OFFICIAL TRANSCRIPT

No. 021064076P1

THE PROVINCIAL COURT OF ALBERTA

HER MAJESTY THE QUEEN

v.

C. BRADLEY PEARCE and DEREK MCINTYRE

T R I A L
(Excerpt)

Edmonton, Alberta
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Transcript Management Services, Edmonton

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INDEX

1 Excerpt of proceedings taken at Trial in the Provincial Court
2 of Alberta, Law Courts Building, Edmonton, Alberta
3 ----------
4 *April 1, 2003 2:00 p.m. session
5 The Honourable Judge Schollie — Provincial Court of Alberta
6 P. MacKenzie, Esq. — For the Crown
7 R. Davidson, Esq. — For the Accused Pearce
8 A. Pringle, Esq. — For the Accused McIntyre
9 C. McNeil Fortier — Court Clerk
10 ----------
11 *TAM NGUYEN, sworn, examined by Mr. MacKenzie
12 Q Mr. Nguyen, it's really important that you keep your
13 voice up, okay? If you could please face towards His
14 Honour, like turn sideways and face towards His Honour.
15 Thank you very much.
16 How old a man are you, sir?
17 A Twenty-four years.
18 Q Okay. And what level of education do you have?
19 A I've got a business degree from the University of
20 Alberta.
21 Q What sort of work do you do?
22 A I'm an accountant full-time and a part-time caseworker
23 with the John Howard.
24 Q Okay.
25 THE COURT CLERK: Would you like a glass of water?
26 A Please.
27 MR. MACKENZIE: I'll just wait for a minute while

1 Madam Clerk gets the witness some water, sir.
2 Q MR. MACKENZIE: How long have you been working
3 part-time with the John Howard Society?
4 A About two years now.
5 Q Were you working for them in June of 2001?
6 A I was.
7 Q And what sort of work do you do for the John Howard
8 Society?
9 A Part-time caseworker night shifts and usually 3 to 11
10 shifts.
11 Q Okay. Where?
12 A Where?
13 Q At a halfway house --
14 A At a halfway house.
15 Q Okay, what's the name of the halfway house?
16 A Independence Apartments.
17 Q That's here in Calgary, Alberta?
18 A Edmonton, Alberta.
19 MR. DAVIDSON: I think you're in the wrong city,
20 Mr. MacKenzie.
21 Q MR. MACKENZIE: I'm sorry, old habits die hard.
22 And that's in Edmonton, Alberta?
23 A That is correct.
24 Q Okay. Do you know a person named Jennifer Roles?
25 A I do.
26 Q A person named Candace Trach (phonetic)?
27 A I do.

1 Q A person named Tim Yee (phonetic)?
2 A I do.
3 Q How do you know those people?
4 A Co-workers.
5 Q Co-workers where?
6 A At Independence Apartments.
7 Q Thank you. What about a fellow named Dan Ritter?
8 A I do. He's my boss.
9 Q I'm sorry?
10 A He's my boss.
11 Q Boss --
12 A (INDISCERNIBLE)
13 Q -- with John Howard?
14 A Yeah.
15 Q Okay. As a caseworker do you have some training for
16 working at a halfway house, sir?
17 A I do.
18 Q Some training in first aid for example?
19 A I do.
20 Q Okay. What about in things like maintaining physical
21 control of parolees and that sort of thing? Do you have
22 that sort of training?
23 A I do, yeah.
24 Q Okay. What about training in things like reporting lines
25 of authority for parole violations, that kind of thing?
26 A I do.
27 Q Okay. And what's your understanding or what's your

1 training with respect to reporting parole violations, can
2 you advise me?
3 A If I believe there is a violation I contact the on-call
4 and then from there they'll give me further instructions
5 to call the regional duty officer and from there they'll
6 give me instructions.
7 Q Okay. Familiar with a person named Lyndon Chambers?
8 A I am.
9 Q And how is it that you know Lyndon Chambers?
10 A He was a resident at Independence Apartments.
11 Q Is that in and before June of 2001?
12 A That's correct.
13 Q Okay. And how often did you have an opportunity to
14 interact with Mr. Chambers?
15 A That he'd stop by the office to say hello or every time I
16 did a round around the facility I would say hello to him.
17 Q So I think you said that you're a part-time worker --
18 A That is correct.
19 Q -- with John Howard? So, for example, were you having
20 contact with him during his stay in the halfway house
21 weekly, monthly, daily?
22 A Um, perhaps two or three weekends out of the month.
23 Q Are you familiar with and recognize his voice?
24 A I do.
25 Q Now I understand that you worked at the Independence
26 Apartment in the late evening and early morning hours of
27 June 29/June 30 of 2001, is that correct?

1 A I believe so, yeah.
2 Q Did you have a partner you were working with on that
3 particular day?
4 A I believe it might have been Tim Yee.
5 Q Okay. On this particular night did you have opportunity
6 to see Lyndon Chambers?
7 A Which night are you referring to?
8 Q The 29th of June, 2001.
9 A I don't remember.
10 Q During your time at Independence Apartments in June of
11 2001 and prior, had you seen Mr. Chambers intoxicated?
12 A Following the incident or --
13 Q No, before.
14 A Before the incident?
15 Q Yes.
16 A Um, I have seen him intoxicated. It might not have been
17 in June though.
18 Q Intoxicated on one occasion or more than one occasions?
19 A On one occasion.
20 Q On the occasion you saw him intoxicated was he -- was his
21 parole suspended?
22 A Um, yeah, some police officers did come and pick him up
23 that night.
24 Q Now do you know Constables Pearce and McIntyre who are
25 before the court today?
26 A I do.
27 Q Can you point them out for me?

1 A McIntyre is sitting to my right and Pearce to his -- to
2 his right.
3 MR. MACKENZIE: Thank you. Indicating Pearce and
4 McIntyre for the record, Your Honour.
5 THE COURT: That's right.
6 Q MR. MACKENZIE: I'm going to ask you about an
7 incident at the Independence Apartments in a moment, but
8 before I do that, Pearce and McIntyre, have you seen them
9 on one occasion or on more than one occasion?
10 A More than one occasion.
11 Q And how familiar are you with them?
12 A I only know them by name.
13 Q Okay. But, you know, do you see them a couple times a
14 month, that sort of thing?
15 A Perhaps. Maybe once a month.
16 MR. MACKENZIE: Madam Clerk, could we put Exhibit
17 1 in front of this witness please?
18 Q MR. MACKENZIE: Sir, this is a booklet of four
19 photographs. If you would just look at them and tell me
20 if you can identify them?
21 A That's the -- the first photo is the front entrance.
22 Q Of the Independence Apartments?
23 A That is correct.
24 Q Thank you.
25 A Looking from the second floor.
26 Q Yes?
27 A The second photo is again the entrance looking from the

1 basement.
2 Q Right.
3 A The third photo again is from the basement.
4 Q Okay.
5 A And the fourth photo is the resident phone down --
6 located downstairs in the basement.
7 Q All in the Independence Apartment?
8 A That is correct.
9 Q Okay. Now I understand that you had opportunity to
10 witness an incident involving Pearce and McIntyre and the
11 removal of Mr. Chambers from the halfway house, is that
12 correct?
13 A That is correct.
14 Q Okay. Could you start at the beginning and tell me first
15 what you heard and then what you saw. Okay?
16 A Okay. Um, I was arriving for my shift or for my 11 to 7
17 shift.
18 Q Yes.
19 A As I was walking in I noticed that Lyndon Chambers -- he
20 might have been intoxicated. Actually he was
21 intoxicated. And at that time he kept on coming back to
22 the office and asking pretty obscure questions.
23 Q Okay.
24 A And at that point I wasn't really briefed of the
25 situation yet.
26 Q Okay.
27 A And then I believe --

1 Q Were you eventually briefed about the situation?
2 A I was.
3 Q And who briefed you?
4 A Jennifer Roles.
5 Q Okay. Please continue.
6 A And then from there I -- I usually do a routine round of
7 the facility before I start my shift.
8 Q Yes?
9 A And at that point she was doing up her report.
10 Q Right.
11 A And I believe Lyndon was -- was passed out.
12 Q Where was he passed out?
13 A At the resident phone downstairs.
14 Q Okay. At that point was it your understanding that
15 police had been called?
16 A I was unaware that the police were called and I only knew
17 when they showed up.
18 Q Okay. I take it you probably finished your round at the
19 facility, is that right?
20 A That is correct.
21 Q Okay. When do you next have opportunity to interact with
22 Mr. Chambers and the police?
23 A During my round I did notice that he was downstairs on
24 the phone so I -- I escorted them down -- down there to
25 show them where he was.
26 Q You escorted who down there?
27 A Constable Pearce and McIntyre.

1 Q Okay.
2 A Just to show them where he was.
3 Q Okay. And at that time did police arrest Mr. Chambers?
4 A I did lose sight of them.
5 Q Okay.
6 A And at that point I do believe that they did proceed to
7 arrest him.
8 Q Okay. Now at some point do you hear something that you
9 believe is between McIntyre and Pearce and Chambers?
10 A Yeah, um, I did hear -- it was -- could have been a
11 slapping noise or so and then there was just some verbal
12 interaction between Lyndon Chambers and the constables.
13 Q Were you able to identify Lyndon Chambers' voice?
14 A Yes, I was.
15 Q And what was Lyndon Chambers saying?
16 A He was saying, what are you hitting me for?
17 THE COURT: I'm sorry, I missed that, witness?
18 A What are you hitting me for?
19 Q MR. MACKENZIE: Did you hear him say anything
20 else?
21 A Not that I could make out definitively.
22 Q Okay. Did you hear a response to what are here -- what
23 are you hitting me for?
24 A I think the sense -- sentence that came before that was
25 -- could have been before or after, might have been, so
26 you're going to be a smart ass.
27 THE COURT: I'm sorry, witness?

1 A So you're going to be a smart ass.
2 THE COURT: Thank you.
3 Q MR. MACKENZIE: Now are you able to say who spoke
4 those words?
5 A I am not.
6 Q When you went down and escorted the officers to Mr.
7 Chambers was there anyone else around?
8 A No, there wasn't.
9 Q And would you have recognized Mr. Chambers' voice if he
10 spoke those words?
11 A I would have.
12 Q Okay. Okay, what do you hear next?
13 A Um, I believe they're attempting to arrest him by giving
14 him his rights.
15 Q Right.
16 A And then from there I heard some ratcheting noises, could
17 have been handcuffs.
18 Q Okay.
19 THE COURT: Crown, the witness is speaking
20 very low in kind of a mumble. I'm having trouble, I'm
21 sorry.
22 MR. MACKENZIE: Yes, sir.
23 Q MR. MACKENZIE: If we could start again. If you
24 could try and match my voice, that would be great.
25 A Sure.
26 Q Okay? It's a big room. And would you answer again? I
27 had asked you what you heard next and you had described a

1 couple things. Would you speak up and answer again?
2 A I heard some ratcheting noises, could have been perhaps
3 handcuffs. And the constables were giving him his
4 rights.
5 Q Do you hear Mr. Chambers speak any other words?
6 A He was muttering some words. It's difficult to decipher
7 them.
8 Q Okay. Did he appear to be -- for example, to be swearing
9 at the police officers?
10 A Yes, he was.
11 Q Okay, what's the next thing you hear?
12 A Um, some dialogue between the officers and Lyndon
13 Chambers.
14 Q Okay. What do you hear? Tell me.
15 A I hear Lyndon saying, you're a real tough guy for hitting
16 a guy in handcuffs. And -- and then the -- and then I
17 believe one officer said, um, bring it on, tough guy.
18 And then I believe I heard Mr. Chambers say, I'm not
19 stupid enough to fight a cop.
20 THE COURT: I'm sorry, again?
21 A Oh --
22 THE COURT: I'm not --
23 A I'm not stupid enough to fight a cop.
24 THE COURT: Okay.
25 Q MR. MACKENZIE: Where are you when you are hearing
26 these things, can you tell me?
27 A On top of the stairs.

1 Q Do you still have Exhibit 1 in front of you, sir, or did
2 you give it back to Madam Clerk?
3 Now can I ask you when you say you're on the top
4 of the stairs, do you mean the stairs depicted in
5 Photograph 1?
6 A That is correct.
7 Q Okay. So you're actually around a corner if I'm
8 following these pictures correctly?
9 A Yeah, that's correct.
10 Q I take it then you could not see what was going?
11 A That is correct.
12 Q All right. After you hear not stupid enough to fight a
13 cop, what's the next thing that you hear?
14 A I believe they proceeded to bring him up the stairs and
15 then from there I had a better visual.
16 Q Did you move at all or did you stay in the same place?
17 A Um, from Exhibit 1 I probably took about two steps down.
18 Q Okay.
19 A Two or three steps down.
20 Q Now I see as I look at Exhibit 1 there appears to be a
21 portion of the wall that's cut away, is that correct?
22 A That is correct.
23 Q So if you move steps down could you see around the wall
24 there?
25 A Yeah, um, I saw them as they were bringing -- bringing
26 him up the stairs.
27 Q Okay. And as they were bringing him up the stairs could

1 you tell whether or not he was handcuffed?
2 A No, I couldn't.
3 Q When he comes into your view, when Lyndon Chambers comes
4 into your view does he appear to be resisting the police
5 officers in any way?
6 A No.
7 Q Do they appear to have to assist him at all in getting up
8 the stairs?
9 A It seemed like they were just dragging him up the stairs.
10 Q Okay. I'm just going to stop you for a moment and I want
11 to ask a little bit about Lyndon Chambers' sobriety,
12 okay? When you first came in you had an opportunity to
13 see him, is that correct?
14 A That is correct.
15 Q Did you assess his sobriety at that point in time?
16 A I'm sorry, could you rephrase that?
17 Q Sure. When you initially saw Mr. Chambers when you first
18 came on your shift, did you make an assessment for
19 yourself about how drunk he was?
20 A Yes, I did.
21 Q Okay. And how drunk was he?
22 A Um, he was drunk enough to stumble through the stairs
23 while he was walking.
24 Q Okay. Now I want to take you back to the two police
25 officers and Mr. Chambers. At some point do they get to
26 the top of the stairs?
27 A They do.

1 Q Okay. What do you see when they get to the top of the
2 stairs?
3 A Um, both officers were on either side.
4 THE COURT: Sorry?
5 A Both --
6 THE COURT: One officer on each side?
7 A Yeah.
8 THE COURT: M-hm.
9 A And then from that point all I can remember next is he
10 was on the ground with one officer attempting to put
11 handcuffs on him.
12 Q MR. MACKENZIE: Is this on a landing area that's
13 he's --
14 A Yes.
15 Q -- on the ground?
16 A Yeah, that's correct.
17 Q Are you able to say which officer was trying to put
18 handcuffs on him?
19 A Constable McIntyre.
20 Q Okay. And was that successful? Did he get handcuffs on
21 him?
22 A I believe so.
23 Q Prior to putting the handcuffs on at any point did you
24 observe either one of the police officers strike Mr.
25 Chambers?
26 A I did.
27 Q Okay. Which police officer struck Mr. Chambers?

1 A Constable Pearce.
2 Q And when do you see Constable Pearce strike Mr. Chambers?
3 At what point?
4 A As he is escorted up the stairs.
5 Q And what does Constable Pearce strike Mr. Chambers with?
6 A His hand.
7 Q What part of Mr. Chambers' body is struck?
8 A Head location.
9 Q I'm sorry?
10 A His head location.
11 Q Okay. When you say his head is -- does it hit his face
12 or top of his head? The back of his head? Do you know?
13 A I couldn't decipher that.
14 Q Do you know which side of his head it strikes?
15 A I believe it's his left side.
16 Q When you say Constable Pearce struck Mr. Chambers with
17 his hand, was the hand closed? Was it open? Can you
18 advise me?
19 A I believe it was open.
20 Q And what, if anything, does Mr. Chambers do when he's
21 struck? Can you tell me?
22 A There was no reaction, no.
23 Q Did he appear to react in any way by struggling or trying
24 to fight with the police or anything like that?
25 A He may have been struggling in the sense that -- he was
26 just escorted on either side by -- by the two officers
27 and actually it's really difficult for me to tell if he

1 was struggling or not.
2 THE COURT: Sorry, what --
3 A It was difficult for me to tell if he was struggling or
4 not.
5 Q MR. MACKENZIE: Okay. Okay, so we have this blow.
6 Then Constable McIntyre, I take it, takes him to the
7 ground and handcuffs him, is that correct?
8 A Yes.
9 Q Okay. What do you see next?
10 A He's on the ground and he's screaming profusely.
11 Q What is he saying?
12 A He's saying, please stop, you're going to break my arm.
13 Q Okay.
14 A Um, and then in the mix of all that I see contact between
15 Constable Pearce's hand and Lyndon's head and then his
16 head hitting the metal post.
17 Q The metal post of what?
18 A The front entrance by the door.
19 Q Now let's be clear about this. Is this -- was what you
20 saw something like incidental contact where Constable
21 Pearce is moving and the head simply goes into the door
22 or does he apply force to the head to go into the door?
23 A It's hard for me to say what the intent was.
24 Q I'm not asking about the intent.
25 A Um, there was contact between his hand and Lyndon's head.
26 Q Yes?
27 A Followed by his head hitting the post.

1 Q Okay. Is there any sort of wrestling or anything like
2 that going on when this occurs?
3 A Constable McIntyre was on his back or had his knee on his
4 back.
5 Q Constable McIntyre has Mr. Chambers -- has his knee on
6 Mr. Chambers' back?
7 A That is correct.
8 Q Mr. Chambers is on the ground when this happens?
9 A Yeah.
10 Q Are you able to demonstrate for me what you saw?
11 A Sure.
12 Q Okay. Do you want to demonstrate on me?
13 A Um, what did you want me to demonstrate?
14 Q I want to see how the hand contacted the head and how it
15 moved. Are you able to show me that?
16 A It just -- it all happened so quick, um --
17 Q So you're not able to demonstrate?
18 A No, I'm not.
19 Q If I can take you back to the pictures again. Exhibit 1.
20 And take you to -- perhaps to Picture 2. That shows us
21 most of the door, do you agree?
22 A Yeah, yes.
23 Q Okay. What part of this door did Mr. Chambers' head come
24 in contact with?
25 A The lower right-hand side.
26 Q Okay. Did it actually hit the door or did it hit the
27 frame?

1 A The frame.
2 Q Okay. And where -- let me -- let me withdraw that
3 question and try again. Can you tell me approximately
4 how big this landing is?
5 A It's probably about eight feet by four feet.
6 Q Okay. And how far did Mr. Chambers' head move to contact
7 the door approximately? Can you tell me?
8 A From his original position?
9 Q Yes.
10 A Perhaps half a foot.
11 Q Half a foot, okay. Okay, now is this where this whole
12 episode ends, the physical episode ends?
13 A It is.
14 Q Okay. Are you involved at all in providing some first
15 aid to Mr. Chambers?
16 A I am.
17 Q Okay.
18 A But at the time I -- I thought it would be in his
19 interest to let Tim Yee. He's apprentice -- he was
20 taking some nursing courses so I let him attend him.
21 Q Right. Mr. Yee did the principal stuff, is that right?
22 A That is correct.
23 Q Okay, but what I want to know is did you look at Mr.
24 Chambers' injuries?
25 A I did.
26 Q What injuries did you see on Mr. Chambers?
27 A Um, there was some blood on his face.

1 Q Yes?
2 A Quite a bit of swelling. And a --
3 Q Where was the swelling on his face?
4 A I believe there is some above his eye.
5 Q Yes?
6 A Might have been some on his cheek. And there was a large
7 gash on his head.
8 THE COURT: I'm sorry, what was the last part?
9 A A large gash on his head.
10 THE COURT: All right. You're indicating the
11 right-hand side of his head?
12 A Um, I can't remember what side right now.
13 THE COURT: Okay. How large is large?
14 A Perhaps two or three inches.
15 THE COURT: Thank you.
16 Q MR. MACKENZIE: And I take it the gash on the head
17 is where the blood was coming from?
18 A I believe so.
19 Q Now I understand when there is an incident like this at
20 the halfway house that it's typical to fill out a report,
21 is that correct?
22 A It is.
23 Q And did you do that in this case?
24 A Jennifer provided -- provided the report for -- for the
25 incident of him coming back intoxicated.
26 Q Right.
27 A I followed that up with another report.

1 Q Okay. And who did you fol -- I'm sorry, let me try
2 again, sir. Who did you forward that report to?
3 A Dan Ritter.
4 Q And the substance of your report, what did it focus on,
5 can you tell me?
6 A The events of that night starting with -- starting with
7 the dialogue near the resident phone between Lyndon and
8 the officers up to -- up to the point where he's escorted
9 out.
10 Q Right. Focuses on the arrest, is that correct?
11 A That is correct.
12 Q Did Mr. Ritter follow up on your report by -- with any
13 discussions with you?
14 A He just gave me some support and -- and advised me of --
15 of what he was going to do.
16 Q As Mr. Chambers was coming up the stairs did you note any
17 injuries to his face or his head?
18 A Not at that time I couldn't.
19 Q Okay, now is that you couldn't see or you didn't see and
20 -- or there were not any injuries?
21 A I couldn't see.
22 Q Okay. And in your report to Mr. Ritter did you express
23 concern about the nature of the arrest?
24 MR. DAVIDSON: Well, I think that's an improper
25 question, Your Honour.
26 MR. PRINGLE: I agree, sir, it's self-serving
27 evidence.

1 MR. MACKENZIE: Well, I guess the purpose that I
2 want to put it in for is whether or not this witness took
3 a step towards this prosecution through this report and
4 whether -- I will have a question for Mr. Ritter about
5 whether he took steps as a result of information he got
6 from this witness.
7 THE COURT: I think the witness is pretty well
8 restricted to what he saw.
9 MR. MACKENZIE: Yes, sir.
10 THE COURT: As opposed to what he did.
11 MR. MACKENZIE: All right, sir, thank you.
12 I believe that I'm finished, sir, I'm just going to
13 be one moment.
14 Q MR. MACKENZIE: This all happened here in
15 Edmonton, Alberta, sir?
16 A That is correct.
17 MR. MACKENZIE: Okay. Please stay there, my
18 friends will have some questions for you.
19 THE COURT: Cross-exam. Mr. Davidson?
20 *Mr. Davidson cross-examines the witness
21 MR. DAVIDSON: Thank you, Your Honour.
22 Madam Clerk, would you be good enough to provide Mr.
23 Nguyen with the photographic exhibit, Exhibit 3? And
24 could you also permit Mr. Nguyen to have access to the
25 Photographic Exhibit Number 1, so he has both exhibits,
26 Madam Clerk?
27 Q MR. DAVIDSON: Mr. Nguyen, I am going to ask you

1 a series of questions about Photographic Exhibit 3 and
2 you're more than welcome to take the paper clip off of
3 the series of photographs. And when you turn each
4 photograph over you will see that it has a number on the
5 reverse side. So to assist you I'm going to be referring
6 to them by the number that's on the reverse side and then
7 asking my questions of you.
8 The first photograph, Photograph 1 of Exhibit 3,
9 depicts a telephone? Hopefully your photographs are in
10 order.
11 A No, they're not, but yeah, okay, I -- I have it.
12 Q And would I be fair in saying that Photograph 1 of
13 Exhibit 3 depicts what I understand to be the residents'
14 telephone in the basement area of Independence
15 Apartments?
16 A That is correct.
17 Q And would I be fair in saying that it was in the location
18 of this particular telephone that Mr. Chambers fell
19 asleep?
20 A That is correct.
21 Q And if I could take you please to Photograph Number 2 of
22 Exhibit 3 and that photograph depicts a chair and two
23 doors. Am I fair in saying that that location shown in
24 Photograph 2 is basically adjacent to the resident
25 telephone?
26 A Yes.
27 Q And Photograph 3 of Exhibit 3 simply depicts a close-up

1 of the residents' door that is shown on the far left of
2 Photograph 2 of Exhibit 3, namely Apartment Number 106.
3 Is that a fair statement?
4 A It is.
5 Q And it's my understanding that there are approximately 30
6 to 40 federal parolees or residents in Independence
7 Apartments and there would have been approximately that
8 number of residents on June 29th, 2001. Is that a fair
9 statement, sir?
10 A It is.
11 Q And I understand that those residents would have varied
12 criminal records. For example, some might have records
13 that were primarily for violence, others might have
14 records that were primarily drug related, and others
15 might have records that were primarily property related.
16 Would that be a fair general description of the records
17 of the residents in the halfway house?
18 A It is.
19 Q If I could take you please, Mr. Nguyen, to Photograph 4
20 of Exhibit 3.
21 A Okay.
22 Q And would I be fair in saying that Photograph 4 of
23 Exhibit 3 is a photograph taken in the basement area of
24 Independence Apartments and we are looking to the west up
25 the flight of stairs that will lead to the west entrance
26 doorway?
27 A That is correct.

1 Q And would I be fair in saying, Mr. Nguyen, when you look
2 at Photograph 4 of Exhibit 3 that the open doorway that
3 appears at the forefront of that photograph, that the
4 resident phone is off to the left of that open doorway?
5 A That is correct.
6 Q Now it's your memory that you took the two police
7 officers downstairs to show them where Mr. Chambers was
8 asleep by the resident phone, is that correct?
9 A I don't believe I took them all the way downstairs. I
10 took them part of the way and they proceeded down the
11 stairs.
12 Q That's what I was going to ask, sir, whether or not you
13 simply basically gave directions as to where they could
14 find Mr. Chambers and the two police officers then went
15 into the area where the resident phone was located?
16 Would that be fair?
17 A That's correct.
18 Q And so would I be fair in saying that you may have gone
19 down a few steps from the top of the first landing near
20 the office area insofar as telling the police officers
21 where Mr. Chambers was at the resident phone, but you
22 basically remained entirely on the top landing near the
23 office area with the possible exception of walking down
24 one or two steps from the top landing?
25 A That's correct.
26 Q And then if I could take you please to Photograph Number
27 5 of Exhibit 3, does that photograph depict the top

1 landing and to the immediate right just beneath the fire
2 extinguisher depicted is the doorway that leads into the
3 office area?
4 A That's correct.
5 Q Now insofar as where you were throughout most of the
6 events involving the actual arrest of Mr. Chambers, would
7 I be fair in saying that you were either on the top
8 landing as depicted in Photograph 5 of Exhibit 3 or
9 walked down one or two steps from the top landing?
10 A That's correct.
11 Q And would you agree with me that to get to the telephone
12 area, that is, the resident phone area, one would have to
13 walk down from the first floor landing to the landing by
14 the west door, then walk down another landing into the
15 basement proper and then proceed in an easterly direction
16 along the hallway in the basement until finally making a
17 right-hand turn or a turn to put you moving in a
18 southerly direction to head towards the resident phone?
19 A That's correct.
20 Q So the resident phone is a reasonable distance away from
21 the top landing depicted in Photograph 5 of Exhibit 3.
22 Is that a fair statement?
23 A Um --
24 Q It's one full flight down, for example, and then you've
25 got to move a fair distance east in the hallway to get to
26 it?
27 A I think the photos are a little bit deceiving. There's

1 only about four or five stairs.
2 Q Well, there are other photographs that may be of greater
3 assistance to you. For example, the next photograph,
4 Photograph 6, depicts more of the steps going down. Not
5 all of them, but would you agree with me that that again
6 depicts the top landing and the fire extinguisher where
7 the office is situate and then we've got the photograph
8 capturing the stairs coming down to the west door plus
9 capturing in part the stairs that lead into the basement?
10 And if I can direct your attention to Photograph
11 Number 7 of Exhibit 3, we can see the staircase going
12 from the basement area up to the west door. Is that a
13 fair statement?
14 A Yeah, that is fair.
15 Q And if we count the stair risers we have one, two, three,
16 four, five, six, seven risers to get us up to the top
17 landing. Is that a fair statement?
18 A It is.
19 Q And then again looking at Photograph Number 7, the
20 resident phone would be again off to the left of the open
21 doorway in the basement hallway. Is that a fair
22 statement?
23 A No, to the right.
24 Q To the right, I'm sorry.
25 A Yes.
26 Q And then if we take a look at Photograph Number 8, that
27 again depicts the same general area? That is, the open

1 door and the phone booth would be off of that open door
2 and we've got the stairs coming out of the basement to
3 the landing at the west door. Is that a fair statement?
4 A It is.
5 Q And finally, Photograph Number 9 depicts the stairs in
6 part coming out of the basement area up to the west
7 landing. Is that a fair statement?
8 A It is.
9 Q And would you agree with me that the staircase is not
10 that wide? I mean by that I'm suggesting it's possibly
11 30 to 36 inches in width from where the banister is to
12 the wall.
13 A Perhaps.
14 Q And for three people to be side by side going up that
15 staircase would be difficult. If you follow my logic? I
16 mean there's not that much room for three men at the same
17 time to try and walk up that staircase side by side? Is
18 that fair?
19 A That's fair.
20 Q Now just before you began your duties at 11 o'clock on
21 June 29th, 2001, you saw Mr. Chambers and formed the
22 opinion that he was visibly drunk, is that fair?
23 A That is fair.
24 Q And you were also present in the office area on the first
25 floor level and had an opportunity of overhearing
26 conversation between Jennifer, Candace, and Mr. Chambers?
27 Would that also be fair?

1 A That is fair.
2 Q And would I be fair in saying that on many occasions you
3 heard Mr. Chambers says words to the effect that he was
4 going to leave the halfway house?
5 A That's correct.
6 Q And would I be fair in saying that on many occasions
7 either Jennifer or Candace said to him, no, you cannot
8 leave because if you do you are unlawfully at large?
9 A They mentioned to him that if he did leave he would be
10 unlawfully at large, but they didn't permit -- I mean
11 they didn't tell him not to go.
12 Q So neither Jennifer or Candace said, do not leave, but
13 they warned him that if he did leave he would be
14 considered unlawfully at large?
15 A That's correct.
16 Q And would I be fair in saying that to some extent these
17 words of warning from either Jennifer or Candace fell on
18 deaf ears? At least insofar as Mr. Chambers continued to
19 say he was going to leave the halfway house?
20 A That's correct.
21 Q And would I be fair in saying that on several occasions
22 either Jennifer or Candace again repeated to him, if you
23 do leave you will be charged with being unlawfully at
24 large?
25 A I believe I heard them say it once.
26 Q Now am I fair in saying you also heard some questions
27 being asked by Mr. Chambers, apparently directed towards

1 either Jennifer or Candace, that you considered to
2 somewhat obscure? For example, who is going to take my
3 TV, or something similar to that?
4 A That is correct.
5 Q And then another question similar to the effect of who's
6 going to take my computer, or words to that effect?
7 A That is also correct.
8 Q And would I be fair in saying that this behaviour that
9 was being exhibited by Mr. Chambers was somewhat unusual?
10 I mean what he was saying was somewhat nonsensical, it
11 didn't appear to connect to anything that was occurring?
12 A That's correct.
13 Q And do you recall Mr. Chambers specifically asking of
14 either Jennifer or Candace, have you called the police
15 yet?
16 A I do my -- I remember that.
17 Q Now did you form the opinion that Mr. Chambers'
18 hostility, at least as it was being directed towards
19 Jennifer and Candace, was increasing when you saw him
20 begin to kick the walls and slam the doors?
21 A I never felt that he was getting more hostile, but he did
22 slam the door.
23 Q And kick the walls?
24 A I don't recall him kicking the wall.
25 Q Would you agree with me it appeared that Mr. Chambers was
26 becoming more agitated?
27 A At that point I believed that he was just going to go and

1 pass out somewhere or perhaps just go up to his room and
2 sleep.
3 Q Well, he was clearly angry or unhappy at a minimum?
4 A Correct.
5 Q And you did not know what his intentions were because he
6 certainly hadn't said what they were other than he was
7 going to leave the facility? That's what he was saying
8 repeatedly was he was leaving the halfway house?
9 A That's correct.
10 Q So he certainly wasn't saying to Jennifer or Candace, I'm
11 going to go up to my apartment and go to sleep? That's
12 not what he was saying to them?
13 A No.
14 Q And it appeared from what you were seeing of the reaction
15 of Jennifer and Candace that they were becoming somewhat
16 concerned?
17 A I believe so.
18 Q Now when you were at the top of the stairs as shown in
19 either Exhibit 1, Photograph Number 1, and listening to
20 what was happening downstairs, am I fair in saying that
21 you were catching snippets of the conversation and
22 clearly you couldn't overhear verbatim word for word
23 whoever was speaking?
24 A That's correct.
25 Q And so the comments that you can recall today formed a
26 part of an ongoing dialogue that was occurring
27 downstairs?

1 A Perhaps.
2 Q I mean you're not able to say one way or another? I mean
3 it's difficult, that's all I'm trying to establish, sir,
4 for you to hear an entire conversation considering where
5 you were standing and considering that there may have
6 been three parties speaking at various times or
7 alternatively all three speaking at the same time? Would
8 that be fair?
9 A It is.
10 Q And so you're hearing parts or snippets of the
11 conversation and you're hearing certain noises and you're
12 attempting to -- if I can call it incorporate the noises
13 with the snippets of the conversation and form a mental
14 picture as to what's happening. Is that a fair
15 statement?
16 A That's fair.
17 Q And you will agree with me that that's a difficult task
18 for you or for anybody else?
19 A They were speaking pretty loudly --
20 Q Oh no, I'm not talking about the --
21 A -- (INDISCERNIBLE).
22 Q -- tone of the voice --
23 A Okay.
24 Q -- insofar as hearing the snippets of the conversation,
25 but I'm simply saying it's a difficult task to try and
26 create a mental picture out of some sounds and some words
27 heard?

1 A It is.
2 Q And I'm not for a moment quarreling with what you're
3 saying, I'm just simply trying to establish that you're
4 in a difficult position. That's all I'm trying to
5 establish insofar as accurately making these observations
6 when you're in a disadvantaged position. Is that fair?
7 A That's fair.
8 Q Now the first opportunity you really had to put together
9 sounds and actions was when people came into your line of
10 sight, where you could physically see them? Is that a
11 fair statement?
12 A It is.
13 Q And insofar as your ability to start to incorporate words
14 with actions, that opportunity first arose, if we take a
15 look at, say, Photograph Number 9 of Exhibit 3, near the
16 top of the staircase leading out of the basement. Would
17 that be fair?
18 A It would be.
19 THE COURT: Say yes or no.
20 MR. DAVIDSON: I beg your pardon, sir?
21 THE COURT: I wanted him to say yes or no.
22 MR. DAVIDSON: Oh, I'm sorry, Your Honour.
23 A Yes.
24 Q MR. DAVIDSON: Now we discussed a few moments ago
25 about the difficulty that there would be of having three
26 men abreast. And when I'm talking about three men I
27 don't want to mislead you, I'm talking about McIntyre,

1 Pearce, and Chambers, all moving up side by side. And I
2 think you'll agree that that would be difficult having
3 regard to the width of the staircase?
4 A Yes.
5 Q And would you agree with me it would be more difficult if
6 Mr. Chambers was resisting just to this extent -- I want
7 you to assume this for a moment -- he wasn't willing to
8 start moving his legs and walking up in a cooperative
9 manner, rather he was just sort of being a dead weight or
10 something of that nature? Assuming that to be the case
11 for a moment, would you agree it would be far more
12 difficult to move him up the stairs if he's not assisting
13 insofar as walking up on his own motion?
14 A Yes.
15 Q Now it would appear from the observations you make when
16 everyone arrives at the top of the landing that Mr.
17 Chambers was not handcuffed while going up the stairs?
18 A Yes.
19 Q And would I be fair in saying that there was, by your
20 memory, one officer who would have been on Mr. Chambers'
21 left-hand side going up the stairs?
22 A Yes.
23 Q Is that your memory that there was one officer on the
24 left-hand side, sir?
25 A Yes.
26 Q And could the other police officer have been slightly
27 behind Mr. Chambers and on the right-hand side of Mr.

1 Chambers?
2 A He could have been in front.
3 Q Or he could have been in front, all right. Now when we
4 get to the top of the landing by the west door, you
5 recall -- and correct me if I'm mistaken in my
6 understanding -- an open-hand blow directed towards Mr.
7 Chambers' head or region of his head?
8 A That's correct.
9 Q And I gather that when that open-handed blow was directed
10 Mr. Chambers remained unhandcuffed? That is, at the time
11 that that blow was directed he was not handcuffed?
12 A Yes.
13 Q And again I just want to speak for a few moments of the
14 events that happened in the -- at the top of the landing
15 by the west door. Would all of the events that happened
16 at the landing at the top of the west door, beginning
17 with this open-handed motion towards Mr. Chambers' head
18 who when he -- ultimately put up on his feet and it's
19 clear to you that he's now handcuffed and it's also clear
20 to you that he suffered some injuries, would all of those
21 events happen very, very quickly?
22 A Yes.
23 Q And again because of the rapidity of the events and the
24 movement of people, whether it's the police officers
25 moving about, Mr. Chambers moving about, or all three
26 people moving about, that it's difficult to discern
27 accurately what motions are being made by who and for

1 what purpose they may be made?
2 A Yes.
3 Q Now at the time this open-handed blow was directed do you
4 have a memory of Mr. Chambers then falling forward and
5 downwards?
6 A No, I don't.
7 Q Could that have happened in the speed of things
8 occurring? That is, that the blow is directed towards
9 the side of his head, that knocks him off balance and he
10 falls forward, and then the officer puts a knee on his
11 back and wrestles with the left hand in an effort to
12 handcuff the left hand?
13 A I don't -- I don't believe the blow was severe enough to
14 put him to the ground.
15 Q Would there be some uncertainty on that? I mean I'm just
16 -- again I'm not trying to -- you're there and I'm not
17 there. I'm just saying things happen quickly. Could he
18 have fallen forward with that blow and then the officer
19 was able to put his knee in his back and pull the left
20 hand around?
21 A Perhaps.
22 Q And the other officer who was on Mr. Chambers' right-hand
23 side was trying to get the right hand out so that it
24 could be handcuffed? Do you recollect that happening?
25 A I believe his hand was behind his back and then --
26 Q All right, but we have the officer on the left-hand side
27 who's dealing with the left hand, is that a fair

1 statement?
2 A It is.
3 Q And the officer who was either ahead or behind Chambers
4 going up the stairs on the right-hand side of Chambers,
5 that police officer is dealing with Mr. Chambers' right
6 hand?
7 A Correct.
8 Q Is that fair?
9 A That's fair.
10 Q And did it appear that what was happening is the officer
11 on the right-hand side of Mr. Chambers is trying to pull
12 the right hand around so that the officer who's on the
13 left-hand side, who's already cuffed the left hand, can
14 effect the handcuffing of Mr. Chambers' right hand?
15 A So are you saying that the -- the person on the left has
16 the handcuffs on?
17 Q No, what I'm saying is this, that the person on the
18 left-hand side, Mr. Nguyen, has been able to get Mr.
19 Chambers' left hand out from wherever it was, either
20 beneath his body or in front of him, and put a handcuff
21 on the left hand. So we have --
22 A While he's being escorted up the stairs?
23 Q Oh no, at the top the landing is what -- what I'm saying
24 this was happening.
25 A Oh. Okay, I'm sorry, you'll have to repeat the question.
26 Q No, I apologize --
27 A Okay.

1 Q -- if there's some confusion. Please, if I ask a clumsy
2 question or it's not clear what I'm asking please ask for
3 some clarification, I'll try and assist. I'm talking at
4 the top of the stairs now only and your observations that
5 you made when all three men are in this landing area in
6 front of the west door. That's where I'm limiting your
7 observations. And it's my understanding initially that
8 this landing area is not a large area, it's by your
9 recollection 4 by 8 feet possibly? So it's a relatively
10 small area, is that fair?
11 A It is.
12 Q And if we're not careful at the top of this landing area
13 we can fall backwards down the stairs?
14 A Perhaps.
15 Q Well, if you take a look at the -- at the photograph I --
16 I'm not trying to in any way mislead you, but if you take
17 a look at, say, Photograph 3 of Exhibit 1.
18 A Okay.
19 Q Photograph 3 of Exhibit 1 depicts the staircase up from
20 the basement, the landing, and the west doors, is that
21 fair?
22 A It is.
23 Q And I'm simply suggesting that if there's some sort of
24 struggling occurring at the top of the landing as
25 depicted in Photograph 3 of Exhibit 1, depending on the
26 motion of people, if you went backwards arguably you
27 could fall down the stairs?

1 A Sure.
2 Q Now just taking you again back to your position a step or
3 two down from the first floor landing on the staircase
4 watching what's occurring on the landing by the west
5 doors. That's the area where you see this open-handed
6 blow to Mr. Chambers' head that you described, is that
7 fair?
8 A It is.
9 Q And that's the area where you see the officer on the
10 left-hand side place a knee upon Mr. Chambers' back and
11 bring his left hand out and handcuff it? Is that fair?
12 A No, it's not.
13 Q You don't see the handcuffing occur at the top of the
14 landing?
15 A I'm sorry, I just -- I couldn't -- there was just some
16 noise up here and I couldn't concentrate on --
17 Q Sorry, I'll --
18 A -- yes, I'm sorry.
19 Q -- repeat the question.
20 A Okay.
21 Q At the top of the landing after this open-handed motion
22 you've described to the head of Mr. Chambers, am I fair
23 in saying the next event is basically the officer on the
24 left-hand side having Mr. Chambers on his stomach or on
25 his side with a knee in his back and putting a handcuff
26 on his left hand?
27 A I don't remember exactly what side and what hand but

1 that's -- that sounds likely that.
2 Q And while the officer on the left-hand side's attempting
3 to accomplish putting a handcuff on Mr. Chambers, am I
4 fair in saying the officer on the right-hand side is
5 trying to bring Mr. Chambers' arm around so that the
6 handcuff can be put on the right hand behind Mr.
7 Chambers' back?
8 A I don't recall that.
9 Q So you have no memory as to how the right hand came to be
10 handcuffed?
11 A No, I don't.
12 Q But obviously once Mr. Chambers was stood up it was clear
13 that he had been handcuffed both right and left hand
14 behind his back?
15 A That's correct.
16 Q And I'm not asking you to make any assumptions, but from
17 where the officer on the right hand of Mr. Chambers is
18 situate would it appear that he was --
19 A I'm sorry, could you repeat that again?
20 Q Sorry.
21 A Sorry.
22 Q In respect of the police officer who was on Mr. Chambers'
23 right hand --
24 A Okay.
25 Q -- would it appear more probable that he had brought the
26 hand about for it to be handcuffed? That is, the right
27 hand only I'm speaking of.

1 A Okay. It would be.
2 Q Now in respect again -- I just take you back to this blow
3 you saw to the head. Could this blow, the open blow to
4 the head, have caused Mr. Chambers to go forward and hit
5 the doors?
6 A This -- as they're walking up or as they're lying down?
7 Q No, no, I'm talking about the struggle that's going on at
8 the top of the landing, okay? Just before the left hand
9 of Mr. Chambers is handcuffed, I understand that you saw
10 a blow to the head at the top of the landing, is that
11 fair?
12 A I saw the blow as they were walking up the stairs.
13 Q Well, that blow was delivered near the top of the stairs
14 by the landing by the west door, was it not?
15 A It was.
16 Q And what I'm asking is with things happening so quickly,
17 could Mr. Chambers have gone forward as a result of that
18 blow and contacted any part of the metal-clad doorway at
19 the top of the landing by the west door?
20 A No.
21 Q You don't think that could have happened?
22 A No.
23 Q Now could you be in error as to who delivered this
24 open-handed left blow? Could your memory be inaccurate
25 in that respect as to which police officer delivered that
26 open-handed blow?
27 A No.

1 Q So you're certain it was Pearce who delivered that blow?
2 A I am.
3 Q And if it subsequently transpires -- I'm asking this as a
4 hypothet now, just a hypothetical, that you are mistaken,
5 would you agree that that will affect other parts of your
6 observations?
7 MR. MACKENZIE: No, I'm sorry, sir, I object to
8 that question. That's --
9 THE COURT: I guess that's a hypothetical.
10 MR. MACKENZIE: It's hypothetical and also asks to
11 talk about credibility, which is your job, not the
12 witness'.
13 MR. DAVIDSON: Oh no, I'm talking about the
14 witness' own observations.
15 THE COURT: I think you're --
16 MR. DAVIDSON: If he was mistaken in that one.
17 THE COURT: -- asking a hypothetical question
18 which is usually of not much probative value.
19 MR. DAVIDSON: I won't pursue it.
20 THE COURT: Thank you.
21 Q MR. DAVIDSON: Now continuing with your
22 observations that you made at the top of the landing by
23 the west door. Mr. Chambers, by your recollection of the
24 observations may have been struggling?
25 A May have been.
26 Q And what was Mr. Chambers' position, by your memory, when
27 his head collided with the door? How was he positioned

1 in the landing area?
2 A He was face down on the ground with one officer
3 positioned on top of him.
4 THE COURT: Face down on the floor?
5 A Yeah.
6 THE COURT: M-hm.
7 Q MR. DAVIDSON: And how far back was he from the
8 doors at this time?
9 A Perhaps a foot.
10 Q So if I understand you correctly, he is on his stomach
11 with his face facing the carpeted landing approximately
12 one foot away from the west door? That is Chambers'
13 position?
14 A That is correct.
15 Q With the one officer on the left-hand side attempting to
16 handcuff the left hand?
17 A Perhaps.
18 Q Well, that's what you saw? He had his knee on his back
19 and he was pulling his left hand? Is that not what you
20 saw?
21 A I saw his knee on his back. I could not see if he was
22 pulling his hand to handcuff him.
23 Q So you couldn't determine whether the handcuffs were
24 being applied then or what was happening?
25 A I believe they were.
26 Q All right, so your belief is that the handcuffs were
27 being applied at the time the officer had his knee on

1 Chambers' back?
2 A That is correct.
3 Q Now where is the other police officer?
4 A I believe he was standing -- or low to the ground and
5 there wasn't enough room for them to both be on his back
6 so he was near his head near his shoulder.
7 Q So is it your memory that the other police officer is
8 standing with his back, that is the police officer's
9 back, to the west door on the right-hand side of Mr.
10 Chambers near his shoulder area?
11 A I'm sorry, I was just a little confused with the right
12 and the left.
13 Q The left-hand side would be if you're looking at
14 Photograph 1 of Exhibit 3, the area over towards where
15 the poster appear on the glass and on the metal. That is
16 if Chambers was lying on his stomach face down.
17 A Okay.
18 Q Does that accord with your memory that that would be the
19 left-hand side?
20 A It does.
21 Q And so looking at Photograph 1 of Exhibit 3, where is
22 Chambers positioned, if you can use this photograph at
23 all, on the landing area when you're making your
24 observations from near the top of the stairs?
25 A Where is Lyndon's position?
26 Q Yes. Where is Mr. Chambers' position? I mean is he --
27 is he directly in front of where the staircase ends

1 coming down from the first floor landing or is he over to
2 the right on the other side of the white partition and
3 banister that would lead down to the second floor
4 staircase?
5 A He's laying flat on his back with his head -- with his
6 head facing north and his feet south.
7 Q And would you agree with me that north would be to the
8 right of Photograph Number 1?
9 A That's correct.
10 Q So north would put his head -- if we take a look at
11 Photograph Number 3 of Exhibit 1, north would put his
12 head towards the heating unit at the top of the stairs?
13 A That's correct.
14 Q And his feet, if we go back to Photograph 1 of Exhibit 1,
15 would be to the left-hand side of Photograph 1 of Exhibit
16 1, extending past the doorway?
17 A I'm sorry, his feet might not have been to the left of
18 Photograph Number 1 there, they could have been
19 positioned somewhere else. I -- I was just certain that
20 his head was near the right-hand side of that frame. I'm
21 not sure where his feet were.
22 Q Well, that's what I'm trying to determine. Because I
23 mean if his head was over by the heat duct it wouldn't be
24 by the right-hand frame of the door either? Do you
25 follow me?
26 A Um, it could have been perhaps that his head was near the
27 right-hand side of the frame and his foot could have been

1 over top of the stairs.
2 Q Well, that would put him not in a north-south direction,
3 that would put him in an east-west direction.
4 A That could have been.
5 Q So I'm just trying to understand your observations and am
6 I fair in saying that it's difficult for you to answer
7 these questions? I mean things are happening quickly and
8 you really don't know the exact position of Mr. Chambers
9 or the police officers? Would that be fair?
10 A That's fair.
11 Q And again asking you what you saw vis-a-vis Mr. Chambers'
12 head and the contact with the metal frame, you don't
13 recall how that came to pass insofar as what the officer
14 was attempting to do or what it looked like he was
15 attempting to do when Chambers' head hit the metal frame?
16 A I don't know what he was attempting to do, that's
17 correct.
18 Q You don't know whether he was trying to pull the right
19 arm out to get it handcuffed or what he was up to at this
20 time when it hit the metal frame?
21 A That's correct.
22 MR. DAVIDSON: Thank you, I have no further
23 questions.
24 THE COURT: Counsel like to cross-examine at
25 this time or do you want a break?
26 MR. PRINGLE: I'll just take a bit of a break.
27 THE COURT: Okay, we'll take ten minutes,

1 thank you.
2 (ADJOURNMENT)
3 THE COURT: Thank you. You understand you are
4 still under oath, sir?
5 A I do.
6 THE COURT: Yes, thank you. Cross-exam?
7 MR. DAVIDSON: Your Honour, I spoke with my
8 learned friend Mr. MacKenzie and I'm going to ask this
9 Honourable Court if I might be given leave to ask one
10 further question.
11 THE COURT: That's fine, yes.
12 MR. DAVIDSON: I appreciate that I did close my
13 cross-examination.
14 MR. MACKENZIE: And I have no difficulty, sir,
15 with that.
16 THE COURT: Thank you.
17 MR. DAVIDSON: I thank my friend.
18 Q MR. DAVIDSON: Mr. Nguyen, do you recall an
19 interview with Detective Topma of the Edmonton Police
20 Service that was tape-recorded?
21 A I do.
22 Q And have you ever had an opportunity of seeing that
23 tape-recorded interview, sir?
24 A I did.
25 MR. DAVIDSON: Your Honour, might I approach the
26 witness?
27 THE COURT: Certainly.

1 Q MR. DAVIDSON: Mr. Nguyen, I want to show you
2 what is numbered page 26 of 34 of the interview and just
3 ask if you'd read from the beginning, Topma, down to Mr.
4 Nguyen, head.
5 THE COURT: You want him to read it to
6 himself.
7 MR. DAVIDSON: Yes, to read it to himself just so
8 he can refresh his memory and then I'll read it aloud,
9 Your Honour, so it goes into the record.
10 THE COURT: Thank you.
11 MR. DAVIDSON: I just want to have the witness
12 have an opportunity of reading it.
13 A Okay.
14 Q MR. DAVIDSON: Thank you, Mr. Nguyen. Now the
15 passages from page 26 of your tape-recorded interview
16 that I asked you to read begins with: Topma. Okay. And
17 go beyond that just -- maybe just read that -- the rest
18 of the statement.
19 Now would I be fair in saying that what Detective
20 Topma was asking you to do was read your incident report?
21 A That is correct.
22 Q And then, Mr. Nguyen, you respond: Walking up the stairs,
23 writer witnessed Constable McIntyre use his left arm to
24 strike Lyndon across the face. Okay, so, um, what did
25 you have to question me on? Detective Topma: So that's
26 actually one of the questions. It says -- or my question
27 is what did it look like when McIntyre used his left arm

1 to strike Chambers on the face? Mr. Nguyen: That was
2 like a open-handed that was. Detective Topma:
3 Open-handed? Some slap on the face? Mr. Nguyen: Head.
4 Now do you recall being asked those questions and
5 giving those answers?
6 A I do.
7 Q And were those answers true and accurate to the best of
8 your ability to give them when you had your interview
9 with Detective Topma?
10 A At the time that was the best I can remember.
11 Q And is that still your memory today or has your memory
12 changed?
13 A Um, I can't recall who struck Lyndon on the head.
14 MR. DAVIDSON: Thank you very much, sir.
15 THE COURT: Mr. Pringle?
16 *Mr. Pringle cross-examines the witness
17 Q Okay, I've just got a couple questions for you, Mr.
18 Nguyen.
19 You talked about Mr. Chambers being -- eventually
20 being down on the ground and they were -- they were
21 attempting to handcuff him, is that right?
22 A That's correct.
23 Q And when he was down on the ground I think you said that
24 he was on his back?
25 A On his front side, stomach.
26 Q Oh, you're saying front side?
27 A Yeah.

1 Q Okay. At some point I think you said he was on his back.
2 You don't remember that, eh?
3 A No, I don't.
4 Q And I just want to be clear, you -- when you first see
5 Mr. McIntyre you first see him, you know, after you hear
6 these sounds and you hear parts of the conversation and
7 everything like that, when you first see him, he's near
8 the -- is he -- he's on the landing or he's just about on
9 the landing?
10 A When I first see them?
11 Q Yeah.
12 A When I first see them they're walking up the stairs.
13 Just about.
14 Q Just about at the landing?
15 A Yeah.
16 Q Okay. And you don't see what's happening before that?
17 A I don't.
18 Q You didn't see what kind of dif -- you know, what type of
19 interaction they had before then?
20 A No, I didn't.
21 Q And you indicate that he was taken to the ground?
22 A They ended up on the ground. I didn't see them take him
23 to the ground.
24 Q You didn't see how they did that?
25 A No, I didn't.
26 Q But what you did see is that as soon as he's down on the
27 ground you see that they're trying to handcuff him?

1 A That's correct.
2 Q So it appeared -- appears that they're in the process of
3 trying to handcuff him when he's right on -- right -- as
4 soon as he gets down on the ground?
5 A That's correct.
6 Q And he was squirming around?
7 A I couldn't tell from my point.
8 Q Couldn't tell from your point of view?
9 A No.
10 Q No, okay. So it's hard to tell whether -- tell exactly
11 how he was moving at that point in time?
12 A That's correct.
13 Q Okay. And then after this is over the officers arrange
14 for medical treatment? They took him to a hospital?
15 A That's correct.
16 Q And did you notice whether there was other officers that
17 were called there?
18 A There was.
19 Q Yeah, they were -- do you know whether they were there --
20 do you remember seeing other officers there, do you
21 remember when they arrived, or you're not sure when they
22 arrived?
23 A I waited with Constable Pearce outside until the officers
24 arrived to pick up Lyndon.
25 Q Okay. Do you know whether an officer had been there
26 earlier though?
27 A No.

1 Q Another officer. You're not sure?
2 A No.
3 MR. PRINGLE: Those are the questions I have,
4 thank you.
5 THE COURT: Thank you. Anything arising,
6 Crown?
7 MR. MACKENZIE: Just one question arising.
8 *Mr. MacKenzie re-examines the witness
9 Q My friend Mr. Davidson has asked some questions about the
10 potential that any of Chambers, McIntyre, Pearce could
11 fall back down the stairs. Do you recall those
12 questions?
13 A I do.
14 Q Okay. Was there anything that you saw that suggested
15 that any of them were going to fall back down the stairs?
16 A No, I didn't.
17 MR. MACKENZIE: Thank you.
18 THE COURT: Agreed this witness could be
19 excused then?
20 MR. DAVIDSON: Yes, Your Honour.
21 MR. PRINGLE: Yes.
22 MR. MACKENZIE: Yes, sir.
23 THE COURT: Thank you very much for coming,
24 witness, you're excused, thank you.
25 (WITNESS STANDS DOWN)
26 ---
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1 *Certificate Of Transcript

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3 I hereby certify that the foregoing pages are a true and
4 faithful transcript of the contents of the proceedings
5 taken down by a digital recording device and transcribed
6 to the best of my skill and ability.
7 Dated at the City of Edmonton, Province of Alberta, this
8 19th day of September, 2003.

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13 D Beland

14 D. Beland

15 Transcriber

16 April 1, 2003 2:00 p.m. session

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