

R. v. Atkinson
John Atkinson - Cr-ex.

5 Q. Well, whether someone drove it or you drove it, you don't like cars, they're not safe. So why would you expose yourself even as a passenger on a drive all the way back from out west to Ontario?

A. Because I did.

Q. Cars are unsafe?

A. They are.

10 Q. You're making that up, sir. It's just a line you're throwing at us today.

A. That's your opinion. I can understand that.

Q. So you said the truck was warm. Does that mean you went out and started it up when Jason - when you called Jason to come and pick up you, you go and start up the truck?

15 A. Yeah, I had already made up my mind.

Q. Made up your mind that you were going in the truck; right?

A. Yeah.

Q. And you were driving it, weren't you?

20 A. No, if I was - just for speculation, if I was driving it, I had no need to call neither one. I could have just went down there, that's it.

25 Q. Well, I'm going to suggest to you, sir, that Jason played absolutely no role in any of this. He didn't - he wasn't there.

A. Well, I don't know what to say.

Q. Well, you agree or disagree?

A. I disagree.

30 Q. The same for Sean, he wasn't there? That's my suggestion to you.

A. I disagree, sir.

Q. The truck was warmed up because you started it

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up because that's what you were going to drive?

A. I didn't drive no truck, sir.

Q. Right. So the truck crashes and you come back up to the house; right?

A. Yes.

Q. And I'm going to suggest to you, sir, that you got the key to the dump truck then; right?

A. The key to the dump truck was in the sun visor.

Q. Okay. So did you get it?

A. I took it down from off the sun visor, yes.

Q. You started it up?

A. Yes.

Q. And I'm going to suggest to you, sir, it was at the bottom of the driveway, and by that I mean close to Highway 50?

A. Then it probably wouldn't have started up without the glow plugs being warmed up, so I don't think the truck was going anywhere. That truck is really hard to start in the cold.

Q. Because you have it plugged into a block heater?

A. I have an extension cord coming from the house that runs into the front of the truck and a plug that goes into the block. It keeps the glow plugs warm, it gives - the diesel oil in those vehicles and the mixture, how everything is, when it gets cold, it's like tar.

Q. M'hm. It's actually on a diesel, it's the fuel that gets jelly-like? Do you know that?

A. It plays a mixture of everything.

Q. And you know a block heater just heats the coolant? It doesn't heat glow plugs, did you know that?

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A. It's a combine of everything that goes in sync.

Q. I see.

A. If you've got frozen oil, you're not going to really turn that crank and those pistons aren't really going to move at the bottom of the crank.

Q. Well, every other vehicle you had on the place had oil in the oil pan, didn't it?

A. I just finished explaining that there is a difference between 10W-40 - 20-40 and 40-60.

Q. You didn't just finish explaining that.

A. The oil. So I just gave you a couple of numbers of the different grades.

Q. M'hm, okay. So you start up the diesel and you're saying it's parked up near the house, right on the parking pad?

A. It was parked up there.

Q. And so in your experience - well, actually, you just told us about an example. You had your Ranchero towed from, was it Alliston to....

A. Emilio towed it.

Q. Emilio towed it?

A. Yes.

Q. All right. That wasn't the first time you ever had to use the services of a tow truck; right?

A. Right.

Q. It's probably been several times over the course of your life that you've had to use a tow truck?

A. Over my life, yes.

Q. Even though you would never drive a vehicle; right? Right?

A. What? I thought you were being smart, sir.

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Q. Well, I was, but I was also asking a question.

A. Well, then can you just ask me the question,
please?

Q. So it would seem odd that you...

THE COURT: Let's just stop for a minute. Okay.

You're here to answer the questions. The question was asked. Maybe you didn't like it, you probably didn't like the way it was put. Fair enough. You answer the questions. Okay. All right.

A. I'm sorry. I'm sorry, Your Honour. Sorry
for....

MR. FAVERI: Q. So you've used a lot of - you've used tow trucks over the course of your life?

A. Yes. *my friend use to drive tow truck, Tim Foster Rob Stone -*

Q. Even though you've never driven a vehicle on a
public road? *being a jerk*

A. Right.

Q. Okay.

A. I have on a public road but not at that time.
I mean, I've got priors.

Q. So you've never found these tow truck drivers to be lousy at what they do, if I can put it that way?

A. No, I wouldn't say that.

Q. Okay. So they've always been competent?

A. The ones I have - the ones I have known, they are very professional.

Q. Okay. So you said the reason you moved the dump truck was to make room for 20 feet of tow truck and 20 feet of pick-up truck; right? So I don't understand that. Can you explain it to me?

A. There's no room.

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Q. For what?

A. The tow truck, the vehicle.

Q. So, presumably, the pick-up truck that ended up in the ditch, presumably, it was parked somewhere on the Campbell property; right?

A. The pick-up truck?

Q. Yes, before it left and ended up in the ditch?

A. It was parked in the parking pad.

Q. Okay. So is there - and is that where you wanted it towed to, back up to where it was?

A. I haven't got a clue.

Q. Well, you must have had a clue because....

A. You'd have to ask Deb that. She was down there with the two truck driver. I just knew that when I spoke to her, I said I was moving the truck to make room so we can have the tow truck drop the vehicle off.

Q. All right. I'll tell you what I'm having trouble with, sir.

A. What?

Q. Why couldn't the tow truck just pull up the driveway forwards - we'll use forwards first - and deposit the pick-up truck where it had originally been parked?

A. Well, if I could have the drawing, I could show you. Well...

Q. Do you want your drawing?

A. Yeah, that would be fine.

COURT CLERK: [indiscernible]

MR. FAVERI: Q. Exhibit 19.

A. And you can actually see how wide the driveway is in one of those drawings. This probably makes it look a little bit bigger than it actually is, the driveway.

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Q. Well, I'll get you the overhead shot.

A. Probably the one with the dump truck with the door open would be perfect.

MR. FAVERI: Exhibit 9...

COURT CLERK: Nine?

MR. FAVERI: ...L or something, if my writing was right. Actually, that's a good one right there.

COURT CLERK: This one?

A. The one that would be good is the one with the dump truck door open.

MR. FAVERI: Q. Hold on for a second, sir. I'm sorry, sir, what were you saying?

A. The one with the dump truck with the door open, that would probably be a good indicator where I'm going with this.

Q. The one with the dump truck...

A. With the door open, the driver's door.

Q. All right. I'll get that one for you.

A. Thank you.

Q. It's a picture of the white dump truck with the door open.

A. It's in the driveway.

Q. I think that's it. All right. We'll do this one first, sir, because it's the one you want. It's 3B, and maybe hold it up so everybody can see.

A. Okay. There is the width of the truck and then the driveway which shows not too much. The one that shows where the bottle jack is sticking up, you can see the back of the truck really clear. I thought that one had the door open.

Q. Is this the one you mean? Exhibit 20, I see the door there and a bottle jack.

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A. Okay. I'll just have to do it this way. So I'm going to use this one here which is Exhibit 3B.

Q. That's correct.

5 A. So Exhibit 3B, if you look at the back tire, you only really - the back tire would be the same as the front - the front, right? So if you look here at the edge of the driveway and then you look underneath the front there, you'll see the front tire.

10 Q. Okay.

A. So you've got about eight inches on each side. That's a wide truck. Okay. So if you're on the tow truck and you're pulling these vehicles in, you're going to run right straight into the garage, and you know what, that tow truck driver is going to say, "Jesus, what, I'm going to drop it here and then I can't even back out myself." So why I say that, because this drawing would make things look a lot bigger. So the tow truck driver comes up and he's like this, right, and these are all tight turns.

20 Now, right here it's pretty tight, too, whether you're driving or backing up. So you get here; right? Now, this here isn't as far as it is indicating; right? So you're up here with the tow truck. So he's driving and so where is he going to - he's going to come straight up. So he's going to drop it here and then, what, he's going to have to Mickey Mouse and play around? So just my knowhow, my knowhow thinks this because I'm up there all the time with the trailers and stuff like that and moving around. I know that if I make room for this guy, right, this guy can come in like this and put it in, drop it back and then back out and leave.

30 Q. Where was the dump truck parked?

A. The dump truck?

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Q. Where did you say it was parked?

A. The dump truck was parked right here.

Q. So where your thumb is?

A. Yeah.

THE COURT: Where was...

MR. FAVERI: Q. Where it says, "John's GMC truck"?

A. Yeah.

Q. Okay. And where was the....

MR. FAVERI: I'm sorry, did Your Honour have a question?

THE COURT: No, just for the record, so you're indicating this is on Exhibit 19, the dump truck was parked where it says, "John's GMC truck" on that diagram?

MR. FAVERI: That's right.

THE COURT: Thank you.

MR. FAVERI: Q. And where was the pick-up truck initially parked?

A. The pick-up truck was parked right here.

Q. "Jim's GMC truck"; right?

A. Yeah.

Q. Okay. So they were parked beside each other?

A. Yeah. So me, just think ahead of time what this driver was going to need, what he's going to be doing to move these two vehicles, he's got plenty of room to back in there, drop her down, pay the guy and he's on his way, not all this you've got to drop the truck here or do all this moving around, Mickey Mouse and stuff.

Q. Well, how did you expect the tow truck driver was going to drive up the driveway, backing up or driving up?

A. He's going to drive up.

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Q. All right. So I don't understand how moving the dump truck made any extra room.

5 A. You don't, okay. So this is what I'm talking about. You've got 20 - you've got 20, 20 and a couple of other feet in between the truck where the home is separating the two vehicles where it's hooked up. All right. So what have you got, 45 feet?

Q. It's your evidence.

10 A. Okay, say 45 feet. Well, that just about maxes it out, so where are you going to drop the truck? I don't got exact measurements. I don't know exactly what to say but I'm being courteous.

Q. All right. So all I'm suggesting to you, sir, is the dump...

15 A. Tow truck?

Q. ...the tow truck could pull the pick-up truck forwards up the driveway up to the garage...

A. Yeah.

20 Q. ...and then back it into where it originally was?

A. That's just - and that's what he did. That's exactly what the tow truck driver did.

Q. All right.

25 A. So I was very courteous and it paid off well. Did you get all that, sir?

THE COURT: I did. Thank you for asking.

MR. FAVERI: Q. So...

30 COURT REPORTER: Mr. Faveri, you're not on the microphone there.

MR. FAVERI: Sorry.

A. It's like I've got my back to you. It's kind

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of....

MR. FAVERI: Q. So if that's exactly what the tow truck driver did, does that mean it really didn't help anything to move the dump truck?

A. It did. It made a huge difference.

Q. Can you explain how?

A. He had more free room. Instead of trying to squeeze - have you ever - have you ever seen a tow truck driver back something in in between two vehicles?

Q. Many times.

A. Okay. So you know if you've got more room, it's a little bit more comfortable. You've got a couple of blind spots, he's not so worried. I mean, with the dump truck gone, he knows he's always got his pine trees there. It's not going to be something he's going to hit another vehicle.

Q. I've seen them back things into a garage. Have you seen them do that?

A. But my point is - yes, I have. The point is I was courteous, I was happy about it and he was, and everything went nice and smooth and he left just as quick.

Q. All right. Sir, I'm going to suggest to you that you actually got in the dump truck because you were very angry at the way things were unfolding, that being that you weren't going for dinner? So the first thing is that you weren't going for dinner at the Village Inn because Deb thought you were too drunk and told you that. Do you agree or disagree with that part?

A. I disagree.

Q. You were upset because you crashed the pick-up truck? Do you agree or disagree with that?

A. I disagree, sir.

*why not call
and ask the
driver.*

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Q. And after you crashed the pick-up truck, you decided you would pull it out of the ditch with the dump truck and Deb was telling you that's not a good idea?

A. I disagree with that, sir.

Q. And I'm going to suggest to you, sir, that you drove - at some point, you were at the bottom of the driveway towards the road with that pick-up truck and you drove it up the driveway at Deb. That's how angry you were with her you were. You can agree or disagree.

A. I disagree, sir.

Q. Do you agree with me you could get furious at Deb?

A. The maddest I've ever got is when I went outside and she wouldn't take the dog to the hospital. That's the only time I've ever - when you used the word "furious", I think that's the only time I was ever like that. Other than that, no.

Q. It was actually you used the word "furious". That's what you said.

A. Yeah, it's something that - yeah, that's about the only time I've ever....

Q. The only time you were ever furious at Deb?

A. Yeah. She's - she's a good kid.

Q. She's a what, sorry?

A. She's a good kid, just a figure of speech. I don't say "old lady".

Q. So you say you were backing the dump truck up the driveway?

A. Yeah.

Q. Right. I can't remember why you were backing it up the driveway.

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A. Well, do you want me to explain?

Q. Yes, please.

5 A. Okay. So I'm moving the truck forward, I don't know where she came from. She came from somewhere, and anyways, she's standing in front of the truck. I stopped. It was a good distance, about from here to there where she stops and I stopped.

Q. Sorry, from you to me?

10 A. Is the distance...

Q. All right.

A. ...that we've stopped at and...

Q. About I'll say 16 feet or so, just going by the ceiling tiles.

15 A. They're four foot each.

Q. All right.

A. So that distance, she's going like this; right?

Q. Yeah, and you're just making a motioning...

20 A. Yeah, making the motions that she's either saying stop or back up, and I rolled down the window and I tell her that I just want to move the truck further down, I want to park it by the green box.

Q. M'hm.

25 A. And I don't even know if she can hear me, but she's still doing this, and so she comes a little bit closer to the truck - I don't know how many feet by then - and I get the truck, I put it in reverse and I start crawling back, creeping back. It's - if anyone's familiar with a standard, if you just take your foot off the clutch, it will just creep on its own. So that took part for a little bit, and then when she got a
30 little bit closer, then I think we had a conversation. I stopped, we had a little conversation, she was at the side of

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the truck.

Q. So tell me about that conversation.

A. Well, I think I just explained to her, okay, that I wanted to put the truck right over there.

Q. All right.

A. I'm not saying 100 percent sure that it's at that time, the present moment place and time, she walked - she walked - no, she was still in front of the truck, so I kept backing up and then I sort of accelerated a bit and I thought I was going up on - up on part of the curb, and I rolled down the window. I was looking down and, shit, I looked back and then I still gave a little bit of gas because there was a bit of a hump, and I went and then the truck stopped.

Q. All right. So my question was why did you back the truck up the driveway, and I don't know that you've directly answered that, but let me see if we can get there. You wanted to park it at the bottom of the driveway to make room for the tow truck driver; right?

A. Correct.

Q. Did you tell Deb that?

A. Yes.

Q. And what? I mean, your will was such that you weren't going to do what Deb told you to do about going to Thornton for dinner; right? So....

A. You've got - just so we've got some clarification here, too, okay, on the parking pad when Deb is standing beside me when I'm inside the truck, okay, it's pretty loud. That truck is loud. So there's a lot of - I don't know, or maybe she said that or I didn't understand. I'm just letting you know that....

Q. The truck is loud.

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A. Okay. Thank you.

Q. All right. I know that now. So what are you saying? When Deb - you say there was a conversation at the bottom of the driveway between you and Deb. Could you hear one another?

A. I couldn't always hear everything that she was saying, and quite honestly, I wasn't quite interested.

Q. Why weren't you interested?

A. Because I knew what I had to do and it didn't require her assistance.

Q. All right. Because, you know, if you couldn't hear her, there is two easy answers; right? One is to turn the truck off; right? You could have heard her then?

A. That's not important.

Q. It's not important?

A. No, there's nothing I need to hear. I know what I need to do. The tow truck is on its way.

Q. Right.

A. Okay.

Q. So you didn't care what Deb....

A. I started leaving. I knew what I was doing. I was already on my way. She appears in front of the truck. I stopped; right?

Q. All right.

A. She's got her hands up like this. I think she's telling me to back up.

Q. Right. But you didn't want to back up and you didn't care what she had to say, whether she is motioning it or saying it; right? Do you want me to break it down?

A. I don't want to hear what she has to say, no.

Q. Okay. Because you're going to do what you're

going to do?

A. No, that's - I wouldn't - I had explained it to her. It wasn't I was going to do what I was going to do. I explained it to her. She knew what I was going to do.

Q. Okay. So according to you, she knew you were going to park the truck at the bottom of the driveway?

A. Not at the bottom of the driveway.

Q. Where?

A. I'm like three - if I can have that drawing back, I can show you exactly where I was.

Q. The one you drew?

A. That one, yes.

Q. Exhibit 19.

A. So she stops me right where I want to park, so I'll show Your Honour. Right here, right where she's standing, she stops me, and this is where I want to park, right in front of this box here. Right?

Q. Okay.

A. She's standing right there, right, and she takes a couple of steps forward. Right. I've got the truck in reverse and then I start crawling back and then I start - I just start backing up. I accelerate a little bit and then that's where I end up.

Q. All right. So you wanted to park by the green bin?

A. Yes.

Q. But that's not a paved area, is it?

A. No, it's not paved. No.

Q. And there would have been snow there?

A. No.

Q. No, okay. Why wasn't there snow there?

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5 A. Because the truck is usually parked there unless I'm doing some work to it. I usually park it up by the house. There's a power place where you plug it in right here, where these Christmas - they've got Christmas lights...

Q. Oh, okay.

A. ...they use power for the Christmas ornaments at the end of the driveway.

10 Q. Earlier, you told us the truck would have been parked up on the parking pad...

A. Yeah.

Q. ...because there was electricity there?

A. Yeah, and when Ms. Hyslop was asking me, I indicated that there was two places the receive power.

15 Q. Oh, okay. So you could park it down by the green bin and plug it in?

A. Yeah, but you don't want to keep it there plugged in too long because with that type of long extension cord, then you add another one, you really can actually burn the wire, cause a fire.

20 Q. All right. Because Deb was like 90 percent sure that you were parked down - or the dump truck was parked down by the green bin or at the bottom of the driveway, in any event. Would you agree it's possible that's where it was?

25 A. I think - I think she said something like that, but it would never - you'd never get that thing started.

Q. Oh, you think she's saying over...

A. I...

Q. ...on the driveway and...

30 A. I thought she...

COURT REPORTER: Sorry, you're both on the same channel. Only one person can speak at a time.

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A. Sorry.

MR. FAVERI: Q. You indicated - you pointed to the picture. I have to describe what you pointed to, sir. So you're pointing on the driveway that goes around to the barn or the roadway or whatever you want to call it; right?

A. Right.

Q. Okay.

A. I mean....

Q. I'll let you finish.

A. Any - anything she said didn't make any sense to me, so that's why I did do that.

Q. Okay.

THE COURT: Mr. Faveri, are you going to be much longer? Do you want - should we take an afternoon recess?

MR. FAVERI: Sure, Your Honour.

R E C E S S

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

MR. FAVERI: Q. Mr. Atkinson, I was asking you about the bottom of the driveway, you wanted to park the dump truck by the green box but Deb is in your way, motioning for you to back it up. So I guess my question of you is why - why did you go along with what Deb wanted this time when you wouldn't go along with her about where to eat? If you don't understand my question, please say so.

A. I don't understand.

Q. All right. So Deb was motioning for you to back the truck up; is that right?

A. Yes.

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Q. Yes, and you did back the truck up; right?

A. Yes.

Q. So it sounds like you did what Deb wanted you to do, did you?

A. No, I - I don't think it was anything to do with the hand signals or anything like that. I think just the fact that if she's in front of me, I'm just going to back up, problem solved.

Q. Well....

A. I mean - I mean, what do you - if someone is standing in front of you, what are you going to do? Stop? What are you going to do? They're not going to move, what are you going to do?

Q. Well, you could ask them to get out of the way. You never did that, though, did you?

A. I'm in the truck.

Q. Right.

A. I'm stopped. She's in front of me. There's not discussions going on. I back up. I can't say any more than that.

Q. Okay. So is it your position that when you're backing that truck up the driveway, you're sober?

A. Oh, absolutely.

Q. Okay. And it's your position that I think it was Sean was able to drive the - first of all, Sean was able to get up the driveway okay, right, when he came to pick you up?

A. I'm not following you. When they first come?

Q. Well....

A. I mean, you're saying he gets up so I don't understand, what is he - are you saying he's somewhere else?

Q. I think you said that Sean was over during the

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day.

A. Right.

Q. That he left.

A. Yes.

Q. So presumably, he got down the driveway okay, right, when he left?

A. I know you're going up and down our driveway. It's a flat slope. I'm just lost when you said Sean - when you said Sean gets up our driveway.

Q. All right. I'm back at - okay, Sean left. You called him and said come pick me up?

A. Yes.

Q. And he did come and pick you up?

A. Yes.

Q. So it would seem like he made it up the driveway okay?

A. You know, if you want, I can - he gets to the driveway. I talk to him while he's still sitting in the car and I said, "Listen, you know what, we're going to take the truck. Park your car down at the end of the driveway. All right?" Then he goes, "No", and he goes, "We'll all go together, I'll follow you." I said, "Okay."

Q. Well, maybe I have the names wrong. So Sean followed?

A. Yes.

Q. Jason, Jason is the one who came back?

A. Jason stayed in the pick-up truck. Okay. Sean was driving. Jason gets out of the pick-up truck and where they went after that, I don't know. I was already at the house.

Q. All right. Maybe - all right. Jason....

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A. When I'm - when I'm dropped off...

Q. Yeah?

A. ...after the truck is in the ditch...

Q. Okay.

A. ...that's the last we see of him until the next day.

Q. All right. I'm talking about earlier than that.

A. Okay.

Q. So Jason was over for your party and Sean was over for your party; right?

A. Yes.

Q. Both of them left?

A. Yes.

Q. Before Deb got home; correct?

A. Yes.

Q. And both of them came back?

A. Yes.

Q. Right. So it would seem like both of them had no problem going up and down the driveway. Would you agree with that?

A. I agree.

Q. All right. And then when you leave to go to the eatery...

A. Right.

Q. ...Jason is driving your truck?

A. Yes.

Q. And he gets down the driveway okay?

A. Yes.

Q. Right. So would it be fair of me to say that the driveway, when you're backing up it, there's no snow on it?

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A. I'm just being distracted by that noise. No, there's no snow. It's fairly cold out, though. I mean, no snow.

Q. Okay. And no ice?

A. Black ice, yes.

Q. There's black ice?

A. Oh, yeah.

THE COURT: Is that the....

MR. FAVERI: There's a chime out front. That's what it is. I used to think I was having auditory hallucinations, but I see you're all sharing them. It's over.

A. I thought it was someone's phone.

MR. FAVERI: I'll let it pass.

A. I'm okay, Frank, you ask me.

MR. FAVERI: Q. So the driveway is sloped down to the road; right?

A. Probably about a three-inch slope.

Q. So what - by that, you mean it's a gradual slope?

A. Yeah.

Q. So is the whole driveway black ice?

A. No, just pretty much near - what I know about the place, not that it happens a lot but it's there, you're sitting there, and if there's a lot of traffic, you've got the exhaust and there's always - there's always a piece of glare or black ice there because your car is sitting there waiting to pull out and it's coming from the exhaust. That's something that I've taken the liberty of actually putting salt in that area at the end of the driveway. So I mean that's - that's what I can tell you about.

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Q. So there was, what, just black ice at the bottom of the driveway?

A. It circuits through but I'm just saying right there, that's one thing I know that is always there.

Q. So my question is how much black ice is on that driveway when you're - well, on this day we're talking about?

A. In the driveway itself, it's ice and snow covered. It's been ploughed by the ATV. So whatever the plough can pick up from the ATV, that's what you have left.

Q. Okay. Because you told me there was no snow on it and now you're saying there's some snow on it.

A. Well, it's....

CROWN S- Q. I've got a picture. *"Show me the picture"*

A. I mean, there's - there's spots here and there where I mean maybe there was shade from the tree and the sun baked on that part but didn't get necessarily the three hours that the sun was passing by the tree. That's what I'm saying.

Q. Because - well, I'm going to suggest to you the driveway was actually in very good condition for driving up and down.

A. That's - that's fair. I mean, I've got no particular condition of the road - driveway.

Q. All right. So as you're backing up the driveway, it's not like you're skidding out on black ice; right? When you're letting out the clutch, the wheels have traction?

A. You're talking about the dump?

Q. The dump truck.

A. Yeah, okay.

Q. Okay. Right? The wheels have traction?

A. Yeah.

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Q. Okay. And what I don't understand, sir, is how you managed to drive off the driveway if you're sober and the driveway is in good condition to drive on?

5 A. It's not the driving condition, it's pretty dark out. Actually, it was about 7 o'clock, 8 o'clock. It was pretty pitch black out. We're talking what, ^{JANUARY} February. It's pretty dark out. I mean, I've got frost on the windows. The mirrors aren't in the best - I mean, I just remember certain things about - you know, you see certain things and....

10 Q. So it was the 14th of January, sir. So are you telling me that your - you have a vehicle in motion going backwards up a - a big vehicle and it's really not a safe manoeuvre for you to do because you can't see? Is that what you're telling me?

15 A. That's not what I'm telling you.

Q. All right. So why do you go off the driveway?

A. It just happened.

Q. Because you couldn't see where you were going?

20 A. Well, I thought I knew where I was going but apparently not, right, because that's where the truck backed into.

Q. Well, not only did you not know where you were going, but you - I'm going to show you Exhibit 20.

25 A. M'hm.

Q. You hit a rock; right?

A. Yes.

Q. Very shortly after you went onto the - off the driveway...

30 A. Yeah.

Q. ...correct? And I'm pointing to the rock, well, just to the left of where I think you wrote "west". Did

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you hit that rock as you were backing up?

A. Right there?

Q. Yeah.

A. No.

Q. No?

A. No, you're probably got about five feet from that rock.

Q. You're five feet from that rock?

A. Yeah, give or take. It might look like it from there but I'm pretty familiar with the property.

Q. I'll just take this....

A. Have we got another view maybe?

Q. We'll try.

A. He's talking *He's adding a rock* about this rock right here. No, he's talking about this rock. I'm talking the truck was on top of this one, not that one. *Kim He's adding a new rock*

Q. All right.

A. I didn't even come close to that one.

Q. Okay. So the rock beside the "W" was about five feet away from the truck?

A. Three, three to five feet.

Q. All right. So the next rock to the left of the picture, is that the one you hit as you were backing in?

A. Yes.

Q. All right. And you could tell you hit it because the back bumper hit it or the back wheel hit it?

A. The back bumper was way over here. You're talking almost 16 feet. This is where the back of the truck hit.

Q. Well, what I'm talking, sir, is if you're backing up and you go off the driveway, I'm going to suggest to

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you you're going to hit one of these rocks long before you hit the ones further to the left.

5 A. Well, see, this rock is over a little bit from this rock, so I'm going to be able to go in there - if I can - can you see what I'm talking about?

THE COURT: So we should identify it for the record. So...

A. Okay.

10 THE COURT: Why don't you take - is there a pen that can mark the rocks 1, 2, 3, so that we know which ones we're talking about?

MS. HYSLOP: You can try that pink one and see if it will mark on it.

15 MR. FAVERI: Q. So the first rock I want you to mark as "1" is the one you say that was three to five feet and that you did not hit. Just put a "1" on top of it.

A. Okay.

20 Q. Then the rock that we'll call rock number 2 is the one to the left of it?

A. Yeah.

Q. Which you say you did not hit as you backed....

25 A. That would be underneath. The front tire would be right about - the front tire would be stopped right about there in front of that rock. The running board would be just - that would be rock number 2, sir.

THE COURT: Number 2, okay.

30 A. So the running board will probably be just a little bit on top of that and the front tire would be just right there.

MR. FAVERI: Q. All right. So....

A. The front tire would be right about there.

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Q. What rock did you hit first?

A. This - this is what stopped it so I'm not going any further. So it would be this one.

Q. So can you put "rock 3" by there?

A. So I put the "rock 3" right there, sir.

Q. Okay. All right. Now, as you were backing the truck up, you realized as you were driving off the driveway that you were driving off the driveway; right? You could feel the truck go over that hump?

A. Well, what I - you know, I can almost remember what was going on. I thought I was just going up a little bit on the curb like up on the bank of the snow, which is no big deal. So that would be - I thought I was just going up along here, right? I thought I was just cresting up on top; right? So I just started to accelerate a little bit more. So actually, instead of riding along this, I was riding along the snow and then when I started to go a little fast when I accelerated a bit to get myself off the rock and that's when I came to a stop.

Q. You accelerated to get yourself off the rock?

A. No, I accelerated a little bit more.

Q. That tells me that you did hit rock number 2 first if you're accelerating to get off of it.

A. No, I said - let me repeat myself.

Q. Please.

A. I'll show you. As I - what I think is, I'm coming up the curb or the crest of this snowbank, this snow line here, but instead I'm not on this, I'm still going across like that. So this here is the back of the truck. I hit this first.

Q. Okay.

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A. All right. I spin my wheels. I sink down, all right, and I'm wedged. All right. All this rock is doing, it's just sitting there underneath the truck.

5 Q. All right. So am I right that you're looking out the window - you're looking out the driver's side window as you're backing up?

A. No, I'm using the mirror.

Q. You're what?

10 A. I'm using the mirrors.

Q. You're using the mirror?

A. I don't know if...

Q. Well, you told us you were looking out the window, looking down.

15 A. Yeah, I did that. Yeah, after I got stuck, I rolled down the window, said, oh, gees, and then I went forward, back, then that was it.

Q. So it's dark out, right...

A. Sure.

20 Q. ...when this is happening? And the lights are on on the dump truck; right?

A. Yeah.

25 Q. Okay. So if your orientation is such that you're backing off the driveway to the extent that you end up on the rocks, couldn't you tell by your headlights and where they are aiming that that's what was happening? Normally, they would be pointed down the driveway; right? Now they're pointed off to whatever is....

30 A. No, they're not. If we look at the satellite drawing, you see that there's a very little curve. I mean, I'm not even paying attention when you talk about the headlights, but I'm just guessing right now off the top of my head from

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knowing the property that that's not the case.

COURT CLERK: Do you know which exhibit? The
aerial view?

A. I said I...

COURT CLERK: The aerial view?

MR. FAVERI: It's like a Google Maps view.

A. Actually, by looking at that picture, it
was....

MR. FAVERI: Thanks.

MR. FAVERI: Q. Sir, you asked to see these, so
I'm going to produce them for you, but if you refer to one, I'd
ask you to look at the back...

A. Sure, I will.

Q. ...and tell us what exhibit it is.

A. These are terrible. They're not going to work.

Q. If they don't work, that's....

A. Okay. So what will work is....

THE COURT: Just for the record, which exhibits did
you show him?

MR. FAVERI: 7A through...

COURT CLERK: I think it's A, B, C. There's
duplicates there, Mr. Faveri.

MR. FAVERI: Sorry?

COURT CLERK: I think it's 7A, B and C.

THE COURT: Can I see those, please?

MR. FAVERI: Just hold on, Mr. Atkinson.

THE COURT: You can carry on.

A. If you pass me all five of those or four...

MR. FAVERI: Q. I only have two.

A. ...we might be able to...

COURT CLERK: Exhibit 3.

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MR. FAVERI: If I can...

COURT CLERK: 3A to D.

MR. FAVERI: Thank you.

COURT CLERK: 3A to D, there's four photos.

MR. FAVERI: Thank you.

COURT CLERK: 3D. Those are Exhibit 3.

A. There should be five.

MR. FAVERI: Q. All right. Sir, these look like they're all Exhibit...

A. Okay.

Q. ...3. I'm not sure what one you want. So again, I'm going to give them to you and....

A. You got something there, you got something here. Okay. So we have - well, it worked pretty good, make my point pretty much crystal clear.

Q. You're just going to have to refer to these by the exhibit number.

A. Okay. Well....

Q. So the first one you're looking at is....

A. Okay. So I'm looking at 3D, Exhibit 3D(i).

Q. Okay.

A. So Your Honour, you see...

Q. It's okay. You can show it that way.

A. So if I'm saying - you're talking about the headlights going this way, it would be a line up the driveway, am I right?

Q. Yeah.

A. Okay. This pretty much would confirm that. Here is - which would be the rocks and I'm saying the truck is that way. So he's pretty much right when he says that the headlights would be lined up with the road, just a little bit -

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5 even though I'm not paying attention, I'm just doing it by
mental guess right now. So the truck would - the headlights
would still be lined up. We're right at the corner where
whatever way I'm at, the headlights are still going to be
straight.

Q. All right, sir. Yeah, and you're referring to?

A. Exhibit 3.

Q. 3B?

A. 3B.

10 Q. So my point is, sir, if you're off course - if
I can put it that way, if you're off course and you're not
backing up the driveway and you're backing onto the front lawn,
the headlights are going to give you an indication of that
because they wouldn't be pointing where they would normally be
15 pointing if you stayed on the driveway?

A. Well, you've got this much room and that much
room in a sense but I'm going backwards. I'm not really paying
attention to headlights. I just really wanted to show you that
you're pretty close when you say which the lights would be, but
20 I'm really backing up.

Q. Okay. So if you're not paying attention to the
headlights, what are you paying attention to?

A. Well, I'm guesstimating as I'm backing up and
then I come to a stop, we're talking within six - two to six
25 seconds, it would be between two and six seconds.

Q. What happened in two to six seconds?

A. I mean, no, what could you do within two to six
seconds when she's standing there and all of a sudden and then,
30 boom, I'm stopped. So I'm not - if the headlights are there,
or if I just backed up, I mean, "vvvv", boom, I'm stopped. So
at that time, what would I be? Well, you know, I'm not - you

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understand what I'm saying? I mean, I don't....

Q. I think what you're trying to say is that it all happened very quickly?

5 A. No, we know that, but I'm trying to say what would the line of the headlights do in three - two to six seconds?

10 Q. Well, I guess I'll just get to it. Sir, I'm going to suggest to you that the reason you drove off the driveway and "up" onto the rocks is, part A, you were drunk.

A. I disagree.

15 Q. All right. And part B, you were so upset with Deb that you were pursuing her up the driveway, you were driving forwards. She is scared, she runs for the rocks and you followed her right up onto it?

A. I absolutely disagree, sir.

20 Q. You said something earlier just before the break. You did say on that dump truck that the front wheels are the same distance apart as the back wheels.

A. In width or in length?

25 Q. In width.

A. The front tires are the exact width as the outside tires on the back, yes, they are.

30 MS. HYSLOP: Could we just put on record what he did because I don't know if I understand the same thing.

A. This is showing the front tires in line with the back.

THE COURT: The witness has made a motion with his hands, putting his hands facing in front of him, palms facing each other and making two parallel lines, presumably indicating the outside of the

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front wheels being at the same parallel distance as the outside of the back wheels.

A. Thank you, Your Honour.

5 MR. FAVERI: Q. You tried to get that truck off the rocks in the following days by yourself; right?

A. The next day.

10 Q. And although you don't remember everything that was said during the conversation, for example - and I'm looking at Exhibit 21 - do you recognize this piece of wood as the one that you put under the front tire?

A. Yeah.

Q. Out of all those other pieces of wood, that's the one?

15 A. That's the one, yeah.

Q. And what is so distinctive about that that you remember it?

20 A. Well, it was the only one that wasn't sunk in that deep, so that's the one that I wedged under, thinking that it would go in and under and then it would just - it wasn't for getting out for any purposes. It was just for putting it under there.

Q. Under where?

A. Under the front tire.

25 Q. So that's what was so distinctive about it?

A. Yeah.

Q. You said that a couple of weeks before you were arrested, you saw Deb and Raymond go through the truck?

A. Yeah.

30 Q. So a couple of weeks before you were arrested, you were living with your mother; correct?

A. Yes.

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Q. So what were you doing up at the Campbell property?

A. I never said I was at the Campbell property.

5 Q. All right. Well, where did you see Deb and Raymond go through the truck?

10 A. I was at a friend's place that's behind a convenience store that's just down the road from my mother's and we were on the second level and it's always a perfect view when you're sitting. You can look outside, it's all glass. And it was probably about 8 o'clock at night. It was just starting to get dark but it didn't matter because the place was still lit up from the parking - the parking lights down in Etobicoke. That's where I seen them.

15 Q. So you were looking out a window at them?

20 A. Well, I recognized her car right away, so I thought what's - you know, she's going to come see me. And then I see them rifling through the truck and so by the time I got down there, I didn't want my company to think that I was some kind of nut, saying - I went down there, they were breaking into my truck.

Q. Well, a couple of things about this, sir. So I guess you were saying Deb didn't drive down in that truck?

A. No, she came down in her car.

25 Q. Okay.

A. By the time I got down there, she was gone.

Q. All right. So you leave a laptop in the pick-up truck?

A. I do, yeah.

30 Q. You're not afraid someone is going to steal it?

A. They did, eh.

Q. Well....

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A. Sorry, no. No, I'm not.

Q. Deb had a key to the truck, I guess?

A. I should be able to leave stuff in my truck without having somebody - it wasn't in view. It was behind the driver's seat in the little pouch.

Q. Why do you call it your truck?

A. Because it's in my name.

Q. All right. The computer, didn't Deb buy that?

A. Pardon me?

Q. Didn't Deb buy the computer?

A. I bought that out in Alberta.

Q. Oh, okay. How did you find out Jason is in California?

A. Through phone calls.

Q. To? Did you talk to Jason or are you just getting this from other people?

A. From other people.

Q. All right.

A. But it was over four people who said he has gone to California.

Q. All right. At the risk of upsetting you, I just want to ask a couple of questions about the dog. The way you tell the story, sir, it's like Deb didn't give a hoot about that dog. Is that what you're trying to convey to us?

A. No, what I'm - what I know, I've been - I just - because I thought it was just hearsay, when she said, well, it's probably got brain damage, it's either going to live or die, there's going to be nothing they can do about it. She is a pretty smart lady. I mean, she's got a B.A., P.H. [sic] and she is - I think sometimes she knows what she's talking about but I think that a vet should have been the one to make that

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choice, that decision.

Q. You thought that what?

A. A veterinarian should have been the one to make that call.

Q. Oh, so do you think she cared about the dog then?

A. She may have, but I mean, because she knows more than I do, I mean, it's like kind of put it this way, the doctor says, well, the patient is going to make it or the patient is not going to make it, one is going to react. Well, she knew how it was going to be, so she came to me instead of the doctor and said, well, you know what, the patient has got - or he's not going to make it tonight and he made - I mean - you know what I mean? He knows there's no question about it, there's nothing you can do about it. So I mean, you try to get through it, and if that's what Deb was doing to me, it wasn't very good because I didn't come back from that. I think that she should have taken it to the vet, have the vet say, you know what, we're going to have to put your dog down or there is a chance of surgery or there's a chance for something.

Q. Would you have paid for it if you had the money?

A. I could borrow that. I could have borrowed it. No one is going to turn down an animal. We've got veterinarians in our own family. My sister - my sister's daughter is a veterinarian for horses. My sister is a veterinarian of horses. I know a little bit about veterinarian of animals. I used to breed horses.

Q. Okay, sir. Thank you.

A. Thank you.

THE COURT: Re-examination?

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MS. HYSLOP: Yes, please.

RE-EXAMINATION BY MS. HYSLOP:

5 Q. I just want to clarify one or two points. When
I was asking you questions in examination in-chief in relation
to the Ranchero and driving it down the laneway, my
recollection was that you also testified that you might have
10 taken it down there and that's down the laneway towards the
barn. When the Crown Attorney was asking you questions about I
guess you were test driving the vehicle, he was only talking or
only asking you about going up and down the driveway. Can you
explain that to me about whether or not you did take it down
15 around to the barn, or if I misunderstood that?

A. Can I see one of the drawings and show you on
the drawings?

MS. HYSLOP: Sure. It's the last - his main
diagram which was the last exhibit, I think.

20 COURT CLERK: Nineteen?

MS. HYSLOP: Nineteen, sorry, yes.

COURT CLERK: I don't think I got that back.

MS. HYSLOP: Oh, it's right here.

MS. HYSLOP: Q. That's the one. This isn't the
25 exhibit copy.

A. A big one like that.

COURT CLERK: I did not receive that back. Unless
it's in here. I lied. Sorry, Your Honour.

30 A. Okay. So the Ranchero, Your Honour, like this,
and then like this and then like this, and then there is a road
- I don't know if you've seen the other drawings, but there's a
gravel road that goes down like this, and then there's a barn

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down here, over here, and then there's a tractor trailer that I use as a makeshift shop and this is like half of ten acres. You turn around, you go back up, that's what I would do for test drives.

5 MS. HYSLOP: Q. The other area of questioning you were asked about is bringing the car back from out west. Did you have the opportunity or was there the option of bringing a truck back from out west? Did you have a truck out there you could have brought back? Do you know what I'm talking about when you brought - Mr. Faveri was asking you questions about if it was your opinion or your feelings that you didn't like cars, that they weren't safe, and he asked you why would you expose yourself to bringing - to driving back from out west in a car. My question is, was there a truck out there that you could have brought back?

15 A. If I wanted to buy a truck out there, would I have....

Q. Did you have the option of coming back with....

20 A. Yeah, yeah, I had an option.

Q. So why didn't you come back in a truck?

25 A. So the reason why it wasn't a truck and it was a car, I had spoke - where I had been living in Alberta, I had spoken to Deb and said I'm coming back and there's this guy, he's got this car. He's a native guy. He's going to come back with us and he's from Ontario, and I can catch a ride with this guy and I said, you know, this guy has got this great car. Like I'm a car enthusiasm [sic], I like getting cars, restoring them and then selling them. So this one was a perfect car and I said it was a small car and it would be great to bring back and I said it's great on gas and then I said to her, I said, you know what, this would be a perfect student car. So that

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5 was the whole purpose. I mean, I had gotten - I had gotten
Raymond a car, I had gotten Luke a four-wheel drive. I mean,
had I gotten Daniel a car before I left, I wouldn't have needed
to do that, but I thought this is a great student car, it's
great, great on gas. It's almost a collector's and it's in
mint condition. You don't get a car that's 15 years old in
mint condition. This car was mint. It had never seen rain -
or I mean never seen the winter or salt, never seen salt
10 because it was always out west. So there wasn't - there was no
rust on it or nothing.

MS. HYSLOP: Thank you very much, Your Honour.

THE COURT: Thank you. I don't have any questions
for you, sir. You can stand down.

15 A. Thank you, Your Honour. Are you allowed to
talk to me yet or not?

MS. HYSLOP: Not right now. We're still in court.
Your Honour, I did mention prior to court I do have
a copy of the expert report. Mr. Faveri has had it
for some time now. I was only suggesting, I don't
20 know if Your Honour wishes to review it prior to
having the expert testify tomorrow?

THE COURT: Sure, I'd be interested in reading
that. Thank you. All right. So we're down till
tomorrow morning then?

25 MS. HYSLOP: Yes, I believe so, Your Honour.

THE COURT: Okay.

C O U R T A D J O U R N E D

30 *****

FORM 2

Certificate of Transcript

Evidence Act, Subsection 5(2)

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10
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Nov. 8/15

(Date)



PHYLLIS TORRANCE,
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