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ONTARIO COURT OF JUSTICE

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v.

JOHN ATKINSON

CONTINUED PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE JUSTICE E. MEIJERS  
on December 8, 2014, at BRADFORD, Ontario.

APPEARANCES:

F. Faveri

K. Hyslop

Counsel for the Crown  
Counsel for John Atkinson

(i)  
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MONDAY, DECEMBER 8, 2014

U P O N R E S U M I N G:

MR. FAVERI: Good morning, Your Honour.

THE COURT: Good morning.

MS. HYSLOP: Good morning, Your Honour.

THE COURT: Good morning.

MS. HYSLOP: I apologize for that. I was here at 9 o'clock, Your Honour, but Mr. Atkinson was not in the building until just after 9:30 for me to meet with him. So I apologize, but I needed a few moments to meet with him prior to court starting.

THE COURT: Okay.

MS. HYSLOP: We are ready to go, Your Honour. Mr. Atkinson will be testifying today.

THE COURT: All right.

MS. HYSLOP: Just to advise Your Honour of what I had spoken with Mr. Faveri or emailed anyway, I have the expert planning on coming tomorrow morning. I expected that Mr. Atkinson would be the majority of today. It's expected that the expert would take a part of tomorrow morning and then we'd be able to do our submissions tomorrow afternoon. I do have, Your Honour, a copy of the expert report that I can provide to Your Honour today after Mr. Atkinson testifies, if Your Honour wishes to review it.

THE COURT: Okay. Well, I guess that will be up to you and Mr. Faveri.

MR. FAVERI: I'm content you have it, Your Honour.

THE COURT: Okay. That's fine. Yes, thank you.

MS. HYSLOP: So the last issue, Your Honour, is I understand that Mr. Atkinson has the leg irons on

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5 right now. Your Honour may recall we had been making a request in the past that the handcuffs be taken off of him and I would make that request again so that if he's drawing any diagrams or trying to describe anything from the witness box, he'd be able to do that.

MR. FAVERI: I think we're all okay with the leg irons staying on, handcuffs coming off.

10 THE COURT: Okay. Fine. That seems to meet with the approval of security, so that's fine. We can carry on that way then. Mr. Faveri, do you want to - do you want to deal with Informations at all at this point?

15 MR. FAVERI: Yes, I didn't write down the numbers but there's one that we've been having the trial on and I'd like to keep that one alive, but the other one I'm content to withdraw. If there's any orders on the other one that should be attached to the one that remains, I'd ask that they be transferred.

20 THE COURT: Maybe you can just....

COURT CLERK: So the Information, Your Honour, 12-6820 that Mr. Faveri is asking to be withdrawn...

MR. FAVERI: It looks like there's pre-trial notes.

COURT CLERK: I'll make sure it's all transferred.

25 MR. FAVERI: Maybe designations and things.

30 THE COURT: All right. So that would be a duplicate Information. The Crown is asking that any documentation or decisions on that one attach to the other Information and that that one be marked as withdrawn. Do you have any difficulty with that, Ms. Hyslop?

MS. HYSLOP: No, thank you, Your Honour.

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THE COURT: Okay. Thank you. So that will be done then.

COURT CLERK: Your Honour, there seems to be a discretionary bench warrant attached to this Information and it doesn't look like it was ever withdrawn. It's dated May 1st, 2013.

MR. FAVERI: I'm content that it be withdrawn.

THE COURT: Okay.

COURT CLERK: Rescinded?

THE COURT: It's a bench warrant for Mr. Atkinson?

COURT CLERK: It is.

THE COURT: Okay.

MS. HYSLOP: I imagine he probably wasn't maybe brought in for that court appearance, so....

THE COURT: I assume that that's what it would be. Okay. So that will be marked as withdrawn - or rescinded.

COURT CLERK: Rescinded, thank you. Thank you.

THE COURT: Thank you.

MS. HYSLOP: I believe that's all the housekeeping matters, if Mr. Atkinson could take the witness stand, please.

THE COURT: Okay. That's fine.

MS. HYSLOP: And I understand, Madam Clerk, that he wishes to affirm.

JOHN ATKINSON: Good morning, Your Honour.

THE COURT: Good morning.

COURT CLERK: You wish to affirm?

JOHN ATKINSON: Affirm, please.

JOHN ATKINSON: AFFIRMED

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EXAMINATION IN-CHIEF BY MS. HYSLOP:

Q. Good morning, Mr. Atkinson.

A. Good morning.

Q. Would you like a glass of water?

A. Please.

Q. I'll just remind you, Mr. Atkinson, when you're testifying - you'll have a glass of water in a moment, but make sure that you're giving verbal responses to answer your questions, not nodding your head or shaking your head. Okay?

A. Yes.

Q. And if you don't understand the question that's being asked of you, I ask that you let us know that you don't understand so we can repeat it or rephrase it. Okay?

A. Yes.

Q. I'm going to start with - I'm going to provide you a copy of your criminal record and have you review it. Please take your time to review each and every single entry on it. Okay?

A. Yes.

MS. HYSLOP: I have an additional copy if Your Honour wishes to have a copy to look at.

THE COURT: Okay. Well, we'll mark a copy. I don't need a copy right now.

MS. HYSLOP: Okay.

COURT CLERK: To be the next exhibit, Your Honour?

THE COURT: Yes.

COURT CLERK: It will be Exhibit 18.

EXHIBIT NUMBER 18: Criminal Record of John Atkinson - produced and marked.

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A. It's correct.

MS. HYSLOP: Q. Okay. And if I could just take you to the last page of that document, you'll see the 2007 entry from Orangeville?

A. Yes.

Q. And there's a handwritten notation on that, on your copy; correct?

A. That's right.

Q. And that's not your writing; right?

A. No, it's not.

Q. But that is a correction that's accurate; correct?

A. Yes, it is.

Q. Okay. And so this record, all of - you've reviewed all of those offences and all of those sentences and you agree with them?

A. I do agree.

Q. It's my understanding with respect to the last convictions, the 2011 convictions, that those are presently under appeal?

A. They are.

Q. Okay. But other than that, those are all matters that you have either pled guilty to or been found guilty of?

A. They are, yes.

MS. HYSLOP: So that has been identified, Your Honour...

THE COURT: Thank you.

MS. HYSLOP: ...by Mr. Atkinson and made an exhibit already. I'll take that back.

MS. HYSLOP: Q. Okay. Mr. Atkinson, I want to try

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5 and go over the allegations that you've heard over the last year during the trial proceedings and so I want to start with the incident that's alleged to have happened in May of 2006 where Raymond Summerfield and Deborah Campbell say that you drove a Ranchero vehicle at Raymond. So did you drive the Ranchero at Raymond as was described either by Raymond or by Deborah?

A. No, I did not.

10 Q. Okay. Do you have - if we go back into May 2006, did you have any issue with Raymond coming to the house?

A. No, I did not.

Q. I'm just going to ask, Mr. Atkinson, if you can keep your voice up a little bit, a little bit louder. Okay?

A. Okay.

15 Q. Do you recall Raymond coming to the house back in May, so May the 15th, I believe it was, 2006?

A. I believe so.

20 Q. Can you tell us what you recall from that day when Raymond came to visit?

25 A. So what had happened was I had been in the garage the entire time working on the Ranchero. It had been sitting in my garage for 17 years, so that would be the first time since I brought it over that I actually started to get to work on it. Deb was in the garage with me and we were just discussing about what I was doing with the car, what kind of car it was, the history on it. It was just conversations that we were having like that. We were in the garage for maybe - I don't know, I can't really keep track of the time how long we were in there for, and then Raymond had pulled in the driveway and she says, "Okay. Well, Raymond is here." She goes, "I'm going to go in the house." So Raymond walked up as far as - as

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far as the garage, said hi, hello, how's it going. I said hi, and Deb had already started walking out and then they had walked and they had gotten out of sight and that's - that's the extent of that.

5 Q. Did you take the Ranchero out of the garage that day?

A. Yes, I did.

Q. Okay. Where did you take it?

10 A. The reason why I had taken it out of the garage, because I had been working under the hood, one of the things I had been doing, I had been doing a timing test on it, a vacuum test, and I had just finished changing the antifreeze. So one of the - one of the times I left the garage was I had the timing set up and I had the distributor. So I'd take the car out, I'd drive it towards the end of the driveway and then I'd back it back up and I did that a couple of times until I got the timing just right and then I was adjusting the carburetor and there was times I'd rev it up, not rev it up, rev it up, not rev it up, and that's - that was the extent, and I might have taken it further down to the driveway down towards where I have a makeshift tractor-trailer down there where I keep my roofing supplies. I'd go down there and then I'd come back up.

25 Q. So when you say "go down there", you mean down that laneway that takes you down to the barn?

A. Yes, and I would turn around and I would come back up. So it's forward, reverse, forward, reverse and then go down.

30 Q. Okay. Which way was the Ranchero facing in the garage?

A. West.

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Q. Okay. So what does that mean? Was it facing in or out of the garage?

A. It would be directed towards Highway 50.

Q. Okay. So the nose of the vehicle was facing out of the garage towards the highway?

A. Correct.

Q. After - how long were you working on the vehicle that day, do you recall?

A. A couple of hours.

Q. Well, what did you do after you were done working on the vehicle?

A. Well, by then it had been pretty late. I believe I went in, got cleaned up. I knew that we were having dinner upstairs with her parents, so I grabbed a shower, cleaned up, talked to Raymond, talked to Daniel, went upstairs, asked if they needed any help setting the table, some stuff like that, just - just a regular family thing.

Q. Were there any arguments that evening between anyone?

A. No.

Q. We heard Raymond testify that you took the Ranchero out onto the road. Did you do that?

A. No.

Q. Okay. So that's the first allegation. I'm going to move on to the second allegation in terms of the time where Deborah has testified that you in January, January 14th, 2008, that you drove a dump truck at her?

A. Right.

Q. Did you do that?

A. No, I did not.

Q. Could you tell us, Mr. Atkinson, as best you

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can, what you were doing on January 14th, 2008 when we know that the dump truck stuck on the rock - got stuck on the rock? So start from earlier in the day if you can and tell us what you did that day.

Q. So from - from that day, pretty much that entire day right till the incident, I went out ATVing, ploughing, snowmobiling, just taking it easy, having a good day. It was my birthday and I had a couple of people over and, you know, it was just a normal, relaxing day, out having fun. So getting a little closer to the time that Deborah came home, I think it was around maybe 4:30, 5 o'clock, she had un-regular hours because she worked her own time, and so she had come into the house and we were sort of - me and Carl were enjoying ourself. We were just sitting around and Deborah - Deborah had come into the house and everything was fine. We were getting along, singing and dancing, playing guitar. And then when I had explained to her that, you know, we should get going, and I explained the place that I had people that we were going to be meeting up with, she had made indications to me that she had made the reservations, but I knew that there was no reservations because prior to that weekend we had a discussion and I was not up to going out. I'm not that type of person going to fancy, classy, dressed-up places. So....

Q. I'm going to actually stop you there and go back a little bit and get a few more details and then I'll have you continue. So you said that you had a couple of people over and you've mentioned Carl?

A. Yes.

Q. And that's Carl Lockhurst?

A. Yes.

Q. Okay. Do you remember the names of the other

people you had over?

A. Yeah, there was Jason Marsh and there was Sean Whittaker.

Q. Okay. And how did you know these people?

A. Uh, well....

Q. So start with Carl.

A. Well, Carl, I've known for some time, probably about 12 years, inside and outside of prison, plus from Wasaga Beach.

Q. Okay. What about the other two individuals, Jason and Sean?

A. Well, Jason is sort of related through family and Sean is one of his friends.

Q. Okay. And then you've told us that during the day you were out ATVing and ploughing and snowmobiling, taking it easy, and then you tell us that Deb - Deborah comes home around 4:30 or 5:00.

A. Yeah.

Q. Who was at the house when Deborah got home?

A. It was just me and Carl.

Q. Before Deborah got home that day, so throughout the day, had you been having anything to drink?

A. I may have had a couple of drinks.

Q. Okay. Was Carl drinking?

A. Yes.

Q. What would you have been drinking?

A. I probably had about - well, we only had probably about three-quarters of a bottle of wine the entire day, so I'm not much of the heavy drinking as back in the day, so I probably had about three glasses.

Q. And that's what you were drinking throughout

the day?

A. Yes.

Q. What time would you have started drinking?

A. Probably about 11 o'clock.

Q. In the morning, 11:00 a.m.?

A. Yeah, but this isn't sit there, drink, sit there, drink. This is over a period of coming into the house, going out ATVing, you know, having a lot of fun, snowmobiling, come back in, have another little drink. That's how that was gone about.

Q. Okay. Okay. So you and Carl are inside the house when Deborah comes home or outside?

A. Say that again.

Q. Are you and Carl inside or outside of the house when Deborah comes home?

A. We're inside the house.

Q. Okay. So she comes home and you've told us sort of to have a discussion and you said that you should go, you had a place to go where your friends were waiting? Where was that place that you were talking about?

A. Say that - I'm sorry?

Q. Where was the place that you were talking about? What's the name of it? Where is it located?

A. I know the owner very well. His name is Emilio. The name - the name of the restaurant, it's - I think it's Highway 9 Eatery Restaurant and Diner. There is - like there's a fast food place, then there's a place where you wine and dine and you can do banquets and stuff like that. That's on - it's about two miles from our house. It's about a five minute drive. It's on - south on 50, west on 9. It's probably about 1,000 feet from 50 off of 9, on 9.

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Q. And I'm not familiar with east and west location, so if you can tell me if you were driving out your driveway at the time....

5 A. So if I'm driving out my driveway, I immediately go left for two minutes. I come to a set of lights and I turn right and within a minute I am there.

Q. Okay. And you - so that was where you had planned to go that evening; is that correct?

10 A. Yes.

Q. Okay. And if you can continue on then telling us about the discussion you had with Deborah?

15 A. So I had that discussion with her and Deb started saying how important it was, she made these reservations, how this place was so great, and how I never  
20 listened to her, and I can't recall every detail that was said but I was kind of - I was just annoyed because this was happening in front of Carl and Carl actually got up and he went outside and he had a cigarette. He was standing there, smoking outside, and I said to Deb, I said, you know, we had this  
25 conversation, and I wasn't going to prolong the conversation. So I walked out to the back door where Carl was and I said, Carl, I said, you know what, I said, you stay here. I'm going to go. Right? I'm going to make a phone call. I'm going to have my cousin come up. I'm going to go there for a while and then we'll return and it shouldn't be long. Right? You know, if it's okay, just stay here. Right?

30 I just was not very comfortable with what was going on. So I had actually gone and grabbed my cell phone and I had phoned my cousin and I said, "Where are you at?" And he says, "Okay. We're down here now." They had to do things earlier, I would imagine, so they were at the restaurant. And so I said,

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"Well, you know, come on up, get me, and you have to come pick me up."

Q. When you say your cousin, who are you talking about?

A. I'm talking about Jason.

Q. Okay.

A. Jay, Jay or Jason.

Q. Okay.

A. So at that time, I had already walked to the house, went in through the other end in front of the house which would be still part of the basement, and I came up through the garage door steps, they lead into the garage inside the house, and I was just standing there and I was thinking about what I wanted to do, what was going on, and trying to plan. Should we all just come back to the house or should we stay at the restaurant and then when Deb feels a little better, she can come down. So I'd gone over to the truck and I decided, you know what, I got my cell phone charger, and when I was walking back to the garage, I decided, you know, I'm just going to have Jason come, we'll take my truck.

So warmed up the truck. The truck was warming up. I had my phone in the charger inside the truck and then he had shown up and Sean was with him and I explained the situation. I said, "You know what, we probably won't be spending that much time at the restaurant. I'll go down there and see a couple of people that I know and then we'll probably come back to the house."

So when we got back in the truck, we were having a smoke - we were having a couple more discussions and then I went back into the - I went back into the house, told Carl what I just said to you guys now, so I repeated the same thing to

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him. Okay. I had left, we got back in the truck and we had gone down the driveway. We turned left. We had gone down, which would be south on Highway 50, to the next hill, and then I said, "Shit, I left the phone in the house."

And I was talking to Carl. We turned around, headed back and we got down to the bottom of the hill and we hit some black ice and Jason sort of spun it like a 360 and it went through the ditch, going backwards, up on top of the higher part of the grass, and then it just stopped before the fence in the backward position and we were a little - a little kind of shaken up; right?

And then one of the things that I thought about was, well, this isn't a good idea, we've got to do something, and we got out. And the back tire on the driver's side was torn right off. It was ripped right off the rim and the exhaust pipe was sort of bent right into the rim without the rubber being on the rim, and just for the fact of how I feel about it being there, the police are going to be called, a tow truck, you know, there was just a lot of stuff that was just going through my mind. So when Jason was - or Sean was sitting at the side of the road with the car, I got in his car and I said, you know - well, actually, before I got out of the truck, I said, "Jay, stay here, all right, and we'll get a tow truck."

So I went to Sean and I said, "Okay, Sean"...

Q. Let me stop you there. So where does Sean come from?

A. Well, Sean was behind us when we turned around. He followed us out in his car when we left.

Q. Okay. So continue on.

A. So just before we're getting to the house, right, I just said, "You know what, this night is a bust." I

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mean, this night is not going good at all; right? So I said, "Instead of Sean even getting involved coming into the house and getting into the driveway," I said, "Sean, just let me out here and go back and get Jay and then you guys can come back to the house or do what you guys got to do." Right? So I was just going to go get a tow truck, and I mean, there's other things I was thinking about. So I got out of the car which was just kitty-corner from our driveway anyways, and I just went up to the corner of our lot. And when I walked into the house, there was nobody there, so I walked out to the back patio and Carl - Carl and Deb were there. They were standing there, smoking a joint, and I wasn't - I'm not too impressed with that kind of stuff going on.

So I said to Deb, I said, "Listen, Deb, you have CAA. I don't have CAA. So the truck is just down the road. We spun and hit some back ice. Just call CAA." And then she started - just started arguing with me. She goes, "I'm not going to call CAA," she goes, "You know, just leave the truck there, we'll get it in the morning." You know, she's been drinking, she's been smoking dope, and I said, "Gees," I said, "You know, if it's sitting there, they're going to come anyways and they're going to start asking more questions. Can you please just go call CAA?" I said, "I'm going to go up and I'm going to make room for when the tow truck comes in and just drop the vehicle off and bring it back out and whatever." However the tow truck driver does after that, right?

So as I was leaving, she said she wasn't going to call CAA, and then when I get up to the top of the driveway, I go out towards the same way I had spoke to earlier when I first left. I went out through the basement part, up through the garage part of the garage door, and then Deb was standing

5 there. She says, "What are you going to do?" I said - I told her I was just going to make room for the tow truck when it comes in, right, because you've got 20 feet - you've got 20 feet of pick-up truck and then you've got 20 feet of tow truck, so that's 40 something feet. Right? So the vehicles we had there, so the pick-up truck wasn't there, so I moved the dump truck. So when I get into the dump truck...

Q. So where is the dump truck parked?

10 A. The dump truck is parked on the parking pad.

Q. Okay.

MR. FAVERI: I'm sorry, where?

15 A. The parking pad. There's a line of pine trees. If you're looking south, the parking pad here, you can tell the shape of the garage - of the garage, right? So the garage is here, the dump truck is here, the pine tree is here, the driveway is here.

MS. HYSLOP: Q. Okay. Okay. Continue on.

20 A. Okay. So I explained to her what I was going to do and so I started scraping a little bit on the inside of the window from the frost, and I rolled the window back up and I just started driving away and I was going to park the truck where I always had it parked. If it's not parked close to - if I'm working on it and it's close to the house, and I got it plugged in for the glow plugs, it's diesel; right? If there's  
25 nothing really planned for it, I will usually have it parked further from the house and I can run an extension cord to do a slow warm up on it.

30 So my intention was to drive out and park it where the green box is, the green disposal box. There's a parking spot there, and so that it covers the box. It's not an eyesore when you can see the truck, if the truck is parked like that.

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5 So anyways, that was my intention. So I hadn't seen Deb at all. I don't know where she came from or where she went, whatever, but just before I get to - there's - there's a small road that goes down towards the barn, all right? So I'd say maybe, what, ten feet before that little turn-off, Deb is standing there in the driveway.

10 So I stopped and I roll the window down and I asked her, I said, "What are you doing?" Right? And she's screaming and yelling. She goes, "Where are you going? You're not taking that out on the road." She goes, "I don't want you going anywhere with the truck." And it was like she didn't hear the first conversation I had with her when I was on the parking pad that I was moving the truck to make room. And so I explained to her again and she wasn't listening to me. She was 15 of the opinion that I was going to take the truck out on the road or whatever. I'm just adding that. I'm not saying that that's what she was going to say or thinking, but she was not moving.

20 So a little frustrated, I said well - to myself I said, well, I'll just put it in reverse and I will just park it back there, and I'm thinking that I'm just going to leave it in front of the garage closer to the steps going out to her parents' entrance. So I put the truck in reverse and I'm just - it's starting to crawl back, crawl back, and then she's 25 walking towards it, right, and then she's doing - she's doing these - like she's going like this, and I thought....

Q. So just describe that. So you've got both your arms raised in the air?

30 A. And she has her hands - she's closed like this. She's going like this and she's yelling at me.

Q. Okay. And....

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A. You can't hear a word, right, and I'm not too interested in what she's saying.

Q. I'm just going to....

A. I think she's giving me hand directions.

Q. Okay. So I just want to put on the record the description of what you're doing with your arms. So you've got both your arms up in the air and you're motioning them forward. So your elbows are at shoulder height basically?

A. Yes.

Q. And her hands are motioning forward?

A. Yes.

Q. Okay.

A. So I have the truck in reverse and I just kind of - I'm just - I can barely - with the truck, the little bit of heat that's coming through the vents, you know, you can just barely get a little glow from the heater coming onto the windows. So I just barely make out what I can see in either mirror and I've got the driver window down and I'm looking out the window and I'm looking through the mirror, and then I think I know where I'm going and I'm keeping an eye on Deb at the same time. And then I felt a little bit of - well, I just - I just pick up speed because I feel a little bit of - I'm going into the bank of the snow sort of, so I figured, well, I'll just give it more acceleration and that's what I did and then all of a sudden, it just came to a halt.

So I'm stopped and I look out the driver door. I just do one of these, right, I looked down, and I thought, holy shit. Okay. So I'm a little bit off the driveway; right? So I just - the tires spin a little bit more and then I go to put it in forward; right? And by that time, Deb is almost standing right beside the driver door and she's looking at me and then

5 she starts screaming. She goes, "Oh, you're ruining my gardens." She spent - I know she spent a lot of money on that garden and she's - don't spin the wheels, don't do this, don't do that, you're ruining my garden. She goes, "You're up on rocks." She goes, "You're stuck."

10 So then I put it in forward and then I spin and I just dropped down. Like you know, there was no movement after that. I was wedged in. So I get out of the truck, I walk around, and sure enough, I mean, from what I could see underneath - the lighting wasn't that great, but if you look at the back of the dump truck, you'll see there's a white - in the picture you'll see a white light. That's the reverse light. So I got that on and I walk around the truck and it's kind of lit up and I can see what's behind me.

15 So I go into the truck and I raised the dump on it, raised the box up to have a look underneath what's going on here, and just by the view of what I've observed from where the truck is positioned, where the rock is and the axle, and I'm thinking, you know, this one is staying because you could see where the universal and the driveshaft and the rock, if you were to do a lot of moving around, you'd start throwing things out of true force. So you'd have speed wobble later on with the axle, the transmission, driveshaft and wheel bearings, oil bearings and seals; right? So it was just - I thought just to leave it there and we'll do it another day which would require jacking it up. So I....

20 Q. I'm going to actually stop you there before we continue on. Now, I understand that you've drawn a diagram?

25 A. Yes.

30 Q. Can you tell me, Mr. Atkinson, when you drew the diagram?

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A. I drew the diagram almost immediately after the preliminary hearing.

5 Q. Okay. What I'm going to do, Mr. Atkinson, as we did with Ms. Campbell, we showed the original, had her confirm the copy.

A. Yeah.

10 Q. And then we filed the copy as an exhibit. So is that the diagram you're telling us you drew after the preliminary hearing?

A. Yes.

Q. Okay. And then I'm showing you a photocopy of that diagram. Is that the same diagram?

A. Yes, it is.

15 Q. I'll leave that there and take this back.

A. And I did this diagram based on everything that I heard, what I thought I would have to set it straight.

MS. HYSLOP: I have an extra copy if Your Honour wishes to review it at the same time.

20 THE COURT: Thank you. We'll mark that Exhibit 19.

COURT CLERK: Thank you.

THE COURT: So we'll mark the exhibit that the witness has. I'll just take that one.

COURT CLERK: Thank you, Your Honour.

25 EXHIBIT NUMBER 19: Diagram - produced and marked.

MS. HYSLOP: Q. Okay. So we've got this diagram. You indicated you drew it after the preliminary hearing?

30 A. Actually, I drew it when I was at CNCC in segregation with the best tools that I had.

Q. Okay. So can you describe for us what you've

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drawn there as it relates to the Ford dump truck?

A. Yeah. So Your Honour, this would be the dump truck what I'm referring to.

THE COURT: Okay. Where it says "dump truck"?

A. Yes. So that's probably my stopping point and that's probably my stopping point and I don't know if I've got the exact type of curve in the driveway but that's as close as I can get. So you can see where I back up. Now there is - this here rock right here that's by the passenger back tire, which would be behind the back bumper, I always call that a bumper on the dump truck.

MS. HYSLOP: Q. Okay. I'm going to have you circle it in pen, but just go ahead and say what you were going to say.

A. So that's - that's what actually stopped the truck.

Q. And that, sorry, was the rear or the front tire?

A. That was the back rear passenger tire.

Q. Okay.

A. And there's this rock here and that's what stopped the truck.

Q. I'm going to give you - is that okay if he has a pen?

THE COURT: Yes.

MS. HYSLOP: Q. I'll take the pen lid off, actually. Thank you.

A. And I'm to circle that?

Q. Yes, so if you can circle the wheel that you're talking about, and what you're saying is - so tell me exactly, Mr. Atkinson. I'll let you review the pictures in a moment,

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but based on your diagram, what are you saying stops the vehicle? Where does the vehicle get stuck on the rocks?

5 A. The wheel doesn't get stuck on the rock. The back bumper bangs into the rock and it stops the truck from moving any further. The truck gets stuck only because when I turned the wheels, it drops down, but it's the rock that stops the truck.

Q. Okay.

10 A. There is a rock, a little tiny rock, in between the two rear wheels.

Q. Okay.

15 A. So that's where the back axle is. That's where I'm kind of worried about causing internal and external damage to the casting where the seal is. And then there is the front tire which is right by - actually, the rock, there's the rock that is actually pretty much underneath the truck from the running board and that stops pretty much the front tire from moving back, as well.

20 Q. Okay.

A. There is - it's like it's sloped, the tire is in like that, then you've got the rock which is underneath the truck but is almost flush with the tire, and then you've got the running board that's caved in on it.

25 Q. Caved in on what? What's....

A. This, the rock.

Q. Okay. Okay. Mr. Atkinson, I'll take - well, I'll leave that diagram up there. You may want to refer to it again.

30 MS. HYSLOP: Madam Clerk, could I see - I think we did Exhibit 3A, B, C and D?

COURT CLERK: The photos?

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MS. HYSLOP: The photos and then there is an  
Exhibit 5. Yeah.

COURT CLERK: Exhibit 5.

5 A. And at this time, I have assumed that Deb has  
called the tow truck driver.

MS. HYSLOP: Okay. Just a minute. I just want to  
have the pictures. I think that that's  
probably....

10 COURT CLERK: I have 5 and 5A.

MS. HYSLOP: Yes. So I just want 5 and then I want  
one of the other three numbers but I don't know  
which one, so I just have to have a look at it.

COURT CLERK: This is Exhibit 5.

15 MS. HYSLOP: Okay.

COURT CLERK: This is Exhibit....

MS. HYSLOP: And I want Exhibit 3A, B - what has  
happened - D. Okay. So I just need these two,  
Madam Clerk, if I can return these ones to you.

20 COURT CLERK: Yes.

MS. HYSLOP: Q. Mr. Atkinson, what I'm going to do  
is have you identify - I've got some fresh copies of  
photographs.

A. Okay.

25 Q. So I'm showing you - it says "3D" on the back?

A. Yes.

Q. And can you tell me if this picture that I'm  
now putting in front of you seems to be the same image,  
although a bit clearer? It's a copy.

30 A. This one is much clearer.

Q. Yes, but it's the same picture?

A. It is.

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5 MS. HYSLOP: Okay. Mr. Faveri, did you want to see this comparison? I'm going to be asking, Your Honour, Mr. Atkinson to draw on these diagrams, which is why I'm giving him clean copies. So I'm wondering if we could make this another exhibit, please, and....

THE COURT: I'm sorry, what is it that you're showing him now?

10 MS. HYSLOP: So this is a copy of our already entered Exhibit 3D.

THE COURT: Okay. Thank you. So that will be Exhibit 20 then.

15 EXHIBIT NUMBER 20: Photography of Exhibit 3D - produced and marked.

MS. HYSLOP: Thank you.

20 MS. HYSLOP: Q. Okay. And while we're comparing things, if I may, now this is Exhibit 5.

A. Yeah.

Q. Is that the same photo?

A. This is the same as 5.

25 MS. HYSLOP: Okay. So if Exhibit 21, Your Honour, could be a copy of Exhibit 5, please?

THE COURT: All right. Madam Clerk, do you want to describe these things and mark them for a minute or....

COURT CLERK: Yes, please.

30 MS. HYSLOP: Those are the ones that are back. Mr. Atkinson still has the other ones.

COURT CLERK: Do you want to mark them? So...

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THE COURT: As well as...

COURT CLERK: ...which ones are to be marked?

MS. HYSLOP: These two here.

COURT CLERK: Thank you.

THE COURT: And have you already marked the diagram?

COURT CLERK: I have not.

THE COURT: Okay. Let's get that marked, too.

MS. HYSLOP: Okay. I'll go grab that back then.

COURT CLERK: Okay. So the copy of Exhibit...

THE COURT: 3D is Exhibit 20.

COURT CLERK: And 21 is a copy of?

THE COURT: Exhibit 5.

COURT CLERK: Five.

THE COURT: And 19 is the diagram.

MS. HYSLOP: And here is the diagram that Mr. Atkinson had.

EXHIBIT NUMBER 21: Photocopy of Exhibit 5 -  
produced and marked.

COURT CLERK: Do you want that back?

MS. HYSLOP: Yes, I'm going to - I can wait until we have that because I want him to write on the diagram - or on the photographs, rather.

MS. HYSLOP: Q. Just leaving this map or this diagram that you drew up here in case you need it, leave it off to the side. On these two diagrams [sic], Mr. Atkinson, if you could take your time, maybe start with Exhibit 20, so that's the copy of 3D - or start with the other one, whichever works best. If you can draw to the best of your recollection how the

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vehicle was stuck on the rocks? Do you understand what I'm asking you to do there?

A. Yeah.

Q. Okay. So you can use the green marker.

A. On this exhibit?

Q. You can draw it on both images, whichever one is easiest for you to draw on.

A. Okay. So I have this one here.

Q. Okay.

A. This exhibit.

Q. Okay.

THE COURT: That's Exhibit 20.

A. So the front of the truck is here.

MS. HYSLOP: Q. Okay. You're pointing to the top right-hand corner. Are you pointing to the edge of the grass line there?

A. I would say pretty much where this big - okay, so we've got this rock here, I would say Rock Number 1, then we've got Rock Number 2 which would be underneath the truck, and then we've got Rock Number 3 which would be right where the front tire was just before it.

Q. Okay. If you could - can you draw? Do you feel that you're able to draw the shape of the truck on that rock? Just draw it with a rectangle and do your best to position where you believe the wheels to have been.

A. Put a box? Make the box of the vehicle?

Q. Yes.

A. Sure. It's not a good marker. It's green. So what I've done here is, here is the back and this is the rock that it would have hit. This is the rock that the back bumper would have hit. There is the truck there, there is the front

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of the truck.

Q. Okay. Can you write or use an arrow pointing towards which way the vehicle is facing?

A. Okay. So I put west, front, and then I've got an arrow.

MS. HYSLOP: Okay. I'm just going to show Mr. Faveri.

MS. HYSLOP: Q. Now, you - you weren't there when these photographs were taken; correct?

A. No.

Q. Okay. Are you able to - what do you understand this other photograph - so this is Exhibit 21.

A. Okay. So this - this part here is where the back wheels were, okay? This board here, I know before this picture was taken - this board here has been moved over here, but this here was originally put at the driver's front tire because I put that there the next day and that's one of the rubber marks from the front tire spinning. This here is the rock. You can see the scrapes where I lifted - the next day, I lifted the dump up and lifted it down.

I was using this rock as a pry and it wasn't budging. So now, this here, what was indicated through the preliminary as rust, there's two things I get from this is, when the box is up, anybody knows if they drive a dump truck, you always lift the box up maybe a foot or two or two feet so the run-off doesn't sit, it runs out of the box and plus it's got a wooden box frame or box - wood sides that are on the box.

Q. I'm just going to stop you there, Mr. Atkinson. You were talking about "this rock", so that's the rock that's in the top sort of centre, left of centre maybe a little bit, that's the rock you're talking about?

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A. That's right.

Q. Okay. Can you put "A" on that so that we know that you're referring to rock A? And can you please circle - I think you said "scratching" when you were talking about where the dump truck is making contact with the rock? And then you said this board was originally under the front tire, and you say it's originally under the front tire but it's been moved?

A. Yes.

Q. Okay. So what have you written there?

A. I put - okay, so I've circled the rock with the scraping marks which would be from the back bumper of the dump. I've taken this board that I recognized because of this - I just recognize that piece of wood because of the marks that are on it and the angle at the end which would be shoved under the front driver tire, and I would indicate that this truck has four-wheel drive, so the front tire will spin.

Q. Okay. But where you indicated "front tire", that's not where you're saying the front tire is in this image?

A. No, I'm explaining that this piece of wood that's sitting here was actually from the front.

Q. Okay. And do you see there where the back tires would have been stuck?

A. Yes.

Q. Can you draw the tires in there for us? Okay. And which rear tires are those, driver's side or passenger side?

A. These are passenger side.

Q. Okay. So where would the other wheels be? Would you be able to draw them, the other rear wheels, rather? Would you be able to draw them on there?

A. They would be over here.

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Q. Okay. And you're indicating far off the right side of the....

A. Correct.

Q. Okay. So you are not able to draw them on there?

A. No.

Q. Okay. You've told us - I believe you told us that the rear axle stuck on something. Can you tell me that?

A. Okay. So when you look at this rock here....

Q. So I want you to put a "B" for that rock, please, indicating the rock that's on the bottom right-hand corner of the picture.

A. Right. There's a "B" and I've got an arrow indicating right above the scrape marks and this here would be from your back axle and driveshaft.

Q. Can you please circle the scrape marks you're talking about?

A. I've added that in there. I've put "B" and the arrow on the scratch mark.

Q. Okay.

A. And just before that scrape mark where you see which part of the back axle is on, the axle - the bottom part of the axle where it drops down where the differential is, so when the truck went this way and then it started spinning, the tire started spinning, it dropped. So it was wedged from there. I wedged myself in there with that back axle into that. So it was like - then it dropped and then it was wedged, so that's what....

Q. I have to stop you there, Mr. Atkinson, because you're saying "this" and "that" and no one is going to be able to read this later. So you are - can you hold the diagram up

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so that myself and Mr. Faveri can sort of see? So you're indicating that you're wedged between rock <sup>C</sup>A which is the back of the truck?

A. Yes. - ~~no~~

Q. Okay. And rock B which is the rear axle where the differential has dropped down to the rock?

A. Yes.

Q. Okay. Okay. And so which direction then in this diagram - like where would the front tires be?

A. The front tires would be there.

Q. Okay. So you're pointing down to the bottom of the picture?

A. Yes.

Q. Quite a ways off the picture?

A. Right.

Q. Okay. Okay. I can take those back, I believe, and I'll take the marker back. Thank you.

MS. HYSLOP: Sorry, I was going to show Mr. Faveri and then I don't know if Your Honour wishes to see them.

THE COURT: No, I was able to see them as he was marking them.

MS. HYSLOP: Okay.

A. Was I clear about that?

MS. HYSLOP: Q. Actually, what I'll have you do, Mr. Atkinson, on this - on Exhibit 20, can you just indicate so that we're all clear what rock A would be? So rock A is the rock that the vehicle is stuck on at the back. Okay.

A. It's not stuck on, it's against.

Q. Sorry, stuck against.

A. And that's A.

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Q. "A", thank you. So that's just indicated on there.

A. M'hm.

MS. HYSLOP: I am returning the diagram, as well.  
I may need it back, unfortunately.

MS. HYSLOP: Q. Okay. You indicated, Mr. Atkinson, that you - I thought you said the next day you had raised the dump truck back?

A. That evening I did, and then the next day I - yeah, I had that up and I actually had took a four-by-four probably about four feet and to get the stress off the hydraulics, I lowered it back down onto the four-by-four, so I felt it was going to be sitting there for a while. It's the same piece of wood I usually used when it was parked anywhere else.

Q. Okay. Now, you weren't there when the vehicle actually gets taken off the rocks; right?

A. No.

Q. Okay. But you had seen - the pictures that I showed you, had you seen those pictures before?

A. These pictures I just looked at now...

Q. Yes.

A. ...I never seen these pictures until - well, when the previous lawyer and Faveri had them in court, I knew that they were floating around, but did I actually get to view, no. So it actually was probably about a year later.

Q. Okay.

THE COURT: I'm sorry, about a year later or a year after what?

A. I'm thinking after the preliminary, I received new counsel. I would say six, eight months.

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THE COURT: After what?

A. I had - when I had actually seen those pictures.

5 MS. HYSLOP: Q. His Honour is asking - you were talking about the preliminary hearing...

A. Yes.

Q. ...where the photos I guess were shown at the preliminary hearing?

10 A. Right.

Q. And you said you saw them about a year later, and then you've just said six to eight months. Do you mean you saw them a year after the preliminary hearing?

A. Yes.

Q. When you actually got to hold onto them?

15 A. Yes, when they were being floated around the courtroom, I never had any visual.

Q. Okay.

THE COURT: Thank you.

20 MS. HYSLOP: Thank you, Your Honour.

MS. HYSLOP: Q. We saw at the last - I'll just make sure. I don't want to go over any more - were you made aware that - without telling me what was said, but were you made aware that the vehicle was taken off the rocks?

25 A. In through - can you say that again, please?

Q. Well, you eventually returned to the property?

A. Yeah.

Q. And the vehicle is not stuck on the rocks?

30 A. I thought you were talking about did I hear anything in court about the pictures.

Q. I'm sorry, no.

A. Sorry.

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Q. So when did you become aware that the vehicle had been taken off the rocks?

A. When I was - so when I'm out on the street?

Q. Yes.

A. Okay. Actually, it was - I was aware of it partly when it was being done because she had me on the phone when she told me she was doing this, and then shortly after that, my laptop, I had about 15, 20 pictures and I asked her if there was any damage, did it cause any damage to the vehicle, how is it running, this and that, just - just variable stuff I wanted to know about the truck.

Q. Okay.

A. She was upset because she goes, well, what about my garden. She goes, I have like thousands of dollars worth of damage, and I said, "Thousands of dollars?" I said, "Everything was frozen." Anyways....

Q. The laptop you're talking about, where is that laptop?

A. A couple - a couple of weeks before I was arrested, I observed Raymond with the spare keys to my truck go inside the truck and they rumbled through it, and when I went back out to the truck, my laptop was gone. So I seen Deb and Raymond that night, so I'm assuming - I didn't see for sure, but I went down there before they - after they had just left and my laptop was gone and the truck had been rifled through.

Q. Okay. So you don't have the laptop anymore?

A. No.

Q. Okay. The pictures, you said 15 to 20 pictures?

A. Yeah.

Q. What pictures? What are you talking about?

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5 A. Well, then getting the truck out, there was pictures of the truck when it was on the rocks, there was pictures of Daniel, Raymond, her, her dad and Deb's brother. I think it was Deb's brother. There was another man. I don't - I didn't see him that much. And then there was a picture of the dog walking around on the site and then there was a picture of my pick-up truck which would be just a little bit more - in that picture you see the dump truck with the door open, probably about 30 feet back, you would see my pick-up truck and then you'd see the stuff on the driveway, you'd see the compressor, battery charger, the eight-by-eight with the jack on top. So if you were to look a little bit further back, if they were looking - if the picture was taken that way, you'd see the pick-up truck, too.

15 Q. Okay. On one of the last occasions when we were hearing evidence in your case, some video clips were played of yourself and somebody that was said to be Carl Lockhurst?

20 A. Yes.

Q. Do you remember seeing those videos?

A. Yes, I do.

Q. Do you remember when those videos were taken?

25 A. One was taken in 2010 and one was taken in - it would be 2008.

Q. Which one was taken when?

A. Well, the one that I viewed was taken in 2010.

30 Q. Okay. There was - there were sort of three different clips of the video that were being played. Are you thinking that that's all one video or are you calling that different videos?

A. Those are all of one night.

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Q. Okay. So all the videos that were played in court were of one night?

A. Yes.

Q. Okay. And when was that one night?

A. That was probably - the one on the video, so that would probably be just a little bit after I was released actually.

Q. In what year?

A. That would be 2010.

MR. FAVERI: I'm sorry, two thousand and...

A. Ten.

MS. HYSLOP: Q. Okay. So you heard Deborah say that the videos that were played in court were from January 14th, 2008; right?

A. Yeah.

Q. So do you agree with that or not agree with that?

A. Well, that's why I asked the Crown right away is there a date and time on that. I wanted to correct that right away.

Q. Okay. So what does that mean? Do you agree that they were from January 14th, 2008?

A. No.

Q. When we started - when I started asking you these questions, you talked about there was videos from 2008 and 2010?

A. M'hm.

Q. So what does that mean? Do you recall that there were videos taken from 2008?

A. Yeah.

Q. Okay. But not ones that we were shown in