

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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Monday, July 7, 2008

Volume 9

INQUIRY PROCEEDINGS

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1 Monday, July 7, 2008

2 Upon commencing at 9:30 a.m.

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

6 THE COMMISSIONER: Good morning.

7 MR. PACIOCCO: Good morning
8 Mr. Commissioner. As is our practice, I will
9 announce the witnesses who we anticipate
10 testifying this week. We are going to, of course,
11 finish up with Mr. Graham this morning. And then
12 we are going to be calling Jason Woychuk of the
13 East St. Paul Police. We are going to be calling
14 Constable Brian Maloney of the East St. Paul
15 Police. It is our expectation that he will be
16 testifying tomorrow. We will then be calling
17 Chief Norm Carter, followed by Mr. Harry Bakema.

18 BY MR. PACIOCCO:

19 Q Good morning, Mr. Graham.

20 A Good morning.

21 Q When we were together last, you
22 described how this whole episode started with the
23 phone call from an unknown male.

24 A Correct.

25 Q And, of course, there is no

1 identification in your notes for that particular
2 individual?

3 A Not at that time, no.

4 Q How did you come to identify him?

5 A How did I come -- I believe he -- he
6 either came by or he phoned me afterwards and said
7 that he was the one that called and so forth, and
8 that he worked at the oil refinery. And so then I
9 went there and obtained a statement from him.

10 Q Because we will try to get to exactly
11 how you had contact with him later, but does it
12 strike you a little strange that he would have
13 taken that initiative to contact you after your
14 description of him not staying on the line and not
15 responding when you were trying to get his name?

16 A It is not that strange, it was a
17 serious accident. He probably wanted to give his
18 account of what happened.

19 Q I am sorry?

20 A He probably wanted to give his story
21 of what happened. It is not strange, it is a
22 serious accident.

23 Q Yes, I understand why he might want to
24 make sure he came forward. I was just wondering
25 whether it sat comfortably, with your description

1 of the initial phone call to you, where I recall
2 you telling the Commissioner that he had not
3 responded when you were trying to get his name, as
4 though he just said, just to come out.

5 A Later on he said that he was on his
6 way to work and he was in a rush to get to work,
7 and later on he contacted me and --

8 Q Did he explain all that to you, that
9 he didn't leave his name because he was in a rush
10 to get to work?

11 A No, he just said he was in a hurry to
12 get to work, and he phoned because of the
13 accident, and he would call later on to give his
14 side of the story.

15 Q Okay. You did ultimately go and
16 interview him?

17 A Yes, I did.

18 Q And you prepared an incident report in
19 connection with that interview, do you recall
20 that?

21 A I recall that, yes.

22 MR. PACIOCCO: This can be found at
23 tab E-1.24.b. If this could be made the next
24 exhibit, please?

25 THE CLERK: Exhibit 85.

1 (EXHIBIT 85: E-1.24.b, Incident
2 Narrative, March 3, 2005)

3 BY MR. PACIOCCO:

4 THE COMMISSIONER: What is the page
5 number?

6 MR. PACIOCCO: It is at page 565 of
7 volume E-1.

8 THE COMMISSIONER: Thank you.

9 BY MR. PACIOCCO:

10 Q You will see there that that
11 individual was ultimately identified and
12 interviewed as Mr. Ken Ford of Winnipeg? That's
13 correct, sir?

14 A That's correct.

15 Q And you determined that he was at the
16 scene and he observed a male standing at the
17 yellow vehicle, and noticed some kind of shoulder
18 patch on this person, assuming that help was
19 already there, he continued on to work?

20 A Correct.

21 Q And, sir, in your conversations with
22 the RCMP, during your interview, you describe how
23 this individual actually came up to you at the
24 scene?

25 A Okay, correct.

1 Q That's at page 588 of tab E-1.24.d,
2 tab E-1.24.d, already made an exhibit in these
3 proceedings.

4 And you will see, sir, that this
5 begins with the conversation on the prior page, or
6 earlier in the interview where Corporal Kennett
7 says to you halfway through page 588:

8 "Q Alright. Okay, and did you talk
9 to any other witnesses at actual
10 scene? Were you discussing anything
11 as far as...

12 A Witnesses, no.

13 Q What happened or, do you know at
14 what point did you find out that it
15 was the accused. Like how did you
16 find out it was the truck that caused
17 the accident or, do you know where
18 that information came from?

19 A Well, I kind of came back, I think
20 he came back, he said, I am the one
21 that called this in.

22 ...I think he attended back to the
23 scene and said, I am the one that
24 called this in, and worked at the
25 refinery. I was going to work."

1 And you subsequently spoke to him and you say:

2 "I'm pretty sure it was at the scene."

3 It is our information sir, that,
4 Mr. Ken Ford actually called the East St. Paul
5 Police Station and did not go back to the scene.

6 Do you agree that that's a possibility?

7 A It could be possible. Like I just
8 said, I'm not too sure what it was, whether he
9 called or whether he came back to the scene.

10 Q And you didn't have any notation of
11 how it was he contacted East St. Paul?

12 A Well, there is nothing in my notes
13 indicating that. Like I said, with this RCMP
14 interview, some of my notes were missing regarding
15 this statement.

16 Q And what notes are missing, sir?

17 A Well, me actually going to take the
18 statement.

19 Q You have your incident narrative
20 report. Are you suggesting that you had written
21 notes as well?

22 A Yes. Every time I go to a place to
23 take a statement, I write in my notes where I
24 attended to get that statement.

25 Q So that statement was taken on the 3rd

1 of March?

2 A Correct.

3 Q And you were not furnished with any
4 notes for that date?

5 A Correct.

6 Q Sir, the individual who you spoke to
7 at the scene, do you recall speaking to a civilian
8 witness at the scene?

9 A I don't remember offhand right now.

10 Q Do you remember a Mr. Garth Shaw, a
11 man in a van?

12 A I don't remember speaking to no Garth
13 Shaw.

14 Q Because there was an indication in his
15 testimony that he spoke to one of the officers
16 present, and through deduction we imagined that it
17 was you, sir.

18 A No, I don't remember speaking to him.

19 Q Do you remember going up to a witness
20 and telling a witness that they had to stick
21 around in order to provide a witness statement?

22 A Not offhand, no.

23 Q All right. Sir, I'm going to also ask
24 you about another off-duty paramedic who was on
25 scene. Do you recall seeing an off-duty paramedic

1 on scene, sir?

2 A All I remember seeing is a bunch of
3 paramedics. I don't know if they were off duty or
4 what they were doing.

5 Q Perhaps I can refresh your memory. At
6 page 590 of your RCMP investigation, at the top of
7 page 24:

8 "Okay. Do you recall who you spoke to
9 from the Winnipeg Police First
10 Responders?

11 A No, I don't.

12 Q Okay. Do you know, did you speak
13 to, ahm, ah, ahm, fire department, ah,
14 fellow, that may have been ahm, off
15 duty at the time, but first on the
16 scene? He would have been from
17 Winnipeg, ah, Fire Department?

18 A Um, I don't (pause) don't recall.

19 Q Don't recall anyone saying they
20 were (talking over each other) first
21 on the scene.

22 A I recall someone saying that.
23 They were on the scene and he's, he's
24 an off duty Winnipeg Fire Paramedic.

25 Q Okay. So --

1 A But I don't recall talking to
2 him."

3 Sir, is that that your position that you never
4 spoke to that particular individual?

5 A As far as I can remember, yes.

6 Q Do you recall seeing him there?

7 A I saw a lot of people there. I don't
8 know if he was off duty or -- there was a lot of
9 people there I can't remember at this time.

10 Q Did you take any steps to identify
11 individuals who were on scene who weren't actually
12 first responders or with the Winnipeg Paramedic
13 Service?

14 A Like I say, in the beginning my hands
15 were kind of tied. We were kind of busy, short
16 staffed. We can only do so much at that time.

17 Q Okay. And then certainly there was no
18 attempt by anyone from the East St. Paul Police to
19 say, well, Mr. Graham, you go and do this and we
20 will do that, and I will get the names, and you
21 take care of the traffic, there was no such
22 discussion?

23 A No, there was not.

24 Q So you didn't have the opportunity or
25 take the initiative to try to take down the names

1 of witnesses at the scene?

2 A Correct.

3 Q Sir, I'm going to show you some
4 photographs, they are found in exhibit 62. They
5 will be in volume B-8.

6 You have just been handed a whole
7 packages of photographs that have been made
8 exhibits in this case. I'm going to ask you to
9 turn to the very last four. And if you can start
10 with the fourth last document, sir, it should have
11 the number 23 stamped in the upper right-hand
12 corner.

13 A The fourth last? No, what I have here
14 is what I have for fourth last.

15 Q Okay. Fair enough. I know those
16 documents, there was a problem in their filing the
17 last time and we had, I think, re-provided four
18 additional photographs.

19 Apparently, they have been marked
20 separately as exhibit 82 according to
21 Mr. Clifford. Perfect. Thank you.

22 You should have four photographs, the
23 first of which is marked 23 at the top?

24 A Correct.

25 Q These are photographs clearly taken

1 early in the day on the accident scene, do you
2 agree with that, sir?

3 A Yes, could be, yes.

4 Q Because you see that paramedic and
5 ambulance vehicles are still in attendance?

6 A Correct.

7 Q There is a firefighter still standing
8 next to the motor vehicle, there seems to be some
9 activity going on around it?

10 A Correct.

11 Q And, sir, you will notice a vehicle
12 parked behind the destroyed yellow Sprint. Do you
13 see that vehicle, sir?

14 A It looks like an SUV.

15 Q Yes?

16 A Correct.

17 Q Do you remember that vehicle being
18 there?

19 A Not offhand, no.

20 Q Because our information is that that
21 vehicle belonged to a Mr. Garth Shaw, who was a
22 witness to the accident?

23 A Okay.

24 Q That he had initially parked across
25 the front of the Sprint to protect it from

1 traffic, and then in order to make room for the
2 ambulances, he put his vehicle back there.

3 Do you have any recollection of seeing
4 that vehicle, sir?

5 A Not offhand, no.

6 Q Mr. Shaw is the fellow who described a
7 police officer coming up to him other than Harry
8 Bakema, other than Mr. Woychuk, telling him that
9 he would have to remain on scene in order to give
10 a statement. You don't have any recollection of
11 that being you, sir?

12 A I don't know, it could have, I don't
13 know, I don't recall that time. Like I say, I had
14 other important things to do.

15 Q I'm certain you do, sir. And you will
16 notice that the following photographs seem to be
17 taken while there is still a lot of activity on
18 the scene, the first responders are still there in
19 the next photograph of the Zenk vehicle, which is
20 number 26. And then number 27 and number 28 are
21 both photographs of the Zenk vehicle, which are
22 similar in presentation to the photograph at
23 number 26.

24 Sir, I can tell you that there were a
25 number of other photographs taken from the same

1 package of photographs marked 23 through 28 on the
2 documents you have, that actually showed the
3 injured individual in the car and showed the
4 attempts at resuscitation and other things. Sir,
5 did you take these photographs?

6 A I can't remember if I took the
7 photographs or not.

8 Q I think we can agree that
9 Mr. Blandford, the accident reconstructionist,
10 would not have taken them because he was not there
11 at the time?

12 A He was there later on.

13 Q We have obviously two sets of
14 photographs, sir?

15 A Correct.

16 Q Constable Woychuk indicated in his
17 interview with Mr. Clifford that he believes
18 seeing you with a camera at the scene, sir. Is
19 that something that you would do at an accident
20 scene?

21 A Yes.

22 Q So there is a possibility, sir, that
23 you are the one who took these photographs?

24 A There is a possibility, yes.

25 Q And, of course, there is no notation

1 in your notes, sir, of you having done that?

2 A Not that I see here, no.

3 Q Sir, let's take a look at what is in
4 your notes and what is not in your notes. On
5 Friday, I pointed out that there was no notation
6 made by you of the fact that Chief Bakema told you
7 that he knew Mr. Harvey-Zenk?

8 A Correct.

9 Q And you gave me an explanation as to
10 why that wasn't in your notes. What was that
11 explanation again, sir?

12 A I don't recall. Can you refresh my
13 memory?

14 Q I think -- it is your explanation,
15 sir. You are not able to repeat it today?

16 A No, I'm not.

17 Q Your explanation, sir, was you said
18 that you don't record in your notes what other
19 people do, that your notes are your notes, and it
20 would have been up to him to make that kind of a
21 record. Does that refresh your memory?

22 A Yes, that's correct.

23 Q And I suggested to you that it was an
24 important piece of information that defence
25 counsel or others might want to know in connection

1 with the case, but that it was something that you
2 nonetheless felt that Mr. Bakema should take
3 charge of because it was his observation; correct?

4 A Correct.

5 Q Sir, I notice that your notes did not
6 record that you seized the police uniform?

7 A No, but if you look in the report, it
8 does indicate in the report.

9 Q I'm going to take you, before we go
10 back to the report, I'm going to take you to
11 another narrative, incident narrative that you did
12 prepare. You will find that at page 566 of volume
13 E-1, and it is document E-1.24.c. And I'm
14 catching the clerk off guard I think. If that
15 could be made the next exhibit, please?

16 THE CLERK: Exhibit 86.

17 (EXHIBIT 86: E-1.24.c, Incident
18 narrative, April 1, 2005)

19 BY MR. PACIOCCO:

20 Q And you recognize that incident
21 report, sir?

22 A Yes, I do.

23 Q And, sir, that is a report taken,
24 according to the indication at the top, by
25 yourself, Constable Patrol Graham number 43 on the

1 31st of March, 2005. Can you describe for the
2 Commissioner what that report pertains to?

3 A It pertains to Mr. Zenk wanted his
4 personal belongings out of his vehicle at the
5 time. His vehicle was at Dr. Hook's compound, and
6 I went there to seize or remove all of the
7 personal items that I could find in his vehicle,
8 put them all in an exhibit bag, took them back to
9 the office and gave them to Norm Carter.

10 Q So it is evident that you took a great
11 deal of care in recording exactly what you had
12 taken from Dr. Hook's?

13 A Correct.

14 Q You have a green travel cup, for
15 example, that I mentioned to you the last time,
16 and I asked you whether or not you checked that
17 for signs of alcohol, sir?

18 A Correct.

19 Q You have everything from an empty
20 cassette to a golf ball, business cards and pens,
21 recorded very, very carefully, four pens?

22 A Correct.

23 Q And, sir, this would be something that
24 would be appropriate to do under those
25 circumstances, when you take a piece of property

1 either for seizure purposes or for returning to an
2 individual, you want to make sure you have a clear
3 inventory of it, sir?

4 A If it is personal belongings, yes.

5 Q Okay. And you took a great deal of
6 care here. I notice that one of the items was
7 cell phone charger. Did you come upon a cell
8 phone at all? You notice, probably about
9 two-thirds of the way down, "hit far vehicle, cell
10 phone charger" is one of the items recorded?

11 A Correct.

12 Q Did you come across the cell phone at
13 all, sir?

14 A I believe not, no.

15 Q So you didn't find any cell phone in
16 the vehicle?

17 A If it is not in the report there, no.

18 Q And you didn't find a cell phone in
19 the vehicle when you searched it initially, when
20 you entered the vehicle to get the registration
21 number and smelled the alcohol?

22 A Not that I can remember.

23 Q And, sir, I'm observing at how
24 carefully you are recording this information
25 because, as I say, there is no record in your

1 notes of seizing the uniform. You indicate it is
2 in the narrative report, sir. Whose narrative
3 report is it in?

4 A That would be the report that Bakema
5 wrote, I believe.

6 Q I think that would be correct, sir, it
7 is in the narrative report that Mr. Bakema wrote.
8 So that report wasn't created by you?

9 A Correct.

10 Q And how is it that it ends up in his
11 report rather than in a report prepared by you,
12 sir?

13 A Well, he was also there at the time,
14 and we arrived in the same car, and he indicated
15 that he would write up the report, and if I just
16 submit my notes to the file.

17 Q So, effectively, Harry was undertaking
18 to do a joint report between you and him?

19 A Correct.

20 Q So you never did an independent report
21 in this case?

22 A No, I was not asked to.

23 Q Sir, isn't it a matter of routine that
24 you prepare an incident report in connection with
25 your observations at the scene?

1 A Usually, if you are in the same car,
2 and sometimes you just do the report, and the
3 other officer hands in his notes. It is up to the
4 reader to ask if he wants more notes or not, or
5 more report done.

6 Q So you believe that the onus is on the
7 reader to get each investigator to generate their
8 own incident report?

9 A Not each incident report, but this one
10 here, if the reader wanted an incident report done
11 by myself, he should have asked for it.

12 Q Because when Constable Pedersen was
13 testifying, she said it is routine to do incident
14 reports in connection with any business transacted
15 at East St. Paul. Would you not agree with that?

16 A If you are alone, going to a scene,
17 yes. But not every incident.

18 Q All right. So she suggested, for
19 example, that even if somebody called with a query
20 about a traffic law, she would take an incident
21 report. Would you have done that, sir?

22 A If I was the lone person dealing with
23 that, with that whole file, yes, I would.

24 Q Okay. So your explanation is that
25 Bakema was basically doing this on your behalf?

1 A Correct.

2 Q Did you do it with him, sir?

3 A Do the file?

4 Q The incident report?

5 A No.

6 Q Did you do it with him?

7 A No, I gave him my notes.

8 Q Did you go out and check the incident
9 report to make sure that it was satisfactory to
10 you?

11 A I read over it, yes.

12 Q Was it for that purpose, sir?

13 A I read over most of the incident
14 reports like every other member does.

15 Q Okay. Well, was it for the purpose of
16 ensuring that this joint report was satisfactory
17 to you?

18 A Yes, to make sure that everything was
19 pretty much the same.

20 Q You notice that there is nowhere on
21 the incident report that was prepared by
22 Mr. Bakema on which it records that it is a joint
23 incident report?

24 A There is nowhere that indicates that
25 he wrote it; is that what you are saying?

1 Q That it is a joint report written by
2 the two of you, or representing both of your
3 observations?

4 A Well, he puts my observations in
5 there, he puts his observation in there.

6 Q And he puts his name on the report,
7 correct?

8 A He puts his name on the report.

9 Q He doesn't put your name on the
10 report?

11 A Correct.

12 Q You see, the difficulty that I'm
13 having, sir, is that your notes don't contain any
14 information about the uniform; correct?

15 A Correct.

16 Q And you don't do your own incident
17 report, sir, correct?

18 A Correct. That's why when I read the
19 report, I probably noted to him, what about the
20 uniform.

21 Q So you think that he might not have
22 put it in and you had him add it?

23 A Unless he did put it in, because he
24 was there at the time.

25 Q Okay. So you just don't know?

1 A I'm not sure at that time.

2 Q All right. What I'm suggesting to
3 you, sir, is that there is nothing with your name
4 on it as a report or a record that records the
5 seizure of that uniform, even though you have a
6 report that records the seizure of a golf ball.
7 Is that fair, sir?

8 A I believe it does indicate that I
9 seize the uniform out of the vehicle.

10 Q Yes, but that's his description of
11 what you did as opposed to your own description of
12 what you did. Would you agree with that, sir?

13 A Yes.

14 Q Wouldn't it be awkward if you went to
15 testify in court, and you needed to make reference
16 to somebody else's report to refresh your memory?

17 A That's why we have notes as well,
18 notes on the report.

19 Q Yes. And, sir, neither your notes or
20 any report written by you would have been able to
21 refresh your memory about the uniform, would it?

22 A But the report that Bakema did, does
23 refresh my memory with the uniform.

24 Q But you are suggesting that you would
25 have to have been shown somebody else's report in

1 court to get you memory refreshed on that point,
2 correct? You don't think that it is a far better
3 practice for you to make your own incident report,
4 sir?

5 A If that's policy, we probably would
6 have.

7 Q So you only go according to policy, is
8 that your position? You don't exercise your own
9 discretion on these matters?

10 A If it my was case and I was the only
11 one dealing with it, I would have made my own
12 incident report.

13 Q Okay. Sir, what about the fact that
14 you smelled alcohol, is that in your notes?

15 A No, it is not in my notes.

16 Q And again, sir, you haven't done your
17 own incident report?

18 A Correct.

19 Q So you had to depend on Mr. Bakema
20 recording that?

21 A Yes, it is in the report, because he
22 was there at the same time.

23 Q Do you not agree with me that
24 observing a smell of alcohol in a motor vehicle,
25 after a fatality when that vehicle is clearly the

1 one that's rear ended the vehicle of the deceased,
2 is a very important observation to make?

3 A It is very important, that's why it is
4 in the report.

5 Q Sir, is that why it is not in your
6 notes?

7 A That's why it is in the report. Your
8 notes is basically to refresh your memory on
9 making the report.

10 Q Is that your understanding of the use
11 of the notes, is to refresh your memory on the
12 making of the report?

13 A Making a report and testifying.

14 Q Yes. If it is not in your notes, it
15 is not going to be of any assistance to you in
16 testifying, is it, sir?

17 A If it is in the report it does.

18 Q But if it is not in your notes, your
19 notes are not going to be of any assistance to you
20 in testifying, sir?

21 A The notes are not, but the report is.

22 Q All right. But somebody else's
23 report?

24 A Correct.

25 Q And there is nowhere that's recorded

1 in your notes that you advised Harry of the smell
2 of alcohol in the vehicle?

3 A That's correct.

4 Q And that's not in the incident report
5 either, sir?

6 A That's correct.

7 Q Let's examine the process of making
8 your notes on this occasion. It has been
9 suggested that you and then Chief Bakema did your
10 reports in collaboration. Mr. Woychuk suggested
11 that in an interview with us. Would that be a
12 fair description, sir?

13 A No.

14 Q Did you share your notes with him back
15 at the station, sir?

16 A With who? Woychuk.

17 Q No, Chief Bakema?

18 A I gave him my notes when we were back
19 at the station.

20 Q You gave them to him?

21 A Yes, for the file.

22 Q I'm going to ask you to take a look at
23 your statement to the RCMP, please? This would be
24 E-1 amendment at page 601.

25 You see what appears to be the second

1 paragraph on that page, sir?

2 A The notes go into a reading basket
3 which goes to either the Chief or the Sergeant at
4 the time.

5 Q All right. So, I just asked you
6 whether you handed your notes to Mr. Bakema, or
7 gave your notes to Mr. Bakema, and you said that
8 you did in order for them to go in the file?

9 A He got the notes. They go into the
10 basket. That's how they get -- the reports, the
11 incident reports of what were seized, the stuff
12 from Zenk's vehicle, the notes, everything goes in
13 the basket, and it goes to the Sergeant or to the
14 Chief.

15 Q Okay. And you don't know at the time
16 that the documents were being put in there whether
17 it is the Sergeant or the Chief who is going to
18 look at them, sir?

19 A Whoever picks them up gets it.

20 Q And the Sergeant was the reader on
21 this file, we have learned. And is that the
22 capacity in which he would have got the notes,
23 sir?

24 A Either he got the notes, whoever
25 picked it up would get the notes.

1 Q Okay. So your position now, after
2 looking at this, is that you didn't hand them to
3 Harry?

4 A Harry got them.

5 Q Yes, sir?

6 A Whether he got them through picking up
7 the file from the basket, or where he got them,
8 but he got the notes from me.

9 Q How do you know that Harry got them,
10 sir?

11 A Because he wrote the report.

12 Q Yes, sir, and -- but the stuff with
13 respect to your activity that's in the report is
14 not in your notes, so the fact that he wrote the
15 report doesn't show that he had your notes, sir.

16 A And it was with the file, so either
17 one of them got them.

18 Q Okay. So you don't know if he got
19 them?

20 A If you want to twist it that way, yeah
21 sure.

22 Q Am I twisting it that way, sir?
23 Because I don't mean to do that.

24 A I don't know who got them.

25 Q Okay. So you are basically saying you

1 don't recall giving him the notes?

2 A Handing it to him personally?

3 Q Yes?

4 A I don't recall that.

5 Q Are you saying that you didn't do it,
6 sir?

7 A I'm saying I don't recall that.

8 Q Okay. So you are allowing for the
9 possibility that you did hand him the notes
10 personally?

11 A It could be.

12 Q Did you discuss the times when events
13 occurred with him, sir?

14 A He did ask me, what time did we arrive
15 there.

16 Q And did he ask you any other times,
17 sir?

18 A Not that I can remember offhand.

19 Q But you do remember him asking you
20 about what time you arrived there?

21 A Correct.

22 Q Sir, I'm going to take you to page 587
23 of the same RCMP interview, if you would, please?

24 Halfway down the page, you are asked by Kennett:

25 "All right. And a, at that point did

1 ah, you and Harry go over times and
2 stuff for the notes?

3 A No, I think he was making his own
4 notes. Cause he was doing.

5 Q I mean, it is often people
6 would...

7 Often, (talking over each other)
8 sometimes you get to this, sometimes
9 you get that. Say, you know what time
10 did we get there and. I can't (pause)
11 could be but I can't recall, (pause)
12 No, I can't recall doing that."

13 So at the time you that made this statement, sir,
14 you had no recollection of him asking for that
15 time, 7:16?

16 A At the time of making the statement,
17 it says going over our notes together, that is
18 what she is asking me, did we go over our notes
19 and times together? No, we did not sit down and
20 go over our notes and times together. He asked
21 me, when he was writing his notes at the time,
22 what time did we get there?

23 Q So you have a specific recollection of
24 that, sir?

25 A That's one thing that I remember, is

1 he asked me what time did we get there?

2 Q And did he ask you about any other
3 times?

4 A Not that I can remember, no.

5 Q You would agree with me, sir, that it
6 is pretty difficult at times to actually take the
7 time to record the events and the times when you
8 are caught up in the busy atmosphere of the
9 accident scene?

10 A Correct.

11 Q And you I think in your RCMP interview
12 at one time talked about times being to some
13 degree guesstimates?

14 A Correct.

15 Q Sir, I'm going to ask you to take a
16 look at Chief Bakema's notes. I'm going to ask
17 the clerk to have them filed as an exhibit. That
18 would be the document found at book E-1.22.a, at
19 page 388.

20 (EXHIBIT 87: E-1.22.a, Officer's
21 Notes (Bakema, Arend)

22 MR. PROBER: What number was that,
23 please?

24 MR. PACIOCCO: 87.

25

1 BY MR. PACIOCCO:

2 Q And if you would, sir, take your notes
3 in the other hand, which are found at tab E.24.a.
4 You will notice that you each have the same
5 departure time of 7:10?

6 A Correct.

7 Q Correct. And you each have the
8 arrival time of 7:16?

9 A Correct.

10 Q And you just testified that you do
11 have some recollection today of him asking you
12 what time you got there?

13 A Yeah.

14 Q And you will recall, when we went over
15 that, we weren't quite sure whether that time was
16 accurate, you took it off the clock on the police
17 car, but it didn't seem to fit with the
18 information given by the paramedic service?

19 A Correct, but it was accurate to the
20 time on the dash.

21 Q Yes. And you will notice that each
22 set of notes records the vehicles and gives them
23 vehicle numbers, vehicle one, vehicle two, and
24 vehicle three?

25 A Okay.

1 Q And you will remember the RCMP asking
2 you about that and suggesting to you that that
3 seemed to be quite a coincidence. Do you recall
4 that questioning, sir?

5 A Yes, I do.

6 Q And your response was, that's just the
7 way you do it?

8 A That's usually the normal way of doing
9 it, the sequence that the vehicles were in at the
10 time of the collision.

11 Q Okay. And were you together with
12 Mr. Bakema when the vehicles were recorded?

13 A We were probably walking around the
14 same time, I'm not too sure if we were
15 side-by-side or what we were doing.

16 Q You will notice next that at page 390,
17 his notes have a record at 7:23.

18 "East St. Paul First Responders
19 attended the scene. They attend to
20 the yellow Sprint."

21 Do you see that, sir?

22 A Yes, I do.

23 Q And then you will notice also on your
24 notes at page 558, East St. Paul:

25 "At 7:23 East St. Paul Police Fire and

1 First Responders arrive and attend to
2 yellow Sprint."

3 Correct, sir?

4 A Correct.

5 Q And so you each have the same time and
6 the same description of the events in your notes,
7 sir?

8 A Correct.

9 Q And you understand from our earlier
10 conversation that the East St. Paul responders
11 record their arrival time as 7:24, as opposed to
12 7:23?

13 A So that minute makes a difference?

14 Q Well, sir, I'm just asking if you
15 remember?

16 A Correct.

17 Q All right. I'm just making the
18 observation that the actual dispatch time recorded
19 by the East St. Paul Fire Responders was 7:24, but
20 both you and Chief Bakema have 7:23 down, which
21 would be different from the actual dispatch time?
22 I was just wondering whether that might help
23 refresh your memory as to whether you supplied
24 that time to him as well?

25 A I don't remember supplying that time

1 to him. I can't remember right now. I gave him
2 my notes and that was that.

3 Q Next, sir, if you could look at 7:39?
4 Take a look first at Chief Bakema's notes at page
5 391?

6 "7:39, Winnipeg Fire Paramedic Service
7 departs for Concordia Hospital with
8 driver of vehicle number two."

9 Correct?

10 A Correct.

11 Q And in your notes, sir, at page 559:
12 "Winnipeg Fire and Paramedic Service
13 depart to Concordia Hospital with
14 driver of vehicle number two, 7:39."

15 Correct, sir?

16 A Correct.

17 Q So same wording and same time, sir?

18 A Correct.

19 Q Are you aware, sir, that the dispatch
20 records show that that vehicle actually departed
21 to Concordia at 7:43?

22 A That's what you have indicated, yes.

23 Q So once again, sir, we have a
24 discrepancy between your notes and the dispatch
25 departure time, but a coincidence in time between

1 your notes and Chief Bakema's. Does that assist
2 you at all, sir, in refreshing your memory as to
3 whether these times were shared?

4 A No.

5 Q And, sir, if you could turn to page
6 394 of Chief Bakema's notes? And you will notice
7 at the top of that page:

8 "Analyst Chris Landford..."

9 L-A-N-D-F-O-R-D,

10 "...attends scene and takes photos of
11 same and conducts an analysis of the
12 scene."

13 Do you see that recorded, sir?

14 A Correct.

15 Q Is that name Landford correct?

16 A That is correct I believe.

17 Q In fact, sir, his name is Blandford,
18 B-L-A-N-D-F-O-R-D. So there is a mistake as to
19 what the gentleman's name is there, sir, if I'm
20 right? There is a mistake as to the name there,
21 sir, if I'm correct?

22 A If you are correct, I guess there is.

23 Q If you take a look over at page 560 in
24 your notes, sir?

25 A Okay.

1 Q Starting halfway down that page:
2 "RCMP traffic analyst arrived, Chris
3 Landford."
4 L-A-N-D-F-O-R-D. So you've spelt the name the
5 same way he spelt the name, even though it is
6 different from how Mr. Blandford spells his name;
7 correct, sir?

8 A Correct.

9 Q And, of course, both sets of notes
10 contain the same omission, there is nowhere in
11 Chief Bakema's notes that referred to the
12 attendance at the truck of Mr. Harvey Zenk, the
13 smell of alcohol, or the seizure of the uniform,
14 sir. Correct?

15 A Correct.

16 Q Now, you had told the RCMP that you
17 made these notes at the scene?

18 A Yes.

19 Q You told them that when things quieted
20 down, as they unfolded, you made those notes, sir?

21 A Correct.

22 Q After the family left, you went to
23 each vehicle, you got the description, and you sat
24 down, you were able to record the times of the
25 first responders and when the paramedics left the

1 scene and the times the daughters arrived, and
2 stuff like that is the way you put it?

3 A After the family left, after we put up
4 barricades, secured the scene even better, walked
5 around and got the description of the vehicles,
6 yes.

7 Q And sir, how did you take those notes?
8 Where were you when you took the notes, sir?

9 A Walking around.

10 Q So you were outside when you were
11 making the notes, sir?

12 A Correct. As much as I could because
13 it was cold out that day.

14 Q That's what you told the RCMP. If you
15 take a look, please, at page 586 of your
16 statement, which is in the appendix to exhibit
17 E-1, amendment to E-1, which would be E-1.24.d,
18 page 586.

19 So you are asked about two-thirds of
20 the way down the page about making your notes, and
21 you have just gone through the description I've
22 just given you of things have setted down now and
23 you are making your notes of the scene. And
24 Kennett asks you:

25 "Okay. So you were actually sitting

1 in the police car...

2 No. I had my notes out walking around

3 and writing down."

4 (Talking over each other) is the indication that

5 somebody is talking when another person is

6 speaking so the transcriber has two voices that's

7 coming at the same time.

8 "Doing your notes. Oh. Okay. Cause

9 it was pretty cold that day?

10 Yeah, it was.

11 Yeah, cause they ah, it (talking over

12 each other) It's tough to..."

13 and then you laugh,

14 "...as you can see, my writing is not

15 that neat."

16 Kennett says,

17 "It was tough that sometimes pens

18 don't work very that good in minus 20

19 weather either.

20 Well, it you..

21 it's tough to start.

22 ...have a couple in your pocket."

23 And then you kind of laugh.

24 So it is pretty clear that you are

25 telling Kennett that you don't take the notes in

1 the car, that you take the notes outside?

2 A What I'm saying there is the
3 description of the vehicles, from walking around,
4 taking my notes at that time, putting that in, as
5 you see it is in the beginning. Then every little
6 other piece of information I jot on pieces of
7 paper, I sat in the vehicle, we took turns sitting
8 in the vehicle, jotting the notes down, because it
9 is cold out.

10 Q Okay. But you would agree with me,
11 sir, that reading this passage, that's not what
12 you are saying to her?

13 A That's what I meant.

14 Q Okay. But it is not what you are
15 saying. You are saying -- she asked you
16 specifically, she is asking you:

17 "Okay, so you were actually sitting in
18 the police car?

19 A No, I had my notes out, walking
20 around and writing down."

21 A Taking the information of the
22 vehicles, walking around. The rest of them are
23 sitting in the vehicle writing them up.

24 Q You see, sir, that just above that you
25 are describing the kind of things that you are

1 putting in your notes. And the paragraph that
2 starts one-third of the way down the page, you are
3 saying:

4 "Ahm, everyone was kind of gone. And
5 at the time to kind of jotting things
6 down.

7 Q Uh-huh.

8 A And then ahm, like time, ahm,
9 (sigh, long pause) yeah, I guess when
10 everything's done, quiet down, I went
11 to each vehicle and wrote down the
12 description of each vehicle in the
13 notes. And ahm, what time the first
14 responders arrived, and what time the
15 Winnipeg Paramedic Service, ahm, left
16 the scene, and the time the daughter
17 arrived and stuff like that.

18 Q Uh-huh.

19 A It was quiet down and was ready
20 under control.

21 Q Uh-huh.

22 A And there is really not much you
23 can do, so as that time I started
24 writing down stuff as it happens.

25 Q Okay. So you were actually

1 sitting in the police car?

2 A No. I had my notes out walking
3 around and writing down."

4 A Like I said, for the vehicle
5 information I was walking around, the other
6 information we were taking turns in the vehicle.

7 Q So you've now clarified what you had
8 intended to communicate to her, is that your
9 position?

10 A Correct.

11 Q Sir, you had a conversation with
12 Mr. Woychuk in the aftermath of this event, sir,
13 do you recall --

14 A Correct.

15 Q -- speaking about the events?

16 A Correct.

17 Q And can you tell the Commissioner what
18 took place, sir?

19 A I don't know if it was either that day
20 or the day after, but we had a conversation.
21 Woychuk came to me and had concern that he didn't
22 want to be known as the cop that charged a
23 Winnipeg member, because he wanted to get on with
24 Winnipeg, he didn't have want to have that bad
25 reputation. And he indicated to me on the way

1 to -- on the way to the office that he could start
2 to smell alcohol.

3 Q Okay. Please continue?

4 A Then he didn't know what to do. He
5 just had a concern about that.

6 Q He also, according to your interview
7 with Mr. Clifford, indicates that he was concerned
8 about the whole deal because he went to school
9 with Mr. Zenk. Do you recall saying that to
10 Mr. Clifford?

11 A That he knows Zenk from Brandon, yes.

12 Q And that this was one of his concerns
13 in terms of being responsible for ruining that
14 man's career?

15 A Correct.

16 Q Sir, why would there be any concern
17 about a bad reputation for arresting a police
18 officer, sir?

19 A Because not too many police officers
20 really -- I don't know, he felt that that would
21 hinder his chance of maybe getting into Winnipeg
22 Police, or have a bad reputation. He also knows
23 some members with Winnipeg and he didn't want to
24 have that conflict.

25 Q So he perceived that there might be

1 some kind of pressure on an individual if they
2 were to arrest another police officer, sir?

3 A I guess, that is what I'm assuming.
4 You would have to ask him how he felt.

5 Q Well, I am asking you, sir, do you
6 agree that there is any kind of pressure like that
7 that would be on a police officer; that others
8 might judge them harshly or it might be awkward to
9 have to arrest a police officer?

10 A There might be, yes.

11 Q And that that could influence some
12 police officers perhaps not to do it, or not to do
13 it with the same zeal that they might for a
14 civilian?

15 A It depends who that person is, I
16 guess.

17 Q And according to your note, he also
18 indicated to you that one of the paramedics told
19 him that he could smell alcohol on Mr. Zenk's
20 breath when they were checking him out in
21 Woychuk's vehicle?

22 A He said that one of the paramedics
23 indicated to him that he could smell alcohol, or
24 something like alcohol, or something like that,
25 but Woychuk said that he couldn't smell anything

1 at that time.

2 Q Okay. And sir, you, of course, didn't
3 take any notes of this exchange with Constable
4 Woychuk?

5 A No, I'm not going to put other
6 people's comments in my notes, like I said.

7 Q I forgot to ask you, sir, when you
8 took the stand, how old are you, sir?

9 A I'm 34.

10 Q And you indicated that you grew up in
11 Brandon?

12 A Correct.

13 Q What high school did you go to, sir?

14 A Crocus Plains.

15 Q Crocus Plains. I understand there are
16 just a couple of high schools in Brandon?

17 A There would be three, four, something
18 like that.

19 Q You don't remember how many, sir?

20 A No, I don't remember, no.

21 Q Do you know how many people live in
22 Brandon?

23 A Couldn't tell you.

24 Q Could you give me a worthwhile
25 estimate?

1 A No, don't have no idea.

2 Q Somewhere between one and a million, I
3 guess?

4 A Sure, somewhere in there.

5 Q Sir, I want to be fair to you, because
6 this is the end of the questioning that I have for
7 you, and I want to get your response to a
8 perception that might be made based on the way
9 events unfolded. And I want to get your reaction
10 to it. How would you respond to the suggestion
11 that when you arrived on the accident scene or at
12 some point shortly after, you had a conversation
13 with Chief Bakema about the driver of the truck
14 being a police officer and that he knows him. I
15 think you've agreed so far that much did, in fact,
16 happen?

17 A That occurred, yes.

18 Q And how would you respond to the
19 suggestion that he told you that this fellow was
20 impaired, or possibly impaired, and that he maybe
21 did not know how to handle or did not know what to
22 do at that point in time, sir?

23 A That did not happen.

24 Q And how would you respond to the
25 suggestion that that may have happened, and that

1 afterwards he puts the gentleman in Mr. Woychuk's
2 vehicle. And later you go to the truck and you
3 smell alcohol, and you seize the police uniform,
4 and you mention it to Bakema. Now, this last part
5 you've testified has happened. You went to the
6 truck, you seized the police uniform, you smelled
7 the alcohol, and you did mention it to Bakema.
8 And how would you respond to the suggestion that
9 maybe between the two of you it was decided that
10 that shouldn't be put in your notes, that you
11 should leave the stuff about police officer and
12 the alcohol out?

13 A That did not happen.

14 Q And that you learn later that Chief
15 Carter has, in fact, arrested Harvey-Zenk, and he
16 has laid a charge against him, says that he has
17 detected the smell of alcohol and the man had
18 signs of impairment, and that you and Chief Bakema
19 get together, and knowing that he is already
20 charged, you do up the incident report. And all
21 this stuff about your own observations about the
22 truck and the uniform, at this point the game is
23 up, so they go into the incident report even
24 though they are not in your notes. How would you
25 respond to that suggestion?

1 A No, that's not the way it happened.

2 Q And that Jason Woychuk comes back to
3 the police station, and you are still there, and
4 you and Bakema have a talk with him about what
5 should go in his notes. And his notes don't
6 contain any reference to alcohol or to
7 Mr. Harvey-Zenk being a police officer.

8 A That did not happen.

9 Q You can understand, looking at the way
10 your notes have omissions and stuff coming later
11 that that might be one possible spin that somebody
12 might put on the evidence, sir?

13 A I guess you could think that, but
14 other people might not either.

15 Q Okay. So your position is that none
16 of that happened, sir?

17 A Correct.

18 Q Okay. I want to thank you for taking
19 the time to listen to the questions and answering
20 the questions that I have given you, sir. There
21 are going to be some other lawyers who are going
22 to have some questions for you.

23 A Okay, thank you.

24 BY MR. ZAZELENCHUK:

25 Q You told my learned friend that you

1 are 34 years of age?

2 A Correct.

3 Q And you went to high school in
4 Brandon, Manitoba?

5 A Correct.

6 Q I wonder if you could look at your
7 interview with the RCMP. That's exhibit 84,
8 that's tab E-124, Your Honour?

9 THE COMMISSIONER: Page?

10 MR. ZAZELENCHUK: 591.

11 THE COMMISSIONER: Thank you.

12 BY MR. ZAZELENCHUK:

13 Q It is page 25 at the top of the page
14 and page 591 at the bottom of the page.

15 A Yeah.

16 Q And you are being interviewed by the
17 RCMP Officer Kennett, and she is referring to
18 Mr. Harvey-Zenk, and the question is:

19 "Uh-huh. Do you know him at all?"

20 And your answer is:

21 "Well, I did... Well, I know his
22 parents from Brandon."

23 And she says,

24 "Uh-huh."

25 And you say:

1 "Cause I'm originally from Brandon."

2 And then down at the bottom of the page, four
3 lines from the bottom she says:

4 "So you guys didn't go to school
5 together?"

6 And you answer:

7 "No.

8 Or anything like that?"

9 And you answer:

10 "No."

11 Do you recall giving those answers?

12 A Correct.

13 Q Well, we have evidence before this
14 court, sorry, before this hearing, it is exhibit
15 4, and you don't have to see it, but we have
16 evidence before this hearing that Mr. Harvey-Zenk
17 is presently 34 years of age. Same age as you.

18 A All right.

19 Q Okay. I have been to Brandon, it has
20 got 40, 50,000 people in it; isn't that about
21 right?

22 A It could be. I'm not sure what is in
23 there.

24 Q Okay. So you go to high school in
25 Brandon, and Mr. Harvey-Zenk goes to high school

1 in Brandon, and you are the same age, and you know
2 his parents, but you don't know him?

3 A I don't know his parents personally.

4 Q Well, what does it mean when you say,
5 "well, I know his parents from Brandon," what does
6 that mean?

7 A Some people you know. I have heard
8 the name Zenk before. It doesn't mean I went to
9 school with him. I just ---his mother, I believe
10 his mother was a school teacher at the time. I'm
11 not too sure if that's the right Zenk.

12 Q So what did you mean when you said,
13 "well, I know his parents from Brandon"?

14 A Because if his mother is a school
15 teacher, then I know her and she is from Brandon.

16 Q Okay. You recall, and I will take you
17 to it if you want, but do you recall telling the
18 RCMP when you were interviewed that there was a
19 strong odour of alcohol in the motor vehicle?

20 A That's what I said in the RCMP report.

21 Q And can you tell us today why there is
22 no mention of that in your notes?

23 A In my notes, but it is in the report,
24 I think we have gone through that already.

25 Q Well, I'm just wondering if you can

1 tell me today why, in investigating a motor
2 vehicle collision, you smell a strong odour of
3 alcohol in one of the vehicles, and you make no
4 notation of that in your notes, can you tell me
5 why?

6 A It is in the report that there is an
7 odour of alcohol in the vehicle.

8 Q I see. So that's why it is not in
9 your notes?

10 A Does it make a difference whether it
11 is in the notes or in the report?

12 Q I think we have been through that.
13 You can't give me a reason for why there is no
14 mention in your notes, other than the fact that it
15 is in a report that somebody else wrote?

16 A Correct, I mentioned that.

17 Q Okay. I think your notes are exhibit
18 85 -- sorry, 83, do you have them there?

19 A Yes, I have got my notes here.

20 Q And they are at E-1.24.a, Your Honour.
21 And I notice, starting at the first page, that you
22 put times periodically in the margins; correct?

23 A Correct.

24 Q So if we look at page 556, we have got
25 your arrival at 7:10, and then we have got -- we

1 have got the call at 7:10, your arrival at 7:16;

2 correct?

3 A Correct.

4 Q So if we go over to page 559, we've

5 got the two girls arriving, you have got a

6 notation of the time, 7:25?

7 A Correct.

8 Q And then we've got the Winnipeg Fire

9 and Paramedic Service, 7:39, and then we have 7:41

10 Robert Taman arrives?

11 A Correct.

12 Q And then if we go to the next page,

13 we've got an entry for 7:49?

14 A Correct.

15 Q And the second thing on that entry is

16 that you and Chief Bakema then decided to close

17 the intersection?

18 A Correct.

19 Q Did you not tell us on Friday that

20 closing the intersection was the first thing that

21 you did?

22 A This is putting up barricades. The

23 intersection is already closed, we put up more

24 barricades to close it off.

25 Q Well, it is your handwriting. So we

1 have got the entry, 7:49, but skip the first four
2 lines, because that is:

3 "Advise dispatch to call RCMP traffic
4 analyst out to scene."

5 correct?

6 A Correct.

7 Q We are done with that. Now read the
8 next line?

9 A Closed 101 and 59.

10 Q Intersection.

11 A Intersection.

12 Q It doesn't say put up more barricades,
13 it doesn't says reinforce the closure, it says
14 closed, but you are telling us today you closed
15 the intersection earlier?

16 A Sorry, I guess I should have put in
17 there put in barricades instead of close, it was
18 already closed off, we closed it off even more.

19 Q I see. You told us that the Taman
20 girls were upset?

21 A Very upset.

22 Q And that's understandable. You have a
23 victims liaison officer, and you had in February
24 of 2005, with the force?

25 A Correct.

1 Q And that was Constable Pedersen?

2 A Correct.

3 Q And Constable Pedersen was a few
4 hundred yards away?

5 A Correct.

6 Q Why didn't you call her over?
7 Wouldn't she be an appropriate person to be
8 comforting these two girls, if she is the victim
9 liaison officer?

10 A Like I said before, we are short
11 manpower. Who is going to direct traffic in that
12 situation?

13 Q You. You. You told us that while the
14 girls were there, you sat with them, correct?

15 A Correct, we sat there for a little
16 bit, yes.

17 Q Okay. And Constable Pedersen is
18 directing traffic?

19 A Correct.

20 Q And she is the victim liaison officer.

21 A After everything is dealt with.

22 Q And she is the victim liaison officer?

23 A After everything is dealt with, she
24 usually deals with the victims.

25 Q So why not trade places with her?

1 A We didn't do that at the time.

2 Q Can you give me any reason?

3 A Because I was dealing with the girls
4 at the time and Glenda was directing traffic. If
5 we probably had more manpower that would happen,
6 but it didn't at the time.

7 Q How does more manpower have anything
8 to do with changing places? You are doing a job
9 and Constable Pedersen is doing a job. Just trade
10 jobs?

11 A And afterwards, the victims liaison
12 officer dealt with the family.

13 Q My question to you, sir, is why didn't
14 you just trade places with Constable Pedersen?

15 A Because we didn't at the time.

16 Q Can you give me a reason?

17 A No, I can't. Because we didn't.

18 Q Okay. I suggest to you that both
19 girls were screaming that they wanted to get out
20 of the car the whole time they were in there;
21 isn't that correct?

22 A That's not correct.

23 Q That's not correct?

24 A Not correct.

25 Q So, if they told us that, they would

1 be mistaken?

2 A I'm not saying mistaken, they had just
3 been traumatized, they just lost --

4 Q We know that they were traumatized.
5 My suggestion to you is that they were screaming
6 because they wanted to get out of the car?

7 A No, they were not. Because I was in
8 the car with them. I asked them if they can phone
9 their father, or if I could phone their father,
10 and they're the one that phoned their father.
11 They were not screaming and yelling in the car
12 when they are phoning the father.

13 Q It didn't take 20 minutes to phone
14 their father, sir?

15 A No, it didn't, but it took that for
16 him to arrive there. It took 20 minutes for him
17 to arrive there. They do not need to be walking
18 around the scene. First of all, it is cold out,
19 they do not need to be walking around a scene like
20 that, to see the tragedy that their mother went
21 through, they do not need to remember their mother
22 that way.

23 Q I understand that as well, but they
24 could have stood beside the car.

25 A It is cold out.

1 Q It may be cold out, sir, but what if
2 they wanted to get out of the car?

3 A It is cold out, they are traumatized
4 to begin with, they don't need to be seeing what
5 is going on. They need to be in a warm vehicle
6 where they can calm down and stay away from that
7 element, where they can't see what is going on.

8 Q Mr. Graham, the girls were in your car
9 for 20 minutes.

10 A Correct, while their father was on his
11 way.

12 Q Correct. Did they ever ask you to get
13 out of the car?

14 A I can't remember that.

15 Q If they had asked you to get out of
16 the car, what would you have done?

17 A I would have asked them, why do they
18 want to get out.

19 Q To have a smoke?

20 A Did they ask me that?

21 Q I suggest to you that they did.

22 A I don't remember that.

23 Q Would you have let them out to have a
24 smoke?

25 A If they wanted to, I guess I probably

1 would have. But I don't recall them asking to get
2 out for a smoke.

3 Q You don't recall that at all?

4 A Correct.

5 Q You had a colleague, Officer Maloney,
6 when you worked at East St. Paul?

7 A Correct.

8 Q Did you get along well with him?

9 A Yes.

10 Q Any animosity between the two of you
11 that you would see?

12 A Not that I could really see, no.

13 Q Okay. When you and Chief Bakema
14 worked on a case together, did you do your notes
15 together?

16 A Worked on what case together?

17 Q Any case? Let's go back a step, did
18 you and Chief Bakema ever work on a case together
19 during your tenure at East St. Paul Police?

20 A Probably, just like everyone else
21 probably worked on a case with him.

22 Q Okay. Was it your practice, when you
23 worked on a case with Chief Bakema, to do your
24 notes together?

25 A No, that was not my practice.

1 Q Did you ever, when you worked on a
2 case with Chief Bakema, do your notes together?

3 A Not that I recall, no.

4 Q Your colleague, your former colleague,
5 Officer Maloney was interviewed by Commission
6 Counsel, and I'm going to read to you what he
7 said. I'm going to ask you for your comment on
8 it. It is at page 15, Your Honour.

9 THE COMMISSIONER: Let me get it.

10 BY MR. ZAZELENCHUK:

11 Q Commencing at line 24, on the bottom
12 of page 15, your former colleague is asked:

13 "Q And when you say making notes
14 together, what do you mean by that?

15 A Sitting down together and making
16 notes together.

17 Q And who did you observe doing
18 that?

19 A Well, it was, well, Harry and Ken
20 used to do it when they would do their
21 files or go on a call together."

22 And then there is a little interchange, and if we
23 go down to the bottom of page 16, there is a
24 further -- no, we will skip that. If we turn the
25 page and go to page 24, line 4:

1 Q Approximately how many times
2 would you have observed that taking
3 place?

4 A Probably half a dozen."

5 Now, that was the on oath evidence
6 that your former colleague gave to Commission
7 Counsel when he was interviewed.

8 A It is kind of funny, because I believe
9 we are on opposite sides of shifts.

10 Q So your evidence today is that Officer
11 Maloney is mistaken when he gave that evidence?

12 A Yeah. Because if he saw me most of
13 the time doing this, how can he do that when he is
14 on the opposite shift?

15 Q But there is no animosity that you
16 were aware of earlier between yourself and Officer
17 Maloney?

18 A Not that I can think of, unless he's
19 got a problem.

20 MR. ZAZELENCHUK: Thank you, sir.

21 MR. McDONALD: I have no questions of
22 this witness, Mr. Commissioner.

23 THE COMMISSIONER: Thank you.

24 MR. WEINSTEIN: Mr. Commissioner, this
25 might be a good time.

1 THE COMMISSIONER: I am sorry, I am
2 having difficulty hearing you?

3 MR. WEINSTEIN: I anticipate being
4 some time with this witness, and rather than
5 breaking it up for the morning break, perhaps it
6 is prudent to take it now and then I can go right
7 through?

8 THE COMMISSIONER: We will break now.
9 15 minutes.

10 THE CLERK: All rise. This Commission
11 of Inquiry is now in recess.

12 (Proceedings recessed at 10:32 a.m.
13 and reconvened at 10:46 a.m.)

14 THE CLERK: All rise, please. This
15 Commission of Inquiry is now re-opened. Please be
16 seated.

17 MR. WEINSTEIN: Thank you, sir.

18 BY MR. WEINSTEIN:

19 Q I am told that it is not unusual for
20 police officers who attend together to sometimes
21 get together when they are preparing notes, just
22 to make sure they've got things down properly.
23 Doesn't that happen?

24 A That happens occasionally, but not --
25 try not to do them verbatim word for word in

1 exactly what the other member did.

2 Q No, but in making notes, am I not
3 correct, sometimes, and I'm not suggesting
4 anything is wrong with it, that it is not unusual
5 for peace officers who are attending basically
6 together to perhaps share information in preparing
7 the notes?

8 A Correct. For a big scene like this,
9 yeah, you can go over each other's notes, I guess.

10 Q Yes.

11 THE COMMISSIONER: You are not
12 suggesting that it is proper, are you, MR.
13 Weinstein?

14 MR. WEINSTEIN: No.

15 THE COMMISSIONER: Isn't there always
16 the concern, if you have a senior officer and a
17 junior officer and one, particularly the senior
18 officer, has seen something that the junior
19 officer hasn't seen, that suddenly it goes into
20 the junior officer's notes. And later when he is
21 asked to refresh his memory, he refreshes his
22 memory of something that he hasn't seen. Isn't
23 that a concern about the whole concept of
24 collaboration?

25 MR. WEINSTEIN: I was going to follow

1 up.

2 THE COMMISSIONER: I was just
3 wondering, although I know it is a practice, the
4 authorities are clear that it shouldn't be done.

5 MR. WEINSTEIN: I appreciate that.

6 BY MR. WEINSTEIN:

7 Q But in the past, okay, have you seen
8 that being done?

9 A With other officers, yes.

10 Q And needless to say when you
11 testify -- and you've been called to testify in
12 the past, correct?

13 A Correct.

14 Q You are expected to testify just what
15 you saw or did, is that correct?

16 A Correct.

17 Q You can't testify what someone else
18 did if you did not see it?

19 A Correct.

20 Q That would be improper?

21 A Correct.

22 Q Now, just also as far as notes go, and
23 dealing with East St. Paul, in this particular
24 case Sergeant Carter was the reader; is that
25 correct?

1 A Either Sergeant Carter or Harry.

2 Q I'm talking about this particular
3 case?

4 A This particular case, yes, Sergeant
5 Carter was.

6 Q And Sergeant Carter has been the
7 reader on previous cases?

8 A Quite a few cases, yes.

9 Q Has there been occasion that Sergeant
10 Carter, he makes -- just so I'm clear -- the
11 reader makes sure that notes are proper, that the
12 facts are there, that type of thing?

13 A Correct.

14 Q If there is deficiencies you would
15 hear from Sergeant Carter, and no doubt you have
16 in the past?

17 A Correct.

18 Q If something, if perhaps he sees
19 something in a narrative and it is not in your
20 notes, all right, he would ask you about it or ask
21 you to put in a supp; is that correct?

22 A Either he would ask me to do that, or
23 there has been times where he has actually gone
24 into the narrative that I have made and changed it
25 himself.

1 Q To add something?

2 A Correct, add or take away something.

3 Q All right. And for no ulterior
4 motive, just to make sure it is accurate, and more
5 importantly to make sure it is complete?

6 A Correct.

7 Q Now, you said in your evidence to
8 Mr. Paciocco, no, I didn't put about the smell of
9 liquor, that I detected a smell of liquor in the
10 truck, but it is in the narrative of Mr. Bakema;
11 correct?

12 A Yes.

13 Q And Sergeant Carter, as a reader,
14 would have seen both your notes and no doubt the
15 narrative of Mr. Bakema; correct?

16 A Correct.

17 Q Were you ever asked by Mr. Carter
18 about perhaps putting in additional notes about
19 you smelling the liquor?

20 A No, I was not.

21 Q Or about you seizing the uniform?

22 A No, I was not.

23 Q Just while it is on my mind, when you
24 were asked about the uniform, I notice in your
25 RCMP interview they asked you about the uniform,

1 and you didn't have to have your memory refreshed
2 by the RCMP, by showing you Mr. Bakema's report,
3 you remembered that?

4 A I remember that, yes.

5 Q And there is no question, it is not in
6 your notes and it should have been?

7 A That's correct.

8 Q Right?

9 A Correct.

10 Q Just like the smell of liquor,
11 correct?

12 A That's correct.

13 Q Was that done to give a break to
14 Mr. Zenk?

15 A I don't know what Carter's motive to
16 that was.

17 Q No, no, I'm asking you?

18 A Oh, for me?

19 Q Forget about --

20 A No, no, no, I didn't do that to
21 give -- I didn't know Zenk at the time. So, no,
22 that's no motive on my behalf.

23 Q Just dealing with, towards the tail
24 end of Mr. Paciocco's interview or questioning of
25 you, peace officers, it is sort of a family;

1 correct?

2 A Sometimes.

3 Q Yeah. I'm not suggesting that you get
4 along with every police officer, but I'm
5 suggesting to you it would perhaps be
6 uncomfortable arresting "one of your own."

7 Correct?

8 A It probably would be uncomfortable.

9 Q And even so, would you do something to
10 give him a break as opposed to giving -- not
11 giving a civilian a break?

12 A No. Because he has to realize that he
13 is the one that screwed up. I'm not going to put
14 my job in jeopardy because he screwed up.

15 Q Did you do anything in this case to
16 give Mr. Zenk a break?

17 A No, I did not.

18 Q And just dealing with notes or
19 narratives, say with other police officers, say
20 Ms. Pedersen, did she have a problem with notes
21 that you are aware of?

22 A Yes.

23 Q In what way?

24 A A lot of times she didn't even do her
25 notes -- well, she would do her notes but she

1 would always put in other personal comments or
2 other member's comments into her notes that didn't
3 belong there.

4 Q And was she talked to about this?

5 A Yes, she was.

6 Q And was she -- and I'm not saying
7 there is anything wrong with the following -- was
8 she on occasion helped in making her notes or her
9 narrative?

10 A Yes, Carter would always either help
11 her with her notes, tell her what to put in, what
12 not to put in, and also he would actually write
13 her narratives for her, or change them for her to
14 make it sound better.

15 Q Okay. You and Mr. Bakema -- you
16 joined the East St. Paul when?

17 A I can't remember offhand when that
18 was.

19 Q Okay. I'm told that you and
20 Mr. Bakema never socialized outside of the office;
21 is that correct?

22 A That's correct.

23 Q You may see each other at police
24 functions, but I'm talking about, say going out
25 for Saturday night for dinner or things like that,

1 going out for Sunday --

2 A No, we never did anything like that.

3 Q And I'm not sure what my learned
4 friend was getting at, but I will ask you about
5 this: He asked you where you are working and
6 where Mr. Bakema was working, and you mentioned in
7 the same office, correct?

8 A Correct.

9 Q At a realty firm. I'm told that there
10 are 95 real estate agents at that firm; is that
11 correct?

12 A That's correct, it is the biggest in
13 the city.

14 Q All right. So it is not as though you
15 and Mr. Bakema are in an intimate office with no
16 other people around?

17 A That's correct. Within a week I might
18 see Bakema maybe two, three times for a total of
19 10, 15 minutes.

20 Q And that would be the same with other
21 realtors in the office? Because I'm told that
22 when you are a realtor, you are spending most of
23 your time away from the office, either showing
24 homes or going out getting listings, things like
25 that?

1 A Correct. And I have my own office at
2 home as well.

3 Q All right. As a matter of fact, even
4 though you have an office at the real estate firm,
5 you are not there a lot?

6 A Correct.

7 Q And that's the same with most
8 realtors; is that correct?

9 A That is correct.

10 Q Because you are making your money
11 going out showing homes, getting listings, things
12 like that?

13 A Correct.

14 Q And I'm told also, while you've been
15 at the realty firm, you and Mr. Bakema don't
16 socialize, like going out together?

17 A We might go for lunch the odd time
18 when they have their little committee
19 organizations, but that's where all of the agents
20 are together.

21 Q No, I'm just talking about a one on
22 one type of thing socializing?

23 A Might go for coffee or something like
24 that the odd time, but not very often.

25 Q All right. But at East St. Paul, I

1 understand, once in a while you would help each
2 other. I understand that you and Mr. Bakema
3 reshingled Mr. Woychuk's roof; is that correct?

4 A That's correct, there was three of us
5 there that shingled his roof.

6 Q Yeah. You and Woychuk got along?

7 A I knew Woychuk from back in Brandon.
8 We were good friends.

9 Q Now, you get the call, and I'm not
10 going to go through that, and you and Graham
11 attend at the scene; correct?

12 A Correct.

13 Q We know it was a cold day?

14 A It was very cold.

15 Q Very cold. And once you got to the
16 scene, you saw, I take it, you take a view of, you
17 know, what is there?

18 A Correct.

19 Q Correct? And who decided where you
20 went, where Bakema went?

21 A We both just went our ways, and then
22 we just dealt with whatever we could do at the
23 time.

24 Q All right. And Constable Pedersen,
25 you had told her where she should go, where she

1 should take her cruiser car, or police car, is
2 that correct?

3 A That's correct.

4 Q So Ms. Pedersen really wasn't at the
5 close scene; is that correct?

6 A That's correct, she was up by the
7 weigh scale at the turnoff to 101.

8 Q Now, you at one point in time see
9 Mr. Bakema by the truck; is that correct?

10 A That's correct.

11 Q Okay. You see him by the truck and
12 you were asked this, and I'm not asking about
13 possibilities, if this could have happened or that
14 could have happened, I'm not asking you those
15 types of questions. I want to know from you, your
16 best evidence, how many police officers were at
17 the scene with Mr. Zenk at the truck?

18 A At the truck it was just Harry.

19 Q Okay. Because the only two police
20 officers besides Harry were you, correct?

21 A Correct.

22 Q Were you at that truck?

23 A Not at that time, no.

24 Q No. I'm talking when Zenk is there.

25 A No.

1 Q And was Woychuk at the truck --

2 A No.

3 Q -- that you saw?

4 A No.

5 Q Woychuk arrived a little later,

6 correct?

7 A Correct.

8 Q And you saw Mr. Bakema, I think you
9 saw him, and you will correct me if I'm wrong,
10 bringing Harvey-Zenk towards the Woychuk vehicle?

11 A Yes, they were both walking together
12 towards the vehicle.

13 Q And I think you told, in an interview,
14 you were asked about how long the conversation
15 might have been where Bakema was at the vehicle.
16 And just to refresh your memory, just in case,
17 this is the interview you had with Commission
18 Counsel. You said the conversation at most would
19 have been about three minutes. Do you recall
20 that?

21 A Yes, a couple of minutes in there.

22 Q Do you recall that as being, to the
23 best of your ability, an accurate answer?

24 A To the best of my knowledge, yes.

25 Q And when you saw Bakema walking with

1 Zenk towards the vehicle, okay, was there anything
2 unusual or alarming about the way in which
3 Mr. Zenk was walking?

4 A Not that I could see, no.

5 Q No staggering, no lack of coordination
6 that you might see. And you have been experienced
7 with an impaired driver, a lot of times one thing
8 that happens is coordination, or lack of
9 coordination I should say?

10 A That's correct.

11 Q And he puts him in Mr. Woychuk's --
12 his vehicle.

13 A I didn't see him put him in Woychuk's
14 vehicle, but the next time I saw him, he was in
15 Woychuk's vehicle.

16 Q Okay. Were you near your vehicle at
17 this time?

18 A I was pretty close to my vehicle,
19 which is a short distance from Woychuk's.

20 Q Okay. Now, I'm going to ask you this,
21 and I'm not asking whether thing are possible or
22 not possible, I'm asking your best evidence; was
23 Mr. Zenk ever standing outside your vehicle for 15
24 minutes while the young Taman ladies were in your
25 vehicle?

1 A No, he was not. The whole time that I
2 know, he was in Woychuk's vehicle.

3 Q And surely that's something you would
4 have noticed, because the Taman ladies were in
5 your vehicle; correct?

6 A That's correct.

7 Q And you were at your vehicle; correct?

8 A That's correct.

9 Q And Zenk was nowhere near your
10 vehicle, correct?

11 A Nowhere near.

12 Q Now, did Mr. Bakema tell you that he
13 was calling Carter out?

14 A Yes, he did.

15 Q And I believe my learned friend
16 Mr. Paciocco, and I think you told the court,
17 excuse me, the inquiry, under questioning, that
18 Mr. Bakema told you words to the effect, I'm
19 calling Carter out, you know, I know Zenk, I
20 worked on an opposite shift from him, I don't want
21 an appearance of bias or anything like that. Do
22 you recall you gave that answer?

23 A I recall something like it, yes.

24 Q And Mr. Paciocco told you, and
25 referred you to your interview with the RCMP and

1 said, and you agreed you never mentioned that part
2 of the conversation to the RCMP. Do you remember
3 him asking you that?

4 A Yes, I do.

5 Q I will go further, and in fairness to
6 you, you also had an interview with Commission
7 Counsel, correct?

8 A That's correct.

9 Q With Mr. Clifford, and this is
10 March 6, 2008. In fact, during that interview you
11 did tell Commission Counsel about that part of the
12 conversation with Mr. Bakema; correct?

13 A That's correct.

14 Q And just, I will put it into the
15 record, at page 19 of your interview with
16 Commission Counsel, and I will read portions into
17 the record. Question, this is line five,
18 Mr. Commissioner, page 19.

19 "Q Harry Bakema told you that the
20 fellow in Jason Woychuk's cruiser was
21 a police officer?

22 A Was a police officer, indicated to
23 Harry at the time, I guess when they
24 were having conversation at the
25 vehicle, that he was a police officer,

1 works out of district 3. And Harry
2 indicated to me that that was the same
3 place that he was a Sergeant at for
4 some time. And at that time, that's
5 when Bakema indicated to me that he
6 was going to call out Norm Carter, who
7 was a Sergeant at the time for East
8 St. Paul police, to attend to the
9 office and take over this
10 investigation.

11 Q Did he say why he was doing that?

12 A Because he doesn't want to have
13 any conflict, he wants to be out of
14 the situation, he doesn't want to have
15 any conflict with Zenk, and want this
16 to go the wrong way. He wants an
17 unbiased person to take control of
18 this.

19 Q And where was he going to call Norm
20 Carter, to attend, to go where?"

21 And you mentioned to the office and Woychuk was
22 going to go to the office.

23 And then later on at page 21, still
24 going over that, or page 20, starting at line 19,
25 page 20:

1 "Q Now, when you say that he doesn't
2 want to have a conflict, when you say
3 that Harry Bakema said he didn't want
4 to have a conflict with Harvey-Zenk,
5 are these words your words or are you
6 using the words of Chief Bakema on the
7 day?

8 A I'm using his words.

9 Q I would like you to elaborate on
10 that and explain that in as much
11 detail as you can, what exactly Harry
12 Bakema was saying to you about his
13 relationship with Harvey-Zenk, or any
14 concerns he had about dealing with a
15 Winnipeg Police officer? And not in
16 your words, but in the words as
17 expressed to you by Chief Bakema?"

18 And this is the last portion I will read to you,
19 page 21 line 7:

20 "What he said to me was, I don't know
21 verbatim word for word, but in general
22 what he said to me is he knows this
23 person works with Winnipeg Police,
24 district 3. He was on the opposite
25 shift of Bakema's, but they did

1 overlap at times, and that he feels
2 that he shouldn't have any contact
3 with Zenk whatsoever because of the
4 situation that they kind of worked in
5 the same office before and so forth
6 and that know each other. And that's
7 why he called out Sergeant Carter to
8 deal with that end of it. That way
9 there is no ambiguity or anything like
10 that to come out."

11 Do you recall that --

12 A Yes, I do.

13 Q -- being asked of you, and your answer
14 being given to Commission Counsel?

15 Now, when Chief Bakema -- when did you
16 find out, number one, I'm not talking about the
17 name Derek Harvey-Zenk, but when did you find out
18 that he was a police officer, that the person that
19 Bakema was bringing or put in the car was a police
20 officer?

21 A When Harry told me afterwards, just
22 what I said here, after he was put into Woychuk's
23 vehicle, Harry came to me and told me this, what I
24 just said in the statement.

25 Q Okay. When did you find out the

1 actual name?

2 A That wasn't until, I believe, I spoke
3 to Woychuk or something about that. He told me
4 his name, Derek, but that's all I knew at the
5 time. When it really clicked in who he was and
6 where he was from was from Woychuk.

7 Q Okay. Now, did Harry Bakema ever tell
8 you that he thought that Zenk was impaired?

9 A No.

10 Q All right. Did Harry Bakema tell you
11 that he appeared to be distraught, that Zenk
12 appeared to be --

13 A He told me he was distraught.

14 Q And that's the word he used?

15 A Yeah, distraught.

16 Q Let me ask you this: Did Harry use
17 the word "pissed"?

18 A No, I never heard him use the word
19 "pissed."

20 Q Say a person is impaired or
21 inebriated, what word would he use?

22 A He would say intoxicated or impaired,
23 but mostly he says intoxicated.

24 Q All right. Did he ever tell you that,
25 you know, we have to get Mr. Zenk out of here

1 quickly?

2 A No. He said they were just waiting
3 for Norm to get to the office and Woychuk was
4 supposed to take him to the office.

5 Q Okay. And some time passed from the
6 time that Zenk was put in the vehicle until
7 Woychuk left with -- or Woychuk left with Zenk, is
8 that correct?

9 A Yes, that's correct.

10 Q Okay. So it is not something that
11 happened very quickly, is it?

12 A No, because the paramedics were there
13 looking at him, and they were waiting for Carter
14 to get to the office, so it took some time.

15 Q Okay. So quite the opposite, Mr. Zenk
16 was in the vehicle for some time; correct?

17 A That's correct.

18 Q I'm told that Sergeant Carter had more
19 experience dealing with impaired drivers than
20 Harry Bakema, is that correct, based on your
21 knowledge?

22 A I'm not too sure about that.

23 Q All right. When you then went to the
24 truck on your own, okay, first, and you opened the
25 vehicle, and you were what, searching for

1 identification, registration, that type of thing?

2 A Registration of the vehicle, yes.

3 Q Which door, do you remember which door
4 you opened?

5 A The driver's door.

6 Q Okay. And are you inside for some
7 time looking around?

8 A I opened the door, looked around,
9 didn't see the registration. I had to reach into
10 the glove box, so I had to sit in the driver's
11 seat to reach over and get the registration.

12 Q Okay. I assume the door was left open
13 while you were in there?

14 A Yes.

15 Q Okay. And did Harry come up after
16 that, after the door was open?

17 A I am pretty sure he was there pretty
18 much the same time I opened the door to go in.

19 Q Okay. But you were in there by
20 yourself at first, I'm assuming?

21 A I was in the vehicle by myself.

22 Q Okay. The door is open for a period
23 of time. Do you recall, did Harry try to smell
24 something in the vehicle?

25 A I told him that I could smell

1 something like alcohol in the vehicle, and then he
2 stuck his head in to try and smell as well.

3 Q Okay. Did he tell you whether he
4 could --

5 A He said he could barely smell
6 anything, he couldn't smell anything.

7 Q Okay. But the door had been left open
8 for some time; correct?

9 A Probably for about 30 seconds,
10 somewhere in there.

11 Q Okay. And no question, dealing with
12 an impaired person, we've heard this before, it is
13 easier to smell liquor from a person in a confined
14 space as opposed to being outside with the breeze
15 and cold; would you agree with that?

16 A Yes.

17 Q Okay. That sometimes you can't smell
18 liquor on a person's breath outside, but certainly
19 after you put him in a cruiser car, you can?

20 A Sometimes you can smell him outside,
21 but it depends on the weather too. If it is cold
22 out, it makes it a lot harder to smell alcohol on
23 someone.

24 Q But if there is a breeze, it even
25 makes it harder?

1 A That's correct.

2 Q But once you get an impaired, what
3 turns out to be an impaired person, into a
4 vehicle, now it is not as cold, it is not cold,
5 there is no breeze, it is easier then, if there is
6 liquor on the person's breath, to detect it; is
7 that correct.

8 A That is correct. From my experience,
9 when they are in the vehicle, after a time, once
10 it heats up in the vehicle, you can smell the
11 alcohol a lot easier.

12 Q Do you recall when -- do you have any
13 idea when the uniform was seized, approximately,
14 the time?

15 A No, I don't know offhand.

16 Q I believe, if I can get it, that you
17 have a notation about Dr. Hook being called?

18 A That's correct.

19 Q Do you have your notes in front of
20 you? Do you want to turn to that?

21 A Dr. Hook attended at 1440.

22 Q Okay. Does that refresh your memory
23 at all when you might have attended to the truck
24 and taken the uniform?

25 A It was definitely before Dr. Hook

1 arrived there.

2 Q I appreciate --

3 A It might have been after the traffic
4 analysis was done, or just before that, one of the
5 two times.

6 Q Would it have been as early as 8:28 in
7 the morning?

8 A I don't think it was that early.

9 Q Okay. Did you find out later in the
10 morning or early afternoon that Mr. Zenk was going
11 to be charged with impaired driving -- alcohol
12 related driving charges?

13 A It was later on that day.

14 Q Okay. While you were still at the
15 scene?

16 A Still at the scene, yes.

17 Q I'm suggesting to you this would have
18 been before 3:00 in the afternoon?

19 A Yes.

20 Q Okay. Did you and Harry go in briefly
21 to the station later that morning or noontime
22 for --

23 A We went for a washroom break.

24 Q Okay. And then came back?

25 A Correct.

1 Q Do you recall if you found out at that
2 time that he was going to be charged, what he was
3 going to be charged with, he was showing signs of
4 impairment, do you know if you found out at that
5 time?

6 A I can't remember offhand if that's
7 when it was.

8 Q If you are doing your notes, do you
9 get times sometimes from dispatch?

10 A Yes.

11 Q Okay. And how does that work?

12 A Either we call them and they tell us
13 over the phone what the times were, or if there is
14 a major thing where we need a lot of times, they
15 fax a sheet with all of the times and everything
16 on it.

17 Q And that's if you say you can't recall
18 on your own the times?

19 A Correct.

20 Q You get it from that other source?

21 A That's correct.

22 Q You were on the scene until
23 4:00 o'clock, if I understand?

24 A That's correct.

25 Q And Mr. Bakema was on the scene too

1 until 4:00 o'clock?

2 A That's correct.

3 Q I believe someone used the term, "we
4 cleared the scene"?

5 A That's right.

6 Q This is after the reconstructionist
7 finished his work and took his measurements?

8 A After he was finished, after Dr. Hook
9 left, and after we moved all of the barricades to
10 open up the traffic.

11 Q I assume the barricades, do you recall
12 what time the barricades came -- you had some
13 discussion with Mr. Paciocco about that.

14 A It was before the traffic analyst
15 came, but I'm not too sure exactly what time it
16 was.

17 Q If I may just have a moment?

18 Just as far as your notes, you didn't
19 put in there yourself about the smell of liquor
20 from the truck, correct? We know that.

21 A Not in my notes.

22 Q That's not in your notes?

23 A That's correct.

24 Q You said it is in the narrative of
25 Mr. Bakema?

1 A Correct.

2 Q And again, in hindsight, since you are
3 the one that smelled it, it should have been in
4 your notes; correct?

5 A I guess it should have, yes.

6 Q Or in a narrative prepared by you?

7 A In a narrative, yes.

8 Q And also about seizing the uniform,
9 even though it was covered by Mr. Bakema, it
10 wasn't being hidden, it should have also been in
11 your notes?

12 A Yes, and the narrative.

13 Q In your notes or in a narrative?

14 A A narrative, yes.

15 Q Okay. But on those two points, were
16 you ever asked by Sergeant Carter to put in your
17 own narrative, as far as say those two points or
18 other points?

19 A No.

20 Q I think I have one last question,
21 thanks to my assistant. Did any police officer,
22 any other police officer get into your vehicle
23 when you were looking -- or the Taman ladies were
24 there?

25 A I don't think so, no.

1 Q To the best of your recollection, it
2 was you and the two daughters?

3 A That's correct.

4 MR. WEINSTEIN: Thank you, sir.

5 THE WITNESS: Thank you.

6 MR. JACK: We have no questions,
7 Mr. Commissioner.

8 THE COMMISSIONER: Thank you.

9 MR. PROBER: Good morning,
10 Mr. Commissioner. Mr. Graham.

11 BY MR. PROBER:

12 Q You confirmed to Mr. Weinstein that
13 Mr. Bakema did, at no time, tell you that Derek
14 Harvey-Zenk was impaired; correct?

15 A That's correct.

16 Q In fact, no one that day told you
17 Derek Harvey-Zenk was impaired; correct?

18 A Afterwards, Woychuk told me that he
19 could smell alcohol.

20 Q Yes, that's --

21 A But not that he was impaired.

22 Q Exactly. Woychuk told you he smelled
23 alcohol, he told you that one of the paramedics
24 smelled alcohol; right?

25 A That's correct.

1 Q But at no time did Woychuk tell you
2 that Derek Harvey-Zenk, in his opinion, was
3 impaired; is that correct?

4 A That's correct.

5 Q At no time did one of the paramedics
6 tell you, in their opinion, that Derek Harvey-Zenk
7 was impaired; is that correct?

8 A That's correct.

9 Q In fact, as you sit here today, in
10 fact, on Friday, and you try to recollect the
11 events of that day, your best recollection is that
12 you were told by Chief Bakema, chief at the time,
13 that he did not smell alcohol on Derek
14 Harvey-Zenk; correct?

15 A Correct.

16 Q And when your colleague, Woychuk, told
17 you that he was concerned, because this was a
18 fellow police officer and he didn't want to be
19 responsible for ruining his reputation, you told
20 Woychuk, did you not, that we can only do what we
21 can do, and it is not you that's going to ruin his
22 career, it is he himself, Derek Harvey-Zenk;
23 correct?

24 A That's correct.

25 Q And, in fact, that's something that

1 you told to the Commission as well, right?

2 A That's correct.

3 MR. PROBER: Thank you, sir. Those
4 are my questions.

5 BY MR. GREEN:

6 Q Commission Counsel asked you about the
7 roadside breathalyzer device; do you recall that?

8 A Yes, I do.

9 Q I think you said that you were
10 qualified to administer them?

11 A That's correct.

12 Q Some members of the department were
13 and others weren't?

14 A That's correct.

15 Q Ms. Pedersen was not qualified, to
16 your knowledge?

17 A To my knowledge, I'm not too sure if
18 she was or not.

19 Q And you took some sort of a course to
20 become qualified, I'm assuming?

21 A Yes.

22 Q Where did you take that?

23 A Brandon Police.

24 Q And had you actually administered
25 these tests over your career with East St. Paul?

1 A Yes.

2 Q How many times before this particular
3 accident?

4 A Many, many, many times.

5 Q And when you smelled the alcohol in
6 the Zenk vehicle, you were in the presence of
7 Bakema?

8 A That's correct.

9 Q Was there any discussion then about
10 administering the roadside breathalyzer?

11 A No, there was not. That was
12 afterwards, I believe that was afterwards when we
13 heard that he was being charged.

14 Q Okay. At that stage in your career,
15 sir, were you -- you had been a police officer for
16 how many years?

17 A Approximately five years before that,
18 four or five years before that.

19 Q Was that combined with East St. Paul,
20 and where else had you worked?

21 A Dakota Ojibway.

22 Q Okay. That's five years in total?

23 A That's five years in total.

24 Q Were you capable of heading up this
25 investigation at this point in your career?

1 A If I was told to, yes, I believe I
2 could.

3 Q So you were qualified to do it?

4 A Yeah, I guess.

5 Q Do you know why Chief Bakema didn't
6 ask you to head it up, when he felt that there may
7 be some sort of a conflict that he was involved
8 in?

9 A Because he gave it to a more superior
10 officer like a Sergeant.

11 Q Did he explain that to you?

12 A He wanted the Sergeant to deal with
13 it.

14 Q Did he tell you that he told Sergeant
15 Carter that that was the reason that he was
16 involving him, that is because he had some sort of
17 a possible conflict?

18 A That's what Bakema told me that's why
19 he told -- or called out Carter.

20 Q I know you said that.

21 A I don't know if he told Carter that,
22 that's something you would have to ask him.

23 Q But to your recollection, Bakema
24 didn't tell you that he had told Carter that
25 that's the reason why he wanted him involved, that

1 there was some sort of a possible conflict on his
2 part?

3 A No, you would have to ask him that
4 question.

5 Q Your answer is, no, he didn't tell you
6 that?

7 A That's correct.

8 MR. GREEN: Those are my questions,
9 thanks.

10 BY MR. McFETRIDGE:

11 Q Now, I understand, Mr. Graham, that
12 Mr. Taman attended at your vehicle, according to
13 your notes, at 7:41 in the morning?

14 A That's correct.

15 Q And after your brief discussion with
16 him, he would have then left shortly thereafter
17 with his daughters to go to the hospital?

18 A I believe so, yes.

19 Q And according to the notes of
20 Constable Woychuk, he left to go to the East St.
21 Paul Station approximately 8:08. Would you have
22 gone between the time that Mr. Taman left, and --
23 between that time -- he would have left what,
24 shortly thereafter, sometime after 7:41?

25 A Probably between 7:41, probably 7:50,

1 somewhere in there.

2 Q Okay. Because you have in your notes
3 at 7:49 you were calling for the RCMP traffic
4 analyst?

5 A So it would be between that time.

6 Q So he had left by that point in time,
7 Mr. Taman?

8 A Yes.

9 Q So I take it after he had left, you
10 would not have then gone to the Zenk vehicle to
11 look at it, or was it at that time that you and
12 Chief Bakema were doing some other work?

13 A No, I didn't look, I didn't go to the
14 Zenk vehicle at that time, no.

15 Q We heard the evidence of Constable
16 Pedersen that when she was driving back past the
17 scene to go to the Concordia Hospital, at
18 approximately 8:29, she had seen you outside the
19 Zenk vehicle holding a blue uniform?

20 A Was that when she was going to
21 Concordia or coming back from Concordia?

22 Q I am not sure if it was going or
23 coming back, I believe it was going, but she
24 indicated that she would have seen you standing
25 outside of the Zenk vehicle at 8:29?

1 A That would be kind of funny, because
2 if she was going to Concordia, the only way to see
3 me actually taking the uniform out of the vehicle
4 was to actually be either driving southbound on
5 the northbound lane, or driving right through the
6 scene. She would have had to go to 101 westbound,
7 got back on the eastbound, and then taken the
8 bypass, which was far north, or far south of the
9 overpass on 59. So that is impossible.

10 Q She said she saw you on the driver's
11 side of the vehicle. Is that where you entered
12 into the vehicle?

13 A That's where I entered into the
14 vehicle.

15 Q Would you have been holding the
16 uniform at the driver's side of the vehicle?

17 A That would be impossible to see if she
18 was going to Concordia.

19 Q So you would disagree with her when
20 she said at 8:29 that she saw you holding the
21 uniform?

22 A Yes.

23 Q When you remove -- or when you smelled
24 the strong odour of alcohol in the vehicle, did
25 you -- did either -- and you told that to Chief

1 Bakema, was there any discussion between you that
2 you should be immediately notifying the detachment
3 that a breath sample should be taken of Mr. Zenk?

4 A No, because I believe this was
5 afterwards, when he was already charged.

6 Q So that belief is based on you think
7 you were doing this investigation with the vehicle
8 some time later in the afternoon?

9 A Correct.

10 Q Just in terms of where your vehicle
11 was located in respect to the Woychuk vehicle, if
12 I could just have you look at -- I don't know if
13 you have in front of you, exhibit 82?

14 A Yes, I do.

15 Q And this is the photographs?

16 A Correct.

17 Q If I could take you to the photograph,
18 the bottom page 124, it is in the bottom
19 right-hand corner?

20 A All I have is 23, 26 --

21 Q Okay. No, it is 62 then, sorry, the
22 earlier set of photographs?

23 A Okay.

24 Q And if you look at the bottom
25 right-hand corner of that exhibit, page 124, and

1 this would have been a photograph that would have
2 been taken sometime after the time of the accident
3 because none of the emergency vehicles are
4 indicated there?

5 A Correct.

6 Q But it would indicate where the
7 various vehicles in the accident were located, and
8 that hadn't changed, correct?

9 A That's correct.

10 Q When you were then at the scene, when
11 the Taman children were in your vehicle, where
12 approximately would your vehicle have been parked
13 at that time?

14 A It would be probably pretty close to
15 where this picture is taken from.

16 THE COMMISSIONER: Sorry, I didn't
17 hear that?

18 THE WITNESS: Pretty close to where
19 this picture is taken from.

20 BY MR. McFETRIDGE:

21 Q Just look at this picture, before you
22 go across the intersection you will see some
23 debris, noticeable debris there. Were you
24 actually into the intersection where you parked
25 your vehicle, or would you have been parked back

1 where you see that debris in the middle of the
2 road?

3 A I believe I was parked just north of
4 that debris a little bit.

5 Q Just a little bit into the
6 intersection?

7 A North of it.

8 Q North of it?

9 A Behind, yes, on this side of the
10 debris, yes.

11 Q And where would the Woychuk vehicle
12 have been parked?

13 A Woychuk's vehicle was parked, if you
14 are going northbound on 59.

15 Q So you wouldn't be able to see it, the
16 roadway, it would have been to the left, I take
17 it, on the northbound traffic going north; is that
18 correct?

19 A It was kind of in the intersection.
20 He was parked, he came up after -- if you look at
21 exhibit 82, number 23 at the top?

22 Q If you would just hold on for a
23 minute, I can take you to another photograph. If
24 I could take you to now the same exhibit, page
25 147. And this is a photograph that's taken later

1 on in the day, but you will see a police vehicle
2 parked there?

3 A I can explain it better in this one
4 here.

5 Q Okay. Which one are you looking at?

6 A Exhibit 82, the first photo, number 23
7 at the top.

8 Q Where would the Woychuk vehicle be on
9 that?

10 THE COMMISSIONER: Excuse me, I'm
11 lost. All I have is the volume, I don't have what
12 he is referring to, what page would that be?

13 MR. McFETRIDGE: If you have the same
14 volume.

15 THE COMMISSIONER: What page?

16 MR. McFETRIDGE: It would be 23 at the
17 top. There is the four photographs at the very
18 back of that volume.

19 THE COMMISSIONER: Well, there is a
20 page number at the bottom, which page number?

21 MR. McFETRIDGE: There is no page
22 number on the bottom of the volume. There were
23 four additional photographs at the back,
24 Mr. Commissioner, and the one that's marked 23 at
25 the top of the page, and those were marked as a

1 separate exhibit, those last four photographs.

2 THE COMMISSIONER: Thank you, yes.

3 BY MR. McFETRIDGE:

4 Q So in that last --

5 A So with that photograph there, do you
6 see the emergency, the big one ton or whatever
7 that is, emergency vehicle there?

8 Q Right?

9 A Once that vehicle left, that's
10 approximately where Woychuk pulled his vehicle up
11 to.

12 Q Okay. At the time when you had
13 indicated to Chief Bakema that you had smelled a
14 strong odour in the vehicle, did he, and I can't
15 remember what your answer was, did he himself ever
16 look in the vehicle to see if he noticed the same
17 strong smell?

18 A Yeah, he stuck his head in the vehicle
19 and he said he couldn't really smell anything.

20 Q Pardon me?

21 A He said he couldn't really smell
22 anything.

23 Q At that time when you had indicated
24 that you had smelled the strong odour of alcohol,
25 did Chief Bakema ever indicate to you at any time

1 that he had smelled any alcohol on
2 Mr. Harvey-Zenk's breath?

3 A No, he did not smell anything.

4 MR. MCFETRIDGE: Thank you. Those are
5 my questions.

6 THE COMMISSIONER: Yes.

7 BY MR. PACIOCCO:

8 Q Sir, you were asked some questions by
9 Mr. Weinstein about Mr. Carter being the reader
10 and Mr. Carter not making any suggestions with
11 respect to changes in your notes, sir?

12 A Correct.

13 Q You understand that the notes are your
14 responsibility, and that you should take proper
15 notes and not rely on the reader to catch what you
16 don't include, sir?

17 A I should, but that's why we have a
18 reader.

19 Q Yes, sir. But you agree with me that
20 it is your responsibility initially, and the fact
21 that you have a reader doesn't remove any
22 responsibility from you, sir?

23 A That's correct.

24 Q Now, you indicated to my friend, when
25 he was asking you questions about being able to

1 remember during the RCMP interview that you had
2 found the uniform without notes and, therefore,
3 you didn't need an aide memoire. Do you remember
4 him asking you that question, sir?

5 A That's correct.

6 Q You will recall when I took you
7 through the RCMP passages, you had not made any
8 mention of Harry being there, that was something
9 that you omitted to mention to them, sir?

10 A In the RCMP interview?

11 Q Yes. Certainly if that had been in
12 your notes, if you had had complete notes that
13 would have described both you and Mr. Bakema going
14 to the vehicle, that would be something that
15 wouldn't have been missed, sir?

16 A Possibly, yes.

17 Q You indicated, when you were being
18 asked about whether there was any prospect of
19 doing any favours for a fellow police officer, you
20 responded, I didn't know Mr. Zenk, that's not a
21 motive on my behalf. Do you recall that answer,
22 sir?

23 A Yes.

24 Q And I take it from your answer that
25 you would agree that knowing someone who is a

1 fellow police officer would potentially provide a
2 motive for providing some type of special
3 treatment to that individual?

4 A Maybe for other people, but not for
5 myself.

6 Q I know, but you indicated that you
7 didn't know him, sir, but I am just saying, the
8 way you responded to that question, as though if I
9 had know him, then maybe I would have a motive, is
10 effectively how I interpreted what you were
11 saying, sir?

12 A No motive, whether I knew him or not.

13 Q Okay. No motive for you, sir, but you
14 were essentially acknowledging, I think, that if
15 somebody knew him, it might be a motive?

16 A Could be.

17 Q Sir, with respect to Constable
18 Pedersen having problems in including what other
19 people did in her notes, sir, she had provided us
20 with evidence about a difficulty she got into
21 because of including information in her notes
22 about something you did that she considered to be
23 a charter breach. Do you recall that, sir?

24 A Yes, I do.

25 Q And I think the way she explained it

1 was, it was a situation where you had put a
2 suspect or an individual in your vehicle for up to
3 45 minutes, without providing him with the right
4 to counsel, sir?

5 A Correct.

6 Q And she had recorded in her notes that
7 you had him in a locked vehicle and that you had
8 not chartered him, sir?

9 A It was not a locked vehicle, he could
10 have left at any time.

11 Q Sir, was it in the back seat of a
12 police vehicle?

13 A The window was down, and I advised him
14 he was not under arrest at the time.

15 Q Okay. I'm not going to get into the
16 question of whether or not there was charter
17 violation at that time, sir. But you agree that
18 the controversy had to do with her including the
19 fact that he was in the back of your vehicle and
20 that he had not been chartered, sir?

21 A If she actually knew the full
22 situation, then maybe she would understand. But
23 that's the type of person Glenda is, she likes to
24 see what other people are doing, right or wrong,
25 in her mind. And before I even started, when I

1 first started on the force there, her and another
2 member took me aside and said, make sure you take
3 another note pad with you to write down stuff
4 about other members because you are going to need
5 it down the road. That's the type of person she
6 is.

7 Q So your evidence is, she told you to
8 bring another note pad just to record stuff about
9 your colleagues?

10 A Yes.

11 Q Sir, I'm going to suggest to you that
12 if she was, in fact, recording her observation
13 that this man was in the back of a locked police
14 vehicle, that would have been her observation,
15 sir?

16 A That would have been her observation.

17 Q And you would agree with me that that
18 would be a relevant thing for an officer to
19 include in their notes?

20 A If she was actually to be part of this
21 investigation at the time, yeah, but she was not
22 to be part of it, she just showed up on her own
23 free time.

24 Q Sir, does it matter if a police
25 officer observes something relevant to a criminal

1 investigation, whether they are there as a result
2 of an initial plan or whether they are there at
3 all? If it is something that they observed that's
4 relevant, shouldn't they record it, sir?

5 A Yes, but if she actually had the
6 training and knew about the circumstances of the
7 stop, then maybe she would look at the situation
8 differently.

9 Q So what you are quibbling with is her
10 interpretation of the event, rather than the fact
11 that she recorded it?

12 A Her interpretation is always different
13 than others.

14 Q All right. So she was recording her
15 observations, and you didn't agree with her
16 interpretation of those observations?

17 A She was recording her opinion of what
18 she saw.

19 Q All right. Well, sir, isn't
20 everything we observe an opinion about what we
21 saw?

22 A A personal opinion, I guess so.

23 Q Yes. And, sir, you indicated that
24 there are approximately 95 people working in your
25 realty office?

1 A I didn't indicate that, Mr. Weinstein
2 indicated that.

3 Q Well, you seemed to agree with him.
4 Did I misunderstand that?

5 A It was somewhere in the nineties, yes.

6 Q And you had also told him that being a
7 police officer is something of a brotherhood?

8 A Yes.

9 Q And I take it you felt that way when
10 you were working with Harry Bakema, that you were
11 effectively involved in some kind of brotherhood?

12 A Like every other member should, yes.

13 Q Sure. And there has to be some kind
14 of bonding and loyalty between police officers for
15 the proper functioning of the police force?

16 A To a certain extent, yes.

17 Q And I take it none of your other 90 or
18 more colleagues at the ReMax office are former
19 brothers in the police force, along with you,
20 other than Harry Bakema?

21 A Correct.

22 Q Now, sir, you will remember
23 Mr. Weinstein putting a passage from the
24 transcript to you about the length of time that
25 there would have been a conversation with Harry

1 and Mr. Zenk at the truck?

2 A Yes.

3 Q And he didn't read you the passage, he
4 simply said that your testimony at that time was
5 that it would have been at most about three
6 minutes. Do you recall him saying that?

7 A Yes.

8 Q Let's take a look at the passage, sir.
9 Do you have the transcript in front you, your
10 transcript of your interview with Mr. Clifford at
11 the Commission office?

12 A Yeah.

13 Q Take a look, please, at page 18?
14 Starting at the top of page 18, at line one:

15 "And that's when Chief Riddolls
16 advised me there was no signs of life.
17 And it would be shortly after that,
18 within, you know, a couple of minutes
19 that I can think of, the time span
20 might be minutes or seconds, I'm not
21 too sure, but that's when I saw Chief
22 Bakema escort Zenk to Woychuk's
23 vehicle."

24 Correct?

25 A Correct.

1 Q So at this point you are not really
2 clear on how long it is, it could be seconds, it
3 could be minutes, right?

4 A Correct.

5 Q "I guess it could be minutes, it
6 could be seconds after the East St.
7 Paul Fire arrived, I can't remember.

8 Q So based on what you are telling
9 me, the conversation would have been,
10 at the shortest, three minutes?

11 A That would probably be the
12 longest it would be, three minutes,
13 somewhere in there."

14 So that was the answer that you gave, sir?

15 A Seconds to minutes, yes.

16 Q You didn't say at most it would be
17 three minutes, you are saying probably three
18 minutes, something in there; is that correct, sir?

19 A Something in there.

20 Q And you will recall, and we are not
21 going to go through it again, that Mr. Clifford
22 went through the logistics of the conversation and
23 the circumstances to show that it had to be at
24 least that long. Do you recall him doing that?

25 A Yes.

1 Q And, sir, you indicated that to the
2 best of your evidence, to the best of your
3 recollection, Mr. Zenk was not at your vehicle, he
4 was only at Woychuk's vehicle?

5 A Correct.

6 Q And, sir, the best of your
7 recollection, when you were testifying to the
8 RCMP, also had recalled that there was one
9 daughter rather than two for some period of time;
10 correct?

11 A Until I looked at my notes and
12 remembered, yes.

13 Q Yes. But that was the best of your
14 recollection until you looked at your notes, sir?

15 A Correct.

16 Q And the best of your recollection also
17 had the Taman family getting a ride to the
18 hospital and two vehicles being parked. Do you
19 remember that as well, sir?

20 A I remember something like that, yes.

21 Q That's to the best of your
22 recollection when you were testifying, or giving
23 information to the Winnipeg Police -- or RCMP, I
24 do apologize?

25 A Yes.

1 Q And the best of your recollection also
2 had you going to the Concordia Hospital to help
3 the Tamans view the body?

4 A That's what I indicated in there, but
5 afterwards I realized that that did not happen.

6 Q But that was the best of your
7 recollection about the interactions with the
8 Tamans at the time, sir.

9 A To the best at the time, after so many
10 years, yes.

11 Q Yes. And so what we have then is the
12 best of your recollection, but we do know that
13 with respect to the Tamans and the incidents
14 around the vehicle, there is room for some errors,
15 sir?

16 A There always is.

17 Q And, sir, my friend also read very
18 detailed passages from your March 6th, 2008
19 interview with Mr. Clifford, some three years
20 after the event, where you had disclosed that
21 Harry Bakema indicated to you that it was because
22 of concern of a conflict of interest that he was
23 calling Chief Carter out. Do you recall Mr.
24 Weinstein doing that?

25 A Yes.

1 Q Sir, that's the first recorded
2 indication of that in any of the notes or
3 interviews that you have given, isn't it, sir?

4 A That Bakema called the Sergeant out?

5 Q For the purpose of avoiding a conflict
6 of interest. I think we saw it is not in your
7 notes, sir?

8 A It is not in my notes.

9 Q It is not in the incident report, sir?

10 A No, I don't know why it would be in
11 the incident report.

12 Q It wasn't mentioned to the RCMP, sir?

13 A I believe it was, that he didn't want
14 conflict or anything, I believe that's in the RCMP
15 statement somewhere.

16 Q In your statement, sir?

17 A It might be.

18 Q I can indicate to you, sir, that it is
19 not. Will you accept that?

20 A I guess I would have to read it over
21 again and make sure.

22 Q Well, you are more than welcome to do
23 that, and if you find something in there that you
24 think is relevant, let us know. I'm telling you
25 that there is no such reference in there, and it

1 took three years before we heard anything about
2 that, sir.

3 And when you were talking about
4 whether you -- when you first heard the name of
5 the individual involved, you were talking both
6 about Derek -- or not Derek, you were talking both
7 about Mr. Woychuk and Mr. Bakema at the same basic
8 time, and then you made this statement. I just
9 want to understand who you were referring to. You
10 said:

11 "He told me that it was Derek, but it
12 didn't click at the time, I got the
13 whole name from Woychuk."

14 A Harry told me his name was Derek and
15 that's all he said, it was Derek. Afterwards when
16 Woychuk told me it was Zenk, Derek Zenk from
17 Brandon, the Brandon thing clicked it in.

18 Q Sir, so your recollection is that
19 Chief Bakema tells you that he has got a Winnipeg
20 Police officer named Derek and he just put him in
21 Woychuk's vehicle?

22 A Correct.

23 Q And you don't ask, Derek who?

24 A No, because I don't care Derek who at
25 the time, because I never knew Derek Zenk was a

1 police officer at the time.

2 Q Sir, I know that you may not make the
3 connection between Derek and Derek Zenk
4 immediately, but I'm just finding it a little
5 curious, perhaps, if you don't share your view
6 with me that someone would say to you, I have got
7 a Winnipeg Police Officer, his name is Derek, I am
8 putting him in the car, that you wouldn't say
9 Derek who?

10 A No, because I didn't care at the time
11 who he was.

12 Q And that reference to Derek is
13 certainly more familiar when you refer to somebody
14 by their first name, it is certainly more familiar
15 than when you use their last, is it not, sir?

16 A Not to me. Going back in history for
17 the first name, or is it the last name that kind
18 of clicks in?

19 Q I'm suggesting to you that if somebody
20 uses somebody's first name, that usually means
21 that they are more familiar with them than if they
22 refer to them by their last name?

23 A Not really.

24 Q You also said, when you were talking
25 about Harry at the vehicle, and my friend asked

1 you a question, and one of the things you said
2 was:

3 "He could barely smell anything, he
4 could not."

5 What was it, did Harry indicate to you that he
6 could barely smell or --

7 A He said that he didn't smell anything.

8 Q All right. You don't know then why
9 you would have used that phrase, "he could barely
10 smell anything?"

11 A No.

12 Q It is more difficult, I think we can
13 all accept, to smell alcohol out in the cold than
14 it is in a warm car. And through my experience
15 and I think through the experience of counsel
16 here, that's often something that the police do,
17 they put the individual in the car in order to try
18 and see whether there is a smell of alcohol.
19 That's your experience as well, sir?

20 A That's correct.

21 Q It is also the experience of many
22 counsel, would it not be, and police officers,
23 that when a police officer suspects someone may
24 have been drinking, even if they are outside, they
25 try and get as close as possible to that

1 individual to try and see whether they smell of
2 alcohol?

3 A If you suspect they had been drinking,
4 yes.

5 Q If it is one of things that you are
6 investigating, you would want to check that out,
7 sir?

8 A If you are investigating, if you think
9 he has been drinking, that's why you are
10 investigating it, yes.

11 Q And if you see an unexplained
12 accident, a serious accident, there is no apparent
13 cause for that accident, one of the things that's
14 going to be on your mind, as a competent
15 investigator, is the possibility of impairment,
16 sir?

17 A Among a bunch of other things as well.

18 Q Certainly, but you wouldn't rule it
19 out, sir?

20 A Probably not, no.

21 Q And it is something that you would
22 want to check out, wouldn't you?

23 A Yes.

24 Q And you would probably want to get as
25 close to that person's face as you could, either

1 through conversation, or putting your arm around
2 them and commiserating with them, you would want
3 to do something to try and get in there and see
4 what you could, sir?

5 A If it was me, yes.

6 Q And that's because, sir, any officer
7 who really wants to investigate something like
8 that will take those types of steps; correct?

9 A Depends on the officer, I guess.

10 Q And if they didn't do it, sir, it
11 would be an oversight or something that really
12 wasn't very impressive in terms of a performance?

13 A Not necessarily, no.

14 Q So your evidence is that even though
15 the opportunity is there to try and get a smell of
16 the individual's breath, if somebody chooses not
17 to do it in a situation where you have an
18 unexplained fatal accident, that's okay with you?

19 A First thing to do is make sure the
20 person is safe and okay. You are not going to
21 jump in his face and try and smell alcohol, you
22 are going to get him in a safe surrounding first
23 and make sure he is okay, and then start the
24 investigations.

25 Q You are not suggesting that things

1 were unsafe over by the truck, sir?

2 A The guy seemed distraught, it was cold
3 out, he was probably already going into shock.

4 Q Your position would be that you
5 wouldn't try and see whether you could detect the
6 odour of alcohol off of him at that time?

7 A At that time I would probably get him
8 in a safe environment and then start the
9 investigation.

10 Q Sir, if you were having a conversation
11 of three or so minutes out there, that would be an
12 opportune time to try and do that?

13 A It could be, yes.

14 Q With respect to the dispatch, you
15 began to explain how the dispatch works, and you
16 indicated that you can call dispatch at that time
17 and get a time if you wished?

18 A If you wish.

19 Q Or alternatively, in more complicated
20 or serious cases, they might fax out a sheet --

21 A Correct.

22 Q -- with the log times on it?

23 A Correct.

24 Q You would have to request that sheet,
25 I take it?

1 A No, sometimes for serious accidents,
2 or serious incidents, they would just send it
3 after everyone is cleared.

4 Q And I think in a competent
5 investigation, if that sheet were to be sent, you
6 would find it somewhere in the files, sir?

7 A It should be.

8 Q Yes. What gets recorded on those
9 dispatch sheets, what kinds of times?

10 A Well, any time that you have called in
11 to them and requested them to do something, or any
12 time that you arrived at the scene or anything
13 like that.

14 Q Okay. And when you arrive at the
15 scene, you actually announce your arrival so that
16 it will be recorded, sir?

17 A Sometimes, yes.

18 Q Yes. If you are going to rely on the
19 system?

20 A Right.

21 Q And I noticed that you didn't, you
22 looked at the clock that was on your --

23 A Correct.

24 Q -- on your vehicle. And it would only
25 catch the times that you called in for dispatch

1 purposes, sir?

2 A Correct.

3 Q And I understand that some systems are
4 linked to other emergency services, so that their
5 dispatches are sent over to your dispatcher as
6 well?

7 A What are you --

8 Q Well, say, for example, that there are
9 ambulance times, they can be patched in to your
10 dispatch service so that your police record will
11 also produce those ambulance times?

12 A I don't know about that. Ours is an
13 independent company that just deals with our radio
14 functions.

15 Q So it wouldn't have the departure time
16 of an ambulance to Concordia, unless it was called
17 in or --

18 A No, it wouldn't. They only deal with
19 our conversations, not any other dispatch service.

20 Q Okay. So there wouldn't be a record
21 in there of the arrival of the fire paramedics,
22 for example?

23 A No, the investigator of the file would
24 have to, I guess, request that from their
25 dispatch.

1 Q Okay. So you would have to actually
2 go and voice it in and then ask for the time
3 later?

4 A Right.

5 Q And you don't recall doing that, sir?

6 A No.

7 Q No. You were busy when you were
8 speaking to Ray Riddolls?

9 A Yes.

10 Q My friend, Mr. Prober, had some
11 questions of you, and made the observation that no
12 one ever told you that Harvey-Zenk was impaired?

13 A That's correct.

14 Q And he went through a list of people,
15 he said you never heard it from Mr. Woychuk, and
16 you never heard it from Mr. Bakema, and you never
17 heard it from the paramedics; correct?

18 A That's correct.

19 Q Did you ever talk to the paramedics?

20 A No.

21 Q Did you ever talk to Sergeant Carter?

22 A No.

23 Q Did you ever talk to Constable
24 Pedersen?

25 A No.

1 Q With respect to Constable Pedersen and
2 her testimony that she observed you with the
3 uniform, sir, you don't know what route she took
4 to Concordia Hospital, do you, sir?

5 A No, I don't, but it would be kind of
6 impossible for her to drive southbound in a
7 northbound lane. It wouldn't make sense.

8 Q She was at the head of a blocked off
9 road and she was spelled off by another officer,
10 we understand, to permit her to go back to the
11 hospital.

12 A I believe so, yes.

13 Q And she would have had to come back
14 down Highway 59 and approach the intersection?

15 A No, she would have went down the off,
16 on to the off -- the access on to 101, either go
17 down Henderson, or cross over the intersection by
18 the tracks that are usually there.

19 Q Okay.

20 A And then go back and take the off-ramp
21 which is south of the overpass on 59, so it would
22 be impossible for her to see that.

23 Q So that would be the most logical
24 route for her to take?

25 A Correct.

1 Q But, again, you don't know what route
2 she did take?

3 A Correct.

4 Q You also were looking at the
5 photograph on exhibit 82, the one with number 23
6 at the top?

7 A Yes.

8 Q And you were looking at photograph 23
9 at the back, about three or four photos from the
10 end of that tab. For those with the book, tab
11 B.8.a, the one with 23 at the top?

12 A Correct.

13 Q And you were trying to situate
14 Constable Woychuk's vehicle, and you referred to
15 that one ton fire vehicle that's depicted in the
16 right-hand corner?

17 A Yes.

18 Q And you indicated that that vehicle
19 would have moved, and Woychuk would have pulled in
20 approximately there. Was that your evidence?

21 A That's correct, yes.

22 Q Sir, do you know what time these
23 photos were taken?

24 A No, I don't.

25 Q And you also gave evidence that

1 Woychuk was arriving as you arrived, after you
2 came back up from the north?

3 A Either arriving or already there.

4 Q Yes. So his vehicle would have
5 already been there?

6 A His vehicle -- actually if you look in
7 the picture --

8 Q Yes.

9 A -- you can see his vehicle sitting
10 there.

11 Q Okay. Where is his vehicle sitting?

12 A You can just see the front nose of his
13 vehicle.

14 Q Okay. His vehicle actually is there?

15 A Yes.

16 Q Okay. I wanted to make sure that I
17 didn't understand your suggestion that he was not
18 there yet because --

19 A No, he was there at the time.

20 MR. PACIOCCO: Thank you very much,
21 Mr. Graham. Those are my questions.

22 THE COMMISSIONER: Thank you.

23 MR. WEINSTEIN: Mr. Commissioner, I
24 just want to raise one point with you, and that
25 deals with the right of Commission Counsel to

1 re-examine. And I appreciate that's his right, it
2 is even in the draft rules and procedures. But
3 there should be a basis for the re-examination,
4 and I will give one illustration. When my learned
5 friend was examining Mr. Graham, there was no
6 examination of the, I will call it the incident of
7 2004, that we heard about between Pedersen and
8 him. We heard it from Pedersen, there was no
9 examination by Mr. Paciocco of Mr. Graham when he
10 was examining, no other counsel raised it. Then
11 my learned friend starts questioning on that, or
12 raising that in re-examination. In my opinion,
13 that is not proper re-examination.

14 THE COMMISSIONER: Yes. Mr.
15 Weinstein, just wait, you may have a response.

16 MR. PACIOCCO: Would you like to
17 excuse the witness, Mr. Commissioner, he is
18 sitting there with bated breath.

19 THE COMMISSIONER: Yes, thank you.

20 MR. PACIOCCO: I agree with my
21 friend's interpretation of the rule. The reason I
22 asked the question was because my friend had asked
23 this witness about whether Constable Pedersen had
24 ever put stuff in her notes that shouldn't be
25 there, and whether she was ever told to remove

1 things from her notes that weren't there. And it
2 directly opened the question of his knowledge. He
3 indicated specifically that she put her opinions
4 and things in notes that weren't supposed to be
5 there. And I wanted to check with him about that
6 incident to see what kind of things were being
7 removed from her notes. And so, in my view, the
8 door had been opened and it was not something that
9 I pursued in examination-in-chief because I didn't
10 consider it to be something that needed to be
11 looked into. But once that statement was made,
12 and Constable Pedersen's competence was put into
13 issue, and the nature of the exclusions were put
14 into issue, I felt in fairness it was something I
15 wanted to address, what kind of things he had in
16 mind.

17 THE COMMISSIONER: Do you have a
18 response?

19 MR. WEINSTEIN: Yes, I do,
20 Mr. Commissioner. But my examination was not
21 anything about that specific incident. It was
22 general. It was not about that specific incident,
23 and no other counsel raised that specific
24 incident. That is my response, Mr. Commissioner.

25 THE COMMISSIONER: Well, it is over

1 now. But I agree, we should be careful about
2 re-examination. But I thought that during your
3 cross-examination, you had raised the question of,
4 at least inferentially of her competence, and I
5 understand why Mr. Paciocco did it, but I think we
6 will be careful as we go along. Thank you.

7 MR. WEINSTEIN: And I assume the
8 reasons for re-examination, even though this is
9 not a trial, still exists at this inquiry?

10 THE COMMISSIONER: Yes, you are right.

11 MR. WEINSTEIN: Thank you.

12 MR. PACIOCCO: I'm going to need a
13 minute to get set up here, Mr. Commissioner.

14 THE COMMISSIONER: I am sorry?

15 MR. PACIOCCO: I'm going to need a
16 minute to get set up here.

17 The Commission would like to call
18 Mr. Jason Woychuk to the stand.

19 JASON WOYCHUK, having first been duly
20 sworn, testified as follows:

21 BY MR. PACIOCCO:

22 Q Good afternoon, Mr. Woychuk.

23 A Good afternoon.

24 Q My name is David Paciocco, I'm
25 Commission Counsel. We have not met. I know you

1 have had the opportunity of meeting with
2 Mr. Clifford, but I will be asking you the
3 questions today.

4 A Okay.

5 Q Sir, when Mr. Clifford met with you in
6 March, you were 32 years old?

7 A Yes, I was.

8 Q Have you had a birthday since?

9 A No, I haven't.

10 Q Okay. And you are a constable with
11 the East St. Paul Police Service?

12 A Yes.

13 Q I understand that you started with the
14 East St. Paul Police Service on October 6th, 2004?

15 A Yes.

16 Q And, sir, you were involved in the
17 investigation, or at least the on-scene management
18 of the Harvey-Zenk collision, sir?

19 A Yes.

20 Q Which occurred on the 25th of
21 February, 2005?

22 A Yes.

23 Q And so if my arithmetic is right, at
24 the time of that incident you had been with East
25 St. Paul approximately four and a half months?

1 A That's right.

2 Q When you went to East St. Paul, you
3 had some modest experience as a police officer?

4 A I had approximately two months as a
5 member of Dakota Ojibway Police.

6 Q The Dakota Ojibway Police. So you
7 were hired by them I guess in around August of
8 2004?

9 A That's correct.

10 Q You also had some modest experience as
11 an auxiliary member, apparently?

12 A Yes, I was an auxiliary member as well
13 with the Dakota Ojibway Police.

14 Q Okay. And what does an auxiliary
15 member do?

16 A Basically, it is a volunteer position,
17 more or less a ride-along where you just ride with
18 the members and --

19 Q So it is not exactly a full-time job?

20 A No, it is not.

21 THE COMMISSIONER: Excuse me, what
22 kind of training would you have had as a police
23 officer before joining the East St. Paul?

24 THE WITNESS: I had the police
25 training through Brandon Police Service.

1 THE COMMISSIONER: I am sorry?

2 THE WITNESS: I had police training
3 through Brandon Police Service and I received that
4 through the Dakota Ojibway Police, and that was a
5 five-month course.

6 THE COMMISSIONER: Five-month course,
7 thank you.

8 BY MR. PACIOCCO:

9 Q I was going to ask you if that was a
10 five month full-time or a part-time course?

11 A It was a full-time course.

12 Q And it is the Brandon Police Services
13 who offer that course, sir?

14 A That's correct, I went through Brandon
15 Police Services.

16 Q But you were sponsored by Dakota
17 Ojibway?

18 A Yes.

19 Q And that went from September '03 to
20 January '04, I take it?

21 A Yes.

22 Q What kind of training had you been
23 provided with by East St. Paul prior to the
24 Harvey-Zenk collision?

25 A There was no training.

1 Q Was there never any opportunity for
2 you to receive training during that four and a
3 half month period, sir?

4 A I was told when I was first hired that
5 I would be riding with someone for the first
6 month.

7 Q That someone was Constable Graham, I
8 understand?

9 A Yes.

10 Q And what was your expectation as to
11 what would happen in riding with Constable Graham?

12 A That I would ride with him and he
13 would help me out with learning.

14 Q Where did you get this idea or this
15 impression that that was going to happen?

16 A That's what I was told when I was
17 first hired, that I would be with someone for the
18 first month.

19 Q And who was it who told you that?

20 A I believe it was Chief Bakema.

21 Q And what makes you think it was
22 Constable Graham that would have been providing
23 you with this assistance?

24 A I believe that's what I was told, and
25 I believe for the first month I was on the same

1 shift as Constable Graham.

2 Q Okay. And did that materialize, did
3 you get instruction from Constable Graham?

4 A No, it really didn't materialize. I
5 spent most of the first month on my own.

6 Q Okay. So you would be on your own in
7 the vehicle when you went out to patrol?

8 A That's right.

9 Q How much experience had you had with
10 impaired driving cases before the Harvey-Zenk
11 collision?

12 A I guess I would say minimal
13 experience. I had been involved in a few
14 investigations before as an auxiliary, not a lead
15 role, basically observing.

16 Q So you were like a ride-along when
17 someone else was handling an impaired
18 investigation?

19 A Basically, when I was an auxiliary,
20 that's the way it was. I did help but I was
21 basically not the lead investigator in it.

22 Q Are you able to tell us how many such
23 incidents, approximately?

24 A I don't know offhand, sir.

25 Q Would it have been more than a dozen?

1 A I don't believe there would have been
2 more than a dozen, no.

3 Q Would it have been around six?

4 A It might have been around six to ten,
5 I don't know for certain.

6 Q And so once you were with East St.
7 Paul Police, did you ever have occasion to deal
8 with an impaired driver?

9 A I believe that I did deal with a few
10 before this occurred.

11 Q I am sorry, I did not hear your entire
12 answer?

13 A I believe that I did deal with a few
14 before this occurred.

15 Q You did deal with a few before this
16 occurred?

17 A I did. I don't recall how many but --

18 Q Do you know whether you would have
19 been alone or with someone when that occurred,
20 when you investigated those?

21 A I believe that I may have been alone,
22 I'm not sure, at the beginning, and someone may
23 have come and helped at the -- when it was already
24 started.

25 Q Sir, had you ever been an investigator

1 in connection with a major criminal investigation?

2 A No, I had not.

3 Q Had you ever been the investigator in
4 connection with a major accident?

5 A No, sir.

6 Q How qualified an officer did you
7 consider yourself to be in February 25th, 2005, to
8 deal with the collision that occurred that day?

9 A Not qualified enough.

10 Q Sir, you have given basically five
11 sources of information that are recorded, that I'm
12 going to be putting in as an exhibit now. And it
13 is going to be documents that I may be referring
14 to when you are being questioned, and documents
15 that you may be offered the opportunity to use to
16 refresh your memory.

17 The first of those documents would be
18 your police notes. I see you have brought some
19 material with you today.

20 A Yes, sir.

21 Q Do you have your police notes with
22 you?

23 A Yes, I do.

24 Q We are going to be filing those as an
25 exhibit. They are found in volume E-2, tab 25.a.

1 I'm going to have the clerk show them to you, just
2 so we can get them properly identified.

3 (EXHIBIT 88: E-2.25.a Constable
4 Woychuk's duty book notes)

5 BY MR. PACIOCCO:

6 Q You should have a document that is, I
7 would guess, three pages in length?

8 A Yes.

9 Q Are those your notes from that
10 incident, sir?

11 A Yes, they are.

12 Q All right. I'm going to take you to
13 the next document that I'm going to file, which is
14 at tab E-2.25.b. And this is an incident
15 narrative. Do you have a copy of an incident
16 narrative with you, sir?

17 A Yes, I do.

18 Q This document is found at pages 607
19 and 608 of the Commission material.

20 THE CLERK: Exhibit 89.

21 (EXHIBIT 89: E-2.25.b, Constable
22 Woychuk's incident narrative)

23 BY MR. PACIOCCO:

24 Q Would that be your incident report or
25 incident narrative, sir?

1 A Yes, it is.

2 Q The next document is found at tab
3 E-2.25.d, and this is an interview transcribed
4 with the RCMP that occurred on the 24th of May,
5 2006. Sir, you recall being interviewed by the
6 RCMP in May of 2006?

7 A Yes.

8 THE CLERK: Exhibit 90.

9 MR. PACIOCCO: Exhibit 90.

10 (EXHIBIT 90: E-2.25.d, Statement to
11 RCMP of Constable Woychuk, May 24,
12 2006)

13 BY MR. PACIOCCO:

14 Q The next document that I'm going to
15 make an exhibit, sir, is found at tab E-2.25.f,
16 and it is a transcript of a second interview with
17 the RCMP, this time on June 9th of 2005. Do you
18 recall being interviewed a second time by the
19 RCMP?

20 A Yes.

21 THE CLERK: Exhibit 91.

22 (EXHIBIT 91: E-2.25.f, Statement to
23 RCMP of Constable Woychuk, June 9,
24 2006)

25

1 BY MR. PACIOCCO:

2 Q The next document I'm not going to be
3 making an exhibit, sir, is the interview that you
4 had with Commission Counsel. Do you have a copy
5 of that with you, sir?

6 A Yes, I do.

7 Q Sir, you were working, I understand,
8 the night shift throughout February 24th into
9 February 25, 2005?

10 A Yes.

11 Q And our information is that you
12 started at 9:00 o'clock on the 24th, and you
13 worked into the early morning hours of the 25th?

14 A That's correct.

15 Q And as the 7:00 o'clock hour was
16 approaching, our information is that that would
17 have been the end of your shift?

18 A Yes.

19 Q And yet you were still at the East St.
20 Paul Police when you got a phone call about the
21 collision in question, sir?

22 A Yes.

23 Q Who was there?

24 A From what I recall, I recall myself,
25 Harry Bakema, and Ken Graham were in the office.

1 Q Do you remember Constable Pedersen
2 being there, sir?

3 A I don't necessarily recall her being
4 in the office, but I believe she was.

5 Q So she would have been in the building
6 as opposed to in the office, am I understanding
7 you correctly, sir?

8 A I just don't recall her being there,
9 but I do know that she was in the building.

10 Q All right. So from records, or things
11 that you have seen, or what you have been told,
12 you are satisfied she was there, but you don't
13 have any independent recollection of that today?

14 A That's correct.

15 Q Okay. And we understand that the call
16 came in around 7:10 in the morning, sir?

17 A Yes.

18 Q And you received information that that
19 accident was where?

20 A Received information that it was at
21 Henderson Highway and Highway 101.

22 Q Was that information accurate, sir?

23 A No, it wasn't.

24 Q Sir, how did you come to be involved
25 even though your shift was ending?

1 A I believe I was asked to attend, as it
2 came in that it was a serious collision. I
3 believe that Harry Bakema asked me to attend.

4 Q Sir, do you know that that's what
5 happened or are you --

6 A Sorry?

7 Q Yes, or are you just trying to figure
8 out what must have happened?

9 A I don't recall the exact conversation,
10 but it would have been Harry that asked me to
11 remain working and come help.

12 Q Sir, what do you do when you get that
13 request to stay on and help? What do you do?

14 A I stayed to assist.

15 Q And how did you go about doing that,
16 sir? How did you get to the scene?

17 A I got in a police vehicle and I was
18 on -- going to the location where the call came in
19 at Henderson and 101.

20 Q Okay. I'm going to stop you for a
21 second and ask you if you remember what kind of
22 police vehicle you were in.

23 A I was in a Merc unit, it was a Ford
24 Explorer, RM2 is the unit number.

25 Q RM2 is the number that has been

1 allocated within the service to that particular
2 unit?

3 A Yes.

4 Q And it is a Ford Explorer SUV?

5 A Yes.

6 Q And are there any other SUVs at East
7 St. Paul?

8 A No, sir.

9 Q Did anybody accompany you in that
10 vehicle?

11 A No.

12 Q Are you able to say what order the
13 vehicles left that day?

14 A From recollection, I believe I may
15 have been the first vehicle to leave the parking
16 lot.

17 Q If you are not basing that on
18 recollection, sir, what are you basing it on?

19 A From reviewing my interviews, I
20 believe that's what I had said.

21 Q Okay. So I take it from your response
22 that you have looked at answers that you furnished
23 to that effect, sir, and you believe them to be
24 true?

25 A I believe it to be true, that's what I

1 replied to in my RCMP interview.

2 Q What route did you take?

3 A I'm not -- again, from recollection, I
4 don't recall. In my notes I have that I went down
5 Sperring Avenue, and then I came up on Raleigh
6 Road to the Highway 101.

7 Q And, sir, if that's in your notes, I
8 take it that you would have recorded an accurate
9 route for yourself?

10 A I believe I would have.

11 Q So, officer, based on your notes, I
12 take it that your testimony is that that's the
13 route you are comfortable that you took?

14 A Yes, but at some point I was confused
15 and I thought that I went on Highway 59 and turned
16 westbound on to 101.

17 Q This was when you were trying to
18 remember what had happened, that is how you
19 remembered it, but it turned out it conflicts with
20 your notes?

21 A That's correct.

22 Q Having seen it in your notes, you
23 trust those notes, sir?

24 A Yes.

25 Q And you trust the notes because you

1 record things for the purpose of sparking your
2 memory, and you would have no reason to record an
3 inaccurate departure time or an inaccurate route
4 that you would have taken?

5 A Yes.

6 Q And that would mean, sir, that you
7 would come into the accident scene through the
8 back instead of straight down Highway 59 south?

9 A That's right. At some point I had --
10 there is an emergency turnaround on Highway 101,
11 west of 59, and I had done a U-turn on that.

12 Q And what prompted you to do a U-turn,
13 sir?

14 A I believe that it was voiced over the
15 air that the collision was actually at Highway 101
16 and Highway 59.

17 Q Sir, do you recall who it was that
18 voiced that over the air?

19 A I believe it was Constable Graham.

20 Q Sir, do you recall what time you
21 arrived at the scene of the collision?

22 A From looking at my notes, I know that
23 it was 7:22 in the morning.

24 Q And, sir, were those your notes, sir?

25 A Yes.

1 Q Were they made by you?

2 A Yes.

3 Q And when were they made?

4 A They were made my next night shift I
5 came in following.

6 Q Okay. We will get in some detail of
7 what happened during that night shift. How did
8 you get the times for the notes if you made them
9 later, when you came back in for the next shift?

10 A I don't recall exactly how I got all
11 of my times.

12 Q Would you have made them up?

13 A No.

14 Q What are the ranges of possibilities,
15 sir?

16 A Range of possibilities are from
17 recollection, from what I believed was a call
18 intake sheet at the time which -- or a fax that
19 came from our dispatch service for times.

20 Q Okay. And how would that work, sir?

21 A I believe that there is a call intake
22 sheet at the time. I have since learned that -- I
23 don't think that we had a call intake sheet, but I
24 may have confused it with a fax of times from
25 dispatch.

1 Q Okay. I'm going to take you through
2 that in a moment, sir. I take it when you stop
3 your vehicle at the scene, in order to have a
4 recorded time you have to announce your arrival,
5 sir?

6 A Yes.

7 Q And is that something that you do as a
8 matter of practice?

9 A Yes.

10 Q And you would -- another way that we
11 have heard about is jotting somewhere on a piece
12 of paper the times?

13 A Yes.

14 Q Do you ever do that?

15 A Yes.

16 Q So your evidence is that you are not
17 sure where you got the 7:22 time. Are you
18 confident that that's an accurate time?

19 A From my notes I am, but I don't know
20 where I got that time.

21 Q Okay. And the reason I'm taking a bit
22 of time on this is because you have just been
23 describing how you originally thought it was from
24 a call intake sheet?

25 A Yes.

1 Q And you have since learned that the
2 call intake sheet system didn't come in until
3 April of 2005; correct?

4 A Correct.

5 Q And that you were at that time
6 serviced through a dispatch service, Triple A
7 dispatch?

8 A Yes.

9 Q And how that worked is you would call
10 in and get the time, or request a faxed copy of
11 the times; is that correct, sir?

12 A Yes.

13 Q And when you were testifying for the
14 RCMP, I'm going to take you to the passage,
15 because if I'm going to refer to the transcript I
16 think it is in fairness we do it entirely
17 accurately. If you can look at your RCMP
18 interview, which would be your second interview at
19 E-2.25.f? And I'm going to ask you to take a look
20 at page 685? And there are several references to
21 it in here, but this is the one that I think we
22 can focus on. It is about halfway down the page.
23 You are being asked a question by Corporal Todd
24 Doyle:

25 "Okay, but you specifically remember

1 using the call, call sheet for your
2 note development in this instant?

3 A Yes."

4 Is that your answer, sir, that you gave at the
5 time?

6 A That was my answer, yes.

7 Q And at the time you believed that
8 answer to be true?

9 A Yes.

10 Q And you now know that it can't be
11 true?

12 A Yes.

13 Q So it would have been some other
14 system in place at the time, or some other method
15 of recording that time?

16 A Yes.

17 Q Does that shake your confidence in the
18 times that are included in your notes, sir?

19 A Again, I don't know where I got the
20 time. I may have got a call intake sheet confused
21 with a fax that would have been sent to the
22 office.

23 Q Is it possible that you may have
24 received the time from another officer?

25 A It is possible. I don't recall for

1 certain.

2 Q All right. We will explore that in
3 more detail later, sir. So you arrive at the
4 accident scene, and we will say that 7:22 is
5 certainly a time that we can work with. What
6 happens when you get there?

7 A What happened -- when I got there, I
8 pulled up to where my vehicle was, northbound 59.

9 Q So you are coming northbound 59. You
10 will notice to the left we have an aerial
11 photograph of the intersection, sir, and that the
12 roads are marked. You will see PTH 59 around
13 two-thirds of the way down. And that would be the
14 northbound lane, sir.

15 So I take it that after receiving the
16 inaccurate information, you headed out a
17 roundabout way, and you ended up going past the
18 intersection and having to double back on 59; is
19 that correct?

20 A That's correct.

21 Q What happened when you got to the
22 intersection?

23 A I parked the vehicle in a way to try
24 and keep traffic from going through the scene of
25 the accident.

1 Q Okay. So you are effectively using
2 your vehicle as a roadblock?

3 A Yes.

4 Q There are a number of places where
5 traffic can enter that scene. Are you able to
6 describe for the Commissioner which route into
7 that accident scene you blocked off with your
8 vehicle?

9 A I believe I blocked off the route that
10 was going northbound 59 into the westbound 101
11 turning lane.

12 Q All right. So you see, if you look at
13 that diagram you see that there is a black line
14 across PTH 59 as it approaches the beginning of
15 that intersection, sir?

16 A Yes.

17 Q And that would simulate approximately
18 where the stop line would be for vehicles catching
19 that light?

20 A Yes.

21 Q And where would you be relative to
22 that line, sir?

23 A I would be very close to that line on
24 the median inside lane?

25 Q All right. You would be in the left

1 of the two lanes that are coming up, pretty much
2 in the turning lane, would you not, sir?

3 A Yes, turning lane.

4 Q And you would have your vehicle
5 situated to prevent cars from actually making that
6 turn, so you would be up into the intersection
7 area, but not in the intersection itself. Would
8 that be fair, sir?

9 A Yes, I believe I might have been a
10 little bit further than the black line on the
11 diagram, but not much further.

12 Q And your lights would have been
13 activated, sir?

14 A Yes.

15 Q And I understand from your interview
16 that you had made some minor adjustments to where
17 your vehicle was located because you were
18 concerned that it might actually be run into
19 because it was protruding too far into the driving
20 lane, sir?

21 A Yes.

22 Q But your vehicle remained basically in
23 that area?

24 A Yes. I did move it at one point but
25 it was a matter of a few feet over.

1 Q Okay. Now, do you recall seeing any
2 other police officers when you arrived at the
3 scene, sir?

4 A Not when I arrived, no.

5 Q What was the first thing you did when
6 you got there?

7 A I guess there was a little bit of
8 confusion here as to -- I'm not sure if I recall
9 the accused being brought to me first, or if I put
10 out traffic cones to direct traffic first.

11 Q Okay. Let's work our way to that,
12 sir. Are you able to tell us whether you are the
13 first car on the scene?

14 A I was the second vehicle on the scene.

15 Q Do you know whether the other vehicle
16 was actually there when you arrived at the scene,
17 sir?

18 A I didn't see it, but I believe it was
19 there.

20 Q All right. And you know, we have
21 information that at one point the vehicle may have
22 gone up Highway 59 south in reverse in order to
23 block off the vehicles from coming down, and
24 forcing them to take the exit on to Highway 101,
25 which may explain why there might not have been a

1 vehicle there at the time, sir. So you may not
2 have been the first to arrive, even if there
3 wasn't a police car there at the time.

4 A Right.

5 Q So you are arriving at this location,
6 you have blocked off that area. And you said
7 there is some uncertainty, sir. I'm going to get
8 to that in a second, but I am going to ask you a
9 few questions first.

10 What did you see of the scene itself?

11 A At the scene itself, I saw the
12 vehicles that were involved in the collision.

13 Q And how many vehicles were there?

14 A I saw three vehicles that were
15 involved.

16 Q And we've had a fairly detailed
17 description of the condition and location of those
18 vehicles, sir, so I'm not going to take you
19 through it.

20 We also have information that the lone
21 occupant of the yellow Sprint that was in the
22 middle of the road was grievously injured. Did
23 you go to that vehicle and offer any assistance?

24 A No, I didn't.

25 Q Are you able to explain why you

1 didn't?

2 A I don't know for certain. I believe
3 there were other people on scene at that time.

4 Q Thinking it through, sir, if there had
5 been nobody at that vehicle, what would you have
6 done?

7 A I would have probably attended to that
8 vehicle then.

9 Q And, sir, so your evidence, and I know
10 that you seem to preface almost every answer with
11 "I believe" or "probably" but your evidence would
12 be, I take it, that your best information is
13 somebody would have been attending to her; is that
14 fair?

15 A That's fair.

16 Q When you arrive at the scene, what did
17 you believe your responsibilities to be?

18 A To conduct traffic control at that
19 intersection and try to maintain vehicles from
20 going through the scene.

21 Q What responsibilities do police
22 officers have in general when arriving at a major
23 accident like that?

24 A To ensure people are safe, to maintain
25 the scene and to investigate the scene.

1 Q Okay. By maintaining the scene, you
2 are talking about maintaining the evidentiary
3 basis by not having vehicles come through and tear
4 it apart?

5 A Yes.

6 Q All right, sir. And you indicated
7 that you, you concluded your responsibilities were
8 to block the scene and direct traffic. Where did
9 you come up with that conclusion that that was
10 your job that day, or at that time?

11 A I believe because I was the second
12 vehicle on scene, and there was other senior
13 members there besides myself that would have been
14 conducting the other parts of the investigation.

15 Q Okay. So you basically deduced that
16 this should be your role based on seniority and
17 the point in time that you arrived; is that fair?

18 A That's fair.

19 Q Who were those other senior members
20 who were on scene?

21 A Harry Bakema was on scene, and
22 Constable Graham.

23 Q Who was in charge of the scene, in
24 your opinion?

25 A Harry Bakema.

1 Q And how do you come to that
2 conclusion?

3 A He was the Chief of Police, most
4 senior member there.

5 Q So the person with the most authority
6 to direct individuals on what to do?

7 A That's correct.

8 Q Do you have a method of determining
9 who takes charge of a scene as between the various
10 officers who arrive there at East St. Paul?

11 A Normally it would be the first member
12 on scene, depending on the situation, but it could
13 change, I guess, depending on what type of
14 investigation it was and what kind of experience
15 each member had.

16 Q So, essentially the starting point
17 would be the first member on the scene takes
18 charge of that accident scene, but because of lack
19 of experience or lack of seniority, that person
20 may be replaced?

21 A That's correct.

22 THE COMMISSIONER: It is 12:30.

23 MR. PACIOCCO: I can stop here,
24 Mr. Commissioner. I have got a couple of other
25 related questions, but I can easily pick up.

1 THE COMMISSIONER: We will be back at
2 2:00 o'clock to carry on.

3 THE CLERK: All rise, please. This
4 Commission of Inquiry is adjourned until 2:00 p.m.

5 (Proceedings recessed at 12:30 and
6 reconvened at 2:00 p.m.)

7 THE CLERK: All rise, please. This
8 Commission of Inquiry is now re-opened. Please be
9 seated.

10 BY MR. PACIOCCO:

11 Q Mr. Woychuk, just before the break, we
12 were talking about the organization at the
13 accident scene. And I was about to ask you
14 whether at any point, when you arrived, there was
15 any discussion of an action plan in terms of what
16 officers on the scene would be doing what?

17 A Oh.

18 Q Now, you started to tell us you were a
19 bit confused about which of the two things
20 happened upon arrival at the accident scene. What
21 were those two things that caused you some
22 confusion?

23 A When I put out the traffic cones set
24 up for traffic and when the accused was brought to
25 my vehicle.

1 Q So if I understand you, sir, there is
2 some confusion in your mind today as to what order
3 in which those events occurred?

4 A Yes, I'm not certain in which order.

5 Q Okay. So I'm going to take you to
6 your notes, if you would, please, at tab E.2.25.a,
7 tab E.2.25.a. And I am going to take you to page
8 604, which you have identified as your notes. And
9 I am going to ask you to read what is contained at
10 the 7:22 time.

11 A "10-7 Hwy #59/#101, MVC,
12 blocked off north west turning lane,
13 set up cones."

14 Q Okay. Sir, are we to understand that
15 all of those activities are meant to go in your
16 notes at 7:22?

17 A That's correct.

18 Q All right. So you get there at 7:22,
19 and according to your notes, at least, that's the
20 order in which things progress?

21 A Yes.

22 Q You also talk about the accused being
23 brought to your vehicle?

24 A Yes.

25 Q Just tell us a little wee bit about

1 that event, because I want to explore it in some
2 detail so that we have a context for the next
3 question I ask you.

4 A Okay. They used the vehicle by Harry
5 Bakema.

6 Q And you indicated, in the first
7 question I asked you in this series, that you were
8 uncertain as to whether that happened before or
9 after the traffic cones?

10 A Yes.

11 Q Would you look at your notes and
12 indicate the time at which you have recorded Harry
13 Bakema bringing the accused to your vehicle?

14 A 7:42.

15 Q And can you read that passage, please?

16 A "Bakema put driver of Dodge
17 truck into rear of RM2."

18 Q All right. Sir, you would agree with
19 me that, according to your notes, at least, the
20 traffic cones would have been set up first?

21 A Yes.

22 Q Why were you in doubt at what point
23 the traffic cones were set up with your notes?

24 A It is just not clear to me if I have a
25 recollection of which of these appeared first.

1 Q Sir, are we able to rely upon your
2 notes to indicate which happened first, even
3 though you don't, today, have a personal recall?

4 A According to my notes, I guess, that's
5 the way it occurred.

6 Q Well, sir, you wrote the notes. When
7 you wrote the notes, when you indicated "set up
8 cones, 7:22", what did you intend to record when
9 you were making that notation?

10 A That that's when I set up the traffic
11 cones.

12 Q And, sir, do you have any reason to
13 doubt that you recorded that information
14 accurately?

15 A No, I don't. I guess just the fact
16 that there has been a question about the time,
17 that I have thought about it, and I don't recall
18 exactly which order it occurred.

19 Q And which time has been in question,
20 sir?

21 A The RCMP interviews.

22 Q But which time has been a question?
23 Did they question you about the 7:22 time?

24 A I believe I was questioned more about
25 the 7:42 time when he was brought to my vehicle.

1 Q All right. And so are you expressing
2 any confidence, or lack of confidence, in that
3 time today? The recorded time was 7:42.

4 A I guess somewhat of a lack of
5 confidence because I don't have the recollection
6 right now.

7 Q Okay. Well, we are going to come to
8 that and spend some time on it. But for now,
9 let's deal with the fact that you have described
10 that, at some point here, you came and brought the
11 driver of the Dodge truck to your vehicle. Could
12 you describe what you observed, from the
13 beginning, with respect to that event?

14 A I guess what I observed from the
15 beginning is Harry Bakema had walked to my vehicle
16 with the accused.

17 Q Where were they coming from?

18 A They were coming from the south and
19 the rear of my police unit.

20 Q And what was down in that area that
21 they were coming from?

22 A That's where his vehicle came to rest,
23 was further south from my vehicle.

24 Q And when you say "his vehicle", who
25 are you referring to?

1 A Derek Harvey-Zenk.

2 Q Okay. So Mr. Harvey-Zenk's vehicle is
3 south of your vehicle, and you described seeing
4 Harry Bakema walking towards your vehicle, sir; is
5 that accurate?

6 A That's correct.

7 Q And he has Mr. Harvey-Zenk with him?

8 A Yes.

9 Q Did you see Harry Bakema and
10 Harvey-Zenk together before you saw them walking
11 to your vehicle?

12 A No.

13 Q Are you able to describe the distance
14 that you saw them walk?

15 A A matter of five to ten feet.

16 Q So can you describe where that five to
17 ten feet was?

18 A I believe that I was seated in the
19 vehicle, and that I was looking in the rear-view
20 mirror when they came up, and I had exited the
21 vehicle.

22 Q So, I take it, about five to ten feet,
23 You are describing the last five to ten feet?

24 A That's correct.

25 Q What happened then?

1 A Harry had put Derek Harvey-Zenk in the
2 back of RM2.

3 Q RM2, being the vehicle that you had
4 taken that day?

5 A Yes. And he had shut the door and we
6 had a brief conversation, at that point.

7 Q And, sir, do you recall which door he
8 put Mr. Harvey-Zenk into?

9 A The driver's side rear door.

10 Q Sir, do you recall who opened the
11 door?

12 A We did. And he opened the door.

13 Q And you give a possibility that he
14 might have opened the door?

15 A It's possible.

16 Q And you believe that you said he
17 opened the door in your interview with RCMP?

18 A I believe it was -- I am not
19 100 percent sure, but I believe Harry opened it.

20 Q And you started having some
21 conversation with Harry Bakema?

22 A Yes.

23 Q And can you describe the length of
24 this conversation?

25 A Very brief. A matter of 30 seconds,

1 maybe 20 seconds, you know, a very short
2 conversation.

3 Q And where were you when this
4 conversation was taking place?

5 A I was standing outside, beside RM2.

6 Q So I take it, at some point, you
7 exited the vehicle?

8 A Yes.

9 Q Do you know when you did that?

10 A I believe when I saw them walking up
11 towards the vehicle.

12 Q Okay. And what did he say to you?

13 A He told me not --

14 Q Please go slowly.

15 A He told me it was the driver of the
16 truck, one of the vehicles involved in the
17 collision.

18 Q Yes, sir.

19 A He made a comment to me that he could
20 be impaired, or was impaired, I'm not certain on
21 which it was.

22 Q He could be impaired or was impaired?

23 A Yes.

24 Q Yes, sir.

25 A And he also made a comment to me that

1 it was a Winnipeg Police member.

2 Q All right. Sir, I am going to take
3 you through each of those points in a bit more
4 detail. Was there any indication from Mr. Bakema
5 as to who this individual was, apart from him
6 being a Winnipeg Police Officer?

7 A No.

8 Q There was no name used or anything
9 like that?

10 A No.

11 Q And you described how this person
12 could be impaired, or possibly impaired, in your
13 statement, sir?

14 A Yes.

15 Q Could you tell us, to the best of your
16 recollection, what it was that Bakema said to you?

17 A That he could be impaired or was
18 impaired. I don't recall the exact words, or
19 which it was.

20 Q Okay. So if I understand you
21 correctly, and please correct me if I'm wrong, it
22 wasn't as though Mr. Bakema said he could be
23 impaired or is impaired, he said one or the other.
24 You can't remember which of the two it was; is
25 that fair?

1 A That's fair.

2 Q And so you don't, today, recall the
3 exact words that were spoken to you?

4 A No, I don't.

5 Q And I understand that you ultimately
6 made a disclosure of this conversation that Chief
7 Bakema had with you to Norm Carter?

8 A Yes.

9 Q I am going to go through that in some
10 detail. And I also see, from looking at the
11 documents, that nowhere is this conversation that
12 you had with Chief Bakema noted by you; is that
13 correct?

14 A That is correct.

15 Q All right. Sir, in the notes that
16 Chief Carter had made of the conversation that he
17 had with you in the car, and it would have been on
18 February 24th, 2006, he described you as having
19 told him that Harry said that this man was
20 "pissed". And I understand that you're aware that
21 that is Chief Carter's recollection of your
22 discussion with him?

23 A Yes.

24 Q You'd agree with me, sir, that there
25 is quite a difference between saying somebody is

1 "pissed" and saying somebody is "possibly
2 impaired"?

3 A Yes.

4 Q And what is the difference, sir?

5 A I guess the difference would be that
6 by saying "possibly impaired", it means that he's
7 unsure. And if he said he was "pissed", then it
8 would be that he was sure.

9 Q Sir, are you able to say whether Chief
10 Bakema used the term "pissed" when speaking to
11 you?

12 A No, I'm not.

13 Q Now, whether he said pissed or
14 impaired or intoxicated or possibly impaired, when
15 he spoke to you, did you ask him the basis upon
16 which he made that conclusion, or did he offer you
17 any basis upon which he made that conclusion?

18 A I didn't ask him, and he never offered
19 any information.

20 Q He was being put in the back of your
21 vehicle, sir, and you're a police officer?

22 A Yes.

23 Q Did you feel that you should ask him
24 for the basis of his statement, sir?

25 A Not at the time I didn't.

1 Q And what do you think now, looking
2 back on it?

3 A I think it would have been a good
4 question to ask.

5 Q And why would that have been a good
6 question to ask?

7 A So that I know what he did or what his
8 observations would have been.

9 Q And, sir, if you had a basis for those
10 observations, how might that have assisted you in
11 an investigation?

12 A I guess I would have -- I would have
13 myself been looking for more signs or symptoms
14 of -- to back up his comments.

15 Q Well, sir, I'm going to suggest to you
16 that whether he said "possibly impaired" or
17 "pissed", that should be a signal to you to start
18 looking to see what degree he was in; do you agree
19 with me?

20 A I agree.

21 Q Okay. I am going to come back to that
22 in a moment, but I am going to stick with the
23 interest you have in getting information. Sir, in
24 what circumstances do you, as a police officer,
25 issue a roadside breath demand to a subject?

1 A If I note them operating a motor
2 vehicle, or care and control of a motor vehicle.

3 Q Yes, sir. And what else do you
4 require before you can make a roadside breath
5 demand?

6 A I would need some observations and
7 form an opinion that they were possibly impaired.

8 Q And, sir, can you understand -- or can
9 you relate the standard that's described in the
10 Criminal Code?

11 A I can't quote it, you know.

12 Q Okay. Sir, you have to reasonably
13 suspect that they have alcohol in their body.
14 And, sir, what types of grounds would allow a
15 police officer to reasonably suspect that an
16 individual, who has been driving, has alcohol on
17 their body?

18 A If I noted signs myself or, I guess,
19 if someone else had advised me of signs.

20 Q And someone else who you would have to
21 believe --

22 A Yes.

23 Q -- or have reason to believe. And
24 this is the Chief of Police offering you this
25 information, sir?

1 A Yes.

2 Q And had he provided you with the
3 explanation for why he drew the conclusion that
4 this person was possibly impaired, that might have
5 allowed you to reasonably suspect that the
6 individual had alcohol in his body; correct?

7 A Correct.

8 Q And then you could have made a
9 roadside demand; correct?

10 A Correct.

11 Q But you didn't do that, did you?

12 A No, I didn't. I didn't have the BSD
13 with me at the time, either.

14 Q Well, is that the reason? What
15 happens if you pull someone over and you suspect
16 they have alcohol in their body? Do you let them
17 go if you don't have the BSD with you?

18 A No.

19 Q What do you do?

20 A I probably -- at this point in my
21 career, I probably, if I would have suspected
22 that, I would have arrested them for impaired
23 driving.

24 Q Well, sir, how about you call someone
25 to bring the unit down? Is that ever done in your

1 police department, sir?

2 A It's been done in the past, but I
3 think there is probably case law on that where it
4 is unreasonable detention or --

5 Q And, sir, you believe you can arrest
6 somebody for impaired if you reasonably suspect
7 that they have alcohol in their body?

8 A If I form an opinion that they are
9 impaired.

10 Q Yes. And do you agree that there is a
11 difference between believing someone is impaired
12 and having reasonable ground on the one hand, and
13 reasonably suspect that they have alcohol in their
14 body on the other?

15 A I agree that there is a difference,
16 yes.

17 Q And the purpose of the roadside
18 screening device is to find out if you have a good
19 reason to arrest them, correct?

20 A Correct.

21 Q You can't just arrest them if you
22 don't have a ASD on you?

23 A Right.

24 Q So you didn't follow up with any
25 questions?

1 A No, I didn't.

2 Q You, again, tell us that he said
3 something identifying this person as a Winnipeg
4 cop. Do you remember what he said to you?

5 A I don't remember the exact wording.
6 It was basically telling me that he was a Winnipeg
7 member.

8 Q Okay. And you certainly understood
9 from that, that he was a police officer?

10 A Yes.

11 Q And you have indicated, in your
12 narrative of the conversation that Chief Bakema
13 had with you, that he also advised you that he was
14 the driver of the truck; is that correct, sir?

15 A That's correct.

16 Q Was there any comment by Chief Bakema
17 about paramedics dealing with this person?

18 A I believe there may have been a
19 comment that an ambulance was going to be coming
20 to look at him. I don't recall that specifically.

21 Q Why are you offering that that may
22 have been a comment, sir? Do you have any basis
23 for it, other than pure speculation?

24 A I'm off -- I'm offering it because
25 that's what I believe, that there was that comment

1 made.

2 Q All right, sir. And, of course, you
3 haven't taken any notes of this exchange with
4 Chief Bakema?

5 A No.

6 Q So there is no way now to verify what
7 may have been said?

8 A That's correct.

9 Q Yet you have some sense that this
10 conversation occurred, but no clear memory of it,
11 is that a fair description of your state of mind
12 right now?

13 A I believe that I spoke about it to a
14 previous RCMP member, but I don't have a clear
15 memory of it at that time.

16 Q Well, let's take a look at it, at this
17 time, if you think that will assist you. Can you
18 take a look at page 630, which will be the first
19 interview at tab .25.d of volume 2, tab 25.d of
20 volume E.2. And you can probably start at the
21 bottom of page 629. Kennett is asking you a
22 question at the very bottom of page 629:

23 "Um-huh. Did he say he was concerned
24 about his well-being or anything like
25 that?

1 Woychuk: Well, he said, 'Keep him
2 here.' There was a -- it was brought
3 up like, 'The ambulance is coming.'

4 Kennett: Um-huh.

5 Woychuk: I mean, I don't know exactly
6 if he said 'I am concerned about his
7 health', or anything, but 'Keep him
8 here, the ambulance is going to come."
9 I'm sure that was said to you."

10 Do you recall giving that answer, sir?

11 A I don't necessarily recall giving that
12 answer, but I read it here, and I believe that was
13 what I said.

14 Q All right. And what would you have
15 meant by "said to you," would you have meant "said
16 to me"?

17 A I guess I -- that's probably what I
18 meant, or it could have been maybe a typo in this
19 transcribing.

20 Q Sir, in addition to simply giving you
21 that introductory information, did Chief Bakema
22 give you any instructions or directions?

23 A Yes, he did.

24 Q What did he say to you, sir?

25 A He told me to keep in the vehicle. I

1 asked him -- I asked him what he wanted me to do.

2 He said to keep him there, not to do anything,

3 that Carter would be coming to the scene.

4 Q All right, sir. So your evidence is

5 that he told you to keep him there and not to do

6 anything, sir?

7 A That's correct.

8 Q Do you recall him specifically telling

9 you not to do anything?

10 A I do recall him telling me not to do

11 anything, Carter would be coming.

12 Q All right. Sir, let's explore, in a

13 bit more detail, the information that Carter would

14 be coming, because you've phrased it in different

15 ways in your various different answers. I am

16 going to start, again, by looking at the same

17 transcript we were just looking at, only at page

18 612, please? You'll notice your narrative, at

19 page 612, which is page 3 of the interview, about

20 a quarter of the way down, Kennett says:

21 "Okay. All right. Do you know, at

22 that point, ahm, can you, can you just

23 be specific with exactly what

24 direction you were told at that time?

25 Woychuk: The direction I was given

1 that, 'This is the driver of the
2 truck. I am putting him in your
3 vehicle. Keep him here. There is a
4 possibility he could be impaired. I'm
5 calling Sergeant Carter. I'm going to
6 have him come down."

7 Do you see that, sir?

8 A Yes.

9 Q And you know how it describes "I'm
10 calling Sergeant Carter." Do you see that, sir?

11 A Yes.

12 Q And that would, of course, mean that
13 that's something somebody is going to do in the
14 future?

15 A Yes.

16 Q And do you recall whether that's how
17 it was put?

18 A I don't recall the exact wording.

19 Q What impression did you have about
20 Carter? Did you have an impression as to whether
21 he had been called yet or whether he was going to
22 be called?

23 A I honestly didn't know.

24 Q Sir, when you answered the question to
25 the RCMP, you don't indicate there that you don't

1 know, do you, sir?

2 A I don't believe I do.

3 Q Do you not think, if you are unsure
4 about an answer, you should let the questioner
5 know that it is something you are not sure about,
6 but you are going to answer about?

7 A Yes.

8 Q You've got that type of wording in a
9 number of places where it looks like this is
10 something yet to be done.

11 And then you can take a look, if you
12 will, at your transcript with Mr. Clifford, at
13 page 20. See how it is divided into four pages
14 per page, sir?

15 A Yes.

16 Q And at the upper right-hand corner of
17 page number 6 of the page document, you will have
18 the actual transcript number, which is page 20?

19 A Yes.

20 Q And you see line number 2?

21 A Yes, I do.

22 Q And you tell Mr. Clifford:

23 "I believe first, when he first
24 brought him, he mentioned not to do
25 anything, that Sergeant Carter at the

1 time was coming to the scene."

2 Do you see the difficulty that I'm having, not
3 being clear as to whether you're describing him
4 saying "I'm going to call Carter," as opposed to
5 "Carter is on his way"?

6 A Yes, I see that.

7 Q And I take it, sir, you are not going
8 to be able to help us out in sorting which of the
9 two it was?

10 A I don't know for sure how I took that
11 at the time. I wasn't aware of the communication
12 that they were having.

13 Q And, sir, he is telling you about
14 something connected to Carter, and you're not sure
15 today whether he told you he is coming or he's
16 given a call to come; is that right?

17 A I am not 100 percent sure on which way
18 it was put to him.

19 Q Sir, do you have a sense as to which
20 one of those versions was given to you?

21 A Pardon me?

22 Q Do you have a sense of which one of
23 those two versions was given to you?

24 A I am really not sure which way it was.

25 Q Fair enough. The other thing that I

1 thought I should point out to you, sir, is if you
2 look back at the first interview, the RCMP
3 interview in which they were examining you at page
4 611, you will see, at the very bottom of the page,
5 second last set of questions:

6 "There was a mention?

7 Woychuk: From the Chief that he could
8 be impaired. And my direction from
9 that point was, "Just leave him in
10 your car and we will figure out what's
11 going to happen."

12 Do you see that, sir?

13 A I do see that, yes.

14 Q Was there any point in time when Chief
15 Bakema said, we are going to leave him in your car
16 and figure out what's going to happen?

17 A I don't recall that exact -- those
18 exact words. I recall the direction that we had
19 previously just spoken about.

20 Q Okay. And do you have any idea what
21 you were trying to communicate when you spoke that
22 way to the RCMP during this investigation?

23 A No, I don't.

24 Q And you, of course, understood that
25 that's a very important investigation into

1 allegations of wrongdoing, sir?

2 A I do understand that.

3 Q And you understand the importance of
4 being careful and precise in the answers that you
5 furnish?

6 A Yes.

7 Q Do you believe you were careful and
8 precise in the answer that you furnished there?

9 A I believe what I said I believed at
10 the time, but I don't have a -- I don't know how
11 to -- I don't recall, at this time, exactly what
12 it was.

13 Q The answer is, had you taken notes of
14 the conversation, we wouldn't be in this
15 difficulty, would we?

16 A No, we wouldn't.

17 Q Sir, how long were you supposed to do
18 nothing, do you know?

19 A I don't know.

20 Q And how did that period of nothingness
21 come to an end?

22 A Eventually I was told to take him to
23 the station and that Chief Carter was there.

24 Q So you were told to take him to the
25 station and that Chief Carter was there. Are you

1 able to tell us how much time passed before that
2 direction was changed?

3 A I am not able to tell you that, no.
4 From what I recall, it felt like a long time,
5 but --

6 Q I understand, from reading your
7 transcripts, that you had some concerns about the
8 position you were put in?

9 A Yes.

10 Q You had a person, who was apparently
11 involved in a fatal motor vehicle accident, and
12 who was likely the driver of the vehicle at fault,
13 being put into the back seat of your vehicle by
14 the Chief. What was it that made you
15 uncomfortable, given the nature of the
16 conversation you had with him?

17 A It was the direction that I was given
18 to follow.

19 Q What was it that made you
20 uncomfortable about the direction you were given
21 to follow?

22 A I guess the point of not to do
23 anything and wait for Sergeant Carter, or
24 Constable Carter at the time, to come to the
25 scene.

1 Q Okay. It would have been Sergeant
2 Carter. It's a mistake I've made 56 times
3 already, so no big deal. So you were concerned
4 about waiting for Sergeant Carter to come to the
5 scene. What were your precise concerns about not
6 doing anything and waiting for him?

7 A Because he had made a comment to me
8 about possibly, or being impaired.

9 Q Okay. Can you connect those dots for
10 us, sir? Where does the concern come from, the
11 suggestion of possible impairment, of being told
12 to wait for Chief Carter?

13 A I guess the concern would be that he
14 had made comments to me that I was directed not to
15 do anything with those comments.

16 Q Okay. And that's how you understood:
17 Don't do anything, wait for Chief Carter?

18 A That's how I understood it, yes.

19 Q If you had not been given those
20 comments, what would you have done, sir? If you
21 had not been told to do nothing, what would you
22 have done with a suspect you put in your vehicle
23 and someone telling you either he's impaired or
24 he's possibly impaired?

25 A Probably investigating more into

1 the -- into the comments and trying to make --
2 form my own opinion.

3 Q What did you think of the quality of
4 the direction that you received that morning?

5 A I thought they were poor.

6 Q Have you any understanding of why you
7 would have been given that direction?

8 A No understanding. Just, I guess, I
9 have opinions as to why, but I don't know for
10 certain why I was given that direction.

11 Q Sir, what are your opinions based on?

12 A Just my own thoughts.

13 Q And what are those thoughts?

14 A I believe that Harry didn't want to
15 deal with him at the scene, and that he wanted me
16 to at first wait for Sergeant Carter, and then
17 later to take him so that Sergeant Carter could
18 deal with Harvey-Zenk.

19 Q Do you have any explanation as to why
20 you would think that Chief Bakema wouldn't want to
21 deal with Mr. Harvey-Zenk at the scene?

22 A I think that -- I think that's just my
23 opinion, I think that otherwise he would have
24 shown -- he would have given better directions for
25 what he wanted me to do.

1 Q Sir, why would Chief Bakema, or any
2 police officer not want to deal with
3 Mr. Harvey-Zenk at the scene?

4 A I believe because he was a -- the
5 accused, or Harvey-Zenk, was a police officer
6 himself.

7 Q And what does that matter, sir? Why
8 would that be a concern to a police officer?

9 A It shouldn't be a concern, but I felt
10 that that was a concern at the time.

11 Q And why might it be, sir?

12 A Because Harry is a Winnipeg Police
13 member himself for 32 years, I believe.

14 Q And I take it that you are talking
15 about some sense of loyalty to this individual or
16 to police officers in general?

17 A Possibly, or just not wanting to be
18 involved in it.

19 Q Do you have any sense as to how police
20 officers might react to a police officer who busts
21 police officers?

22 A I think that most people understand
23 that you need to do your job, regardless.

24 Q Yes, sir.

25 A That whether or not that person is a

1 police officer, or another citizen, it needs to be
2 done the same way.

3 Q Yes, sir. You've said that's "most
4 people". What about the others?

5 A I don't know.

6 Q Sir, do you recall raising your
7 concerns with anyone else?

8 A No, I don't.

9 Q I am going to ask you, if it may help
10 you with your memory, to look again at the RCMP
11 transcript that we've just been examining, at page
12 665. And you have just finished a conversation
13 with Officer Kennett about the questioning that we
14 have been pursuing on 665. And in the middle of
15 the page you are saying:

16 "I am just saying that's how I felt.

17 Kennett: Um-huh.

18 Woychuk: You know what? And I've
19 discussed that with Norm and I have
20 discussed it with Constable Maloney at
21 the office. Like I mean it wasn't
22 something that was hidden. Like I did
23 not hide the fact that I wasn't happy
24 with the way that worked out."

25 Do you recall that, sir?

1 A Yes, I do.

2 Q Does that refresh your memory?

3 A Yes, I recall discussing it with
4 Constable Maloney at the time.

5 Q Yes. And Sergeant Maloney was a
6 constable?

7 A Yes.

8 Q And you were talking about Chief
9 Bakema at that point?

10 A Yes.

11 Q And do you recall what you told
12 Sergeant Maloney?

13 A I don't know exactly what I said to
14 him. I remember telling him that I thought the
15 direction I was given was poor, and I was being
16 put in a bad position by being given poor
17 direction, and I didn't think that it was handled
18 correctly.

19 Q Okay. Do you remember anything else
20 about your conversation with Constable Maloney?

21 A Right now, no, I don't.

22 Q Okay. We will come to Constable
23 Carter shortly, and come back to that point later.
24 Did you undertake any active investigation of
25 Derek Harvey-Zenk when he was in the back of the

1 police cruiser?

2 A I spoke to him briefly about -- he
3 gave me his driver's license. Besides that, I was
4 in and out of the vehicle with -- I don't believe
5 there was any active investigation going on.

6 Q You are the one that would have been
7 doing it, if there was. Did you, or did you not,
8 sir, engage in any active investigation whether
9 Derek Harvey-Zenk was impaired?

10 A Not that I recall. I was following
11 the directions that I was given.

12 Q So you didn't ask him to perform any
13 sobriety tests?

14 A No, I did not.

15 Q You did not get in the back seat and
16 try to smell his breath?

17 A No, I did not.

18 Q You didn't try to see whether he could
19 manipulate things, like his wallet, and getting
20 documents out of it, sir?

21 A I don't recall. I believe not.

22 Q You didn't note any improper
23 behaviour, or any unusual behaviour in your notes,
24 sir, or try to see whether there was any?

25 A I remember watching him in -- in the

1 mirror. I remember I noted that he had dry blood
2 on his nose.

3 Q Okay. We will get to that in a
4 moment, sir. And I appreciate you offering that.
5 Had Chief Bakema told you to investigate this
6 person for possible impairment, would you have
7 done it, sir?

8 A Yes, I would have.

9 Q Had he told you to see if you could
10 smell any alcohol on this man's breath, would you
11 have done it, sir?

12 A Yes.

13 Q Did he tell you that, sir?

14 A No, he didn't.

15 Q Are you sure of that?

16 A I'm sure of that, yes.

17 Q Sir, because I am going to show you a
18 passage from a document that's been furnished to
19 the Commission. This is in book 3, P as in Peter,
20 3.88. And this will be found at page 2851. The
21 clerk will furnish you a copy of this document
22 shortly, sir. If that could be made the next
23 exhibit, please?

24 THE CLERK: Exhibit 92.

25

1 (EXHIBIT 92: Harry Bakema, P3, Tab
2 3.88, pg. 2851)

3 BY MR. PACIOCCO:

4 Q And, sir, while there is no title on
5 this document, this was furnished to Mr. Bakema's
6 lawyer. And I am going to take you down to the
7 second last paragraph of that document, where it
8 records:

9 "I then walked him to where Constable
10 Woychuk who was standing outside of
11 RM2. I told him to put the male
12 inside the back of his vehicle as he
13 was in a daze and distraught, and may
14 have to have some medical attention.
15 I also told Woychuk that I could not
16 smell anything on this male, as it was
17 very cold outside."

18 Sir, did Mr. Bakema tell you that he couldn't
19 smell anything on this person because of the cold
20 outside?

21 A No, he didn't.

22 Q "I told him to sit in the vehicle
23 with him and see if he could detect
24 any alcohol in a more confined space."

25 Sir, did Chief Bakema tell you to sit in the

1 vehicle with Mr. Harvey-Zenk to see if you could
2 smell alcohol in a more confined space?

3 A No, he didn't.

4 Q Where were you when Mr. Harvey-Zenk
5 was placed in the back seat?

6 A I believe I was outside of the
7 vehicle, beside it.

8 Q And then what happened, sir?

9 A That's when I -- after he was placed
10 in the back seat, that's when I had a conversation
11 with Harry Bakema.

12 Q After the conversation was over, what
13 happened?

14 A I believe I got -- probably got back
15 into the vehicle and tried to speak to Derek
16 Harvey-Zenk, who was placed in there.

17 Q Do you know where Chief Bakema was at
18 that time?

19 A No, I don't.

20 Q Was he with you, sir?

21 A No, he wasn't.

22 Q And were you in the front seat or the
23 back seat of the vehicle?

24 A The front seat.

25 Q Did you ever go into the back seat of

1 the vehicle?

2 A No, I didn't.

3 Q Sir, I am going to ask you to take a
4 look at page 616 of that same document, the
5 interview with the RCMP. And you might be able to
6 explain this by interpreting the phrase for us, in
7 the middle of the page:

8 "After Chief Bakema left, I was back
9 in the vehicle and I got ID from him."

10 Now, sir, when you use the term "back" there, are
11 you referring to when you got in the vehicle again
12 or you were in the back of the vehicle?

13 A I was referring to getting into the
14 vehicle again. I never got in the back seat with
15 someone.

16 Q All right. And, sir, if you were
17 attempting to smell his breath, is that something
18 that you might have done, get in the back seat?

19 A No, it's not.

20 Q And I take it, for safety reasons,
21 that wouldn't be a recommended course of action?

22 A Yes, that's the reason why.

23 Q And in your vehicle there is a screen,
24 I take it, between the front seat and the back
25 seat?

1 A Yes.

2 Q And that screen can be opened or
3 closed, depending on whether you are interacting
4 with the individual?

5 A Yes.

6 Q Do you know whether that screen was
7 opened or closed?

8 A I believe it was open when I was in
9 the vehicle.

10 Q And what happened in the back seat?
11 What was Mr. Harvey-Zenk doing?

12 A Just sitting there looking, basically,
13 straight ahead.

14 Q Did you form any impressions of his
15 demeanour or how he was appearing or behaving,
16 sir?

17 A I thought that he was either injured
18 or in shock over what had just occurred.

19 Q And can you tell us, in as much detail
20 as possible, what observations led you to form
21 that basic conclusion?

22 A He wasn't speaking at all, very
23 minimal. He wasn't answering questions. And at
24 this -- I recall watching him swallow when he was
25 sitting in the back seat.

1 Q And what did you observe about the
2 swallowing?

3 A I observed that it looked very
4 uncomfortable. I recall that, to me it looked
5 like it possibly hurt when he swallowed. It
6 was --

7 Q So he is sitting in the back of the
8 vehicle. He is very quiet. He is looking
9 straight ahead, as you've said?

10 A Yes.

11 Q And he is having a hard time
12 swallowing?

13 A That's what I noted.

14 Q Did you say anything to him when you
15 made those observations?

16 A I believe I asked him, at some point,
17 if he was injured at all, and that I told him that
18 there would be an ambulance that would look at
19 him.

20 Q Did he respond to you at all when you
21 asked him if he was injured?

22 A I don't believe he did.

23 Q Did he give any indication that he
24 understood the question or was prepared to deal
25 with the question in any way?

1 A I don't believe that I got any real
2 indication from him.

3 Q So no response verbally, no nod, no
4 indication that he was fine?

5 A I don't recall for certain. I don't
6 recall any verbal indication.

7 Q And, sir, how would you describe his
8 emotional state at that time? Was he crying or
9 anything like that?

10 A No, he wasn't crying. He was very
11 silent.

12 Q Sobbing or anything?

13 A No.

14 Q And so, sir, you're aware that the
15 term "distraught" has come up in the interviews,
16 and it appears in your incident report as well?

17 A Yes.

18 Q And I am going to take you to that,
19 please, at tab E.2.22.b, tab E.2.22.b, page number
20 607. You will notice the entry that you have at
21 7:42 in the incident report, sir?

22 A Yes.

23 Q Can you please read that passage to
24 the Commissioner and to the gallery?

25 A "At 7:42 hours, Chief Bakema came

1 to RM2 with who he identified as the
2 driver of the blue Dodge truck. He
3 advised writer that he was putting him
4 into RM2 until he could receive
5 medical attention. Chief Bakema said
6 he was distraught over his accident
7 and advised writer to stay with him
8 due to his condition."

9 Q Sir, do you recall Chief Bakema using
10 the word "distraught"?

11 A I don't recall that, no.

12 Q Do you know how it has come to appear
13 in your notes, sir?

14 A No, I don't.

15 Q Is that a word you use, sir?

16 A Not very often.

17 Q We will come back to your notes a
18 little later. Now, you referred earlier, when I
19 was asking you about what Mr. Harvey-Zenk was
20 doing in the back, and what you were doing to
21 investigate it, you said you looked in the
22 rear-view mirror and you could see an injury.
23 What was that injury, sir, or signs of an injury?

24 A There was -- he had blood around his
25 nose.

1 Q Sir, did you have any conversation
2 with him or try and have any conversation with
3 him?

4 A I did try to have a conversation with
5 him, but I wasn't getting any answers from him.

6 Q Right. Now, let's take a look at your
7 notes, sir, and see how you've recorded that. You
8 will find them at tab E.2.25.a. Tab E.2.25.a, I
9 am going to take you to the top of 605.

10 "Harveymordenzenk indicates he doesn't
11 want to talk due to his condition."
12 And you see you've written that, sir?

13 A Yes, I do.

14 Q How did he indicate that to you, sir?

15 A I don't recall if he responded to me
16 or if he just wasn't answering questions or --

17 Q Well, would the word "indicates" to
18 you include someone just not responding?

19 A I don't know. Probably not.

20 Q That word normally, and correct me if
21 I'm wrong, if you have a different understanding
22 of that word, normally "indicates" means some kind
23 of communication, sir. You just don't recall,
24 sir?

25 A I don't recall.

1 Q You record he indicates he doesn't
2 want to talk due to his condition. What condition
3 is that, sir?

4 A I'm not sure. I don't recall how he
5 indicated to me, so I don't --

6 Q So you don't know whether those are
7 his words or your words?

8 A That's -- I don't recall.

9 Q And you don't even recall what
10 condition they refer to, sir. Are you able to
11 help us out any more than that?

12 A I don't know. I don't recall why I
13 have that there, "due to his condition," I don't
14 know how I came to that.

15 Q Are you suggesting, sir, that you just
16 don't know what happened or that your answer -- or
17 that your notes are not very clear as to what was
18 taking place?

19 A I don't think my notes are very clear
20 and that I don't recall.

21 Q Sir, did you ask him his name?

22 A I believe I asked him for his driver's
23 license.

24 Q Do you know whether you asked him
25 orally, in addition to asking him for his driver's

1 license?

2 A I don't know.

3 Q And did he give you his driver's
4 license?

5 A Yes, he did.

6 Q And what conclusions did you form
7 about his ability to understand questions, as a
8 result of him giving you that driver's license?

9 A That he understood my request.

10 Q Take a look, please, in the document
11 that's found at tab B.10, which we've made an
12 exhibit. B.10, it's at tab C.ii, or two little
13 "I's" it's shown. Actually, you could get, madam
14 clerk, B.10.c.i. B.10.c.i, this is a photocopy of
15 a license document. I know the photograph is not
16 going to help you out at all because it's almost
17 impossible to see any figures or distinguishing
18 features. But you have there what purports to be
19 a Manitoba license certificate for
20 Harveymordenzenk, D.G. And it has an address in
21 Winnipeg and personal information, height of 6'1",
22 sex male. Down below you have the photo
23 identification, showing a date of birth of the
24 21st of February, 1974, which would make this
25 individual 34 years of age today. And the name

1 "Harveymordenzenk" all one word, initials "D.G."
2 shown on the initial portion; is that correct,
3 sir?

4 A That is correct.

5 Q And is that the driver's license that
6 you were furnished with, sir?

7 A I am assuming it would be, yes.

8 Q And you have recorded the name in your
9 notes as "Harveymordenzenk" as one word, have you
10 not, sir?

11 A Yes, I have.

12 Q I understand that you, in fact, knew
13 Derek Harveymordenzenk before this day, the 25th
14 of February, 2005?

15 A I knew of him. I didn't know him
16 personally.

17 Q How did you know of him, sir?

18 A He was someone that went to the same
19 high school as me.

20 Q And what high school was that, sir?

21 A Vincent Massey High School in Brandon.

22 Q How many high schools are there in
23 Brandon?

24 A I believe there was three when I was
25 there. I am not sure about now.

1 Q And what would those high schools have
2 been?

3 A Crocus Plains, and I believe there was
4 Neelin.

5 Q And we've heard that Brandon is a
6 reasonably small town?

7 A Reasonably, compared to Winnipeg.

8 Q And what would you make the population
9 of Brandon as?

10 A I am not sure. I believe it was
11 around 40,000 when I was -- I lived there.

12 Q I understand Constable Graham also, by
13 coincidence, also happens to be from Brandon?

14 A I believe so, sir.

15 Q Sir, I think you know so; is that
16 fair?

17 A I don't know if he was from Brandon or
18 outside, but I did know that he lived in Brandon
19 at one point.

20 Q How do you know that?

21 A I was doing conciliation at DOPS, and
22 he also went there.

23 Q He also said that he went to high
24 school with you?

25 A Constable Graham?

1 Q Yes.

2 A I don't believe so.

3 Q Maybe I'm confused. I am confused,
4 and I do apologize. What was Derek
5 Harveymordenzenk's name when you knew of him back
6 in high school?

7 A I believe it -- I recall it as being
8 Derek Zenk.

9 Q So there was no "Harveymorden" part to
10 that name at the time?

11 A Not that I heard.

12 Q And when you say you knew of him, you
13 would recognize him, sir, if you ever saw him?

14 A Maybe now, but not before, no, I
15 wouldn't.

16 Q So did you know, when you saw the
17 driver's license, did you put two and two
18 together, sir?

19 A No, I did not.

20 Q When did it dawn on you, and I know it
21 did, that this is the same person who you knew of
22 in Brandon?

23 A I don't know exactly when it dawned on
24 me. I think at some point later on. I don't
25 remember if it was later on that evening or if it

1 was later, meaning days.

2 Q So when you used the expression in
3 your RCMP interview "a day or two after," you were
4 using that expression just as a general indication
5 that it was later, and you don't know when?

6 A That's correct.

7 Q I am going to take you back to the
8 incident report, sir. And I am going to take to
9 you the same passage at 742. This, again, is at
10 tab E.2.25.b, E.2.25.b. I will take you to the
11 same passage at 742 that we were looking at
12 before, and the last sentence:

13 "Chief Bakema advised writer that the
14 driver was distraught over the
15 accident and advised writer to stay
16 with him due to his condition."

17 Do you see that, sir?

18 A Yes.

19 Q Do you recall being told to stay with
20 him due to his condition?

21 A I recall being told to keep him there
22 and Sergeant Carter was coming.

23 Q And, sir, did you stay in the vehicle
24 throughout the time you had Derek Harveymordenzenk
25 in your vehicle?

1 A No, I did not.

2 Q How often were you out of the vehicle,
3 sir?

4 A Quite frequently.

5 Q What caused you to get out of the
6 vehicle?

7 A At the time I was trying to monitor
8 traffic. It was very busy that day on the
9 highway, northbound traffic. And I recall seeing
10 quite a few vehicles almost involved in other
11 collisions, so I was definitely trying to prevent
12 any other further collisions or --

13 Q How were you doing that? What exactly
14 were you doing when you got out of the vehicle?

15 A I believe I was standing there on the
16 road and trying to get people to slow down by hand
17 signs.

18 Q Right. And what would provoke you to
19 decide to go back into the vehicle? Was it the
20 cold?

21 A I don't recall exactly why I went back
22 in. I know --

23 Q Are you able to give us an indication
24 of how frequently you went in and out?

25 A Not with any certainty, but it was

1 quite frequent. It was on a number of occasions.

2 Q And did you stay in the general
3 proximity of the vehicle?

4 A Yes. In the general proximity, yes.

5 Q So during this time, if I understand
6 you correctly, you have no active assigned duties
7 to perform, but you're getting out periodically
8 because your vehicle, being parked at that
9 location, is not necessarily causing the traffic
10 to slow down, and you feel the need to try to help
11 that out by making a personal appearance; is that
12 fair, sir?

13 A That's fair to say.

14 Q And that was your own decision as to
15 how you were going to spend your time at that
16 scene?

17 A Yes. It was -- I was also concerned
18 about someone colliding with my vehicle, too.

19 Q During the time that you were on the
20 scene with Derek Harveymordenzenk, what were you
21 paying attention to?

22 A Probably mostly the traffic.

23 Q Sir, did you note any signs of
24 impairment on Mr. Derek Harveymordenzenk at the
25 scene?

1 A Not at that point. I recall at some
2 time getting an odour of liquor.

3 Q So you didn't observe any slurring of
4 speech?

5 A Not that I recall. I don't recall
6 having an in-depth conversation with him.

7 Q All right. And so -- and I take it,
8 from your answer, that you don't feel you had an
9 adequate opportunity to observe that, the nature
10 of the speech that he had, because he wasn't
11 speaking?

12 A That's correct.

13 Q Sir, you saw him come up with Chief
14 Bakema, five, ten feet. What kind of vantage
15 point did you have? Were you looking directly at
16 them or were you still looking at the mirror when
17 you described them?

18 A When they were coming up in?

19 Q Yes.

20 A I believe at the rear of the vehicle.
21 By the time I got out there, probably at the rear
22 door.

23 Q Are you able to describe the duration
24 of the walk that you were able to observe? How
25 far did he walk in your sight?

1 A I believe that when I first noted him
2 coming, it was, like I said, within ten feet or
3 so. I don't know if I observed that whole walk.

4 Q And what would you say about your
5 opportunity to observe him walk, sir?

6 A I would say, at that point, it
7 wouldn't have been sufficient.

8 Q And, sir, you obtained his driver's
9 license from him?

10 A Yes.

11 Q And did he produce that license
12 himself?

13 A Yes, he did.

14 Q Did you watch him obtain the license?

15 A I don't recall if I asked him for it
16 or if I was looking in the mirror. I don't recall
17 that.

18 Q So you never made a conscious attempt
19 to try to see how well he manipulated his wallet?

20 A I don't recall making any conscious
21 attempt.

22 Q And so the only thing you make as an
23 observation, that might be relevant to the
24 prosecution of an impaired driving case, is the
25 smell of alcohol at the scene; is that fair, sir?

1 A That's correct.

2 Q You indicated, at some point, you
3 smelled the odour of liquor. Do you know when
4 that was?

5 A I believe it was when I was going
6 back -- when I was taking him to the station, to
7 Sergeant Carter.

8 Q So en route?

9 A En route.

10 Q What makes you believe that you
11 smelled the odour of alcohol en route?

12 A That's what I have in my notes.

13 Q Sir, if you look in your notes, in
14 fact, it doesn't indicate where you observed the
15 odour of alcohol, but it does in your incident
16 report.

17 A It could have been from my incident
18 report.

19 Q So you're basing your testimony today
20 on the incident report itself?

21 A In my notes it says 10:17, East St.
22 Paul office, recorded, Harvey-Zenk, recorded
23 liquor slight.

24 Q Recorded liquor slight?

25 A "10:17" would mean I was en route.

1 Q Okay. All right. Thank you for that
2 clarification. And I'm asking you this question
3 because, again, you've furnished a number of
4 responses in connection with the same question,
5 when you smelled the odour of alcohol, and your
6 answers vary somewhat. Are you aware of that,
7 sir?

8 A Pardon me?

9 Q I say I ask you the question about
10 when, because the answers you've furnished in your
11 various interviews vary somewhat. Are you aware
12 of that, sir?

13 A Yes.

14 Q Okay. And why do your answers vary,
15 in terms of where you believe you smelled the
16 alcohol?

17 A I'm not sure why they vary. I guess
18 I'm not 100 percent certain on referring to
19 interviews and notes because I don't have a
20 positive recollection of that.

21 Q Because you indicate to the RCMP, at
22 page 716 of your interview, again at tab B, in
23 this passage at page 618, the bottom third of the
24 page, you don't remember where it was that you
25 smelled the odour of alcohol. Kennett asks you

1 four questions from the bottom:

2 "What were those then? And we're
3 talking about Zenk.

4 Woychuk: I guess at some point there
5 I did get a slight odour of alcohol
6 coming from him.

7 Kennett: Um-huh.

8 Woychuk: I don't recall exactly when
9 it was. And, I mean, to me, I looked.
10 He didn't talk. He wasn't talking at
11 all."

12 Do you see that answer, sir?

13 A Yes, I do.

14 Q And then, of course, you are
15 indicating there that you don't know exactly when
16 it is. So you had access to your incident reports
17 and notes before you spoke to the RCMP?

18 A Yes, I -- yes, I did.

19 Q And why is it that you didn't have
20 confidence in those documents when you were
21 speaking to the RCMP?

22 A I don't know. I guess it was just
23 my -- I didn't recall, my memory.

24 Q Sir, that's why we take notes, isn't
25 it?

1 A Yes.

2 Q And if you don't trust your notes,
3 then doesn't that tell you something more about
4 your note-taking than it does about your memory?

5 A Yes.

6 Q Page 635 of the same interview, third
7 question from the bottom:

8 "Kennett: So, I guess, at what point,
9 then, did you start to see signs of
10 impairment then?

11 Woychuk: I guess probably I got a
12 slight odour of liquor when I was in
13 the vehicle at one point. And I
14 believe it was after, after the
15 ambulance had dealt with him."

16 Do you see that answer, sir?

17 A Yes, I do.

18 Q And, of course, we're going to come to
19 the description of the ambulance and testimony
20 dealing with him, sir. But I understand, from
21 your transcripts, that you had some information
22 given to you from an ambulance attendant?

23 A Yes, I did.

24 Q And what was that information, sir?

25 A That he could be drinking or had been

1 drinking.

2 Q And, sir, is there any relationship to
3 your answer here, saying that you noted the odour
4 of alcohol after that suggestion had been made to
5 you and the comment that you just relayed to the
6 Commissioner?

7 A I don't --

8 Q I am wondering why you situate the
9 time as after the ambulance was there, sir?

10 A I don't -- I don't know why it was
11 after that.

12 Q Do you recall smelling any alcohol,
13 sir?

14 A I do recall smelling an alcohol odour
15 at some point.

16 Q And you were in the vehicle at some
17 point?

18 A Yes.

19 Q And your evidence, if I understand you
20 correctly is, it may have been en route and that's
21 what you believe today?

22 A Yes.

23 Q But you are not 100 percent, would
24 that be a fair way to --

25 A It would be fair.

1 Q Sir, do you have any explanation as to
2 why you would smell it after the ambulance, or en
3 route, and not during the long period of time that
4 you were in the vehicle with Mr. Woychuk -- sorry,
5 with Mr. Zenk at the scene?

6 A I don't have any explanation.

7 Q Have you ever offered an explanation
8 to anyone?

9 A I don't know. I believe I've said
10 before that I had a cold at the time and I was
11 plugged up.

12 Q And the way you put that, you've said
13 it before, is that an accurate piece of
14 information, sir?

15 A Yes, it is.

16 Q I think you said you were sucking on
17 Halls all day, is the way you put it?

18 A I believe that's what I said.

19 MR. PACIOCCO: If I could just have a
20 minute, Mr. Commissioner, I want to change the
21 order of something here.

22 BY MR. PACIOCCO:

23 Q Okay. Sir, are you aware of the
24 policy and procedure guidelines of East St. Paul
25 in connection with the investigation of

1 alcohol-related incidents?

2 A Not 100 percent.

3 Q I am going to show you a document. It
4 is in P, as in Peter, 2. It's at page 80 -- tab
5 85, page 2571. 85? Yes, it's 85, page 2571.
6 Actually, at P2.85.1, if that could be made
7 Exhibit 92, please.

8 THE CLERK: This is 93.

9 (EXHIBIT 93: P-2.85.1, pgs. 2574-2613
10 and pgs. 2614-2657, Excerpt from East
11 St. Paul Police Policies and
12 Procedures Manual, Instructions)

13 BY MR. PACIOCCO:

14 Q Sir, you'll notice, on the first page
15 of that document is the heading "Policy
16 Instructions", and it is dated March 22, 1995;
17 correct, sir?

18 A Yes.

19 Q And if you turn, please, to page 2577,
20 under the heading "Observation of suspect at scene
21 of the offence," A -- that's heading A under the
22 heading 1 -- "Impaired Driving". This policy and
23 procedure manual says:

24 "A suspect shall be observed at all
25 times and the following noted:

1 "1) Manner of walking - whether the
2 suspect was steady.
3 2). Attitude - cooperative,
4 belligerent, friendly, amorous.
5 3) Speech - slurred, fluent, slow or
6 fast, difficulty in pronouncing
7 certain words.
8 4) Breath odour of alcoholic
9 beverage.
10 5) Condition of clothing -
11 disheveled, neat, dirty.
12 6) Unusual actions.
13 7) Evidence of injury or illness.
14 The Member shall attempt to determine
15 from the suspect how much sleep they
16 had, when they last ate and whether
17 they are ill or taking medications."

18 Do you see that list of duties that are involved
19 in the investigation of an impaired driving case,
20 sir?

21 A Yes, I do.

22 Q And I think those are probably pretty
23 much common sense altogether, apart from having
24 them in a policy?

25 A Yes.

1 Q And I think you would agree with me,
2 sir, that at the scene you did not discharge those
3 duties?

4 A I didn't.

5 Q Were you aware that those were your
6 duties, sir, at the time in 2005?

7 A I don't know if I was aware that they
8 were policy. But I believe through, as you say,
9 common sense I should have known.

10 Q Sir, there is actually a sign-on sheet
11 in connection with the policy. And you will
12 notice at page 2575 that your name does appear,
13 although it does not appear until, apparently,
14 after the collision that took the life of Crystal
15 Taman.

16 You have not dated the date on which
17 you viewed this. But Constable Chudyk, ahead of
18 you, has dated the date, the 30th of '05 -- the
19 30th of the 5th month, rather, of '04. And then
20 the entry after you is the 7th month of '05,
21 Constable Graham. So it's possible that you saw
22 this before the accident, but not certain, because
23 of the timeframe within the other dates; is that
24 fair, sir?

25 A Possible.

1 Q But, again, you would agree with me
2 that those observations are things that should
3 have recommended themselves to you as a matter of
4 common sense?

5 A Yes.

6 Q You'll notice on page 2578, under the
7 heading "F" for Frank, there is a heading "Demand
8 for Roadside Screening Device Test". And it
9 reads:

10 "Should the member believe there are
11 no reasonable grounds sufficient to
12 pursue a charge under Section 253,
13 Criminal Code, and/or to demand a
14 breathalyzer test or blood test, but
15 reasonably suspect that a person
16 driving or having care or control of a
17 motor vehicle has alcohol in their
18 body, they shall demand that the
19 person submit to a Roadside Screening
20 Device Test as described below in
21 Section 2 of this Policy."

22 And then it references section 254.4 of the
23 Criminal Code, correct, sir?

24 A Correct.

25 Q And we've already established that you

1 made no effort to secure a roadside demand for
2 Mr. Harvey-Zenk?

3 A That's right.

4 Q Or to ascertain whether you had a
5 basis for doing so?

6 A Right.

7 Q I understand that the paramedics
8 arrived while Mr. Harvey-Zenk was in your vehicle?

9 A Yes.

10 Q How many came, sir?

11 A I believe there was two of them.

12 Q And they were the Selkirk paramedics?

13 A Yes.

14 Q And what happened when they came?

15 A They -- one of them got into the back
16 seat with Derek Harvey-Zenk.

17 Q Do you know the paramedic who got in
18 the back seat?

19 A I thought it was Ted Rosser. I
20 believe it was.

21 Q All right. And he gets in the back
22 seat with Mr. Harvey-Zenk. And what happens then?

23 A He was in there for a few minutes.

24 Q Sir, how long, after your conversation
25 with Chief Bakema, did they show up?

1 A I don't recall how long it was after.

2 Q Did you remain in the vehicle when
3 Mr. Rosser was in the back seat with
4 Mr. Harvey-Zenk?

5 A No, I didn't. I was outside.

6 Q Were you in the vehicle with them at
7 any point in time?

8 A No.

9 Q And what happened during that meeting
10 between Mr. Harvey-Zenk and Mr. Rosser?

11 A Harvey-Zenk declined any medical
12 attention and signed a waiver to the same.

13 Q And I take it that's information that
14 you received from Mr. Rosser, given that you were
15 not in the car?

16 A Yes.

17 Q And you observed Mr. Rosser in with
18 Mr. Harvey-Zenk. Was he in the back seat or the
19 front seat, Mr. Rosser?

20 A He was in the back seat.

21 Q Sir, you had some communication with
22 Mr. Rosser after he exited the vehicle?

23 A Yes.

24 Q And can you tell the Commissioner
25 about that communication, please?

1 A He had mentioned to me that
2 Harvey-Zenk had declined medical attention, signed
3 a waiver. And he also made a comment, or a
4 motion, that he either detected some alcohol or
5 that he may have been drinking.

6 Q Sir, you say this in your RCMP
7 statement as well, that he may have said something
8 or made a motion. What type of motion do you
9 believe he may have made?

10 A The hand to the -- cup to the mouth
11 motion.

12 Q Okay. And are you able to help us out
13 in trying to determine whether it would have been
14 a comment or a hand motion?

15 A I don't recall which it was. It was
16 one of the two.

17 Q Okay. And so you're confident that it
18 was either/or, but you don't know which one; is
19 that fair?

20 A Yes.

21 Q And if it was a motion, that's how you
22 interpreted it?

23 A Yes.

24 Q Did you ask him any questions, the
25 paramedic?

1 A None that I recall.

2 Q And you chose not to follow up on
3 that?

4 A I didn't ask him any further questions
5 on that.

6 Q Do you know what time they left, sir?

7 A No, I don't know.

8 Q Did Chief Bakema return to the car at
9 all during all of this?

10 A I spoke to him on a few occasions. I
11 don't recall. He did return to the car, I
12 believe, after the ambulance had left. I don't
13 recall before that.

14 Q But you indicate you spoke to him on a
15 few occasions?

16 A Yes.

17 Q I take it that had he returned to the
18 car on those occasions, you would have had to
19 speak to him outside the vehicle?

20 A Yes.

21 Q Well, it is one or the other, sir,
22 right?

23 A Yes.

24 Q And I take it, from your answer, sir,
25 you are not sure how many times he came to the

1 vehicle, but one time after the paramedics were
2 there?

3 A I don't know for certain how many
4 other times he had come.

5 Q But did you talk to him more than
6 once?

7 A I did talk to him more than once.

8 Q What kind of conversations did you
9 have with him?

10 A I was asking him for direction on what
11 to -- what do you want me to do?

12 Q Sir, had he not already given you
13 direction?

14 A He did.

15 Q And what were you trying to do by
16 asking him for further directions?

17 A Trying to find out what further he
18 wanted me to do.

19 Q Are you able to tell us how many times
20 you asked him, what do you want me to do?

21 A I don't know for certain, but I
22 believe it was probably in the area of three or
23 four times.

24 Q Why did you keep asking him that?

25 A I guess probably because I was unsure

1 of what was going on. And I was waiting for
2 Sergeant Carter to come to the scene, and he
3 wasn't there yet.

4 Q How were you feeling?

5 A Pardon me?

6 Q How were you feeling about things?

7 A I felt that the direction was poor,
8 given the comments that were made.

9 Q Did you tell him that?

10 A No, I didn't tell him that.

11 Q Is there a reason why you didn't tell
12 him that?

13 A I guess I didn't want to question him
14 or, I guess, given the time when this occurred, I
15 wasn't --

16 Q When you say "given the time that this
17 occurred," do you mean shortly after you just
18 joined the police force?

19 A Yes.

20 Q And this is the Chief of Police you
21 are dealing with?

22 A Yes.

23 Q Did you share with Chief Bakema the
24 information you had received, either by motion or
25 verbally, from the ambulance attendant that there

1 was a sign that there had been some alcohol
2 consumption on the part of Mr. Harvey-Zenk from
3 the attendant?

4 A Yes, I did share that.

5 Q Where did you do that, sir? Was that
6 at the scene or was that some time later?

7 A I believe it was some time later, or I
8 am not sure if it was at the scene or not. There
9 was a discussion at a later point, though.

10 Q Okay. And we will come to that
11 discussion shortly. What happened after the
12 paramedics left and you had some conversation with
13 Chief Bakema?

14 A I was told to transport him to the
15 station.

16 Q And who told you to transport him to
17 the station?

18 A Harry Bakema.

19 Q Was there any explanation given?

20 A No.

21 Q Did you have any information about
22 where Chief Carter was -- or Sergeant Carter was,
23 rather?

24 A No, I don't. I believe the
25 information that I had was that he was at the

1 station.

2 Q And where would you have got that
3 information from?

4 A From Harry Bakema.

5 Q So if I understand you, you had
6 received some information from Harry Bakema that
7 Sergeant Carter was now at the station and you
8 should go there?

9 A Yes.

10 Q And, I take it, was there any
11 discussion about bringing Harvey-Zenk there?

12 A Was there any discussion?

13 Q Yes. Were you able to bring
14 Harvey-Zenk there, or just you go?

15 A Oh, to take Harvey-Zenk.

16 Q Based on your notes, sir, your
17 departure occurs at 8:08 a.m., correct?

18 A Correct.

19 Q And you arrive at 8:12, four
20 minutes --

21 A Correct.

22 Q -- for travelling time?

23 A Correct.

24 Q Now, sir, you have expressed, on
25 occasion during your interviews, that you were

1 concerned about the delay. What were you
2 concerned about the delay and the amount of time
3 that you were at the scene with Mr. Harvey-Zenk?

4 A That he was in the back of a police
5 car and there was no -- ever any charter caution
6 even.

7 Q So you felt that there was potentially
8 a charter violation there, sir?

9 A Yes, I did.

10 Q And based on the fact that he was in
11 the back of a police car, what did you understand
12 that that would mean, having him in the back of a
13 police car, legally?

14 A I guess unlawful detention.

15 Q Okay. And what might cause you to
16 believe that that was unlawful, sir?

17 A Because after I took him back to the
18 station, he was arrested.

19 Q Sir, was there any concern about the
20 right to counsel?

21 A Yes.

22 Q Could you explain that, please?

23 A I don't know if the concern came --
24 when exactly I was concerned. I guess the biggest
25 thing I was concerned about was the direction I

1 was given not to do anything, but in the same
2 conversation I was given information that he could
3 be impaired or was impaired.

4 Q Okay. So was it fair to say that you
5 felt that legally that you were required to act on
6 that information reasonably quickly or you would
7 run into trouble with any breath samples that
8 might subsequently be taken?

9 A Yes.

10 Q And did it occur to you that,
11 depending upon the circumstances in which he was
12 in the back of the police car, that would amount,
13 in the law, to a detention, correct, sir?

14 A I don't know if that's the exact way I
15 thought of it but, basically, yes.

16 Q And you understand that anybody who is
17 detained by the police is advised to the right to
18 counsel forthwith, without delay --

19 A Yes.

20 Q -- under Section 1(b) of the Charter?

21 A Yes.

22 Q Was there any constitutional or
23 charter warning by yourself to Mr. Harvey-Zenk?

24 A Not by myself, no.

25 Q Did you make any efforts to determine

1 whether he had been chartered?

2 A No, I didn't.

3 Q Sir, you arrive at East St. Paul
4 Police Station. Who was there?

5 A Sergeant Carter.

6 MR. PACIOCCO: Mr. Commissioner, I
7 don't know what time you wish to break for the
8 afternoon recess. I can keep going for sure, but
9 it is 3:20.

10 THE COMMISSIONER: Well, how much --
11 how long are you going to be?

12 MR. PACIOCCO: Well, I am going to be
13 a while with him. I think we will probably finish
14 him up today.

15 THE COMMISSIONER: Yes.

16 MR. PACIOCCO: But we are going to be
17 a while.

18 THE COMMISSIONER: Well, let's break
19 now.

20 THE CLERK: All rise. This Commission
21 of Inquiry is in recess.

22 MR. PACIOCCO: How long,
23 Mr. Commissioner?

24 THE COMMISSIONER: 15 minutes.

25 MR. PACIOCCO: Thank you.

1

2 (Proceedings recessed at 3:20 p.m. and

3 reconvened at 3:36 p.m.)

4 THE CLERK: All rise, please. This
5 Commission of Inquiry is now re-opened. Please

6 be seated.

7 BY MR. PACIOCCO:

8 Q Sir, just before the break, you
9 indicated that you went back to the station with
10 Mr. Harvey-Zenk, according to your notes, and
11 Sergeant Carter was there. Where did you meet
12 Sergeant Carter?

13 A I believe I met him inside the
14 building.

15 Q Can you tell us of the circumstances
16 in which you met him inside the building? Where
17 was Mr. Harvey-Zenk at that time?

18 A He was in the -- remained in the
19 police vehicle.

20 Q So it's your evidence that you left
21 him alone in the police vehicle and went into the
22 station?

23 A Yes, I did.

24 Q Is that something you normally do,
25 officer, you leave a suspect alone in a police

1 vehicle?

2 A Not normally. It's -- depending on
3 what the circumstances are, but no, not normally.

4 Q Sir, would you have left just any
5 suspect in the back of a police vehicle like that?

6 A I guess it would all depend on the
7 circumstances, but it's not a normal practice.

8 Q Sir, you describe how you went into
9 the building. You left him behind. And if you
10 look at your duty notes, sir, they seem to provide
11 a slightly different description of that event; is
12 that fair, sir?

13 A Yes, they do.

14 Q Take a look at page 605 of tab
15 E.2.25.a.

16 Q Your notes, at page 12, indicates:
17 "Arrived at East St. Paul office.
18 Sergeant Carter met at rear entrance
19 to office"?
20 What does that say, sir?

21 A "Into office."

22 Q "Into office." So, according to your
23 notes, you appear to have been met by Carter at
24 the rear. And I understand, from your testimony,
25 that you actually went inside and met him there,

1 and then you went out, or you went out, sir?

2 A No. I went into the building to speak
3 to him, yes.

4 Q So that's not accurate, sir, your
5 notes?

6 A I don't know if he was near the rear,
7 or that's why I put it there, or I don't --

8 Q The reason I ask you this question,
9 sir, is because you know that Sergeant Carter, now
10 Chief Carter, takes a different impression of
11 where you met with him for the first time, sir?

12 A Yes.

13 Q And it's not his view that he met you
14 at the rear. It's his view that he met you
15 inside, sir?

16 A Yes.

17 Q And you were made aware of that?

18 A Yes.

19 Q How did you learn that?

20 A I don't know for certain. Maybe Chief
21 Carter may have mentioned that to me. I don't
22 recall for certain.

23 Q Okay. And then I notice that now
24 you've adopted a different view from your original
25 notes. Is it because Chief Carter told you that

1 he met you inside the station that you're now
2 providing that version of events, sir? Do you
3 recall it or can you explain it?

4 A I don't necessarily recall exactly
5 where I met him, but I just accepted that I had
6 met him inside.

7 Q Effectively, this senior member,
8 Sergeant Carter, now Chief Carter, expressed to
9 you that your notes were inaccurate, and based on
10 that, you've now adopted that version. Is that a
11 fair way to put it, sir?

12 A It's fair.

13 Q Because you know that the Winnipeg
14 or -- excuse me, the RCMP asked you, when you've
15 described the arrival, whether anyone had
16 influenced you in the testimony you were going to
17 give. And I asked you whether Chief Carter had --
18 what Chief Carter had said to you about the
19 information you were going to give to the RCMP.
20 Do you remember being asked those questions?

21 A Yes.

22 Q And do you recall what your response
23 was?

24 A I believe my response was that no one
25 had influenced me.

1 Q And did you tell them what Chief
2 Carter had told you to say?

3 A I don't -- I don't recall if that was
4 something that was brought up after or before my
5 RCMP interview.

6 Q Okay. I am just going to take you
7 there. Just for the sake of completeness, if you
8 can look at the first interview, which is at
9 E.2.25.d at page 655, 656. Excuse me, I
10 apologize, it's page 508. No, that's not right.
11 I messed up here.

12 MR. PROBER: It's at the bottom of
13 655, 656.

14 BY MR. PACIOCCO:

15 Q Yes. Thanks, Mr. Prober. Bottom of
16 655, Woychuk -- or Kennett is asking you:

17 "KENNETT: And everything along here
18 (pointing to notes), is accurate, as
19 far as you can recall?

20 WOYCHUK: As far as I recall, yeah, it
21 looks accurate to me. Like I mean,
22 they're not really detailed, or
23 nothing but. This here, I met
24 Sergeant Carter at the rear entrance.
25 Like I said, I don't recall. I think

1 I met him in the hallway kind of. If
2 you come in one small hallway, and
3 then there'd be another hallway into
4 our office.

5 KENNETT: Um-huh.

6 WOYCHUK: I believe I met him
7 somewhere in there and then we went
8 around to the back.

9 KENNETT: Um-huh.

10 WOYCHUK: To me, this here says I met
11 him at the rear entrance, but I guess
12 it would have been the hallway."

13 And you, of course, are referring to your notes
14 when you say 'this here', it says you met him at
15 the rear entrance.

16 "KENNETT: And as far as any
17 conversations that you've had with
18 Chief Carter before coming here
19 today...

20 WOYCHUK: Yeah.

21 KENNETT: Ahm, did Chief Carter give
22 you any directions as far as, ah, what
23 to say to, to us today?

24 WOYCHUK: Well, he just said

25 'Be honest,' just tell what happened."

1 Do you remember that exchange, sir?

2 A Yes.

3 Q So --

4 THE COMMISSIONER: Excuse me, does
5 Chief Carter have to tell a police officer to be
6 honest?

7 THE WITNESS: No.

8 THE COMMISSIONER: You're expected to
9 be honest?

10 THE WITNESS: Yes, sir.

11 THE COMMISSIONER: The public expects
12 you to be honest?

13 THE WITNESS: Yes, sir.

14 THE COMMISSIONER: And he told you to
15 be honest. Thank you. Go ahead.

16 BY MR. PACIOCCO:

17 Q When you met with Chief Carter, back
18 then Sergeant Carter, and he arrived, what did you
19 say to him?

20 A At the back entrance or when I brought
21 the --

22 Q The whole period during which you
23 initially arrived, describe that whole period and
24 the conversations and what took place for us?

25 A I don't recall exactly. But I said I

1 believed I told him that I had the driver from the
2 collision and that I got an odour of liquor. And
3 I believe I mentioned to him that it may have been
4 a Winnipeg police officer. I am not sure if I
5 mentioned that or not.

6 Q And, sir, how confident are you that
7 you communicated those three pieces of
8 information; that you had a driver, that you had
9 an odour of liquor, and that he, indeed, was a
10 Winnipeg police officer?

11 A I don't know. I don't have a -- an
12 independent recollection of that conversation.

13 Q Nor do you have a note about that
14 conversation, do you, sir?

15 A No.

16 Q Was -- are you certain that there was
17 a discussion about alcohol, either references to
18 impairment, or to the odour of alcohol having been
19 detected?

20 A I recall mentioning that.

21 Q Okay. So you're confident there was
22 some reference to alcohol, but you're not sure
23 what exactly it was, is that a fair way to put it,
24 sir?

25 A That would be fair.

1 Q And you're not sure whether you
2 mentioned to him that this gentleman was a police
3 officer?

4 A I am not 100 percent sure.

5 Q What's your sense?

6 A I probably would have.

7 Q What happened after you shared this
8 information with him, whatever it was that you
9 shared with him?

10 A Sergeant Carter went out to the
11 vehicle and began speaking to the accused.

12 Q And where were you when he went out to
13 the vehicle?

14 A I was with him.

15 Q And, basically, the two of you went
16 out to the vehicle?

17 A Yes.

18 Q And when you say:

19 "Began speaking to the accused,"
20 are you able to give us any more detail?

21 A I don't recall any conversation, that
22 Sergeant Carter opened the back door, or was
23 speaking to him.

24 Q Okay. And are you able to observe
25 this conversation, sir? Are you able to see it?

1 A I did see it, but I don't recall what
2 was said during that conversation.

3 Q Was it a one-way or a two-way
4 conversation?

5 A I don't recall.

6 Q Who do you recall speaking to before
7 witnessing the conversation?

8 A Pardon me?

9 Q Who do you recall speaking, if you
10 were witnessing a conversation?

11 A I recall Sergeant Carter speaking, but
12 I don't recall what was said.

13 Q What happened then?

14 A And then the three of us went into the
15 station.

16 Q Did you observe Mr. Woychuk get out of
17 the police vehicle?

18 A Mr. Zenk?

19 Q Or Mr. Zenk. I do apologize for that.

20 A I did, but I don't -- I would have,
21 but I don't recall where I was standing in
22 relation to him getting out.

23 Q Okay. What happened when he brought
24 Mr. Zenk into the police station?

25 A He was put into a holding cell or

1 office.

2 Q What happened then?

3 A Sergeant Carter formed an opinion of
4 impairment and advised him he was under arrest for
5 impaired driving.

6 Q Did you witness that, sir?

7 A Yes, I did.

8 Q Let's use your notes for the times.
9 Your notes, again, are at tab E.2.25.a. You have
10 a time of 8:12 where you arrive, describe the
11 meeting at the rear entrance that was just
12 discussed. You have:

13 "Sergeant Carter placed
14 Harveymordenzenk into interview room
15 number 1."

16 Do you recall that happening, sir?

17 A Yes.

18 Q And then you have the next entry at
19 8:18:

20 "Observed Sergeant Carter arrest,
21 caution..."

22 and what would that be, sir?

23 A Police warning, "PW".

24 Q "Police warning, breath demand.
25 Harveymordenzenk."

1 So you saw that occur at that time, sir?

2 A Yes, I did.

3 Q And what happened next?

4 A I don't have any notes of it, but I
5 believe he phoned his lawyer, or made contact with
6 legal counsel.

7 Q Okay. And were you there for that,
8 sir?

9 A Yes, I was.

10 Q And where did he make contact with
11 legal counsel, are you able to say?

12 A I believe he was in the interview
13 room, or the cell, or whatever you wish to call
14 it. A phone was brought in.

15 Q Is that a location that affords
16 individuals privacy?

17 A Yes, it is.

18 Q And do you know who he called?

19 A No. I don't recall who he called.

20 Q It is not something that you noted or
21 recorded?

22 A No, I don't.

23 Q What happened after that contact with
24 counsel?

25 A I believe Sergeant Carter had spoken

1 to him again and requested that he provide breath
2 samples.

3 Q And where was Sergeant Carter during
4 the time that Mr. Harveyordenzenk was consulting
5 with counsel?

6 A I don't know for certain. I believe
7 he may have been outside in the breath room, which
8 was next door.

9 Q And, sir, is Sergeant Carter an
10 authorized breathalyzer technician?

11 A Yes, he is.

12 Q And so do you know what he would have
13 been doing in there?

14 A Preparing the serum, I think.

15 Q Do you know where Harveyordenzenk was
16 when the initial demand was furnished at 8:18?

17 A No, I don't recall.

18 Q Now, you've indicated in your notes:

19 "8:18, breath demand."

20 Do you remember what exactly was said by Sergeant
21 Carter?

22 A Meaning the breath demand?

23 Q Yes.

24 A It would have probably been read off
25 his card.

1 Q And were you paying attention when
2 that happened?

3 A I believe I was.

4 Q And you have recorded it as a "breath
5 demand", sir?

6 A Yes.

7 Q Now, the reason I'm asking you that is
8 because Sergeant Carter's notes refer to "blood
9 demand" rather than "breath demand". Do you have
10 any observations to make whether it was a blood
11 demand read to Mr. Harvey-Zenk or a breath demand?

12 A I believe it was a breath demand.

13 Q All right. So he's gone, you believe,
14 into the breathalyzer room to prepare the machine.
15 Harveymordenzenk has consulted with counsel. What
16 happens next?

17 A After he consults with counsel,
18 Sergeant Carter asked me to bring Harvey-Zenk into
19 the breath room.

20 Q Yes, sir.

21 A He told me he didn't want to provide
22 samples.

23 Q And Mr. Harveymordenzenk said this to
24 you?

25 A Yes.

1 Q And was this when you were conveying
2 him to the breath room he told you that?

3 A I think he didn't come out of the
4 room. He was sitting on the bench there.

5 Q When he spoke to you?

6 A Yes.

7 Q And what did he do when he told you he
8 didn't want to provide breath samples?

9 A From what I recall, Sergeant Carter
10 was in the breath room next door and he heard
11 this. I believe he came out and started speaking
12 to Harvey-Zenk.

13 Q And you have two times:

14 "9:05: Harveymordenzenk stated, 'no I
15 don't want to provide a sample'."

16 And at 9:07 you said:

17 "Harvey-Zenk asked to provide a
18 sample",

19 and:

20 "Harveymordenzenk said 'no'."

21 Both of those are in quotes?

22 A I believe they are in quotes.

23 Q And the first time he would have said
24 "no", and he would have said, "No, I don't want
25 to" the second time. What happened then?

1 A Sergeant Carter read the refusal.

2 Q The refusal is, effectively, a

3 warning --

4 A Yes.

5 Q -- that he would be charged if he

6 didn't comply with the demand?

7 A Yes.

8 Q And what happened then?

9 A And then, I believe, he gave him

10 another opportunity to provide the samples.

11 Q And so at 9:08 you have recorded:

12 "Sergeant Carter read refusal.

13 Accused refused to provide a breath

14 sample.

15 9:09: Sergeant Carter gave

16 opportunity to provide sample.

17 Accused refused."

18 What were you doing when all of this was going on?

19 A I was observing, I guess.

20 Q And, sir, what time did you leave the

21 office? Your shift has long been over?

22 A I believe it was around 10:30.

23 Q And that's an estimate, on your part.

24 You don't have any record of that. There is no

25 indication in your notes as to when you departed?

1 A No.

2 Q And no indication of any events
3 occurring after the last one you just spoke of,
4 sir?

5 A No, there isn't.

6 Q Sir, did you observe any signs of
7 impairment, before you left the station that day,
8 on Mr. Harvey-Mordenzenk?

9 A I observed that he appeared unsteady
10 on his feet when he was walking from the police
11 vehicle into the station.

12 Q And did you observe anything else
13 beyond that, sir?

14 A Not that I can recall.

15 Q All right. Sir, I am going to ask you
16 a couple of questions about that. Your notes
17 don't contain any reference to those observations,
18 sir, correct, or incorrect?

19 A That's correct.

20 Q Your incident report, this appears at
21 page 607, of tab E-2.25.b, provides, in the fourth
22 last paragraph, on page 607:

23 "Sergeant Carter spoke to Harvey-Zenk
24 and brought him into the office. The
25 writer noticed that as Harvey-Zenk was

1 walking into the office, he appeared
2 to be unsteady on his feet."

3 Do you see where you have that recorded, sir?

4 A Yes.

5 Q Are you able to tell us when you made
6 that observation, sir?

7 A No, I'm not.

8 Q It does describe here that you notice
9 it as he is walking into the office. Does that
10 refresh your memory, sir?

11 A Not really. I don't recall exactly
12 where it was.

13 Q Sir, do you think there's a difference
14 in describing someone as being "unsteady on their
15 feet" and someone "stumbling"?

16 A I think so.

17 Q What would the difference be?

18 A "Stumbling" would be a manner of
19 walking, and "unsteady on their feet" may be if
20 they are standing in a still position or --

21 Q Okay. So somebody could be stumbling
22 because they are unsteady on their feet, but they
23 are not necessarily the same things?

24 A It could be very close, but it could
25 have a difference.

1 Q "Stumbling" is far more specific, is
2 it not?

3 A I believe so.

4 Q And what about staggering, would that
5 be the same as unsteady on one's feet?

6 A Probably not.

7 Q And, sir, I am going to take you to
8 first the transcript of your interview with
9 Mr. Clifford, at page 26, line 15. Page 26 of the
10 transcript with Mr. Clifford, Page 26, line 15:

11 "Q And did you notice any indicia or
12 signs of impairment yourself?

13 A I believe that I noticed -- I
14 think I have in my notes that he was
15 staggering, but I don't necessarily
16 recall that."

17 Do you remember giving that answer to
18 Mr. Clifford, sir?

19 A Yes.

20 Q You used the term "staggering",
21 whereas your notes say "unsteady on his feet"; is
22 that correct, sir?

23 A Yes.

24 Q Sir, is there a reason why you would
25 have described this person as "staggering" in your

1 interview with Mr. Clifford, when your notes use
2 the term "unsteady on his feet"?

3 A No explanation.

4 Q I'm sorry?

5 A Well, just a -- I don't have any
6 explanation for it, no.

7 Q Sir, you indicate that you don't
8 recall that. Do you recall him being unsteady on
9 his feet?

10 A I don't have any recollection of it.
11 Myself, right now, I'm having --

12 Q Is it something that you observed on
13 that day, sir?

14 A It is something that I know that I
15 observed, but I don't necessarily recall observing
16 it.

17 Q Okay. And if you look at your
18 interview with the RCMP, at page 635 of tab
19 E-2.25.d, you will notice, in the second last
20 paragraph, Kennett is allowing you to continue
21 your narrative.

22 THE COMMISSIONER: Which page?

23 BY MR. PACIOCCO:

24 Q Page 635, Mr. Commissioner. 635,
25 second last paragraph, Kennett is allowing you to

1 continue your narrative.

2 "KENNETT: Um-huh.

3 WOYCHUK: I took him back to the
4 office and then once he was out of the
5 vehicle and walking, I started seeing
6 other things, too.

7 KENNETT: Okay. What did you see?

8 WOYCHUK: Well, I saw he was stumbling
9 a little bit."

10 Do you recall giving that answer, sir?

11 A I don't necessarily recall giving the
12 answer, but I can -- I believe that that's what I
13 said.

14 Q And, again, your reference here is to
15 "stumbling", but your notes talk about
16 "unsteadiness on the feet", sir, is that correct?

17 A That's correct.

18 Q And I believe that we agree there may
19 be a difference between the two?

20 A Yes.

21 Q And so there are some diversions in
22 the way that you're describing this individual's
23 balance. Do we agree on that?

24 A Yes.

25 Q You also indicated, in the same

1 interview, at page 636, in the next paragraph:

2 "KENNETT: Um-huh.

3 WOYCHUK: Ahm, I guess slurring his
4 speech a little bit. He didn't really
5 even talk to me before that."

6 Do you see that observation, sir?

7 A Yes, I did.

8 Q Did you make observations of
9 Mr. Harvey-Zenk slurring his speech a little bit?

10 A I don't recall making those
11 observations, no.

12 Q Sir, why did you tell the RCMP, during
13 their investigation, that you observed that?

14 A I don't recall. Maybe I was confused.

15 Q So you're thinking that maybe you did
16 not observe that, sir?

17 A I don't recall observing that, no, I
18 don't.

19 Q And it does not appear in your
20 incident report?

21 A No.

22 Q It does not appear in your notes?

23 A No.

24 Q Sir, I understand you did not make
25 your notes at the scene itself?

1 A That's correct.

2 Q You had a short shift off because you
3 were already on overtime?

4 A That's correct.

5 Q And you had to go back to your next
6 shift. You were still on evenings?

7 A That's correct.

8 Q And what time did you go into the East
9 St. Paul Police Station after leaving at
10 approximately 10:30 that day?

11 A I don't recall what time it was. It
12 was -- my shift was scheduled for 9:00 p.m.

13 Q Sir --

14 A I don't recall the time I went in for
15 my shift.

16 Q Did you go in for any purpose, apart
17 from simply attending your shift?

18 A No.

19 Q Was there a special job that you had
20 to do, or anything, that would have caused you to
21 go in there earlier?

22 A I don't recall if I was around earlier
23 or not.

24 Q What did you do when you went in?

25 A From what I recall, I did my MPICS

1 reports and made some notes.

2 Q Do you recall what order you did them
3 in?

4 A No, I don't.

5 Q Sir, do you know whether you completed
6 your incidence report that evening when you went
7 in?

8 A No, I didn't.

9 Q When did you complete it?

10 A I am not sure of the day when I did
11 it.

12 MR. PACIOCCO: I am going to take you,
13 if you would, to P1, tab 83. P1, tab 83. And the
14 page reference that I'm going to direct everyone
15 to is page 2212. Yes, if that could be made an
16 exhibit, please?

17 THE CLERK: Exhibit 94.

18 MR. PACIOCCO: P1, 83 is Exhibit 94.

19 (EXHIBIT 94: Correspondence from
20 Fillmore Riley with incident report
21 and log, P1, tab 83)

22 BY MR. PACIOCCO:

23 Q Now, what you have in front of you, at
24 page 83, are the records generated by the
25 computerized system for taking incident reports at

1 East St. Paul Police. You'll find the document
2 that I'm interested in at page 2212. And you'll
3 notice, at page 2212, you have an incident report
4 that is something of a work in progress.

5 You'll notice that the top half of the
6 page we have what are referred to, in the
7 left-hand column, as "old values" showing a date
8 of "2005/02/25". And you have about a half a page
9 and then you have a hard break line. And then you
10 have "new values" at "2005/02/25". And the entire
11 document is dated "2005/02/26 at 6:52:27 a.m.",
12 correct, sir?

13 A That's correct.

14 Q At the top?

15 A That is correct.

16 Q Sir, do you recognize this format with
17 the "old values" and the "new values"?

18 A Yes, I do.

19 Q And can you explain to the
20 Commissioner exactly how this type of document is
21 generated?

22 A It's -- it would be a revision log
23 for -- basically, once you enter a report and save
24 it, it will show any changes and, I guess, time
25 stamp it, any changes that you've made.

1 Q So if I understand you, the revisional
2 logs shows both the previous generational document
3 and the changes that you've made?

4 A That's correct.

5 Q And the date and time shown on the
6 document above the heading "old values" is
7 actually the time when the revisions are made,
8 sir, is that correct, when the revisions are
9 completed?

10 A I am not sure on that one. On the old
11 values, the date and time above that?

12 Q No. Above, in the black, "2005/02/26,
13 6:52:27, Jason Woychuk", that would be the time
14 when the revisions were made, isn't that right,
15 sir?

16 A Yes. I am not sure on how that works.

17 Q Well, based on your work with this
18 file, you made the changes when you arrived on the
19 beginning of your shift. That would be the 26th
20 of February, sir?

21 A Yes.

22 Q You did not complete it. And I am
23 suggesting to you, sir, you would have completed
24 it the following morning at, "2005/02/27 at
25 2:27:27", which would be during the course of the

1 same shift, is that fair, sir?

2 A That's fair.

3 Q Okay. And it shows that the document
4 was not complete. If you look at the old values,
5 it comes to the point where:

6 "Selkirk paramedics arrive at the
7 scene",

8 and then it stops. And then if you are going to
9 look for any more information, you've got to look
10 at the "new values" part of the document. That
11 tells you that you didn't finish it the first
12 time, sir?

13 A Yes.

14 Q I am going to come back to that
15 document shortly. But who was there when you went
16 back for your shift?

17 A I am not 100 percent certain. I think
18 Harry Bakema and Constable Graham. I don't know
19 for sure.

20 Q Sir, do you know whether both or
21 either of those gentlemen were there?

22 A I know Harry was there.

23 Q And you seem to have some recollection
24 that Ken Graham was there as well?

25 A I believe he was in the building as

1 well.

2 Q All right. And what causes you to
3 believe that, sir?

4 A Just memory.

5 Q And you indicated to the RCMP that you
6 believe he was in the building as well?

7 A Yes.

8 Q But you don't recall if he was there
9 the whole time or not, is what you told them?

10 A Yes.

11 Q Is that a fair description of your
12 evidence today?

13 A That's fair.

14 Q Was Sergeant Carter there?

15 A I don't recall if Sergeant Carter was
16 there or not.

17 Q And the reason I ask you that question
18 is, even though your interviews tend to proceed on
19 the basis that it was Ken Graham, and possibly Ken
20 Graham, but certainly Harry Bakema who were there,
21 there is also a reference, if you take a look,
22 please, at page 627 of your RCMP interview, to
23 "Norm". And this is about a third of the way
24 down.

25 "KENNETT: Okay. Ken is, Ken is

1 Constable Graham?

2 WOYCHUK: Constable Graham. And I
3 believe I still have -- I was involved
4 with Norm there for quite a while,
5 too, after I got back to the office,
6 so, I mean, my notes are all... I
7 don't know how to explain it to you.
8 Like, I don't. I guess, I guess when
9 I made my notes when I came in that
10 night, Harry was there, and there was
11 certain things... like, don't...
12 Because I asked them, like what do I
13 say about this? Like how do I make up
14 for all this time and...

15 Sir, the reference to 'Norm' is the
16 only reference I can find with respect to that
17 evening in that passage. Were you communicating
18 that Norm Carter was there when you made that
19 statement, sir?

20 A I don't recall him being there. It
21 would have been just a mistake, "Norm".

22 Q You could have got the names mixed up,
23 like I have done four times already this
24 afternoon?

25 A Possibly, yes.

1 Q But you just don't know? He could
2 have been there?

3 A I don't recall him being there.

4 Q Did you speak to anyone that evening
5 about your notes and your incident report?

6 A I spoke to Harry Bakema about my
7 notes.

8 Q Can you tell us about that, please?

9 A I remember raising some concern about
10 the time delay and the reason for transporting to
11 the --

12 Q So you were concerned, I take it, from
13 our earlier conversation, about the charter breach
14 that you imagine may have occurred?

15 A Right.

16 Q And you were also the one who had
17 carriage of Mr. Zenk?

18 A Yes.

19 Q We talked about the difficult position
20 you had been put in. Did you share those concerns
21 with Mr. Bakema, when you had your conversation
22 about concern about the delay?

23 A I don't believe I shared my concerns
24 with him. I believe I had asked him how -- or I
25 had made a comment that I wasn't sure how I was

1 going to -- why I was transporting him.

2 Q All right. And what happened?

3 A I was told that I was transporting him
4 to complete a traffic accident report.

5 Q All right. Sir, and was that
6 something that reflected your understanding of why
7 you were transporting him?

8 A No.

9 Q What else was said to you, sir?

10 A I believe I mentioned about the
11 comments that I got from Ted Rosser, the Selkirk
12 ambulance attendant.

13 Q Okay. So the comments about alcohol,
14 smell, whether he gave you a sign or a motion,
15 yes, sir. And what discussion ensued as a result
16 of you mentioning that?

17 A I was told that I didn't need to put
18 that in my notes.

19 Q Anything else that you recall, sir,
20 discussing with respect to your notes?

21 A No, there isn't, sorry.

22 Q Anything else, do you recall,
23 discussing about what should go in your notes?

24 A Nothing that I recall, no.

25 Q Sir, was there any conversation

1 relating to the communication between you and
2 Harry at the time that Mr. Zenk was brought to the
3 vehicle about him being impaired or possibly
4 impaired?

5 A No, there wasn't.

6 Q I'm going to take you, if you would,
7 to page 668 of document E.2.25.d. And you were
8 asked the question:

9 "KENNETT: Did you ask to say, did you
10 ask what are you supposed to say about
11 this odour of liquor?

12 WOYCHUK: Possibly. I don't really
13 recall that though. Like, I don't
14 recall if I asked or if I was told
15 that. Like I know I had concerns
16 there about the time delay and why I
17 couldn't have formed an opinion at
18 that time.

19 KENNETT: Um-hum.

20 WOYCHUK: So like I don't recall if
21 anyone told me. If Harry would have
22 told me to put that or not, like the
23 things I recall are what the ambulance
24 driver said, then obviously not
25 putting anything in there about what

1 Harry said about he could be
2 impaired."

3 Do you see that answer, sir?

4 A Yes, I do.

5 Q I'm sorry?

6 A Yes, I do.

7 Q And the last phrase of that, you've
8 told the RCMP that, "obviously" -- and in a
9 context of describing what you were told not to
10 put in:

11 "Obviously not putting anything in
12 there about what Harry said about he
13 could be impaired."

14 Do you see that, sir?

15 A Yes.

16 Q And what's your position with respect
17 to whether or not Harry made any comment to you
18 about not putting in there his observations about
19 this person being possibly impaired?

20 A I don't recall that. I don't recall
21 him saying that to me.

22 Q Are you able to explain why you would
23 have told the RCMP, during that criminal
24 investigation, that this was something that was,
25 obviously, said to you?

1 A No. I'm not able to explain. What I
2 told them is what I believe. At this point, I
3 just don't recall that, though.

4 Q You had a second interview with them,
5 sir?

6 A Yes.

7 Q And if you could turn to page 684 of
8 document E.2.25.f, page 684. And, sir, this is
9 approximately a little over a month later that
10 you're being interviewed again by the RCMP or
11 within a few weeks of the first interview?

12 A Yes.

13 Q And you'll notice, about half of the
14 way down:

15 "Okay. Did he suggest that you
16 include or not include um, comments
17 that he had made in relation to the
18 accused?

19 WOYCHUK: I don't recall if he ever...

20 I know there was a comment that he,
21 that he made to me that, when he first
22 brought the accused to my vehicle, he
23 said that he could be impaired, but I
24 don't necessarily recall if he
25 suggests that I don't put that in

1 there. Possibly, I'm not, I'm not
2 100 percent sure on that, like or if
3 it was just something that I didn't
4 put in there."

5 So your position, during the second interview, is
6 much the same as your position today. And it is
7 different from the position that you expressed in
8 the first interview; is that fair, sir?

9 A Yes.

10 Q What about the odour of alcohol, sir,
11 that you had observed? Did you have any
12 conversation with Harry Bakema about whether that
13 should go in the notes?

14 A I don't remember if I did or did not.

15 Q And what about the reason provided in
16 the incident report for bringing Mr. Harvey Zenk
17 to your vehicle, his reason? Do you recall any
18 discussion about this distraught business, about
19 him being distraught and bringing him there to the
20 vehicle?

21 A No, I don't. I just -- I recall being
22 told to take him to the station.

23 Q Yes, sir. But do you recall having
24 any discussion with Chief Bakema, at the station,
25 about Mr. Harvey-Zenk, the notes should reflect

1 that Mr. Harvey-Zenk was distraught?

2 A I don't recall having any
3 conversation, no, I don't.

4 Q Sir, did you get an impression, or was
5 anything said to you, about the general nature of
6 the instructions you were receiving? In other
7 words, what your goal or objective would be in --

8 A No.

9 Q -- making your notes in that fashion?
10 I am going to take you again to page -- this time
11 page 668, reading on from the earlier statement
12 you made of what Harry said about:

13 "He could be impaired."

14 So down to the bottom third of the page.

15 "So Harry told you not to put that in
16 there?

17 Yeah, it was 'don't put in...'

18 Basically it was don't, not to put in
19 anything that's, should have led you
20 to form an opinion or to form the
21 grounds for impaired driving."

22 Do you see that answer, sir?

23 A Yes, I do.

24 Q And does that accurately express your
25 recollection of the general instructions you were

1 under or the general impression you had from your
2 conversation with Harry Bakema?

3 A I don't recall that right now, but
4 that's -- I know that that's what I told the RCMP.

5 Q Yes, sir. And what is it that you
6 don't recall? You don't recall if he ever said
7 anything about not putting anything that would
8 lead back to grounds for arresting or chartering
9 this guy?

10 A I don't recall that conversation, I
11 guess.

12 Q What was your impression with respect
13 to the directions you were getting relating to
14 your notes?

15 A Pardon me?

16 Q What impression were you getting about
17 the directions relating to your notes? What would
18 the purpose have been for those discussions, and
19 recommendations, or directions, whatever they
20 were?

21 A To make up for the time delay and for
22 the reason for transporting.

23 Q Do you remember being asked that same
24 basic question by the RCMP?

25 A Not offhand I don't, no.

1 Q Could you take a look, please, at 672?

2 Right in the very middle of the page, 672:

3 "WOYCHUK: Well, I guess my impression
4 would be that probably to align what
5 they wrote or what Harry wrote in his
6 notes. And then probably also to make
7 up for time, the time delay or for the
8 reason why I never formed any grounds
9 and arrested him for impaired
10 driving."

11 Sir, does that information that you provided to
12 the RCMP remain accurate in your mind today?

13 A I believe that's probably part of the
14 reason, yes.

15 Q So to align the notes and to account
16 for the delay would be your interpretation of what
17 was going on with the discussions about the notes?

18 A Yes.

19 Q Is that correct, sir?

20 A Yes.

21 Q You also indicated, in your testimony,
22 that you felt that "Ken and Harry" -- you put:

23 "I'm pretty sure that Ken and Harry
24 did the report together."

25 Is that correct, sir?

1 A That's right. I believe I said that,
2 yes.

3 Q And what did you mean by that?

4 A I -- I'm not sure on what I meant by
5 that. But I believe they wrote an MPICS report
6 together.

7 Q And when you say "they wrote it
8 together", what do you mean by that?

9 A I guess, at that point, in East St.
10 Paul, if there is two people riding in a car,
11 sometimes you just do one MPICS report, both names
12 go on it.

13 Q Both names go on it, sir?

14 A That's -- I guess it wasn't the common
15 thing to do, but it was done sometimes.

16 Q And was it ever done when only one
17 name would go on it, and that it would be the
18 report for two people?

19 A No. If it was one name, it should be
20 each person having their report.

21 Q All right. Sir, I want to look at the
22 changes in the development of your incident
23 reports. You saw how the program that you used to
24 prepare your incident reports allows you to look
25 at generations of documents as they change. And

1 I'm going to take you through a number of visual
2 aids or demonstrative aids that I've prepared by
3 photocopying the documents as they've changed and
4 highlighting various portions. Counsel have all
5 been provided with a copy of each of these five
6 versions that I am going to show you and take you
7 through. I am going to ask you to look first at a
8 document "Changes to text found in versions at
9 2212 to 2213" is the heading. "Changes to text
10 found in versions at 2212 to 2213", if that could
11 be made the next exhibit, please?

12 THE CLERK: Exhibit 95.

13 (EXHIBIT 95: Changes to text found in
14 versions at 2212-2213)

15 THE COMMISSIONER: Thank you.

16 BY MR. PACIOCCO:

17 Q What you have in front of you, sir, is
18 a photocopy of the pages I've shown you just a
19 moment ago. And at the top, you have the "old
20 values", which would be your first attempt at
21 preparing an incident report on the evening when
22 you arrived in at work, is that correct, sir?

23 A Yes.

24 Q And then the "new values" would
25 reflect the changes that you had completed at

1 6:52:27 in the morning, sir. I have highlighted
2 in yellow, on the first page, an insertion that is
3 found in the "new value" that was not in the "old
4 value". If you were to look at the text of the
5 "old value", you'll see that you do not have an
6 inclusion there.

7 "Writer set up cones at this location
8 and directed traffic north on Highway
9 59".

10 That was something you put in subsequently, sir?

11 A Yes.

12 Q Are you able to explain why that
13 didn't appear in the first version, but was
14 inserted in the second version?

15 A I may have just been going through the
16 report and --

17 Q I am going to offer this to you, sir,
18 not because I have any information that it's true,
19 but to see whether or not you react to it in a way
20 that's helpful to the Commissioner. You were
21 concerned about the delay in the amount of time
22 that Harvey-Zenk was at your vehicle. Did you put
23 in this activity, that you seemed uncertain about
24 in your testimony today, in order to use up some
25 of the time at the scene so that you would be with

1 Mr. Harvey-Zenk a shorter period?

2 A No, I didn't.

3 Q Okay. You'll notice, on the second
4 page, sir, that there's a red line and the heading
5 "new material" added. That heading "new material"
6 was added by us. And the only thing it signifies
7 was that everything under the red line was
8 completed after the first attempt at the incident
9 report.

10 A Okay.

11 Q I would ask that the next document be
12 the "February 26th version of incident report,
13 2212 to 2213". The "February 26th version of
14 incident report, 2212 to 2213", I would ask that
15 that be made Exhibit 96, please.

16 THE CLERK: Yes, Exhibit 96.

17 (EXHIBIT 96: February 26th version of
18 incident report, 2212-2213)

19 BY MR. PACIOCCO:

20 Q What you have here, sir, is a copy of
21 the same document we just looked at. On this
22 version, I have highlighted three passages. Can
23 you read those passages into the record, please?

24 A "At 8:08 hours, writer transported
25 Harvey-Zenk to the East St. Paul

1 Police office to get him away from the
2 accident scene.

3 At 08:12, writer was met by Sergeant
4 Carter at the rear door to the office.
5 Writer advised Sergeant Carter that
6 Harvey-Zenk was a driver involved in
7 the collision and that he was
8 distraught. Sergeant Carter spoke to
9 Harvey-Zenk and brought him into the
10 office and put him into interview room
11 number 1."

12 Q All right, sir, so that's the
13 information that would have been contained in your
14 incident report at 6:32 in the morning on
15 February 26th, correct, sir?

16 A Yes.

17 Q And the reason there that you've given
18 for getting him away, or for transporting him,
19 what is the reason that you record here for
20 transporting him at 8:08?

21 A "The driver involved in -- the
22 driver involved in the collision and
23 he was distraught."

24 Q No, sir, the reason for transporting
25 him, sir.

1 A Oh, sorry.

2 Q At 8:08?

3 A "To get him away from the accident
4 scene."

5 Q Sir, why would you have put that:

6 "To get him away from the accident
7 scene"?

8 A I don't know.

9 Q Are you able to tell us whether that
10 was something you came up with, or whether that
11 was something that you told him at the time that
12 you transported him, or at some subsequent period
13 of time?

14 A I don't recall. It could have been
15 something that was mentioned or said, but I don't
16 recall.

17 Q It was something that could have been
18 mentioned or said at the actual scene, sir?

19 A No. I don't recall where I got that
20 from. I was never told to get him away from the
21 accident scene. I was told to transport him to
22 the office.

23 Q And you're confident in that
24 recollection, sir?

25 A Yes.

1 Q Okay. Now, I am going to give you the
2 next generation of the document, dated
3 February 27th at 11:27:45. This version of the
4 document, everyone, says on the heading
5 "February 27th version of incident report, alcohol
6 additions".

7 THE CLERK: Exhibit 97.

8
9 (EXHIBIT 97: February 27th version of
10 incident report, alcohol additions)

11 BY MR. PACIOCCO:

12 Q Exhibit 97, "February 27, version of
13 incident report, alcohol additions."

14 Now, if you would take the time to
15 read the document, sir, you would see that the
16 version under the top version, at the top, is the
17 version that we just examined. And under the
18 heading "new values", I've highlighted changes
19 that have been put into the document that relate
20 to alcohol. In other words, the yellow that
21 appears on page 2210 was not in the February 26th
22 version of the incident report, but ends up in the
23 February 27th version of the incident report as it
24 was at 11:27:45. Do you follow me, sir?

25 A Yes.

1 Q And could you read the three entries
2 in yellow that were added on the 27th, essentially
3 two days after the fatal collision?

4 A "En route to the..."

5 East St. -- or:

6 "ESP office, writer detected a slight
7 odour of liquor coming from Harvey
8 Zenk.

9 Writer also advised Sgt. Carter that a
10 slight odour of liquor was detected
11 from him.

12 Writer noticed that as Harvey-Zenk was
13 walking into the office, he appeared
14 to be unsteady on his feet."

15 Q So what you have, sir, is on the 27th
16 of February, you have three observations relevant
17 to alcohol consumption put into the incident
18 report for the first time, correct, sir?

19 A That's correct.

20 Q Can you explain why it took two days
21 before there was any mention of alcohol put into
22 the incident report that you prepared?

23 A I can't explain. Maybe it could have
24 been sent back to me to -- I know at some point
25 there was a sticky note that had a comment about

1 notes and narrative not being the same.

2 Q And, sir, you mean a sticky note in
3 the disclosure material that you've been
4 furnished, and you've used to assist you in your
5 testimony today, correct?

6 A It could have been -- the file could
7 have been sent back.

8 Q We don't know whose sticky note that
9 is, sir?

10 A We don't.

11 Q But you're saying the file could have
12 been sent back. What's the process that might
13 cause a file to be sent back?

14 A You'd do your MPICS report in the
15 file, it would go into a read basket.

16 Q Okay.

17 A It would have been by -- at the time,
18 I believe, it was Sergeant Carter or the Chief.

19 Q Okay.

20 A They would review the file. And if
21 anything needed to be done on the file, it would
22 be reassigned to you.

23 Q Okay. Do you know who the reader was
24 on the Harvey-Zenk file?

25 A No, I don't.

1 Q Would it surprise you to learn that it
2 was, according to our information, Chief Carter?

3 A No, I wouldn't -- I don't --

4 Q Sir, do you have any recollection of
5 Chief Carter instructing you to put this alcohol
6 information in the report?

7 A No, I don't.

8 Q Do you have any recollection of any
9 conversations with Chief Carter about the report
10 itself?

11 A No, I don't.

12 Q Do you have any recollections of Chief
13 Bakema telling you to put the alcohol references
14 in your report?

15 A No, I don't.

16 Q And so the indication here that you:
17 "...advised Sergeant Carter that there
18 was a slight odour of alcohol detected
19 from him..."

20 is not found in your notes, sir?

21 A No, it's not in my notes.

22 Q And that would be something, if it
23 happened, known to Sergeant Carter?

24 A Yes.

25 Q Would that be known to Chief Bakema?

1 To your knowledge, did you discuss it with him,
2 what you said to Sergeant Carter?

3 A No, not that I -- not that I recall I
4 didn't.

5 Q And the observation of Harvey-Zenk
6 walking into the office appearing unsteady on his
7 feet is not in your notes either?

8 A No, it's not.

9 Q When you were with Chief Carter, or
10 Sergeant Carter that morning, did you have any
11 conversation with him about what you were seeing
12 for the first time after you got back to the
13 station?

14 A Not that I recall, no.

15 Q Are you saying it didn't happen or
16 that you don't remember?

17 A I don't recall having a conversation.

18 Q So you made observations at the scene
19 about this man being unsteady on his feet and you
20 never bothered to mention them to Chief Carter,
21 sir?

22 A I believe I made the observation at
23 the office.

24 Q Yes. And you never bothered to
25 mention it to Chief Carter, who was also at the --

1 or Sergeant Carter, who was also at the office?

2 A I don't recall if I did or if I
3 didn't.

4 Q Now, sir, are you able to help us out
5 in terms of how these additions came to be in your
6 notes on February 27th and were not in the
7 February 26th version?

8 A I guess my only explanation would be
9 that I revised the MPICS report.

10 Q We know that happened, sir. I am
11 trying to find out why.

12 A I don't know why.

13 Q Well, would you agree with me, sir,
14 that you expressed some concerns about the
15 accident scene, and your observations and signs of
16 alcohol, and how that could instigate a charter
17 breach at the time you were at the scene? You
18 were worried about the situation you were in,
19 correct?

20 A Yes, that's correct.

21 Q And if there was an indication in the
22 report of alcohol, that could somehow lead to you
23 being responsible for a potential charter breach
24 and that you would be better off if there was no
25 reference to alcohol at all in the report?

1 A I don't believe that's the reason why,
2 though.

3 Q Okay. But you would agree with me
4 that that's true, that you would be better off if
5 nobody ever knew anything about alcohol at the
6 scene in terms of the charter violation?

7 A I don't really follow the question,
8 I'm sorry.

9 Q Well, sir, I'm suggesting to you that
10 at the time you did the first report, there is no
11 reference to alcohol in there and, therefore,
12 there would be no reason for anyone to question
13 why Mr. Harvey-Zenk wasn't cautioned or charged at
14 the scene, correct?

15 A Correct.

16 Q And once you start putting in
17 information about alcohol, then you have a
18 potential for some difficulty down the road in
19 terms of charter violations, correct?

20 A Correct.

21 Q In addition, in the report that you
22 have no reference to alcohol in, there's no real
23 apparent prospect of a successful conviction of
24 Mr. Harvey-Zenk, would you agree with that, sir?

25 A Correct.

1 Q And then when you have a report that
2 does include references to alcohol, and symptoms
3 of impairment, the prospect of conviction
4 improves, correct, sir?

5 A Correct.

6 Q Well, knowing that, from the point of
7 view of the prosecution of the case, the case
8 becomes stronger with this information and the
9 incident report, and weaker with its absence, does
10 that help you at all in terms of remembering why
11 that transaction occurred, why that change
12 occurred?

13 A No, it doesn't.

14 Q Sir, it's not complete coincidence, is
15 it, sir, that three entries about alcohol suddenly
16 show up in the notes two days later?

17 A I -- it could be -- I can't explain
18 why it came in after. I don't -- I don't have a
19 recollection of why I put those in there.

20 Q Well, sir, you must know how it looks
21 like to others?

22 A Yes.

23 Q What do you think it looks like to
24 others?

25 A That I was adding stuff about the

1 alcohol.

2 Q Or you were not putting it in the
3 original notes, even though these were things that
4 you had observed --

5 A Right.

6 Q -- in order to weaken the case. Do
7 you understand how somebody could draw that
8 conclusion?

9 A I can understand that, yes.

10 Q The three things that are about
11 alcohol show up in your report, but only a few
12 days after, after someone had given you direction
13 to add stuff to your notes, correct, sir?

14 A Correct.

15 Q So it either looks like somebody is
16 trying to bolster a case to maybe make it stronger
17 than it really was or that back on the 26th
18 somebody was trying to weaken a case to make it
19 look weaker than it was; is that fair, sir?

20 A That would be fair to say.

21 Q And you can't help us out of which
22 things it is or whether the three things that you
23 added had to do with alcohol?

24 A I don't recall if I was told at some
25 point that -- anything about my MPICS report or if

1 I reviewed it on my own. I don't recall.

2 Q You do -- you do recall discussing
3 with Chief Bakema what should be included in your
4 notes?

5 A I recall that, yes.

6 Q And you can't draw a link between
7 those two, sir?

8 A I don't recall being directed to
9 actually add or delete anything from my MPICS
10 report, though.

11 Q Sir, the term "directed" is a very
12 strong term.

13 A Okay. Or --

14 Q Any suggestions? Do you remember any
15 suggestions being made to you?

16 A Not that I recall.

17 Q Okay. Let's look at another change
18 that's occurred in the generation of documents
19 that you have. This next document is entitled
20 "February 26th version of incident report,
21 2212-2213, reason for transportation", if that
22 could please be made Exhibit 98.

23 THE CLERK: Exhibit 98.

24 (EXHIBIT 98: February 26th version of
25 incident report, 2212-2213, reason for

1 transportation)

2 BY MR. PACIOCCO:

3 Q Sir, you'll see, in the fourth
4 paragraph, I've highlighted the original reason
5 you've furnished for bringing Harvey-Zenk to the
6 East St. Paul office; namely, to get him away from
7 the accident scene?

8 A Yes.

9 Q I am going to now give you the next
10 generation of the document and focus on the same
11 issue. This would be "February 27th version of
12 incident report, reason for transportation". If
13 that could be made Exhibit 99, please?

14 THE CLERK: Exhibit 99.

15 (EXHIBIT 99: February 27th version of
16 incident report, reason for
17 transportation)

18 BY MR. PACIOCCO:

19 Q And you will notice, in yellow, is the
20 old passage that you just read. And now on this
21 date, February 27th, at 11:27:45, you have "new
22 values". Can you please read the highlighting in
23 pink which shows a change to the "reason for
24 transportation"?

25 A "At 8:08 hours, writer transported.

1 Harvey-Zenk to the East St. Paul
2 office to...

3 Q "...to process an accident report."

4 And that's not the reason why you took
5 Mr. Harvey-Zenk to the station, is it?

6 A That's what I told after.

7 Q Sir, that was what you were told after
8 was your reason?

9 A No. I took him there because I was
10 told to do so.

11 Q All right. And did you indicate, in
12 your incident report, that you were directed to
13 take him there for a TAR?

14 A No, I didn't.

15 Q You were told that that's the reason
16 you took him, sir. And this is the first time
17 that this appears, on the 27th of February,
18 correct?

19 A Correct.

20 Q It wasn't in the version that you
21 produced on the 26th?

22 A That's correct.

23 Q Are you sure as to when you had the
24 conversation with Chief Bakema about the reason
25 for transportation?

1 A I believe it was the night after.

2 Q And, sir, why doesn't --

3 A The night of.

4 Q And why doesn't it turn up, the
5 reference to the TAR there? Why does it take a
6 day to have happened?

7 A I don't know.

8 Q Could it have been that the
9 conversation with Chief Bakema may have been on
10 another occasion, sir?

11 A There may have been another occasion.
12 I don't recall that.

13 Q Could it have been after the
14 accident -- after the alcohol information was
15 being put back into the accident report, as a
16 result of instructions from Carter, that you
17 needed a reason now as to why you brought him back
18 to the station that would not engage any charter
19 violations, sir?

20 A No.

21 Q You told us earlier that this is the
22 advice that you received from Chief Bakema to put
23 down that it was for the purposes of a traffic
24 accident report, sir?

25 A Yes.

1 Q And you described how he was put into
2 your vehicle because he was distraught and upset,
3 correct?

4 A Correct.

5 Q And you felt that he might even be in
6 shock, sir, correct?

7 A Correct.

8 Q Does it make any sense to you, sir,
9 that you would transport a man in that state to
10 the station for the purposes of filling out a
11 traffic accident report?

12 A No.

13 Q And you have how long to fill out a
14 traffic accident report after the accident,
15 according to law, sir?

16 A Seven days.

17 Q And so your notes and your traffic --
18 your incident report is not an accurate account of
19 what actually happened, is it, sir?

20 A Not really.

21 Q There are also some things missing
22 from your notes themselves, sir. Let's look at
23 your notes. There is no indication in your notes,
24 at tab A, of Chief Bakema's observations about the
25 possibility of impairment or the fact of

1 impairment when he brings Mr. Harvey-Zenk to your
2 vehicle, correct?

3 A That's correct.

4 Q No observations in your notes about
5 you detecting the odour of alcohol, other than the
6 passage "odour liquor slight" under "10:17",
7 correct, sir?

8 A That's correct.

9 Q No notation of what the ambulance
10 attendant said, correct, sir?

11 A That's correct.

12 Q No indication of the signs of
13 impairment that were observed by you at the
14 station, correct, sir?

15 A That is correct.

16 Q No note to wait for Carter to arrive,
17 correct, sir?

18 A Correct.

19 Q No note that Harvey-Zenk was a police
20 officer, correct, sir?

21 A Correct.

22 Q No note of why you took him to the
23 station, correct, sir?

24 A That's correct.

25 Q You never put in what the ambulance

1 attendant said to you, sir?

2 A No, I didn't.

3 Q Now, let's take a look at the notes
4 themselves, sir. If you start at the beginning of
5 your notes, you'll notice that between each change
6 in topic there is a space, very neatly done, and
7 very consistently done. There is a space under
8 the heading before "7:10", correct?

9 A Correct.

10 Q There is a space between your voyage
11 down Sperring and Raleigh, and you receiving
12 advice as to the actual location of the accident.
13 There is a space between that and "7:22" and your
14 blocking off of the intersection and your arrival,
15 correct?

16 A Correct.

17 Q There is a space between that and
18 Bakema putting the driver of the Dodge truck into
19 the rear of your vehicle, correct?

20 A Correct.

21 Q There is a space between that and the
22 identification information for Derek
23 Harveymordenzenk, correct?

24 A Correct.

25 Q There is a space after that that

1 indicates he doesn't want to talk due to his
2 condition, correct?

3 A Correct.

4 Q And a space after:

5 "observed dried blood on his nose",

6 correct?

7 A Correct.

8 Q A space after:

9 "Paramedic Ted Rosser speaking with

10 Harveymordenzenk",

11 correct?

12 A That's correct.

13 Q A space after:

14 "Declined medical attention and signed

15 waiver",

16 correct?

17 A Correct.

18 Q Let's skip the next one for a moment.

19 There is a space after the "8:12" entry between

20 Sergeant Carter placing Harveymordenzenk into the

21 interview room, and Sergeant Carter meeting you at

22 the rear, correct?

23 A Correct.

24 Q Spaces before your observation at

25 8:18, correct?

1 A Yes.

2 Q Again, between 9:05, you have two
3 incidents, and they are separated by a space?

4 A That's correct.

5 Q The request for the breath demand and
6 the response:

7 "No, I don't want",
8 another space between 9:05, and another 9:07,
9 another between 9:07 and 9:08, another between
10 9:08 and 9:09, correct? Every one has a space
11 except for one, correct?

12 A That's correct.

13 Q Which one does not have a space, sir?

14 A "Odour liquor slight."

15 Q "Odour liquor slight."

16 I am going to suggest to you, sir, that that
17 wasn't in your notes originally. Possibly you
18 added that, sir?

19 A I could have added it upon reviewing.

20 Q Yes, sir. At the same time you added
21 the other alcohol information into your incident
22 report, sir?

23 A I don't recall when I -- if it was
24 added or if it was one.

25 Q Sir, you're indicating that you don't

1 recall. But it's obvious, from your answer, that
2 you were allowing for the possibility that that
3 was added after your notes were already finished?

4 A It would appear that it was added at
5 some point. I don't recall when, though.

6 Q Yes, sir. And you note that it was on
7 the 27th of February that, all of a sudden, all of
8 this alcohol information appears for the first
9 time in the incident report, correct?

10 A That's correct.

11 Q Doesn't it stand to reason that it
12 would have been added at around the same time and
13 for the same motivation?

14 A I don't recall.

15 Q And so what we have here, what appears
16 to be here, is an original set of notes in which
17 you would have no indication whatsoever that
18 Mr. Harveymordenzenk was a police officer, and no
19 indication whatsoever that Mr. Harveymordenzenk
20 had anything to do with any signs of alcohol,
21 correct, sir?

22 A Correct.

23 Q And certainly, at some later point,
24 and by February 27th, the incident report includes
25 three references to alcohol and this, at some

1 point, shows up in your notes?

2 A Correct.

3 Q Correct, sir?

4 A Correct.

5 Q And, again, getting back to the
6 observation that I made earlier, you know what
7 that looks like, don't you, sir?

8 A Yes.

9 Q And you're not able to help us out at
10 all?

11 A I'm not.

12 Q Sir, you interviewed Garth Shaw in
13 March of 2005, sir?

14 A That's correct.

15 Q What made you go and interview Garth
16 Shaw, the witness to the accident, sir?

17 A I was told to do so.

18 Q And who told you to do so, sir?

19 A I believe it was Harry Bakema.

20 Q On March 14, 2005, you went and
21 interviewed Don Fotti at the firehall. He was a
22 firefighter at the Winnipeg Fire Service?

23 A I believe so, sir.

24 Q And who told you to interview Don
25 Fotti March 14th at the firehall?

1 A I believe it was Harry Bakema.

2 Q And so sometime, sir, you had a
3 discussion with Sergeant Carter about the state of
4 your notes and what transpired during this
5 investigation, correct, sir?

6 A Correct.

7 Q Let's take you to the time when the
8 first Preliminary Inquiry is approaching,
9 July 2006, this scheduled period. You are
10 subpoenaed to attend. You've already had the
11 subpoena served. Chief Carter is meeting with
12 Mr. Minuk. I understand that you picked Sergeant
13 Carter up at a meeting on the 24th of February,
14 2006?

15 A Yes.

16 Q And it's clear, from your interviews,
17 that you had some concerns about the preliminary
18 inquiries coming up, correct, sir?

19 A Yes.

20 Q What were your concerns?

21 A My concerns were that I would -- that
22 I had advice where I was told to have certain
23 things in my notes, or reasons why, the reason why
24 I had transported him.

25 Q Yes, sir.

1 A And my concern was that I wanted -- I
2 didn't want to lie about it. I wanted to be
3 honest.

4 Q Okay. So it was weighing on your
5 conscience?

6 A Yes.

7 Q You knew it was wrong to put this in
8 when it wasn't the real reason, and it was
9 bothering you, and so you decided to mention it to
10 Sergeant Carter; is that a fair summary, sir?

11 A It's fair.

12 Q And because you didn't want to get
13 subpoenaed to trial and then have a set of notes
14 that differed from what you felt you would have to
15 testify to under oath?

16 A Right.

17 Q What made you choose to talk to
18 Sergeant Carter?

19 A I don't know. He was the Chief at the
20 time.

21 Q What did you tell him?

22 A I don't recall exactly what I told
23 him. I believe I told him that I was told to --
24 the reason for transporting him to the station was
25 for the TAR.

1 Q Yes.

2 A And that I -- and that I was told that
3 I didn't need to put anything in my notes about
4 the conversation or the comments that Ted Rosser
5 made.

6 Q About smelling or detecting alcohol on
7 Mr. Harvey Zenk?

8 A Yes.

9 Q You have no notes of that meeting,
10 sir, that drive back, of what the conversation
11 was?

12 A No, I don't.

13 Q And I'm not saying this to you in a
14 critical sense, that you may have been trained to
15 do this, but do you not wish now that you kept
16 notes of all of what transpired?

17 A Yes, I do.

18 Q We do have notes from Sergeant Carter,
19 and I'm going to take you through them, to see
20 whether or not you feel comfortable with his
21 recollection of the disclosures. The document is
22 P2, at tab 85.8. P2, tab 85.8, at page 2668. If
23 that could be marked an exhibit, please?

24 THE CLERK: Exhibit 100.

25 (EXHIBIT 100: Handwritten note of N.

1 Carter, March 5, 2006, P2, Tab 85.8)

2 BY MR. PACIOCCO:

3 Q Exhibit 100, dated:

4 "February 24, 2006, 11:30,

5 approximately, Woychuk picked up

6 writer at Minuk. Disclosed notes not

7 his. Wrote as instructed to match

8 number 47/43."

9 I take it, sir, that those are numbers referring
10 to badges or identification numbers for members of
11 the East St. Paul Police Force?

12 A That's correct.

13 Q And who would number 47 be, sir?

14 A Would have been Harry Bakema.

15 Q And number 43?

16 A Ken Graham.

17 Q "Said 47 told him Harveymordenzenk
18 pissed. Said he was new and taking
19 directions from chief. Said should
20 have known better. Writer advised it
21 has to be disclosed. 06/03/05 noted."

22 Do you see that there, sir?

23 A Yes, I do.

24 Q Do you have any comments to make with
25 respect to the accuracy of Chief Carter's note?

1 A No, I don't.

2 Q Does that mean you agree with it, you
3 don't agree with it, or you are neutral on it?

4 A I don't remember that conversation. I
5 remember picking him up. I remember talking to
6 him about it, but I don't recall exactly what I
7 had told him or said to him.

8 Q And so this doesn't help in jogging
9 your memory at all, sir?

10 A No.

11 Q And you are not in a position to say
12 that description is inaccurate, nor are you in a
13 position to confirm it, is that the way it is,
14 sir?

15 A That would be correct.

16 Q Now, sir, if someone was going to
17 suggest to you that you have come forward, and
18 indicated that you made changes to your notes at
19 the behest or instructions or suggestion of Harry
20 Bakema because you were angry with him for putting
21 you in a difficult position, even though it didn't
22 happen, what would you say to that, sir?

23 A I would say, no, that's not an
24 accurate statement.

25 Q What would be an accurate statement,

1 sir?

2 A As to why I came forward?

3 Q As to why you came forward?

4 A I came forward for the reasons that I
5 had concerns about what was in my notes and the
6 direction I was given.

7 Q All right. Sir, if you could be
8 given, please, the document at P2.85.9. at tab
9 2669, P2.85.9.

10 MR. PROBER: Is this 82?

11 MR. PACIOCCO: P2, 85.9, at page 2669,
12 that will be Exhibit 101.

13 (EXHIBIT 101: Handwritten note of N
14 Carter, April 10, 2006, P2, Tab 86.0,
15 pg. 2669)

16 BY MR. PACIOCCO:

17 Q This document also, according to our
18 information:

19 "Notations taken by then Sergeant
20 Carter, on the 10th of April, 2006, at
21 approximately 1600, or 4:00 in the
22 afternoon:

23 'Requested 45 to my office'."

24 And I take it, sir, that that's your badge
25 identification number?

1 A Sorry, which page are you on?

2 Q I'm at page 2669.

3 A Oh.

4 Q Have I given the wrong document, P2
5 85.9?

6 A I have .1 here.

7 Q We've got one coming up here that
8 looks more familiar to me.

9 "Requested 45 to my office."

10 Would "45" be you, sir?

11 A That's -- yes, it would be.

12 Q "Again said 47 told him Mordenzenk
13 pissed. Again said 47 directed him
14 how to make notes. 45 said he had a
15 cold and could not smell properly,
16 stuffed up. Said knows it was wrong,
17 shouldn't have done it.

18 Instructed..."

19 and we're going to have to get Chief Carter to
20 help us out with those last two words, unless you
21 are better at reading handwriting than I am.

22 A "By 47", I think.

23 Q "Instructed by 47", thank you.

24 And, sir, do you have any comments to
25 make about his notes that you met on February 27,

1 2006 and that exchange took place?

2 A No, I don't.

3 Q And would it be for the same reason,
4 that you don't actually remember, sir?

5 A I don't know what was exactly said. I
6 met with him on a couple of occasions, but I don't
7 know exactly what we discussed.

8 Q So both, you cannot back it up and
9 nor, based on your recollection, can you endorse
10 it?

11 A Yes.

12 MR. PACIOCCO: All right. If we can
13 have a document, this time from book P3.85.12,
14 P3.85.12.

15 THE COMMISSIONER: P3?

16 MR. PACIOCCO: P, as in Peter, 3.

17 THE COMMISSIONER: Thank you.

18 MR. PACIOCCO: The tab,
19 Mr. Commissioner, would be 85.12. That would be
20 Exhibit 102.

21 (EXHIBIT 102: Handwritten note of N.
22 Carter, April 21, 2006 P3, Tab 85.12)

23 BY MR. PACIOCCO:

24 Q This note, again, we're advised, is
25 from Sergeant Carter, dated the 21st of

1 April 2006, 1900, approximately.

2 "Advised Woychuk I disclosed."

3 And, sir, from the context, I would offer the
4 suggestion to you that he had to disclose it, in
5 his view, to Mr. Minuk?

6 A Yes.

7 Q And he is advising you that he did
8 that. Do you recall that conversation, sir?

9 A Pardon me?

10 Q Do you recall being told that he told
11 Mr. Minuk about this?

12 A I recall at some point being told,
13 yes.

14 Q "Said he had intention of speaking
15 to me about this.
16 Didn't feel 47 intentionally tried to
17 cover up.
18 Said 47, 43 chicken shit to deal with
19 the case, Mordenzenk as a cop, and
20 concerned what other cops would think.
21 I advised 45 to tell truth when
22 speaking to Minuk."

23 Do you see that, sir?

24 A Yes.

25 Q And do you have any observations to

1 make about the accuracy of that note, sir?

2 A No, I don't.

3 Q Does it reflect your impression about
4 what was going on the day that Harveymordenzenk
5 was arrested, sir?

6 A Does it reflect my impression?

7 Q About why you may have been left to
8 deal with Mr. Harveymordenzenk on your own?

9 A No, I don't. I still believe for the
10 same reasons that I had mentioned before.

11 Q And what are those reasons, sir?

12 A That Harry Bakema didn't want to be
13 involved in it, so he gave him to me, in turn to
14 give to Norm.

15 Q And, sir, perhaps I misunderstood the
16 note, but I interpreted the reference to chicken
17 shit to deal with the case, that Mordenzenk is a
18 cop, as being consistent with that, would you not
19 agree, sir?

20 A Yes.

21 MR. PACIOCCO: I am going to show you
22 one more document, sir. In fact, two more, I
23 apologize.

24 MR. PROBER: Before we continue,
25 Mr. Commissioner.

1 THE COMMISSIONER: Yes, Mr. Prober.

2 MR. PROBER: I, for one, base my
3 schedule at the office on the fact that we had
4 agreed to end proceedings at 4:30, and I exercised
5 an extraordinary amount of patience before
6 standing. I think that it's reasonable that we
7 might continue tomorrow. Thank you.

8 THE COMMISSIONER: Thank you for
9 drawing my attention to the clock. We will
10 carry --

11 MR. PROBER: You don't have it facing
12 you on that side?

13 THE COMMISSIONER: I'm sorry?

14 MR. PROBER: We should get a
15 dual-faced clock.

16 THE COMMISSIONER: Well, I have been
17 concentrating on my notes, and I wasn't looking at
18 the clock.

19 MR. PACIOCCO: It's as inopportune a
20 time as any.

21 THE COMMISSIONER: Yes, it always is.

22 MR. PACIOCCO: It always is.

23 THE COMMISSIONER: All right. We will
24 adjourn until tomorrow morning at 9:30. Thanks.

25 MR. PACIOCCO: Thank you,

1 Mr. Commissioner.

2 THE CLERK: All rise, please. This
3 Commission of Inquiry is adjourned to tomorrow at
4 9:00 a.m.

5 (Proceedings adjourned at 4:58 p.m.)

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COURT REPORTERS CERTIFICATE

Cecelia Reid 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.

Cecelia Reid

Lisa Reid

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