

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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Transcript of Proceedings
taken at the Taman Inquiry Office
Winnipeg, Manitoba

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Monday, July 21, 2008

Evidence of Tracey Fudge

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Ms. K. Dixon For Mr. Marty Minuk
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1 MONDAY, JULY 21, 2008

2 UPON COMMENCING AT 3:30 P.M.

3

4 MR. CLIFFORD: The date is July 21st,
5 2008. I'm Vincent Clifford, Associate Commission
6 Counsel. I'm present at the Taman Inquiry office,
7 located in Winnipeg. We are here today for the
8 purpose of conducting the examination in chief of
9 officer Tracey Fudge, who is with the Winnipeg
10 Police Service.

11 This examination is being conducted in
12 the office of the Taman Commission, and the
13 evidence will be applied to the evidence that
14 Mr. Commissioner is hearing at the Winnipeg
15 Convention Centre.

16 The time now is 4:30, and what I will
17 ask -- pardon me, I apologize, 3:30, and what I
18 will ask is that each party present indicate their
19 name and who they are here on behalf of.

20 MR. ZAZELENCHUK: Zazelenchuk
21 appearing for the Taman family.

22 MR. McDONALD: Bob McDonald for the
23 R.M. of East St. Paul and its police service.

24 MR. LABOSSIÈRE: Keith Labossiere for
25 the Winnipeg Police Association.

1 MR. KING: King appearing for
2 Mr. Zenk.

3 MR. PROBER: Also Prober for Zenk.

4 MR. WEINSTEIN: Weinstein and
5 Labossiere for Bakema.

6 MR. GREEN: Mike Green and Kelly Dixon
7 for Marty Minuk.

8 MS. HANLIN: Shannon Hanlin for the
9 Winnipeg Police Services.

10 MR. JACK: And Michael Jack for the
11 Winnipeg Police Service.

12 MR. PACIOCCO: David Paciocco
13 Commission Counsel present.

14 TRACEY JAN FUDGE, having first been
15 duly sworn, testified as follows:

16 BY MR. CLIFFORD:

17 Q Officer Fudge, I wanted to start the
18 examination-in-chief by asking you about your
19 relationship with the officers that were present
20 in Branigan's on February 24/25th of 2005. Where
21 were you working at that time?

22 A At that time I was working in Division
23 11 on the B1 platoon.

24 Q And what relationship did you have to
25 the officers that -- the majority of the officers

1 that attended at Branigan's on that evening?

2 A I had previously worked in district 3
3 on the B2 shift, and followed the B1 shift. I
4 knew some of them better than others and some just
5 sort of in passing, just from working in the same
6 area.

7 Q And as of February 2005, what was your
8 level of experience in policing?

9 A At that time I had been hired for
10 eight years, approximately eight years.

11 Q And how long had you been off the
12 shift with the majority of the officers that were
13 in attendance at Branigan's?

14 A I was never on the same shift as them.
15 I worked on the B2 shift, but I was working
16 downtown for approximately a couple of months, I
17 believe it was.

18 Q Had you been in attendance at
19 Branigan's on prior occasions?

20 A Yes, I had.

21 Q With a similar group?

22 A I'm not sure that I have ever been
23 there with that platoon.

24 Q What about the individuals that were
25 present that evening? Had you been there, for

1 instance, with Officer Black previously?

2 A I can't say for sure. I think I have
3 been, but I'm not positive.

4 Q Azaransky?

5 A I'm not positive if I have ever been
6 there at the same time.

7 Q What about with Derek Harvey-Zenk?

8 A I don't know.

9 Q Can you recall any officers that you
10 would have been present at Branigan's with prior
11 to February 2005?

12 A Prior to that day? I would have been
13 there with my shift, the B2 platoon. Occasionally
14 our platoons would end up at the same time, or at
15 the same place at the same time on a rare
16 occasion.

17 Q And on the evening of February 25th,
18 the officers that were present, had you been there
19 prior to that with any of those officers?

20 A It is possible that we may have
21 overlapped in the past.

22 Q What was your degree of familiarity
23 with Derek Harvey-Zenk at that time?

24 A At that time I knew who he was, I was
25 familiar with who he was, knew him from going to

1 the same calls. I mean -- not friends with him,
2 just sort of know him, acquaintance at work. I
3 would say hi to him. I wouldn't call him up on
4 the phone and see what he was doing on his days
5 off.

6 Q For how long had you known him?

7 A I'm -- I don't know. I'm not sure
8 when -- how long he had been on.

9 Q Who did you go to Branigan's with that
10 evening?

11 A When I went there?

12 Q Yeah?

13 A I drove by myself.

14 Q How was it that you learned about the
15 gathering?

16 A I'm not sure. I can't remember how I
17 found out. There was the majority of the B1 shift
18 that was going there from district 3, and a couple
19 of people from my shift downtown were also going.
20 I don't know how I came to learn about people
21 going to Branigan's.

22 Q I understand that you had actually
23 booked off work. Did you go home prior to going
24 to Branigan's?

25 A No, I didn't.

1 Q When you arrived, where did you go in
2 the restaurant?

3 A I went to the east section, I think I
4 kind of drew it out for you in the previous
5 interview. It would have been on the east side of
6 the restaurant. And when I first arrived, I had
7 gotten there after the majority of the people,
8 and --

9 Q The Commission has heard that the
10 officers were located in an area referred to as
11 the lounge area. And we've also heard testimony
12 with respect to the layout of tables, et cetera.
13 And can you recall who it was that you sat with
14 when you arrived?

15 A When I arrived, I don't know who I sat
16 with. I know I sat on a purple couch at one
17 point. And like I had said in the last interview,
18 I know I wouldn't just walk in and go straight to
19 a purple couch, I would walk around and say hello
20 to everybody that was there before sitting down.
21 I know I was squished on the couch, but I don't
22 recall who specifically I was sitting with.

23 Q Let me see if I can assist you with
24 that. When you arrived did you notice whether
25 there were individuals sitting at the high top

1 tables?

2 A Yeah, there was tables there. But
3 because I had arrived after everyone else, there
4 was no room left at the tables and I was stuck on
5 the low couch, kind of down below the tables.
6 There was the shorter tables and higher tables.

7 Q And at this point do you have any
8 recollection of who you were sitting with?

9 A I think it was Jay Nolet or I sat with
10 Jay Nolet at some point, but who -- I thought that
11 there was possibly three people on the couch
12 because I was so squished, but I don't recall.

13 Q Let me see if I can assist you in
14 refreshing your memory on that point. You have a
15 copy of the interview conducted with Commission
16 Counsel, and that was on April 3rd of 2008. And
17 did you have an opportunity to review that
18 transcript prior to testifying today?

19 A Yes, I did.

20 Q If I could refer you then to page 19,
21 and if you reviewed it you will know how the pages
22 work. I asked you at page 19, line 2:

23 "Q Where were you located?

24 You responded:

25 "Okay. Well --

1 Q And who were you sitting with?

2 A I'm not sure. I think Jay Nolet
3 was also on the couch and one other
4 person, but I can't -- I'm not
5 positive if it was Jay. I think it
6 was Jay, but I'm not positive. Then
7 there was one other person and I can't
8 remember. I remember being squished
9 on there. I wouldn't have sat on the
10 couch the whole night. I probably
11 would have walked around and talked to
12 people. For the most part I remember
13 sitting on the couch."

14 Just on the issue of Jay Nolet, does that refresh
15 your memory on him being present?

16 A Somewhat, yes.

17 Q Now, you indicated in your interview
18 with me on that day that you were not positive,
19 but you thought it was Jay. Is that still the
20 case?

21 A I'm still not positive. I'm still not
22 positive.

23 Q And what I would like to know is how
24 many other officers were sitting at that couch
25 with you?

1 A I thought that there was three people
2 because it was really squishy. I can't remember
3 for sure who was all sitting on the couch.

4 Q Were there other female officers
5 present that evening at Branigan's?

6 A Yes, there was.

7 Q Do you know where they were located?

8 A I can't remember where they were
9 sitting.

10 Q Do you recall who it was that invited
11 you there?

12 A I don't recall.

13 Q Apart from speaking with Jay Nolet, do
14 you recall having conversation with other
15 individuals?

16 A That night?

17 Q Yes?

18 A I recall speaking with Norbert Bauer.
19 I know I kind of walked around the table to say
20 hello to everybody. But specific conversation, or
21 who exactly I was speaking to, I can't recall. I
22 know Dave Harding was there, I believe I spoke to
23 him shortly. But who --

24 Q At the table you were sitting at, was
25 it -- the chair that you say you were squished on,

1 and I'm not sure whether you meant that there were
2 a number of you squished on a couch or whether the
3 chairs were squished together. Can you explain
4 that a little bit further so we can try and
5 understand where you were?

6 A I remember sitting on a purple couch,
7 it is a purple or red velvety couch, and it is --
8 I believe it is on the east wall and it sits below
9 the tables, kind of down below. And I just sat on
10 that couch for some time.

11 Q Was it shaped like a love seat? Like
12 somebody might describe it like something like
13 that?

14 A It is kind of -- I think it was like
15 an old fashioned -- like a short little, I don't
16 know what you would call it, it wasn't a long
17 couch where you could fit five or six people on
18 it. I think the most you could fit would be
19 three, unless people sat on the arms.

20 Q And how many people do you recall
21 sitting in that chair?

22 A I don't recall. I mean, I think Jay
23 was there for a little bit and I don't know who
24 else was sitting on the chair.

25 Q Did you know where Officer Black was

1 sitting?

2 A I don't recall. I don't recall
3 Officer Black even being there at that time.

4 Q Where were you sitting in relation to
5 the taller tables?

6 A I believe that the taller tables were
7 closer to the south end of the restaurant. And
8 that the shorter ones came out further to the
9 north, and I think the couch was kind of -- sort
10 of in the middle of both tables on the one side,
11 if that makes sense.

12 Q How close were you to the people that
13 were sitting at the high tables?

14 A I don't recall how close it is. It is
15 not a far distance away. I wouldn't be yelling
16 across the table, but it is not crammed up against
17 the table either.

18 Q When you were interviewed by the
19 Winnipeg Professional Standards Unit on March 25,
20 2005, you were aware of the fact that they were
21 looking for certain pieces of information from
22 you?

23 A Correct.

24 Q And they wanted to know a number of
25 things, one being where you were located in

1 Branigan's restaurant, who you were sitting with?

2 A Correct.

3 Q And do I understand your evidence to
4 be then and, of course, at this point, that apart
5 from indicating who was present at the lounge or
6 at Branigan's, that you are not able to indicate
7 who it was that you actually spent the evening
8 sitting with and interacting with?

9 A Well, because I think I sat on the
10 couch, but I wasn't sitting on the couch the whole
11 time. I walked around the table and spoke to
12 various people that were there, including Norbert
13 Bauer.

14 Q And when you say you walked around the
15 table and spoke to various individuals, including
16 Bauer, do you mean the high top tables?

17 A Well, they were all kind of squished
18 together, so it would just be one large table that
19 I kind of walked around.

20 Q You are referring to all of the high
21 top tables that were squished together, you walked
22 around all of those tables?

23 A Well, I can't remember exactly how
24 they were positioned, but there was some high
25 tables and some lower tables, and they were all

1 kind of clumped together, and I know I just kind
2 of walked around to say hello to everyone that was
3 there that I --

4 Q Where was Derek Harvey-Zenk located?

5 A I'm not exactly sure, but I think he
6 was sitting at one of the higher tables.

7 Q And do you recall where in amongst
8 those tables he was located?

9 A No.

10 Q Any idea with respect to his position?
11 Who might have been sitting beside on his right,
12 who might have been on his left, who might have
13 been across from him?

14 A No, I don't recall.

15 Q Did you interact with Derek
16 Harvey-Zenk throughout the evening? Did you have
17 conversation with him?

18 A I don't recall talking to him. I may
19 have said hello. I don't recall a conversation
20 with him.

21 Q Do you recall consuming alcohol
22 yourself at Branigan's?

23 A Yes, I did.

24 Q And how much did you have?

25 A I know for sure I ordered one beer

1 with my wings, and possibly two. I'm not sure if
2 I ordered two, but I know for sure one.

3 Q And did anybody else purchase alcohol
4 for you?

5 A No.

6 Q And did you purchase alcohol for
7 anybody else?

8 A No, I didn't.

9 Q Did you know officer Dave Harding?

10 A Yes.

11 Q Do you recall him being present?

12 A Yep.

13 Q What do you recall about him?

14 A He was there. I think I had a
15 conversation with him. I don't recall anything --
16 I mean he had been drinking.

17 Q How do you know that David Harding had
18 been drinking?

19 A Because he wasn't acting like himself.
20 He is a little bit louder than usual.

21 Q And when did you make that
22 observation?

23 A Well, at some point through the night.
24 I don't know exactly when.

25 Q What about Derek Harvey-Zenk, did you

1 notice whether he was consuming alcohol at
2 Branigan's?

3 A No, I didn't.

4 Q What about the people that -- the
5 other people that were sitting at the table, the
6 lower table where you were located, did they order
7 and consume alcoholic beverages?

8 A I wasn't really sitting at the lower
9 table, I was sitting at the couch.

10 Q That's what I meant, you were sitting
11 at the couch, you were squished in, you were at a
12 low table?

13 A A lower level, yeah. I'm not even
14 sure if there was a table in front of me. I don't
15 remember a table being in front of me.

16 Q You remember sitting in that low couch
17 and you were squished in with other individuals,
18 you think that Jay Nolet was one of them, but you
19 are not positive?

20 A Right.

21 Q Did the people you were with purchase
22 alcoholic beverages?

23 A I don't know.

24 Q Were you drinking by yourself there?

25 A There were people, there was glasses

1 on the table, there was pitchers of beer. I don't
2 know who was drinking beer or who was drinking
3 Coke or who -- I don't know what anybody was
4 drinking.

5 Q So if I just lump everybody then into
6 one pool here, take Dave Harding out of the
7 equation, do I understand your evidence to be that
8 you don't know if anyone other than you and Dave
9 Harding was consuming alcohol at Branigan's?

10 A Well, I'm not even sure if Dave
11 Harding was consuming alcohol at Branigan's. I'm
12 assuming he was, because he appeared to be --

13 Q Drunk?

14 A -- becoming intoxicated. I had a
15 beer.

16 Q But what I'm interested in now is
17 whether you can provide testimony on whether you
18 observed any other police officer at Branigan's
19 consuming alcohol?

20 A No, I can't.

21 Q You are prepared to make the
22 assumption, I take it, only the assumption that
23 other police officers consumed alcohol?

24 A Well, there was glasses on the table.
25 I would assume people were drinking.

1 Q And specifically with Derek
2 Harvey-Zenk, are you able to provide any evidence
3 with respect to alcoholic beverages that he may
4 have consumed?

5 A No, no.

6 Q Now, you've stated that you noticed a
7 behavioral change in Dave Harding?

8 A Correct.

9 Q And describe that for me? What did
10 you notice or observe about the change in his
11 behaviour?

12 A When it was time to leave he was
13 louder, he wasn't himself, he appeared to be
14 intoxicated to me. He was loud. He wasn't
15 exactly steady on his feet. He just wasn't the
16 Dave that I normally deal with or know.

17 Q Okay. And you hadn't seen him
18 consuming any alcoholic beverages, but as a police
19 officer of a number of years at that point I take
20 it that you were satisfied that the individual
21 that you saw before you was demonstrating the
22 effects of alcohol consumption?

23 A Correct.

24 Q Do you recall leaving Branigan's?

25 A Somewhat, yeah.

1 Q What can you tell us about the process
2 of getting ready to leave Branigan's?

3 A To leave Branigan's, everyone -- we
4 all kind of left at the same time. Everyone paid
5 at the same time, formed a line. I don't recall
6 if my bill was brought to me or if I went up to
7 pay it, or if I left money on the table. I don't
8 recall that. Once everyone was done paying, we
9 were out in the parking lot.

10 Q Do you recall where Derek Harvey-Zenk
11 was in connection with the line up or the
12 gathering of people to pay?

13 A I have no idea.

14 Q Do you know where you were in relation
15 to other officers in the line up --

16 A No, I don't.

17 Q -- of the people that wanted to pay?

18 A No.

19 Q Okay. So, just up to this point, your
20 arrival, and up to the point where you are getting
21 ready to pay your bill and the officers are lined
22 up, I just want to recap what the extent of the
23 information is that you can provide about Derek
24 Harvey-Zenk. One is that you are not sure where
25 he was sitting other than he is at the high top

1 tables?

2 A I think he was sitting at one of the
3 higher tables.

4 Q Okay. You do not know who he was
5 sitting around or who was in the vicinity of his
6 seat?

7 A I can't remember.

8 Q Nothing with respect to any alcohol
9 consumption on his part or anybody around him or
10 any other officer for that part?

11 A No.

12 Q And nothing with respect to him
13 actually being in the lineup to pay?

14 A No, I don't.

15 Q Okay. When do you notice the
16 behavioral change on Dave Harding? Is it when you
17 are in the lineup?

18 A It was when we were all getting ready
19 to leave.

20 Q Who else do you recall being present
21 at that time?

22 A In -- when we were all leaving?

23 Q Apart from police officers.

24 A I don't recall anyone else.

25 Q The server was present taking money,

1 checking out the customers?

2 A I don't recall. Like I said, I don't
3 know if a server brought me my bill or if I just
4 went up to pay and stood in line with everyone
5 else. I can't remember how I paid.

6 Q No recollection at all?

7 A Well, I know I paid, but I don't --

8 Q I understand that you recall that you
9 paid, but with respect to the process of paying,
10 do I understand your evidence to be that you have
11 no recollection of that occurring?

12 A Well, I would have been standing with
13 everyone else at some point.

14 Q And did you deal with a female server
15 or a male manager? Do you know who it was that
16 settled your bill with you?

17 A No, I don't recall.

18 Q We've heard evidence in the Commission
19 from the manager who was working that evening,
20 that when it came time for all of the police
21 officers to leave that they were in fact lined up
22 in the configuration that you have described, and
23 he raised in a serious and firm manner his concern
24 that a number of officers should not operate their
25 motor vehicles due to alcohol consumption. Do you

1 recall anything of that nature being said to any
2 of the police officers?

3 A No.

4 Q We've also heard evidence from that
5 witness that the officers, some of the officers
6 responded to him, and indicating that that concern
7 was being addressed and that certain individuals
8 would not in fact be driving?

9 A No.

10 Q You say no, and what I want to follow
11 up with you on is are you saying no, that did not
12 occur, or you just didn't -- you heard nothing or
13 didn't participate or hear anybody else
14 participating in such a conversation?

15 A I didn't hear any of that
16 conversation, nothing.

17 Q Now there were cars left behind?

18 A Yes.

19 Q Tell us about that.

20 A Once we were outside, I invited anyone
21 who wanted to come with me, because everyone was
22 going to go back to Sean Black's house, I invited
23 anyone that wanted to ride with me that they were
24 welcome to. I made arrangements to drive Dave
25 Harding because I didn't think that Dave Harding

1 should be driving.

2 Q Dave Harding was somebody that you had
3 a concern about in terms of his alcohol
4 consumption and his ability to drive?

5 A Yes, I did.

6 Q So you are acknowledging that at least
7 one person there, there was a bona fide concern
8 about their behaviour and their ability to drive?

9 A Yes.

10 Q You indicated that you don't have any
11 recollection, nor can you testify with respect to
12 concerns being raised by staff at Branigan's about
13 leaving vehicles behind, but in fact you do act as
14 a designated driver for Dave Harding?

15 A Yes.

16 Q Now who else do you drive to Officer
17 Black's residence?

18 A I drove Jim Anderson and Kelly McLure.

19 Q Did you spend time with Kelly McLure
20 that evening in Branigan's?

21 A It is possible that we talked. I know
22 Kelly, we -- we usually talk when we see each
23 other. I don't recall anything specific --
24 conversations or what we were doing exactly.

25 Q Would you agree that it would be quite

1 unlikely that you didn't talk to her?

2 A Yes.

3 Q That certainly more probable than not,
4 and a high degree of likelihood, that you would
5 have spent time with her in Branigan's?

6 A Most likely, yes.

7 Q And what was she drinking there?

8 A I have no idea.

9 Q Generally speaking?

10 A I don't think she was drinking
11 anything. I don't recall her drinking anything.

12 Q Do you know whether she interacted
13 with other people that were there? Did you spend
14 time in a group with her and other officers?

15 A I can barely remember talking to Kelly
16 myself. I don't know who she talked to or what
17 she was doing.

18 Q How many female officers do you recall
19 being present?

20 A It was me, Kelly and Marnie Nechwediuk
21 who were there.

22 Q We have heard evidence from the server
23 who was working there that one of the female
24 officers stood up on a bar stool, on the lower
25 rung of a bar stool, was standing up and clapping

1 their hands at one point in the evening after
2 alcohol had been served. Was that you, officer?

3 A No.

4 Q No?

5 A No.

6 Q Did you see any other female officer
7 doing that?

8 A I don't recall anybody else doing
9 that, and it certainly wasn't me.

10 Q Was there anybody celebrating anything
11 that evening?

12 A Not that I know of.

13 Q Had you recently become engaged at
14 that point?

15 A No, I wasn't.

16 Q Were you aware of the other female
17 officers, whether a situation like that occurred?

18 A I don't think so.

19 Q When was it determined that you were
20 going to be driving Kelly McLure and Jim Anderson
21 to Constable Black's residence?

22 A That was after we paid when we were
23 kind of debating whether we would even be going
24 back to Sean's house. When we decided that we
25 would go, Kelly and I didn't want to go for very

1 long, we weren't sure -- like I said, we weren't
2 sure if we even wanted to go, and decided that we
3 would go and drive Dave, and Jim just decided to
4 hop in with us, because --

5 Q Did you talk to Jim about why he was
6 going in your vehicle as opposed to taking his
7 own?

8 A No.

9 Q Kelly McLure left a vehicle behind at
10 Branigan's. Do you understand that to be the
11 case?

12 A Yes.

13 Q And Jim Anderson left a vehicle behind
14 at Branigan's. Do you understand that to be the
15 case?

16 A Yes.

17 Q And Dave Harding left a vehicle behind
18 at Branigan's?

19 A Yes.

20 Q And you understood that to be the
21 case?

22 A Yes.

23 Q And your evidence is that the only
24 person that you had any concern about with respect
25 to alcohol consumption was Harding?

1 A Yes, that's correct.

2 Q And he was clearly showing signs of
3 alcohol consumption when it came time to leave?

4 A Yes.

5 Q Did you see any of the staff from the
6 bar outside the restaurant when you were leaving?

7 A I don't recall any.

8 Q Do you recall what time it was that
9 you actually left the restaurant?

10 A I'm not sure what time it was.
11 Whatever time they close.

12 Q Do you recall whether you stopped on
13 route to Officer Black's residence for any reason?

14 A I don't think so, no.

15 Q And did you know how to get there?

16 A No, I didn't.

17 Q How did you get there, if you didn't
18 know the way?

19 A I had never been to Officer Black's
20 house before. I'm not sure, I can't remember if
21 somebody else had directions or if someone else in
22 my vehicle knew where he lived.

23 Q So no recollection in terms of how you
24 arrived at his residence, but you can tell me that
25 you had no idea where he lived?

1 A Before I went there I had no idea
2 where he lived. Whether someone gave us
3 directions or somebody in the car had the
4 directions or knew, I don't recall.

5 Q We've heard some testimony that there
6 was a caravan or people following one another.
7 Does that refresh your memory or accord with any
8 recollection you may have?

9 A I don't remember following anyone.

10 Q When you arrived at Officer Black's
11 residence, can you tell me who was already
12 present?

13 A I don't know.

14 Q Tell me generally what was happening
15 when you went into his house?

16 A There wasn't much happening. I don't
17 recall if we were the first ones there or the last
18 ones there, or somewhere in between. People kind
19 of congregated in the, I guess it would be his
20 kitchen area.

21 Q Where do you recall most of the people
22 being when you first arrived?

23 A Well, I'm not sure if it is when I
24 first arrived or when everybody else arrived
25 after, but we kind of sat -- Sean has a kitchen

1 with a counter, that's open into sort of a, I
2 guess it is a dining area where there was a table,
3 everyone was kind of along that counter or sitting
4 around the table. It would be the kitchen area
5 generally I would describe it.

6 Q And do you recall where Derek
7 Harvey-Zenk was?

8 A I believe he was at the opposite end
9 of the counter, close to the table.

10 Q And do you recall who he was with?

11 A I think that people at that end, like
12 I said previously, they were arm wrestling. I
13 believe it was Jay Nolet, Ken Azaransky, I believe
14 that Derek Harvey-Zenk was kind of at the opposite
15 end -- I don't even know which way -- which wall
16 that would be, opposite of the livingroom.

17 Q Let's start with who were you with
18 then when you walk in and settle down first at
19 Officer Black's house, who were you sitting with?

20 A I was with Kelly McLure.

21 Q And where are you seated?

22 A I was -- his bar -- there is a kitchen
23 counter that divides the kitchen from the dining
24 room, and the counter kind of goes straight and
25 then angles into the livingroom. Sort of has an

1 angle. We were sitting kind of at the end where
2 the angle of that counter was.

3 Q Okay. And how many of you were there?

4 A There was me and Kelly, we were kind
5 of having our own conversation. I don't know how
6 many people were sitting at the counter or sitting
7 at the table.

8 Q That's what I'm interested in at this
9 point; how many people were involved in the
10 conversation with you and Kelly McLure?

11 A For the most -- majority of the night
12 it was Kelly and myself. I mean other people came
13 along and joined in. The guys were arm wrestling
14 and teasing each other at the other end and we
15 were kind of at the opposite end in a
16 conversation.

17 Q So that's a fair characterization then
18 of the time you spent at Officer Black's, that it
19 was you and Kelly McLure isolated at one end of
20 the kitchen area, and then Derek Harvey-Zenk and
21 other individuals were for the most part spending
22 time at the other end of the kitchen?

23 A We weren't exactly isolated, because
24 it is all an open room.

25 Q We understand from hearing the

1 testimony of Officer Black the layout of the
2 kitchen, and we have a good idea with respect to
3 the size of the kitchen. So when I say you were
4 isolated, I don't mean that you were off in a
5 separate area of the house, it may be not the best
6 word. But that you were sitting with Officer
7 McLure, spending most of your time interacting and
8 engaging with her while Derek Harvey-Zenk and
9 other officers were in another area of the
10 kitchen; is that what I understand that you are
11 telling me?

12 A Correct.

13 Q And did you consume alcohol at Officer
14 Black's residence?

15 A No, I didn't.

16 Q Did you observe alcohol out at Officer
17 Black's residence?

18 A Yes, there was.

19 Q What did you observe?

20 A I believe it was a bottle of rye and
21 Bailey's.

22 Q And where was that located?

23 A It was on the counter, that same
24 counter that we were sitting along.

25 Q And did you see people taking the

1 bottles, mixing themselves drinks?

2 A No, I didn't. I mean I saw glasses,
3 and people were drinking, but I wasn't paying
4 attention to what other people were drinking or if
5 they were drinking.

6 Q What about Kelly McLure? You were
7 spending time with her interacting with her, do
8 you have any idea what her alcohol consumption
9 was?

10 A I don't think she was drinking.

11 Q Do you recall anybody drinking
12 Bailey's?

13 A No, I don't.

14 Q When you say that you saw that other
15 people were drinking, there is glasses out?

16 A Correct.

17 Q People are walking around with
18 glasses?

19 A Correct.

20 Q You see alcohol. There was rye out?

21 A Yes.

22 Q Okay. And the Bailey's, you are --
23 are you clear on whether there was a bottle of
24 Bailey's?

25 A I thought it was a bottle of Bailey's.

1 I'm not positive.

2 Q So rye and Bailey's. Did you see mix?

3 A No.

4 Q You didn't see any pop?

5 A No.

6 Q Ice?

7 A No.

8 Q Okay. So you see alcoholic beverages
9 being served, they are available, you see people
10 walking around with drinks in their hands, am I
11 right about that?

12 A Correct.

13 Q Okay. Who was drinking?

14 A I don't know. I wasn't paying
15 attention to anyone that was there. I was sitting
16 at the end of the counter talking to Kelly. I
17 toured the residence. Sean took us on a tour of
18 his house because it was a new house and I had
19 wanted to see it. I know there was alcohol out.
20 People were drinking. Who was drinking what, I
21 don't know.

22 Q All right. So do I understand that to
23 be your position, there was alcohol out -- I take
24 it you are prepared to make the assumption that
25 people were consuming alcohol, you just don't know

1 who was consuming what or how much?

2 A Correct.

3 Q What about Dave Harding?

4 A I don't know. I don't know what he
5 was drinking.

6 Q What was his behaviour like when you
7 got to Officer Black's residence?

8 A The same thing, he was still loud, and
9 not the Dave that I know. Obnoxious, unsteady,
10 kind of knocking things over.

11 Q Did you see anybody dealing with him
12 there?

13 A No, I didn't.

14 Q Did you interact with, apart from
15 getting the tour with Officer Black, did you
16 interact with him, as the host of the gathering?

17 A I recall him being in the kitchen
18 portion of the kitchen. He was sort of talking to
19 everyone. He was making popcorn.

20 Q Can you tell me anything about him
21 making popcorn?

22 A Well, at the time there was -- I
23 didn't recall until it was on the news about the
24 popcorn, and after that I recall that he did have
25 a problem with the popcorn machine, which seemed

1 funny at the time. The popcorn was -- he put too
2 many kernels in the popcorn and he was having a
3 problem with kernels all over the place.

4 Q And how long did that episode take?

5 A I don't recall how long it took. I
6 don't know.

7 Q I take it, it was a situation where he
8 just rectified the situation, took some kernels
9 out and cleaned up the mess?

10 A Cleaned up the mess and grabbed
11 another bowl.

12 Q And it wasn't long, I take it, before
13 you had your popcorn?

14 A I don't recall eating popcorn.

15 Q Do you recall anybody dealing with
16 Dave Harding at the residence, at Black's
17 residence?

18 A It was me, I dealt with Harding.

19 Q At the end of the night?

20 A Yes.

21 Q What about during the course of the
22 evening prior to you leaving, do you recall
23 anybody interacting with him?

24 A No, I don't.

25 Q Before I deal with you leaving with

1 Dave Harding, because I understand that when you
2 leave, the group that arrives together basically
3 leaves together?

4 A Correct.

5 Q And before that takes place, do I
6 understand your evidence to be that with respect
7 to Derek Harvey-Zenk, once again, it is very
8 similar to what you've indicated to the Commission
9 with respect to him being at Branigan's, you can
10 not indicate whether there was any alcohol
11 consumption?

12 A I don't -- I don't know.

13 Q And when it came time to leave and you
14 were going to obviously take people back because
15 there were vehicles left in the Branigan's parking
16 lot, do you speak to Dave Harding at that point
17 and make arrangements for him to come along with
18 you?

19 A Yes. And again the last time I was
20 here with you, you had asked me a question what he
21 was doing, and you suggested that he was sleeping,
22 and I recall that he had been sleeping, I believe
23 he was sleeping in the basement. And we had gone
24 and woke him up, or I had gone and woke him up to
25 give him a ride home, to arrange for him to get

1 back home.

2 Q And you take the individuals with you
3 that arrived at Black's and you bring everybody
4 back to Branigan's?

5 A That's correct.

6 Q And you drop off Kelly McLure?

7 A Yes.

8 Q Her vehicle is there, did you see her
9 drive away?

10 A I don't specifically remember her
11 driving away. Her vehicle was there, and she
12 left.

13 Q What time did you get to your
14 vehicle -- get to her vehicle?

15 A I'm guessing it was right around 5:00
16 o'clock.

17 Q Were you still concerned about the
18 state of Dave Harding and his ability to operate a
19 vehicle when you got back to Branigan's in the
20 morning?

21 A Yes, I was.

22 Q Did you talk to anybody about that?

23 A Jim Anderson and I arranged that I
24 would drive Dave back to Branigan's, and from
25 there he would drive Dave home. When we got to

1 Branigan's, Dave was intoxicated, showing obvious
2 signs of intoxication, and he wanted to drive.
3 And we got into a wrestling match over his keys,
4 and didn't let him drive.

5 Q So you got into a wrestling match at
6 Branigan's parking lot with Dave Harding?

7 A Yes.

8 Q And how many people were involved in
9 the wrestling match?

10 A It was just me and Dave fighting over
11 his keys. Jim was waiting for him to come to his
12 truck, and Kelly was kind of standing near the car
13 with me.

14 Q And how long did this wrestling match
15 last?

16 A It didn't take very long. I mean,
17 initially he didn't want to release his keys and
18 tried to sit down in his car. I think after a
19 short time he thought better of it, and I took his
20 keys.

21 Q This is the first time that I've ever
22 heard about you and Dave Harding having a
23 wrestling match on the evening, or the morning of
24 the 25th. And have you told this to anybody prior
25 to today?

1 A Not really. I mean, Kelly McLure was
2 there, and Jim Anderson and Dave.

3 Q You didn't bring it up, you didn't
4 think it was relevant to bring it up with the
5 Professional Standards Unit when you met with
6 them?

7 A No, because he didn't drive.

8 Q Okay. His intent was to drive,
9 presumably, based on the fact that you had to
10 wrestle with him to prevent that from happening?

11 A Well, I grabbed the keys from his
12 hands so he wouldn't have them.

13 Q Did anybody have to assist you in
14 dealing with him?

15 A No, initially he was going to drive,
16 and I think he realized that he should not be
17 driving when you have an appropriate ride with Jim
18 Anderson to drive him home.

19 Q Was he angry with you, Constable, when
20 you were wrestling with him?

21 A I don't think so.

22 Q You say you don't think so. What was
23 his demeanor towards you? How was he behaving
24 towards you?

25 A He just was of the opinion that he

1 would be fine, he could drive. And I, obviously,
2 was of a different opinion.

3 Q How much force did you have to use
4 with him to get the keys from him?

5 A Not very much. He just had them in
6 his hands. He was intoxicated, it wasn't
7 difficult.

8 Q Did he fall down to the ground when
9 you were wrestling with him?

10 A I don't -- I don't remember.

11 Q Okay. Did Officers McLure or Anderson
12 get involved in that at all?

13 A No. I mean, it was just, it was very
14 quick. It wasn't -- I wasn't standing on the
15 street punching Dave in the head, fighting with
16 him to get his keys. It was just he wanted to
17 drive when he shouldn't have.

18 Q Did you raise a concern at Officer
19 Black's house, a concern about people driving,
20 with Officer Black, that people at his residence
21 shouldn't have been driving?

22 A No. Just Dave Harding.

23 Q You were -- you and Kelly McLure were
24 the only two individuals that were present, the
25 only two female police officers that were present

1 at Officer Black's?

2 A Correct.

3 Q And you raised this concern about Dave
4 Harding driving, but Dave Harding is one
5 individual?

6 A Correct.

7 Q Okay. And what I'm interested in is
8 the plural, whether there were other people that
9 you were concerned about leaving his residence?

10 A Dave Harding was the only one that I
11 was concerned about.

12 Q Well, in fact, you were taking -- you
13 brought Dave Harding there and you were taking him
14 back?

15 A Correct.

16 Q So if you were concerned about Dave
17 Harding you would say, look, I'm concerned about
18 Dave Harding driving his car, and we are going to
19 take him back. There was something in place for
20 Dave Harding, right?

21 A Correct.

22 Q Now, other people you know were
23 consuming alcohol, but you are not going to
24 indicate, or are unable to indicate who drank
25 what. But you are aware that there are other

1 people there that are consuming alcohol as well?

2 A I'm assuming people were consuming
3 alcohol because there was alcohol out on the
4 counter.

5 Q And did you not have a general concern
6 that, look, we have been out at a bar all night,
7 closed it, we have been here all night, there is
8 alcohol out on the counter, we have got one guy
9 who is intoxicated, I'm going to be driving him.
10 Did you raise a concern with Officer Black that,
11 look, there are other individuals here --

12 A No, because I didn't think that
13 anybody else was intoxicated.

14 Q I want to ask you about a statement
15 made by Constable Black, when he gave his Winnipeg
16 Professional Standards Unit interview on
17 March 11th. He indicated to the Professional
18 Standards Unit, at that time -- and I'm referring
19 to his statement, all right, this is not your
20 statement, but this is a statement of another
21 individual -- wherein he indicated during his
22 interview, this is at page 906 of F-1.36.c.

23 "I do recall Chris Humniski leaving
24 but I do know he lives in the area, I
25 remember talking to him. T.J., the

1 young guy on the shift, he left pretty
2 early himself. I do recall the girls
3 leaving and being concerned about
4 people driving. Obviously at that
5 point Dave Harding was a concern.
6 Originally he was taken, I took him
7 downstairs..."

8 A Sorry, where was that?

9 Q I will -- I gave you a copy just
10 before the interview started. If you want, you
11 can follow along with --

12 MR. LABOSSIERE: Just before she
13 answers, what is the purpose of asking her about
14 somebody else's statement?

15 MR. CLIFFORD: The statement from
16 Officer Black is that he recalls the girls leaving
17 and being concerned about people driving. And I
18 want to put to the witness whether the concern was
19 about an individual or the plural "people".

20 MR. LABOSSIERE: My concern is that
21 you put this to Sergeant Black today and my
22 recollection is that he qualified --

23 MR. PACIOCCO: Don't state the
24 evidence, please. Don't state the evidence in the
25 presence of a witness when you make an objection

1 as to what somebody else says, because that's not
2 a fair way to present evidence.

3 MR. LABOSSIERE: My concern is it is
4 not a fair way to put the evidence to the witness
5 in the first place. I want to make sure that the
6 actual evidence is being put to the witness if she
7 is going to be challenged on it in any way.

8 MR. PACIOCCO: As I understand it, the
9 witness is going to be given an opportunity to
10 respond to the suggestion that was said. That is
11 what is being put --

12 MR. LABOSSIERE: But my concern is,
13 Mr. Commission Counsel, is that there are two
14 different issues here. One is what his statement
15 was to PSU back in 2005, and what his answer was
16 today. So if you are going to be fair to the
17 witness, you have got to put what the actual
18 evidence is.

19 MR. PACIOCCO: No. She has to give
20 her answer to the suggestion as to whether the
21 statement was made, and his evidence and her
22 evidence will be both before the Commissioner.

23 MR. PROBER: Well, I have to say as
24 well, that when a witness qualifies something that
25 they said before, then the whole scenario should

1 be put to the witness, this witness. Because
2 that -- what was put to Black was qualified by
3 Black. And if he qualifies it, then it should be
4 put to her. We don't have to say how he qualified
5 it, but the qualification, in fairness, should be
6 put to this witness. It is not fair otherwise.

7 MR. PACIOCCO: The qualification of
8 the witness in court may or may not be credited by
9 the Commissioner. Until the determination is made
10 by the Commissioner as to whether the statement
11 was said, and hearing all potential witnesses to
12 it, the Commissioner won't be in a position to
13 determine whether to credit that qualification.
14 The qualification of one witness is not something
15 that has to be put to another witness when you are
16 trying to determine whether the statement in
17 question was in fact made.

18 MR. PROBER: Well, the statement may
19 not be credited either.

20 MR. PACIOCCO: It may not be. Let's
21 put it to the witness and find out.

22 MR. PROBER: No, no, but it may not be
23 credited by the Commissioner, not by this witness.
24 So it seems to me that if you are going to put
25 something to a witness that a previous witness

1 said, then the whole scenario in its proper
2 context should be put to the witness. I mean,
3 otherwise it is not fair.

4 MR. LABOSSIERE: Or just say, were you
5 concerned with one or more people, period?

6 MR. PACIOCCO: There is value in
7 putting to a witness what someone else attributed
8 to that witness on an occasion. What that same
9 witness says on another occasion is a related but
10 separate matter. I think counsel is entitled to
11 put a statement attributed to a witness --

12 MR. LABOSSIERE: With all due respect,
13 not when the implication by the question is that
14 someone else suggested that either this witness or
15 somebody else -- we are talking about more than
16 one person. That's the concern that I have.

17 MR. CLIFFORD: Well, perhaps, let me
18 get the question out, and listen carefully to the
19 wording of the question.

20 You have it in front of you now?

21 THE WITNESS: On page 17.

22 BY MR. CLIFFORD:

23 Q Page 906, the bottom:

24 "Constable Black: I do recall Chris
25 Humniski leaving. But I know he lives

1 in the area, I remember talking to
2 him. T.J., the young guy on the
3 shift, he left pretty early himself.
4 I do recall the girls leaving and
5 being concerned about people driving."

6 Now, what I need to know from you,
7 Officer, is what did you express to Constable
8 Black, when you were leaving, about a concern
9 about individuals or people driving? What was the
10 concern? Who was relaying this concern and what
11 was being said to Constable Black?

12 A Sorry, what was the first question?

13 Q What was being said to Constable Black
14 about a concern, about individuals or people
15 driving?

16 A By me?

17 Q Yes?

18 A I was concerned about Dave -- I can
19 answer that question?

20 MR. LABOSSIERE: My concern is that it
21 was totally unnecessary to even show her the
22 statement to make the suggestion, unless you were
23 trying to make her feel like her recollection
24 wasn't a valid one. That's the concern that I
25 have.

1 MR. CLIFFORD: We will get to that
2 because I'm not finished the sequence of
3 questions.

4 MR. LABOSSIÈRE: Just ask her whether
5 she had a concern with one person or two, or three
6 or ten, and I will have no issue.

7 MR. CLIFFORD: It is important, I
8 think, for all counsel to realize this is not an
9 examination in discovery. If you are going to
10 make observations, they have to be made and there
11 has to be a process of responding. There can't be
12 a dialogue back and forth. The objection has been
13 raised, argument has been made, I don't know if
14 anybody else wants to weigh in on this. We have a
15 protocol in place with respect to ruling from the
16 Commissioner, so I'm going to suggest that we move
17 forward, and I want you to answer the question, if
18 you can. What was said by you to Constable Black
19 regarding your concern about an individual or
20 people driving.

21 THE WITNESS: I don't recall what was
22 specifically said, but I was concerned about Dave
23 Harding driving.

24 MS. HANLIN: I think that's her
25 answer.

1 BY MR. CLIFFORD:

2 Q Now, you were at his residence. You
3 left at approximately 5:00 a.m., I understand?

4 A Correct.

5 Q Did you not have a concern with
6 respect to the fact that people had been consuming
7 alcohol, in your presence, throughout the evening
8 at Branigan's and there again at Officer Black's,
9 did you not have a concern with respect to anybody
10 else, just on the sheer fact that there was
11 alcohol consumption occurring on your observation
12 throughout the entire evening?

13 A No. Because everyone there seemed
14 fine to me. Everyone -- I didn't think anyone
15 else was intoxicated.

16 Q What about Ken Azaransky?

17 A He seemed fine to me.

18 Q Did he seem fine to you at Branigan's?

19 A I don't recall interacting with Ken
20 Azaransky at Branigan's.

21 Q Do you recall interacting with him at
22 Officer Black's?

23 A I believe he was at the opposite end
24 of the kitchen and I think he was arm wrestling.
25 I'm not positive. I wasn't paying close attention

1 to the guys at the opposite end.

2 Q If you weren't paying close attention
3 to the guys at the opposite end, how can you draw
4 the conclusion that other persons were okay to be
5 driving?

6 A The only person I was concerned about
7 was Dave Harding.

8 Q That's because there were obvious
9 signs --

10 A Obvious signs.

11 Q -- that he was intoxicated. But did
12 you have at least a degree of curiosity about how
13 much alcohol other officers had consumed there?

14 A No.

15 Q So, I take it then from your testimony
16 that unless somebody is demonstrating overt signs
17 of intoxication, you are not going to be concerned
18 about the fact that they would have been drinking
19 all night?

20 A The only person I was concerned about
21 at that point was Dave Harding, because he was
22 displaying signs of intoxication to me. Everyone
23 else there seemed fine to me.

24 Q But what I wanted to know is, were you
25 concerned at all about the fact that people were

1 present with you and consuming alcohol all night
2 and all morning?

3 A No.

4 Q Did you at any point, along with
5 Officer McLure, offer to volunteer as designated
6 drivers?

7 A No, I offered to give Dave a ride and
8 arranged to get him home.

9 Q Did --

10 A I offered to give anyone a ride that
11 wanted to head back into the city at that time of
12 night.

13 Q Why were you making that offer?

14 A Because some people -- I don't know
15 who carpooled, I don't know, sometimes you hop in
16 one car and you want to leave at a different time
17 than the other person. I don't know if people
18 were drinking. Like I said, there was alcohol
19 out, I made the offer to drive people back into
20 the city.

21 Q I suggest to you that you made the
22 offer as -- you offered yourself as a designated
23 driver for people that were consuming alcohol at
24 Officer Black's?

25 A But I didn't think that anyone else

1 was intoxicated.

2 Q Why would you offer to be a designated
3 driver?

4 A I offered to drive in case somebody
5 wanted to take a ride with me rather than drive
6 their vehicle.

7 Q For what reason, other than that they
8 would be consuming alcohol?

9 A Like I said, there was alcohol sitting
10 out. I don't know if people were drinking or not
11 drinking. Everyone seemed fine to me, but I don't
12 know what anyone had to drink.

13 Q Okay. So we can conclude on your
14 testimony that you do concede that you offered
15 generally to act as a designated driver at Sean
16 Black's residence?

17 MS. HANLIN: That's not what the
18 witness said.

19 THE WITNESS: I offered people a ride
20 home.

21 BY MR. CLIFFORD:

22 Q Did you use the words "designated
23 driver"?

24 A I don't recall using the words
25 designated driver.

1 Q What about Kelly McLure, did you have
2 a conversation with her about you and her acting
3 as the designated drivers?

4 A I don't recall that.

5 Q You mentioned that the offer was based
6 on the fact that alcohol was out, and I take it it
7 was your notion and observation that it was being
8 consumed throughout the entire time that you were
9 present? Is that right?

10 A Correct, there was alcohol out.

11 Q Now, did you say to the others when
12 you were leaving, look, we are leaving now, if
13 anybody wants a ride, come with us now?

14 A Come with us now?

15 Q Yes, we are leaving, the people that
16 want to take advantage of this offer of a
17 designated driver, now is the time, we are
18 leaving, it is 5:00 o'clock.

19 A I don't recall what I said when I was
20 leaving. I don't recall saying anything. I was
21 leaving and people were welcome to come back to
22 the city with me. Whether I said I was leaving
23 now, I don't recall that. Come with me now, I
24 don't recall saying that.

25 Q I want to put to you a statement

1 attributed to you by Officer Black in a document
2 he prepared for his insurance agent, and this is
3 found at volume Q-2.89.b.25 at page 3055. He
4 indicated in this statement:

5 "The female officers..."

6 A Is that in here?

7 Q No, it is not.

8 "The female officers..."

9 It is just one sentence, okay?

10 MS. HANLIN: Can you show it to the
11 witness after you read it?

12 MR. PROBER: We have it here.

13 MR. CLIFFORD: Why don't you give that
14 to me?

15 BY MR. CLIFFORD:

16 Q What I'm going to show you, Constable,
17 is what has been filed as Exhibit 162. It is
18 indicated here:

19 "The female officers, Tracey Fudge and
20 Kelly McLure, also offered to
21 volunteer as designated drivers if
22 need be. However, as I've said, the
23 only one that appeared intoxicated was
24 Dave Harding. I told Dave he could
25 stay the night, but the two female

1 officers and a Sergeant took him
2 home."

3 This is the statement, as I say, of Sean Black,
4 prepared in connection with -- prepared by his
5 insurance company. What he is saying here is:

6 "The female officers, Tracey Fudge and
7 Kelly McClure, offered to volunteer as
8 designated drivers if need be."

9 Do you recall speaking to him when you were
10 leaving about offering designated driver services?

11 A I don't recall specifically
12 volunteering to be a designated driver. Whether
13 he viewed me as a designated driver because I
14 wasn't drinking, I'm not sure.

15 Q What about Kelly McLure, do you recall
16 her having a conversation with Officer Black?

17 A I don't recall.

18 Q When did you find out about the
19 accident that occurred and the fact that Derek
20 Harvey-Zenk was being charged?

21 A The following day there was a
22 retirement at District 3 Police Station, and I had
23 arrived to the retirement. And it was a rumour
24 that there was a bad accident and that Derek
25 Harvey-Zenk was at the East St. Paul Police

1 Station.

2 Q And who told you about it?

3 A It was just -- I don't remember who
4 specifically told me about it. It was a common
5 rumour flying around the retirement when I arrived
6 there. The majority of the details that I got
7 came when there was a media release and news, the
8 news came out. I can't recall if that was later
9 that night or a couple of days later. I don't --

10 Q Let's deal first with then what you
11 learned at the -- was it a coffee and cake
12 function that you were attending?

13 A Correct.

14 Q You were aware of the fact that there
15 was an accident, there was a fatality. And do I
16 understand correctly that you were aware of the
17 fact that Derek Harvey-Zenk was in custody?

18 A No. I was under the impression that
19 there was an accident and that he was at the East
20 St. Paul Police Station.

21 Q And what did you understand the
22 purpose of him being at the East St. Paul Police
23 Station was?

24 A I thought that he had been in fault in
25 the accident, and giving a statement or dealing

1 with East St. Paul Police at that point.

2 Q You knew it was a motor vehicle
3 accident where there was a fatality, that much?

4 A Um-hum.

5 Q And you knew he was at a police
6 station?

7 A Correct.

8 Q Did you embark on any conversation
9 with any of the officers that were present at the
10 cake and coffee and say, look, what happened after
11 we left the residence?

12 A No, not that I recall, no.

13 Q You weren't in the least bit curious
14 about what other officers had to say with respect
15 to what might have lead to it?

16 A Well, I was curious about the accident
17 and what happened, and why Derek Harvey-Zenk was
18 at East St. Paul.

19 Q And did you ask questions to satisfy
20 your curiosity?

21 A Well, no. I mean, it was, there is
22 rumours flying around the station, and we were in
23 the middle of a retirement cake and coffee, people
24 are giving speeches and doing whatever.

25 Q Well, I understand that. But on the

1 other hand, this was a situation where you were
2 with a number of fellow officers all night long,
3 and alcohol was consumed. You had dealings with
4 Dave Harding, who you knew was consuming alcohol.
5 You told us about wrestling in the lot. You knew
6 that there were other officers that were left
7 behind at Black's when you departed. Simple
8 intuition suggests that you would have been
9 following up on these things to find out what took
10 place?

11 A I left the retirement early. I worked
12 in Division 13, and then at that time I was
13 working downtown. I was only at the retirement
14 for a short time, heard what people were saying,
15 and I had to get back to Division 11. It wasn't
16 until the news came out that I heard the details.

17 Q What about when you did hear the
18 details and you knew that he was charged? At that
19 point, did you follow up with any of the officers
20 that were present and try to learn a little bit
21 more about what occurred in your absence?

22 A We were on days off. I don't talk
23 to -- like I said earlier, I don't know that shift
24 well enough to phone somebody up on days off. I
25 didn't talk to anyone.

1 Q What about Kelly McLure?

2 A No, I don't even -- as much as I will
3 talk to Kelly and I get along with Kelly, we still
4 don't hang out on days off.

5 Q So did you have conversations with
6 anybody who was present at Branigan's or at
7 Officer Black's, after attending at the cake and
8 coffee function on February 25th?

9 A No. After the cake and coffee, I went
10 back to Division 11. I worked, and then we went
11 on our stretch of days off. When I came back to
12 work, back to Division 11, there was again just
13 general talk about what happened, like where was
14 he, what was happening.

15 Q Just a couple of quick questions just
16 to wrap up. When you were at Branigan's, you saw
17 alcohol being served. We have heard testimony
18 that beer was coming out and being served at the
19 tables?

20 A I believe there was beer on the
21 tables.

22 Q And how much beer did you see spread
23 out at Branigan's on the tables?

24 A I don't recall.

25 Q And we've covered your testimony at

1 Black's, and you have given your position with
2 respect to seeing people with glasses or drinks in
3 their hands, but you don't know whether they were
4 alcoholic beverages. And you recall seeing the
5 bottles out, of rye and Bailey's?

6 A Correct.

7 Q What about putting the people together
8 with the bottles, did you see anybody approaching
9 the bottles, picking up the bottle?

10 A No.

11 Q Nobody at all?

12 A No.

13 MR. CLIFFORD: Okay. Those are the
14 questions that I have for you. Other counsel will
15 have questions.

16 BY MR. ZAZELENCHUK:

17 Q Officer, listening to you give your
18 evidence earlier today, you told us that when you
19 arrived at Branigan's that night, the majority of
20 the people had already arrived?

21 A Correct.

22 Q And the majority of people were seated
23 around at a big high table, or several high tables
24 moved together?

25 A It was -- if I recall correctly, it

1 was high tables pushed together with some lower
2 tables.

3 Q But that's where the majority of
4 people were sitting, and there wasn't any room for
5 you?

6 A Correct.

7 Q So you walked around and you said
8 hello to everybody, correct?

9 A Correct.

10 Q And then you ended up sitting at one
11 of the lower tables a little distance away?

12 A The little purple couch.

13 Q And when asked by Mr. Clifford, you
14 told him, I think on two occasions, very close to
15 each other, that you noticed glasses on the
16 tables; correct?

17 A Correct.

18 Q And you noticed pitchers of beer?

19 A I believe so.

20 Q Yes. And you said, and I tried to
21 make a careful note of it, you used the plural,
22 you said pitchers of beer?

23 A Correct.

24 Q Yes. And we are talking about the
25 kind of pitchers that one sees in bars or lounges,

1 they are plastic, they are about eight or ten
2 inches high and about five or six inches wide;
3 correct?

4 A I don't know how they measure, just a
5 regular pitcher. I don't know.

6 Q Sure. And I said approximately.

7 A Yeah.

8 Q And you could tell it was beer and not
9 water because it was some shade of yellow?

10 A I believed it to be beer.

11 Q Sure. Okay. Now, let's move on to
12 you go to Sean Black's house. And you mention
13 that the guys were arm wrestling?

14 A Correct.

15 Q Do you remember telling us that?

16 A Yes.

17 Q Okay. Who was arm wrestling?

18 A I'm not exactly sure. I believe it
19 was Ken Azaransky and I can't remember who -- if
20 they were taking turns.

21 Q Maybe it would help if -- sorry?

22 A I think -- I wasn't really paying
23 attention, I think it was Jay Nolet, but I'm not
24 positive who.

25 Q So it might have been Jay Nolet?

1 A I'm not positive. I wasn't paying
2 attention to the guys at the other end.

3 Q Was it only one pair of guys that were
4 arm wrestling or did that happen more than once?

5 A I don't know.

6 Q So you can't be, you can't tell us if
7 that happened more than once and you can't tell us
8 who the guys were that were arm wrestling?

9 A You know what, they were teasing each
10 other, who is stronger. I was in a conversation
11 at the other end. I mean, I was laughing at some
12 of the comments that were being thrown out. I
13 don't recall what. I don't know who exactly was
14 arm wrestling.

15 Q And they were just doing guy things?

16 A Just, you know, teasing each other.

17 MR. ZAZELENCHUK: Thank you.

18 MR. CLIFFORD: Is that it?

19 MR. McDONALD: I have a couple.

20 BY MR. McDONALD:

21 Q Like Mr. Clifford, I heard for the
22 first time today your evidence about a little
23 wrestling match or encounter with Dave Harding in
24 the parking lot at Branigan's when you returned to
25 Branigan's from Constable Black's house. You are

1 with me?

2 A Um-hum.

3 Q What did you do with his keys after
4 you took them from him?

5 A I believe I gave them to Jim Anderson.

6 Q Well, you have some hesitation there.
7 Can you tell us on oath today what you did with
8 those keys?

9 A I can't remember exactly what I did
10 with his keys. I believe I gave them to Jim so
11 that Dave could get into his house.

12 Q Because you would agree with me that
13 Constable Harding would have need for those keys
14 at some future point in time?

15 A Yes.

16 Q And your best recollection today is
17 that you turned them over to Sergeant -- sorry,
18 the name again?

19 A Jim Anderson.

20 Q Is he a Sergeant?

21 A I believe so.

22 Q Yes. So you think you gave them to
23 Sergeant Anderson, who you understood to be
24 driving him home?

25 A I believe so.

1 Q Again, if I understood your evidence
2 correctly, the arrangements in place, as far as
3 you were concerned when you left Branigan's, was
4 that Anderson was going to drive Harding home?

5 A Correct.

6 Q Did you see Harding get into
7 Anderson's vehicle?

8 A Yes.

9 Q Did you assist him into the vehicle?

10 A No.

11 Q Do you have a conscious recollection
12 of giving the keys to Anderson?

13 A As far as I remember, I gave them to
14 Jim Anderson so that Dave could get into his
15 house.

16 Q Were there more keys on the ring than
17 just a vehicle key, do you know? Do you remember
18 at all?

19 A I don't recall.

20 Q Do you know if this was a house key on
21 the ring?

22 A I don't, I wouldn't know.

23 Q Did you know where he lived, Constable
24 Harding?

25 A I wasn't positive.

1 Q Do you know if he lived in a house or
2 an apartment?

3 A I don't know.

4 Q You have no recollection of having his
5 keys then the next day?

6 A I don't recall having them.

7 Q You have no recollection of doing
8 something with them the next day, after you woke
9 up?

10 A No.

11 Q So you must have given them to
12 somebody then at the scene, at Branigan's, do you
13 agree with that?

14 A Yes. As far as I remember that --

15 Q Was there anybody else present at that
16 point in time other than Anderson and Harding?

17 A It was McLure, Anderson and Harding.

18 Q Did McLure leave the parking lot
19 before Anderson?

20 A I don't recall.

21 Q You didn't give the keys to McLure,
22 though?

23 A I don't think so.

24 Q A little confused about the designated
25 driver questions that I was listening to, and the

1 answers, probably, because I have never
2 volunteered to be one myself.

3 MR. PROBER: And you couldn't.

4 MR. McDONALD: And it would be unsafe
5 for me to do so.

6 BY MR. McDONALD:

7 Q In any event, as I understand the
8 concept of designated driver, that's something
9 that you agree to be at the start of the evening,
10 not something that you decide as the evening is
11 drawing to an end; would you agree with that?

12 A Correct.

13 Q Were there any discussions in which
14 you were involved at the beginning of the evening
15 at Branigan's as to whether you would be a
16 designated driver?

17 A No. Like I said, I didn't call myself
18 a designated driver. I wasn't drinking and I was
19 concerned that Dave Harding was drinking. Some
20 people may view that as a designated driver, but I
21 offered --

22 Q You were just taking him into your
23 care?

24 A -- to make sure he got home.

25 MR. McDONALD: Okay. Thank you.

1 That's all I have.

2 MR. LABOSSIERE: I have a couple of
3 questions.

4 BY MR. LABOSSIERE:

5 Q Constable Fudge, as I understand your
6 evidence, throughout the course of the evening and
7 certainly by the time you were at Sean Black's
8 residence, you formed the opinion that Constable
9 Harding was intoxicated. He was impaired?

10 A Yes.

11 Q And he ought not to be driving home
12 alone?

13 A Correct.

14 Q Or with anybody else for that matter.
15 And as a result of that, you took active steps to
16 ensure that he got home safely?

17 A Correct.

18 Q And is it fair to say, Constable
19 Fudge, that had you believed anybody else was
20 impaired, you would have taken those same steps,
21 you would have ensured that that person or persons
22 got home safely?

23 A Of course, I would.

24 Q And have you done that before?

25 A I'm sure I have, yeah.

1 Q And you've given us some indication
2 that you have spent some time with the individuals
3 that you were with that night before?

4 A Some time.

5 Q And you've worked with some of them,
6 you have known some of them socially?

7 A Correct.

8 Q And would it be your expectation that
9 they would do the same thing, they would ensure
10 that if they thought any one of you were impaired,
11 they would ensure that that person got home
12 safely?

13 A Yes, most definitely.

14 Q And is that your understanding of what
15 occurred that night?

16 A Yes.

17 MR. LABOSSIERE: Those are my
18 questions.

19 BY MS. HANLIN:

20 Q I have a few questions.

21 MR. PROBER: You can go last if you
22 want.

23 MS. HANLIN: Yes, sorry, I do.

24 BY MR. PROBER:

25 Q Constable Fudge, I'm Jay Prober and

1 I'm Derek Harvey-Zenk's lawyer.

2 How many bottles of water are there on
3 the table?

4 A There is two, I still have a full one.

5 Q And down the rest of the table?

6 A Oh, I don't know.

7 Q You can count them.

8 A Seven, eight.

9 Q Yeah. Did you see anybody take a
10 drink?

11 A No.

12 Q Do you know how much anybody had to
13 drink?

14 A I have no idea.

15 Q We are in a much smaller area here,
16 aren't we, than Black's house?

17 A Yes.

18 Q Yeah. Okay. I would like to ask
19 those questions of Mr. Clifford but he is not
20 under oath.

21 In any event, you fought with Dave
22 Harding -- and fought may be too strong a word --
23 you had a little tussle with him?

24 A Correct.

25 Q To make sure he didn't drive.

1 A Correct.

2 Q And to take his keys from him, right?

3 A Correct.

4 Q Okay. And that was in the parking lot
5 of Branigan's?

6 A Yes.

7 Q And that's pretty clear now, in terms
8 of an independent recollection as you sit here
9 today?

10 A Yes.

11 Q Okay. And had you been asked that by
12 PSU, that you may have recalled that as well, if
13 your attention had been directed to that; right?

14 A Correct.

15 Q But Dave Harding wasn't under
16 investigation by PSU, was he?

17 A No.

18 Q And they were following up on an
19 investigation into Derek Harvey-Zenk; right?

20 A Correct.

21 Q Right. And also Dave Harding, you
22 said, didn't drive that night?

23 A No.

24 Q So it is not something that you even
25 thought about offering PSU at the time; right?

1 A No.

2 Q Okay. Now, we know you didn't use the
3 word "designated driver," those words were used
4 apparently at some point by Constable, or by
5 Sergeant Black. And you were asked why you would
6 offer to be a designated driver. First of all,
7 you didn't use the words designated driver?

8 A No.

9 Q You offered, despite the fact that
10 Harding was the only one that exhibited signs of
11 intoxication, you offered because maybe someone
12 else there felt themselves that they weren't
13 capable of driving; right?

14 A Correct.

15 Q Yeah. I mean, somebody could have
16 felt that they weren't capable either because of
17 fatigue, or they may have felt they consumed too
18 much alcohol, if it was the case, and you left it
19 up to them; right?

20 A Correct.

21 Q Nothing noticeable, but it is nothing
22 unusual that you offered to drive people home, is
23 it?

24 A No.

25 MR. PROBER: No. Thank you. Those

1 are all of my questions.

2 MR. GREEN: I have a couple of
3 questions, Mr. Clifford.

4 BY MR. GREEN:

5 Q If I'm understanding what you said,
6 Tracey, you left the Black residence at about
7 5:00 o'clock in the morning?

8 A Correct, I think it was right around
9 5:00.

10 Q Okay. And you gave a lift to Harding,
11 McLure and Anderson?

12 A Correct.

13 Q Is that right? And the drive from
14 Black's to Branigan's parking lot would take how
15 long?

16 A I think it is 15 minutes. I have only
17 driven it once.

18 Q So presumably you would have been
19 talking to the people that you were giving a ride
20 to back to Branigan's as you travelled along?

21 A Correct.

22 Q And you continued to have concerns
23 about Harding's sobriety?

24 A Yes.

25 Q But did you have any concern about the

1 other two passengers and about their ability to
2 drive?

3 A No.

4 Q So as far as you were concerned, it
5 was okay for Tracey to get in her vehicle and
6 drive home?

7 A Kelly.

8 Q And in fact, it was okay for Anderson
9 to get into his vehicle and drive Harding home?

10 A Yes.

11 Q You had absolutely no concerns about
12 their level of sobriety, despite the fact that, to
13 your knowledge, they had been at Branigan's and
14 they had been at the Black residence through the
15 night and morning; correct?

16 A Correct.

17 MR. GREEN: Thank you very much.

18 MR. McFETRIDGE: No questions.

19 MS. HANLIN: I have a few questions.

20 BY MS. HANLIN:

21 Q Constable Fudge, what was your purpose
22 in going to Sean Black's house?

23 A Sorry?

24 Q What was your purpose in going to Sean
25 Black's house?

1 A Sean had just built a house and I had
2 wanted to see his house. I believe the guys were
3 going back to talk about work, talking work
4 politics, but I wanted to see Sean's new house.

5 Q So it is fair to say that you weren't
6 paying attention to what the guys were doing?

7 A No, I wasn't.

8 Q Your interview with Professional
9 Standards Unit, what did you understand the
10 purpose to be in coming forward to them, and in
11 giving a statement to them?

12 A I was at Branigan's and I was at Sean
13 Black's, so I just -- I felt that they would want
14 to know what I saw and had to tell them.

15 Q And would that be in relation to
16 Harvey-Zenk, what he was doing or anything?

17 A That's correct.

18 Q Page 938 of your interview with the
19 Professional standards unit --

20 A This one?

21 Q Yes.

22 MR. CLIFFORD: I will give you the
23 corresponding number, it's 11.

24 THE WITNESS: Page 11.

25

1 BY MS. HANLIN:

2 Q In response to a question by Sergeant
3 Pearson:

4 "And Derek was the same, you didn't
5 see anything unusual about him?"

6 What did you respond?

7 A I responded no.

8 Q And what did you mean by that
9 response?

10 A Derek didn't seem unusual. I mean, I
11 didn't really know Derek. What I know of Derek
12 Harvey-Zenk is he was a quiet guy. When we were
13 at Sean Black's, he was still a quiet guy. I
14 didn't think he was acting any different than he
15 normally does.

16 Q Was his quietness, was that a fairly
17 dominant characteristic of his personality?

18 A I would say so. I'm not sure if
19 that's because I was on a different shift and
20 didn't know him, but I would describe him as very
21 quiet.

22 Q So, if he was acting, if he was loud
23 or belligerent, you would be certain to notice
24 that?

25 A Yes.

1 Q Was there any information regarding
2 Harvey-Zenk that you did not give to the
3 Professional Standards Unit regarding their
4 investigation of his whereabouts on February 24th
5 and 25th?

6 A No.

7 Q Any information that you
8 mischaracterized to the Professional Standards
9 Unit?

10 A I'm not sure what you mean?

11 Q Any information that you gave to the
12 Professional Standards Unit regarding Harvey-Zenk
13 and his behaviour February 24th, 25th, where you
14 were less than honest with them?

15 A No.

16 Q Regarding the keys at the parking lot
17 of Branigan's, I understood your testimony to be
18 that you think you gave the keys to Jim Anderson?

19 A I think I gave them -- I can't recall
20 what I did with his keys.

21 Q But that would make sense, would it
22 not?

23 A Yes.

24 MS. HANLIN: I don't have any other
25 questions.

1 MR. McFETRIDGE: Can I ask Commission
2 Counsel, are you marking the PSU interviews as an
3 exhibit?

4 MR. CLIFFORD: I will get that in as
5 an exhibit, yes. I will do that now. I think we
6 have brought down a copy, and I will just formally
7 indicate that the statement that you have provided
8 to the Winnipeg Professional Standards Unit on
9 March 15, 2005 will be entered as the next
10 exhibit.

11 THE CLERK: Exhibit 167.

12 (EXHIBIT 167: Transcript of interview
13 Tracey Fudge to Professional Standards
14 Unit, March 15, 2005)

15 BY MR. CLIFFORD:

16 Q And in re-examination, I wanted to
17 follow up with you, you were just asked about the
18 keys and giving the keys to Jim Anderson. And you
19 were also asked in the cross-examination about the
20 location of McLure, and whether she had left by
21 the point that the wrestling match had taken place
22 with Dave Harding. What I want to know is the
23 proximity of Jim Anderson and McLure, now based on
24 their proximity to this wrestling match, were you
25 under the impression that they would have seen

1 what was taking place with you and Dave Harding?

2 A Yes, I think so.

3 Q And then you understand that, your
4 impression is that they would have seen what had
5 taken place based on the fact they were close
6 enough to see it, and then you gave the keys to
7 Jim Anderson?

8 A I believe they were close enough to
9 see.

10 Q Any comment on anything when you gave
11 him the keys?

12 A I don't recall anything.

13 Q And Mr. Prober asked you about
14 designated driver, and put to you that you didn't
15 use the word designated driver, and suggested that
16 you would deny using those words. And is that in
17 fact the case, do you deny using the term
18 designated driver?

19 A I don't recall using the term
20 designated driver.

21 Q And, of course, there is a difference
22 between denying something outright and not
23 recalling. And in order to clarify your evidence
24 to the extent that we can on this point, where are
25 you on this? Are you denying it or do you recall

1 whether you indicated or used the term?

2 A I don't recall using the term
3 designated driver.

4 Q My colleague, Mr. Labossiere, asked
5 you some questions about your practice in dealing
6 with people that you believe may be impaired, and
7 you would have acted in the same fashion. When
8 you left at 5:00 o'clock in the morning, you were,
9 of course, aware that there were a number of other
10 officers that remained at the Black residence?

11 A Correct.

12 Q And alcohol was still out?

13 A Correct.

14 Q And you don't know what took place,
15 obviously, after you left?

16 A No.

17 MR. CLIFFORD: Those are the questions
18 I have for you. Thank you.

19 MR. PROBER: Before we go off the
20 record, I want to put two matters in relation to
21 this witness on the record, and we can deal with
22 them on the record in the open inquiry.

23 One, I think it is most unfortunate
24 that the Commissioner is not here, because it is
25 going to be much more difficult for him to assess

1 the credibility of this witness, who I believe is
2 very credible. And I expected that he was going
3 to be here when we made our way over today. So I
4 say that, I don't know that there is anything that
5 can be done about it.

6 The second point is that the media has
7 not been treating most of our clients very fairly,
8 and in particular, my client, Derek Harvey-Zenk.
9 Cecil Sveinson testified that he had heard sort of
10 third or fourth hand that there was an attempt to
11 take Derek Harvey-Zenk's keys from him so he
12 couldn't drive. Well, we now know there was an
13 attempt to take Dave Harding's keys from him,
14 successful attempt, and maybe that's where the
15 confusion arose. This evidence should be made
16 public, without any danger to Constable Fudge's
17 present occupation. There is no reason why this
18 transcript, in my view, cannot be filed,
19 eliminating her name as a witness, and simply
20 referring to her as a police officer.

21 I don't know what steps I can take
22 beyond at least putting it on the record so that
23 the media can, if they choose to, print the
24 correct version of this issue with the keys. We
25 have it directly from a witness, as opposed to

1 Cecil Sveinson, I think it is Cecil Sveinson, the
2 Patrol Sergeant, who testified that he heard from
3 Harewood, who heard from somebody else, who heard
4 from somebody else. We don't even know where he
5 heard it from, and Harewood is deceased.

6 So those are the two points I want to
7 make and put on the record. And we can discuss
8 how we deal with it, either on the record or off
9 the record.

10 MR. PACIOCCO: I think we should
11 remain on the record to get position of Commission
12 Counsel.

13 MR. PROBER: Sure.

14 MR. PACIOCCO: It was always the
15 intention to have this filed as evidence in the
16 proceeding. This process was agreed to in order
17 to protect considerations that have to be attended
18 to here for this witness. And as a result, we
19 have arrived at what we thought was an appropriate
20 compromise. It is our intention, and I was going
21 to canvass everybody in here, to file this as
22 evidence in the proceeding, subject to any
23 objection. It was also my understanding that the
24 name of the officer is not something that will
25 compromise the officer.

1 THE WITNESS: That is correct.

2 MR. PACIOCCO: The press is expecting
3 this officer to testify. It is the image of the
4 officer that we are protecting.

5 MR. PROBER: Oh, good. Okay. So it
6 is going to be filed sooner rather than later?

7 MR. PACIOCCO: As soon as it can be
8 done by Madam Reporter.

9 MR. PROBER: Thank you very much.
10 Okay.

11 MR. CLIFFORD: If there are no further
12 comments, the time now is 5:10 p.m.

13 MR. PROBER: Make sure the
14 Commissioner knows about that, please, 5:10.

15 MR. CLIFFORD: We can go off the
16 record.

17 (Proceedings adjourned at 5:10 p.m.)

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COURT REPORTERS' CERTIFICATE

I, Cecelia Reid, court reporter in the Province of
Manitoba, do hereby certify the foregoing pages
are a true and correct transcript of my Stenotype
notes as taken by me at the time and place
hereinbefore stated.

Cecelia Reid