

Tuesday, 1st July 1997

THE CLERK OF THE COURT:

Are you Glen Robert Soames?

1. THE DEFENDANT: Yes.
2. MR. BOWLEY: Before matters are taken any further, might I just apply that my client have bail at any adjournments, unless your Honour indicates to the contrary?
3. JUDGE HUTTON: Yes. He can have bail starting from three minutes after the jury leaves court.
4. MR. BOWLEY: I'm much obliged.
5. MR. MOONEY: Your Honour is probably aware there is going to be video evidence in this case, and I shall be asking the jury to look at the whole of the video at some stage in the course of the evidence.
6. JUDGE HUTTON: Yes, I see. Presumably there will be another monitor for the jury to see there. I don't think they will be able to see very much from over there. We usually have a second one over here.
7. THE CLERK OF THE COURT: On video link but not very often do we have another one, but I can get another one for you.
8. JUDGE HUTTON: Oh, I see. Well, what do you say?
9. MR. MOONEY: Well, your Honour, it would be much better if they had a television close to them
10. JUDGE HUTTON: It is used on the video link but if it can be fixed up for this, it would be useful. At what stage are you going to play it?
11. MR. MOONEY: Your Honour, I was going to go play it in opening.
12. JUDGE HUTTON: Where is the machine?
13. THE CLERK OF THE COURT: I can get one of the security men to lift it for me.
14. MR. MOONEY: Can I give the reason why it would be better. It is not only what the video depicts, it is the oral contents of the video which are important. I don't know if they'll be able to hear it from over there.
15. JUDGE HUTTON: We usually have little speakers on the table too.

17. MR. MOONEY: Yes.
18. JUDGE HUTTON: I don't think your preparation is all it could be, Mr. Mooney.
19. MR. MOONEY: Our preparation was fine, but unfortunately
20. the court didn't act upon it.
21. JUDGE HUTTON: I see. Is there anything else to discuss while the machine is being brought along.
22. MR. MOONEY: Your Honour, I don't think there is anything
23. I can usefully address you upon at this stage.
24. I understand that we will not be sitting this afternoon or tomorrow morning.
25. JUDGE HUTTON: That's right. That being so, how long is the case likely to go on for?
26. MR. MOONEY: Well, your Honour, with a day taken out,
27. I would anticipate the jury going out Friday morning or Thursday afternoon perhaps.
28. JUDGE HUTTON: Any views, Mr. Bowley?
29. MR. BOWLEY: Certainly not before Friday morning. I can't
30. conceive of the prosecution case finishing before the end of tomorrow afternoon.
31. JUDGE HUTTON: Well, it may spill over into next week.
32. MR. BOWLEY: It is a possibility.
33. JUDGE HUTTON: We will see. The other thing, Mr. Mooney, is perhaps we had better just see and make sure
the jurors don't know any of these people.
34. MR. MOONEY: Your Honour, yes, that is a good idea.
35. JUDGE HUTTON: You have got quite a large number of witnesses to call, I expect.
36. MR. MOONEY: Your Honour, yes. There are witnesses -- Mr.
37. Duckworth potentially at this stage, I put it that way, could either be tendered or not dealt with at all. A Miss Prior
--
38. JUDGE HUTTON: I can't understand where she lives. Where is Kingsworth? It is not a name I know.
39. MR. MOONEY: Your Honour probably has better local
40. knowledge than I do, but I don't know where it is either.
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42. JUDGE HUTTON: And Kirkpatrick. Is he going to be a witness?
43. MR. MOONEY: Your Honour, no.
44. JUDGE HUTTON: I haven't got any address for him.
45. MR. MOONEY: I can indicate the witnesses who are to be
46. called.
47. JUDGE HUTTON: Yes, will you tell me.
48. MR. MOONEY: Yes, they are Duckworth, Prior -- that's at
49. page 5.
50. JUDGE HUTTON: Well, she is from Cheltenham.
51. MR. MOONEY: Aspinwall, page 8.
52. JUDGE HUTTON: Some distance from Cheltenham.
53. MR. MOONEY: Seabrook, page 12. There is a Mr. Main, who
54. appears in a notice of additional evidence dated the 10th February
55. JUDGE HUTTON: Is he local?
56. MR. MOONEY: Perhaps I could check on the rear of the
57. statement. Unfortunately it does not disclose his address on the statement I have. It is Cheltenham in fact. The
witness Tamey, page 15. Then two officers --
58. JUDGE HUTTON: Is that a notice of additional again. Did you say Taley?
59. MR. MOONEY: Tamey, your Honour. I think that is at page
15. Powell Tamey.
60. JUDGE HUTTON: Yes. It's misspelt somewhere. In the list of witnesses it is Miss Tammy Powell.
61. MR. MOONEY: Yes, your Honour, that sounds much more
62. likely, yes.
63. JUDGE HUTTON: Also Cheltenham, right.
64. MR. MOONEY: There are medical statements but they are all
65. to be read. They are not in dispute. I would anticipate that no difficulty will arise.
66. JUDGE HUTTON: Yes, and then there are police officers.

68. MR. MOONEY: Yes, your Honour. I don't know if your Honour has had an opportunity of viewing the video. I suspect you have not.

69. JUDGE HUTTON: I don't think so. Is there any need to?

70. MR. MOONEY: Well, your Honour is not in the ideal position to see either of the monitors.

71. JUDGE HUTTON: I will be able to see well enough, I think.

72. Can we have the jury panel in.

73. (Jury panel enter into court)

74. JUDGE HUTTON: I just want to see that you don't know

75. either the defendant or the principle witnesses in the case. The defendant is Mr. Glen Soames. Would you stand up, please, Mr. Soames. He lives at Village Road, Cheltenham. He was, on the night in question, a doorman at a nightclub called Club Mondo in Bath Road, Cheltenham. Any of you know him? (No response) Mr. Mooney, would you like to read out the names of civilian witnesses in this case?

76. MR. MOONEY: Your Honour, yes. Mr. Eaton Duckworth, miss Katherine Prior, Miss Jennifer Aspinwall, Mrs. Sheila Seabrook, Miss Tammy Powell, Miss Claire Braithwaite, PC Baldwin, DS Beard and DC Jamieson, and finally a gentleman by the name of Peter Main.

77. JUDGE HUTTON: Any of you know any of those? (No response)

78. thank you very much. Would you proceed then to swear them in.

79. (The defendant was given his challenges

80. and the jury was sworn)

81. CHARGE TO THE JURY

82. THE CLERK OF THE COURT: Members of the jury, the defendant Glen Robert Soames stands charged on an indictment with causing grievous bodily harm with intent. The particulars of the offence are that on the 11th July 1996 he unlawfully caused grievous bodily harm to Paul Steele, with intent to do him grievous bodily harm. To this indictment he has pleaded not guilty, and it is your charge to say, having heard the evidence, whether he is guilty or not.

83. JUDGE HUTTON: Yes, Mr. Mooney?

84. MR. MOONEY: May it please your Honour. I appear on behalf of the Crown. My learned friend Mr. Bowley appears on behalf of the defendant. Your Honour, before I open the

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matter, can I deal with one preliminary issue. Your associate has put one Count to this defendant. I was under the impression that the indictment had been amended to add a third Count contrary to Section 20.

JUDGE HUTTON: I see.

MR. MOONEY: It appears that has not been done. Might

I formally apply at this stage for that indictment to be amended to add a further Count?

JUDGE HUTTON: It has not actually been amended yet.

MR. MOONEY: I thought that it had. It seems it has not.

JUDGE HUTTON: Well, does this surprise you, Mr. Bowley? MR. BOWLEY: I hadn't heard of it before, your Honour, no.

JUDGE HUTTON: It seems sensible for the jury to have the two alternatives in front of them, I think.

MR. BOWLEY: I certainly don't dispute that.

JUDGE HUTTON: Alright. Well then, I grant leave for the indictment to be amended to add a second and alternative Count under Section 20. So that has not been drafted, I imagine.

MR. MOONEY: It has been drafted, your Honour, but it has not yet been put. You had better just show that to Mr. Bowley. I don't think there can be any dispute about that, but just as a matter of form, he'd better check it.

MR. BOWLEY: I have checked it, your Honour.

JUDGE HUTTON: He has not actually been arraigned on that, has he?

MR. MOONEY: Your Honour, no. Can he be arraigned on that Count?

JUDGE HUTTON: He must be arraigned first on that.

THE CLERK OF THE COURT: Will you stand up, please, Mr. Soames. Glen Robert Soames, you are charged on Count 2 of this indictment with inflicting grievous bodily harm, and the particulars of the offence are that on the 11th July 1996, you unlawfully and maliciously inflicted grievous bodily harm on Paul Steele. Are you guilty or not guilty?

THE DEFENDANT: Not guilty.

JUDGE HUTTON: Thank you, you can sit down again.

MR. BOWLEY: Well, I think he should be formally put in charge of the jury.

JUDGE HUTTON: Yes, perhaps he should be. I was just wondering if we should go through that step again, but yes, I think everything should be done properly. Better start again and put him in charge of the jury on the two Counts now.

CHARGE TO THE JURY

THE CLERK OF THE COURT: Members of the jury, the defendant Glen Robert Soames stands charged on this indictment on two Counts. On Count 1 he is charged with causing grievous bodily harm with intent, and the particulars are that on the 11th July 1996, he unlawfully caused grievous bodily harm to Paul Steele, with intent to do him grievous bodily harm.

On Count 2 he is charged with inflicting grievous bodily harm, and the particulars are that on the 11th July 1996, he unlawfully and maliciously inflicted grievous bodily harm on Paul Steele.

To these charges he has pleaded not guilty, and it is your charge to say, having heard the evidence, whether he is guilty or not of either of these Counts.

MR. MOONEY OPENS THE CASE FOR THE PROSECUTION

MR. MOONEY: Members of the jury, you have just heard negotiation over those Counts. Perhaps I could hand you a copy of the indictment, which has upon it both Counts, and I will explain to you what the prosecution case is in respect of both of them. It's likely to be one between two, I'm afraid.

You can see from that document that at first blush both of these Counts appear to be very similar. They are to this extent. In both of the Counts the victim is the same; a young man by the name of Paul Steele. In both Counts it is not in dispute that that young man has suffered grievous bodily harm; very serious harm. The difference in the two Counts is this; that in respect of Count 1, the Crown allege that this defendant, Glen Robert Soames, on the 11th July, caused that really serious harm to Mr. Steele, and that he intended by his actions to cause Mr. Steele really serious harm. That is the principle Crown allegation.

We say that on the 11th July, Mr. Soames, working as a doorman at Club Mondo, in Cheltenham, in a fit of anger and wanton violence, destroyed the life of Paul Steele by inflicting upon him massive brain damage, to such an extent that Paul Steele will never be the same again. That is the principle Crown allegation, and that is the allegation which the Crown say is made out by the evidence.

Why then is Count 2 on the indictment, and what is your approach to it? Count 2 is an alternative to Count 1. You cannot find the defendant guilty of both.

Ultimately you will be directed by his Honour, the learned judge, who is the sole arbiter of the law, in the way you should approach these two Counts, but in summary what happens is, if you feel that this defendant is not guilty of Count 1, you then go on to consider Count 2.

What is the difference in the allegations? Well, in a nutshell it is this: Count 2 reflects a situation whereby you feel that this defendant, without lawful authority or good cause, but without intent to cause really serious harm, did, by his actions, cause really serious harm to Paul Steele. It is something which you consider only if you find that you cannot find evidence that he intended to cause that harm.

It may seem a bit complicated at this stage, but as the trial progresses, the issues will become clearer and clearer. This case is unusual to this extent. You will see, on that television screen, the violence that was directed by Mr. Soames towards Mr. Steele. It does not happen often, but you will be in the best position possible to draw what inferences you can, and to come to what conclusions you can, from the video evidence you will see. It is disturbing and it is unpleasant. But it is the best evidence available, and it is that which I am afraid you will have to see, and it is that which I will play to you in a few moments. I will first set the scene of what it is you are going to see.

Paul Steele, on the 1st July, or this time last year, the 1st July, was a perfectly healthy young man. He socialised, as do other young men. He went out for an evening, as do other young men. It was his misfortune to go out socialising with a friend of his, a Mr. Ballantyne, on the evening of the 10th July going into the 11th July. No doubt they went to a number of public houses in the early part of the evening. No doubt towards the end of the evening they may have consumed some alcohol. But whatever the ins and outs of that are concerned, it came to pass that Mr. Steele and

Mr. Ballantyne, at about 1.15 in the morning of the 11th July, approached the entrance to Mondo's nightclub, in Bath Road, in Cheltenham.

Mr. Steele, a sensible young man, did nothing untoward at all. His friend and colleague, Mr. Ballantyne, was unfortunately ill-advised. No doubt he had drunk so much that his judgment was clouded, and the Crown fully accept that it was Mr. Ballantyne who started the incident which was to result in the hospitalisation of Mr. Steele, and massive brain damage to him.

They approached the entrance to Mondo's, with Mr. Ballantyne at the front, and it was Mr. Ballantyne, it seems, who was anxious to secure entrance to that nightclub, notwithstanding it was late at night, early in the morning. It seems that he was refused entry to that nightclub by this defendant and other nightclub doormen who were working at that time.

Unfortunately, Mr. Ballantyne did not take no for an answer. The effect of this upon Mr. Soames was significant, say the Crown. It antagonised him. It brought to a head any latent feelings of violence he had that night. He became angry with the attitude shown to him by Mr. Ballantyne; an anger which drove him to behave in the way which you will see in a few moments. It is true that Mr. Ballantyne instigated some violence. He pushed or punched, you will see. My description perhaps is inadequate but you will see what he did to Mr. Soames. At that, passions boiled over on the part of Mr. Soames.

What he did thereafter was to inflict his will upon those around him. It was not a question of defending himself. What Mr. Soames was intent upon was punishing the impertinence of those who tried to seek entrance to the nightclub against his express instructions. He was going to make them suffer and make them pay; in particular Mr. Ballantyne, for starting the violence.

Mr. Steele, as I have indicated, was and is a sensible young man. He could see Mr. Ballantyne's behaviour was stupid. He could see that Mr. Soames was a substantial man. He could see that the prospect of violence loomed large. He did not want any part of it. He did not want Mr. Ballantyne to be any part of it. No doubt he wanted them to leave the area, to go away. No doubt if he had his time again, Mr. Ballantyne would do just that, because what Mr. Steele did was to step

forward -- a slight young man as you will see from the video -- saying: "Calm down", hands lowered. "Calm down, don't do it." You will hear the exact words.

He was to the side of Mr. Soames, the man who was at this stage becoming more and more inflamed, and more and more intent on the infliction of harm. He saw Mr. Steele as being a friend of the man who had antagonised him. He had to suffer and pay as well. And in order to make him suffer, Mr. Soames launched a punch of such magnitude that it caused the brain of Mr. Steele to turn within the skull, slightly. He caused, as a result of this punch, Mr. Steele to fall, for his head to strike first the door, for his head then to strike the pavement, and for him then to be rendered unconscious.

When he awoke from the blow, his life would never be the same. He is currently awaiting rehabilitation in Oxford, and that is a year on. You will hear from various doctors the effect that this punch and the subsequent blows from his head on the door and the pavement had upon him. But the significant part, say the Crown, is that that blow was of such ferocity that it went way beyond any legitimate need for self-defence. It was an offensive blow; a blow designed to inflict harm, to inflict serious harm.

The Crown accept that one cannot, in the agony of the moment, weigh up the response to any perceived threat with a nicety. But you will see from this video exactly what it was that Mr. Soames did, and you will hear from the doctors the effects of what he did. Mr. Steele was taken to hospital. You have heard, and you will hear later, of the effects upon him.

Later that evening Mr. Soames himself was arrested, and he was interviewed. In the course of his interview, and I can summarise it in this way, he contended that any force which had been used by himself was used in self-defence. It was proportionate to the threat that he felt. It was designed specifically to protect himself from harm.

The Crown say that that is palpable nonsense. It is an attempt to justify the unjustifiable. It is an attempt to excuse the inexcusable. You will see exactly the state of mind that Mr. Soames was really in, because you will see what he did immediately after he had struck Mr. Steele. You will hear the words he used. You will glean from that his state of mind and what he really intended; and that was to inflict really serious harm. And that is just what he did. Perhaps at this stage the video can be played.

JUDGE HUTTON: Have you got a transcript of words used on the video?

MR. MOONEY: Your Honour, no I haven't. It is clear from the video which is being played, which is the original video. As one gets used to it, you can hear.

JUDGE HUTTON: Yes, thank you. Presumably you will be playing it again at some stage?

MR. MOONEY: Yes, I will. It will be exhibited and available to the jury to see. Your Honour may wish to see it again at a later stage as well.

JUDGE HUTTON: Yes. Right. Now is the screen turned so that all the jurors can see it. No, not quite. Turn it a bit towards the jury, please.

MR. MOONEY: Can I indicate, before it is played, I am going to be showing, at this stage, something of a 15 second passage, which depicts that which I have opened to the jury. The video is longer. The defence may wish it to be played in its entirety at some stage.

JUDGE HUTTON: Yes.

(15 seconds of video played)

JUDGE HUTTON: Perhaps you can play that again with the sound up a bit.

(Section of video played again)

MR. MOONEY: Mr. Steele will never be the same again as a result of that. You can see from what Mr. Soames did immediately after he inflicted the blow on Mr. Steele, the sort of state he was in. You have heard at the end of that video the words: "I'll kill you" -- perfectly clear. The Crown say those words emanate from Mr. Soames. They were an example of the state of mind that he was in, and the intentions which he had. What he did that night was not remotely in self-defence. What he did that night was indulge in thuggish violence, which left Mr. Steele very, very badly hurt.

The purpose of my address to you at this stage is to summarise the Crown's case to you, so that you have something of a thumb nail sketch of what it is that you will hear by way of evidence. In this case you have the advantage of seeing the incident itself. So it is not merely my interpretation or witnesses's description of what happened that you have to find your verdict upon. It is that which you see with your own eyes.

But it is right that I address you at this stage upon one or two very fundamental and important principles which govern your deliberations. The first is this: it is the Crown, the prosecution, who bring this case against Mr. Soames. He does not have to prove anything. When the Crown have to prove something in this court, they have to satisfy a very heavy burden. You can only convict this man, Mr. Glen Soames, if you are sure of his guilt. If you are suspicious or uncertain but not sure of his guilt, then you must acquit. It is only if you feel sure, sometimes said beyond reasonable doubt, that he is guilty as charged, that you can return a verdict of guilty.

Because there are two Counts, it works in this way. Can you be sure that this defendant, on the 11th July of last year, caused really serious harm, and at the time he did so, he intended to cause really serious harm? It requires you to look at his state of mind as can be governed by what you see and what you hear. If you are not sure that he intended to cause serious harm -- because it is not in doubt that serious harm was caused -- but at the time his actions were unlawful, and he used violence which went way beyond that which was required in lawful self-defence, then you can be sure that he is guilty of the second Count.

If you are not sure on that basis, if you are not sure that he was not acting in self-defence, you are not sure that what he says is false, then you should return a verdict of not guilty in respect of that Count too. But the Crown make it perfectly clear that the allegation is that this man caused really serious harm, in a fit of anger, and at the time he inflicted that serious harm, that was his sole intention, and it was that which he achieved: about that you can be sure. With your Honour's leave, I will call the first witness, if I may. It is at page 5; Miss Katherine Prior.

MISS KATHERINE PRIOR, affirmed

Examined by MR. MOONEY

Can you tell the court your full name, please?

Katherine Prior.

I am going to be asking you questions about the evening of the 10th July of last year, going into the early morning of the 11th July of last year, if I may. Did you, during the course of that evening, go to Cheltenham town centre?

I did, yes.

Was that alone or with a friend? A. I went with my friend.

Male or female?

Female.

What was her name?

Jennifer Aspinwall.

Did you have a meal in Cheltenham town centre? A. We did, yes.

What time did that finish?

About quarter past eight.

After you had eaten, did you then go to the Garrick's Head public house in Bath Street?

Yes.

There was a Karaoke evening there, I believe?

Yes.

Did you leave that premises at about quarter past 11 and go to Chicago Rock Cafe, Bath Road?

Yes.

And that is, in fact, situated on the ground floor, underneath what is known as Club Mondo, is that right?

Yes.

And Club Mondo is a nightclub?

Yes.

What time did you leave the Chicago Rock Cafe?

Around one o'clock.

What time does it shut?

One o'clock.

During the course of all of your evening out, how much alcohol, if any, had you consumed?

About two or three bottles.

Bottles of what?

Beer.

When you left the Chicago Rock Cafe, what was your intention?

To go home.

What happened as you left or as you got out of the Chicago Rock Cafe, near to the entrance of Club Mondo?

The friend I was with knew the bouncer that was on the door of Mondo's, and went over to talk to him.

Did you know that man?

I didn't know him very well. I knew him to speak to but I didn't know him that well.

Did you know his name?

Yes.

What was that?

Glen.

As of July of last year, when you saw him, can you describe him to members of the jury?

Very tall.

How tall would you say?

Over six foot. Short hair. Muscular build. He had his uniform on.

When you say his uniform, what do you mean?

Well, his security uniform; his suit.

I think we have seen from the video that it is, effectively, a suit.

Yes.

JUDGE HUTTON: Could you speak a little louder, so the jurors over there can hear you.

MR. MOONEY: Did you have any conversation with Mr. Soames yourself?

I don't think so, no.

We know that at some point another male person arrived and tried to gain entrance to Club Mondo?

Yes.

How long were you talking to Mr. Soames before that person came along?

Probably about 10, 15 minutes.

Did you hear what that person said, if anything, to Mr. Soames?

He tried to gain access into the club.

What was he told?

That he could not go in because the doors had closed. Q. Did you see anybody with this person?

Not when he first went to the door, no.

What was his attitude when he first went up to see Mr. Soames and ask for entrance to Club Mondo?

When he first went up, he tried to get in, and then when he was refused entry, he started shouting.

Started shouting?

And getting aggressive.

Towards Mr. Soames?

Yes.

What happened as he became more aggressive?

He started throwing punches and trying to hit him.

Did you see anybody else in that area, who may or may not have been with the man trying to gain entry to Club Mondo?

I think there was a group of people with him that came after; that were still on the pavement.

Did you see anybody approach where this man and Mr. Soames were talking -- can I use the term talking -confronting each other?

There was a man that walked up onto the step, to obviously try to get his friend away because he was throwing punches.

You say obviously trying to get his friend away?

Well, he was getting very aggressive, this other man.

Why do you say that that other man was obviously trying to get his friend away?

Because he was talking to him.

What was he saying?

I can't remember what he was saying.

I am going to ask you a question now. If it is one to which you do not know the answer and can't help, please say so. Can you recall the sort of words he was using?

No.

Did you think that that man knew the one that was trying to gain entrance to Club Mondo?

Yes.

Whilst this man moved forward, you say to try and intervene, what were Mr. Soames and the other man doing?

The other man was hitting Mr. Soames.

JUDGE HUTTON: Did you say hitting or kicking?

Hitting.

MR. MOONEY: Did you see anything done by Mr. Soames towards the man who was trying to intervene?

I only ever saw Mr. Soames defending himself.

Did you see a punch landed by Mr. Soames upon the other man?

No.

Did you, at any time, look away from the incident?

No.

15

Did you see the other man fall to the floor?

Yes.

Did you see what caused him to fall to the floor?

I think it was him getting caught up in the other man. Q. Did you see him what caused him to fall to the floor?
(Mr. Bowley objects but it is inaudible)

MR. MOONEY: Your Honour, she can answer what she saw rather than what she thinks.

JUDGE HUTTON: I think that is right, Mr. Bowley. The witness can only say what she saw. Put the question again.

MR. MOONEY: Miss Prior, I only want you to answer questions of what you saw with your own eyes. I don't want you to speculate or guess. I asked you a question. Did you see what caused the man who intervened go to the floor?

I saw him fall to the floor.

Did you see what caused him fall to the floor?

He got caught up in the man trying to gain entrance into the club hitting Mr. Soames.

Did you see Mr. Soames do anything towards him, to him, that would cause him to fall to the floor?

No.

Were you watching the entire incident all the time?

The only time I left was to 'phone an ambulance.

So you watched it from beginning to end?

I did, yes.

What are your feelings towards Mr. Soames?

I don't know him that well.

It is right, isn't it, he was a friend of a friend of yours?

He is a friend of the girl I was out with.

Your Honour, can I invite this witness to view the video? She has given evidence that she saw the incident in its entirety.

JUDGE HUTTON: Well, let's just think about this. That is really like asking a witness to look at a statement, isn't it?

MR. MOONEY: It is an agreed document, the video. It is an accurate depiction of that which occurred.

JUDGE HUTTON: Let's just see if Mr. Bowley has any objection to this. If so, we will discuss it in the absence of the jury.

MR. BOWLEY: Your Honour, having still photographs, the witness would be entitled to be shown those.

JUDGE HUTTON: That's absolutely right.

MR. BOWLEY: These are just moving pictures.

JUDGE HUTTON: Yes, she can be shown the video.

MR. MOONEY: Before I do this, Miss Prior, can I ask you if you have seen this video before?

I haven't, no.

(Relevant section of video shown to witness)

MR. MOONEY: Your evidence was that you saw the incident in its entirety. Did you see that?

No.

JUDGE HUTTON: What was your answer?

No.

MR. MOONEY: You didn't see any of that at all?

I didn't see the bit where he punched him, because my friend was stood beside me, so she must have been obstructing my view when that happened.

MR. MOONEY: You didn't see what happened on the interior, behind the door on the inside of the nightclub?

No, because I had gone then to go and 'phone an ambulance.

MISS PRIOR
Cross-examined by MR. BOWLEY

MR. BOWLEY: Prior to that small incident -- you have only been shown a very few seconds of it in this trial -- you had been, with Miss Aspinwall, talking to my client Mr. Soames, outside the Club Mondo, for ten or 15 minutes?

Yes.

Friendly conversation?

Yes.

Mr. Soames wasn't aggressive in any way towards anybody at all?

Not at all, no.

Staying with this, perhaps we can go back and see some of this now. Let's see the rest of it, shall we. Can we go back, please, on the video?

MR. MOONEY: It is a misapprehension I was labouring under this morning. I am just concerned my learned friend isn't as well. The video we have both seen is an edit of the full video. The video that had been played through that machine is the original video. It, in fact, goes on for a very long period of time, much more than the 18 minutes that my learned friend and I have seen. I was unaware of that until this morning.

JUDGE HUTTON: It is a video of the whole night?

MR. MOONEY: Virtually, yes, from 9.30.

JUDGE HUTTON: We don't want to see all that. What do we want to see?

MR. MOONEY: I only say that to my learned friend because I was under that misapprehension as well.

MR. BOWLEY: Go back perhaps five minutes to give the impression of what was happening prior to this incident.

JUDGE HUTTON: Yes, if that can be done. I am not sure what actual tape we are going to see. Is this one, Mr.

Mooney, that was in the machine at the time?

MR. MOONEY: Yes, it was.

JUDGE HUTTON: It is an unedited tape.

MR. MOONEY: Yes, the reason it has been played is, it is of a better sound and picture quality than the copy. It is always the way. The second generation of copies, and third generation, get progressively worse.

JUDGE HUTTON: Mr. Bowley, how far back do you want to go in the video?

MR. BOWLEY: About five minutes.

JUDGE HUTTON: How are we going to identify it; by time or what? Is it timed or not. Have you seen it yourself?

MR. BOWLEY: I have seen it myself. I have only seen the copies, and they go essentially from the first visit of Mr. Ballantyne and Mr. Steele to the Club Mondo. I don't think we need to go back to as far as that; just a few minutes to get the impression of what was happening.

JUDGE HUTTON: Can you achieve that, officer?

OFFICER: It may be better off the copy, sir. There are two Technical Support Unit copies which are second generation. I don't know if that is a Technical Support copy. I have one in my bag which is the entire 18 minutes and may be better than the original, rather than using this all the time, your Honour.

JUDGE HUTTON: I don't know. You must agree between you which you want to play.

OFFICER: I don't mind.

JUDGE HUTTON: There must be no dispute about it.

(Section of video played)

MR. BOWLEY: I think you will find that is probably just at the time of the incident. Is that you and your friend talking to Mr. Soames?

Yes.

Could you play it on a bit more.

JUDGE HUTTON: Mr. Bowley, are we looking through the door to the outside?

MR. BOWLEY: We are inside the club looking outside.

JUDGE HUTTON: We are inside looking out. I see, thank you.

(More video played)

JUDGE HUTTON: You have seen as much as you want?

MR. BOWLEY: I think so. Does that give a fair indication of what was happening outside the club, in the five or 10 minutes before the incident took place?

Yes.

People coming out of the club because it was closing time?

Well, it closed at two o'clock.

One o'clock I think it is.

Mondo's, I think, closes at two.

Well anyway, people coming out. The two doormen, Mr. Soames and the coloured doorman Mr. Duckworth?

Yes.

And there was no trouble at all until these two people came back?

Yes.

One of them, Mr. Ballantyne -- not the man who was injured, the other man -- starts the trouble, doesn't he?

Yes.

We have seen it on the video. He pushes Mr. Soames in the chest and then punches Mr. Soames on the chin. At that stage you say that the other man, the man who was eventually very badly injured, was trying to get Ballantyne, the man who had thrown the first punch, away?

Yes.

He was trying to calm him down. Can we move to that, please, and I want a still frame, please. Now, that is the man who was injured coming forward, is it not?

Yes.

One hand out -- can you take it back a frame?

MR. MOONEY: I don't want to stop my learned friend but the evidence of this witness is that she didn't see this. What she is giving is --

MR. BOWLEY: I asked her to see it in view of the evidence she gave, in order to establish whether or not she did, in fact, see the incident.

MR. MOONEY: Her evidence was that she did not. Seeing this and commenting upon it at this stage serves no purpose.

MR. BOWLEY: My friend asked her to look at the video.

MR. MOONEY: My learned friend knows why. Because the evidence she gave --

MR. BOWLEY: My learned friend misses the point.

MR. MOONEY: Well, perhaps I can deal with it in the absence of the jury if I need to, but I would counsel against this cross-examination going any further on this basis.

JUDGE HUTTON: Well, do you want to pursue this, Mr. Bowley, or not?

MR. BOWLEY: I expect I can take it through many other witnesses, your Honour.

JUDGE HUTTON: Had we not better ask the jury to go out whilst this matter is discussed and decided?

MR. BOWLEY: I am happy to leave it at this stage and deal with it with other witnesses.

JUDGE HUTTON: Alright. Any more questions then?

MR. BOWLEY: The picture you have is the man who was eventually badly injured was trying to get the man who threw the first punch to calm him down?

Yes.

He was the man who had been aggressive and causing trouble?

Yes, that is what I thought was happening.

MR. MOONEY: I have no re-examination.

JUDGE HUTTON: I should just tell you, Miss Prior, I don't know whether you know any of the other people who are going to be giving evidence, but you must not discuss this case with people who are yet to give evidence, you see. Keep off the subject. Right, you can go.

(The witness withdrew)

MR. BOWLEY: There is one matter I would like to raise in the absence of the jury, if I may.

JUDGE HUTTON: Well right. Members of the jury, I have to decide disputes as to the law, and other things, in the absence of you. You may find you are trotting out to your jury room quite a lot, I'm afraid. Would you go out now. The usher is going to go out and then we will call you back in a few minutes.

(The jury withdrew from the court)

JUDGE HUTTON: Yes, Mr. Mooney, what is the point?

MR. MOONEY: Your Honour the point is that it refers to the next witness, miss Jennifer Aspinwall. Can I say that I do not propose to call her or to tender her. I give my learned friend advance warning of that fact rather than move swift Leo. The reason being he she is clearly a friend of the evidence. In view of the evidence this witness has given, it seems that she will offer no material assistance to the prosecution, and will be called, will give evidence it would seem to damage the prosecution. Your Honour, on that basis I do not propose to call her.

JUDGE HUTTON: What do you say, Mr. Bowley.

MR. BOWLEY: I always understood the law to be that the prosecution have an obligation to call the witnesses whose names are on the back of the indictment.

JUDGE HUTTON: It is not an absolute obligation. There has been some authority on it very recently.

MR. BOWLEY: They will either call or tender, unless they believe that a witness is not looking to be a witness of truth. I see nothing that has happened so far to suggest that this witness is not a witness of truth. We have not even heard her.

MR. MOONEY: Well, your Honour, in fact the Crown's obligations currently are rather different to that. It is not only a question of whether or not a witness is a witness of truth, which leaves them to be in a position whether or not to call that witness. I am referring to

a case of R v Russell Jones. It is at 4275 of the current volume of Archbold. I refer to sub-paragraph 7 of the report of that authority.

JUDGE HUTTON: I'm sorry. Were you referring me to the paragraph?

MR. MOONEY: Yes, I beg your pardon. The page number is 421.

JUDGE HUTTON: Which page number is it?

MR. MOONEY: Page 421, the bottom right hand page is on the right hand side. Your Honour sees effectively sub-paragraph 7 of the report of the Crown against Russell Jones. "The prosecutor properly exercising his discretion will not, therefore, be obliged to prefer a witness --

JUDGE HUTTON: "Proffer".

MR. MOONEY: "Proffer", I beg your pardon -- "to proffer a witness merely in order to give the defence material with which to attack the credit of other witnesses on whom the prosecution rely. To hold otherwise would be in truth to assert the prosecution are obliged to call a witness for no purpose other than to assist the defence in its endeavours to destroy the Crown's own case."

The Crown's case is that this is not self-defence. The evidence given by the previous witness was categorical, shall we say. She was not the friend of this defendant; the next witness is. On that basis the Crown have good reason to believe that her evidence will not assist the Crown's case at all. It is not a situation where this is unfair, because fundamentally and ultimately the prosecution rely upon the video. The jury have seen the video. It is the jury's interpretation of that video as to whether or not self-defence is made out, not the impressions or opinions of witnesses.

JUDGE HUTTON: I imagine there is nothing to stop Mr. Bowley calling this witness for the defence if you don't call her for the prosecution.

MR. MOONEY: Nothing at all.

JUDGE HUTTON: Yes. What do you say Mr. Bowley?

MR. BOWLEY: Your Honour, if one calls somebody for the defence, one has to examine them in chief rather than have the benefits of cross-examination --

JUDGE HUTTON: Well, I realise that.
MR. BOWLEY: -- which is a powerful weapon, which should
not be withdrawn.

JUDGE HUTTON: The exercise is to try and achieve justice.

MR. BOWLEY: One has here a witness who was going to be
called, who apparently has as good a view as anyone, and there is nothing to suggest at this stage that she is going to say
anything other than what she has had in her proof of evidence already.

JUDGE HUTTON: Mr. Mooney, that is right, isn't it? It is
your assumption that as one witness has gone sour on you, as the next witness is more of a friend of the defendant, she is
going to be even worse.

MR. MOONEY: Yes. On that basis I wouldn't call her.

JUDGE HUTTON: Mr. Bowley, I interrupted you. Did you want
to say any more?

MR. BOWLEY: No. I would invite your Honour to invite the
prosecution to call her. The prosecution can effuse to accept your Honour's invitation, but I would invite your Honour to
make that invitation, bearing in mind that there is nothing, as your Honour has said in agreement to my comment, that has
happened so far to suggest this witness may be going to give anything other than the evidence she put in her statement.

JUDGE HUTTON: I think I rule that from what I have seen
and heard of the last witness, the prosecution would be entitled not to call the next witness, a friend of the first witness
and also a friend of the defendant, on the basis that they think that she is going to be favourable to the defence and
damage the prosecution's case. It is not a decision for me to take. The prosecution are entitled not to call her and it is,
therefore, their decision. So what is your decision, Mr. Mooney?

MR. MOONEY: I am not going to call her. I move on to the
next witness at page 12, that being Sheila Seabrook. JUDGE HUTTON:

Can we have the jury in now?

MR. MOONEY: Yes, please.

(The jury returned into court)

MRS. SHEILA SEABROOK, sworn Examined by MR. MOONEY

Your full name, please?

Sheila Ann Seabrook.

I beg your pardon, is that Miss or Mrs. Seabrook?

Mrs.

Mrs. Seabrook, I am going to be asking you questions about the evening of the 10th July going into the 11th July of last year, if I may. I believe that during the evening of the 10th July you had gone into Cheltenham town centre with your son, and you went into the Chicago pub in Bath Road, is that right?

That's right.

Did you leave that pub at about one o'clock in the morning?

I did.

What did you see or hear as you left the pub?

I heard a bang, and turning around saw somebody lying on the floor.

JUDGE HUTTON: Could you speak a little bit louder and more distinctly, because the jurors have got to hear. Just repeat that, would you?

I heard a bang, and turned around and saw a gentleman on the floor.

MR. MOONEY: Can I just sort out the geography. We know an incident took place outside Mondo's nightclub. How far is the Chicago pub from Mondo's nightclub?

It's right next door.

What did you do when you saw the person lying on the floor?

I went straight to him.

What condition was he in?

He was lying flat on his back.

What did you do?

25

I put him into the recovery position.

Was he bleeding?

Yes.

From where?

From his head and his nose.

On his nose?

And his nose, yes, and his mouth.

Whilst you were tending to this man, did anything happen around that area to attract your attention?

I saw two people in the doorway, scuffling around and moving about.

Where was most of your attention directed? Was it towards that scuffle or towards the man?

Towards the man more than anything.

Did you see how long the scuffle, as you described it, lasted for?

Not really, no.

Did you become aware of any individuals returning to the doorway of Mondo nightclub while you attended the man on the floor?

No.

Were there other people around the area whilst the man was on the floor?

There was people around, yes.

On the pavement?

Yes.

Were there people closer to the doorway to the nightclub?

I can't remember.

Did you hear anybody do, or did you hear anybody say, anything at the entrance to the nightclub?

I did.

What?

JUDGE HUTTON: What did you say?

I did, yes.

MR. MOONEY: Firstly, can you tell us what that person said?

He said: "I hit him. He was causing trouble. I hit him."

"He was causing trouble. I hit him."

"So I hit him", yes.

Can I clarify, is that an approximation of what he said or --

That's to the best what I could remember.

As best you can remember?

Yes.

Did you see who said that?

I saw somebody but I didn't sort of really -- I just had a glance.

Can I ask you if you can recall what that person was wearing, for example?

All I can remember is that he had a black tie on.

A black tie?

Yes.

A bow tie or?

Like a long tie. It was either a long tie or a bow tie, I can't remember.

You just remember the colour?

Yes.

JUDGE HUTTON: That was the speaker, was it?
Yes.

MR. MOONEY: Did an ambulance then arrive?

Yes, it did.

After the injured man had been taken away in the ambulance, what did you do?

I just went home.

MRS. SEABROOK
Cross-examined by MR. BOWLEY

You have told us, Mrs. Seabrook, that you put the injured man in the recovery position. Did you remain with him until the ambulance arrived?

I did, yes.

He's lying on the pavement, his head towards the road? A. Yeah.

So you are out almost in the gutter, aren't you? His head is almost in the gutter, isn't it?

I think so, yes.

And then you hear somebody with a black tie on saying something like: "I hit him. He was causing trouble so I hit him."

That's right.

But you have no idea what he was referring to? A. No, I don't know.

MR. MOONEY: I have no re-examination.
(The witness withdrew)

MR. EATON DUCKWORTH, sworn Examined by MR. MOONEY

Your Honour, I tender him.

Cross-examined by MR. BOWLEY Q. Your full name, please, Mr. Duckworth? A. Eaton

Anthony Duckworth.

I think you are the area manager of Leisure Security? A. That's correct, yes.
And that firm supplies doormen to nightclubs over quite a wide area?

Yes.

Including both the Club Mondo and the Chicago Rock Cafe, in Bath Road in Cheltenham?

That's correct, yes.

Q. The occasion that we are examining in this court is the earlier occasion on the early hours between 1 and 1.15
on the 11th July last year, when a young man was very seriously injured outside the Club Mondo?

Yes.

That was the early hours of a Thursday morning, was it not?

Yes.

Normally no one would be allowed entry into Club Mondo after one o'clock in the morning?

One o'clock, that's right.

I think the club actually closes at two o'clock?

That's correct, yes.

And people have to be out by half past two?

Yes.

Now that was a Wednesday night into a Thursday morning, correct?

That's correct, yes.

One of the quieter nights at the club?

Yes.

I think there were, as we have seen -- and the Chicago Rock Cafe too?

I don't know how many people was next door in Chicago, but we were fairly quiet.

Was it a night when you had slightly older clientele at Club Mondo, on a Wednesday night?

That's right, yes.

I hesitate to say slightly older; over 25?

Over 30.

And on that Wednesday night, Thursday morning, you and Mr. Soames were the doormen on Club Mondo?

That's correct.

And around about one o'clock, is it right that two men came to the Club Mondo asking for entry?

That's correct, yes.

One of those was the man who was later seriously injured?

Yes.

One of them approached Mr. Soames and asked to be allowed in?

Yes.

The other approached you?

Yes.

And they were both refused entry because it was after one o'clock?

That's correct.

And was there any aggravation between either you or Mr. Soames and these two men at that stage?

No, no, we just explained to them why they couldn't come in.

Now there is a fire escape entry between the Chicago Rock Cafe and the Club Mondo, is that correct?

That's correct, yes.

Did it occur to you the two men might try to get into the Club Mondo using that entry?

Yes.

Why was that?

Because a lot of people try it and go up the back way.

Did you do anything to try and stop them, if that was your intention?

Yes, I just went upstairs to make sure they didn't come that way up.

You didn't see anybody coming in that way at that stage? A. No.

Having gone upstairs, what did you do?

I just waited by the main door to go into the club and where the exit door is, about here, to where the television is, and I was just watching the door to see anybody was coming through there.

When you came back downstairs, what was the scene at the entrance to Club Mondo?

Quiet. Everybody was sort of stationary; slow motion, if you like.

Was the man already lying on the pavement?

I didn't see a man on the pavement at that time when I first come down, initially come down.

What did you see when you first came down?

I noticed Glen standing back by the till, red faced -his being white -- you know, red faced. I saw another stocky male with a gash over his --

A scar, you mean?

Yeah. No.

Not an open gash?

A little cut. A little cut over his eye. Then the stocky man was coming towards Glen, and I ushered him towards the front door.

Was it then you saw the man lying?

That's right. Well, I just saw two feet on the step, actually

So you didn't see how he came to be in that position? A. No.

MR. MOONEY: I have no re-examination.

(The witness withdrew)

MR. MOONEY: Your Honour, can I indicate the position so far as the Crown is concerned, witness wise?

JUDGE HUTTON: You've run out of witnesses.

MR. MOONEY: Bluntly, yes. We moved at a rather speedier pace than I had anticipated. There is one more eye witness to the event itself. He is to attend tomorrow. What I can do at this stage is to read the medical evidence, if your Honour would consider that appropriate?

JUDGE HUTTON: Well, it is out of order but I don't see why you should not. No objection, Mr. Bowley?

MR. BOWLEY: No.

MR. MOONEY: Then regrettably, your Honour --

JUDGE HUTTON: Well, the jury doesn't know but you do, we are not sitting this afternoon anyway, so you can fill in the time between now and one o'clock with the medical evidence.

MR. MOONEY: Yes, I don't think it will in fact take that long.

JUDGE HUTTON: No. Right.

MR. MOONEY: Members of the jury, what I am going to do now is to read to you some statements. His Honour will direct you upon the effect of that.

JUDGE HUTTON: Yes, I will just tell the jury. As I am sure you realise, all witnesses make statements to the police, and then if it eventually is the situation that any particular witness's evidence is not challenged at all, the statement the witness made can be read to the jury, to save the expense and inconvenience of bringing the witness to court. So the medical evidence is not in

dispute, I gather, and you are going to hear some statements of doctors at this stage, but this applies to any witnesses. This is the evidence in the case because it is not challenged.

MR. MOONEY: Yes. Ladies and gentlemen, the first statement is Christopher Lloyd Chandler, at page 23. This statement has a caption at its heading, as do all statements. I will only read it out the once, and you take it as read that any statement I read out thereafter, will have the same caption. "This statement consisting of two pages, each signed by me, is true to the best of my knowledge and belief, and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true." Dated the 30th July 1996, and it is signed by Mr. Chandler.

STATEMENT OF MR. CHRISTOPHER CHANDLER, read.

"I am the Senior Registrar in the Department of Neurology at Frenchay Hospital, Bristol. I qualified in medicine in 1986 and have been a Senior Registrar here for two years, with experience in the management of head injuries.

"Paul Steele was admitted to the intensive care unit of Frenchay on the 11th July, having suffered a head injury the same day. He was in a deep coma on arriving from the referring hospital", that was Cheltenham, "and remained in that deep coma throughout his stay at Frenchay. He sustained a severe head injury, consisting of an acute subdural haematoma, contusions of the frontal lobes and a mid brain contusion.

He underwent an operation to remove a blood clot, insert an intracranial pressure monitor and a further operation to drain cerebro spinal fluid, from his head, to reduce pressure subsequent to his injury. The injuries he sustained to his head are consistent with the purported mechanism of injury, namely a severe rotational injury, which could have caused the mid brain confusions and the occipital impact, which could have caused the contusions and the acute subdural haematoma.

This patient has remained severely disabled by the effects of his head injury, and we feel his prognosis for recovery is very poor. We do not expect him even to achieve an independent life, and he will, if he survives, require constant nursing care."

The second statement I will read to you is the first of two statements prepared by Dr. Llewellyn, dated the 23rd August 1996.

"I am a doctor working as a consultant in Accident & Emergency in the Cheltenham General Hospital. I was on duty in the Accident & Emergency Department on the 11th July 1996, when Paul Steele was admitted to the department, having sustained a head injury. The time of admission was recorded at 01.34 hours.

When I examined Mr. Steele he was deeply comatose, with a Glasgow cone score of 3-15, and was bleeding from his right ear. He was placed on an artificial ventilator, and a CT scan of his head was performed urgently. This showed extensive bleeding within the skull and bruising to the brain. Mr. Steele was transferred to Frenchay Hospital in Bristol for neurosurgery. He underwent an emergency operation to remove a blood clot from his brain on the 11th July. He was managed on the intensive care unit in Bristol and needed a prolonged course of intensive therapy, during which time he was on a ventilator.

On discharge from the department of neurosurgery, the neurosurgeon had noted that his prognosis, following his injury, is extremely poor. Whilst in Bristol this was discussed with Mr. Steele's family, and it was decided that if his condition were to deteriorate, then no further active treatment would be instituted to prolong his life. He was transferred back to Cheltenham on the 25th July 1996.

At present, he requires full nursing care for all of his bodily functions. He is fed by a tube into his stomach. He has little movement in the left side of his body but moves his right arm, though it is debatable as to whether or not he is responding at all purposely with this arm to commands. Though his eyes are open, it is again debatable as to whether or not he can see. The overall clinical picture is of a patient who has had a severe brain injury.

It is difficult at this stage to give a definite opinion on prognosis but I fear that the outcome will be poor at the end of the day. Having survived the initial brain injury, and the complications of being in intensive care, Mr. Steele is not in any immediate danger of succumbing from his injuries."

Another statement from Dr. Llewellyn; it is a notice of additional evidence. The date of this statement is the 10th February 1997.

"I am a doctor working as a consultant in accident emergency medicine at Cheltenham General Hospital. This statement concerns Paul Steele, who was admitted to the Accident & Emergency Department on the 11th July 1996 and was examined by me at that time. On my initial examination, I found Mr. Steele had blood on his face and head. There was a contusion to his forehead and some bleeding from the right ear. He also had blood in his nose.

At 3.05 p.m. on 30th January 1997, I was shown a video by DC Jamieson". The video exhibit reference number was given. "This video shows an incident in the doorway of Club Mondo in Cheltenham, and demonstrates the original assault on Mr. Steele. Essentially there are three elements to the head injury that I can identify on the video. There is an initial punch to the left side of the head; subsequently the right side of the head strikes a door; and then Mr. Steele falls to the ground and hits his head on a pavement. Any one of these three elements could have caused the neurological damage which Mr. Steele sustained, or they may have combined to produce the final effect on his brain".

JUDGE HUTTON: No, I haven't got that statement, Mr. Mooney. That is additional evidence dated when?

MR. MOONEY: It is the 10th February. I will ensure that your Honour has a copy of that note.

JUDGE HUTTON: Yes, please.

MR. MOONEY: Indeed, the final statement I will read also appears in that notice.

JUDGE HUTTON: Can you see that is produced as well?

MR. MOONEY: Do I understand this statement is of Dr. Peter Fletcher?

JUDGE HUTTON: Yes, sorry. I have got it, so you can forget what I said.

MR. MOONEY: This is a statement of Dr. Peter Fletcher and it is dated the 7th February of this year. It concerns Mr. Paul Steele, date of birth 7th November 1966,
4 Heal's Road, Cheltenham, Gloucestershire, and then a
post code.

"This man was admitted to my care on the 1st October 1996. Since then he has been an inpatient on Deerhurst Ward, at the Delancy Assessment and Rehabilitation Hospital. He had sustained a head injury on the 11th July 1996. A scan revealed a right sided blood clot secondary to the trauma, and he was transferred to Frenchay Hospital, where he underwent brain surgery to remove the clot. He had a difficult post operative course, with the result that he did not return to Cheltenham until the 25th July 1996. Again his progress was difficult and was complicated by a chest infection. Hence, when I took over his care, it was almost three months since the incident.

On admission to my ward, he was agitated, immobile, could barely sit, speak or feed himself, but he was aware that he had moved between hospital wards. He was being fed through a tube into his stomach and he could only pass urine by a catheter. In the succeeding four months, there has been modest recovery. He is fully conscious but speaks with great difficulty. He can only transfer from chair to bed with help of two nurses. He uses a type of catheter to pass water and is incontinent of faeces. His manual dexterity is poor, and his left arm is in plaster to prevent contractures.

At times he can feed himself with his right arm, but of late his swallowing has become less reliable. He remains restless, irritable, anxious, and at times has shown evidence of hallucinating. He has not had any epileptic fits.

The situation has now been more or less stable for around five weeks. He awaits transfer to the Rivermead Rehabilitation Centre at Oxford. However, the prognosis remains poor and it is highly improbable that he will return to paid employment, and almost certain that he will never work again as a self-employed builder. It is possible that he may walk again with a frame but it is much more probable that he will be wheelchair bound.

Finally, his psychiatric problems require treatment with antipsychotic drugs, and it is possible that psychotic problems are a direct result of his head injury, and that these may continue indefinitely. There may be further improvement in his intellect but this is highly unlikely, and in any event it will not recover to anything like his previous level."

That concludes the medical evidence, and I think realistically it takes the prosecution as far as we can go today. I apologise.

JUDGE HUTTON: That's alright. You have only lost 25 minutes. Members of the jury, I can't continue this case this afternoon or tomorrow morning. I have got something I have got to do. So we now have a break until tomorrow afternoon. Would you please be back in time to start at two o'clock tomorrow. It may be that I have some other things to do first. It does sometimes happen that urgent things have to be pushed in. I just don't know. So we will start as soon after two as we can if you could be back for that tomorrow. So you need not be in this afternoon or tomorrow morning.

I should just tell you this; a usual warning to the jury. It is important that you should not talk to anybody else about this case until it is all over, because you have to decide your verdicts on what you hear in court and not what anybody else may tell you. So it is most important that you don't talk to anybody else about it. Don't let anybody else talk to you about it, and this includes your own families, please, until the whole case is over. I will adjourn.

(The court adjourned until the following afternoon)

Wednesday, 2nd July 1997 MR. PETER MAIN, sworn

Examined by MR. MOONEY

Can you give the court your full name, please?

Peter Clive Main.

Mr. Main, I am going to be asking you questions about a date in July of last year, certainly the summer of last year, when you went into the centre of Cheltenham for a few drinks with friends, is that right?

Yes.

I don't think there is any dispute it was, in fact, the 10th July when you went to Chicago public house, in Bath Road, Cheltenham?

Yes.

Do you recall what time you left that public house?

I believe it was at the end, when they kick out.

What time would that be?

About 1.30.

When you left the Chicago, did you leave it alone or with somebody else?

I left with my friend.

What was the name of your friend?

JUDGE HUTTON: 1.30, that is a.m. presumably.

MR. MOONEY: Yes, your Honour.

JUDGE HUTTON: 10th July or 11th July?

MR. MOONEY: The date, which has not been disputed, was in fact the 11th July. After you had left Chicago's, did your route take you past the entrance to Mondo's nightclub?

Yes.

I am going to be asking you what you saw as you passed that area. It is very important that the members of the jury who you see before you hear what it is you have to say, so could you try and keep your voice up. I know

it's quite a large room, and you may be nervous, but if you direct your responses to the ladies and gentlemen of the jury, I would be grateful. As you approached the entrance to Mondo's nightclub, what did you see?

There was two gentlemen standing outside.

Could you describe those two people?

No.

By reference to their build or height or anything at all?

No, I can't.

What were these two people doing?

I can't remember, sorry, it's a long time ago

I beg your pardon?

It was a long time ago.

Of course. If I ask you questions about which you can remember nothing, please say.

Right.

Leaving aside the description of these two people, what could you see them doing?

JUDGE HUTTON: They were standing up outside the club, were they?

Yes, they were standing just on the pathway next to the entrance to Mondo's.

Is this a pavement?

Yes.

MR. MOONEY: Can you tell the members of the jury what they were doing?

Well, I wasn't paying a great deal of attention to them at that time. It would appear they were trying to get back into the club. They were, I think they were just talking.

Were they talking to each other or to somebody else?

I don't recall. They then made their way back up the steps. One of them, I can't remember if he forced his way through the doorway or he went straight through the doorway, whatever he done, and then there was a commotion going on.

Can I stop you there, please?

Sorry?

JUDGE HUTTON: Not too fast. Let's just see if we can understand this as you go along. This is the steps into the club, is it?

Yes.

And you say they then made their way up the steps and in through the entrance?

No. The one made his way up the steps, the other one was following. He didn't get as far. One made his way straight in.

Yes. You take us through it but take it slowly, so we can all understand what the witness is saying.

MR. MOONEY: Your Honour, of course. You saw one of the two men you had earlier seen go in front of the other to try and gain entrance to the nightclub?

Yes.

Did you see what happened to him; what happened involving him as he tried to go into the nightclub?

That's really what took my attention. It was sort of out the corner of me eye before this, because there was a commotion going on.

A commotion caused you to actually turn and look at what was happening?

Yes.

JUDGE HUTTON: A commotion where; inside or outside?

Inside the club, within the doors.

MR. MOONEY: Can I ask you, can you describe the nature of that commotion. What was happening. What was it you saw that attracted your attention?

Just the noise attracted my attention.

Then where you looked, what did you see, what was happening there?

I couldn't really see because it was just a single doorway and they were inside, so they were in a different light, so I couldn't really see what was going on.

You say "they" ?

"They" because there was a commotion between the chap who went in and I would imagine the bouncer inside, or doorman or whatever.

Yes, I think we know the sort of person you refer to. That commotion you have described as being by the doorway to Mondo's itself?

Inside the door.

Inside the doorway?

Yes.

You described earlier two people who were trying to get in?

That's right.

Did you see where the other person was standing?

The other person -- like I say, the noise attracted me attention. I looked up. There was the one person was already inside having the argument or whatever was going on inside. The second one then, he was making his way up the steps anyway, but he --

Take this slowly, please.

Sorry.

It's my fault. I should be asking you these questions so you can answer them shortly, so it's my fault not yours.

Right. Go on.

So you saw the man, the second man going up the steps towards the nightclub entrance as well, is that right?

Yes.

Did you see what that man was doing as he went up the steps and as he got to the entrance to the nightclub?

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As he was going up, he appeared to be trying to calm the situation.

Why do you say that?

I can't remember if he raised one hand or both hands, but he was sort of trying to calm it. He was saying something but I don't recall what he was saying, but he was certainly trying to calm the situation down.

JUDGE HUTTON: By indicating with his hands and saying something or what?

He was saying something. I'd really have to guess to say what he was saying. "Leave it out". "Stop". It was along those lines, as I recall.

Indicating by his arms and saying something?

He was certainly saying something.

MR. MOONEY: I don't want you to guess at what was said. From the nature of what was being said, were you under the impression that that was trying to calm the situation down or make the situation worse?

No, he was trying to calm his mate down, as I understood it. It gave that impression.

How far away from this man were you when you saw him doing this, and when you formed the impression he was trying to calm things down or calm his mate down?

I was stood on the pavement, so he would have been stood four or five foot in front of me.

From the position you were, you could hear him saying things but you can't recall the exact words?

Yes.

Did you see the doorman, or bouncer as you call him, as this man was doing what you have described?

I beg your pardon?

How far away from the man you described trying to calm the situation down was the bouncer at the door?

I don't want to confuse the issue but there was two bouncers. There was one inside having an argument with this chap. There was one that was stood on the doorway to the entrance.

So you are describing the man calming the situation down, talking to one of the bouncers on the outside of the door to Mondo's. Meanwhile, on the inside, the other bouncer and the other man were involved in whatever was --

On the inside there was a commotion of whatever going on. There was one chap who was stood in the door who was a bouncer, and the second chap was making his way up the steps towards him.

Can I ask you about the bouncer who was on the inside, involved in the commotion. Did you see him come outside?

No.

Did you see anything happen to the man who was trying to calm the situation down?

Yes.

What did you see happen to him?

As he made his way up the steps, he was gesturing like this, and like I said, I can't recall what he was saying, the chap who was on the door, on the outside of the door, the bouncer. I'm trying to think. He was stood sort of trying to block the entrance, it appeared -- I'm trying to think now -- trying to block the entrance, but he was yelling at the person inside, I believe.

Who was yelling at the person inside?

The bouncer who was stood in the door, on the outside of the door, he was stood there. He was sort of looking both inside and out at the same time. As the chap made his way up the stairs, trying to calm him down, he just appeared, the guy turned round and hit him.

Perhaps at this stage I can show Mr. Main the video of the relevant part, which I suspect the officer has. Can we put that back in the machine?

JUDGE HUTTON: Well, let's just think this out. I think you ought to obtain such evidence as you want to in chief before showing him the video. You have covered what you want to, have you?

MR. MOONEY: Well, your Honour, he has described the blow being administered.

JUDGE HUTTON: You don't want to elaborate on that at all before you show the video?

MR. MOONEY: Well, your Honour, he can look at the video and elaborate.

JUDGE HUTTON: He will be reminded once he has seen the video, of course.

MR. MOONEY: Yes.

JUDGE HUTTON: Alright, well, you are conducting the case. It is not for me. I am just wondering aloud. Anyway, you've finished your examination in chief for the moment.

MR. MOONEY: Your Honour, perhaps I will ask a few more questions before the video is shown. What happened?

Can you describe the blow which was landed upon the man who had been crying to calm the situation down. Was it a punch, a push?

No, it was a punch.

Did you see where that punch connected with that man? A. On the face.

Can you describe your impression of the sort of force that was used in that punch. How would you describe that punch if you were asked to do so?

I would say that he was hit so hard that as he fell he made no effort to stop himself falling. As you know, if anyone falls over, the first thing you do is you try and put your hands down. He didn't put his hands down at all, so I would say he was knocked out before he hit the floor.

Did you hear the person who threw that punch say anything before or after he did it?

No, I can't recall.

Did you see what he did immediately after he punched the man?

I wasn't watching him. I was watching the guy on the floor.

So after the man had fallen to the floor, as a result of the punch, was your attention then devoted to him?

Yes.

Did you see then where the person who had punched him went?

No.

Perhaps at this stage I could show him the video, or the relevant extract from the video.

JUDGE HUTTON: What is the point of showing the video now; to ask him whether that is what happened?

MR. MOONEY: Yes.

JUDGE HUTTON: I am just wondering the evidential value of this.

MR. BOWLEY: My learned friend is trying to discredit his own witness, as far as I can see.

JUDGE HUTTON: Mr. Bowley, I am just trying to keep the balance between both sides. Mr. Mooney, I would have thought that showing the video now is -- well, the video is in itself evidence. How does it improve this witness's evidence?

MR. MOONEY: Your Honour, in the same way as inviting the witness to look at pictures of the scene of the crime. It allows him to confirm that the evidence of the video is that which he saw.

JUDGE HUTTON: Right. Unless there is any objection from Mr. Bowley, I will allow that then. Do you have any objection to that course?

MR. BOWLEY: Certainly he may be impugning his own witness.

JUDGE HUTTON: Well, I mean, do you object to this course or not?

MR. BOWLEY: At this stage, yes.

JUDGE HUTTON: Why?

MR. BOWLEY: He is impugning his own witness. His witness has given certain evidence.

JUDGE HUTTON: Impugning his own witness?

MR. BOWLEY: Trying to -- as I understand, we have all seen the video except, I suspect, this witness, and we know the differences that exist.

JUDGE HUTTON: Well, Mr. Mooney, as this course of action is objected to by the defence, I am bound to say I think that I should uphold that objection. The jury has seen the video several times now, and the video is in itself evidence. But I don't see how it is relevant to this witness's evidence, because he has given his own recollection, and it is a matter for the jury to listen to his recollection, rather than ask him to comment on the video now.

MR. MOONEY: Does your Honour find I am trying to impune my witness, therefore, adopting the basis of the defence objection, because I am not?

JUDGE HUTTON: No, I don't think you are impuning, but I am a little bit doubtful as to whether it is proper to ask the witness now to look at a photograph of what was happening when he has given his evidence from his recollection. I mean, he can be cross-examined about it if he has gone wrong in any respect.

MR. MOONEY: Your Honour, I am not seeking to cross-examine.

JUDGE HUTTON: No, by the defence. The defence could show the video and say: "Look, it was all different in the video", if they want to.

MR. MOONEY: Well, your Honour, I will be bound by your Honour's ruling. You have heard my application. I certainly won't --

JUDGE HUTTON: I think it would be better not. I dare say the jury will see the video again, and maybe again and again, but I don't think it is right at this stage. Have you finished your evidence in chief now?

MR. MOONEY: Perhaps I can review the position now that the position about the video has been clarified?

JUDGE HUTTON: Yes.

MR. MOONEY: Perhaps I can just finish off your evidence, because clearly, although you had no involvement in this, you were public spirited enough to go and tend to the man. Did you then ensure that medical treatment was sent for?

I didn't. I never tended to the man.

You were concerned about him?

Right.

Were you concerned enough to ensure that an ambulance was called?

I ran down to the Strand to call an ambulance. It was quite obvious the guy wasn't getting up, so I went down to call an ambulance, yes.

To finish, immediately before the man was struck the blow which caused him to be rendered unconscious, what do you think he was trying to do, from what you could see?

From what I could see, I thought he was trying to calm the situation.

MR. MAIN
Cross-examined by MR. BOWLEY

Mr. Main, I have a statement from you in front of me, which is dated the 2nd February of this year. Is that the first time you made a statement?

Yes.

Before that you had not tried to recall what happened on that particular night?

No. I had spoken to an officer following the day.

But not later?

No.

You were with your friend Mr. Mark Boyce, is that right. You had been with him all the evening, had you?

As I recall, yes.

Sorry?

As I recall.

Starting when?

Sorry? Where?

When? What time did you go out drinking? A. I can't recall. I honestly don't know.

Well, was it a full evening's drinking, was it?

I honestly couldn't say. It was a year ago. I really don't know.

You can't tell us how long you had been in the Chicago? A. No.

You can't tell us how much you had had to drink?

No.

Not even in the most general terms?

No, not really, no.

Your friend Mr. Boyce certainly had a lot to drink, hadn't he?

Yes.

More than you?

I would say he was more drunk than I was, yes.

But had you been going drink for drink?

I can't answer the question. I don't know.

Pints, halves, shorts or what?

I would imagine pints but I'm only guessing that. I don't know.

You say you said he was more drunk than you. Does that mean you were under the influence of alcohol to some degree?

I had had a drink, yes.

And your recollection of this evening is not clear, is it?

I have told you what I remember.

And you have talked about the man coming up the step. It's not steps, it's just one step, isn't it?

If you say so.

Off the pavement; you think it's steps, do you; a number of steps? Those are the words you used.

There is, I believe, one step off the pavement, and I think there is another step going into the club

That may well be the case, yes. And you say that the man comes forward. There is a commotion actually in the reception area, isn't there?

Yes.

Between one of the doormen?

I don't know if it was one, but there was certainly a commotion with a doorman inside. There might have been more than one. I don't know.

That was with the man who pushed his way in?

Yes.

Did you see that man who pushed his way in throw any punches?

I couldn't say. It was inside the doorway. As I say, I was attracted to it by the noise. I couldn't really see what was going on.

Did you see any punches thrown before he pushed his way through the door?

I don't recall.

The man who was eventually injured, hit his head on the pavement, you say he raised both his hands. Can you indicate what you recall in the way in which he raised his hands?

As I recall, as he was going up or when he got to the top of the steps, he was just "settle down, calm down".

He had both hands raised above the shoulder, palms forward?

I mean --

I am holding my hands, I hope, in a reasonable reflection of what you did. That is right doing that?

Yes.

He holds his hands up either side of his head, palms forward, and was appearing to try and calm his mate down. That was the man who would be scuffling inside?

I don't know who he was trying to calm down, but I'm guessing it was his mate because his mate had just gone in.

You said he was trying to calm his mate down. That is the note I have of your evidence in chief.

Yes, yes. He was trying to calm the situation down, I would have said, and seeing as his mate had just gone in, I presume he was trying to calm his mate down.

Now, there is no doubt that that person who raised his hands, in whatever position, was hit on the jaw. You say he went straight back, did you, and hit his head on the pavement?

As I remember, yes.

He was hit by the punch. What happened then?

He fell down.

Backwards?

Yes.

Straight backwards?

I think so, yes.

Didn't bounce off anything else?

Don't recall, no.

JUDGE HUTTON: What was your answer?

I don't recall.

MR. BOWLEY: Then your attention was concentrated on the man who was lying on his back, obviously very seriously injured?

Yes. I saw him on the floor, I saw the blood, so

I figured it was serious. That's why I went off.

And you went off to try and get an ambulance?

Yes.

MR. MAIN
Re-examined by MR. MOONEY

Two matters: first, my learned friend held his hands up in a way that he suggested was similar to that which was done by the man who was struck.

MR. BOWLEY: No, your Honour. I was reflecting what the witness had done, and I very carefully said it.

MR. MOONEY: Perhaps I can clear the decks then. Do you have any firm recollection of the way in which the hands of the man were held, other than to say that they were calming?

If you put it like that, no, I don't. I recall him doing, it was a calming gesture. He was trying to, he gave the impression to me he was trying to calm the situation. His hands were raised.

Perhaps I'll leave that point there. Now, can I turn to the evidence that you gave about the man falling to the floor. Was your evidence that he did nothing to prevent himself, or to save himself, from falling to the floor?

I don't believe he did, no.

Your Honour, I have no further questions unless your Honour has any questions.

JUDGE HUTTON: No, I haven't. Thank you. That's all, thank you, Mr. Main.

(The witness withdrew)

MR. MOONEY: Can I now turn to the statement of Mr. Baldwin at page 18. Again, members of the jury, it has got the same caption as the statements of the doctors I read to you yesterday, so I won't repeat it. This is the statement of Wayne Michael Baldwin. It is dated the 11th day of July of last year.

"I am a police constable in the Gloucestershire Constabulary, currently stationed at Wadham. At 1.20 on Thursday, 11th July 1996, as a result of a radio message, I attended Mondo's nightclub, Bath Road,

Cheltenham. On my arrival at the location, at the same time as an ambulance crew, I saw a man who I know to be Paul Steele, led on his back".

MR. BOWLEY: "Laid on his back".

MR. MOONEY: It should be "laid".

JUDGE HUTTON: I think it is often said in the vernacular; "led". Perhaps we don't need a great deal of thought about the grammar of it. I think it is an expression often used.

MR. MOONEY: I'm only a messenger. I move on from there. "I could see that he had facial damage around his nose and mouth and he was lying motionless. At 4.28 hours, I attended at 135 Village Road and spoke to Glen Soames, the doorman. He took us to his bedroom and pointed out clothing he said he was wearing --

JUDGE HUTTON: You've got me lost at the moment. I can't follow this if you don't tell me where you've got to in the statement.

MR. MOONEY: Your Honour, it's page 21.

JUDGE HUTTON: You're missing out irrelevant bits, obviously. Which page now?

MR. MOONEY: It's now at page 21; bottom paragraph. I'll start again.

JUDGE HUTTON: Yes, that's right. Start again.

MR. MOONEY: "At 4.28 hours, I attended at 135 Village Road, and spoke to Glen Soames, the doorman. He took us to his bedroom and pointed out clothing that he said he was wearing at the time of the incident. He said to me that a black and white check jacket that I had seized, Exhibit WMB3, had not been worn, and that he had borrowed one from another doorman called John, for the evening, and returned it when he left the club. I could see that there were spots of what appeared to be dried blood on the lapel of the jacket. I also seized a number of other items. They were placed in individual brown sacks. Mr. Soames was then arrested by PC Spriggs, who attended in company with PC Lane".

That concludes the relevant evidence of PC Baldwin. Before I call the officer, can I just read out a formal admission, which has been shown to my learned friend and with which he agrees. I also have a copy for your Honour and the jury.

JUDGE HUTTON: Yes.

MR. MOODY: Perhaps I could read it out and they can be distributed at a relevant time.

JUDGE HUTTON: Yes, perhaps you could hand up my copy now, could you?

MR. MOONEY: Yes.

JUDGE HUTTON: Thank you.

MR. MOONEY: 1: It is formally admitted that Exhibit WMB 1, being the video which we have seen, accurately depicts the events which occurred at the entrance to Mondo's nightclub, Bath Road, Cheltenham, on the morning of the 11th July 1996.

2: The seizure and continuity of transfer of exhibit

WMB1 is admitted.

MR. BOWLEY: I do tell the court that I admit that on behalf of the defendant.

JUDGE HUTTON: Thank you.

MR. BOWLEY: I appreciate it excludes the necessity for a great deal of technical evidence as to what happened to this video hand to hand.

JUDGE HUTTON: That's very helpful, thank you.

MR. MOONEY: I am grateful to my learned friend for making those admissions. May I now call the officer, DC Jamieson. While he is on his way, may I indicate in open court the way I propose to deal with this matter. My learned friend has asked, quite properly, yesterday, was the tape to be played in full. Your Honour, the tape that both he and I have seen, as I indicated, is an 18 minute summary of the tape that lasted all night.

JUDGE HUTTON: Well, you use the word 'summary'. Don't you mean a 'section'?

MR. MOONEY: Yes, I do, your Honour. It is.

JUDGE HUTTON: The relevant part.

MR. MOONEY: Yes, it is the 18 minute relevant section, yes. I would propose to play that in its entirety, and then perhaps the officer can deal with the other matters, and whilst he is here he can deal with the video, but first he can be sworn.

DC STUART JAMIESON, sworn Examined by MR. MOONEY

Your name, rank and station?

I am DC 560 Stuart Jamieson, currently stationed within Cheltenham CID.

DC Jamieson, do you own a video recorder?

Yes, I do.

Can you operate that one?

Yes.

We have heard an agreed document, stating that the video we have seen has been admitted, but the members of the jury have only seen excerpts from it. Could you rewind that and perhaps everybody can now watch the video in its entirety. I have indicated it is about 18 minutes long. (Entire 18 minutes of video shown). Your Honour, perhaps the video could be Exhibit 1. I don't think it has formally been exhibited as yet.

JUDGE HUTTON: Do you want the actual tape exhibited?

MR. MOONEY: Perhaps the actual tape to be exhibited, and for further reference we can refer to the segment.

JUDGE HUTTON: Exhibit 1 is the 18 minute section of the tape?

MR. MOONEY: Exhibit 1 is the actual video which forms the subject matter of the admission, which is WMB1. Perhaps that could be Exhibit 2.

JUDGE HUTTON: What is that?

MR. MOONEY: That is the segment, if it needs to have a separate exhibit number.

JUDGE HUTTON: Yes, alright. Thank you.

MR. MOONEY: Officer, did you conduct an interview with the defendant, I think on the 11th July of 1996?

I did the introductions. DS Beard participated in the interview.

Were you present throughout the interview?

Yes, I was, yes.

We have transcripts of that interview here. Perhaps I can hand you a copy. Whilst it is being distributed, could I indicate there are a number of underlinings in this. They have no significance. It is merely something which was on the transcript when it was photocopied.

JUDGE HUTTON: Well, we don't know who put the underlinings in.

MR. BOWLEY: I did.

JUDGE HUTTON: You did?

MR. BOWLEY: What happened was that we asked for this to be transcribed. It was transcribed by a firm. A copy was sent to me. I regret to say I had not realised it was the only copy, and they are my underlinings. I think they should be ignored.

MR. MOONEY: Officer, turning to the first page, there is an initial summary of who was present in the interview, including the defendant, his legal adviser and the other person. Can we now start with you taking the role of DC Jane, and any other policeman who happens to be there, and I will read the responses of the defendant, if I may?

Certainly. I started the interview. "Can I ask you why you are in the interview, please, Mr. Bryan?"

Perhaps if you could start where it says: "Lovely okay, just for the tape". Start there. Prior to that is just interruption.

"Lovely, okay. Just for the tape, if we can all speak up that would be brilliant. Okay then. I have got to remind you that are still under caution. Okay? And that is that you do not have to say anything, but it may harm your defence if you do not mention, when questioned, something which you later rely on in court, and anything you do say may be given in evidence. Do you understand that?"

"I understand".

"Have you explained that to your client, Mr. Bryan?" Q. "Yes."

"Okay, you are quite happy with that tape procedure. There is one master tape, the other for working copies, and that is the tape that will be sealed in our

presence. Everyone will sign it at the conclusion of the interview, okay? We will give you a form R73, which explains the procedures in relation to those tapes, and how you can gain access to them. Okay? You are entitled to free legal advice. You have obviously taken up that right, having Mr. Bryan here, to represent you from Smith Robinson & Co. Okay? Are you happy with that?"

"Yes."

A. "Okay." DC Beard: "Okay then. We are investigating an incident which occurred at 1.15 a.m. this morning outside" -- it must be a misprint -- "outside Mondo's. May I continue?"

"Yes, please do."

"I understand the incident concerned yourself, a man named Sean Ballantyne and a man named Paul Steele. As a result of that incident, Paul Steele is currently detained at" -- it should read 'Frenchay Hospital' - "with a head injury, and I understand that this morning he underwent surgery to remove a blood clot from his brain, and at this present time, he is described by the hospital as being in a critical condition. What I want to establish in this interview is actually what took place outside Mondo's this morning, and your involvement.

Now I know from enquiries that we have conducted that there was an incident which involved Sean Ballantyne and yourself, prior to Mr. Steele receiving injuries. Would you tell me what happened from the beginning?"

"I was standing on the door at quarter past one approximately, and I know now it to be Sean Ballantyne that approached the door. I don't know previously to the --"

"Right."

"A friend of his, who had been with him, asked if he could come into the club. I said: 'No. There's no more admissions after one o'clock'."

"Right."

"And he left and went back."

"Did his friend go with him?"

"Yes, I think so, yes."

"Right."

"Um."

"At that time, that initial contact with him, can you describe his manner to me; Ballantyne's?"

"It was a straight knock back and he went." A. "And his friend Steele?"

"Again was fine."

"No problem there?"

"He tried to -- obviously he was having a chat with the doorman next door, trying to convince me that it was alright to go."

"Who was that doorman?"

"John Kirkpatrick."

"Okay. Is he a close friend?"

It is inaudible at that part. "A bit later on, virtually straightaway afterwards it was, I think, he came -- Sean Ballantyne -- we exchanged a few words. 'I'm just going upstairs to see a friend of mine', and I said to him: 'No, we're closed. I've already explained to you before that we're closed'. And he was quite persistent, and he was just about to walk into the club, I just stepped onto the step. I wasn't on the step at the time. I was just talking to two guys, and I put my hand out to stop them from -- to the club. He brought his arm back and punched me straight in the chin."

A. "Right. As a result of that punch, what happened next? Were you thrown backward?"

"I was shocked by what had happened."

"Yeah."

"And came back, and then there was another chap who came -- the corner of my eye didn't see anything at all. I just seen another bloke coming towards me."

"Yeah."

"And I had good reason to believe that he was either -that he was going to attack me."

"What reasons did you have for believing that you were going to be attacked by him?"

"The two lads they were both mates; they were both drunk. And I turned round. I didn't see him fully, but I saw him make a quick movement with some part of his body, and that's when I turned round."

"Well, what did you do. Can you describe exactly how you --" inaudible.

"Punched him."

"Right. Where did the blow connect?"

"Sort of" -- then inaudible.

"Right, what happened then?"

"Then there was another confrontation with Sean Ballantyne."

"Where did that take place?"

"In the reception area."

"Right. Can you just talk me through that?"

"It happened very quick. It's very hard for me to -- "

"Um, was there fingered blows inside the entrance -Ballantyne?"

"Well I -- as the way I see is these two lads were attacking me."

"Yeah."

Q. "And I was defending myself."

"Right. Going on to that then, I accept -- I don't know if Mr. Bryan is (inaudible) but we do have a video of the whole incident, and it is quite clear on the video that Ballantyne pushed you in the chest with his hand. He then threw a punch, which connected with your face. Is that correct?"

"That's correct."

"Then -- and you went backwards." Q. "I went back a little bit, yes."

"It's also clear on the video that his friend Paul Steele did step forward, and he had his hands held up in front of him, with his palms open."

MR. BOWLEY: It's "held in front of him" not "held up".

Sorry, my apologies. "Held in front of him, with his palms open, and there is (inaudible) and saying"

"(Inaudible) words to that effect."

"Calm down or (inaudible) or words to that effect at that stage. Ballantyne himself is away from you and he's not threatening you, and that's when you punch Steele. So at the time you punched Steele, it would appear you were under no real physical threat."

"I was. I was just punched in the mouth by those two."

"Yeah, I've explained that. Following that punch to your mouth there, there is a gap where -- "

"-- a longer --"

"Ballantyne, it's several seconds".

"It's not. In that situation, two seconds is --" it's inaudible again.

"You're quite --"

"Under them circumstances, if that's what you're saying to me now, put yourself in my position. I've been attacked by this lad Sean Ballantyne --"

"Mmmm."

"-- then his friend has come up from behind, and I'm not aware of what his hands --"

"His friend's -- um -- to your side, isn't he, to your right side, I would say. Would that be correct? You are facing Ballantyne."

"Yes, come back of the --"

"You've stepped back and he's punched you."

"Stepped back and he's punched me, and then on the side."

"His friend Steele comes forward."

"Yes."

"To your side."

"He's actually at the side of the door then."

But both hands, palms outwards, raised in front of you, and that's when you punch him. Is that correct?"

"That's correct."

"And you are saying you felt threatened at that stage?" Q. "I was threatened, yes."

"By whom?"

"By the lad who was coming round the corner from beyond the door."

"You are saying you felt threatened by Mr. Steele. That's the reason you punched him."

"Yes."

"Right. You are saying you felt threatened, but during the assault upon you, did Steele play any part in that whatsoever?"

"No. But I did know him to be the second party over the Ballantyne's."

"Yes. The point I'm making is, Mr. Soames, is that I accept that Ballantyne was the aggressor initially and he did assault you, also at the same time I must point out that the injured party, Paul Steele, was merely, at that stage, an onlooker. He was just stood there on the pavement."

"Looking at it from your point of view."

"I accept -- wait a minute -- I accept he, he lunged forwards, but it is quite clear that he had both hands held palm outwards, attempting to diffuse the situation."

"We've just been through this."

"I know, but I am just reiterating that I can't see how you thought you were under threat from him under the circumstances."

"Under the circumstances I've just been hit by Sean Ballantyne."

"I accept that."

"But I see a silhouette coming from behind me, a sudden movement. Whether his hand was clenched or open, I wasn't aware of that. All I was aware of was that this man was behind me and was making a sudden move."

"But prior to that there was a break (inaudible) at the time you threw the punch at Steele, you are not under immediate attack from Ballantyne, are you?"

"It would have been at least two seconds for me to fall back when he pushed me."

"You are saying you were punched and you acted."

"I acted. I did what I had to do at the time. I mean I defended myself. I had reason to believe that I was going to be attacked again. I was in a situation where I was being attacked, and somebody else came from behind me. I wasn't aware who it was."

"So let's get it straight then. The reason you punched Paul Steele was because --"

"The only reason."

"Posed a threat to you."

"Yes".

A. "The thing is, Mr. Soames, you are a doorman by trade, aren't you? I mean, you've been in this business some time."

"I have, correct."

"Right. So you've been in these situations before, I suggest."

"I have, yes."

"So I would assume from that that your reactions would be a bit better than normal run of the mill persons."

The response was inaudible.

"And you would be able to assess the situation."

"I'm not in the habit of being attacked every night." A. "I accept that. But you have --"

"I have worked in some of the dangerous clubs."

"I mean, you have, you have training, I assume, to do that type of work that you are in."

"No."

"You don't?"

"No."

"Have you ever had any training?"

Q. "I've been on, been on quite a few courses."

Right."

But I'm not in physical training or anything like that. Self-defence or anything like that."

"So you have been trained, I assume, to how you can react in these situations."

"Yes."

"How to assess the danger."

"And I've also been told, when my life is in danger I am entitled to defend myself in whatever defence that may take."

"I wouldn't say your life was in danger over this incident."

"No, but I was being attacked."

"You had been attacked."

"Yes, and I had reason to believe that there was a further attack going to take place on me."

"Right, right. Is there anything else you wish to say regarding this incident?"

"No, thank you, I've said my bit."

"So to recap then, you are saying that because you stopped a man you now know to be Ballantyne from entering Mondo's
--"

"That's correct."

-- "as a result of that, he pushed you first in the chest and then he punched you in the face. You fell backwards."

"Yes."

"You saw, out of the corner of your eye, a second man who you believed to be with him."

"That's correct."

"So you stepped forward. Do you recall that, do you? "

"I saw a silhouette and some movement from the corner of my eye."

"And did you -- you thought you were under immediate attack from him."

"Yes."

"And that's the reason you punched him."

(Inaudible)

"Is there anything you wish to add, Stuart?"

You said no, I think?

Yes.

This is the solicitor.

A. "I think to clarify that, I think the likelihood, the great likelihood of immediate attack, not that he was under immediate attack." DS Beard: "Well, it's what Mr. Soames thought at the time." DS Beard: "Are there any other witnesses to this incident that you can recall we have not yet seen or we know of?"

"There was two people."

"We've seen them. We saw the two people."

Okay, that's -- "

"Yeah."

"Nobody else."

"Nobody else. On the video there is a man who was obviously concerned for the chap who's on the floor. Was he there at the time or did these people arrive afterwards?"

"I think -- I'm not a hundred percent certain, but it is a possibility they arrived after the incident."

"But you don't know them?"

"No."

"Okay. Alright. I'm not going to formally charge you at this stage. You have given us your account of events as why you felt it necessary to punch Mr. Steele, and if you are happy, we will conclude the interview."

Something by the solicitor: "I want to say that I think, for the benefit of the tape, and for -- I think my client genuinely appears to be shaken." You responded: "Right", or DS Beard did.

Yes.

Then, to conclude, the formalities of signing the tape and indicating to Mr. Soames what would happen to it were told to him?

Yes.

And that concluded the interview?

That's correct.

Can you remain there, please.

DC JAMIESON
Cross-examined by MR. BOWLEY

Mr. Jamieson, first of all, was Mr. Ballantyne charged in relation to this matter?

Not by myself but I believe he was charged in relation to the incident as a whole, your Honour.

What with?

I believe it was affray.

Has he been dealt with yet?

I do not know, your Honour.

Going back to the video, at the start of the video two men try and get entrance to the club, and they are Ballantyne and Steele, are they not?

Having seen the video on numerous occasions, that is my understanding, yes, your Honour.

We can see Ballantyne is the man in the shirt sleeves rolled up, dark hair and dark trousers; the man who eventually throws the first punch.

JUDGE HUTTON: That's right, is it?

Yes, your Honour.

MR. BOWLEY: And Steele is with him right at the start in that 18 minute section of video?

Yes, that's correct.

And they are apparently trying to get access to the club at a time when access is not being allowed?

I suspect so, yes.

And then the same two men come back almost immediately before the punch was thrown?

Yes, that's correct.

Q. Now, in the course of that interview -- I think Mr. Beard was doing the interviewing -- he refers to page 5, the bottom of page 5: "It is also clear on the video that his friend Paul Steele did step forward, and he had his hands held in front of him with his palms open." Then later on, page 7, half way down: "I accept. Wait a minute. I accept he lunged forward." That would be Mr. Steele, would it?

You are going to have to bear with me and read a bit prior to that before I answer that question.

Yes.

Yes. In the context that would be Mr. Steele he would be talking about, as he goes on to say he had both hands held palm outwards.

It seems to read that way, doesn't it?

Yes.

Had you seen the video before the interview?

Yes, I had when it was shown to the legal representative of Mr. Soames.

That occurred before these interviews took place?

That's correct.

But Mr. Soames had not seen it?

No, he had not, no.

Those two descriptions of the hands held in front of him with his palms open, was a demonstration given to Mr. Soames?

Excuse me, your Honour, may I just go back? I am not sure if Mr. Soames had seen the video at Mondo's or not, as it was not seized until a bit later on that evening.

I have a statement here which Mr. Duckworth made about the video, saying that it was handed to PC Baldwin at 2.30 a.m. on the 11th July. Do you know about that statement?

I haven't read the statements in their entirety. I believe Mr. Duckworth did make a statement, yes.

Immediately Prior to handing it to Mr. Hall, he had removed it from the tape machine, having switched it off?

Yes.

Which would indicate it is perhaps unlikely that this statement is in any way true at all, that Mr. Soames had probably not seen this video before the interview?

I am not in a position to comment on that, your Honour. It merely says the video was removed. It doesn't say if it was played prior to it or not.

Maybe that can be dealt with by Mr. Duckworth's evidence by way of an admission in due course.

MR. MOONEY: I certainly admit that which you have asked him.

MR. BOWLEY: My learned friend indicates he is prepared to admit that Mr. Duckworth handed it over at 2.30 a.m., and it had been taken out of the machine almost immediately prior to that.

MR. MOONEY: Yes, the Crown will formally admit. It is one of the technical matters. It did not need be read. The video was taken from the machine at 2.30, and thereafter its location was known at all times. Prior to that, it was not.

MR. BOWLEY: Now, these references on pages 5 and 7 to the hands held palm outwards. Do you recall whether the sergeant gave any sort of demonstration to Mr. Soames by what he was meaning by that, or was it just describing?

I don't recall, your Honour.

You have watched this video many times, have you?

I've watched it a few times. I've certainly limited watching it.

And the picture that comes out, if you freeze frame it, is of Mr. Steele's right hand coming out almost parallel to the ground at just below shoulder level, correct, with the palm outstretched?

I would not like to comment without the video straight in front of me again, whilst you are asking me that question.

Right, well let's do that.

Yes, no problem with that. (Video played).

Do you want to look at it again?

I'm happy with it as it is, thank you.

Just keep it held there. It goes out with his right hand by that time, in the frame we have got to, his hand is behind the door?

Yes.

But it goes out just below shoulder level, with the fingers outstretched?

From my understanding of the video tape, it is something similar.

The other hand, the right hand, is arm bent, wrist cocked, fingers slightly bent?

I wouldn't like to say. Your view is much closer than mine.

JUDGE HUTTON: Would you just wind that back, please, usher, and then take it forward frame by frame. Take it frame by frame. Okay, carry on slowly. Right, stop.

MR. BOWLEY: So the right hand goes out, certainly with the hand and fingers outstretched?

That is my understanding from what I can see from the video.

And the other hand, as I say, is just below shoulder level, arm bent. We will have to go back to it.

That's alright. Yeah, I mean, my understanding --

Can we go back, please, a few frames. Another frame, another frame, another frame, stop. That seems to me hand almost down, isn't it?

Obviously hands like that --

Facing downwards?

Yes, at the moment, yes.

Perhaps slightly cocked, the wrist there. Then take it on one more, please. Then there we have the right hand with the arm bent, right, the elbow bent. Do you see that? Would you like to go closer?

I can see the elbow bit. I can certainly see the elbow bit.

And the wrist bent?

Yes.

And the fingers slightly bent?

I guess so. I mean, the definition is not too clear at that moment. The fingers are close together, certainly.

Oh yes, but it's the angle. You can see the angle, can't you?

The wrist is bent, yes.

Yes, and the fingers are slightly bent, because the wrist is like that, the arm bent, wrist bent, and the fingers slightly bent back -- forwards. Sort of angle that I am holding my arm at the moment.

It appears that way, yes.

I know it's not easy. Can we hold that, please. Not exactly hands held in front of him with his palms open, is it?

At that particular time?

It's that.

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I'd say his palms are in front of him, and we can't see the other hand, to see if it was going like that forward, and it was appearing to go upwards as it was going forward. That's all I can say.

He was leading with his left, wasn't he?

Yes, at that stage, yes.

Lunging forward, leading with his left?

DS Beard said yes, he lunged forward, yes.

Lunging forward is the description that Mr. Beard gave, and he had seen it?

Yes, that's correct, yes.

Yes, thank you very much.

DC JAMIESON
Re-examined by MR. MOONEY

Officer, perhaps we can just move this forward one frame at a time. Stop there. At this stage, his hands -- his right hand is up. He is looking at his friend Mr. Ballantyne. He is not looking at the defendant at all, is he?

MR. BOWLEY: This is re-examination, not cross-examination.

MR. MOONEY: It's descriptive. I am not cross-examining.

JUDGE HUTTON: Well, you are asking leading questions, which is not allowed in re-examination.

MR. MOONEY: Well, your Honour, I can merely ask this officer to describe it. I was merely trying to short circuit it. If your Honour wants me to do that, I will. Describe what you see, officer?

I see Sean Ballantyne looking outward, from inside the foyer or entrance to the club, with what would appear to be his hands down. I see Mr. Paul Steele facing what appears to be, at that time -- obviously I can't see where his eyes are looking, your Honour -- facing Mr. Ballantyne, with his right hand, looking down obviously slightly higher than chest height, I would estimate, with his hand, I suppose about that height. Whether his fingers are curved, I wouldn't like to say. His left

hand is -- I have no idea what the hand position is but it is obviously out to the left, which I assume is where Mr. Soames was. I do not know what his hand was doing at that time.

Can we move it forward one notch, please. Now this blow landing.

Yes.

Where is Mr. Steele looking?

Still at Mr. Ballantyne.

Where are his hands?

His hands; as the impact from there moves slightly round, he still has his left hand in between waist and chest height, I would guess. I don't know what the hand is doing but his arm is obviously between chest and waist height.

Is his body inclined towards Mr. Soames, away from him or vertically?

Upright. As I say, not, at that stage vertical.

From what angle did that punch come in?

The punch would appear to me to be a sideward blow to the left hand side of Mr. Steele's face.

How far away is Mr. Ballantyne?

Mr. Ballantyne is still in the foyer

JUDGE HUTTON: We are not hearing what you are saying?

Sorry, your Honour. Mr. Ballantyne is still in the foyer, close to the door.

MR. MOONEY: Can you move it forward another notch or two, please. Now can you just let it run forward. Stop it there. What was Mr. Soames doing at that point?

Mr. Soames came into the entrance of the club.

What was he doing?

Punching Mr. Ballantyne at that point.

Move it forward. Stop there. What is the man with the white shirt outside inviting Mr. Soames to do?

He is inviting people inside to stop.

JUDGE HUTTON: What was your answer?

He is inviting people inside to stop.

MR. MOONEY: What is Mr. Soames doing in response to that? A. At that particular time, Mr. Soames is looking outward.

Move it on a notch. Carry on, please. What did Mr. Soames say at that point?

I didn't hear any verbals at that point, I'm sorry.

Rewind two notches. Bit more, bit more. Right, stop there. Let it play. Stop there, please. As he gestures with his fingers towards the other person, what does he say?

"Come on. I'll kill you."

JUDGE HUTTON: Saying to whom?

I suspect to Mr. Ballantyne. That's the indication I have, your Honour. I cannot see his mouth.

"Come on. I'll kill you."

Yes.

MR. MOONEY: Have you had the opportunity of listening to the sound track at the point immediately before the punch is thrown, which renders Mr. Steele unconscious?

Yes, I have.

From your interpretation of what happens there, can you recall or understand any words said by Mr. Steele?

A. The words, without listening to the audiotape, which we have done, the words were to the effect of: "Calm down." Without listening to the tape, I cannot be more descriptive, I'm afraid.

Thank you, very much. Does your Honour have any questions of this officer?

JUDGE HUTTON: No, thank you.

(The witness withdrew)

MR. MOONEY: That's the case for the Crown.

MR. BOWLEY: I don't know what your Honour's timetable is likely to be but I am certainly calling my client.

JUDGE HUTTON: You are calling your client to give evidence.

MR. BOWLEY: Yes.

JUDGE HUTTON: Yes. Well, time is short. I think we had better start.

MR. GLEN SOAMES, sworn

Examined by MR. BOWLEY Q. Your full name, please, Mr. Soames? A. Glen Robert Soames.

Are you currently in employment?

No, I am not employed at the moment. Q. How old are you?

27.

At the time of the incidents we are dealing with, which is the 10th and 11th July last year, were you in employment?

Yes, that's correct.

Where were you employed?

I was employed by Leisure Security Consultants. They're a company based in Solihull, West Midlands.

In what capacity were you employed by them?

I was a door supervisor. I was actually the head doorman at the time.

At which club?

Club Mondo, Cheltenham.

What were your responsibilities there?

To ensure the safety of the customers and to make sure that people enjoyed the night, to keep the running of the doors nice and sweet for people to go in.

What were your hours of work? A. 9.30 until 2.30 in the morning.

Had the club opened before you went on duty?

No.

That was the opening of the club?

Yes.

Was it open seven days a week?

No.

What time did it close?

2.30: Two o'clock to the customers but we had half an hour to get the customers off the premises.

What was the last time the customers were allowed in?

One o'clock was the last admission for customers. There are a few people round town that work in bars themselves that we would let through.

You are wearing glasses today, Mr. Soames, and you are not wearing glasses on the video?

That's correct.

Are those glasses as a result of doctor's prescription? A. That's right.

How long have you been wearing glasses?

About two years.

What's the problem with your eyesight?

I've got bad eyesight in my left eye. I can hardly see out of it.

Your left eye?

That's correct.

Do you wear glasses when you go to work?

No.

Why not?

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Because of my appearance I think it's better that I don't wear my glasses, in case there's something that does happen, there would be a danger. They would be a danger to my job.

How long have you been working for as a doorman for any company prior to the incidents of July 1996?

About three years; every day for three years. Every night, sorry, six nights a week for three years.

You told the officers in the interview that you had gone on a number of courses?

That's correct, yes.

What sort of courses were they?

A. Government training courses for doormen, fire and -JUDGE HUTTON: Please speak up a bit. They were training courses, government training courses, approved training courses for doormen to be licenced on premises of night clubs.

MR. BOWLEY: What sort of things did those courses deal with?

Situations that you might get involved in. How to deal with situations. How to speak to people.

The evening that we are dealing with, which is the Wednesday evening into the Thursday morning, what sort of clientele were expected at the club on that particular night of the week?

A. On the evening in question it was an over 25s night. JUDGE HUTTON: Was what?

Over 25s.

MR. BOWLEY: And prior to the 18 minute extract from the video that we have all seen, had there been any trouble that night?

No, it was a quiet evening. It was very quiet, relaxed.

Who was on duty with you?

My colleague, Eaton Duckworth and myself.

I think we can see from the video you were both wearing uniform?

That's correct.

Uniform being what?

Dog tooth jacket and black tie.

Later on in the video I notice that you have your tie in your hand at one stage?

It came off.

Is it one of these velcro ties that come off?

It's the same one as what I wear now. It's a clip on tie. It saves me neck strain.

So you don't get strangled if somebody pulls the tie? A. Yes.

The police have the same system, don't they?

Yes.

It looks smart but it's very convenient?

That's correct.

That's what happened in this case, is it?

That's right.

Who pulled it off you?

Ballantyne did.

On that evening, the start of the 18 minute video, we have heard from a police officer that it is Ballantyne and Mr. Steele who come in at the start of that 18 minute section.

That's correct.

Do you recall that incident?

Well, two gentlemen approached the door. One of them was somebody Ballantyne. The other one was Paul Steele. I didn't know, I hadn't seen them before at all around the club, so I didn't know them.

At all?

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Not at all.

What were they trying to do at that stage?

My colleague Eaton was speaking to the one, I spoke to the other one, I spoke to Paul Steele, just general chit chat about the lateness of the hour, and they left shortly after. There was a few words exchanged.

Did you see where they went?

I believe they both left the entrance of Mondo's and walked towards the left, which was the club next door, Chicago Rock Cafe.

The next sequence in the video we have seen, prior to them returning, we see you and Mr. Duckworth, do we not, coming in and out from time to time?

That's correct.

Mr. Duckworth, we have seen him in the witness box. Is it you who is standing outside on the pavement for much of that time?

That would be true to say.

We can't see the head of the person there. We can see the blazer and the slacks talking to the two girls, is that right?

Yes, that's correct.

Was that the girl who gave evidence, Katherine Prior? A. That's true, yes.

Did you know her at all before this evening?

The girl who was in the dock here yesterday?

Witness box.

Yes, briefly, not very well.

And the girl she was with was apparently called Jennifer Aspinwall?

That's correct.

Did you know her at all?

I knew her generally better than the other one.

While you were talking to them, there are various people coming out of the club?

Yes.

And everything seems to be peaceful?

Peaceful, yes, very quiet.

Then we see, on the video, Ballantyne returning?

Yes.

And Steele behind him?

That's true, yes.

I want to take this through very carefully. What happens when Mr. Ballantyne returns?

Mr. Ballantyne -- I was talking to two female girls at the time. He walked past me and stood in the door entrance. I turned round and spotted him in the entrance, and walked over to him, and I explained to him that he had already been refused admission. And he said to me: "I'm just going upstairs to see my mate."

What was your reaction to that?

I said to him: "You've already been told that you're not allowed in after one o'clock". There was no aggressiveness on my behalf whatsoever.

What was his reaction when you told him he could not go upstairs to see his mate?

He pushed me in the chest. I couldn't believe what was happening. He just pushed me in the chest.

Where were your hands just then?

In my pockets.

What happened to you when he pushed you in the chest? A. I lost my balance and went back off the step.

Actually onto the pavement?

No, very closely. My foot just come to the edge of the step.

You didn't actually go off the step?

No, I didn't.

What's the next thing that happened after he pushes you in the chest and you go backwards?

I managed to get my balance back, and before I could stand upright, Sean Ballantyne punched me straight on the point of the chin, sending me back off the step.

How hard a punch was that?

It was quite a forceful punch. It caught me right on the point of the chin. I felt a little bit dizzy off the punch.

Did it cause any damage?

I went to hospital afterwards and I had an X ray on my jaw, yes, and there was severe swelling of my jaw.

How long before the swelling went down?

About three or four days.

So the push doesn't get you off the step but the punch does?

Yes.

You say you were dizzy with the punch?

That's correct, yes.

What's the next thing that happened?

As soon as I was punched, I saw a silhouette of a man coming from my side vision. It could have been anybody. It could have been Joe Bloggs, but after being punched in the jaw, I thought well, I'm going to be attacked again.

When you say a silhouette, what did you think the silhouette was doing. What was your impression?

It happened really very quick. It was as if like that, it was like that sort of thing.

What did you think that person was going to do?

He was going to attack me.

Did you know at that stage whether or not the silhouette had anything to do with Mr. Ballantyne?

It's hard to say. I mean, my head, I was just dazed. I couldn't believe what was happening. I'd been punched, and I saw a man from the side coming onto the step quick, straightaway. After within two seconds of me being punched on the point of the chin, another man comes onto the step with a gesture that I thought was, he was going to attack me.

So what did you do?

I punched him.

With which hand?

My right hand.

Fist open or closed?

Half and half, I'd say. I didn't have much time to even think about what I was doing. It was just a natural reaction.

A natural reaction to what?

Self-defence.

JUDGE HUTTON: What was your action?

It was a natural reaction to self-defence.

MR. BOWLEY: Where did the punch land?

I believe it was the side of the jaw. I couldn't be a hundred percent certain.

What were you concentrating on at that stage?

I wasn't concentrating on anything in particular. It was just spur of the moment, I honestly believed I was going to be attacked. These two men had been refused, and I thought well, I just didn't know what was happening at the time.

After you punched Mr. Steele -- and we know from the video that he's hit on the side of the door and then he falls backwards onto the pavement -- what do you do then?

If I remember rightly I went back into the reception area to try and get Sean Ballantyne off the premises,

but he tried to throw me over the counter, rugby tackled me. As I say, he did that very quick, so, you know --

On the sound track of the video, while you and Ballantyne are clearly struggling in the reception area, right in the foyer ground of the camera's view, there are words on the sound track like: "I'm going to kill you."

That's correct, yes.

Are those your words?

I might have said that in the heat of the moment but it wasn't directed at anybody in particular.

Do you recognise your voice on the video?

Yes.

It is your voice uttering those words?

It could be or it could have been anybody else.

You've heard the video. You heard it this afternoon. A. Could you repeat the question, please?

Can you say who it was who uttered those words?

Yes, it was myself.

Who were you referring to?

Sean Ballantyne.

Why did you say that to Ballantyne?

It was a phrase that I just said at the time. I was attacked by him, and it was just a gesture. It wasn't meant by --

Were you angry with Ballantyne?

Yes.

Because of what?

Because he punched me for no reason.

Were you angry with Paul Steele?

No, I wouldn't wish that injury upon any man. It's just -- I didn't go out of my way to cause these injuries.

I was there one moment, minding my own business, and then all of a sudden I got attacked. It was not an intentional thing on my behalf whatsoever. I didn't go out of my way or say to anybody: "I'm going to injure this man at all tonight" because that's not true.

How do you feel about Mr. Steele's injuries now?

I regret everything that has happened, and it is a tragic accident.

Yes. Would you wait there, please.

MR. SOAMES
Cross-examined by MR. MOONEY

Mr. Soames, you have been a doorman about for, I think you said, just about three years?

That's correct.

As of July last year, you had worked as a doorman six nights a week for three years?

That's correct.

And you had been on a number of courses in order to make you a better bouncer?

To enlighten you somewhat (inaudible).

How would you regard a successful evening at work?

No trouble; trouble free night. I also enjoy the job as well; mixing with people.

A trouble free night; you've done your job?

That's correct.

Your job is to avoid trouble, to ensure the safety of the customers, that's right, isn't it?

That's correct.

To keep the running of the door sweet?

Yes.

Your job is to try and diffuse any unpleasant situation which might arise?

That's true.

You are employed to stop trouble before it starts?

Yes.

Not to create trouble yourself?

That's correct.

There are many ways of avoiding violence, aren't there? A. Yes.

You can intervene diplomatically and invite people to stop?

Yes.

You can use restraint techniques?

Yes.

Techniques particularly useful if you have a substantial size advantage over the person you are dealing with?

Yes, but size doesn't come into it.

Strength comes into it, doesn't it, Mr. Soames?

Strength; it doesn't matter how big you are in the game of doing a doorman's job.

You were substantially bigger than Mr. Steele, weren't you?

I am bigger than Mr. Steele, yes.

You are not quite as big now as you were in July of last year, are you?

That would be true to say, yes.

Were you training in a gym at the time?

Yes.

How often?
Three times a week.

Weightlifting?

Yes.

Bulking up?

Yes.

Had you ever boxed?

Yes.

To what level?

Amateur.

How many bouts did you have? A. I had a few fights in the ring. Q. How many?

Three or four.

Did you win them?

I won a couple, lost a few, yes. Q. Did you train for those fights? A. Yes.

Did you go to a boxing gym to train?

Yes.

Did you have someone who was dedicated to training you; a trainer?

I didn't have a trainer, but I had a lot of friends that supported me.

Did you spar with other people?

Yes.

Did you work out using punch bags?

Yes.

Did you work out using the hanging punch bags to increase hand speed?

Yes.

How many years did you fight as a boxer?

I didn't really ever go in the ring professionally. It was just sparring was part of my training.

You said you had a number of amateur bouts?

Three or four I just said.

What division did you box in?

I said to you there wasn't any division. I was just training in a gym.

Well, in the fights you had, you would not go in with a flyweight, would you?

As I said to you, people train with all sorts of different people.

Well, I thought your evidence was that you had had two or three amateur fights?

Trained in the ring, yes.

Well, is that an amateur fight or is that sparring or training?

Amateur doesn't get paid for his sport.

I know, but they have organised fights. The Olympics, for example, are amateur?

That's true.

How many amateur fights did you have when there was a referee, for example?

There was never a referee.

You had honed your boxing skills to the best level that you could, hadn't you?

That's a false statement to say.

Well, you had trained?

Yes, I trained.

You sparred?

I did, yes.

You didn't want to lose in the ring, did you, or get hit yourself?

Nobody wants to lose.

So you trained in order not to lose?

To the best of my ability.

And you think you attained the best of your ability. You got as far as you could get?

If I could have made a living out of it, I would have. Q. So, in summary, you knew how to punch, didn't you?

I can't understand the question.

It's a very simple question, Mr. Soames. Answer it. You knew how to punch, didn't you?

Yes.

You knew where to aim to inflict most harm?

No, I did not.

You knew the sort of punch that was required to put the man down?

That's a false statement.

In what respect is that false?

Well, how can you say that?

I am suggesting to you, Mr. Soames, that amateur sparring, you knew where to hit people to cause maximum damage?

How can you say that when I had seconds to decide what to do?

We'll get on to those two seconds in a moment, Mr. Soames. I am talking about generally. You knew how to inflict maximum harm, didn't you, as part of the training you underwent as a boxer?

No, that's rubbish.

You think so?

Yes.

Where would you hit someone to knock them out?

Most places. You know, where, you know.

Can you --

Well, if you hit him hard enough, I suppose you could.

Well, we know that, don't we, Mr. Soames. You know the damage that a punch can cause, don't you?

It all depends how hard it is.

Yes, I would agree with that statement. But you know the damage that a punch can cause, don't you?

Well, as I just said to you, it all depends how hard the punch is.

You know the sort of damage a particularly hard haymaking punch can cause, don't you?

No.

No?

That's right, no.

I asked you if you knew the sort of damage a hard haymaking -- you know what I mean by that; a haymaker?

No.

Let me rephrase it. You know the sort of damage that a punch administered with the full body force behind it can cause, don't you?

Yes, if you hit somebody hard, you are going to cause them injury, aren't you?

You have heard, haven't you, of people being killed by being punched once, haven't you?

I don't know where you've got that from. That's not come from myself. I've not said anything.

I am suggesting to you, Mr. Soames, that you have heard, through newspapers, through the television, of other people who have punched somebody once and the victim has died?

Well, we read about these things all the time.

So you do know that?

Yes.

Punching is a last resort, isn't it?

Of course.

When you were working the evening of the 10th and 11th July last year, you had no cause to be angry until Mr. Ballantyne became involved with you, did you?

It was a peaceful night. There was no confrontations with anybody. It was a pleasant night.

But afterwards you had every reason to be angry, didn't you?

After I'd been punched?

Yes.

I was upset and shaken by what had happened.

You were angry with him, weren't you?

I was angry with Ballantyne.

Yes. Mr. Ballantyne had come along once and ignored your request to go away. He had come back.

Yes.

He'd disregarded you?

Yes.

You said go away again and he walked past you to the door?

Yes.

This is a man who has no respect for your authority? A. Yes.

How did you feel about him before he hit you?

As I said before, I didn't know the man very well.

But you knew him as someone who had been told by you, on at least two occasions, to go away and not go in, and he had ignored you, you the head doorman at Mondo's, he'd ignored you?

It happens all the time, so you have to learn to deal with situations like that. It happens all the time.

And control your temper?

That's correct.

Would one of your training exercises perhaps suggest the way to deal with it was to let him go in, get Mr. Duckworth, and then restrain him and get him off the premises?

I didn't have the chance to even explain anything to the man. He attacked me without -- I couldn't even say anything to him. I couldn't believe what was happening to me.

He did attack you. I accept that. But that made you extremely angry, didn't it?

I wasn't extremely angry. I was shocked. The word to use was, I was shocked. I just couldn't believe I'd been attacked. I just couldn't understand what was happening.

You said, I think in your evidence in chief, you were angry with him?

I was angry with him, yes.

You wanted to get your revenge, didn't you, for hitting you?

Not at all.

As evidenced by you saying: "I am going to kill you" ?

As I said it was a phrase I used, but it wasn't directed towards Mr. Steele. People say that to their children, don't they?

No, Mr. Steele had already been knocked out at this stage. Once you had been struck by Mr. Ballantyne, would you say you were under control?

I didn't know what was happening. I was almost knocked out myself.

Would you say you were under control?

No.

Would you say you lost your temper?

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No.

"I'm going to kill you." Is that the sort of thing you would use when you had lost your temper?

You have to put yourself in my position. After being punched on the point of the chin, I almost fell off the step myself. It could have easily been me on the step who hit his head on the floor.

So this person had attacked you for no reason. It could have been you lying there. You were very angry and you lost control, didn't you?

I didn't have a chance to even think about it.

Perhaps we can just have a quick look at the relevant parts of the video, and I'll ask you some questions as we go along. We can either do that now or tomorrow, your Honour.

JUDGE HUTTON: I think it's best to do it now.

MR. MOONEY: Just before we get onto the video, just wait there for a moment, officer. You wore a uniform that night, didn't you?

That's correct.

All the doorman that night wore the same uniform? A. Yes.

Same jacket, same detachable tie?

That's correct.

And you had a particular jacket on?

I had a uniform jacket, yes.

All of you wearing the same?

That's correct.

Why did you change your jacket with another doorman after the police had left?

There was blood on my jacket.

So the police left. You had blood on your jacket, and you decided to change it with another doorman?

That's correct.

Why?

It was a suggestion made by my colleague next door. He could see that my jacket was in a bit of a state from Ballantyne, where I caught him in the reception. He had a little cut above his eye, and it dropped onto my jacket.

How about, Mr. Soames: "Why don't you take it to the dry cleaner tomorrow, Glen, get the blood off"?

That wasn't suggested.

I want to know why you, after the police had left the scene, chose to change a jacket, which had the blood of somebody else on it, with another bouncer?

I didn't suggest changing my jacket at the time.

I thought, my colleague thought it would be a good idea to change my jacket because I had another three quarters of an hour to go before the club had actually finished throwing people out.

So did your colleague, the one you changed the jacket with, didn't he --

My colleague actually worked next door. He'd actually finished his shift, so he no longer needed his jacket.

So the suggestion that you changed the jacket to try and hide what you had done, would be entirely wrong, would it?

That's right.

I notice -- laughing but perhaps it's not funny -- you see, my suggestion to you about that, Mr. Soames, is that at that stage you knew that what you had done was dreadfully, dreadfully wrong, and you were at that stage immediately trying to cover your tracks by changing your jacket, which had blood upon it, with another man. That's why you did it?

No.

Perhaps we can now turn to the video. I think again we can fast forward it until the relevant parts. Perhaps we can stop here. This is Mr. Ballantyne, isn't it? Can we stop there, please.

JUDGE HUTTON: That's Ballantyne in the doorway?

MR. MOONEY: Yes. Knock it back a little bit, please. Right, stop there, please. Carry on. Stop. That's the first violence used against you by Mr. Ballantyne, isn't it?

Sorry, could you repeat that, please?

That is the first time that Mr. Ballantyne made contact with you, isn't it?

That's correct.

It's not a punch to your chin at all, is it?

It's quite clear on the video that it's a punch to my chin.

Well, we'll go over to it. It's a push to your chest, isn't it. Replay that, please. There we go. Stop. What is that?

That is a push, yes.

A push to your chest?

That's the first initial contact I had with him.

So the evidence you gave, the first thing he did was punch you on the chin, is wrong.

MR. BOWLEY: That's not the evidence he gave.

MR. MOONEY: Your Honour, let me put it a different way.

JUDGE HUTTON: The evidence was that the initial contact was a push which pushed him backwards, and then there was a punch on the chin.

MR. MOONEY: Your Honour, that is, in fact, quite right, and I fully accept that. Can we look back at that bit, please. It's a push. You'd been pushed back. How did that make you feel?

That sort of situation could happen two or three times in a year, but, you know.

How does it make you feel?

I just put my hand up and say "pack it in". In other words "pack it in".

Move forward a bit, please. Then he punches you?

Yes.

I accept that. Knock it forward a little bit. Stop there. That man posed no threat to you at all, did he?

Well, I was punched on the point of the chin.

Look where the man who punched you is?

Yes.

Did you look at him?

I didn't have a chance to.

You'd been knocked back. You looked forward to see the man who punched you, didn't you?

I didn't look at all in front of me no, because I fell back. I lost my balance.

And you lost your balance, but you were still looking forward, weren't you, at the man who had punched you?

No, I was not.

Well, with your boxing training, you would not want to turn your back on somebody who had punched you, would you, in case they punched you again?

At the end of the day, if you get punched on the chin at the right time -- he punched me viciously --

I accept he punched you. Your boxing training was sufficient to make you recover quickly and see where he was?

I don't know how you can say that.

You don't?

No.

He's standing looking at you, that man, isn't he?

After he's punched me?

Yes. And you want to get at him, don't you?

It's quite clear on the video, you see the evidence in front of you.

You want to get at him, don't you?

I don't want to get at him, no.

Knock it forwards, please. Stop there. Would you like to reconsider your last answer?

No.

So that is not an example of you wanting to get at that man who struck you?

It was a combination of, two men approached me on the door, assaulting me, and another man came from the side and it's --

You'd completely lost it there, hadn't you. You had completely lost it. All control had gone, hadn't it?

(No answer)

Would you answer the question, please?

I admit that I was trying to restrain Ballantyne, but I was given as good as I got.

This isn't self-defence, this is retribution, isn't it?

You're talking about an incident which happened after Paul Steele. This case is about one punch.

The members of the jury know exactly what this case is about. Can we rewind just back to the punch in question, as you have raised it. Forward, please. Can you punch any harder than that?

When you are in a situation like that --

Answer the question?

Could you repeat the question, please?

Can you punch any harder than that?

I don't know.

You don't know?

No.

That was a punch from back here over the top, wasn't it?
I didn't think about how I was going to punch anybody. It just happened.

You wanted to really get that person out of the way, didn't you?

Not at all.
Make sure they weren't going to get involved?
That's not true.
That is why you used that degree of force?
I was frightened for my own safety.

Play on. Stop. That is a man frightened for his own safety, is it?

(No reply)

What's that man asking you to do?

Looking at the video I can hear him saying: "Stop".

Do you remember him saying that?

No.
I say it again: you had lost complete control. You didn't have a clue what people were saying was going around. All you wanted to do was inflict as much harm as you could, wasn't it?

That's not true at all.

'Come on'; gesturing 'come on'. Where is the restraint in that?

Ballantyne was trying to throw me over the reception counter.

Did you say what you did: "Come on, come on". What does that mean?

As if to say: "I'll give as good as I get."

Yes. "Come on, you try it. I'll kill you". That's what you were saying?

People say these things when they hit a man.

They say these things when they are extremely angry and intent on causing serious harm, don't they, Mr. Soames?

That's not true.

When you were interviewed, you knew that the video had been taken of what happened, didn't you?

Could you repeat that, please?

You knew there was a video of what happened when you were interviewed, didn't you?

I knew that there was -- it's my duty to put the video in the machine at the beginning of the night, yes.

You may have forgotten about it in the heat of the moment, but by the time you were interviewed, you knew there was a video; I knew there was video coverage of the whole thing.

It's just as well there was coverage, because it actually shows on the video that I was attacked first.

You hadn't quite remembered at the time you were changing jackets though, had you?

It wasn't my -- I didn't suggest to change my jacket through any -- in fact, at the time of the incident, the manager said to me, he called me upstairs and that was the end of the night as far as I was concerned. I just couldn't believe -- I was so upset about what had happened.

And then you were interviewed, and the only thing you could say, realising you had been caught on camera, was to say self-defence?

Well, it is clear on the video. The video doesn't lie. I would not go out of my way -- knowing very well there's video coverage of it.

I would agree with you the video doesn't lie, Mr. Soames. And what it shows is a man who totally lost control and was intent on causing as much harm to anybody in the area as he could?

That is not true.

You knew but didn't care that Mr. Steele was trying to intervene to stop things?

I didn't see it that way at all. I was dazed.

I couldn't see what was happening. I'd been punched on the point of the chin myself. If the truth be known, that could easily have been me on the step. I could have fell off.

You were furious, out of control, in a fit of temper hit everybody out of the way that you could find, and even when that man, when Mr. Steele, was lying on the floor,

that man is asking you to stop, your one primary aim was to cause as much harm as you could. "I'll kill you." That's what you said, isn't it?

I say these things.

I have no further questions, your Honour.

JUDGE HUTTON: Any re-examination?

MR. BOWLEY: No re-examination.

(The witness withdrew)

JUDGE HUTTON: We will adjourn now.

(The court adjourned until the following morning at 10.30 a.m.)

Thursday, 3rd July 1997

MR. STUART MARTIN DIX, sworn

Examined by MR. BOWLEY

Your full name, please?

Stuart Martin Dix.

Your occupation?

At the moment I am starting my own business.

As a?

As a mortgage consultant.

Just about a year ago, July of 1996, did you have a part-time employment?

Yes.

What was that?

I was employed as a doorman at Chicago Rock Cafe. Q. That, as we know, is next door to the Club Mondo? A.

Yes.

How often per week did you work there?

I started working there Wednesdays, Fridays and

Saturdays, and then I changed to just Wednesdays and Thursdays.

What were your duties?

I was employed as security personnel for the club. Q. What time did you work; what were your hours of work?

From nine o'clock in the evening until one a.m. in the morning.

Do you know the defendant in this case, Mr. Soames? A. Yes, I do.

How long have you known him?

I started working at the Chicago Rock Cafe in August 1995, so that is when I would have met Mr. Soames.

So you have known him now for nearly two years?

Nearly two years, yes.

And you had known him for nearly a year before July of 1996?

Yes.

You will appreciate the evening that we are concerned with in this court?

Yes.

When a young man received serious injuries outside the Club Mondo?

Yes.

Were you on duty that night at the Chicago Rock Cafe? A. Yes, I was.

Who was on duty with you?

Mr. John Kirkpatrick.

You say your hours ended at one a.m.?

Officially ended at one a.m. That's what time the club closed.

Shortly before one a.m., were you approached by two men?

It must have been around one a.m.. I can't say whether it was five to or five past, but around one a.m.

Did these two people have any request of you?

Yes, sir, they wanted to enter the club above, club Mondo's, via the fire exit. There is an adjoining exit inside Chicago's, which goes up to club Mondo's.

What was your response to that?

"I'm sorry, no". I could not allow them access.

Did they tell you why they wanted to use the fire escape?

Yes, they did.

Why was that?

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That the doorman at Mondo's would not allow them to go in.

Can you tell us what these two men looked like?

One with very short dark hair, very stocky. The second gentleman was of a thinner build, with lighter hair.

Was either of these involved in the fracas later on? A. Yes.

We know one person was seriously injured in that fracas? A. Yes.

Was that one of the two who spoke to you?

Yes.

Which one?

The lighter coloured hair, sir.

And was the dark haired man also involved in the fracas? A. Yes.

So can we perhaps deal with them and describe them hereafter as the light haired man and the dark haired man?

Yes.

After you told them -- well, what condition did they appear to be in?

The lighter coloured hair gentleman was, if I remember correctly, fairly drunk; a little bit wobbly. The darker haired gentleman did not appear to be drunk but more sort of -- he did most of the talking and trying to persuade me to get up to Club Mondo's via the back entrance.

Had you seen them before at Chicago Rock Cafe?

The darker haired gentleman, yes.

After you refused them entrance to go through the fire escape, what happened then?

They turned and proceeded out of Chicago's.

Where did they go out of Chicago's?

Turned right towards the door of Club Mondo.

What did you do?

I then -- obviously there was other people moving out of the club at the same time, and I proceeded through the entrance of Club Chicago.

Could you see what happened, or did you see what these two men did?

Yes.

What happened. What did you see them do?

The dark haired gentleman -- if I can explain, if you turn right out of Chicago's, there is a step which then goes into Club Mondo's. The dark haired gentleman went up the step as if to proceed in through the door.

Whereabouts were you at this stage?

On the pavement or on the side of the road, outside Club Chicago.

What was your view like of the entrance into Club Mondo?

I couldn't see the entrance of Club Mondo. I could not see inside the club.

Could you see the door? We know there is a push bar fire door.

You have two doors. One was open, allowing the entrance in. One was closed.

Could you see that?

I couldn't see the open door. Q. Could you see the closed door? A. Yes.

What did the dark haired man do? A. Proceeded to go into the club.
When you say that, how far into the club could you see him?

Inside the doorway.

So you lost sight of him?

Yes.

Could you see Mr. Soames at this stage?

Yes, I could.

What was Mr. Soames doing?

I think he was talking to some people on his right hand side

You say people. Can you tell us anything more about them?

No.

JUDGE HUTTON: Outside, presumably?

Outside the club, yes.

MR. BOWLEY: So the dark haired man had gone out of your sight at this stage.

Yes.

Did you see any altercation between Mr. Soames and the dark haired man?

Some words were exchanged.

Could you hear what they were?

I only heard Mr. Soames.

What did you hear Mr. Soames say?

"You can't come in"; words to that effect.

What happened after that?

I believe that it was the gentleman, the dark haired gentleman, then turned and hit Mr. Soames.

You saw somebody hit Mr. Soames?

Yes.

Where was he hit?

On the face.

What happened to Mr. Soames after he was hit on the face?

He stepped backwards.

Could you see the fair haired man at this stage? A. Yes, the back of him.

You were behind him, were you?

Behind and slightly at an angle.

When Mr. Soames was hit on the face, where was the fair haired man?

On the pavement outside Club Mondo.

When Mr. Soames was hit on the face and stepped back, what did the fair haired man do?

He advanced towards the door of Club Mondo's, actually going up onto the step.

Could you see how he was holding his arms?

Yes.

How was he holding his arms?

Left arm was out towards Mr. Soames.

Just a moment. Just about shoulder level with the palm facing outwards?

Yes, whether it was here or there, I'm not sure, but facing outwards.

What about the right?

The right arm was back.

JUDGE HUTTON: Sorry, I wasn't looking. Say it again.

The right arm was back.

And you are indicating again, open hand?

No, sir. The right arm was back in this position, like that.

Well, when you demonstrated to me a moment ago, the hand was open, but you meant it to be closed like a fist?

Yes.

MR. BOWLEY: That was the impression you had?

That was the impression I had.

You were looking at it from behind?

Yes.

What was your impression as to what the fair haired man was going to do?

My opinion is that the fair haired man was also going to attack Mr. Soames.

How far behind the fair haired man were you?

Some 15 feet.

Did the fair haired man get up onto the step?

Yes.

What happened when he got up on the step?

After his arms being in this position, he was then hit by Mr. Soames.

Where did Mr. Soames hit him?

On the side of the face.

What happened to the fair haired man?

He fell sideways against the open door of Mondo's and then backwards onto the pavement.

What happened after that. What did you do?

I then returned into the Club Mondo.

Returned into Mondo's?

Sorry, Chicago. Sorry, returned into Chicago.

I checked the toilets, as we normally do to make sure
there is nobody else left in the club, chained the

bottom fire exits, and then proceeded out.

MR. DIX
Cross-examined by MR. MOONEY

Mr. Dix, you have known Mr. Soames now for, I think you say, for about three years?

It's just under two years.

Just under two years, I beg your pardon. And you knew him when he was a doorman working in the club next door to you?

Yes, I did.

And you still know him?

Yes, I do.

He is a friend, isn't he?

Yes, he is.

A friend, and at the time he was effectively a colleague?

At the time of the incident, yes; working for the same company.

So you're all doormen together?

No, sir.

Well, you were all doormen?

Yes, sir.

You were all employed by the same company?

Yes, sir.

You socialised?

I never socialised with Mr. Soames.

You were friendly with him?

Yes, sir.

You all had common problems with working on the door of night clubs, didn't you?

Of course.

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You would stick up for each other? A. Only if asked to, sir.

Have you been asked to?

Never.

Have you been asked to stick up for Mr. Soames by giving evidence for him in this case?

No, sir.

Have you given a statement?

Yes, sir.

Do you recall the police making extensive efforts to find witnesses to this case at or about the time it took place?

No, sir.

Do you not recall the police making a number of requests?

No, sir.

Putting notices in the paper?

No, sir.

Were you aware -- well, you obviously were aware -- of the incident that had taken place?

Yes.

Did you approach the police in order to assist them with their enquiries?

No, sir.

Why not?

For no reason, sir.

But you approached somebody with a view to giving evidence today, haven't you?

No, sir, I was approached.

And have come along?

Yes.

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And the impression that you are conveying to the jury is that Mr. Steele, the man injured, was threatening violence. That is the impression you are conveying, isn't it?

Yes sir, it is.

And you have indicated a clenched fist and a hand being back?

Opposite way round, sir; this hand is open.

Quite right. Did you hear Mr. Steele say anything as he approached?

I could hear somebody saying something, but what the words were, I have no idea.

Along the lines of: "Leave it out. Calm down" ?

No, sir.

Have you seen the video recording of what you have described?

Yes, sir.

Perhaps you would like to look at it again. Would you play the video at the relevant section to this witness, please?

JUDGE HUTTON: You actually just want the 15 seconds or so incident. Can you find that?

MR. MOONEY: Could you just pause it there. That is from the inside of Mondo's looking out, isn't it?

Right sir, yes sir.

And were you to the left or the right hand side as we look at it?

The left, sir.

About some 15 feet away?

Yes.

Just watching?

Yes.

At no stage, at no point did you, at this stage, think there was going to be any trouble from what you could see?

No, sir.

Will you let it play on, please. Stop it there. That is the stocky man, isn't it?

Yes, sir.

Let it play on, please. Did you see this conversation between -- will you stop it, please?

No, sir.

Were you watching?

I believe so, I was at the time.

If you were watching, you would have seen this?

But I don't remember this conversation.

Well, perhaps I can phrase it differently, to be fair to you. I don't think I made that entirely clear.

Right.

Could you see that the stocky man appeared to be talking to Mr. Soames?

No, sir.

Why not? It's 15 feet away.

Sure. But I don't remember that, remember the conversation between the stocky man and Mr. Soames.

Can you play it on, please. Stop there, please. Your evidence is, the first thing I think you saw -- and I am notorious for getting this wrong yesterday, so I am going to tread carefully -- was a punch from the stocky man towards Mr. Soames?

Yes.

How would you describe what you just saw there?

A push.

Did you see that?

No, sir.

Were you watching this?

Sorry?

Your evidence is that you were watching this incident? A. Yes, sir.

And you didn't see that?

No, sir.

Play it on a little bit. Stop. But you did see that?

Yes, I saw that part of an arm. I didn't say that I saw the gentleman hit Mr. Soames.

Could you wind it back a bit, please, just a couple of notches. Stop. So all you could see, just hold it just as the punch is landed -- well, I think we get the impression -- all you could see, when the punch landed, was a bit of arm?

Yes, sir.

What was obstructing your view?

A wall.

Carry on, please. Stop. Rewind it back a little bit. Stop there. As he approached, his hand never went above shoulder height, did it?

No, sir.

But you suggested to the jury that it did?

In this position, sir; maybe my fault.

Alright, that is a closed hand. That never went above shoulder height, did it?

This hasn't, no, sir.

And neither did the other hand, did it? A. I believed at the time it did, sir, yes.

But looking at that you are wrong, aren't you?

Obviously.

But before you gave evidence, you had had the opportunity of seeing this video, didn't you?

Yes, sir.

You had the opportunity, quite rightly and properly, of looking at it to refresh your memory and to show you that what you said to the jury was wrong?

I had seen the video previous to my statement, sir, yes.

So why did you maintain something which, having seen the video, you knew was incorrect?

Because that is what I believed to be correct, sir.

Even after you had seen the video of what happened on July 11th, which showed your recollection to be entirely false?

It was my recollection, sir.

But you would accept, having seen that video, that your recollection is false?

It is not false, sir. It is obviously not quite as the video shows.

Well, let me put it specifically. In so far as you held the open hand up above your shoulder --

Yes, sir.

-- that didn't happen.

MR. BOWLEY: My recollection is the witness was
saying: "I can't really remember whether it was there,
there or there".

Thank you.

JUDGE HUTTON: Well, carry on with your cross-examination.

MR. MOONEY: Thank you, your Honour. And your gesture that the other hand came up to here is equally wrong?

As it says, sir.

Who is Mr. Steele looking at?

At this point, sir?

Yes.

I don't know, I can't see his eyes.

Which direction is his face pointing? Try not to be clever, Mr. Dix.

At the stocky gentleman who is inside the club.

Just let it play on a bit. You saw that blow, did you? A. Yes.

Where did it start; that blow. We saw where it ended up. Did it start round by his waist?

I believe not, sir. I believe it was higher.

Directed?

Whether it was directed but starting higher.

Like that?

Yes, round that sort of (inaudible).

How tall was Mr. Steele, or still is Mr. Steele. How tall?

I would say five eight.

How tall is Mr. Soames?

Over six foot; six foot two.

At the time you knew him, he was boxing, wasn't he?

I have no idea.

Or training to be a boxer?

No idea.

Did you not talk about him going to the gym?

No, sir.

Did you go to the gym?

No, sir.

You knew that bouncers did tend to go to the gym, didn't they?

One colleague I have worked with went to the gym.

So did another one; Mr. Soames?

Not to my knowledge.

Are you sure about that?

Yes, sir.

He was a very substantial chap, wasn't he? A. Yes, sir.

Much more substantial than he is now?

I don't think Mr. Soames has changed.

Can you play it on, please. Stop there. Did you see Mr. Soames advancing in that manner, punching the stocky man, the man by the name of Mr. Ballantyne?

No, sir.

Had you turned away?

Yes, sir, I'd walked back in towards Chicago's.

So you watched it. A chap is completely laid out by a punch, and you think: "I know, I'll go and check the toilets"?

Yes, sir.

Any particular concern for the man now lying very ill on the floor?

Yes, he was very ill, but at the time I didn't realise the extent of his injuries.

You didn't go over and check, did you?

No, sir. There were two or three people around him. Q. Thank you, I have no further questions.

MR. BOWLEY: I have no re-examination.

(The witness withdrew)

MR. BOWLEY: That concludes the case for the defence, your Honour.

(Prosecution and defence closing speeches to the jury were not recorded)

SUMMING-UP

JUDGE HUTTON: Members of the jury, I now sum the case up to you. During the last hour or so, you have heard a lot of comments from both the learned counsel in this case, and that was absolutely right because it is part of a barrister's job to put his own side of the case in the best possible light. And he does so by making comments in favour of his own side, as I say. Those comments are for you, of course, to consider, but remember they are only comments. It is for you to decide whether they are good comments that impress you, or the reverse. Some of them may be the one, some the other, but it is entirely for you to decide how much weight to place on the various comments.

Exactly the same applies if, in the course of this summing-up, I make any comments. You are entitled to accept them or reject them just as you think right, using your common sense and experience in life, and that is the strength of our jury system. The 12 people are chosen completely at random to pool their experiences and their common sense, and reach decisions on matters like this.

I, as I say, don't intend to comment or to refer to comments, for the most part, in this summing-up. What I have to do is to direct you as to the law to

apply and then to remind you of some of the evidence, to enable you to reach decisions of fact. You have to accept what I say about the law. If I go wrong, there is another court to put matters right. But, whereas

I am the judge of the law in this court, you are the judges of the facts, and I am not.

As I say, I remind you of the important parts of the evidence, and you then decide what the relevant facts were, and then applying the law as I will have directed you, you bring in the appropriate verdict or verdicts.

The first matter of law that I have to direct you about is what you have been perfectly correctly told by both learned counsel, but I have to do so again. It is what is generally known as the burden of proof, which I am sure you all knew was upon the prosecution, even before you came into this court, but nonetheless I have to explain it to you, and it is, of course, a very important aspect of our law.

The prosecution, on behalf of the Crown, brings charges against defendants, and it is for the prosecution to prove those charges. Defendants in this country do not have to prove their own innocence. When we say that the prosecution has to prove the charges, we mean prove them properly, and the standard that you are to adopt is that you are not to find Mr. Soames guilty on either of these two charges unless, having heard the

evidence and all the comments on the evidence, you are satisfied to the extent that you are sure of his guilt. If you are so sure, well then, of course, in accordance with the oath you have taken, it will be your duty to find him guilty. If you are less than sure, he is entitled to be found not guilty, just as much as if you are sure of his innocence.

The charges are set out on the document called the indictment, of which you have got copies. If you would like to just turn up your copies while I am explaining the law to you, it might help. There are two charges or Counts, as they are called. It is important to remember that they are alternatives. In no circumstances, would you find Mr. Soames guilty of both. They are alternatives.

It is also important to remember that the first one is by far the more serious charge than the alternative second Count. So you will obviously consider the first Count first, and then you would only go on to consider the second Count if you found he was not guilty on the first one.

The first one is a really serious charge of violence, and it is, like both of these charges, in old fashioned language, because, as you will notice from the statement of offences, they are brought under an Act of Parliament dated 1861, a very venerable Act. And it is a credit to the draftsmen of those days that it has

stood the test of time, but use of language has somewhat changed since those days, so that some of the expressions need some explanation.

The prosecution has to prove various elements of each charge you are considering. Looking at Count 1 first, the prosecution has to prove that the defendant, on the day in question, caused grievous bodily harm to the injured man Paul Steele. Grievous bodily harm means, in modern language, really serious bodily harm. There is absolutely no doubt that Steele received really serious bodily harm, and there is no dispute about it in this case. It is accepted, admitted by the defendant Mr. Soames, that he caused, to Mr. Steele, grievous bodily harm. That is, of course, only the beginning of the matter, but there is no dispute about that.

Incidentally, when I am referring to these people, I will drop the Mr.; not out of any disrespect but it is rather easier just to refer to surnames. Now the prosecution has to go on to prove that the causing of the really serious harm was unlawful. That word covers any lawful excuse for causing the injury. There might be various reasons one could think of, but the only relevant one in this case is self-defence. I will tell you a bit more about that later. So the prosecution have got to prove that it was done unlawfully, and not by reason of proper self-defence.

Now the seriousness of the first Count is that it is alleged that grievous bodily harm was caused, with intent to do him grievous bodily harm, as opposed, you see, to the mere causing of really serious bodily harm. So it is the intent to cause really serious bodily harm that makes this first Count the more serious charge.

This is denied by the defendant, so the

prosecution has got to prove that at the time he inflicted this injury, he actually intended to do Steele some really serious bodily harm. So the question of intent you have to be sure about. Of course, you can't look into a man's mind but you decide questions of intent by other matters of evidence; sometimes by what the accused person is heard to have said at the time; sometimes by reason of the actual actions that he is proved to have carried out. You would probably be more concerned with the way he did these things than one remark he is said to have made when attacking the other man

Ballantyne.

The prosecution, of course, rely upon the actions, which are caught pretty dramatically in this case by the security video. On seeing exactly what happened on the video, or as near exactly as possible, and hearing the evidence of witnesses, you have got to decide whether the prosecution has made you sure that the intention has been proved actually to cause some really serious bodily harm to the victim.

Of course, the prosecution doesn't have to prove that Soames intended to brain injure him for life. That would be a very difficult thing to prove, and I don't suppose for a moment you would be sure that Soames intended to do that. That is perhaps impossible to believe. The prosecution don't have to go that far; only that he intended to do some real serious bodily harm to him on striking him on the head like that.

It is a matter for you, using your common sense what sort of really serious bodily harm would be the natural result of such a blow, such as perhaps broken jaw or whatever else you think might have resulted, and decide whether the intention to cause some such injury has been proved.

So that is the first matter that the prosecution has got to make you sure about. The second one is that the action he took was unlawful. The defence raised here is that it was lawful by reason of self-defence. This having been raised as a defence by Soames, or the lawyers on his behalf, it has to be disproved by the prosecution, because the burden of proof on the prosecution never leaves them. It is not a case of the defendant himself bearing the burden of proving that he was defending himself. That is not the case. The burden of proof does not shift. Once that suggestion

has been raised by the defence, the prosecution has the same burden of proof to make you sure that this was not a case of lawful self-defence by Soames.

The law on this is really common sense, you would think, I expect. It is the law that anybody is entitled to defend himself from an attack by another, and he does not actually have to wait until he is attacked by that other before he defends himself. If the attack is imminent, he can pre-empt that attack by striking first, if that is reasonable in the circumstances. So if you see somebody apparently going to hit you violently, either with a fist or a weapon, you don't have to wait to be hit before you defend yourself. You are entitled to use such violence or such force as is reasonable in the circumstances to defend yourself.

Therefore, it is a matter of fact and of common sense for you to decide, having heard the evidence and seen the video, whether this really was self-defence at all, or whether this defence that has been raised, this defence in law that has been raised, is entirely spurious.

Then, further, if somebody is lawfully defending himself, he is only entitled in law to use such force as is reasonable in the circumstances. So you have to consider the further question. If he really was genuinely defending himself from an expected attack by Steele, did he go beyond what was reasonable in the

circumstances, in striking him heavily on the side of the face in the way that you know he did? It is the law that somebody in this situation is bound to retreat if possible rather than attack back, although it is also right to say that in such circumstances it is difficult, and maybe impossible, for the man attacked to weigh up the situation to a nicety. It may not be reasonable to expect somebody to escape and get out of the way like that. But these are matters you have got to consider, using your common sense, and hearing and seeing about what was actually happening.

So, has the prosecution made you sure, either that there was no question of self-defence here at all, and this was an attack by Soames in a fit of temper, or if you think there was an element of self-defence, that the prosecution have made you sure that, in the circumstances, Soames went far beyond what was reasonable in the circumstances, by punching in the way that you know he did? So, I think that is all I have to say about the first Count. The most serious, the one you will first have to consider.

I have explained to you the defences that have been raised on behalf of the defendant. If you find him guilty of that first Count, then you do not go on to consider anything else. The second Count is a considerably lesser alternative, and you would not be asked for a verdict on Count 2. If, however, you are

not sure that the prosecution has proved Count 1, or if you are quite sure that the defendant is not guilty of Count 1, then you would go on to consider the alternative Count 2, which is exactly the same offence charged, in that it is unlawfully inflicting grievous bodily harm. But the difference is that the prosecution does not have to prove, in Count 2, the intention to cause real serious bodily harm. You will see that that is the only real omission from the wording of Count 2, and there is also the word 'maliciously' added. That again is a word that has changed its meaning over the last 140 years or so. Maliciously, in this context, merely means deliberately.

So the prosecution, on Count 2, has to prove that the defendant inflicted grievous bodily harm on Steele. There is no dispute about that again. They have to prove that it was done maliciously. That merely means intentionally, causing some harm which, in fact, amounted to grievous bodily harm. Again, because of the defence of self-defence that has been raised, the prosecution has to prove also, in this alternative Count, that the defendant was not lawfully defending himself from an attack, or if he was, the prosecution have got to prove that he went beyond what was reasonable in the circumstances.

So you have to decide whether you are sure that he is guilty of that lesser charge, if you are considering it, and of course, if you are not sure, then he is to be found not guilty on both of these Counts on the indictment.

You must, therefore, be prepared, when you come back into court after your deliberations, and in answer to the questions put to you by the clerk of the court, to give separate verdicts. You will be asked first for a verdict on Count 1. If it is guilty, you will not be asked for a further verdict. If it is not guilty, you will be asked for a verdict on Count 2. Then your verdict will either be guilty or not guilty on Count 2. That deals with the indictment.

I turn to the question of how you reach your decisions. Of course, you reach decisions on guilt or innocence on your assessment of the evidence that is called before you by prosecution and defence. Evidence, of course, takes all sorts of different forms. In this case you might think that the most important evidence of all is the evidence of the security video at the club. Most important of all because you might think that it is fairly explicit in that some films, of course, give a much better representation than others. This perhaps could be clearer but, on the other hand, you might think it is clearer than a lot of such films.

There is one thing that is certain, and this has been said more than once in the case; films do not lie, so that you have got the picture of what was happening over quite a brief period of time, which has been played over to you at natural speed and at different speeds, quite a number of times. I have lost count now how many times it was shown to you. I am not complaining about that. It is, as I have suggested, the most important evidence.

If you need to look at it again in the course of your deliberations, you are entitled to do so, within reason, as many times as you want. If you want to do so, you will come into court and you will look at it again, played to you in the courtroom.

The prosecution's case is that that shows that what Soames did to Steele was not in self-defence at all. They say he has made that up as an excuse for what he did, and that what he did was in sheer temper, and was completely inexcusable.

The prosecution submit to you that there is support for that view by what Soames went on to do to the other man

Ballantyne and what he said to Ballantyne.

Well, that is a matter for you, as I say; those are the comments of the prosecution. The defence, of course, comments otherwise. You can look again, if you

want, at the film, and you, using your own common sense and experience, will reach your own conclusions about those matters.

But of course there is evidence as well from witnesses, which is of importance, and in particular, of course, there is the defendant's own evidence. I don't want to detract from that at all. But first, just a word or two about witnesses in general. It is the duty of a jury to watch and listen to witnesses when they come into the witness box and give their evidence on oath, and for you to assess their credibility, again, jointly using your common sense and experience of life, and decide which evidence you accept and which you reject.

Witnesses vary, of course, infinitely. First thing you have got to decide is whether a witness is an honest witness and trying to be helpful. If you come to the conclusion that any witness is apparently telling lies, you will clearly reject such part of the evidence you consider to be lies. Short of that, you accept or reject what evidence you think to be credible or less than credible, and every witness differs.

For example, Mr. Mooney, for the prosecution, commented to you that the prosecution's first witness, the young girl Katherine Prior, was apparently not very keen to give evidence for the prosecution, perhaps because she was, to some extent, friendly with the

defendant. The prosecution suggest that she is not the most credible of witnesses. Well, that is a matter for you to assess. You would probably think it is common sense that some witnesses are more ready to be forthcoming than others. And you will have assessed that young woman, whether she was in fact being deliberately unhelpful when she said she didn't see the most important parts of the incident. You will compare that with the evidence of a witness called rather later in the prosecution's case, and of whose evidence I will remind you about in a moment; Peter Main, who was not apparently known to, or a friend of, Soames, but who gave a rather more explicit account of what Soames is alleged to have done.

Again you assess him and his credibility.

Even if a witness is apparently trying to be accurate and is an honest witness, of course that witness is not necessarily giving an accurate account of what happened, because the most honest of witnesses can be completely wrong in their evidence for a variety of reasons. Perhaps they didn't observe as accurately as some people might have done, or have forgotten, or whatever it may be. Human beings are fallible. The human eye cannot take in the whole scene like a camera focusing on a scene, and people tend to focus on different parts of a confused incident, and therefore, only give evidence of what they can remember of that

part subsequently. So you just have to assess the credibility of each witness, using, as I say, your common sense and experience.

You will consider what Soames said almost immediately after these events to the investigating police officer, in his tape recorded interview with a police officer. It is to his credit that he was putting forward to that officer exactly the same explanation as he has given to you; namely self-defence. And then you will consider the evidence given in court by the defendant himself and his one witness.

You assess them in the same way as you assess prosecution witnesses. Assess their credibility in the same way, except that you must remember that the burden of proof is on the prosecution throughout, so that you only accept evidence given by prosecution witnesses if you are sure it is accurate. You only reject evidence given by a defendant or a defendant's witness, if you are sure that the defendant is either not telling the truth or you are sure he is inaccurate for other reasons.

That is the only difference between the way you assess witnesses from one side of the case or the other. Remember that it is not a balancing act, as in a civil action. In a prosecution, the burden of proof remains on the prosecution to make you sure that their case is the correct one.

You will, of course, have in mind, I expect, that defendants often do tell a pack of lies to try and pull the wool over a jury's eyes, to achieve an acquittal. That is perhaps too obvious to say. But the point is, you must not approach Soames's evidence with any such prejudice. Any defendant is entitled to give evidence on his own behalf, and if he does so, he is entitled to be believed, if you believe him. You therefore assess him like any other witness, and only reject what he says if you are sure he is telling lies about it. That is all I say on the law.

I turn to remind you of the evidence, but this will be quite a brief summary of the evidence because it is unnecessary, and, indeed, I think unhelpful and tedious, to try and go through everything that was said. I remind you of what I consider to be the more important parts of the evidence, and if I omit to remind you of things which you do remember and you consider to be of importance, well of course you will apply them, even if I have not mentioned them in this summing-up.

I start with the prosecution witness Peter Main,

whose evidence was not called first. I don't know why but his evidence came rather after a number of other prosecution witnesses whose evidence was either challenged or admitted.

He said that he had been to the Chicago pub.

I am not quite sure what the Chicago is but at any rate

it is right next door to the nightclub in question, the Mondo Club. I remind you that the night in question was the 10th and 11th July of last year, and Mains' evidence was that he came out of the next door pub, the Chicago, at something like 1.30 in the morning. Exact timings don't matter in this case.

He was walking past Mondo's when he saw the two men, who are obviously, and there is no dispute about this, the two men Steele and Ballantyne. Main said he saw them on the pavement outside the entrance to Mondo's, trying, apparently, to get into the club. This, you would probably think, was after the initial approach by these two men to the doorman to get in, because they seem to have come back again after trying the fire escape. But anyway, this witness said when he saw them, one made his way up the few steps to the club entrance, and the other was following him. There was some sort of a commotion inside the club, which the witness could not see properly, but it was the noise of that commotion inside that attracted his attention to what was going on. It appeared to be, appeared to him to be, a commotion between the one who actually got into the club at that stage and the bouncer who was trying to stop him from going in. But when cross-examined, the witness said that he could not recall if there was any punching between those two.

Then he said that he saw, and of course this is right at the centre of this dispute in this case, his evidence was that the other one, and that must be Steele, the injured man, was going up again towards the entrance to the nightclub and appeared to be trying to calm the situation, by indicating with his arms and saying something, which the witness could not actually catch. But you remember the witness, in the witness box, indicated the movement with his arms. I won't try to reproduce it. I will probably get it wrong. But you will remember the various indications of witnesses in the witness box, and I expect you will remember what Peter Main showed.

Anyway, the witness went on to say: "I got the impression he was trying to calm his mate down with his raised hands", in the way that he showed you. This was challenged, of course in cross-examination. He maintained that was the impression he got.

When he was re-examined by further questions from prosecuting counsel, he repeated that that is what he thought. He, the witness, was standing about four or five feet behind and able to see what was going on. He said that he observed there were two bouncers at the club. One was inside arguing, apparently with one of the two men who had got in, and then there was the other who is said to be, of course, the defendant Soames, just outside the doorway, or in the doorway. The witness

said he could not see the one who was inside, who you would probably think is the other prosecution witness Duckworth, the big black bouncer. He said he could not see the one who was inside. He was watching the one who was just outside on the steps.

He said it appeared that that one, the one outside the door, turned round and hit the one who was trying to calm the situation. It was a punch on his face. "I would say he was hit so hard that as he fell he made no effort to help himself". So, it was the witness's opinion that he was knocked out before he hit the ground. That is really a summary of that witness's evidence.

He very properly went to attend to the injured man Steele, who was then lying on the ground, and it was this witness who apparently, or one of them, who called the ambulance. So that is an outline of that witness's evidence.

I go back to the first witness who was called, the young woman Katherine Prior, who you may have thought, as I have already commented, was far less forthcoming. She had been in the Chicago cafe next door apparently, and then left there and went to the Club Mondo when leaving the cafe, and stayed there with her friend Jenny Aspinwall, until about one o'clock in the

morning. Like everybody else, of course, she had been drinking, although I don't think anybody suggests she had drunk to excess.

She said they left the Chicago -- I'm sorry -when, earlier, she left the cafe next door, they were intending to go home but then her friend spotted the doorman at the Club Mondo with a friend. That is apparently Soames. So the two of them got talking to Soames. There is no issue as to his identity. But anyway, at something like one o'clock or a little later in the morning, her evidence is that she observed the two men appear and ask if they could get into the club, and that Soames told them that they were not allowed in because entry was then closed.

Then she said the man who was trying to get in started shouting and was aggressive with Soames, and started trying to hit him. She said there was a group of people around. Then she said of the other man, who apparently was Steele -- and this is really more in favour of the prosecution -- she said there was another man obviously trying to get the aggressive one away. That, you would probably think, is therefore, referring to Steele, who she thought, like some others, was trying to get Ballantyne away. But she said Ballantyne -- or referred to him as 'the other one' -- was hitting Soames.

Then, of course, importantly for the defence, she said -- and you must remember this is a prosecution witness -- she said: "I only saw Soames defending himself. I did not see Soames punch at all". On being pressed a little bit by prosecuting counsel, she said: "I saw a man fall to the floor". Then in explanation for that, she said this: "He got caught up in the one who was trying to gain access", or words to that effect. I am not sure I got it down word for word, but her explanation for his fall was something like that.

Actually, in the course of cross-examination, she

again said that the man, who was obviously Steele, was trying to calm Ballantyne down.

The next witness was a rather older woman, Mrs. Seabrook, who had been at the Chicago next door to Mondo's. She, I think, had not been at Mondo's but she was leaving something round one o'clock in the morning, when she came upon this incident at the Mondo's nightclub. She again was outside the door. She said that on walking by, she heard a loud bang, and looked to the right and saw a man lying on the floor. You will probably have noticed that every time we saw and heard the video played, there was a remarkably loud bang when the victim was hit, so that really what this witness is saying is much the same.

Anyway, she didn't see the blow. All she can say is that there were people scuffling round the doorway, including a man she realised was a doorman because of the black tie he was wearing.

The only other contribution she can make is that she told you that she heard the man wearing a black tie, and therefore, she assumes to be the doorman, say to somebody: "He was causing trouble, I hit him". The prosecution relies on that piece of evidence as fairly important in supporting their case.

Mrs. Seabrook very reasonably put the injured man in the recovery position, and was watching him and helping as best she could until the ambulance arrived.

Mr. Duckworth, the other doorman, I am sure you

will remember his physique; obviously very large, as most doormen are; the coloured man or black man. His evidence really didn't come to very much. It was that he was one of the two doormen that night. He confirmed that the two men were seeking entry at about one o'clock in the morning. Both were refused entry and were turned away, obviously by Soames. This witness Duckworth said that it occurred to him that they might try to gain entry via the fire escape, so that he went upstairs to the fire escape door to see they were not slipping in there.

I think, by inference, he is saying that the incident happened downstairs while he was upstairs, and

therefore, he did not see it. But his evidence was that when he came down all was then quiet, but that Soames was standing by the till, red faced, as if he had been in some sort of an incident. So his evidence really, you probably would think, does not really take the matter further.

Then we had the evidence read to you, because it was undisputed, of the two senior medics; consultants. I just remind you quite briefly about that because

I don't want to go into the awful details of these very serious injuries.

Dr. Llewellyn is the specialist who was on duty in the Accident & Emergency Department of the Cheltenham General Hospital, in the early hours of the 11th July 1996. He gave evidence that Steele was admitted by ambulance, having sustained a head injury. The recorded time of admission was 1.34 a.m. Mr. Steele was in a deep coma, and he was immediately put on an artificial ventilator, and a scan was done which showed considerable brain damage. He was, I

think, almost immediately transferred to Frenchay Hospital for neurosurgery.

There was also some further evidence from Dr. Llewellyn, who was shown the video which you have seen, and using his medical expertise he was able to give evidence in his statement of the matters that actually Mr. Bowley for the defence has read to you. He pointed

out there were essentially three elements to the head injury, which he could identify as occurring by watching the video: the initial punch to the left side of the head, subsequently the right side of the head striking the door, and then the fall to the ground and Steele's head hitting the pavement. He said any one of these three elements could have caused the neurological damage which Mr. Steele sustained, or they may have combined to produce the final brain damage. Then the evidence of Dr. Chandler was also read to you. He was the neurosurgeon at Frenchay Hospital, Bristol, who said that Steele was admitted into the intensive care unit there, in a deep coma still, and he underwent operation to remove a blood clot. It was the opinion of that consultant at that time that the patient, at the time of this statement, was still severely disabled by the effects of his head injury, and it was his opinion that the patient's likely recovery, or chances of recovery, were very poor indeed.

So everybody agrees that this was a terribly serious brain injury, although of course your considerations about the actual actions by the defendant should not be over coloured by the seriousness of the injuries that actually occurred, which, as I have already suggested to you, you would probably not find for a moment that this defendant intended.

Now I turn to the police evidence, which I can take quite shortly. PC Baldwin went and recovered the tape of the security video machine from the nightclub at 4.30 the same morning -- I'm sorry, earlier than that, earlier the same morning. It was at 4.30 the same morning that he actually went to Soames's home and challenged him with the events that occurred slightly earlier that night.

I think the only relevance of this evidence is that Soames was asked for the clothes that he was wearing, and he had apparently exchanged his jacket for the jacket of another doorman because his own jacket was so heavily bloodstained, but I don't think the prosecution is making very much of this, although perhaps without thinking very properly in the anxiety of the moment, he did change his jacket to get rid of the bloodstained jacket, but on the other hand as soon as he was asked about his clothing by the police officer, later that same morning, he said that he had changed his jacket and got a less bloodstained one from one of his colleagues. So you probably would not think very much of that piece of evidence. DC Jamieson, the officer in the case, took charge of the video tape and got the relevant section of it, which I think we were told was 18 minutes long. I have forgotten what the actual expression was, but it was enhanced, I think, by the experts, so that you could get

a clearer view and perhaps clearer soundtrack. So, on a separate tape is the 18 minute length, covering the very short period of this actual incident, and the actual incident is said to have been about 15 seconds long, and of course that has been the bit that has been concentrated on.

Then it was this officer who interviewed Soames in the usual way. These interviews of people charged with offences now take place in special rooms where there is again videoing equipment -- I'm sorry, recording equipment -- so that every word that is said is recorded and can be transcribed. In this case, as is usual, it was considered unnecessary to transcribe the whole interview. I think I'm wrong actually. I think there was a complete transcript of the relevant parts of this interview. We don't start right at the beginning. This is not a summary, it is a transcript. You have got copies of it. You can refer to that as much as you need to in your room. It would be quite tedious for me to read that to you again, but it is right to give credit to the defendant, as I have already remarked, that in essence what he was saying in that interview, at an early stage, was what he has said to you in his defence in this trial; namely that after the punch from Ballantyne, he said he saw out of the corner of his eye Steele approaching. He feared an immediate attack, and therefore, punched Steele, and in essence

that is his defence, and it is to his credit that he said the same thing, at an early stage, to the investigating police officer. Also, it was elicited from the detective officer, by cross-examination, that the man Ballantyne had apparently, in the past, had apparently been charged with the offence of affray. So he, Ballantyne, as you probably will have realised anyway, was apparently not an innocent bystander in this incident.

There was a certain amount of playing of the video while this officer in the case was giving his evidence, and it was played forwards and backwards slowly as well as normal speed. It was the evidence of DC Jamieson, which you may or may not agree with, that Steele had his hands open, not with either fist clenched, at the time of the incident, and supporting the prosecution's case that Steele was merely making calming gestures, not threatening gestures. It was this witness who said that, on listening carefully to the soundtrack on the video, he could hear Soames say: "Come on, I'll kill you" to Ballantyne, in the course of his hitting Ballantyne. That is a summary of the prosecution evidence.

I remind you of Soames's evidence. He is 27.
the time in question, he was head doorman at the Club Mondo. He had been a doorman for three years. He, in the course of that time, had attended various training

courses to teach him how properly to deal with difficult situations that doormen undoubtedly have to deal with.

In cross-examination, he agreed that at the time

of these incidents he was training physically, and had a rather more powerful physique than he now shows. He also agreed that at the time he was training as a boxer, and sparred, but he did not agree, as I understood the evidence, that he actually was fighting in -- well, not professional bouts but at any rate not in boxing contests of any professional nature. I am not quite sure of the significance of the sparring, but I think he agreed that he was sparring but not proper boxing bouts.

He accepted that in the course of his boxing training, he knew how to punch properly, but he denied, in cross-examination, that in punching Steele, he intended to do the maximum harm, although he agreed that he knew people could be seriously hurt by a punch, or even killed by a punch.

Anyway, that was in cross-examination. Continuing with his other evidence, he confirmed that the last admissions to the club were at one o'clock. The club closed at two, and everybody had to be out by 2.30. He said there was no trouble in the club before this series of incidents arose. He remembers the two men, Steele and Ballantyne, approaching the door. He did not know them and had not even seen them before. He

spoke to them, and they left. Then he, the witness, was outside talking to the two girls, Katherine Prior and Jenny Aspinwall. He said that of those two, he knew Jenny better than Katherine.

Then he said the two men returned, with Ballantyne in front and Steele behind. Ballantyne walked up, again seeking admission, and was told that he had been refused admission, and then the witness said that he, Ballantyne, said that he wanted to go upstairs in the club to see a mate of his, but was again refused entry.

Then he said that Ballantyne pushed him in the chest, which of course is shown in the video. The witness said that he lost his balance and went back. That is Soames lost his balance and went back. Before he could stand upright again, Ballantyne punched him, hitting him on the point of the chin, as a result of which he subsequently found he had got a swelling of the jaw. And, of course, that punch is confirmed on the video. In cross-examination, Soames said that he was shocked and angry by that incident. And then he went on in his evidence in chief in answer to his own counsel to say: "As soon as I was punched, I saw the silhouette of a man approaching me, or of the other man approaching, with some sort of a gesture, and I thought he was going to attack me."

Now this, of course, is the nub of the whole defence. You will have to consider whether you accept this evidence or think that it at least may have been true, or whether you reject that evidence. So he went on: "So I punched him with my right hand. It was a natural reaction of self-defence. I believe it landed on the side of his jaw". He continued: "I then went back in to get Ballantyne out of the premises".

Cross-examined about this, he said: "I was not under control then but on the other hand I did not lose my temper." So he was agreeing he was not fully in control, but he would not go so far as to agree with Mr. Mooney for the prosecution, that he lost his temper. He agreed that he might have said: "I'm going to kill you" to Ballantyne when he continued hitting Ballantyne, as shown in that video. In purported explanation, he said words to the effect: "People say these things", I think meaning in some situations, and he agreed with Mr. Mooney that he was angry with Ballantyne. But, he said he was not angry with Steele. He did say that he regretted what had happened and that it was a tragic accident. I think that is the important parts of Soames' evidence. I have reminded you of some of the things he said in cross-examination. Then the final witness, Mr. Dix, was called on behalf of the defence. He is a former doorman, now in fact a mortgage consultant, but

in July of last year he was the doorman of the Cafe Chicago next door, for two or three nights a week, nine p.m. to one a.m., but at any rate he was on duty on the night in question. He was a doorman employed by the same company or business that supplies doormen to these establishments, and he said he had known Soames for the previous two years. He was on duty at the Chicago Cafe with another doorman called John Kirkpatrick. At about one o'clock in the morning, he said that two people, whom he did not know, but the inference is that they were the same two men, asked for entry to Club Mondo via the fire escape, which you would probably understand from the evidence connects between Mondo's and Chicago cafe, so that this witness, doorman of the Chicago, said that the two people were asking if they could use the Chicago fire escape to get into Mondo's nightclub, and the witness said that he refused that request. He described the two men, but it seems not to be in dispute that they were the two men in question. He said he saw the man who was Ballantyne, go to the entrance to Mondo's and then go in, actually after having been told that he was not allowed entry. But at that time -- and again this, of course, is confirmed by the video -- the witness said that Soames was outside the door talking to people out there, and the video, of course, is looking from inside the club out through the

door, and there you can see parts of Soames just partly behind the partly closed entrance to the nightclub, but outside it. So, he said Soames was talking to people outside. Then, he said: "I saw Soames was hit in the face by the one who had gone in"; the man he referred to as the one with darker hair. And then he said: "I saw the other man", who would be Steele, "on the pavement, and saw him go up the steps towards the door, and that he had his arms up in" -- again the way that this witness demonstrated to you in the witness box.

You will remember, I am sure, that the demonstration he gave was left hand somewhat raised, with the hand open and palm forward. But, contrary to the prosecution's case, the other hand in the position of a closed fist. So that would be right arm somewhat raised, and there is a dispute how much raised, but with the hand not open but as a closed fist. So he was giving the demonstration of Steele approaching, left hand up, with arm slightly raised, right hand closed fist, also arms slightly raised. So the suggestion, of course, from this witness is that Steele was approaching in a threatening attitude, as if about to punch. Conflict of evidence of course, which you will have to resolve. The witness said: "My opinion was that Steele", or the man he was referring to was Steele, "was also going to attack

Soames, but he was then hit by Soames on the side of the face, and fell sideways against the open door of Mondo's and then back on the pavement".

This witness, Dix, said -- and you might note this. I don't know what you think of it -- he said he immediately went back into the Chicago Cafe to check his security there. Of course he was cross-examined to bring out the fact that he did not go to look at the injured man on the ground but went about his own business in the other cafe.

Further cross-examined, he agreed that Soames is, to some extent, a friend and a colleague. He was asked why he didn't make himself known to the police and give a statement at that time, giving this explanation. What he said in answer to Mr. Mooney for the prosecution was that he didn't know of the police enquiries at the time, and he didn't come forward and offer information until he was asked by the defence to make a statement.

So there it is, members of the jury. That is a summary of the evidence. I don't think I can help you further. Now I am going to ask you to go out and consider your verdict now, although it is one o'clock and the time when we usually adjourn. I will just hear what Mr. Bowley has to say.

MR. BOWLEY: There is one matter of fact.

JUDGE HUTTON: Certainly.

MR. BOWLEY: Your Honour suggests to the jury that the bouncer who was involved in the reception area, in the commotion with Mr. Ballantyne, would have been Mr. Duckworth.

JUDGE HUTTON: I didn't mean to say that if I did. As I say, Mr. Duckworth was upstairs anyway. Certainly I meant to say that Ballantyne was inside. There was the confrontation that we all saw on the video.

I certainly didn't mean to say Duckworth was then

involved in something, but if I did give that impression, you have noted what has been said, members of the jury.

Now, I am actually going to ask you to start considering your verdict now, so that you have more time. I don't want you to feel under pressure of time to reach your decisions, but refreshments will be brought out to you in your room.

Two matters of administration before you go out. The first is that if you have not already done so, when you go into your room you should appoint a foreman from your number, who will act as chairman in your discussions in your room.

It will be your foreman who will give the verdicts of you all in answer to the questions from the clerk of the court. He or she, as

I say, as your foreman, will give the verdicts which you will then have decided, whichever way they are. The other matter I have to tell you is that, as I said, they will be the verdicts of you all. You may have heard that in some circumstances I can accept a majority verdict, but those circumstances have not yet

arisen, and very likely will not. Only if you were unable to arrive at unanimous verdicts after a considerable time, would I give you further directions about majorities, but unless and until I do that, will you please try and arrive at verdicts, whichever way they are, on which all 12 of you are agreed. When you have been put in charge of the jury bailiffs, will you please now retire and consider your verdicts.

(The jury bailiffs were sworn and the jury retired to consider their verdict at 1.04 p.m.)

(After a short while, a note was received from the jury)

(The jury returned into court at 3.02 p.m.)

JUDGE HUTTON: I have your note, members of the jury. I don't think counsel have seen it. I will just read the note out. "Please can we have the differences between the two Counts explained again; the difference between intent to do him grievous bodily harm and inflicting grievous bodily harm". I don't suppose either counsel wants to make any submissions to me?

MR. BOWLEY: Your Honour, no.

MR. MOONEY: Your Honour, no.

JUDGE HUTTON: Members of the jury, this is not perhaps an easy distinction to grasp at once, but it is a not unusual situation either that people are charged with the more serious offence or the lesser offence or both in the alternatives like this. I think I can perhaps explain the difference in this way.

If you take the lesser offence first, Count 2, which is inflicting grievous bodily harm, unlawfully and maliciously inflicting grievous bodily harm, in order to prove the lesser of these two offences, the prosecution have got to prove the actual assault, and that it was a deliberate action by the defendant, in which he would have realised, if he didn't intend, actually that some harm would follow. If the defendant assaults somebody else, and, in fact, if it was a deliberate assault, in

fact did cause some harm which amounted to really serious bodily harm, that offence then is committed, subject to any other defences.

So the offence is actually inflicting grievous bodily harm, which, I have said, means really serious bodily harm, which incidentally need not at all necessarily be as dramatically serious as in this case. Grievous bodily harm is something that the jury considers to amount to really serious bodily harm, whatever form that takes. So that lesser charge charges him with actually inflicting that bodily harm.

Now the more serious offence is doing so with the added intent specifically to cause really serious bodily harm. It is perhaps a little bit difficult at first, but the difference is between assaulting somebody which results in really serious bodily harm, without the specific intention to cause that harm. That is the lesser offence. But the more serious offence is committed if the person deliberately assaults the other one, intending at the time to cause some sort of harm that is really serious, whether it turns out to be desperately serious, as in this case, or something rather less.

Does that answer your question? A little bit of doubt I see on some faces. The intent to be proved is the intention actually to cause some harm which will be really serious. That is the difference. The lesser offence is assaulting, and in fact that assault which was a deliberate assault amounts to really serious bodily harm, without the specific intention to cause it. Have I got myself across? Does either counsel want to correct my direction?

MR. MOONEY: I certainly would not seek to correct your Honour. Your Honour is quite right. The difference is that the second is an unlawful assault. The first is an unlawful assault which carries with it the intention to cause really serious harm. Your Honour is quite right.

JUDGE HUTTON: The distinction between the two is the intention, at the time of the offence, actually to cause some really serious bodily harm. So unless I can help you further, will you please go out and consider your verdicts.

(The jury retired again at 3.08 p.m.

and returned into court at 3.30 p.m.)

THE CLERK OF THE COURT: Will the foreman please stand. Madam foreman, will you please answer my first question either yes or no. Has the jury reached a verdict upon which they are all agreed?

THE FOREMAN OF THE JURY: No.

JUDGE HUTTON: Would you sit down then and we will just consider. Members of the jury, sufficient time has now elapsed for me to be able to accept a majority verdict, whichever way it is, provided that at least 10 of you are agreed. So, it can be 10 to 2 or 11 to 1, but if you are more evenly divided than that, then I could not accept a verdict, and you would be discharged from giving a verdict.

So what I have to do is to ask you to go out to your room again. It may not be a very practical suggestion but I have to ask you still to try and arrive at a unanimous verdict, but if that is not possible, please try and arrive at a verdict, whichever way it is, on which at least 10 of you are agreed.

MR. BOWLEY: Before the jury go out, could I mention one matter to my learned friend?

JUDGE HUTTON: Yes.

MR. MOONEY: Your Honour, my recollection, and it has been faulty through this trial I accept, is that your associate asked the jury if they had reached a verdict upon which they were all agreed. It should have been a verdict on either Count upon which they are all agreed.

JUDGE HUTTON: Gentlemen, that was just going through my mind. I think that is right. Would you ask them if they have reached a verdict on either Count on which they are all agreed.

THE CLERK OF THE COURT: Will the foreman please stand. Madam foreman, will you answer my next question either yes or no. Members of the jury, have you reached a verdict on either Count, upon which you are all agreed?

THE FOREMAN OF THE JURY: No.

JUDGE HUTTON: That's it, thank you. I have given a direction about majorities. Will you please now retire and try again.

(The jury retired again at 3.34 p.m.
At 3.59 p.m. a note was received from the jury)

JUDGE HUTTON: Would you please ask Mr. Bowley to come in. Mr. Bowley, there is a note from the jury. Would you just look at it.

MR. BOWLEY: My client should be in court.

JUDGE HUTTON: Yes, he should be. Is he being fetched? Would you go into the dock, please, Mr. Soames. Various figures are put on that note which I don't propose to read out, but do both counsel agree that it appears from that, that at the moment the jury have not agreed on -that at least 10 have not agreed on either verdict?

MR. BOWLEY: That is a way to read it. I find it very difficult to understand. I don't really understand exactly what it says, and my learned friend has the same problem.

MR. MOONEY: Your Honour, what I would propose, subject to your Honour and my learned friend's better view, would be for your Honour to effectively start from scratch with their approach to these two Counts; to indicate they assess Count 1. If they are unsure the burden has not been satisfied on Count 1, they then discard it and move on to Count 2, and then the same procedure should apply.

JUDGE HUTTON: Yes. It seems to me as if they have got in a bit of a muddle as to the way they are approaching these two Counts. I think that is probably right. Do you agree, Mr. Bowley?

MR. BOWLEY: Your Honour, I was considering drafting a questionnaire.

JUDGE HUTTON: Well, you can draft it, and I will see what you put.

MR. BOWLEY: I have begun to do so.

JUDGE HUTTON: I should be careful how much I ask them about their considerations.

MR. MOONEY: I don't think it's that sort of questionnaire my learned friend had in mind.

JUDGE HUTTON: Well, let's see what you suggest I might ask them.

MR. BOWLEY: A sequence of questions to focus their attention on the issues.

JUDGE HUTTON: Would you like to put pen to paper and I will see what you suggest.

JUDGE HUTTON: It seems to me that if they cannot agree on Count 1, it is not really proper to ask them if they can agree on Count 2.

MR. MOONEY: Your Honour, that is my view.

JUDGE HUTTON: And so I think the direction ought to be; consider Count 1. Have at least 10 of you agreed either way.

MR. MOONEY: Can I reserve my position. I know my learned friend and I have had a very brief discussion about certain eventualities which may arise during the trial. I know my learned friend has a great experience of these matters. To a certain extent I anticipated the problem, and have been considering the appropriate way to address the jury. It may well be that as a result of the document he is drafting, a succinct definition can be placed before the jury, with which all counsel agree.

JUDGE HUTTON: A definition of Section 18?

MR. MOONEY: Your Honour, no. Perhaps a description of the way in which they should approach it stage by stage may be a better way of putting it.

JUDGE HUTTON: Well, I'll see, alright.

MR. MOONEY: But I am anxious that we get it right at this stage.

JUDGE HUTTON: Yes.

MR. BOWLEY: Three questions I have thought of, but my writing is quite impossible --

JUDGE HUTTON: Well, would you like to read them out then.

MR. BOWLEY: First posed question is: "Are at least 10 of you satisfied, so that you are sure, the defendant caused really serious harm to Steele? If no, acquit. If yes, carry on to question 2."

JUDGE HUTTON: But you have not mentioned an intent there.

MR. BOWLEY: Your Honour, I am taking this stage by stage.

JUDGE HUTTON: Well, I'm not sure I agree with this but carry on then.

MR. BOWLEY: 2: "Are at least 10 of you satisfied, so that you are sure, that when the defendant caused that really serious bodily harm to Steele, are at least 10 of you

satisfied, so that you are sure, that the defendant caused that really serious bodily harm to Steele unlawfully; ie: are at least 10 of you satisfied, so that you are sure, that in doing so, he was not acting in reasonable self-defence? If no acquit. If yes, carry on to question 3".

3: "Are at least 10 of you satisfied, so that you are sure, that when the defendant unlawfully caused that really serious bodily harm to Steele, he intended to cause really serious bodily harm to Steele. If no, convict of Count 2. If yes, convict of Count 1".

JUDGE HUTTON: Well, let me see that. Well, Mr. Bowley, I think, if I may say so, that is, yes, a very logical approach, but the jury could not possibly remember this rather complicated direction without having it in writing in front of them, and with all respect to your writing, it takes a little bit, it is a bit difficult to interpret.

MR. BOWLEY: I am always happy to apologise for my writing. Certainly a questionnaire like this, I always taken the view, should be handed to the jury in writing, so they can follow through, to give them a framework for their deliberations.

JUDGE HUTTON: "Are at least 10 of you satisfied, so that you can be sure, that the defendant caused really serious bodily harm to Steele. If no, acquit". That means acquit on both Counts?

MR. BOWLEY: Yes. I mean, that is obvious. There is no dispute about the first question. It is a necessary preliminary to the other two.

JUDGE HUTTON: Well, I think one can add, for the sake of clarity, "there is no dispute".

MR. BOWLEY: It's just, if no acquit of both Counts. If yes, carry on.

JUDGE HUTTON: But there is no dispute in the case that your client did cause really serious bodily harm.

MR. BOWLEY: Yes. It is "yes", but it is something about which they have to be satisfied.

JUDGE HUTTON: "If yes, then go on to question 2. Are at least 10 of you satisfied so that you are sure the defendant caused that really serious bodily harm to Steele unlawfully, ie. are at least 10 of you satisfied,

so that you are sure, that in doing so, he was not acting in reasonable self-defence. If no acquit". Of both Counts?

MR. BOWLEY: Yes.

JUDGE HUTTON: "If yes, carry on to question 3. Are at least 10 of you satisfied, so that you are sure, that when the defendant unlawfully caused that really serious bodily harm to Steele, he intended to cause really serious bodily harm to Steele. If no, then convict on Count 2. If yes, convict on Count 1".

Well yes, that is very logical, if they follow it step by step. Mr. Mooney, what do you say about this suggestion?

MR. MOONEY: Well, your Honour, I agree. I have some concern after seeing the note. It seems that some form of logical framework may be of assistance to this particular jury.

JUDGE HUTTON: Yes. I don't think there is anything very logical about what they have arrived at in their note.

MR. MOONEY: Well, your Honour, they're off the rails possibly. Your Honour, what my learned friend drafted gives them a framework for them within which to work.

JUDGE HUTTON: Well, I will give them that direction in writing, but it must be in writing they can understand.

MR. MOONEY: I don't know whether your Honour would feel it

--

JUDGE HUTTON: I am not going to volunteer to write it out for them. Could anybody type it out quickly in this building? Anybody got a good hand. It is now quarter past four.

MR. MOONEY: Well, your Honour could dictate it to them.

JUDGE HUTTON: Perhaps that is the best thing to do.

I think that is going to be the quickest.

MR. MOONEY: I think it might well be in the long run.

JUDGE HUTTON: Alright. Well, both agreed?

MR. MOONEY: Your Honour, yes.

JUDGE HUTTON: Could we have the jurors in then, please. (The jury returned into court at 4.16 p.m.)

JUDGE HUTTON: Members of the jury, it is obviously desirable that we should have a verdict in this case, if that can properly be achieved, and to that end both counsel have agreed a formula which they suggest, and I agree, would be a suitable formula for you to approach your final considerations, and see if we can achieve verdicts, whichever way they are, by following that formula. It is a little bit complicated, and therefore, I think you must have a note of it. You won't possibly be able to remember. So I think one of you, I think perhaps the foreman, could be given paper and biro. Are you alright to note it down while I dictate it to you? I will do it slowly, and then you will be able to consider it, in your own time, in your room.

It is this. 1: "Are at least 10 of you satisfied, so that you are sure, that the defendant caused really serious bodily harm to Steele"? Just interposing here. You will remember that in fact there had been no dispute, in the course of the case, about that; the actual causing of grievous bodily harm. Now, that is the first question.

"If the answer is no to that, you acquit on both Counts". On the other hand, and I have already commented to you there is no dispute to the causing of the grievous bodily harm, but "if the answer is yes to that question, then carry on to the next question, number 2".

Question 2: "Are at least 10 of you satisfied, so that you are sure, that the defendant caused that really serious bodily harm to Steele?" I read that again, I may have gone a bit too fast. "Are at least 10 of you satisfied, so that you are sure, that the defendant caused that really serious bodily harm to Steele?" Now the important word "unlawfully". Brackets, that is, are at least 10 of us satisfied, so that we are sure, that in doing so he was not acting in reasonable self-defence? If the answer to that question is no, again acquit on both Counts. But if the answer is yes, then you go to question 3".

Question 3: "Are at least 10 of you satisfied, so that you are sure, that when the defendant unlawfully caused that really serious bodily harm to Steele, he intended" -- that is the important word there -- "he intended to cause really serious bodily harm to him?"

Now then, there is a difference here. "If the answer is no, then you convict on Count 2, but if the answer is yes, you convict on Count 1". Now, if you

follow that through faithfully step by step, and if at least 10 of you can agree on each step, we ought to be able to achieve a verdict. Do you understand? Would you please retire and try again.

(The jury retired again at 4.23 p.m.
and returned into court again at 4.47 p.m.)

VERDICT

THE CLERK OF THE COURT: Your Honour, 3 hours and 41 minutes have elapsed since the jury first retired to consider their verdict. Will the foreman please stand. Madam foreman, will you please answer my first question either yes or no. In respect of the first Count, charging the defendant Glen Robert Soames with causing grievous bodily harm with intent, have at least 10 of you agreed upon a verdict?

THE FOREMAN OF THE JURY: Yes.

THE CLERK OF THE COURT: Do you find the defendant guilty or not guilty?

THE FOREMAN OF THE JURY: Not guilty.

THE CLERK OF THE COURT: Will you please answer my next question either yes or no. In respect of the second Count, charging the defendant Glen Soames with inflicting grievous bodily harm, have at least 10 of you agreed upon a verdict?

THE FOREMAN OF THE JURY: Yes.

THE CLERK OF THE COURT: Do you find the defendant guilty or not guilty?

THE FOREMAN OF THE JURY: Guilty.

THE CLERK OF THE COURT: Is that the verdict of you all or by a majority?

THE FOREMAN OF THE JURY: By a majority.

THE CLERK OF THE COURT: How many agreed to the verdict and how many dissented?

THE FOREMAN OF THE JURY: 11 agreed, one dissented.

MR. BOWLEY: Your Honour, I should say I will be asking for a pre-sentence report.

JUDGE HUTTON: Yes. I think at this stage I just ask prosecuting counsel if the defendant has any previous convictions of violence.

MR. MOONEY: Your Honour, yes, he does. Does your Honour have a copy of the antecedent history?

JUDGE HUTTON: Yes. Just tell us. You need not worry about motoring offences and such like.

MR. MOONEY: For an offence of wounding in 1988, he was fined and bound over. In September 1990, at Warwick Crown Court, for an offence of assault occasioning actual bodily harm, he was sentenced to four months in a Young Offenders' Institution, and on the 25th March 1992, at Birmingham Crown Court, for manslaughter, he was imprisoned for three years.

JUDGE HUTTON: What were the circumstances of the manslaughter?

MR. MOONEY: Your Honour, they bear no relation to the facts of this offence at all.

MR. BOWLEY: Can I say they are fairly extraordinary. That is one of the reasons why I am asking for a pre-sentence report.

JUDGE HUTTON: Yes, Mr. Bowley. I think probably in the circumstances it would be right to have a pre-sentence report. I will so request. Is there any further application?

MR. BOWLEY: Would your Honour consider granting my client bail before that pre-sentence report? One knows very often it is better for that report to be done while a client is on bail.

JUDGE HUTTON: Well, yes. In the circumstances of his acquittal on the first Count, I will allow bail, pending the production of the report. Does the prosecution ask for any particular conditions of bail? Have there been any condition up to now on his bail? There have been some conditions, and they have been varied. I think the current conditions were, I don't understand it, to attend the Mondo Club, in company with a representative of a firm of McGrath & Co. Was that for the purposes of looking at the geography of it or something?

MR. BOWLEY: I suspect so.

JUDGE HUTTON: But apart from that there had been a condition that he did not go to that nightclub or contact prosecution witnesses, and I expect there was a condition of residence, wasn't there?

MR. MOONEY: Yes.

JUDGE HUTTON: Yes. Well, is his address 135 Village Road, Cheltenham, still?

MR. BOWLEY: That's correct.

JUDGE HUTTON: Right, condition then of residence at that address until the next appearance at court. What other conditions do you ask for?

MR. MOONEY: We would ask that he surrender his passport.

JUDGE HUTTON: Alright. When?

MR. MOONEY: Within 24 hours.

JUDGE HUTTON: I don't suppose he has got it now.

MR. MOONEY: I would not have thought he had it with him.

THE DEFENDANT: It's actually not in Cheltenham (possibly not correctly recorded as inaudible)

MR. MOONEY: Perhaps we can say by nine o'clock tomorrow morning.

JUDGE HUTTON: Alright. Where does he have to surrender it to?

MR. MOONEY: Cheltenham police station, I would have thought.

MR. BOWLEY: Apparently his passport is in Birmingham. If he has got to reside in Cheltenham tonight, perhaps by nine o'clock tomorrow evening would be better, rather than nine o'clock tomorrow morning.

MR. MOONEY: Your Honour, yes. Can we revert to the 24

hours, which would take us to five o'clock tomorrow morning. I don't know if a particular police station in Birmingham could be specified; Acocks Green Police Station.

JUDGE HUTTON: Yes, right. Bail on those conditions then.

MR. MOONEY: On a purely personal note, I would be grateful if the case could be re-listed before the 30th July, when I leave the country to represent the Bar at a convention on the West Coast of America.

JUDGE HUTTON: And we are at the moment the 3rd. Yes, well that, I think, will give time enough, wouldn't it, Mr. Grace?

PROBATION OFFICER: I think we should be able to do it in three weeks, sir.

JUDGE HUTTON: Yes, so be it then. You can leave the dock then, Mr. Soames. You keep in touch with your solicitors, and you keep to those conditions. Thank you members of the jury. It has been a difficult case, and thank you very much for the attention and care you have obviously given to it. It is not a very pleasant duty but it is an important public duty, and we rely upon jurors to do that, and thank you very much for your attendance. You are now released and the court will rise.

(The court adjourned) *****