

E-File Name: 2019-04-29SVQStewartJ
Appeal No.:

IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF SASKATOON

BETWEEN

JAMES STEWART

Plaintiff

and

GORDON KEATING, BRADLEY MCAVOY, VINCENT SCHAEFER,
RYAN HOUNSELL, and ADAM BOYCE

Defendants

TRIAL
Volume 2
(Pages T163 - T364)

April 29 and 30, 2019
May 1, 2, and 3, 2019
Saskatoon, Saskatchewan

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1 Proceedings taken in the Court of Queen's Bench, Saskatoon, Saskatchewan

2

3

4 April 30, 2019

Afternoon Session

5

6 The Honourable

Court of Queen's Bench for Saskatchewan

7 Mr. Justice R.S. Smith

8

9 (No Counsel)

For the Plaintiff

10 R. Gibbings, Q.C.

For the Defendants

11 A. Rohrke

For the Defendants

12 B. Werezak

Court Clerk

13

14

15 **Discussion**

16

17 THE COURT:

Thank you. Please be seated.

18

19 Constable Keating, why don't you resume your spot on the stand? Any reason I
20 shouldn't bring in the jurors? You are ready to go, Mr. Stewart?

21

22 MR. STEWART:

Yes, My Lord.

23

24 THE COURT:

Let's bring in the jurors, deputy.

25

26 THE SHERIFF:

Yes, My Lord.

27

28 MS. ROHRKE:

My Lord, maybe I can just give you one

29 preliminary issue.

30

31 THE COURT:

Yes.

32

33 MS. ROHRKE:

I reviewed the CDs that the plaintiff has

34 provided.

35

36 THE COURT:

Yes.

37

38 MS. ROHRKE:

And there's two CDs. The one CD that's

39 audio -- that says audio on it simply contains the audio phone call that we had
40 listened to yesterday.

41

1 THE COURT: Right.
2

3 MS. ROHRKE: The CD that has the Saskatoon Police
4 Service logo on it only contains the GPS information. That's it. But the CD that
5 says Detention video, James jail on it --
6

7 THE COURT: Yes?
8

9 MS. ROHRKE: -- contains about 12 hours of footage. It's
10 the entirety of the footage from the Detention cells, broken down into probably 30
11 different files, which clearly we didn't look at all of that.
12

13 THE COURT: Yes. You were just interested in that one
14 part in the --
15

16 MR. STEWART: Well, I was interested -- you know,
17 interested in a number of them, actually. Like, there's quite a bit of -- I mean, I
18 could have sat and gone through all and showed you all of that. I just figured I'd
19 just put it in. I mean, I can highlight which incident, which file is specific to it, but,
20 I mean, it's -- there's quite a bit of information there, so I felt that they were better
21 served showing everything.
22

23 THE COURT: Yes. We can only exhibit that which you
24 went through in trial.
25

26 MR. STEWART: Okay.
27

28 THE COURT: And, you know, which -- you know, you
29 said, look, they put this spit sock on me, it was -- I mean, it was underpinning your
30 case.
31

32 MR. STEWART: Right.
33

34 THE COURT: But it's just that portion that can go in.
35

36 MR. STEWART: Oh, all right. Okay. I can -- I can redo the
37 files, then.
38

39 THE COURT: You can return the --
40

41 MS. ROHRKE: Should I just return the one CD?

1
2 THE COURT: Yes. Madam Clerk, all rise.
3
4 (JURY ENTERS)
5
6 THE COURT: Please be seated. All right. Mr. Stewart,
7 when you are ready.
8
9 MR. STEWART: Okay. I can -- for the -- for the Court, I
10 can get these done up just tonight and --
11
12 THE COURT: Yes. You should revise it and then let
13 Ms. Rohrke look at it.
14
15 MR. STEWART: Tomorrow, and they can review it again.
16
17 THE COURT: Yes. Thank you.
18
19 MR. STEWART: But they are going to hand in the other --
20 they have the other stuff that's there?
21
22 THE COURT: Yes. Yes.
23
24 MR. STEWART: Yeah. Thank you, My Lord.
25
26 THE COURT: Oh, and, you know, we are not sitting
27 around having coffee. You should call the witness "Constable" or "Constable
28 Keating" or simply "witness."
29
30 MR. STEWART: Thank you, My Lord.
31
32 THE COURT: Thank you.
33
34 **GORDON JAMES KEATING, Previously Sworn, Cross-examined by**
35 **Mr. Stewart**
36
37 Q MR. STEWART: Constable Keating, thank you for
38 showing up today. Just getting over a number of situations here, I'm just going
39 to go and actually bring up a couple of court cases. You said in your testimony
40 there with -- with Ms. Andrea Rohrke that you were a member of a police
41 department in -- in New Brunswick, was it? Or Nova Scotia, sorry? Is that

1 correct?
2
3 THE COURT: Oh, hang on.
4
5 MR. GIBBINGS: My Lord. My Lord.
6
7 THE COURT: I take it you're objecting?
8
9 MR. GIBBINGS: Yes. And I think we need to have a
10 discussion about this in the absence of the jury.
11
12 THE COURT: Okay. So you have some idea of what's
13 coming, I take it?
14
15 MR. GIBBINGS: Very much.
16
17 THE COURT: Okay. That gives you the advantage over
18 me.
19
20 So you are going to say, Why is the judge doing this to us? It's not because I'm
21 mean. It's just sometimes thing happen. I apologize.
22
23 Deputy, can I ask you to remove the jury?
24
25 (JURY RETIRES)
26
27 THE COURT: Please be seated.
28
29 MR. GIBBINGS: I know -- I know something of what's
30 coming because this was attempted in the Jarvis Stewart trial in front of Justice
31 Gabrielson, when Jarvis Stewart attempted to put to Constable Keating, I think four
32 cases in which Constable Keating had given evidence.
33
34 THE COURT: Right.
35
36 MR. GIBBINGS: And the allegation was that in those
37 cases, he was not believed, and the purpose for bringing forward that -- those cases
38 was to then suggest he should not be believed here.
39
40 THE COURT: All right.
41

- 1 MR. GIBBINGS: We submitted a brief of law at that time.
2 Justice Gabrielson dealt with that issue and rejected that evidence as being
3 character evidence and inadmissible.
4
- 5 THE COURT: All right.
6
- 7 MR. GIBBINGS: And I would like to provide you with a
8 brief on that -- on that issue, as well.
9
- 10 THE COURT: Okay. And, Mr. Stewart, is -- you want to
11 get these Nova Scotia cases in just to sort of impeach Mr. Keating's character,
12 saying, gee, this guy in Nova Scotia didn't believe you?
13
- 14 MR. STEWART: I am -- I'm not sure what you're saying,
15 My Lord.
16
- 17 THE COURT: Okay. Fair enough. Why do you want to
18 talk about the Nova Scotia cases?
19
- 20 MR. STEWART: Well, there's just one Nova Scotia case,
21 along with a number of other cases that I have. And this is all basically talking
22 about Keating, what he's done as a police officer. They're very -- I would consider
23 these cases similar fact cases with regards to the actions of Constable Keating.
24
- 25 THE COURT: Okay. Gabrielson was correct in Jarvis's
26 case not to admit that. We don't allow evidence as to character come in because
27 we're focussing basically on one incident. It's like, you know, in rape cases, sexual
28 assault cases, they don't allow the defence counsel to cross-examine the
29 complainant about her sexual activity with other men in other places, because it
30 boils down to you've got a story about this night, you've got a story about this night,
31 who is believed. So Mr. Gibbings is correct.
32
- 33 MR. STEWART: My Lord, I'll speak to that. It's a character
34 reference. I'm -- I'm proposing similar fact, My Lord.
35
- 36 THE COURT: Yes. It is not similar fact.
37
- 38 MR. STEWART: Okay. Okay. So you're saying I can't use
39 any of these cases, then?
40
- 41 THE COURT: Yes.

1
2 MR. STEWART: Okay.
3
4 THE COURT: I think you should be talking to
5 Constable Keating about what happened that night.
6
7 MR. STEWART: Yeah. Okay.
8
9 THE COURT: Okay. Thank you.
10
11 MR. GIBBINGS: Thank you.
12
13 THE COURT: All right. Deputy, bring in the jury.
14
15 THE SHERIFF: Yes, My Lord.
16
17 THE COURT: Madam Clerk. Put that on the file. Yes.
18 Sorry.
19
20 (JURY ENTERS)
21
22 THE COURT: I thank the jury very much. It was me
23 who needed that break. Don't blame anybody else. It's on me, all right?
24
25 Okay. Mr. Stewart, are you ready, sir?
26
27 MR. STEWART: Yes, I am, My Lord.
28
29 THE COURT: Okay. At your convenience.
30
31 MR. STEWART: I'm going to bring a case to the Court's
32 attention. It's *R. v. Lux*, Cindy Linda Sophie Lux v. Her Majesty the Queen in
33 regards to the *Traffic Safety Act*, among a number of other things. Once again, it's
34 the citation 2012 SKCA 129, a date of 2012-12-21. So that would be December
35 21st, 2012. Linda Sophie Lux v. Her Majesty the Queen. And this was counsel --
36 sorry, the -- the judge was Chief Justice Klebuc and Madam Justice Smith and
37 Mr. Honourable -- Mr. Justice Ottenbreit. And on page 13 of that case, the
38 paragraphs are all numbered. And paragraph number 1 begins, it says: (As read)
39
40 In my view, Section 209.1 falls far short of establishing by clear
41 words or clear implication that peace officers are entitled to

1 conduct random stops anywhere on private property used as a
2 parking area where there is no basis to believe the driver is
3 committing any infraction or poses a threat to public safety or
4 evidence or reason to believe that peace officers would be
5 significantly hampered in performing their duties if they waited
6 until a vehicle exited from a private parking area onto a highway.
7

8 THE COURT: Okay. First off, you're lapsing into
9 argument.

10
11 MR. STEWART: Okay.

12
13 THE COURT: That is an argument of law. You're
14 talking about --

15
16 MR. STEWART: That's what (INDISCERNIBLE) --

17
18 THE COURT: -- a stop on a parking lot.

19
20 MR. STEWART: M-hm.

21
22 THE COURT: The evidence is that Constable Keating
23 was behind the vehicle being driven by Jarvis. He noticed there was something
24 wrong with the continuous sticker.

25
26 MR. STEWART: M-hm.

27
28 THE COURT: He ran the licence plate. The licence plate
29 was another vehicle.

30
31 MR. STEWART: M-hm.

32
33 THE COURT: And all he did was follow you to a
34 parking lot in order to gauge -- engage the driver for a highway traffic offence. He
35 was on 8th Street whether that happened.

36
37 MR. STEWART: Mm.

38
39 THE COURT: So that is different than what you're
40 talking about.

41

1 MR. STEWART: It's not really, actually.
2
3 THE COURT: Well, okay. Well --
4
5 MR. STEWART: Because actually --
6
7 THE COURT: -- see, we get -- we get --
8
9 MR. STEWART: Yeah.
10
11 THE COURT: -- to argue about that, and we can
12 respectfully agree to disagree.
13
14 MR. STEWART: That's fine. That's fine.
15
16 THE COURT: But here's some news. I get to decide.
17
18 MR. STEWART: Fair enough, My Lord.
19
20 THE COURT: It was a lawful arrest.
21
22 MR. STEWART: Okay. Fair enough, My Lord. I'll just give
23 you one more paragraph, then.
24
25 THE COURT: Okay. One more.
26
27 MR. STEWART: (As read)
28
29 The *Traffic Safety Act* also excludes from its --
30
31 This is paragraph 34 of the -- of this Linda Sophie Lux, L-U-X --
32
33 THE COURT: Yes.
34
35 MR. STEWART: -- paragraph 34. (As read)
36
37 The *Traffic Safety Act* also excludes from its definition of a
38 highway any area, whether privately or publicly owned, that is
39 primarily intended to be used for the parking of vehicles and the
40 necessary passageways on that area. By this exception, the
41 Legislature confirmed private parking areas are not to be treated

1 as if they were highways, safe for the rules of the road, prescribed
2 by Section 211.

3

4 We'll get into Section 211. (As read)

5

6 Those rules only apply to parking areas which the public is
7 ordinarily permitted to use. Furthermore, Section 211 does not
8 require a driver to have a driver's licence or the driver's vehicle to
9 be registered.

10

11 Q MR. STEWART: Mr. Keating, you knew when you were
12 going to do this traffic stop that the vehicle was in a left-hand turn lane
13 specifically made -- made for that parking lot; is that correct?

14 A The vehicle was in the left-hand turning lane, like I pointed out here on this
15 picture of 8th Street.

16

17 Q Yes. It was in the left-hand -- it was in the left-hand turning lane?

18 A On 8th Street, yes.

19

20 Q Yes. That's right. Turning into a parking lot. And you testified that at some
21 point, through that intersection, that you then -- you engaged your siren, you
22 chirped it, I believe you said? Is that what you said? You chirped the siren?

23 A That's correct.

24

25 Q Okay. But there's no audio, is there?

26 A No. We've established there's no audio.

27

28 Q So we don't know. Yeah, so we don't really know if you actually chirped your
29 siren or not.

30

31 THE COURT: No, you don't -- you can't argue with him.
32 He gave you the answer.

33

34 MR. STEWART: Oh, I'm not arguing, My Lord. I'm just
35 saying -- I'm just saying, we don't have any -- any verifiable proof that he --

36

37 THE COURT: We don't.

38

39 MR. STEWART: That's what I'm saying, My Lord. I'm not
40 arguing with whether or not he did it or not. I'm just -- I'm saying that if he says he
41 did, we still have no proof that he actually chirped the siren --

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THE COURT: But we have his evidence.

MR. STEWART: -- we have his -- his words, yes, My Lord. Yes.

Q MR. STEWART: So today, you were being questioned with respect to the torts of assault, battery, false arrest, false imprisonment, intentional infliction of mental suffering, negligence causing personal injury, negligent standard of care, and abuse of process. Is that correct? Do you know what you're being sued for?

A I'm aware, yes.

Q Okay. So do you understand today that the evidence you are going to give is important?

A Yes.

Q Okay. You have informed yourself on the subject matter of this case that we will be discussing today?

A I've read over my reports.

Q Okay. You were on active duty on August 24th, 2012; is that correct?

A That's correct.

Q Okay. You were operating an unmarked traffic car, car number 477?

A Yes.

Q Okay. You were acting as a traffic safety enforcement officer?

A I was a police officer, a constable assigned to the Traffic Services section.

Q Assigned to the Traffic Services section. Does SGI have any involvement in the Traffic Services section? Like, do you enforce for SGI or is that something like a traffic enforcement officer? Is that -- do you -- do you work at all for SGI? Is there any contract from SGI?

A I work for the City of Saskatoon Police.

Q And you enforce the *Traffic Safety Act*?

A That's correct.

Q The *Traffic Safety Act*. Did you arrest me without a warrant that evening?

A That's correct.

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Q Did you take the stand and testify -- and testify against me at my criminal trial?

A I did, yes.

Q Did you take the stand, knowing that the charges that had been laid against me, the obstruction and two counts of assault, the charges that had been laid against me, were actually false charges?

THE COURT: Did you believe the charges to be false?

A No.

Q MR. STEWART: You believed the charges to be true?

A I did.

Q Okay.

A And still do.

Q So did you knowingly commit an abuse of process by charging me with crimes I did not commit to cover for your own misconduct?

MR. GIBBINGS: That's a point of law, My Lord.

MR. STEWART: M-hm.

THE COURT: Yes.

Q MR. STEWART: Do you consider that you acted in good faith by laying these charges?

A I did, yes.

Q Okay. Your job entails more than just physically arresting someone?

A It does.

Q To be hired for your job, there's certain educational requirements?

A There are.

Q Do you consider yourself to be a professional?

A I do.

Q Do you consider yourself to have honour and integrity?

- 1 A I do.
2
- 3 Q You noticed -- or you made mention earlier that you did some queries for some
4 licence plate, you were checking some licence plates. So would you say --
5 A No. I want to specify. I was checking the licence plate that was on the back of
6 the white Celica that has been put in evidence, 131HFG.
7
- 8 Q So you -- so you ran a query on that licence plate?
9 A On that specific licence plate, yes.
10
- 11 Q Yeah. On that specific licence plate. And you do that with other licence plates?
12 You've made mention you query --
13 A I do, yes.
14
- 15 Q -- you query vehicles on -- on a regular basis, you would say?
16 A But in this instance, I was querying your brother's licence plate.
17
- 18 Q Absolutely. Absolutely. I understand. So you were -- you were in that query.
19 Would that be using a computer?
20 A It was, yes.
21
- 22 Q Okay. So you're -- you use computers, and you used a computer on the evening
23 in question?
24 A That's right.
25
- 26 Q Okay.
27 A The car is equipped with a Panasonic Toughbook computer.
28
- 29 Q And -- yeah. So you would say in modern law enforcement, it would more
30 about gathering information and facts than it is about, you know, applying force
31 or the threat of force?
32 A I'm sorry. You'll have to repeat your question.
33
- 34 Q Okay. You would think or you believe that modern law enforcement is more
35 about gathering information and facts than it is about applying force or the
36 threat of force?
37 A Modern law enforcement is -- is interpreted by people different ways.
38
- 39 Q How do you interpret your job as a police officer or being a law enforcement
40 officer? Would you say that you would more gather facts or --
41 A I go out to -- I go out to protect the lives of the public and their property.

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Q Okay. That's great. So you testified in criminal court that my brother, Jarvis, he allegedly refused to give you his name or his identity?

A No, not allegedly. He didn't give me his name or his date of birth.

Q M-hm. Because if Jarvis had said, Well, my name is Jarvis, then the -- the camera microphones would pick that up, but we don't have any audio for that. So we can't -- we can't prove or disprove whether or not he said his name or he didn't say his name.

THE COURT: Again.

MR. STEWART: Yeah.

THE COURT: There is no question we don't have audio.

MR. STEWART: M-hm. M-hm. I know.

THE COURT: You have made that point clear.

MR. STEWART: Great. No audio.

THE COURT: But it's not to say that we don't have evidence.

MR. STEWART: M-hm. All right. Yeah.

THE COURT: Constable Keating said you wouldn't give him his name.

MR. STEWART: Yeah.

THE COURT: So --

MR. STEWART: Didn't he, though? Didn't he? Yeah. Yeah. Yeah.

THE COURT: -- and Jarvis said he was cooperative and gentle.

MR. STEWART: Right.

1
2 THE COURT: So you have got two stories.
3
4 MR. STEWART: M-hm. M-hm.
5
6 THE COURT: The judge of the facts.
7
8 Q MR. STEWART: So does that recollection stand out in
9 your memory when you think back to the events of August 24th, 2012?
10 A Which recollection is that, Mr. Stewart?
11
12 Q Is that he -- he didn't give you his name.
13 A No, the fact is he wouldn't give me his name or his date of birth.
14
15 Q Okay. The fact. Okay. Fantastic. One of your jobs as a peace or a police officer
16 is you have to write, like, a police report or an offence report of -- of a crime; is
17 that correct?
18 A General occurrence reports, yes.
19
20 Q General occurrence report. And these general occurrence reports, these basically
21 involve describing the facts of your investigation from the incident in the form
22 of, say, a written report?
23 A That's correct.
24
25 Q And this report is then kept as a permanent record?
26 A I don't know how long they're kept for.
27
28 Q Okay. But yes or no, this -- this police report would contain the factual and
29 relevant information about what you saw and what you did in investigating the
30 incident?
31 A The report is what I observed, yes.
32
33 Q Yeah. Absolutely. And so your police report would -- or may also contain, say,
34 what witnesses told you?
35 A This --
36
37 Q If witnesses came up and said, you know, if there was something, that police
38 report that you wrote may include things that witnesses told you?
39 A That's correct.
40
41 Q Okay.

1 A Most of the time when I leave my reports, however, I leave my general
2 occurrence and then a detailed witness statement has been left, I say in the
3 report to refer to the witness statement.

4

5 Q So you'd say that certain information, you know, would be really crucial or
6 really must be included in your -- in your police report so that -- just in case
7 others happen to read your police report. You'd say that it would be important to
8 put information in there?

9

10 THE COURT: That question is a little clumsy.

11

12 MR. STEWART: Okay.

13

14 THE COURT: It would be cleaner said that: You
15 attempt to put in the crucial information from the incident in your police report?

16

17 A I put in all the information that I have into it.

18

19 Q MR. STEWART: Thank you, Mr. Keating.

20

21 MR. STEWART: Thank you, My Lord.

22

23 THE COURT: Syntax, syntax, syntax.

24

25 Q MR. STEWART: So as part of your police training, are
26 you -- are you taught to properly write police reports?

27 A There's no course on police writing or writing police reports. It's -- it's all done
28 through training and what you observe, and then you -- you leave reports. And
29 over time, people get better at leaving more detailed reports.

30

31 Q Yes or no, so you would you understand, then, from your own experience as a
32 cop, a policeman, that the prosecutor would rely on your police report in
33 figuring out what -- what some of the evidence might be?

34 A I don't know what the prosecutor relies on, Mr. Stewart. When -- when an
35 offence takes place and a charge is laid, I leave a general occurrence report. In
36 that report, I leave all the information that I have about the offence and what
37 took place, and then that is shipped off to the prosecutor. So I don't know what
38 they specifically rely on for their case. All I can do is put in what I observed and
39 the information I have in relation to the charge.

40

41 Q Okay. So are you aware, yes or no, that a prosecutor would use your police

1 report for building his case for trial?

2 A I'm aware that prosecutors review my reports, yes.

3

4 Q So you would be aware -- you might understand that a prosecutor would need to
5 know the who, what, when, where, and why and how of an alleged crime or an
6 offence?

7 A Again, Mr. Stewart, I put in the information. If I have the information
8 pertaining to the person that's charged or the victim, I put forward all the
9 information that I have to the prosecutor.

10

11 Q Fantastic. If you must testify in a case where you made the arrest, you can use
12 your police report to refresh your memory and -- about the circumstances?

13 A I can use my police report and my notes, yes.

14

15 Q Okay. So it's important that your police report be accurate?

16 A Yes.

17

18 Q And it's important the police report be thorough?

19 A Yes.

20

21 Q And it's important that your police report be complete?

22 A Yes.

23

24 Q And it's important that your report contains the facts which give a clear picture
25 of what happened?

26 A I would agree with that.

27

28 Q It is important that the report contain the actual facts, and not just your one
29 -sided opinions?

30 A Mr. Stewart, my reports include the information that I observed at the time.
31 They don't include made-up facts.

32

33 Q I'm just going to say it one more time. "Yes" or "no," is the important that the
34 report contain --

35

36 THE COURT: Actually, on that "yes" or "no," I know
37 that's really TV, but we're not TV.

38

39 MR. STEWART: Fair enough.

40

41 THE COURT: We are real life.

1
2 MR. STEWART: Okay.
3
4 THE COURT: Sometimes you can't do a "yes or no."
5
6 MR. STEWART: Okay. Fair.
7
8 Q MR. STEWART: So it's important, then, that it's the actual
9 facts and not just your one-sided opinion; that's correct?
10
11 THE COURT: He's already answered that question.
12
13 MR. STEWART: Okay. All right. I just wanted to make
14 sure, yeah.
15
16 THE COURT: No, fair enough. Fair enough.
17
18 MR. STEWART: Okay.
19
20 THE COURT: But, I mean, he said he doesn't -- he --
21
22 MR. STEWART: Yeah.
23
24 THE COURT: -- puts in what he observed, not his
25 opinion.
26
27 MR. STEWART: No. Perfect. Perfect.
28
29 Q MR. STEWART: Thank you, Mr. Keating.
30
31 THE COURT: No problem.
32
33 MR. STEWART: And My Lord.
34
35 Q MR. STEWART: As a professional police officer,
36 Mr. Keating, do you demand accuracy and thoroughness of yourself?
37 A Yes.
38
39 Q As a professional police officer, do you demand accuracy and thoroughness of
40 other police?
41 A Yes.

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Q That's a good attitude. Is it your habit to make a written police report in each case where you are the the officer in charge or the officer in charge of the investigation? Would you -- it's your habit to -- to write a police report every time, like, you're involved in a case?

A Every time somebody is charged and I'm the officer that's laying the charges, I have to leave an occurrence report.

Q Okay. That makes sense. And so we can agree, then, that you put all the important facts that you developed from this case, you put all the important facts into your police report?

A I put the information that I had into my report, yes.

Q Okay. And you consider your police report to be thorough, complete, and professional?

A I do.

Q Okay. Fantastic. So this was a case involving the identity of a driver and his alleged refusal to identify himself, and in addition, the passenger, myself, allegedly committing two separate charges of assault against police officers and allegedly obstruction of yourself? Is that correct?

A The fact of the case, yes. Your brother refused to give me his identification. He was charged with obstruction. You were subsequently charged with obstruction and two counts of assault while resisting arrest.

Q Okay. And so -- and you knew that the circumstances surrounding these charges were likely to be important? Like, assault is a big -- assault is a very important thing. It's a big thing, assault. So you knew the circumstances surrounding these various charges, the circumstances were likely to be important?

A Well, the circumstances of the whole event were important.

Q Very much so. Thank you, Mr. Keating. So you realized that the issue of whether the identity of the driver and the alleged two separate counts of assault against police officers would be crucial to your case, because that's your case, right?

A I'm sorry. Can you repeat the question?

Q Okay. Yeah. You realized the issue of whether the identity of the driver and the alleged two separate counts of assault against police officers would be crucial to your case, the identity -- really, the issue of whether or not he identified himself. That's crucial to your case.

1 A Well, he didn't identify himself.

2

3 Q Yeah. That's -- absolutely, you're saying that. Yeah. Did you bring your notes
4 today, your hard copy notes, Mr. Keating?

5 A No, I did not.

6

7 Q Okay. I have --

8

9 MR. STEWART: My Lord, I have a Saskatoon Police
10 Service general occurrence hard copy narrative details one. It's the notes of
11 Constable Jay Keating. I just have my own copy here.

12

13 A I should say, I didn't bring my notebook. I have a copy of my notes, however.

14

15 Q MR. STEWART: Oh, the notes? Okay. So you're -- you're
16 really long -- I think I might have another copy that I can print that doesn't have
17 my notes on it. But what --

18

19 THE COURT: But you have got your notes?

20

21 A I have a photocopy, Your Honour -- My Lord.

22

23 THE COURT: Yes. That's fine.

24

25 MR. STEWART: So do I put these into evidence now or
26 later?

27

28 THE COURT: Why don't you just read through it?

29

30 MR. STEWART: Okay.

31

32 THE COURT: If it's important, we will put them into
33 evidence.

34

35 MR. STEWART: Okay.

36

37 THE COURT: So direct the constable to that part of his
38 notes --

39

40 MR. STEWART: Yes.

41

1 THE COURT: -- that you think are important.
2
3 MR. STEWART: Yeah. Yeah.
4
5 Q MR. STEWART: So you've got your general occurrence
6 hard copy number -- narrative details one? Is that the one that you have in front
7 of you?
8 A I have my notes. You just asked me about my notes.
9
10 Q I'm sorry. The --
11 A They are the actual notes.
12
13 Q -- the -- the typed stuff. Do you have --
14 A The general occurrence report?
15
16 Q Yes.
17 A I have a copy of that, as well.
18
19 Q Fantastic.
20 A My Lord.
21
22 Q Ow, you've got it in front of you?
23 A I do.
24
25 Q Okay. Fantastic. Thank you very much, Mr. Keating -- Constable Keating. Your
26 police report reflects your own version of the events and the circumstances of
27 August 24th, 2012?
28
29 THE COURT: Just, again -- I don't want to be unfair,
30 Mr. Stewart. But we are beating that horse pretty near to death, right?
31
32 MR. STEWART: Okay.
33
34 THE COURT: He says, if I make a general occurrence
35 report --
36
37 MR. STEWART: Okay.
38
39 THE COURT: -- I put in what I think is important.
40
41 MR. STEWART: Okay.

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THE COURT: Period. End of thought.

MR. STEWART: Okay.

THE COURT: Okay. So if you have got something there that you want to challenge him on, go to that something.

MR. STEWART: Okay.

Q MR. STEWART: You've got it in front of you. That's good. We'll get to that. I just wanted to make sure. So you were the first officer at the scene; is that correct?

A That's correct.

Q Okay. And you requested, after backup, Officers McAvoy and officers Schaefer, to arrest me, have me arrested for obstruction when they -- when they arrived after you called for backup?

A That's correct.

Q And so would you say, then, that you gave me a warning before you had me arrested -- or sorry. Did you say you had me -- you gave me a warning before you told them to arrest me or that you did not give me any type of warning that I would be arrested for obstruction?

A I told you numerous times to back up --

Q Okay.

A -- when you kept coming towards me, ranting and raving about letting your brother go --

Q Okay.

A -- in an aggressive manner.

Q Okay.

A At which point I almost kicked you on two separate occasions.

Q Mm. Okay.

A And then when backup arrived, I told them to arrest you for obstruction.

Q Okay. So you never actually physically warned me that I would be arrested for wilful obstruction?

1 A No.

2

3 Q No? Okay. You're familiar with the power of arrest?

4 A I am.

5

6 Q It's a very powerful thing. When you arrest somebody for arrest, usually you
7 give them a warning that they -- what they're doing --

8

9 THE COURT: Well, except --

10

11 MR. STEWART: No, that's okay.

12

13 Q MR. STEWART: Usually you do. You give them a
14 warning.

15

16 THE COURT: Yes. Some do. The fact that he almost
17 kicked you twice might also be a warning. So it --

18

19 MR. STEWART: Yes. Amazing, eh? Amazing that he
20 almost kicked me.

21

22 THE COURT: -- warnings can take many forms.

23

24 MR. STEWART: Amazing that he almost kicked me, didn't
25 he?

26

27 Q MR. STEWART: Okay. So you're the first officer, officer at
28 the scene. You told them to arrest me for obstruction. Did you make a request
29 for those officers to take me down?

30 A I did not.

31

32 Q No. Did you use physical force against me?

33 A I assisted in pulling your hands out from underneath your stomach and placing a
34 handcuff on you, yes.

35

36 Q Okay. Did you take -- did you make any attempts to de-escalate the situation?

37 A Your actions forced the reaction from the police, Mr. Stewart.

38

39 Q Okay.

40 A There was no opportunity to de-escalate in the condition you were in.

41

1 Q Things happened so fast, didn't they? It was very fast, was it not, Mr. Keating?

2 A It was fluid.

3

4 Q It was very fast. Very fast.

5 A I'm not saying it was fast. I said it was a fluid --

6

7 Q Earlier -- earlier on --

8 A Mr. Stewart. I didn't say it was fast. I said it was a fluid situation.

9

10 Q Earlier --

11

12 THE COURT: And actually, Mr. Stewart, we do have
13 two very different versions of what happened.

14

15 MR. STEWART: M-hm. Mm.

16

17 THE COURT: And that's for the judge of the facts.

18

19 MR. STEWART: Yeah.

20

21 THE COURT: Certainly, you've got your version in,
22 quite clearly.

23

24 MR. STEWART: M-hm.

25

26 THE COURT: Constable Keating has given his.

27

28 MR. STEWART: M-hm. Absolutely, My Lord. I just --
29 when Ms. Rohrke was examining Mr. Keating, he actually stated that -- that things
30 happened fast. His words were, it just happened so fast. So I just want everyone to
31 know that this thing, it's fast. Everything is fast.

32

33 THE COURT: Okay.

34

35 MR. STEWART: So the escalation was unavailable
36 because of my -- once again, because, according to Jay Keating, it was my -- my
37 actions and my activities that we have no -- no audio whatsoever that can even
38 corroborate it. So that's okay.

39

40 Q MR. STEWART: So, Mr. Keating, did you get me a call to
41 a lawyer?

1 A I did not.
2
3 Q Did you visit me in Detention cells?
4 A I did not.
5
6 Q Did you make any attempts to uphold my *Charter*-protected rights and
7 freedoms?
8
9 MR. GIBBINGS: My Lord, I don't know how he can
10 possibly answer it.
11
12 THE COURT: Yes.
13
14 MR. GIBBINGS: It's a legal question.
15
16 THE COURT: The fact of the matter is you didn't read
17 him his *Charter* rights?
18
19 A I did read him his *Charter* rights.
20
21 THE COURT: Oh, where did -- where did that take
22 place?
23
24 A That took place, My Lord, when he was in the back of Constable Smith's police
25 car.
26
27 THE COURT: Okay. So that's his evidence,
28 Mr. Stewart.
29
30 MR. STEWART: Okay.
31
32 THE COURT: Your evidence is, hey, you never got
33 them.
34
35 MR. STEWART: M-hm. Okay. Yeah.
36
37 THE COURT: Right? Again --
38
39 MR. STEWART: Yeah.
40
41 THE COURT: -- facts -- facts to be decided.

- 1
2 Q MR. STEWART: As part of your job as a police officer, are
3 you lawfully required or legally obligated to take an arrested person in front of a
4 justice of the peace without delay?
5
- 6 MR. GIBBINGS: Again, I think that's a legal question.
7
- 8 THE COURT: That is a legal question.
9
- 10 MR. GIBBINGS: I think it --
11
- 12 MR. STEWART: Well, then, okay. That's fine.
13
- 14 THE COURT: But that -- but that can form part of your
15 argument.
16
- 17 MR. STEWART: M-hm. M-hm. Okay.
18
- 19 Q MR. STEWART: My -- my next question then goes to --
20 with that. It goes to the actual *Traffic Safety Act*. I'm sorry, the *Traffic Safety Act*
21 section --
22
- 23 THE COURT: Okay. But now you are lapsing into a
24 pure argument of law here. You are going to say that the *Traffic Safety Act* is
25 inapplicable to when I turned into the parking lot?
26
- 27 MR. STEWART: No. No, My Lord. I'm not at all, actually.
28 He -- he -- under the *Traffic Safety Act*, when you -- when you arrest somebody, it's
29 very -- it spells it out specifically in the *Traffic Safety Act* what you're supposed to
30 do, and he was a traffic safety officer operating a traffic safety car --
31
- 32 THE COURT: Okay.
33
- 34 MR. STEWART: -- under the *Traffic Safety Act*. So --
35
- 36 THE COURT: Yes. But is this to go to a point you're
37 making about --
38
- 39 MR. STEWART: Yeah, absolutely. Absolutely.
40
- 41 THE COURT: -- the arrest being illegal?

1

2 MR. STEWART: It's not as much the arrest being illegal,
3 but it's just -- what he's trying to do with this arrest is -- is -- I'm just letting the jury
4 know that this arrest wasn't even -- wasn't even acceptable, including the fact that
5 under -- under arrest on the *Traffic Safety Act*, it states specifically what the -- what
6 the -- a traffic safety -- a peace officer, what he's -- what he's supposed to do. So ...

7

8 THE COURT: Okay. Look. This bus has left the station.
9 You have been convicted of obstruction of justice.

10

11 MR. STEWART: Right. I know that. I know that.

12

13 THE COURT: So we can't -- you don't get a chance --
14 there is no do-over here, to re-argue the case.

15

16 MR. STEWART: But I'm not -- I'm not -- this gets back to
17 my tort of being -- of having my rights violated. And so you can't just pull a person
18 out of their life and -- and -- and say -- and say I was -- you were found guilty and
19 convicted and whatever else when the *Traffic Safety Act* specifically says -- it
20 specifically says, if the person is not going to appear or doesn't think they're going
21 to appear, then it's arrest, 276, arrest. 276. Can I read them?

22

23 THE COURT: Sure. Sure.

24

25 MR. STEWART: Okay. Arrest. 276 (1). If a peace officer
26 finds a person contravening Section 32, 57, 140, 209.1, 213, or 239, the peace
27 officer may arrest that person if the officer has reasonable grounds to believe that
28 the person will not appear in court to answer a summons. 276 (2) a peace officer
29 who has arrested a person in accordance with this section shall, with reasonable
30 diligence, take the person so arrested before a court of competent jurisdiction so
31 that the arrested person may be dealt with according to law. So all I'm saying is that
32 Mr. -- Mr. Keating -- Mr. Keating was the one who gave the order to arrest me, and
33 then I'm saying that as -- as -- he's acting under this *Traffic Safety Act*, and because
34 I've been arrested, then I'm just trying to show the jurors that he's not fulfilling his
35 traffic safety obligations.

36

37 THE COURT: Right. Although he took you to the
38 station and then to Detention?

39

40 MR. STEWART: No, he didn't take me to the station.

41

- 1 THE COURT: Okay. Well, somebody took you to the
2 station.
3
- 4 MR. STEWART: Yeah, somebody. Yeah.
5
- 6 THE COURT: And then -- and then the Detention
7 people eventually got you in front of a J.P.
8
- 9 MR. STEWART: The next day.
10
- 11 THE COURT: Yes. I understand that.
12
- 13 MR. STEWART: Yes. Yeah.
14
- 15 THE COURT: And that's a complaint.
16
- 17 MR. STEWART: Yeah. Yeah. Fantastic. Thank you, My
18 Lord.
19
- 20 THE COURT: You -- you think -- your position is, hey,
21 I should have been put in front of a J.P. earlier, damn it. Right? That's your
22 argument?
23
- 24 MR. STEWART: Thank you, My Lord. Thank you, My
25 Lord. One of my many arguments. Thank you, My Lord.
26
- 27 THE COURT: Yes.
28
- 29 Q MR. STEWART: So my question now, Jay, is -- is why did
30 you fail to follow the *Traffic Safety Act*?
- 31 A You weren't arrested under the *Traffic Safety Act*, Mr. Stewart. You were
32 arrested under the *Criminal Code* for Section 129 (a), and then assaulting two
33 police officers, wilfully resisting arrest.
34
- 35 Q Yes, I was. Wasn't I? I'd like to -- to go through your notes now, and I'd just like
36 to --
37
- 38 THE COURT: Now, again, is this -- is it his occurrence
39 report or his notes?
40
- 41 MR. STEWART: Oh, I'm sorry. His -- I guess this would

1 be the general occurrence hard copy.

2

3 THE COURT: Thank you.

4

5 MR. STEWART: So the -- the narrative details, data 1,
6 would be the typed -- the typed notes.

7

8 Q MR. STEWART: So I'm just going to -- I'm just going to
9 read out loud. And if -- if -- if your notes are different, then just -- just stop me,
10 Mr. Keating -- Constable Keating. (As read)

11

12 On 12th August 24, I was travelling eastbound on 8th Street in
13 Traffic Unit number 477. At approximately 1900 hours, I noted a
14 white Toyota Celica bearing SL 131HFG directly in front of me. I
15 noted that the continuous sticker in the bottom right-hand corner
16 of the plate looked odd.

17

18 So that second sentence, at approximately 1900 hours, I noted a Toyota, white,
19 directly in front of me. But I thought earlier you said that you queried the car,
20 and then you pulled in behind it?

21 A Yeah. You were directly to the left, and just -- I was right here. And then you --
22 I pulled in right behind you. Then you were directly in front of me.

23

24 Q No, I -- yeah. But it says -- but at approximately 1900 hours, I noted a white
25 Toyota Celica directly in front of me. But you said earlier on that you said you
26 were beside the Toyota Celica when you ran the query, and then, now it says
27 here, I'm already behind it. So I'm just -- I'm just curious as to -- did you query
28 the car when you were in the -- in the through lane or did you actually query the
29 car when it was sitting in that -- in that left-hand parking lane?

30 A You were in the left-hand turn lane. I was right here, staggered. I saw the weird
31 continuous sticker. I was querying it and pulling in behind you at the same time.

32

33 Q Okay. Okay. So you're querying and pulling in behind at the same time. Okay.
34 (As read)

35

36 I confirmed that the plate I had run, 131HFG, was indeed the
37 plate on the back of the Toyota Celica, and additionally confirmed
38 that the plate belonged to a Honda Civic.

39

40 Are we good so far?

41

1 THE COURT: Well, no. Mr. Stewart. You are not going
2 to read his whole report.
3

4 MR. STEWART: Well, I might actually have to, My Lord.
5 It's -- there's quite a few inconsistencies, and --
6

7 THE COURT: But let's just go to the point where there's
8 an inconsistency.
9

10 MR. STEWART: Okay. There's -- okay.
11

12 Q MR. STEWART: Hah. All right. When you parked your
13 car -- actually, you know what?
14

15 MR. STEWART: Can we -- am I able to bring up the video
16 of while I'm -- I'm having a cross-exam with Constable Keating?
17

18 THE COURT: Yes.
19

20 MR. STEWART: Am I allowed to show this video?
21

22 THE COURT: Yes.
23

24 MR. STEWART: Fantastic. Let's -- let's just bring this
25 video up.
26

27 THE COURT: Can you bring it up relatively efficiently?
28

29 MR. STEWART: I think so, My Lord.
30

31 THE COURT: So it's on the screen?
32

33 UNIDENTIFIED SPEAKER: Yeah. (INDISCERNIBLE).
34

35 MR. STEWART: I'm just going to come back and forth and
36 play that as we go.
37

38 Q MR. STEWART: Your third paragraph starts: (As read)
39
40 I exited PC 477 and instructed the driver.
41

1 I exited PC 477 and instructed the driver, Jarvis Stewart, to get
2 back into the vehicle, and then directed James Stewart to get back
3 into the vehicle. Both males disobeyed my commands.

4

5 Do you think it's odd, Mr. Keating, to actually send someone back into a vehicle
6 where they could actually get weapons rather than actually get out of the vehicle
7 where you could see their hands? Do you think it's odd to actually order
8 someone to get back into a vehicle

9 A Not at all.

10

11 Q Not at all? Interesting. It says here: (As read)

12

13 Jarvis Stewart, who was driving the Toyota Celica, walked
14 towards me, bumping his left shoulder into my left shoulder, and
15 stated that he did not believe in our laws.

16

17 Is that correct?

18 A That's actually not correct.

19

20 Q Okay.

21 A The -- my left shoulder should have been my left elbow.

22

23 Q Mm. Okay. Okay. (As read)

24

25 I told Jarvis to stop as he was subject to the traffic stop, and he
26 began screaming at me that I had no right to detain him, as he did
27 not believe in my laws.

28

29 Is that correct?

30

31 THE COURT: But you are, again, reading, again,
32 Mr. Stewart.

33

34 MR. STEWART: No. I know. I know.

35

36 THE COURT: We want to get to -- if there's some
37 inconsistency, let's get to it.

38

39 MR. STEWART: Yes. Yeah, I know.

40

41 Q MR. STEWART: (As read)

1
2 While Jarvis was explaining his views to me, James Stewart
3 continued to yell at me to, quote, unquote, go fuck myself. I
4 explained to Jarvis Stewart that he was being stopped as the plates
5 on the back of the Toyota Celica did not match the vehicle
6 description. After explaining this to him, Stewart began to rant
7 about how he does not believe in our laws and continually asked
8 me if I was a peace officer or a police officer. Again, while Jarvis
9 was explaining his views to me -- or explaining his views, James
10 Stewart continually yelled at me, quoting nonfactual laws, and
11 continually telling me to fuck off.

12

13 THE COURT: Mr. Stewart. Again.

14

15 MR. STEWART: Mr. -- My Lord.

16

17 Q MR. STEWART: Mr. Keating, do you believe that this is
18 an adequate representation of this traffic stop?

19 A Yes.

20

21 Q Your -- your notes? Do you -- do you believe that your notes are an adequate
22 representation of this traffic stop?

23 A Absolutely.

24

25 Q Okay. Fantastic. I'd like to direct your attention to the little binder. I think it's
26 tab 1. That you -- I'm not sure of the -- I'm not sure of the evidence number,
27 like, document number, P or whatever, but it's under the tab 1 --

28

29 THE COURT: Okay.

30

31 Q MR. STEWART: -- under this wonderful little binder. The
32 note --

33

34 MR. GIBBINGS: It's D-11, My Lord.

35

36 THE COURT: P-11.

37

38 MR. STEWART: P-11.

39

40 MR. GIBBINGS: D-11.

41

1 THE COURT: D-11, sorry. Thank you.

2

3 Q MR. STEWART: Do you have it in front of you,
4 Mr. Keating?

5 A Yeah.

6

7 Q Constable Keating. Yeah.

8 A I do.

9

10 Q Just at the bottom, you'll see it says, respectfully, and then my -- my signature
11 there, just the -- the first line above that, it starts: If there is some important
12 information? Would you just like to read that out for the -- for the Court,
13 please?

14 A (As read)

15

16 If there's some important information you wish to impart upon
17 me, please do so respectfully and expediently as possible. I
18 appreciate your understanding and wish you goodwill and safe
19 passage.

20

21 Q Thank you, Mr. Keating. It's -- it's quite a story you've got here. But you have
22 no audio. It's also quite the story, and we'll show this in a moment here, that
23 you've -- you've undertaken a police stop, and you've given the driver no ability
24 to show any type of distress or hand signals. You've -- you've parked this car at
25 an -- at an angle that not only leads me to believe that you know the audio is not
26 working, because now with your -- the way you've parked this --

27

28 THE COURT: Yes. You are kind of lapsing into
29 argument.

30

31 MR. STEWART: Mm.

32

33 Q MR. STEWART: -- the way you've parked this car does
34 not give the driver any -- any chance of protection whatsoever, the very
35 protection that you are sworn, under the *Traffic Safety Act*, to provide. You are
36 there to serve and protect and provide safety. And it -- it feels to me like this
37 parking lot, when you parked in there, it feels a little bit more like it's a
38 predatorial stop --

39 A Actually, Mr. Stewart, it's not, because if you look at this, where the vehicles
40 are parked, there's no possible way for me to get my vehicle directly behind
41 yours, due to the building and the parking spot.

1

2 Q Mm.

3 A Or to offset it, as I normally do on a traffic stop on the side of the road. So the
4 only spot for my vehicle to park was at that angle.

5

6 Q M-hm. Yeah. That's -- that's -- that's quite a story, Mr. Keating.

7

8 THE COURT: Again, we have two different stories,
9 Mr. Stewart.

10

11 MR. STEWART: Yeah. Absolutely, My Lord.

12

13 THE COURT: That's --

14

15 MR. STEWART: We certainly do.

16

17 THE COURT: -- that's the way it's going to be --

18

19 MR. STEWART: Yeah. Absolutely, My Lord.

20

21 THE COURT: -- because there is no audio.

22

23 MR. STEWART: Yeah.

24

25 Q MR. STEWART: And so I'm not going to read the rest of --
26 of your -- of your notes, Mr. Keating, but I do have a number of other questions.
27 But I'm just going to start with this question here. If you'd like to go through
28 your notes here and for the jury and for His Lordship, can you just actually go
29 into your notes and just read me back the spot where it basically says, Jarvis
30 Stewart refused to identify himself?31 A Yeah. When I -- I don't have to go through it. When I say that I'm giving him
32 commands, I'm asking for his name --

33

34 Q No, I know. I'm saying go through your --

35 A -- and date of birth.

36

37 Q -- go through your notes here when -- when -- and it's very important. This is all
38 the obstruction. This is what the actual -- the whole charge of obstruction, my
39 brother refusing to identify himself. We have no audio whatsoever to
40 corroborate one either way. And you're -- you're telling me -- you're telling me
41 that that was the original charge? He refused to identify himself. So I'd like you

1 to show me in your notes --

2

3 THE COURT: Wait. Let's -- don't do it that way.

4

5 MR. STEWART: Well --

6

7 THE COURT: Let me just -- let me ask you this.

8

9 Do your notes say, Jarvis refused to give me his name?

10

11 A It says in here several times that Jarvis refused to comply with my commands,
12 My Lord. And by that --

13

14 THE COURT: Yes. Comply with your commands?

15

16 A -- I mean -- by that, I'm asking him --

17

18 THE COURT: Yes.

19

20 A -- for his driver's licence, registration, name, date of birth.

21

22 THE COURT: The point Mr. Stewart is making is it
23 doesn't have those words.

24

25 A No, not those specific words, no.

26

27 THE COURT: Okay. So point made. A little quicker
28 than perhaps --

29

30 MR. STEWART: M-hm. Thank you, My Lord. M-hm.

31

32 Q MR. STEWART: What was that number? Six or
33 something? There it is. I'd like you to turn to the tab 20, please, Constable
34 Keating.

35

36 MR. GIBBINGS: D-14, My Lord.

37

38 THE COURT: I am sorry. What is that?

39

40 MR. GIBBINGS: D-14.

41

1 THE COURT:

D-14. Thank you.

2

3 Q MR. STEWART: That is a Saskatoon Police Service
4 general occurrence hard copy, and it says: Narrative note to prosecutor, and
5 then in brackets, it says "confidential." Do you have that in front of you,
6 Mr. Keating?

7 A I do.

8

9 Q It says, author 748, Keating, Jay. Is that you, Mr. Keating?

10 A That -- that is me.

11

12 Q It says here, respectfully request that both Jarvis Stewart and James Stewart be
13 remanded in custody as it is clear that they do not have any intention of abiding
14 by court-imposed sanctions as outlined in their affidavits. Both Jarvis and James
15 refer to themselves as member of the Freeman Society. Copies of their
16 affidavits have been attached to this file. Did you speak to myself or my brother
17 Jarvis about being members of the Freeman Society?

18 A I did not, no.

19

20 Q Did you feel that it was necessary to take my brother and myself out of the
21 parking lot that evening? Did you feel it was necessary to take us out of that
22 parking lot, then take us to jail? Did you feel it was necessary?

23 A Your actions dictated what happened there. So yes, you were both charged and
24 taken out of the parking lot to SPS headquarters.

25

26 Q Right. But you -- you charged us, you didn't release us in the parking lot, but
27 you charged us, and you had to take us to jail. Like, that is -- that was -- as far
28 as you were concerned, that was necessary, yes or no?

29 A You didn't identify yourself. Neither did your brother. So -- and based on your
30 actions in the parking lot, yes. You were both taken to jail.

31

32 Q So on a -- on two charges of obstruction and two charges of assault, you
33 decided to take both gentlemen, myself and my brother, to jail, except you didn't
34 take us to jail. You ordered somebody to take us to jail; is that correct?

35 A Well, I can't transport people in my Traffic Unit --

36

37 Q M-hm.

38 A -- because I don't have a Silent Patrolman. So marked units took you to
39 Detention.

40

41 Q And you felt that these arrests were made in good faith?

- 1 A Absolutely.
2
- 3 Q Okay. This Saskatoon Police Service general note here, you're saying that
4 somebody gave you this information or this instruction?
5 A Sergeant Mitzel gave me that instruction.
6
- 7 Q Sergeant Mitzel gave you this instruction that -- that we would both be -- be
8 remanded. Now, how did Constable [sic] Mitzel know that we were members of
9 the Freeman Society?
10 A Sergeant Mitzel.
11
- 12 Q Or Sergeant Mitzel.
13 A That was based on conversation in Detention with regards to the affidavits that
14 we found in your car.
15
- 16 Q Interesting. So you didn't tell Sergeant Mitzel that -- that cops had been
17 assaulted? You were just more concerned that there was paperwork and stuff in
18 the car?
19 A No. He was aware you were -- that you assaulted the officers.
20
- 21 Q Oh, he was aware that -- that -- that officers had been assaulted. Did you
22 actually fill in --
23 A It's actually on your charge check sheet. It says assault PO.
24
- 25 Q I know it does. I know, and those were both thrown out at my criminal trial.
26 Ha-ha, for lack of evidence. So you didn't take it upon yourself to keep us in
27 jail? You -- you would have rather had us out of jail, but you decided to let
28 Sergeant Mitzel keep us in jail; is that correct?
29 A I don't decide to let Sergeant Mitzel do --
30
- 31 Q You don't decide.
32 A -- make his decisions. He makes his own decisions.
33
- 34 Q He makes his own decisions. Was he in the parking lot that night?
35 A No. He's the Detention sergeant.
36
- 37 Q He's the Detention sergeant. So he didn't actually see anybody get assaulted? He
38 was not a witness to an assault? He was only told that somebody might have
39 allegedly had been witness -- or been assaulted by someone else, which led
40 him --
41 A He was informed of the charges that you and your brother were facing.

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Q Yes. He was informed of the charges. And then he took it upon himself to order you to write this note to remand us into custody; is that correct?

A He -- he was the one who signed off on you being held to see a J.P., and he told me to dictate that into the notes to the prosecutor.

Q Fantastic. M-hm. And -- and you -- and, just for the record, Mr. Keating, you haven't mentioned his name? There's no -- it doesn't Sergeant Mitzel, you know, respectfully told me that I was respectfully requested. There's nothing. There's no Mitzel here. So it's just your word against mine, once again.

A Oh, I don't have to say that Sergeant Mitzel respectfully requests. He told me to put that in there, and that's what I did.

Q He -- he told you to. Interesting. But you were the officer in charge. You were the one in -- in -- you were the first officer who was responsible for the charges; is that correct? The assault?

A I'm not the officer in charge, Mr. Stewart.

Q Not the officer in charge?

A I was the first officer there.

Q First officer there.

A I was the one who made the determination that your brother be charged with obstruction, as were you.

Q M-hm. So then the -- the sheet here -- the one that had the -- here it is. So then under tab -- tab 21, tab 21 --

MR. GIBBINGS: That's D-15, My Lord.

THE COURT: 15? Thank you.

Q MR. STEWART: -- then the Saskatoon Police Service charge checklist. And that was you -- you said you were the arresting officer, 738, and that you filled out the top half of this?

A I filled out everything except where it says Detention, NCO approval, and that's Sergeant Mitzel's signature.

Q M-hm. Right. And so --

A And then, I'm sorry, on the bottom line, the proceeds of crime seizure. Under that, that's not my handwriting there.

- 1
2 Q Okay. So the charges there. It says 129 (a), and that's the obstruction. And then
3 270, and then subsection 1 (b). That's -- and then it says CC. That's carbon
4 copied, I'm assuming. That's two charges. That's two charges of assault?
5 A No, that's *Criminal Code*.
6
7 Q Oh, okay. But there was two charges. There was assault on McAvoy and assault
8 on Schaefer; is that correct?
9 A Yeah, I believe they are lumped into one synopsis.
10
11 Q Oh, they were? Okay. So it was a -- a single charge, but I assaulted two police
12 officers with the one charge?
13 A I'm not -- I'd have to look at the Information, if there's --
14
15 Q Please -- please do so. Please do so.
16 A -- three charges. Yeah. On the Information there, it says assault Constable
17 Schaefer and Constable McAvoy under the name -- the same charge.
18
19 THE SHERIFF: My Lord? Sorry for the interruption. May
20 I approach?
21
22 THE COURT: Yes. Can we put down the monitors?
23
24 MR. STEWART: No, not just yet. I'll play it in a second
25 here.
26
27 THE COURT: Okay. Let's get to the video so we can --
28
29 MR. STEWART: Okay.
30
31 THE COURT: -- put down the monitors, because it
32 blocks the view of the jury.
33
34 MR. STEWART: Oh, I'm sorry. Okay. My -- I apologize,
35 My Lord. Okay. I'll do the -- a couple things in the video here, then.
36
37 (AUDIO/VIDEO PLAYED)
38
39 Q MR. STEWART: Do you see that car right there,
40 Mr. Keating?
41 A Which one? The one in the centre of the screen?

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Q Yes.

A Yeah.

Q It looks like a little hatchback? Oh, I have the thing there. You stated that you -- you're trained to take witness statements as a police officer? You've been trained to take witness statements?

A That's correct.

Q And you said that you didn't take any witness statements for this incident; is that correct?

A That's correct.

Q Okay. Other officers, during my criminal trial, they testified that there were two occupants inside that vehicle. You did not talk to them at all during this incident?

A I didn't see the two occupants. I didn't deal with any occupants in another vehicle.

Q Okay. I'm just going to bring a -- bring a line from my criminal trial here. So you didn't have any witness statements or witnesses.

MR. STEWART: I'd just like to go to my criminal trial, My Lord, on (INDISCERNIBLE).

THE COURT: Is this a line from the judgment in your criminal trial?

MR. STEWART: It's not a judgment, per se. It's a testimony of the witness, Your Honour -- My Lord.

THE COURT: All right. So this is a transcript from your criminal trial?

MR. STEWART: Yeah.

THE COURT: And who is the witness on the stand?

MR. STEWART: Okay. The witness on the stand was -- I -- Constable Keating. It'll be page 80, Your Honour.

1 THE COURT: All right.
2
3 MR. STEWART: Or maybe 79. Yeah.
4 (INDISCERNIBLE). Yeah. Or sorry. Page 19. Page 19 of the criminal trial, taking
5 place on April 16th through 18th.
6
7 THE COURT: So you read the part you think is critical
8 to your question to Constable Keating.
9
10 MR. STEWART: Okay. I'm sorry. (INDISCERNIBLE).
11 Sorry. The -- the -- cross-exam at this time was Constable Schaefer, My Lord. And
12 it's on page 110 of --
13
14 THE COURT: All right.
15
16 MR. STEWART: -- of -- and the --
17
18 THE COURT: Read the part you think is important.
19
20 MR. STEWART: Yeah. Yeah. Absolutely. Page -- or sorry.
21 Line -- line 17.
22
23 Q MR. STEWART: (As read)
24
25 This vehicle, period. Beside the white Celica was another vehicle.
26 I don't know the make and model, but there was two occupants of
27 the vehicle. They were kind of watching what was going on, the
28 events that were unfolding.
29
30 THE COURT: Okay. But that was Constable Schaefer.
31
32 MR. STEWART: Yes. It certainly was. But they were all
33 there. And there's -- I'm just letting you know that there's witnesses in that -- in --
34
35 THE COURT: But you should ask Constable Schaefer.
36
37 MR. STEWART: I will, absolutely. Yeah.
38
39 THE COURT: Yes.
40
41 MR. STEWART: But they're all there. Constable Keating --

1 I just wanted to show the Court he did not get any witnesses -- witness statements
2 taken.

3

4 THE COURT: He's already testified to that.

5

6 MR. STEWART: M-hm. That's enough for the video.
7 Thank you, My Lord.

8

9 THE COURT: Thank you.

10

11 Q MR. STEWART: M-hm. So we listened to the -- we
12 listened to the dispatch, audio dispatch, of your request for assistance,
13 Mr. Keating. So in your recollection, would you consider you called backup at
14 least three separate times?

15 A I called once, and then I asked them the second time to get there faster.

16

17 Q Okay. Now, do you think the way in which you asked for assistance -- you
18 weren't very specific with regards to where you were, who you were, or -- or
19 what you were doing. Do you think that the nature of your call maybe led some
20 people -- I'm only asking you to speculate, obviously -- that maybe some people
21 assumed different things were going on? No one was really sure exactly what
22 was going on, so there may have been -- maybe an attempt by people to -- to
23 think it's a lot worse than it is?

24

25 THE COURT: I take it you are objecting because
26 Constable Keating cannot testify to what other people thought?

27

28 MR. GIBBINGS: Correct, My Lord.

29

30 MR. STEWART: Yeah. Okay.

31

32 MR. GIBBINGS: As Mr. Stewart said at the outset --

33

34 THE COURT: That is legitimate.

35

36 MR. STEWART: Absolutely, My Lord. That's fine. Yeah.

37

38 THE COURT: You can say, that is what I thought.

39

40 MR. STEWART: Yeah. And that's fine. That is fair.

41

1 Q MR. STEWART: So did you take a statement from
2 Constable McAvoy as to his assault -- like, being assaulted by me?

3 A I did not.

4
5 Q You did not? Did you take a statement from Constable Schaefer about being --

6 A No.

7
8 Q No? Did you take a statement from me?

9 A No.

10
11 Q As -- as the person who assaulted the -- the cops? You didn't take a statement
12 from me? Okay. Did you make a statement to the alleged assaults of Schaefer
13 and McAvoy? Did you write down anywhere that they were -- they had been
14 assaulted? I mean, I was charged with assault, but did you have anywhere where
15 you've written down that -- did you have a statement to the alleged assaults?

16 A From who?

17
18 Q Well, I'm not sure. Did you make a statement? Did anyone have a statement?

19 A I don't fill out witness statements --

20
21 Q Okay.

22 A -- in regards to general occurrence reports that I'm leaving, no.

23
24 Q Okay. So you obtained your watch commander's approval with the -- the
25 separate charges of assault? Or the watch commander just went ahead and did it
26 by himself?

27 A I'm not sure who talked to the watch commander.

28
29 Q Okay. M-hm? No. No. So do you acknowledge using physical force in effecting
30 my arrest?

31 A I used enough force to get your hands out from underneath your hoodie,
32 because I didn't know if you had weapons in your waistband or in your pockets.
33 And then we placed handcuffs on you.

34
35 Q Okay. Did you instruct other officers to use physical force in effecting my
36 arrest?

37 A I don't instruct other officers to use force.

38
39 Q You didn't have a warrant for my arrest?

40 A No, sir. I was charging you with obstruction. I didn't need a warrant.

41

- 1 Q But -- and you filed the -- the charges of assault?
2 A I laid all the synopsis. Sergeant Bradford swore the Informations.
3
4 Q But you made the -- the arrest of -- for that night? Like, the -- the two counts of
5 assault and obstruction? Like, you made those arrests?
6 A Yes, Mr. Stewart.
7
8 Q Okay.
9 A I arrested both you --
10
11 Q Okay.
12 A -- and your brother.
13
14 Q Okay. Did you provide any medical assistance to Mr. Schaefer or Mr. McAvoy
15 for victims of assault --
16 A No.
17
18 Q -- being victims of assault?
19 A I'm not medically trained.
20
21 Q Okay. Do you remember how many police officers were at the scene?
22 A I do not.
23
24 Q Do you remember the -- who put the handcuffs on me?
25 A I assisted in putting the handcuffs on you. I don't know who the other hands
26 were.
27
28 Q You don't know who the other hands were?
29 A I don't know who -- who the -- had the other handcuff, no.
30
31 Q So it was Schaefer and McAvoy, and then -- and then when they took me down,
32 the next two guys who showed up were Boyce and Hounsell, and you handed
33 my brother off to them. And then you came and assisted McAvoy and Schaefer
34 in my arrest?
35 A That's right. Because you --
36
37 Q Yeah.
38 A -- weren't complying.
39
40 Q No, no, of course.
41 A You were flailing your hands --

- 1
2 Q Absolutely. No, your -- your version --
3 A -- and kicking your feet.
4
5 Q -- and my version, absolutely. Absolutely. So you're saying that you assisted in
6 putting the handcuffs on me.
7 A That's correct.
8
9 Q So who else assisted in putting the hands on me?
10 A Well, there was McAvoy and Schaefer there. But like I said, I can't say
11 specifically whose hand was the other cuff that was helping me get you into
12 handcuffs.
13
14 Q Because there's so many people, it's just that --
15 A It was not so many. There was --
16
17 Q -- you're just not -- yeah. There's --
18 A -- three of us.
19
20 Q -- three guys. You just can't -- can't keep track of hands. Okay. Interesting. So --
21 A But, Mr. Stewart, you have to remember, you were flailing around and being
22 combative. So no. I don't know which hand had the other handcuff.
23
24 Q I thought -- I thought -- you see, I thought I was --
25 A But to answer your question, I assisted in putting handcuffs on you.
26
27 Q Okay. Okay. Okay. "Yes" or "no," have you ever seen a use of force report?
28 A I've filled out use of force reports, yes.
29
30 Q You've filled some out? Yes. Okay. Have you been trained to properly prepare
31 or -- or fill out a use of force report?
32 A There's no training involved, Mr. Stewart. It's a form.
33
34 Q Hm. Did you fill out a form for this incident?
35 A No. Because there wasn't sufficient force used by myself.
36
37 Q There wasn't sufficient force used by yourself? Okay. Do you recall or do you
38 remember or do you know how many police officers filed use of force reports --
39 A I do not, no.
40
41 Q -- in relation to this incident? You don't know. Those use of force reports, they

1 would kind of state exactly how and why you and other officers may need to use
2 force?

3 A There's a -- it's a form. You fill it out. As you go along, there's check boxes. So
4 it lays out what force was used and whether or not it was effective.
5

6 Q Fantastic. I have that form here today. I think it might even be in this tab. It's tab
7 23. Can you turn to that, please? This, I guess, is going to have to be entered
8 into evidence because I haven't entered into it yet. And it's the Saskatoon Police
9 Service use of force reporting form.
10

11 THE COURT: Okay. You acknowledge that, Constable?
12

13 A I do. Yes, Sir.
14

15 THE COURT: Okay.
16

17 A Sorry. Yes, My Lord.
18

19 THE COURT: Under tab 23, Saskatoon Police Service
20 use of force report, Exhibit P -- Madam Clerk?
21

22 Q MR. STEWART: You're familiar with this form,
23 Mr. Keating? Yeah?

24 A Yeah.
25

26 Q You've trained -- you've filled these out before?
27

28 THE COURT: What exhibit --
29

30 THE COURT CLERK: Four.
31

32 THE COURT: P-4.
33

34 MR. STEWART: Mm.
35

36 MS. ROHRKE: My Lord, that -- it just happens to be one
37 of our documents. Did you want me to prepare it and give it to the jury?
38

39 THE COURT: Not yet.
40

41 MS. ROHRKE: Okay.

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EXHIBIT P-4 - Saskatoon Police Service Use of Force Reporting Form - Tab 23

THE COURT: Again, Mr. Stewart, I am worried about wasting time. He didn't fill one out. What's your point? Is your point is why didn't you fill one out? If that's your point, ask him.

MR. STEWART: Okay. Yeah. That's kind of -- sure. Yeah.

Q MR. STEWART: It's -- it's a four-page form. It goes into quite -- quite a bit of stuff about using force when you (INDISCERNIBLE) so, Mr. Keating, why didn't you fill one of these out?

A As I had previously stated, we didn't use enough -- sufficient force to fill one out.

Q You didn't use enough force to --

A That's correct.

Q -- to fill out this form, but you did -- you do admit to using force, but just not a lot of force or enough force that it would cause you to actually -- to fill this out; is that correct?

A That's --

Q So you used --

A -- that's correct.

Q Okay. Okay. Okay. So just enough force, just enough force to effect this arrest? That's what you're saying? You just used --

A I used the appropriate amount of force, Mr. Stewart --

Q -- (INDISCERNIBLE).

A -- based on your actions.

Q I know. And -- and you're acting in good faith at all times, Mr. Keating. How do we know that? How do we know that you used just the right amount of force? How do we -- how do we know that?

THE COURT: Well, hold it. I mean, that's his testimony. You have a different view, and you do, and you have testified to it. Fine. That is a fact that has to be decided.

1 MR. STEWART: Okay.

2

3 THE COURT: He is saying, All I did was yank your
4 hands out from under because I was worried about officer safety, just enough to put
5 the cuffs on, period, end of thought.

6

7 MR. STEWART: Okay. Thank you.

8

9 THE COURT: You have a different --

10

11 MR. STEWART: M-hm.

12

13 THE COURT: -- narrative, period.

14

15 MR. STEWART: Thank you, My Lord.

16

17 THE COURT: End of thought.

18

19 MR. STEWART: Thank you, My Lord.

20

21 Q MR. STEWART: You don't know, then, if other officers
22 filled out use of force reports in relation --

23 A I do not.

24

25 Q -- to this incident? You don't know? Do you acknowledge I sustained physical
26 injuries in this incident?

27 A I observed no injuries while I was dealing with you, Mr. Stewart.

28

29 Q Do you know if other officers acknowledge I sustained physical injuries in this
30 incident?

31 A I can't comment on other officers.

32

33 Q Okay. M-hm. So then you did not take any steps to get me medical attention?

34 A As I stated, I didn't observe any injuries on you.

35

36 Q Okay.

37 A And I was not there when you were booked into Detention.

38

39 Q Okay. No, you certainly weren't. Mr. Keating, who read me my rights?

40 A I did.

41

1 Q Can you prove it?

2 A It's in my notes.

3

4 THE COURT: He has testified that --

5

6 MR. STEWART: M-hm.

7

8 THE COURT: -- he did it.

9

10 MR. STEWART: I understand.

11

12 THE COURT: And so if --

13

14 MR. STEWART: But there's no audio. So it's -- it's --

15

16 THE COURT: No. There is no audio.

17

18 MR. STEWART: Exactly, hey.

19

20 THE COURT: We know that. That's a dead horse. Don't
21 beat it.

22

23 MR. STEWART: Isn't it, though?

24

25 THE COURT: Yes.

26

27 Q MR. STEWART: Would it be fair to say, Mr. Keating,
28 there was a crowd of --

29 A Well, just to specify on that point, Mr. Stewart, there was no audio -- there was
30 no cameras installed in the PC you were put in that I read you your rights in. So
31 there would be no audio or video from that car.

32

33 Q No. No, all the cars on, they didn't have cameras. It's great. It's great. Was it fair
34 to say that there was a crowd of people around?

35 A There wasn't a crowd, no.

36

37 Q There wasn't a crowd? Did other officers state there was a crowd of people
38 around?

39 A I don't know what other officers stated.

40

41 Q Okay. Your -- and part of your job does involve collecting witness statements

1 and names, does it not, Mr. Keating?

2 A Yes, Mr. Stewart.

3

4 Q And you are trained to take witness statements and are trained to talk to
5 witnesses, are you not?

6 A I take witness statements and I talk to witnesses all the time.

7

8 Q Okay. Fantastic. There were two cars on the scene. Car 477, your car, and the
9 second car that came to the scene was an unmarked car, as well. You've testified
10 to that, the colour I think being tan or whatever that -- that second car, that
11 unmarked car, being --

12 A The second car was dark blue.

13

14 Q Oh, was it dark blue? Okay. But it was an unmarked car, as well, and it was -- it
15 was driven by -- by Schaefer and McAvoy. I think McAvoy was the -- the
16 passenger. So you were saying that the car you drove was an unmarked car, and
17 it was equipped with a Panasonic Arbitrator camera system?

18 A That's correct.

19

20 Q That's correct. But you did not really receive any training on that Panasonic
21 camera -- camera system, did you not?

22 A I did not.

23

24 Q No. But you were wearing a wireless microphone?

25 A I was.

26

27 Q Yeah. And they provided you a pouch -- and pouch -- and right. But you didn't
28 have any training?

29 A That's correct.

30

31 Q Correct. So McAvoy and Schaefer in car 477 [sic], that car was not equipped
32 with a camera, but they were both trained on the camera; is that correct?

33 A I don't know about their training.

34

35 Q No? Okay. We'll talk to them about training. So do you find it somewhat odd,
36 Mr. Keating --

37

38 THE COURT:
39 argument.

No. This is an argument. This is an

40

41 MR. STEWART:

Okay. That's fine.

1
2 Q MR. STEWART: So basically, then, what you're saying,
3 Mr. Keating, is you have no evidence, rightly or wrongly, that you have any
4 audio from that car you were driving, even though you were wearing the
5 microphone?
6 A I don't know what you're asking, Mr. Stewart.
7
8 Q Okay. There's no audio whatsoever --
9
10 THE COURT: But, Mr. Stewart, there is no audio.
11
12 MR. STEWART: Yeah. Dead horse, right?
13
14 THE COURT: Well-established. Well-established.
15
16 MR. STEWART: Isn't it? Yeah.
17
18 THE COURT: That Constable Keating had a mike on
19 him, but it didn't work.
20
21 MR. STEWART: Yeah. Amazing. He wasn't trained, but he
22 was wearing a mike.
23
24 Q MR. STEWART: Ah.
25
26 THE COURT: I trust you are moving towards the big
27 finish, right?
28
29 MR. STEWART: Yeah. Almost done.
30
31 Q MR. STEWART: You testified during my criminal trial that
32 the first time you physically watched the video was in the courtroom at my
33 criminal trial; is that correct?
34 A That's correct.
35
36 Q And so you had not seen the video before that day in court; that's correct?
37 A I had not, no.
38
39 Q No? And so -- but somehow, you knew that the audio from all three separate
40 microphones was not working, and you --
41 A There was two separate microphones. And I was aware of that because on

- 1 future traffic stops later on that evening, when I did the playback, there was no
2 audio then, either.
3
- 4 Q There was no audio then either?
- 5 A And then I -- then I informed Acting Sergeant Spot that there was a problem
6 with the microphones.
7
- 8 Q So later on that evening, you -- you were now realizing that you were having
9 audio difficulties?
- 10 A That's correct.
11
- 12 Q Is that what you're saying? Later on that evening, you're having audio
13 difficulties. And you told Sergeant Sprott; is that correct?
- 14 A Acting Sergeant Spot.
15
- 16 Q Acting Sergeant Spot. And you told him?
- 17 A That's correct.
18
- 19 Q And what did he tell you in response?
- 20 A He didn't know anything about the system either, so ...
21
- 22 Q So then did you take the car in to get it fixed or did you just continue?
- 23 A No. That was the -- towards the end of the shift. So I just brought it back in and
24 put it --
25
- 26 Q And you just -- you just didn't worry about the -- you've -- so you're basically
27 telling me that you're -- you went to do traffic stops later that evening, realized
28 that your audio was not working, and so you just parked the car at the end of
29 your shift at 3:00 and went home; is that correct?
- 30 A No. It's not. I said -- you just started talking there.
31
- 32 Q Ah.
- 33 A I told Acting Sergeant Spot what had happened. I brought the car back to the
34 garage. And I advised him that I wouldn't be using it anymore. And then he
35 took care of getting it fixed, not me.
36
- 37 Q Interesting. But we don't have any of those notes saying that -- that you were
38 aware about any audio or video missing.
- 39 A Well, I didn't take any notes --
40
- 41 Q No. No?

1 A -- based on the fact that the audio and video wasn't working anymore,
2 Mr. Stewart.

3

4 Q Mm. So then -- so then you knew that the audio wasn't working, but you still
5 decided to testify in criminal trial against me. Is that correct, Mr. Keating? You
6 took the stand in criminal trial, knowing that the audio wasn't working?

7 A That's correct.

8

9 Q That's correct. Do you believe --

10 A Just because the audio wasn't working, Mr. Stewart, doesn't negate your actions
11 that night.

12

13 Q Ha-ha. Mr. Keating, do you think that's good faith, that not having audio --

14

15 THE COURT: Argumentative. Argumentative.

16

17 MR. STEWART: Argumentative. Fantastic.

18

19 Q MR. STEWART: Um, almost done, Mr. Keating. So you
20 told Sergeant Spot, and then we got -- we got the car fixed -- or we got the car
21 fixed, we don't know, but -- do you consider yourself to be an honest person,
22 Mr. Keating?

23

24 THE COURT: Argumentative.

25

26 MR. STEWART: Fantastic. I have another sheet from the
27 Saskatoon Police. It's -- it's a sheet that shows their -- I guess you could call it their
28 motto, if you will. And I'd just like to -- it's a core value. It's a mission statement for
29 the police, the Saskatoon Police Service core values.

30

31 THE COURT: Okay.

32

33 Q MR. STEWART: And you said you're a member of the
34 Saskatoon Police. It says here: Saskatoon Police Service core values: Honesty,
35 integrity, compassion, fairness, commitment, respect, and professionalism. Are
36 these core values that you -- that you believe that you possess, Mr. Keating?

37 A Those are the core values of the service.

38

39 Q Please answer the question, Mr. Keating. Are those values that you believe you
40 possess, Mr. Keating?

41 A Those are the values I uphold every day.

1
2 Q Fantastic. I'm not very good with most of these values.
3
4 THE COURT: Moving towards the big finish?
5
6 MR. STEWART: Moving close. Yeah, moving close.
7
8 Q MR. STEWART: So you didn't get trained on the camera.
9 There was no training on the camera; is that correct? You weren't trained to use
10 the ICCS?
11 A No. I was shown how to log into it.
12
13 Q How to log into it. Okay. So how did you know how to attach the microphone?
14 A You take it out of the holder, and you put it into the pouch.
15
16 Q Mm. And who gave you the microphone?
17 A It was in the car.
18
19 Q It was in the car? So you took a car with equipment that you weren't trained for,
20 and Constable McAvoy and Constable Schaefer, they took a car that didn't have
21 the equipment that they were trained for; is that correct?
22 A I took a car that was there. It was Cruise Weekend. They had modified the
23 other -- other platoon shift. So we only have so many cars. So they had already
24 taken out that car. 477 was left in the garage. I took that car.
25
26 Q I find that very interesting, Mr. Keating. So they took a car that didn't have a
27 camera, even though they were trained, and you were then left with a car that
28 had --
29 A When they -- when they signed out their --
30
31 THE COURT: That sounds like a question you should
32 ask them, right?
33
34 MR. STEWART: M-hm. I will, My Lord.
35
36 THE COURT: Okay.
37
38 Q MR. STEWART: So you just put the microphone on. It was
39 there in the car, and you get in? That's -- you weren't trained, but you operated
40 the car; is that correct, Mr. Keating? You got into the car? You -- you logged in,
41 and you operated car 477?

1 A That's correct.

2

3 Q That's correct? And by the end of the evening, you had -- you had realized that
4 there were audio malfunctions, and you decided to tell Sergeant Spot, and then
5 the car supposedly was taken out of service that evening after your shift; is that
6 correct?

7 A I don't know what action Sergeant Spot took.

8

9 Q Okay. So you just parked your car at the end of the night, didn't take it to a
10 special area? You just parked it in the same parking spot that it always is? It
11 wasn't --

12 A At the time, Mr. Stewart, in 2012, we were on 1st Avenue by ourselves in the
13 Traffic building. So the garage there only housed Traffic Units. So nobody else
14 had access to our vehicles except us. Sergeant Spot took that car to service.
15 What he did afterwards, I don't know.

16

17 Q You don't know. Interesting. One last question, Mr. Keating. On that car, car
18 477, did it have a licence plate reader?

19 A No, it did not.

20

21 MR. STEWART: Okay. Thank you, Mr. Keating.

22

23 THE COURT: Thank you, Mr. Stewart. Any re-exam,
24 Ms. Rohrke?

25

26 MS. ROHRKE: Yeah. My Lord, I promise I will be short,
27 but I do have a few things I'd like --

28

29 THE COURT: All right.

30

31 MS. ROHRKE: -- to re-examine on, if that's all right.

32

33 THE COURT: Brief and focussed.

34

35 **Ms. Rohrke Re-examines the Witness**

36

37 Q MS. ROHRKE: Constable Keating, can I just get you to
38 turn to document 22, D-2 for the record?

39 A The Information?

40

41 Q Yeah.

1 A Yeah.

2

3 Q I'm just going to provide you with a copy of the *Criminal Code*, if that's all
4 right, My Lord?

5

6 THE COURT: Yes. The detective perhaps didn't know
7 there would be a pop quiz.

8

9 MS. ROHRKE: I'll try to not make him do this by
10 memory, My Lord. I think it's important that perhaps we just clarify what these
11 charges exactly are.

12

13 THE COURT: All right.

14

15 Q MS. ROHRKE: So if we're looking at this Information,
16 this Information has a number one and a number two. Can you explain what --
17 just for the jury, so they understand -- perhaps they haven't seen an Information
18 before -- how this works, why there's two?

19 A Well, there's two counts, so --

20

21 Q Okay.

22 A -- count 1 is the obstruction. Count 2 is the assault with intent to resist.

23

24 Q So that count 1, and that relates to the date in question, that August 24th,
25 2012 --

26 A That's correct.

27

28 Q -- count 1, can you just read out what count 1 says?

29 A Count 1:

30

31 On or about the 24th day of August, A.D., 2012, at or near
32 Saskatoon, Saskatchewan, did wilfully obstruct Constable
33 Keating, PC Number 738, a peace officer engaged in the lawful
34 execution of his duty by interfering with the lawful arrest of Jarvis
35 Stewart, contrary to Section 129 (a) of the *Criminal Code*.

36

37 And then it has the occurrence number and info number.

38

39 Q Now, Constable Keating, I'm going to get you to turn to that section of the
40 *Criminal Code*, please, and read out Section 129 (a), just for the benefit of the
41 jurors.

1
2 THE COURT: Tell me how this benefits the jury.
3
4 MS. ROHRKE: Mostly it's Section 2 that I'd like to
5 clarify, the assault charge, My Lord.
6
7 THE COURT: Okay.
8
9 MS. ROHRKE: But I wouldn't mind them just hearing
10 what these actually say in the *Criminal Code*.
11
12 THE COURT: Okay. You are at -- you have found the
13 *Code*, the 129?
14
15 A I -- I did, My Lord.
16
17 THE COURT: Okay.
18
19 A It's offences relating to the public -- or a peace officer. 129:
20
21 Everyone who (a) resists or wilfully obstructs a police officer or
22 peace officer in the execution of his duty or any person lawfully
23 acting in aid of such an officer --
24
25 Do you want me to read the whole thing?
26
27 Q MS. ROHRKE: So that was (a), right?
28 A That's (a), yes.
29
30 Q So -- and that is what he's charged with under this Information, correct?
31 A That's correct.
32
33 Q And now let's look at that second count, assault Constable Schaefer and
34 Constable McAvoy with intent to resist the lawful arrest, contrary to Section --
35 and if you can go here -- 270? 1 (b). And if you can just read out what that is,
36 just so we can clarify what kind of an assault this is.
37 A Yeah. Assaulting a peace officer, Section 270 (1) (a).
38
39 Everyone commits an offence who assaults a public officer or
40 peace officer engaged in the execution of his duty --
41

1 Or sorry. It's for Section B.

2

3 Q B, please.

4 A My apologies. 270 (1) (b):

5

6 Everyone commits an offence who assaults a person with intent to
7 resist or prevent the lawful arrest or detention of himself or
8 another person.

9

10 Q So is it fair to say that the assault charge stemmed from the plaintiff resisting
11 arrest?

12 A That's correct.

13

14 THE COURT: But again, it's fair to say he was found
15 guilty not of that, but of obstruction, period. End of thought.

16

17 MS. ROHRKE: Correct. Correct.

18

19 THE COURT: Correct.

20

21 MS. ROHRKE: I am more interested in the whole issue of
22 injuries to Constable Schaefer and Constable McAvoy.

23

24 THE COURT: Okay.

25

26 Q MS. ROHRKE: I also just want to look at that tab 23 for a
27 moment.

28 A Sorry, My Lord.

29

30 Q Which I believe is --

31 A Is it okay if I put these here?

32

33 Q Sorry. I can take that.

34

35 MR. GIBBINGS: P-4.

36

37 Q MS. ROHRKE: P-4.

38 A Sorry. What number?

39

40 THE COURT: Tab 23.

41

1 Q MS. ROHRKE: Tab 23, P-4.
2
3 MS. ROHRKE: And perhaps, My Lord, if it's all right if I
4 can hand these out to the jury? They didn't receive them yet.
5
6 THE COURT: Sure. Sure.
7
8 Q MS. ROHRKE: So again, I think your testimony a few
9 moments ago was that this was a use of force report?
10 A That's correct.
11
12 Q So this is a standard form from SPS?
13 A It is.
14
15 Q And that you didn't fill one of these out?
16 A I did not.
17
18 Q Because you didn't believe the force you used was sufficient?
19 A That's correct.
20
21 Q So what I just want to do is I want to look at -- if you look about halfway down,
22 it says type of force used.
23
24 THE SHERIFF: Sorry, Ms. Rohrke. I believe I'm one
25 short.
26
27 MS. ROHRKE: You're one short. Sorry.
28
29 THE SHERIFF: Unless (INDISCERNIBLE) stuck
30 together again? No.
31
32 MS. ROHRKE: Is there one in there?
33
34 MR. GIBBINGS: There's one.
35
36 MS. ROHRKE: Okay. Sorry.
37
38 THE SHERIFF: Thank you.
39
40 Q MS. ROHRKE: So I'm just going to ask you a few
41 questions in relation to your actions during this arrest. Did you discharge your

1 firearm?
2 A I did not.
3
4 Q Underneath that, firearm pointed. Did you do that?
5 A I did not.
6
7 Q Next, firearm used to destroy animal. Did you do that?
8 A No.
9
10 Q Less lethal device?
11 A No.
12
13 Q Sorry. What's a less lethal device?
14 A That would be the equivalent of a Taser.
15
16 Q A Taser? Okay. A baton. Did you use that?
17 A No.
18
19 Q OC spray. Did you use that?
20 A No.
21
22 Q Chemical weapon. Did you use that?
23 A No.
24
25 Q K9. Did you use that?
26 A No.
27
28 Q Diversionary device. Did you use that?
29 A No.
30
31 Q What would that be?
32 A Flash-bang.
33
34 Q Okay. Restraint chair?
35 A No.
36
37 Q Conducted energy weapon?
38 A No.
39
40 Q The --
41 A Sorry. They've added in the conducted energy weapon. Then a less lethal device

1 would be like a less-lethal shotgun with a bean bag round in it.

2

3 Q Okay.

4 A So sorry.

5

6 Q That's fine. Thank you. Vehicle boxing and pinning?

7 A No.

8

9 Q Vehicle pursuit?

10 A No.

11

12 Q Tactical team involved?

13 A No.

14

15 Q Physical control. Neck restraint?

16 A No.

17

18 Q Pressure point stun?

19 A No.

20

21 Q Physical strike?

22 A No.

23

24 Q Joint lock?

25 A No.

26

27 Q Take down or throw?

28 A No.

29

30 Q I don't -- and what about explosive forced entry charge?

31 A No.

32

33 Q So sufficient to say, none of these were used?

34 A None of those applied.

35

36 Q And it does say "other." Do you have any idea what typically that would refer
37 to? It's kind of right on the hole punch. I apologize. On that first page, the very
38 bottom?

39 A Under explosive forced entry?

40

41 THE COURT:

It's above explosive forced entry. It's

1 where the -- it's where the hole punch is.

2

3 A Oh, sorry.

4

5 Q MS. ROHRKE: Sorry.

6 A Oh. I'm assuming it's with regards to the physical control technique, if you --

7

8 Q Oh, because it's right underneath that physical control? Okay. But getting
9 somebody's hand out to put them in handcuffs wouldn't be sufficient?

10 A No.

11

12 MS. ROHRKE: Okay. My Lord, those would be all my
13 questions.

14

15 THE COURT: Thank you.

16

17 MR. STEWART: My Lord, I have -- I'd like to do a --

18

19 THE COURT: No. No, you --

20

21 MR. STEWART: What?

22

23 THE COURT: It goes chief, cross, re-exam.

24

25 MR. STEWART: My Lord, there's the next page, My Lord.

26 The next page of this --

27

28 THE COURT: But again. Chief, cross --

29

30 MR. STEWART: Okay.

31

32 THE COURT: -- re-exam.

33

34 MR. STEWART: Okay. M-hm. M-hm.

35

36 THE COURT: Okay. So this seems like a good point to
37 take the afternoon break. Your next witness, is he or she long?

38

39 MS. ROHRKE: My Lord, I anticipate he will be fairly
40 lengthy for chief, probably the same length as Constable Keating.

41

1 THE COURT: Okay. Well, then run him through chief.
2 And again, I won't break in the middle of Mr. Stewart's cross. But we can break in
3 chief.
4
5 MS. ROHRKE: Okay. Thank you.
6
7 THE COURT: Okay. Thank you, Constable Keating.
8 You are free to go.
9
10 A Thank you, My Lord.
11
12 THE COURT: The deputy will take the jury out.
13
14 THE SHERIFF: Yes, My Lord.
15
16 (JURY RETIRES)
17
18 (WITNESS STANDS DOWN)
19
20 THE COURT: 15 minutes, Madam Clerk.
21
22 (ADJOURNMENT)
23
24 THE COURT: Thank you. Please be seated. You are
25 ready --
26
27 MR. GIBBINGS: My apologies.
28
29 THE COURT: No gown. All right. Call the police.
30
31 THE SHERIFF: Should I (INDISCERNIBLE) My Lord?
32
33 THE COURT: Yes. Bring in the jury.
34
35 THE SHERIFF: Okay.
36
37 (JURY ENTERS)
38
39 THE COURT: If your next witness is here, Ms. Rohrke,
40 why don't you have them get on the stand?
41

1 MS. ROHRKE: Yes, My Lord.
2
3 THE COURT: Thank you.
4
5 MS. ROHRKE: Our next witness is Clayton Schaefer.
6
7 THE COURT: Right up here, Constable.
8
9 CONSTABLE SCHAEFER: Thank you, My Lord.
10
11 THE COURT: And let's talk about that disk. We have
12 one disk in?
13
14 THE COURT CLERK: (INDISCERNIBLE).
15
16 THE COURT: No, no. We have one disk ready to go in.
17 No, one disk is being corrected by Mr. Stewart.
18
19 MS. ROHRKE: So there were two disks, My Lord --
20 sorry. The plaintiff provided me with three disks.
21
22 THE COURT: Right.
23
24 MS. ROHRKE: Two of them were okay, and I've
25 provided them to Madam Clerk.
26
27 THE COURT: Okay.
28
29 MS. ROHRKE: And they only contained the information
30 that we had previously discussed.
31
32 THE COURT: Okay.
33
34 MS. ROHRKE: That third disk had all of the Detention
35 footage, and I have provided it back to the --
36
37 THE COURT: Right.
38
39 MS. ROHRKE: -- plaintiff to be corrected.
40
41 THE COURT: Right. All right. So the two disks are --

1 one is audio, one is video.
2
3 You can sit down, Constable.
4
5 MS. ROHRKE: One was audio, and the other one was the
6 GPS footage --
7
8 THE COURT: Okay.
9
10 MS. ROHRKE: -- so yes, video of a sort.
11
12 THE COURT: So there are two disks. The one with the
13 GPS will be Exhibit P --
14
15 THE COURT CLERK: We marked this yesterday
16 (INDISCERNIBLE).
17
18 THE COURT: Make that P-2.
19
20 THE COURT CLERK: (INDISCERNIBLE)?
21
22 THE COURT: Yes. The GPS.
23
24 (JURY ENTERS)
25
26 THE COURT: I thank the jury very much for taking that
27 break. We are ready to go with our next witness for the defence?
28
29 MS. ROHRKE: Yes, My Lord. The next witness is
30 Constable Clayton Schaefer.
31
32 THE COURT: Okay. Madam Clerk. We will regularize
33 that exhibit later. Swear the witness now.
34
35 THE COURT CLERK: State your name for the record, spelling
36 your surname, please.
37
38 CONSTABLE SCHAEFER: Clayton Schaefer, S-C-H-A-E-F-E-R.
39
40 **CLAYTON SCHAEFER, Sworn, Examined by Ms. Rohrke**
41

1 THE COURT CLERK: You may be seated.

2

3 A Thank you.

4

5 THE COURT: When you are ready.

6

7 Q MS. ROHRKE: Good afternoon, Constable Schaefer.

8 A Good afternoon.

9

10 Q So you are one of the named defendants in this action, correct?

11 A Yes.

12

13 Q And you are employed by the Saskatoon Police Service?

14 A Yes.

15

16 Q Can you advise as to your rank?

17 A I am a constable with the Saskatoon Police Service.

18

19 Q And how long have you been with the Saskatoon Police Service?

20 A I am in my 16th year of service.

21

22 Q So can you just kind of provide a brief overview of your employment history
23 with the police service.

24 A Sure. Currently, I am a detective constable in the Sex Crimes Unit, and
25 therefore -- just a couple of months. It's a temporary assignment. Prior to that, I
26 was in Patrol. Prior to that, I was in the Combined Traffic Unit. That's one of
27 those units that leave the city and drive around throughout the province. Prior to
28 that, I was in the regular Traffic Enforcement Unit, and before that, I was in the
29 Hit-and-Run Section. And, as well as Patrol.

30

31 Q And prior to working for SPS, were you employed as a police officer anywhere
32 else?

33 A Yeah. I was a special constable with the Saskatchewan Highway Patrol.

34

35 Q Okay.

36 A And I had been there since 1996 to one year in Alberta, as well as their
37 counterparts, and then eventually came to the Saskatoon Police.

38

39 Q Okay. And in approximately -- let's say August of 2012, what area were you
40 working in?

41 A On that particular night, I was working on 8th Street.

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41

Q Sorry.

A Or just in August?

Q Yeah, what department of the police were you working with?

A Oh, okay. Regular traffic enforcement.

Q And how long had you been in regular traffic enforcement at that time?

A I had a total of five years in that.

Q Okay. And I understand that you were on duty on August 24th, 2012?

A Yes.

Q Can you -- or do you recall what your shift was that day?

A I believe it was 3 PM to 3 AM.

Q And you were in Traffic, you said?

A Yes.

Q And on that evening, were you working alone or were you working with a partner?

A I had a partner.

Q And who was your partner?

A Constable McAvoy.

Q And when I say a partner, can you kind of just describe what that would be?

A In this particular example, it was a two-man car. I was driving a car, an unmarked traffic car, and Constable McAvoy was in the car with me as a passenger.

Q Okay. Were you in uniform that night?

A Yes, I was.

Q And was your uniform similar to what you're wearing today?

A Yeah, very similar to this, other than I was not trained or equipped with a Taser at the time.

Q Okay. Thank you. And you indicated you were operating a vehicle?

A Yes.

1 Q That day? What -- and what kind of vehicle was it?

2 A It was a Ford Crown Victoria, dark blue in colour, unit 474.

3

4 Q Unmarked?

5 A Unmarked.

6

7 Q Was the vehicle equipped with emergency lights, sirens, and loud hailer?

8 A Yes.

9

10 Q What about audio/video equipment? We heard some testimony with respect to
11 that -- to kind of the installation of that. Do you recall if on that night in 2012,
12 that specific vehicle had audio/video equipment installed?

13 A There was no audio/video equipment installed in that car.

14

15 Q In that unit 474?

16 A Right.

17

18 Q And as at that time, on August 24th, 2012, we've heard some testimony that
19 there was a pilot project with respect to the installation of -- of that audio
20 equipment, and that some officers received training around those at that time.
21 Were you one of those officers? Did you have training on that audio/video
22 equipment?

23 A No.

24

25 Q Was your vehicle equipped with a Silent Patrolman?

26 A No.

27

28 Q So on the evening of August 24th, 2012, did you come into contact with the
29 plaintiff, James Stewart?

30 A Yes.

31

32 Q Can you describe generally what happened?

33 A On that particular night, I was working with Constable McAvoy in that
34 unmarked unit. I was doing radar enforcement just a little west of that location.
35 I was at about the 1200 block of 8th Street. I was using a laser and getting
36 people that were speeding down 8th Street. It was Cruise Weekend, so our
37 attention was to 8th Street because of previous crashes, people stunting, racing,
38 and whatnot on that -- on that strip.

39

40 So around 7:00 that night, I had heard Constable Keating ask for assistance. He
41 said he wanted more officers to attend his location.

- 1
2 Q So let's just back up a little bit. How did you hear this, that he was asking for
3 assistance?
4 A It was through our radio.
5
6 Q So -- is that a radio that's in the vehicle?
7 A Yes.
8
9 Q Okay. And what exactly did you hear?
10 A I haven't heard the recording for a long time. I don't recall exactly, but it was
11 along the lines of bit of a panicked voice of Constable Keaton saying, I need
12 other officers here now. And it was relayed that it was at the Shoppers Drug
13 Mart on 8th Street.
14
15 Q And was this typical for an officer to request that kind of assistance?
16 A No.
17
18 Q No -- go ahead.
19 A In the past, we've had other cars attend to assist for, you know, can I have
20 another car here to bring me a ticket? Can I have another car here to wait for a
21 tow truck? But in this case, the demeanour of his voice, the stress in his voice,
22 needed help, help as in another officer attending his location.
23
24 Q So you were concerned?
25 A Yes.
26
27 Q So you hear that initial call for help. And what happens after that?
28 A I was driving the car. I put the laser down and immediately headed towards his
29 location. I had to -- I was on the south side of 8th Street -- or sorry, the north
30 side of 8th Street. So I had to get to the south side of 8th Street to head
31 eastbound to his location. Once I got there and crossed the centre median, I
32 ended up heading down to the location where Constable Keating was, which
33 was west -- east of my location.
34
35 Q Did you hear anything else over the radio as you were heading towards that
36 location?
37 A I believe there was an additional request, I need other officers here now.
38
39 Q Okay. So then can you describe what happened as you get to the parking lot?
40 A I pulled in my vehicle. Do you want me to make reference on the map before
41 I --

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41

Q Sure. I happen to have a sticky here.

A Okay.

Q I'll just give it to you. And it's got your vehicle number on it. If you could just indicate on that map where you parked your car.

A It was just near the entrance to the Shoppers Drug Mart off of 8th Street, off the main part of the -- of the entrance, so that it didn't obstruct anybody else from using the rest of the mall.

Q Okay.

A But it did kind of take part of that entrance to Shoppers.

MS. ROHRKE: Okay. And, My Lord, perhaps just as a housekeeping matter, could we have that diagram marked as an exhibit?

THE COURT: Okay. I believe we are at -- Madam Clerk, is it D-16?

THE COURT CLERK: Yes.

THE COURT: So the bird's-eye view of the subject area with stickers, indicating where vehicles are parked, D-16. And I can assure the jury that when you go in to engage in your deliberations, you will have that with you.

EXHIBIT D-16 - Map, Birds-eye View of the Subject Area Indicating Where Vehicles are Parked

Q MS. ROHRKE: So you parked your vehicle in that parking lot, and then what happens?

A I was the first patrol car, other than Constable Keating, to attend, to -- to arrive. I noticed that Constable Keating had one male in custody. I later -- I didn't know at the time, but I later found out that to be Jarvis Stewart.

Q Okay.

A He was already in handcuffs. The other male, I didn't know until later, James Stewart, was out and about walking around the back of the patrol car, of Constable Keating's patrol car. And I -- Constable Keating told me to arrest James Stewart. There was a comment, something like here -- here are the heroes or here comes heroes.

1 Q Sorry. A comment from who?

2 A A comment from James Stewart, saying, Here come the heroes, or something
3 along that line. As he approached, he was walking away from the back of that --
4 of Constable Keating's patrol car, walking towards his Toyota Celica that was in
5 the parking lot. He -- I'm assuming he also heard that command by Constable
6 Keating.

7

8 Q Which command by Constable Keating?

9 A To arrest that -- that man --

10

11 Q Okay.

12 A -- or arrest that person. So Constable Keating wanted that person arrested.
13 There was no time to debate whether or not what are your grounds, why is he
14 being arrested. I just knew that if Constable greeting -- if Constable Keating had
15 grounds to believe James Stewart, then I would follow up by arresting James
16 Stewart.

17

18 Okay. So he was walking towards his Toyota Celica. I ordered him to get on the
19 ground. I wanted to go on the ground for numerous reasons, one of which that
20 Constable Keating had already requested for backup because of these people. I
21 wanted him into a more controlled position -- prone position, we call it -- to aid
22 in handcuffing. He was also a taller man than me, bigger-set, heavier than me,
23 and it offered me the best control. He said, No, I'm not going to do that. I
24 ordered him to the ground. I pointed to the ground. No, I'm not going to do that.
25 I said, again, Go to the ground, and again he refused. He took, I guess, a combat
26 or an athletic stance. He lowered his body weight. He tucked his arms into
27 himself. It looked like he wasn't going to go to the ground. He just took more of
28 a -- an aggressive approach. His body language followed up his rejection of my
29 command to go to the ground.

30

31 Constable McAvoy ended up coming around the front of our patrol car and had
32 gotten behind James Stewart. He had also told James to go to the ground.
33 Again, there was no compliance with that. I said it at least two, possibly three
34 times. There was multiple commands for him to go to the ground. He didn't.
35 Constable McAvoy ended up putting his arms around James and then bringing
36 him to the ground. At the same time, I had grabbed the front of his head to bring
37 him to the -- to the ground. He ended up going to the ground, where we were
38 able to try to get more control of him. James still struggled on the ground.

39

40 He had tucked his right hand underneath his chest. His left hand got free as he
41 went down to the ground, and Constable McAvoy ended up grabbing his left

1 hand. James was on his face, pretty much, on his stomach with his right arm
2 tucked under his body, and his left hand out. His feet were behind us. He
3 continued to kick towards us, trying to roll out of our hold, and continuously
4 yelled and screamed. I forget what it was, but he was causing attention to
5 himself.

6

7 I tried to pull his arm out from under him. We -- at this time, I don't know if
8 there was a weapon in his waist. I don't know what he was holding in his hand.
9 It was for officer safety reasons. We needed to get that arm out right away.

10

11 As I'm pulling on his right arm that was tucked under his body, I felt it going
12 back into his body. So he was actively resisting. He was pulling his arm back
13 to -- to me -- or to his body. I noticed at the same time, he was flipping his head
14 back and forth on the pavement, I don't know, maybe to get a better advantage
15 of where I was looking, but his face was making contact with the pavement.

16

17 Eventually, as Constable McAvoy had held his left arm, pulling it up to get
18 compliance for him to pull his right arm out, he eventually vendor surrendered
19 his right arm. I guess, to give you guys an idea of where I was at, I was more at
20 the front of his body, towards his right side, right side shoulder. Constable
21 McAvoy was to his left side. Just -- we were both feeling down above him. I
22 wasn't kneeling on him, just kneeling in that area.

23

24 Eventually, his right arm came free, pulled it out, and I had gotten my
25 handcuffs, which I keep in the front pouch. Pulled them out, got a handcuff on
26 his right arm, and had obtained his left wrist and got handcuffs behind his back.
27 Around this time, Constable Hounsell and Constable Boyce -- Constable
28 Hounsell went towards the front of James or I guess his head area, and
29 Constable Boyce went to his feet, because, again, he was still kicking. It was
30 almost like a two-year-old having a temper tantrum. Everything was -- was
31 flailing and yelling and screaming and a lot of emotion going on.

32

33 His legs were finally secured, and we needed to search him, search him for any
34 weapons, means of escape, any of that. I was kind of out of breath at this time,
35 because it was a struggle that went on for 30 seconds to a minute. I don't
36 remember. It went really -- it was a while. And they had -- we didn't pick them
37 up right away. We ended up searching them, just to check for anything. There
38 was a wallet on him, cell phone, just things -- some keys, just a few things in his
39 pockets. We determined there was no weapons, but anything he had on him was
40 removed. I had obtained the property. I held onto it for a bit.

41

1 He was eventually stood up and taken to a marked patrol car. Now, the reason
2 why we didn't use our patrol car was because there was no divider between the
3 front and back seats to keep us safe. There was a marked patrol car that
4 eventually showed up, and we had put him in the back of that. Constable
5 Hounsell and Constable Boyce ended up escorting him in there. I was -- I
6 believe I was behind them or in the vicinity of them. They put him in the back
7 of the patrol car.

8

9 He was placed in the back of the patrol car. The door was closed. Like I said, I
10 needed a minute to kind of catch my breath and figure out what was going on.

11

12 Q So at any point during this interaction on the ground, when the plaintiff was on
13 the ground, did you threaten the plaintiff?

14 A No. I just gave him commands over and over again. Give me your arm, pull out
15 your arm, release your arm, give me that --

16

17 Q But you weren't threatening to, say, beat him up --

18 A No.

19

20 Q -- at this -- at any point during this interaction?

21 A No.

22

23 Q Did you at any point pick his head up and smash his face into the ground or
24 attempt to cause an injury to his face?

25 A No, I didn't smash it at any point. I tried to hold it at one point to stop him from
26 flipping his head back and forth into the ground.

27

28 Q Okay.

29 A But at the same time, I was struggling to get that arm out. So --

30

31 Q Right.

32 A -- there was no pushing his face in the ground. There was nothing like that.
33 There was just --

34

35 Q Did -- sorry. Continue.

36 A Just to prevent him from doing further injury to himself.

37

38 Q So when you say further injury to himself, did you notice whether he had any
39 injury on his face?

40 A Yeah. There were some abrasions on his face. I noticed some kind of lateral
41 scratches --

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Q M-hm?

A -- consistent with him flipping his face into the pavement.

Q So once the plaintiff was on the ground, would you describe him as compliant?

A No.

Q How would you describe his behaviour?

A He was being -- I guess we'd call it actively resistant.

Q So you indicated the plaintiff was then put in the back of the police car. Do you recall which police car he was put in the back of?

A I don't remember the number. Constable Aaron Smith was operating that vehicle at the time.

Q Okay. At any point during that -- during the incident at the Shoppers Drug Mart, did you ask the plaintiff for his identity?

A I did. I went back to the car and asked him who he was. I don't remember what he said, but he did not give me a name.

Q Okay. At -- so did you have an exchange with the plaintiff when he was back in that police car?

A Yes. I didn't open the door. I had Constable Smith roll down the window.

Q Okay.

A There's a glass window, and in between the glass window, there is, like, a plastic divider. There's holes in there so you can talk through to somebody. But it prevents them from spitting at you or -- or escaping through the window.

Q Can you talk about that exchange that you had and what was said?

A I did advise him at one point -- like I said, You're under arrest for obstruction. I didn't read him rights to counsel. Constable Keating did.

Q When you say Constable Keating did, did you actually hear and/or witness Constable Keating reading him his rights to counsel?

A Yeah. I was somewhat behind him. You know, probably -- not quite in earshot, but I had heard Constable Keating saying, Yes, you're under arrest for obstruction, read him rights to counsel. I didn't -- I didn't quite hear the responses, just because that divider still -- you know -- I wouldn't say it's soundproof, but it does limit the sound coming through.

1 Q So did your use of force in arresting the plaintiff cause him any injury?

2 A There was, like, some scratches across his face that I had noted that -- I mean,
3 again, I -- the take down and stuff, no. Him pushing his face back and forth onto
4 the ground, I would say those were self-inflicted.

5

6 Q Okay. So once the plaintiff is placed in the back of Constable Smith's police car,
7 what did you do?

8 A I went back to figure out what the vehicle was all about. I didn't know who they
9 were. I still didn't know who they were. And we wanted to identify the vehicle,
10 who owned it. There was -- part of the investigation went to -- down the avenue
11 of being a stolen vehicle. The plate did not match the vehicle. The plate was in
12 somebody else's name. The -- there was lots of damage to the vehicle. Like,
13 the -- the front driver's door, in that area, there was some intrusion into the
14 frame or into the body, up to the frame. There was a cracked windshield. There
15 was some tinted taillights on the vehicle. It wasn't roadworthy by any means.
16 We also tried to find out what the VIN number was. It was really hard to read. I
17 had wrote down part of it in my notebook, and then I had to go back and change
18 a couple letters because it wasn't exactly what it was. So I had a hard time
19 reading that VIN number.

20

21 We also wanted to look into the vehicle to find out, you know, pursuant to
22 arrest, any evidence and that, and also to figure out ownership of the vehicle.

23

24 Q So prior to the plaintiff being transported to SPS headquarters, were you aware
25 of his identity?

26 A No, I didn't know who he was.

27

28 Q So after you searched the VIN number, eventually were you able to positively
29 identify the vehicle?

30 A Eventually, we did.

31

32 Q On scene or at a later date? Do you recall?

33 A I think it was afterwards.

34

35 Q Okay.

36 A I'm satisfied it wasn't stolen later, but it was not properly registered. I was very
37 satisfied it was there.

38

39 Q Okay.

40 A And part of the reason why I couldn't identify the vehicle was because I didn't
41 know who they were until after I got to Detention. It was about an hour

1 afterwards.

2

3 Q So you get to it back -- you go back to Detention?

4 A Right.

5

6 Q With Constable McAvoy?

7 A Right.

8

9 Q And then what happens?

10 A It was around 8:00-ish. And it's the old building, so we had to come up to --
11 through an elevator up to the second floor where our Detention cells are. We
12 ended up riding up the elevator, just the two of us. And as the elevator door
13 opened, you could hear this loud screaming and yelling and commotion and
14 carrying-on going on in Detention. It turned out it was James Stewart, yelling
15 about -- in -- in one of his cells in the back of the -- one of the cells. He was
16 already secured in the cell.

17

18 Eventually, I ended up going back to that cell, because I wanted to find out who
19 he was, and I thought I'd just ask him. I went to his cell, and I asked him what
20 his name was. He wanted to know my name. I gave him my badge number.
21 There was a lot of animation. He was jumping about, banging on the glass. He
22 was not giving me his name. I didn't feel I was getting through to him, asking
23 him his name. I had my notebook out, ready to write it down. But I never did
24 get his name.

25

26 Q I'm going to show you a video.

27

28 MR. STEWART: Hey, that looks like me.

29

30 (AUDIO/VIDEO PLAYED)

31

32 Q MS. ROHRKE: So, Constable Schaefer, this would be
33 Detention at the old police station?

34 A Yeah. It was the back row. So there's -- I had to walk through other cells to get
35 to that. I could clearly hear him yelling and screaming from the other side of
36 Detention. It was almost bothersome to the other prisoners.

37

38 Q Do you recall what he was yelling, Constable?

39 A No. Not off -- but it was just so loud.

40

41 Q Okay.

1 A I don't recall exactly what it was.

2

3 Q So then you indicated that you attended at the cells?

4 A Yes, I did.

5

6 Q So I'm just going to play this video. If you can perhaps -- we'll watch it, but just
7 identify yourself when you see yourself.

8 A Okay.

9

10 Q And again, there's no audio.

11

12 (AUDIO/VIDEO PLAYED)

13

14 A That is me.

15

16 (AUDIO/VIDEO PLAYED)

17

18 A He is obviously offended by my presence. He did say, I don't -- I had it written
19 in my notes. I don't conform to your laws. You are a servant, you serve me. And
20 I'm asking, What is your name?

21

22 (AUDIO/VIDEO PLAYED)

23

24 Q MS. ROHRKE: Did he say anything?

25 A No. But you can see that he's agitated. It's -- whatever he's saying is yelling to
26 me.

27

28 Q Is he banging on the glass (INDISCERNIBLE) right there?

29 A Yes. There is a gap underneath that door.

30

31 Q Okay. That's --

32 A So I think if he felt that more volume would come through that gap if he laid on
33 the floor. I did write down exactly what he did say in my notes. My Lord, may I
34 refer to my notes?

35

36 THE COURT: Yes. And I see you making them right
37 now, so you can refer to them any time.

38

39 A Thank you. Thank you, My Lord. So I wrote down at 1957 at Detention, Would
40 not give name, just yelled obscenities, extremely loud.

41

1 MS. ROHRKE: My Lord, the interaction didn't last much
2 longer. I just wanted (INDISCERNIBLE).

3

4 THE COURT: All right.

5

6 (AUDIO/VIDEO PLAYED)

7

8 Q MS. ROHRKE: So here we see -- oh.

9 A He was also asking me if I was a police officer or a peace officer.

10

11 (AUDIO/VIDEO PLAYED)

12

13 Q MS. ROHRKE: And that was the end of your interaction?

14 A Yes.

15

16 Q And at the time when you left, had he provided you with his name?

17 A No, he didn't. But --

18

19 MS. ROHRKE: My Lord, I would ask to have this USB
20 drive put into evidence. I do have a couple other videos on it that I will be playing
21 for other witnesses.

22

23 THE COURT: Okay. We will mark this, then, for Ident.,
24 I think is the best procedure.

25

26 MS. ROHRKE: Sure.

27

28 THE COURT: Because the other ones haven't been.

29

30 MS. ROHRKE: Sure.

31

32 THE COURT: So this will be -- tell me if I'm right,
33 Madam Clerk -- D-16 for identification.

34

35 THE COURT CLERK: That would be D-17.

36

37 THE COURT: Okay. You are telling me I'm wrong.
38 D-17 for identification. And then when you put those other two, we will make it a
39 full exhibit. All right, Ms. Rohrke?

40

41 MS. ROHRKE: Yes, My Lord. Perfect. Thank you.

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THE COURT:

Do you understand? Okay.

EXHIBIT D-17 - FOR IDENTIFICATION - USB Drive with Detention Video

Q MS. ROHRKE: So after this exchange with the plaintiff, you did learn his name at some point?

A I did.

Q And how did you obtain his name?

A I went to the other side of the cells. Jarvis Stewart was in one of the cells, and I asked him what his name was.

Q Okay.

A And Jarvis did provide me with his name.

Q Okay.

A I also asked him what his brother's name was. He provided me with his brother's name and date of birth.

Q Okay. And we heard some testimony from the plaintiff with respect to a birth certificate and a live birth statement that was in the car. Did you ever see those at any point?

A I don't recall if I did.

Q So once you obtain the plaintiff's name, what do you do?

A I confirmed his identification on SGI's database, and then I had CPIC'd him on our database for checking for warrants or conditions or anything like that.

Q And when you CPIC him, what do you find?

A I find that there's three *Traffic Safety Act* warrants outstanding for James.

Q Okay. So I'm going to ask you to turn to tab 8, which is D-5. Oh, sorry. I was incorrect. Tab 7, which is D-4. So this would be a certificate of offence 339. And then if you go to the next tab, which is tab 8, which is a summons for that same ticket 339, correct?

A The same number, the same summons, yes.

Q And then I want you to go to tab 10. What is that document?

A Tab 10 is a warrant for arrest for the name of James Douglas Stewart, date of birth 19 July 1975 of Hanley.

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Q If you look at the top, it says Information number. And then there's a number that ends in 339.

A There is.

Q So would that correlate to the previous two documents we were looking at?

A Yeah. That's the same Information number from the traffic ticket.

Q So this warrant was in -- in relation to that traffic ticket?

A Yes. For a driving unregistered motor vehicle.

Q So you -- and you obtained this warrant?

A Yes.

MS. ROHRKE: My Lord, I would ask that this document be entered.

THE COURT: Warrant for arrest of the plaintiff under 10. D-18.

EXHIBIT D-18 - Warrant for Arrest of James Douglas Stewart, Ticket Ending 339 - Tab 10

Q MS. ROHRKE: So looking at that document -- and I apologize. I'll just wait until the jury has it.

MS. ROHRKE: Madam Clerk, you could probably put the screens down. I don't anticipate having another video for this witness. Thank you.

Q So looking at that document, again, it was in relation to that same ticket, unlawfully driving an unregistered motor vehicle. Can you -- from that, looking at that arrest warrant, can you see why it was issued?

A It was issued because the accused failed to appear in court.

Q So on the night of April -- sorry, August 24th, 2012, there was a warrant for the plaintiff's arrest that was unrelated to this traffic stop?

A Correct.

Q And if you turn to that second page, what does that second page indicate?

A It is indicated that on the 22nd of March, 2012, a justice or a judge had signed that warrant.

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Q And is your signature on that page?

A It is on the third page.

Q Oh, sorry. And what does that indicate?

A It indicates endorsement of the warrant, which means that I had come into contact with James, and had executed this warrant on the 24th of August.

Q And that is -- he was now under arrest as a result of that warrant for arrest, as well?

A Correct.

Q In addition to the traffic stop for Keating?

A Correct.

Q Okay. I'm going to get you to turn to tab 11, which is D-6. This is another ticket. And you'll note that it's ending 340.

A 340.

Q Then I'm going to get you to turn to tab -- yes. 14. And that's the summons for that same ticket, correct? Summoning the plaintiff to court?

A Yes. This is the same.

Q Okay. And then I'm going to get you to go to tab 13.

A 13?

Q Yeah. And again, if we look at the top, there's another indication that this arrest warrant is in in relation to what ticket?

A Ending 340.

Q The two previous documents?

A Correct.

Q And again, the accused is arrestable for failure to appear in court?

A Correct.

MS. ROHRKE: So perhaps we can have this document marked, as well, My Lord.

THE COURT: All right. The warrant for arrest of the plaintiff in relation to ticket ending number 340, D-19.

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EXHIBIT D-19 - Warrant for Arrest of James Douglas Stewart, Ticket Ending 340 - Tab 12

Q MS. ROHRKE: So this is arrest warrant number two that the plaintiff was subject to on the night of August 24th, 2012, that was unrelated to the traffic stop?

A Yes.

Q Okay. Now I'm going to get you to turn to tab 15, document D-8, ticket ending in 341. And then I'm going to get you to turn to tab 17, document D-9. So those would be the ticket and the summons with respect to that 341 ticket?

A Yes.

Q And then I'm going to get you to turn to tab 16, which is what?

A This is also a warrant for arrest for James Stewart.

MS. ROHRKE: My Lord, I would ask that that be entered, as well.

THE COURT: Warrant for arrest of the plaintiff under tab 16 relating to ticket ending 341, D-20.

EXHIBIT D-20 - Warrant for Arrest of James Douglas Stewart, Ticket Ending in 341 - Tab 16

Q MS. ROHRKE: And sorry. I just want to go back to that previous warrant for arrest and this warrant for arrest. You executed both of those warrants on this night, right? The other one was tab 13.

A My signatures are on both of those --

Q Okay.

A -- warrants, endorsing those.

Q And again, this is a warrant for arrest for the accused failing to appear in court, the accused being the plaintiff, James Stewart?

A Yes.

Q So there was three warrants for arrest on August 24th, 2012, for the plaintiff?

A Yes.

1 Q That were apart from the arrest from the traffic stop of Jay Keating?

2 A Yes.

3

4 Q Thank you. I have one more document -- well, for this series of documents. And
5 unfortunately --

6

7 MS. ROHRKE: Unfortunately, My Lord, it's not in your
8 documents or in any of the binders. But it has been disclosed to the plaintiff
9 previously.

10

11 THE COURT: All right.

12

13 Q MS. ROHRKE: Can you tell me what that document is?

14 A This is a form H recognizance. It's a release document.

15

16 Q In relation to what?

17 A Those three warrants that they were arrested on.

18

19 Q For who?

20 A For James Stewart.

21

22 Q So this would be -- maybe perhaps explain to the jury what a recognizance
23 would be.

24 A Yes. Once a person is arrested on something like a traffic ticket, they have to
25 come to court to deal with these traffic tickets. The -- in order for them to be
26 released from custody, they would acknowledge that they owe \$500 if they fail
27 to attend court, or I could take a certain amount of money from them and hold it
28 until they do come to court. In this case, on this form H, it's just faith that they
29 would come to court, otherwise \$500 would be owed through their personal
30 property. I did not collect any money on it.

31

32 There was a release -- a condition of them being released on this recognizance
33 is that they would be required to attend court. And in this case, on Monday, the
34 10th day of September, 2012, in traffic court. This form has the ticket numbers
35 written at the top of it so that they're corresponding with those three warrants.
36 And I had -- I didn't actually fill this recognizance out. The special constable
37 did, prior to James Stewart getting release from Detention.

38

39 Q And in looking at the bottom of that document, that was signed by -- it looks
40 like -- it says justice of the peace?

41 A In this case, it was a signature of a peace officer. It was Special Constable -- I

1 don't know this signature, but it's Special Constable 8802.

2

3 Q Okay.

4 A I know it's a special constable because that's their series of badge numbers.

5

6 Q And that was signed the next day, on that -- on August 25th?

7 A August 25th.

8

9 Q Okay.

10 A It was also signed by James Stewart, as well.

11

12 MS. ROHRKE: My Lord, I would ask that this be entered
13 as an exhibit, as well.

14

15 THE COURT: No problem. Recognizance respecting the
16 release of the plaintiff in relation to the previous three traffic tickets, D-21.

17

18 **EXHIBIT D-21 - Recognizance in Relation to Tickets 7485339, 7485341, 7485340**

19

20 THE SHERIFF: (INDISCERNIBLE) My Lord.

21

22 THE COURT: Pardon me?

23

24 THE SHERIFF: There was none in the binder. Did you
25 want one to --

26

27 THE COURT: Give them to the jury first. If there's one
28 left over, then I'll get it.

29

30 THE SHERIFF: There should be.

31

32 MS. ROHRKE: There should be, My Lord. If not, I'll
33 make you a copy.

34

35 THE COURT: Okay. No, they are the decider of the
36 facts.

37

38 Q MS. ROHRKE: So after you have this exchange --

39

40 THE COURT: Thank you, deputy.

41

- 1 Q MS. ROHRKE: -- exchange with the plaintiff in cells, do
2 you have any further interaction with him?
- 3 A No.
- 4
- 5 Q Did you prepare reports with respect to this incident?
- 6 A There was an occurrence report that I did after.
- 7
- 8 Q Okay.
- 9 A After Detention.
- 10
- 11 Q In preparing those reports, did you make any recommendation in them whether
12 the plaintiff should be detained for any period?
- 13 A No.
- 14
- 15 Q Once an individual is at Detention, do you have any authority over whether or
16 not they are to be released?
- 17 A No.
- 18
- 19 Q Who would have that authority?
- 20 A That ultimate -- ultimately relies on our -- the decision is made by the Detention
21 sergeant.
- 22
- 23 Q Okay. What time was your shift that day?
- 24 A Until 3 in the morning.
- 25
- 26 Q After you were finished with the plaintiff or after your last exchange with the
27 plaintiff in Detention, what did you do?
- 28 A I made my way to write up the report, the occurrence report for what happened.
- 29
- 30 Q And then did you just go back to regular duties?
- 31 A I think I was done around midnight. I believe I did go back out.
- 32
- 33 Q Okay. So who was the Detention sergeant that night? Do you recall?
- 34 A Sergeant Mitzel.
- 35
- 36 Q Okay. And I think we've heard evidence already that he's passed away?
- 37 A Yes. He's dead.
- 38
- 39 Q Can you turn to tab 22 in the binder, please? This is D-2, for the record. That is
40 the -- can you describe that document for me?
- 41 A Tab 22 shows me an Information.

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Q Okay. And who is it charging?

A It is charging James Douglas Stewart.

Q Okay. Did you lay these charges?

A No.

Q Did you swear the Information?

A No.

Q Was your opinion or consultation asked for prior to laying these charges?

A No.

Q So one of the charges, count 2, is with respect to, quote, an assault on Constable Schaefer with intent to resist the lawful arrest of himself.

A Right.

Q So with respect to that charge, you're not alleging that you were physically assaulted by the plaintiff?

A That's correct.

Q So what does that charge relate to?

A It's essentially a resist arrest.

Q Okay. Have you seen -- you testified at the criminal trial with respect to these charges?

A Yes.

Q Did you see the video from car 477, the car that Constable Keating was operating?

A Yes, I saw part of it.

Q Okay. Okay. And you're aware it didn't have audio?

A Correct.

Q Did you have any access to audio or video equipment?

A No.

Q Did you delete any of the audio from that video?

A No.

- 1 Q Would you know how to, even if you were looking on a computer?
2 A No.
3
- 4 Q Subsequent to this incident, did you file what is known as a use of force report?
5 A No.
6
- 7 Q Can you turn to tab 23 in the binder, please? Can you tell me what that
8 document is?
9 A This is a form. It says use of force reporting form.
10
- 11 Q Okay. And what's the purpose of these reports?
12 A This is essentially a statistical gathering tool for administration.
13
- 14 Q Would you include anything in that use of force report that wasn't already
15 included in either of your handwritten notes or your typed occurrence report?
16 A No. Everything would be in my report that would be on this form, if I had filled
17 one out.
18
- 19 Q Okay. So back in 2013, you were the witness at a criminal trial of the plaintiff in
20 relation to these charges?
21 A Right.
22
- 23 Q And at trial, you testified that you believed you did file a use of force report?
24 A I believed there was one filled out.
25
- 26 Q So can you speak to that?
27 A I -- I thought it -- at the time, when there was a question asked if there was a use
28 of force report filled out, I thought there was. I did some research to find out
29 there was not one filled out.
30
- 31 Q And that research, what do you mean by research?
32 A Okay. I checked the original report. There was nothing added to the file. I
33 checked with the use of force committee that meets occasionally. They said
34 there was no use of force reporting form sent to them to review this as a use of
35 force.
36
- 37 Q Okay.
38 A There was an internal investigation complaint that both James and Jarvis
39 Stewart made against myself.
40
- 41 Q M-hm.

1 A The internal investigators have sealed files that I do not have access to. I did
2 speak to one of the internal investigator sergeants to look through the file, the
3 hard copy file. I didn't go through it with them, but I asked him to look into the
4 file to see if there was a use of force reporting form in that file, because they
5 would -- if anybody would have it, they would have it. He opened the file in
6 front of me. He looked through all the sheets. He could not see a form for this.

7

8 Q Okay. I just want to go back to that August 24th night for a moment. Did you
9 take any witness statements?

10 A No.

11

12 Q No? Did you notice any individuals around at the time of this incident?

13 A There was.

14

15 Q Can you guess approximately how many?

16 A It -- throughout the event, some were there, some left, some came, because there
17 was "what are the police doing?"?

18

19 Q Yeah.

20 A So they came to see what's going on, a lot of curiosity witnesses. I didn't keep
21 track of who came before. I don't know who left. I don't know who came after
22 the fact. My hands were literally tied up with taking James Stewart into custody,
23 finding out the reasons for -- you know, what's this vehicle for, is it stolen. I had
24 lots of other things to deal with, to contend with. So I did not take any witness
25 statements at the time.

26

27 Q At any time during the evening of August 24th, did you ever see a passport of
28 the plaintiff?

29 A I did not see one.

30

31 Q Okay. During this interaction with the plaintiff, do you specifically remember
32 whether you threatened him at all?

33 A No.

34

35 Q Did you kick him?

36 A No.

37

38 Q Did you punch him?

39 A No.

40

41 Q Did you use any profanities towards him in your interaction?

1 A I don't remember.

2

3 Q Prior to August 24th, 2012, did -- have you had any interaction with the
4 plaintiff?

5 A No.

6

7 Q Did you know who he was?

8 A No.

9

10 Q He wasn't somebody you had typically arrested or anything like that?

11 A No.

12

13 Q Okay. Did you have any or do you have any malicious feelings towards the
14 plaintiff with respect to this incident?

15 A No.

16

17 MS. ROHRKE: My Lord, I have no further questions of
18 this witness.

19

20 THE COURT: All right. It's 25 to, Mr. Stewart. Would
21 you like to start your cross in the morning?

22

23 MR. STEWART: I think it would be easy for everyone
24 involved, My Lord. I -- I would be happy to do that.

25

26 THE COURT: Okay. Yes. This is a long day. I am
27 wondering if it's worthwhile starting at 9:30.

28

29 MR. GIBBINGS: That was going to be my suggestion, My
30 Lord.

31

32 THE COURT: Okay. Well, good for you for thinking
33 clearly.

34

35 I look, though, to the jury. Are any of you going to have difficulty getting here by
36 about 9:15, 9:20? Okay. So why don't we start -- you are comfortable with that,
37 Mr. Stewart?

38

39 MR. STEWART: Absolutely, My Lord.

40

41 THE COURT: Okay. Then I think, for the sake of

1 efficiency, let's start at 9:30. All right. And, Madam Clerk, you have got an extra
2 disk that hasn't been marked as an exhibit. P-2 is a disk relating to GPS. That extra
3 disk you got? It would be -- that's the disk from the -- help me out again,
4 Ms. Rohrke.

5

6 MS. ROHRKE: My Lord, can I just look at the disks for
7 two seconds?

8

9 THE COURT: Sure. Sure. Sure.

10

11 MS. ROHRKE: That will help.

12

13 THE COURT: Because I want to label it properly in the
14 record.

15

16 MS. ROHRKE: So -- so, My Lord, this one is the
17 dispatch.

18

19 THE COURT: Okay. That's the dispatch call audio.

20

21 MS. ROHRKE: Yes.

22

23 THE COURT: So that disk has to be marked as an
24 exhibit. We will mark that. The next number is D-22, Madam Clerk?

25

26 MS. ROHRKE: This is the plaintiff's CD.

27

28 THE COURT: Oh, okay. He put it in?

29

30 MS. ROHRKE: Yes.

31

32 THE COURT: Okay. Where are we at on P exhibits?

33

34 THE COURT CLERK: P-5.

35

36 THE COURT: P-5 it is. Thank you. So 9:30. Deputy, set
37 the jury free.

38

39 THE SHERIFF: Yes, My Lord.

40

41 **EXHIBIT P-5 - Dispatch DVD - 12-81887 Audio**

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41

(JURY RETIRES)

THE COURT:
evening.

We will see you at 9:30. Have a good

MR. GIBBINGS:

Thank you, My Lord.

MS. ROHRKE:

Thank you, My Lord.

PROCEEDINGS ADJOURNED UNTIL 9:30 AM, MAY 1, 2019

May 1, 2019

Morning Session

The Honourable
Mr. Justice R.S. Smith

Court of Queen's Bench for Saskatchewan

(No Counsel)
R. Gibbings, Q.C.
A. Rohrke
B. Werezak

For the Plaintiff
For the Defendants
For the Defendants
Court Clerk

Discussion

THE COURT:

Good morning, everyone.

MR. GIBBINGS:

Good morning, My Lord.

MS. ROHRKE:

Good morning, My Lord.

MR. STEWART:

Good morning, My Lord.

THE COURT:

Everybody is ready to go?

MR. STEWART:

As ready as can be. We experienced
some technical difficulties last night, My Lord, but I'm -- I'm confident I'll be able
to continue.

1 THE COURT: Very good. Please bring in the jury.
2

3 THE SHERIFF: Yes, My Lord.
4

5 THE COURT: And, Mr. Stewart, I respectfully remind
6 you, cross-examination is question, answer, question, answer. Commentary and
7 argument should be left for your address to the jury, which will come after all the
8 evidence. Okay? Thank you.
9

10 MR. STEWART: Yes. Yes, My Lord.
11

12 THE COURT: Great.
13

14 (JURY ENTERS)
15

16 THE COURT: Please be seated. Good morning,
17 members of the jury. We're here for the cross-examination of Constable Schaefer.
18 And, Mr. Stewart, when you are ready to go, please proceed.
19

20 MR. STEWART: Thank you, My Lord. I'm going to be
21 questioning Constable Schaefer on some of his notes, but I'd also like to add
22 Constable Keating's notes into evidence. Is now the time to add Constable
23 Keating's notes and then Constable Schaefer's notes or --
24

25 THE COURT: Ideally, you should have put Constable
26 Keating's notes to him. Are these your notes?
27

28 MR. STEWART: Well, I did yesterday. We -- we talked,
29 and you said, Are you going to read all the notes? And I said no, I'm just going to
30 read some of the notes. That's what we did.
31

32 THE COURT: All right. Well, you can read from
33 Keating's notes and put the question to Constable Schaefer. Yes.
34

35 MR. STEWART: Correct. But can I give the notes as
36 evidence so the jury can read them? We don't have any audio. I'd hate to, you
37 know, beat a dead horse.
38

39 THE COURT: Right.
40

41 MR. STEWART: So there's only -- there's only notes of

1 this.

2

3 THE COURT: Put Keating's notes to Constable Schaefer
4 and ask him if he understands them to be Keating's notes.

5

6 MR. STEWART: Okay.

7

8 **CLAYTON SCHAEFER, Previously Sworn, Cross-examined by Mr. Stewart**

9

10 Q MR. STEWART: Constable Schaefer, I'm giving you some
11 documents. It's a narrative details one, Saskatoon Police Service general
12 occurrence hard copy, author 738, Keating, Jay. Does that look like Constable
13 Keating's notes of the incident that evening?

14 A This is an occurrence report, not handwritten notes.

15

16 THE COURT: Yes.

17

18 Q MR. STEWART: But the notes are --

19

20 THE COURT: The occurrence report can go in.

21

22 A Okay.

23

24 THE COURT: It's a document.

25

26 MR. STEWART: Thank you very much, Constable.

27

28 THE COURT: That will be P --

29

30 THE COURT CLERK: P-6.

31

32 THE COURT: P-6.

33

34 **EXHIBIT P-6 - Occurrence Report of Jay Keating, August 24, 2012**

35

36 MR. STEWART: Now -- what? Now, My Lord, I have
37 another question that we dealt with a little bit yesterday in regards to character
38 reference and similar fact. And we had to excuse the jury, obviously, for some
39 certain questions. I have a case, My Lord, that involved Constable Keating, but it's
40 not -- I'm not using it as a -- as a reference to that. The case involved a -- a
41 member -- a person trying to run over Constable Keating in a car. And so my only

1 purpose to use this as saying that Constable Keating testified to get back into a
2 vehicle, which I believe can be used as a weapon. And the case -- Constable
3 Keating actually had found a conviction for the guy he tried to run Constable
4 Keating over. So I was just -- was thinking about using that, so that a car can be
5 used as a weapon. And it seems odd that a police officer would order somebody to
6 get back in the car.

7
8 THE COURT: Okay. Well, I will stipulate --

9
10 MR. STEWART: Okay.

11
12 THE COURT: -- to the degree that a car can be used as
13 a weapon.

14
15 MR. STEWART: A car can be?

16
17 THE COURT: It can.

18
19 MR. STEWART: Absolutely, Your Honour. Absolutely.

20
21 THE COURT: Okay. So we don't need the case.

22
23 MR. STEWART: Okay.

24
25 THE COURT: That's a fact.

26
27 MR. STEWART: All right.

28
29 THE COURT: Again, I am looking for that question,
30 answer, question, answer.

31
32 MR. STEWART: Absolutely, My Lord. Absolutely, My
33 Lord.

34
35 THE COURT: Okay. You have to given the occurrence
36 report to my clerk so she can tag it up.

37
38 MR. STEWART: Oh.

39
40 THE COURT: Thank you, Madam Clerk. And that way,
41 as an exhibit, it will go in to the jury room with the jury.

1
2 MR. STEWART: Okay.
3
4 THE COURT: Okay.
5
6 MR. STEWART: And then upon my examination of
7 Constable Schaefer, I can then bring his notes into evidence. Or should I bring
8 them in now?
9
10 THE COURT: Bring them in now.
11
12 MR. STEWART: Okay. And once again, it's the
13 occurrence. It's not a handwritten note.
14
15 THE COURT: Yes. Yes.
16
17 Q MR. STEWART: Constable Schaefer, I'm just going to
18 show you three pages. Can you please just tell the jury what this is?
19 A This is the occurrence report that I had submitted into the file.
20
21 Q Thank you.
22
23 THE COURT: Okay. That will be P-7.
24
25 MR. STEWART: Do you want these now?
26
27 THE COURT: Yes.
28
29 **EXHIBIT P-7 - Occurrence Report of Clayton Schaefer, August 24, 2012**
30
31 MR. STEWART: I won't be long. (INDISCERNIBLE)
32 with a picture, and then I have -- after the -- after the --
33
34 THE COURT: You know, it's okay if you -- if you set
35 that up before we come in.
36
37 MR. STEWART: I understand.
38
39 THE COURT: You don't have to wait --
40
41 MR. STEWART: I understand.

1
2 THE COURT: -- until we come in.
3
4 MR. STEWART: I understand, My Lord.
5
6 THE COURT: I am now beginning to be concerned
7 about the time.
8
9 MR. STEWART: My Lord, it's taken me seven years to do
10 this, My Lord. Please just grant me a few moments to --
11
12 THE COURT: But I am just thinking that next time,
13 maybe feel free to set it up --
14
15 MR. STEWART: Tomorrow -- tomorrow, I'll be --
16
17 THE COURT: -- before we come in.
18
19 MR. STEWART: -- on it tomorrow. Absolutely. I'll be
20 entering this into evidence, along with the evidence of my detention in jail. And I'll
21 be using all those videos. Ms. Rohrke complained yesterday that there was too
22 many videos, but I'll use them all, seeing as she tried to use them. So I'll just use
23 them all. So I'll -- I'll be including this, and I'll also be including this mug shot here,
24 and we have it on the TV (INDISCERNIBLE) can you turn the TV on, please?
25
26 THE COURT: The videos that Ms. Rohrke reviewed
27 yesterday are in evidence.
28
29 MR. STEWART: Okay.
30
31 THE COURT: Right?
32
33 MS. ROHRKE: So, My Lord, just to kind of describe
34 how the videos work when you get them from Detention or from the security
35 system at the police, they're broken into multiple files.
36
37 THE COURT: M-hm.
38
39 MS. ROHRKE: So I think on, you know, there might be
40 14 incidents that all have four video files that are all an hour long. So the evidence
41 that I put in evidence yesterday was simply that one file --

1
2 THE COURT: Yes.
3
4 MS. ROHRKE: -- that had that one section.
5
6 THE COURT: Yes.
7
8 MS. ROHRKE: So the issue I have is that there's
9 probably -- I mean, the plaintiff alleges 18 hours. That's how long we would be
10 sitting here if we wanted to watch all of it, My Lord.
11
12 THE COURT: You are not planning on putting in all of
13 the videos?
14
15 MR. STEWART: Well, I was in jail for 18 hours. We
16 don't -- I should -- there's snippets in here of what they did to me. But I don't need
17 to -- we need to prove that I had -- do we need to watch all 18 hours --
18
19 THE COURT: No.
20
21 MR. STEWART: -- that I was in jail? No.
22 (INDISCERNIBLE).
23
24 THE COURT: And we accept you were in jail 18 hours.
25
26 MR. STEWART: Okay.
27
28 THE COURT: That's come out in evidence.
29
30 MR. STEWART: So then I can just show you small videos?
31
32 THE COURT: Small snippets, yes.
33
34 MR. STEWART: That's fine.
35
36 THE COURT: Just as Ms. Rohrke showed us a small
37 snippet yesterday.
38
39 MR. STEWART: (INDISCERNIBLE). Do we have it up
40 on the screen yet? No? Can I get the -- and I'll be entering this picture into
41 evidence. I have it on a disk. But I'll ...

1
2 THE COURT: Of course, we have already got that in --
3
4 MR. STEWART: (INDISCERNIBLE) a lot better.
5
6 THE COURT: -- photographic form.
7
8 MR. STEWART: Colour. And it's clear. It's not fuzzy --
9
10 THE COURT: Okay.
11
12 MR. STEWART: -- and blurry.
13
14 THE COURT: Okay.
15
16 Q MR. STEWART: Mr. Schaefer, that's a picture taken of me
17 the day after. That's my brother's birthday, August 25th. That's the day after. Do
18 you -- can you just describe to the jury if you see any -- any injuries?
19
20 THE COURT: No, no. The injuries are self-evident.
21
22 MR. STEWART: The injuries are self-evident. Okay. Well,
23 that -- that gets further to my questions, then.
24
25 Q MR. STEWART: Mr. Schaefer, you testified in court
26 yesterday that you thought I caused the injuries to myself. Is that correct?
27 A You did.
28
29 Q But you acknowledge that I sustained injuries as a result of this encounter with
30 yourself and other officers; is that correct?
31 A Yes.
32
33 Q Okay. Yesterday, Constable Keating testified that he did not see any visible
34 injuries on me after this encounter. Do you think that's a reasonable
35 interpretation of the evidence at this point?
36
37 THE COURT: No. No, that's an argumentative question.
38
39 MR. STEWART: Cool. Fine.
40
41 THE COURT: What is clear, though, is Constable

1 Schaefer has a different view --

2

3 MR. STEWART: M-hm.

4

5 THE COURT: -- than Constable Keating.

6

7 Q MR. STEWART: Constable Schaefer, do you think this is a
8 deliberate attempt to conceal through an abuse of process what really happened
9 on August 24th, 2012?

10

11 THE COURT: Again. Argumentative.

12

13 MR. STEWART: Okay, Your Honour.

14

15 THE COURT: Again, cross-examination should be on
16 this day, what did you do.

17

18 MR. STEWART: Okay.

19

20 THE COURT: What did you see.

21

22 MR. STEWART: Okay.

23

24 THE COURT: What did you hear.

25

26 MR. STEWART: Okay.

27

28 THE COURT: Those are questions.

29

30 MR. STEWART: Okay.

31

32 THE COURT: And the constable, no doubt, wants to
33 give you answers.

34

35 MR. STEWART: He certainly does. Okay.

36

37 THE COURT: What you are saying is -- you are making
38 an argument, and that is what you will make at the end of the day. Right?

39

40 MR. STEWART: Okay. Fantastic, My Lord.

41

1 THE COURT: You will say, this is not reasonable.
2
3 MR. STEWART: Okay. Fantastic. I just have the audio to
4 play now of the dispatch radio. If we can play it one more time for Mr. Schaefer?
5 That audio is already in evidence.
6
7 THE COURT: Yes.
8
9 MR. STEWART: (INDISCERNIBLE).
10
11 THE COURT: Absolutely. It has been played several
12 times.
13
14 MR. STEWART: Yes.
15
16 (AUDIO/VIDEO PLAYED)
17
18 MR. STEWART: (INDISCERNIBLE).
19
20 THE COURT CLERK: (INDISCERNIBLE).
21
22 (AUDIO/VIDEO PLAYED)
23
24 THE COURT: Is this in?
25
26 THE SHERIFF: We turned -- we turned the amplification
27 up for the day, but we just have to watch the microphones for feedback. So ...
28
29 (AUDIO/VIDEO PLAYED)
30
31 THE COURT CLERK: It's not coming out at all.
32
33 THE SHERIFF: (INDISCERNIBLE).
34
35 (AUDIO/VIDEO PLAYED)
36
37 MR. STEWART: Mm. Next time I'll bring mine.
38
39 THE COURT: I again respectfully remind you,
40 Mr. Stewart, we have heard this three times.
41

1 MR. STEWART: Yeah. It's very important to hear it again,
2 My Lord.
3
4 THE COURT: Let Ms. Rohrke help you.
5
6 MR. STEWART: (INDISCERNIBLE).
7
8 (AUDIO/VIDEO PLAYED)
9
10 MR. STEWART: Okay. Yeah. We've got it. It's been a long
11 number of years (INDISCERNIBLE).
12
13 Q MR. STEWART: Mr. Constable Schaefer, I'm just going to
14 play this for you as loud as I can, and we're just -- we're just going to listen to
15 the whole thing. It's not very long. It's actually only 2 minutes and 42 seconds is
16 the entire dispatch. And there's actually some dispatch (INDISCERNIBLE).
17 There's -- there's also some dispatch of another officer. He is the officer that
18 was in that black pick car that I originally alluded to, and you'll hear his voice
19 after --
20
21 THE COURT: You have to ask these questions to the
22 witness.
23
24 MR. STEWART: Oh, no, I understand. I just -- I mean,
25 there's -- there's a voice there, so ...
26
27 (AUDIO/VIDEO PLAYED)
28
29 Q MR. STEWART: That's at the 1-minute mark.
30
31 (AUDIO/VIDEO PLAYED)
32
33 Q MR. STEWART: Okay. So that gentleman, that voice there,
34 he was not one of the gentlemen directly involved in this incident. He wasn't --
35 his voice there was not Constable Keating, Constable Schaefer, Constable
36 McAvoy, Constable Boyce, or Constable Hounsell.
37
38 THE COURT CLERK: I'm having trouble hearing you.
39
40 MR. STEWART: Sorry?
41

- 1 THE COURT: You are not speaking into a microphone.
2
- 3 MR. STEWART: Oh.
4
- 5 THE COURT CLERK: Yeah.
6
- 7 MR. STEWART: Okay.
8
- 9 Q MR. STEWART: That gentleman that was -- that second
10 voice. That was -- was not a gentleman that was involved directly in the I bet,
11 was it, Mr. Schaefer?
- 12 A I -- I don't know which voice you're talking about.
13
- 14 Q Okay. That's okay. I'll -- I'll just -- there was a black car, and it -- it -- it was
15 behind me as I was being driven to the police station. And in that black car was
16 a police officer, and he was making those comments, that he is driving. I am
17 play it again for you, sir. He -- and he is driving the car.
18
- 19 MS. ROHRKE: My Lord, I would just object. The
20 plaintiff is assuming evidence that's not in fact --
21
- 22 THE COURT: Yes.
23
- 24 MS. ROHRKE: -- or facts that are not in evidence.
25
- 26 MR. STEWART: No, I'm just -- I'm clarifying that this
27 person wasn't involved in the --
28
- 29 THE COURT: What is the point you want to make? If
30 you will go to the mike? What is the point you want to make?
31
- 32 MR. STEWART: The -- the point is, My Lord, is that
33 there's a time stamp on this audio. She says the time is 1905. The -- the audio
34 dispatch itself is just 2 minutes and 42 seconds, but it's actually from the -- the call
35 that Officer Keating made was only a minute and a bit. So that's the call that
36 officer -- Constable Keating made. The -- the other half of this dispatch, I'm just
37 trying to tell you that it's not an officer that was involved in the -- it's just a
38 different officer. So we can only -- we're only using, like, half of this. Does that
39 make sense? Am I making sense?
40
- 41 THE COURT: What is -- no. Why is it important?

1
2 MR. STEWART: Well, why is it important?
3
4 THE COURT: Why is it important?
5
6 MR. STEWART: That -- that --
7
8 THE COURT: The point is Constable Keating says he
9 was involved in a brawl with you --
10
11 MR. STEWART: M-hm.
12
13 THE COURT: -- and your brother. He called for
14 backup. Backup came.
15
16 MR. STEWART: Yes. Yes.
17
18 THE COURT: What is the point you want to make about
19 that?
20
21 MR. STEWART: Okay. Okay. The point is that it came
22 very fast, and that they -- that's half of the audio, the second half of the dispatch
23 audio that they gave us is another gentleman driving the car. It's got nothing to do
24 with the -- the call for assistance, Constable Keating's call for assistance, the
25 second half of this audio is not a call for assistance.
26
27 THE COURT: But that --
28
29 MR. STEWART: That's all I'm trying to say.
30
31 THE COURT: Right.
32
33 MR. STEWART: Okay.
34
35 THE COURT: There were just the first two requests by
36 Keating.
37
38 MR. STEWART: M-hm.
39
40 THE COURT: And the evidence is the assistance came
41 relatively quickly.

1
2 MR. STEWART: Yes. Okay. That's all I wanted to show,
3 because I --
4
5 THE COURT: Okay.
6
7 MR. STEWART: -- I just need to play the first part again,
8 and --
9
10 THE COURT: Well, I think --
11
12 MR. STEWART: Okay.
13
14 THE COURT: -- you can -- you can say that that's in
15 evidence.
16
17 MR. STEWART: Okay. I'm -- I'm glad it's in evidence.
18 Okay.
19
20 MS. ROHRKE: My Lord, can I just perhaps make one
21 point about this audio?
22
23 THE COURT: Yes.
24
25 MS. ROHRKE: This is a audio of Dispatch. It does not
26 necessarily portray the timeline of events, and it is not an accurate portrayal of a
27 timeline. It's not a continuous file. There's no evidence that it is.
28
29 THE COURT: Okay.
30
31 MS. ROHRKE: So it could have been cut, if that makes
32 any sense, and -- and made smaller in order to make it less lengthy.
33
34 THE COURT: But if the point you want to make,
35 Mr. Stewart, is that police backup got there pretty quickly, the answer is, point
36 made.
37
38 I assume you have no objection to that over-the-forest observation?
39
40 MR. GIBBINGS: Not at all, My Lord.
41

1 THE COURT:

Thank you.

2

3 Q MR. STEWART:

I just want to show the jury the -- the audio that the Dispatch said the time is 1905. And that was when they -- they basically finished the -- I think the -- the word was we've got the -- we've got them in custody. And the dispatch radio operator said, Copy, 10-4, the time is 1905. So that would be 705. Did you hear your voice or were you at all on that dispatch recording, Mr. -- Constable Schaefer? Were you on that recording at all? Like, did you hear your voice on that recording at all?

10 A Again, I heard a series of voices.

11

12 Q Okay.

13 A And I wasn't able to pick one out that was mine. I don't know if -- I -- I would have to hear it again. But again, that's not a true timeline of what happened.

14

15
16 Q Okay. And that's fair. That's just what you like to say, and that's fine. It's not a true timeline, even though they're saying it's -- the time is 1905. That's fine. Okay. Mr. Schaefer, I just -- I'll have to -- you'll have to excuse me. It's not often that someone is accused of acting like a two-year-old and having a temper tantrum. So just bear with me, please, sir. "Yes" or "no," you were being questioned today with the -- with respect to the torts of assault, battery, false arrest, false imprisonment, intentional infliction of mental suffering, negligence causing personal injury, negligent standard of care, and abuse of process; is that correct? Are you aware that you're being sued for these torts?

25 A Yes.

26

27 Q Okay. So you understand today that the evidence you give will be important?

28 A Yes.

29

30 Q Okay. You have informed yourself on the subject matter, on the case that we will be discussing today?

32 A Yes.

33

34 Q You were active -- on active duty on August 24th, 2012; is that correct?

35 A Yes.

36

37 Q You were acting as a traffic safety enforcement officer?

38 A I was in my role as a police officer in the Traffic Section of the Saskatoon Police Service.

39

40
41 Q The Traffic Section. So you were -- your primary goal that evening was the

1 enforcement of traffic safety?
2 A That's one of my jobs.
3
4 Q No. I understand. But your primary goal was -- was traffic safety?
5 A My primary goal is to enforce all laws.
6
7 Q All laws? Okay. Including the traffic safety statute?
8 A Including that, yes.
9
10 Q Yeah. Including that. Okay. Fantastic. Constable Schaefer, did you take the
11 stand and testify against me at my criminal trial?
12 A Yes.
13
14 Q Constable Schaefer, did you take the stand knowing the charges that had been
15 laid against me were really false charges?
16 A I don't understand that question.
17
18 Q Constable Schaefer, I was accused of assaulting yourself. Did you take the stand
19 knowing the charges that had been laid against me, the two charges of assault,
20 as well as a charge of obstruction, were really false charges?
21 A They were not false charges.
22
23 Q Okay. They were not false charges. Constable Schaefer, did you knowingly
24 commit an abuse of process by charging me with crimes I did not commit to
25 cover for your own misconduct?
26 A I did not charge you with crimes that you did not commit. You were found
27 guilty in court of those crimes.
28
29 MR. STEWART: Okay. I was not found guilty of assault,
30 My Lord. It was -- it was thrown out for lack of evidence by Justice Singer --
31
32 THE COURT: Yes. But you were found guilty of
33 obstructions.
34
35 MR. STEWART: -- of both counts. Yeah, I certainly was,
36 wasn't it? Mm. Yeah.
37
38 Q MR. STEWART: So I'm going to ask you one more time.
39 Did you take the stand knowing that the charges that has been laid against me
40 were really false charges?
41

- 1 THE COURT: Well, that's a little bit of an unfair
2 question.
3
- 4 MR. STEWART: Okay.
5
- 6 THE COURT: It happens all the time --
7
- 8 MR. STEWART: M-hm.
9
- 10 THE COURT: -- that people are charged with crimes,
11 and then they are acquitted by a judge. The police think the crime has been done,
12 but they don't convince the judge. Or sometimes, they are charged with murder, and
13 the judge and jury says manslaughter. So the constable has indicated what he
14 thought went on, and that you were charged. The record will note, and you can
15 make this point to the jury, you were acquitted of the assault charges.
16
- 17 MR. STEWART: Thank you, My Lord.
18
- 19 Q MR. STEWART: Constable Schaefer, your job entails more
20 than just physically arresting someone, does it not?
21 A That's right.
22
- 23 Q Okay. To be hired for your job, there are certain educational requirements that
24 have to be met?
25 A Yes.
26
- 27 Q What are some of those educational requirements that have to be met?
28
- 29 THE COURT: This -- this is not relevant.
30
- 31 MR. STEWART: It's not relevant? Okay.
32
- 33 THE COURT: Not relevant.
34
- 35 Q MR. STEWART: "Yes" or "no," Constable Schaefer, do
36 you consider yourself to be a professional?
37 A Yes.
38
- 39 Q Okay. "Yes" or "no," do you consider yourself to have honour and integrity?
40 A Yes.
41

1 Q Constable Schaefer, would you say you use computers on the job?

2 A Yes.

3

4 Q Constable Schaefer, did you use a computer on the evening in question?

5 A Yes.

6

7 Q Ah. So you would say modern law enforcement is maybe more about gathering
8 information and facts than it is about applying force or the threat of force?

9 A No.

10

11 Q Okay. You testified in criminal court that Jarvis Stewart, my brother, allegedly
12 refused to give you his name or identity?

13 A Can you repeat that?

14

15 Q In -- you testified in criminal court that my brother, Jarvis Stewart, allegedly
16 refused to give you his name or his identity. You testified in criminal court. Did
17 you or did you not testify in criminal court during April 15th, 16th -- or 16th,
18 17th, 18th, on 2013, that my brother allegedly refused to give you his name or
19 identity?

20 A I testified in court. I don't recall what my transcript says. However, Jarvis did
21 eventually give me his name, as well as your name, that you didn't give me.

22

23 Q Okay. I'd like you to look at your notes -- your occurrence, general occurrence
24 notes, please, Constable Schaefer.

25

26 THE COURT: Do you have it, Constable?

27

28 A I do.

29

30 MR. STEWART: M-hm. And the -- the jury is going to get
31 copy of these -- of -- of these later tonight, right? The jury will get a copy of all
32 these --

33

34 THE COURT: Yes. All exhibits will go to the jury room.

35

36 MR. STEWART: Okay. Fantastic. Thank you. Thank you,
37 My Lord.

38

39 THE COURT: That's why -- so both the occurrence
40 report of Keating and Schaefer will be in the jurors' hands, as well as the poster, the
41 whole bit.

1
2 MR. STEWART: And then I'll -- I'll -- as the rest of the
3 defence -- the defence come in, I'll bring their occurrence --
4
5 THE COURT: If you have other occurrence -- that's
6 right.
7
8 MR. STEWART: Okay.
9
10 THE COURT: When the guy gets on the stand, put it in
11 front of him.
12
13 MR. STEWART: Okay.
14
15 THE COURT: Boom, it's an exhibit.
16
17 MR. STEWART: Okay. Fantastic. Thank you, My Lord.
18
19 Q MR. STEWART: Okay. I have to get my computer in a
20 moment. But, Constable Schaefer, you testified in my criminal trial that you had
21 filled out a use of force report. Is that correct?
22 A I had stated in your trial that a use of force report was done.
23
24 THE COURT: But again, we don't necessarily have to
25 go over plowed ground. The constable has testified that he was wrong in that
26 statement, that he did not fill out a use of force report. That's a given. That's a fact
27 we know.
28
29 Q MR. STEWART: Constable Schaefer, you -- you testified
30 in criminal court, but it turns out you were wrong. You had an affidavit, I
31 believe, and I think your defence has it. Can you bring that up, the affidavit that
32 you verily do believe that you did not write up a use of force report? See, you
33 all have used force, but you just -- you used enough force. So I'm just trying to
34 get to the facts of how much force could have been used. So, Mr. --
35
36 THE COURT: But then why don't you ask him that
37 question?
38
39 Q MR. STEWART: Constable Schaefer, did you use force
40 against me?
41 A There was force used, yes.

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Q Constable Schaefer, did you fill out a use of force report?

A I did not.

Q Constable Schaefer, why did you testify in criminal trial that you did, in fact, fill out a use of force report?

A I believed there was one filled out at the time.

Q You believed there was a use of force report filled out at the time by you?

A No.

Q Oh. So when I asked you in criminal court, did you or did you not fill out a use of force report, and you answered yes, and now you're wrong; is that correct?

A Again. I don't have the transcript in front of me.

Q Okay. That's okay, because --

A But my -- because I have --

Q -- I -- I do. So we'll just -- we'll just go to it right now.

A Okay.

Q Okay.

THE COURT: But again, Mr. Stewart, because time is becoming an issue, what is the point you are trying to make? If it is that Constable Schaefer made a mistake on the issue of the use of force, that's -- you have made that clear.

MR. STEWART: Have I made it clear that --

THE COURT: You have made it clear.

MR. STEWART: -- he's -- it's nothing but mistakes here. It's -- it's just -- it's just a constant.

THE COURT: Well, no. Again, I am not agreeing with that.

MR. STEWART: Ha-ha. All right.

THE COURT: But there was a mistake on that, and there

1 is no question.

2

3 MR. STEWART: Wasn't -- wasn't there a mistake on the
4 stand? There was a mistake. So okay.

5

6 Q MR. STEWART: So I'm not -- I'm not going to ask you,
7 then. I've got it here, but --

8

9 THE COURT: Yes.

10

11 Q MR. STEWART: -- yeah, you -- you testified --

12

13 THE COURT: If he's -- if he --

14

15 Q MR. STEWART: -- in criminal trial, but there was a
16 mistake, and now we've got an affidavit saying that. So anyways. So, Constable
17 Schaefer, I'm just going to read your notes here. Let's just go to one, two, three,
18 four -- the fourth -- the fourth paragraph of your notes. It starts with "I advised
19 the male to get on the ground."

20 A Yes.

21

22 Q Okay. So I testified that Constable Keating told you to take him down, me,
23 being take him down. Constable Keating testifies that he told you to arrest me
24 for obstruction. Is that correct?

25 A Yes.

26

27 Q And then you in turn tell me to go to the ground; is that correct?

28 A That's right.

29

30 Q Okay. So you --

31 A I was notified to arrest you for obstruction.

32

33 Q Yeah. Obstruction. Yeah.

34 A So I ask you to go to the ground.

35

36 Q Yeah. So let's just -- let's just read -- I'm going to call this story time with Stew.
37 Let's just read your notes here and just -- just stop me if it's -- if it's -- if it's
38 wrong here. (As read)

39

40 I advised the male to get on the ground. I believed that at this
41 point, there was significant risk to officers, and I wanted more

1 control over the suspect while he was on the ground. Reasons was
2 Constable Keating already had issues with this male, as he
3 requested backup. He was out of his vehicle. He postured a
4 combative body language, and he vocalized disdain at my and
5 Constable McAvoy's presence. It should be noted that the ground
6 was dry pavement and would not suffer any hardships if he laid
7 on the ground. He stated to me, no, I'm not doing that. I advised
8 him to get on the ground again. He did not comply. Constable
9 McAvoy told him also to get down, and he refused to do so. He
10 was non-compliant with officers. He heard Constable Keating that
11 he was to be placed under arrest, and he was aware that this was
12 my intention. I had had held his left arm, and he had pulled away
13 from me. This male was a muscular male, 6 feet tall, and 200
14 pounds.

15
16 Is that -- is that -- is that what you wrote, Constable Schaefer?

17 A I did, and that's very accurate of what happened.

18

19 Q Fantastic. Fantastic. The next line, it says: (As read)

20

21 At this point, Constable McAvoy had went behind him and
22 grabbed his waist --

23

24 It's spelled wrong, but that's okay.

25

26 -- from behind and attempted to take him to the ground. This male
27 had resisted going to the ground.

28

29 I wonder why.

30

31 THE COURT:

So again, if I can just interrupt,

32 Mr. Stewart.

33

34 MR. STEWART:

All right. Yeah. Okay. Sure. By all

35 means, My Lord.

36

37 THE COURT:

I am just not sure how this is helping

38 your case. Your case --

39

40 MR. STEWART:

How this is helping my case?

41

1 THE COURT: Yes.
2

3 MR. STEWART: I'll tell you how it's helping my case. I'm
4 showing how all these officers have no video at all whatsoever. They're supposed
5 to have cameras that protect me. And now their notes, that's all I have left is notes,
6 and they're completely inconsistent. They're not even the same with each guy.
7

8 THE COURT: Well, if you want to point out some
9 inconsistency --
10

11 MR. STEWART: Okay.
12

13 THE COURT: -- point that out. But all you're doing is
14 repeating --
15

16 MR. STEWART: Well, that's what I'm getting --
17

18 THE COURT: -- the story about how you're --
19

20 MR. STEWART: No, I'm not.
21

22 THE COURT: -- noncompliant and combative.
23

24 MR. STEWART: M-hm.
25

26 THE COURT: I don't see how that helps you.
27

28 MR. STEWART: M-hm. So --
29

30 THE COURT: Inconsistencies.
31

32 MR. STEWART: Inconsistencies.
33

34 THE COURT: Point them out. That will help you.
35

36 MR. STEWART: Okay.
37

38 Q MR. STEWART: So if you go back to the second sentence
39 before, it says, I had had held his left arm, and he had pulled away from me.
40 Constable Schaefer, you testified that you made a mistake, that you didn't file a
41 use of force report, but in reading your notes, it appears that you used -- used

1 Lord. I'll --

2

3 THE COURT: -- the jury has it in front of them.

4 They're -- they can read it.

5

6 MR. STEWART: Okay. They can read it. Fantastic. I
7 apologize, jurors. I wasn't thinking you had it all in front of you.

8

9 Q MR. STEWART: So, Mr. Schaefer, Constable Schaefer,
10 you said you used force.

11 A Yes.

12

13 Q But just enough force that was necessary to -- to enforce the arrest, but not
14 enough force to generate you filling out a use of force report; is that correct?

15 A Yes.

16

17 Q Okay. So can you just -- suspect was passively resistant, question mark, yes or
18 no? And I'm -- I'm curious. The next question, suspect actively resistant. Well,
19 was I passively resistant or was I actively resistant? Because I ended up
20 assaulting someone in resistance. So I would think the reason for the use of
21 force would be quite clear, that you would just fill this in. And I'm just curious
22 why you testified to using force and I don't have a reason for you to use force
23 except you just say, I had to use force.

24

25 THE COURT: That's not really -- quite a question.

26

27 MR. STEWART: Okay. Then --

28

29 THE COURT: What's the question?

30

31 Q MR. STEWART: Why do I not have a reason for you using
32 force? What's the reason that you used force?

33 A The reason I used force is because you were non-compliant. You were actively
34 resistant. You were also passively resistant. The use of force model is
35 something that we're trained in. It's a representation of how we respond to your
36 actions.

37

38 Q So you're trained to -- to -- to use -- or to fill out use of force reports?

39 A Yes.

40

41 Q Okay. And you're trained to take witness statements?

1 A Yes.
2
3 Q And there were witnesses at the -- at the scene, were there not?
4 A Yes.
5
6 Q Yeah. But you didn't take any witness statements, did you?
7 A No.
8
9 Q Okay. Fantastic, Mr. Constable Schaefer. So I have another thing from my
10 criminal trial. It was the Crown prosecutor, his name was Bryce Pashovitz, and
11 he got into an argument with the judge because we didn't get anything. Like, we
12 don't have any audio. We don't video. We don't have anything. So we said we
13 want the source reports. They said, You're not going to get them. We said, Well,
14 can we have them? They said no. Well, how many are there? How many reports
15 are there? And on page 479 of my criminal transcript --
16
17 THE COURT: Yes. And again -- again --
18
19 MR. STEWART: Oh.
20
21 THE COURT: -- Constable Schaefer is on the stand.
22
23 MR. STEWART: Yeah.
24
25 THE COURT: What's the question for him?
26
27 MR. STEWART: Yeah. Okay.
28
29 Q MR. STEWART: The question is why would a Crown
30 prosecutor at my criminal trial --
31
32 THE COURT: But he can't testify what Crown
33 prosecutors think. No one can.
34
35 MR. STEWART: I'm not -- I'm not asking him to think or
36 what to think. The Crown prosecutor said there are a number of them.
37
38 THE COURT: Oh, look.
39
40 MR. STEWART: There are a number of use of force
41 reports. They are --

1
2 THE COURT: Yes. Again --
3
4 MR. STEWART: -- with respect to your question --
5
6 THE COURT: -- you are beating this dead horse. If the
7 point you are making --
8
9 MR. STEWART: It's another dead horse.
10
11 THE COURT: -- your point made is, hey, there were
12 lots of mistakes made on this use of force thing, that's -- you've proved that.
13
14 MR. STEWART: Okay. Okay.
15
16 THE COURT: And that's a fact.
17
18 MR. STEWART: Okay. Okay.
19
20 THE COURT: That's clear.
21
22 MR. STEWART: No, I know. I know. Okay. A number of
23 use of force reports. I don't have one yet. So that's okay.
24
25 Q MR. STEWART: So you didn't fill one out, but it was just
26 enough force. Okay. All right. One of your jobs as a police officer is to -- is to
27 write notes, is it not?
28 A Yes.
29
30 Q About -- about describing the facts in an investigation? And that's what is it in
31 this general occurrence hard copy, is it not, Mr. Schaefer?
32 A Yes.
33
34 Q Okay. Mr. Schaefer, yesterday, Constable Keating testified that he read me my
35 rights, and it was -- I was taken to the back of Constable Smith's car, and he
36 read me my rights where I proceeded to tell him to fuck off and fuck off and
37 fuck off. And that was it. So I'd just like you to go to your notes here. It's the
38 second page. And it says, in the second -- more or less the second paragraph, it
39 starts "the male was placed." The -- can you -- can you read that on the second
40 page? The first paragraph starts with "told him to pull his arm out." The second
41 paragraph starts with "the male was placed in the back of the" -- I'm sorry. "The

1 male was placed in the back of Constable Smith's PC." Do you -- do you have
2 that in front of you?

3 A Yes.

4
5 Q Okay. So yesterday, Constable Keating testified that he read me my *Charter*
6 rights. He got me -- told me a call to a lawyer where I proceeded to just tell him
7 to fuck off, and I never got to call a lawyer. So I'm just curious. It says here "the
8 male was placed in the back of Constable Smith's PC. I attended," I being you,
9 Constable Schaefer. "I attended to the Constable Smith's PC." A PC is police
10 cruiser?

11 A Right.

12

13 Q Thank you. (As read)

14

15 After he was placed in. I spoke to him through an open
16 window that he was being arrested for obstruction of
17 justice. He continued to holler and scream obscenities at
18 me. I advised him that he needed to listen to police to
19 avoid conflict. Constable Smith transported the male to
20 Detention. I did not know who the male was until later.

21

22 Where -- where does it say that you were there at the car with Constable
23 Keating, reading him the rights? Constable Keating says he was at the car, but
24 you said "I attended the Constable Smith's PC after he was placed into it." In
25 fact, I'll go to Constable Keating's notes.

26

27 THE COURT: Again, the point -- what --

28

29 MR. STEWART: I'm showing inconsistencies in their
30 notes, Your Honour.

31

32 THE COURT: Okay.

33

34 MR. STEWART: I'm just going to --

35

36 THE COURT: But then why don't you ask --

37

38 MR. STEWART: Oh.

39

40 THE COURT: -- Constable Schaefer, did you see
41 Constable Keating read me my rights? Isn't that the point?

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MR. STEWART: Yeah.

Q MR. STEWART: Constable Schaefer, did you see Constable Keating read me my rights?

A Yes.

Q And -- and where is that in your notes?

A My notes don't include that.

Q Okay. Fantastic. Thank you. Okay. Good stuff. I know. I know. Okay. As part of your police training, are you taught how to properly write police reports?

A Yes.

Q Okay.

A The purpose of my report is to refresh my memory.

Q Mm. Fantastic. So you're trained to write reports, and you're trained to -- to use guns, and you had a gun on you. But you weren't trained on the ICCS. I made a mistake yesterday. I assumed that you were trained on the ICCS, but you were not trained; is that correct?

A Not at the time, no.

Q Not at the time. But I believe your partner in the car, McAvoy, Constable McAvoy, he may have been trained. But that's okay. You don't have to answer that. We'll get to him next. Okay. So you know, then, that your police report would be, you know, fairly important to be used to refresh -- to refresh your memory. At some point in this incident, Mr. Constable Schaefer, you made mention that the car may have been stolen?

A Yes.

Q Is that -- is that correct? Yes? Okay. Did you find anything in the car that was, like, a bill of sale or something that directly related -- was attributable to that car being purchased legally or not being stolen or something, et cetera?

A No.

Q There was nothing in the car?

A I didn't.

Q There was no bill of sale, there was no receipt, there was nothing? It was -- there was nothing? It was all -- it was just nothing but crazy Freeman on the

1 Land documentation. Is that correct?

2 A There was a lot of things in the car.

3

4 Q A lot of things in the car.

5 A I didn't go through everything.

6

7 Q You didn't go through everything?

8 A But I did not locate a bill of sale.

9

10 Q I'm sorry?

11 A I did not locate a bill of sale.

12

13 Q You did not locate a bill of sale? So at what time and how did you find out that
14 the car was not stolen?

15 A It was after you had left the scene.

16

17 Q Interesting. After I left. Is there anything in your notes -- I'd just like you to
18 have a look. Is there anything in your notes that would -- would show that
19 you -- how can I say this? Would prove to -- to -- in your notes that the people,
20 the two occupants of the car, had been notified that they were potential car
21 thieves? Is there anything in your notes that says, you know, we were -- we --
22 yeah. Is there anything in your notes that says that you were investigating a
23 stolen vehicle? And if there is, is there anything in your notes that says you --
24 you explained this to the occupants?

25

26 THE COURT: Again, Mr. Stewart. It's well settled that
27 you were not arrested because they thought you'd stolen the car. There were
28 suspicions that I wonder if this car is stolen. But you were arrested because of the
29 obstruction of justice.

30

31 MR. STEWART: The obstruction of justice?

32

33 THE COURT: Yes.

34

35 MR. STEWART: That's the obstruction of justice. That's
36 what I was arrested for.

37

38 THE COURT: That's what -- yes. Well, that's what
39 Constable Keating told --

40

41 MR. STEWART: Didn't he, though?

1
2 THE COURT: -- Constable Schaefer.
3
4 MR. STEWART: I know. It wasn't --
5
6 THE COURT: And I -- and I accept the fact the police
7 probably thought to themselves, I wonder if this is stolen. But they eventually
8 figured out it wasn't.
9
10 MR. STEWART: Yeah. It would be great to actually tell
11 the people involved. Okay, My Lord. So --
12
13 THE COURT: But, I mean, all of that is obvious.
14
15 MR. STEWART: Actually, My Lord, I really take
16 exception to that. It's not obvious because there's no fucking audio. There's no
17 audio. There's no audio. Like, that's my -- my protection, you see. It's -- it's -- oh,
18 we have a microphone, but we didn't have a microphone.
19
20 THE COURT: But it is not --
21
22 MR. STEWART: And you just sit in it. No. No, no, no.
23 You -- this is 2012. This is 2012. This -- where's my camera? I can't see this. This
24 has a microphone in it. It's a camera and a microphone, together. They work.
25
26 THE COURT: Again --
27
28 MR. STEWART: And when they don't work --
29
30 THE COURT: Again.
31
32 MR. STEWART: -- something pops up that says --
33
34 THE COURT: Again, you are engaging in argument.
35
36 MR. STEWART: -- that's it, it doesn't work. Fine.
37
38 THE COURT: You are engaging in argument. Have you
39 got a question for the witness?
40
41 MR. STEWART: Oh, I'm engaging in argument. I'm

1 engaging in an argument. Ha-ha. I'm not. (INDISCERNIBLE). Excuse me, My
2 Lord. Yeah.

3

4 Q MR. STEWART: "Yes" or "no," you understand from your
5 own experience that a prosecutor would rely on your police report in figuring
6 out what the prosecution's evidence might be?

7 A Yes.

8

9 Q In your experience? Yes. And you're aware that a prosecutor would use your
10 police report for building his case for trial?

11 A Right.

12

13 Q Okay. And so you understand that a prosecutor would need to know the -- the
14 who, what, when, where, why, and how of the alleged crime or offence?

15 A Right.

16

17 Q Okay. So we can agree, then, that a big part of your job entails arresting people
18 and investigating cases?

19 A Right.

20

21 Q Thank you. And you just alluded earlier, if you must testify in a case where you
22 made the arrest, you can use your police report to refresh your memory?

23 A Right.

24

25 Q Yeah. Fantastic. And it's important, then that your police report be accurate?

26 A Yes.

27

28 Q And it's important, then, that your police report be thorough?

29 A Yes.

30

31 Q And it's important that your police report be complete?

32 A Yes.

33

34 Q And it's important that your report contain the facts which give a clear picture of
35 what happened?

36 A Yes.

37

38 Q Yes? Yeah. And it's important that the report contain the actual facts and not
39 just your one-sided opinion?

40 A It -- it included the facts, yes.

41

1 Q Absolutely. Fantastic. Constable Schaefer, as a professional police officer, do
2 you demand accuracy and thoroughness of yourself?

3 A Yes.

4

5 Q Constable Schaefer, as a professional police officer, do you demand accuracy
6 and thoroughness of other police?

7 A Yes.

8

9 Q Okay. Constable Schaefer, I have a designation as a plumber. I'm -- I'm a
10 tradesman. I'm a plumber. And so any time I go into a building and there's
11 another plumber who's doing something that's maybe not correct and up to
12 code, I have a personal and a social and a professional responsibility to tell that
13 plumber that what he's doing is wrong. Now, you're a professional police
14 officer. And I'm not going to tell you how to do your job. But I would think at
15 some point that you would talk with other officers about engaging in -- in
16 good -- I'll call it good practices. Is that correct? Would you say you talk to one
17 another about how you -- how you treat people, how you work together, how --
18 how you do things, how you -- how you police? Do you talk with one another
19 how techniques are used? Do you -- do you do that with one another?

20 A Occasionally.

21

22 Q Occasionally? Like, I'm -- I'm a plumber, and I talk to other plumbers about
23 how they plumb.

24

25 THE COURT: Yes. But again, we are running out of
26 time. I wonder --

27

28 MR. STEWART: Well, why are we running out of time?

29

30 THE COURT: What is -- because we have only got until
31 Friday. What is the point you're trying to make? Is the --

32

33 MR. STEWART: Okay. Yeah.

34

35 THE COURT: -- question you want to ask the
36 constable, if you saw an officer --

37

38 MR. STEWART: You know, you just --

39

40 THE COURT: -- doing something wrong.

41

1 MR. STEWART: Okay. I know. Yes. I know. M-hm.

2

3 THE COURT: -- if you saw an officer doing something
4 wrong, would you say something? Is that the question you want to ask? Because
5 that's your plumber analogy.

6

7 MR. STEWART: I'm getting there, My Lord. It's close.

8

9 THE COURT: Okay.

10

11 Q MR. STEWART: Constable Schaefer, yesterday I --
12 Constable Keating testified that he arrested me under the *Criminal Code*, the
13 Canadian *Criminal Code*, and not the *Traffic Safety Act*, which has direct
14 instructions. So, Constable Schaefer, as a professional policeman and the officer
15 involved in my arrest -- it was yourself, McAvoy, and Constable Keating.
16 We've all heard testimony that it was the three of you that were the original ones
17 to put your hands on me. Constable Keating said that I was arrested under the
18 criminal act, the Canadian criminal act, which means, then, that if -- it's the
19 *Criminal Code*, sorry, the Canadian *Criminal Code* -- which means, then, that I
20 have -- I am kind of protected, because once I've been arrested, you have duties
21 and obligations, do you not, as a professional?

22 A Yes.

23

24 Q Yes. You do. You have duties and obligations, because the power of arrest is a
25 very powerful thing, is it not, Mr. Schaefer?

26 A It can be, yes.

27

28 Q Yeah. The power of arrest is a very powerful thing. Yes. Okay. For the record,
29 Constable Schaefer, you visited me in cells, did you not?

30 A Yes.

31

32 Q Were you there to get me out of jail?

33 A No. I wanted to get your identity.

34

35 Q Mr. Schaefer, Constable Schaefer, can you just go through your notes and just
36 show the jury -- or tell the jury at what point you asked me for my identity and I
37 refused to give it to you? (INDISCERNIBLE).

38 A In my handwritten notes, 1957, I attended to the cells. As I testified yesterday.

39

40 Q No, no, no. The question, Constable Schaefer, is where -- where you asked me
41 for my name and where I refused to give it to you in your -- in your notes there.

1 A At 1957, I attended to Detention.
2
3 Q Not --
4 A In my handwritten notes.
5
6 Q 1957?
7 A Yes.
8
9 Q (INDISCERNIBLE). There's -- there's -- there's nothing about --
10
11 THE COURT: No. It's -- you're using different
12 technology. All police officers have handwritten notes.
13
14 MR. STEWART: Okay.
15
16 THE COURT: He has made the notation in his
17 handwritten notes about visiting you. Does it come up in the incident report,
18 Constable Schaefer? That's what you're talking about, right, Mr. Stewart?
19
20 MR. STEWART: No, I'm -- I'm talking about identity.
21 Like, when you're -- when you're asking me my identity.
22
23 THE COURT: Yes. But you're talking about is it
24 mentioned in the incident report.
25
26 MR. STEWART: The incident report? Yeah. Is it
27 mentioned in the -- yeah. Is it mentioned in the incident report?
28
29 THE COURT: That's the question.
30
31 A It's not in the incident report, but it is in my handwritten notes.
32
33 THE COURT: There. You have made the point.
34
35 MR. STEWART: Okay.
36
37 THE COURT: You must -- we must be getting towards
38 the end of this witness, Mr. Stewart.
39
40 MR. STEWART: Okay.
41

1 Q MR. STEWART: One of the -- one of the problems I have
2 is I believe I was held in jail too long. I believe it was -- it was a much longer
3 detention than normal. And it's my understanding of the *R. v. Simpson* and the
4 Canadian *Criminal Code* under 497 and 498 the duties of an arresting officer.
5 So I'd like to bring those duties up, because Jay Keating said I was not arrested
6 in the *Traffic Safety Act*. So then if he's the arresting officer, then he has duties.
7 He doesn't just get to take me away. So you're the second in line, Mr. Schaefer,
8 and you are a professional police officer, and you engaged in my arrest and my
9 physical takedown. So you, I believe, are just as responsible for the Canadian
10 *Criminal Code* and the Section 497 and 498 of when I was released.

11

12 THE COURT: And that is an argument you will make
13 for the jury.

14

15 MR. STEWART: Okay. Fantastic.

16

17 Q MR. STEWART: Then why did you, Mr. Schaefer, instead
18 of releasing me that evening, why the -- why did you then begin to start -- what
19 do you call it? Activating a warrant? What -- what's the term when you -- when
20 you -- when you activate what -- execute a warrant? Constable Schaefer, do you
21 think executing three warrants in the middle of the night under the *Traffic*
22 *Safety Act* was acting in good faith?

23 A Executing the warrants that were under your name was acting in good faith, yes.
24 I arrested you for those.

25

26 Q Okay. Constable Schaefer, those warrants were never actually mailed or issued
27 to me. Those warrants first came to my attention the second day, August 25th,
28 after they had basically -- you had basically sent me off to Detention. So I'm --
29 I'm just curious. How did you not take me in front of a justice of the peace until
30 the next day as -- as a -- as an arresting officer, but you actually found the time
31 to go and dig up some traffic safety offences and get a justice of the peace to
32 write up my warrants? Why did you not get me in front of a justice of the
33 peace? Why did you then decide to write warrants instead and leave me in jail?
34 Why did you -- why did you decide to do that? Why did you think that was
35 good faith?

36 A I think you're confused on the procedure. The warrants were already on the
37 CPIC system. The warrants were already outstanding for those two -- three
38 traffic tickets that we talked about yesterday.

39

40 Q Yeah, I know. Weren't they? I -- but I never received anything. There was
41 never -- there was never -- yeah, there was never -- there was never any warrant

1 ever issued that I can ever -- the only time those ever came up was that evening.
2 And then, under that warrant, it even says, the -- the -- it's on your tab. You can
3 be released. So why did you not release me after then you -- you executed the
4 warrants? Why did you not release me after the warrants were executed?

5 A Okay. Those -- I can't release you. Well, I can't release you until I know who
6 you are.

7

8 Q Okay. But -- m-hm. You can't release me until you know who I am. But you're
9 saying you knew who I was. No, but it was on the warrant. My -- okay.

10

11 THE COURT: Let me ask you this.

12

13 Q MR. STEWART: Okay. So yeah. No, so -- so -- so -- so
14 you didn't --

15

16 THE COURT: I will ask -- I will ask the constable a
17 question.

18

19 So he was arrested under the *Criminal Code*. You run -- you run his name, you get
20 his name, you run it in the system, you see the three traffic warrants.

21

22 A Right.

23

24 THE COURT: You fill out the paperwork on those. Who
25 was the -- who was the officer in charge of determining when he went in front of
26 the JP for release?

27

28 A That would be the Detention sergeant, Sergeant Mitzel.

29

30 THE COURT: All right. Was it you?

31

32 A No, it was not me.

33

34 THE COURT: Was it Keating?

35

36 A No, it wasn't.

37

38 THE COURT: Who was it?

39

40 A It was the Detention sergeant, My Lord.

41

1 THE COURT: Okay.

2

3 MR. STEWART: Yeah. And that's just an excellent point,
4 My Lord. Yesterday, Constable Keating said that I was detained because that was
5 the instruction given to him by Detention staff.

6

7 Q MR. STEWART: And so you're saying that you can't
8 override the officers in charge, this Mitzel, was it? Mitzel? Constable or -- what
9 was it? Mitzel was the name?

10 A It was Sergeant Mitzel who was in charge of Detention that night.

11

12 Q He was in charge of Detention. And so it was up to him to release me and not
13 you; is that correct?

14 A That's right.

15

16 Q That's -- that's correct. That's interesting. That's -- that's a really good
17 interpretation of that where you can just -- you just hand someone off to
18 somebody else. And then so you told Sergeant Mitzel that I had assaulted
19 officers, right? Is that correct? That I had assaulted officers? You told them, the
20 Detention staff, and then they made the decision to keep me overnight. Is that
21 correct?

22 A The charge was told to the Detention sergeant while you were here, and you
23 were charged with --

24

25 Q How -- how convenient that I wasn't actually notified of my charges until the
26 next day. How convenient for you and me that it wasn't until the next day. I
27 have the video of going in front of the justice of the peace. In the video, they
28 didn't even have the decency to put me in front of -- in a -- as a person. I had to
29 do a video. So -- but you're telling me you had all this time to -- to do all this
30 stuff and execute warrants, and then you actually have the ability on that
31 warrant -- and we'll show what it says -- that you have the ability to release as
32 an arresting officer. You have the ability to release. But no, it's not up to you
33 anymore. It's up to Detention staff. And Detention staff is going to keep me
34 because you told them I assaulted you. And those assault charges were
35 ultimately blew up. They bombed. You -- you went and took me to trial. You --
36 six months, and we went to criminal trial --

37

38 THE COURT: Again. Again. Again.

39

40 Q MR. STEWART: -- we walk into trial --

41

1 THE COURT: Are we going to get to a question?

2

3 MR. STEWART: And -- and yeah.

4

5 THE COURT: Finish with this question.

6

7 MR. STEWART: Oh.

8

9 Q MR. STEWART: So, Constable Schaefer, you don't have
10 the power, once you send me off to another officer; is that correct? Once you
11 send me away, you've got no more control over me; is that correct? It's your --
12 it's out of your hands. You've sent me away, and that's it, right? You -- you've
13 washed your hands of me. Is that correct? Is that what I'm to interpret?

14 A For the traffic safety warrants, you were released eventually on a form H
15 recognizance that we talked about yesterday.

16

17 Q Mm.

18 A That was given to you at your time of release. Normally, you can be released at
19 any time under a form H for traffic warrants.

20

21 Q Constable Schaefer, were you there at the time of my release?

22 A No.

23

24 Q Mm. What time did you go finish your shift that evening?

25 A Three in the morning.

26

27 Q Three in the morning. Did you at any time check up on me before you left the
28 shift for that evening and went to your bed? Did you check up on me at all?

29 A No.

30

31 Q So it was -- it was only the one time you checked up on me?

32 A That's right.

33

34 Q Okay.

35

36 MR. STEWART: My Lord, I'd like to enter my computer,
37 again. We have a video. Ms. Rohrke was showing part of it, but it was a very, very
38 poor attempt to give me a snippet. I'd like to actually show the original video, the
39 whole video, and show the -- the ladies of the jury the actual -- you know, 5, 10, 15
40 minutes previous to that, instead of trying to portray me as some monkey running
41 around. I'd like to actually show the video and show some -- show some previous

1 time that will give the jury an idea of the state I was in and what they were actually
2 looking at.

3

4 THE COURT: We, of course, have 18 hours of video. I
5 will allow you to show the 10 minutes before the video that Ms. Rohrke --

6

7 MR. STEWART: It's actually -- okay. Thank you, My Lord.
8 I'll show you the video that we had yesterday.

9

10 Q MR. STEWART: Now, you approached me.

11

12 MR. STEWART: Can I have the -- (INDISCERNIBLE)?
13 Can you see that okay? Can everybody see that? Why is it not on the big screen?
14 Can you see see that? The view of the back of my head?

15

16 THE COURT: The last questions to Constable Schaefer
17 about this.

18

19 MR. STEWART: Okay. All right. I just have to back up.
20 I'm just going to try to go slow so you can introduce the officer, or if it's not you,
21 you can (INDISCERNIBLE).

22

23 Q MR. STEWART: But you'll be able to tell the jury if this is
24 you or not or when it's you for confirmation and clarification. So this is the
25 beginning of the video that Ms. Rohrke showed yesterday when I was lying
26 down on the ground, and they were proceeding to tell -- tell you I was yelling
27 and doing all this crazy stuff. So this is the video here.

28

29 (AUDIO/VIDEO PLAYED)

30

31 THE COURT: If you can, fast-forward it to when you
32 show up.

33

34 MR. STEWART: To when I show up? Absolutely, My
35 Lord. It will be --

36

37 THE COURT: Yes. Because this is not that interesting to
38 look at.

39

40 MR. STEWART: -- right there. No, it certainly isn't, My
41 Lord. It's not very interesting at all.

1
2 THE COURT: There we are. Here we are.
3
4 (AUDIO/VIDEO PLAYED)
5
6 MR. STEWART: I apologize, My Lord. It's a little longer
7 than ten minutes. It shows a few things.
8
9 Q MR. STEWART: So now I'm in jail. That's me in jail right
10 there. And as you can see, I'm washing all the blood and all the -- all the stuff
11 off my face. And it'll take --
12
13 THE COURT: Again. Again, this is not an opportunity
14 for you to testify. You are cross-examining Constable Schaefer.
15
16 MR. STEWART: Okay. Okay, My Lord.
17
18 THE COURT: You have told your story.
19
20 (AUDIO/VIDEO PLAYED)
21
22 THE COURT: Is that you, Constable Schaefer? Was that
23 you?
24
25 A I believe it was.
26
27 THE COURT: Yes.
28
29 (AUDIO/VIDEO PLAYED)
30
31 Q MR. STEWART: All right. You've got -- you're to give me
32 ten minutes? You're going to give me ten minutes?
33
34 THE COURT: Just to watch this?
35
36 MR. STEWART: Well, no. You gave me ten minutes of
37 this video. Ms. Rohrke showed 4 minutes. Can I have the full 10 minutes to show
38 previous? Can I have 10 minutes?
39
40 THE COURT: What -- what --
41

- 1 MS. ROHRKE: My Lord, I can advise that I showed of
2 that video the minute 1620 to approximately 17 -- so six -- the minutes are 1620 to
3 17-ish.
4
- 5 THE COURT: Okay. And what -- what time marker are
6 we on now?
7
- 8 MS. ROHRKE: My Lord, if you look, I believe we're at
9 the 6-minute marker, and the video runs for --
10
- 11 THE COURT: Okay.
12
- 13 MS. ROHRKE: -- 55-zero minutes.
14
- 15 MR. STEWART: Yeah. We won't need that much. We'll
16 just need about 10 minutes here. As you can see --
17
- 18 THE COURT: And again. Are you giving testimony?
19 Your case is in.
20
- 21 MR. STEWART: My case is in. Yeah. It's a big elephant,
22 My Lord. It's a big elephant, and, you know, I -- it's -- I've never done this before.
23 I'm sorry that my case is in. I didn't realize that these people would go to great
24 lengths -- would go to such great lengths to just basically deprive me of everything.
25 So no --
26
- 27 THE COURT: Yes. But what is the point you're trying to
28 make?
29
- 30 MR. STEWART: I'm going to show you.
31
- 32 THE COURT: Are you -- are you saying -- like, there
33 was the part Ms. Rohrke showed that you were kind of acting up.
34
- 35 MR. STEWART: Yeah.
36
- 37 THE COURT: Are you trying to make the point that,
38 hey, I didn't act up all the time?
39
- 40 MR. STEWART: Yeah.
41

- 1 THE COURT: Is that the point you're trying to make?
2
- 3 MR. STEWART: That's the point I'm trying to make, My
4 Lord.
5
- 6 THE COURT: Okay. And so was -- would you act like a
7 lot of the time, like that? Just lying there?
8
- 9 MR. STEWART: What, sorry?
10
- 11 THE COURT: Is that the way you were acting, just lying
12 there, peacefully?
13
- 14 MR. STEWART: Well, no. I'm -- I'm trying to tell the
15 people. See, there's a slot at the bottom of the -- of the -- of the jail cell, okay? And
16 it's open. The rest is glass. That was Mitzel, right?
17
- 18 Q MR. STEWART: Was that Mitzel that just walked by?
19 A No, it wasn't.
20
- 21 Q (INDISCERNIBLE). So there's -- there's -- there's an open space, because they
22 can feed you food or water, okay? So I'm lying there. Now, Mr. Schaefer,
23 Constable Schaefer, you said that cell 11 is on the other side of the old police
24 station; is that correct? It was, like, at a -- there was -- there's a long hallway.
25 Could you please just describe for the jury, like, the -- how the setup of that jail
26 was?
27 A That is on the backside of the jail, yes.
28
- 29 Q That's cell 7 -- or cell 11, sorry, it's the backside?
30 A I believe it was, yeah.
31
- 32 Q So it takes you a while to kind of walk there and get there?
33 A Right.
34
- 35 Q Okay. So do you remember at all what cell my brother was in, Jarvis Stewart,
36 when he was in jail? Do you remember at the time? Was he, like, right beside or
37 was he maybe somewhere else?
38 A He was somewhere else. He was the opposite side.
39
- 40 Q The opposite side? So do you think it would be normal for a person to maybe
41 try and find where his brother is and let him know that he's okay? Do you think

1 that would be somewhat normal, that someone would try to contact his brother
2 to see where he is? Do you think that would be a normal -- a normal thing to do,
3 for someone to try to get a hold of their -- their brother? Do you think that's a
4 normal thing?

5

6 THE COURT: Is that normal, while they're in jail?

7

8 A I've heard people yelling and hollering in jail before.

9

10 Q MR. STEWART: Yeah.

11 A From what -- I suppose, if you were to call out to him, he may be able to hear
12 you, yes.

13

14 Q Yeah. And you'll see here that I'm plugging my ear. And that's me trying to hear
15 underneath. It's -- it's very loud. So this is me actually yelling at my brother,
16 because I'm trying to tell him that they beat me up, and I'm -- I'm --

17

18 MR. GIBBINGS: My Lord, he's testifying.

19

20 THE COURT: Yes. You are giving testimony. But the
21 record will note you weren't acting crazy all the time you were in the cell.

22

23 MR. STEWART: Fantastic. Thank you.

24

25 THE COURT: Okay.

26

27 Q MR. STEWART: So now, one more thing. When he -- he's
28 going to come in here, because we talked about this is lawful, arrested me
29 without -- without my name. And now he's going to come. He's going to come,
30 and he's going to -- he's going to -- he's going to come, and he's going to have a
31 discussion with me.

32

33 THE COURT: Again. Have a question.

34

35 MR. STEWART: I will. I will.

36

37 Q MR. STEWART: Constable Schaefer, when you come in
38 here and have a question with me, why are you interrogating me?

39 A I am asking for your information, who -- who you are. I wanted to know what
40 your name was.

41

1 Q Constable Schaefer, did you give me your name?

2 A I gave you my badge number. You asked for my name, for my information.

3

4 Q I -- I asked you for your name. I asked for your name. See, this is -- this is
5 where I'm a little upset here, you see.

6

7 THE COURT: Yes. And you see, I don't think --

8

9 MR. STEWART: Yeah.

10

11 THE COURT: -- inviting the jury to watch this is
12 helping you.

13

14 MR. STEWART: No, no. That's okay. No, that's okay.
15 That's quite all right, because I -- have you ever been in jail, My Lord? It's a really,
16 really stressful time. And after you've been beat up and hurt and everything, I'm
17 trying to talk to my brother, and they were -- the -- the jail --

18

19 THE COURT: Look. Look, ask questions of the witness
20 and finish your cross-examination.

21

22 MR. STEWART: Okay. Okay. Okay.

23

24 THE COURT: You have made your point. Now, did you
25 want that put in?

26

27 MR. STEWART: No, we're going to wait until Constable
28 Schaefer shows up, and you'll just get to see because you have to understand, My
29 Lord, the jury has to see that -- that Constable Schaefer was the man who came and
30 assaulted me. He used force against me. He used physical force against me. He's
31 even admitted using physical force. He never gave me his name or identified
32 himself to me, and he's asking me all these questions. And you'll see right here, I'll
33 be, like, hey, this is the guy, this -- watch. You'll see. You -- you can
34 (INDISCERNIBLE) testimony with this.

35

36 THE COURT: But this --

37

38 MR. STEWART: I could have sat there for 20 hours, if I
39 had known Monday --

40

41 THE COURT: But this is what we saw yesterday with

1 Ms. Rohrke.
2
3 MR. STEWART: Mm.
4
5 THE COURT: We're not going to watch it again.
6
7 MR. STEWART: Yes. No, I'm not saying we're going to
8 watch the whole thing again. I'm just saying this is -- this is what you're trying to
9 portray me as. And all I'm doing is -- you can see right there, with my ear to -- or
10 my hand to my ear, and I'm trying a get a hold of my brother.
11
12 THE COURT: I agree.
13
14 MR. STEWART: And you -- okay.
15
16 THE COURT: You did not act crazy all the time.
17
18 MR. STEWART: Yeah. All the time. Fantastic. Thank you,
19 My Lord. I just have one more quick --
20
21 THE COURT: Yes. Finish with this witness.
22
23 MR. STEWART: Yeah. Absolutely, My Lord. I appreciate
24 your patience.
25
26 THE COURT: No problem.
27
28 THE SHERIFF: Mr. Stewart. Mr. Stewart, if I may? Can
29 we put these down --
30
31 MR. STEWART: Absolutely. Thank you --
32
33 THE SHERIFF: -- for the jury, so they can see?
34
35 MR. STEWART: Thank you, deputy. Yes.
36
37 THE SHERIFF: Thank you.
38
39 MR. STEWART: Yes. Thank you. It's just
40 (INDISCERNIBLE). Okay.
41

1 Q MR. STEWART: Constable Schaefer, "yes" or "no," did
2 you use physical force against me?
3 A Yes.
4
5 Q Okay. "Yes" or "no," did you take orders from Jay Keating?
6 A I -- I wouldn't -- I was told to arrest you for obstruction from Jay Keating.
7
8 Q Jay Keating told you to arrest me for obstruction?
9 A That's right. Yeah.
10
11 Q Okay. And that just --
12 A And that's what I did.
13
14 Q -- was just -- just obstruction, arrest him for obstruction?
15 A Right.
16
17 Q Okay. So you weren't the officer in charge at the scene?
18 A No.
19
20 Q No? Okay. Do you know who was?
21 A No.
22
23 Q Okay. So there's a whole bunch of officers, ten cars show up, but nobody knows
24 who's in charge?
25 A No.
26
27 Q Okay.
28 A Well, it's --
29
30 Q Oh.
31 A -- our arrest, so we just deal with it.
32
33 Q We just deal with it? Yeah. So --
34 A We don't need to have an officer in charge at every scene that we go to.
35
36 Q Because you're all officers, you're all police, peace, traffic safety officers?
37 A Right.
38
39 Q Not one of you is in charge, but you're just all there?
40 A We're all there, yeah.
41

- 1 Q But then -- but then when we go to Detention, then it's the Detention staff.
2 They're in charge of my fault, and so they keep me. Is that correct?
- 3 A I think you're confused what the definition of an officer in charge is.
4
- 5 Q Okay. Can you -- can you please tell me and the jury, please?
- 6 A An officer in charge is the person that was in charge of Detention that releases
7 prisoners. An officer in charge at scene is different. It may be a supervisor that
8 we had asked to attend.
9
- 10 Q Okay. Thank you. What? Did a supervisor attend at the scene?
- 11 A I think there might have been one, eventually, that showed up after the fact, yes.
12
- 13 Q Eventually, that might have showed up, a supervisor?
- 14 A Yeah.
15
- 16 Q Okay. Fantastic. But you don't remember who that was?
- 17 A I think there was an acting sergeant, Sergeant Spot --
18
- 19 Q Okay.
- 20 A -- did show up after you had left.
21
- 22 Q After we had left? Okay. So did you get me a call to a lawyer?
- 23 A No.
24
- 25 Q Okay. And you did visit me in Detention cells?
- 26 A Yes.
27
- 28 Q But you didn't get me out of Detention cells?
- 29 A No.
30
- 31 Q No. Okay. And you went home at 3:00 that morning, knowing that I was still in
32 jail, that Detention staff was -- I was -- I was in their hands now? You knew
33 that, leaving your shift that evening?
- 34 A Right.
35
- 36 Q Okay. Okay. You're trained to take -- you're trained on the importance of taking
37 detailed notes. That's -- that's correct?
38
- 39 THE COURT: You've gone over this.
40
- 41 MR. STEWART: Yeah? Okay. So --

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THE COURT: You've gone over this.

Q MR. STEWART: So as part of your job, are you lawfully required or legally obligated to place an arrested person in front of a justice of the peace without delay?

A Not I.

Q I am --

A That's -- again, that's up to our Detention sergeant.

Q That's up to the Detention sergeant? You just take people away, and then they will decide? It's -- it's not --

THE COURT: And again, we've gone over that ground.

MR. STEWART: Just -- oh, haven't we, though? Okay.

Q MR. STEWART: I'd just like you to look at your report, your occurrence report, one more time, please? And I'm just -- I'm just looking to see if it says anything about separate assaults or -- or a combined assault? Because I was charged with assault of you and I was charged with assault of -- of Constable McAvoy. So can you just take a moment and look at your report, and can you just tell me if there's any mention of -- of separate -- or -- or individual or combined assaults of police officers?

A It's not in the report. It would be in the synopsis of the report, which is the charge section.

Q Okay.

A The result is the resisting arrest, resisting arrest that I told you you were under arrest for --

Q M-hm.

A -- obstruction, and you resisted both Constable McAvoy and myself.

Q Did you ever warn me to just stop, just -- just stop, just stop, police? Did you ever warn me that my actions would be -- would lead to me being arrested? Or did you just say, Get on the ground, I'm about to arrest you? Like, what exactly did you say?

A Get on the ground.

1 Q Get on the ground.

2 A I told you multiple times to get on the ground.

3

4 Q Get on the ground. So you didn't say "stop, police"?

5

6 THE COURT: Well, no. You asked him what he said.
7 He told you. So he didn't say a thousand things. Finish with the witness.

8

9 Q MR. STEWART: Take a moment to look at your police
10 report and tell me where, in that report, there is any mention of any reference to
11 the direction or the specific instructions given to you by someone in Detention
12 staff to unlawfully remand both suspects, myself and Jarvis, overnight.

13

14 THE COURT: Your report speaks for itself. We all
15 know that's not in there.

16

17 MR. STEWART: M-hm.

18

19 THE COURT: And the report is in evidence.

20

21 MR. STEWART: Fantastic, My Lord. Fantastic, My Lord.

22

23 Q MR. STEWART: Constable Schaefer. Just for the -- for
24 the -- for the -- the last thing (INDISCERNIBLE). The remanded -- oh, no. I'm
25 not going to talk about that. What about the CPIC? No? Okay. You said that
26 you were making a number of CPIC searches and doing searches for the name
27 and address of myself and my brother when you were searching for this stolen
28 car or the investigation of this car, and you did a CPIC search for -- for
29 identities and whatnot. Do you have any of those searches here today?

30 A No.

31

32 Q Do you -- you don't have any of the searches here today. So who told you that
33 you were potentially investigating a stolen car? Like, you were the third officer
34 on the scene. So how did you come to -- to find out that you were investigating
35 a stolen car?

36 A The thought had crossed my mind that, since the vehicle was not registered
37 properly, there was a misuse of plate, there was a problem with the VIN
38 number. It wasn't legible -- that people who do that sometimes drive stolen cars.

39

40 Q Do you think Constable Keating was thinking the same thing?

41

1 THE COURT: He can't -- he can't tell us what Keating is
2 thinking.
3

4 MR. STEWART: As a professional police officer, I think
5 there's some similarity as far as professional conduct or standard.
6

7 THE COURT: But again --
8

9 MR. STEWART: I would think.
10

11 THE COURT: -- again -- again. Let's -- let's say --
12

13 MR. STEWART: Okay. Fair enough.
14

15 THE COURT: -- let's say the --
16

17 MR. STEWART: No, no. That's --
18

19 THE COURT: -- some of the police had reason to think
20 maybe the car is stolen. It's got nothing to do with your claim.
21

22 MR. STEWART: Mm.
23

24 THE COURT: Nothing to do with what you say
25 happened, namely, you got beat up --
26

27 MR. STEWART: M-hm. M-hm.
28

29 THE COURT: -- unnecessarily.
30

31 MR. STEWART: Okay.
32

33 THE COURT: Finish with the witness.
34

35 Q MR. STEWART: How many police officers were at the
36 scene and during that incident? Do you remember? Do you have even a ball
37 park number?
38 A I can't tell you the exact amount.
39

40 Q You can't tell me? Okay.
41 A Some came before. Some left.

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Q Some left.

A Some attended. Some drove by. I don't know the exact number.

Q Okay. Did you -- did you get me medical attention, Constable Schaefer?

A No.

Q Did you get yourself medical attention for being a victim of assault?

A I did not get medical attention because, again, the charge was -- it was a resist arrest charge.

Q No. Mr. -- Constable Schaefer, it's not a resist arrest charge. Resist arrest is actually a different charge.

THE COURT: Well, the -- I am not going to have you engage in a --

MR. STEWART: Well, you're --

THE COURT: -- you can --

MR. STEWART: -- they charged me with assault. That's what it says. It says assault. And now you're going to try to -- you're just going to massage it into resisting? Just because -- just because a cop grabs my arm and I pull my arm away --

THE COURT: But again. Is this argument?

MR. STEWART: -- that's not assault.

THE COURT: Is this argument? Does that sound like a question?

MR. STEWART: Well --

THE COURT: What -- what tab is the Information at?

MR. STEWART: What are we looking for, My Lord?

THE COURT: I just want --

1 MS. ROHRKE: My Lord, that would be at tab -- it's D-2,
2 tab 22 of our binder.

3
4 THE COURT: All right. Yes. So look at tab 22. The
5 second charge, on which you were acquitted, says assault Constable Schaefer and
6 McAvoy with intent to resist arrest.

7
8 MR. STEWART: Yeah. Assault.

9
10 THE COURT: So you're touching them with a view to
11 resisting arrest, and that can constitute, at law, assault. An assault is just a touch. It
12 can be as little as a touch, without consent.

13
14 MR. STEWART: That's what an assault can be?

15
16 THE COURT: Yes.

17
18 MR. STEWART: Okay. Fantastic.

19
20 Q MR. STEWART: Constable Schaefer, did I assault you on
21 the evening in question?

22 A With intent to resist the lawful arrest of myself, yes.

23
24 MR. STEWART: Thank you, Mr. Schaefer. No further
25 questions.

26
27 THE COURT: Thank you.

28
29 MS. ROHRKE: My Lord, I have a very brief couple of
30 follow-up questions.

31
32 THE COURT: Okay.

33
34 MS. ROHRKE: If that's all right?

35
36 THE COURT: Brief and crisp.

37
38 MS. ROHRKE: I promise I will be brief and crisp.

39
40 **Ms. Rohrke Re-examines the Witness**

41

1 Q MS. ROHRKE: Constable Schaefer, if you can just refer
2 back to your notes that you have? The plaintiff was asking you where in your
3 occurrence report you indicated that you had attended cells and asked for his
4 name? And I just want to direct you to page 2 of your occurrence report, the
5 kind of --

6 A Yes.

7

8 Q -- bottom paragraph? I attended to Detention?

9 A That's right. That's true.

10

11 Q So can you confirm that your occurrence report does include that you requested
12 for identity?

13 A It does.

14

15 Q Okay. I wanted to just go to one other document. I want to look at that arrest
16 warrant that -- relating to those traffic safety tickets. If you can go to tab 16?
17 There are three warrants that are virtually identical. I'm not going to go through
18 all three of them, if that's all right, My Lord.

19

20 THE COURT: At tab 16 is D-20.

21

22 Q MS. ROHRKE: Tab -- okay. So tab 16, so we've got the
23 first page that's the warrant for the arrest. The second page, when does it
24 indicate that that warrant for arrest was issued?

25 A On the second page?

26

27 Q Yes.

28 A The 22nd day of March, 2012.

29

30 Q And who would have that been issued by? Not yourself?

31 A No.

32

33 Q So suffice it to say, this warrant for arrest was issued far before that August
34 24th, 2012, incident?

35 A Yes.

36

37 Q And you simply searched his name and came across these warrants?

38 A Right.

39

40 Q They weren't produced that evening, as suggested to you?

41 A Right.

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MS. ROHRKE: Okay. My Lord, those are all my questions.

THE COURT: Thank you. Thank you very much, Constable Schaefer. You are free to go.

A Thank you, My Lord.

(WITNESS STANDS DOWN)

THE COURT: So do we want to segue seamlessly into your next witness, or do you want a ten-minute break, or what do you want to do?

MS. ROHRKE: My Lord, could we take a ten-minute break? Do you mind?

THE COURT: No, I don't. I don't.

MS. ROHRKE: Thank you.

THE COURT: And I apologize to the jury. It will only be ten minutes, okay? And I realize it will be ten minutes back and forth for you.

Madam Clerk, if they need more time, you can give them more time.

(JURY RETIRES)

(ADJOURNMENT)

THE COURT: Thank you. Please be seated.

MS. ROHRKE: My Lord, our next witness will be Brad McAvoy.

THE COURT: Yes. Okay. Just hang on.

Jarvis. Look, you're -- you're there, helping your brother, and I don't mind that, and you should be. But you're also making comments, right? And the mike is really sensitive. It's picking them up.

1 MR. JARVIS STEWART: Okay. I will try to --
2

3 THE COURT: And so those -- like, some of the
4 comments might come back to haunt you. So --
5

6 MR. JARVIS STEWART: Probably, sir. At this point, I'm pretty
7 heavily invested in this. I don't even care.
8

9 THE COURT: Okay. Okay. But I don't want you -- I
10 don't want you, you know, making alarming comments. You can help James --
11

12 MR. JARVIS STEWART: I'm alarmed, Sir.
13

14 THE COURT: Fair enough. But I don't want you making
15 alarmed comments because then you can't stay in the courtroom.
16

17 MR. JARVIS STEWART: That's --
18

19 THE COURT: And I know you want to stay. And I
20 know James wants you to stay. But you can't be engaging in threats, okay?
21

22 MR. JARVIS STEWART: Engaging in threats?
23

24 THE COURT: Well, whatever.
25

26 MR. STEWART: My Lord, he'll be -- he'll be on his best
27 behaviour, My Lord.
28

29 THE COURT: All right. Thank you.
30

31 MR. JARVIS STEWART: (INDISCERNIBLE) I haven't threatened
32 anyone. I would never threaten anyone.
33

34 THE COURT: Good. Good. But just -- so help James,
35 and nice and quiet.
36

37 MR. JARVIS STEWART: Yes. Yes, My Lord. I apologize.
38

39 THE COURT: Let's get the jury in.
40

41 THE SHERIFF: Yes, My Lord.

1
2 THE COURT: Call your witness to the stand.
3
4 MS. ROHRKE: Constable McAvoy.
5
6 MR. STEWART: You have to stand up, yeah.
7 (INDISCERNIBLE).
8
9 THE COURT: You can sit down and wait for the jury,
10 Constable.
11
12 CONSTABLE MCAVOY: Thanks, My Lord.
13
14 THE COURT: They take a while to come from way
15 down the hall.
16
17 CONSTABLE MCAVOY: (INDISCERNIBLE) try not to drop that.
18
19 THE SHERIFF: Just (INDISCERNIBLE). Watch the
20 stand.
21
22 (JURY ENTERS)
23
24 THE COURT: Please be seated. Ms. Rohrke, your next
25 witness is?
26
27 MS. ROHRKE: Constable Brad McAvoy.
28
29 THE COURT: The clerk will swear the constable.
30
31 THE COURT CLERK: Will you swear or --
32
33 CONSTABLE MCAVOY: Affirm.
34
35 THE COURT CLERK: Raise your right hand. Please state your
36 name for the Court, spelling your surname for the record.
37
38 CONSTABLE MCAVOY: It's Constable Brad McAvoy, B-R-A-D
39 M-C-A-V-O-Y.
40
41 **BRAD MCAVOY, Affirmed, Examined by Ms. Rohrke**

1
2 THE COURT CLERK: Thank you. You may be seated.
3
4 Q MS. ROHRKE: Good morning, Constable McAvoy.
5 A Good morning.
6
7 Q So you're one of the defendants in this action?
8 A Yes, I am.
9
10 Q And you are employed by the Saskatoon Police Service?
11 A Yes, I am.
12
13 Q Can you advise of what your rank is?
14 A Currently I'm employed as a constable.
15
16 Q Okay. How long have you been with the Saskatoon Police Service?
17 A I'm currently in my 12th year of service with Saskatoon Police.
18
19 Q And can you just provide a brief overview of your employment history with
20 them?
21 A I've been in Patrol, started my career in Patrol with Saskatoon Police. I did five
22 years in the Traffic Section, back to Patrol for a couple years, and then I'm
23 currently assigned to the Air Support Unit as a tactical flight officer.
24
25 Q Okay. And prior to working with SPS, were you a police officer anywhere else?
26 A I was a peace officer as a special constable with the University of Saskatchewan
27 for five years.
28
29 Q Okay. And in approximately August of 2012, what department were you posted
30 to?
31 A I was assigned to the Traffic Section at that time.
32
33 Q And as of August --
34 A Oh, sorry. The Saskatoon Police Service -- or sorry. 2012, August?
35
36 Q Yeah.
37 A I was Saskatoon Police Service, assigned to the Traffic Section.
38
39 Q Okay. And as of, say, August, how long had you been with that section?
40 A I was in my second year with Traffic, I believe, at the time.
41

1 Q Okay. And I understand you were on duty that day, August 24th, 2012?

2 A Yes, I was.

3

4 Q Do you recall what your shift was?

5 A I believe we were working 3 to 3. It was Cruise Weekend, so we had -- pretty
6 much everybody was in, working the evenings for the usual activities involved
7 for Cruise Weekend.

8

9 Q So can you describe the nature of your duties that day?

10 A Just general traffic enforcement is what we were doing.

11

12 Q And on that evening, were you working with a partner?

13 A Yeah. I was partnered us with Constable Schaefer at the time.

14

15 Q Were you in uniform?

16 A Yes, I was.

17

18 Q And what did your uniform look like?

19 A My uniform at the time was different from what I'm wearing right now. It
20 would be in line with what Constable Schaefer is wearing.

21

22 Q And Constable Schaefer is in the courtroom now?

23 A Yes, he is. He's right there.

24

25 Q And that would have been the uniform you would have been wearing?

26 A That would have been, yes.

27

28 Q Okay. Were you operating a vehicle that shift?

29 A No, Constable Schaefer was. I was the passenger.

30

31 Q Okay. Do you recall what type of vehicle you were a passenger in?

32 A It was -- it was an unmarked traffic car. I think it was 474.

33

34 Q 474? Do you know if that vehicle was equipped with emergency lights, siren,
35 and a loud hailer?

36 A Yes, it was.

37

38 Q Do you recall whether that vehicle, 474, was equipped with the audio/video
39 equipment, more specifically, the Panasonic Arbitrator that we have heard some
40 evidence about?

41 A No, it was not. It wasn't part of the trial period, so there was no camera system

1 installed in that car at all.

2

3 Q And if there was no camera system installed in that car, would have there been
4 microphones in that car?

5 A No.

6

7 Q Would you have been wearing a microphone that night?

8 A No.

9

10 Q At that time in August of 2012, we've heard evidence that there was a pilot
11 project going on with respect to the installation of these in-car camera systems.
12 Were you involved in that pilot project?

13 A Yes, I was. I was one of the officers selected to do the evaluations on the
14 system. So I was trained on the operation of the equipment and how to do --
15 operate it as we would normally be as a -- as a Patrol member or Traffic officer.
16 And then I was tasked to, you know, run it as much as I could. I spent a number
17 of times working with them, trying to work out some bugs that would show up
18 during the -- during the trial period, as well.

19

20 Q What kind of bugs were you aware of?

21 A We had issues with mikes not synching properly. We had issues with
22 downloads not automatically happening, and just due to software issues and
23 stuff like that, and hardware not working well. The -- one of the biggest
24 problems we had with the mikes, especially for the Traffic office, was that we
25 were situated offsite from the main station. So we only had a couple of mikes
26 for the cars, and frequently they would -- they wouldn't be charged. Once the
27 car is powered off, the batteries would drain and we'd have no charging. They
28 weren't synching properly at times, as well.

29

30 Q Okay. So why were -- on that evening, August 24th, 2012, why were you not in
31 a vehicle that -- that had that camera operating system?

32 A There wasn't one available for me at the time when I got in to sign out a car. It
33 was Cruise Weekend. Again, we had both our shifts working at the same time
34 in Traffic Section. At most, we had six vehicles available with potentially 12
35 officers trying to draw from those vehicles. So there wasn't a vehicle available
36 for me at the time.

37

38 Q So by the time you got there, simply all the ones with the cameras were gone?

39 A Yeah.

40

41 Q So you picked a different car?

1 A I was with Constable Schaefer, so he would have had to have picked a car.

2

3 Q Okay. So on the evening of August 24th, 2012, did you come into contact with
4 the plaintiff, James Stewart?

5 A Yes, I did.

6

7 Q I'm going to ask you to generally describe what happened, but I want to start
8 kind of -- just go block by block. So let's start with, kind of, up until you --
9 before you arrive at the Shoppers Drug Mart. Can you talk about what
10 happened?

11 A Constable Schaefer and I were doing some speed enforcement on 8th Street. We
12 were about the 11 or 1200 block of 8th Street, kind of in between Wiggins
13 Avenue and McKinnon Avenue on 8th Street. We were primarily focussed on
14 the westbound traffic. We were stationary there when we heard Constable
15 Keating request another car to the Shoppers Drug Mart on 8th Street. From that
16 point, we pulled out. We had to go a little bit west of our position to find a point
17 where we could turn around to come back east. And while we were coming
18 back, just coming back east, there was a second call from Constable Keating,
19 asking for the responding units to step on it.

20

21 Q I'm just going to play that call, and I just want you to identify if any of these
22 voices are yours.

23

24 MS. ROHRKE: My Lord, the USB drive, what we have
25 marked for identification purposes, our USB drive also includes the same audio call
26 that is -- the plaintiff put in (INDISCERNIBLE) --

27

28 THE COURT: Okay.

29

30 MS. ROHRKE: -- just (INDISCERNIBLE).

31

32 THE COURT: And remember, the stick is for Ident.
33 only. You have to make it a full exhibit.

34

35 MS. ROHRKE: Yes.

36

37 THE COURT CLERK: (INDISCERNIBLE).

38

39 (AUDIO/VIDEO PLAYED)

40

41 MS. ROHRKE: (INDISCERNIBLE).

- 1
2 Q MS. ROHRKE: So, Constable Schaefer, are any of those
3 voices yours?
4 A No.
5
6 Q But you --
7
8 MR. STEWART: He's McAvoy. He's McAvoy.
9
10 MS. ROHRKE: Oh, I'm sorry. Thank you.
11
12 Q MS. ROHRKE: But you were in a vehicle, and you heard
13 that call from Constable Keating?
14 A Yes. We were -- we didn't radio that we were responding.
15
16 Q Okay.
17 A That's not uncommon, to --
18
19 Q So can you describe to me -- or I'm going to back up for a moment. Had you
20 ever heard a call like that from Constable Keating before?
21 A Not that I can recall, no.
22
23 Q Is it unusual for a police officer to make a call like that?
24 A Yeah. We're -- we're very careful about the language that we use on the radio,
25 due to the type of responses that it will get. We generally try to follow radio
26 procedures, and -- and that -- the calmness in our voices would denote the need
27 for response for officers and what type of response they would make. In this
28 case, we could hear -- you know, I work with Constable Keating in the same
29 office. I talk with him on a regular basis. Their first call for another car sounded
30 a little bit hectic, sounded like he -- he wanted somebody there in a real -- you
31 know, in a fairly quickly manner. And then when the second call came, asking
32 for officers to step on it, to get there faster, that's generally -- definitely
33 something we won't say unless it's absolutely something necessary.
34
35 Q Okay. So suffice it to say, you had concerns about Constable Keating?
36 A Yeah. We were concerned about his -- what was going on that he needed help
37 that quickly.
38
39 Q Okay. So maybe describe what happens after that point.
40 A We were driving, I think, a little hard to get there. The second call comes in,
41 lights and sirens go on. That's a double fold feature for us in that it (a) lets the

1 officer know that we're coming close, as well as will let the person who's in
2 conflict with that officer know that other -- other officers are going to be there
3 right away. So it's a reassurance for the officer asking for help, as well as the
4 potential to cause the other individual to modify their behaviour a little bit.

5
6 As we get there, we pull into the parking lot. Constable Schaefer pulls into the
7 parking lot, and as we're pulling in, we can see an individual walking towards
8 Constable Keating. As we're coming to a stop, that office -- that person is
9 between our vehicle and Constable Keating's vehicle. I could see Constable
10 Keating standing there with -- behind another individual that -- I could see that
11 other individual's arms were behind his back at the time. I get out of the car.

12
13 Kind of at the same time I'm getting out of the car, the person that was
14 originally walking somewhat towards Constable Keating changes his path a
15 little bit to walk more so across the front of our vehicle towards the parking lot,
16 not to where Constable Keating was, off to the side, again, closer to the
17 building. I get out of the car. I hear Constable Keating telling me, Arrest that
18 person for obstruction. I'm -- this individual is moving to the driver's side of the
19 vehicle of -- of my patrol car. I'm coming out of the passenger's side. As I'm
20 coming out -- coming around the vehicle towards that individual, I can hear
21 Constable Schaefer telling the individual to get on the ground, that they're under
22 arrest. He said it about two or three times.

23
24 As I continue to come around the vehicle, I -- I noticed that Constable Keating
25 wasn't -- didn't appear to be in need of help. There was no -- didn't appear to be
26 much of a struggle going on at that point as the -- as it looked like the individual
27 was handcuffed, from what I could see.

28
29 I come around the vehicle. The male, who turned out to be James Stewart, was
30 now walking more away from us. He put his hands in his pocket at one point,
31 still not complying with Constable Schaefer's commands to get on the ground. I
32 got up to him, and I grabbed on to him to try and effect the arrest.

33
34 Q I'm going to pause you there, and I just want to play a little bit more of this
35 audio recording, if that's all right.

36 A Okay.

37
38 Q If you can identify your voice (INDISCERNIBLE).

39

40 (AUDIO/VIDEO PLAYED)

41

- 1 THE COURT: Madam Clerk, can we turn up the
2 volume? No. How about using this?
3
- 4 THE COURT CLERK: (INDISCERNIBLE).
5
- 6 MS. ROHRKE: Yes.
7
- 8 THE COURT: Yes, we've used it.
9
- 10 THE COURT CLERK: (INDISCERNIBLE).
11
- 12 MS. ROHRKE: Yesterday she did. I don't know which
13 dial she turned yesterday, but she turned --
14
- 15 THE COURT CLERK: Okay. Let's try it.
16
- 17 MS. ROHRKE: Okay.
18
- 19 (AUDIO/VIDEO PLAYED)
20
- 21 Q MS. ROHRKE: Are any of the voices yours?
22 A I don't believe so.
23
- 24 Q (INDISCERNIBLE)?
25 A Sorry. I don't believe so, no.
26
- 27 Q No? All right. Who would have called you to advise that another -- that there's a
28 fight between yourself and McAvoy?
29 A Honestly, I don't know.
30
- 31 Q Okay. That's fine. So did you hear the plaintiff make any response when
32 Constable Schaefer demanded he go to the ground?
33 A No. I don't recall that at all, no.
34
- 35 Q And is this a typical command that you would make of an individual, to go to
36 the ground?
37 A Yeah. If -- sometimes, yeah, given the -- the circumstances. I've come up on to
38 scenes where the first thing is get on the ground, you're under arrest, just
39 given -- depending on what a scenario is, I guess.
40
- 41 Q So can you give me an example of why you would put somebody -- ask

1 somebody to get to the ground?

2 A If it's more of a heightened situation, the lower a person is down to the ground,
3 the easier they are to control, and the less options that they have to resist or fight
4 or potentially deploy any kind of weapon rapidly.

5

6 Q And would have you described this as a heightened situation?

7 A Yes, I would.

8

9 Q Okay. So I think your indication was that the plaintiff had put his hands in his
10 pocket. So if you can kind of go from that point on.

11 A Yeah. I could see that he had his hands in his pockets. Pockets for us, not being
12 able to see any hands, an obvious concern for us is I don't know if he has any
13 weapons or anything on him at that point. I grab onto him. He tense up -- tenses
14 up, pulls his arms tight up against his body to make it difficult to try and gain
15 control of his arms. He starts to -- to twist his upper body a little bit and drops
16 his -- his centre of gravity a little bit lower to make him a little bit harder to -- to
17 move around. Constable Schaefer joins me on the other side of him to try and
18 get the arms out. He continues to twist a little bit.

19

20 And then it's kind of a little modified of a hip toss. It's not a hip toss across my
21 hip. It would have been across my lower leg, to trip him up, to take him down to
22 the ground while he still had his hands in his pockets to prevent him from being
23 able to twist out of our grasp. On the ground, his ability to move away from us
24 is greatly limited, whereas on his feet, if we're trying to get his arms out or put
25 some pressure on -- on his arms to get control of him, he could potentially move
26 away from it by moving his body on the ground. That's -- that's greatly limited,
27 to allow us to try and have -- get him into custody a little bit more so.

28

29 Q And then once the plaintiff was on the ground, was -- did he continue to resist?

30 A Yeah. He continued to hold his -- his arms in, twisted a little bit when he was on
31 the ground, kept his arms tight in against his body.

32

33 Q And where would have you been located when he was on the ground?

34 A I was one -- I was working on trying to gain control of his left arm, which was
35 still tucked up underneath his body. And Constable Schaefer was working on
36 trying to control his right arm.

37

38 Q So at what stage are you able to get his arms out? Or are you able to?

39 A We were down there, struggling for a little bit. I was giving -- we were both
40 giving him commands to get his arms out, put his arms behind his back. At
41 some point, I was able to gain control of his -- his hand and his -- his arm. And

1 from there, I was able to bend it back behind his back. I was able to get some
2 pressure on his wrist and his elbow and a bit on his shoulder to gain some
3 compliance on his left side of his body. Constable Schaefer still had his right
4 hand -- this -- he still had his right hand underneath his body, up against
5 himself. Constable Schaefer was working on that, to try and get it out, as well. I
6 could see out of the corner of my eye, there was nobody -- it was just us two at
7 the beginning. His head was free and moving as we were lying -- as we're lying
8 on the ground, trying to gain control of it. With -- at some point, another officer
9 came and did the -- take control of his head, to keep him from moving around.

10

11 Q Do you recall which officer that was?

12 A At the time, I didn't, no.

13

14 Q Okay. Fair enough. Continue.

15 A We -- so with me able to get his arm -- one arm behind his back and into a bit of
16 an arm bar hold and a little -- probably a little bit of -- a little bit of pain
17 compliance with that, Constable Schaefer was able to get his right arm out from
18 behind his -- from underneath his body, and then was able to get into a position
19 where he could apply handcuffs to the right arm. And then once that was done,
20 it was brought in and towards his left arm, and the handcuff was applied to the
21 left hand.

22

23 Q So -- and just to be clear, the reason that you -- you used the term "pain
24 compliance" or pressure. The reason that was applied was because he was
25 resisting being under arrest --

26 A Yes, he was.

27

28 Q -- or being placed in handcuffs?

29 A Yeah. He was still -- he was still actively trying to keep us from taking control
30 of his arms. So ...

31

32 Q Was the plaintiff saying anything at all throughout this process? Do you recall?

33 A I only recall him swearing.

34

35 Q Okay.

36 A Sorry. He did at one point say something about my -- something about his arm
37 was going to be broken, and I don't know what he was referring to. I did tell
38 him in response to put his right arm behind his back.

39

40 Q And as soon as you were able to gain control --

41 A Yeah.

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Q -- was there any --

A No. As soon as his handcuffs were applied and the control was gained, everything, all pressure was released on his arms.

Q Of course. At any point during that interaction on the ground, did you threaten the plaintiff?

A No.

Q At any point during that interaction on the ground, did you kick the plaintiff?

A No.

Q Did you punch the plaintiff?

A No.

Q At any point, did you pick his head up and somehow smash his face into the ground?

A No. From the time that he was taken to the ground, he was in direct contact with the ground. He never once came up until he was moved to the patrol car.

Q And at any point, did you take hold of the plaintiff's face?

A I didn't, no. I could see -- like I said, as -- as I was working on trying to get his arm, I could see he was moving his head around on the ground as we were trying to get his arms out from under him.

Q When you exited the vehicle, your police cruiser, did Constable Keating use the words, quote, take him down?

A No. His words were "arrest him for obstruction."

Q Okay. At any point, did you advise the plaintiff why he was under arrest?

A I didn't feel it was necessary, as he was between me and Constable Keating. I heard Constable Keating no problem, with no difficulty. I heard him clearly. And James was closer to Constable Keating than I was. So I had no concern that he wasn't able to hear it.

Q So once you get the handcuffs on to the plaintiff, then what happens?

A At that point, there were other officers who were in contact with him, holding his head, and I believe somebody on his legs, still. At that point, Constable Schaefer and I stood up. And we'd just been in a struggle. We were a little bit out of breath, and he was being controlled by other individuals, other officers. So there was no need for us to be on -- on him.

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Q Was he continuing to be combative, even once the handcuffs were on?

A I believe he was still yelling and arguing and -- and -- and they still needed to hold him in place.

Q So at that stage, once you step away from -- from the plaintiff, what -- what is your role? What do you do?

A I spoke with Constable Keating to find out kind of what had happened as, as to why we were being called there in such a -- with such urgency, and was told that they were not -- not identifying themselves, trying to get away, trying to interfere with the arrest, and that's why he wanted us to arrest him for him.

Q And then subsequently, what did you do?

A After that point, we still weren't -- we still didn't know who these individuals were. They weren't telling us who they were. They weren't providing any names or anything at all. So we went on to --

Q I'm just going to stop you there for a moment. Did you ask the -- either the plaintiff or his brother for their names?

A I can't remember if I asked them. I was there when other officers were asking them, and I could hear that they weren't --

Q Okay.

A -- they weren't answering questions and stuff. So ...

Q Thank you. Sorry. Continue.

A For -- from that point, it was now attempts to try and identify the individuals, who they were. Steps were taken to query the vehicle, the VIN number, to see if we could trace who they were through that, through the plate that was on the vehicle, by pulling up on the SGI photo database to see if any of those individuals were associated -- that were associated to the vehicle or the licence plate were the ones that we were dealing with. Those both turned up negative. We started taking further steps. We eventually gained -- went into the vehicle to see if we could find any documentation within the vehicle that we could try and identify the individuals, using anything off of that.

Q And did you locate anything in the vehicles?

A Yeah. In the glove box, I located a number of documents in the -- in there that had -- some of the documents were some traffic tickets, I believe, issued to Jarvis Stewart that had written across them "I do not consent or wish to contract."

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Q Sorry. Continue.

A Also, there were a couple of other documents. There was an affidavit with a notice of right to travel for, I believe, both of them, as well as a fine payment schedule that was included on the back of one of them. Now, I've -- was familiar with those types of documents, as I had seen them before through a course of some research after some incidences that -- involving people that identified themselves as freemen of the land or sovereign citizens. I'd come across almost identical documents like that on websites that were freemen of the land-sovereign citizen-type websites, where again, almost identical, besides some slight changes to the names and stuff like that.

Q So if you go to tab 1 in that binder in front of you, which is D-11, would that be one of the documents that you located?

A Yes, it was.

Q And did that document present any concerns to you?

A Yeah. It -- it kind of answered questions as to why the individuals were behaving the way they were, why they were refusing to provide any identification or anything, why they were driving around in a vehicle with the licence plate that didn't match, with some validation stickers that were doctored, as well as -- I was told that they were saying that we don't believe in your laws and stuff. And seeing this document, it just further went in line with that, that all those things, the licence plates, the vehicles, the driver's licences, refusing to identify, the language used of don't abide by laws and are you a peace officer or a police officer, all those types of language are consistent and are basically the script that freemen or sovereigns use when dealing with law enforcement.

Q Now, you heard the plaintiff testify earlier this week. And he made some indication that within that glove box, there was a -- and I'm -- I never actually saw the document -- a passport that appeared to have a red or burgundy cover to it, and a certificate of live birth. Do you recall seeing those in the vehicle?

A I don't recall that. I do know that after we found the documents, that we ended up having to look them up --

Q I'm just -- sorry.

A Sorry?

Q The documents being what?

A The -- the affidavits.

- 1 Q Okay.
- 2 A The traffic tickets and stuff. I do know that we still had -- were trying to take
3 steps to try and find photographs of the individuals on SGI. So with a passport,
4 there would be a photograph, and I wouldn't see the need to try and identify
5 that. I don't recall finding a passport at all on that day.
- 6
- 7 Q Okay. Thank you. So once the plaintiff was put in handcuffs and you stepped
8 back from him, did you have any further involvement with him?
- 9 A I don't believe I did at all, no.
- 10
- 11 Q Did you -- you didn't take the plaintiff into the police car that he was transported
12 in?
- 13 A No, I don't believe so.
- 14
- 15 Q Did you see the plaintiff at -- back at Detention?
- 16 A We ended up at Detention at some point. I may have seen him, but I didn't have
17 any interaction with him.
- 18
- 19 Q Okay. When the plaintiff was eventually picked up off of the ground or got up
20 off the ground, did you notice whether the plaintiff had any injuries?
- 21 A I think he had a little bit of road rash on one of his cheeks, just some scraping
22 from the -- from pavement, it looked like. So -- as I say, I don't know. He was
23 moving around quite a bit, his head, while we were trying to get him under
24 control. It could have been from that. I don't know.
- 25
- 26 Q Okay. Did you see any other officers kick the plaintiff, punch the plaintiff, or
27 push the plaintiff's face into the ground or anything like that?
- 28 A No. There was no use of force like that used at all.
- 29
- 30 Q Okay.
- 31 A The only use of force was the arm bars and the -- the initial --
- 32
- 33 Q Okay.
- 34 A -- take down or trip.
- 35
- 36 Q So once the plaintiff is back at the Detention, do you have any authority over
37 him?
- 38 A He becomes the -- the sergeant in charge in Detention is the one who has the
39 ultimate say on what's going to happen with an individual, whether they're
40 going to be released on appearance notice, released on an officer in charge
41 recognizance with conditions, or to be held by a J.P. -- or to be held to see a J.P.

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Q So -- and perhaps I'll just want to get into this -- this idea of a J.P. This was -- August 24th, 2012, was a Friday night?

A That's correct.

Q So the next day, being Saturday? And you would agree with me that there is no Provincial Court on Saturday?

A That's correct.

Q So if somebody is being held, they're being held for a J.P.?

A Yeah. They were brought in after 7, and they would not have been -- if there was a J.P. in the station that evening, none of the paperwork would have been prepared or ready for them to go before it by the time they were brought in, so they would have been held until they were seen by a J.P. the following morning.

Q Okay. So you had no authority to decide whether the plaintiff was held until the next morning?

A No, we don't have that. That's not our decision. The only thing that we have in that role would be to brief the sergeant on any potentially relevant information. In this case, I know I briefed him on the nature of the documents for the freemen of the land-sovereign citizens and their -- what their beliefs are, and that they don't believe the laws apply to them. They believe that they're -- they can come and do what they please, they don't have to abide by the courts or any -- any of those rules. So that would have been, really, to the sergeant to use that as part of the decision-making process as to whether or not he'd be released, held with -- to see a J.P., or ask for a bail or a bond.

Q But ultimately, that decision is up to the sergeant?

A That is up to the sergeant, yeah.

Q Okay. Who was the Detention sergeant at the time?

A It was the late Sergeant Mitzel.

Q Okay. You can please turn to tab 22 in the binder, which is D-2, My Lord. So this would be the Information that was charging the plaintiff?

A Yeah.

Q From that evening?

A Yeah.

Q Did you swear that Information?

- 1 A No, I didn't.
2
- 3 Q Who swore it?
4 A Sergeant Bradford.
5
- 6 Q Okay. The second charge relates to a, quote, assault on Constable Schaefer and
7 yourself: (As read)
8
- 9 With the intent to resist the lawful arrest of himself, contrary to
10 Section 270 (1) (b) of the *Criminal Code*.
11
- 12 So you confirm that the assault related to his resistance?
13 A Yes, that's the -- it's -- it's worded as an assault, but it was more so for the -- it
14 was for the -- the resisting the arrest.
15
- 16 Q So you're not alleging you suffered any injuries as a result?
17 A No. It was the resistance to being taken into custody.
18
- 19 Q Okay. I'm going to ask you, then, to turn to tab 23, which is P-4. This is a use of
20 force reporting form.
21 A Yeah.
22
- 23 Q Would you always -- or would an officer always fill one of these forms out after
24 every incident?
25 A No.
26
- 27 Q No?
28 A No. Depending on what use of force is done.
29
- 30 Q Okay. Did you file a use of force report in relation to this?
31 A Yes, I did.
32
- 33 Q Were you able to locate a copy of that use of force report?
34 A No, I didn't know -- I -- once I fill it out, I just hand it to a supervisor. And then
35 from that point, it -- it's -- it's now part -- looked at by the supervisor, then
36 passed on to a report committee and stuff like that.
37
- 38 Q So you fill out one of these forms, and it goes to your supervisor. It's not as
39 though you would keep a copy of this?
40 A No.
41

1 Q Or -- or have a file with it where you would keep all the use of force reports?

2 A No.

3

4 Q So in the course of this litigation, did you attempt to locate this use of force
5 report?

6 A I wouldn't even know where to begin to find it.

7

8 Q And you're aware that it has not been located?

9 A As far as I'm aware, yeah.

10

11 Q Now, you would also agree that you filled out a report with respect to this
12 incident?

13 A Yes, I did.

14

15 Q So there would be handwritten notes and then a typed occurrence report?

16 A Yeah.

17

18 Q Would this use of force reporting form contain any information -- once you
19 filled it out -- contain any information that would not be in your occurrence
20 report or your handwritten notes?

21 A No.

22

23 Q So would it be fair to say that you based your use of force report on your notes?

24 A Yes, I did. The use of force report form is -- it's just a statistic-gathering tool. It
25 uniforms the reporting to make it easier to classify what type of use of force.
26 Everybody will describe something using a little bit different words here and
27 there, so they've created a check box form that they can say, this is the type of
28 force that was used, this is that, instead of having to decipher what a particular
29 officer may -- may word something a certain way. Because, you know, playing
30 the telephone game, things are different for each person. So it's -- it's simply a
31 check box form as to what had happened.

32

33 Q Okay. So going back to the -- the parking lot on August 24th, were there people
34 around that you were aware of? That you noticed?

35 A I didn't really notice much besides the officer. I was pretty focussed on (a)
36 taking James into custody, and then from that point trying to figure out who
37 they were.

38

39 Q Okay.

40 A So ...

41

1 Q Did you take any witness statements from anyone?

2 A No, I didn't.

3

4 Q Did anyone identify themselves to you as wanting to provide a witness
5 statement?

6 A No.

7

8 Q You didn't -- could you guess how many people were around?

9 A I wouldn't know.

10

11 Q A hundred? It was suggested at one point 100 people were standing around.

12 A I don't think that's at all an accurate number. That's a fair -- quite a large amount
13 of people.

14

15 Q Prior to the interaction on August 24th, 2012, had you ever had any previous
16 history with the plaintiff?

17 A No.

18

19 Q Did you know who he was?

20 A No.

21

22 Q Do you have any malicious feelings towards the plaintiff with respect to this
23 incident?

24 A No.

25

26 MS. ROHRKE: My Lord, those are of my questions for
27 this witness.

28

29 THE COURT: Thank you, Ms. Rohrke. Mr. Stewart.

30

31 MR. STEWART: My Lord, what time are we going to
32 break for lunch?

33

34 THE COURT: Well, this officer's involvement with you
35 was relatively brief. It was the fight in the parking lot.

36

37 MR. STEWART: The fight, My Lord, of the alleged fight,
38 My Lord.

39

40 THE COURT: Yes. The alleged fight. Yes, that's right.
41 Your perspective is completely different. But he didn't have any -- there was no

1 follow-up. So the cross is obviously going to be relatively brief. So I think we'll do
2 it now, go to 12:30, and then break.

3

4 MR. STEWART: Thank you, My Lord.

5

6 THE COURT: And that's assuming you're done at 12:30.

7 If you're not --

8

9 MR. STEWART: Okay.

10

11 THE COURT: -- we can always break. But again, the
12 interaction was pretty brief.

13

14 MR. STEWART: It certainly was.

15

16 THE COURT: Yes.

17

18 MR. STEWART: It certainly was.

19

20 **Mr. Stewart Cross-examines the Witness**

21

22 Q MR. STEWART: Constable McAvoy, thank you for being
23 here today. You were operating traffic that day? You were operating a car. It
24 was a traffic car. So you're somewhat familiar with the *Traffic Safety Act*; is that
25 correct, Mr. McAvoy? Constable McAvoy?

26 A Well, I'm familiar with the *Traffic Safety Act*, but I wasn't operating the car.

27

28 Q No. I know you weren't operating a car, but you were operating a car with
29 Constable Schaefer, and you guys were -- were engaged in -- in speeding,
30 checking -- like, traffic?

31 A Yeah. I was in the passenger in the vehicle. Yeah.

32

33 Q Yeah. Yeah, you were the passenger. But -- but your -- your role that evening,
34 upon arrival into the parking lot, your -- your role was not -- you weren't a
35 special detective? You weren't drugs? You were -- you were -- you were --

36 A No, we were doing traffic enforcement.

37

38 Q -- you were doing traffic? Thank you.

39 A Yeah.

40

41 Q Thank you. Thank you, Constable McAvoy. Constable McAvoy, so you --

1 you -- you do traffic enforcement with -- with the *Traffic Safety Act*; is that
2 correct?

3 A Amongst other things, yes.

4

5 Q Okay. So would you consider that the *Traffic Safety Act* to be what would be
6 considered, like, a rule book for your -- as a traffic enforcement officer?

7 A It's a rule book for everybody to abide by the safe travel on the roads in the
8 province, yes.

9

10 Q Absolutely. Thank you. The safe travel for roads on roads. Fantastic. So I'm just
11 curious. Constable Keating attempted to pull this car over. He thought he was
12 pulling the car over. We, of course, didn't think that it was -- we were being
13 pulled over, but he thought that he was pulling the car over for misuse of plates.
14 And I'm curious. In your definition, Constable McAvoy, is that a safety concern
15 or is that -- is that just a -- you know, a -- a litigation thing, a paper thing? Is it a
16 safety thing, not having the correct -- correct paperwork for your car? Is it a
17 safety thing that it did not have the correct paperwork for your car?

18

19 THE COURT: I take it, Ms. Rohrke, you want to object.

20 But this is a reasonable question.

21

22 So if -- if you discover that there's a false plate on the car, what do you do?

23

24 A Well, part of the reason why you have a licence plate on the car that belongs to
25 the car, that belongs to somebody who is associated to the vehicle, is for the
26 event of an accident or properly identifying that vehicle in the case that that
27 vehicle does something malicious to other people or the person driving it, using
28 that vehicle. So yes, a misuse of a licence plate is actually a fairly significant
29 event because that's somebody trying to be deceitful as to who they are and who
30 the vehicle belongs to.

31

32 Q MR. STEWART: Right. But you have to admit that this is
33 an open society that we call Canada it's -- you know, it's -- it's an open and --
34 and democratic society. So, you know, you actually are allowed to be a little
35 deceitful in Canada. You can -- you can actually drive around without a licence.
36 You just can't -- you just can't --

37 A It's against the law to drive around without a licence.

38

39 Q No, it's not against the law.

40 A Yes, it is.

41

1 Q No. No, it's actually -- the *Traffic Safety Act* --

2 A The *Traffic Safety Act* is a law. It's against the law.

3

4 Q -- is a -- is a statute, so --

5 A It's a law.

6

7 Q Yeah. Okay. Well, we'll just agree to disagree.

8 A It's still a law.

9

10 Q So -- no. Because here in -- well, actually, I'll just read it into the record here.
11 Once again, for you, Mr. Constable McAvoy and for everyone here, because
12 there's a number of things in the *Traffic Safety Act*, and we're going to get into
13 them all. And then we'll continue. But there's an interpretation that -- that
14 cops -- that police, they like to use this *Traffic Safety Act* as just a -- a club,
15 really. They can just beat you over the head with this *Traffic Safety Act* because
16 you just -- as soon as they pull you over, you have to comply. You have to
17 comply. You have to do what you are told. This is Canada. You must have
18 papers, papers. So let's --

19

20 THE COURT: Okay. You should get to a question.

21

22 MR. STEWART: I'm getting to it. I -- I'm getting to it.

23

24 Q MR. STEWART: So if you have -- if you have a situation
25 where you're going into a parking lot, you say, or into another environment, the
26 *Traffic Safety Act* would actually have something in that regarding jurisdiction,
27 would it not, Mr. Constable McAvoy?

28

29 THE COURT: Well, that's kind of a vague question of
30 law.

31

32 MR. STEWART: No, it's not really a question of law.
33 There's a highway on the *Traffic Safety Act*. There's an actual definition of
34 highway. And there's also a definition of a parking place. And then my -- my -- my
35 case law here states specifically the judge found in -- in favour: I respectfully
36 disagree with the -- and sorry. This is paragraph 33 of *Lux*, L-U-X. (As read)

37

38 I respectfully disagree with the interpretation of Section 209.1 by
39 the appeal judge and several submissions by the Crown for the
40 reasons hereinafter canvassed.

41

1 And this is the thing you don't understand with the *Traffic Safety Act*. It's about
2 safety. There's nothing unsafe about driving around with a car with continuous
3 licence plate stickers that don't happen to be the right continuous licence plate
4 stickers. And do you know why?
5

6 THE COURT: We are -- we are getting off track.
7

8 MR. STEWART: Mm. There's no -- do you notice there's
9 no continuous stickers anymore? Do you notice in Saskatchewan, you don't see
10 anymore continuous stickers? That's because of us.
11

12 THE COURT: We are getting off track.
13

14 MR. STEWART: No, that's what they do here.
15

16 THE COURT: The reality is --
17

18 MR. STEWART: It -- it tips them off.
19

20 THE COURT: -- the --
21

22 MR. STEWART: And then judges like yourself, you think
23 that it's against the law to drive around without insurance --
24

25 THE COURT: But it is --
26

27 MR. STEWART: -- and without a licence and without this,
28 and it's actually not against the law.
29

30 THE COURT: But the point is --
31

32 MR. STEWART: Yeah.
33

34 THE COURT: -- the point is --
35

36 MR. STEWART: No, my point is is he thinks --
37

38 THE COURT: -- is the arrest -- the arrest was lawful.
39 You were convicted of obstruction of justice.
40

41 MR. STEWART: Oh, yeah. That. (INDISCERNIBLE).

1 Yeah.

2

3 THE COURT: So that is a settled issue.

4

5 MR. STEWART: (INDISCERNIBLE). You're going to
6 have to get your facts straight, My Lord. It's not an obstruction of justice. You're
7 going to have to -- it's too bad we don't actually have a written decision for my
8 case, you know. There's obviously ambiguity. But -- but no. It's okay. So let's just
9 go with the *Traffic Safety Act*, and you want to talk about, like, lawful, and let's just
10 go to number 160. 160 of the *Traffic Safety Act*. The immobilization or
11 impoundment of a motor vehicle. In this section, in Section 162, notice of seizure
12 and direction means a notice of seizure and direction issued pursuant to clause 2
13 (b). 160 (1) (b) notice of seizure and impoundment or immobilization means a
14 notice of seizure and impoundment or immobilization issued pursuant to clause 2
15 (a).

16

17 Q MR. STEWART: When you seized this vehicle, Constable
18 McAvoy, did you actually issue a notice of seizure and direction or a notice of
19 seizure and impoundment or immobilization on the driver?

20 A I don't recall who seized the vehicle or who played the direct role in the seizing
21 of the vehicle.

22

23 Q You don't recall?

24 A I don't know if --

25

26 Q Okay.

27 A -- it was me or somebody else.

28

29 Q Okay. So there was -- there was -- it was yourself, and it was Constable
30 Schaefer in that car, and you were the second officer to arrive on the scene, so
31 Constable Keating would have been the first officer at the scene; is that correct?

32 A Yeah. He was the first one.

33

34 Q Okay. So it -- we would -- you see, I would only assume it would be one of the
35 three of you that would potentially have issued a notice of seizure and direction
36 or a notice of seizure and impoundment or immobilization. But you --

37 A I don't --

38

39 Q -- are not familiar --

40 A -- remember who was.

41

- 1 Q -- that -- that you didn't, and you don't -- are not familiar if either one of those
2 officers did? Okay.
- 3 A I don't know who did it.
- 4
- 5 Q But -- but you think somebody did --
- 6 A I don't know who --
- 7
- 8 Q -- follow the rules?
- 9 A -- I don't know who acted in accordance with the seizure of the vehicle or
10 who --
- 11
- 12 Q Okay.
- 13 A -- who dealt with it.
- 14
- 15 Q Okay. Fantastic. But you were there for a good hour, you would say? From, say,
16 7 -- 7:02 to 8:00, would you say? You were there for about an hour? What
17 would --
- 18 A I don't know what time we left the scene.
- 19
- 20 Q Okay. So did you say you were there for a good half an hour, then? Like, were
21 you -- we were on the video. You were on the video for a good 20 minutes. I
22 leave. We've all seen the video. It's about 25 after. You're still around the car.
23 You were -- you were probably there. If you can just do a -- a basic recollection,
24 probably half an hour?
- 25 A Oh, it was seven years ago. So I know --
- 26
- 27 Q M-hm.
- 28 A -- I was on the video for about 20 minutes. So I'll say for sure 20 minutes.
- 29
- 30 Q Okay. Fantastic. Thank you. So I'm just going into this *Traffic Safety Act*, and
31 it's -- its subsection D here, it's 160 (2) (b), and it says: (As read)
- 32
- 33 If the peace officer is satisfied that immobilizing or impounding a
34 motor vehicle would jeopardize the safety of or cause undue
35 hardship to any person, issue a copy of a notice of seizure and
36 direction to the unauthorized driver and the owner of the motor
37 vehicle.
- 38
- 39 Why -- why -- why did -- like, you knew we lived in Hanley. So you knew that
40 this could potentially cause undue hardship. So I'm just curious, as a
41 professional, where -- where is this and -- and do you feel that -- that maybe, as

1 a professional, it would have been a good idea to have this, and as a
2 professional, do you -- do you expect that from your other officers?

3 A I don't think I had anything to do with the seizure of your vehicle.
4

5 Q Oh, you didn't have anything to do with the seizure of the vehicle. You were
6 just there for a good half an hour.
7

8 THE COURT: Again, the evidence is he was there
9 because Constable Keating asked --
10

11 MR. STEWART: Absolutely. And I'll --
12

13 THE COURT: -- asked him to arrest you for
14 obstruction.
15

16 MR. STEWART: -- absolutely. And I'll just -- and I'll
17 just -- I'll let the jury know that Constable Keating did not add in any notice of
18 seizure or notice of impoundment.
19

20 THE COURT: No. There is no evidence at all --
21

22 MR. STEWART: I know. There is no evidence.
23

24 THE COURT: -- of any notice of seizure.
25

26 MR. STEWART: I know. I know.
27

28 THE COURT: Yes.
29

30 MR. STEWART: Fantastic. Fantastic. Okay.
31

32 THE COURT: There is no question you have made that
33 point.
34

35 MR. STEWART: Thank you, My Lord.
36

37 Q MR. STEWART: Constable McAvoy, please bear with me.
38 I have a Saskatoon Police Service general occurrence hard copy. It's a
39 details-dash-18. The author is 447 Bradford, comma, Matthew James. I'm just
40 going to show this to you, Constable McAvoy. Will you just confirm that this is
41 a Saskatoon Police general occurrence hard copy, and the narrator is

1 (INDISCERNIBLE) Bradford?
2

3 THE COURT: Well, why would you object?
4

5 MS. ROHRKE: My Lord, Bradford has not been called. I
6 mean, I suppose if it's for the identification purposes only, but to put it in as
7 evidence, Brad -- like --
8

9 THE COURT: But isn't it a document in the ordinary
10 course of business?
11

12 MS. ROHRKE: My Lord, if that's what you wish, but --
13

14 THE COURT: Yes. That's what I think.
15

16 A I am not the author of this document. It looks to be a photocopy of something. I
17 can't confirm its authenticity. I have never seen -- I don't think I've seen this
18 before.
19

20 MR. STEWART: My Lord, I got this from my -- my friend.
21

22 THE COURT: From Mr. Gibbings. Yes. We will put it
23 in as a full exhibit. P -- Madam Clerk?
24

25 THE COURT CLERK: P --
26

27 UNIDENTIFIED SPEAKER: Would you like to have a look at it, just
28 to see?
29

30 MS. ROHRKE: I'm sure I have a copy. Thank you.
31

32 THE COURT: P-8. Thank you.
33

34 **EXHIBIT P-8 - Occurrence Report of Matthew Bradford, August 23, 2012**
35

36 MR. STEWART: No, no, no, no. You know what? I
37 probably just looked that up. No (INDISCERNIBLE). Can I take it back from you
38 real quick.
39

40 THE COURT: Yes. It's been tagged up. You just have to
41 make sure you give it to the clerk when you finish your questioning. Thank you.

1 Now, it's in, and it's available to read, but this -- this juror -- or this juror -- this
2 witness can't answer any questions.

3

4 MR. STEWART: He can't answer any questions?

5

6 THE COURT: Well, I mean, he wasn't the author of it.
7 But if you've got a question, ask him, and we will see if he can answer it.

8

9 MR. STEWART: Yeah. Okay.

10

11 Q MR. STEWART: You were an arresting officer on that
12 evening. You arrested me with the assistance of Schaefer and Constable
13 Keating. Why did you not release me that evening?

14 A I have no role in the release or decision on who releases at that point.

15

16 Q So you are a professional police officer? Is that correct?

17 A Yes.

18

19 Q So under the Canadian *Criminal Code*, Section 497 and 498, there is actually a
20 clause in there from the case *R. v. Simpson*, where it basically goes into the
21 duties of an arresting officer. Because it's -- it's a really interesting situation
22 when you just hand someone off, and they just go to other people and go to
23 other people and go to other people. So this isn't the first time in history it's
24 happened. So they actually put something in with *R. v. Simpson* about the role,
25 the duties, and the obligations of an arresting officer.

26

27 THE COURT: Yes. But that would have been an
28 argument -- that is a legal argument --

29

30 MR. STEWART: Mm.

31

32 THE COURT: -- that did not work at trial. All we know
33 from -- from this constable is that --

34

35 MR. STEWART: (INDISCERNIBLE).

36

37 THE COURT: -- you know, he has a different view of
38 the physical exchange that you had, and you were arrested.

39

40 MR. STEWART: Yeah.

41

- 1 THE COURT: And you kind of went down to the
2 station, and that was pretty much it for him.
3
- 4 MR. STEWART: Yeah. Pretty much. Okay.
5
- 6 THE COURT: And I understand you're saying, hey, I
7 should have been let out earlier.
8
- 9 MR. STEWART: M-hm.
10
- 11 THE COURT: Well, okay. I mean, we've got one of the
12 questions for the juries is was there an abuse of process.
13
- 14 MR. STEWART: Absolutely, My Lord.
15
- 16 THE COURT: Was there an infliction of mental
17 suffering? They are -- they will decide those facts.
18
- 19 MR. STEWART: Fantastic. Thank you, My Lord.
20
- 21 THE COURT: And you will get a chance to make an
22 argument before the question is put to them.
23
- 24 MR. STEWART: Thank you, My Lord.
25 (INDISCERNIBLE) no, I'm just going to finish real quick.
26
- 27 Q MR. STEWART: Constable McAvoy, I'm just going to let
28 you bring your attention to your own notes, your details 3, the Saskatoon Police
29 Service general occurrence hard copy notes, the ones that are typed, narrative
30 details-dash-3. Do you have that in front of you?
31 A I do.
32
- 33 Q It's -- begins on 12 August 24 at approximately 1900. I responded to a request
34 for assistance? Is that -- is that the same --
35 A Yeah.
36
- 37 Q Okay. Fantastic. I'm just going to go down a few -- a few paragraphs here. I
38 guess the fifth paragraph. It would be: Once down on the ground. Can you --
39 can you read that one? Okay. I'll read it here. (As read)
40
41 Once down on the ground, this male continued to struggle with

1 Constable Schaefer and myself, refusing to give up his hands and
2 refusing to comply with our demands to cease struggling. He
3 continued to twist and try to get away --
4

5 Sorry. (As read)
6

7 And he continued to twist and try and get away from our grasps. I
8 grabbed hold of the male's left arm and was able to get an arm bar
9 twist lock on it, applying pressure on his shoulder, elbow, and
10 wrist. While I was doing this, Constable Schaefer was working to
11 control his right arm and eventually was able to get handcuffs on
12 him. Once Constable Schaefer handcuffed his right arm, we were
13 able to pull it back behind his back and get both hands
14 successfully cuffed.
15

16 Is that -- is that a fair --

17 A Yeah.

18
19 Q Yeah? Okay.

20 A That's verbatim.

21
22 Q So, Constable McAvoy, Constable Keating testified that he assisted in getting
23 the cuffs on. But it says here -- it says here that it was -- it was -- we were able
24 to, once Constable Schaefer handcuffed his right arm, we were able to pull it
25 back behind his back and get both hands successfully cuffed. Constable Keating
26 testifies that he assisted in that handcuffing.

27 A He very well may have. It was --

28
29 Q He very well may have? Okay.

30 A -- there was a lot of going -- things going on at the time.

31
32 Q There certainly was, wasn't there?

33 A There was a lot of hands.

34
35 Q It was crazy. So the next line: (As read)

36
37 During the course of this struggle, this male's face was in contact
38 with the pavement, and it appears that he may have had some
39 abrasions that were bleeding on his face. After this male was
40 placed in handcuffs, I was able to stand up and speak with
41 Constable Keating as to what was going on.

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Is that correct?

A That is correct.

Q What did he tell you at that time?

A He told me the run-down of what happened.

Q Well, what happened?

A Traffic stop, people weren't identifying, one was trying to interfere, saying they don't believe in the laws, and he called for help for obstruction.

Q At any time, did somebody tell you that you were investigating this car as a stolen car?

A It would have been one of our topics to look at, since the plates didn't match, the individuals -- the plates didn't match the vehicle. We were having difficulty with the VIN, as it wasn't being able to be read properly. So yes. There would have been -- at one point, we were concerned that it may have, in fact, been a stolen vehicle.

Q At any time in your notes, did you make mention of that, that you were explaining that to the two occupants of the vehicle, that it was, in fact, a stolen vehicle?

A I don't remember saying any of that to anybody.

Q Fan --

A But it's not in my notes. But that would have been part of our investigation as to whether or not the vehicle was stolen.

Q I'm glad you said part of your investigation. So was the other part of your investigation the assault and the obstruction? Are you --

A The part of our investigation -- the obstruction had already taken place. You were arrested for the obstruction, as per Constable Keating's request and order --

Q Request. Yeah.

A -- when we got there.

Q When you -- when you normally arrest someone, do you make them get on the ground?

A Depends on the situation.

1 Q Depends on the situation.

2 A As I've already stated.

3

4 Q M-hm. And so coming into this situation, you didn't actually know what was
5 going on. You were just going in with some assumptions; is that correct?

6 A Yeah. We were making reasonable assumptions based on information that we
7 had at the time.

8

9 Q So a reasonable assumption? Absolutely.

10 A Yeah.

11

12 Q So what did you know, coming into that parking lot?

13 A We knew that there -- Constable Keating was needing backup immediately, as
14 something was going on that caused him to request backup immediately
15 because somebody was doing something that caused him to request backup
16 immediately. So we went into the parking lot in that case. We got there. We
17 were told to arrest you for obstruction, which we did. Given the fact that the
18 situation was quite urgent as expressed by Constable Keating over the radio, we
19 were going to get you in custody as quick as we could until we could figure out
20 what was going on.

21

22 In this case, you were not complying with demands by Constable Schaefer, his
23 instructions to get on the ground, and that you were under arrest. You, in fact --
24 you buried your hands in your pocket, which caused concern, given
25 everything -- the potential for weapons, not knowing what was going on. And
26 then when you -- when we went to use any kind of minimal force, i.e., grabbing
27 onto you, you tried to get out of our grasps. So that warrants us getting you on
28 the ground because nothing you did was compliant to any of our verbal
29 requests. So then we had to take it a little bit higher in use of force, i.e., tripping
30 you and trying to get you under control that way. So your actions dictated what
31 happened to you.

32

33 Q Thank you, Constable McAvoy. Would you tell a 70-year-old man with -- with
34 a hearing impediment to get down on the ground, and if he didn't get down on
35 the ground right away, would you tell him to get down on the ground again?

36

37 THE COURT: Well, I will -- go ahead. You answer that
38 question. But I am just -- hypothetical questions --

39

40 MR. STEWART: M-hm.

41

- 1 THE COURT: -- that's not -- that's offside.
2
- 3 MR. STEWART: Oh, okay. A fair --
4
- 5 THE COURT: If you call an expert, you can give a
6 hypothetical. But --
7
- 8 MR. STEWART: Ah.
9
- 10 THE COURT: -- the constable -- I will invite you,
11 notwithstanding the fact that the question is offside --
12
- 13 A Depending --
14
- 15 THE COURT: -- to talk about the 70-year-old deaf guy.
16
- 17 A Depending on the situation, yes. And in this case, you were asked at least two or
18 three times by Constable Schaefer to get on the ground.
19
- 20 Q MR. STEWART: Okay.
21 A Which you did not.
22
- 23 Q Okay. I'm just going to read you -- because we're going to put your -- your --
24 your notes -- your hard -- hard occurrence notes into -- into evidence so that the
25 jury can read it. But I'm just going to read you from -- from clay -- from
26 Constable Schaefer part of his notes. And it's -- and on his first page -- the first
27 page of his notes. And -- and it's the last paragraph. It starts: (As read)
28
- 29 At this point, Constable McAvoy had went behind him and
30 grabbed his waist from behind and attempted to take him to the
31 ground. The male had resisted going to the ground. He maintained
32 a low combat stance and refused to go to the ground, despite
33 commands by police. I had taken control of his head and took it to
34 the ground, and his body followed.
35
- 36 That's a good thing. Imagine if it didn't follow. We'd be in trouble. (As read)
37
- 38 This is at the same time Constable McAvoy did a take down.
39 While in the ground, he was repeatedly told to put his hands
40 behind his back, and his right arm under his body. I tried pulling it
41 out, and he kept it tucked under his body. I felt him pulling it back

1 to his body. Constable McAvoy put pressure on his left arm and
2 repeatedly told him to pull his arm out. Eventually, he complied.
3 The entire time, he was screaming and yelling, attracting attention
4 of bystanders. He was shouting obscenities and accusing us of
5 beating him to gauge sympathy of bystanders. In addition, the
6 male was rubbing his own face into the pavement, flipping his
7 face left and right as he was screaming. There was some scraping
8 on his face from contact with the pavement as a result. I placed a
9 handcuff on his right hand after he pulled it out from under his --
10 after he pulled it out from his body. By this time, Constable
11 Hounsell, Constable Smith, and Constable Boyce attended and
12 assisted with the arrest. He was completely searched --
13

14 Sorry. (As read)

15
16 He was completely handcuffed and searched. I did see that when
17 the male was picked up, there was some scraping to his face, and
18 his nose was bleeding. It should be noted that pepper spray was
19 not used, as it was extremely windy, and Constable McAvoy was
20 downwind, as well as numerous bystanders.
21

22 Constable McAvoy, does that sound like an accurate representation of this
23 incident?

24 A From Constable Schaefer's point of view --

25
26 Q Yes.

27 A -- yes. It very well could be.
28

29 Q Did you unlock the locked car to search for information inside the vehicle or
30 did -- did someone else unlock the car to search for information in that vehicle?

31 A I tried the passenger door. It was locked. I think I went around to get it open. So
32 yeah, I unlocked it to get into it. I tried to find a key or something to do that.
33

34 Q And then you ultimately got into the car?

35 A Yes, I did.
36

37 Q Found a bunch of documents?

38 A Yes, I did.
39

40 Q Did you take an inventory of the car's -- the car's contents at all? Was there,
41 like, an inventory taken when you -- you know, you impounded the car. They

1 took the car. Was there --

2 A No.

3

4 Q -- an inventory of the contents?

5 A There was a bunch of hand tools and stuff. Other than that, there wasn't really
6 some -- just some small hand tools and stuff like that. Nothing major, of value.

7

8 Q No -- no bags of cocaine?

9 A No, I didn't find any.

10

11 Q No guns?

12 A Didn't find any.

13

14 Q Dead hookers?

15 A No.

16

17 Q No. But you did look?

18

19 THE COURT: Okay. Mr. Stewart, I'm not sure --

20

21 MR. STEWART: Hm. But you did look --

22

23 THE COURT: I am not sure this helps your case.

24

25 MR. STEWART: Yeah. Oh, no, it certainly does.

26

27 Q MR. STEWART: But, Constable McAvoy, you were
28 engaged in looking in the car. We've seen the video, that you were actually
29 using a -- a flashlight in looking all over the car, all around the car.

30 A Yeah.

31

32 Q What time would you say that you found the information about the names of
33 myself and my brother? What time --

34 A It was -- I believe it was --

35

36 Q -- would you say? Because you -- you're -- you --

37 A -- 7:18, according to the time stamp on the video.

38

39 Q Okay. Because you -- you guys say we never -- we refused to identify -- we
40 refused to identify yourselves. Is that correct?

41 A That is correct.

1
2 Q All right. I refused --
3 A You did not identify. You yelled and swore at people.
4
5 Q -- my brother refused. We were refusing.
6 A And refused.
7
8 Q And so I'm just -- I'm curious. In your notes, in your -- in your -- in your -- in
9 your hard copy, the -- the details 3, I'm just -- I'm just -- I'm just curious
10 where -- where it says that -- that you were asking us for our names, because it
11 would seem that if you were investigating a stolen car, you'd like to know, like,
12 who the guys who are driving that stolen car.
13
14 THE COURT: Again. Like, that is --
15
16 MR. STEWART: Well --
17
18 THE COURT: -- that is an unfair question. They weren't
19 investigating a stolen car. They were called to the scene of an officer altercation
20 who was requesting assistance. They immediately engaged you physically. You say
21 they threw you on the ground.
22
23 MR. STEWART: Right.
24
25 THE COURT: They say no. And then they arrested you.
26
27 MR. STEWART: M-hm.
28
29 THE COURT: And then you were taken away.
30
31 MR. STEWART: M-hm. Yeah.
32
33 THE COURT: At that point, somebody might have said,
34 I wonder if this car is stolen. Okay? That's the sequence.
35
36 MR. STEWART: I like it, My Lord.
37
38 THE COURT: Okay.
39
40 Q MR. STEWART: Do you consider yourself to be a
41 professional, Constable -- Constable McAvoy?

1 A I do.
2
3 Q Okay. Good. Do you consider yourself to have honour and integrity?
4 A I do.
5
6 Q Would you say you -- you use computers on the job?
7 A Yes.
8
9 Q Did you use a computer on the evening in question?
10 A I would have, yes.
11
12 Q Were you -- what were you doing with that computer?
13 A Trying to track down who the individuals were, using the VIN, the licence
14 plates, anything we could find in the -- once we found documents with names
15 on it, we took steps to try and verify who those individuals were --
16
17 Q Okay. So you -- so you --
18 A -- by trying to find a photograph, in this case, some old SGI photographs.
19
20 Q Fantastic. So you -- you did a bunch of searches?
21 A I did, yes.
22
23 Q Okay. Are any of those searches here today?
24 A I don't think so.
25
26 Q Okay.
27 A We were able to identify you based on the names, based on SGI. So the --
28
29 Q Supposedly. Supposedly.
30 A -- they were successful searches.
31
32 Q Yeah, they were successful, weren't they?
33 A No. That's how we did it.
34
35 Q No, I'm sure you did.
36 A It's not supposedly. It is the truth.
37
38 Q I'm sure you did. But you don't have a copy of any of those searches?
39 A No. We don't have a copy of those.
40
41 Q No? No. Because it's interesting, Constable McAvoy. You see, like, it's very

- 1 easy to say, I identified myself. I said my name is James.
- 2 A You didn't, though.
- 3
- 4 Q I know, right? Because there's no audio. It's -- it's a wonderful game. So all I
- 5 can do is -- is just try to get to some form of a -- a level of reality that we can all
- 6 deal with.
- 7
- 8 THE COURT: Well, and in fairness, we are at that.
- 9
- 10 MR. STEWART: We are certainly close.
- 11
- 12 THE COURT: Because the jury will be faced --
- 13
- 14 MR. STEWART: Yeah.
- 15
- 16 THE COURT: -- faced with a decision. Okay.
- 17 Mr. Stewart says I was compliant, I gave my name. The officers had a different
- 18 perspective. That's a fact.
- 19
- 20 MR. STEWART: Yeah.
- 21
- 22 THE COURT: They are the judges of the facts.
- 23
- 24 MR. STEWART: Fantastic, My Lord.
- 25
- 26 Q MR. STEWART: So in -- in my notes -- in your notes,
- 27 sorry, Constable McAvoy, is there anywhere that you can point to me where it
- 28 says I -- I specifically asked them for their name?
- 29 A As I already said, I don't believe I asked them specifically. But I was there
- 30 within earshot to hear other officers ask them and to hear the profanity-laced
- 31 responses that did not include any identification.
- 32
- 33 Q Okay. Profanity-laced responses that weren't recorded on audio. Thank you,
- 34 Constable McAvoy.
- 35
- 36 THE COURT: Yes. We know there was no recording,
- 37 Mr. Stewart.
- 38
- 39 MR. STEWART: Don't we all. Don't we all.
- 40
- 41 THE COURT: Yes. That horse is dead.

1
2 MR. STEWART: Still no reason, though, right? We just --
3 we just know it doesn't exist, but we've -- we don't have a reason, though, right?
4 We just -- we just know it doesn't exist. But we've got -- we don't have a reason.
5 We'll just -- let's just call it physics. How about magic?
6
7 Q MR. STEWART: Constable McAvoy, you went to my
8 criminal trial and you testified to using force to effect my arrest; is that correct?
9 A Yes, I did.
10
11 Q And normally when you use force, you would fill out a use of force report; is
12 that correct?
13 A Yes. And I did in this case.
14
15 Q And yes, you certainly did fill out a use of force report in this case, except we
16 don't have it. It's not here.
17 A Okay.
18
19 Q It's missing. That's too bad. But that's okay, because what I think we should do
20 is get Constable McAvoy to fill one out, because he was there that evening.
21
22 THE COURT: No, no.
23
24 MR. STEWART: No?
25
26 THE COURT: No. But you could ask him --
27
28 MR. STEWART: No? Okay.
29
30 THE COURT: -- can you recall what he put in?
31
32 MR. STEWART: Ah.
33
34 THE COURT: That's perfectly legitimate.
35
36 MR. STEWART: Ah. Perfect. Okay.
37
38 THE COURT: Do you remember cross-exam? Question,
39 answer, question, answer?
40
41 MR. STEWART: M-hm. I'm -- I'm -- I'm trying to do my

1 best, My Lord.

2

3 Q MR. STEWART: Do you remember filling one out,
4 Mr. Constable McAvoy?

5 A Yes, I do.

6

7 Q Okay. Do you remember some of the things that you put into that use of force
8 report?

9 A If I may, I can -- I'll have a copy of the use of force report in the book.

10

11 THE COURT: Yes. The report is at tab 23.

12

13 A Yes. I can refer to that, as well.

14

15 THE COURT: That will hopefully refresh your
16 memory.

17

18 A Yeah. I can. Yeah. Yeah, I would have filled out the names of the officers
19 involved.

20

21 Q MR. STEWART: Okay.

22 A Generally, one use of force report form needs to be filled out for an incident. In
23 this case, there would have been one brief summary as to what the situation was
24 that caused this report, and then in this case, I would have checked off the boxes
25 for a joint lock and a takedown or a throw.

26

27 Q Okay.

28 A And that would have been it.

29

30 Q And that would have been it?

31 A Because that's all that was done.

32

33 Q Okay. And then the second page, the reason for the use of force, that would
34 have all been properly filled out?

35 A Yeah.

36

37 Q And you put the suspect was passively resistant or actively resistant?

38 A Actively resistant.

39

40 Q Okay. And then assault of -- to officer -- and -- and assault of two others?

41 A It would have been intent to flee, as well.

1
2 Q Right. And so what would be the reasoning behind all that, then, in that blank
3 area there, like, once you get the box? And then below, it says, Explain why the
4 use of force was effective or ineffective. What would you say there?
5 A Suspect was taken into custody is basically what it would be. It was effective
6 because you were handcuffed and taken into custody.
7
8 Q Okay. And --
9 A It would have been something brief like that.
10
11 Q And so at the very top, it says in the big blocks, reason for the use of force,
12 colon. And your reason would have been?
13 A I'm sorry. Which page are you?
14
15 Q The second page, the very top. It's just below "copy." It's in a box that says
16 "reason."
17
18 THE COURT: Just above the punch hole where the --
19
20 Q MR. STEWART: Reason for the use of force.
21
22 THE COURT: No, right at the top of the page.
23
24 A Oh, right at the top?
25
26 THE COURT: Yes.
27
28 Q MR. STEWART: It just says "reason for the use of force."
29 And then there's a box there, like, a blank box. What would that reason -- what
30 would that reason have been, that you used force against me in a parking lot at
31 7:00 in the evening with lots of people around?
32 A Well, that's the heading for that section. So what that means is the boxes that
33 fall underneath it are --
34
35 Q Right.
36 A -- what the reason for the use of force was. In this case, it would have been,
37 like I already said, actively resistant --
38
39 Q Yeah?
40 A -- and attempting to flee.
41

- 1 Q Okay. Attempting to flee.
- 2 A That's what -- that's the heading line in that box there.
- 3
- 4 Q Interesting. But you wouldn't have put assaultive to officer or fighting?
- 5 A Actively resistant --
- 6
- 7 Q Actively reminiscent and attempting --
- 8 A -- attempting to flee.
- 9
- 10 Q -- to flee. Interesting. Okay. And so what would you, then, have said in explain
- 11 why the use of force was effective or ineffective?
- 12 A Again. You were taken into custody.
- 13
- 14 Q M-hm. And so then the charges below would have been?
- 15 A The obstruction and the -- the assault with intent to resist.
- 16
- 17 Q And assault with intent to resist. But then you said I was fleeing. But I thought I
- 18 was -- in here, they were -- Constable Keating says they're -- they're getting in a
- 19 fight. So that's -- it seems to me a little bit -- there seems to be some
- 20 discrepancy between "flee." Like, I understand a flight and fight response, but I
- 21 don't think you can do the same -- both at the same time.
- 22 A Well, walking away --
- 23
- 24 THE COURT: But again, you are lapsing into argument.
- 25
- 26 MR. STEWART: Am I? Okay.
- 27
- 28 THE COURT: Your question is how did you fill it out.
- 29
- 30 MR. STEWART: Okay.
- 31
- 32 THE COURT: Now, if -- I will take your point. Was
- 33 there a reason you didn't talk about him trying to flee other than just a mention he
- 34 was --
- 35
- 36 A Yeah. Well, walking away is attempt to flee.
- 37
- 38 THE COURT: Okay. All right.
- 39
- 40 MR. STEWART: There you go. There you go.
- 41

- 1 THE COURT: Okay.
2
- 3 Q MR. STEWART: But there's no fighting, was there?
4 A No, there was the --
5
- 6 Q Constable --
7 A -- active resistant.
8
- 9 Q The active resistant?
10 A Which we already described.
11
- 12 Q Right. But we have Keating on -- on -- going out over a loud hailer, saying that
13 fighting -- that we've got fighting -- there's fighting, but you said there was no
14 fighting?
15 A I -- I can't speak for how Constable Keating would describe any particular
16 situation. So ...
17
- 18 Q So you can came on the scene, and you got into a physical altercation with --
19 with myself, according to Constable Keating, and through that altercation, you
20 decided that I only used a little bit of force, not a whole lot of force. It was like
21 a -- a modified, over the leg hip toss, it wasn't, like, a full hip toss, and I was
22 totally lawfully obligated to do that. Is that correct? Is that your -- your -- your
23 take on this, Mr. Constable McAvoy?
24 A I believe that was dealt with at the criminal trial, so yes.
25
- 26 Q Yeah. So did you notice any injuries to me?
27 A As I already said, there was a little bit of road rash on your one cheek.
28
- 29 Q A little bit of road rash. Lots of people get road rash on their face. So I'm
30 curious. On the third page, it says conditions, multiple suspects, indoor,
31 outdoor, daylight, dark. The next one, apparent physical-mental condition of
32 suspect, normal drug intoxication, abnormal behaviour, alcohol intoxication,
33 prior injuries, other. What would you have put there?
34 A I don't recall what I would have put for the description for, you know,
35 intoxication or anything like that. I probably would have put down "road rash"
36 for injury.
37
- 38 Q Okay. Okay. And would you have said medical attention?
39 A No.
40
- 41 Q No? No. No, (INDISCERNIBLE) was any officer injured? There was no

- 1 officers injured, was there?
- 2 A I don't think anybody was -- any officers were injured, no.
- 3
- 4 Q No. No, but there was fighting, some -- some kind of fighting?
- 5 A Yeah.
- 6
- 7 Q Yeah? Okay. And then you would have got your supervisor. It said here to be --
- 8 to be completed fully by the involved member's supervisor, appropriate force
- 9 used yes or no, forward with memo and incident report to section or division
- 10 head. And you would have filled that out?
- 11 A I don't fill that out. That's for the supervisor. Again, that's just the title of the
- 12 box.
- 13
- 14 Q Of course. Of course. You would have --
- 15 A And that's for the supervisor to --
- 16
- 17 Q -- do it.
- 18 A -- to deal with.
- 19
- 20 Q And so who would -- and who would that supervisor have been?
- 21 A I don't know who the sergeant was in charge of us that night.
- 22
- 23 Q You don't know.
- 24 A So it would have been handed off to him. I believe it might have been a
- 25 Sergeant Spot that it probably would have been given to.
- 26
- 27 Q Okay.
- 28 A I don't know. It could have been any one of the other supervisors that were
- 29 working that night. I don't know. I can't remember who it was.
- 30
- 31 Q Okay.
- 32 A That's something for them to fill out, and from there, it gets passed on.
- 33
- 34 Q Okay. You were -- you were -- you took some form of training for the ICCS,
- 35 the in-car camera system, the Panasonic Arbitrator. We -- we heard from a Dave
- 36 McGillivray there was a number of different models and -- and whatnot, but
- 37 you -- did you actually physically take part in some form of training for the
- 38 Panasonic Arbitrator?
- 39 A Yeah, a user's course on how to operate the equipment and how to use it.
- 40
- 41 Q I'm sorry. I'm just --

1 A A user's course, how to separate the equipment.

2

3 Q A user's course?

4 A Yeah. How to be the user in the vehicle, i.e., the police officer driving the car.

5

6 Q For --

7 A Using it at that end, yes.

8

9 Q Okay. Fantastic. Thank you very much, Constable McAvoy.

10

11 THE COURT: When did you take that training?

12

13 A You know, I can't remember the date. It would have been before the -- the test
14 period or the trial period started. So I couldn't recall that date, though. It would
15 have been prior to the 24th of August, though.

16

17 THE COURT: All right. Thank you.

18

19 A So ...

20

21 Q MR. STEWART: So you -- the training, this -- this course,
22 if you will, did -- like, did it have an actual title? Can I -- can I refer to it as a
23 Panasonic training course? Did you receive a certificate? Was it an online
24 course?

25 A No. It wasn't a certificate course. It was seven or eight years ago. I couldn't
26 tell you exactly what the -- the course -- what the title was or anything like
27 that.

28

29 Q Okay. Fair enough. So --

30 A There was no certificate. It's showing how to use the equipment.

31

32 Q Okay. And so at the end of that period or whatever, did you get, like, any type
33 of badge or a number or anything that would just say --

34 A No.

35

36 Q -- I passed this course?

37 A No, I don't.

38

39 Q No? Okay. Do you remember how long the course -- the training course took?

40 A Again, I don't -- I don't recall that. Again, that was about eight years ago. I
41 couldn't tell you.

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Q Fair enough. Do you remember if you did it with other people in a room and an instructor or this an online in front of a -- in front of a computer screen?

A I think it was in a room with other people who were part of the trial period.

Q Okay. Fantastic. And you don't have any of that -- any of the installation records or report or anything about that trial period?

A I had absolutely nothing to do with the maintenance of the equipment.

Q Okay.

A The course is only to do with the operation --

Q Very fair.

A -- from the front end, i.e., the officer in the car.

Q Very fair.

A That was it.

Q Very fair.

A That's all.

Q Did it -- did it strike you as odd that Constable Keating was wearing a microphone and operating a car with a camera when he hadn't been trained? Did it strike you as somewhat odd?

A No.

Q No? As -- as a professional, Constable McAvoy, I'm a -- I'm a certified journeyman plumber, and I have a certain social and professional responsibility, both to myself and to my other coworkers. When I see a plumber who's doing really bad plumbing things, I actually have a duty -- I have an obligation to see that that plumbing doesn't continue because there's certain codes and responsibilities that the Government of Canada dictates must be done on building. So, like, when I have to solder or sweat valves --

THE COURT: No, again --

MR. STEWART: Um?

THE COURT: -- we are getting a little too in-depth into what you do --

1 MR. STEWART: I'm just -- all I'm trying to do, My Lord,
2 is just --
3
4 THE COURT: -- at a work site. If --
5
6 MR. STEWART: -- preface the question.
7
8 THE COURT: Right.
9
10 MR. STEWART: Okay.
11
12 THE COURT: But if you want to ask a question -- and I
13 know what your question is.
14
15 MR. STEWART: M-hm. Can you ask it for me, My
16 Lord?
17
18 THE COURT: Yes.
19
20 Constable McAvoy, if you see an officer misbehaving in the course of his duties,
21 would you do something?
22
23 A Yes, I would.
24
25 THE COURT: Thank you.
26
27 Anything further?
28
29 MR. STEWART: Thank you, My Lord.
30
31 THE COURT: Okay.
32
33 MR. STEWART: I -- I just have a couple more. But that
34 was perfect. Thank --
35
36 THE COURT: Yes. But you must be close to the big
37 finish.
38
39 MR. STEWART: Absolutely. Yes. Yeah.
40
41 THE COURT: Okay.

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Q MR. STEWART: So, Constable McAvoy, you acknowledge that you saw some road rash on my face?

A Yes.

Q Yeah. And Constable Schaefer, he acknowledges that he saw some damage to my face. And he says it was self-inflicted. Constable Keating says there was no damage to my face. Did you see blood on my face, Constable McAvoy?

A I only recall the road rash, the scrapes.

Q The road rash. Just the scrapes. So you don't know -- you didn't notice any blood. I was -- I was in this -- in the state of this, I was -- I was accused of spitting blood. Did I spit blood at you, Constable McAvoy? Did I -- did I physically spit blood in your -- in your direction?

A I don't believe I said you spit at me or spit blood at me or spit blood at all.

Q No, I -- I -- I -- I didn't. It was just, I was accused of spitting blood, and I'm just -- for the -- to clarify, I didn't at any time spit any blood on you or at you --

A Well, no.

Q -- or in your direction?

A No, you didn't -- you -- you are adamant in your testimony that you never spit blood at anybody, but you did spit blood is what you did say.

Q No, no, no, I -- I -- you guys said I was spitting blood.

A No, you said it as well, in your testimony.

Q No, no. I -- I understand that. But originally, you guys said I was spitting blood, and that's -- and that's just what I'm getting to. So that's fine. Let -- let the -- the witness show that yeah, I did. I did spit blood. Absolutely. Okay. A couple more things here. You said that there was a -- there was a crowd of people. There was a few bystanders around. It was kind of busy, Cruise Weekend. Like, would you say there was ten people, you know, maybe 15? You said there wasn't 100, you know. I know it wasn't 200. It wasn't standing-room only. But could you say, you know, ball park, 20 people, 30 people? And does that include the ten officers, the cars that showed up, or is that just civilians? How many people would you say were there in that parking lot on that night during the incident, Mr. Constable McAvoy?

A I couldn't tell you how many people were there.

1 Q Okay.

2 A I don't even think I referred to the number of people in my report. I just have to
3 read through it quickly here.

4

5 Q Okay.

6

7 THE COURT: Do you have any recollection?

8

9 A I don't remember how many people were there.

10

11 Q MR. STEWART: Okay.

12 A At all.

13

14 Q Thank you, Constable McAvoy. Constable McAvoy, did other officers state
15 there was a crowd of people around?

16 A I can't comment on what other officers saw.

17

18 Q Okay. Fair enough. But you -- you did read -- I did read from you -- from
19 Clayton Vince Schaefer, Constable Schaefer, his notes were I was grinding
20 my own face in the pavement to engage sympathy of bystanders. So it's -- you
21 can say that there is maybe not a crowd of people, but there's definitely
22 bystanders?

23 A I don't read other officers' reports on incidents. I prefer not to. I don't need to.

24

25 Q Oh, okay.

26 A So I can't say if that's what Constable Schaefer's report says or not.

27

28 Q Okay. Well, I'll tell you that --

29 A I -- I don't know.

30

31 Q -- that's what Constable Schaefer's report says. It says --

32 A Again, I --

33

34 Q -- I was -- I was -- so --

35 A -- I -- I don't know. I never read it. So ...

36

37 Q Okay. And that's fine. I'll just read it to you one more time. It said --

38

39 THE COURT: Well, no. The evidence is Constable
40 Schaefer thought there were bystanders.

41

- 1 MR. STEWART: Okay. Fair enough. Thank you, My Lord.
2 Thank you, My Lord.
3
- 4 THE COURT: And you thought there were a good
5 number.
6
- 7 MR. STEWART: Yeah.
8
- 9 Q MR. STEWART: Does part of your job -- Constable
10 McAvoy, does part of your job as a police officer involve collecting witness
11 names or witness statements?
12 A Yeah. It can, yeah.
13
- 14 Q It can? Okay. Are you trained to take witness statements or witness names?
15 A We have been, yeah.
16
- 17 Q You have been trained? Okay. Did you take any witness statements?
18 A In this situation, no.
19
- 20 Q Okay. Were you approached by any witnesses?
21 A No.
22
- 23 Q No? Okay.
24 A The only witness I was approached by was Constable Keating.
25
- 26 Q Okay. So you don't -- you're not -- you're not aware if other officers took
27 witness statements?
28 A No, I don't know whether other officers did.
29
- 30 Q Okay. Okay. Would you say witness statements are important to an
31 investigation?
32 A Sometimes they're needed. Sometimes they aren't.
33
- 34 Q Fair.
35 A In this case, we had Constable Keating as being the primary witness as to what
36 had happened, and, in fact, we were effecting the arrest for Constable Keating.
37 So not much of a witness statement needed from him.
38
- 39 Q Mm.
40 A Besides, he was already doing his report, so there's his witness statement.
41

1 Q M-hm. No, that's great. Would you say witness statements could have been
2 helpful in this incident?

3 A Given this incident, I don't see how a witness statement from somebody who
4 may not have seen anything or had direct involvement with it would be
5 beneficial. You provided a witness statement to the police station a few days
6 later on your own account, so --

7
8 Q M-hm.

9 A -- that was --

10

11 Q That was actually a public complaint, but the police, they tricked it. They -- they
12 put it on a -- they put it on a witness statement form. But it was actually a public
13 complaint. But you'll see --

14 A It was a hand-typed document that contained --

15

16 Q Yeah.

17 A -- a lot of the same Freeman language as the other documents.

18

19 THE COURT: There is no evidence that any civilian
20 witness was contacted for a statement. If that's the point you want to make,
21 consider it made.

22

23 MR. STEWART: Okay. Perfect, My Lord.

24

25 THE COURT: Move to the big finish.

26

27 MR. STEWART: Okay.

28

29 Q MR. STEWART: Was the first time that you saw that video
30 of the incident in -- the first time you saw that video, was the first time that you
31 saw the video, was that in criminal court for my -- for my criminal trial?

32 A You know, I can't -- I can't say when the first time I saw the video was. I
33 don't -- I don't know when the first time was. It may have been before or just
34 before. It may have been in court. I don't know.

35

36 Q Okay.

37 A It's been -- again, we're looking at seven or eight years ago.

38

39 Q Yeah. Yeah.

40 A I -- I -- I couldn't tell you the exact time I first saw that video.

41

1 Q Okay. So when you went to court, you knew if the other four officers, the five
2 of you total, you knew you were going in to testify against me without any
3 audio that had been picked up, or you were going in expecting audio to be
4 there?

5 A Again, I -- I don't know. I don't know when I saw the video. I don't -- I can't
6 remember the exact specifics seven or eight years ago surrounding prepping for
7 the trial.

8

9 Q Okay. But my point is is that, like, the day of the trial, you must have known
10 that there was evidence that was going to be used, and the day of the trial, it
11 was -- it was made evident that there was no audio. So --

12

13 THE COURT: Again. How many times have we banged
14 that drum? You know there's no audio.

15

16 MR. STEWART: No, I -- I --

17

18 Q MR. STEWART: So now my question, then, is does -- does
19 that concern you at all as a professional in -- in your -- in your duties and roles,
20 both professionally and socially, that -- that that in a situation such as this, that
21 there's so much going on, and we're missing audio. You're going in to testify
22 against a person. Do you believe this is good faith, to go in and testify without
23 having any audio?

24

25 THE COURT: Yes. That's a little rambly. Let me ask it
26 for you.

27

28 MR. STEWART: Okay. Okay. Thank you, My Lord.

29

30 THE COURT: And you tell me if you like.

31

32 Do you think the absence of audio evidence negatively impacted the -- the trial in
33 this matter? The criminal trial of James Stewart?

34

35 A The lack of the -- lack of audio?

36

37 THE COURT: The lack of audio.

38

39 A No, I don't think it negatively impacted it. I think, given this -- what happened
40 at the scene, it would have probably been worse for him had there actually been
41 audio.

- 1
2 THE COURT: All right. Okay.
3
- 4 Q MR. STEWART: Fantastic. Thank you, Constable
5 McAvoy. You guys are always looking out for me. So what did you do after
6 you found out that there was no audio that had been recorded? What did you do
7 as the -- as the officer here? You've gone in now, and then you've found out that
8 you thought a system would have been working, but now, you as a professional,
9 you're -- you're in a situation --
10
- 11 THE COURT: Except, Mr. Stewart, that's not how it
12 works.
13
- 14 MR. STEWART: Okay.
15
- 16 THE COURT: He has filed his incident report.
17
- 18 MR. STEWART: Okay. Okay.
19
- 20 THE COURT: The Crown gathers up -- it would -- the
21 Crown would have said to themselves, boy, there's no audio, but the Crown
22 probably said, I've got the testimony of five officers, should still be a slam-dunk
23 without it, right? And in the end, that's how it played out.
24
- 25 MR. STEWART: Okay.
26
- 27 Q MR. STEWART: Do you think hearing the audio that could
28 have been recorded from this incident could give a much clearer picture of what
29 took place?
30 A Well, as I already stated, it probably wouldn't have been better for you. It
31 probably would have been worse for you, had there been audio.
32
- 33 Q So -- so you say the incident, having been recorded audiolly [sic], you would --
34 you -- you would have a clearer picture of what happened?
35 A Yeah. Audio would have been nice. But unfortunately, equipment fails.
36
- 37 Q Yeah. Yeah.
38 A Just like everything. Just like plumbing parts fail.
39
- 40 Q Don't they, though?
41

1 THE COURT: Wrap it up.
2
3 MR. STEWART: Yeah.
4
5 Q MR. STEWART: Do you -- does it concern you that your
6 conduct and credibility as a professional police officer now appear to be
7 suspicious?
8
9 THE COURT: No, that's an improper question.
10
11 MR. STEWART: That's improper question?
12
13 THE COURT: That's argumentative.
14
15 MR. STEWART: Okay. Fair enough.
16
17 THE COURT: That's an argument for you to make.
18
19 MR. STEWART: Good thing to know.
20
21 Q MR. STEWART: Yeah, okay. Constable McAvoy, you
22 testified that I was assault with the intent to resist and not just a resisting. So
23 can you just clarify again what exactly the assault relates to in that charge, that
24 270 (1) (b) or whatever, the word "assault" and then explain how I assaulted
25 you? Can you just kind of go into that charge, that 270 (1) (b) a little bit more,
26 please?
27 A We've gone over this, I think, numerous times with you in regards to it wasn't
28 the assault, it was the resist.
29
30 Q So just the squirming?
31 A The part of that is --
32
33 THE COURT: Okay.
34
35 A -- the resist part of that section --
36
37 Q MR. STEWART: Okay.
38
39 THE COURT: If you're physically engaged --
40
41 A -- it's not the assault part.

1
2 THE COURT: -- with the guy, trying to resist, the
3 *Criminal Code* characterizes that as an assault with intent to resist?
4
5 Q MR. STEWART: Yeah. Right. Assaulting --
6
7 THE COURT: Yes.
8
9 Q MR. STEWART: -- with the intention --
10
11 THE COURT: Which is different than, you know --
12
13 A Yes.
14
15 Q MR. STEWART: -- versus just straight resisting, which is
16 Section 130.
17
18 THE COURT: Yes. Yes.
19
20 Q MR. STEWART: Yeah. Right. It's assault is the keyword.
21
22 THE COURT: But again, this doesn't help.
23
24 MR. STEWART: That's -- that's -- that's the end of it. I'm
25 just -- that was what you --
26
27 THE COURT: Okay.
28
29 MR. STEWART: -- you testified to an assault.
30
31 THE COURT: Okay.
32
33 MR. STEWART: Thank you, My Lord.
34
35 THE COURT: Thank you very much.
36
37 MR. STEWART: I have no further questions.
38
39 THE COURT: Very good.
40
41 MR. STEWART: What -- what?

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THE COURT:

Ms. Rohrke.

MR. STEWART:

That's fine. It's fine.

MS. ROHRKE:

My Lord, I just have maybe two follow-up questions.

My Lord, I just have maybe two

THE COURT:

All right. Nice and crisp.

MS. ROHRKE:

I'll try.

Ms. Rohrke Re-examines the Witness

Q MS. ROHRKE:

Constable McAvoy, so you indicated that you were part of the test phase for that -- I'm going to call it the Panasonic Arbitrator.

A Yes, I was.

Q And you were one of the officers who was kind of in that core group that was trained for the pilot?

A Yeah. We were there to run the equipment and try and work out any bugs that may exist with the installation, with hardware conflicts and software conflicts that might exist between the Panasonic -- the cameras, the recording equipment, the transmitting equipment, because it's all wireless, and all that stuff, we were -- we were just basically, this is how to use it, go and use it, and let's see if there's any bugs that show up is -- is what it was.

Q And it was a small group of officers who was trained for that pilot?

A Yeah. There was -- there was very -- there wasn't a whole lot of us. There was, I think, four cars in the entire service, two cars in Traffic and two cars in Patrol that were set aside as being vehicles that would have the trial equipment installed in them.

Q Okay. To your knowledge, was Constable Keating one of those officers who was trained on that pilot?

A No, he wasn't one of those ones. He wasn't -- he was a part of the trial project. We did tell officers who would end up taking the cars out -- again, we have a finite number of vehicles. And due to maintenance and accidents, sometimes officers who aren't part of the project end up taking out vehicles that have the camera equipment in it. We tell them that it's going to run, it's going to record

1 no matter what. As long as the car is on, it should be recording. You don't have
2 to do anything about it. We would kind of maybe give them a brief run down on
3 how to log in, if they wanted to, but other than that, they were just told, it's
4 going to run. It's going to turn on. And that's about it. Maybe some guys would
5 show, yeah, the mike if you wanted to take it. It might work. It might not. We
6 don't know, depending on it. So ...

7

8 Q But suffice it to say you didn't provide that instruction to Constable Keating that
9 night?

10 A No.

11

12 Q Or at any night prior to that?

13 A Not that I recall, no.

14

15 Q Okay.

16

17 MS. ROHRKE: Those are all my questions, My Lord.

18

19 (WITNESS STANDS DOWN)

20

21 THE COURT: Thank you, Ms. Rohrke. All right.

22

23 Let me ask the members of the jury. Have you elected a foreperson? Okay. Do that
24 over the noon hour, okay? Thank you.

25

26 12:30. Quarter to 2?

27

28 MR. GIBBINGS: Sure.

29

30 THE COURT: Does that -- are you comfortable with
31 that, Mr. Gibbings?

32

33 MR. GIBBINGS: Certainly.

34

35 THE COURT: Are you comfortable with --

36

37 MR. STEWART: Yeah.

38

39 THE COURT: -- quarter to, Mr. Stewart?

40

41 MR. STEWART: Yes, My Lord.

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THE COURT:
to lunch.

Okay. Very good. Deputy, take the jury

THE SHERIFF:

My Lord.

(JURY RETIRES)

PROCEEDINGS ADJOURNED UNTIL 1:45 PM, MAY 1, 2019
