

# Sentencing Scenario (Sentencing Conference & Sentencing Circle)

## R. v. Cain – Assault causing bodily harm and robbery



### What Happened?

On December 5, 2006, Nate Lee and Omar Richie (both 15 years old and in grade 9) were walking home from school after basketball practice. It was approximately 5:30 at night and dark. There was snow on the ground. They walked down Eglinton Avenue and turned up the alley that is a shortcut to the apartment building where Nate lives with his parents and two sisters.

As they turned into the alley they saw a couple of guys standing about five metres further up the alley. They looked a bit older than them and pretty aggressive. As soon as the guys saw Nate and Omar, they called out and told them to 'come here'. Nate and Omar didn't move. The two guys walked up to Nate and Omar. One of them said that he liked Nate's shoes. Nate was wearing his new basketball shoes. The guy told Nate to give up his shoes. Nate said no.

Then one of the guys reached over and pushed Nate up against the side of a garage. Nate and Omar tried to push them both away and run past them. Only Omar got away, and he bolted down the alley. Nate was left alone with the two guys. They started repeatedly punching him in the face, chest and stomach. Nate fell to the ground and they began kicking him in the back and legs. While he was lying there, one of them pulled off his shoes and hat.

The two guys got up and laughed at Nate, telling him to walk home in the snow in his socks. One of them pulled out a knife and waved it in Nate's face, telling him not to go to the cops, and that if they saw him again Nate would regret it. He lunged forward at Nate's stomach with the knife. The other guy yelled and pushed his arm away and the knife missed Nate. The two guys started yelling at each other. The one without the knife said he wasn't going to be involved in stabbing anyone and that they had to leave before someone saw them near Nate. They turned and ran down the alley.

When they had gone, Nate slowly got up. His shoes and hat were gone. He had blood all over his face and neck. His face, chest and stomach were really sore. He stumbled home and his mom called an ambulance and the police. Nate was taken to hospital. He had two broken ribs, a broken nose, and severe bruising all over his body. The doctors told him he was lucky the attack hadn't burst any of his internal organs. Nate was in hospital for two nights.

After Nate went home from the hospital he didn't go back to school right away. He refused to go back to basketball practice with Omar. Just before the Christmas holidays, Nate's mom called his teacher because he was skipping class and moping around the apartment. His teacher referred him to the school psychologist.

On December 6, 2006, Constable Richard Baker of the Toronto Police interviewed Nate. On January 8, 2007, Constable Baker called Nate to the police station and told him that an arrest had been made. Nate then identified a photo of Anwar, and confirmed that he was one of the two attackers, the one who had prevented the knife attack.

Anwar Cain was charged with:

1. Assault Causing Bodily Harm (section 267 (a))
2. Robbery (section 343 (a))

Anwar pled guilty to both charges. He is now being sentenced. He has no previous criminal convictions. The other assailant was apprehended and dealt with in separate proceedings.



# THE INFORMATION

Canada  
Province of Ontario  
Date \_\_\_\_\_

## IN THE ONTARIO COURT OF JUSTICE

Judicial District of York

HER MAJESTY THE QUEEN

AGAINST

ANWAR CAIN

**ANWAR CAIN** who is a young person within the meaning of the Youth Criminal Justice Act stands charged:

- I. That he, on or about the 5th day of December 2006, in the City of Toronto, did assault causing bodily harm NATE LEE contrary to section 267(b) of the Criminal Code.
- II. That he, on or about the 5th day of December 2006, in the City of Toronto, did rob NATE LEE, contrary to section 343(a) of the Criminal Code.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_

Signed \_\_\_\_\_  
Justice of the Peace

## ***R v Cain* Sentencing Statement of Agreed Facts**

**Charges:** Robbery C.C. s.343  
Assault Causing Bodily Harm C.C. s.267

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On Tuesday December 5, 2006, at approximately 5:30 PM, the victim, **NATE LEE**, was walking with **OMAR RICHIE** in an alley near Eglinton Avenue.

The assailants **ANWAR CAIN** and **DWAYNE DIRKS** were in the alley. They approached the two and **CAIN** demanded the victim give him his shoes. The victim refused.

The assailants pushed the victim against a wall. **RICHIE** ran away past the assailants.

The assailants punched the victim multiple times in the face, chest and stomach. The victim fell to the ground. The assailants kicked him multiple times in the back and legs.

**CAIN** then removed the victim's shoes and hat. The victim was warned not to go to the police.

**DIRKS** then attempted to stab the victim with a knife. **CAIN** prevented the knife attack by pushing **DIRKS** away.

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<b>Injuries Sustained by Victim:</b>	Broken nose, two broken ribs, severe bruising
<b>Recovery Time:</b>	Two night stay in hospital and 6 – 8 week recovery One week absence from school
<b>Property Stolen:</b>	1 Los Angeles Dodgers Basketball Cap 1 Pair Nike Basketball Shoes
<b>Items recovered:</b>	1 Pair Nike Basketball Shoes (used)

## Key Players

### Sentencing Hearing Participants

#### Lawyers

- 2 counsel for the crown
- 2 counsel for the defendant

#### Witnesses for the Crown

- Nate Lee (reading his victim impact statement)
- Justin Lee, Nate Lee's father
- Constable Richard Baker

#### Witnesses for the Defence

- Anwar Cain (reading his letter of apology)
- Ravi Cain, Anwar Cain's father
- Paul Nyomba, the manager of a local cell-phone store where Anwar works part- time

#### Court Staff

- Court clerk
- Judge's assistant

### Sentencing Conference Participants

The presiding judge has accepted the joint submission of the crown and defense counsel that the sentencing be referred to a sentencing conference pursuant to the Youth Criminal Justice Act.

For the sentencing conference, you will play the same character that you played in the hearing. Only 2 lawyers are needed, the other two lawyers will play new roles.

- 1 counsel for the crown
- 1 counsel for the defendant
- Nate Lee
- Omar Richie
- Justin Lee, Nate Lee's father
- Marcel Croft, Nate Lee's teacher
- Constable Richard Baker
- Anwar Cain
- Ravi Cain, Anwar Cain's father
- Paul Nyomba, the manager of a local cell-phone store where Anwar works part- time
- Jeremy Choi, the youth group leader from Anwar Cain's local rec centre
- Jacob Ross, Anwar Cain's teacher



## Lawyers: How to prepare sentencing submissions

1. Describe the sentencing options that you think are most appropriate and why.
2. Think about any possible programs or counseling that might help Anwar from getting into trouble again.
3. Write down the most important facts that you want the court to consider when sentencing (i.e. that Anwar has no previous criminal convictions, or that the attack resulted in serious injuries to Nate).
4. Write down the important parts of the witnesses' evidence that you want the court to consider (i.e. that Anwar's employer will let him keep his job if he is still able to work his shifts, or that Nate's father thinks Nate's grades have dropped and that Nate is scared to leave the apartment now).
5. Write down the key points about why the sentence you are suggesting meets the sentencing guidelines.
6. When delivering the sentencing arguments, try to speak in short, clear sentences. Be brief and to the point.
7. At the end of your submissions, ask the court to impose the sentence that you have chosen.





## Anwar Cain (the accused)

- You are 16 years old and in grade 10
- You have no previous criminal record.

### Your version of what happened

- On December 5, 2006, at about 5:00 PM you and your friend Dwayne left the apartment where you live with your dad. You were angry with your dad because he wouldn't give you money for the new basketball shoes that you wanted. He had told you to save up your money from your part time job at the local cell phone store, but you wanted them now.
- Dwayne is two years older than you and you know that he has been in trouble a few times with the police. Sometimes he brags to you about the stuff that he has stolen. He suggested that you steal the shoes from the store at the mall. You told him that you didn't want to jeopardize your job at the mall.
- The two of you ended up by Eglinton Avenue. It was not an area you knew very well. It was dark and there was snow on the ground.
- You were walking up an alley that comes off Eglinton when you stopped to light smokes. Just then Dwayne nudged you and pointed out two guys who had turned up the alley. One of them was wearing a pair of the basketball shoes that you wanted.
- Dwayne said to you "Now's your chance, grab his shoes off him". There was no one else around.
- Dwayne yelled out to the guys, telling them to come over here. They just stood there. They looked scared. They were a bit younger than you. Dwayne pushed you ahead of him down the alley. You told the guy with the shoes that you liked his shoes, and that he had better give them to you. The guy said no, that he had just got them, or something like that.
- Dwayne reached out and pushed the guy up against a garage wall. Both of the guys then tried to push past you and Dwayne. One of them got past and ran up the alley. Dwayne caught the other one, the one with the shoes, and started punching him in the face and stomach. You started punching him too.
- You felt angry because the guy should have just given you the shoes and then he wouldn't have got hurt. You had been angry all day, mostly at your dad, and it felt good to take it out on someone.
- The guy fell to the ground and you and Dwayne both started kicking him. You probably kicked him 3 or 4 times. Dwayne kicked him more. While he was on the ground you pulled off his shoes and took his hat.
- After a bit, you and Dwayne stopped beating the guy. You laughed at him, telling him to walk home in the snow in his socks. He had blood on his face and down his neck. He just lay there.
- Dwayne pulled out a knife. You were surprised. You already had the shoes, and the guy wasn't trying to get them from you. You yelled at Dwayne, telling him to stop. As he lunged forward to stab the guy you pushed his arm away and the knife missed.
- Dwayne yelled at you, telling you to mind your own business. You told him that you weren't going to be involved in stabbing anyone, and that you both needed to get out of

there before someone saw you. Dwayne called you a coward, but followed as you ran down the alley.

- About a month later a police officer knocked on the door, asked your name and told you that you were under arrest. Your dad told you not to talk to anyone until he and a lawyer arrived. He promised to meet you at the police station.
- The police officer collected the basketball shoes from outside your front door as you left. Once in the cruiser you told him that you wouldn't talk to anyone until your dad and a lawyer showed up.
- You were charged with assault causing bodily harm and robbery. You and the lawyer discussed the situation and you decided to plead guilty to both charges.
- Your dad is very disappointed in you. You two had discussed how your good grades in computer studies and your job at the cell phone store might lead to a college program in technology.

#### **Questions you should think about when preparing**

- What kind of student are you?
- Have you ever gotten into trouble before?
- Do you feel sorry for what you did?
- Were you surprised at how bad the victim's injuries were?
- What do you want to include in your letter of apology?
- Do you think you will ever do anything like this again?
- Are you scared about what sentence you might get?
- How close are you to your friend Dwayne now?







## Ravi Cain

- You are Anwar Cain's father. You are 37 years old.
- The two of you live together. Anwar's mother died five years ago.
- You are a hospital janitor. You have no criminal record

### Your version of what happened

- You were very surprised when the police officer knocked on your door and arrested Anwar for assault and robbery. He had never been in trouble with the police before. Sometimes he has trouble controlling his temper, and yells at you or breaks things, but he is always sorry afterwards.
- You told Anwar that you would find him a lawyer and meet him at the station. You called the lawyer that works for your union at work. She recommended someone who does criminal law. He seemed pretty good.
- The lawyer is expensive. You do not qualify for legal aid because of your job. The lawyer explained the situation to you and Anwar. Anwar decided to plead guilty and not go to trial.
- When you brought Anwar home from the police station you asked him if he had done it and he told you that he had. You started crying. You couldn't believe that your son had assaulted and robbed another kid. You have been trying to be a good parent since Anwar's mother died, but it is hard because you work a lot. You don't want to let her or Anwar down.
- You went to court with Anwar when he plead guilty. Everyone was looking at him like he was a thug. But you know that he is a good kid who just made a terrible mistake.
- You are worried about the sentence that Anwar will get. You are scared that he will go to prison. Even more, you are worried about how this will affect his chances of going to college.
- You had noticed that Anwar had been very quiet over the last month, and had been staying at home a lot more. You thought he had had an argument with his friend Dwayne.
- You are not sure about Dwayne. He is a bit older than Anwar and is not in school. He is rude and talks back to you. Since he started hanging around with Dwayne, Anwar had also gotten ruder, and he has stopped doing his homework. You think his grades have probably dropped. You had been meaning to call his teacher and talk to him but hadn't got round to it. You work long hours at the hospital.

### Questions you should think about when preparing

- What kind of parent are you?
- Do you think you could be a better parent to Anwar?
- Do you think Anwar could benefit from any counseling or programs?
- Do you feel responsible for what Anwar did?
- Have you ever gotten into trouble?
- How do you think Anwar should be punished?



## Paul Nyomba

- You are 35 years old
- You are the Manager of 'Call Me' a cell phone store, where Anwar works ten hours a week (Fridays from 4 – 9 PM, and Sundays from 12 – 5 PM).

### Your version of what happened

- You employed Anwar Cain about six months ago to work two shifts in the 'Call Me' cell phone store that you manage.
- Anwar is a good worker. He is always on time and works hard during his shifts. He stocks shelves and helps shoppers with their queries. He knows a lot about phones and often solves customers' phone problems.
- You were very surprised to hear that Anwar had committed these crimes, and at the severity of the injuries suffered by the victim. Anwar is usually pleasant and well mannered at work. The customers like him because he is friendly and helpful.
- You had noticed that when Dwayne comes into the store when Anwar is working, Anwar acts differently.
- Once recently Anwar answered you back when you asked him to redo a job because you had changed your mind about how it should be done. He seemed stressed out when this happened.
- Overall you are happy with Anwar's job performance, you think he is trying to be a good employee. You had planned on offering him fulltime work for the summer.
- You think that Anwar made a terrible mistake but is not necessarily a bad person. You believe that everyone deserves a second chance. You would continue employing him if he is still able to work his two shifts, and as long as Dwayne does not hang around the store anymore.

### Questions you should think about when preparing

- Are you worried about your safety or the safety of the store employees and shoppers around Anwar?
- Why do you think he did this?
- Do you think he will do something like this again?
- Have you ever been in trouble yourself?



## Nate Lee (the victim)

- You are 15 years old and in grade 9
- You live in an apartment with your parents and two sisters

### Your version of what happened

- On December 5, 2006 you and your friend Omar Richie, who is in the same class as you, were walking home after basketball practice at school. You were wearing your new basketball shoes.
- The two of you took your normal shortcut up the alley to your apartment building. It was cold and dark and there was snow on the ground.
- When you turned into the alley that night you both noticed two guys standing a bit further into the alley. They were a bit older and looked kind of aggressive.
- One of them yelled at you to 'come here'. You and Omar didn't move. The two guys walked up to you. One of them said that he liked your shoes. He told you to give them up to him. You said no.
- One of the guys reached over and pushed you up against a garage. You and Omar tried to push past them. Only Omar got away, and he ran down the alley. You were left by yourself. The guys started punching you in the face, chest and stomach. You fell to the ground and they began kicking you in the back and legs. While you were lying there, one of them pulled off your shoes and took your hat.
- When they stopped beating you, the two guys laughed. One of them told you to walk home in the snow in your socks.
- Then one of them said something about not going to the police and pulled out a knife. It happened really fast. The other guy yelled at the guy with the knife and pushed his arm away when he tried to stab you. The knife missed you, but it was pretty close. The two guys started yelling at each other. The one without the knife said he wasn't going to be involved in stabbing anyone and that they had to leave before someone saw them near Nate. They turned and ran down the alley.
- When they were gone, you slowly got up. Your whole body was sore. You could hardly stand up straight. You were covered in blood. You stumbled home. When you walked in your mom started crying. Then she called the police, and took you to the hospital. You had two broken ribs, a broken nose, and severe bruising. The doctors said that you were lucky that you hadn't burst any of your internal organs. You had to stay in hospital for two nights.
- On December 6, 2006, Constable Richard Baker of the Toronto Police interviewed you. You told him everything you could remember. On January 8, 2007, Constable Baker called you to the police station and told you that that an arrest had been made. You then identified Anwar from a photo and you confirmed that he was one of the two attackers, the one who had prevented the knife attack.
- Since the assault you haven't felt like yourself. You haven't wanted to go outside and worry that you might get attacked again, or see those guys again. You have been skipping school, and haven't been back to basketball even though your injuries are better. Your mom called

your teacher, who made you go to the school psychologist but you didn't feel like talking to anyone. You just wished it had never happened.

**Questions you should think about when preparing**

- How do you feel about the people who attacked you?
- Are you worried for your safety? About the safety of your family members?
- Do you think you will play basketball again?
- Are you worried about your grades at school?
- What do you want to say to the person who is being sentenced?
- What sort of sentence do you think he should get?





## Justin Lee

- You are Nate Lee's father. You are 45 years old.
- You are a mechanic

### Your version of what happened

- On December 5, 2006 your daughter called to tell you that your 15 year old son Nate had been robbed and beaten up near your apartment building. Nate was in the hospital and would have to stay there for a couple of nights. He suffered broken bones and severe bruising.
- You were shocked. Nothing like that had ever happened in your neighbourhood before. It is supposed to be a family neighbourhood, a good place to bring up kids.
- Before the attack Nate was a happy outgoing teenager. He was helpful around the apartment, and interested in many things. He was an excellent student, and talked about going traveling after he finished high school.
- Since the attack Nate's physical injuries have healed well. But he seems like a different person. He is very quiet, but also seems nervous and afraid. He is irritable and snaps at his younger sisters. He doesn't like to leave the apartment. He has been missing school. His grades have slipped. He hasn't been playing basketball. Nate's teacher is also worried about him. Nate saw the school psychologist but didn't want to talk to him.
- The attack has also affected your daughters, both of who are younger than Nate. They are scared to leave the apartment. You have considered moving to another part of the city and starting again.

### Questions you should think about when preparing

- How do you feel about the people who attacked Nate?
- Are you worried for your safety? About the safety of your family members?
- What do you want to say to the person who is being sentenced?
- What sort of sentence do you think he should get?



## Constable Richard Baker

- You are 40 years old
- You work at 13 division, the area where this attack took place.

### Your version of what happened

- At approximately 6:00 PM on December 5, 2006 you were assigned to investigate a report of a robbery and assault near Eglinton Avenue. There was one victim, Nate Lee, aged 15 years. Nate was in hospital with injuries sustained in the assault, including broken nose and ribs.
- On December 6, 2006, you interviewed Nate in hospital. He seemed very upset about the attack but thought he would recognize his attackers. He gave you a full statement.
- On January 6, a colleague, Constable Levine from another police division, contacted you. She had taken a statement from Mr. Dwayne Dirks, a 19 year old, arrested while trying to hold-up a convenience store and charged with robbery. He had described his involvement in the assault on Nate Lee. He identified Anwar Cain as the second assailant in that assault. She sent the relevant information to your division. Constable Levine will be dealing with the matters relating to Mr. Dwayne Dirks. You are not involved and do not know anything about those proceedings.
- On January 8, 2007 you visited the home of Anwar Cain, noticing the basketball shoes that matched the description of Nate's stolen shoes outside the front door. You arrested Anwar and charged him with robbery and assault causing bodily harm, properly informing him of his rights. You collected the basketball shoes as you left.
- You decided to see if Nate recognized Anwar. You put together a photo line-up and later that day Nate came down to the station and looked at it. He picked out Anwar as one of his attackers.
- When Anwar went to court he plead guilty to both charges.

### Questions you should think about when preparing

- What is your opinion of the attack – was it very serious?
- Do you think it is likely that Anwar will re-offend?
- Does this neighbourhood have a violence problem?



## Marcel Croft (Sentencing Conference participant)

- You are 32 years old
- You are Nate Lee's teacher

### Your version of what happened

- You are Nate Lee's English teacher. You also taught him English last year.
- Nate has always been a good student. His grades are not exceptional, but he works hard and generally maintains a decent grade average. He is interactive in class, and is well mannered and interested in other peoples' opinions. You understand that he has always participated in extra-curricular activities, such as basketball.
- After the December attack, Nate was away from school for almost a week recovering from his injuries. Since his return he has been very withdrawn. Recently he has started missing class regularly, which he had never done before. You have been told that he hasn't returned to basketball practice.
- Nate's mother called you in late December to discuss his truancy and withdrawal. She sounded very worried about him. You referred Nate to the school psychologist. You understand that Nate visited the psychologist but did not talk about the attack or how he was feeling.
- You are hopeful that now that one of the offenders has been arrested and pleaded guilty, Nate will put the attack behind him, and reengage in his schooling. You are happy to assist him in whatever ways you can.
- The assault has a large impact on the whole school. This was the third such attack that month. Other students are worried that they will be assaulted. The school principal organized a seminar on coping with violence and bullying and what to do if you were in danger of being assaulted.

### Questions you should think about when preparing

- How worried about Nate's skipping school and lack of interest are you?
- How do you think you can assist Nate?





## Jacob Ross (Sentencing Conference participant)

- You are 27 years old
- You are Anwar Cain's technology teacher

### Your version of what happened

- You have been teaching Anwar Cain in his technology course since September of this year, but have seen him around the school for the last three years.
- Until recently, Anwar was probably your best technology student. He was very interested in the subject and seemed to have a natural talent for resolving technological problems. He often explained material to other students. He had spoken to you a number of times about options for technology course at college.
- However, since November, and particularly since the start of December, Anwar has been withdrawn and erratic. In early December he verbally abused a student who asked him about the course work. He has been defiant and rude to you. You had to refer Anwar to the Vice Principal, as his behaviour was very out of line.
- Since then Anwar has been extremely focused on the course work, and hasn't really interacted with anyone else in the class, including you. The other students seem intimidated by him. You hoped that things would improve after the holidays.
- You were very surprised to hear about the assault and Anwar's convictions. It seems very out of character, and such a waste for someone so talented to be involved in such a violent and senseless crime. You wonder if this is why Anwar's behaviour has changed so much.
- You think that Anwar is off track, but not a lost cause. He is very talented and you would be disappointed if his abilities went to waste. You think he might benefit from having something positive to focus on, to be involved in, or take responsibility for, such as a technology project.

### Questions you should think about when preparing

- Are you worried about the safety of your other students around Anwar?
- Are there any programs or projects at school that Anwar could become involved in?





## **Omar Richie (Sentencing Conference participant)**

- You are 15 years old, and in Grade 9.
- You are Nate Lee's friend

### **Your version of what happened**

- You have been Nate Lee's best friend since the two of you met when you both started high school. You have a lot in common, and really love basketball. You both play on the school team.
- On December 5, the night that Nate was beaten up, the two of you were walking home together. When you were attacked, both of you tried to get away but only you managed to escape. You ran down the alley to call for help, but it was cold and dark and there was no one around.
- You ended up running all the way to your house and got your father, who came with you back to the alley. But by the time you had got here, Nate and the two guys had gone.
- You feel very bad about what happened to Nate, and that you left him there alone. Now you think you should have stayed, but at the time you were scared. Nate hasn't said anything to you, but you think that he is angry with you for leaving him. Since the attack Nate hasn't wanted to do much with you.
- You have tried to say sorry to Nate and explain why you ran but he has just told you to forget about it. This has made you feel really bad.
- Nate has started skipping school. You are worried about him but don't know what to do to help him.
- The basketball team is happy for Nate to return, even though he has missed lots of games and practices. Your older brother has said that he will walk home with you after practices.

### **Questions you should think about when preparing**

- Are you worried about your safety now when you walk home?
- What would you like to say to Nate if you had the opportunity?
- What would you like to say to Anwar Cain?
- Do you think Nate is going to be okay?



## Jeremy Choi (Sentencing Conference participant)

- You are 28 years old
- You are the youth leader at Anwar Cain's local rec centre

### Your version of what happened

- You are known Anwar Cain for approximately 18 months, when he started hanging out at the rec centre. Anwar sometimes came to the homework drop-in club. Sometimes he just played cards or basketball. You then found out that he was really good with technology, and over the last year he has assisted with small tech problems at the centre, setting up the new computers.
- You know that Anwar's mother died about five years ago, and that he lives alone with his dad, who works long hours at the hospital.
- Anwar has always seemed like a good person. Every now and then he would be rude or abusive to another youth, but his behaviour was nothing compared to others.
- You noticed that about three months ago he started hanging out with an older guy, Dwayne Dirks, who was often hanging around the centre. You were bit concerned about this relationship, as Anwar can be quite impressionable, and you know that Dwayne has been in trouble with the police before, and has a very negative attitude.
- Since December, Anwar hasn't been at the centre as much as normal. When he was there, he was very quiet. You haven't seen Dwayne since the start of December.
- You weren't all that surprised to hear that Anwar had gotten into trouble while with Dwayne, but were very surprised to hear what type of trouble it was. You had never thought that Anwar would physically assault anyone.
- You think that Anwar may find your intensive Youth Violence program useful. This is a 12-week free and voluntary program that meets once a week to talk about violence, the impact it has on victims and on attackers, and how violence can be avoided.

### Questions you should think about

- Do you think Anwar is likely to re-offend?
- How do you think Anwar feels about the assault now?
- How much do you think Dwayne was influencing Anwar?

