

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

JOHN ATKINSON

P R O C E E D I N G S   A T   T R I A L

CROSS-EXAMINATION CONTINUED AND RE-EXAMINATION  
OF DEBORAH LYNNE CAMPBELL

BEFORE THE HONOURABLE JUSTICE E. MEIJERS,  
on May 7, 2014, at BARRIE, Ontario

APPEARANCES:

F. Faveri

Counsel for the Crown

K. Hyslop

Counsel for John Atkinson

109.  
Certification

FORM 2

Certificate of Transcript  
Evidence Act, Subsection 5(2)

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November 17, 2014



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(i)  
Table of Contents

ONTARIO COURT OF JUSTICE  
TABLE OF CONTENTS  
WITNESSES

<u>WITNESSES</u>	<u>Examination in-Chief</u>	<u>Cross- Examination</u>	<u>Re- Examination</u>
CAMPBELL, DEBORAH LYNNE			
By Ms. Hyslop		1	
By Mr. Faveri			100

EXHIBITS

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
6 Letter dated April 11th, 2014 from Ms. Hyslop to Deborah Lynne Campbell	12
7(A) Satellite image printout of Deborah Atkinson's house	39
7(B) Second Satellite Image of Property	40
7(C) Third Satellite Image of Property	42
8(A) Google Street View Photo of Property	44
8(B) Second Google Street View Photo of Property	45
8(C) Third Google Street View Photo of Property	45
8(D) Fourth Google Street View Photo of Property	48
9(A) Photograph of Rear of Truck	50
9(B) Photograph of Front of Truck	50

(ii)  
Table of Contents

ONTARIO COURT OF JUSTICE  
T A B L E   O F   C O N T E N T S  
E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
9(C) Photograph of Side of Truck	50
9(D) Photograph of Truck	51
10 Property Purchase Documents, nine pages	57

Legend

- [sic] - Indicates preceding word has been reproduced  
verbatim and is not a transcription error.  
(ph) - Indicates preceding word has been spelled  
phonetically.

2.

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 A. I said that the - any other photographs that I would've had weren't relevant to what I - the only other picture that I have is a picture of me and my dad celebrating. I did not think that was relevant it doesn't show anything in the background that would've been relevant to the case and so I didn't think that was part of what I provided to the Court; that's why I didn't give it in the first place.

10 Q. So, you're saying that there was only one other photograph.

A. As far as I remember.

15 Q. And the reason you didn't disclose it is because it was your view that it didn't have anything else to do, or it didn't have anything relevant to offer to the case, is that correct?

A. That's right, it's really just a picture of me and my dad celebrating that we got that rock finally off that - that dump truck right off the rocks.

20 Q. And the reason that you didn't want to, I guess, provide that photograph was because you didn't want to involve your father in this investigation.

A. That's exactly right, yes.

25 Q. But your father had given a statement to the police, right?

A. I don't know whether he did or not, did he?

30 Q. Okay. He did give a statement, I believe, over the phone to the police, you're not aware of that?

A. No.

Q. But you're also aware that he was subpoenaed by the Crown Attorney to come back to the court back in October, right?

A. He was subpoenaed and I spoke with the Crown Attorney and, and the Crown Attorney decided that it wasn't

did you ever show  
the opp. over even  
or #41 Bliss - ?  
yes she did

1.  
Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

WEDNESDAY, MAY 7TH, 2014

COURT OPENS...

THE COURT: Good morning.

MS. HYSLOP: Good morning, Your Honour.

THE COURT: Good morning.

MS. HYSLOP: So, we're here again for the Trial Continuation with Ms. Campbell who's under cross-examination still, Your Honour.

THE COURT: Okay.

MS. HYSLOP: And she's present.

THE COURT: Are you guys ready to go?

MS. HYSLOP: I think so, yes.

THE COURT: Okay, Ms. Campbell, if you'd come forward then, please and maybe Ms. Campbell can be re-sworn.

DEBORAH LYNNE CAMPBELL: RE-SWORN

THE COURT: Go ahead.

MS. HYSLOP: Thank you.

CROSS-EXAMINATION BY MS. HYSLOP CONTINUED:

Q. Good morning, Ms. Campbell. On the last occasion when I was asking you questions, so back in January of this year we - do you recall us talking quite a bit about the dump truck being stuck on the rocks?

A. Yes.

Q. And you confirmed at that time that you did have additional photographs other than the five photographs that we've reviewed at the trial.

get Don. Raymond

and Jim stayed up one day

if when deb was to take  
the stand

3.

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

necessary for my dad to come. My dad is elderly and he doesn't hear well and although there's nothing wrong with his mind it's stressful to him. He has a pace maker, I didn't really think that it was appropriate for him to be dragged into court for something that he really didn't have much to contribute to.

Q. But he was a key player in, in getting the truck off the rocks, right?

A. That's true.

Q. So, if I were to ask you to send us that photo or any additional photos that you have, is that something you're prepared to do?

A. Well, I just don't understand the relevance of it so I'm not sure that I would want to give that unless I was forced to do that, in which case, of course I would. If that's what I was forced to do then I would give you that picture, but all it is is a picture of me and my dad and we're celebrating that we got that truck off the rocks, that's all it is. There's nothing in the background.

Q. And I appreciate that that's what you're saying but sometimes, you know, different people will see different things from a photograph. So, you recall that I sent a letter to you in April of this year, correct? Do you recall receiving a letter by registered or by - yeah, by registered mail?

A. Yeah, I'm not sure if it was in April or whether I got it in May, I got it recently, yes.

Q. I'm going to show you....

A. It was a registered letter, I don't remember exactly but it wasn't very long ago. Yep, I remember the letter.

Q. So, that's a letter that you received April 16th I'm going to suggest to you and you can look on the second page of it. There's a confirmation and that's your signature on that confirmation page, right?

A. Yep.

Q. And in that letter I made a request that you forward those photographs, any additional photographs to the Crown Attorney, correct?

A. That's what you've asked for.

Q. Okay. And you haven't done that, correct?

A. No, you phoned me and talked to me about it.

Q. Okay. But you hadn't - you haven't done that, I asked you to do that and you didn't do that, correct?

A. That's right, I didn't think that that was - I thought there was a choice - it was a choice, you said, if I can then I would and I didn't want to, so I didn't.

Q. The additional photo that you say that you have, is that a photo that's on your iPhone?

A. No.

Q. Okay. Where is the photo?

A. It's on my old computer that's at home. As far as I know it's still there, I just had the computer recently upgraded, so I haven't actually looked since that happened.

Q. Also in that letter was a request made for your consent to have somebody come onto your property and take pictures, take photographs and take measurements, correct?

A. Right.

Q. And you denied that request, right?

A. That's right.

Q. Do you recall testifying at the last occasion and I'm happy to provide you with the transcript, but



I was asking you questions about whether or not the truck was facing a different direction. So, the dump truck was facing a different direction and you commented to me that you, meaning 'me', was not there or you weren't there is what you said, do you recall saying that?

A. I remember.

Q. Okay. And so your position is that I am mistaken or I don't know the direction that the dump truck was facing 'cause I wasn't there and you were, correct?

A. That's right.

Q. So, why is it then, Ms. Campbell, that you won't allow us to have somebody come onto your property and take photographs and measurements that could assist all of us who weren't there?

A. I already provided you with a scaled drawing of the property with the positions of the rocks and the description, and I've testified to the description and the position of the rocks or the position of the truck on the rocks. I've told you that exactly what happened, and that the most - the position of the truck, the way that it was in March it wasn't necessarily exactly in by inches. I don't think there would be any added value if you're taking any additional measurements. I don't understand why you would need additional measurements.

Q. But if - there could be some value if it would assist His Honour in determining this case, is that something you would agree with, that you would allow somebody to come onto your property?

A. Yeah, I'm not convinced that it would be of any value.

Q. Okay. So because you've made the decision that it won't be of any value you're not prepared to allow

*not scaled drawing  
there prior and she  
made them up*

*Bingo*

somebody to come onto your property to take measurements and pictures, is that correct?

A. That's correct, it's my choice, isn't it?

Q. You understand that this won't cause any damage to your property, right?

THE COURT: Is this an application of some sort? Like, is the purpose of this cross in order to convince the witness to do this or to get an Order from the Court, or is it on credibility? Like, what's the purpose of this cross-examination?

MS. HYSLOP: Sure, if I could ask that the witness step out of the courtroom while I discuss that.

THE COURT: Sure.

...WITNESS LEAVES THE COURTROOM...

THE COURT: The witness is now out of the courtroom and while we're talking about this, I mean, ordinarily in circumstances like this where there's a witness under cross-examination I would have expected if you wanted those things that one would have gone through the Crown and if not gotten them and then maybe make an Application to the Court.

MR. FAVERI: I've been kept in the loop, so to speak, Your Honour, but I was reluctant to communicate at all, directly or indirectly because she's under cross.

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

THE COURT: All right, fair enough, so, that leaves that concern that I have, but like what's the purpose of this cross-examination?

5 MS. HYSLOP: The purpose, Your Honour, I'm just looking for the reference; Your Honour may recall. The last occasion, Your Honour, when I was questioning Ms. Campbell about the positioning and I was questioning her about in particular how it would be possible for the dump truck to be positioned the way that she's saying based on the photographs because it was my position that when you were looking at the photographs in particular the one where there's the boards and the ruts of where the back wheels of the truck are stuck, and you compare that to 10 the rocks that are in the picture, my position to her was that the truck would have to be too - would be very, very short and Your Honour and I'm just going to look for the reference in it. Your Honour questioned me during that 20 questioning of Ms. Campbell about how it could be that I could ask her those types of questions when we don't know the angles that the pictures were taken. I'll just find it for Your Honour 'cause I know that I flagged it. On page 115, Your Honour - sorry, 114, I apologize, of the cross-examination of Ms. Campbell. When I'm questioning Ms. Campbell about the length of the plank and questioning her about how we compare how wide the tires are and whatnot, and Your Honour said,

30

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

"Counsel, can we, I mean, I appreciate your line of questioning but I mean we've got a photograph that's taken here from whatever angle it's taken. What can we say about how long or how close things really are?"

And then I continued on, 'Well, I absolutely agree with Your Honour that the angles are a bit difficult to look at. I'm going to change it to the next photo but my point is we can use here some of the pieces of wood, some patio stones even the jack itself which is in the background to try and measure, to try and estimate the distance between where Ms. Campbell is saying the front axle was and where she's putting the back axle. But I see that Ms. Campbell has disagreed which is fine. My position is, Your Honour and I...."

I'll allow, of course, my friend to object.

I've filed expert notice, I have an expert prepared to go to the property and take measurements to try and reconstruct this scene for Your Honour because as I was trying to do so with the pictures that we do have Your Honour made a very valid point that we can't tell because of the angles of the photographs. This witness is coming before Your Honour testifying that she's adamant that the truck was pointing a certain way which is entirely crucial to this particular case. If that element - if Your Honour does not believe what Ms. Campbell is saying about the direction of the truck then her whole account is wrong and the allegation that

Mr. Atkinson drove directly at her falls.

Mr. Atkinson position or sorry, I'll start maybe just by saying, I questioned Raymond Summerfield about the position of the truck and he put the truck in the opposite direction. He said the truck, the dump truck, was pointing towards the road. So, this is a live issue in this case. I will be making submissions to Your Honour that if this witness is being truthful and if she's reliable and credible she would be volunteering to allow us to go onto her property or allow an expert to go onto her property in order to conclude this issue or to make final measurements, to be able to come to a conclusion before Your Honour that this is not possible that the truck was facing this way or that she is in fact, they would affirm her, if she's telling the truth. An expert report could say, yes, it's possible and so, that's my position, Your Honour, it comes from what Your Honour said at page 114 of my cross-examination of Ms. Campbell on the last occasion which triggered me to try and go about getting an expert for this. And so, I'm putting it to the witness because it's all I can do. Your Honour has heard her say that she believes it's her decision about whether or not she has consent and I don't know of any authority that would allow Your Honour to order her to allow us onto her property or order her to disclose these pictures. Your Honour has heard what she said so I feel that all I am left to do is to make

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5        submissions to Your Honour at the end of the day  
with respect to how this plays on her  
credibility. You know, if this is a jury case  
I'd be asking that the judge take a view of the  
area, that might be the only way I'd ever be  
allowed to go onto the property. So, that's the  
line of questioning that I'm pursuing at this  
time, Your Honour.

THE COURT: Mr. Faveri, any comments?

10        MR. FAVERI: I guess there's two streams of  
thought going through my head, neither of which  
might be correct. But with regard to the photo  
that might be something like failure to call a  
witness which sometimes results in an adverse  
finding if a witness is easily producible by one  
side or the other. But the other stream of  
thought is, it's a piece of property and there's  
nothing compelling Ms. Campbell to produce it or  
not to produce it, it's her choice, and she's  
given an explanation as to why she's chosen not  
to and in the end that's something you can weigh  
if you're assessing her credibility. Those are  
the two streams on that one. When it comes to  
questioning about whether or not Ms. Campbell  
should permit representatives of the defence on  
her property, I think that's a different can of  
worms because that kind of property is one,  
treated differently in our law, in the Criminal  
Code for one. But also, there may be personal  
feelings of safety at stake by, and I appreciate  
it's not Mr. Atkinson who will be going on the  
property, but it would be people connected to

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20  
25  
30

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 him working for him. And in the end it's simply  
her right to exclude people, anybody from her  
property, anyone she chooses to. I don't know  
that you can be critical of her exercising that  
right anymore than you can be critical of an  
accused person exercising their right to  
counsel. So, I don't know that - and the other  
thing is this happened in 2008 and it's now 2014  
and I don't think the charges were laid until  
2010. So, the chances of that and I appreciate  
rocks probably don't move except with heaves of  
the frost but I don't know that the property is  
going to be exactly the same as it was back  
then, and she's right she did produce a scale  
15 drawing which I think became an exhibit. So I  
don't know what's to be made of anymore cross-  
examination on that point but those are my  
thoughts.

20 THE COURT: So I take it, Ms. Hyslop, there's no  
application of any sort coming for an order of a  
court with respect to a view or disclosure or  
anything, this is simply cross-examination for  
me to assess with everything else on the  
credibility of the witness.

25 MS. HYSLOP: Yes, Your Honour.

THE COURT: All right, that's fine. Yes,  
please.

...COURTROOM CLERK PAGES WITNESS TO COURTROOM...

30 ...WITNESS ENTERS COURTROOM...

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

MS. HYSLOP: I'd ask Your Honour for that letter, I still have more questioning in this area but I'd ask for that letter to be marked as an exhibit, Your Honour?

THE COURT: Any comments, Mr. Faveri?

MR. FAVERI: That's fine.

THE COURT: All right. What number are we at please, Madam Clerk?

COURTROOM CLERK: Six.

THE COURT: Six, Exhibit 6.

EXHIBIT NUMBER 6: Letter dated April 11th, 2014 from Ms. Hyslop to Deborah Lynne Campbell - produced and marked.

CROSS-EXAMINATION BY MS. HYSLOP CONTINUED:

Q. I was asking you questions, Ms. Campbell, about confirming that you understood that having somebody come onto your property would not cause any damage to your property, do you understand that that's the case?

A. That's what you're saying, yes.

Q. Okay. And do you understand that it's a process that wouldn't take a great deal of time.

A. I don't know how long it would take you didn't tell me that.

Q. Okay. If I indicate to you that it doesn't take, it won't take maybe more than an hour or so, does that change your position, is it something you would agree to allowing somebody onto your property?

A. I really don't want to. Am I forced to do that?

Q. No, no one's going to force you.



Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 A. I really don't see the point of it; I really don't want somebody there. I find this whole process very traumatizing as it is without having people coming right to my house. Who knows what they're going to look at while they're there. I just don't want people at my property, I don't understand why there's any point to it.

Q. You're involved in the Model 'A' Club or your father is, is that correct?

A. Yes.

10 Q. Okay. Do you sometimes have groups of people come to your property as part of the Model 'A' Club, they'll bring their cars and their setups are on the back portion of the property?

A. Yes.

15 Q. How many people come to those types of events?

A. Well, it varies, depends on how people have that day available. It can upwards of 30, 40 people.

20 Q. And some of those people you would know they're fellow members of the club.

A. I would know all of them.

Q. Nobody ever brings friends or family members that you hadn't met before.

25 A. I don't think so, I know everybody that's ever been there.

Q. Now, the rocks, the rocks are still there, correct?

A. Yes.

30 Q. All right, those are big rocks, they're hard to move.

A. They're more like boulders than rocks.

Q. Right. I think that you had testified at one point, I think on the last occasion that you had, I think, put some sort of figurine or something up on one of the rocks but otherwise the rocks are in the same position.

A. I don't think the figurine will make any difference at all to the rocks.

Q. I'm going to suggest to you, Ms. Campbell, that the real reason you don't want somebody coming on to your property and taking those measurements is because it would prove that the version of the events that you are giving is false, would you agree with that?

A. Absolutely not. What I have given to the Court is a copy - is a scaled drawing to the best of my ability, I measured it myself and as far as I am concerned, it is accurate. It's certainly accurate enough to give a good indication of where the truck was in relation to my house and it certainly supports what I've testified here to. There is no way I in any way would try to do any kind of false drawing or present anything like that to the Court and try and put it off as if it was, if it was true if it wasn't true. Why would I do that?

Q. So, if having somebody come onto your property would settle this issue, why is that not something you want to do?

A. Because I feel I - because I find that it's intrusive, I don't want - and unnecessary. And all you're going to try and do is delay this whole process longer than necessary just because you want to delay it for no other reason, I can't see what your purpose is.

Q. Well, I've told you what the purpose is, right? I've told you that this will assist me, I think it will assist His Honour in understanding what happened that day

because we weren't there, so, I've told you what the purpose is. It's just that you disagree with that.

A. Well, you told me, you told me the purpose was to prove that I was trying to lie which I don't think is a valid purpose. I don't think that - it's certainly not the case so why would I agree to it?

MS. HYSLOP: Madam Clerk, I'm wondering if you could, I don't remember the exhibit numbers. There is a scale diagram - nope, I don't - I think it's a rather detailed - maybe, perhaps I could have - those are the only diagrams that we have, I guess, okay. Okay, I'm showing the witness, Your Honour and Mr. Crown, Exhibit 4 and Exhibit 1(A) - are these the scales - is one of these the scaled diagram that you're talking about?

A. Well, these are photocopies.

Q. Okay. If we look at Exhibit 4, is this a photocopy of what you're saying is a scaled diagram?

A. I have the diagram that I have, it's in my purse back....

Q. I wonder, Your Honour, if the witness would be permitted to get that, what she's talking about.

THE COURT: That's fine. Madam Clerk, can I see Exhibit 1? Just the big one, the big - Ms. Hyslop, maybe....

MS. HYSLOP: It's very noisy next to the microphone.

THE COURT: And that's the exhibit she's looking at.

MS. HYSLOP: Okay, thank you, Your Honour.

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

A. Yeah, that's the one - that's the photocopy of it.

MS. HYSLOP: Q. Right and so the other exhibits, for example, Exhibit 1(A) that I'm showing you it's just a reduced version of part of that.

A. That's right, that's what it looks like.

Q. That - okay. So, this, Exhibit 1 is the scaled diagram that you're talking about.

A. Right.

Q. Nowhere on this document is there a scale in terms of an inch on this diagram equals a foot, for example, is that correct?

A. That's true.

Q. So, when you're saying it's to scale....

A. It means I took measurements and I converted the measurements on a piece of graph paper and then my dad drew this on the drafting table.

Q. Okay. And so, where all of these rocks are positioned, are those all drawn to scale as well?

A. Well, the rocks may not be exactly to scale but they're certainly positioned in the right spots.

Q. Okay. And the dump truck that you've got, there's a....

A. We put that on after, I believe, and I think that that is not necessarily the scale of the dump truck, it may not be to scale.

Q. Okay. So, you say that the rocks - now, when you say the rocks are in the positions that they're - that reflect where they actually are, each one of those rocks you're saying you drew specifically where they are on your property.

A. Correct.

Bingo

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

Q. Okay. But the rocks may not be to scale.

A. Right.

Q. And the shape of the rocks, are those identical to what you actually see?

A. Not necessarily.

Q. And the dump truck has been drawn on there but that's after the fact and that's therefore not to scale or measured.

A. Right.

Q. Okay. What is the distance from your - the top of the house - sorry, there's a front door on the house that would be where your parents entered into, correct?

A. The front door is where the arrow is indicating...

Q. Okay.

A. ...the front entrance is there.

Q. What I'm pointing on the diagram to a little rectangle that's just off, it's on the right hand - just right of the middle of the page.

A. So, that's the northwest corner of the house.

Q. Okay. There's a diagram or sorry, there's a box there, a rectangle there, does that depict something?

A. There is a window well there.

Q. Okay. So, the window well which is that rectangle that's attached to the shaded part of the house where there's diagonal lines on the house.

A. Correct.

Q. Okay. How far is it from that window well to the road, to County Road 50, what's the distance?

A. Well, you're asking me to remember something off the top of my head. If I recall correctly it's about 66

feet but I would have to go back to my, to my measurements that I took at the time.

Q. Where the dump truck is positioned on the rocks where you've drawn it here on the diagram, how far is that from the road?

A. Well, if this whole thing is 66 feet I would say it's about 40 feet from the road.

Q. Where you have it positioned on the rocks, could you see it from the road?

A. Yes.

Q. Okay.

A. Because the road isn't blocked, there's trees here but there's a hill that goes down so anybody could see this. The road's here at the far left-hand side of this diagram, anyone could see this. Policemen were there, they could've seen the truck but they didn't write it down in their notes that it was there.

MS. HYSLOP: Does Your Honour wish to have the diagrams back?

THE COURT: No, no, that's fine.

MS. HYSLOP: Q. You just went through a bit of an exercise, Ms. Campbell, where I showed you that scaled diagram you talked about and you confirmed that there's no actual scale on the diagram, right?

A. Right.

Q. You mentioned that you had taken measurements and put them on, or you had drawn it on graph paper and that assisted you in coming, or having your father, I guess, come up with the scaled diagram, correct?

A. Correct.

Q. Do you have those measurements anywhere?

A. I probably have them still at home.

Q. Because this is what I'm saying, right?  
Allowing somebody else to come onto your property to measure those rocks which you haven't necessarily measured would assist us in understanding some of the pictures that have now been entered as exhibits, that's my point. So, your position remains that you don't feel that it's necessary or that it would add anything to this case, is that correct?

A. It's my feeling, yes, but....

MS. HYSLOP: Madam Clerk, can I see - there's a photograph of - I wonder if it might be easier if I could just see the photographs. Thank you. Actually, Madam Clerk, if I could have Exhibit 1 back as well, please. Thank you.

Q. I'm going to put Exhibit 1 down in front of you which is the diagram here and I'm showing you now Exhibit 3(D)(i).

MS. HYSLOP: I'll just give that to my friend so he knows which one I'm talking about.

MR. FAVERI: Thank you.

MS. HYSLOP: Q. So, this is an exhibit where you've drawn how the truck was positioned on the rocks, okay? Do you see that there?

A. Yeah.

Q. Now, there is a rock where you've described previously where the front, either axle or differential, it looks like it's the axle but you had talked previously about the differential being stuck on a rock. Can you show me on your diagram, which rock that large rock is?

A. Which rock on here do you want me to show you?

Q. Yeah, I want you to tell me, so, the rock that we see this purple outline of the truck on top of the

*the front axle  
is not stuck  
on the rock it is  
anything, would  
be for the  
- Rock*

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

largest rock which is in the forefront of the picture between the two front wheels as you've previously described. I'm wondering if you can tell me where that rock is located on this picture. I'm sorry, on Exhibit 1.

A. Well, I believe it's under the truck.

Q. So, we can't see it at all on this picture.

A. Right, as far as I can figure out, I'm not - it's - it is difficult to go from picture to - because the picture's got perspective and the drawing is two dimensional.

Q. Okay. So, you're not able to assist me with identifying which rocks we can see in these photographs with your scale diagram, do you agree with that?

A. Yes.

Q. Okay.

A. Really, the problem that I'm having is that the, the important part of the whole process is that it was stuck on a rock. The fact that there's several rocks there really isn't - not that relevant to me in my recollection of what happened that night. He drove that truck fast enough and hard enough to get it stuck on a rock and it sat there, he couldn't get it off again. It doesn't really matter to me which rock it was. He drove that thing at me and that's why it got stuck on a rock. Where the rocks were positioned or where the truck was positioned is really not as relevant as the fact he did that. If you want to bring somebody to my house and measure rocks, go ahead. — — — — — *Bingo*

Q. So, does that mean you're changing your position?

A. I don't want to change my position but I feel like I'm being forced to. I mean, the fact is that it doesn't really make any difference where those rocks are, the truck was stuck hard enough on there, he drove it fast enough



and hard enough to get it stuck on a rock and he tried his best to get that rock - that truck off of that rock for several days pulling it with a pickup truck and he was unable to get it off of their myself - himself - my dad and I had to do it and we did it.

Q. I understand that. No one can force you, I think we've all agreed in this courtroom when you weren't here, that no one can force you to allow somebody onto your property, take measurements and photographs.

A. Okay.

Q. That's your right, you don't have to allow us to do that. You know because I sent you a letter and we spoke on the phone that I'm requesting that you allow me to have a defence expert come onto your property and take those measurements and take photographs. Your decision, what I'm asking you, is this something you will agree to?

A. And then I'd have to come back to court again.

Q. There's a possibility that that may be the case.

THE COURT: Let's take a recess.

R E C E S S

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

THE COURT: Actually, ma'am, would you mind just waiting outside for one moment?

...WITNESS EXITS COURTROOM....

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 THE COURT: So, the question has been asked and I guess we're all interested in the answer rather, but the question that I have for you is let's assume she says she will agree to have someone come onto the property, what's the next step from your perspective?

10 MS. HYSLOP: If that were to be the case, I don't actually think, Your Honour, she would - I think I could finish my cross-examination with her, I think she's been adamant to Your Honour that this is the way the truck was facing and that her opinion wouldn't change even if confronted with an expert report. So, she likely would not have to come back, we could continue on with the trial but I would need to have an expert go out there; he's retained, he's ready to go. The difficulty that I'm in with Your Honour is that it was Your Honour's comments that prompted me to try and get this expert arranged and I made efforts. In advance of today of trying to facilitate that in getting that going in advance of today as I've gone through now with Your Honour and with this witness. So, my concern is Mr. Atkinson getting the best defence he can have and I think that this is a crucial issue for Your Honour's determination here. That really changes the whole case if it's proven through the use of an expert that her account is not true, it's not possible that she's wrong, then that is going to be a key issue for credibility and for the entire case because her evidence, it's her

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Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 testimony about all of these allegations, all of  
the charges that Mr. Atkinson is facing really  
as it comes down to it. So, it would absolutely  
cause delay if that's Your Honour's question, I  
would be prepared to finish her cross-  
examination because I don't think it's necessary  
to put the expert report to her once it's  
completed because I don't think she's going to  
change her opinion.

10 THE COURT: Any thoughts, Mr. Faveri at this  
point? I realize it's perhaps a little bit  
speculative since we haven't heard the answer  
from the witness but....

15 MR. FAVERI: Sorry, I didn't hear all of what  
you said. I heard that you wanted my thoughts  
but I didn't hear after that.

20 THE COURT: Well, I realize that it may be a  
little bit premature, speculative, since we  
haven't heard the witness' answer but I'm just  
trying to figure out what we go on from there.  
Or do you want to wait until....

25 MR. FAVERI: My first thought is because  
Ms. Campbell said she felt that she was being  
pressured, if there's duty counsel in the  
building it might be wise for her to be able to  
get some legal advice because I can't give it to  
her, and Ms. Hyslop can't give it to her. After  
that, I guess, I'll say this, I know Ms. Hyslop  
has suggested it, it's been disagreed with that  
this would be a helpful exercise to send an  
expert onto the property. I'm not convinced it  
would be helpful, I don't know how it would be

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5        helpful, and if I can put it this way, I don't  
think the police would be able to get a - I  
guess it would be a general warrant to be  
permitted to or judicially authorized to go to  
the property and take measurements. I just, I  
don't understand how it's going to help.

Sometimes you just have to work with what you're  
given and that's how I understood Your Honour's  
comments. Anyways, that's what I'm thinking.

10       THE COURT: Ms. Hyslop, what do you think about  
      Mr. Faveri's comment about giving Ms. Campbell  
      an opportunity to speak to duty counsel? I  
      don't know if one's available, quite frankly, on  
      Wednesday they're pretty scarce in this building  
      or pretty busy.

15       MS. HYSLOP: I don't have any issue with that,  
      Your Honour, and we could provide a copy of the  
      letter to Ms. Campbell so that she could take it  
      to duty counsel. I do have comments, Your  
20       Honour, with respect to my friend's comments  
about whether or not this would be useful. Your  
Honour, hasn't asked me for those comments but I  
do have comments about that but I'll wait to  
hear from Your Honour. I don't have any issue  
25       if Ms. Campbell wishes to get independent legal  
      advice if she can find a lawyer here today or  
      duty counsel today. I do think that  
      Mr. Atkinson is entitled to an answer from this  
30       witness because if she does say, "yes" - she may  
      say, "no" and then I'll be asking Your Honour to  
      make adverse credibility findings against her on  
      that basis. If she says, "yes" then I think it

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5 is something that needs to be pursued. And if  
she is feeling pressured, I feel I've explained  
to her that we've all agreed that she doesn't  
have to do this. And I've tried to explain to  
her why I'm asking her to agree and why it would  
be relevant and I think that I've demonstrated  
even when she's referring to the scale diagram  
how that doesn't actually assist us when looking  
at those pictures. I - like, I said, served my  
10 friend with an expert notice outlining the areas  
that this - that my proposed witness would  
testify to. I could see about getting further  
information if it would satisfy my friend about  
what this witness, what this potential expert  
witness would be able to do in terms of offering  
it to the Court but I don't know if that  
necessarily helps us along because this is a  
defence request. It's defence, potential  
defence evidence that I'm indicating to Your  
Honour is relevant to this case.

20 THE COURT: Can we get the witness back in,  
please.

25 ...COURTROOM CLERK PAGES DEBORAH CAMPBELL TO  
COURT...

...DEBORAH CAMPBELL RE-ENTERS COURTROOM...

30 THE COURT: Okay, Ms. Campbell, when we left off  
last in court you had been asked whether you had  
changed your mind about agreeing to let a  
defence expert come and make some measurements  
of your property. And we've paused so I thought

Deborah Lynne Campbell - Cr-ex. by Ms. Hyslop Cont'd.

5           it might be a good idea to just give you an  
          opportunity to think about that. The question I  
          expect is going to be put back to you and you  
          can answer that question. It's entirely up to  
          you whether you wish to do that or whether you  
          don't wish to do that but it seems as well to me  
          that you are probably feeling a little pressure.  
          Is it the circumstance where you would, if you,  
          before that question is put to you, take an  
10          opportunity to see if you can speak to a duty  
          counsel in the building or some other lawyer or  
          are you prepared to carry on?

15       DEBORAH CAMPBELL: Your Honour, the only  
          question that I have in my mind is whether it  
          would help you or not. If it would help you  
          then I would agree to it, if it wouldn't help  
          you then I don't see the point in it. That's  
          really where I'm, that's where I'm going.

20       THE COURT: Well, I'm certainly not going to  
          answer that question for you right now but in  
          the circumstances here then I guess what we'll  
          do is we'll just carry on, I'll let the question  
          be put to you and you answer the question as  
          best and honestly as you can, okay?

25       DEBORAH CAMPBELL: Okay.

          THE COURT: Okay.

CROSS-EXAMINATION OF DEBORAH CAMPBELL BY MS. HYSLOP CONTINUED:

30       Q. Okay, so, Ms. Campbell, the final question I  
          have is whether or not you will agree to having a defence  
          expert come onto your property, take measurements and  
          photographs of the rocks and of the driveway.