

January 9, 2013

JOSEPH FIORILLO - 1

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Court File No. 81654/12

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

YASMIN NAHKUDA

Plaintiff,

- and -

STORY BOOK FARM PRIMATE SANCTUARY and SHERRI DELANEY
Defendants.

This is the Examination for Discovery of JOSEPH
FIORILLO, a Third Party herein, taken at the offices of
Network North Court Reporting, 25 Sheppard Avenue
West, Suite 1210, North York, Ontario, on Wednesday,
January 9, 2013.

A P P E A R A N C E S :

Theodore P. Charney	for the Plaintiff
Kevin D. Toyne	for the Defendants
Kirsten Franz	for the Third Parties
Yasmin Nakhuda	Observing
Samar Katoch	Observing

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INDEX OF UNDERTAKINGS

Undertakings are found on the following pages: 6,7

1 Joseph Fiorillo; AFFIRMED

2 EXAMINATION BY MR. CHARNEY:

3 --upon commencing at 3:30 p.m.

4 1 Q. You are Officer Fiorillo?

5 A. Very good. Yes. I am.

6 2 Q. And you've taken an oath to tell the truth
7 today, sir?

8 A. Of course.

9 3 Q. And you're here pursuant to a summons to
10 witness?

11 A. Yes.

12 4 Q. In connection with the Nakhuda matter?

13 A. Uh-huh.

14 5 Q. And you recall retrieving Darwin from
15 Ikea?

16 A. I did.

17 6 Q. All right. Before we turn to those events
18 can you tell me how many years you've been with Animal
19 Services?

20 A. 20.

21 7 Q. In those 20 years have you always been an
22 Animal Control Officer?

23 A. 17.

24 8 Q. The last 17?

25 A. Yes.

1 9 Q. So you'd agree with me you're very
2 experienced --

3 A. Yes. I am.

4 10 Q. -- in terms of recovering loose animals?

5 A. Yes. I better be at this point.

6 11 Q. Yes. Now, on the day in question,
7 approximately when did you receive the call?

8 A. Approximately 1:45 p.m.

9 12 Q. Who did you receive the call from?

10 A. Our dispatch.

11 13 Q. What were you told by dispatch?

12 A. That there is a monkey running in the
13 upstairs parking lot with a jacket and a diaper on. I
14 thought it was a joke. I was at the shelter at the time
15 and I showed the girls my call and said, "I don't know.
16 This is funny." And I said, "Donna Nash come with me
17 just in case it's there" and then I headed out to the
18 call.

19 14 Q. And the way you depicted that just now
20 with your hand, was this an e-mail or was this an actual
21 phone call?

22 A. On my Blackberry. We get the calls
23 through our Blackberry. So I go to my messages. Right
24 now there's nothing. Oh, yeah. There's one from this
25 morning. That's how I do it. And I open it.

1 15 Q. Okay. These are written messages?

2 A. Yes. They are.

3 16 Q. Either text or e-mail?

4 A. Text mostly.

5 17 Q. Text?

6 A. Yes.

7 18 Q. And have you saved the text messages from
8 the Darwin case? Do you still have them?

9 A. Not on this phone, no. I do not. I did
10 print it up, though.

11 19 Q. So you have them somewhere?

12 A. Not with me. I don't have that with me.

13 20 Q. Okay but they exist somewhere?

14 A. Yes.

15 MR. CHARNEY: Ms. Franz, would you undertake
16 to provide us with whatever text messages the officer is
17 able to locate?

18 MS. FRANZ: Yes.

19 --undertaking

20 BY MR. CHARNEY:

21 21 Q. Thank you. Did you record the time you
22 went to Ikea in some kind of a note?

23 A. My driver's sheet. It was approximately
24 2:15, give or take.

25 22 Q. What information do you normally record in

1 a driver's sheet?

2 A. Time of arrival, what I picked up and
3 animal I.D. and that's it.

4 23 Q. And time you leave?

5 A. That's done with the dispatch. Actually,
6 the time I leave is on there. Sorry.

7 24 Q. Can we have an undertaking with respect to
8 that sheet as well? What did you call it again?

9 A. A driver's log sheet.

10 25 Q. Driver's log sheet.

11 MS. FRANZ: Are they kept?

12 THE DEPONENT: Yes.

13 MS. FRANZ: Yes.

14 --undertaking

15 BY MR. CHARNEY:

16 26 Q. Thank you. Did you make any other notes
17 that day of what you did that day?

18 A. No. I remember it vividly. Everything.
19 Time and everything.

20 27 Q. I'm sure you do.

21 A. It's a call I'm not used to.

22 28 Q. What animal shelter were you located at
23 when you got the call?

24 A. North York. 1300 Sheppard West.

25 29 Q. How soon after that did you leave to go to

1 Ikea?

2 A. Probably ten to 12 minutes I would say.

3 30 Q. Who did you bring with you?

4 A. Donna Nash. She's one of the inside
5 staff. She's a vet tech. And I thought maybe I'll need a
6 vet tech.

7 31 Q. Okay. How do you spell her last name?

8 A. N-a-s-h.

9 32 Q. Why did you think you would need a
10 Veterinary Technician?

11 A. I don't know. Maybe she knows about the
12 animal more than I do because I've never come across an
13 animal like that in my 17 years. Just extra knowledge.

14 33 Q. And in the conversations you had with her
15 on the way to Ikea did she inform you whether she had
16 ever come across a monkey in her experience?

17 A. No. She did not.

18 34 Q. So you don't know whether she did or
19 didn't?

20 A. No.

21 35 Q. Did you have any other conversations or
22 communications with anybody about Darwin before you got
23 to Ikea?

24 A. Before Ikea? No.

25 36 Q. You didn't call anybody at Ikea or speak

1 to security or anything?

2 A. No. I did not. I just went there.

3 37 Q. On your way there were you aware that's
4 there's a Toronto bylaw prohibiting monkeys?

5 A. Yes.

6 38 Q. How were you aware of that?

7 A. I know the bylaw. It's a prohibited
8 animal.

9 39 Q. Had you had any prior experience
10 apprehending prohibited animals?

11 A. Yes. Pit Bulls, goats, sheep, snakes,
12 tarantulas.

13 40 Q. Did you speak to anyone else about the
14 call before arriving at Ikea?

15 A. No. Just Nash.

16 41 Q. So did you discuss what you would be doing
17 with the monkey with anyone else before you got there?

18 A. No.

19 42 Q. What about your supervisor?

20 A. No. I did not talk to the supervisor.

21 43 Q. Mr. Behan? Officer Behan?

22 A. He did.

23 44 Q. Could you explain that, please?

24 A. You're asking if I spoke to the supervisor
25 on the way?

1 45 Q. Yes.

2 A. I did not. I didn't know if the call was
3 going to be there so I get to the call first, get the
4 animal, then transport it.

5 46 Q. So let's take this one step at a time. On
6 the way there you didn't speak to Behan?

7 A. I called him before I left and told him I
8 have a monkey at the parking lot at --

9 47 Q. Why did you call him?

10 A. He's my head ACO-1.

11 48 Q. Pardon?

12 A. He's the head officer.

13 49 Q. But every time you get a call to apprehend
14 an animal do you call your supervisor?

15 A. No.

16 50 Q. What's different about this situation?

17 A. Because it's a monkey.

18 51 Q. You thought you should let the supervisor
19 know?

20 A. Yes.

21 52 Q. What did he say to you during the call?

22 A. He said -- I said "It probably won't be
23 there. It seems like it's a funny call."

24 He said, "It will be" and it was.

25 53 Q. Did you talk about with him what you would

1 be doing with the monkey?

2 A. No because I didn't know the situation
3 until I got there, what it was doing.

4 54 Q. And did you talk about whether you would
5 speak to him again that day?

6 A. No. I just said -- I don't know if I said
7 I'll talk to you later after the call. Yeah. I
8 probably did say that.

9 55 Q. Were you wearing your uniform on the way
10 there?

11 A. I was.

12 56 Q. When did you arrive?

13 A. Probably 2:15. 2:10 to 2:15. Didn't take
14 us long to get there.

15 57 Q. You've already told me you did not make
16 any notes at the scene?

17 A. No.

18 58 Q. Did you call or communicate with anyone
19 from Animal Services while you were at the scene?

20 A. Besides Donna Nash, my dispatcher. Once I
21 got the animal contained I called in for a number and I
22 joked. I said, "You're not going to believe this. It's
23 here. I got it. Give me a number. Don't ask what kind
24 it is but it's a monkey. You have to give me a number
25 for the monkey." An ID number. Animal ID.

1 59 Q. I don't understand. How is the dispatcher
2 supposed to find out the ID number for the monkey?

3 A. Well, I have number for the call. I call
4 in that number, let's say 429.

5 "I have a monkey, can you give an ID number?"
6 I said, "It's a small monkey, grey" and then he looks on
7 the Internet and he gives me something just so we have
8 the number for the monkey.

9 60 Q. So it's an internal code process for
10 records for Animal Services?

11 A. Yes.

12 61 Q. And why do they need to look on the
13 Internet to do that?

14 A. Well, I don't know. He was trying to give
15 me a monkey similar to what I'm telling him.

16 62 Q. You mean they were trying to identify the
17 kind of monkey?

18 A. Yeah. I knew I wasn't going to say it was
19 a chimpanzee. I knew it wasn't a chimpanzee. I didn't
20 know what kind of monkey it was.

21 63 Q. So you wanted the dispatcher to help you
22 identify the monkey?

23 A. If he could. He didn't.

24 64 Q. Why did you need to identify it?

25 A. I don't know. Just to get a number so it

1 matches the animal. I'd never picked up a monkey so we
2 were a little bit --

3 65 Q. I appreciate it. Much less one that's got
4 a coat on.

5 A. And a diaper.

6 66 Q. Where did you park your vehicle when you
7 got to Ikea?

8 A. I went up the ramp and parked right in
9 front of the door. He was in the elevator room that
10 takes you to the lower level to the mall.

11 67 Q. How did you know where to go?

12 A. People were outside taking pictures. As
13 soon as I drove up the ramp I said, "Monkey's here."
14 I said, "Now we got a monkey."

15 68 Q. But at some point on your way over there
16 did you have some idea where the monkey would be? It's
17 a big parking lot. It's an Ikea store.

18 A. No. No. That's what I said. When I drove
19 up, I knew where it was by the people huddled around the
20 door.

21 69 Q. Indicating with your hands taking
22 photographs?

23 A. They were taking pictures.

24 70 Q. And you went right up to where the monkey
25 was located?

1 A. Right in the room.

2 71 Q. And you parked your vehicle very close by?

3 A. Yes. I did.

4 72 Q. And you and the other fellow went in
5 together?

6 A. Donna Nash stayed outside.

7 73 Q. Why is that?

8 A. I went in just to assess it and I asked
9 the security guard, "How is he?"

10 "Oh, he's fine. If you put a blanket over him
11 he stops right away." And he did. He ran around a
12 little bit, screaming and I, kind of, was smiling
13 because I never saw this and then he put a blanket over
14 him and we lifted him into the cage.

15 He did he escape the cage once and we had to
16 do it again but soon as you put the blanket on him, he
17 just -- he stayed still so we were very lucky. My
18 partner had a net outside the door waiting and we didn't
19 need it. I had him in the cage in two minutes.

20 74 Q. When Darwin escaped the first time had you
21 properly closed the cage?

22 A. I was trying to. I didn't want to close
23 it fast because I didn't want to hurt him. He was very
24 quick, yeah. So the second time he had his blanket over
25 him and then I had one in front so he couldn't crawl

1 out. He's very fast and he could push the thing open. I
2 mean he's --

3 75 Q. And is the first time you spoke with
4 security when you got to the scene?

5 A. Yes.

6 76 Q. Did you have any conversations with
7 security about what efforts they had made to find the
8 owner?

9 A. No. I did not. I figured if somebody was
10 there that owned it they would have been there on site
11 so --

12 77 Q. Just turning to another topic for a
13 moment.

14 A. Yep.

15 78 Q. You've done many of these. What do you
16 call them when you go and take an animal that's gotten
17 loose somehow? Do you call it a seizure? Do you call it
18 apprehension? What do you do?

19 A. It's a stray. It's a stray animal call.

20 79 Q. The act of taking possession of the animal
21 and taking it back to Animal Services, do you call that
22 apprehending an animal? What's the terminology that you
23 would use?

24 A. Picking it up.

25 80 Q. Picking it up? Wonderful. That's what I

1 would have said.

2 A. I picked up the animal. If dispatch calls
3 me, I picked it up. I got it.

4 81 Q. I take it you'd agree that from the coat
5 and the diaper it was apparent to you that Darwin had an
6 owner?

7 A. Of course.

8 82 Q. So if that had been a dog at that same
9 place, at Ikea, that had gotten loose and you were there
10 to pick it up would you make some efforts to see if the
11 owner was around, for example, in the Ikea or in the
12 parking lot or would you just take it and leave?

13 A. Take it and leave.

14 83 Q. You never make any efforts to see if the
15 owner is nearby?

16 A. Usually if we get there, especially in
17 this case, somebody would know if the owner was around.
18 The animal was there probably, what, 20 minutes, 25
19 minutes, maybe more before I got there. Somebody would
20 have had some information. I knew there wasn't, you
21 know.

22 There's no tag on a dog I do not look around.
23 I do not go in the Ikea and ask. It's too big. I don't
24 have time to do that. It goes on board. It comes back.
25 It's running at large. We need to get it for health and

1 safety and for the public. We have to remove it.

2 84 Q. Now I asked the other officer this
3 question so feel free to give me the same shot that he
4 did. What did Darwin look like when you first saw him?

5 A. Very cute. I never saw a monkey, like,
6 you know, in Toronto running around. He wasn't bad in
7 there, too. He screamed a little bit. I'm sure he was
8 looking for his owner but he didn't attack anybody and
9 he was scared.

10 85 Q. But he looked like he was looking for his
11 owner?

12 A. Yes.

13 86 Q. Now is it fair to say that part of your
14 job is to be alert for issues of abuse when you pick up
15 an animal? Any kind of animal?

16 A. Yes.

17 87 Q. You have experience with abused animals?

18 A. Yes. We can take it to the vet if we
19 think that it needs care. If it's not that bad we can
20 take it back to the shelter and the girls look at
21 because we have Vet Techs who know.

22 88 Q. You wouldn't ignore abuse if you saw it?

23 A. No.

24 89 Q. And you have certain obligations if you
25 suspect abuse?

1 A. Yes.

2 90 Q. What are those ordinarily?

3 A. Take it to a vet.

4 91 Q. Do you usually take photographs if you
5 suspect abuse?

6 A. I would take it back to the yard and let
7 the girls look at it and assess if I thought it was, you
8 know, needed a vet. If it was really bad bleeding and
9 we're stuck, it's going to a vet automatically.

10 92 Q. Can we agree that when you picked up
11 Darwin there was no evidence of any kind of abuse?

12 A. No.

13 93 Q. Once you left Ikea did you go directly
14 back to the animal shelter?

15 A. No. I went to Toronto Wildlife to see if
16 they knew what type of monkey it was and they did give
17 us a little food. They had some grapes and we were
18 there a few minutes. They said it was a, don't quote me
19 on this, a Rhesus Macaque. I found out, I think it's a
20 Japanese Macaque or something. I'm not really sure.

21 94 Q. Was there any other reason to go to --

22 A. Toronto Wildlife? To see if they knew what
23 it was and if they had any food.

24 95 Q. That was the only reason?

25 A. That's it.

1 96 Q. Did you speak with anyone in particular
2 there?

3 A. I don't remember their names, the girls.
4 They were all freaking out. "Oh, he's so cute," you
5 know.

6 97 Q. Any discussions with them about what
7 should happen to the monkey?

8 A. They asked me where it came from. Found
9 it in a lot. Not that I remember.

10 98 Q. How long were you there, again? Maybe you
11 said this?

12 A. A few minutes.

13 99 Q. Where are they located?

14 A. 60 Carl Hall Road. Right across the
15 street from us.

16 100 Q. I see.

17 A. It's right across the street. They deal
18 with a lot of different animals than we do. Wildlife.

19 101 Q. The next stop was Animal Services?

20 A. Yes.

21 102 Q. By that time had you spoken to Officer
22 Behan again?

23 A. I came into the shelter and he was not too
24 far behind. I guess, maybe, ten minutes.

25 103 Q. Had you spoken to him again once you were

1 on the road?

2 A. I called him and told him that I picked it
3 up. That was it. He showed up at the yard and we
4 waited for the owner. Apparently the owner had called
5 the front desk.

6 104 Q. So by the time you arrived at the animal
7 shelter with Darwin did you know the owner was on their
8 way?

9 A. No.

10 105 Q. How did you find that out?

11 A. When I went to the front desk they said
12 the owner had called. I'm not sure about the timeline
13 there.

14 106 Q. And they told you the owner was on their
15 way to claim the monkey?

16 A. Yes.

17 107 Q. She was obviously going there to claim the
18 monkey?

19 A. Yes.

20 108 Q. What happened next?

21 A. That was probably -- okay. I got back
22 about 2:35, let's say. They came probably quarter to
23 four. So Dave took them -- well, we were talking in the
24 front. We weren't actually at the shelter. We were
25 getting gas in one of the vehicles and I got called,

1 "They're here." So I don't know what was said while we
2 were gone.

3 109 Q. That's fine.

4 A. So Dave took them into the kitchen to tell
5 them what their choices are in the situation.

6 110 Q. We'll get into that. You're getting a
7 little ahead of me. So when Ms. Nakhuda and her husband
8 Samar were in the reception were you at the reception at
9 any point?

10 A. Just for a minute and then Dave took them
11 to the back. So I walked in, they were there and then
12 we all went, kind of, to the kitchen.

13 111 Q. And were you present for any of the
14 conversations?

15 A. A little bit. Not all of it because I was
16 getting things for Dave and I was seeing if the girls
17 had a supervisor on the phone for him to talk to and he
18 was switching.

19 112 Q. What do you remember about the
20 conversation that took place at reception?

21 A. Reception? Nothing.

22 113 Q. Now where did the four of you go after
23 reception?

24 A. Kitchen. I think there was other public
25 in there maybe looking at cats and just, you know, you

1 don't want to discuss this stuff in front of them.

2 114 Q. Early on in the conversation in the
3 kitchen were you all sitting down somewhere?

4 A. Yes.

5 115 Q. Like how?

6 A. At a table.

7 116 Q. At a table? Across from each other? Next
8 to each other? How was that?

9 A. She was sitting where you were. He was --
10 sorry I don't know your name. He was sitting there. I
11 was here. Dave being there.

12 117 Q. You and Officer Behan were on one side of
13 the table and Yasmin and her husband were directly
14 across from you?

15 A. Yes.

16 118 Q. At the beginning of the meeting was one of
17 the two of you doing more of the talking?

18 A. He was doing the talking. I left it up to
19 him. He's the ACO-1. I'm an ACO-2. And then we knew we
20 had to contact a supervisor to, you know, get everything
21 going and in the right, proper steps.

22 119 Q. Was there a particular reason why you
23 participated in the meeting? Why you were there?

24 A. I don't know. I picked it up so -- and I
25 thought if he needed help because he sent me to get her

1 licence at the front. I had to get that book, the thing
2 because he didn't have it with him.

3 120 Q. Meaning the surrender form?

4 A. Yes.

5 121 Q. But you didn't get the form before you
6 went into the meeting, did you?

7 A. No.

8 122 Q. At some point during the meeting you went
9 to get the form?

10 A. Yes. I wasn't always in there because
11 even though he was talking to them I walked out of the
12 room and went to check what the girls were doing because
13 they were calling the zoo and the sanctuary and they had
14 the boss on the line and then I'd come back, "Dave, they
15 need to talk to you" so he left the room.

16 123 Q. When the girls were calling the zoo and
17 the sanctuary, was this right from the very beginning
18 when they got to reception or when did that start?

19 A. I think it started pretty shortly after if
20 not even before.

21 124 Q. Right. And the reason they were calling
22 the zoo and the sanctuary was to find out where to send
23 Darwin?

24 A. Yes.

25 125 Q. At the beginning of the meeting in the

1 lunchroom, I understand that my clients wanted their
2 monkey back. They wanted to pick it up and take it
3 home. Is that right?

4 A. Yes. That's not my decision to make.

5 126 Q. I'm not suggesting it is, sir, for a
6 moment.

7 A. I'm just saying it isn't.

8 127 Q. I'm not suggesting it is for a moment and
9 I understand you have a supervisor that tells what to do
10 and we'll get to that but when my clients were asking to
11 get the monkey back, I understand that Officer Behan,
12 near the beginning said, "I can't give him back to you.
13 It's prohibited by the bylaw."

14 A. It's prohibited. Yes.

15 128 Q. And at some point he said he had to talk
16 to his supervisor. Is that right?

17 A. Yes.

18 129 Q. And the reason he wanted to talk to the
19 supervisor is because my clients wanted their monkey
20 back?

21 A. Yes and just the whole situation having a
22 monkey in the shelter. You know, what's next.

23 130 Q. I understand that early on in the
24 conversation in the lunchroom my clients said, "Can we
25 see Darwin?" Do you agree with that?

1 A. They did.

2 131 Q. I understand that after they asked to have
3 Darwin back and after they asked to see him it's at that
4 point that Officer Behan leaves to talk to his
5 supervisor?

6 A. Probably, yes. I was in and out at that
7 time as well.

8 132 Q. And while he's out talking to his
9 supervisor are you still in talking to Yasmin and her
10 husband?

11 A. I did stay for one of the -- a few minutes
12 before he got back. Yeah.

13 133 Q. And did they talk to you about whether
14 they'd get their monkey?

15 A. He asked me --

16 134 Q. Samar?

17 A. Sorry. Samar.

18 MR. KATOCH: Just like the weather.

19 BY MR. CHARNEY:

20 135 Q. Samar.

21 A. He asked me "What is Dave? Who is Dave?"
22 I said, "He's an ACO-1. I'm an ACO-2."

23 And my words were, "He's right now talking to
24 somebody higher. A supervisor." And that was it from
25 my words.

1 136 Q. But you understood he went to talk to the
2 supervisor to find out what he was supposed to do with
3 Darwin?

4 A. Yes. As far as I know, yes. I don't know
5 that conversation.

6 137 Q. Then at some point he comes back?

7 A. Uh-huh.

8 138 Q. How long was he gone?

9 A. A few minutes.

10 139 Q. What does he say to my clients when he
11 comes back?

12 A. Was I in the room at that time? I don't
13 remember exactly if I was even in the room because I
14 walked out a couple of times. I think at that time he
15 asked me to get her licence. It was at the front counter
16 so I didn't hear everything he said.

17 I did hear there was a few options. You know,
18 you could sign the animal over. We're very concerned
19 about the monkey. We don't want it hurt. We want the
20 best for the animal. He did say that.

21 140 Q. What other options did he offer her
22 besides signing the monkey over or were there any other
23 options?

24 A. That's what I heard.

25 141 Q. Just that option?

1 A. Like I said, at that time I was standing
2 at the thing and we had one of our other inside staff
3 sit down at the table because she was talking to the zoo
4 and she was telling her that the monkey would be fine if
5 it was separated. They deal with the monkeys, I guess.

6 142 Q. When Officer Behan came back, you'd agree
7 with me that he asked Yasmin to sign a surrender form?

8 A. I don't know if he actually asked her to
9 sign it. He said, "You have a choice here to sign it
10 over if you want. You don't have to sign it over but
11 we're looking at the animal safety and well-being" and
12 that was important.

13 And he walked out of the room at that point
14 and got on with our boss and they were in the room
15 probably 15 minutes by themselves and she called
16 somebody to ask, "They're asking me to sign it over." I
17 didn't listen to her conversation. She was upset.

18 143 Q. Was it fair to say she was struggling
19 about whether to sign the form?

20 A. Yeah.

21 144 Q. She was emotionally upset?

22 A. She was very upset. Her animal was there.

23 145 Q. She was crying?

24 A. Yes.

25 146 Q. Did Officer Behan say anything about the

1 implications if she didn't sign the form? For example,
2 you know, this could go further? There could be other
3 problems or ramifications if you don't sign the form?

4 A. That I don't know. I know that signing --
5 he said signing the form just gives us the option to
6 move the animal out of the shelter. Then we can get it
7 to a sanctuary, whatever, somewhere, the zoo. Yeah.
8 That I heard.

9 Shortly after I got a call. I had to go on an
10 emergency. I left. When I came back, it was signed
11 over and they were just leaving, driving out. There was
12 a bunch news people there.

13 147 Q. So you weren't there for the whole
14 meeting?

15 A. No.

16 148 Q. At what point in the meeting did the
17 officer ask you to go get the surrender form? Was it
18 before he called his supervisor or when he came back
19 from talking to his supervisor?

20 A. I think he had already spoken to somebody.
21 I'm not sure if it was the zoo or the supervisor.

22 149 Q. But you were there at the beginning of the
23 meeting and at some point you went to get the surrender
24 form?

25 A. Uh-huh.

1 150 Q. So when did you do that in relation to
2 when Officer Behan left to talk to his supervisor again?
3 Was it after he came back or was it even before he went
4 to talk to the supervisor?

5 A. No. It was after he came back.

6 151 Q. After he came back he asked you to get the
7 surrender form?

8 A. Yes. And then I got a call. I said, "I
9 can't stay. I've got to go." I had an emergency and I
10 split and when I got back they were just driving out and
11 there was a bunch of media at the shelter and it was
12 signed over.

13 152 Q. Is there anything else that you can tell
14 me about the conversations that took place in that
15 meeting in the lunchroom that you think are important
16 for us to understand?

17 A. I don't have enough together. There were
18 just bits and, you know, said, so I didn't really hear
19 everything because I was walking back and forth,
20 checking my calls. I was still on the road so I had to
21 keep busy.

22 153 Q. Sure. Can we agree that when Yasmin
23 arrived she was there to pick up her monkey?

24 A. Yes. Of course.

25 154 Q. And somehow she ended up leaving without

1 the monkey, right?

2 A. That happens a lot with prohibited
3 animals. Goats. If we pick up a goat, somebody comes in,
4 "I want my goat." You can't have the goat.

5 155 Q. Right. And that's because Animal Services
6 won't turn it over?

7 A. It's a prohibited animal in the city. Yes.

8 156 Q. So the procedure in Animal Services is
9 when there is a prohibited animal and someone comes to
10 claim it, you won't turn it over?

11 A. That's been my -- yes and I don't make
12 that decision.

13 157 Q. I understand that. But if you're not
14 turning it over, if you're going to keep it why did you
15 get them to sign a surrender form? What's the point?

16 A. I think the surrender form allows us to
17 remove the animal out of the shelter. Okay. If it's
18 not surrendered to us we have to hold it for a certain
19 amount of time. How many days? I think it's seven. I
20 don't know.

21 We didn't want that animal there so -- it's
22 five or seven days. Anyway, once you sign it over, we
23 can move the animal to a safer place better than the
24 shelter. We don't look after monkeys there.

25 158 Q. Is that five or seven days something to do

1 with protective care?

2 A. Yes.

3 159 Q. And I understand under protective care the
4 owner can claim the animal back during those five or
5 seven days?

6 A. That's totally up to the supervisor of the
7 shelter, not me. They decide what animals come and go.
8 I don't.

9 160 Q. Okay.

10 A. I bring it in.

11 161 Q. Based on being at that meeting and what
12 you experienced that day, can you give me any reason why
13 Ms. Nakhuda signed that form given that she came there
14 to claim her monkey? Are you aware of any particular
15 reason why she signed that form?

16 A. I was surprised when I came back that she
17 signed it.

18 162 Q. Those are all my questions. Thank you,
19 sir.

20 MS. FRANZ: Mr. Toyne may have some questions.

21 MR. TOYNE: Why don't we take a quick break?

22 --break at 3:57 p.m.

23 --upon resuming at 4:00 p.m.

24 EXAMINATION BY MR. TOYNE:

25 163 Q. All right, Officer. Just a couple of

1 questions. First batch of them relate to what
2 transpired when you were at Ikea. I don't think my
3 friend asked this and if he did I'm sorry I didn't catch
4 it when I was making notes.

5 When you were talking to the security guards
6 from Ikea had they given you any indication as to how
7 long they thought Darwin had been loose in the parking
8 lot or running around in the parking lot?

9 A. Yeah. If I got the call at quarter to it
10 had to be probably ten to 15 minutes before that so it
11 would have been 45 minutes I would say approximately.
12 He didn't tell me me that. I'm just guessing.

13 164 Q. Did anyone else say anything to the effect
14 of how long he had been there while you were there? You
15 had indicated there was a crowd of onlookers. Did
16 anyone say how long he had been there?

17 A. No. They were just interested in getting
18 it's picture.

19 165 Q. During your interactions with Darwin he
20 kept his coat on the entire time?

21 A. Yes. He did.

22 166 Q. You had started to say something about how
23 he was able to get out of or escape the cage and you
24 started to say something along the lines of he was able
25 to push it open while you were trying to close it?

1 A. We had him in and he had this exit so he
2 just pushed up the top and scooted out. So we put the
3 blanket over him again. He calmed right down again and I
4 had my blanket on the side so he wouldn't do that.

5 I didn't want to get his fingers or his head
6 caught anywhere so that's why I lost him the first time
7 because I was just being cautious with him.

8 167 Q. Right. And you had also said that in your
9 view that there were certain behaviours of his that made
10 you think he was looking for someone and that in your
11 view he didn't appear to be distressed or to have been
12 abused?

13 A. No. Not at all.

14 168 Q. In fairness, this was the first
15 interaction you'd had with a monkey?

16 A. Yes.

17 169 Q. And you'd agree with me that you don't
18 really have any background or training to be able to
19 interpret how a monkey would be acting or to be able to
20 determine what their actions mean?

21 A. No.

22 170 Q. When you were back at Toronto Animal
23 Services do you recall Officer Behan at any point in
24 time talking about potential criminal charges?

25 A. No.

1 171 Q. You had said that there were, I think you
2 used the phrase, the girls out front were calling the
3 zoo and calling the sanctuary?

4 A. Supervisor, sanctuary, yes. Everybody.

5 172 Q. Can you just amplify on that answer a
6 little bit more? How many people were calling? How do
7 you know who they were calling?

8 A. Probably two. I didn't hear the
9 conversations. We're just trying to get in touch with
10 them, bah, bah, bah. Just to see what we could do with
11 the animal.

12 173 Q. How do you know who they were trying to
13 call?

14 A. I was told they called the zoo and I'm
15 pretty sure they called the sanctuary. I'm not a
16 hundred percent sure on the sanctuary. I think I heard
17 that.

18 174 Q. So you know that they called the zoo. Are
19 you certain that they called anyone else or are you
20 just --

21 A. That's it I would say. Yeah.

22 175 Q. Now you had also said that at some point
23 someone else from Toronto Animal Services came into the
24 meeting when Officer Behan left to have some sort of a
25 discussion?

1 A. No. He was sitting there and Tracy walked
2 in. I just said I was --

3 176 Q. Can I stop you there?

4 A. Okay.

5 177 Q. Let's just take a step back for a second.
6 Okay. So who is Tracy?

7 A. She's one of the kennel attendants. I
8 don't know her last name.

9 178 Q. So she's a kennel attendant?

10 A. We have so many new ones coming and going
11 right now.

12 179 Q. So she walked into the meeting so it was
13 the five of you having a discussion at that point or
14 just four?

15 A. Four. I was not saying anything at that
16 point. I was standing, kind of, at the sink.

17 180 Q. And Tracy started to speak to Ms. Nakhuda
18 and her husband?

19 A. Yes.

20 181 Q. And you were close enough to overhear what
21 was being said?

22 A. Yes.

23 182 Q. What was Tracy telling them?

24 A. That she called the zoo and found out that
25 if the monkey was separated from her -- her main concern

1 was if the monkey was separated from me, it's a baby and
2 they assured us, the zoo did, that the monkey would be
3 fine if it was separated.

4 183 Q. Do you recall what the reaction of Ms.
5 Nakhuda or her husband was to that information?

6 A. I don't. I don't know if she was tearing
7 up and putting tissue to her eyes. I don't remember if
8 she said anything back. I don't remember.

9 184 Q. Do you recall hearing any discussions
10 about a sanctuary between Ms. Nakhuda, her husband and
11 anyone that worked at Toronto Animal Services?

12 A. I'm going to say no. I heard the zoo --
13 no. Somebody did mention there was a sanctuary in
14 Ontario who looks after primates.

15 185 Q. Do you have any recollection of who that
16 might have been?

17 A. It's either Dave or Tracy because the
18 situation we were in with the monkey we didn't know, you
19 know, what to do really so that's why we were calling
20 people and supervisors and other places.

21 MR. TOYNE: I don't have any other questions
22 for you.

23 MS. FRANZ: Thank you.

24 --whereupon the proceedings adjourned at 4:06
25 p.m.

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