

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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Transcript of Proceedings
before the Commission sitting at
the Winnipeg Convention Centre
Winnipeg, Manitoba

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Friday, July 4, 2008

Volume 8

INQUIRY PROCEEDINGS

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1 FRIDAY, JULY 4, 2008

2 UPON COMMENCING AT 9:30 A.M.

3 THE CLERK: All rise. This Commission
4 of Inquiry is now open. Please be seated.

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,
7 Mr. Commissioner. We are about to start stage two
8 of phase two. We're going to be looking at the
9 East St. Paul Police investigation over the course
10 of the next several days.

11 I noticed my friend, Mr. Weinstein,
12 was standing, it's kind of hard to miss that, but
13 he was standing a moment ago. And it appears he
14 has a gentleman with him at the table, who I
15 presume is his client. I anticipate he is going
16 to be bringing a motion to have his client sit at
17 the table. I'll have him come and address you.

18 THE COMMISSIONER: Yes.

19 MR. WEINSTEIN: Good morning,
20 Mr. Commissioner.

21 THE COMMISSIONER: Good morning.

22 MR. WEINSTEIN: I thought it was
23 understood that parties with standing are entitled
24 to be in the room, as opposed to witnesses. And
25 as you know, Mr. Bakema has standing in this

1 matter, so he will be here for part of the time.

2 THE COMMISSIONER: Thank you.

3 MR. WEINSTEIN: Thank you.

4 MR. PACIOCCO: I have no difficulty
5 with him being here. Of course, he is a party
6 with standing. The question is whether or not it
7 suits the Commissioner to have a party sitting at
8 counsel table, given the number of parties. Is
9 this something that you feel comfortable with?

10 THE COMMISSIONER: In the
11 circumstances of this case, I think it's
12 appropriate that he sit with you so he can give
13 you instructions.

14 MR. WEINSTEIN: Exactly. Thank you
15 very much.

16 THE COMMISSIONER: Thank you. Did I
17 say case? I meant inquiry.

18 MR. WEINSTEIN: Thank you.

19 MR. CLIFFORD: Good morning,
20 Mr. Commissioner.

21 THE COMMISSIONER: Good morning.

22 MR. CLIFFORD: Today we intend to call
23 two witnesses. The first one will be Glenda
24 Pedersen.

25

1 GLENDA AMELIA PEDERSEN, being first
2 duly affirmed, testified as follows:

3 THE COMMISSIONER: Good morning.

4 THE WITNESS: Good morning, sir.

5 MR. CLIFFORD: Mr. Commissioner, for
6 the benefit of you and counsel, I will indicate at
7 the outset that the materials or documents that I
8 will refer to with this witness are exhibits 42,
9 43 and 44, and what I'm referring to is documents
10 from volume E-2, exhibit 42 is from E-2. It's at
11 tab E-2.26.a. Those are this witness's duty book
12 notes. Exhibit 43 is found at tab E-2.26.b. That
13 is this witness's East St. Paul Police incident
14 narrative. And Exhibit 44 is at tab E-2.26.c, and
15 that is this witness's RCMP statement.

16 THE COMMISSIONER: Thank you.

17 BY MR. CLIFFORD:

18 Q Constable Pedersen, you have
19 previously appeared before the Commission and were
20 helpful in giving us some evidence during the
21 victims' phase of the inquiry, and you've been
22 called back now to fill in the gap with respect to
23 the observations you made and the dealings that
24 you had with specific officers, and also with
25 Harvey-Zenk.

1 First, I'd like to thank you for
2 coming back. And for the benefit of those who
3 were not present during the first phase, could I
4 ask you very briefly to recap your current
5 position with the East St. Paul Police, and touch
6 briefly upon your career, when you started
7 policing and what brings you to where you are
8 today?

9 A Yes. Good morning. I am first class
10 constable with the East St. Paul Police for eight
11 years now. And previous to that, I was a first
12 class constable with St. Clements Municipal Police
13 for six years, for a total of 14 years all
14 together.

15 Q Thank you. And could you bring your
16 mind back, please, now to the day of
17 February 25th, 2005? I understand you have a
18 number of exhibits before you and I take it you
19 recognize those documents?

20 A Yes, that's correct.

21 Q Your duty book notes, your incident
22 narrative, and your RCMP report?

23 A Yes.

24 Q And you certainly had an opportunity
25 to review those prior to being interviewed by the

1 Commission?

2 A That's correct.

3 Q And I take it you have also had an
4 opportunity to review them again prior to
5 testifying today?

6 A That's correct.

7 Q All right. Now, with the benefit of
8 those materials and your own personal
9 recollection, can you tell us what time you
10 started your shift on February 25th, 2005?

11 A I started at 7:00 a.m.

12 Q And could I ask you please to refer to
13 Exhibit 42, your duty book notes. And I see an
14 entry at 7:00 a.m. But what I'd like to ask you
15 about, is it appears as though at the top of page
16 90 of your duty book notes, it looks as though
17 there's a time entry of 7:30?

18 A Yeah, that's correct.

19 Q And then I see just under that, the
20 next time entry is at 7:00 o'clock. And could you
21 provide an explanation for that?

22 A That may have been something related
23 that I just noted down the time, and then when I
24 got to actually write my notes, I did the next
25 line which would be the actual date.

1 Q Okay. At 7:30 you've got an entry
2 that your shift is 07 to 1700 hours. This is your
3 first entry, and you're describing the weather,
4 minus 17, cold and sunny. That is the typical
5 entry a police officer would make, is it not, at
6 the commencement of a shift?

7 A That's true.

8 Q So might it be that at 7:00 o'clock
9 something happened that would have started your
10 day, so to speak, and then subsequent to that, you
11 went in and put in your normal entry of what you
12 would do?

13 A Yes, that's correct.

14 Q Could you tell me, is it at
15 7:00 o'clock that you normally start your shift?

16 A On a day shift, yes.

17 Q And to put it in context, I'm
18 referring to that time?

19 A That would be correct, yes.

20 Q Who else would have started on that
21 shift with you?

22 A My recollection is Constable Graham
23 was starting with me at 7:00 a.m. and Chief Bakema
24 was also present in the station at that time. I
25 believe he was also working the day shift.

1 Q Do you know who had been on the night
2 shift?

3 A I believe it was Constable Woychuk.

4 Q Had you worked the night shift prior
5 to that?

6 A On that day?

7 Q No, during your career, in close
8 proximity to that day?

9 A I don't know if that was my first day
10 shift back or not.

11 Q What time does the night shift end?

12 A 7:00 a.m.

13 Q And what time does it start?

14 A I believe it started at that time at
15 9:00 p.m.

16 Q So based on your testimony, Jason
17 Woychuk would have worked from 9:00 p.m. till 7:00
18 in the morning?

19 A That would be pretty accurate, I
20 believe.

21 Q And you would have been going into
22 work with Officer Graham and Officer Carter --
23 pardon me, Bakema?

24 A Chief Bakema, yes.

25 Q Chief Bakema at the time, Officer

1 Graham and yourself?

2 A On that particular day, yes.

3 THE COMMISSIONER: How many constables
4 were there on the force at that time?

5 THE WITNESS: I'd have to just think a
6 moment on that. I believe there was about seven
7 or so.

8 THE COMMISSIONER: Seven of you?

9 THE WITNESS: Seven to eight, I'm not
10 quite exactly sure.

11 THE COMMISSIONER: Thank you. How
12 long would your normal shift be?

13 THE WITNESS: Ten hour shift.

14 THE COMMISSIONER: Seven?

15 THE WITNESS: A ten hour shift.

16 THE COMMISSIONER: Ten hour shift,
17 thank you.

18 BY MR. CLIFFORD:

19 Q Now, according to your duty book
20 notes, there is an entry at 700 hours, so can we
21 take it from that you were at the police station
22 at 7:00 o'clock?

23 A 0700 I believe you mean?

24 Q Yes. And present at that time is
25 yourself, Chief Bakema, Officer Graham and Officer

1 Woychuk?

2 A That's correct.

3 Q Just the four of you at that point?

4 A Yes.

5 Q Okay. Now, in terms of who is present
6 at the station, in terms of experience, who was
7 the most senior? And then I'll have you go down
8 to who had the least seniority in terms of
9 experience?

10 A That would be Chief Bakema, then
11 myself, Constable Graham, and then Constable
12 Woychuk, from senior to least.

13 Q Did you know how much experience
14 Constable Woychuk had at that point?

15 A I believe he came on the summer before
16 in either August or September of 2004.

17 Q So ballpark, and we'll hear from him
18 to get definitive evidence on this, but your
19 understanding was he would have had about six,
20 seven months?

21 A I believe that would be about right.

22 Q Okay. So, in terms of the four of
23 you, the person with the least work experience and
24 seniority was also the individual who had been up
25 all night?

1 A That would be correct.

2 Q And he was scheduled to go out the
3 door and go home that morning?

4 A Yes, that's correct.

5 Q What did you do upon your arrival at
6 work?

7 A We were basically sitting at the desk
8 and just chit-chatting a bit at normally the start
9 of the day.

10 Q Now, according to your duty book
11 notes, a call is received at 7:15, and can you
12 expand upon that?

13 A Actually, I believe it was
14 approximately 7:10, and the phone rang and
15 Constable Graham picked up the phone and received
16 the call of the motor vehicle collision located at
17 the Perimeter Highway and Henderson Highway
18 intersection.

19 Q Okay. So you understand a call to
20 have come in at 7:10, and where do you reference
21 that time?

22 A I remember looking at the clock on the
23 wall over to my left, a large clock just about
24 10 feet away, and noting 7:10.

25 Q And in your duty book notes there's a

1 time entry of 7:15, MVC at lights at Perimeter
2 Highway 101 at Henderson. So I take it you would
3 have made that note five minutes after noting the
4 time of the call?

5 A That was when I actually arrived at
6 Henderson and Highway 101, because that was the
7 location we were directed to.

8 Q Okay.

9 A I noted that because I looked at the
10 clock in the vehicle that's in front of us on the
11 radio.

12 Q Okay. So that's very helpful. At
13 7:10, you received the call. At 7:15 you are at
14 location 101 and Henderson Highway?

15 A That's right.

16 Q Now that's not where you want to be,
17 is it?

18 A No.

19 Q Can you explain to the Commission how
20 that came about?

21 A I realized on route to Henderson
22 Highway and 101 that there was a lot of traffic
23 congestion at the intersection of 59 and 101, but
24 I could not see clearly what was going on, because
25 as you turn to go westbound on 101, it's very

1 difficult to look completely over and see the
2 intersection. So I made a mental note, and then I
3 continued on to my original location. And I
4 realized that there was nothing there that was out
5 of the ordinary, no vehicle collision or anything,
6 and assumed that perhaps the location was wrong
7 and perhaps it was at 101 and 59. I proceeded to
8 turn around eastbound back on 101. And when I was
9 doing that and travelling eastbound on 101, I
10 received a call from Constable Graham on the radio
11 that that was actually the location and they were
12 there at that time.

13 Q Who told you to go to 101 and
14 Henderson?

15 A It was the caller on the telephone
16 that Constable Graham took.

17 Q All right. So to recap, you start
18 your shift at 7:00; 7:10 there's a call; 7:15
19 you're at 101 and Henderson. What time do you
20 arrive on scene where the accident occurred?

21 A Approximately 7:20 a.m.

22 Q And that, of course, is indicated in
23 your duty book notes and also in your incident
24 narrative report, is it not?

25 A Yes, that's correct.

1 Q Now, you were not the only individual
2 from the East St. Paul Police, obviously, who
3 responded. What I'd like you to do is tell the
4 Commission the sequence or the order in which you
5 understood the East St. Paul Police Officers to
6 leave, and also in your response, tell us who was
7 partnered up with who?

8 A I was by myself.

9 Q Okay. Who was the first to leave?

10 A I was the first to leave.

11 Q And you were by yourself?

12 A Yes.

13 Q Okay. Do you know who the second was
14 to leave? And I understand you were gone at this
15 point, but do you have information, or did you
16 have radio contact or anything of that nature that
17 would allow you to tell us who left second and
18 thereafter?

19 A I seem to recall Constable Woychuk
20 next on the radio, advising dispatch he was
21 leaving as well. And then I believe it was
22 Constable Graham in the third vehicle that left
23 the station. And later on I found out that Chief
24 Bakema was with him at that time.

25 Q So it's yourself in a marked police

1 cruiser?

2 A Marked police vehicle, yes.

3 Q Officer Woychuk we know was by
4 himself, according to you. He's in a marked
5 vehicle as well?

6 A Yeah. He was in the four-by-four,
7 RM2.

8 Q So he's in an SUV or a four-by-four?

9 A Yes.

10 Q And what about officers Graham and
11 Bakema?

12 A I believe they were also in a marked
13 police vehicle.

14 Q Okay. Moving then to 7:20 again.
15 When you arrive, in what order do you make it
16 there? We know that you've gone up to 101 and
17 Henderson. So can we conclude that you're not the
18 first one there?

19 A I'm actually the last one to arrive
20 right at the intersection where the collision was.

21 Q Can you give any evidence with respect
22 to how far ahead of you other officers might have
23 been?

24 A Constable Woychuk arrived in his
25 vehicle maybe 10 to 15 seconds prior to myself

1 coming up to the intersection.

2 Q And you base that, I take it, on
3 seeing him there, on seeing him pull up?

4 A That's correct.

5 Q So he's there approximately 7:20, 10,
6 15 seconds ahead of you. Did you have any idea
7 how long officers Graham and Bakema had been on
8 the scene?

9 A Well, at least approximately from the
10 time that Constable Graham advised me on the radio
11 that that was the location to when I arrived. So
12 from my notes, it would be approximately five
13 minutes.

14 Q What do you see when you arrive?

15 A In respect to what exactly?

16 Q In terms of the placement of the
17 police vehicles, who was present on scene? I'll
18 break it down for you, okay. Do you see Jason
19 Woychuk get out of his car?

20 A Yes, I believe I do.

21 Q What does he do?

22 A He immediately parks the vehicle in
23 the intersection and gets out and walks westward
24 across the intersection of 59 towards 101. And I
25 believe, it looks like he's walking towards where

1 Constable Graham and Chief Bakema are.

2 Q And where are Constable Graham and
3 Chief Bakema?

4 A From my recollection, I believe that
5 they were parked in the middle of the southbound
6 lanes, keeping traffic from as many directions as
7 possible. And they were standing outside the
8 vehicle, approximately within that vicinity, maybe
9 10 or 15 feet from the vehicle, I think.

10 MR. CLIFFORD: Mr. Commissioner, with
11 your permission, I'd go up and move that chart and
12 expose the photograph, as it might be of
13 assistance to the witness.

14 THE COMMISSIONER: Yes.

15 MR. CLIFFORD: Thank you.

16 BY MR. CLIFFORD:

17 Q Constable Pedersen, just take a moment
18 and look at the diagram and get yourself situated.
19 I take it you are very familiar with that stretch
20 of road that's illustrated?

21 A Yes.

22 Q And I'm going to put it on the record
23 what it is that you're looking at, just for
24 completeness sake.

25 Madam clerk, what exhibit number is

1 this that I'm referring to?

2 THE CLERK: The picture?

3 MR. CLIFFORD: What the witness is
4 looking at right now?

5 THE CLERK: I will find out.

6 MR. CLIFFORD: I'll follow up on it,
7 Mr. Commissioner.

8 BY MR. CLIFFORD:

9 Q You're looking at the photograph
10 that's illustrating the section of highway in
11 question. Now, having the opportunity to look at
12 it, does it assist you in determining where the
13 vehicles were, where your vehicle was, et cetera?

14 A I can probably tell you where they
15 were, yeah.

16 Q And what you're looking at is a blowup
17 version of Exhibit 66. Would you like to just
18 step out of the witness box and indicate where you
19 saw --

20 A Which vehicle?

21 Q Tell me where you saw Chief Bakema and
22 Officer Graham?

23 A I believe it was just --

24 THE COMMISSIONER: Constable Pedersen,
25 could you speak up? Unfortunately, we're in a

1 situation, the room requires microphones, but the
2 reporter has to get it, and I'm sure the people
3 and the counsel in the room have to hear what you
4 have to say. So speak up as loud as you can.

5 THE WITNESS: I'll point to the
6 location where I believe Chief Bakema and Officer
7 Graham were in the vehicle there, like where their
8 vehicle was.

9 MR. CLIFFORD: Mr. Commissioner, can
10 you see that?

11 THE COMMISSIONER: I can see it, yes.
12 Somebody behind would like to see it as well.

13 THE WITNESS: It was approximately in
14 this location where I'm pointing to.

15 BY MR. CLIFFORD:

16 Q If you put your finger there again,
17 for the purpose of the record, you've got your
18 finger on the black line just north of the
19 intersection; is that right?

20 A Not exactly on the black line, but
21 just a bit ahead of it. So it will be south of
22 the black line.

23 Q Just south of the black line. And
24 that's where you see those officers?

25 A It's approximately there.

1 Q Okay. And where is Constable
2 Woychuk's SUV? Okay. And for the record, what
3 you're pointing to there is the northbound lane --
4 and put your finger back up there, please -- and
5 just beyond the intersection, just when the
6 intersection turns back into a two lane. Would
7 that be an accurate description of where Constable
8 Woychuk was?

9 A That's approximately. He was blocking
10 that intersection westbound.

11 Q And yourself? You're in the
12 northbound lane, but you're south of the
13 intersection in the left-hand turning lane towards
14 the Perimeter Highway 101?

15 A I was just coming up to that point. I
16 believe I had stopped for maybe one or two
17 seconds.

18 Q So all three vehicles are -- you've
19 got three corners of that intersection covered,
20 based on what you've indicated?

21 A Yes, that's correct. Actually, it's
22 two corners, because the turning lane where I was
23 would be the same kind of corner that Constable
24 Woychuk was blocking.

25 Q Now, you've got the vehicles placed.

1 Tell me what's happening?

2 A I was asked by Constable Graham to
3 actually leave my location and go up to the north
4 end of Highway 59, the southbound lanes, just
5 south of the weigh scales, to block the traffic
6 off there from going south.

7 Q And just prior to being asked to go up
8 there to block the traffic, what did you observe
9 on scene?

10 A I only noted that there was Crystal
11 Taman's vehicle, which I found out later on, the
12 small car in the intersection that was turned
13 perpendicular to it, somewhat, was very mangled,
14 the vehicle. And I noted a pick-up truck in the
15 median ditch in the southbound lanes that was
16 almost, just almost across from me to my left.

17 Q And can you tell me, was there anybody
18 in the vicinity of the pick-up truck?

19 A Yes, there was a gentleman standing
20 there that I briefly saw, right next to the
21 vehicle.

22 Q Do you know who that was?

23 A I didn't know who it was at the time.

24 Q Do you know now?

25 A Yes. It was the accused,

1 Harveyordenzenk.

2 Q So on your timeline, you are arriving
3 at 7:20, you have indicated where the vehicles are
4 and where the officers are. And you see his truck
5 and you see him in the vicinity of it at 7:20?

6 A That's correct.

7 Q And who was he with?

8 A There was no one else beside him.

9 Q And where exactly are officers Graham
10 and Bakema?

11 A I think they were pretty close to
12 their police vehicle.

13 Q And when you say pretty close, and I
14 apologize for interrupting you, could you define
15 that a little more?

16 A Somehow I seem to recall probably
17 within, you know, 10, 20 feet of their vehicle,
18 somewhere in the intersection, they are sort of
19 trying to keep the traffic away.

20 Q What are they doing?

21 A It looked like they were talking to
22 one another, but I don't know what was being said.

23 Q And what was Mr. Harvey-Zenk doing
24 down at his truck?

25 A It appeared like he was just standing

1 beside the vehicle.

2 Q How close to the vehicle was he?

3 A I think he was probably within a few
4 feet of his driver's side door.

5 Q Can you make any further comment --

6 A No.

7 Q -- on what he was doing, other than
8 the fact he was standing within a few feet of the
9 driver's side door?

10 A No. I know that he was standing
11 there, but I basically only got to glance over to
12 my side to see that there was a person there, and
13 approximately height, weight kind of thing, what
14 they looked like. It was an older model truck.
15 And then I was basically asked to leave that
16 location.

17 Q Did you see any other persons on
18 scene?

19 A I can't recall at the time.

20 Q Do you recall whether there was
21 anybody giving assistance at the scene at that
22 point, medical or otherwise?

23 A I can't say for sure.

24 Q Apart from Harvey-Zenk standing at the
25 driver's door of his truck, did you see anybody

1 else standing around other vehicles?

2 A Around his vehicle?

3 Q Around any other vehicle?

4 A Just as I said, I believe Chief Bakema
5 and Constable Graham were in and around near their
6 police vehicle, and Constable Woychuk was just
7 departing his vehicle.

8 Q Okay. Now, you were telling the
9 Commission that a request was made of you to go to
10 another location to block traffic?

11 A Yeah.

12 Q Okay. We'll pick up there. Who made
13 the request?

14 A It was Constable Graham that came on
15 the radio and told me to go down to the north end
16 and divert the traffic to westbound 101.

17 Q Can you see where you went on the
18 diagram?

19 A Yes, I can.

20 Q And I'd like you to put your finger on
21 it, and you describe the location as best you can?

22 A Did you see that?

23 Q Yes?

24 A Okay. That's just approximately, I
25 can't quite actually reach it, maybe just an inch

1 or so higher than what I pointed to, but it's
2 approximately where the turn-off lane goes to 101
3 westbound Perimeter Highway from the southbound 59
4 lanes.

5 Q And as I understand it, what you are
6 trying to achieve there is to get traffic that's
7 going southbound on 59 to veer off to the right?

8 A That's correct, yes.

9 Q And head off in an easterly direction
10 away from the intersection?

11 A In a westerly direction.

12 Q You got it. Now, do you know where
13 Constable Graham was when he called you, or when
14 he radioed to you to go to that location?

15 A He was outside the vehicle, his
16 vehicle.

17 Q That's your recollection or
18 understanding?

19 A Yeah. Both him and Chief Bakema were
20 outside their vehicle.

21 Q Do you know whether anybody was up at
22 the turn-off?

23 A No, I don't think they were.

24 Q When you went up, what did you see?

25 A When I went up, I had to basically get

1 my way through the congested traffic that was
2 backed up there, and then maneuver myself in to
3 block the traffic from going southbound, and then
4 I proceeded to place out traffic cones to divert
5 them over to 101 westbound.

6 Q And from your position there, were you
7 able to see with any detail what was occurring in
8 the intersection where the accident happened?

9 A I could see generally persons moving
10 about, and that there was more vehicles there as
11 time went on. But I couldn't distinguish exactly
12 which person was which person, other than I do
13 remember one time noting what I thought was
14 Constable Graham, just because of his height and
15 size and the way he walked, just walking in the
16 intersection.

17 Yeah, I just remember one time when I
18 was doing traffic control that I did think, what I
19 believe was Constable Graham, was standing in the
20 intersection somewhere. And I made that note
21 because I could tell by his body language and
22 mannerisms that it appeared it was him.

23 Q Any idea what he was doing?

24 A Just, you know, generally in the
25 middle of the intersection. I don't know if he

1 was looking at something specifically or not.

2 Q And apart from that, were you able to
3 discern any other detail or make any other
4 observations?

5 A I could tell when the ambulances and
6 paramedics and fire trucks rolled up, and there
7 was individuals from those agencies that were in
8 and around the area. The firemen wear distinctive
9 clothing, so you could see who the fireman was
10 versus who the police officer was, those kind of
11 things, or a citizen.

12 Q So once you're at that location as
13 of -- and we'll try to get the time now that you
14 landed there to block traffic and divert it. You
15 put your arrival on scene at 7:20. How many
16 minutes would have gone by before you were up
17 there directing traffic?

18 A Well, as soon as I basically rolled up
19 into the intersection where the collision actually
20 was, as I said, I only maybe stopped my police
21 vehicle for a few seconds, literally, and then
22 departed right away, as soon as I could clear and
23 go into the lane. So it would have been for me to
24 get set up there maybe a few minutes.

25 Q Okay. But your actual arrival time at

1 the north position where you're going to be
2 diverting traffic?

3 A To arrive there would probably be just
4 maybe 30 seconds.

5 Q So between 7:20 and 7:21?

6 A Yes. But to position myself took a
7 bit more time to get through the traffic
8 congestion.

9 Q And then, of course, you've got to put
10 cones out, et cetera, and get organized to get the
11 traffic going in the direction you want it to go
12 in?

13 A Yes, and I was actually out directing
14 traffic too.

15 Q Is it during this period, or
16 subsequent to 7:21, that you recall seeing the
17 emergency vehicles, fire trucks, et cetera?

18 A Yes.

19 Q And that's your first recollection of
20 that type of vehicle?

21 A That's my recollection, yes.

22 Q How long did you remain at the
23 location where you were diverting traffic?

24 A I remained there until I was asked to
25 attend to the hospital and get particulars on the

1 victims involved in the collision.

2 Q Okay. And what time were you asked to
3 leave? And if you want to refer to your duty book
4 notes and your incident narrative, the time entry
5 is 8:28?

6 A Yes, that's correct.

7 Q You can sit back down now, Officer
8 Pedersen.

9 Now, at 8:28 you are clearing that
10 location where you had been diverting traffic
11 since 7:21 or 7:22. Who is it that asks you to
12 leave?

13 A I believe Chief Bakema called me on
14 the police vehicle cell phone and requested me to
15 do that.

16 Q And who is it that replaces you?

17 A I know it was another police officer.
18 It may have been an RCMP member that had come to
19 assist us.

20 Q Do I understand from your testimony,
21 your evidence on that point would be it's another
22 police officer but you can't say who it was?

23 A That's correct.

24 Q Now, when you are asked to clear the
25 scene by Chief Bakema to go to the hospital, and

1 you have testified about that previously so we're
2 not going to go through what you did, et cetera,
3 at the hospital. But I understand the request was
4 made of you to go there, and you previously told
5 the Commission it was for the purpose of checking
6 on the status of the victims?

7 A That's correct.

8 Q Now, when you went to the Concordia
9 Hospital, I take it you would have gone by the
10 accident scene again?

11 A That's correct.

12 Q And I want to ask you about
13 observations that you made as you went by the
14 accident scene?

15 A Yes. As I was passing through the
16 intersection, I do recall seeing Constable Graham
17 near the driver's side door of the pick-up truck
18 in the median ditch. And he was -- had in his
19 hands, outside the vehicle actually holding up a
20 dark coloured uniform of some sort.

21 Q So we know it's at 8:28 that Chief
22 Bakema asked you to go to the Concordia Hospital.
23 You go directly from the location you are, past
24 the intersection. Traffic is now blocked off, so
25 presumably you're not dealing with traffic

1 congestion. How long did it take you to get down
2 to the intersection when you make this
3 observation?

4 A Well, it would be between maybe 12 to
5 15 minutes, 12 to 15 minutes, 10 to 15 minutes,
6 somewhere in there.

7 Q Let me put the question to you again,
8 because I think there's a bit of a
9 misunderstanding. You were directing traffic?

10 A Yeah.

11 Q You were asked to go to the Concordia
12 Hospital?

13 A Um-hum.

14 Q You got in your cruiser and you
15 started to make your way to the hospital. You
16 drive by the accident intersection?

17 A Um-hum.

18 Q Okay. So it's just that distance
19 between the weigh scales and the -- do you follow
20 me?

21 A Okay. I understand now.

22 Q So that's a matter of hundreds of
23 metres?

24 A Yeah, that would only be under a
25 minute.

1 Q Okay. So would it be fair to say then
2 that you would have made this observation, give or
3 take, 8:29?

4 A Yeah, that would be fair to say.

5 Q And if you could explain further what
6 it was that you observed, give more detail in
7 terms of what Officer Graham was, where he was
8 located, what vehicle he was beside, what he was
9 doing and what he had?

10 A I remember him distinctly beside the
11 pick-up truck that was parked in the ditch in the
12 median between the south and northbound lanes of
13 Highway 59. And he had just pulled out a dark
14 coloured uniform, a shirt and I think it was some
15 trousers with it, and appeared to be just holding
16 it up so it wouldn't drag on the ground. And then
17 it looked like he had taken it out of the vehicle.

18 Q And when you say a dark coloured
19 uniform, what brought you to that conclusion?

20 A It was very dark coloured, like ours,
21 and there was a crest on the sleeve.

22 Q So it looked like a police uniform?

23 A It could have been, yes.

24 Q And this was coming from the truck
25 that you saw Harvey-Zenk standing next to when you

1 first arrived on scene at 7:20?

2 A That's correct.

3 Q Now, I take it you have been an
4 investigator in motor vehicle accidents,
5 fatalities, et cetera, in your career?

6 A A few.

7 Q Okay. And if you're taking items from
8 any vehicle involved in an accident, am I correct
9 in indicating to you that the standard expected,
10 police procedure was that you would document
11 everything that you would take out of the vehicle?

12 A Yes, I've always done that.

13 Q In fact, you are required to do it,
14 are you not?

15 A Yes, we are.

16 Q Did you make any other observations?

17 A I do remember seeing another vehicle
18 over on the right-hand side, so that would be in
19 sort of the shoulder or ditch area of the
20 southbound lanes on 59, southbound again, a
21 smaller vehicle that was also there, that I hadn't
22 seen when I first came on the intersection
23 initially. And of course, Crystal Taman's vehicle
24 was also across the intersection, facing east and
25 westbound, and it was, as I said, very much

1 mangled.

2 Q So at this point you are also having
3 the opportunity to see the third vehicle?

4 A Yes.

5 Q And it's the first time that you
6 picked up on the presence of the third vehicle?

7 A Well, I think I actually noted seeing
8 it when I was doing traffic control, I noted
9 glancing back and sort of seeing another vehicle
10 down there, but I didn't know what it was in
11 respect to.

12 Q Were you aware of whether Jason
13 Woychuk was still on the scene?

14 A I don't believe he was.

15 Q Had you heard radio dispatches or
16 messages earlier that he was actually clearing the
17 scene?

18 A Yes. Actually, he wasn't there
19 because he had, when I was still doing traffic
20 control at the north end, I heard him on the radio
21 depart his location. And as he went by me, I
22 glanced over and saw that he was leaving the scene
23 northbound on 59.

24 Q Now, you have indicated what your
25 observation was as you were on your way to the

1 hospital at approximately 8:28, 8:29, when you
2 drive by and you have told us about Officer
3 Graham. You go to the hospital. How long are you
4 there?

5 A I arrived there approximately
6 8:48 a.m., and I left there at approximately
7 9:43 a.m. So just under an hour.

8 Q You departed from the hospital at
9 9:43, and what time are you back on scene again?

10 A 10:00 a.m.

11 Q And can you tell us what you are doing
12 when you are back on scene?

13 A I stopped and spoke at the
14 intersection, and spoke with Chief Bakema and
15 Constable Graham. They were sitting in the police
16 vehicle now close to where Constable Woychuk had
17 originally stopped, and facing southbound. And I
18 advised Chief Bakema and Constable Graham that I
19 had spoke with the Taman family members that were
20 there and gotten the particulars on the victims,
21 Crystal Taman and Kathleen Beattie, and what had
22 transpired there briefly. And that I had never
23 actually spoke with Kathleen Beattie because she
24 had left the hospital before I could speak with
25 her. And I do recall I think stating to Chief

1 Bakema that the Taman family was interested in
2 getting back Crystal's cell phone as well, so that
3 he had that information so we could try and
4 retrieve that.

5 Q And they were together at that point,
6 Officer Graham and Chief Bakema?

7 A Yeah. Chief Bakema, for some reason,
8 I thought he was sitting in the driver's seat
9 because he was closest to the window and it was
10 easy for me to talk to him. So I rode up just
11 beside and we spoke just, you know, a few feet
12 away, like windows open.

13 Q Is that all you observed of him?

14 A And I think Chief Bakema had told me
15 they were waiting for the traffic analyst.

16 Q And it was Chief Bakema who directed
17 you back to continue with traffic duty?

18 A I think I asked what they would like
19 me to do and, yes, I was directed back. I can't
20 remember who said that, possibly him.

21 Q Now, Constable Pedersen, I want to
22 deal with something at this point before we go
23 further. In your RCMP interview, when being
24 questioned by the RCMP on May 31st of 2006, the
25 RCMP were interested in what you did when you left

1 the hospital. And you indicated to them that you
2 went back to the station to commence normal
3 duties. And I understand that having had the
4 opportunity to review your duty book notes and
5 your incident narrative, that during the course of
6 the interview with Commission Counsel, prior to
7 any testimony, you concluded that that was an
8 error, that in fact you left the hospital, and as
9 indicated in your duty book notes and in your
10 narrative report, you actually went back to the
11 scene?

12 A That's correct.

13 Q So your RCMP interview stands to be
14 corrected in that regard?

15 A That's correct.

16 Q Now, when you go back to that
17 location, do you continue with your traffic
18 duties?

19 A Yes, I picked up where I left off.

20 Q And generally, what is happening when
21 you are there?

22 A I believe I relieved another officer
23 who was there, I think that was the RCMP officer
24 at that time, and took his position in my same
25 location as previously, and just continued to

1 monitor the traffic from going southbound. They
2 were still diverted to the west.

3 Q Okay. You told us you arrived back on
4 scene at 10:00 o'clock in the morning. How long
5 are you there before you leave again?

6 A I was there until 12:40 p.m.

7 Q Where do you go at 12:40?

8 A I was told I could go back to the
9 station.

10 Q And what's taking place at the
11 station?

12 A When I arrived back at the station, I
13 was briefly advised by Sergeant Carter that there
14 was an individual in custody and that was the
15 accused. He was the driver of the pick-up truck.
16 His lawyer, female lawyer, was present with him.

17 Q Did you see that happening?

18 A I saw them together in the holding
19 room, yes. And that was pretty much about it. I
20 don't know if Sergeant Carter actually told me his
21 name at the time.

22 Q Did Sergeant Carter give you any
23 details on the state of the investigation at that
24 point?

25 A No.

1 Q Did you ask him any questions?

2 A No. We didn't really have a chance to
3 talk because there was other people, such as the
4 accused and their counsel, and everything in the
5 building. So we don't normally.

6 Q Did you ultimately become involved or
7 have any contact with Mr. Harvey-Zenk?

8 A Yes. When he was being released by
9 Sergeant Carter, he had turned to his lawyer and
10 said, well, about the fingerprinting and indenting,
11 maybe he could do that right now. And his lawyer
12 said, well, do you want to do that now? And he
13 said, yeah, I don't want to come back here. And
14 Sergeant Carter had said, well, certainly if you'd
15 like to do that, we can allow that, that's not a
16 problem. If that's fine with you and your
17 counsel. They both agreed to it. And immediately
18 Sergeant Carter turned to me, I was only a few
19 feet away at my desk, and he said, could you
20 please take his fingerprint and photograph,
21 Glenda? Which I did.

22 Q And what time did this happen?

23 A This was approximately 1325 or
24 1:25 p.m.

25 Q Okay. You've told us you arrived back

1 at the station at 12:40 and now we're up to
2 1:25 p.m. and a request is made of you by Officer
3 Carter to do this?

4 A Um-hum.

5 Q Did you take Mr. Harvey-Zenk to any
6 specific location in order to follow through with
7 that request?

8 A Yeah, approximately 10 feet away where
9 the holding interview rooms are. They are dual
10 purpose rooms. That's also our form room back
11 there, and that's where we do the fingerprinting,
12 so it was just back into the room behind us.

13 Q Can you describe the space there that
14 you do this printing, et cetera?

15 A It's maybe a room that's 10, 12 feet
16 by 10, 12 feet, and we just have all the forms
17 there, and we have the small top area on top of
18 the shelves, and we just do the fingerprinting
19 there. And then we have -- the blank wall behind
20 us is where we just ask them to stand and we do
21 the photographing there. And his lawyer was
22 present at the time.

23 Q Now, I understand that when you were
24 working as an identification officer, taking
25 fingerprints and photographs, that when you do the

1 printing, you actually have physical contact with
2 the individual. You get close to them in order to
3 do that?

4 A Yes. I actually roll their fingers,
5 so I have control over how the print is done.

6 Q And if you could, describe the process
7 and the observations that you made of Mr. Zenk
8 when you were doing that?

9 A I would have asked him to just let me
10 do the work as far as rolling his finger, not to
11 press down or anything. And we proceeded to do
12 that. And I also would have completed the form by
13 asking all the questions on the form, name, date
14 of birth, place of birth, height, weight, those
15 kinds of things, which he would have answered.
16 And because I was very close to him, within a foot
17 and a half to less, I made the distinct
18 observation, I could smell stale liquor on his
19 breath and I could see that his eyes were somewhat
20 still glassy. And I also noted that he was very
21 deliberate and slower, just a little bit slower or
22 hesitant in his answers to the questions on the
23 form.

24 Q And for how long were you with him
25 when you were doing this fingerprinting?

1 A Oh, maybe seven to eight minutes,
2 maybe a minute less and maybe a minute more.

3 Q And was he -- were you walking with
4 him in this space?

5 A No. We would be, like literally
6 side-by-side. And in order for you to just take
7 their fingerprints, you have to basically
8 manipulate the hands. So the person would be
9 fairly close to you, like within one or two feet.

10 Q And when you indicated that you
11 detected the smell of stale liquor, where was that
12 smell emanating from?

13 A From his breath, his mouth.

14 Q Now, at this point you understood him
15 to be the accused. You had already been to the
16 hospital and you knew the severity of the
17 accident, that tragically one person lost their
18 life and another person, you understood, required
19 medical care but was released. These are, would
20 you not agree, significant observations in the
21 context of everything that you have learned that
22 day?

23 A What was the significant observations,
24 about the accused you're asking?

25 Q Yes.

1 A Yes, I would agree with that.

2 Q You have no hesitation at all in
3 agreeing with that?

4 A No, I don't.

5 Q And did you record any of these
6 observations?

7 A I did not record any of them, I just
8 made a mental note to myself.

9 Q Did you share those observations with
10 anyone?

11 A I did share them.

12 Q Who with?

13 A I know I did share it with Sergeant
14 Carter at some point in time. I thought I had
15 shared it with him the same day, but after the
16 accused had left the station. But I definitely
17 shared this information with him within the couple
18 of days after the fact.

19 Q Okay. So would your evidence be that
20 you thought you did it on the day?

21 A I thought I did, yes.

22 Q But, in fairness, you don't know
23 whether you did?

24 A I can't say absolutely 100 per cent.

25 Q But you are more confident on the fact

1 that within a number of days you relayed these
2 observations to Officer Carter?

3 A Definitely.

4 Q Now, apart from that, these are, you
5 have agreed, significant observations in the
6 context of an allegation of driving related
7 offences involving a death?

8 A That's true.

9 Q And observations such as these should
10 definitely have been recorded in your duty book?

11 A On hindsight, I believe I should have
12 done that, but I was not the investigating officer
13 at the time, and in my mind, I thought the accused
14 had actually been released. Because in order for
15 him to be fingerprinted, he would have to be
16 released first and then we -- he is given a
17 fingerprint date. And I thought I saw he had the
18 pink legal documents that he promised to appear,
19 and other documents in his hands, or in the
20 lawyer's hands at some point in time there. So
21 for me, I didn't think it was relevant that I had
22 to specifically make a note of that in my
23 notebook, but I made a mental note in my mind to
24 kind of confirm the information I had at hand
25 saying, thinking that that all seemed to fit.

1 Q You didn't record it in your incident
2 narrative either?

3 A No, I didn't, because I didn't record
4 it in my notebook. And as I said, I wasn't the
5 investigating officer and I thought he was
6 actually released at that point.

7 Q And you say, looking back on it, you
8 realize it was an error?

9 A Yes. Normally a person would come
10 back for fingerprinting in several days. So if I
11 had been the officer fingerprinting several days
12 later, that would not have been a notation in my
13 book either at the time. It would only be noted
14 that I fingerprinted the person.

15 Q No, but Constable Pedersen, if
16 somebody came back for fingerprinting a week later
17 and confessed to the crime, you'd record that in
18 your notebook?

19 A Yes, I would do that.

20 Q So these are observations that you
21 made that could have been used in furtherance of
22 the investigation?

23 A That would be true, yes.

24 Q That you failed to record?

25 A I did do that.

1 Q Let me ask you about your general note
2 taking practice. We know that, through our
3 experience, that officers do it in different ways.
4 Some try to do it contemporaneously, if possible.
5 What's your general practice?

6 A I try to do it as soon as possible at
7 the time, so I try to complete my notes as I go
8 along.

9 Q And were you taught anything in
10 respect of whether you should take notes
11 chronologically and put time entries in?

12 A Yes. In my initial training as a
13 police officer, I was taught to put times in and
14 put as much detail as possible, or what you need
15 to remember later on.

16 Q And is it standard police practice and
17 expected of police officers that you will create
18 your own duty book notes?

19 A That's always been my practice and
20 that's what I was taught.

21 Q You were taught that duty book notes
22 are not a collaborative process?

23 A That's always what I've done.

24 Q And we often hear police officers,
25 prior to testifying, in referring to their notes,

1 being asked or asserting to the court, they were
2 made by me at the time or shortly after, no
3 additions or deletions. Have you cited that
4 yourself?

5 A I have cited that they were made by me
6 at the time or shortly thereafter. That's what I
7 have cited, yes.

8 Q And I take it that you would think
9 that's what's expected of you?

10 A Yes.

11 Q In this case, did anybody ask to read
12 your notes?

13 A Not that I recall.

14 Q Did anybody want to use your notes to
15 collaborate on it?

16 A No one ever asked me that.

17 Q What can you tell us about your
18 incident narrative?

19 A I wrote the incident narrative,
20 actually the next day, on February 26th, because I
21 did not have time to write it at the end of my
22 shift when I came back to the station, so I
23 completed it the next day. And my memory was
24 still very fresh, so I wrote my notes then.

25 Q Okay. If I could just refer to you

1 your incident narrative report? That's Exhibit
2 43, tab E-2.26.b again?

3 A If I might just clarify something. I
4 said notes, but I actually meant I wrote my
5 incident narrative then. My notes were written at
6 the time. Just so that we're clear on that.

7 Q Okay. So looking at your incident
8 narrative, do I understand that you started your
9 incident narrative the day after?

10 A Yes, that's correct.

11 Q And we see at the second page of your
12 incident narrative, "date created 2005," and I'm
13 referring to the lower right-hand corner, there's
14 an indication, "date created 2005/02/26,
15 4:22 p.m."

16 A That's correct.

17 Q Now, that's the day that you started
18 your incident narrative report and I guess
19 completed the first version of it?

20 A Yes. That's -- I completed to what I
21 had at that point in time. And any other entries
22 after that were completed after that time.

23 Q And we see additional entries, for
24 instance, at 2005/02/26, there's an entry at 1700
25 hours on the second page?

1 A Um-hum.

2 Q That would have been done, obviously,
3 after 4:22. And then there's a further entry, the
4 final entry on your narrative incident report is
5 February 28th, 2005?

6 A That's correct.

7 Q So, generally speaking, when an
8 officer from East St. Paul Police creates an
9 incident narrative report, the day that you create
10 it remains, you can't change that, right?

11 A I can't change it.

12 Q But you can keep making additions?

13 A Yes, you can.

14 Q You can follow up, and they are all
15 time stamped as you generate this document?

16 A Yes, you continue to add to any
17 dealings you may have had with that incident.

18 Q And you can, of course, go back and
19 add to it, and developments as the investigation
20 proceeds and progresses and you get more
21 information, you include it in the document?

22 A That's correct.

23 Q Now, can other police officers get
24 access to your incident narrative report?

25 A At the time that this report was

1 completed, I believe there was only the
2 supervisors that had access to changing anything
3 on anyone's narrative, such as spelling mistakes
4 and that kind of thing.

5 Q When you say supervisor, who do you
6 mean?

7 A The Chief would have had access and
8 the reader.

9 Q I don't understand what you're saying,
10 the Chief and the reader?

11 A The file reader, file reviewer.

12 Q Okay.

13 A It was usually Sergeant Carter was the
14 file reviewer.

15 Q So the Chief, and would it be the
16 investigating officer, would that person be the
17 file reviewer?

18 A No. File reviewer is usually a
19 supervisor or someone, a senior member who reviews
20 all files that come in for the day.

21 Q Okay.

22 A And gives them a diary date.

23 Q Are incident narrative reports
24 generated in matters where criminal charges are
25 laid, or are they also generated in matters where

1 there's motor vehicle accidents?

2 A Well, usually we generate a report for
3 any matter that we have.

4 Q Okay. So it's not just confined to
5 cases --

6 A No.

7 Q -- where there's a criminal
8 investigation?

9 A No. We -- if I have a call requesting
10 just information on the Traffic Act, I would
11 generate a report.

12 Q Okay. Thank you. Now let's go back
13 to where I was with you. I was asking you about
14 other officers having access to incident narrative
15 reports, and you were telling the Commission that
16 the Chief would have access to it, or the
17 designated file reviewer, access that would allow
18 them to make changes?

19 A From my understanding, yes.

20 Q Well, what about other officers who
21 just want to read it?

22 A We would have reader, reading access
23 only. So you can pull up the file electronically
24 on the computer and read any person's narrative to
25 that report.

1 Q And did you read other officers'
2 narrative reports in connection with this case?

3 A I did at the time. I wrote my report,
4 after I wrote my report, I read the other
5 officers' narrative.

6 Q You say that you wrote yours first and
7 then you read the other officers'?

8 A Yes.

9 Q Why do you say that?

10 A Because I wanted to get all the
11 information down I had fresh in my memory. So I
12 wrote my report first, and then I went and looked
13 at what the other officers' reports were, so that
14 I would have an idea that my times fell into
15 basically what was going on at the time as well,
16 because I go by my own watch.

17 Q So you wanted to create an independent
18 incident narrative?

19 A Yes.

20 Q Much in the same way that you would
21 want to create independent duty book notes?

22 A Yes. I usually write my own narrative
23 first, and then try to gain more information by
24 reading other person's narratives that they have
25 added.

1 Q What did you notice as you started to
2 review other officers' narrative reports?

3 A I believe there was, Constable
4 Woychuk's narrative that was in there, and Chief
5 Bakema's narrative, and I think Sergeant Carter
6 had started his narrative as well.

7 Q And did you go back and continue to
8 review their narratives?

9 A It was a few days later that I went
10 back and took a look at the file again to see
11 where I was. Of course, on the 28th I made
12 another entry, so that might have been the actual
13 date that I looked again at the other narratives
14 to see how much more information to this case
15 there was, because I didn't hear very much about
16 it, to be honest. And being curious, I wanted to
17 just sort of put the sequence of events in order
18 in my own head.

19 Q And what, if anything, did you notice
20 when you were reviewing the incident narratives
21 for the second time?

22 A I noticed a couple of the reports had
23 more detail in them.

24 Q And can you elaborate on that?

25 A Yes. Constable Woychuk's report was

1 more detail oriented in things about the accused.
2 He had put signs of impairment and things like
3 that into the report, on the second time that I
4 read it. And Chief Bakema's report also had a
5 notation in there that Constable Graham had
6 retrieved the uniform from the accused's vehicle,
7 which wasn't there initially that I recalled.

8 Q So you created your incident narrative
9 on February 26th at 4:22?

10 A That's correct.

11 Q Thereafter, you reviewed the incident
12 narratives of officers Woychuk and Chief Bakema?

13 A That's correct.

14 Q As the days progressed, you were back
15 watching the development of their incident
16 narratives, and you learned that Officer Woychuk
17 is adding more detail about signs of impairment
18 regarding Mr. Harvey-Zenk?

19 A Yeah, and things about the incident in
20 general, yes.

21 Q And you noticed that Mr. Bakema, or
22 Chief Bakema has included a notation that wasn't
23 in his original report about Officer Graham taking
24 a police uniform out of the vehicle?

25 A That's correct.

1 Q Did you discuss this case with Chief
2 Bakema?

3 A Yes, I did.

4 Q When did you first talk to him about
5 it?

6 A He actually spoke to me about it the
7 morning of February 26th, when I came into duty
8 again at 7:00 a.m. And it was just sort of
9 chit-chat again.

10 Q And what was that conversation about?
11 What was he saying to you?

12 A He was saying to me that it was a very
13 terrible thing that had happened, and that he
14 thought it was a very terrible thing for the
15 accused now, because this would really affect his
16 life and ruin it, as he was a police officer. And
17 also that it was -- he did mention it was terrible
18 for the victim's family as well, but he seemed to
19 dwell on, more on the accused and the consequences
20 of all of this for him. And I agreed it was a
21 terrible situation for everyone, but I also made a
22 point to say that it was also terrible
23 specifically for the victims and their families,
24 specifically the deceased. And he said yes,
25 that's true. And then made another comment, I

1 believe, about the accused and --

2 THE COMMISSIONER: I'm sorry?

3 THE WITNESS: Made another comment
4 about the accused and how it is still affecting
5 his life in a very negative way. And I didn't say
6 anything after that. I just kind of nodded my
7 head, but in my mind I wasn't agreeing with that.

8 BY MR. CLIFFORD:

9 Q And how did it strike you?

10 A It struck me that he tended to be more
11 concerned about the accused and his future than
12 with what had occurred to the victims.

13 Q Did you know whether Harry Bakema knew
14 Derek Harvey-Zenk?

15 A I believe in that conversation he did
16 tell me that he had worked with him in the North
17 End while he was a Sergeant there. Like Chief
18 Bakema was a Sergeant there with Winnipeg Police
19 prior to retiring and then coming to our
20 department.

21 Q Did you have any idea how long Chief
22 Bakema would have known Mr. Harvey-Zenk?

23 A For some reason, I thought five years
24 was mentioned.

25 Q Did you know Mr. Harvey-Zenk?

1 A No, I didn't know him at all.

2 Q Did you ever discuss the issue of
3 conflict with Chief Bakema or any other officer
4 from East St. Paul?

5 A I'm not quite sure what you mean.

6 Q A conflict in terms of the
7 investigation?

8 A I think as time went on, I discussed
9 it with other officers, yes.

10 Q Can you describe your conversations?

11 A Just that I felt -- I know I have made
12 mention that I felt it was an extremely long time
13 between the time Harvey-Zenk was placed into
14 Constable Woychuk's vehicle and the time at the
15 scene and to the point that he was taken back to
16 the station and actually placed under arrest, and
17 I thought that that would be a problem later on.

18 Q Okay. I take it from your response
19 that, when I say to you conflict, you are
20 responding in terms of what you understand to be
21 the difficulties or the hurdles in the prosecution
22 as a result of the investigation?

23 A That's, yes.

24 Q What about the issue of conflict of
25 interest in terms of the appropriateness of one

1 officer investigating another when they might have
2 had a previous professional relationship?

3 A I guess I probably may have said it
4 but I can't actually recall who I said it to. I
5 mean, I realized that possibly, but I don't think
6 I discussed that much with anybody.

7 Q I take it there is times in your
8 career that you have been the senior officer
9 called to a scene?

10 A Yes, there has been.

11 Q And there would be a number of junior
12 officers that would also attend on the scene with
13 you?

14 A That's correct.

15 Q People with less experience?

16 A Sometimes.

17 Q I take it, as senior officer, you
18 would have to make decisions about who would be in
19 the best position to do certain tasks?

20 A That's what we were requested to do.

21 Q For instance, would you call upon a
22 rookie police officer who was up all night on a
23 shift to undertake an investigation of a serious
24 motor vehicle accident involving alcohol?

25 A If I had other options, I wouldn't be

1 doing that.

2 Q Do you know how and when Officer
3 Carter got to the East St. Paul Police Station?

4 A Well, it was obviously when the
5 accused was transported back to the station.

6 Q Were you aware of what it was that
7 brought him to the station, though?

8 A No.

9 Q Now, in terms of who was in command at
10 the scene that day, so to speak, that's how I
11 understand police forces work and they need to
12 work that way, there needs to be someone in
13 charge?

14 A Um-hum.

15 Q You're nodding your head?

16 A Yes, I agree with that.

17 Q And you were instructed to do certain
18 things that day, to go to the hospital?

19 A Yes, I was.

20 Q Check on victims. You went back and
21 you reported your findings to Chief Bakema?

22 A Yes, I did.

23 Q You were then instructed to go back to
24 where you came from?

25 A I believe it was --

1 Q Okay. So Chief Bakema was instructing
2 you on what to do?

3 A For most of the time, yes.

4 Q What was your understanding of who was
5 in command at the scene of the accident?

6 A I was not told specifically who was in
7 command, but I would assume it was the most senior
8 officer, so I would have assumed it was Chief
9 Bakema.

10 Q When you are working as a senior
11 police officer on scene, and just in the general
12 context of working as an officer, do you expect
13 junior officers to do what they are told to do?

14 A When you are asked to do it, yes, you
15 usually do it without question. If you have some
16 difficulty with it -- I, myself, normally would
17 perhaps mention it to who was directing and ask if
18 we should be doing this or not. And if it's
19 explained to me the reasons why we should, then I
20 would normally carry out my duties.

21 Q And would you do what Chief Bakema
22 instructed you to do?

23 A In general, you mean?

24 Q Yeah?

25 A In general, yes.

1 Q And had he ever instructed you to do
2 something that you didn't want to do?

3 A Yes.

4 Q Can you elaborate on that?

5 A Yes. Would you like me to? It was an
6 incident back in the summer of 2004, involving
7 Constable Graham and myself, that had been at a
8 roadside checkstop in the early spring, prior to
9 actually Chief Bakema coming to our department.
10 Constable Graham had made an arrest on drug
11 related -- or actually he had not made an arrest,
12 he had detained a person in the back of his
13 vehicle, investigating a drug related matter. And
14 I advised Constable Graham at the time that my
15 understanding of powers of arrest and detainment
16 were you were to charter the person of their
17 rights and legal counsel, if you were to detain
18 them at any point in time. He did not agree with
19 me on how he was conducting this investigation, or
20 that particular investigation. And I made note of
21 it in my notebook of our discussion. And later
22 when I put all my notes copied into the file, this
23 was in I think May of 2004, Chief Bakema called me
24 into his office and asked me why I had put those
25 specific notes in there, and that it was my

1 opinion only of a discussion I had with another
2 officer. He then requested that I not photocopy
3 that portion of my notes, and re-photocopy the
4 portion only directly related to the investigation
5 and the incident, and what role I played in that.
6 Which I did. Knowing that my notes had, my
7 original notes had everything in, so if I should
8 ever be called to the witness stand, I would
9 testify according to my notebook.

10 Q Was it your understanding that what
11 you did in response to that request was
12 appropriate?

13 A Yes, it was.

14 Q Did you understand it to be what you
15 should have done?

16 A I was always taught that you put
17 everything from your notes copied into the file
18 that has anything to do with that incident. So
19 that's exactly what I did.

20 Q But you followed through with Chief
21 Bakema's request?

22 A I did, because it's only a photocopy
23 into the file. And as I said, if I was ever
24 called to testify in a court of law, I would
25 provide my original notebook and give exactly what

1 was in my original notes as testimony.

2 Q Was there ever another occasion where
3 you were spoken to about your notes and doing
4 anything like that?

5 A Not in a specific incident, I don't
6 believe.

7 Q Can you expand upon that?

8 A Yes. Approximately in June of 2004, I
9 was called into Chief Bakema's office, and he
10 reviewed all my files with me and he stated to me
11 that I was not being professional, and I wasn't
12 diligent of my duties in not doing well on my
13 files, and that I should certainly re-evaluate
14 whether or not I should be a police officer.

15 MR. CLIFFORD: All right. Officer
16 Pedersen, those are the questions I have for you.
17 Please remain seated and other counsel will have
18 questions.

19 Mr. Commissioner, would this be an
20 appropriate time? It's 11:53. I apologize,
21 wishful thinking, it's 10:53.

22 THE COMMISSIONER: We'll let counsel
23 start and then I'm sure they will be through
24 quickly, and we'll then have a break.

25 Mr. Weinstein is kind of smiling as if he said,

1 that's what you think. We'll see. Let's see how
2 far we go.

3 BY MR. ZAZELENCHUK:

4 Q Officer Pedersen, you told us you
5 drove by the scene at about 7:18, 7:20, something
6 like that; is that correct?

7 A About 7:20, I believe, according to my
8 notes.

9 Q Okay. And not to put too fine a point
10 on it, you got a look at the yellow car as you
11 drove by?

12 A I guess I did, yes.

13 Q And it didn't require a great deal of
14 rocket science or anything else to figure out that
15 this was a very serious accident. We have seen
16 photos of that car. And you didn't know for sure
17 that it was a fatality, but if it wasn't a
18 fatality, it was a pretty sure bet that there was
19 a serious injury there?

20 A I would say so, yes.

21 Q And that was obvious to anybody just
22 by driving by?

23 A Yes.

24 Q Okay. And there are four police
25 officers from the East St. Paul Police division at

1 or about the scene. There's the Chief, who of
2 course is the boss, correct?

3 A Yes.

4 Q And then there's yourself. You are
5 the most, after the Chief, you are the most senior
6 in rank and experience?

7 A At the time that we were working, yes.

8 Q Yes, of the four of you?

9 A Yes.

10 Q And you told us that you had had
11 experience in investigating a few traffic
12 fatalities?

13 A That's correct.

14 Q Yes. Had Constable Woychuk had any
15 experience, to your knowledge, investigating
16 traffic fatalities?

17 A I couldn't really comment on that.

18 Q Okay. But you felt that you were more
19 experienced than either Constables Graham or
20 Woychuk, particularly in investigating traffic
21 fatalities; isn't that correct?

22 A I had dealt with a few, yes.

23 Q Yes, okay. But you were directed,
24 presumably by your Chief, to proceed north and
25 direct traffic?

1 A Actually, it was Constable Graham that
2 directed me.

3 Q I see. And you followed his orders,
4 why? You are senior to him.

5 A Yes. Sometimes in a situation as it
6 was, if there is people there already on the
7 scene, and the person usually that comes to the
8 call first would usually, normally, be the
9 investigating officer. Therefore, they would try
10 to take command of the scene until a superior
11 officer could be advised, usually the Chief or
12 second in command.

13 Q Okay. So you were directed to go
14 north and direct traffic. The East St. Paul
15 Police force is a small police force, it's not
16 overly large, and the members wear more than one
17 hat from time-to-time; isn't that correct?

18 A That's correct.

19 Q Yes. And you were also at that time
20 the victim liaison officer for the police force,
21 were you not?

22 A Yes, I was.

23 Q Yes. And how long had you been the
24 victim liaison officer?

25 A Since actually I started in June 2000.

1 Q So you had some considerable
2 experience in that?

3 A Yes.

4 Q Yes. We have heard evidence, and I
5 believe that the evidence will unfold later on, we
6 have heard evidence that the two daughters of the
7 deceased, Crystal Taman, arrived at the scene
8 shortly after you did. And I believe the evidence
9 will show later on that they arrived at about
10 7:25. Were you aware of that?

11 A No, not until much later.

12 Q Not until much later. It's also
13 anticipated, or at least I anticipate that we're
14 going to hear evidence that the girls were put in
15 Constable Graham -- in the police vehicle that
16 Constable Graham had for some considerable period
17 of time. And we heard evidence two days ago from
18 Tara that her and her sister became hysterical,
19 they began to yell and scream. You may or may not
20 be aware of that. But what that's leading to is,
21 you were the victim liaison officer. Would you
22 agree with me that it would have been wiser for
23 you to be called in to assist these girls, who
24 were in a horrendous situation?

25 A I guess, if I had known, I would have

1 tried to assist, yes.

2 Q Sure.

3 A And if someone had called me,
4 certainly.

5 Q And would you view that as part of
6 your duties as a victim liaison officer? Is that
7 the kind of thing that a victim liaison officer
8 should be doing?

9 A That would be part of what we do, yes.

10 Q Sure. Okay. Then you told us that
11 you were directed at -- when was it -- about 8:30,
12 to go to the hospital and do some work there?

13 A Yes. I believe it was about 8:28.

14 Q Sure. And you followed your
15 direction, you followed your orders, and you did
16 your work at the hospital and you came back and
17 you were sent to direct traffic again?

18 A That's correct.

19 Q Okay. You know, when I read your
20 interview with the Commission Counsel and with the
21 RCMP, and your duty book, when I got all the
22 disclosure materials, it seemed to me almost as if
23 your fellow officers didn't want you at the scene.
24 Did you get that feeling?

25 A When you read mine?

1 Q I said when I read the materials, your
2 interview. When I found out that first you were
3 sent to direct traffic, then you were sent to the
4 hospital, I got the feeling that it was as if your
5 fellow officers didn't want you at the scene?

6 A Well, I don't know if they did or they
7 didn't.

8 Q Okay. Fair enough. You took a photo
9 of Mr. Harvey-Zenk?

10 A Yes, for identity purposes.

11 Q Sure. Was that one photo, or two?

12 A It would be a front view of the face,
13 neck and up, and then a side view, two
14 photographs.

15 Q Do you know what happened to those
16 photographs?

17 A I would have put them into, logged the
18 number on the photograph, put into the logbook for
19 what it was under the I.D. number. And it would
20 still remain in the disk, on the disk in the
21 camera, because usually we put as many photographs
22 of individuals on the disk until it gets full.
23 And then when the disk is full, it's taken out and
24 given usually to a superior, who would put it on
25 the computer, or have someone put it on the

1 computer.

2 Q So after you take the photo, you put
3 it in two places? You leave it on the disk and
4 you put it somewhere else?

5 A No, what I would do is log in the
6 photograph book --

7 Q I see?

8 A -- the number it was under, the I.D.
9 number it was under with photograph. When you see
10 the individual, they will have the date and I.D.
11 number that that photograph matches to. So you
12 have to log that into the logbook.

13 Q Okay. Just a couple more points,
14 Officer. You related to us about your
15 observations of Mr. Harvey-Zenk, when you were
16 fingerprinting and photographing him?

17 A Yes.

18 Q And you related to it us that you
19 didn't put it in your notes or incident report,
20 but you also related to us that you discussed it
21 with Sergeant Carter verbally?

22 A Yes, I did.

23 Q And of course, we have your RCMP
24 interview, which was conducted in May of 2006, and
25 you told the RCMP about that?

1 A Yes, I did.

2 Q Okay. Is there any earlier
3 documentation, before the RCMP interview, of your
4 observations, that you are aware of?

5 A Documentation, no. But I know I had
6 said it to several people in the office.

7 Q At any time after May of '06 to July
8 of '07, were you contacted by the prosecutor in
9 this matter, Mr. Minuk?

10 A No.

11 Q No request to interview you?

12 A No, I never talked to him at all.

13 MR. ZAZELENCHUK: Thank you.

14 MR. McDONALD: Mr. Commissioner, I
15 will reserve my right to go last.

16 THE COMMISSIONER: Mr. Weinstein,
17 while you're getting all your books together --

18 MR. WEINSTEIN: I've been chastised
19 before by judges that I am a poor predictor of
20 time. So I don't want to even suggest -- I'll be
21 some time, less than half an hour.

22 THE COMMISSIONER: Maybe we should
23 take a break at this time. Give you an
24 opportunity to review your notes.

25 MR. WEINSTEIN: Fine, thank you.

1 THE COMMISSIONER: Maybe that will
2 speed it up. I usually tell counsel that are
3 about to cross-examine that it's best that we take
4 a break so that they will focus on the issues and
5 get on with it, not that you haven't been doing
6 that. We'll take 15 minutes. Thank you.

7 THE CLERK: All rise. This Commission
8 is in recess.

9 (Proceedings recessed at 11:03 a.m.
10 and reconvened at 11:18 a.m.)

11 THE CLERK: All rise. This Commission
12 is reopen. Please be seated.

13 BY MR. WEINSTEIN:

14 Q Good morning.

15 A Good morning, Mr. Weinstein.

16 Q Let's just talk about notes for a
17 second. As you indicated, in hindsight, you
18 should have put in the symptoms that you observed
19 at 1:25, correct?

20 A Yes, I would agree with that.

21 Q Right. And I'm not being critical, we
22 do things better in hindsight in many cases.

23 A Yes.

24 Q And just as far as notes go, have you
25 in the past been told, as far as the notes you

1 prepare on occasion, and I'm not being critical,
2 have you been told at the time that sometimes that
3 your notes perhaps are redundant? Have you ever
4 been told that?

5 A Yes, I have.

6 Q Have you ever been told you shouldn't
7 be putting in opinions of people you have dealt
8 with, or officers, have you been told things like
9 that?

10 A That I should be doing that?

11 Q Shouldn't be doing that?

12 A Yes, I have been told that.

13 Q And you've been told to keep that out
14 of your notebook; correct?

15 A Yes, I have been told that.

16 Q Yeah. And in 2004, Constable Bakema
17 said, you know, this interaction you had with
18 Graham should not be included, correct, on this
19 drug thing?

20 A Chief Bakema, yes.

21 Q Yeah. And in fact -- again, trust me,
22 I'm not being critical -- on occasion has, say
23 Sergeant Carter helped you in preparing a
24 narrative?

25 A He may have directed me, yes.

1 Q Yes. Has he ever done the narrative
2 for you?

3 A I have never asked him to, but he has.

4 Q Okay. So it's actually your narrative
5 done by someone else. And there's nothing bad
6 about that or surreptitious about that, correct?

7 A Sometimes that's happened, yes.

8 Q And who signs it? Do you sign it?

9 A We don't typically sign it when a file
10 or incident number is created. Whoever takes out
11 that number and starts the actual report, that's
12 usually the name of the person that it goes
13 underneath. So only a supervisor or a reader or
14 someone in that capacity could assign it to the
15 investigator who it should be assigned to.

16 Q Okay.

17 A So it doesn't -- a person who actually
18 starts a report may not always be the person doing
19 the report.

20 Q Okay. But my point is, and again
21 nothing surreptitious about it, someone else may
22 do a narrative for you, but it's your narrative of
23 what you saw and what you did; correct?

24 A Well, like Sergeant Carter may have
25 started a report for me to get the base data in,

1 like the headings, time, date, whatever in the box
2 report, and then I can come back and do the
3 initial narrative myself.

4 Q Okay. And on occasion has Sergeant
5 Carter, after you have done your narrative,
6 suggested additions or deletions from your
7 narrative because of lack of relevance?

8 A I don't ever recall being told to
9 delete anything, but certainly to add as much
10 information as possible.

11 Q Okay. If something was redundant, had
12 you ever been asked to delete that?

13 A I can't recall if I have or not.

14 Q So it's possible that happened?

15 A It's possible.

16 Q And in fact, just along the same vein,
17 the author of a report can go back and make
18 deletions or additions -- or can make additions;
19 is that correct?

20 A Certainly.

21 Q And that's what you told Commission
22 Counsel, and you also said there is nothing
23 unusual or surreptitious about that; correct?

24 A That's correct.

25 Q Now, just as far as your narrative,

1 now you gave evidence today about attending the
2 scene and what you observed at the scene. This is
3 before you go to the Concordia Hospital?

4 A Okay.

5 Q You gave that evidence this morning in
6 some detail. Again, not being critical, but as I
7 read your incident narrative, and I'm looking at
8 the heading 7:20 hours, you don't really describe
9 anything you saw there. Do you see the three
10 sentences I am referring to?

11 A Yeah, that's correct.

12 Q It's not in there at all?

13 A No, it isn't.

14 Q And it's not in your notes?

15 A No.

16 Q Do you feel, in hindsight, it should
17 have been?

18 A I guess I should have probably put a
19 little bit more detail in.

20 Q Well, more detail, because there's
21 hardly any detail, again, not being critical,
22 would you agree with that?

23 A I wrote the narrative according to the
24 notes I did at the time.

25 Q Okay. Well, then should your notes

1 have been a little more weighted, as far as what
2 you have observed at the scene, as you testified
3 this morning?

4 A Yes. I could have put that into my
5 notes.

6 Q Yeah. Now, my learned friend,
7 Mr. Zazelenchuk, raised this suggestion that,
8 reading your summary of your interview with
9 Commission Counsel, and reading your summary or
10 interview with the RCMP, whether you got the
11 impression that they wanted you out of there. You
12 never got that impression?

13 A I never got that impression.

14 Q Thank you. What you were asked to do,
15 and that made sense, was go to a particular
16 location to control traffic; is that correct?

17 A Yes, I was asked to do that.

18 Q And that was by Graham?

19 A Yes.

20 Q Okay. So it wasn't just Chief Bakema
21 giving you instructions, Graham told you which
22 location to go to; correct?

23 A Graham told me the initial location,
24 yes.

25 Q And that made sense, where you went?

1 A At the time it did.

2 Q Yeah. And Bakema, Chief Bakema asked
3 you to attend to Concordia Hospital to check on
4 the condition of the two people taken there?

5 A Yes.

6 Q Correct? And that made sense to you,
7 correct?

8 A Yes, it did.

9 Q Okay. So it's not as though anyone is
10 sending you on a wild goose chase to do irrelevant
11 things; correct?

12 A No.

13 Q Now, let me just talk about the East
14 St. Paul Police in 2005. Forget about an overlap
15 day, I'm not talking about an overlap day, okay.
16 A non overlap day, how many people would be on
17 duty?

18 A Normally just one officer, patrol
19 officer, and the Chief normally came in, well,
20 Monday to Friday during the daytime.

21 Q So --

22 A And there would be office staff as
23 well, sorry.

24 Q Okay. Forget about the office staff,
25 I'm talking about police officers. So on a non

1 overlap day, and are most days non overlap days?

2 A Yes.

3 Q Okay. So most days in East St. Paul,
4 there is one person on the street, one person
5 inside; correct?

6 A Yes. Actually at some point, Sergeant
7 Carter would be in during the day as well.

8 Q Okay. But he'd be in the office?

9 A Yes.

10 Q Okay. So you still only have one
11 patrolman?

12 A Yes, that's normally the case.

13 Q So we've heard from some other witness
14 that East St. Paul was understaffed. Would you
15 agree with that?

16 A I would agree with that, yes.

17 Q Now, when you talk about -- and you
18 talked about briefly, about seniority, okay?

19 A Um-hum.

20 Q Where was Sergeant Carter as far as
21 seniority, years of experience?

22 A Sergeant Carter would be the most
23 senior member --

24 Q Okay?

25 A -- of the officers.

1 Q Okay. Even more senior than Chief
2 Bakema?

3 A With our department, yes.

4 Q All right. Now, this particular file
5 ended up early on being Sergeant Carter's;
6 correct?

7 A I don't know.

8 Q Well, who was Harvey-Zenk turned over
9 to?

10 A I don't know. I wasn't there.

11 Q All right. Have you read reports?

12 A Yes.

13 Q From the reports, who was Harvey-Zenk
14 turned over to at the police station?

15 A I don't know that he was turned over
16 to anyone, but I know that Sergeant Carter made
17 the arrest.

18 Q Okay. Sergeant Carter made the
19 arrest. Was Sergeant Carter also the reader, what
20 you call the reader?

21 A Yes. At that time, I would call him
22 the reader.

23 Q And you correct me if I'm wrong, the
24 reader is a person who goes through a file and
25 makes sure that everything appears proper, that,

1 you know, the reports are proper, things like
2 that?

3 A They reviewed the files, yes.

4 Q Right. And if there has to be more
5 elaboration on a report, the reader would notify
6 that individual that, you know, things are lacking
7 in this report?

8 A Yes, for me that's always been the
9 case.

10 Q Right. That he would ask you or ask
11 any other officer, you know, I'm reviewing this
12 file, I have this file, things are not as complete
13 as they should be, do this or do that; correct?

14 A Yes.

15 Q Including, if he felt that some
16 witnesses who had been interviewed and, you know,
17 their report, it wasn't thorough enough, he would
18 send the officer out to get a more thorough report
19 from a witness; correct?

20 A I would assume that, yes.

21 Q Yeah. And that's happened?

22 A Yes.

23 Q Now, going back to the scene for a
24 moment, or arriving at the scene for a moment,
25 shortly after you come to the scene, you see a

1 truck and an individual standing by the truck;
2 correct?

3 A A pick-up truck, an older model, yes.

4 Q Yeah. And I think I saw in one of
5 your interviews, when you went to fingerprint this
6 person, it triggered in your mind that this was
7 the same person you saw by that truck; correct?

8 A I believed it was, yes.

9 Q Yeah, and I believe that's what you
10 told the interviewer. Now, when you saw that
11 person by the truck, the pick-up, no one was
12 around him; correct?

13 A I didn't see anybody around him, no.

14 Q No. He was standing outside of the
15 truck, he wasn't inside the truck?

16 A No, not inside, outside.

17 Q Okay. And you also saw, and I'm now
18 jumping ahead, you also saw Woychuk drive away,
19 Constable Woychuk, with that individual sometime
20 later.

21 A I saw him drive away.

22 Q Yeah?

23 A I didn't really get to see who was in
24 the back of the vehicle.

25 Q Okay.

1 A That vehicle that Constable Woychuk
2 was driving, it's very hard to see into the back
3 because it's such a small space and the partition
4 is right there. Unless you were directly across
5 to see exactly and within, probably for me, 20,
6 30 feet, I wouldn't be able to say exactly who the
7 person was.

8 Q Okay. But it was --

9 A There was a body in there, though.

10 Q Okay.

11 A I mean there was a person there.

12 Q I appreciate what you meant. So from
13 the time you first saw the person at the truck
14 until Woychuk was driving away with a person in
15 the vehicle, we'll call that a person, a fair
16 amount of time had passed by?

17 A I thought so, yes.

18 Q Yes. So it's not as though that
19 person in the vehicle -- let's assume for a moment
20 it's Mr. Zenk, okay?

21 A (Witness nodding)

22 Q Let's assume that. And if you have
23 read reports, it was Mr. Zenk. So from the time
24 you saw him until he's taken away, it's not as
25 though he was whisked away immediately, he had

1 been at the scene for a fair amount of time,
2 correct?

3 A Yeah, I seem to recall that, yes.

4 Q Yeah. And I think you mentioned
5 something that, you know, that triggered something
6 in your mind, maybe it was too long a time that he
7 was at the scene; correct?

8 A Well, after reading the reports and
9 knowing the time of the arrest, and if the accused
10 was at the scene, it seemed like a fair amount of
11 time that there could be a problem there.

12 Q Right. In other words, it was obvious
13 to you, from your observation, from times reading
14 reports, Mr. Zenk was not "whisked away"
15 Immediately, was he?

16 A Not that I knew of.

17 Q Yeah. And just -- sorry to jump
18 back -- when you indicated to Commission Counsel
19 that you told Sergeant Carter that day, or maybe
20 the next day, okay, in fairness, about the
21 symptoms you observed on Mr. Zenk, this would be
22 about 1:20, 1:25, something like that?

23 A Um-hum.

24 Q Okay. You told him that even though
25 you made no note of that in your notes or in your

1 narrative, and in hindsight you should have, would
2 you have expected Sergeant Carter to include that
3 in your narrative -- in his narrative?

4 A Well, if it was several days later, I
5 don't think I would have expected that, because it
6 was just a -- I think I mentioned something about
7 that I thought he had done the appropriate thing
8 of arresting the individual, if it was an impaired
9 driving, and because I smelled the booze on him
10 too.

11 Q Right.

12 A So whether or not he would have made
13 note of that, I don't know. I mean, we're talking
14 several days after the fact.

15 Q It doesn't matter, I'm sorry to
16 interrupt, it doesn't matter that you told him
17 several days after the fact, Sergeant Carter was
18 entitled to go back and add to his narrative;
19 correct?

20 A Certainly, yes.

21 Q Okay. So if you told him that a day
22 later or two days later, there was nothing to stop
23 Sergeant Carter from going and adding to his
24 narrative, nothing unusual or wrong about that;
25 correct?

1 A And that would be correct, yes.

2 Q Yeah. Do you have an opinion, again,
3 whether he should have put that in, your
4 observations?

5 A No, I don't have any opinion on that.

6 Q None. All right. I think you told
7 the RCMP at one point in time, I believe page 19,
8 that you thought it would have been Graham
9 "running the file." Do you remember saying that?

10 A Yes, I do.

11 Q Running the file, does that mean in
12 charge of the file?

13 A Being the investigator.

14 Q Okay?

15 A Because he was on the scene.

16 Q All right. So you thought it would be
17 Graham's file; correct?

18 A Yes, I thought he would be the
19 investigator.

20 Q Okay. In fact, it turned out to be
21 Carter as the main investigator?

22 A I guess I assumed that at the time,
23 but I don't really know who got the file.

24 Q Okay.

25 A I know I never got the file, that's

1 all I can tell you.

2 Q And I'm sure you're happy about that.

3 A No, I just know that I --

4 Q No, I am not suggesting --

5 A -- never got the files.

6 Q Constable, I'm not suggesting for a
7 moment that you got the file.

8 And you mentioned, as far as the file,
9 Woychuk had gone back into his file or the report
10 and added something to his report; correct?

11 A Yes, he added more detail.

12 Q Yeah. And nothing wrong or
13 surreptitious about that?

14 A Not to my mind.

15 Q All right. Now, did you know that
16 Chief Bakema was the one who asked that Carter
17 come to the office?

18 A I think I found that out later on.

19 Q Okay. Carter, who had the most
20 experience of anyone at East St. Paul Police
21 Department; correct?

22 A Carter, he was the most senior
23 officer, because seniority is delegated by number
24 of years of service with our department.

25 Q Correct.

1 A So he had the most number of years.

2 Q Fine. Now, I don't want to go into
3 detail on this, the time that you were called in
4 by Chief Bakema to go over files. Were there some
5 files that things perhaps hadn't been done
6 properly?

7 A I would probably say that would be
8 correct.

9 Q All right. And he went through the
10 files and told you, you know, I'm sure, this file
11 is fine, this file is lacking something; correct?

12 A There were some files that were fine
13 and some that were not.

14 Q Okay. And you also told the RCMP that
15 you were not aware of any -- and I'm quoting
16 basically what you said towards the end of your
17 interview, I believe at page 92 of your
18 interview -- that you were not aware of any
19 interaction between Chief Bakema and any
20 individuals in the preparation of their notes
21 relating to this case. Do you recall saying that?

22 A You said page 92?

23 Q Of your RCMP?

24 A It's not listed as that. Can you tell
25 me how many pages back, I have -- I have two

1 numbers on the top and bottom here.

2 Q Okay. Take a look at the top?

3 A Okay. It would be in the 30's?

4 Q No, 92?

5 A I have pages 2 to 37.

6 Q Have you got the RCMP?

7 A Yes, this one here.

8 Q Oh, I'm sorry, it's 92 of Commission
9 Counsel. Have you got the Commission Counsel
10 interview?

11 A That one I don't have here in front of
12 me -- actually, I have a copy here.

13 Q Okay, good. You know that there is
14 four pages on one page?

15 A Yes.

16 Q And if you go basically right to the
17 end, and at the top it's page 92.

18 A Yes. Mr. Commissioner, if I can show
19 you the copy that I have received here from my
20 counsel.

21 THE COMMISSIONER: Yes, thank you.

22 BY MR. WEINSTEIN:

23 Q What I was referring to is, have you
24 got page 92?

25 A Yes, I have.

1 Q Okay. Line 12 you were asked:
2 "Were you aware of any interaction
3 between Chief Bakema and any
4 individuals in the preparation of
5 their notes relating to this case?"

6 Your answer:

7 "No, not that I'm aware of."

8 A That's correct.

9 Q Okay. I just wanted to bring that to
10 your attention. And again, I think you mentioned
11 this, and if you did, I apologize. You saw Graham
12 with, we'll call it a uniform; correct?

13 A That's what it looked like to me.

14 Q Okay, by the truck. And this is what
15 you observed, and that's nothing that you put in
16 your notes or your narrative?

17 A No.

18 Q Okay. You are aware, I think you
19 might have mentioned this, that Chief Bakema did
20 in fact put that in his notes or narrative?

21 A Yes. The second time I read it, it
22 was there.

23 MR. WEINSTEIN: If I may just have a
24 moment, Mr. Commissioner?

25

1 BY MR. WEINSTEIN:

2 Q Do you recall an RCMP member being
3 there directing traffic? I think you said that to
4 us this morning?

5 A Yes.

6 Q Do you know which detachment he was
7 with?

8 A I think perhaps Headingley Highway
9 Patrol, but I am not certain, or some highway
10 patrol unit perhaps.

11 Q Okay. But RCMP?

12 A I believe it was an RCMP, and then
13 later on in the day it was one of our members,
14 Constable Krawchuk that relieved me at the
15 location.

16 Q But before Krawchuk relieved you, this
17 is when you believe you saw an RCMP member?

18 A I thought it was, yes.

19 Q Just getting to the end of my
20 questioning, and I asked you about the manpower,
21 lack of manpower at East St. Paul. Say someone
22 was working and if they became sick, is this when
23 Carter or Bakema would have to come in and fill
24 in?

25 A Well, normally we would try to call an

1 extra member in, like the supervisors would try to
2 call someone in, one of the regular members to
3 fulfill that task. And if no one was available,
4 often they would fulfill that place, yes.

5 Q Both Sergeant Carter and Chief Bakema?

6 A Yes, they were both diligent that way.

7 MR. WEINSTEIN: Thank you very much,
8 Constable.

9 BY MR. JACK:

10 Q Constable Pedersen, I just have a few
11 questions for you. I just want to start with
12 whether or not you are aware that the Professional
13 Standards Unit of the Winnipeg Police Service
14 played a role in the criminal investigation
15 subsequent to this accident. Do you have any
16 awareness of that?

17 A No, I don't believe I have heard that.
18 I'm not quite sure what part you are referring to,
19 I know that I never spoke to anyone.

20 Q Thank you. And that's specifically
21 what I am getting at. I just want to be clear,
22 and it's not that it occurs anywhere in the
23 material, I just wanted to confirm with you, while
24 we've got you up here, that at no point did you
25 play any role in forwarding evidence, material,

1 reports, narratives and the like to the
2 Professional Standards Unit of the Winnipeg Police
3 Service?

4 A No.

5 Q That's correct?

6 A No, I had nothing to do with anything
7 like that.

8 Q At no point were you contacted by any
9 officer within the Professional Standards Unit
10 requesting such information; correct?

11 A No.

12 Q At no point were you directed by Chief
13 Bakema, or any other officer within the East St.
14 Paul Police Department, to forward such
15 information; correct?

16 A No.

17 Q And I take it from your initial answer
18 that at no point in the subsequent investigation
19 did you have any communication with any officer of
20 the Professional Standards Unit of the Winnipeg
21 Police Service?

22 A No, I talked to nobody there.

23 MR. JACK: Thank you, Constable
24 Pedersen. I have nothing further.

25

1 BY MR. PROBER:

2 Q Good morning, Constable Pedersen.

3 A Good morning, Mr. Prober.

4 Q Am I correct in my recollection, and
5 are my notes correct, that you said this morning
6 it was your view that an extremely long time
7 elapsed before the accused was taken back to the
8 station?

9 A What would you describe as extremely?

10 Q No, those are your words, I'm asking
11 you that?

12 A Okay.

13 Q That's what I have recorded that you
14 told us this morning?

15 A If I said that, then that's what I
16 said.

17 Q And you agree with that?

18 A Yes, I would agree with that.

19 Q When you were fingerprinting Derek
20 Harvey-Zenk, you asked him some questions?

21 A Yes.

22 Q Did he appear to have any difficulty
23 understanding the questions?

24 A No, I don't think so.

25 Q Did you have any difficulty

1 understanding his responses?

2 A No.

3 Q He answered the questions in a
4 straightforward manner, correct?

5 A Yes, I would say straightforward.

6 Q You have told us that you didn't know
7 Derek Harvey-Zenk at all?

8 A That's right.

9 Q So you wouldn't know what his eyes
10 normally looked like, would you?

11 A No.

12 Q You wouldn't know whether they were
13 normally glossy or not, would you?

14 A No.

15 Q You wouldn't know if they were glossy,
16 whether -- or glassy, because you used the word
17 interchangeably a couple of times -- whether that
18 was caused by his being tired, would you?

19 A No.

20 Q And in terms of his speech, you don't
21 know how he spoke, do you?

22 A Other than him answering the
23 questions, no.

24 Q Yes. You described it as deliberate
25 and slow, as I recall?

1 A Somewhat slow, yes.

2 Q And that could be his normal manner of
3 speaking as far as you know?

4 A Could be.

5 MR. PROBER: Thank you. Those are my
6 questions.

7 BY MR. GREEN:

8 Q My name is Mike Green, I'm the lawyer
9 for Marty Minuk. I just have a few questions for
10 you.

11 You talked about an incident, I think
12 in the summer of 2004, involving Constable Graham
13 and a drug investigation?

14 A Yes.

15 Q Do I have the date right?

16 A Yes, that would be correct.

17 Q Okay. And I didn't understand what
18 your concerns were, but you definitely had some
19 concerns about the way that he was, he being
20 Constable Graham, was conducting himself; is that
21 correct?

22 A Yes.

23 Q And can you just explain that to us,
24 what were your concerns?

25 A My concern was he had placed the

1 individual in question in the back of his police
2 vehicle, which again I believe was RM2, the
3 four-by-four, and I did not observe him charter or
4 caution the individual. This police vehicle, as
5 all of our police vehicles, when you place someone
6 in the back seat, there are no locks, so you
7 cannot exit the vehicle without assistance from
8 outside.

9 Q Okay.

10 A He left the person in the vehicle for
11 approximately 45 minutes. And I advised him he
12 should probably charter and caution the
13 individual, because technically he was being
14 detained. And we had a discussion on him having
15 taken a recent course of the pipeline course and
16 drug investigation.

17 Q Yes?

18 A And that I had not, and he did not
19 have to do that. And I said, well, in all my
20 experience, when you detain or arrest a person,
21 you must advise them as soon as possible of their
22 rights, regardless of the situation.

23 Q All right.

24 A And I noted that in my notebook, our
25 discussion. And then later on I was questioned on

1 it by Chief Bakema.

2 Q All right. And Chief Bakema asked you
3 not to make a photocopy to put in the file?

4 A Of that --

5 Q Of your notes?

6 A -- portion of my notes, yes.

7 Q But you retained your own notes, so
8 that if the question ever came up about this
9 particular interchange, about whether proper
10 procedure had been followed, it would be available
11 in your notes. Do I understand your evidence
12 correctly on that point?

13 A That's correct. I would testify
14 directly from my notebook.

15 Q All right. Now, I think you said
16 that, after reading the reports on the Harvey-Zenk
17 case, that you formed an opinion that there had
18 been an extremely long delay from the time that he
19 was taken -- from the time that he was placed in
20 the squad car till he was taken to the station; is
21 that correct?

22 A Yes. Basically from shortly after
23 probably Constable Woychuk arrived on the scene,
24 until he left and bypassed, and then at some point
25 later when I read Sergeant Carter's narrative, the

1 actual time of the arrest as they arrived back at
2 the station, to me that seemed like a longer
3 period of time that --

4 Q And I think you said that you felt
5 that that could cause problems down the road?

6 A I felt it could.

7 Q Yes. And that was basically the same
8 problem that you considered in the earlier
9 incident with Graham and the drugs; is that
10 correct?

11 A Yes, it's about detaining a person and
12 not having the freedom to leave at their own will.

13 Q And the problems would be possible
14 infringements of the Charter of Rights and
15 Freedoms?

16 A Yes.

17 Q And did you discuss your thoughts in
18 that regard with Chief Bakema, or anyone else at
19 the East St. Paul Police?

20 A I don't recall discussing with Chief
21 Bakema, but I do recall later on in time that I
22 had discussions with other members, and who, I
23 can't recall. But I know I had mentioned it.

24 Q Do you know if you discussed it with
25 Sergeant Carter or not?

1 A I may have done that, yes.

2 Q But right from the time that you
3 reviewed the initial reports, you recognize that
4 there might be charter problems; is that fair?

5 A That's what I believed.

6 Q Yes. Thank you very much.

7 A But I'm not a lawyer.

8 MR. GREEN: Thank you very much.

9 BY MR. McFETRIDGE:

10 Q Constable Pedersen, can I ask you a
11 bit about the training that is given to the East
12 St. Paul Police in respect to when a potential
13 accused should be chartered, as to either when
14 they are being detained or arrested? What
15 training do you have in that respect?

16 A Well, in the time that I've been
17 there, we have had seminars and discussions on
18 reviewing that information, powers of arrest and
19 charter issues and things like that. But I can't
20 say that all the personnel that were there at the
21 time actually received that training, because some
22 of them came after that to our department.

23 Q Now, you indicated that Mr. Woychuk
24 had been with the force for approximately four
25 months, six months at the time of the incident?

1 A I think it's a little bit longer than
2 that.

3 Q Do you know what, if any, training he
4 would have been given when he joined the force, by
5 the force itself? Would you be involved in that
6 at all?

7 A Normally, the whole department takes
8 part in something like that. It would be like a
9 review session or something to that effect, or
10 ongoing training, and we would all take part in
11 that. And I don't recall anything.

12 THE COMMISSIONER: Who does the
13 training?

14 THE WITNESS: It would be done by our
15 supervising staff. I know in the past that
16 actually, Constable Carter had actually given us
17 training, upgrading on that when Chief Grant was
18 still there.

19 THE COMMISSIONER: Who else?

20 THE WITNESS: The senior members that
21 are there at this point, Sergeant Chudyk,
22 Constable Maloney, myself. I think Constable
23 Soltys was there at the time. I don't know if
24 anyone else was actually with our unit.

25 THE COMMISSIONER: Mainly police

1 officers?

2 THE WITNESS: Yes.

3 THE COMMISSIONER: Giving you training
4 on the charter?

5 THE WITNESS: Yes.

6 BY MR. McFETRIDGE:

7 Q In respect to -- do your units have
8 roadside breathalyzer equipment?

9 A Yes, we do.

10 Q Is that in all the units?

11 A No, there's only one unit that we have
12 available.

13 Q And which unit would that have been?

14 A You mean the AST?

15 Q For doing roadside tests?

16 A It would just be taken by one of the
17 technicians who is certified in it. If they go
18 out on general patrol, they would take it with it
19 sometimes.

20 Q Was that unit in your vehicle?

21 A Not to my recollection. I don't have
22 the course or certificate, so I would have no
23 reason for it to be there.

24 Q Do you know whether it would have been
25 in the SUV that was in attendance?

1 A I have no knowledge.

2 Q Would it have been in the vehicle that
3 Constable Graham had taken to the scene?

4 A I don't know. Unless it was left
5 behind by another member, there would be no reason
6 for it to be in the vehicle, unless the member on
7 duty actually took it with them.

8 Q Would it be normal practice, when
9 you're going to a scene of a motor vehicle
10 accident, to take that unit with you in the
11 vehicle?

12 A I'm not a technician, so for me, it
13 would not be normal practice for me. And I can't
14 comment on anyone else.

15 Q You indicated that had you had
16 attended on previous motor vehicle accidents. Is
17 that correct?

18 A Yes.

19 Q Have you ever had an opportunity to
20 use a roadside breathalyzer unit?

21 A I'm not qualified to use one.

22 Q So you have not received any training
23 as to when to use it, or when you can use it?

24 A Not for myself.

25 Q Okay. Do you know whether or not

1 anybody in the East St. Paul Police Force would
2 have been trained on how to use the unit, and
3 under what circumstances that unit could be used?

4 A I think the majority, from my
5 understanding, the majority of members have that
6 training. There's only one or two of us that do
7 not, and I am one of them.

8 Q If I could just -- I just want to get
9 clarified where some of the vehicles were located,
10 the police vehicles. And if I could have put
11 before you volume B, I believe it's Exhibit 66?

12 THE CLERK: Sixty-six is the map.

13 MR. McFETRIDGE: Okay. It's in the
14 same volume, though, B and -- what is the exhibit
15 number?

16 THE CLERK: Sixty-two.

17 MR. McFETRIDGE: Sixty-two, sorry.

18 BY MR. McFETRIDGE:

19 Q And if I could take you to, in that
20 exhibit, if I could take you to page 124, it's in
21 the bottom right-hand corner? It would be hard to
22 read. Do you have that, Officer Pedersen?

23 A Yes, I do.

24 Q Just make sure that you have the same
25 photograph that I am looking at. This is a

1 photograph that is looking south towards the
2 overpass. Yes. And in that you see the three
3 vehicles that were involved in the accident,
4 correct?

5 A Yes, I do.

6 Q You see on the left, the truck on the
7 median, you see the Taman vehicle. Do you have it
8 in front of you, Mr. Commissioner? You see the
9 Taman vehicle in the middle of the road. And you
10 see the Beattie vehicle next to the light standard
11 on the other side; is that correct?

12 A I believe that's correct, yes.

13 Q Now, when you were coming on the
14 scene, you said that the Graham vehicle was
15 parked. And I take it, it would be, where you see
16 the intersection there, on the other side, on the
17 north side of the intersection you see some
18 debris --

19 A Um-hum.

20 Q -- there in the middle of the road?

21 A Yes.

22 Q Is that approximately where the Graham
23 vehicle would have been parked?

24 A I think it was approximately here,
25 close to or in the intersection here somewhere,

1 yes.

2 Q Actually into the intersection itself?

3 A I am not sure. I mean, I know it was
4 in this -- I thought that it was in this
5 particular area here.

6 THE COMMISSIONER: Can you show me
7 that, please?

8 MR. McFETRIDGE: Could you show that
9 to the Commissioner?

10 THE WITNESS: This particular area, so
11 it would be just north of the intersection,
12 blocking the lanes.

13 BY MR. McFETRIDGE:

14 Q And I take it where you described, on
15 the map, where you described Constable Woychuk's
16 vehicle being, it would not be shown on this
17 particular photograph; correct?

18 A It's not --

19 Q It would be over in the next group of
20 lanes, the northbound lanes, is that where he was
21 parked?

22 A He would be actually just over here,
23 so just over there.

24 Q If I could just take you --

25 A It's not a complete photograph.

1 Q I know these photographs were taken
2 sometime after when you attended the scene. But
3 if I could take you just further on to page 147 in
4 this group of photographs? Yes. And this is
5 really a photograph looking at the Zenk truck that
6 is also looking to the north. And we do see a
7 police vehicle in that photograph. Is that one of
8 the East St. Paul Police vehicles?

9 A I see, it looks like two police
10 vehicles to me.

11 Q Okay. Where is the other?

12 A There is definitely a police vehicle
13 right here.

14 Q Right. That's the one I'm looking at.

15 A That is the closest one. And it
16 appears that this may be a police vehicle back
17 here as well too.

18 Q Okay. Now, I'm just trying to
19 identify, though, from this photograph, where
20 Constable Woychuk's vehicle would have been when
21 you first attended at the scene? Would he have
22 been to the right of that very obvious police
23 vehicle that appears to be at the intersection
24 there? Would he have been located to the right of
25 that?

1 A He would actually probably be pretty
2 much right at that location.

3 Q Right at that point?

4 A Yeah, or, you know, just a few feet
5 over to the left, towards the next car that's
6 facing east and west.

7 Q And then when you had said that
8 Mr. Harvey-Zenk was standing outside the vehicle,
9 then he would have been standing outside the
10 driver's side of the vehicle where it's located
11 there?

12 A Yes, he was standing over on this side
13 here, just a few feet within his vehicle.

14 Q Okay. Now, when you indicated, I
15 believe it was at approximately -- and I can't
16 remember the exact time period when you were
17 driving back after you were up to the north and
18 you had seen the Woychuk vehicle leaving?

19 A Actually, I was still doing traffic
20 control and I saw Constable Woychuk's vehicle pass
21 by me.

22 Q Oh, he passed by you?

23 A Um-hum.

24 Q At that time, do you know whether or
25 not, when you ever drove by the scene again, do

1 you know whether or not the location of the Graham
2 vehicle ever changed as to where it was located at
3 the scene or did it always remain at that same
4 spot?

5 A Well, I think this is actually
6 Constable Graham's vehicle here.

7 Q Which one are we looking at here?

8 A The first one.

9 Q So it actually had moved over then a
10 bit?

11 A Yeah. He would have changed position
12 at some point in time. I know that for sure.

13 Q Okay. So that actually is Constable
14 Graham's vehicle --

15 A I believe it is, yes.

16 Q -- you believe? And that's the police
17 vehicle that's the most forefront in the
18 intersection?

19 A The one closest here in the picture,
20 yes.

21 Q If I could just take you further on in
22 these photographs, and at the very end, the page
23 numbers are then at the top of the page, and if
24 you could go after page 161, and then at the top
25 you'll see page 23?

1 A I end at 161.

2 Q The next photograph over, there's a
3 page number 23 at the top, and here you'll see
4 ambulance vehicles, emergency vehicles in the
5 photograph?

6 A Are you -- I don't think I've got that
7 page on this.

8 Q They are not in that exhibit? I am
9 sorry, because they are all in the same tab in my
10 volume. I thought they were part of the same
11 exhibit documents.

12 THE COMMISSIONER: Show her mine.

13 THE WITNESS: Thank you. 23?

14 BY MR. McFETRIDGE:

15 Q Page 23. I see an SUV in that
16 picture, right in the middle of the picture.
17 That's not a police vehicle, is it?

18 A No, no, ours is white.

19 Q Yours is a white vehicle?

20 A With the lights on top.

21 Q So that's not a police vehicle. Okay.
22 If I could just take you to the next picture, 26?
23 And there appears to be, I think it's a police
24 vehicle, it's sort of in the intersection there,
25 it appears to be an SUV. Is that one of the --

1 A This one?

2 Q Can I just approach to make sure she's
3 looking at the same one?

4 THE COMMISSIONER: Of course.

5 THE WITNESS: This one, is that the
6 one you are speaking of?

7 BY MR. McFETRIDGE:

8 Q Yeah.

9 A I believe that may be our vehicle,
10 yes.

11 Q Could you just show the Commissioner?
12 Would that be Mr. Woychuk's SUV?

13 A I believe it's this one, Commissioner.

14 THE COMMISSIONER: Thank you very
15 much. The question is, is that Constable
16 Woychuk's vehicle?

17 THE WITNESS: I can't be certain but
18 it certainly looks like it.

19 THE COMMISSIONER: It looks like it.

20 BY MR. McFETRIDGE:

21 Q Did you have more than two SUV's at
22 the East St. Paul Police Department?

23 A No, but I can't read the writing on
24 the side of that one. I can't read the writing on
25 any of them. I can only go by what I know what

1 they look like on the outside.

2 Q Just where that SUV is located on this
3 page 26, is that approximately where you would
4 have seen the Woychuk vehicle parked when you
5 attended at the scene, when you first attended at
6 the scene at approximately 7:30?

7 A Well, when I attended, I don't recall
8 seeing the emergency vehicles there.

9 Q The emergency vehicles wouldn't have
10 been there, but is that approximately where
11 Constable Woychuk's vehicle would have been?

12 A No, I think he would have been more
13 where that white pick-up truck is just behind the
14 fire vehicle.

15 Q Okay.

16 A Approximately in that location.

17 THE COMMISSIONER: Keep it with you
18 until you finish your testimony.

19 BY MR. McFETRIDGE:

20 Q Perhaps, and I don't know if all these
21 documents should be marked as one package, these
22 photographs, but certainly these two pictures, I'd
23 like to have marked as exhibits. There are
24 actually four documents in this sort of package
25 that, I take it, were taken separately --

1 THE CLERK: It will be number 82.

2 (EXHIBIT 82: B.8.a, 4 additional
3 pictures of Accident Scene (23, 26,
4 27, 28)

5 MR. McFETRIDGE: Those are all the
6 questions I have, Mr. Commissioner. Thank you.

7 THE COMMISSIONER: Thank you.
8 Mr. McDonald.

9 MR. McDONALD: I have no questions of
10 this witness, Mr. Commissioner, thank you.

11 THE COMMISSIONER: Thank you. Any
12 re-examination?

13 MR. CLIFFORD: There is no
14 re-examination, Mr. Commissioner. Constable
15 Pedersen, on behalf of the Commission, I'd like to
16 thank you for attending again today and providing
17 testimony.

18 THE WITNESS: Thank you.

19 THE COMMISSIONER: Thank you very
20 much. You may step down.

21 THE WITNESS: Commissioner, may I just
22 make a comment?

23 THE COMMISSIONER: If it's relevant to
24 these proceedings, yes.

25 THE WITNESS: I would just like to

1 address this to the Commission and to Crystal
2 Taman's family. I'm very, very sorry for their
3 loss. And I think of her every time I pass by her
4 memorial at the scene, and I'll never forget her
5 face. And I just want them to know that. I'm
6 sorry for my emotional outburst.

7 THE COMMISSIONER: Nothing to be sorry
8 about. Thank you very much.

9 THE WITNESS: Thank you.

10 MR. PACIOCCO: If I could just have a
11 moment to get my books together, Mr. Commissioner?

12 THE COMMISSIONER: Yes.

13 MR. PACIOCCO: Thank you, sir. If we
14 could call Mr. Ken Graham to the stand, please?

15 KENNETH WILLIAM GRAHAM, being first
16 duly sworn, testified as follows:

17 BY MR. PACIOCCO:

18 Q Good afternoon, Mr. Graham. My name
19 is David Paciocco and I am Commission Counsel, and
20 I'll be asking you questions for the better part
21 of the next couple of hours I suspect.

22 A Okay.

23 Q Sir, I understand that on
24 February 25th, 2005, you were a police constable
25 with the East St. Paul Police Force?

1 A That's correct.

2 Q How long had you been a police officer
3 at that point?

4 A I had been with East St. Paul for
5 approximately three years, and before that I was
6 with the Dakota Ojibway Police for about three
7 years.

8 Q So, the Dakota Ojibway Police?

9 A Yes.

10 Q You had been a police officer for
11 approximately five years at that point?

12 A Five or six years, yes.

13 Q And I understand, sir, that you are no
14 longer a police officer?

15 A That's correct.

16 Q And you're going to have to forgive me
17 if I lapse into the practice of referring to you
18 as Constable Graham. Those who have watched me
19 over the last week know I have difficulty with
20 names or titles, so I don't mean any offence by it
21 if it does happen.

22 A That's all right.

23 Q What is your current occupation?

24 A I am self-employed.

25 THE COMMISSIONER: Sorry?

1 THE WITNESS: Self-employed.

2 BY MR. PACIOCCO:

3 Q What do you do in your
4 self-employment?

5 A I don't know what that has to do with
6 this case.

7 Q Sir, I'm asking you what your
8 profession is?

9 A I'm in real estate.

10 Q You're in real estate. Sir, when you
11 were a police officer, were you certified to carry
12 and use a roadside breath machine?

13 A Yes, I was.

14 Q And before I forget to ask you this
15 later when we get into the actual events, sir, do
16 you know whether or not you had one in the unit
17 you were travelling in that day?

18 A I believe there was not one in the
19 vehicle.

20 Q And if one was required at the scene
21 of an accident, or an incident, how would you go
22 about obtaining one?

23 A We would call another member to bring
24 one out.

25 Q And what would happen if all of the

1 members were at the scene, sir?

2 A Then I don't know.

3 Q I take it that someone would go back
4 and get it?

5 A Either someone would go back and get
6 it if they could, or we would just do what we
7 could do.

8 Q Perhaps contact another police force
9 to see if they can bring one out?

10 A Usually we'd do that, but very seldom
11 that would happen.

12 Q But you have heard of that happening?

13 A Yes.

14 Q Sir, I know that you brought a bunch
15 of papers up there with you. I take it that you
16 have copies of your police notes with you, sir?

17 A Yes, everything that the Inquiry
18 provided to me.

19 Q Okay. And you therefore have the
20 interview that was done by Mr. Clifford when you
21 met with him at the Commission office as well?

22 A Yes.

23 Q And you have a copy of the police
24 notes that we know to be in a document that we all
25 share?

1 A Yes.

2 Q Those are found, for the information
3 of everyone involved, in book E-1 at tab 24.a.
4 This would be Constable Graham's notes.

5 You also have two incident reports,
6 sir, that were prepared by you and that were in
7 the possession of the Commission?

8 A Yes.

9 Q I'll wait for the Commissioner to get
10 his book.

11 THE COMMISSIONER: I have it, thank
12 you.

13 BY MR. PACIOCCO:

14 Q Mr. Commissioner, the documents I have
15 referred to, to date, are E-1, tab 24.a, which
16 would be Mr. Graham's notes; E-1.24.b, which would
17 be Mr. Graham's incident report in connection with
18 contact with a witness, a Mr. Ken Ford; E-124.c,
19 which is an incident report relating to a search
20 and seizure of the vehicle by Constable Graham.
21 I'm also going to be referring to other documents
22 during the course of my questioning that you don't
23 have, but you certainly will be provided with
24 those that I do choose to use. They would be
25 exhibits 63, 64 and 65, which are the paramedic

1 and ambulance reports that have been admitted.
2 All are found in volume D of the materials at tab
3 18.a, that would be Exhibit 63; D.19.e, which
4 would be Exhibit 64; and D.20.e, which would be
5 Exhibit 65.

6 I may have to resort to notes taken by
7 then Chief Bakema, which are in tab E-1 of the
8 same book that contains officer Graham's notes,
9 only at tab 22.a. There are a couple other
10 documents I may choose to use, but I will give
11 everybody sufficient notice to retrieve the
12 volumes if and when I do that.

13 Mr. Graham, I understand that you did
14 have some involvement in the tragic motor vehicle
15 death of Crystal Taman?

16 A That is correct.

17 Q And I take it, sir, that that was a
18 major crime, or major event in the East St. Paul
19 Police's repertoire, it being a small community,
20 sir?

21 A Correct.

22 Q It involved the fatality, allegations
23 being made against a police officer, charges of
24 impaired driving causing death laid. It was a
25 pretty significant incident, sir?

1 A It was a pretty serious one, yes.

2 Q That day your notes, sir -- if you
3 want to refer to them, please feel free to do so?

4 A Um-hum. The notes that we made at the
5 time, they are for everybody's use at tab 24.a of
6 Exhibit E-1.

7 Q Sir, you indicate that that day it was
8 20-degrees Celsius and it had a wind chill of
9 28-degrees?

10 A Correct.

11 Q Certainly those of us familiar with
12 police officers appreciate that it is very common
13 to record weather conditions at the onset of a
14 shift, and I take it that that's simply what
15 you've done there?

16 A That's correct.

17 Q And you also indicate Pedersen, 7 to
18 1700 and Krawchuk 11 to 2100, I take it you're
19 simply recording the shifts of other individuals
20 who you may have to have some contact with during
21 the course of that day?

22 A That is correct.

23 Q Now, sir, around 7:00 o'clock in the
24 morning, I understand that you were at the East
25 St. Paul police Station?

1 A Yes.

2 Q We had received information that there
3 were others present. Our information is that
4 Constable Pedersen was there?

5 A Yes.

6 Q And that Chief Bakema was also there?

7 A Correct.

8 Q And that Constable Woychuk was coming
9 off shift?

10 A That's correct.

11 Q And I take it that, including
12 yourself, those are the police officers who were
13 present at 7:00 o'clock that morning?

14 A Correct.

15 Q And we have heard that Constable
16 Woychuk was actually coming off shift at that
17 time?

18 A That is correct.

19 Q And the rest of you had not yet really
20 engaged in any business, you were sitting around,
21 there was some usual small talk and banter, as you
22 would expect under those circumstances?

23 A That's correct.

24 Q And according to your notes, sir, you
25 received a call at approximately 7:10 in the

1 morning?

2 A That is correct.

3 Q And sir, at that time 7:10, how
4 definite are we that that's an accurate indication
5 of when the call was received?

6 A Definite, I looked at the time when I
7 was finished with the call.

8 Q Okay. So the call ended and it was
9 7:10?

10 A Yes.

11 Q And I take it, it was a fairly brief
12 call.

13 A It was fairly brief, yes.

14 Q Can you tell the Commissioner about
15 the call, please?

16 A Basically, the call came in. It was
17 an unknown male indicating there was a motor
18 vehicle accident at Highway 59 -- or excuse me, a
19 motor vehicle accident at Henderson and the
20 Perimeter. The vehicle was basically in half, and
21 he basically hung up after that.

22 Q Sir, did you take the opportunity to
23 try to ask him his name or get to identify him?

24 A I tried and he just hung up.

25 Q Was he still on the line when you were

1 trying, sir, or did he hang up before you had a
2 chance?

3 A I was trying and he said, you know,
4 just get someone there now because it's serious,
5 the car in half, and then he hung up.

6 Q Okay. So you were trying to get his
7 identification information from him --

8 A Trying.

9 Q -- and he wasn't responsive?

10 A Correct.

11 Q I understand as well from the
12 interviews that you weren't yet in your police
13 uniform. It was that quick into the shift that
14 this happened?

15 A That is correct.

16 Q And so you obviously had to go and
17 change in order to be able to respond to the call?

18 A Yes.

19 Q And was that true also with respect to
20 Chief Bakema?

21 A Yes, he was not in uniform as well.

22 Q How about Constable Pedersen?

23 A I believe she was just changing at the
24 time. I'm not too sure of that.

25 Q Okay. Because her evidence was she

1 was standing around at the time the call was
2 received, so I don't imagine she would still be
3 changing then?

4 A No, I don't know.

5 Q Fair enough. So you have to change.
6 Where do you go to change your clothes at the East
7 St. Paul Police Station?

8 A Down in the basement there's change
9 rooms.

10 Q So you have to change floors and go
11 down there?

12 A You got to walk down a flight of
13 stairs.

14 Q Okay. So you walk down a flight of
15 stairs, and I'm sure you were doing it with
16 tremendous urgency and haste?

17 A Definitely.

18 Q And you have to put on your police
19 uniform?

20 A Yes.

21 Q I take it that would include having to
22 take off and change your shoes and button up your
23 collar --

24 A Correct.

25 Q -- and do the rest and get out the

1 door. And then, sir, you had information that
2 this motor vehicle accident had happened at the
3 intersection of Highway 59 and the Perimeter?

4 A No, the call was Henderson and the
5 Perimeter.

6 Q Okay. And in fact it was at 59 and
7 101; correct?

8 A That's correct.

9 Q And I understand that by the time you
10 were leaving traffic was already backed up?

11 A Traffic was very backed up.

12 Q And I take it, from information that
13 we have learned, that you were actually travelling
14 southbound on Highway 59 towards the scene that
15 you expected the accident to be at?

16 A That's correct.

17 Q And so you would have been in fact
18 going in the correct direction to get to the
19 actual accident site?

20 A Yes.

21 Q And I take it that with the traffic
22 backed up, you would have to put on your siren and
23 wait for people to get out of the way in order to
24 clear that area?

25 A All the emergency equipment was on and

1 activated.

2 Q Okay. And so it might take a little
3 bit longer to actually clear that area than it
4 would if it was open without traffic, given the
5 congestion in that area?

6 A It took a few minutes more, yes.

7 Q Now, sir, what happens when you arrive
8 at the scene?

9 A When I arrive at the scene, when we
10 are getting closer to the scene, you could
11 actually see where the accident was. There is
12 still vehicles trying to get through. I pulled
13 up.

14 Q Where would the vehicles be trying to
15 get through? You will notice that to your left we
16 have an aerial photograph of the intersection, and
17 I'm going to ask you, it's probably obvious, but
18 can you orient yourself on that diagram?

19 A Yeah.

20 Q Some of us are a little spatially
21 challenged. But you've got your car, I take it,
22 coming down the left-hand lane that starts at the
23 top of the diagram running the full length of the
24 diagram?

25 A Yes.

1 Q And the intersection that we have
2 identified as the site of the collision is PTH
3 101, to the left there where it runs into PTH 59,
4 in the left-hand lane, in the little box that
5 would be the intersection that is shown between
6 those two roadways that intersect with Highway 59;
7 is that correct, sir?

8 A Correct.

9 Q So you've got to clear down that area
10 that's backed up with traffic, and you arrive
11 there, sir. At what point are you able to
12 determine that there was, in fact, a collision
13 there?

14 A I believe when you're getting about,
15 right where the turn-off is to go on 101 west, you
16 can actually see the accident scene.

17 Q Okay?

18 A And Winnipeg Fire Paramedic were on
19 scene, you could see them at that time.

20 Q I'm going to ask you about that in a
21 moment, sir.

22 You come down, and are you sure you
23 can see the fire and paramedics from up there?

24 A Yes, you can see the big trucks.

25 Q And you know they were there at that

1 time?

2 A Yeah.

3 Q So you are coming down and you arrive
4 at the scene. What do you do when you get close
5 enough to the scene that you're going to come upon
6 it?

7 A Well, Harry Bakema is with me, we're
8 in the same car. We pulled up and we got -- we
9 didn't want to get right into the scene with the
10 vehicle, you've got to keep back a little bit to
11 keep the evidence. I was the driver. Harry got
12 out, and I got out. And I noticed that there's
13 still vehicles trying to get through, they are
14 driving over the debris on the road, just, they
15 are just getting in the road. So I told Harry,
16 I'm going to back up, block this traffic off and
17 get them rerouted, and call Glenda Pedersen in.

18 Q Okay. So you're basically -- you
19 come, you're not going to bring your vehicle into
20 the intersection?

21 A No.

22 Q Because you know that one of your
23 obligations at an accident scene is to preserve
24 the site?

25 A Correct.

1 Q Yet there are vehicles that are
2 infringing on that accident site?

3 A Yes.

4 Q And you, of course, understand the
5 importance of sealing it off?

6 A Correct.

7 Q Both from the point of view of
8 preserving evidence and making sure people are
9 safe on the site?

10 A Yes.

11 Q Is that fair, sir?

12 A That's fair.

13 Q Now, sir, you indicated you were
14 driving with Chief Bakema. Could you tell us how
15 that came about, sir?

16 A Well, actually, we were both at the
17 office at the same time. He jumped in the vehicle
18 with me. We're very short vehicles, we only had
19 so many vehicles at the time, and there's other
20 members coming on, so he came in with me. Glenda
21 Pedersen went in one vehicle and Woychuk went in
22 the other vehicle.

23 Q So your position is, your
24 understanding is, it was a decision to use the
25 resources of East St. Paul wisely?

1 Bakema is working with you right now?

2 A Working with me?

3 Q Or has been working in connection with
4 your real estate business?

5 A He works in the same office.

6 Q Okay. And can you be more specific as
7 to the nature of your working relationship?

8 A We see each other at the office the
9 odd time. That's it.

10 Q Do you have the same employer?

11 A Well, yeah, it's the same office, yes.

12 Q Okay. And who is the employer?

13 A It's the broker of Re/Max
14 Professionals.

15 Q So both of you are working out of the
16 same Re/Max office?

17 A Yes.

18 Q How long have you been working
19 together there?

20 A I have been there for two years.

21 Q Yes. And how about Mr. Bakema?

22 A Probably just under two years.

23 Q So pretty much you have followed your
24 careers together in East St. Paul, and then you
25 have gone over and you are working together at

1 Re/Max?

2 A I don't know if we followed each other
3 or not, it's just a decision that I made and that
4 he made at the time.

5 Q I'm not suggesting that you inspired
6 him or anything like that, I am just saying that
7 you ended up at the same place of work shortly
8 after you had been working together at East St.
9 Paul?

10 A That's correct.

11 Q Okay. And could you comment, sir, on
12 your experience as to how usual it was for Chief
13 Bakema to attend an accident scene?

14 A It was very usual. He was -- the
15 municipality wanted Chief Bakema to be out in the
16 public because we were short manpower.

17 Q Okay. So it was considered, again, to
18 be an efficiency to have a Chief who wasn't just a
19 figure head, but somebody who might get their
20 hands dirty once in a while?

21 A That's correct. If we were short
22 manpower, it was the municipality expecting the
23 Chief to be out there.

24 Q So you would -- would you say that he
25 would then be experienced in connection with

1 attending accident scenes and what needed to be
2 done?

3 A Yes.

4 Q And would you say that he basically
5 knew what he was doing when he attended an
6 accident scene?

7 A Yes.

8 Q I take it you would find him to be a
9 good officer?

10 A A very good one.

11 Q You had no concerns about his
12 competence in running an accident scene, sir?

13 A No concerns.

14 Q Now, sir, on your notes you indicate
15 an arrival time of 7:16?

16 A Yes.

17 Q Is that a fair description of what
18 7:16 means?

19 A That's the time I saw on the dash of
20 the vehicle once I pulled up.

21 Q Okay. So you didn't get this off of
22 any type of call intake report system or anything?

23 A No.

24 Q This was a manual observation that you
25 say you made at the time that you pulled up?

1 A That's correct.

2 Q Now, sir, you testified earlier that
3 you could see some emergency personnel or
4 vehicles --

5 A Um-hum.

6 Q -- as you approached the intersection.
7 Who was there?

8 A I believe it was Winnipeg Fire and
9 Paramedic.

10 Q And do you know how many vehicles you
11 saw there, sir?

12 A Not offhand, no. Maybe two.

13 Q I'm not talking about throughout the
14 morning, I'm talking about at the time you entered
15 the scene, sir?

16 A Yeah. Maybe two or three, I'm not too
17 sure.

18 Q Okay. Because, sir, you testified, or
19 you told the RCMP in your interview -- if you
20 could take a look at the RCMP interview, which is
21 at tab E-1.24.a?

22 A What page is that?

23 Q Sorry, that was a reference to your
24 notes, I apologize. It is a reference to your
25 notes E-1.24.a. It's your own personal notes,

1 sir. You probably don't have these tab numbers
2 showing on your notes?

3 A No, I don't.

4 THE COMMISSIONER: Mr. Paciocco, it's
5 12:33, maybe it's an appropriate time to break.

6 MR. PACIOCCO: Okay. Will do. We
7 will return at 2:00 o'clock. Thank you.

8 THE CLERK: All rise. This Commission
9 is in recess until 2:00.

10 (Proceedings recessed at 12:33 p.m.
11 and reconvened at 2:00 p.m.)

12 THE CLERK: All rise. This Commission
13 of Inquiry is now re-opened. Please have a seat.

14 BY MR. PACIOCCO:

15 Q Mr. Graham, just before we broke, we
16 were talking about your notes --

17 A Yes.

18 Q -- and the time of arrival. And you
19 noted that you took the 7:16 time off of the dash?

20 A That's correct.

21 Q We were also questioning you about the
22 observation that there were Winnipeg Fire and
23 Paramedic Service vehicle or vehicles on site at
24 that time?

25 A That's correct.

1 Q And your testimony was that you were
2 coming down Highway 59, you observed a vehicle or
3 vehicles at that point, and you really couldn't
4 tell us how many?

5 A That's correct.

6 Q And I notice that you, in your notes,
7 that you have a reference to Winnipeg Fire and
8 Paramedic Service being on site at your time of
9 arrival?

10 A Yes.

11 MR. PACIOCCO: I am going to ask the
12 clerk, at this time, to mark your notes which are
13 starting at tab E.1.24.a as the next exhibit in
14 this proceeding.

15 THE CLERK: Number 83.

16 MR. McDONALD: Sorry, 83?

17 THE CLERK: Correct.

18 (EXHIBIT 83: E.1.24.a, Constable
19 Graham duty book notes, pgs. 34 - 45,
20 131 - 135)

21 BY MR. PACIOCCO:

22 Q And the notes do not disclose the
23 number of Winnipeg Fire and Paramedic Service
24 vehicles there?

25 A That's correct.

1 Q Okay. Because I -- you did tell
2 Mr. Clifford, during the course of the interview,
3 with fairly great certainty, that there were two
4 vehicles there. Do you recall telling him that?

5 A I recall it being two, yes, I'm pretty
6 sure.

7 Q And is that your best recollection
8 today?

9 A That is, yes.

10 Q And are you reasonably confident that
11 there were, in fact, Winnipeg Fire and Paramedic
12 Service vehicles there when you arrived?

13 A Yes.

14 Q The reason I ask you, sir, is we have
15 information, and counsel will find it, of course,
16 in the exhibit containing the Winnipeg Fire and
17 Paramedic Service records, in tab D.20.e, tab
18 D.20.e, showing that there were two vehicles
19 dispatched from the Winnipeg Fire and Paramedic
20 Service. Unit number 24 was dispatched at
21 7:13:35. Unit number 2 was dispatched at 7:15:37.

22 Now, unit number 2 and 24, our
23 information is, arrived first. And unit 24 is the
24 unit that would have dealt with Ms. Taman on
25 scene. And the information we have is that it

1 takes approximately five minutes for those
2 vehicles to get from where they are dispatched
3 from. So this unit leaves at almost 7:14, and
4 takes a five-minute ride, which would get it there
5 at around 7:19 or so, and you have an arrival time
6 of 7:16.

7 So I am just trying to explore that
8 discrepancy. I am trying to find out whether that
9 has shaken your confidence as to whether there
10 were fire and paramedic services there, or whether
11 it has shaken your confidence in the 7:16 arrival
12 time?

13 A No, it has not shaken my confidence in
14 anything. It may be that the time that the
15 vehicle arrived was wrong at the time of my
16 arrival, but that's the time I saw on the dash and
17 that's the time I wrote down.

18 Q Okay. Well, you indicated to the
19 RCMP -- you had some conversation with the RCMP
20 about the time on the dash. Do you recall that?

21 A Yes.

22 Q And you indicated that you are very
23 busy. Obviously, your priority when you get to
24 that scene isn't sitting there taking notes;
25 right?

1 A Correct.

2 Q Your priority is to get out and make
3 sure that you can attend to anyone who requires
4 attention?

5 A Right.

6 Q You described yourself, there are
7 vehicles coming through that might foul up the
8 scene. So you make a mental note of the time.
9 And then subsequently, when you get an
10 opportunity, you go and try and record that. And
11 do you recall giving that evidence to the RCMP?

12 A Yes, I do.

13 Q And, sir, I'm going to suggest to you
14 that perhaps you misremembered the time that you
15 had recorded?

16 A No, I did not.

17 Q Okay. So you --

18 A That's the time I saw on the dash,
19 like I said, and that's the time that I said that
20 I wrote down.

21 Q Okay. So I am going to take you to
22 the RCMP interview, which is in document E.1.24.b
23 at page 577. If that could be made the next
24 exhibit, please?

25 THE CLERK: 84.

1 (EXHIBIT 84: E.1.24.b, Initial
2 disclosure, East St. Paul Police
3 Witness (Amendment)

4 BY MR. PACIOCCO:

5 Q You'll notice, sir, that you begin
6 that questioning with Officer Kennett asking you,
7 about halfway down the page:

8 "Um-hum. Do you recall where you
9 might have got that time from? Did
10 you record it right away or did you
11 record it --

12 A Well, I just --

13 Q -- from someone else later?

14 A Well, I looked on the clock, the
15 dash, the vehicle, okay, and I just
16 tried to keep that in my head. You
17 can't stop and start writing stuff
18 down.

19 Q Yeah. You just keep as good a
20 memory as you can, right?

21 A Yeah.

22 Q So that's what you did that day?

23 A Yes.

24 Q Is there any other -- like, my
25 understanding is that sometimes people

1 use different ways of recalling the
2 time, or using dispatch perhaps to log
3 the time for you or anything like
4 that?

5 A Some people do at times, but I
6 remember looking at the dash.

7 Q Okay. What time was it?

8 A I believe a couple of minutes
9 after, yeah, it would be 7, about
10 7:16.

11 Q Okay. So this is an estimate,
12 roughly, that you --

13 A This is an estimate, roughly.
14 It -- by the time we, you know, got in
15 the vehicle, got in the traffic, got
16 to the scene, you're looking at, I
17 don't know, 4 to 6 minutes, something
18 like that."

19 Were you asked those questions and did you give
20 those responses?

21 A Yes, I did.

22 Q And, sir, did you not concede in there
23 that essentially what you are doing is you are
24 estimating the time of your arrival?

25 A As you can see, it also says "7:16" is

1 what I have in my notes, and that's what I saw on
2 the dash.

3 Q Okay. But you are also noticing the
4 part of the answer where you start to suggest:

5 "You try to remember the time as best
6 as you can,"

7 that it's -- you are quantifying it, based on the
8 amount of time you get there, that it's:

9 "...An estimate roughly."

10 Those are words that are found in your answer,
11 sir.

12 A What I was saying in here is you look
13 at -- I look at the time. You are trying to
14 remember it as best as you can when you go to
15 write your notes.

16 Q Okay.

17 A That's all.

18 Q So you try to remember as best as you
19 can. Are you allowing for the possibility that
20 you might have misremembered it?

21 A No. I looked at the dash and that's
22 what I saw.

23 Q So you are allowing for the
24 possibility that your dash was wrong?

25 A It could be, yes.

1 Q Okay. So you may have arrived after
2 7:16?

3 A If the dash was wrong, it was wrong.

4 Q But you agree with me that this, of
5 course, doesn't correspond with the ambulance
6 times that are related?

7 A I agree with that, yes.

8 Q Sir, what are your responsibilities as
9 a police officer arriving at an accident scene?

10 A Um, responsibilities are to analyze
11 the scene, attend to anyone that needs medical
12 attention, preserve the scene, all of the evidence
13 as good as possible, to control the scene and go
14 from there.

15 Q And investigate any criminal activity
16 that might have occurred?

17 A Correct.

18 Q And you do, ultimately, assist in
19 traffic reconstruction that takes place that day?

20 A Yes.

21 Q Who's in charge of an accident scene
22 like this? How is that determined, sir?

23 A I guess it's determined by, you know,
24 the chief, or the sergeant at the time, or whoever
25 is on the scene.

1 Q Well, sir, what happens if you get a
2 couple of officers to the scene and the Chief is
3 not there, how is that determined? Is there a
4 protocol in place?

5 A I guess they each determine who wants
6 to be -- or who wants the file, the other controls
7 the scene.

8 Q Because we have heard evidence from
9 Constable Pedersen that the practice would be for
10 the senior officer on that scene to take charge of
11 that file?

12 A Not necessarily.

13 Q So you don't agree with that?

14 A I don't agree with that.

15 Q Do you remember the RCMP putting the
16 same question to you and suggesting that, perhaps,
17 you might have been the person who would be
18 responsible for this investigation?

19 A No. I don't think I was the person
20 that was responsible for this investigation.

21 Q But you remember them asking you that?

22 A I remember them asking.

23 Q Yes. And no one is suggesting that
24 you were ever told you were responsible for the
25 investigation. But your position is whether you

1 were told or not, this did not fall to you, as the
2 senior officer on scene, other than the Chief, at
3 the time of arrival?

4 A Correct.

5 Q And it wouldn't be usual for a Chief
6 to be taking on the investigation of an accident
7 scene like this himself, sir?

8 A He would take it on himself or he
9 would delegate it to whomever he feels should be
10 doing it.

11 Q And was there a discussion at the
12 scene as to who is going to take charge?

13 A I was advised by Bakema that he was
14 going to call out Sergeant Carter to be,
15 basically, in control of the file.

16 Q Okay. But, of course, he couldn't be
17 in charge of the scene because Sergeant Carter, at
18 the time, wasn't at the scene?

19 A Correct.

20 Q So maybe we should break it off and
21 consider first control of the scene.

22 A Okay.

23 Q And then consider control of the file.
24 So with respect to control of the scene, was there
25 ever a discussion held between you, Constable

1 Woychuk, and Chief Bakema over what your relative
2 responsibilities would be?

3 A No, there wasn't.

4 Q And I note, when you were being
5 questioned about this by the RCMP, at one point
6 you indicated that it was Harry calling the shots?

7 A I didn't say that. I am not sure I
8 said Harry was calling the shots.

9 Q I am going to show you, again, if you
10 take a look at your RCMP interview at page 574,
11 and it goes to the top of page 575, because it
12 stands alone. Officer Kennett asks you:

13 "So which one of you was making
14 decisions and calling the shots?

15 CONSTABLE GRAHAM: Well, I guess when
16 I was back here, Harry was, um,
17 calling the shots I guess. I was back
18 here walking this off, trying to keep
19 people from walking over here seeing
20 that, seeing who to go with, the
21 person who to deal with."

22 So you would agree with me that certainly Harry
23 was calling the shots at the point in time when
24 you were up at the other location that you were at
25 that you were about to describe?

1 A Well, of course, he was the only
2 officer there.

3 Q Okay. And do you have any opinion as
4 to whether there was any designated person in
5 charge of that investigation at the time?

6 A No, there was not.

7 Q So that's why you indicated, at page
8 593 of the interview, when you were again asked by
9 Officer Kennett, near the bottom of the page:

10 "Okay. Would you be able to say,
11 then, who was in charge between you
12 and Harry at the scene, like who was
13 calling the shots, who is making the
14 big decisions?

15 A I have no idea. Like, that's how
16 it works is we -- we get there, we do
17 what we have to do."

18 Q So that would be consistent with the
19 answer that you furnished here, correct? You
20 don't really know who is calling the shots. And
21 there never really was an organizational meeting
22 in connection with how that scene was going to be
23 conducted?

24 A No. We are so short of manpower, you
25 just have to deal with what you can do at the

1 time. And once the scene is under control, then
2 you sit back and figure out who is going to do
3 what.

4 Q Sir, wouldn't it make more sense, if
5 you are short of manpower, to try and allocate
6 responsibilities very precisely so that you have
7 the most efficient use of the personnel on the
8 scene?

9 A It is kind of hard to do that. At the
10 time when there is chaos, you are not going to
11 take your time. You have to go do this and that.
12 You deal with what you have to deal with. And
13 when everything is under control, then you
14 delegate.

15 Q Okay. So at the time when chaos is
16 going on, you just have to fold yourself into the
17 chaos, is that basically your position?

18 A That's right.

19 Q And, sir, I understand from your
20 testimony, in earlier proceedings, that it was
21 your understanding that Sergeant Carter was
22 delegated the file?

23 A Yes.

24 Q And so, I take it, that would make him
25 the investigator in connection with the criminal

1 charges?

2 A That he would be the one that would be
3 taking care of the file, seeing what charges are
4 laid and what needs to be done on the file.

5 Q So he would be overseeing the
6 investigation?

7 A Correct.

8 Q Now, of course, Sergeant Carter had
9 not been at the accident scene?

10 A No, he had not.

11 Q Is that unusual at all, sir, in your
12 experience, to have somebody delegated
13 responsibility for an investigation of a traffic
14 accident without attending the scene?

15 A That's the way the department ran.
16 Sergeant Carter was the reader, the reviewer of
17 the files, and he basically delegated who got what
18 file.

19 Q Well, sir, I agree with you that he is
20 designated as the reader. Everything we have seen
21 indicates the same information. But are you
22 suggesting that the reader is the investigator?

23 A There has been times where we've gone
24 to a -- to a call or a scene, or something like
25 that, the file is written up and it's delegated to

1 someone else. I guess it's really no different
2 than that, to someone else who has never been on
3 the scene.

4 Q Okay. So with respect to the question
5 I did ask you, though, you are not suggesting that
6 the reader is the investigator?

7 A It could happen, yes.

8 Q It would be a coincidence if that
9 happened, sir. It is not like when you become
10 assigned the reader, all of a sudden you are the
11 investigator as well?

12 A If it is delegated to the reader, and
13 the reader is told, you are responsible for the
14 file --

15 Q You are also investigating?

16 A -- you are the investigator, then I
17 guess that's what happens.

18 Q Certainly. But just being the reader
19 doesn't make you the investigator?

20 A Certainly not.

21 Q All right. Thank you. And, sir,
22 although we will probably hear more evidence about
23 it later, do you know at what point in time
24 Sergeant Carter was delegated responsibility for
25 being investigator of this file?

1 A No, I don't.

2 Q Now, sir, we will return to the scene
3 and we will return to your involvement. Now, when
4 you arrive at the scene, can you describe what you
5 observed when you pull up to the spot where you
6 first arrived when coming down Highway 59?

7 A Yes.

8 Q Describe what you saw, please?

9 A Well, I saw there was debris all over
10 the place, vehicles still trying to get through.
11 Um, the paramedics were on scene, working on -- on
12 Taman's vehicle there. And, like I said, like we
13 pulled up. Bakema got out. I had to stop traffic
14 from behind. I backed up, took control of
15 traffic. Bakema went to the scene and did what he
16 needed to do at the time.

17 Q All right. Now I am going to break
18 that down into pieces. You indicated that you
19 both get out of the vehicle when you arrived at
20 the scene?

21 A Yes.

22 Q And you described earlier that you
23 parked just north of the scene because you knew
24 enough not to disturb the crash site?

25 A Correct.

1 Q And you both got out. And what did
2 you do when you got out, sir?

3 A Looked around, kind of observed the
4 scene, see what needs to be done.

5 Q All right. And what did that involve,
6 looking around? Did you remain at the car?

7 A Well, just kind of -- we were just
8 standing in front of the car, looking around,
9 seeing what was going on. And the vehicles kept
10 coming through, so I just said: I am going to go
11 block the traffic off and stop the vehicles from
12 coming through.

13 Q Okay. Now, we heard evidence this
14 morning from Constable Pedersen that she was,
15 basically, coming up highway north and pulled over
16 adjacent to the Harvey-Zenk vehicle, and could see
17 you and Chief Bakema standing by the vehicle close
18 to the intersection. That's consistent with the
19 evidence that you provided just now?

20 A I don't think so. Because when I
21 backed up, I didn't see her anywhere. She kind of
22 got lost. She went to Henderson and the
23 Perimeter, so she was looping back around. I
24 called her over the radio and told her to come
25 where I am to put up some barricades to block the

1 traffic.

2 Q Okay. So I am going to hear you out
3 in terms of where you went. You have gotten out.
4 You've checked around. You've done a very quick
5 assessment of the scene. How long do you think
6 that would have taken?

7 A A couple of seconds.

8 Q Just a couple seconds?

9 A 10, 15 seconds.

10 Q Okay. And after that 10 or 15
11 seconds, what do you do?

12 A I get in my vehicle, I back up to stop
13 the traffic from coming through.

14 Q All right. Where were you planning to
15 stop the traffic?

16 A Right where it joins, where the
17 turn-off is off of 59 going to 101 west.

18 Q Okay. So you are motioning over to
19 the chart. And I take it, it would be somewhere
20 close to where we see the offshoot road --

21 A Yes.

22 Q -- to the left as you are coming down
23 Highway 59 south?

24 A Correct.

25 Q So you have taken the initiative of

1 taking your vehicle up there, sir?

2 A Yes.

3 Q And I understand, from your
4 statements, that you backed the vehicle up?

5 A I backed the vehicle up.

6 Q And that was the road that was
7 congested when you came down it?

8 A There was very little -- there wasn't
9 as much traffic, from that point, down to the
10 crime -- to the accident. But there was still the
11 odd car trying to get through, to get ahead of
12 everyone.

13 Q Where had the traffic blocked up?
14 When you describe coming to the accident scene and
15 the traffic was backed up, where had it backed up
16 from?

17 A Pretty much -- pretty much right, I
18 guess the Pritchard Farm turnoff, a little bit
19 past that, north of the Pritchard Farm turnoff,
20 sir.

21 Q And what's the Pritchard Farm turnoff,
22 sir?

23 A It's just north of the weigh scale
24 there.

25 Q And is the weigh scale depicted on

1 that diagram, or would it be north of that?

2 A It would be north of that.

3 Q And, sir, can you explain what might
4 have stopped the traffic from continuing down that
5 artery into the area where the accident was?

6 A They probably had a little more common
7 sense to keep driving, trying to get off the 59 on
8 to 101 west, and it was just getting congested.

9 Q Okay. So, essentially, most of the
10 congestion was north of that, vehicles were trying
11 to get out of the way, rather than some long line
12 of parked cars in the way --

13 A Correct.

14 Q -- as you tried to back up?

15 A Correct.

16 Q All right. So you back up and you
17 bring your vehicle there. And what happens when
18 you bring your vehicle there?

19 A I bring my vehicle, I park it
20 diagonally across 59 so people can get through. I
21 believe I put a couple of cones out. And I called
22 Pedersen over the radio to come and take over that
23 spot and redirect traffic.

24 Q Okay. I am going to get to Constable
25 Pedersen in a second. You indicated to me that

1 you were stopped at the intersection for only a
2 couple of seconds before you backed up?

3 A Yes.

4 Q Are you confident with that answer,
5 sir?

6 A Yes, I am.

7 Q I am going to ask you, again, to take
8 a look, if you would, please, at the RCMP
9 interview that you gave, which would be Exhibit 84
10 in the amendment volume. If you would take a
11 look, please, at page 572? You've just finished,
12 at the point where you are going to find page 572,
13 of describing how you got to the scene, you got
14 out of the car with Chief Bakema. You did a quick
15 assessment, and then you made the decision to go
16 back up to the scale area where it is the stack-up
17 area, as described here?

18 A Yes.

19 Q Then you are asked by Officer Kennett:
20 "Okay. So from the time you pulled up
21 here, to the time that you backed up
22 your vehicle here, how much time would
23 have elapsed?

24 A It was a matter of maybe three
25 minutes.

1 Q All right.

2 A So then I pulled up here and I
3 blocked traffic."

4 So I take it, when you were being interviewed by
5 the RCMP, you were describing the same time period
6 that we just covered, sir?

7 A I don't think it would have been three
8 minutes. It's more a couple seconds, because I
9 remember not being out there very long.

10 Q Sure. But you would agree with me
11 that there really can be quite a difference
12 between a couple of seconds and three minutes,
13 sir?

14 A I guess there could be, yes.

15 Q And you felt comfortable giving this
16 three-minute answer to the RCMP when they asked
17 you?

18 A I was sure it would be within a couple
19 of minutes to a couple of seconds, somewhere in
20 there.

21 Q But that's not what you said, is it,
22 sir? You used three minutes as your point of
23 reference?

24 A It could be, yes.

25 Q Yes. And now you are using a couple

1 of seconds. So I think it's fair to say, sir,
2 that you are not really sure how long it was?

3 A It was not that long.

4 Q Okay. But it could have been up to
5 three minutes?

6 A Or it could have been less.

7 Q Yes. But it could have been up to
8 three minutes?

9 A Yes. But it could have been less.

10 Q Okay. So you back up to the weigh
11 scales. It is about three city blocks. And your
12 evidence is that you asked for Glenda Pedersen.
13 And why do you ask for Glenda Pedersen, at that
14 point?

15 A Because I didn't know where she was at
16 that point. And I just asked if she could come up
17 and block the traffic.

18 Q And why did you want her to come up
19 and block the traffic, rather than her to come out
20 and help with the accident scene?

21 A Because she is known not to be able to
22 handle situations like this very well.

23 Q Okay. So you basically made a
24 decision that you felt that you would be more
25 competent as an investigator, sir?

1 A Not as an investigator, but to help
2 out with the scene, yes.

3 Q Okay. But that was your own judgment?

4 A Yes.

5 Q That wasn't a policy or anything that
6 was in place?

7 A No, it wasn't.

8 Q Okay. So even show she is superior to
9 you in experience, you felt that you could better
10 handle what was going on at the scene?

11 A Not handle it but, yeah, take care of
12 it, yes.

13 Q Okay. Is there a difference between
14 "handle" and "take care"?

15 A I don't know.

16 Q Pardon me?

17 A I don't know.

18 Q Well, you corrected me. I am just
19 asking you.

20 A Well, you tell me if there a
21 difference between "handle" and "take care" of. I
22 guess it's just the same.

23 Q Mr. Graham, you are the one that
24 corrected me, and I simply asked you if there is a
25 difference. If there is not, then that's your

1 answer.

2 A I don't know.

3 Q So where are you when you ask for her
4 over the radio, sir?

5 A I was up blocking traffic off by that
6 turnoff.

7 Q Okay. And I understand, in your
8 interview with Mr. Clifford, that you also start
9 to put out cones?

10 A Yes.

11 Q And you distinctly remember doing
12 that?

13 A I think I can remember doing that,
14 putting out a couple of cones, yes.

15 Q So you think you can remember it, sir?

16 A I'm pretty sure I did.

17 Q So you are not 100 percent on the
18 cones?

19 A Not 100 percent. It was quite some
20 time ago.

21 Q Sure.

22 A I am pretty sure I put out the cones.

23 Q And we are allowing for that, sir. We
24 are asking about events that took place three and
25 a half years ago. And we are trying to use your

1 notes to try to clarify it, so you don't need to
2 get defensive. If you don't recall, that's your
3 answer.

4 A I'm pretty sure that's what I did.

5 Q Because, again, Glenda Pedersen
6 testified today, and Glenda Pedersen's evidence
7 was that she received a couple of radio calls from
8 you. The first radio call was to tell her where
9 the actual accident scene was.

10 A M'hm.

11 Q And that she had gone the wrong way,
12 based on the information that had been furnished
13 by the caller, correct?

14 A I didn't really say that. I said the
15 accident is at 59 and the Perimeter.

16 Q Okay. So you -- that's what you
17 initially told her?

18 A I initially told her that -- I don't
19 remember if I told her at 59 and the Perimeter or
20 Henderson and the Perimeter. I am not sure what I
21 told her.

22 Q Okay. But you are, basically, trying
23 to -- you are trying to get her back to the
24 accident scene?

25 A Yes.

1 Q And she claims that that's when she
2 came up Highway 59 north and pulled over behind
3 the vehicle of Constable Woychuk that was just
4 pulling in. And she pulled over adjacent to the
5 Harvey-Zenk vehicle, only, of course, in the other
6 lane.

7 And she indicates she was there a
8 couple of seconds, and then she received a radio
9 instruction from you to go up to block up the
10 traffic. Are you disagreeing with her evidence,
11 sir, or is it a case that you just don't remember
12 two calls?

13 A I didn't see her there. I might have
14 called her twice, but I didn't see her sitting on
15 59. I didn't know where she was.

16 Q Are you saying that she wasn't there,
17 sir?

18 A I didn't see her there.

19 Q Fair enough. And she also testified
20 that she was the one who went up there, and that
21 you were at the intersection at the time she went
22 up there. Do you disagree with that?

23 A Well, if she is at -- if she was there
24 when I was at the intersection, I would have seen
25 her. I did not see her there. Woychuk's vehicle

1 was not there either.

2 Q Okay.

3 A They were still trying to get there,
4 because I guess they went to Henderson and the
5 Perimeter. When I backed up, I didn't see her
6 there.

7 Q Our information, from Constable
8 Woychuk's notes, is his vehicle arrives at 7:22.
9 Constable Pedersen testified today that it was
10 7:20 when she pulled over at that location, but
11 Constable Woychuk was just pulling in.

12 So your evidence would be that her
13 testimony would be wrong about where you were, at
14 that point in time, because you actually got out
15 of your vehicle, got back in, and took it right up
16 the highway to block at the weigh scale area, or
17 at the turnoff area?

18 A Correct.

19 Q And you are confident of that?

20 A I am very confident of that.

21 Q And you told Mr. Clifford, and you
22 told the RCMP, that you waited for her?

23 A Yes.

24 Q Okay. And the way you put it in your
25 RCMP interview was:

1 "She finally attended."

2 Do you know where she was, sir?

3 A Like I said, I have no idea where she
4 was.

5 Q But you waited some period of time
6 before she got there?

7 A Yes.

8 Q And so after you hopped in your
9 vehicle, you arrived at the scene, a period
10 between seconds and three minutes passes. You
11 back your vehicle up. You are waiting for her up
12 at that scene. Any idea how long you are up
13 there, sir?

14 A No, I don't.

15 Q But you did wait long enough that,
16 when the RCMP asked you, you said:

17 "She finally attended"?

18 A Right.

19 Q So we can accept that some period of
20 time has passed, and you are, actually, becoming a
21 little impatient?

22 A It was some period, yes.

23 Q And when she arrives, what happens,
24 sir?

25 A I just advised her to, you know, put

1 some more cones out, and block this off, and
2 direct traffic on to 101 west.

3 Q Okay. So you actually have a personal
4 conversation with her, sir?

5 A When she pulled up.

6 Q And so she pulled up, and you are
7 speaking to her. She is still in her vehicle?

8 A I believe she was, yes.

9 Q So you are telling her to block off
10 the traffic and put the cones up. And then what
11 did you do?

12 A Once she gets there and does that -- I
13 tell her that -- I, again, get in my vehicle and
14 drive up to the scene again.

15 Q Okay. So you are back at the scene.
16 And what do you do with your vehicle?

17 A I block -- basically, where I stopped
18 to begin with, in the first time at the scene, I
19 park it diagonally across the road.

20 Q So you would be blocking the north
21 side of the access into the intersection from
22 Highway 59 north -- or south, rather?

23 A 59 north. I was still southbound in
24 the southbound lane.

25 Q Yes. But you are north of the

1 intersection, because you testified --

2 A Yes. Just north of the intersection.

3 Q You didn't want to go in there.

4 A Correct.

5 Q And you didn't want to mess it up?

6 A Correct.

7 Q So you parked diagonally across that
8 intersection?

9 A Yes.

10 Q And correct me if I'm wrong, or
11 perhaps if you wish, you could drag that mike over
12 and get up and try and show us on that diagram
13 where you think your vehicle was, sir, or would
14 you like me to make a suggestion to where you were
15 parking?

16 A Make your suggestion.

17 Q Okay. So you see that black line
18 across where the intersection is?

19 A Yes.

20 Q That would be approximately where your
21 vehicle is?

22 A It would be very close to that, yes.

23 Q Okay. And when you got back, sir, was
24 Constable Woychuk there yet?

25 A I believe I was there for maybe a

1 couple seconds or so, and then I saw his vehicle
2 pull up.

3 Q Okay. So he is pulling up pretty
4 much --

5 A Yes.

6 Q -- at the same time?

7 A Yes. Pretty much at the same time I
8 got there, yeah.

9 Q And where was he pulling up to, sir?

10 A He was in the turning lane, northbound
11 at 59. The boulevard side in the turning lane, he
12 pulled up in that spot.

13 Q All right. So if I can, again, make
14 reference to the diagram, he would have been
15 coming up from the bottom of that diagram, up
16 Highway 59, having not taken the same route there
17 that you took?

18 A Correct.

19 Q And you've already managed to go up to
20 the other end and back, and he was just arriving
21 when you got there?

22 A Or he was just getting there, or I'm
23 not too sure, but he was there when I was just
24 pulling up, when I was just getting out of the
25 vehicle.

1 Q All right. And he pulls up. And you
2 say he pulls near the turning lane?

3 A Yeah.

4 Q And perhaps if you could describe what
5 you interpreted his purpose in parking there to
6 be, it will help us to picture where his vehicle
7 was?

8 A To try and stop the traffic from
9 coming northbound on 59 and turning there, making
10 a left turn there, to disturb the scene.

11 Q Fair enough. And so you've got
12 vehicles -- undoubtedly, the flashers are on those
13 vehicles?

14 A Yes.

15 Q And so you have that intersection
16 pretty well under control, at that point?

17 A As best as we can, yeah.

18 Q There was no need for anybody to get
19 out and actually direct traffic at that point?

20 A Not at that point, no.

21 Q Did you ever see Chief Bakema
22 directing traffic during that part of the day, the
23 early part of the morning?

24 A I don't -- not that early in the
25 morning, I don't -- I don't think so.

1 Q Okay. And so you arrive, and then
2 what do you do, sir?

3 A I go to Taman's vehicle. I see the
4 paramedics are working on her.

5 Q Okay. The way -- the way you put it
6 in your evidence to Mr. Clifford is you were
7 assessing the scene again?

8 A Assessing the scene, yeah.

9 Q Okay. So you get out. And by now,
10 for sure, the paramedics are there?

11 A Yeah.

12 Q And you walk up and they are working
13 on her?

14 A They are working on her, trying to,
15 you know, use the jaws of life on the vehicle and
16 cut it up and get her out. At that time, I looked
17 ahead southbound, and I see a half ton in the
18 boulevard, in the median part. And I saw Bakema
19 with a male standing there.

20 Q Okay. I am going to ask you some
21 questions about Mr. Bakema and the male standing
22 there shortly. But I want to get the timeframe
23 down here.

24 You indicate in your notes, sir, at
25 7:23 -- your notes, which would be at page 558,

1 for those of us that are working at E.1.24.a --
2 that East St. Paul Fire and First Responders
3 arrive and attend to a yellow Sprint. Now, that
4 7:23, sir, are you recording the arrival time of
5 the first responders?

6 A Yes.

7 Q And were you there when they arrived,
8 sir?

9 A When East St. Paul Fire first arrived,
10 I believe it's there, yes.

11 Q And is that the 7:23 time that you are
12 recording, sir?

13 A Yes.

14 Q And, sir, although it is not a matter
15 of significance, I can't imagine, we have
16 information that the East St. Paul Fire Responders
17 arrived at 7:24. So there may be a discrepancy in
18 recording of the time that's insignificant. But,
19 essentially, that's around the time they get
20 there, sir? And where do they go at that time,
21 sir?

22 A They went to the yellow -- the yellow
23 Sprint.

24 Q Okay. And before I ask you what they
25 did there, where did you get that time of 7:23

1 from?

2 A I believe I got it from my watch.

3 Q So you got it from some personal time
4 piece of your own?

5 A Yes.

6 Q And, sir, what does the Fire First
7 Responders do when they get there? They attend to
8 Crystal Taman's vehicle. Can you tell us what
9 they were doing?

10 A I wasn't too sure what they were
11 doing. They just -- they all went to the vehicle.
12 And, I guess, they were trying to escort her out
13 of the vehicle.

14 Q And you -- you talked earlier about
15 Ray Riddolls?

16 A I talked earlier with Ray Riddolls.
17 They were putting a tarp over the vehicle at the
18 time. And I talked to Ray Riddolls and I asked
19 him: How is she doing? And he advised there was
20 no sign of life at the time.

21 Q And they had the jaws of life with
22 them?

23 A Correct.

24 Q And they would have been trying to
25 extract her?

1 A Yes.

2 Q And I take it, even though they worked
3 with tremendous speed and dispatch, they pull in
4 at 7:23, they are going to have to get the
5 equipment, get over there. Ray Riddolls is going
6 to have to do some type of inquiries or assessment
7 before he can come to that conclusion?

8 A I believe that's what he does. I am
9 not too sure what he does.

10 Q Sure. And it wouldn't be a decision,
11 I wouldn't imagine, that he would make lightly,
12 sir?

13 A No, certainly he would not.

14 Q He would be very careful about it?

15 A He would be careful about it.

16 Q And it would be something that he
17 would take a little bit of time before he is in a
18 position to actually make such a significant
19 proclamation?

20 A I don't know. You would have to ask
21 him that.

22 Q But just common sense would suggest he
23 is not going to tell a police officer at that time
24 that she has no signs of life without making
25 pretty sure that that's true?

1 A You wouldn't think so, yes.

2 Q And you indicated, in your interview,
3 that you helped them a little bit trying to cover
4 the vehicle with a tarp?

5 A I believe I was doing something with
6 the tarp, yeah. I believe I was doing something
7 or helping them with something. I can't really
8 remember what it was.

9 Q So you were somewhat involved with the
10 yellow vehicle yourself, and this very important
11 and disappointing conversation you were having
12 with Ray Riddolls. Where was Chief Bakema at this
13 time?

14 A Um, I'm not too sure where he was.
15 Um, last time I saw Chief Bakema, I just kind of
16 glanced at the area to see what was going on. And
17 he was walking the male that he was standing with,
18 by the -- by the truck that was ahead, to
19 Woychuk's vehicle.

20 Q So you saw him walking a male to the
21 vehicle?

22 A Yes.

23 Q All right. Well, let's back up a
24 little bit. Because in your transcript, you said
25 that you saw Mr. Bakema speaking to the driver of

1 a Dodge truck?

2 A M'hm.

3 Q And it was approximately 100 yards
4 south of where you were --

5 A Correct.

6 Q -- as you got out of the vehicle to
7 assess the scene. So, before you see him walking
8 the gentleman back, you actually seen them at the
9 area where the truck is, I take it?

10 A Correct.

11 Q And what were they doing there, sir?

12 A I don't know what they were doing
13 there. They were just standing there.

14 Q They were just standing there?

15 A It was 100 yards away. I don't know
16 what they were doing.

17 Q You did -- you do recall offering
18 Mr. Clifford the evidence that it looked like they
19 were talking?

20 A They could have been, yeah.

21 Q Well, just --

22 A They were just standing there talking.

23 Q Sir, I just want to be clear here,
24 because "could have been" is simply a suggestion
25 that something could have been happening, whether

1 you knew it or not. But your evidence at the
2 time, and I will take you to it at page 13 of the
3 transcript, was that it looked like they were
4 talking. Is that fair, sir?

5 A That's fair to say.

6 Q So your conclusion would be that it
7 looked like they were talking?

8 A Yes.

9 Q And he asked you how far apart they
10 were. Can you answer that question for the
11 Commissioner?

12 A A couple feet apart. I'm not too
13 sure. I didn't really pay attention how far they
14 were apart.

15 Q Okay. So your best estimate today
16 would be that it's a couple of feet?

17 A A couple feet, somewhere in there,
18 yeah.

19 Q And you didn't pay much attention to
20 what was going on down there?

21 A No, I did not.

22 Q Are you able to tell us how far they
23 were from the truck?

24 A Not off the top of my head, no, I
25 can't.

1 Q You don't remember telling
2 Mr. Clifford that you thought they were 15 to
3 20 feet from the truck?

4 A Yes. Maybe 10 -- 10, 15 feet from the
5 truck. I'm not --

6 Q And do you remember being asked
7 whether there was anyone else there, sir?

8 A Who was asking me this?

9 Q Mr. Clifford?

10 A Yes. I remember him asking me that,
11 yeah.

12 Q Okay. And what was your answer, sir?

13 A No.

14 Q So is that your evidence, again today,
15 that there was nobody there?

16 A Yes, just Bakema and the male.

17 Q Okay. You indicated that you kind of
18 caught this out of the corner of your eye when you
19 were first describing this. Is that a fair
20 description of how you viewed this event?

21 A Yes.

22 Q And, sir, would it be fair to say that
23 you weren't really paying a lot of attention to
24 what was going on down there?

25 A That's probably true, yes.

1 Q And, sir, are you open to the
2 possibility that there may have been more than one
3 person down there with Mr. Harvey-Zenk?

4 A I didn't see -- all I believe I saw
5 was Bakema and Zenk at the time.

6 Q Yes, I understand what you believe you
7 saw. I am just asking whether you can rule out,
8 under oath, the possibility that there was someone
9 else there also?

10 A I guess, no, I can't.

11 Q Now, sir, you just described, in your
12 testimony, how you saw Mr. Bakema then walk
13 Mr. Harvey-Zenk over towards Constable Woychuk's
14 vehicle?

15 A Correct.

16 Q And I asked you, very expressly,
17 whether you saw that, sir. And you indicated that
18 you did. I am going to ask you to turn to page
19 581 of your statement to the RCMP. You'll notice,
20 sir, about two-thirds of the way down the page,
21 you are asked by Officer Kennett:

22 "So, um, through the -- in that time,
23 that must have been when Harry
24 escorted the accused from his vehicle
25 to Woychuk's?

1 A Yes.

2 Q Now, did you see that?

3 A No, I did not see it."

4 Do you see that answer and that response, sir?

5 A I remember him walking towards

6 Woychuk's vehicle.

7 Q All right. But, sir, would you agree
8 with me that when you were giving this statement
9 to the RCMP, you indicated that you did not see
10 him escorting the accused from his vehicle to
11 Woychuk's?

12 A That's what I said in this, yes.

13 Q Yes.

14 A But now, since that, my memory has
15 kind of been refreshed a little bit, I remember
16 him walking up to Woychuk's vehicle, or towards
17 the vehicle.

18 Q Okay. Sir, and when you were
19 responding to questions from the RCMP, you
20 certainly understood that it was in connection
21 with a very serious investigation?

22 A I gave that answer to the best of my
23 knowledge at the time.

24 Q And you were trying to do that, sir?

25 A Right.

1 Q And you were confident that you could
2 give a definite answer to that question?

3 A At that time, yes.

4 Q And you didn't qualify it at all by
5 saying: I'm not sure or it's not clear. You
6 said:

7 "No, I did not see it,"
8 correct?

9 A To the best of my knowledge at the
10 time, yes.

11 Q Well, sir, you did not say here:
12 "To the best of your knowledge".

13 You said:

14 "No, I did not see it."
15 Do you agree with me?

16 A That's what I said, yes.

17 Q Yes. And today you have a different
18 recollection?

19 A Well, I am sure things can come along
20 over time.

21 Q Certainly. Our recollections do
22 change. And I am trying to confirm that you are,
23 today, giving us a different account than you gave
24 the RCMP, even though you were trying to give the
25 RCMP a truthful and accurate account?

1 A Correct.

2 Q All right. Now, sir, you began to
3 suggest that you did see him walk, and then you
4 were going to say something else. Did you see him
5 actually put constable, or Mr. Harvey-Zenk in
6 Constable Woychuk's vehicle?

7 A I don't recall seeing him put him in
8 the vehicle. I am not too sure on that.

9 Q Now, sir, if you take a look at the
10 transcript, at page 18, you'll notice that you
11 describe him putting Chief Bakema in the -- or:

12 "...putting Mr. Harvey-Zenk in the
13 vehicle,"

14 down at line 16 or 17?

15 "Did you ever learn what they were
16 talking about after -- after Chief
17 Bakema puts Zenk in Woychuk's vehicle?

18 A I believe it was shortly after
19 that. Woychuk was still sitting there
20 with Zenk in the vehicle, and the
21 paramedics were still at the vehicle,
22 in the passenger's side of the
23 vehicle, and I guess I looked at
24 Zenk."

25 So at that point in time, sir, is it your best

1 recollection that you saw him put him in the
2 vehicle or you didn't?

3 A I know he put -- I knew there was
4 someone in the vehicle. I knew -- because he
5 walked him towards the vehicle, and then he was in
6 the vehicle. I didn't actually see him open the
7 door and place him in there, but I knew he was in
8 the vehicle, because that's where he was walking
9 towards.

10 Q Okay. So you actually saw, then,
11 Mr. Harvey-Zenk over by the truck. You saw him
12 being escorted back. And you are not really sure
13 whether you witnessed him being put in the
14 vehicle?

15 A Correct.

16 Q I am just a little curious, sir,
17 because you have also told the RCMP in the
18 interview, if you take a look at page 603.3, page
19 40 of the interview. Page 603.3, you are being
20 asked by the RCMP whether Mr. Harvey-Zenk was ever
21 put in the back of your police car.
22 And you say:

23 "A Not that I know of.

24 Q Well, is it possible that he could
25 have been in the back of your police

1 car, and you wouldn't have known it?

2 A I guess it's possible. It's
3 possible if I didn't know him. I -- I
4 didn't see -- the only time I saw him
5 was in the vehicle, in Woychuk's
6 vehicle."

7 Sir, are you able to clarify that for
8 us? Because it just strikes me as possibly
9 inconsistent with the testimony you are giving
10 today, that you saw him down at the scene walking
11 back?

12 A What I saw -- what I'm saying is I saw
13 him walking with Bakema. And the next thing I
14 knew, he was in Woychuk's vehicle.

15 Q Okay. But I am just a little curious,
16 because this one -- this passage says:

17 "The only time I saw him was in the
18 vehicle, in Woychuk's vehicle."

19 And I am just wondering how that's consistent with
20 your testimony today that you saw them walk down
21 to the vehicle?

22 A I didn't see him in anyone else's
23 vehicle but Woychuk's vehicle.

24 Q That's what you meant here?

25 A That's what I meant there.

1 Q Fair enough.

2 Now, you told Mr. Clifford that this
3 incident, where you saw him out of the corner of
4 your eye, and he walks Mr. Harvey-Zenk back,
5 occurred within minutes, or seconds, of your
6 conversation with Ray Riddolls?

7 A Correct.

8 Q Is that correct?

9 A Yes, it is.

10 Q And Mr. Clifford was trying to gauge
11 the length of the conversation that you would have
12 witnessed. Do you recall that series of
13 questions?

14 A Yes. He was asking questions, yes.

15 Q And he suggested to you that it had to
16 be three minutes. And you really weren't able to
17 give an estimate as to how long that conversation
18 was, sir?

19 A No. I wasn't too sure what it was.

20 Q You said it could have been seconds,
21 it could have been minutes?

22 A Correct.

23 Q And that would be your evidence today,
24 too, I take it?

25 A Correct.

1 Q Sir, did you go over and meet with
2 Chief Bakema, when he was with Mr. Harvey-Zenk,
3 over by the truck?

4 A No, I did not.

5 Q You're entirely sure about that, sir?

6 A I'm pretty sure.

7 Q You're pretty sure?

8 A As far as I can recall, yes, I'm sure.

9 Q So, again, it is not something you can
10 necessarily rule out?

11 A Off the top of my head, I am pretty
12 sure I did not meet with Bakema by Woychuk's
13 vehicle.

14 Q Okay. But you are qualifying that?

15 A Yeah.

16 Q Now, sir, when you were giving the
17 rest of your narrative to Mr. Clifford, I see some
18 potential problems with the chronology of it. So
19 what I am going to do -- each one of these
20 episodes has some importance. So I am going to
21 lay out the chronology that you gave to
22 Mr. Clifford, and I am going to look and see
23 whether you got them in the right order. And then
24 I am going to take you through each of the events,
25 and get your evidence on each of those events.

1 The first event you tell Mr. Clifford
2 of is shortly after Mr. Harvey-Zenk is placed in
3 the vehicle. Mr. Woychuk is sitting in the car
4 with Harvey-Zenk, and the paramedics arrive at the
5 vehicle. Do you recall telling him that?

6 A Yes.

7 Q And then you say you had a
8 conversation with Chief Bakema. That would be the
9 second event, the conversation with Chief Bakema?

10 A Correct.

11 Q And then you describe a conversation
12 that you had with the driver of the other vehicle,
13 the green vehicle. Do you recall that?

14 A I don't know if I recall that offhand.

15 Q I can take you to page 25 of the
16 transcript of the interview that you had with
17 Mr. Clifford. You'll notice on page 25, halfway
18 down at line 13 -- are you with me?

19 A Yes.

20 Q "I spoke with the driver of the other
21 vehicle a while back, right after I
22 spoke to Bakema."

23 Okay. So you seem very uncertain about that as
24 you are sitting there today?

25 A For some reason, I -- I can't recall

1 that. I'm not too sure.

2 Q Okay. But just for the sake of
3 symmetry, given that it's in there, this would be
4 the third event that's described in there. And I
5 do take note of the fact that you are expressing
6 some lack of confidence today --

7 A Yeah.

8 Q -- as to whether that happened.

9 Then the fourth event you describe is
10 the Taman daughter showing up. Do you remember
11 that, sir?

12 A Yes, I do.

13 Q And then the fifth event you describe
14 is the search of the Harvey-Zenk vehicle, and some
15 further conversation with Chief Bakema.

16 A Sure, yeah.

17 Q Sir, with respect to the order in
18 which you have events, you basically told us that
19 you got to the scene at 7:16, although you've made
20 some allowances for the clock being wrong. You
21 were there for a few seconds to three minutes. So
22 maybe in around 7:20, at that point in time,
23 approximating 7:19, 7:20, 7:21.

24 You back your vehicle all the way up
25 to the weigh scale. You end up waiting for

1 Constable Pedersen. And correct me if I say
2 anything that you disagree with. You could be up
3 there until 7:23 or so. You come back, and we
4 know it to be a very short distance, getting you
5 back on the scene at 7:23 or 7:24.

6 You see the First Responders arrive.
7 You have your conversation then with Ray Riddolls.
8 And you're saying that it's effectively at this
9 time, 7:23, 7:24, 7:25, in and around there, that
10 you notice Chief Bakema, out of the corner of your
11 eye, bringing Mr. Harvey-Zenk back after some
12 conversation. You don't know how long it is; is
13 that fair, sir?

14 A From the time I pulled up to that
15 time, I recognized him talking to Zenk. And then,
16 out of the corner of my eye, I see him walking
17 towards --

18 Q And you really don't know if it's a
19 couple of minutes, a few minutes, a few seconds?

20 A I have no idea.

21 Q It is something that we are going to
22 have to explore. But I can advise you that the
23 notes of Chief Bakema show that he approaches
24 Harvey-Zenk, according to those notes, at 7:40,
25 which would be a fair amount of time after you've

1 got it happening, sir.

2 And I'm just going to ask you whether
3 you remain confident that you saw that
4 conversation taking place, and that approach
5 taking place, around the time that you arrived and
6 had your conversation with Ray Riddolls?

7 A Well, Bakema is already with Zenk when
8 I pulled up.

9 Q Okay.

10 A So the timeframe, I'm not too sure.

11 Q And we -- did you disagree with the
12 timeframe I just laid out, in terms of when you
13 would have got back?

14 A My -- to my notes, and to the best of
15 my knowledge, that's pretty -- pretty close.

16 Q Okay. And, sir, you also describe, in
17 your evidence to Mr. Clifford, that shortly after
18 Woychuk was put in the vehicle, the -- you saw --
19 or Woychuk put Mr. Harvey-Zenk or was in the -- in
20 the vehicle with Mr. Harvey-Zenk, that the
21 paramedics showed up?

22 A No. The paramedics were already
23 there. They went to Woychuk's vehicle.

24 Q Okay. So your recollection is that
25 the paramedics, who went to Woychuk's vehicle,

1 were already there?

2 A Yeah.

3 Q Because the information that we have
4 is that the Selkirk paramedics went to the vehicle
5 from the Interlake Health Authority?

6 A I didn't know who they were. I just
7 knew there was paramedics there.

8 Q I was just going to tell you that the
9 information we have is that they arrived on scene
10 at 7:38, which would have been a fair amount of
11 time after you would have observed this gentleman
12 being put into the vehicle?

13 A M'hm.

14 Q Sir, are you starting to have any
15 concerns about the accuracy of your chronology?

16 A No. To the best of my knowledge, this
17 is what the times are.

18 Q Okay. Sir, you're -- you put the best
19 of your knowledge in your notes, correct? And
20 your notes, at tab A.1.24.a, record, at page 559,
21 at 7:25 you have a recording in the name of "Tara
22 Taman"?

23 A M'hm.

24 Q And I take it, sir, that you got that
25 information from Tara?

1 A Yes.

2 Q Date of birth?

3 A Yes.

4 Q Home?

5 A Yes.

6 Q And you have that recorded at 7:25,
7 correct?

8 A Correct.

9 Q The difficulty I'm having with your
10 chronology, sir, is the East St. Paul Fire
11 Responders, who record themselves getting there at
12 7:24. You have a description of having a
13 conversation with Ray Riddolls. You then have a
14 description, in your narrative to Mr. Clifford,
15 that you then have a conversation with Harry
16 Bakema. You then have a conversation with the
17 driver of the green vehicle. And then the
18 daughters arrive. And I'm just wondering how you
19 can have all three of those conversations?

20 A No. I had a conversation with Harry
21 Bakema after the daughters arrived.

22 Q Okay. That's what I was trying to
23 discover. Because when you gave your evidence to
24 Mr. Clifford, you were very express, after
25 describing seeing Constable Woychuk in the vehicle

1 with the paramedics, and you said: And then I had
2 the conversation with Bakema, and then the
3 conversation with the driver of the green vehicle,
4 and then the Taman's daughters showed up?

5 A No. No. I had a conversation with
6 Bakema after the daughters showed up.

7 Q You are not saying you didn't say
8 that? You are just saying it wasn't right?

9 A It wasn't right, yeah.

10 Q You also said, in the same interview,
11 that Constable Woychuk or, excuse me, you said
12 this to the RCMP, that Constable Woychuk remained
13 in the vehicle the whole time?

14 A As far as I saw, I believe he was in
15 the vehicle the whole time.

16 Q Okay. And here is how you put it,
17 sir. If you take a look, please, at page 582 of
18 the RCMP interview, at the top of page 582:

19 "No, because when the accused was in
20 that vehicle, Woychuk stayed in that
21 vehicle the whole time."

22 You would agree with me that's a very specific and
23 clear statement?

24 A Yes.

25 Q And it's not an indication of what you

1 think happened. It's a very clear assertion of
2 fact?

3 A That's what I thought at the time,
4 yes.

5 Q Okay. So you would have said, as a
6 fact, he remained in that vehicle?

7 A As far as I can remember, yes, he
8 remained in the vehicle when Zenk was in his
9 vehicle.

10 Q Okay. And after you were questioned a
11 little more by the RCMP, you did back off that.
12 You said:

13 "I couldn't say for sure. Well, he
14 might have -- I'm not sure. But the
15 time that I saw him, I never saw him
16 step out of the vehicle."

17 Correct?

18 A I never saw him step out of the
19 vehicle.

20 Q And so it's fair to say you weren't
21 focusing on Constable Woychuk? You had other
22 things to do and other things to attend to?

23 A Correct.

24 Q And it's quite possible that he
25 stepped out of the vehicle?

1 A He could have at the time I never saw
2 him.

3 Q And, in fact, our information is that
4 he stepped out of the vehicle a few times. And we
5 expect the evidence is going to show that. So we
6 really can't put any stock in the statement of
7 fact that he didn't step out of the vehicle?

8 A Well, that's the statement of fact
9 that I gave, that I saw.

10 Q Yes, okay. So you are clarifying what
11 you meant then?

12 A Right.

13 Q Where was Constable Woychuk before
14 Mr. Harvey-Zenk was put in his vehicle?

15 A I have no idea.

16 Q Okay. So you don't know where he was.
17 So you had this conversation with Harry Bakema
18 after the girls were in the car. What did he say
19 to you, sir?

20 A He advised me that when he went and
21 talked to the male down at the truck, the male
22 indicated to him that he was a police officer from
23 District 3.

24 MR. McDONALD: I'm sorry, I didn't
25 hear that?

1 MR. PACIOCCO: You said the male was a
2 police officer from District 3?

3 THE WITNESS: Yes, District 3.

4 BY MR. PACIOCCO:

5 Q And he told you that -- the way you
6 put it is, he told you that when he had the
7 conversation with the male at the truck, the male
8 told him?

9 A The male told Bakema that.

10 Q Are you remembering him referencing
11 the conversation to what took place at the truck,
12 sir? I mean, was that a conversation --

13 A I don't know if it happened at the
14 truck or where it happened.

15 Q Fair enough. Okay. And he indicated
16 that the man was a police officer who works out of
17 District 3?

18 A Correct.

19 Q Please continue?

20 A And that he knows Harry, but he worked
21 on an opposite shift, or something like that. I
22 am not too -- I can't really remember. And that's
23 when Harry indicated to me that he was going to
24 call Norm Carter out.

25 Q Can you speak up a little bit, please?

1 A That's when Harry indicated to me that
2 he was going to call Norm Carter out.

3 Q Okay. And what you've, in fact, told
4 the RCMP is consistent, but with a little more
5 detail. You told them that he indicated that he,
6 being Harry, was a Sergeant at the same place, on
7 a different shift, but they did overlap and kind
8 of worked out of the same office?

9 A Yes. They were on different shifts,
10 but same office.

11 Q But they did overlap and worked out of
12 the same office?

13 A Yes.

14 Q And when you told this to the RCMP,
15 you said he used to work under Harry?

16 A I didn't -- I am not sure I said he
17 worked under Harry. Probably when he overlapped
18 shifts they worked together, that's about it.

19 Q I think you were purporting to
20 describe what Harry had told you, sir. Do you
21 recall that?

22 A Yeah. I don't -- yeah.

23 Q Okay. In fairness, this is exactly
24 what you said, sir?

25 A What page is that?

1 Q Page 580, at the bottom of page 580 on
2 to 581. The bottom of page 580, starting with the
3 last line:

4 "A And that he spoke to this person
5 here, and put him in Woychuk's
6 vehicle. And that, um, he used to
7 work -- works Winnipeg or he used
8 to -- for Harry or something, or with
9 Harry, something like that, because
10 Harry was a sergeant -- a sergeant in
11 District 3 --

12 Q Right.
13 -- for Winnipeg, and said that he used
14 to work under Harry, or something like
15 that. I can't remember the exact
16 words."

17 Do you recall giving that answer?

18 A Yes.

19 Q The impression that you had was that
20 he worked under Harry, but not on the same
21 shift --

22 A Or something like that.

23 Q -- or at the same place?

24 A I don't know how it worked.

25 Q But you were definitely -- after your

1 conversation with Harry Bakema, then you were of
2 the understanding that these men had worked
3 together?

4 A Correct.

5 Q And you started to tell us about him,
6 that he was going to call out Norm Carter?

7 A That's correct.

8 Q Can you elaborate on that?

9 A He advised me that he was going to
10 call Norm Carter out to take over the file,
11 because since he knew Zenk and Zenk knew him, that
12 he didn't want any conflict to go about regarding
13 this -- this incident.

14 Q So you remember him telling you, when
15 he came over to have a conversation with you, that
16 he was going to call out Carter because Bakema was
17 concerned that it wouldn't be proper for him to
18 deal with this person, given that he knew him, is
19 that basically it?

20 A Yes.

21 Q And he is, basically, telling you that
22 it would be wrong for him to investigate this
23 case?

24 A Not that it would be wrong, but that
25 it would be -- you need an unbiased person doing

1 it, since you have knowledge and contact of that
2 person previously.

3 Q And so it was your understanding that
4 there was some recognition, on his part, of bias?

5 A Yes.

6 Q And you would agree that that's
7 pretty -- a pretty important piece of information
8 for an investigator to make known?

9 A Correct.

10 Q And you would expect to see that in
11 someone's notes?

12 A (witness nodding).

13 Q You are nodding, sir?

14 A Yes.

15 Q And, sir, the way you phrased it is
16 you said: He was going to call Carter?

17 A That's what he said, he was going to
18 call Carter.

19 Q Sir, where did this conversation take
20 place, do you recall?

21 A I believe it was in the middle of the
22 intersection. The middle of the intersection,
23 somewhere in there, in that vicinity.

24 Q So you would have been out of your
25 police car?

1 A Yes.

2 Q Are you confident of that?

3 A Yes.

4 Q And, sir, are you able to describe the
5 time when this conversation took place?

6 A No.

7 Q Because you described it as: He was
8 going to call Carter out. The information that we
9 have is that Carter was contacted at 7:38 in the
10 morning. So if that's accurate, this
11 conversation, I take it, would have had to take
12 place before 7:38?

13 A It could have. I have no idea what
14 time it was.

15 Q So if you accept the information that
16 I am giving you, that he was calling him out at
17 7:38, Harry Bakema telling you he was going to
18 call Chief Carter out, this has to occur before
19 7:38?

20 A It was either he was going to or he
21 did.

22 Q So are you backing off your version
23 that he was going to call out Chief Carter?

24 A That he was either going to or did. I
25 am not too sure exactly what the words were. But

1 I knew that he was -- that Carter was coming.

2 Q Okay. So when you said, sir, that:

3 "He was going to call out Carter", you weren't

4 exactly sure that that's what he said?

5 A Well, he was going to or did, I'm not

6 too sure of what it.

7 Q Well, sir, in the future when you

8 answer a question, sir, if you are not really

9 sure, let us know. Because if you just state it,

10 it sounds like fact, and we are going to treat it

11 as one.

12 Q Now, sir, you are sure that this is

13 the explanation you got for Carter being called

14 out?

15 A Yeah.

16 Q That Harry was in a conflict

17 situation?

18 A He felt that there was -- that there

19 might be a conflict situation.

20 Q And you agreed with me that this was a

21 pretty important piece of information?

22 A Definitely.

23 Q Now, sir, you never told the RCMP that

24 this is why Carter was called out. Are you able

25 to explain why you didn't tell that to them?

1 A I don't know. Maybe they didn't ask.

2 Q Well, in fact, they did, sir. Take a
3 look at page 574, please? You are about 6 to 10
4 lines into the page. We will start with the
5 question.

6 "Q Okay. Now, did you at that
7 point -- who was running the file at
8 that point? Like, who was in charge
9 of the scene?

10 A I have no -- basically, what
11 happened is we got out there. We
12 tried to control the scene as much --
13 as good as we can until we got more
14 members there. At that time, um, I
15 believe it was Chief Bakema called out
16 Sergeant Norm Carter --

17 M'hm.

18 -- to kind of be an umpire of the
19 scene, being controlling of the scene,
20 what to do with stuff like this.

21 Q Okay.

22 A Um.

23 Q Were you there when he phoned him?

24 A No.

25 Q Okay. Then how do you know he did

1 that?

2 A Because it was up to Norm Carter
3 to -- I guess, to report something. I
4 don't know. That's just what I was
5 told, and he called -- that Chief
6 Bakema called him, Norm Carter, to
7 kind of, um, take things over, make
8 sure they -- you know, you need more
9 than one supervisor there, basically.
10 This is a serious accident.

11 Q Okay.

12 A That's, basically, all I was
13 told."

14 And so, sir, do you recall being asked
15 those questions and giving those answers?

16 A Yes.

17 Q And you would agree with me that you
18 don't provide the information, when you are
19 explaining why Carter is coming out, that you've
20 provided today in your testimony?

21 A They indicated that -- they asked me:
22 How did you know that Carter was called out?

23 Q Well, sir, you -- you've include in
24 your description why he is called out, don't you,
25 sir?

1 A I just did, yes.

2 Q You did then, too, did you not, sir?

3 A To basically be a supervisor and deal
4 with the file, or something. It's a serious
5 accident. You need more than one person out there
6 dealing with stuff.

7 Q Yes, sir. And you don't see anything
8 in here about a conflict, do you?

9 A No.

10 Q So you didn't tell them about the
11 conflict?

12 A No, I did not.

13 Q The explanation you -- you did give,
14 was that this is a serious accident. You need
15 more than one supervisor. And you agreed with me
16 that the conflict issue was an important one?

17 A It's a very important one.

18 Q And yet you omit to tell them that,
19 when you are giving this important interview, in
20 connection with a police investigation?

21 A That's correct.

22 Q Sir, when did you learn that the
23 person, who was in Woychuk's vehicle, and who you
24 had seen down the road, was Derek Harvey-Zenk?

25 A Afterwards. I think it was later on

1 in the day when we got back to the office.

2 Q You said you "think it was", sir?

3 A I'm pretty -- I think it was. I am
4 not quite sure when. But I did find out later on
5 that -- who he was. Harry might have mentioned
6 his name to me, but it didn't -- it didn't really
7 mean anything to me.

8 Q So Harry might have mentioned his name
9 to you?

10 A He might have. It didn't mean
11 anything to me.

12 Q Okay. Sir, I am going to take you to
13 page 590 of the RCMP interview. You just
14 indicated that Harry might have told you his name.
15 You told the RCMP that Harry didn't tell you who
16 it was. He told you later on, correct?

17 A Like I said, he might have. I am not
18 too sure.

19 Q But you were pretty sure, when you
20 were talking to the RCMP, that he had not?

21 A I was sure that he had not, yeah.

22 Q And now you are not so sure?

23 A He might have said that his name was
24 Derek. I didn't know Derek Harvey-Zenk. I didn't
25 know anything about that, his last name, or

1 anything.

2 Q Well, sir, if you take a look at page
3 591, please? You've said twice that the name
4 didn't mean anything to you, and that you didn't
5 know Derek Harvey-Zenk. You are asked by Officer
6 Kennett, on page 25, about eight lines in:

7 "Q Did you know him at all?

8 A No. I did -- well, I know his
9 parents from Brandon.

10 Q M'hm.

11 A Because I'm originally from
12 Brandon.

13 Q Okay. But at that time --

14 A I didn't know who he was."

15 Sir, I take it when you are referring to:

16 "I didn't who he was,"

17 you are referring to the fact that you didn't know
18 who the guy in the car was?

19 A At the time, I did not know who he
20 was, until I was told later on who he was.

21 Q And then you realized --

22 A I realized.

23 Q -- he is from the same place you were?

24 A He was from the same place I was.

25 Q And you knew his parents?

1 A And I knew his parents.

2 Q And so the name --

3 A And the name clicked.

4 Q So the name does mean something to
5 you?

6 A After Harry said it, yes, it did.

7 Q When you were testifying earlier, sir,
8 you said the name didn't mean anything to you?

9 A At the time, until someone told me he
10 is from Brandon, it didn't mean anything to me.
11 After the fact, when Constable Woychuk told me
12 that he was from Brandon, it clicked in.

13 Q So it was Woychuk who told you he was
14 from Brandon?

15 A Yes.

16 Q When did he tell you that?

17 A It was -- it was either later that day
18 or the next day. I am not too sure which day it
19 was.

20 Q So, obviously, you could have spoken
21 to him to the next day, and you could have spoken
22 to him later that day?

23 A It could have been.

24 Q Now, sir, you've got Officer Bakema
25 telling you that the man who drove the truck --

1 and I take it, at this point, you figured out that
2 the truck has caused this collision?

3 A Correct.

4 Q And he is telling you that the man who
5 caused this collision, whom he has just taken to a
6 police car, is a Winnipeg police officer, correct?

7 A Correct.

8 Q And you would agree with me that you
9 know many Winnipeg police officers?

10 A I don't know many of them. I know a
11 few.

12 Q Well, how many would you know, sir?

13 A Maybe out of a handful, maybe six.

14 Q Not out of a handful, out of
15 everybody?

16 A Out of everyone on the force, maybe
17 five or six.

18 Q Okay. And these are people that you
19 know reasonably well, I take it?

20 A Not reasonably well, but I know who
21 they are.

22 Q And so you are a police officer
23 working in East St. Paul. You've been a police
24 officer for five years, sir?

25 A Correct.

1 Q And I take it there is a fair amount
2 of camaraderie among police officers? You are all
3 engaged in the same basic job?

4 A Correct.

5 Q There is a certain understanding of
6 the lifestyle. You tend to get to know each
7 other, sir?

8 A On occasion.

9 Q Yes. And you only know six?

10 A Out of Winnipeg Police Service, yeah,
11 not too many.

12 Q Would you know the names of more than
13 six, sir?

14 A I couldn't tell you.

15 Q And you've got the Chief telling you
16 that he has got a Winnipeg police officer that he
17 has just put in the car. You are not curious as
18 to who it is?

19 A No. I'm not worried about that right
20 now. I am worried about what's going on at the
21 scene.

22 Q How long does it take to ask somebody:
23 Who was it?

24 A I don't know.

25 Q It just might strike some people as

1 strange that you would have a conversation with
2 your Chief, about a Winnipeg police officer being
3 put in the car, that he knows, and that he worked
4 with, and not have any discussion of who it was.

5 A I didn't care at the time who it was,
6 whether it was a Winnipeg police officer or not.
7 It didn't matter to me.

8 Q And you say you had no dealings with
9 Mr. Derek Harvey-Zenk at all that day?

10 A No dealings at all.

11 Q And you say you didn't recall talking
12 to him at all?

13 A Correct.

14 Q And so even though this fellow police
15 officer is in the back of a police vehicle, in a
16 fairly small area, you didn't feel any curiosity
17 to go over there and --

18 A None whatsoever.

19 Q He has just killed a woman, and you
20 didn't feel any need to go and talk to him, see
21 how he was doing, anything like that?

22 A No.

23 Q Sir, there was more to the
24 conversation that you had with Chief Bakema that
25 you described in your interview. Do you recall

1 what else you said?

2 A I can't remember offhand.

3 Q Did the conversation include any
4 discussion of alcohol?

5 A I remember him telling me, at one
6 time, he couldn't smell any alcohol on him or
7 anything.

8 THE COMMISSIONER: I'm sorry, I didn't
9 hear that.

10 THE WITNESS: I remember him telling
11 me he couldn't smell any alcohol on Zenk or
12 anything.

13 BY MR. PACIOCCO:

14 Q You remember him telling you that,
15 sir?

16 A I remember him telling me that. I
17 don't remember what time he told me that, but I
18 remember him saying that to me.

19 Q Was it at the scene?

20 A I believe so.

21 Q Was it at the scene, or you believe
22 so?

23 A Yes, it was at the scene.

24 Q I am just curious, you would agree
25 with me that his inability to smell alcohol would

1 be a pretty significant factor in an impaired
2 investigation?

3 A M'hm. Some people can smell it right
4 away and some people can't. And he said he didn't
5 smell alcohol.

6 Q And you would agree with me that
7 that's a pretty serious and significant
8 observation in connection with an impaired driving
9 investigation, correct?

10 A Correct.

11 Q And nowhere, in and of the interviews
12 that you have given, have you said this before,
13 sir, have you?

14 A Not to my knowledge. I'm not too
15 sure.

16 Q Sir, did you not feel that was an
17 important enough piece of information to
18 communicate during these interviews?

19 A It could have been, yes.

20 Q And yet you didn't?

21 A No, I didn't.

22 Q And you are coming here, for the first
23 time today, and providing this information, sir?

24 A Correct.

25 Q And nowhere in your notes do you

1 indicate that Chief Bakema could not smell
2 alcohol?

3 A I'm not going to put what someone else
4 does in my notes.

5 Q Well, sir, if they share that
6 information with you, do you not think that's
7 something you should record?

8 A That's has nothing to do -- I put in
9 my notes what I do, not what other officers do.

10 Q Well, do you not agree that a defence
11 lawyer, in connection with a case, would want to
12 know that an officer has said: I didn't smell
13 alcohol on his breath?

14 A I am not too sure what they want.

15 Q Well, sir, it is pretty obvious that
16 they would want that if their client is charged
17 with a drinking case, and that they are denying
18 that that was what happened?

19 A They might.

20 Q They would, sir. They would. Do you
21 agree with me, sir?

22 A Sure. They probably would want it.

23 Q Yes, they would want it. And you
24 would agree with me, sir, that if somebody else
25 doesn't put it in their notes, and they've told

1 you, and you don't put it in yours, then the
2 defence lawyers don't learn about it, do they?

3 A That's correct.

4 Q So it's a material piece of
5 information?

6 A It could be, yes.

7 Q It would be, sir. It would be. Do
8 you agree with that?

9 A It could be, yes.

10 Q So you don't agree that "it would be".
11 You are saying "it could be"?

12 A It could be one of the factors, yes.

13 Q Yes, it would be one of the factors.
14 And it is something that, I would suggest to you,
15 is relevant and should have been in your notes, if
16 it happened?

17 A I put stuff in my notes that I do, not
18 what other members tell me or what other members
19 do.

20 Q So, notwithstanding the conversation
21 we've just had, where I'm suggesting to you that
22 an admission by an officer that he didn't smell
23 alcohol might prove to be important down the road,
24 even though you know of that admission, you still
25 feel it is not something that needs to be in your

1 notes?

2 A I guess if I felt it should have been
3 in my notes, I would have put it in.

4 Q And so, sir, three and a half years
5 after the event, we are now depending on your
6 naked memory of that conversation, because you've
7 nowhere recorded it?

8 A Correct.

9 Q And you've nowhere disclosed it, even
10 though you've been questioned about these very
11 events twice, in some detail?

12 A Correct.

13 Q Any other conversation with
14 Mr. Bakema?

15 A We've had lots of conversation. We
16 were there the whole day. I can't remember
17 offhand exactly every conversation we had.

18 Q Okay. Well, let's talk about the
19 conversation about why Mr. Harvey-Zenk was put
20 into the police vehicle?

21 A Um, I believe later on Bakema told me
22 that he just put him in -- in Woychuk's vehicle.
23 The guy was distraught and it was cold out.

24 Q So your evidence is that Mr. Bakema
25 told you that the reason he put him in the vehicle

1 was because Mr. Harvey-Zenk was distraught and it
2 was cold out?

3 A He told me that Zenk was distraught at
4 the time. He didn't tell me that that's why he
5 put him in the vehicle. But you put all of those
6 things together, the guy is distraught, it is cold
7 out. Where are you going to put him? You are
8 going to put him in a vehicle.

9 Q Sir, you just indicated that he didn't
10 tell you that that was the purpose. He was just,
11 basically, telling you that he had put him in --
12 or that the man was distraught. Is that your
13 evidence today?

14 A That's what I can -- what I remember
15 offhand.

16 Q Okay. And do you remember telling
17 Mr. Clifford about this back when you had your
18 interview with him on March 6th, 2008?

19 A I can't remember what I told
20 Mr. Clifford.

21 Q Okay. But you would have tried to
22 tell Mr. Clifford the truth?

23 A Yes. At the time, yes.

24 Q You would have tried to tell him the
25 same thing that you are telling the Commissioner

1 today?

2 A I would have probably tried to, yes.

3 Q And, sir, he specifically asked you,
4 at the bottom of page 21 of the interview, and
5 he's asking you what you are being told, what was
6 told to you by Chief Bakema about why Woychuk was
7 bringing him there, that would have been to the
8 station, what the purpose was?

9 "Well, Bakema told me that Zenk was
10 very distraught and upset about what
11 happened."

12 Do you see that, sir?

13 A Yes.

14 Q So he was telling you that this was
15 why Woychuk was bringing him to the station?

16 A Correct.

17 Q And there was no connection, in your
18 mind, between Woychuk bringing him to the station
19 and why he was putting him in the car?

20 A What do you mean, why he was brought
21 to the --

22 Q Well, I asked you why he was putting
23 him in the car, and you answered as to why he was
24 being brought to the station. Is there no
25 connection between the two in your mind?

1 A Well, if he was obviously distraught
2 and it was cold out, and that's why you would put
3 him in the vehicle, and you need to take a
4 statement from him, take him to the station, you
5 can't leave him standing alone outside.

6 Q Sir, you go on and you indicate:
7 "I guess Zenk walked up to Taman's
8 vehicle right after the accident
9 happened, saw that she was deceased.
10 He went back to his vehicle, and he is
11 just distraught."
12 Do you remember that, sir?

13 A Yes.

14 Q So Harry told you that Zenk apparently
15 went up to the vehicle and looked in?

16 A He told me that later on.

17 Q When you say "later on", sir, is that
18 part of the conversation that he had with you that
19 you were describing earlier, or a separate
20 conversation?

21 A A separate conversation. Like I said,
22 we were there all day and we had conversation all
23 day.

24 Q Okay. So you are saying that he had a
25 separate conversation with you, in which he told

1 you that Zenk had gone up and looked at the woman
2 and he was distraught?

3 A Correct.

4 Q Did he tell you that Zenk told him
5 that?

6 A No.

7 Q It also indicates here that:
8 "Bakema said that he was having the
9 paramedics look at him, and he refused
10 medical attention. And Woychuk was
11 supposed to take him to the office,
12 and that he wanted Sergeant Carter to
13 be there at that time."

14 A Yes.

15 Q Do you see those responses?

16 A Yes.

17 Q So you are explaining here why he was
18 put in the car, or why he is being taken to the
19 office. And he is telling you:

20 "Bakema said that he was having the
21 paramedics look at him, and he refused
22 medical attention."

23 Correct?

24 A That's what he told me, yes.

25 Q When did he tell you that?

1 A I am not too sure when he would have
2 told me.

3 Q So could it have been part of a
4 different conversation than the one you just have
5 related?

6 A It could have been, yes.

7 Q So even though you are answering a
8 question to Mr. Clifford about a conversation, you
9 are including information that had come from later
10 conversations; is that your evidence?

11 A Correct.

12 Q Because our information is that the
13 paramedics didn't leave until 7:56, and that's
14 shortly after the denial or refusal of medical
15 attention would have been finalized with the
16 signing of a form. So, I take it, that this
17 conversation would have had to have happened after
18 7:56?

19 A Probably afterwards, yes.

20 Q When did you learn that
21 Mr. Harvey-Zenk had been arrested?

22 A That he was charged for those --

23 Q Well, he wasn't charged until
24 March 1st. But when he was arrested and released
25 on a promise to appear and that he had

1 alcohol-related charges pending?

2 A It was later on in the day. Um,
3 Harry -- I think Harry told me, when we were at
4 the scene that, um, he was charged for impaired,
5 and he did -- he refused the breathalyzer.

6 Q And we know that he refused the
7 breathalyzer shortly after nine o'clock, so
8 obviously this conversation would have had to have
9 taken place after nine o'clock?

10 A Yes.

11 Q Okay. Now, you will recall that I
12 listed five events for you. And I listed the
13 Beattie event as event number 3. And you did
14 indicate, in your transcript, that you went to see
15 the driver of the other car after your
16 conversation with Harry. And I showed you that
17 passage. And now you're -- you're not sure that
18 that took place?

19 A I can't remember offhand, right now,
20 when, or even if I did. I can't remember.

21 Q And, sir, can you give any explanation
22 as to why you might have told Mr. Clifford that,
23 if you have no recall of it today?

24 A Because maybe, at that time, I felt I
25 did. For some reason, something jogged my memory,

1 but I'm not sure.

2 Q Because it wasn't described as
3 something that might have happened. It was a
4 description of an event in your life, sir.

5 A Like I say, at that time. Maybe I
6 can't remember at this time.

7 Q Okay. So your memory is fading on
8 you, is it not, sir?

9 A After this time of period, it could a
10 little.

11 Q And what kind of memory do you have?

12 A I try to have a good memory. How's
13 yours?

14 Q My memory is not so bad. I am really
15 bad with names.

16 A Good.

17 Q I am just looking, sir, for the
18 passage where you told the RCMP that you didn't
19 have a good memory. Do you remember saying that
20 to them, sir, or do you forget that, sir?

21 A I forget that.

22 Q Would you have told them you don't
23 have a good memory?

24 A It can be short at times.

25 Q Would you have told them that you

1 don't have a good memory?

2 A Like I said, I can't remember that.

3 Q I will find it during the break, just
4 to assuage any curiosity that you might have about
5 that.

6 How good is your memory of the event
7 with the family, Crystal Taman's family?

8 A Fairly good, with the two daughters
9 and the husband, yes.

10 Q And I ask you that question that way,
11 not only because of the conversation we just had,
12 but because, in both your Winnipeg statement, and
13 your statement to Mr. Clifford, you spoke as
14 though there -- as though there was only one
15 daughter.

16 A I was -- I clarified with
17 Mr. Clifford, down the road, that there was the
18 two daughters.

19 Q And you clarified it after you were
20 corrected, correct? And you had mistakenly
21 remembered dealing with one daughter?

22 A That's the one daughter I dealt with
23 mostly, I believe. I think the other one was a
24 little bit quieter. But I remember specifically
25 dealing with one daughter, but I remember there

1 was two girls there.

2 Q Do you not think it is a fair
3 description, and you have read your transcripts
4 recently, that in there it is pretty clear that
5 you are talking dealing with one daughter in those
6 transcripts until you were corrected?

7 A Well, obviously, when I talked with
8 Mr. Clifford, I looked at my notes and corrected
9 myself, kind of.

10 Q Yes. But when you were talking about
11 those events, you thought it was one daughter.
12 And you looked at your notes and you realized it
13 was two?

14 A Right. Like I said, my memory is not
15 that great.

16 Q All right. So your memory is not that
17 great.

18 Tell us about the meeting with the
19 daughters?

20 A I was on the scene. I saw two girls
21 running across the 59 Highway. They were going
22 northbound, I believe, and they parked on the
23 shoulder. They were running across. And I can't
24 remember which girl was yelling that that's her
25 mother's car and so forth.

1 Q This would have been shortly before
2 7:25, the time you recorded in your notes?

3 A Yes, 7:25, somewhere in there.

4 Q And that would be consistent with the
5 kind of information we've received to date. So
6 please continue?

7 A Um, they came running across. They
8 were running towards her mother's vehicle. I kind
9 of stopped them. They didn't need to see the
10 vehicle. I then, kind of, lead them to my -- to
11 the police unit that I was in and put them in the
12 back of the vehicle. And then I explained to them
13 the situation and advised them that they can give
14 their father a call, or if I can give their father
15 a call, for him to come down.

16 Q Okay. And what were they like?

17 A They were distraught. They were --

18 Q And when you say "distraught," what
19 does that entail?

20 A Well, they saw their mother's vehicle.
21 They were just distraught.

22 Q Yes.

23 A They were yelling. They were crying.
24 Just mixed emotions all over the place.

25 Q That's what "distraught" means to you,

1 yelling, crying, very emotional, a clear
2 demonstration of emotion?

3 A Yes.

4 Q Sir, you told the RCMP that you
5 believed that the daughter arrived as the
6 ambulance was leaving. Do you remember saying
7 that?

8 A It was close to that time.

9 Q Well, sir, in fact, the ambulance left
10 at 7:43, which was 18 minutes after the 7:25 time
11 when you dealt with the daughters. So is that
12 close, in your view, the 18 minutes?

13 A Well, I don't know the exact time.
14 But I remember the daughters were there. A few
15 minutes later, the ambulance left.

16 Q And I'm suggesting to you, sir, that
17 you've got in your notes that the daughter comes
18 at 7:25. And I'm telling you that our
19 information, from the dispatch, is that the
20 ambulance left at 7:43, which is an 18-minute gap.
21 And I'm asking you whether 18 minutes is, in your
22 lexicon, or in your terminology, a few minutes?

23 A It is quite a few minutes.

24 Q It is quite a few minutes. Okay. So
25 is it possible that you misremembered when the

1 ambulance left, sir, and the amount of time that
2 had passed?

3 A Maybe I wrote down the wrong time. I
4 looked at my watch and put the best time that I
5 thought.

6 Q Well, 7:25 is, as I say, consistent
7 with the other evidence we've heard, sir. And
8 7:43 is a pretty dependable time because it is on
9 a dispatch system. So I am just suggesting to
10 you, sir, that 18 minutes may be a little bit
11 longer than the suggestion that you made to the
12 RCMP that she arrived as the ambulance was
13 leaving?

14 A Could be.

15 Q So you may have misremembered things
16 when you were talking to the RCMP?

17 A Misremembered, or looked at my time
18 wrong, that's why the time is wrong in my notes.

19 Q Another occasion, on that same
20 interview, sir, you had the ambulance with Crystal
21 Taman leaving last among all of the emergency
22 vehicles. Do you recall that?

23 A Not of all of the emergency vehicles.

24 Q Of all of the paramedics vehicles?

25 A I am not too sure they were last --

1 they were amongst them. I can't remember exactly
2 when it left. I wasn't keeping track of when the
3 emergency vehicle left.

4 Q I'm sorry, I didn't hear your answer?

5 A I wasn't keeping track of when the
6 emergency vehicles were leaving.

7 Q Well, sir, if you weren't keeping
8 track of when they were leaving, you wouldn't tell
9 police officers, during a criminal investigation,
10 a piece of information that you weren't keeping
11 track of?

12 A I didn't keep track of the exact time.
13 I thought that that was when it was.

14 Q You thought that Crystal Taman's
15 vehicle left last?

16 A Pretty close to being last, or
17 somewhere in there, yes.

18 Q And you remember telling them that
19 that --

20 A I believe so.

21 Q -- the RCMP?

22 A Something like that. I'm not too
23 sure.

24 Q In fact, our information is that, of
25 all of the paramedic vehicles, it was the first to

1 leave. So you were confused about that, sir?

2 A Well, are you talking paramedic
3 vehicles or first responder vehicles? There is
4 two different types.

5 Q I am talking about the Winnipeg
6 Paramedic vehicle, and I am talking about the
7 Selkirk Ambulance and the First Responders?

8 A Well, the First Responders were there
9 for some time.

10 Q Yes, they were.

11 A Right.

12 Q Yes.

13 A But the paramedics left. She -- I
14 think there was one unit, a paramedic unit, that
15 left. And then Taman's left shortly after that,
16 or something like that. I'm not too sure.

17 Q Yes. Well, all I'm suggesting to you,
18 sir, is that of the four ambulance-type vehicles
19 that were there, she was the first to leave. And
20 you had her as the last. And I am just suggesting
21 to you that maybe your memory was a little weak on
22 that fact?

23 A Maybe.

24 Q Now, you say you took the girls to the
25 vehicle, the police vehicle?

1 A Correct.

2 Q What happened when you got to the
3 police vehicle?

4 A I opened the door and put them in --
5 well, they got into the back of the vehicle, and I
6 got in the front of my vehicle.

7 Q Okay.

8 A And talked to them, got their name and
9 information, stuff like that.

10 Q And what about the phone call? You
11 began to describe that earlier?

12 A Yes. I asked if, you know, there is a
13 number I can call their father, or something like
14 that. And they said: No, I'll do it.

15 Q Okay.

16 A And they called their father.

17 Q Because the evidence that we've heard
18 from the girls is that they were already calling
19 on the cell phone. And they said: Dad, mom's
20 been in a terrible accident. And at that point,
21 you took the phone away and you spoke to Robert
22 Taman?

23 A No, I never did take it away. They
24 were talking. They phoned the father and said:
25 Mom has been in a bad accident. I said: Give me

1 the phone. I can explain to him where to go and
2 how to get here.

3 Q Okay. But you do remember the relay
4 of the phone from them to you?

5 A Yes. They gave me the phone. I
6 didn't take it from them.

7 Q And how were they reacting when they
8 were in the car, sir? I know you said they were
9 distraught. Is there anything else that you
10 remember?

11 A Oh, they were crying and very upset.

12 Q Did you leave the vehicle at all when
13 they were in the vehicle?

14 A I can't remember if I did or not.

15 Q Sir, do you remember telling
16 Mr. Clifford that you did leave the vehicle?

17 A I can't remember that.

18 Q I will take to you page 36, please.
19 You'll notice the answer at the top of page 36:

20 "A Correct. At that time, I asked,
21 you know, where do you live? Where is
22 your father, you know, stuff like
23 that. I finally got her calmed down.
24 She was able to call her father, who
25 also attended. It took him for a

1 while before he got there. I sat in
2 the vehicle with her, basically, the
3 whole time. At one point, I did leave
4 the vehicle to see where they were
5 going to take her."

6 Q And by "her," of course, you are
7 referring to the mother?

8 A That's correct, yes.

9 Q And do you remember that now?

10 A I remember that now, yes.

11 Q So you left the vehicle in order to
12 find out that they were taking --

13 A Yes. I talked to, I believe, it was
14 Riddolls, who advised that she was going to
15 Concordia.

16 Q Could you take a look at your notes,
17 please? You see now, at 7:25, you have Tara
18 Taman's and Kristin Taman's information. And they
19 have come and you've put them in the vehicle at
20 that point, sir?

21 A Yes.

22 Q Turn to the prior page, sir? This is
23 7:23, before the girls have even arrived. Can you
24 read your writing down to the bottom, please? If
25 you would read it out loud? I just don't want to

1 misquote you.

2 A Well, that:

3 "They, um, indicated that there is no
4 signs of life and that they would be
5 escorted to Concordia Hospital."

6 Q Okay. So two minutes before the girls
7 got there, you knew where Crystal Taman was going
8 to be?

9 A But things do change. I just wanted
10 to make sure that she was going to Concordia, so I
11 could relay the information to Mr. Taman and the
12 daughters that that's definitely where she's
13 going.

14 Q Okay. Well, I don't want to be
15 nitpicking, but you didn't tell Mr. Clifford that
16 you were double checking. You told him that you
17 got out in order to check.

18 A To check, to double check.

19 Q So your evidence today is that you had
20 remembered that you had been told by Ray Riddolls
21 that they were going to Concordia?

22 A At first, yes.

23 Q You got out of the car --

24 A Correct.

25 Q -- and you checked with Ray --

1 A Correct.

2 Q -- that he hadn't changed his mind?

3 A Correct.

4 Q And you have a recall of that?

5 A Yes.

6 Q Did you speak to Harry Bakema at all
7 when you were outside of the vehicle?

8 A I remember him, at one time, asking me
9 who the girls were in the vehicle. I said that it
10 was the daughters, but I can't -- I can't remember
11 offhand when exactly it was.

12 Q And that would be a natural thing to
13 happen, wouldn't it?

14 A Yeah.

15 Q You've just taken two screaming young
16 girls and put them in the back of the police car.
17 And he is at that scene, and he would have,
18 unquestionably, wanted to approach you and talk to
19 you about it?

20 A Yeah.

21 Q And the girls explain that, at one
22 point, another officer did get in the car for a
23 short period of time. It's a cold day. Is that
24 possible, sir?

25 A I'm not too sure.

1 Q Okay. But it could have happened?

2 A It could have, but I'm not too sure.

3 Q And you got out of the vehicle, we
4 know, at least once, in order to check with Ray
5 Riddolls. You had some conversation with him?

6 A Yes.

7 Q You might have talked to Harry out
8 there when that --

9 A Yes. I don't see why another member
10 would get in the vehicle.

11 Q Okay. Fair enough. But it was cold,
12 as you have explained why you might want to put
13 Mr. Harvey-Zenk in the vehicle? I just thought
14 that might be an explanation.

15 A Well, there is three of us there;
16 Woychuk, Harry and myself. And why would they
17 come to my vehicle? Maybe the girls --

18 Q Well, the girls maybe don't know who
19 to identify. But I am just suggesting that maybe,
20 when you had this conversation that you are
21 allowing you had with Harry Bakema about who was
22 in the car, that he might have slipped in,
23 basically, and asked you who they were?

24 A I can't remember that.

25 Q You've got the girls in the car, and

1 then the father comes?

2 A Correct. Before that I radioed
3 Pedersen and let her know that the father is
4 coming and to let him through, and let him come up
5 to my vehicle.

6 Q And what happened when he -- he
7 arrived?

8 A He arrived. I got out. I talked to
9 him. I let him know the situation. And then
10 opened the vehicle, opened the door, and let the
11 girls talk to -- talk to their father.

12 Q So you met him outside the vehicle?

13 A Yes.

14 Q And he arrived at 7:41, that's what
15 your notes indicate?

16 A That's what my notes, somewhere around
17 there, yes.

18 Q Your notes actually indicate 7:41?

19 A Yes, they do.

20 Q And I take it, you tried to be
21 accurate with the time you recorded?

22 A To the best I can.

23 Q And would you have gotten that off
24 your watch as well?

25 A I believe it would be off my watch.

1 Q Do you keep a little jotter, notepad,
2 or anything where you record times, or do you put
3 them right into your notes?

4 A Sometimes just on scrap paper, yeah.

5 Q And do you know what you did on this
6 occasion?

7 A Probably scrap paper in the vehicle, a
8 notepad, or something.

9 Q What do you do with that scrap paper
10 after you take your notes, sir?

11 A I throw it out.

12 Q So you don't keep a record, your
13 initial, original record of your times in case
14 that falls into issue later?

15 A No.

16 Q And so the kids were locked inside the
17 vehicle when their father showed up, and you got
18 out to meet with him?

19 A Correct.

20 Q And do you recall what happened, when
21 you got out to meet with him, what they were
22 doing?

23 A They were in the vehicle. I believe
24 they were still in the vehicle. I talked to him
25 behind -- well, at the back of my vehicle for a

1 few minutes, just explaining to him the situation.
2 And then I opened the door and the girls talked to
3 their father.

4 Q Because they gave very stirring
5 testimony to the Commissioner that they were
6 screaming and banging on the windows and telling
7 you to let them out.

8 A No.

9 Q Never happened?

10 A No. No. Why would I keep them in
11 there just under -- under -- you know, their --
12 they've been through so much. I wanted to talk to
13 the father and let him know the situation. And
14 then I opened up the door, and they were able to
15 talk to their father. And then I asked him if
16 they need a ride to the hospital.

17 Q Now, I know that you've had a few
18 memory issues surrounding this, so I am just going
19 to put this to you. Is there any chance that you
20 are misremembering things or --

21 A That never happened.

22 Q -- are you adamant that those girls
23 weren't screaming and banging on the windows?

24 A Well, I am pretty adamant, because I
25 would have heard that. And the father would have

1 heard that, and he would have said something.

2 Q Well, in fact, he testified that he
3 did. He testified that he told you to let his
4 daughters out of the vehicle?

5 A No. They were not pounding on the
6 door.

7 Q So his evidence that he came, his
8 daughters were banging on the windows trying to
9 get out, and he told you:

10 "Let my daughters out of the vehicle,"
11 is just inaccurate, sir?

12 A He didn't tell me to let them out of
13 the vehicle. I opened the door so they could see
14 their father. They were not pounding on the
15 vehicle. I would have remembered that.

16 Q He says that when they came out they
17 hugged him?

18 A Oh, definitely.

19 Q Yeah. Now, you started to talk about
20 asking whether he needed a ride. Can you
21 elaborate on that a little bit?

22 A I asked him -- I told them where she
23 was going and if they needed a ride there. He
24 said no, no, it is okay, we can drive there. I
25 said, are you sure? He said no, we can drive. He

1 wanted to drive with the girls. All they asked is
2 whether their vehicle was okay on the side of the
3 highway now.

4 Q And you have a clear memory of that,
5 sir?

6 A Yes.

7 Q I am going to take you to page 603.4
8 of the RCMP statement. And you'll see, starting
9 at the bottom quarter of the page:

10 "GRAHAM: And then the daughter phoned
11 the dad and the dad came in another
12 vehicle.

13 KENNETT: So you've got two vehicles.

14 GRAHAM: So you've got two vehicles
15 sitting there, okay. And then I
16 called. I said: You know, there is
17 someone else that can drive you there,
18 because you shouldn't drive in stuff
19 like this. So I think someone else
20 came and picked them up and took them.

21 KENNETT: And they just left their
22 cars there?

23 GRAHAM: They left their cars there,
24 along the side, back -- back further."

25 Do you see that answer, sir?

1 A Yes. But what I can recall is I asked
2 them if they wanted a ride, out of -- his wife
3 just passed, the mother just passed. Be
4 compassionate, try to help them out as much as
5 possible. He said he didn't want a ride. I did
6 ask him: Is there someone else that can give you
7 a ride? But he didn't. He insisted on driving
8 himself.

9 Q And, sir, you are very clear in your
10 evidence that he insisted on driving himself. And
11 I am just curious as to why, when you were
12 interviewed by the RCMP, you have quite a
13 different story told there, sir?

14 A I don't know. But I'm positive I
15 asked him if he wanted a ride. And he insisted
16 that he did not want a ride, that he would take
17 himself.

18 Q Once again, sir, when you were being
19 interviewed by the RCMP, you knew that this was in
20 connection with an investigation?

21 A Correct.

22 Q And you understood how important it
23 was to try to be truthful in your answers?

24 A Yes.

25 Q And you gave a very clear description

1 of the two vehicles being left there?

2 A I remember the one vehicle being left
3 there. The girl's vehicle was left on the other
4 side.

5 Q I am asking about your answer to the
6 RCMP, sir. You remember, at that time, you gave
7 an account of two vehicles being left there?

8 A I could have at the time. I'm not too
9 sure, but I remember --

10 Q It's a transcript, sir.

11 A It is a transcript.

12 Q Are you questioning --

13 A But when you start reading everything
14 over other things, other things will refresh your
15 memory.

16 Q So you are not denying you said that
17 to the RCMP?

18 A I am not denying that I said that.
19 It's there.

20 Q So you are saying that three and a
21 half years later, you now have a better
22 recollection of this than you did when you were
23 interviewed by the RCMP in 2006?

24 A When you read your statements, and
25 your notes, and everything over, you find that you

1 refresh your memory, yes, I am saying that.

2 Q He says that -- and so your position
3 is he wanted to go? He didn't want to wait around
4 for a ride?

5 A He didn't want to wait around for a
6 ride.

7 Q So his evidence was that you told him:
8 "Follow the ambulance."
9 Is that possible, sir?

10 A No.

11 Q And why is that not possible?

12 A I waited for the ambulance to leave
13 first, and then I told him where she was at
14 Concordia.

15 Q All right. Now, you waited for the
16 ambulance to leave, sir?

17 A I believe it left just before they
18 left.

19 Q Okay. So, of course, it is very
20 different from your earlier answer that you gave
21 to the RCMP, that the ambulance left the same
22 time, around the same time the girls got there;
23 right?

24 A It had left before they left. I don't
25 know exactly what time it was that they left, but

1 the ambulance left before they left for the
2 hospital, I believe.

3 Q Well, it left very shortly after he
4 arrived there. It left at 7:43, sir.

5 A So, but it did leave before he left.

6 Q Yes, it did. But he wasn't going to
7 hang around, was he, sir?

8 A No.

9 Q He was going to get going. So you
10 would agree that they were there maybe a total of
11 20 minutes from the time the girls showed up?

12 A I don't know what the timeframe was.

13 Q You wouldn't venture a timeframe that
14 you are not in a position to really advise us of,
15 sir?

16 A I don't know the timeframe.

17 Q You wouldn't offer a timeframe that
18 you are not feeling confident in?

19 A That's correct.

20 Q So let's look at what you said to the
21 RCMP at page 603.4, at the top of page 41:

22 "Q Okay. Well, what time do you have
23 the victim departed?

24 A The daughter -- the daughter was
25 there at 7:25. The father arrived at

1 7:41. And they probably didn't leave
2 until probably quarter after eight.

3 Q At least 45 minutes?

4 A At least."

5 Do you see that answer, sir?

6 A And as you see, "probably" means I'm
7 not too sure on the time.

8 Q When you are not too sure, sir, do you
9 say "at least"?

10 A "At least" or "probably".

11 Q When you say --

12 A I am not too sure.

13 Q You are not too sure. But it is "at
14 least 45 minutes" is what you say there?

15 A "At least" means it could be; "at
16 least", it could not be.

17 Q "At least" says it could be? Is that
18 what you are saying, in your dictionary of life,
19 "at least" means "could be"?

20 A To me, yes.

21 Q Sir, we know that this is not a very
22 likely scenario that they are there 45 minutes,
23 because he would have been anxious to follow his
24 wife to the hospital?

25 A Correct.

1 Q And we also know at 7:49, from your
2 notes, you are trying to get the accident
3 reconstructionist out; correct?

4 A 7:49?

5 Q Yes.

6 A Yes.

7 Q You are not going to be making
8 arrangements for the accident reconstructionist
9 with this grieving family in your presence, are
10 you, sir?

11 A Probably not.

12 Q No. So they're -- they're gone by
13 then?

14 A It takes -- yeah, it could have been.

15 Q So you have some confusion about the
16 events that took place on that date, between the
17 RCMP statement and what you are saying here today,
18 sir, some changed views on what happened?

19 A Yes.

20 Q And you had a period when you thought
21 that there was -- there was only one girl. And
22 then you realized, when you looked at your notes,
23 that there was two?

24 A Correct.

25 Q You are trying your best to piece

1 things together today, sir?

2 A I am trying my best.

3 Q But you are not necessarily sure of a
4 lot of the stuff that happened, are you, sir?

5 A I am sure of some of it and not too
6 sure of others.

7 Q Okay. And that's, of course, because
8 three and a half years has passed and a lot has
9 happened since, sir?

10 A Correct.

11 MR. WEINSTEIN: Counsel, can we just
12 have a brief recess?

13 THE COMMISSIONER: Yes, we can
14 after --

15 MR. PACIOCCO: A couple of more
16 question, Mr. Commissioner. I'm actually working
17 on something.

18 THE COMMISSIONER: You are working on
19 something?

20 MR. PACIOCCO: Yes.

21 THE COMMISSIONER: Okay. A few more
22 minutes.

23 BY MR. PACIOCCO:

24 Q So you allow that Chief Bakema might
25 have come over to the vehicle with the girls. And

1 you recall some conversation about what are they
2 doing there?

3 A I don't think he came over to the
4 vehicle.

5 Q So you would necessarily have had to
6 get out?

7 A I was already out.

8 Q So you remember this now?

9 A I think I was out. I didn't say I was
10 in the vehicle when Bakema came over.

11 Q You certainly weren't as confident as
12 you are right at the moment, sir?

13 A I am not too sure where it was, but I
14 am pretty sure he was not in the vehicle when he
15 had the conversation with me. I don't know.

16 Q I am not talking about in the vehicle.
17 I am talking about at the vehicle?

18 A I don't know. I can't recall.

19 Q Would you have left that vehicle and
20 gone very far, with those two girls in the back in
21 the state they were in?

22 A Like I said, I went to see Riddolls to
23 see where their mom was going. That's pretty much
24 my time out of the vehicle.

25 Q And you think that's when you saw

1 Mr. Bakema?

2 A I believe so.

3 Q I am going to tell you, sir, that Tara
4 Taman's account of the events is that Harry Bakema
5 came up to the vehicle door, and he had escorted
6 Harvey-Zenk right up to the proximity of the
7 vehicle that the girls were sitting in?

8 A How could that have happened when he
9 was in Woychuk's vehicle?

10 Q Well, that depends on whether he was
11 in Woychuk's vehicle.

12 A He was in Woychuk's vehicle.

13 Q So he was in Woychuk's vehicle at the
14 time the girls arrived at 7:25, you are sure of
15 that, sir?

16 A Yes.

17 Q And you are sure of that, even though
18 we have you having a conversation with Ray
19 Riddolls at 7:24, and you weren't sure how long
20 Bakema had that conversation with Mr. Harvey-Zenk,
21 and the girls show up at 7:25?

22 A Zenk was nowhere near, nowhere near my
23 vehicle.

24 Q But you are not sure that he was
25 necessarily in Woychuk's vehicle at 7:25, are you?

1 A I am not too sure what time he was in
2 Woychuk's vehicle.

3 Q Okay.

4 A But he was in the vehicle before the
5 girls arrived.

6 Q He was in the vehicle before the girls
7 arrived?

8 A Well, I thought he was. I am not too
9 sure. But Zenk -- Zenk was never near my vehicle
10 when the girls were there.

11 Q Well, I am not going to re-cover all
12 of your terminology, with Mr. Weinstein wanting a
13 break, so I will have to go back to re-cover that
14 ground, sir.

15 But you understand that Tara Taman's
16 position is that Mr. Harvey-Zenk was brought and
17 was mulling around the vehicle for some period of
18 time?

19 A I never saw that.

20 Q Are you saying it didn't happen?

21 A I am not saying it didn't happen. I
22 am saying I just never saw it.

23 MR. PACIOCCO: Thank you very much.

24 This is a good time for a break.

25 THE COMMISSIONER: Let's take 15

1 minutes.

2 THE CLERK: All rise. This Commission
3 is in recess.

4

5 (Proceedings recessed at 3:45 p.m. and
6 reconvened at 4:00 p.m.)

7 THE CLERK: All rise. This Commission
8 is re-opened. Please have a seat.

9 MR. PACIOCCO: Thank you,
10 Mr. Commissioner.

11 THE COMMISSIONER: Mr. Paciocco, I am
12 going to adjourn court at 5:00, if we go that
13 long.

14 MR. PACIOCCO: I could use that time;
15 however, my colleagues from Manitoba have
16 prevailed on me. Their view is that 4:30 is
17 palatable.

18 THE COMMISSIONER: Well, that's
19 preferable to me.

20 MR. PACIOCCO: In a perfect world, I
21 would keep going, but I respect their requests and
22 one of them has a commitment.

23 THE COMMISSIONER: Yes, certainly. We
24 will adjourn at 4:30. Thank you.

25

1 BY MR. PACIOCCO:

2 Q Mr. Graham, you told both the RCMP and
3 Mr. Clifford that after the family left, you
4 approached the truck that had been driven by Derek
5 Harvey-Zenk. Do you recall that?

6 A Yes.

7 Q I want you to tell us about that,
8 please?

9 A I don't know exactly what time it was,
10 but I did approach the vehicle with Bakema. And,
11 you know, we actually walked around, getting
12 license plates and descriptions of the vehicles,
13 and stuff like that. And I went to Zenk's
14 vehicle --

15 Q Okay. I am just going to stop you for
16 a second. And I am very interested in you getting
17 to Zenk's vehicle. But you were getting the motor
18 vehicle information and stuff like that?

19 A The motor vehicle information.

20 Q I just noticed that your notes have
21 the vehicle information recorded before some of
22 the events that we have just described, such as
23 the arrival of the family and the rest of it, so I
24 take it that your notes are not prepared
25 chronologically?

1 A No.

2 Q We cannot assume that the first thing
3 on the first page is the first thing written?

4 A No. Well, you can assume that because
5 that's when I started my day.

6 Q All right. But I'm just saying that
7 we cannot assume it. You can follow that pattern
8 all the way through the notes.

9 A The majority of it is as it happened,
10 probably up to getting a description of the
11 vehicles. So from 7:16, that would be exact.
12 After that, I was writing on pieces of paper, and
13 stuff like that.

14 Q I'm sorry, what are you writing on
15 pieces of paper and stuff like that?

16 A The times when the daughters arrived,
17 and stuff like that.

18 Q So -- so, I take it, you haven't
19 prepared this document from start to finish,
20 according to as events are happening?

21 A No.

22 Q You, at some subsequent point, sat
23 down and prepared your notes?

24 A Right.

25 Q Okay.

1 A So where was I?

2 Q You were talking about how you were
3 getting the vehicle information.

4 A Getting the vehicle information,
5 walked to Zenk's vehicle, got his license plate on
6 the back, wrote that down, and then went to the
7 vehicle. Opened up the door to get the
8 registration, the information from the
9 registration of the vehicle and then --

10 Q Sir, is there any other reason why you
11 opened the door?

12 A No.

13 Q Because you indicated to the RCMP that
14 it is something you like to do because the person
15 might be drinking, you like to open the door. Do
16 you recall saying that to them?

17 A When I'm dealing with people and I
18 pull over someone, I like them to come out and
19 open the door, and stuff like that, to smell.
20 That's not the real reason why I went to Zenk's
21 vehicle. I went to Zenk's vehicle to get the
22 information of the vehicle.

23 Q Okay. I'm going to take you, if you
24 would, to page 584 of your transcript, please. At
25 the bottom of page 17, or page 583 of the

1 transcript pages:

2 "Okay, um.

3 And was -- did Harry tell to you go

4 check on the vehicle and search the

5 vehicle or was that just something

6 that you did on your own or --

7 That was just -- that was something I

8 did because I like to get the

9 information of the vehicle --

10 Aha.

11 -- of all of the vehicles involved.

12 And, you know, I usually look in the

13 vehicle.

14 Aha.

15 You know, maybe there is something in

16 there. Maybe the person was drinking.

17 I don't know."

18 Do you see that there, sir?

19 A Right. That's how you go into the

20 vehicle. You get personal information from the

21 vehicle. This isn't -- this is what I do all the

22 time.

23 Q Yes.

24 A Not just for Zenk's vehicle.

25 Q Okay. Fair enough. Fair enough.

1 A Okay. So --

2 Q But I was just suggesting to you, and
3 correct me if I'm wrong, that it was not just to
4 check the vehicle registration. You were actually
5 conducting a bit of an investigation?

6 A The main thing was to get -- well, of
7 course, you are conducting an investigation
8 because you are getting information from the
9 vehicle.

10 Q But you are also checking it out to
11 see if they had anything to drink or anything like
12 that?

13 A The main reason why I would is to get
14 the information out of the vehicle.

15 Q I can accept that. But it is also to
16 check out to see whether there has been drinking
17 or anything like that, correct?

18 A It could be drinking. It could be to
19 see if there's any guns in the vehicle. It could
20 be to see if there is any contraband in the
21 vehicle. It could be a lot of things. But the
22 reason why I went to Zenk's vehicle was to get the
23 proper information.

24 Q I think you are agreeing with me that
25 it could be a lot of things. But you did tell the

1 RCMP that you also like to do that because there
2 might be some drinking?

3 A It could be. And it could be drugs,
4 too. It could be lots of things.

5 Q It could be lots of things. But I
6 think you are agreeing that it could be drinking,
7 too?

8 A It could be.

9 Q Very good. Now, would you please
10 continue?

11 A So I opened up the door to Zenk's
12 vehicle. And I used the key remote control to
13 open the glove box to see what was in there. And
14 when I got into the vehicle to open the glove box,
15 I noticed really an odour of alcohol in the
16 vehicle.

17 Q Okay.

18 A I looked around in the vehicle. And
19 at that time, I saw a Winnipeg Police uniform in
20 the back.

21 Q Okay. I am going to get to the
22 uniform in a moment, but I want to deal with the
23 odour of alcohol first.

24 A Okay.

25 Q How strong was that odour?

1 A Right now I can't recall.

2 Q So I am going to ask you if you would
3 look at the RCMP statement to see if that can help
4 refresh your memory. If we can start at page 568.
5 You opened your interview with the RCMP by giving
6 a narrative. In other words, there were not a
7 bunch of questions being posed. You were just
8 asked to tell your story. And you'll notice that
9 exactly halfway down the page, I am going to start
10 in the middle of the line with the word:

11 "Um, I went to the Dodge truck. I
12 opened it up and I could smell a
13 strong odour of alcohol inside the --
14 inside the vehicle."

15 Does that refresh your memory, sir?

16 A Yes, it does.

17 Q And you would agree the odour of
18 alcohol was strong in that vehicle?

19 A Could be somewhat strong, yes.

20 Q And, sir, you didn't say "somewhat
21 strong". You said there was "a strong odour of
22 alcohol"?

23 A "A strong odour of alcohol."

24 Q So it wouldn't have been something
25 that was easily missed?

1 A It depends on the person's sense of
2 smell. I guess it could be missed if someone has
3 a poor sense of smell.

4 Q But it would have to be pretty poor,
5 wouldn't it, if you would describe it as strong
6 and somebody else wouldn't smell it at all?

7 A It could, yes.

8 Q But you would describe it as strong
9 for your nose?

10 A For my nose.

11 Q And this prompted you to actually
12 search the truck for any evidence of alcohol, did
13 it not?

14 A Once I smelled the alcohol, I looked
15 around the vehicle to see if there were any beer
16 bottles or cans, or anything that would, you know,
17 show that there was drinking in the vehicle or
18 something like that.

19 Q And you came up empty, I understand?

20 A Correct.

21 Q I noticed later, when you conducted
22 your seizure of the contents of the vehicle, you
23 found a coffee mug? I can take that -- I can take
24 you to that later or if you would want to do it
25 right now.

1 A Whatever is good for you.

2 Q So you don't remember?

3 A I don't remember everything that I
4 seized in the vehicle.

5 Q You don't remember finding a coffee
6 mug and taking a look at what was in it or
7 smelling it or anything like that?

8 A No.

9 Q Now, you said that you went there with
10 Harry. Please continue. Where was Harry at the
11 time that you were smelling the alcohol?

12 A He was right beside the vehicle when I
13 was inside of it.

14 Q And what happened when you smelled the
15 alcohol?

16 A I told him: I can smell alcohol in
17 here.

18 Q And what happened then?

19 A At that time I looked around the
20 vehicle. He kind of stuck his head in there and
21 tried to smell. I don't know if he smelled
22 anything or what that was.

23 Q Okay. So you just witnessed him kind
24 of try to smell?

25 A Yeah.

1 Q And you don't know whether he smelled
2 anything?

3 A I can't remember if he smelled
4 anything.

5 Q Sir, maybe at page 31 you'll recall
6 telling Mr. Clifford in the interview. According
7 to the account you gave Mr. Clifford, Mr. Bakema
8 says: "Well, let me smell" -- after you tell him
9 that you've caught the smell of alcohol.

10 A Right.

11 Q "A He tried to smell. He couldn't
12 really smell anything. Everyone has a different
13 sense of smell."

14 Do you remember giving that answer to
15 Mr. Clifford?

16 A Yes.

17 Q So that's what you told Mr. Clifford,
18 is that Mr. Bakema tried, and he didn't come up
19 with a smell of alcohol. Do you remember telling
20 Mr. Clifford that?

21 A Briefly, I guess, yes, I did.

22 Q Yes. Because it is transcribed?

23 A It's transcribed, yeah.

24 Q Sir, I'm curious about this because
25 when you were interviewed by the RCMP, you didn't

1 have Harry Bakema anywhere close to you when you
2 were at the vehicle.

3 A Well, he was there with me.

4 Q You certainly didn't tell them that,
5 sir. Does that surprise you?

6 A I have no idea.

7 Q You have no idea whether that
8 surprises you?

9 A It could have. I don't know. Maybe
10 they didn't ask. I'm not too sure. I just
11 answered the questions that they asked.

12 Q Were you holding back and saying: I
13 am not going to answer anything unless they tell
14 me?

15 A No.

16 Q You were trying to give a natural
17 narrative of the event to them?

18 A I was trying to give the knowledge
19 that I had at the time.

20 Q Are you saying that you didn't
21 remember Harry being there at the time?

22 A I am not saying that. I was trying to
23 give the best knowledge that I have.

24 Q Would the best knowledge that you have
25 at the time was that the Chief of Police that was

1 there with you tried to smell alcohol and didn't
2 smell it?

3 A It must be because, like I said, that
4 was the best knowledge that I had.

5 Q Are you saying you didn't know or are
6 you saying that it wasn't important enough to
7 communicate?

8 A I am saying that at the time this was
9 the best that I remembered at the time.

10 Q So you didn't remember Harry being
11 there at the time, is that what you're saying?

12 A That's what I'm saying.

13 Q But you remember it now?

14 A I remember it now, and I remembered it
15 when I talked to Mr. Clifford.

16 Q And I noticed that this is not
17 recorded in your police notes?

18 A No, it's not.

19 Q Okay. And did you tell -- did you
20 have any conversation with Mr. Bakema about
21 whether this was going to be recorded?

22 A No.

23 Q You would agree with me that this is a
24 significant event in the investigation?

25 A If you look in the report, it's in the

1 report.

2 Q Okay. I asked you a question, and I
3 want you to answer it. Do you agree with me that
4 this is a significant event in the investigation?

5 A Yes, that's why it's in the report.

6 Q All right. We will get to the report
7 later. But it's a significant event in the
8 investigation and you don't record it, correct?

9 A Correct.

10 Q Do you contact Woychuk at the station,
11 or Carter, and say: Hey, guys, you got
12 Harvey-Zenk there, here is a piece of information
13 for you?

14 A No. I told Bakema and that was it.

15 Q You didn't feel the need to go ahead
16 and do that?

17 A I guess not at the time. I believe
18 Zenk was already charged at that time.

19 Q Well, I am going to tell you, sir,
20 that Constable Pedersen testified that she drove
21 by on her way to the Concordia Hospital at 8:28 in
22 the morning and she saw you at the truck with the
23 uniform. Could that be possible that it was 8:28
24 in the morning when you did this?

25 A I don't think it was that early.

1 Q You know the family is gone by this
2 time. They've been gone for a fair amount of
3 time. You are waiting for the traffic
4 reconstructionist to show up. The intersection is
5 under control. What are you doing during this
6 time, after the family leaves?

7 A Calling for the RCMP to arrive for the
8 traffic analysis and, um --

9 Q It would have been a short
10 conversation, I would take it?

11 A Yes. And walk around the scene
12 gathering information, stuff like that. We also
13 had -- we called for the Highways Department to
14 bring out barricades. We were also putting out
15 barricades at that time.

16 Q All right.

17 A That took quite some time to put up
18 barricades.

19 Q I'm sure it did.

20 A It did.

21 Q And you said you were out looking for
22 information around the scene. What information
23 did you find around the scene?

24 A Like I say, vehicle plate numbers,
25 stuff like that.

1 Q Well, it kind of fits, because you
2 were describing how you went into the vehicle when
3 you were there checking the vehicle plate number.

4 A M'hm.

5 Q So are you saying she was wrong it was
6 at 8:38?

7 A I don't think it was that early
8 because I believe we were probably still setting
9 up barricades at that time.

10 Q But it was when you were out checking
11 for vehicle information that you went into the
12 car?

13 A It was.

14 Q So she is, obviously, mistaken as to
15 seeing this, that's the assumption that --

16 A I am not saying that. I am just
17 saying this is what I know.

18 Q Okay. So you know that you don't
19 agree with the testimony she gave that it was at
20 8:28 that she saw you with the inform?

21 A Yes.

22 Q And you wouldn't agree either with the
23 description of it being you at the truck and not
24 you and Harry Bakema?

25 A Harry was with me at the time I took

1 the uniform out of the vehicle, so she would have
2 saw both of us there.

3 Q Okay. Let's talk about the uniform.

4 MR. PROBER: Before we get to that, it
5 seems to me, Mr. Commissioner, that Commission
6 Counsel is not being fair to the witness in terms
7 of his questions concerning the smell of alcohol
8 that emanated from the truck when he opened the
9 door. He put only one answer this witness has
10 given in a statement to the RCMP.

11 In his interview with the Commission,
12 this witness described the odour as:

13 "a faint odour of alcohol".

14 And, in fairness, to put it in context, that
15 should have been put to the witness. The witness,
16 later on in his interview to the Commission said,
17 as he said today:

18 "I just can't remember exactly if it
19 was strong, faint or medium. I'm not
20 too sure. There was definitely a
21 scent."

22 So, in fairness, since my friend
23 appeared to have left that area in examination, I
24 rose at that point in time. I thought he was
25 going to get to that. But it seems, in fairness,

1 it should be put in context. And so all of the
2 evidence the witness has given prior to this
3 should be put to him. Thank you. And that's
4 objecting --

5 THE COMMISSIONER: I would have
6 thought that you would bring that out when you
7 cross-examined him.

8 MR. PROBER: Well, I will, too, if it
9 is not going to be done by Commission Counsel.
10 But I thought, in fairness, Commission Counsel
11 should do that.

12 THE COMMISSIONER: Thank you.

13 BY MR. PACIOCCO:

14 Q Mr. Graham, you testified that the
15 passage I read to you from the Winnipeg Police
16 Service refreshed your memory that the odour was
17 strong, correct?

18 A From the RCMP, yes, that the odour was
19 strong.

20 Q And you remembered that now that it
21 was a strong odour?

22 A Like I said, I wasn't too sure, and
23 that's what I said here. And then you kept going
24 at me about "strong". That's what I put here,
25 yes, at the time he took the interview, I believed

1 that it was strong.

2 Q Well, I misunderstood your answer that
3 it refreshed your memory that it was strong as
4 being your evidence today, rather than simply a
5 description of what you told the RCMP.

6 A It refreshed my memory to the
7 statement that was taken from me.

8 Q So you remember saying that it was
9 strong, but you don't remember it being strong, is
10 that what you are saying today?

11 A Yes. I can't remember if it was a
12 strong or slight odour, but I did smell alcohol in
13 the vehicle.

14 Q You told Mr. Clifford, when he asked
15 if your memory was refreshed, you say:

16 "I can't remember exactly."

17 This is on page 45 of the transcript,
18 line 13:

19 "I can't remember exactly. It was
20 almost three years ago. But I know
21 there was a scent of alcohol or liquor
22 in the vehicle, but I just can't
23 remember exactly if it was strong,
24 faint or medium. I'm not too sure.
25 There was definitely a scent."

1 That was your evidence?

2 A Exactly what I just said, yes.

3 Q So "there was definitely a scent" is
4 your evidence?

5 A Exactly.

6 Q Let's get back to the uniform. Tell
7 me about the uniform?

8 A When I was looking inside the vehicle,
9 I looked in the back, behind the seats -- it was
10 an extended cab, I believe. Looked in the back
11 and I saw a uniform sitting there, a Winnipeg
12 Police uniform.

13 Q And what happened with the uniform,
14 sir?

15 A I took it out of the vehicle, and put
16 it in a bag and put it in the vehicle, in the
17 police unit.

18 Q And, sir, whose decision was it to
19 take the uniform out of the vehicle?

20 A Well, that was basically both Bakema
21 and my decision because it does not belong -- it
22 belongs to the City of Winnipeg.

23 Q Okay. And you're saying both of you
24 made that decision?

25 A Yes.

1 Q So you had a discussion about it?

2 A Yup.

3 Q And you decided to take it because it
4 belongs to the City of Winnipeg?

5 A Not only that, but there has been
6 times where we -- the towing companies we've used
7 have taken stuff from vehicles. And this is --
8 belongs to the city, and they do not need to have
9 this on their hands.

10 Q Okay. And I just want a little
11 clarification, because when you talked to the
12 Winnipeg Police Force about this, it was clearly
13 you describing your decision to take the uniform
14 out of the vehicle?

15 A I am the one that took it out of the
16 vehicle, and we decided what to do with it.

17 Q When you talked to the Winnipeg
18 Police, or when you talked to the -- excuse me, to
19 the RCMP, your position was it was your decision
20 to take the uniform out of the vehicle. And you
21 didn't discuss or have any conversation with Harry
22 Bakema. Does that surprise you?

23 A Exactly what I said, it was my
24 decision to take it out of the vehicle, yes.
25 Afterwards, we discussed what we were going to do

1 with it.

2 Q Okay. So the decision to take it out
3 of the vehicle was yours. The discussion of what
4 to do with it was done with both of you?

5 A Correct.

6 Q Sir, I am going to take you to page
7 584 of your Winnipeg -- or of your RCMP, rather,
8 statement, in the middle third of the page:

9 "KENNETT: Okay. So you checked the
10 car and you, you know, secured the
11 police uniform. Now the reason for
12 securing it was why?

13 Well, it was going to Dr. Hook. They
14 don't need to -- Dr. Hook is known for
15 taking things out of people's
16 vehicles.

17 And it is the property of the City --

18 Aha.

19 -- of Winnipeg, that's why I seized
20 it.

21 So you wanted to secure it?

22 Right."

23 That's your answer?

24 A That's why I took it out of the
25 vehicle, yes.

1 Q And, sir, that's why you seized it,
2 that what you're talking about in the statement
3 about taking something out of the vehicle --

4 A When you take someone else's property
5 out of the vehicle, you are seizing that property,
6 yes.

7 Q And you seized it because you intended
8 to keep it, in the sense that it was not going to
9 remain in the vehicle?

10 A Correct.

11 Q So I'm just suggesting to you that
12 this makes it look like it was your decision here.

13 A It was my decision to take it out of
14 the vehicle and seize it.

15 Q Okay.

16 A It was our decision what to do with it
17 afterwards.

18 Q Okay. And because the other thing is
19 that in none of the passages in the RCMP interview
20 do you mention Harry Bakema being with you when
21 this was taking place at the same time?

22 A That's the time I was checking the
23 vehicle for alcohol.

24 Q So it's the same omission?

25 A Same time.

1 Q Because you told Commission Counsel
2 that you took the uniform under the direction of
3 Harry Bakema. Do you remember saying that?

4 A I put it in the vehicle under the
5 direction of Harry Bakema.

6 Q Would you take a look at page 42 of
7 the interview with Mr. Clifford, line 4 on page
8 42:

9 "So when you took the uniform from the
10 Harvey-Zenk vehicle, this is under the
11 direction of Harry Bakema?

12 Aha. Correct.

13 And he tells you to put it in the
14 trunk of the car?

15 Right."

16 So you took --

17 A I took the -- you are cutting straws
18 here. I took the uniform from the vehicle. I
19 took it. It was Harry Bakema's direction to put
20 it in the police cruiser, because he was going to
21 hand it over to the RC -- or to Winnipeg Police.

22 Q I hear your position, sir. But you
23 would agree with me that you didn't really succeed
24 in communicating that directly to Mr. Clifford?

25 A But I am now.

1 Q Okay. That's your position today.

2 Sir, you told the RCMP that you went to the
3 Concordia Hospital to assist the family in viewing
4 Crystal Taman. Do you remember saying that?

5 A I can't remember offhand.

6 Q Page 603.5, the top of page 603.5:

7 "...dealing with them or was it you
8 that was dealing with them that whole
9 time or did it -- did you get help
10 from --

11 I dealt with them. No, I dealt with
12 them the whole time.

13 Aha.

14 And I was dealing with -- and then I
15 also went --

16 M'hm.

17 -- to Concordia. I met them there so
18 they can -- they wanted to view mom
19 and his wife."

20 Do you remember giving that answer,
21 sir?

22 A Well, obviously, I gave the answer,
23 but I don't -- I don't recall that right now.

24 Q I take it you don't have any idea what
25 that's about?

1 A Well, it's about me going to Concordia
2 with the family, but --

3 Q You --

4 A But I can't recall that right now.

5 Q You don't have any recollection of
6 going to Concordia?

7 A Not right now, no.

8 Q I am going to suggest to you, sir, you
9 don't have any recollection because it just plain
10 didn't happen?

11 A I have no idea.

12 Q So if the family was to say that it
13 didn't happen, you wouldn't object to that?

14 A I couldn't say it did. I couldn't say
15 it didn't.

16 Q Sir, you were at the accident scene
17 until 4:00 in the afternoon?

18 A That's correct.

19 MR. PACIOCCO: And they viewed the
20 body long before that, sir.

21 Mr. Commissioner, I think this is a
22 good time. I'll be changing themes.

23 THE COMMISSIONER: Yes. Thank you.
24 Monday morning.

25 THE WITNESS: Okay.

1 THE COMMISSIONER: 9:30.

2 THE WITNESS: Okay.

3 THE COMMISSIONER: Thank you, counsel.

4 We will break for today.

5 THE CLERK: All rise. This Commission
6 is now adjourned until Monday at 9:30 in the
7 morning.

8 (Proceedings adjourned at 4:24 p.m.)

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COURT REPORTER'S CERTIFICATE

DEBRA KOT and LISA REID, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

Lisa Reid

Debra Kot

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