

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

MICHAEL JAMES BRYANT

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C O U R T P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE P. BENTLEY

On May 25th, 2010, at Toronto.

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CHARGES: Criminal Negligence Causing Death;  
Dangerous Driving Causing Death

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A P P E A R A N C E S :

Counsel for the Crown

M. Sandler, Esq.

R. Peck, Esq.

Counsel for the accused

M. Henein, Ms.

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ONTARIO COURT OF JUSTICE

E X H I B I T S

<u>EXHIBIT NUMBER</u>		<u>PUT IN ON PAGE</u>
ONE (A)	Photograph of person at window of vehicle	18
ONE (B)	Photograph of person beside vehicle	18
ONE (C)	Photograph of person hanging onto vehicle	18
TWO	Diagram of area	31
THREE (A)	Photograph looking westbound on Bloor Street	33
THREE (B)	Photograph taken further west on Bloor Street	33
FOUR	Executive Summary	66

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**MR. SANDLER:** Good morning, Your Honour.

**THE COURT:** Good morning.

**MR. SANDLER:** Your Honour, Sandler, initial M. I appear for the Crown this morning.

Perhaps we can deal with the Michael Bryant matter. I see Mr. Bryant is here, perhaps he could have a seat in the well of the court.

**MS. HENEIN:** Good morning, Marie Henein and Margaret Boyanoska(ph.) appearing for Mr. Bryant.

**THE COURT:** Thank you.

**MR. SANDLER:** I should indicate to Your Honour at the outset that with me today, first of all, Mr. Richard Peck, who is the special prosecutor assigned to the matter from British Columbia--

**THE COURT:** Good morning.

**MR. SANDLER:** --together with Mr. Gottardi and Mr. Campbell from Mr. Peck's office.

As Your Honour will recall, having case-managed and being the judge on the pretrials in this matter, I had indicated on the last appearance to Your Honour that we were requesting that the matter go over to today's date to complete further investigation in the matter and for the Crown to review the totality of the investigation. That task is now complete, and Mr. Peck will be addressing the court in that regard, if he may.

**THE COURT:** Yes, Counsel, please.

**MR. PECK:** Your Honour, I am asking that the Information before the court be marked as withdrawn.

Given the widespread public interest in this matter, I wish to set out in some detail the applicable law and key features of the evidence which, together, inform my decision.

The case before this court involves a two-count Information charging Michael James Bryant with criminal negligence causing death and dangerous driving causing death, contrary to Sections 220 and 249(4) of the Criminal Code. These charges were laid against Mr. Bryant on Tuesday, September 1<sup>st</sup>, 2009. The incident giving rise to these charges occurred in the late evening of Monday, August 31<sup>st</sup>, 2009, when a fatal motor vehicle incident resulted from the interaction of Mr. Bryant and the deceased, Mr. Darcy Allan Sheppard.

Based on the information available to the police as of September 1<sup>st</sup>, 2009, there were reasonable and probable grounds to lay those charges. However, since that date, a great deal more has been learned from the ongoing investigation which carried through until, in effect, only a few weeks ago.

This case has also been marked by the defence having provided the Crown with very full

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disclosure of its case, which is a commendable occurrence in our adversarial system. This defence disclosure has included giving the Crown access to the defence expert materials, as well as permitting the Crown to interview both Mr. Bryant and his wife, Ms. Abramovitch. Those interviews were conducted by Mr. Mark Sandler, my local agent, and Detective Lester Lalla, one of the police investigators. Expert and other evidence proffered by the defence has been subjected to independent review by the Crown through interviews and the use of its own experts.

With that introduction, let me next outline the charge screening standard in this province and the duties upon Crown Counsel in the decision making process. I think it is important that people hear this.

The charge screening policies which bind provincial Crown Counsel in Ontario arose directly from the Attorney General's Advisory Committee on charge screening which was chaired by the legendary G. Arthur Martin. His report was delivered in 1993. The report has come to be known as the Martin Committee Report. His key recommendations respecting charge screening were subsequently adopted by the Ministry of Attorney General and form the principle tenets of Crown policy. They include the following:

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Firstly, every charge must be screened in accordance with the charge screening standard of reasonable prospect of conviction and in accordance with the public interest.

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Secondly, the obligation to screen a charge is ongoing as new information is received by the Crown.

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Thirdly, in deciding whether to continue a prosecution, the first step is to determine if there is a reasonable prospect of conviction. If the Crown determines that there is no reasonable prospect of conviction, then the prosecution of the charge must be discontinued.

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Fourthly, the public interest is only to be considered after the threshold test of a reasonable prospect of conviction has been met. No public interest, however compelling, can warrant the prosecution of an individual if there is no reasonable prospect of conviction.

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Fifthly, the threshold test of reasonable prospect of conviction is objective. The standard is higher than a prima facie case, which merely requires that there be evidence upon which a reasonable jury properly instructed could convict. On the other hand, the standard does not require a probability of conviction.

Sixthly, the application of this standard requires the existence of prosecutorial judgment and discretion based on objective indicia found in the case itself.

Finally, in applying the test of reasonable prospect of conviction, Crown Counsel is required to consider the availability of evidence, some assessment of the credibility of witnesses, and a consideration of any defences that should reasonably be known to the Crown or have come to the attention of the Crown.

With respect to this case, the focus has been on whether there is a reasonable prospect of conviction. Stated differently, is there a

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reasonable prospect that the Crown could prove its case beyond a reasonable doubt? That is the test I am required to apply, and have applied, to this case. This case falls short of that standard, and I will explain why. Before doing so, I wish to emphasize that this decision is mine and mine alone. I wish to note that officials of the Ministry of the Attorney General in Ontario had no input into this decision whatsoever, and that includes the Attorney General himself. That approach is consistent with the independence demanded of me in this exercise.

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I am going to turn now to the events of September - of August 31<sup>st</sup>, 2009, and I'm going to start by examining Mr. Sheppard and his movements and his background.

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On that evening he arrived at the apartment of his girlfriend on George Street shortly after 7:00 p.m. He was intoxicated when he arrived. She wanted him to sleep it off, which he did for a period of time and then decided he wanted to leave.

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At about 9:12 p.m., the Toronto Police Service received a phone call from the resident of another apartment in that building. This person advised that there were sounds coming from Mr. Sheppard's girlfriend's apartment, sounds of things being thrown around, and screaming. The



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complaint was one of a possible domestic assault. I want to make careful note of the fact that the persons present in that apartment, including Mr. Sheppard's girlfriend, denied that there was any assault taking place. This resident also advised that Mr. Sheppard had next been observed outside the apartment building allegedly assaulting a homeless man, possibly with a bicycle lock. A second witness also alleged observing a similar assault. These events were observed at approximately 9:18 to 9:20 a.m. We have the police printouts of the phone calls. The police arrived at approximately 9:21 p.m. and dealt with Mr. Sheppard.

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Police notes from that evening indicate that Mr. Sheppard was acting belligerently when outside the George Street apartment and had been drinking.

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Mr. Sheppard was eventually allowed to proceed on his way. He was observed to ride off on his bike. It was not long after these events occurred that he had his altercation with Mr. Bryant on Bloor Street, east of Avenue Road.

It should be noted that a toxicology report demonstrated that Mr. Sheppard's blood alcohol level obtained after death was .183, more than twice the legal driving limit. The

5 fact that he was an accomplished cyclist, both as a courier and previously, as a competitive racer, may explain his ability to continue on despite this demonstrable level of intoxication.

10 As noted earlier, in evaluating whether there is a reasonable prospect of conviction, the Crown is required to consider any defences that should reasonably be known or which have come to its attention.

15 Here, it has become apparent that the defence that would be advanced was one based on an allegation that the deceased, Mr. Sheppard, was the aggressor in his confrontation with Mr. Bryant, and that Mr. Bryant's actions were thereby justified in law. That is the essence of the defence as we understand it.

20 Having regard to the issues in this case, the Crown was required to consider not only the immediate evidence as to what transpired as between Mr. Bryant and Mr. Sheppard, but the circumstantial evidence, including Mr. Sheppard's prior aggressive conduct that evening, his level of intoxication, and his dealings on previous occasions, usually with other motorists. Some of his relevant prior conduct resulted in criminal convictions.

30 I want to be very clear about this, we are dealing here with legal relevance, but to be

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clear, no one is entitled to commit a criminal offence because the victim of that offence has a prior record. Nor would the fact that a person had engaged in past aggressive conduct justify the commission of a criminal offence by anyone. No one deserves to have a criminal offence committed against him regardless of his background or prior conduct. In Canada, the rule of law will simply not suffer this.

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That being said, the law clearly recognizes, particularly in the context of a case involving a defence of justification that is based on another's aggressive conduct, that this prior conduct is relevant in considering whether the accused was attacked by the deceased and to show the probability that the deceased was the aggressor.

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The oft-cited case that supports that proposition is the Ontario Court of Appeal decision in R.v. Scopelliti, well known to the court. The Court of Appeal said in Scopelliti that this type of evidence may be presented through proof of specific prior acts of violence engaged in by a person. This evidence is admissible even if the accused was unaware of the deceased's disposition for violence at the time. It is in that context that the Crown has considered Mr. Sheppard's prior history of aggressiveness or violence.

I will first outline six altercations which Mr. Sheppard had with other motorists prior to, and in one instance, earlier in the evening of August 31<sup>st</sup>, 2009.

A word about how this came about. There was a marked amount of publicity about this case. Mr. Sheppard's picture was carried in the media. A number of citizens who had had incidents with him recognized him and believed that they should turn this information over to the police, or to the defence, for further investigation. All of the incidents described were investigated by the Crown and/or by the police. All but one of the witnesses I am going to refer to were the subject of detailed interviews by Mr. Sandler, together with one of the investigating officers, and in some instances, their evidence was also the subject of sworn depositions. One incident is partially captured in photographs which will be filed with the court. One incident was the subject of a 911 call and police occurrence reports which have been reviewed by the Crown. Based on the investigation that the Crown and police have undertaken, we are satisfied that reliance should be placed on the witnesses whose accounts of six separate incidents are outlined below. I will refer to them by initials.

J.M.

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The event of her encounter with Mr. Sheppard occurred in either 2005 or 2006. She is a woman who is now 76 or perhaps 77 years of age, a grandmother. She was travelling in her vehicle southbound on Yonge Street. She heard a ruckus behind her. She looked in her mirror, a cyclist was yelling. She was in the car by herself. He was waving an arm at her. She felt that he was after her. When she slowed down at the traffic light, the cyclist came up to her. He started swearing. He claimed she had cut him off. He said something like, "You get out of this car, I have to get your name and your number so I can tell the police." He was angry, she could not figure out why.

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She turned right onto Belmont Street to get away from him. She remembers his anger. She did not know what she had done to prompt this response. He passed her as she went around the corner at Belmont. After he went ahead, he slammed his bicycle right in front of her. He was trying to stop her car. He was now standing. The bike was off to one side. His feet were apart, he started advancing toward her, yelling at her to get out of the car.

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She saw the light turn green and instinctively, in her words, "gunned it" to get out of there, and in doing so, drove across the street onto the sidewalk to get around him. She saw in her rearview mirror

5 that he ran to his bicycle and got on it. She described him as being like a madman. She turned right onto Davenport and was able to drive away.

10 When she saw the picture of Mr. Sheppard, it was definitely the same man. She did not want to get involved, but she spoke to her son and after that discussion she felt she had to come forward.

A.P.

15 In June of 2009, A.P., a sales representative in his thirties, was with three co-workers. His employer asked A.P. to examine his car to see if one of the tires needed air. The car was parked on Shuter Street, near Yonge, facing east.

20 A.P. was walking behind the car with his head down toward the driver's side, in other words, toward the street side of the car. He felt a breeze. A cyclist/courier zoomed by him, perhaps less than a foot away, heading eastbound on Shuter. As the bicycle zoomed by, A.P. yelled at the man, "Take it easy." The cyclist responded by swearing at A.P., yelling an expletive. A.P. responded in similar terms.

30 As soon as the cyclist heard A.P. swear, he turned around and made his way back to where A.P. was standing. The cyclist was angry.

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He came toward A.P. He was swearing and shouting loudly. He was agitated. He was spitting. They verbally sparred. A.P. could smell alcohol on his breath.

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A.P. was larger than the cyclist. His co-workers were standing by. Even so, the cyclist took a bicycle lock and yelled, "You want to go, let's go." He challenged A.P. to fight. A.P. did not go closer because the cyclist was holding a lock. Another courier came over and yelled, "You want to go?" It looked like this person would join in the altercation if one commenced. Eventually, A.P.'s boss told him and the others to walk away.

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A.P. identified the cyclist as Mr. Sheppard after the media reported on the incident.

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C.C.

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A 23 year old woman, late July 2009, was driving on Richmond Street between Peter and John Streets. A cyclist was swerving in and out of traffic in an aggressive way. A hydro truck was blocking the left lane, forcing vehicles to merge to the right. She merged to the right as well. She heard someone behind her yelling that she had cut him off. The cyclist passed her and pulled in front. He did a half-turn parallel to the front bumper of her car. She had to slam on her brakes to avoid hitting him.

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The cyclist threw his bike on the ground and came at her. He was completely enraged. He called her a whore and a stupid bitch. She was scared, panicking, completely terrified, in her words. He repeatedly spat on her vehicle and on her through her partially open window. She rolled up the window. She reversed her car, drove to the right. At first, the cyclist pursued her, but soon was diverted - his attention was diverted to another driver.

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When she saw his photograph in the newspaper, she burst into tears because she knew this was the cyclist who had attacked her. She contacted the police.

D.T.

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D.T. is, or was, on August 11<sup>th</sup>, 2009, a 50 year old businessman conducting meetings in downtown Toronto. When his meetings had completed, he returned to his vehicle, a BMW. He was on Sheppard Street facing south. The next thing he knew, there was a male screaming at him and yelling. He came right up to the car, to the driver's side window, screaming expletives. He said something like, "Just because you drive a fancy car, you think you can drive down the wrong side of the road." D.T.'s intention had been to turn left on Adelaide Street. He had edged into the oncoming lane to avoid delivery vehicles parked against the curb.



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The individual seemed to be upset that D.T. was a foot over the line. The individual was on foot and the individual was shirtless. D.T. told him to calm down, that he would move the car. D.T. lowered his window possibly halfway. The situation escalated. The man kept screaming, yelling, taunting, delivering expletives. He reached into D.T.'s car and tried to grab for the keys but it was a keyless model. He tried to smack D.T. in the face and grab the earpiece for his Bluetooth from his ear. D.T. grabbed his hand and pushed or shoved with an open palm. The individual said, "Get out of the f'ing car and I'll beat your head in." He spat all over the car and was banging on it, grabbing the car and jumping on it. The car had a narrow running board. He was holding onto the window. When D.T. tried to roll up the window, he backed away and then jumped back onto the car. He would not back off.

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D.T. tried to back the car up, but the individual jumped on the car and rode with it backwards. When D.T. went forward, the individual finally got off the car. After moving forwards and backwards, eventually he sped up when the light turned green, thinks that is when the individual finally got off the car.

At some point, Mr. Sheppard is the person we're talking about, had his attention

diverted by another person, and it was then that D.T. was able to drive off and go home and wash the spit off his car.

This piece of Scopelliti evidence is remarkable for one reason. A man - a person occupying a business premise in the building adjacent to where this incident was taking place had complained about the conduct of some of the people on the street to his building manager on repeated occasions, and then he finally got a camera so he could take pictures of some of these things going on, and indeed, he did take pictures and we are going to tender them to you now as the first exhibit, please.

**MR. SANDLER:** A copy for the judge and for an exhibit.

**THE COURT:** Let's mark that Exhibit One(A) and One(B).

**CLERK OF THE COURT:** Noted.

**EXHIBIT NUMBER ONE(A):** Photograph of person at window of vehicle  
- Produced and marked.

**EXHIBIT NUMBER ONE(B):** Photograph of person beside vehicle  
- Produced and marked.

**EXHIBIT NUMBER ONE(C):** Photograph of person hanging onto vehicle  
- Produced and marked.

MR. PECK: The probative force of that type of evidence cannot be denied.

B.S.

The next person is a person whose initials are B.S. He was driving eastbound on Bloor Street in August of 2009, encountered a cyclist who he later identified as Mr. Sheppard. He could see the cyclist up ahead, weaving in and out of different lanes.

When he arrived at Lansdowne, Mr. Sheppard was in the outside passing lane, B.S. was right behind him. B.S. tapped the horn lightly so the cyclist would go to his lane. The cyclist ignored the horn. B.S. passed him by going into the oncoming lane on his left side as there was no traffic. B.S. continued to travel east, stopping at a red light. He had given the cyclist no further thought.

Next thing, the cyclist came up to his car on the left-hand side and slapped the driver's side window. B.S. observed that the cyclist was angry, yelling, agitated and spitting. The cyclist was holding onto the side of the vehicle. First, the cyclist slapped the car to get B.S.'s attention. The cyclist was inches from the window and making angry comments. He was not sure what had prompted that reaction. He did not roll down his window, he did not say a word. He described

the conduct of Mr. Sheppard as "losing his mind."

5 He proceeded eastbound - that is B.S. proceeded eastbound - and reached Brunswick Avenue. The cyclist then came up on his left and struck his left side rearview mirror, dislodging it from its housing so it was hanging only by wires. He then made an immediate right turn onto Brunswick, which is a one-way street going north. B.S. at that point phoned 911 and advised the dispatcher that a cyclist had knocked the mirror off his car. He saw the cyclist in the distance, about two blocks away, straddled on his bike.

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25 As he was communicating his location to the dispatcher, the cyclist returned, racing toward his vehicle. As the cyclist passed, he threw an object, it hit the driver's side rear passenger window. The dispatcher could hear the sound of the impact. B.S. later, some short time later, met with the attending police officers and subsequently had his car repaired at a body shop. We have the repair document. He is positive that Mr. Sheppard was the cyclist he had encountered.

L.S.

30 August 31<sup>st</sup>, 2009, the day of this incident, at about 6:20 p.m., a woman named L.S. was driving southbound on Bay during rush hour. As she approached Queen Street, she noticed

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a cyclist who was weaving in and out in front of cars and doing figure eights in the intersection. She was frightened. The cyclist was acting erratically. She tried not to make eye contact but kept him in sight, in her peripheral vision, I guess. The cyclist's actions were preventing cars from driving. She had to slam on her brakes a couple of times to keep from hitting him. At one point he changed directions and began driving northbound. She observed the cyclist put his hand through the open driver's side window of a BMW. It seemed to her that the cyclist was trying to reach for the steering wheel or scare the driver. The cyclist had been banging on many car windshields and was yelling at drivers.

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The next day she saw two pictures of Mr. Sheppard in the media. Based on one of the pictures, she identified him, although she said she was not absolutely certain.

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What is significant is that all but one of these events just described took place in 2009, and four took place in the same month of the matter under consideration. These would appear to reflect an escalating cycle of aggressiveness toward motorists in the days leading to the fatal interaction with Mr. Bryant. Features of the accounts given by these witnesses, who are independent, credible witnesses, as I say, subject to

careful interviews, would resonate with the accounts given by Mr. Bryant and his wife, and are consistent with the body of reliable objective evidence pertaining to the critical events.

I should note here that several additional incidents were reported to the police or to counsel for Mr. Bryant. Although those accounts are similar, we are not satisfied that the identification in those cases is sufficient to place ultimate reliability or reliance on them.

In addition to the incidents described above, Mr. Sheppard had a criminal record going back many years. I will refer to only a few. In 1996 he was convicted of assault and breaking and entering. Less than one year later, September 15<sup>th</sup>, '97, he entered guilty pleas to assault, failing to comply and failing to attend court.

The agreed upon facts concerning the assault conviction, the latter conviction, is that on April 1<sup>st</sup>, 1997, Mr. Sheppard assaulted his common-law partner at the time. Alcohol was identified as a significant issue. A conditional sentence was imposed that reflected, among other things, efforts to address the underlying problems identified.

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In 2007, Mr. Sheppard was convicted of uttering a death threat, possession of a weapon, being two air pistols, for a purpose dangerous to the public peace, using an imitation firearm while committing the indictable offence of threatening death. These events occurred in July 2006. Mr. Sheppard entered a cab in the Church and Wellesley area, he said, "I killed someone and I'm going to kill you," and pulled out the imitation guns. He directed the cab to another location. In transit he said, "I'm going to shoot that bitch too," aiming his firearm at a lady who could be observed from the window of the cab.

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To assist the court in sentencing Mr. Sheppard, a pre-sentence report was prepared, as was a Gladue report which, as Your Honour knows, is a report prepared by a caseworker from the Aboriginal Legal Services of Toronto, which was helpful in providing an overview of Mr. Sheppard's life circumstances.

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Mr. Sheppard's adoptive father, who is in court today, showed great insight and he wrote a letter to the court, described his adoptive son's challenges, difficulties and positive qualities.

The Gladue report reflected that Mr. Sheppard said he was drinking heavily and using crack

5 cocaine at the time of these charges. During pretrial custody he entered A.A. and acknowledged his problem with alcohol and noted that alcohol was the trigger for his using crack cocaine.

10 In the pre-sentence report, Mr. Sheppard reflected that he had a lot of good prospects at the age of 23 and lost it all once he developed a crack addiction. He said he was addicted to crack cocaine for four years until he quit and returned - or turned to alcohol. He said he used alcohol on a daily basis, beginning the moment he awoke in the morning. When his time was not structured, he drank. He felt remorseful and noted that he terrorized people unintentionally. He attributed his behaviour to his alcoholism and the fact that he is a thrill-seeker.

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20 The investigating officer reflected that Mr. Sheppard had frightened a number of people, including the taxicab driver, who was unable to sleep and too afraid to go to work for a few days. Mr. Sheppard was assessed as high risk to re-offend and of high need of intervention by the author of the pre-sentence report.

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30 For the weapons offence, he received 40 days in jail, which was on top of the five months and five days pre-sentence custody, and he also got two years probation and 60 days on



each of the other charges, concurrent to each other but consecutive to the weapons offence.

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These facts that I am outlining here again are being mentioned because they have significant legal relevance. They are not to demonize Mr. Sheppard, nor as the basis for anyone suggesting that he somehow deserved his fate. I am going to expand on this because it is important.

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It would also be unfortunate if the only focus in these proceedings was on those aspects of Mr. Sheppard's conduct which I have described. The reports referred to earlier also provide valuable insight into Mr. Sheppard more generally.

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He was born October 11<sup>th</sup>, 1975, in Edmonton, Alberta. He was Aboriginal and the eldest of nine children. In due course, he would come to have four children of his own. His biological father had attended a residential school. He lived with his mother until he was two. He and his little brother and baby sister were taken into custody by Child and Family Services in Alberta. He was kept together with his brother but they were separated from their sister.

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Over several years, from about the time he was three or four, to the time he was six, he and his brother were placed in over 30 foster

homes. Staggering. They moved between their mother's care and foster settings on a fairly regular basis.

The material that we have reviewed demonstrates that these boys were subject in some of these homes to maltreatment. Suffice it to say that some of the material we have read is shocking. I am not going to reiterate it.

When he was six, he and his brother were adopted by the Sheppard family. Eventually, the Sheppards divorced and the deceased and his brother went to live with Mr. Sheppard Senior. What one learns from his father's correspondence with the justice system is that Mr. Sheppard was intelligent, resourceful, imaginative, creative and persuasive, but deeply scarred by his life experiences.

We had the privilege of meeting with Mr. Sheppard Senior yesterday. Mr. Sandler had met with him once before. We have been assisted throughout by Ms. Evette Barnes, team leader of the Victim/Witness Assistance Program, and we have had assistance from the Aboriginal Legal Services.

Mr. Sheppard Senior is a remarkable human being, deep humanity and considerable wisdom. It is a privilege to have met him.

At the age of 11 Mr. Sheppard ran away from home, was placed in the Glenrose Rehabilitation Hospital in Edmonton. Until the time he was 17, he was admitted to a number of residential facilities and group homes that deal with youth who have psychological and behavioural difficulties. When he was 12, he overdosed on his medication and was placed in a psychiatric hospital for two weeks for observation.

He had a grade nine education when he set out on his own at the age of 17. He worked as a D.J., a construction labourer, a bicycle messenger, a window washer, a club promoter, and a comedy street performer. He competitively raced in off-road bike races for six years and eventually gained sponsors for these events. He was a very fine cyclist. To his friends he was considered loyal and generous.

Material that we have reviewed indicates, or would tend to indicate, that he suffered from Fetal Alcohol Syndrome, although it appears that he had never been properly diagnosed or fully diagnosed as such. As a child, he had been diagnosed as having Attention Deficit Hyperactivity Disorder and was medicated with Ritalin. He had also suffered a number of concussions over the years as a result of his bike racing, his competitive biking, and that seems to have affected his memory.

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He began using marijuana at the age of 10 and drinking when he was 16. These activities became daily habits after he moved out on his own. When he was 20 he met and married a woman with whom he had two children, they separated, and in January 2000 he gained custody of the two children. Eventually, his partner's mother came and took the children back to Toronto. After the loss of his children, he began using crack cocaine on a daily basis. That led to the loss of jobs and his racing sponsors. In 2001 he had a third child but lost contact with the child and the mother one year later. He had a fourth child born in 2004.

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In 2006 he began attending A.A. meetings while he was incarcerated, and applied to the Rainbow Lodge for residential treatment in November 2006. Prior to this he had never been in treatment for his alcohol and drug problems. It is self-evident from a detailed review of the available records that alcohol and drug use, as well as psychiatric issues imperfectly understood, contributed to the conduct described earlier.

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Given what we know about Mr. Sheppard, it is not surprising that he would go into a rage from time to time, and you know, it is quite an amazing story. Most people are ill situate to overcome the obstacles this man faced.

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Let me now give you the defence position. In the evening of Monday, August 31<sup>st</sup>, 2009, Mr. Bryant and his wife, Ms. Abramovitch, went for dinner at a Lebanese restaurant in the area of College Street in Toronto. A parking ticket for College Street was found on Mr. Bryant's car and it bore the times of 7:04 p.m. to 8:27 p.m.

After dinner they drove to the Beaches where they went for a walk. They then drove to Danforth Avenue to a bakery for dessert. They then proceeded westbound on Danforth until it merged into Bloor Street, and westbound on Bloor, with the intention of eventually turning north on Avenue Road to go home. Neither had been drinking, neither had consumed any liquor.

That evening they were in Mr. Bryant's 1995 Saab, model 900 SE convertible. The top was down, as were the windows.

As they approached Yonge Street, Mr. Bryant noticed the traffic slowing down ahead of him. There were traffic cones in the area with respect to ongoing construction on Bloor Street. One of these cones had been placed in the middle of the driving or travelling lane, so the cars ahead had to somehow manoeuvre around it, and that was part of the reason the traffic was slowing down. The time of the evening was about 9:45 p.m.

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At the same time that the traffic was slowing down, Mr. Bryant noticed an individual on the south side of Bloor Street throwing debris onto the travelled portion of the roadway for eastbound traffic. Remember, he is going west on Bloor.

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When he got to the misplaced cone, Mr. Bryant stopped his car and moved the cone to the side of the road. He then proceeded through the intersection of Yonge and Bloor, but immediately ahead of him was a white SUV travelling slowly. The vehicle's progress was being impeded by a cyclist who was doing figure eights in front of it. The cyclist was the same man he had seen throwing debris on the south side.

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After moving westbound on Bloor Street between Yonge and Bay, Mr. Bryant noticed that the SUV had pulled ahead at normal speed, and he could not see the cyclist at this point, but he thought that the SUV had become a target for the cyclist and so he passed the SUV.

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Can we please hand up the diagram, just one diagram.

**MR. SANDLER:** This one?

**MR. PECK:** Yes. This is a small print diagram but it does help inform what we are doing.

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**THE COURT:** Mark it as Exhibit Two.

EXHIBIT NUMBER TWO: Diagram of area  
- Produced and marked.

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MR. PECK: Thank you.

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You see the arrow pointing north in the right-hand corner, immediately beneath that it says 102 Bloor Street West, that will become important, and immediately below that you see what appears to be driving lanes and you see a square, a diamond, that diamond is a street sign, and I will show you that in the photograph in due course.

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Just to the left of the diamond here is a pedestrian crosswalk mid-block on Bloor. The light had changed to red. As Mr. Bryant approached the light, there was a car stopped in front of him, and a car pulled up behind him, likely the same SUV that he had passed earlier. So he was second in line. His vehicle would have been approximately here, the second vehicle in line.

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THE COURT: Thank you.

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MR. PECK: That is known, by the way, as the number one westbound driving lane, i.e. the driving lane closest to the centre line.

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At that point his vehicle was roughly adjacent to the residential building at 102 Bloor Street West, on the north side, as I showed you earlier. This building has two security video cameras, one facing southeast

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on Bloor and one facing to the west. Footage from these cameras was obtained by the police and has been the subject of considerable analysis by experts for the Crown and defence. As well, this footage has obtained some notoriety for having been posted on YouTube. These videos depict some of the altercation but do not show all the significant events that took place.

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West of that pedestrian crosswalk, construction vehicles had taken up the two lanes adjacent to the centre line, and you can actually see those vehicles in the diagram surrounded by cones. So what was happening was the westbound traffic on Bloor was being funnelled into a part of the road adjacent to the curb, while the eastbound traffic was being funnelled into the same location, that is into the south part of Bloor.

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This photograph will give you some sense of what the viewer would see, and you can see the construction vehicles, and they are better seen in the second photograph. Three(A) and (B).

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This first photograph I showed you, we are looking westbound on Bloor. On this side you can see the construction vehicle. This is the stop line for this pedestrian light shown



above. There is a car ahead of Mr. Bryant, Mr. Bryant's car and a car behind him.

The second photograph I gave you is taken further up the street, or further west, showing the stop line for the eastbound traffic for the pedestrian light, and gives you a better sense of the construction vehicles.

**MR. SANDLER:** Three(A) and (B)?

**CLERK OF THE COURT:** Three(A) and (B), Mr. Sandler, yes.

**EXHIBIT NUMBER THREE(A):** Photograph looking westbound on Bloor Street  
- Produced and marked.

**EXHIBIT NUMBER THREE(B):** Photograph taken further west on Bloor Street  
- Produced and marked.

**MR. PECK:** As Mr. Bryant was waiting for the pedestrian light to change, the time was approximately 9:48 p.m. Pedestrians were on both sides of Bloor Street. It was a pleasant evening.

Mr. Bryant was a little concerned about the whereabouts of the cyclist. As he was looking to the passenger side rearview mirror, which he thought was a logical place for the cyclist to come, he felt something brush past him. Mr. Sheppard cycled past Mr.

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Bryant's vehicle along the driver's side and then cut in front of Mr. Bryant's vehicle, stopping his bike directly in front of the Saab. This movement was captured by the southeast facing video camera at 102 Bloor Street. As Mr. Sheppard was cutting in front of the Bryant vehicle, Mr. Bryant was moving the vehicle forward as the traffic light had changed to green and the car in front of him had moved through the area.

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As he cycled past the driver's side, Mr. Bryant had the sense that Mr. Sheppard had taken a swing at him. Later, when Mr. Bryant phoned 911, he reported that the cyclist had taken a swing at him but missed. The video does not confirm that Mr. Sheppard did take a swing. The video experts, however, agree that given the quality of the video, based on the relatively low number of frames recorded per second, it is possible that quick movements might not have been captured by the video. The video does show that Mr. Sheppard slowed his speed and came very close to the driver's side door, and Mr. Bryant ducked to his right, at the same time, hitting his brakes and turning his wheels to the right. The vehicle, Mr. Bryant says, then stalled.

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The video shows changes in the luminosity of the Saab's headlights on a number of occasions. The expert evidence confirms that one explanation for this is that the

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headlights dimmed as a result of the vehicle stalling and then being restarted. The reason we mention this is because it lends some circumstantial support for Mr. Bryant and his wife's narratives.

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The police took statements from numerous eyewitnesses in the area. The witnesses described seeing and hearing aspects of what occurred. No single witness appears to have observed the events from start to finish. There are both consistencies and inconsistencies in their evidence.

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One of the largely consistent themes is that Mr. Sheppard was acting loudly and aggressively, confronting Mr. Bryant, while he and his wife remained passive. Ms. Abramovitch, in her statement, described Mr. Sheppard as terrifying.

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Mr. Bryant states that he wanted to get away. He attempted to get his car started and it then lurched forward, stalling again. We refer to this in our parlance as the second motion forward. This second motion or movement forward of the Saab is captured by the southeast facing video again at 102 Bloor.

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There was some indication that on this second movement forward Mr. Bryant's vehicle came close to, or in contact with, the rear wheel

of Mr. Sheppard's bike. The video experts state that the video does not show contact at this point. The camera view is obscured to some extent by a bush situated on a ledge on 102 Bloor between the camera and what is being observed. There does not appear to have been any damage to the rear wheel rim of the bicycle examined by the police and the Crown.

At this point Mr. Bryant's car has stalled again, and he describes himself as being in a state of panic. He was trying to get his car started and concentrating on that task. The Saab had a sensitive and tight clutch, as confirmed by the investigation.

When the vehicle restarted it accelerated into Mr. Sheppard causing him to land on the hood of the vehicle. At the point of this third forward movement of the vehicle, Mr. Bryant states that he had been looking down while engaged in his efforts to restart the car. When he looked up he saw Mr. Sheppard on the hood of the car and immediately hit the brakes.

The expert evidence demonstrates that approximately 2.5 seconds elapsed from the time the vehicle started its forward motion to the time it came to a stop. The brake lights were visible approximately one second into this forward movement. There is a

little bit of a debate among the teams of experts on that. One expert has it at .8 seconds, and the other has it at 1.4 seconds, it's a flash.

By the time the brakes were applied the vehicle had reached a speed of somewhere between nine and 13 kilometres per hour - that is six to 8.3 miles per hour for those of us of a different era - and it travelled a total distance of approximately 30 feet, two car lengths.

During this third forward movement of the vehicle, Mr. Sheppard's bike was caught under the front bumper. The forensic analysis demonstrates that the bike was lying on its right side, with the right pedals creating a scratch in the roadway that runs for approximately 22 feet. When the vehicle stopped, Mr. Sheppard fell off the hood and then stood up within about two seconds. He was clearly not seriously injured at that time.

At that point Mr. Bryant reversed his vehicle and then proceeded slightly to the right to get around the bike. At the same time, Mr. Sheppard, who was standing to the south, or driver's side, slightly ahead, threw his backpack, which struck either the hood or windshield and bounced onto Bloor Street, landing near the north curb. Mr. Sheppard

then leapt onto the vehicle as the vehicle began to move away.

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Two eyewitnesses who were in an eastbound vehicle, which was stopped to the south of the Bryant vehicle, observed Mr. Sheppard throw the backpack. Those two witnesses, just to be clear, would have been in a car parked about here, that is facing eastbound in the eastbound lane just short of the pedestrian crosswalk. Another witness on the north sidewalk observed Mr. Sheppard throw something onto the hood of the car. Another witness looking down on the scene from a nearby building described Mr. Sheppard as coming around the car in a quick and aggressive manner, yelling, walking rapidly. Several of the eyewitnesses described Mr. Sheppard as acting very aggressively and angrily throughout.

When Mr. Sheppard leapt onto the car, both Mr. Bryant and Ms. Abramovitch described him as trying to get into the vehicle. One of the eyewitnesses described seeing Mr. Sheppard in the vehicle from the waist up. This same witness said that Mr. Sheppard appeared to be putting his hands in the car. Another witness described Mr. Sheppard as striking his hands on the hood of the car, and then as the car started to drive, latching onto the vehicle.

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The accounts of the eyewitnesses, coupled with the forensic examinations, confirm that Mr. Sheppard was attempting to attack Mr. Bryant at that time. When he leapt onto the car, his hand or hands were inside the vehicle. Traces of blood were located on the inside of the driver's windshield, the driver's side pillar supporting the windshield, and the inside of the driver's door. Impressions consistent with having come from Mr. Sheppard's jeans were found in the rubberized area on the top of the driver's door. This latter finding is consistent with the witness who described Mr. Sheppard as being in the car from the waist up.

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Throughout this event, Mr. Bryant says that he had as his intent to get away from Mr. Sheppard. He describes himself as being in a state of fear and panic. Ms. Abramovitch describes never having been so scared in her life.

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As Mr. Sheppard latched onto the vehicle, the Saab was heading in a westerly direction. Almost immediately it veered to its left, heading on an angle to the southwest, and then west in the eastbound lane that we've seen in the picture. In other words, it crosses from approximately this position here at the stop line in this direction. We don't know why that happened. There are any number

of suppositions that one could draw - a struggle. In any event, it crosses over and now it is heading blind, because from the position he was in, you couldn't see what traffic was coming eastbound on Bloor because of the vehicles, the construction vehicles.

The movements of the vehicle as it proceeded westbound, with Mr. Sheppard latched onto the driver's side, were observed by a number of witnesses. The accounts given by these witnesses vary considerably. There is very little video evidence of this portion of these events. There is one video camera in a store on the south side of the street and that was useful only for one thing, measuring the speed of the vehicle by some form of triangulation of the light going by, but there is very little video of this portion, so we look to these eyewitnesses, but their accounts are disparate. These are honest people, every one of them, but their accounts are different. Eyewitnesses see different things.

Three of the witnesses described the vehicle as swerving or weaving as it is travelling along the south side of Bloor Street. Another three witnesses said they did not observe any swerving. One witness said the car was rubbing against the south curb. Another said the car mounted the sidewalk and drove half on the sidewalk and half on the



road. Yet another witness described the vehicle as going onto the sidewalk, and another said that the vehicle was driving over the curb.

A number of the witnesses estimated the speed of the vehicle as ranging from 60 to 100 kilometres per hour. Two witnesses observed the brake lights come on during the course of this drive. Many of the witnesses described hearing the roar of the vehicle's engine or the sound of the engine revving.

Expert analysis of some of the video has determined that the average speed of the vehicle during this drive was somewhere in the range of 34 kilometres or 21 miles per hour. It appears that the vehicle may never have left first gear during the course of this drive. Mr. Bryant said he never took his hands off the wheel, in his description, struggling to maintain control, and Ms. Abramovitch believed that they were in first gear throughout this portion of the drive. Of course, that would cause an audible revving of the engine, which may explain a witnesses' misperception of speed.

A forensic examination of the vehicle and the curb demonstrates that the Saab did not rub up against the curb or mount the curb at any time during this portion of the drive. Mr. Bryant said he was trying to keep control,

was struggling, the vehicle was not swerving all over the place. He acknowledged braking in the hope that Mr. Sheppard would let go of the car, but said he was trying to drive as straight as he could but it was a struggle to keep the wheel straight. Mr. Sheppard's face was very close to his and he believes that at one point he was struck in the forehead by Mr. Sheppard. When he was booked into the police station, he indeed did advise them that he had been struck in the forehead.

The vehicle was travelling on the south side of the eastbound lane. A fire hydrant was located close to the south curb in the area of 131 Bloor Street. The side cap of the fire hydrant pointed toward the curb, that is toward the north. The distance from the side cap to the curb was one foot. This side cap caught Mr. Sheppard on the left torso, on the exterior of his torso. This caused him to dislodge from the car, striking his head either on a curb or on a raised patch of asphalt. The mechanics of his death involve an impact to the right side of the head that caused fatal damage to the brain stem.

The total distance from the point where Mr. Sheppard jumped onto the car, to the point where he fell off, was approximately 100 metres.

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Once Mr. Sheppard was dislodged from the car, Mr. Bryant felt in control, proceeded to the westbound lane. So he was proceeding now back north to Avenue Road, which was just a short distance away, up Avenue Road for a short distance, and turned into the Hyatt Hotel, a place that he was familiar with having frequented that establishment throughout the summer of 2009.

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The video camera at the Hyatt Hotel shows Mr. Bryant entering the driveway and stopping the car. Mr. Bryant says that he drove to the hotel thinking it to be a place of sanctuary. His intention was to call 911. Initially, on arriving at the hotel, Mr. Bryant could not find his cell phone or Blackberry, and looked for it in the driver's footwell. Movements consistent with this may be observed on the video, it is a little bit difficult to see, but as it turned out, Mr. Bryant's phone had fallen into the passenger's footwell and was later found there by the police.

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Mr. Bryant used his wife's cell phone to call 911. This occurred approximately three minutes after he arrived. The times were reconstructed by the Crown through comparison of the times shown on the cell phone records, the 911 recordings and the Hyatt video.

During the 911 call Mr. Bryant identified himself and the fact that he was at the Hyatt

Hotel at Avenue and Bloor. He said he had been attacked by a man on a bicycle on Bloor Street who had been hanging out of his car. During the course of the phone call the operator was heard talking to someone else about the fact that the cyclist was bleeding from the ear. Mr. Bryant described the incident in more detail, stating as follows:

"He was literally picking fights with people on the corner of Yonge and Bloor, and putting up obstacles in the way and trying to stop cars from going. We all avoided him, drove past him, and then he came back. I'm in a convertible, so he came back and he started - I mean, I thought he took a swing at me, but whatever, he missed. And then he pulled in front of me and stopped. I slammed on the brakes and I tried to get away, and then he - the next thing I know, he's, like, literally trying to climb into my car, and I think he grabbed something from the car and pulled it out."

Mr. Bryant further described Mr. Sheppard as having been pretty violent. When asked where

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Mr. Sheppard was, Mr. Bryant said, "Somewhere on Bloor, I assume." Mr. Bryant further said that he, "Just wanted to pull into a place where...", to which the operator said, "Where you felt a little safer," to which Mr. Bryant replied, "Yeah." He then waited for the police to arrive.

During the time he was at the Hyatt he spoke to a doorman on a number of occasions. This doorman had recognized him. The doorman says that at some point during their interactions Mr. Bryant stated that he had been assaulted, and either then, or at some later time, stated that he had "roughed the guy up," or "I roughed him up good," and further, "He's in pretty bad shape over there," pointing toward Bloor Street. The doorman says that Mr. Bryant was speaking in the context of having defended himself. Mr. Bryant also advised the doorman that he, that is Bryant, needed to call the police, and at some point he also said he had, in fact, called the police. The doorman described both Mr. Bryant and Ms. Abramovitch as appearing shaken. Mr. Bryant's recollection of the words he used to describe what had happened differs from that of the doorman, but those differences are ultimately immaterial.

The police arrived at the Hyatt driveway at about 10:01 p.m. Mr. Bryant was taken into custody, transported to the Toronto Police

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Traffic Services section at 9 Hanna Avenue where he was formally booked. We have watched the booking, it is all captured by video. There are videos everywhere. While being booked, Mr. Bryant stated that he had not been - that he had been struck in the head during the altercation but said he did not need medical attention.

The next day, on Tuesday, September 1<sup>st</sup>, at approximately noon, Mr. Bryant was charged with the two counts currently on the Information before the court. He was then released from the station on an undertaking to an officer in charge, with conditions, including a prohibition from driving pending his trial.

I'm going to pause for a minute and note that there was some public commentary in the media about Mr. Bryant's form of release. I was involved at that stage. In determining whether Mr. Bryant should be released by the officer in charge at the police station, or instead, come here for an appearance before a JP or a judge, I inquired of the senior investigating officer whether they had released persons on such charges by an undertaking to the officer in charge in the past. I was advised that individuals similarly situated had been so released where they had no record and were not a flight risk. I was of the view that Mr. Bryant

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should be treated in the same fashion as any other similarly situated accused. In the result, we agreed that he could be released from the police station. That's how that happened.

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There are several other matters I think need to be addressed as I move to the conclusion. First is to give some sense of the short time within which the critical events transpired. Based on an analysis of the elapsed time from the various videos, it appears that only 10.5 seconds elapsed from the time Mr. Sheppard blocked the Saab to the time he was thrown from the hood in that third forward movement.

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Secondly, the time from when Mr. Sheppard first pulled in front of the Saab, until he was dislodged from the Saab at about 131 Bloor Street when he fell off the car and died, was less than half a minute. Slight disagreement, one expert has it at 27.5, and one has it at 28.5 seconds, less than half a minute.

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Mr. Bryant's account, and that of his wife, have been evaluated in the context of the totality of the other evidence available to the Crown. This evidence includes:

(A) The videos of part of the incident described earlier. These videos have been examined on a frame by

frame basis. That minute examination shows certain things not seen with the naked eye. As noted earlier, the Crown retained its own expert to advise in this regard and to evaluate the expert report provided by the defence.

(B) The accounts of pedestrians, nearby workers, other motorists, and one individual from his fifth floor residence. All those witnesses appear to be honest, although some aspects of some of their accounts are incompatible with the known objective evidence and that has been appropriately considered.

(C) Multiple forensic reports and advice from various sections of the Centre of Forensic Sciences, the Chief Forensic Pathologist of Ontario, mechanics, and an accident reconstructionist. Much of that work was derived from examination of the scene, Mr. Bryant's vehicle, the

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deceased, his clothing and his bicycle.

(D) The various 911 calls to the police, including that of Mr. Bryant; and finally, the prior history of Mr. Sheppard as earlier described.

Viewed cumulatively, the account provided by Mr. Bryant and his wife cannot be discounted or rejected when viewed in the context of the prosecution's burden of proof. Indeed, their accounts find circumstantial support in other reliable evidence available to the Crown.

The defence made known to the Crown must be evaluated in the context of the existing jurisprudence on the offences with which Mr. Bryant is charged.

A full legal analysis has been done by the Crown of that existing jurisprudence. I intend to only refer to some key points.

Dangerous driving requires proof of a marked departure from the standard of a reasonably prudent driver having regard to all of the circumstances, including the accused's reasonable perception of the facts. This is described as a modified objective test.

The Supreme Court of Canada in R.v. Beatty confirmed that, while the fault element or

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fault component for dangerous driving is objective, evidence of an accused's state of mind is relevant to the analysis. Beatty tells us the fact that the driving in question resulted in death does not alter the legal requirements. Put another way, while the consequences of the driving can be relevant to assessing the dangerousness of the conduct, those consequences are not determinative. The Supreme Court of Canada is clear on that point.

Mere civil negligence, carelessness or errors in judgment that fall short of the above standard are insufficient to establish criminal liability. Of course, criminal negligence causing death, the second offence facing Mr. Bryant, imposes an even heavier burden on the Crown. It requires that the accused display a wanton or reckless disregard for the lives and safety of others.

So in this presentation our focus is on the offence of dangerous driving causing death. If the available evidence does not meet the charge screening standard for that offence by definition, it cannot justify prosecution for criminal negligence causing death.

An accused's fear is a relevant consideration both in determining whether the driving constitutes a marked departure, or as part of an affirmative defence such as self-defence.

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To be clear, where an affirmative defence such as self-defence is raised, the Crown must negate that defence beyond a reasonable doubt.

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The law recognizes that momentary acts of panic in reaction to an unexpected situation will often fall short of establishing an act of dangerous driving. A person faced with a threatening situation may not be criminally responsible for driving in a way that would normally constitute a criminal offence.

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The evidence establishes that Mr. Sheppard was the aggressor in the altercation. The defence position that Mr. Bryant and his wife were deeply frightened and panicked by his actions is supported by the available evidence, his history of aggressiveness toward motorists and others. Mr. Bryant and his wife were in an open convertible, adding to their vulnerability. Mr. Sheppard chose to jump into the vehicle - onto the vehicle. Whatever his motivations, Mr. Bryant could reasonably perceive that Mr. Sheppard was intent on doing he and his wife harm. In the circumstances, there is no reasonable prospect of establishing that the driving which followed constituted a marked departure from the standards of a reasonably prudent driver faced with the circumstances known to, or reasonably perceived by, Mr. Bryant.

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Nor would the evidence have supported a charge of failing to remain at the scene, having regard to Mr. Bryant's explanation, his 911 call from the Hyatt shortly after the material events.

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Prior to Mr. Sheppard jumping onto the vehicle, Mr. Bryant moved his vehicle forward several times, three forward movements. They are captured on the videos and were carefully considered by the Crown in determining whether the offences charged or other offences could be proven.

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The first forward movement away from Mr. Sheppard, the wheels angled to the right slightly, is of no bearing and really would not amount to an offence.

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The second forward movement, based on a minute examination of the videotapes, the car may not have come in touch - or contact with Mr. Sheppard or his bicycle. The evidence in that regard is inconclusive.

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The next movement forward was a more significant one and caused Mr. Sheppard to land on the hood of the vehicle. I have already outlined Mr. Bryant's explanation for that movement forward. There is no evidence that the third movement at a relatively low speed caused any serious injury. It was brief in duration.

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We considered whether the available evidence could justify a separate charge of dangerous driving based on that aspect of the driving alone. In all of the circumstances, we have concluded that it would not.

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The Crown must evaluate the totality of the evidence. Having done so, there is no reasonable prospect of conviction on these or other Criminal Code charges. Accordingly, I have asked that these charges be marked as withdrawn.

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In conclusion, it would be remiss of me not to mention the able assistance that we received from the police investigators throughout this matter, in particular, Detective Constable Arthur Lane, Detective Constable Lester Lalla, and Detective Frank Britton. These are extremely able and insightful officers. I would also  
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acknowledge my gratitude to Mark Sandler, an exceptionally able counsel, and my two associates, Mr. Gottardi and Mr. Campbell.

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Let me make one final observation of what I regard as a case of extremely tragic consequences. One man's life has been  
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ineluctably affected, while another's has been taken. Almost 400 years ago John Donne said that every person's death diminishes us. Those words, true then, resonate today in the solemnity of this courtroom. Thank you.

**THE COURT:** Does counsel wish to make some comments?

**MS. HENEIN:** I do. Thank you.

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Thank you, Justice, for allowing me an opportunity to address you this morning. We would like to acknowledge and thank the prosecution team in this case, Mr. Peck, Mr. Sandler, Mr. Campbell and Mr. Gottardi, for undertaking such a thorough and extensive review of the totality of the evidence in this case, much of which emerged only after the charges were laid. They were the model of prosecutorial fairness and objectivity.

After a review of all of the facts by one of our most highly regarded barristers in this country, Mr. Peck concluded that justice demands a withdrawal of these charges. I want to take a moment to also express our thanks to Detective Britton, Detective Lane, Detective Lalla, for a thorough and evenhanded investigation.

I was confident throughout this case that we would be treated the same as, not better and not worse, than any other accused, that Mr. Peck would do no more and no less than is demanded in the prosecution of any case. Prosecutorial powers cannot be differentially invoked by the state depending on whether the target is a public figure or an ordinary citizen. This is something that our Supreme

Court has repeatedly stated as being fundamental to our law. As Justice Binnie in R.v. Feroze (ph.) stated:

"It is one of the proud accomplishments of the common law that everybody is subject to the ordinary law of the land regardless of public prominence or governmental status."

Justices McLachlin and Major put it this way:

"High profile matters by their nature attract strong public emotions. In our society, the Crown is charged with the duty to ensure that every accused person is treated with fairness."

Similarly, in R.v. O'Connor, Justice Major said it again this way:

"When a criminal trial gains notoriety because of the nature of the offences, the parties charged, or any other reason, there is an added burden in the paramount interest of ensuring fairness in the process. This is a principle that is one of the foundations of our criminal justice system."

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The ultimate conclusion that there was no reasonable prospect of conviction in this case was the only available conclusion in the present case having regard to the facts, facts that only emerged over the past eight months through experts, forensic analysis and independent witnesses that came forward. The prosecution was duty bound to consider this new evidence and they did precisely that.

The conclusion that there was no reasonable prospect of conviction means that no judge or jury could reasonably have convicted Michael Bryant on the facts of this case. It confirms what has always been true, that he is innocent.

While Mr. Peck has highlighted the extent of information provided, much of it by the defence, I want to take this opportunity to explain why this extraordinary step was taken.

In my career, I can think of no case in which as counsel I have made the decision to open up our file, expose our full defence to prosecutorial and police scrutiny before the case was even heard. There are numerous reasons why there is no obligation on the defence to provide disclosure to the Crown, not the least of which is the absolute right of every person to have the prosecution prove the case against them.



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In this case I decided that the important evidence gathered by the defence needed to be provided to the Crown, unconstrained by any conditions or restrictions, and on a timely basis, before trial. There can be only one reason to do so, that is the complete unwavering and unequivocal confidence that I had in the strength of our case and in the firm belief that the objective facts, when fully exposed, when fully examined, point to one and only one conclusion, Michael's innocence.

The entire incident lasted 28 seconds. The review of the issue of reasonable prospect of conviction has lasted for a period of months. No statement or report was left unreviewed, and all information provided by the defence was investigated by the police and independently followed up on by the prosecution. The Crown Attorney, as you have heard, retained its own experts to verify the findings of the defence experts, and no avenue of investigation was left unpursued.

As evidenced by Mr. Peck's extensive, some might even say, fulsome submissions this morning, he is not one to do things by half measure.

What happened on August 31<sup>st</sup>, 2009, is about one thing and one thing only, that the commonplace decisions that each of us make

every minute of everyday can put us in a situation that in our wildest dreams we would never have imagined.

It could have been any one of us driving home in that car on August 31<sup>st</sup>, 2009, and it is this that resonates with, and has struck a chord with, the numerous members of the public, many of whom have actually taken the time to contact me and to speak about these events and how they have impacted them. Tragedies are rarely expected or intended. The little decisions we make daily, meaningless and quickly forgotten, at the time can have a life altering impact.

So what was it on August 31<sup>st</sup>, what was the life changing decision that Michael and his wife Susan made that night? It was the decision at the end of the day not to linger a little longer that night while celebrating their anniversary. It was the decision not to stop at the book store that night because they wanted to get home to their children, Sadie and Louie. That decision, and that decision alone, that split-second moment would be life changing. It would bring Michael and Susan face-to-face with the rage of Darcy Sheppard. That decision would bring them here today.

Darcy Sheppard lived a tragic life that was years in the making, that is the

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heartbreaking reality, but as of August 31<sup>st</sup>, 2009, the irreparable damage that had been done to Darcy was complete, and unfortunately, what was left was a person that was troubled and sometimes violent, and that was the Darcy Sheppard that Michael and Susan encountered that night.

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On the night of August 31<sup>st</sup>, 2009, as you've heard, Michael and his wife were celebrating their twelfth wedding anniversary. Like many of us who have been caught up in the business of managing our lives and our children, sometimes years into a marriage it is the few quiet moments, simple moments with your partner that mean the most. They had gone out for a take-out Shawarma dinner to their favourite place, a take-out place on College Street. They had driven down to the Beaches for a walk through the sand and to exchange some small gifts, it was not a fancy night, and finally, they stopped for some Baklava and tea on the Danforth because Susan has a sweet tooth.

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The mood was warm, it was nostalgic, it was reminiscing, like many couples do over their years together, and of course, what you always talk about, your children.

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As they continued their drive towards their home along Bloor Street they stopped at a red light at Yonge and Bloor, and you have those

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diagrams before you. There were several cars behind the red light, and a cyclist, that we now know to be Darcy Sheppard, was at the corner of Yonge and Bloor. He was tormenting another driver, randomly throwing garbage in the street and trying to block cars from moving. As one would do when you see someone who appears to be disturbed and acting out, Michael did nothing. They did not talk. They did not interact in any way, and the cyclist disappeared from view.

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Susan and Michael continued to drive along Bloor. They planned to stop at the Chapters book store at Bay Street so that Susan could pick up a book for a trip she was taking with her mom, but instead, they made the decision not to do so because they wanted to get home to their children.

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From Yonge and Bloor, to the pedestrian lights before Avenue and Bloor, there was no interaction between Michael and Darcy Sheppard, and nothing could prepare them for what came next.

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When Susan and Michael stopped at a red light only moments away from home, they did not expect that the next 28 seconds would change their lives. At the stoplight Michael's vehicle was sandwiched, as you have heard, by a vehicle in front of him and one behind him. As the light turned green the vehicle in

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front of him started to move through the green light. Michael also started to move with the flow of traffic. As he was moving, Darcy Sheppard raced down the centre line, passing numerous vehicles at a high speed, but when he came to Michael's vehicle he did something unusual. Darcy Sheppard suddenly slowed down his speed dramatically as he approached Michael's door and he came close to the driver's door.

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Despite no previous interaction with Michael, Darcy Sheppard either swung or threw something, at least that is the way it appeared to Michael. Startled, Michael moved the vehicle to the right, away from Darcy Sheppard. Michael was shocked and he slammed on the brakes to stop the car. The car stalled. Darcy Sheppard did not continue driving by, he swerved his bike directly in front of the Saab to stop Michael and Susan from moving forward with traffic. His anger was now unequivocally focused entirely on them.

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Darcy Sheppard was described by independent witnesses as being in a rage, menacing and tormenting the driver. Independent witnesses confirmed that Michael did not interact with the cyclist, he did not say anything, and he appeared not to be even making eye-contact with Darcy Sheppard. Darcy Sheppard was in

a violent rage. The source of his rage had nothing to do with Michael Bryant.

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At this point, we now know that Darcy Sheppard had already been in a number of altercations that day. Earlier that day he had been frightening drivers and grabbing a steering wheel of another driver on Bay. Approximately a half-an-hour before encountering Michael and Susan, Darcy Sheppard had some form of altercation with his girlfriend. Approximately half-an-hour before, he had physically assaulted a stranger on the street, and just moments before, at Yonge and Bloor, he had been tormenting another driver. Michael and Susan were Darcy's fifth known encounter that evening. As one independent witness described Darcy Sheppard that evening, he was violent and he was looking for a fight.

Susan and Michael were completely exposed, the car top was down, the windows were down, and a vehicle was behind them, and Darcy Sheppard was in front of them. There was nowhere to go. They were terrified, afraid and panicked, so much so that Michael was now wholly unable to control his car. He could not even start it. The standard transmission car stalled repeatedly. He simply could not get the car started.

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The vehicle eventually started and moved forward, causing the cyclist to fall on the hood of the car, and within a split-second, six-tenths of a second to be exact, Michael immediately slammed on the brakes. The entire sequence of events, which Mr. Peck has gone through, at this point took 2.4 seconds. Michael's intent at all times was to escape from the attack and to protect his wife.

After braking, Michael reversed, swerved around to avoid the cyclist and tried to drive away from Darcy Sheppard. Darcy Sheppard would not let him go. He threw his backpack containing a large U-shaped metal bike lock at the windshield area, causing it to bounce either on the windshield or the hood of the car. He then ran to the car and jumped onto the driver's side of the car. Michael and Susan believed that he was trying to get into the car.

An independent witness observing the incident described Mr. Sheppard as putting his body into the car and his hands either in the area of the steering wheel or grabbing the area of the driver. During that drive Michael tried to stop the vehicle and push Darcy Sheppard off. Darcy Sheppard would not let go. Michael was not strong enough to push the six-foot one-inch Darcy Sheppard off the car. During this attempt Darcy Sheppard said to him, "You are not getting away that easy."

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He was deep into the vehicle, with his entire upper torso leaning into it at this point. At some point Michael recalls Darcy laughing. Michael was desperately trying to control the steering wheel but was having difficulty doing so.

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At this point there were only two options, stop the vehicle and be attacked by Darcy Sheppard, or risk driving into oncoming traffic, driving into oncoming traffic, exposing himself and his wife to a head-on collision, because at that point in time it was the only way to get away from Darcy Sheppard's attack. Michael was in a complete state of panic and of fear. He saw nobody around him to help him. He could only think of getting himself and Susan to a place of safety where there were people and he could get some help.

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All of a sudden, he felt that he had control of the wheel again, and the cyclist did not appear to be in his view. Throughout this brief but frightening attack, Susan thought that they were both going to die.

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They drove to safety just around the corner at the Park Hyatt, called 911. If there was any question as to what was in Michael's mind at that moment, there can be no question when you hear his 911 plea for help. He requests the police to come because he has just been



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attacked. It is the call of someone terrified for his and his wife's life. It is the call of someone who has just been attacked.

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What I have described, the small portion that I have summarized for you this morning, has taken much longer than that life changing event. None of us think of our lives changing in 28 seconds. Twenty-eight seconds and you are in the criminal justice system, 28 seconds, you are in the back of a police car, 28 seconds and you do not get home to your children, 28 seconds of heartbreaking tragedy for everyone. It is 28 seconds that Michael and Susan will live with for the rest of their lives, and it is 28 seconds that has saddened all of us, and it is 28 seconds that Mr. Peck, Mr. Sandler, Mr. Gottardi, Mr. Campbell, Detective Britton, Detective Lane and Detective Lalla have spent months, days and hours reviewing, dissecting and analyzing, and reaching, at the end, the only conclusion that was available on the evidence, to withdraw the charges.

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I think, Justice, today if you were to ask Michael what he would have done differently that night on August 31<sup>st</sup>, he would tell you that he wished he and Susan had just stayed home.

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Thank you.

MR. SANDLER: Your Honour, just one other matter.

5 THE COURT: Would you file the document that has been read out.

MR. SANDLER: We have prepared what I would characterize as an "Executive Summary" of Mr. Peck's comments and we are prepared to file that as an exhibit, and knowing the interest in the matter, we have also prepared copies of those, together with the exhibits that have been filed, that are available to the media after this court appearance. So I will file the Executive Summary with Your Honour, if I may, as the next exhibit.

10 THE COURT: Thank you.

15 CLERK OF THE COURT: Four, please, Your Honour.

THE COURT: Yes.

20 EXHIBIT NUMBER FOUR: Executive Summary

- Produced and marked.

MR. SANDLER: At this point we would be requesting a formal withdrawal of the charges. Thank you.

25 THE COURT: All right. Well, I just want to take about a minute or two just to indicate a few things.

30 This matter came before me many, many months ago. It was obviously a high profile matter at that time, as both counsel have indicated, and I, quite frankly, did not know what to

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expect in terms of how this matter was going to proceed. Was it going to be a trial? Was it not going to be a trial? But one thing that has surprised me, perhaps, but now has given me such great respect for all counsel that are before the court today, is how everybody worked as best they could to produce the situation that brings us here today.

Of course, as judges, we make no determination about the prosecution of a case, that is totally up to the Crown. We listen, and we try to assist in any way we can. In this case, it was not needed. In this case, both counsel for the Crown and for the defence worked above and beyond what I have seen in many, many years, and all I can say is that, to all counsel, you represent the best interest, the best interest of the justice system, and I want to commend all of you today.

So at the request of the Crown, the charge is withdrawn. Adjourn the courtroom.

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This is to certify that  
the foregoing is a true  
and accurate transcript  
of my recordings to the  
best of my ability and  
skills.

  
Sue Murphy  
Official Court Reporter

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