -- everything
3 just kind of flew and landed, so --
4
5 Q Okay. How far away were you from your wife's vehicle when you're standing
6 in front of the shop?
7 A Do you want to see the picture or measurement?
8
9 Q No, I -- I know -- I can -- I can tell what the picture shows, but I don't know
10 what the distance is.
11 A About a hundred feet.
12
13 Q 100 feet?
14 A Yeah.
15
16 Q From the shop to where the -- your wife's Escape is?
17 A Yeah, I think so.
18
19 Q How many feet would you think is in this -- the length of this courtroom?
20 A Oh, a little more than 50, maybe.
21
22 Q Okay. So twice this distance, roughly?
23 A Yeah.
24
25 Q That's to the Escape?
26 A Yeah.
27
28 Q And you say it came to a -- a fairly abrupt stop after it hit the Escape?
29 A The -- the grey?
30
31 Q Yeah.
32 A Yeah, it went another -- whatever, 20 feet or more.
33
34 Q Okay. And you saw it come to a stop?
35 A Yes.
36
37 Q And you had a pretty clear view of the grey Escape?
38 A No, I didn't. I didn't have a clear view. The blue one was kind of in the road
39 now. I could see a little bit of the top of the back of it.
40
41 Q I'm just going to move some exhibits here. And that's P-2 that we're looking

1 at, I believe; is that correct?

2 A Yeah.

3

4 Q As you were watching the grey Escape head towards the road, you didn't see
5 your wife?

6 A No.

7

8 Q You had no reason to think that she was struck by this vehicle?

9 A Well, I knew she was mowing the grass, but --

10

11 Q Okay.

12 A -- I didn't know where she was.

13

14 Q Okay. You've told us that you went into the shop. You grabbed the Tokarev?

15 A Yeah.

16

17 Q How far into the shop? How -- how many paces or feet into the shop would
18 you have --

19 A Two.

20

21 Q -- to go to reach where the Tokarev was?

22 A Two paces.

23

24 Q Two paces? And it sounds like the ammunition was fairly close to the front of
25 the shop, as well?

26 A Yeah. About four paces away from where the gun was.

27

28 Q Okay. You -- where was the gun? Was it in the toolbox?

29 A No, it was in its gun case sitting on a Styrofoam target, about three feet off the
30 ground.

31

32 Q Okay. Was it in a gun case with your revolver?

33 A Yeah.

34

35 Q And was it locked at the time?

36 A Not at -- not right then, no.

37

38 Q Okay. You grabbed ammunition, and you had -- okay. Where was the
39 magazine?

40 A In the toolbox.

41

- 1 Q Separate from -- was it -- was it inside?
2 A Yeah, I don't keep them with the -- in the box.
3
4 Q You don't keep the magazines in the gun box?
5 A No.
6
7 Q Do you -- you keep it in -- when you say the toolbox, is that where the
8 ammunition was?
9 A Yeah.
10
11 Q So it's in the same toolbox as the ammunition?
12 A Yes.
13
14 Q Yes. And the -- and the magazine, is it empty or is there -- are there rounds in
15 it?
16 A That one was empty.
17
18 Q You say you grabbed two?
19 A I pulled what -- I thought I pulled two off that strip.
20
21 Q Okay.
22 A But that, you saw.
23
24 Q And then you had to manually load each shell into the clip?
25 A Yeah.
26
27 Q And so -- and when you manually load each shell into the clip, you'd know
28 how many shells you're putting into the clip, wouldn't you?
29 A On most days, you would, yeah.
30
31 Q On this day?
32 A I thought I put two in.
33
34 Q So you're mistaken, were you?
35 A Well, I know I was now, yeah.
36
37 Q You got the gun because you were concerned?
38 A I was scared.
39
40 Q Scared? But then you -- you didn't run down --
41 A I was getting --

1

2 Q -- to your yard?

3 A All I wanted everybody to do was just leave.

4

5 Q Okay.

6 A I wasn't chasing anybody.

7

8 Q Okay. You -- you walked -- I think you said you walked quickly or briskly?

9 A Yeah. Pretty quick.

10

11 Q Pretty quick?

12 A Pretty quick, yeah.

13

14 Q Okay. You didn't break into a run?

15 A Not there, no.

16

17 Q But you grabbed the gun, you say, because you were scared?

18 A For my son that just took off there, yeah. And what -- I didn't know what was
19 going on.

20

21 Q Did you -- do you know where your son was?

22 A No.

23

24 Q You couldn't see him?

25 A No.

26

27 Q How long after your son took off was it before you turned to get --

28 A Oh, it was only --

29

30 Q -- the gun?

31 A -- 10 seconds, maybe.

32

33 Q 10 seconds?

34 A Yes.

35

36 Q And your son was running?

37 A He -- yeah.

38

39 Q So looking at that from the front of the shop to where your wife's car is seated
40 at -- or sitting, if you say that's a hundred feet, then it -- it likely wouldn't be
41 much more than 20 more feet to the house, if those proportions are --

- 1 A Yeah. I would say that would be about right.
2
3 Q But -- you think -- you think those are correct numbers?
4 A It sounds right, yeah.
5
6 Q 20 feet from that -- from your wife's Ford Escape to your house?
7 A More like 20 from this one, a little more than 20 from that one.
8
9 Q I'm going with your numbers, sir. I'm just -- just wondering if -- if you've -- if
10 you're --
11 A Well, I didn't measure it, but --
12
13 Q Yeah.
14 A -- I'm just guessing myself.
15
16 Q Well, it's --
17 A So ...
18
19 Q -- you've lived there for 30 years?
20 A Yeah.
21
22 Q Okay.
23 A Yeah. It's a hundred feet from the car to the shed, but I don't know about the --
24 to the house. We can say 20.
25
26 Q Well -- where were you when you first noticed other -- or two males standing
27 outside?
28 A I was -- I could see them about the time I was here.
29
30 Q Okay. So you're pointing in the middle of the yard, but about as far as -- from
31 -- from the left to right of that photograph, you're -- you're right below the
32 gold -- the nose of the gold pickup?
33 A Closer to -- closer to this trailer here. Closer to this trailer here. Like, coming
34 this way.
35
36 Q Okay. And where do you fire your first shot?
37 A Approximately here.
38
39 Q So a little bit below, but not quite as far as that power pole?
40 A Right. Correct.
41

- 1 Q So to the -- to the right of the power pole as we look at P-2, but -- but below it?
2 A Yeah. It might be a little farther ahead, but in this area here.
3
4 Q Did you point the gun at either of those two guys who got out of the vehicle?
5 A No, I did not.
6
7 Q Do you remember what those two guys looked like or how they were dressed?
8 A I remember they had hoodies up. I can't tell you what colour they were, like
9 the clothes or anything.
10
11 Q You said you thought you saw three males out of the -- or how many males did
12 you see get out of the vehicle?
13 A Three altogether. Just two up here.
14
15 Q And you say they were all wearing hoodies?
16 A These two were wearing hoodies right there.
17
18 Q Okay. You fired this Tokarev, and you say it's very loud?
19 A Yeah.
20
21 Q And that's why you grabbed the Tokarev?
22 A Yes. That's what I use it for.
23
24 Q And you had your -- you tell us you had your hand up in the air?
25 A Yes.
26
27 Q And did you see them, these two fellows, look back at you?
28 A Yes, after the first shot. One did, for sure. I don't know if they both did or not.
29
30 Q Okay. And when you -- when they looked back, did you still have your hand
31 up in the air?
32 A Mm. I don't know if I did or not. I couldn't say.
33
34 Q And firing this loud --
35 A I would think it would be --
36
37 Q Pardon me?
38 A I thought -- I think it would still be in the air, yeah.
39
40 Q Okay. And -- and at least one of them looked back and saw you?
41 A I thought so, yeah.

- 1
2 Q And that's when you said you had your hand in the air, when you think one of
3 them looked back and saw you, and this was just after you fired a very loud
4 gun?
5 A Right.
6
7 Q And you're telling us that these two didn't react to that?
8 A No. They --
9
10 Q Pardon? No, you were going to say something. Please go ahead.
11 A It looked like they were kind of lost right here in this area. I don't know what
12 they were doing.
13
14 Q Okay. So now, again, if you can point on the pointer to where you were when
15 you fired this -- this first bullet, the first shot.
16 A Right here somewheres.
17
18 Q Okay. So below the power pole. And they are standing where? If you can point
19 it?
20 A (NO AUDIBLE RESPONSE)
21
22 Q And there's a clear -- is there a clear line of sight between you and those two
23 guys?
24 A Now there is, yes.
25
26 Q Okay. Now, given the distances that you've told us, it sounds like you might
27 not have been a whole lot more than 20 feet from these guys when you fired
28 that first shot. Does that sound right?
29 A I think -- I'd say 30 feet.
30
31 Q Okay. 30 feet.
32 A Then 25.
33
34 Q 25 for the second shot?
35 A Yeah.
36
37 Q So you're saying that they didn't react to the first shot, even though they were
38 30 feet from you with a clear line of sight, and you're holding a gun in the air?
39 A Right. That's what I'm saying.
40
41 Q Did you change -- did you quicken your pace at all as you were walking down

1 the yard?

2 A Not yet, no.

3

4 Q Did -- were you saying anything?

5 A No.

6

7 Q Throughout all of this when you ran up to the vehicle when you -- you saw
8 these guys on the quad, did anybody say anything to you?

9 A No, I don't think so.

10

11 Q Did anybody say anything to Sheldon that you heard?

12 A I didn't hear. He was there before I was.

13

14 Q Yeah, and I'm just asking what you heard.

15 A No. No, I didn't hear nothing.

16

17 Q Did you see any weapons at that point?

18 A No.

19

20 Q So you had no reason to believe there was a weapon in the vehicle?

21 A No.

22

23 Q And no one had made any gestures towards you or said anything towards you
24 that was threatening?

25 A They made a gesture with their car back here.

26

27 Q Okay.

28 A Towards Sheldon.

29

30 Q A gesture with their car towards Sheldon?

31 A Yeah. That's what I saw.

32

33 Q Is that when they were --

34 A After they backed up.

35

36 Q Did -- okay.

37 A And went ahead. I was over here.

38

39 Q Yeah?

40 A And it looked like they went right for him. That's when he hit the windshield.

41

- 1 Q Are you saying they turned right towards him?
2 A Well, I think they just went straight.
3
4 Q Okay.
5 A I don't -- I didn't see no big swerve or nothing, but --
6
7 Q Okay. Likely that vehicle wasn't able to swerve really quickly if --
8 A Well --
9
10 Q -- with just one tire and one rim on the front. Is that what you would think?
11 A It looked like he could swerve pretty good.
12
13 Q Pardon me?
14 A It looked like it was doing all right.
15
16 Q When you say they made a gesture towards Sheldon, and I'm trying to see
17 what this gesture was.
18 A It was just a straight line. But they didn't make an effort to move too quick out
19 of the way.
20
21 Q Well, did they make any effort to move out of the way? You --
22 A Well, they curved and went down the driveway after.
23
24 Q So the vehicle backed up, had to turn to -- to -- would have backed up so it
25 could get in position to get out of the yard; is that -- is that what you observed?
26 A Yeah.
27
28 Q And then once they went forward, they would have to somehow complete the
29 turn to go towards the driveway?
30 A Yeah. They had this much room from here to here.
31
32 Q And that's what you're calling was -- was a gesture that might be a threat
33 towards Sheldon?
34 A It kind of looked that way to me from behind, yes.
35
36 Q I see. You fired the second round?
37 A Yeah.
38
39 Q You thought you only had two rounds in there?
40 A Yes, I did.
41

- 1 Q Were you -- at the time, were you pretty certain you only had two rounds in
2 there?
- 3 A Well, I wasn't a hundred percent.
4
- 5 Q Were you --
6 A I was pretty sure.
7
- 8 Q Pardon me?
9 A I was pretty sure, yeah.
10
- 11 Q Well, you've -- you've told us that you grabbed two rounds. You thought you
12 loaded two rounds in there.
13 A M-hm.
14
- 15 Q Is that -- is that what you're telling us right now?
16 A Yes. I thought I put two in.
17
- 18 Q Okay. You fired one into the air?
19 A Right.
20
- 21 Q Then a few seconds later, you fired -- you put your hand up again and pulled
22 the trigger?
23 A Correct.
24
- 25 Q How many seconds went by between the -- the first time --
26 A Oh.
27
- 28 Q -- you put your hand up and fired and the second time?
29 A Enough for two steps.
30
- 31 Q So fire, one, two, fire?
32 A Yeah.
33
- 34 Q Something -- something like that?
35 A Yeah.
36
- 37 Q So that's, like, a second or -- second and a half, maybe?
38 A Yeah. It's after.
39
- 40 Q When you demonstrated to us, you showed that you kept repeatedly pulling the
41 trigger on this second occasion?

1 A Yeah. I was a little scared because they hadn't gone away, so I just did it out of
2 reaction, I think, or something. I don't know.
3
4 Q A reaction? What -- like, if you thought you put two cartridges in the clip --
5 A M-hm.
6
7 Q -- why would you tell us that you fired it three or four times?
8 A I wasn't looking at it, so I wanted to -- I always make sure it --
9
10 Q What do you mean, you weren't looking at it?
11 A I wasn't looking at the gun.
12
13 Q Well --
14 A I was watching them guys on the road.
15
16 Q Okay. You could hear -- you could hear the gun go off?
17 A Oh, yeah.
18
19 Q But you demonstrated to us that you -- you showed us that you repeatedly
20 pulled the trigger the second time?
21 A Yeah.
22
23 Q And why did you demonstrate that to us?
24 A Well, to let myself know that I was empty, without having to look at the gun,
25 right?
26
27 Q And it -- and have you been taught or have you learned that that's a safe way to
28 check if your gun is empty?
29 A Well, I've done it in the past, yeah. Well, I've never -- usually I'm looking at
30 the gun, right?
31
32 Q Okay.
33 A And you can see what's going on with it. But I was watching down the road.
34
35 Q And did you think the gun was empty?
36 A I did.
37
38 Q Why?
39 A Because when I looked at it, the barrel was sticking out the end. Can I show
40 you?
41

1 Q Yeah. And I -- and -- and are we still satisfied that -- that the Tokarev is safe?

2 A No, this is a toy.

3

4 Q Yeah. No, I'm not asking about that. But I -- we might ask you to look at the
5 Tokarev, if --

6 A Oh.

7

8 THE COURT: Well, we have got -- I think Constable
9 Gallicson (phonetic) is here. You can check the -- if you -- if you'd like to.

10

11 MR. BURGE: Sure.

12

13 UNIDENTIFIED SPEAKER: My Lord, the firearm is safe, and so is
14 the magazine.

15

16 THE COURT: And the clip is safe, as well?

17

18 UNIDENTIFIED SPEAKER: Yes, it is.

19

20 THE COURT: Okay. And you want that provided to --

21

22 MR. BURGE: Sure.

23

24 THE COURT: -- Mr. Stanley? Thank you very much,
25 Constable.

26

27 UNIDENTIFIED SPEAKER: You're welcome.

28

29 MR. BURGE: Okay. You can just set it down. I'll get to
30 it in just a second here. I just want to make sure.

31

32 Q MR. BURGE: You said something about the barrel
33 extending, and you were satisfied that it was safe, that it was empty?

34 A Yeah.

35

36 Q Okay. Why don't you -- before you -- before you grab it, why don't you tell us
37 what you meant by that?

38 A Oh, before I grab it?

39

40 Q Well, sure. You can tell us, and then you -- if it's easier for you to grab it --
41 whatever is easier for you, sir. If it's easier for you to -- just to get it and

- 1 demonstrate.
- 2 A After it shoots its last shot, this is the shape it stays in.
- 3
- 4 Q Okay. Is that the shape of the -- that it's in right now?
- 5 A Yeah.
- 6
- 7 Q Why don't you, without -- maybe just turn the gun upside down and keep it
- 8 pointed that way so we can see what -- and so I see the ejection port is open
- 9 right now; is that right?
- 10 A Yeah. That's right.
- 11
- 12 Q And if there was still a bullet or a cartridge in there, you'd be able to see it?
- 13 A Well, I -- I -- I wouldn't have looked at that side.
- 14
- 15 Q Why?
- 16 A Because it -- a hundred times before, this is what means it's empty.
- 17
- 18 Q Okay. To make a gun safe, you take out the -- the magazine?
- 19 A Yeah. I was under the impression that it -- even if there was something in this
- 20 thing, if you took the magazine out, then it wouldn't shoot.
- 21
- 22 Q Okay. You didn't know that your own gun didn't have that kind of a safety
- 23 mechanism?
- 24 A No, it didn't come with a manual. Some do. Some don't, I guess, now.
- 25
- 26 Q Okay. We'll get to that, but now, was the barrel extended and the ejection port
- 27 open because that's the way the gun was as the result of the last time you fired
- 28 it?
- 29 A I assumed so, yeah.
- 30
- 31 Q Well, did you pull it back to -- to -- did you pull the slide back so that the
- 32 ejection port would be open?
- 33 A No. That's the way it -- that's how it ends up on the last bullet.
- 34
- 35 Q Okay. And when -- when -- as you understand a semi-automatic handgun like
- 36 this, when you pull the trigger --
- 37 A M-hm.
- 38
- 39 Q -- the slide moves back and it ejects the cartridge --
- 40 A Right.
- 41

1 Q -- that -- that had just been fired?

2 A Yes.

3

4 Q If another cartridge automatically loaded, then it would have gone to a closed
5 position; is that correct?

6 A Correct.

7

8 Q That isn't what happened?

9 A No.

10

11 Q How could that -- do you know how that slide could be open?

12 A I sure do not. That's why we're here.

13

14 Q Or perhaps the slide wasn't open?

15 A Well, it --

16

17 Q Or this --

18 A -- sure looked like it was open to me.

19

20 Q Well, the slide wasn't open as the result of the -- the last firing?

21 A Well, somewhere between here and here, it was open. So ...

22

23 Q You know from your experience with that gun, if there's still a cartridge in the
24 chamber, the slide doesn't stay open? The slide will close automatically by the
25 force of the gun?

26 A If it's -- if it's loading, yeah.

27

28 Q If it's loading?

29 A Yeah.

30

31 Q Did the eject -- did the ejector on that gun always work?

32 A Yeah, I never had any trouble with that.

33

34 Q Okay.

35

36 MR. BURGE:

Just -- just a moment, My Lord.

37

38 Q Okay. When did you notice that the barrel was extended and -- and the ejection
39 port was open?

40 A Just after the second shot, when I got up to this SUV here, because I brought it
41 down and popped the clip at the same time. That's the same time I got a clear

1 shot -- view of this lawn mower.

2

3 Q So if the ejection -- so if the last time the gun was fired, the slide came back --
4 you know how this works? You know how your gun works?

5 A Yeah.

6

7 Q It would have ejected the spent cartridge?

8 A Yeah.

9

10 Q And that's the position that the gun was in, that it would have -- you're telling
11 us it would have ejected the last cartridge?

12 A If that's what happened, yes.

13

14 Q Well, we're --

15 A It should look like that.

16

17 Q If that was the last cartridge?

18 A Yes.

19

20 Q How -- how many shots did you fire into the -- into that car? Or how many
21 shots were discharged into the car?

22 A None.

23

24 Q How many times did the gun go off --

25 A Oh.

26

27 Q -- into the car?

28 A Just one.

29

30 Q If the slide was wide open, the ejector port was wide open, do you have any
31 explanation for how that expended cartridge ended up on the dash of that car?

32 A I don't.

33

34 Q Because the ejector wouldn't be working if the slide was wide open. Do you
35 agree?

36 A It could be cocked if it wasn't all the way.

37

38 Q Well, you told us it was wide open. It was --

39 A Well, I don't know. I just looked at it. It gives me the -- that's what I thought, it
40 was empty, because it looked like it always did.

41

- 1 Q Before you walk up to that car, when do you say to yourself, gee, where's my
2 wife?
3 A When I'm back at this SUV.
4
5 Q Why don't you -- why don't you -- do you have a pointer there still?
6 A Yeah.
7
8 Q Why don't you point it to us?
9 A When I was here.
10
11 Q And had you fired the second shot at that point?
12 A Yeah, I was -- yes.
13
14 Q And then what do you do?
15 A Then I figured I was disarmed, ran hard to the front of this car.
16
17 Q Did you actually get in -- in -- like, the pointer is looking right as if you're at
18 the front of the hood?
19 A Yeah, I'm at the front of the hood.
20
21 Q Okay. So you were --
22 A The front of the car.
23
24 Q You were -- you ran past the driver's door to the -- to the front, to the hood of
25 the car?
26 A Yes.
27
28 Q And what did you do?
29 A And then I looked -- I was going to look underneath, then the car revved up.
30
31 Q Why were you concerned about your wife at that point?
32 A Well, I love her, that's why.
33
34 Q Pardon me?
35 A I love her.
36
37 Q Well, did you know where she was?
38 A No.
39
40 Q Did -- I -- I take it that lawn mower wasn't in that position right at that time; is
41 that correct?

- 1 A Well, that's what -- what? She --
2
- 3 Q When you walked up -- okay. When you walked up to that car, the lawn
4 mower wasn't right where we see it as we see on this photo right now?
5 A Yes, it was right there.
6
- 7 Q Okay. So where was your wife?
8 A I don't know. I thought she was under the car.
9
- 10 Q Well, she wasn't under the car, was she?
11 A No.
12
- 13 Q She -- you said you looked up, and there she was?
14 A Yeah.
15
- 16 Q Okay. How far from the lawn mower to the front of that -- of that grey Escape?
17 A Mm.
18
- 19 Q 10 feet?
20 A Yeah, 10 feet.
21
- 22 Q So you saw the lawn mower there. You didn't see your wife?
23 A The lawn mower is running, wide open.
24
- 25 Q Okay. You saw the lawn mower. You didn't see your -- you say you didn't see
26 your wife, and you were looking under the -- under the car?
27 A Yeah.
28
- 29 Q For your wife? When you finally see your wife, where was she?
30 A She was standing between the mower, in -- in front of the mower, close to the
31 bush.
32
- 33 Q Okay. Well, how -- how could you have missed her?
34 A Well, she could have been in the bush. I don't know where she was.
35
- 36 Q Could have been in the bush?
37 A Yeah.
38
- 39 Q Oh, I see. So you -- you went -- you knelt down?
40 A M-hm.
41

1 Q You say you heard the car rev?

2 A Yes.

3

4 Q Now what do you do?

5 A Now I went back to the driver's door.

6

7 Q Yeah?

8 A And reached in. I had to move his bar out of the way. And then I reached in
9 and flipped the keys off.

10

11 Q Okay. So was there somebody in the driver's seat?

12 A Yes.

13

14 Q You say you moved his bar out of the way.

15 A It was sticking up pretty much in the middle of his door window.

16

17 Q Sticking up as in --

18 A Up and out.

19

20 Q -- up straight up?

21 A Up and out a bit.

22

23 Q Okay. You're -- okay. Do that again, please. You've got a pointer in your
24 hand, and you're holding it --

25 A Not out, though.

26

27 Q Well, I'm just going to -- please point it the way you said it was being -- you --
28 you have it --

29

30 THE COURT CLERK: Sorry.

31

32 MR. BURGE: (INDISCERNIBLE).

33

34 Q MR. BURGE: So straight up is 90 degrees. You seem to
35 be holding that about 80, 85 degrees; would you agree?

36 A I guess, yeah.

37

38 Q Close to straight up?

39 A Yeah.

40

41 Q And was it resting on the window or was it just pointing?

1 A This part is about halfway up the window.
2
3 Q You say --
4 A Like, in the hole.
5
6 Q Okay. And how did you push that aside?
7 A (NO AUDIBLE RESPONSE)
8
9 Q Okay. You just demonstrated with your left hand --
10 A Yes.
11
12 Q -- that you pushed it aside? And I -- I take it it didn't meet much resistance?
13 A There was some, but I don't know how much.
14
15 Q Well, what -- maybe you can describe that.
16 A I don't know.
17
18 Q Are you suggesting somebody was holding --
19 A What to compare it with --
20
21 Q -- on to this?
22 A Yes.
23
24 Q Okay.
25 A You know --
26
27 Q With -- could you see with one or both hands?
28 A No, I couldn't.
29
30 Q One hand?
31 A I don't know.
32
33 Q So when you -- but you -- was somebody holding on to this?
34 A It felt like it.
35
36 Q Okay. Because it looked like you were able to -- to knock that aside pretty
37 easily, the way you just gestured?
38 A Yeah. Yeah.
39
40 Q Okay. What happened after you knocked it aside?
41 A Then I reached in with my left hand and turned the key off.

1

2 Q Okay. And in the left -- in your left hand, you had the magazine?

3 A Right.

4

5 Q Was the key on the -- the steering column?

6 A Yes.

7

8 Q Did you meet any -- what was the person in the car doing, the person in the
9 driver's seat?

10 A Mm. He was moving around quite a bit.

11

12 Q Okay. Let's hear some details. What was the person doing?

13 A I don't know. I wasn't watching him. I was trying to --

14

15 Q Well, you just told us --

16 A -- get the key.

17

18 Q -- he was moving around quite a bit?

19 A Well, I could feel him moving.

20

21 Q Okay. How could -- how could you feel him moving?

22 A With the other hand.

23

24 Q Pardon me?

25 A On this -- with both hands. He would push on this one and --

26

27 Q Okay.

28 A -- it was only two -- a couple seconds.

29

30 Q He was pushing -- he was pushing what?

31 A Me.

32

33 Q Okay. That's -- I didn't -- hadn't heard that before. Tell us how he was pushing
34 you.

35 A I'm not sure. Just pushing on my arm or both hands or arms. I don't know.

36

37 Q On your both hands or -- you -- you said pushing on my arm --

38 A Ah.

39

40 Q -- or both hands. I don't -- I don't fully -- I don't know what you meant by that.

41 A I just remember I could feel him there. I don't know how or where he was

- 1 pushing on me.
2
3 Q Was he pushing on -- at your right arm, your right hand?
4 A I don't know.
5
6 Q Okay. Was he looking at you?
7 A No, I didn't --
8
9 Q Pardon me?
10 A No.
11
12 Q Where he was looking?
13 A I don't know. I didn't see his face.
14
15 Q But you're -- you're telling us that he's somehow resisting you?
16 A M-hm. I think that it was between his legs.
17
18 Q Okay.
19 A So ...
20
21 Q Were you trying to scare him?
22 A No.
23
24 Q Did you tell Sheldon you were trying to scare him?
25 A No. Well, I was trying to scare them all out of the yard.
26
27 Q Did you tell Sheldon, I don't know what happened, I was trying to scare him, it
28 just went off?
29 A Yeah, I remember that.
30
31 Q Okay. So you were trying to scare him?
32 A Not him in particular. All of them. Scare them so they would run.
33
34 Q Well, I thought these other guys had ran?
35 A Well, they had, yeah.
36
37 Q Did you bump him?
38 A I don't know.
39
40 Q Did you tell Sheldon that you bumped him?
41 A I don't remember what I said to Sheldon.

- 1
2 Q What care were you taking with this handgun to make sure it didn't discharge
3 at this person in the front seat? Were you taking any care?
4 A Well, in my mind, it was empty, so I was just holding it.
5
6 Q Do you -- do you agree that the gun would have been pointed directly at his
7 head --
8 A No.
9
10 Q -- when it -- when it -- the gun would have been lined up right at his head --
11 A No.
12
13 Q -- when it discharged?
14 A I couldn't say that.
15
16 Q How close were you to him?
17 A Well, from here to there. From here to the pitcher.
18
19 Q Close enough that he could touch you?
20 A Yeah.
21
22 Q You could -- you tell us you could grab the keys with your left hand, reaching
23 through the driver's window?
24 A Yeah. I had to reach in.
25
26 Q Well, you had -- you had to reach as far as the steering column?
27 A M-hm, and beyond. So ...
28
29 Q And you had a gun in your right hand?
30 A Yeah.
31
32 Q Why did you have your gun, this gun, inside that cabin of that vehicle?
33 A Well, I didn't even realize I did have it inside.
34
35 Q Well, it's -- it's a gun. Don't you -- don't you --
36 A When it's empty, it's just a piece of metal, you know --
37
38 Q When it's empty --
39 A -- which I thought --
40
41 Q -- it doesn't blow somebody in the head?

- 1 A That's right.
- 2
- 3 Q There was still a -- a round in that -- in the chamber; do you agree?
- 4 A After hearing all this, it wasn't completely in the chamber. But I think that --
- 5
- 6 Q There -- there was a round in the chamber, whether it was a hundred percent in
- 7 or 95 percent in, there was a round in that chamber?
- 8 A Apparently, yeah.
- 9
- 10 Q Apparently. And you're not -- and you're suggesting that the gun wasn't aimed
- 11 or was not aimed, but wasn't lined up with his head when it went off? You're
- 12 -- you're suggesting that wasn't the case?
- 13 A Yes.
- 14
- 15 Q Okay. Then what are you -- what are you suggesting, then?
- 16 A I don't know what the -- I was doing with the right hand.
- 17
- 18 Q Pardon me?
- 19 A I don't know what the right hand was doing.
- 20
- 21 Q Well, it's your right hand.
- 22 A Yeah, well, I wasn't looking at it.
- 23
- 24 Q With a gun in it?
- 25 A Right.
- 26
- 27 Q With somebody right in front of you?
- 28 A Yes.
- 29
- 30 Q Why aren't you more mindful of what you have in your right hand?
- 31 A Because I'm busy trying to turn the keys off with my left.
- 32
- 33 Q I see.
- 34 A Before he ran over some -- something else.
- 35
- 36 Q If you wanted him -- why wouldn't you have opened the door and pulled him
- 37 out of the vehicle?
- 38 A Well, if I just turned the key off, then I can, maybe.
- 39
- 40 Q Why wouldn't you have dropped the gun?
- 41 A Well, I had this far, and I'm running as hard as I can go.

1

2 Q Instead of reaching into that cabin with a -- with a gun in your hand, why
3 wouldn't you have let it go before you reached in there?

4 A I guess I could have threw it out on the road.

5

6 Q Yeah, you could have. You --

7 A I just wasn't thinking straight.

8

9 Q Were you trying to scare him?

10 A Him?

11

12 Q Yeah.

13 A I didn't even -- when I went by, I didn't even know anybody was in the car.

14

15 Q There were three people in that car?

16 A Yeah.

17

18 Q When did you realize there was anyone in that car?

19 A After it revved up when I was in front.

20

21 Q Were you calling Lisa or Dee -- do you call her Dee?

22 A Yeah.

23

24 Q Okay. Were you saying, Dee, where are you?

25 A I might have been. This lawn mower is running wide open, too, so it's loud.

26

27 Q I see. Did you look at the lawn mower to see if she was on it?

28 A Yeah.

29

30 Q Yeah? But wasn't -- she wasn't on it?

31 A No. I could see from here that she wasn't on the mower.

32

33 Q I see. So you thought this was a -- a bar or a piece of rebar or something that
34 was --

35 A Yeah, I didn't know what it was back then. I was just after the keys to shut the
36 engine off.

37

38 Q I see. And you're sure that clip was empty when you started to load it?

39 A Yeah, I'm pretty sure. Yeah.

40

41 Q Do you still have the clip there?

- 1 A Yeah.
- 2
- 3 Q Why don't you show us -- demonstrate to us what you would do to put in one,
4 two, three -- five, you know, separate cartridges, just -- just pretend for the
5 jury.
- 6 A Okay. One --
- 7
- 8 Q What do you do?
- 9 A -- two, three, four --
- 10
- 11 Q So you -- you're holding -- you're holding a clip in your left hand?
- 12 A Push down here and slide it back.
- 13
- 14 Q So for each time you -- now, what is that mechanism on the top of the clip that
15 you're put -- or the magazine that you're pushing down?
- 16 A That's what would put the bullet into the path of the slide coming to pick it up.
- 17
- 18 Q Is that -- is that some kind of a spring-loaded mechanism?
- 19 A Yes.
- 20
- 21 Q Okay. So for each time that you put a cartridge in, you would have to do this
22 distinct operation, like putting it down?
- 23 A Yeah. You can almost put two in at once, too.
- 24
- 25 Q Does that you mean you can't put two in at once?
- 26 A I've never really tried. I --
- 27
- 28 Q Yeah. Well, you said you could almost put two in at once. I --
- 29 A Yeah. It feels like you might be able to.
- 30
- 31 Q So -- but you've never done that?
- 32 A Not on purpose, no.
- 33
- 34 Q You don't know where Sheldon had gone?
- 35 A No, I didn't. I still hadn't seen him yet.
- 36
- 37 Q And you don't know where your wife was?
- 38 A No.
- 39
- 40 Q All of a sudden you see Sheldon?
- 41 A After, yeah.

1

2 Q Okay. How long after?

3 A Oh, I don't know. It was just --

4

5 Q Like, immediately after?

6 A Mm. It seemed like after everything quiet -- just went quiet, the first person I
7 saw was Dee.

8

9 Q Okay. And where was Dee when you first saw her?

10 A Like, right on the edge of this bush here. And --

11

12 Q So you're pointing between the lawn mower and the front of the grey Escape?

13 A Yes.

14

15 Q And I've forgotten the distance you told us between those two. I think at one
16 point you gave us the distance?

17 A 10 feet or so.

18

19 Q So she is within that 10-foot range when you see her between the --

20 A Yeah.

21

22 Q -- the lawn mower and the Escape?

23 A Yeah.

24

25 Q She just appeared out of nowhere?

26 A Well, I don't know where she came from.

27

28 Q I see. Perhaps, Mr. Stanley, she wasn't anywhere near there because she had
29 been cutting on the far side of the -- of the lawn?

30 A No.

31

32 Q When did you notice Sheldon?

33 A Just short -- slightly after that.

34

35 Q Okay. How many seconds would have gone by before you noticed Sheldon?

36 A Two or three. Very quick.

37

38 Q Okay. And this would be seconds from the shot or seconds from seeing your
39 wife?

40 A Seconds.

41

1 Q I don't know. I've --
2 A Seconds from the -- after everything quieted down, yeah.
3
4 Q Okay.
5 A After the shot.
6
7 Q So there was this shot that went in that took Colten Boushie's life, right?
8 A Yeah.
9
10 Q Then you saw your wife?
11 A Yes.
12
13 Q And how much time went past before you noticed your wife?
14 A Mm. I don't know. Just seconds.
15
16 Q Okay.
17 A Like, I don't know the time. Right then was -- I don't remember.
18
19 Q You -- one second, two seconds --
20 A I don't --
21
22 Q -- five seconds?
23 A Not very long.
24
25 Q Okay. None of those times are very long, but they're all different. Do you have
26 any idea?
27 A I don't know. Two seconds.
28
29 Q Two seconds? Did you say anything to her?
30 A No.
31
32 Q After you saw your wife, how long was it before you saw your son?
33 A Just another two seconds. Maybe three, four.
34
35 Q So two seconds to notice your wife, then two seconds -- or three or four
36 seconds later, you saw your son?
37 A Yes.
38
39 Q And did you walk up to your son?
40 A No, he walked towards me.
41

- 1 Q Did you talk to your son?
2 A I think so, but I don't remember.
3
4 Q Do you know what you said to him?
5 A No. Something about I just wanted to scare' em.
6
7 Q Okay. Well --
8 A I was kind of in shock at that point.
9
10 Q I just wanted to scare him?
11 A Them.
12
13 Q So how were you going to scare the guy in the driver's seat? He's one of them.
14 How were you scaring him?
15 A Well, I was going to shut the car off.
16
17 Q Okay.
18 A Then he could continue down the road. He was free to go.
19
20 Q How were you going to scare him?
21 A I guess I would have opened the door and hollered at him to leave.
22
23 Q You didn't yell at the guys going down the road?
24 A I don't think I did.
25
26 Q No?
27 A I may have. I don't know. I wasn't myself.
28
29 Q You haven't told us about doing that?
30 A Hmm?
31
32 Q You haven't told us about doing that.
33 A No. I probably did not.
34
35 Q So why would you be yelling at Colten Boushie, then, instead of the guys who
36 are running down the road?
37 A Well, that situation didn't arise yet, so I don't know if I would have or not or
38 what I was going to do. I knew I had to shut the car off so it wouldn't move
39 anymore. And then just go.
40
41 Q Did this fellow in the driver's seat say anything to you?

1 A I don't think so. It was so noisy right there, I couldn't hardly hear anything.

2

3 Q Was -- was this car engine still revving?

4 A Yeah, about 6,000 RPM, yeah.

5

6 Q Was he doing something with the car as far as you could tell? Like,
7 manipulating the gears?

8 A I didn't really notice.

9

10 Q But he was somehow resisting you or trying to fend off your left arm with --

11 A Yeah.

12

13 Q Yeah? Without looking at you?

14 A Yeah. I don't know exactly what went on inside there.

15

16 Q Did you intentionally shoot this person?

17 A No, I didn't.

18

19 Q And right now, I -- I warned you that I would have to apologize to you for
20 skipping around, and I'm going to do a bit of that right now. After the last --
21 after the second time that you fired this -- this gun and you say you fired it
22 straight into the air --

23 A Yeah.

24

25 Q -- I take it from what you -- you're telling us, you never manipulated the gun
26 yourself to open up to -- to pull the slide back?

27 A No. I didn't.

28

29 MR. BURGE: I'll just check my notes, please, My
30 Lord.

31

32 Q Sir, you told us that when you were at the vehicle, you had the gun in your
33 right hand, you had the magazine in your left hand. You say that you were
34 reaching or reached with your left hand to turn the keys.

35 A Yes.

36

37 Q You told us you don't know what your right hand was doing?

38 A I never looked that way, no.

39

40 Q Okay. It's -- does that mean you don't know if you pulled the trigger with your
41 right hand?

- 1 A I didn't pull the trigger.
2
- 3 Q You're sure of that?
4 A Yeah.
5
- 6 Q Where -- where was your -- where was your trigger finger?
7 A Like this.
8
- 9 Q Just on -- you -- you have all five fingers gripping the -- on the grip of the gun?
10 A Yes.
11
- 12 Q And you're sure that's what you were doing?
13 A That's how I had it, yes.
14
- 15 Q Okay. You just told us you don't know what your right hand was doing?
16 A Well, I don't know what it was doing in the car, no. I know what it was doing
17 holding on.
18
- 19 Q How -- how do you hold that gun when you're -- when you're using it?
20 A Well, I would go like this first.
21
- 22 Q Okay. You've got your right index finger down the left side of the barrel; is
23 that right?
24 A Yeah.
25
- 26 Q Okay.
27 A Until I had it ready to go.
28
- 29 Q Yeah?
30 A And then I would put it in (INDISCERNIBLE).
31
- 32 Q Pardon me?
33 A And then I would put in the trigger hole.
34
- 35 Q Okay.
36 A Once I'm ready to go.
37
- 38 Q Now, let me turn your hand up and still point it there so we can see. So now
39 you have three fingers on the grip, and your thumb on the grip. Okay. And
40 right now, you have your index finger on the outside of the trigger guard?
41 A Yeah.

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41

Q So that -- is that how you'd normally hold the gun if you're not -- if you're not using it, not planning to pull the trigger?

A Right.

Q Okay. So a couple seconds ago, you had all four fingers on the grip. Is that -- are they -- are they --

A I have to move my thumb to hit the eject button anyway, so I always do it -- it just goes down there naturally. And then the magazine comes out.

Q Oh, to eject the magazine?

A Yeah.

Q Okay.

MR. BURGE: If I could just have one moment, My Lord?

THE COURT: Certainly.

Q MR. BURGE: In your experience, Mr. Stanley, how does the firearm get into that position with the slide all the way back in -- in the circumstance that you're describing to us?

A Well, you can pull it back there manually.

Q Okay. You told us you didn't do that?

A No, I didn't do that.

Q Okay.

A Or after it fires its last shell, this will catch it inside. And it just locks there. It's right here.

Q After it fires the last shell, it will lock in that position?

A Yeah. It's supposed to, yeah.

Q Okay. And that's been your experience all the time?

A Yes.

Q It'll lock with the slide open? There's a disconnect. That means the trigger won't pull?

A Correct.

1

2 Q But if it's in that back position, whatever was in the chamber should have been
3 ejected; is that fair to say?

4 A It's supposed to go out, yes.

5

6 Q Well, has it been your experience that it always goes out?

7 A Normally, yeah. I've --

8

9 Q Well, not normally. Is it your experience that it always ejects?

10 A Yes.

11

12 Q So how could there be a round still in the chamber if -- if the slide has come
13 back and the ejector should have pushed it out?

14 A I don't know.

15

16 MR. BURGE: Those are my questions, My Lord.

17

18 THE COURT: Okay. Any re-examination?

19

20 MR. SPENCER: No, My Lord.

21

22 THE COURT: Mr. Stanley, thank you very much. You
23 can go back to where you were sitting before. Thank you, sir.

24

25 (WITNESS STANDS DOWN)

26

27 THE COURT: Mr. Spencer.

28

29 MR. SPENCER: I've got at least one, maybe -- maybe
30 two witnesses in mind. My belief is I likely won't call either of them, but I'd like
31 to discuss that with my colleague and sleep on that, with the time. My thinking is
32 that evidence is pretty well done. We will be able to -- there's -- there's a couple of
33 things we need to clean up together, but I think that's -- that's it. So my thinking --
34 I want to decide on -- on whether I call one more witness or not, so ...

35

36 THE COURT: Okay. The -- the point there, I guess, is
37 that if your case is done, subject to what you might be doing, then we are going to
38 ask the jury to come back tomorrow, and then it could be that there's no evidence
39 for them to hear, in which case we're going to have to deal with some legal
40 matters before I -- you provide your closing addresses and the charge. So I am
41 thinking that they might end up coming here today, and then we would just say,

1 well, the evidence is all in, you can go home again for a day or two. Is that where
2 we're at?

3

4 MR. SPENCER: That's where we're at. But perhaps if I
5 could just speak with -- have two minutes with my colleague?

6

7 THE COURT: Okay. Maybe if we do take a few
8 minutes here, we -- we could perhaps save you from coming back tomorrow, if
9 you're not -- if it's not necessary. So I realize it's 5:33 more or less, but perhaps a
10 few minutes spent now might save us some time tomorrow. So I am going to ask
11 your indulgence. If you could just go wait for a few more minutes, and we'll see
12 where we're at.

13

14 (JURY RETIRES)

15

16 Okay. About five minutes, Mr. Spencer?

17

18 MR. SPENCER: That's all we'll need. Thank you, My
19 Lord.

20

21 (ADJOURNMENT)

22

23 THE COURT: Mr. Spencer, are you able to declare your
24 intention? I don't want to rush you, but I don't want to inconvenience the jurors if
25 we don't need to.

26

27 MR. SPENCER: And -- and I respect that, My Lord. And
28 we have one agreed facts to submit in the presence of the jury and mark as an
29 exhibit, and it is agreed. And with that, again, it's -- it's a tough time to make a
30 decision, but I am closing my case.

31

32 THE COURT: Okay. And then would the Crown be
33 calling any rebuttal?

34

35 MR. BURGE: No.

36

37 THE COURT: So that would be the evidence. I am
38 going to suggest that if -- if that's the case, then that we let the jury go until
39 Thursday at 10 o'clock. Thursday at 10 o'clock, you would come back. You would
40 provide your closing statements, and I would charge them later on in the
41 afternoon. Tomorrow morning I would suggest that we meet here at 9 o'clock, the

1 lawyers, in the absence of the jury, and we sort out the legal issues as to possible
2 verdicts and that type of thing. Does that work for -- for you?

3

4 MR. BURGE: Yes.

5

6 MR. SPENCER: Yes, My Lord.

7

8 THE COURT: Okay. Thank you. So let's -- I see the
9 sheriff is not here. I wonder if you could --

10

11 THE COURT CLERK: She's in with the jury.
12 (INDISCERNIBLE)?

13

14 THE COURT: Yes, if you would.

15

16 (JURY ENTERS)

17

18 THE COURT: Okay. Thank you, ladies and gentlemen
19 of the jury, for your patience. We're going to take maybe five or ten minutes of
20 your time, and then we're -- we're done. So, Mr. Spencer.

21

22 MR. SPENCER: Thank you, My Lord. I have an agreed
23 facts to file, just to clean up a couple of things. We've handwritten it, Mr. Burge
24 and I, just to get it done today for the convenience. It reads:

25

26 Glennis Fouhy called 911 at 5:22 PM on August 9th.
27 Sheldon Stanley called 911 at 5:27 PM on August 9th,
28 2016.

29

30 So just to establish those facts. So I'd ask that that be marked, I guess -- just -- it's
31 just an agreed facts. I don't know if there's -- if it has an exhibit number.

32

33 THE COURT: Well, it would be -- it can be a D exhibit.

34

35 MR. SPENCER: Sure.

36

37 THE COURT: So the next -- D-21, is it, Madam Clerk?

38

39 THE COURT CLERK: Yes.

40

41 **EXHIBIT D-21- Agreed Statement of Fact**

1

2 THE COURT: So again, as I talked to you about facts,
3 the -- the lawyers are able to agree to facts so that way we don't have to call the
4 911 operators and that type of thing, so you would accept that as -- as a fact
5 because it's agreed to by Crown and defence.

6

7 With that, Mr. Spencer?

8

9 MR. SPENCER: And with that, the defence closes its
10 case, My Lord.

11

12 THE COURT: Okay. Mr. Burge, are you calling any
13 rebuttal evidence?

14

15 MR. BURGE: No, thank you.

16

17 THE COURT: Okay. Ladies and gentlemen of the jury,
18 that means that all the evidence is in. And what needs to happen now is there is, I
19 guess, four components left. Firstly, the defence counsel will provide his closing
20 address to you. Then Crown counsel will provide his closing address to you. And
21 then I will provide my charge to you where I tell you the -- the rules and the law.
22 And then you start your deliberations.

23

24 What we have decided, I guess, more me than -- than counsel, is I am going to
25 suggest that we come back at -- that you come back at 10 o'clock on Thursday.
26 The reason for that is is that tomorrow, the lawyers and I are going to meet, and
27 we're going to talk about the law and how I should draft my charge. I want to get
28 their input to be totally fair to everybody rather than just telling you what the -- the
29 law is. I want to hear from them first, and then I will draft a charge. And that
30 sometimes takes a little bit of -- of time to do that. And I might have been able to
31 get it done later tomorrow, but I don't know how much time we're going to take.
32 And so the safest thing to do is to adjourn until Thursday. So you would be done
33 until Thursday at 10 o'clock AM. You would come back at that time, and as I say,
34 the lawyers would address you in the morning. I'd probably provide my charge
35 sometime in the afternoon. And then at that point, I turn it over to you, and you
36 would be sequestered from that point until you -- your deliberations are concluded.

37

38 So with that, I will say that you can go. I will say, as well, that -- just so you're
39 clear -- I consider that you are on jury duty tomorrow and Wednesday, as well,
40 because you really can't do anything else. So you're still on jury duty. So if you're
41 getting paid for your jury duty, I am ordering that you be paid for Tuesday and

1 Wednesday, as well, just so that there's no doubt about that.

2

3 And so with that, I -- I will just remind you again that it's crucially important for
4 you to not look at any media reports or any Internet or any of that type of thing
5 that we've talked about before. And you should not discuss this with anybody
6 outside of your fellow jurors in the jury room. So if you are -- go back home,
7 sometimes spouses and friends and they want to know the -- the real details, and I
8 think what you have to tell them is that you've been told by the judge that you
9 cannot discuss that. Okay. So you're all nodding your head "yes," so thank you
10 very much for that. And we will see you Thursday at 10 o'clock. So thank you
11 very much for your time.

12

13 (JURY RETIRES)

14

15 **Discussion**

16

17 THE COURT: So as far as us, the four lawyers and me
18 and Mr. Stanley, I am going to suggest we start tomorrow at 9 AM. Might as well
19 get a good start on it. I don't know how long this is going to take. There are some
20 legal issues, some nuanced matters about how the law should be framed in this
21 matter, how it should be sequenced for the jury so that they can best understand
22 what's going on. I have given this a fair bit of thought already, but, of course, I
23 welcome your input. I presume that you have researched some of the leading cases
24 in the area and are prepared to discuss those leading cases. I have done my own
25 research, and I have got an idea as to what I consider to be the -- the leading cases
26 in the area. We'll have to talk about airs of reality and things of that nature. And
27 any other matters that we can utilize to try to make the -- the charge as legally
28 correct and as balanced as it ought to be. Any comments on that before we rise to
29 tomorrow at 9 o'clock?

30

31 MR. BURGE: No, thank you.

32

33 THE COURT: Mr. Spencer?

34

35 MR. SPENCER: It -- My Lord, there may be -- may be
36 value in -- if you have particular cases that you feel are relevant, it may be wise for
37 us to have a look at those this evening, and then expedite the discussion tomorrow.
38 But --

39

40 THE COURT: Well, I have thought about that, but I
41 guess I want to be careful that I don't influence the defence or the Crown by

1 suggesting to you that this is what I think is important. This is your case, and I am
2 trying to do what the lawyers think is their theories and their --

3

4 MR. SPENCER: Sure.

5

6 THE COURT: -- and I don't want to -- to prejudice that
7 by providing you a case in an area that you never even thought was -- was relevant
8 or appropriate.

9

10 MR. SPENCER: Yeah.

11

12 THE COURT: So you've been living and breathing this
13 case for a while, both of you -- and by both, I mean both sides -- and I -- I think I'd
14 prefer not to do that, not because --

15

16 MR. SPENCER: Okay.

17

18 THE COURT: -- I don't want to assist, but because I
19 don't want to improperly influence --

20

21 MR. SPENCER: Yeah.

22

23 THE COURT: -- one side or the other in suggesting that
24 you should be or should not be going in a certain direction.

25

26 MR. SPENCER: Fair enough, My Lord. I was just
27 thinking to expedite our discussion, but that makes all the sense. So thank you.

28

29 THE COURT: Okay. So we will then be adjourned to 9
30 o'clock tomorrow morning. And likely we would not -- the courtroom would be
31 dark on Wednesday. We will see what happens tomorrow. And -- and then you
32 would be ready to provide your opening addresses Thursday, followed by my
33 charge Thursday. Thank you.

34

35

36

37 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, FEBRUARY 6, 2018

38

39

40

41

1	February 6, 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: Just set it there. Thank you. Good
16 morning.

17

18 MR. BURGE: Good morning, My Lord.

19

20 MR. GILLANDERS: Good morning, My Lord.

21

22 MR. SPENCER: Good morning, My Lord.

23

24 THE COURT: Okay. So the evidence is in, and it's now
25 time to figure out what we say to the jury and how I say it to the jury and how the
26 -- the charge is framed and where we -- where we put things together. So I've
27 been, as I mentioned yesterday, I've been doing a fair bit of thinking about the
28 fairest way to put this together. And that's the discussion I'd like to have with
29 counsel today.

30

31 So before we go further -- and, Mr. Spencer, you at the outset in the preliminary
32 matters had made a motion, a *Charter* motion, dealing with the vehicle not being
33 secured properly and that type of thing.

34

35 MR. SPENCER: Correct, My Lord. And I -- I think for the
36 most part, we filed a brief that laid out the law, the facts surrounding that, I think,
37 have been flushed out to a certain degree. So I think that is essentially before you.
38 I don't know if you want that argued right away. There's not much argument on it.
39 I think it's -- you know, you've got the *Charter* obligations to disclose which
40 requires that they maintain the evidence, but I don't know when you want to hear
41 that.

1

2 THE COURT: Well, let's -- let's hear it now. I can tell
3 you right off the top, though, that the -- the fact that the -- the RCMP secured the
4 scene. They put tarps over the deceased and the gun. They didn't want to touch the
5 vehicle because that's -- they're damned if they do and damned if they're -- they
6 don't. Then they towed it. They looked at everything. They photographed it. They
7 did a lot of things. And at the end of the day, how are -- how are we any worse off
8 as a result of what they may have alleged to have done?

9

10 MR. SPENCER: Okay, My Lord. And I appreciate it. So
11 what have we lost? What's the lost evidence? Didn't look for any GSR spots that
12 would have allowed us to determine trajectory. You certainly know now we have
13 -- we don't have an aimed intentional shooting. We have an extremely -- extreme
14 irregularity, so now we want to know. Is there -- was there a ricochet in that
15 vehicle? We don't know. I don't know. I can't know. And to the extent that they
16 looked at it, there was no fine photographing of anything. So I would like to have
17 had an opportunity to have an expert look at that to see if he could find a GSR
18 mark that would show us a point. Did it hit the headrest? Where --

19

20 THE COURT: Did -- did they -- was there gunshot
21 residue on Mr. Boushie?

22

23 MR. SPENCER: That's the interesting part. Not as much
24 as might have been expected. So there's an irregularity there. So you're saying,
25 yes, if it's -- if it's not on him, is it somewhere else? And those are the types of
26 things that I think I should have had an opportunity to investigate. Standing here,
27 can I say I've lost evidence? I can't because I don't know. I'm never going to
28 know. Similarly with the blood spatter. That would have allowed us to get a
29 trajectory, and we have part of the --

30

31 THE COURT: Well, the blood spatter person said that
32 she couldn't really get a trajectory, given that it's in a vehicle. And her testimony,
33 as I recall it, was that it wouldn't have made any difference if she was there.

34

35 MR. SPENCER: Oh, no.

36

37 THE COURT: Granted, it would have been good to be
38 there, but if I was there, I likely wouldn't have found anything else.

39

40 Madam Clerk, I seem to have forgotten all my pens on my desk. So if you could
41 perhaps give me one, and then you could maybe scoot up there and get the pens?

- 1
2 THE COURT CLERK: Would you prefer this pen, My Lord?
3
4 THE COURT: Yes, perfect. Yes, that's the kind I use.
5 Thank you.
6
7 MR. SPENCER: So, My Lord, so I'm saying, never
8 looked for GSR at all. That would have helped us on -- on the one point. The
9 second point would be -- and I -- and I know the blood spatter person said it
10 wouldn't have helped me, but we have a portion of the trajectory. And so if we'd
11 have had the GSR to see if there was some other impact point, we would be able to
12 -- I might have a ricochet defence. I don't know. And I don't like arguing defences
13 that I don't have anything for. But without seeing that vehicle, I don't have that.
14 The blood spatter analysis said exactly that is it wouldn't have helped. But we both
15 know, if we've got the trajectory here -- and I asked that question to say, and if
16 there's evidence that there was an impact point over here, then we know, where is
17 that? Where's the bullet? Like, those are all the things which would certainly help
18 us now that, after the fact -- and I appreciate that the -- that the police at the time
19 thought they had it figured out, although remarkably, the -- the witness that made
20 the decision that he was done and who gave the information to the blood spatter
21 person said they didn't know which way the bullet went. It seems bizarre. So that's
22 what I'm saying.
23
24 THE COURT: Well, we know the -- the pathologist's
25 report clarifies that quite clearly, right?
26
27 MR. SPENCER: Oh, no. We -- we know which way it's
28 going now, but the person making the decision to release the vehicle before we
29 have an opportunity had no idea what -- what the potential evidentiary value of the
30 vehicle was.
31
32 THE COURT: Did you request to have the vehicle?
33
34 MR. SPENCER: And I -- we were working on agreed
35 facts. I think my friend for the purpose of argument can -- I asked to see the site
36 before it was released. So I wanted to go out there.
37
38 THE COURT: So you wanted to see what site?
39
40 MR. SPENCER: The -- the crime scene.
41

1 THE COURT: The farmyard?
2
3 MR. SPENCER: With -- with the vehicle there, the tracks,
4 everything.
5
6 THE COURT: Thank you.
7
8 MR. SPENCER: I requested that. I think my friend will
9 concede that.
10
11 THE COURT: So you wanted to see the site before the
12 police took the crime tape down and let the Stanleys back in?
13
14 MR. SPENCER: I was -- I was hoping I could see it with
15 them. I had 12 years with federal justice, worked with the RCMP all the time. I
16 considered myself trustworthy. But I appreciate to say you don't want a defence
17 lawyer tromping through until you're done, but that's exactly what I wanted to do,
18 let me see --
19
20 THE COURT: So you did that?
21
22 MR. SPENCER: I did that. And I will be careful because I
23 -- I did not say I wanted to see the vehicle. I said I want to see the site as is, and
24 that was before I -- I think -- well, they weren't finished, certainly.
25
26 THE COURT: So was the grey Escape still there?
27
28 MR. SPENCER: It had to be, yes. Yeah. The yard was still
29 cordoned off. And then I requested access to it, but to be candid, before I got that
30 far -- disclosure comes on a disk. Before I got that far, Mr. Murphy is -- is in the
31 paper saying it's gone, that it's at a towing yard. So, you know, at that point I
32 requested to get it from SGI. SGI says no, we can't give it to you, it's part of a
33 claim. I asked my friend to have the RCMP re-seize it, and they refused.
34
35 THE COURT: Could you not have got a court order?
36
37 MR. SPENCER: I could potentially have come here and
38 asked for an order, I guess, against SGI. I did not do that.
39
40 THE COURT: Because you -- you came to the Court
41 and you asked for the guns to be released and the ammo to be released, did you

1 not?

2

3 MR. SPENCER: Yeah, yeah, because the police had
4 maintained the integrity of those weapons --

5

6 THE COURT: Right.

7

8 MR. SPENCER: -- or those exhibits. So, you know,
9 certainly my response to that is in a criminal justice system that requires continuity
10 of exhibits -- and I haven't made any issue of continuity of anything because the
11 facts are the facts, but when that's the rule and when the Crown has an obligation
12 -- and this is the Crown's obligation, to give the defence access to what they had
13 access to, and I appreciate there's some things which you can photograph, and
14 that's fine. The phone I've backed off on because I'm saying, no, that -- I didn't
15 lose any real defences out of that. But on this, they have an obligation to give the
16 defence an opportunity to see that. And I don't think their answer can be "you can
17 chase it down." You can chase -- you've got to --

18

19 THE COURT: Although I think what the Crown's
20 position is -- and Mr. Burge can correct me if I'm wrong -- is they have a duty to
21 investigate. They investigated. They looked at things as much as they could. And
22 then when they get to a certain point that the -- everything has been tested as much
23 as they think it should be tested, and it has been photographed as much as it needs
24 to be photographed, they release the exhibit. That happens all the time. It's -- it's
25 fairly routine.

26

27 MR. SPENCER: Well, My Lord, I have to --

28

29 THE COURT: Like, I have never seen vehicles kept for
30 -- into perpetuity.

31

32 MR. SPENCER: Well, and -- and, of course, you -- you
33 could -- if -- if we'd had access to it, we could have determined what, if any,
34 evidence was required for a trial. Trial evidence would be kept, I think 75 years is
35 the Court's rule. But that's -- that's the point is -- is that our -- our test on fairness
36 is that the RCMP do what they think is adequate? In this case, not really
37 understanding. This is -- they released it within a week, My Lord.

38

39 THE COURT: Well, what is it that you're -- you didn't
40 get? Is it gunpowder residue?

41

- 1 MR. SPENCER: And -- and blood spatter evidence, all of
2 which would have allowed me to get the trajectory and potentially, potentially, a
3 good ricochet, evidence of a ricochet. And I'm not being frivolous here. So when
4 they say he's in the driver's seat, well, that's --
5
- 6 THE COURT: So what is it that you would like me to
7 tell the jury? Because this isn't anywhere close to a stay situation.
8
- 9 MR. SPENCER: Yeah. Well -- and, My Lord, you know,
10 I'm --
11
- 12 THE COURT: So that if --
13
- 14 MR. SPENCER: -- I'm going to ask you to make that
15 decision, but then --
16
- 17 THE COURT: Okay. Well, the decision is made. The --
18 that --
19
- 20 MR. SPENCER: Okay. Then when we turn -- when we
21 turn to the charge to the jury, I think the essence of it, essentially, is if there are
22 conflicts in the evidence or gaps in the evidence that would have potentially been
23 filled by evidence that was lost by reason of the premature release of the SUV, that
24 the benefit must go to the accused. The benefit of the doubt must go to the
25 accused. And I think Beryl (phonetic) has some wording to that effect, so ...
26
- 27 THE COURT: Well, that's quite a bit of a different
28 situation, I think. There, it was critical. Here, I'm not so -- so sure. Like, if they
29 searched the car completely and found that there was no ricochet, what does that
30 do?
31
- 32 MR. SPENCER: Well, what if we searched it and found
33 there was? Then we're three --
34
- 35 THE COURT: Well, then we're in speculation.
36
- 37 MR. SPENCER: We're -- but we're -- we're speculating
38 because the police didn't maintain critical evidence, didn't disclose it, didn't give
39 us that opportunity.
40
- 41 THE COURT: So the defence claims that the grey

- 1 Escape should have what? What should they have done?
2
- 3 MR. SPENCER: Sorry. I was -- sorry, I was distracted by
4 my colleague.
5
- 6 THE COURT: If you want to -- talk to him if you want,
7 and then get back to me. Seriously. I am not being facetious.
8
- 9 MR. SPENCER: Sorry, My Lord. If -- if you could put
10 your --
11
- 12 THE COURT: Okay. The defence claims that the grey
13 Escape should have what?
14
- 15 MR. SPENCER: Should have been maintained for the
16 purposes of disclosure.
17
- 18 THE COURT: Maintained by whom?
19
- 20 MR. SPENCER: By the Crown, the RCMP, the police arm
21 of the Crown.
22
- 23 THE COURT: By the RCMP. By the RCMP?
24
- 25 MR. SPENCER: Or in -- in some secure -- maintaining --
26
- 27 THE COURT: Okay.
28
- 29 MR. SPENCER: -- the integrity of that evidence until such
30 of time as the defence was offered -- and that's what we see in lots of these cases
31 or we see in cases, My Lord, is -- and -- and I don't -- I have to say, I can't believe
32 that they wouldn't say, We're done, do you want it?
33
- 34 THE COURT: Okay. The defence claims that the grey
35 Escape should have been maintained by the RCMP until the defence was offered
36 the opportunity to examine it?
37
- 38 MR. SPENCER: And exercise that option if they elected
39 to do so, and if -- if not -- and there's all kinds of room in between where you may
40 have -- we may have sent somebody in to do full photo because we don't even
41 have any pictures of the roof. We don't have any pictures of the passenger's side,

1 not anything close-up at all. I would at least have liked to have had an expert look
2 for fingerprints on the steering column. I would have at least liked to have had
3 someone put it in drive to determine whether it would go.
4

5 THE COURT: Okay. How about something like this:
6 The defence claims -- and I will hear from you, Mr. Burge, of course, I am just
7 playing with words at this point -- the defence claims that the grey Escape should
8 have been maintained by the RCMP until the defence was offered the opportunity
9 to examine it. This did not happen, and the vehicle was released before the defence
10 had that opportunity. Is that fair?

11
12 MR. SPENCER: I think that's fair.

13
14 THE COURT: Anything else?

15
16 MR. GILLANDERS: No, I think that's fair, My Lord.

17
18 THE COURT: All right. So if I was to insert something
19 like that into the -- the charge, that would be fair from your perspective?
20

21 MR. SPENCER: I -- I think that's -- yeah, that would be
22 fair with -- with argument, and as far as the statement, that's --
23

24 THE COURT: And then you can make whatever you
25 want out of.
26

27 MR. SPENCER: Yeah. Yeah, exactly.

28
29 THE COURT: Mr. Burge.

30
31 MR. BURGE: Just making some notes, My Lord.

32
33 THE COURT: Do you want me to repeat what I --
34

35 MR. BURGE: No, I'm just getting down the last word
36 here.
37

38 THE COURT: Okay.
39

40 Submissions by Mr. Burge (Premature Release of Evidence)
41

1 MR. BURGE: Thank you. Well, this -- this application
2 was delayed so that we would have the benefit of the evidence at the trial. And
3 what we've seen, and it came from Corporal Heroux -- is he did, I would submit,
4 as thorough an inspection as one would have expected in this kind of a case. He is
5 alive to the issue of ricochet, knows what ricochet marks look like, didn't see any.
6 Could it be put into drive and -- well, I guess that's --

7
8 THE COURT: I don't know that that matters.

9
10 MR. BURGE: -- likely not a typical -- yeah. Yeah. So
11 my point is, My Lord, we're now in the position of knowing what they did, and it
12 was a very thorough examination. It wasn't like those driving cases where -- where
13 maybe there was a very cursory examination. Here, not -- they didn't -- it seemed
14 to me they were even collecting sunflower seeds off the floor. I couldn't tell what
15 some of that stuff was, but it looked like it to me. I mean, they -- they went
16 through every quadrant of -- of floors and separated everything and described what
17 it is. It's -- it's hard to think that things were missed, especially by people who are
18 looking for obvious signs, and I would think that a ricochet mark would be an
19 obvious sign, if it's -- and -- and to get back to the beginning, my friend talked
20 about his request to see this, and we have it in -- I -- I've seen it in police notes,
21 and I think it was on the 11th. I'm not sure what date it was. It was on --

22
23 MR. SPENCER: It was August 11th.

24
25 MR. BURGE: And I also think it was sometime around
26 10 o'clock in the morning, as I -- from looking at the sergeant's notes that I saw.
27 That was the day, just -- just so you know -- there was a Search Warrant
28 authorized, and -- and the police were given access to this property starting at 6
29 AM on the 11th, and I forget if it went to 5 PM or 9 PM, but it was -- it certainly
30 started at 6 PM. And so at 10 o'clock, my friend is asking to be allowed to go on
31 to the property to do what he wanted to do, and he was advised, it's not
32 appropriate for you to go on there at this time. We -- the police will investigate.
33 They will document. They will provide disclosure to you. And, frankly, it seems to
34 me, My Lord, that's what you would expect of a responsible investigating agency,
35 that they don't want outside sources possibly contaminating a crime scene.

36
37 THE COURT: Also, quite apart from that, it's extremely
38 unusual in Canada, in my view, for defence lawyers to go on scene because it's
39 generally not a wise thing to do, because what happens if the lawyer finds a crucial
40 piece of evidence? He is now no longer the lawyer. He's a witness.

41

1 MR. BURGE: Yes.

2

3 THE COURT: But I know certainly when I was a
4 defence lawyer, I wouldn't go anywhere near a crime scene or -- or touch any
5 exhibits whatsoever. But that was me, and I'm not saying -- people have different
6 styles, but --

7

8 MR. BURGE: Yeah.

9

10 THE COURT: -- certainly on American TV, they
11 certainly run there, but this isn't an American television show.

12

13 MR. BURGE: And I -- yeah. It's my impression that it
14 was an -- a novel request from the perspective of the police to receive this, and
15 they --

16

17 THE COURT: But listen -- listen to me again what
18 Mr. Spencer has agreed to, which is -- is reasonably modest, I would suggest. And
19 that is, the defence claims that the grey Escape should have been maintained by
20 the RCMP until the defence was offered the opportunity to examine it. This did not
21 happen, and the vehicle was released before the defence had that opportunity.

22

23 MR. BURGE: Okay. There's more that -- I guess to
24 describe exactly what happened. The -- it was released, but it's in a secure
25 location, and the defence has always had the opportunity to seek the authorization
26 from the Court to do their inspection. That's --

27

28 THE COURT: So what you would like added is another
29 sentence to this, saying that after it was released, the defence would have had an
30 opportunity to retrieve it from the -- I -- I think that this -- this whole thing, I don't
31 believe, but who knows what the jury thinks, is not really pivotal about a lot of
32 things. But I'm -- I want to do what is fair. And to add too much to it starts to
33 highlight it more than perhaps what -- what it already does. So, Mr. Burge, are you
34 suggesting that we add something to this? The defence had the opportunity to
35 access the vehicle after it was released from the RCMP but didn't do so?

36

37 MR. BURGE: That fairly reflects what happened.

38

39 THE COURT: Okay. And then do I go further and say,
40 Mr. Spencer says that he didn't do that because at that time, continuity had been
41 broken. But a ricochet is a ricochet, and --

- 1
2 MR. BURGE: Yes.
3
- 4 THE COURT: So, Mr. Spencer, if I added another -- I
5 am just going to pen something in here, and then --
6
- 7 MR. SPENCER: Well, my -- yeah.
8
- 9 THE COURT: And then see where we're at. The vehicle
10 was released and placed in a compound; is that fair to say?
11
- 12 MR. BURGE: It's in an SGI compound.
13
- 14 THE COURT: Okay. How about if I add a sentence that
15 said, after the vehicle was released by the RCMP and placed in the SGI -- and
16 placed in an SGI compound, the defence did not seek to examine the vehicle. Is
17 that fair?
18
- 19 MR. SPENCER: Well, I think once we -- you're right. As
20 we start cutting off pieces, I wanted express instruction that the Crown's failure to
21 maintain it should give -- ensure that the accused gets the benefit of any doubt
22 caused by that failure.
23
- 24 THE COURT: Well, the accused gets the benefit of that
25 doubt anyway.
26
- 27 MR. SPENCER: As soon as you start going there, then I
28 think you have to make the other statement, which is that the Crown is obliged to
29 maintain evidence, is obliged constitutionally to disclose that evidence, and that's
30 been breached. And I -- I don't want to -- I appreciate where you're headed, My
31 Lord. I want to be cooperative, but I find it almost unbelievable that the Crown
32 says, yeah, well, you can go get it. It's -- it's in a salvage yard. It's been sitting out
33 there. It wasn't tarped for a while. That's what we did. We went back and tarped it.
34 That's -- in the world we live in with continuity of evidence, that's -- it's
35 unbelievable. And again, within seven days. So I think your initial wording was a
36 fair compromise. I didn't -- it wasn't a win. It wasn't a loss. I didn't -- it wasn't
37 what I wanted, but it was adequate. But I think as soon as now, you start saying,
38 well, the defence could have -- then you're missing the point that the Crown has
39 constitutional obligations that they have breached. And I think the onus should be
40 on the Crown to explain those, and there's been no effort to explain that at all.
41 Nothing.

1

2 THE COURT: Mr. Burge.

3

4 MR. BURGE: Well, I -- I guess I was looking at this,
5 My Lord, and I -- of course, it's -- it's -- you're the one who gets to rule. You
6 could do this, if you found there was a constitutional breach and -- and imposed a
7 remedy, or you could likely do something like this as a trial judge trying -- trying
8 to do what's right. And there's likely a couple of avenues.

9

10 THE COURT: Well, I think that if the -- the wording
11 that I had initially, I think, strikes a fairly reasonable balance, and that is this: The
12 defence claims that the grey Escape should have been maintained by the RCMP
13 until the defence was offered the opportunity to examine it. This did not happen,
14 and the vehicle was released before the defence had that opportunity. That gives
15 you both the opportunity to make whatever arguments you wish, and it really
16 doesn't talk about constitutional remedies. It doesn't say that the police did wrong.
17 It doesn't say that the police did right. It gives you the opportunity to say whatever
18 you want. Mr. Burge, you can say that of course they released it, there was nothing
19 further to be done. Mr. Spencer can say the exact opposite.

20

21 MR. BURGE: I'm fine with that, My Lord.

22

23 THE COURT: Okay. Okay. So that's out of the road. So
24 let's move on to the charge itself. And here, what I am most interested in is I
25 appreciate that there's different views that people can take on the facts of this case.
26 And fortunately, I feel fortunately, I'm not the one that has to sort through the
27 facts and determine what facts should be accepted and which aren't. But what I do
28 need to do is go through the elements of the offence from a judge's perspective, so
29 that I get it right. And in my view -- and again, this is a -- a pre-charge conference,
30 so these matters are often done with nobody in the gallery, nobody watching, it's
31 just the lawyers. They're always public, but a lot of people don't have any interest
32 in it. So the way these things work, for those of you that don't know, it's a
33 dialogue between the lawyers and the judge where everyone is trying to help the
34 judge get the law right so that the -- the jury is asked to decide the correct
35 questions. And then once -- within each question that the jury needs to decide, they
36 will have to determine what those facts are.

37

38 So in my view, there are three elements of the offence of second degree murder.
39 The first element is did Gerald Stanley cause the death of Colten Boushie? The
40 second element is did Gerald Stanley cause the death of Colten Boushie
41 unlawfully? And the third element is did Gerald Stanley have the state of mind

1 required for murder?

2

3 So from your point of view, Mr. Burge, do you believe that those are the -- the
4 elements of the offence?

5

6 MR. BURGE: Yes.

7

8 THE COURT: Again, identity and date and time and
9 place are not in issue, so I'm not going to put them as -- as elements here.

10

11 MR. BURGE: No, I would agree.

12

13 THE COURT: Okay. Mr. Spencer, do you agree?

14

15 MR. SPENCER: I -- I would have anticipated a specific
16 intent factor to it, but ...

17

18 THE COURT: Well, did Gerald Stanley have the state
19 of mind required for murder? That's the intent portion.

20

21 MR. SPENCER: Yeah. Yeah. No. No, I appreciate that,
22 but, you know, I would think there would be a, you know, did he intend to -- in the
23 factual determination, did you determine that he intended to? You know, I
24 appreciate that's the -- the phrase that you feel covers that, but my belief is that
25 there should be --

26

27 THE COURT: Well --

28

29 MR. SPENCER: -- a specific intent.

30

31 THE COURT: I wish it was as easy as I say, here are
32 three questions, and leave it to them. But --

33

34 MR. SPENCER: I understand.

35

36 THE COURT: -- there's a whole bunch of nuances
37 within the questions, so I'm just trying to lay out basic framework at this point.

38

39 MR. SPENCER: Right. Yeah, understood.

40

41 THE COURT: There's lots of talk about intention and --

1 and where it falls within there.

2

3 Now, so more or less, those are the three. And I've looked at the *C.J.C.*
4 framework. I've looked at the Crimj network, and I've looked at the David Watt
5 network, and it's pretty standard that these are the -- the three elements of the
6 offence that the Crown must prove beyond a reasonable doubt. Now, having said
7 that, the first element, did Gerald Stanley cause the death of Colten Boushie? It
8 would seem to me, and you can correct me if I'm wrong, Mr. Spencer, that there's
9 -- there's really no issue on that element?

10

11 MR. SPENCER: Correct, My Lord. And certainly, you
12 appreciate my hesitation is because we have the -- the accident, that the late
13 discharge, you know, his gun went off, and that caused the death. Yes, we get that,
14 but, you know, that's where the act -- the *actus reus* and *mens rea* on this one do
15 get blurred. So -- but I -- but I --

16

17 THE COURT: Well, the -- the -- during the course of a
18 trial, lawyers heap a whole bunch of stuff in a wheelbarrow, and then they come
19 and they dump it all on the judge's desk and say, there you go. And what I need to
20 do is pick through all the material on the wheelbarrow and methodically go
21 through this to try to determine what the elements are and where -- where we go
22 from here. And according to *Rodgerson*, a decision out of 2015 out of the Supreme
23 Court of Canada, they -- the Supreme Court has indicated that what the trial judge
24 should do is try to identify those issues that aren't in issue and get them out of the
25 road and focus on the matters that are in issue.

26

27 MR. SPENCER: Yeah.

28

29 THE COURT: It would seem to me that there is no --
30 any -- no evidence from any other source that anyone but Gerald Stanley caused
31 the death of Colten Boushie. Now, whether it's lawful, whether there's defences,
32 those are -- but that's the first element.

33

34 MR. SPENCER: Yeah. And I appreciate that, and you're
35 right is that is it someone else? No, he's the only one. But again, with the accident
36 component -- but that will be dealt with, I'm sure, later, so I'm --

37

38 THE COURT: Right.

39

40 MR. SPENCER: -- I hear you, My Lord.

41

- 1 THE COURT: Okay. So you agree with that,
2 Mr. Burge?
3
- 4 MR. BURGE: Yes, My Lord.
5
- 6 THE COURT: Okay. So the next area is where it gets a
7 little trickier. So did Gerald Stanley cause the death of Colten Boushie unlawfully?
8 And from you, Mr. Burge, I'd like to know the basis upon the unlawful act,
9 whether there's one unlawful act you rely upon or more than one and how you
10 would see this shaking down.
11
- 12 MR. BURGE: Well, for murder, the unlawful act would
13 be the intentional firing, pulling of the trigger when the gun is pointed directly at
14 the head of Colten Boushie. That would be --
15
- 16 THE COURT: So that would be your primary position?
17
- 18 MR. BURGE: Yeah. Yes.
19
- 20 THE COURT: So the primary position is that
21 Mr. Stanley purposely fired his handgun at Mr. Boushie's head. Is that fair to say?
22
- 23 MR. BURGE: Yes.
24
- 25 THE COURT: So again, it would -- we don't need to
26 talk about assault or anything like that in that context?
27
- 28 MR. BURGE: Well, if we're talking murder, we might
29 have to talk about assault, I think, if we -- if we're looking at included offences,
30 because there's -- there's a variety of ways it could become manslaughter.
31
- 32 THE COURT: Okay.
33
- 34 MR. BURGE: But I -- I don't see that there's any other
35 way it could become murder, apart from the intentional --
36
- 37 THE COURT: Right. Although --
38
- 39 MR. BURGE: -- pulling of the trigger in those
40 circumstances.
41

- 1 THE COURT: To -- to frame it for a jury, the first thing
2 we normally do is we look at the unlawful act.
3
- 4 MR. BURGE: Yes.
5
- 6 THE COURT: And the unlawful act is purposely firing
7 a handgun at Mr. Boushie, and then -- then the third, just dumping -- jumping
8 down, was did he intend to cause grievous bodily harm and was his intent to
9 murder, and that's where we get into the third element.
10
- 11 MR. BURGE: Yes.
12
- 13 THE COURT: But as far as the second element, the
14 unlawful, we focus more on the *actus reus* of the act, and then we focus more on
15 the *mens rea* in the third area.
16
- 17 MR. BURGE: Well, when -- when you mention
18 unlawful, are you -- at this point, are you talking -- are you questioning -- does that
19 include any element of -- of justification? Or are we looking at that separate and at
20 a different place?
21
- 22 THE COURT: Well, it probably comes into place in
23 unlawful act. So again, the -- the primary theory is relatively easy to state --
24
- 25 MR. BURGE: Yeah.
26
- 27 THE COURT: -- because if somebody goes up to a
28 vehicle and purposely pulls the trigger and shoots somebody in the head, that
29 would be an unlawful act. The deceased cannot consent to that type of activity.
30
- 31 MR. BURGE: Yeah.
32
- 33 THE COURT: That would be the unlawful act made
34 out. And then I would say, you go on to question 2 to determine whether he meant
35 to kill him.
36
- 37 MR. BURGE: Sure. Would it be -- it would be -- it
38 would clearly be an intentional application of a force.
39
- 40 THE COURT: Okay.
41

1 MR. BURGE: And then when we move on to -- when
2 we move on to the element of his intent, I -- it seems to me it -- what I would be
3 suggesting to the jury, and it would take me only one or two minutes to talk about
4 this offence, would be that if -- if that is the -- if that's what they found happened,
5 that there was an intentional pulling of the trigger in those circumstances, there is
6 -- it would be very difficult for them to draw any other inference. And so it would
7 be -- it would be -- just be the drawing of the inference of what did he intend to
8 accomplish by committing that act.
9

10 THE COURT: Yes. And to just put this in context, what
11 I would likely tell the jury is something along the lines that -- give them the
12 definition of murder, talk about the difference between culpable and non-culpable
13 homicide, and then say that there's three elements. The first element: Did Gerald
14 Stanley cause the death of Colten Boushie? In this case, it's up to them to decide,
15 but they likely should not have any difficulty deciding that because it's pretty clear
16 and more or less uncontroverted. And it might even be to your benefit,
17 Mr. Spencer, if you agree, for me to be able to say that the defence does not
18 dispute that because it's generally a good idea to dispute only the parts that are
19 logically disputable. There's no dispute that anyone else caused the death of
20 Mr. Boushie.
21

22 Then the second point would be did -- if the answer is "yes," you move on to the
23 second question, and that is did Gerald Stanley cause the -- the death of Colten
24 Boushie unlawfully and outline what you have said. And if the answer is "yes,"
25 you go on to the third, and that would be whether he had the state of mind required
26 for murder. And that's where you would talk about -- and if he did have the state
27 of mind to murder, as you have indicated in this scenario, then that would lead to a
28 second degree murder finding.
29

30 MR. BURGE: Yes.

31
32 THE COURT: So within -- so back up to unlawful act.
33 Are there any other unlawful acts that the Crown is alleging in the alternative?
34

35 MR. BURGE: Well, My Lord, there would be -- based
36 upon the evidence of Sheldon Stanley, there could be an assault with a weapon.
37 Also based upon the evidence of Sheldon Stanley combined, I guess, with the
38 evidence of -- of Gerald Stanley, there would be the offence of pointing a firearm.
39 There would also be the evidence -- there was also the offence from a variety of
40 sources that there was a -- this was careless use of a firearm. And these would all
41 be the underlying offences that would support a finding of manslaughter.

- 1
2 THE COURT: Okay. Assault with -- assault with a
3 weapon, would that not be the first grouping that -- that you have? When you say
4 that the primary position is that Mr. Stanley purposely fired the handgun, the
5 underlying offence would be assault with a weapon, would it not?
6
- 7 MR. BURGE: That -- that would be assault with a
8 weapon where the weapon was intentionally fired. If, for whatever reason, the jury
9 -- if the jury is looking at included offences, apart from the intentional firing of the
10 weapon, to approach Mr. Boushie with the firearm, with the intent to scare him
11 and saying that he bumped him, there -- they would be open for the jury to
12 conclude that this leading up to the firing of the gun, that this constitutes a threat to
13 use force, which would be -- would meet the definition of an assault. And -- and in
14 the threat to use force, that -- that -- there is the firearm that is present. So that
15 could be seen as an underlying offence. I know it's closely connected to the -- to
16 the -- to murder, but it is -- it's -- it's different, if the jury finds that the -- that the
17 discharge of the firearm was not intentional.
18
- 19 THE COURT: So you're alleging four alternate
20 scenarios; is that right? Intent --
21
- 22 MR. BURGE: As on somebody --
23
- 24 THE COURT: Intentional firing of the gun --
25
- 26 MR. BURGE: Yeah.
27
- 28 THE COURT: And what is the underlying offence
29 there?
30
- 31 MR. BURGE: Of the intentional firing of the gun?
32
- 33 THE COURT: Right.
34
- 35 MR. BURGE: Well, that would be -- that -- that would
36 be an assault. If it's the -- well, the underlying -- it would support the -- a finding
37 of murder by the intentional application of force with the intent to cause death, if
38 that -- if the jury finds this.
39
- 40 THE COURT: So is the assault with a weapon any
41 different than the simple assault?

- 1
2 MR. BURGE: It has to be looked at in -- if -- if the jury
3 -- it depends if they're going to start and go to an unlawful act for a variety of
4 reasons and -- and move from the bottom up or from the top down. It depends, My
5 Lord, how you -- I don't know if you will give them instructions on how to do
6 that.
7
- 8 THE COURT: Well, if I don't, somebody's got to.
9
- 10 MR. BURGE: Okay. Well --
11
- 12 THE COURT: So it's got to be me. And I've got to try
13 to make this comprehensible to the jury because these types of things are difficult
14 enough as it is, but to have a humongous flowchart and go through every single
15 piece and move it through, it becomes problematic so that I don't completely -- I
16 want to make things clear for them.
17
- 18 MR. BURGE: M-hm.
19
- 20 THE COURT: I don't want to bamboozle them. So,
21 again, in some of the modern jury pattern instructions, they talk about the Crown
22 alleges that the unlawful act in this case is assault or assault with a weapon or
23 whatever it happens to be. And again, I'm just trying to pin you down -- not pin
24 you down. Clarify for my purposes how you would phrase the first part of it.
25 Primary position, Mr. Stanley purposely fired the handgun at Mr. Boushie. And
26 what -- what do you say the unlawful act is? Is there an underlying unlawful act?
27
- 28 MR. BURGE: Do we need to find an underlying
29 unlawful act? I -- I -- and I'm not -- I'm not --
30
- 31 THE COURT: Well, the question that -- the second
32 element is, did Gerald Stanley cause the death of Colten Boushie unlawfully? So if
33 you -- if I want -- if I ask them to determine that question, then there -- I think I
34 have to say, okay, the -- the Crown is alleging that he -- their primary position is
35 that he walked up and shot him in the head. And if that's the case, that would be an
36 unlawful act.
37
- 38 MR. BURGE: Yes.
39
- 40 THE COURT: And it would be an assault. It would be --
41

- 1 MR. BURGE: That -- well, that is --
2
- 3 THE COURT: -- the intentional application of force
4 without --
5
- 6 MR. BURGE: Yes. It -- yes.
7
- 8 THE COURT: -- the consent.
9
- 10 MR. BURGE: That part would be an assault, yes. So,
11 My Lord, I -- I suppose, looking at it from that perspective, you may not have to
12 give them -- put assault to them again. Although I -- I guess if you found that there
13 was an assault that caused death and it wasn't -- it didn't meet the requirement of
14 the -- of the intent --
15
- 16 THE COURT: Well, it wouldn't get to --
17
- 18 MR. BURGE: -- you would be coming up -- where it
19 goes from there.
20
- 21 THE COURT: Yes. Because what I would do is let's
22 say this was the only theory of the Crown.
23
- 24 MR. BURGE: Okay.
25
- 26 THE COURT: Which I realize it isn't. I would say to
27 them that the primary position of the Crown or the position of the Crown is that
28 Mr. Stanley walked up to Mr. Boushie and purposely fired a shot in the head. They
29 allege that this is the unlawful act of assault. And if you find beyond a reasonable
30 doubt that he did this, that would be an unlawful act. If you're not satisfied beyond
31 a reasonable doubt that he did this, then that would head into a different direction.
32 So if you are satisfied beyond a reasonable doubt that he did that, then you move
33 on to the next question, and the next question is did Gerald Stanley have the state
34 of mind required for murder, and you get into all the -- the intention at that point.
35
- 36 MR. BURGE: Yes.
37
- 38 THE COURT: Okay. So what the primary position
39 would be, then, is -- I don't want to call it simple assault, but it would be the
40 underlying offence would be an assault. And the -- the assault -- you can assault
41 people with a bullet. You don't have to touch them and all the rest of that. There's

1 a consent element to assault which clearly was not there, and clearly, based upon
2 *Jobidon*, you can't consent to that kind of bodily harm anyway.

3

4 MR. BURGE: Yes.

5

6 THE COURT: So that would not be a factor. So we
7 would just crisply put that to the jury in that -- that sense.

8

9 MR. BURGE: That would be fine.

10

11 THE COURT: Okay. And then I would say, but the
12 Crown has an alternate theory. And how many horses do you wish to ride?

13

14 MR. BURGE: Well, that alternate theory is if -- if the
15 jury isn't satisfied that this was an intentional firing into the -- into the head of
16 Mr. Boushie.

17

18 THE COURT: Well, and again, intentional, we -- we --
19 intentional is the third element.

20

21 MR. BURGE: Yeah.

22

23 THE COURT: So do I make four jury charges? Say,
24 let's deal with this one, and if you find him not guilty of this one, then you move
25 on to the next one? Because we have to combine these somehow.

26

27 MR. BURGE: M-hm.

28

29 THE COURT: And this is the -- this is the part that I'm
30 struggling with here. So I was thinking about grouping the unlawful acts all
31 together.

32

33 MR. BURGE: Okay.

34

35 THE COURT: Before we get to the intentional part. But
36 -- unless you think that that's not a good idea.

37

38 MR. BURGE: Well, if you want to group -- because
39 there's -- because there are different unlawful acts that would lead to
40 manslaughter, and the -- and they arise from these facts. I'm not sure how you
41 would group, say, a careless use of a firearm. Well, maybe you can, My Lord. I

1 had -- I hadn't considered this before, but are you --

2

3 THE COURT: Well, I am looking for -- for your -- for
4 your guidance.

5

6 MR. BURGE: Yeah. Well, I guess in each case, in -- in
7 number two, are there a number -- if there are a number of ways in item number 2
8 where the death could be caused unlawfully, that is likely where you could put in
9 the various forms of unlawful acts that the jury may find. And then I guess that
10 might make their decision tree work in more of a straight line. I'm not sure. It's
11 still going to get a bit complicated.

12

13 THE COURT: It -- it would get complicated?

14

15 MR. BURGE: I would think so. Maybe this is less
16 complicated, but --

17

18 THE COURT: If you can provide me a non-complicated
19 way to get this accomplished, I am all ears.

20

21 MR. BURGE: Yeah. I -- I appreciate that. I suppose if
22 -- from looking at it from how you instruct the jury, if -- if the various unlawful
23 acts are simply outlined in number 2, and if the jury simply looks at each of these
24 to determine if the third element applies to each of the unlawful acts, I suppose if
25 -- if any one of them -- if they find was done with the intent to cause death, then --
26 then they would find murder. And if they don't find any, we're done with the
27 intent to cause death. They would have to look at them to see if -- if they are
28 manslaughter.

29

30 THE COURT: Because if -- if the unlawful act was
31 careless use, that could not lead to a murder, a second degree murder conviction.

32

33 MR. BURGE: No.

34

35 THE COURT: That would be manslaughter.

36

37 MR. BURGE: Yes.

38

39 THE COURT: Pointing a firearm?

40

41 MR. BURGE: If the intent was simply to point a

1 firearm and the act was simply to point a firearm, and -- and then something
2 happened that led to the unintentional discharge, that -- that -- I don't -- I don't see
3 how that could get to murder, if the jury's finding is that it wasn't a deliberate
4 intentional act that -- that caused the death.

5

6 THE COURT: So how do you propose would be the --
7 an intelligible way to have the decision tree, if we wish to call it that, flow along
8 the lines? We are fine on the first element, but we're bogging down to a second
9 degree -- to a certain degree on the second element.

10

11 MR. BURGE: Well, put it this -- when -- when I
12 analyze a case from my -- from this side here, I -- I look at what is the act, what is
13 the result, does the act cause the death, is there -- does this get us to manslaughter.
14 If we're at manslaughter, how do we do -- does the evidence provide a link to
15 murder, which would be the -- the element of intention. So I tend to look at things
16 from the bottom up.

17

18 THE COURT: So you think intention should be before
19 the unlawful acts?

20

21 MR. BURGE: No. No, no.

22

23 THE COURT: Don't you have to --

24

25 MR. BURGE: That's not -- I didn't -- to me, the intent
26 is -- is the final element that I look at. I -- I try -- I look for the unlawful act, and
27 then look for causation. This -- does this -- if this gets us to manslaughter, does the
28 evidence elevate this to murder? That's -- that's my thought process. You might
29 look at it in a different way.

30

31 THE COURT: No, I think I'm -- I'm with you there
32 because you have to, first of all, determine if there was an unlawful act. And if the
33 unlawful act is purposely shooting somebody in the head, you then have to go to
34 the next area, and whether the accused had the appropriate state of mind at that
35 point. And that essentially changes it from manslaughter to murder.

36

37 MR. BURGE: Yes.

38

39 THE COURT: It gives the -- the culpable *mens rea*. So I
40 am -- I am with you there. But because of all the -- the potential -- how -- how
41 would you explain that to the jury when you have these careless use, assault with a

1 the defence does not dispute that anyone else caused the death. So if you wanted to
2 add that concession into it, that -- that wording I'm fine with.

3
4 THE COURT: Okay. Yes. Well, thank you for that. And
5 we are kind of beyond that one. We're moving on to the more difficult. So did
6 Gerald Stanley cause the death of Colten Boushie unlawfully? And then after
7 telling them it's up to -- this is an element of the offence and the Crown needs to
8 prove this beyond a reasonable doubt, and if the Crown doesn't prove it beyond a
9 reasonable doubt, then that would result in an acquittal? Or if he does prove it
10 beyond a reasonable doubt, because if -- if there's no unlawful act --

11
12 MR. BURGE: Then there's acquittal.

13
14 THE COURT: Okay. So the -- yes. So if there is no
15 unlawful act, that would be an acquittal. So it's necessary for them to determine
16 whether there's an unlawful act here.

17
18 MR. BURGE: Yes.

19
20 THE COURT: So the Crown has several theories or --
21 or a primary position and several alternate positions. What -- what would I say at
22 this point?

23
24 MR. BURGE: Well, My Lord, I guess where I'm
25 getting hung up is the alternate theories don't lead to the question of did Gerald
26 Stanley have a state of mind for murder such as pointing a firearm, careless use.
27 Those simply won't lead to -- to that inquiry.

28
29 THE COURT: Okay.

30
31 MR. BURGE: There's only one -- there's only -- in my
32 reading of this, the only --

33
34 THE COURT: Well, again, we can make as many boxes
35 as we wish. So if we were to say that the first thing I'd like you to look at is
36 whether you find that he committed the unlawful act of intentionally shooting
37 Mr. Boushie in the head.

38
39 MR. BURGE: Yes.

40
41 THE COURT: And if the answer is yes, you go straight

1 to element three.

2

3 MR. BURGE: Yes. It -- it would -- I guess that finding
4 on element two would -- would certainly lead to a straightforward conclusion on
5 element three, but yes, that would be -- that would be the route.

6

7 THE COURT: Right. So you would still have to -- to
8 look at element two and move on to three.

9

10 MR. BURGE: Yes.

11

12 THE COURT: In the event that you found that he did
13 not intentionally do that, you would go over and consider the --

14

15 MR. BURGE: Yes.

16

17 THE COURT: -- what I'll call the manslaughter --

18

19 MR. BURGE: Yes.

20

21 THE COURT: -- route.

22

23 MR. BURGE: Yes. Because if they go there, the jury
24 doesn't have to determine if he had the state of mind for murder. It's did he have
25 the state of mind -- I guess it's to cause bodily harm.

26

27 THE COURT: Okay. So -- so if they are -- if the jury's
28 primary function is to -- to head down that path, they would -- even on that path,
29 they would find him guilty of murder or manslaughter because if the third element
30 was not there, that would be manslaughter; is that right?

31

32 MR. BURGE: Okay.

33

34 THE COURT: Theoretically speaking.

35

36 MR. BURGE: Yes.

37

38 THE COURT: But I agree with you. Practically
39 speaking, if you conclude that he purposely shot the gun into his head, and then
40 you move on to whether he had a mental element, but theoretically speaking, they
41 could head off -- if they were to answer "no," that could end up in manslaughter. If

- 1 they answer “yes,” that’s second degree.
2
- 3 MR. BURGE: Yes. Yeah.
4
- 5 THE COURT: Okay. So let’s -- I have got that -- that --
6 those boxes conceptualized in my mind. Now, there’s no suggestion of defence of
7 property or self-defence in relation to that stream. Is that correct, Mr. Spencer?
8
- 9 MR. SPENCER: That’s right. The -- the self-defence
10 necessity and accident all relate to the -- the -- what they’re going to allege for
11 potentially included offences. The one -- the one point I want to make sure that I
12 understand it, is whether my friend is going to argue that the -- that the contact
13 with the right hand is somehow an assault. And so I -- I got a sense that that might
14 be the case. I don’t think -- it seems bizarre, but --
15
- 16 THE COURT: Yes. I mean, that’s not what I was
17 thinking.
18
- 19 MR. SPENCER: Yeah.
20
- 21 THE COURT: I was thinking the assault that I’m
22 talking about is the firing of the gun.
23
- 24 MR. SPENCER: Right. And -- yeah. And I just wanted to
25 make sure.
26
- 27 THE COURT: And that would be a --
28
- 29 MR. SPENCER: Pretty straightforward, yes.
30
- 31 THE COURT: Yes. Okay. So we just have these -- these
32 boxes in a decision tree formulated. We would have the element one that we’ve
33 talked about, element two, and then we would talk about the purposely shooting
34 Mr. Boushie. And if you conclude that the Crown has proved beyond a reasonable
35 doubt that there was a purposeful shooting of Mr. Boushie, based upon the
36 evidence, you would move on to the next element.
37
- 38 MR. BURGE: Yes.
39
- 40 THE COURT: And if you’re not convinced that there
41 was purposely shooting, we would move -- I would ask you to consider a subissue.

1 And what would that be?

2

3 MR. BURGE: Well, that would be the underlying
4 offences for -- for manslaughter, which would be -- was there -- and I don't know
5 if you would lump these two together or -- but -- but that would be the offences of
6 careless use and pointing a firearm.

7

8 THE COURT: Okay. So the -- would -- would I tell the
9 jury that if you are not convinced at this stage that -- that he committed this
10 unlawful act, that you have to move to the -- to the right, more or less, and
11 consider whether he's guilty of manslaughter.

12

13 MR. BURGE: Yes.

14

15 THE COURT: And to commit manslaughter, there's
16 different ways that he could do it.

17

18 MR. BURGE: There's different ways, yes.

19

20 THE COURT: And the two -- are you -- you talked
21 about more than one. The assault with a weapon, pointing a firearm, careless use.
22 Do you need all three of those put?

23

24 MR. BURGE: Well, the jury will have gone through
25 this -- this process on assault with a weapon when they look at -- when they -- on
26 the first branch that you're constructing here.

27

28 THE COURT: Okay. The -- I had it just as assault. Do
29 you want it --

30

31 MR. BURGE: Okay.

32

33 THE COURT: -- do you want it assault with a weapon?

34

35 MR. BURGE: I -- I don't know that I -- they're both
36 forms of assault, and we can call it assault, My Lord. I don't know that it's --

37

38 THE COURT: Right. Because assault with a weapon is
39 simply an assault with a weapon.

40

41 MR. BURGE: Yes.

1
2 THE COURT: And it's clear that this assault was with a
3 weapon, so it's --
4
5 MR. BURGE: Yeah.
6
7 THE COURT: -- somewhat redundant, but --
8
9 MR. BURGE: Yeah.
10
11 THE COURT: -- I -- I am in your hands there.
12
13 MR. BURGE: Well -- and it's -- I -- we have to make it
14 workable for 12 laypeople who, you know -- we have -- we're struggling. They're
15 going to -- you know, this is -- so yes. I'm -- I'm certainly happy to make it
16 workable and -- and we don't need to describe it as a different kind of an assault.
17
18 THE COURT: Right. Okay. So -- so then as far as the --
19 the next question is -- would be whether he committed -- if you didn't find the act
20 was intentional in -- in the context of the unlawful shooting, the Crown -- would I
21 make -- call the Crown's main theory?
22
23 MR. BURGE: Sure.
24
25 THE COURT: Okay. Then you'd have to determine
26 whether there was manslaughter.
27
28 MR. BURGE: Yes.
29
30 THE COURT: And -- and then I'd go through unlawful
31 act manslaughter and say that there's two ways that we can deal with that.
32
33 MR. BURGE: Yes.
34
35 THE COURT: And the two ways would be the pointing
36 a firearm and careless use.
37
38 MR. BURGE: Yes.
39
40 THE COURT: And then I would go through the
41 elements of those offences.

- 1
2 MR. BURGE: Yes.
3
4 THE COURT: And if the jury is satisfied that there is --
5 that all the elements of those offences have been made out, then he would be guilty
6 of manslaughter. All right. Let's do them one at a time. Let's say I go through the
7 pointing a firearm first.
8
9 MR. BURGE: Okay.
10
11 THE COURT: Go through the elements of pointing a
12 firearm, intentionally pointing and -- and all of that. Then that would put, didn't
13 she, they -- they -- so we had a mini-trial on just the -- the question of pointing a
14 firearm, the question would be whether he is guilty of pointing that firearm. And if
15 the Crown proves beyond a reasonable doubt that he has pointed the firearm, then
16 he is guilty of manslaughter.
17
18 MR. BURGE: Yeah. I think -- then, yeah, they'd have
19 -- you'd have to put it to them. I think the test and equating to them as far as the
20 mental element.
21
22 THE COURT: Right. Right. And if they found that he
23 was not guilty of pointing a firearm?
24
25 MR. BURGE: Well, --I think they could because there's
26 a mental element in pointing a firearm. It's a *mens rea* offence, which is to
27 intentionally point. They -- and that's why careless is -- is a very --
28
29 THE COURT: Yes. Well, we will move to careless next.
30
31 MR. BURGE: Okay.
32
33 THE COURT: But on this one.
34
35 MR. BURGE: If -- and your question again was then?
36
37 THE COURT: The question would be that if I properly
38 related the elements of pointing a firearm to the jury --
39
40 MR. BURGE: Yes.
41

- 1 THE COURT: -- and did it the style of the way judges
2 do it, going through the first element, second element, third element, and if the
3 Crown proves all these elements beyond a reasonable doubt, he would have
4 admitted the unlawful act of pointing a firearm --
5
- 6 MR. BURGE: Yes.
7
- 8 THE COURT: -- which, because it caused the death, we
9 already found it caused the death, that leads to manslaughter.
10
- 11 MR. BURGE: Yes.
12
- 13 THE COURT: And if not, where does that lead us?
14
- 15 MR. BURGE: Well, if they -- if they -- well, if they --
16 so you're -- are you -- if you're asking me if they don't find that all of the elements
17 of pointing a firearm have been met, careless use.
18
- 19 THE COURT: Okay. Yes, we move to the next one.
20
- 21 MR. BURGE: Okay.
22
- 23 THE COURT: Okay. But --
24
- 25 MR. BURGE: I'm sorry. Are you asking if they found
26 -- if those elements aren't met for one of these underlying offences?
27
- 28 THE COURT: Well, yes. Again, to keep it straight in
29 mind --
30
- 31 MR. BURGE: Okay.
32
- 33 THE COURT: -- let's say for the sake of argument that
34 we just have the pointing a firearm. I know you --
35
- 36 MR. BURGE: Yeah.
37
- 38 THE COURT: -- have careless use out there. Or no, let's
39 put it this way. Let's say that they go through careless use, and I say, okay, if you
40 go through careless use and it's -- correction, pointing a firearm, and you're not
41 able to establish beyond a reasonable doubt that he did this, then you must look to

1 see if there was careless use.

2

3 MR. BURGE: Yes.

4

5 THE COURT: So then you go through the elements of
6 careless use. And if you're not able to establish that beyond a reasonable doubt --
7 or if you are, then that's guilty of manslaughter.

8

9 MR. BURGE: Yes.

10

11 THE COURT: And if you're not?

12

13 MR. BURGE: I think that's an acquittal. I'm not sure
14 where else -- if there's an acquittal on the pointing and the careless use and
15 they've already determined that the unlawful act didn't cause the unintentional
16 death, then I think -- I think -- I'm not sure what is left but --

17

18 THE COURT: Okay.

19

20 MR. BURGE: I'm not -- I -- I just don't know that
21 there's any. If the main offence didn't lead to them to be satisfied beyond a
22 reasonable doubt, and if the -- and if the included offences don't, then -- then I --
23 they would have to find him not guilty. I don't see any other path to anything else,
24 unless I'm totally missing something, My Lord.

25

26 THE COURT: Well, the -- the area that I've been really
27 struggling with is the concept of accident, and the -- the theory of the defence is --
28 is accident. So where does that theory come into any of these -- this -- this decision
29 tree that we've got. I've got it mapped out in my mind. I can see it quite clearly.

30

31 MR. BURGE: I -- I don't know how -- if you have -- if
32 you're undertaking an inherently dangerous activity such as using a firearm and --
33 and in a careless manner or pointing it, and I have trouble seeing how accident
34 would apply there because -- because the test is so different. It's -- it's -- and I am
35 just looking at my notes from looking at *Creighton* on this, My Lord, but it's -- if
36 this is done in the circumstances of an unlawful act, that it is inherently dangerous,
37 and -- and harm to another results --

38

39 THE COURT: Okay. Well, let's look at pointing a
40 firearm. Let's -- for the sake of argument, pretend -- or say hypothetically
41 speaking that the jury ends up not finding that it was a purposeful shooting. And

1 then you -- we ask them to look at manslaughter. So the -- the elements of the
2 offence of pointing a firearm is that the accused pointed a firearm, that he pointed
3 the firearm at Mr. Boushie, and that he had no lawful excuse for pointing the
4 firearm. And the -- to point a firearm means to direct it or aim it intentionally, not
5 accidentally, absent-mindedly, or simply by chance. Pointing involves a choice, an
6 intentional act of directing the weapon toward a person or target.

7

8 So that's -- I'm -- I'm quoting from *Watt's Manual of Jury Instructions*.

9

10 MR. BURGE: Okay.

11

12 THE COURT: So if they were to determine that that
13 was not intentional, that it was more absent-mindedness --

14

15 MR. BURGE: Okay. That -- I look at that as something
16 different from accident, because the intention was an element of the offence. And
17 if -- if it isn't intentional, then a required element is absent.

18

19 THE COURT: Okay. Maybe explain that to me again.
20 What the -- again, from -- from what *Watt's Manual of Jury Instructions* say is that
21 to point a firearm means to direct it or aim it intentionally, not accidentally,
22 absent-mindedly, or simply by chance. Pointing involves a choice, an intentional
23 act of directing the weapon toward a person or object.

24

25 MR. BURGE: Okay.

26

27 THE COURT: So that would mean that if I had -- when
28 this -- this gun that was on the stand was being waved around, and if the -- I don't
29 know if he did, but if he moved it over and it brushed past all of us, would -- it
30 could have been pointed at some of us.

31

32 MR. BURGE: It could have been. It would be difficult
33 to prove it was done intentionally. It would be a lot easier to prove that it was done
34 -- it was careless handling.

35

36 THE COURT: Careless -- right. Right. So that's why
37 I'm -- so you would -- so if the -- the -- if I was to put these elements to the jury in
38 this kind of fashion, and at the end of the day, they had a reasonable doubt as to
39 whether this applied --

40

41 MR. BURGE: Yes.

- 1
2 THE COURT: -- and let's say that careless use was not
3 there, just to keep our --
4
- 5 MR. BURGE: Yeah.
6
- 7 THE COURT: -- our thoughts pure, are you saying that
8 he would be acquitted?
9
- 10 MR. BURGE: Well, if he couldn't be found guilty of
11 pointing a firearm because it wasn't an intentional pointing or direction but just
12 simply -- I -- I would think that he would -- that an essential element hasn't been
13 proved, and he'd have to be found not guilty of pointing a firearm, and that -- and
14 then there's no underlying offence to lead to manslaughter.
15
- 16 THE COURT: So then it would be -- so the jury could
17 find that he accidentally pointed it at Mr. Boushie, and the -- and it went off, and
18 that leads to an acquittal?
19
- 20 MR. BURGE: Well, that -- they would maybe then lead
21 -- not to an acquittal, but they would have to look to the other --
22
- 23 THE COURT: They would have -- okay.
24
- 25 MR. BURGE: -- they would have to then look to the --
26 okay. If -- if that's all we had.
27
- 28 THE COURT: Yes. If that's all we had.
29
- 30 MR. BURGE: If that's all we had, if -- if there isn't an
31 underlying offence, then I -- I -- I don't know how it could lead to a conviction.
32
- 33 THE COURT: See, the -- I found a number of cases
34 talking about how in the -- in the context of accident, that it depends if the accident
35 happens during the course of an unlawful act, then that would result in
36 manslaughter, whereas if the accident occurs in the course of a lawful act, that
37 would lead to acquittal.
38
- 39 MR. BURGE: Okay.
40
- 41 THE COURT: So by way of example, if an intruder

1 came into my -- maybe I'll ask you the question. An intruder comes into my home.
2 I'm afraid, and I grab a gun, and I point the gun at the intruder, and my cat or dog
3 barks, it startles me, and I shoot the gun and shoot the intruder. And that was an
4 accident. Is that murder or -- correction, is that manslaughter or is that acquittal?
5 And before you answer that, I'm going to change the circumstances. Let's say an
6 intruder comes into my home and is pointing a gun at me, and my dog barks and
7 he gets scared, and he accidentally pulls the trigger. And I'm killed. Is that
8 manslaughter?
9

10 MR. BURGE: Well, there's -- there are other offences
11 apart from pointing a firearm for the intruder. For you, you -- the only underlying
12 offence, presumably, would be pointing a firearm, and -- and we'd have to look at
13 issues of lawful excuse, as well, because -- because that might legitimately arise in
14 -- in that scenario, which --
15

16 THE COURT: In my situation?
17

18 MR. BURGE: Yeah.
19

20 THE COURT: So the lawful excuse would be molded in
21 Section 87? Because it --
22

23 MR. BURGE: Yes.
24

25 THE COURT: -- Section 87 does talk about lawful
26 excuse.
27

28 MR. BURGE: Yes. Yes.
29

30 THE COURT: And so does careless use talk about
31 lawful excuse, which conceptually, it's hard for me to figure out how somebody
32 could have a lawful excuse to be careless. But the definition of careless is careless
33 use, storage, transportation, et cetera. But in the context of careless use, I find it
34 difficult to say how somebody can be lawfully justified to be careless.
35

36 MR. BURGE: Well, it's hard to see how it would arise.
37 And -- and in a lot of context, lawful excuse is something where there's an onus on
38 the other side.
39

40 THE COURT: So in the -- in the scenario that we've
41 kind of drafted, where would the -- because Mr. Spencer is going to be,

1 presumably you're talking that this was an accident, a pure accident, an
2 involuntary action, et cetera. Where would that fit into any of this?

3

4 MR. BURGE: On the included offences?

5

6 THE COURT: Well, let's say on the -- well, on the
7 purposeful one, there's no room for accident because it's on purpose.

8

9 MR. BURGE: Okay.

10

11 THE COURT: So they would have to reject accident.

12

13 MR. BURGE: I'll just look at your decision at our --

14

15 MR. SPENCER: My Lord, I'm -- I appreciate we're trying
16 to work through as quick as possible, but if you were thinking of taking a
17 midmorning break, this might be a good chance.

18

19 THE COURT: Sure. We can do that. What I'm going to
20 do is -- are counsel familiar with a case called *R. v. Paris*? That's a 2013 decision
21 out of the Ontario Court of Appeal written by Justice Watt. And I'd look at
22 paragraphs 106 to 108 in particular. We'll take a break, but I'll give you something
23 to -- to read when you're having a break.

24

25 MR. SPENCER: Thank you.

26

27 THE COURT: And there's also a decision out of the
28 Quebec Court of Appeal called *Primeau*.

29

30 MR. BURGE: P-R-I-M-E-A-U?

31

32 THE COURT: Yes, 2017 QCCA 1394. And it was
33 rendered on September 19th of '17. And that talks about this whole accident in the
34 -- within the concept of a -- of a manslaughter situation. So what we will do is,
35 again, these pre-charge conferences I realize are normally not this long. And -- but
36 I find it quite complicated to put this all together in a way that's understandable to
37 the jury, legally correct, and fair to both sides. So we will adjourn until a quarter to
38 eleven.

39

40 (ADJOURNMENT)

41

1 THE COURT: Okay. So, Mr. Burge, just continuing on
2 with our -- our dialogue and trying to map out this scenario, what we've kind of
3 tentatively arrived at -- and I realize Mr. Spencer hasn't had any opportunity at all
4 to talk about this -- is dealing with the second element, we would determine
5 whether or not -- ask the jury to determine whether the Crown has proved beyond
6 a reasonable doubt that Mr. Stanley voluntarily shot Mr. Boushie. And in the event
7 that the answer is "yes," they would move on to the third element, the mental
8 element. If the answer is "no," then they would move off into the manslaughter
9 stream.

10

11 MR. BURGE: Yes.

12

13 THE COURT: And there would be two potential
14 streams that we deal with there. Is that --

15

16 MR. BURGE: Yes.

17

18 THE COURT: That's fair? And when we come down
19 those two streams, do you suggest that I put it to the jury that they should first look
20 at pointing a firearm, work through that analysis, and then if they don't believe
21 that that applies, they move on to the second, careless use, and work through that
22 analysis? And it's a bit of a trick question because given the *Thatcher* instruction,
23 does the jury need to be unanimous? What happens if half the jury is convinced
24 that it's pointing, and half the jury is convinced it's careless? But they're both --
25 they are unanimous that one of those two unlawful acts occurred.

26

27 MR. BURGE: Well, I guess in *Thatcher*, as I recall the
28 issue, was did they have to be unanimous in concluding that one particular offence
29 was committed as opposed to --

30

31 THE COURT: Right. By way of further analogy, in the
32 *C.J.C.* self-defence instructions, the Crown has to negate three points. The jury --
33 and if the Crown does not disprove any one of those three, that results in defence
34 failing. But the jury does not have to be unanimous on which one of those three
35 negates the defence of self-defence. So I don't know if that -- so the *Thatcher*
36 analysis has been applied to duress and self-defence and things of that nature, so it
37 doesn't apply here.

38

39 MR. BURGE: I'll have to give it some thought, but my
40 initial thought is -- is no. I would think that they would have to be -- they would
41 have to determine that the elements of a specific offence have been satisfied.

1 That's -- that's what my gut tells me.

2

3 THE COURT: So it -- so you would -- you would
4 propose, then -- does it matter to you which one I put first? Pointing or careless
5 use?

6

7 MR. BURGE: Well, they'll have to go through the same
8 analysis for each one. I -- I'm just trying to see. Is there -- is there a reason that I
9 would --

10

11 THE COURT: Well --

12

13 MR. BURGE: -- suggest one or the other.

14

15 THE COURT: -- they -- well, they may have to or they
16 may not have to, because if they go through the -- say pointing is first. They go
17 through the pointing analysis, and they conclude that that leads them to
18 manslaughter.

19

20 MR. BURGE: Yes, Your Honour.

21

22 THE COURT: That's the end. Then we don't have --

23

24 MR. BURGE: Oh, yes. Then they don't have to go.
25 Yes.

26

27 THE COURT: Yes.

28

29 MR. BURGE: They only have to get there once, of
30 course. Yes.

31

32 THE COURT: Right.

33

34 MR. BURGE:

35

36 THE COURT: So it doesn't matter to you which one?

37

38 MR. BURGE: I can't -- I can't think right now.

39

40 THE COURT: Okay.

41

- 1 MR. BURGE: If I -- if I do, I'll let you know, My Lord,
2 but I -- I --
3
- 4 THE COURT: Now, the -- did you have a chance to
5 skim those cases that I mentioned to you?
6
- 7 MR. BURGE: Well, I -- I looked at the Quebec case, so
8 that would be *Primeau*. And my friend, who reads a lot faster than me, read them
9 both. And it seems that they both -- although they seem to, frankly, apply the
10 *Creighton* test in each case, and -- but I guess the question -- the question of
11 accident seems to -- if we're assuming that the death is unintentional to start with,
12 then that's -- that's -- but if you're involved in an inherently dangerous activity
13 where a reasonable person foresees the real -- the risk of harm, and if the elements
14 of the offence are all present, I -- I don't know that accident really plays into it.
15 When you mention -- when you mention pointing, and I -- as I said before, just to
16 wave a gun in a direction, it might, by happenstance, point at you as it goes across.
17 And instead of calling it an accident, I would just say that the -- that the element
18 hasn't been proved.
19
- 20 THE COURT: Right. And *Barton*, the case out of the
21 Alberta Supreme -- or Alberta Court of Appeal deals with accident there. And
22 what she talks about, she being Chief Justice Fraser, and Justice Martin, who's
23 now on the Supreme Court who -- who penned that decision, talked about accident
24 really just negating the *mens rea* aspect of it.
25
- 26 MR. BURGE: Yes.
27
- 28 THE COURT: But if you look at the *Healey* decision
29 out of the Quebec Court of Appeal, he talks about a *mens rea* component to the
30 *actus reus* portion of the -- of the process. And -- and by that, what I gather him to
31 be saying -- and -- is that if you have a purely involuntary act, so somebody hits
32 your -- your arm, and it's a purely involuntary act, there is no culpability. And so
33 is -- is a --
34
- 35 MR. BURGE: That's -- that's because it's not your act.
36 Is that --
37
- 38 THE COURT: Right.
39
- 40 MR. BURGE: Okay. That's easy to understand, yes.
41

- 1 THE COURT: Okay. So it would be not your act. So if
2 your -- somebody bumps your hand or -- like you say, it's not your act. So there
3 has to be some -- built into the *actus reus*, there's got to be some degree of
4 intention. It's got to be your act.
5
- 6 MR. BURGE: Okay.
7
- 8 THE COURT: And so with Mr. Spencer's defence
9 argument is that -- or correction, accident argument, does that come in the *actus*
10 *reus* portion of the -- or does it come in --
11
- 12 MR. BURGE: Well, if --
13
- 14 THE COURT: -- in element three, dealing with
15 intention? I know people talk in terms of an unintended act which is a pure
16 accident and the unintended consequences, which is a different type of accident.
17 So people talk about accident all the time, but a lot of time, accident in what -- in
18 common parlance is different than what we in legal circles call -- or talk about
19 accident. And maybe I've thought this thing through too much to the point that
20 I've made it more complicated than it needs to be.
21
- 22 MR. BURGE: Okay. I'm -- I'm -- I likely have the
23 unique ability to dumb it down, just because that's me, but I would think -- do we
24 also have to work in the factor of if you do the act and if it is -- and if the
25 consequences are foreseeable to the reasonable person, because -- because a
26 reasonable person just might foresee the negative consequences being, because of
27 something accidental happening during the course of engaging in this -- this
28 dangerous activity, and -- and maybe if we look at it in terms -- more in terms of
29 foreseeability, and I guess that's -- that's -- maybe that's the *mens rea* aspect of it.
30 The possibility of accident is built into that -- to that test, I would submit.
31
- 32 THE COURT: So in the *mens rea* portion?
33
- 34 MR. BURGE: Yeah.
35
- 36 THE COURT: So where would I put Mr. Spencer's
37 theory about accident into this scenario that we've built with this house of cards
38 that is tentatively sitting there?
39
- 40 MR. BURGE: Well, if -- if the jury finds that
41 Mr. Stanley is handling this firearm in a careless manner, and careless is not

- 1 accidental. It is -- it is --
2
- 3 THE COURT: Well, it's -- it's a state of mind.
4
- 5 MR. BURGE: Yes.
6
- 7 THE COURT: It's not an intentional state of mind, but
8 it's a reckless --
9
- 10 MR. BURGE: It's a --
11
- 12 THE COURT: -- wilful blindness, whatever.
13
- 14 MR. BURGE: -- yes. Yeah.
15
- 16 THE COURT: It's a criminal state of mind.
17
- 18 MR. BURGE: It is. And -- and in that sense, I would --
19 it seems to me that the -- the accident is -- is part of the foreseeable harm, and it's
20 -- it's -- it really goes to -- well, it goes to the recklessness. It's -- it's related to
21 recklessness. I guess it's a disregard of -- of possible consequences. And then --
22 and I don't see it going to the act. I see it going to the -- to just -- to being part of
23 the defined intention, because it's part of the foreseeability, that -- that there is --
24 an accident is foreseeable if you're behaving in a -- in a dangerous fashion because
25 of your carelessness.
26
- 27 THE COURT: So in the first thread, dealing with the
28 primary position of the Crown that the -- Mr. Stanley committed a voluntary
29 assault on Mr. Boushie that caused his death, I would say -- I would highlight the
30 Crown's evidence. And then I would highlight that the defence suggested this was
31 an accident, and I would do it in that context.
32
- 33 MR. BURGE: Yes.
34
- 35 THE COURT: You agree with that?
36
- 37 MR. BURGE: Yes, that's what I'm talking about --
38
- 39 THE COURT: Yes.
40
- 41 MR. BURGE: -- the first branch going -- leading to a

1 finding of murder or not.

2

3 THE COURT: Right.

4

5 MR. BURGE: Yes.

6

7 THE COURT: And then if they were to determine that
8 the Crown has not proven beyond a reasonable doubt that it was a voluntary
9 action, then they would have to see if one of the other intents were there, one of
10 the other criminal intents were there.

11

12 MR. BURGE: Yes.

13

14 THE COURT: And if there was a careless use, but it
15 was lawful, then that would end in an acquittal. If it was a careless use that was not
16 lawful, that would end in manslaughter.

17

18 MR. BURGE: Well, if they found -- well -- careless use
19 that would be lawful.

20

21 THE COURT: See, if you look at the definition of
22 careless use, I think that's Section 86.

23

24 Every person commits an offence who, without lawful excuse, uses, carries, handles,
25 ships, transports, or stores a firearm, a prohibited weapon, a restricted weapon, et
26 cetera, in a careless manner or without reasonable precautions.

27

28 So there's a lawful excuse built in there. Now, I don't know what lawful excuse
29 one could -- as I said a few minutes ago, that it's hard for me to conceptualize that
30 somebody could be found careless in the use, but somehow it's lawful. One could
31 possibly imagine some of the other possibilities, because there's shipping. So
32 somebody could carelessly ship something, but they may have a lawful excuse for
33 doing that. So the -- without lawful excuse may not apply in many circumstances
34 to the using. Unless you can help me how somebody could be careless and --
35 lawfully careless.

36

37 MR. BURGE: I don't know. Maybe in times of war in
38 the indication of shipping. I don't know, My Lord.

39

40 THE COURT: Yes. Yes. Okay. Anything else you want
41 to -- to add? Then I'm going to ask Mr. Spencer. So again, just to recap, then, if I

1 was to build a -- a decision tree for the jury, the decision tree would look
2 something like this, that the first element would be whether or not Mr. Stanley
3 caused the death of Mr. Boushie. It's up to the jury to decide, but I would tell them
4 that that's really not in dispute. And if they find that he didn't, they would acquit,
5 but there's really no basis for that. They should move on to the next question,
6 which is the unlawfulness. The Crown's primary theory is that Mr. Stanley
7 unlawfully assaulted Mr. Boushie by walking up to him and shooting him with a
8 gun and voluntarily shooting him with a gun, thus causing his death. And
9 Mr. Spencer is arguing that this was an accident, and in the context of that, they're
10 going to have to consider all the evidence as to all the different things that -- that
11 came along. And in the -- at the end of that analysis, if they conclude that the
12 Crown has proven beyond a reasonable doubt that this was a voluntary shooting of
13 Mr. Boushie, they should move on to the next element to determine whether it was
14 intentional in the sense that it attracts the mental element required for murder, and
15 if they're satisfied with that, they move on to a finding of second degree murder.

16

17 MR. BURGE: Yes.

18

19 THE COURT: If -- if on the third step they find that it's
20 not there, then -- then that would be manslaughter.

21

22 MR. BURGE: Yes.

23

24 THE COURT: Within the unlawful act, if they find that
25 the Crown has not established that, they still must consider two other types of
26 conduct that might justify this behaviour being characterized as manslaughter, and
27 then I would work through the elements of the offence for pointing a firearm and
28 careless use.

29

30 MR. BURGE: Yes.

31

32 THE COURT: All right.

33

34 MR. BURGE: So on the first hand, they're looking at it
35 if there's an intentional application of force. And in the other two, they're looking
36 at scenarios where there is not an intentional application of force, but some other
37 unlawful act.

38

39 THE COURT: Right. Yes.

40

41 MR. BURGE: Yes.

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THE COURT: Okay. Any -- well, I think that helps.
And if I drafted the charge in that way, that would satisfy the -- the Crown's
views?

MR. BURGE: It -- it sounds -- it sounds like our -- a
reasonable -- a reasonable way to handle this predicament, My Lord, yes.

THE COURT: Okay. Now, Mr. Spencer, you have been
listening to me speak with the Crown, and I don't know if you have a mental
picture of where we're all situated at this point.

MR. SPENCER: Generally, yes. We've been trying to
sketch it out, but certainly not as clear as -- as the vision you have, I don't think,
My Lord. My first point would be I think pointing would logically be the -- the
second step. But, you know --

THE COURT: And why would that be?

MR. SPENCER: Well, my thinking is as far as moving
away from intentionally pointing and intentionally causing to pointing and
unintentionally causing, and then to something else of a careless nature. Now, the
concern I have is, of course, the -- you know, lawful excuse is built into both of the
manslaughter unlawful act provisions that my friend is relying on. So I think once
you look at that, then you also have to look at the self-defence component there as
far as saying -- so not self-defence to use of lethal force. No, it's not there in fact
or in law, but I think there is a self-defence to pointing. I don't believe that
happened, but if there was a pointing, to say stop using your weapon, the vehicle --

THE COURT: Okay. But there's no -- there's no air of
reality to that. Like, the -- there's -- there's no suggestion that Mr. Stanley pointed
the gun at Mr. Boushie because he believed that Mr. Boushie had a gun.

DISCUSSION CONTINUES AT VOLUME 5, PAGE T801
