

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

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TRIAL  
Volume 3  
(Pages T365 - T504)

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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 May 1, 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:  
18 difficulty with me calling for the jury?

Thank you. Please be seated. No

19

20 MR. STEWART:

None.

21

22 THE COURT:

Thank you.

23

24 THE SHERIFF:

Yes, My Lord.

25

26 (JURY ENTERS)

27

28 THE COURT:  
29 occasion to elect your chairperson?

Members of the jury, did you have

30

31 UNIDENTIFIED SPEAKER:

(INDISCERNIBLE).

32

33 THE COURT:

And who is the chairperson?

34

35 THE FOREPERSON:

I am.

36

37 THE COURT:

Could you tell me your Juror Number?

38

39 THE FOREPERSON:

306.

40

41 THE COURT:

Madam Clerk, make a note. The jury

1 chairperson is Juror 306.

2

3 Thank you, and well done.

4

5 You have another witness, Ms. Rohrke?

6

7 MS. ROHRKE: I do, My Lord. Our next witness will be  
8 Constable Ryan Hounsell.

9

10 THE COURT: Call Constable Hounsell to the stand.

11

12 THE COURT CLERK: (INDISCERNIBLE) please state your  
13 name for the Court, spelling your surname for the record.

14

15 CONSTABLE HOUNSELL: Constable Ryan Bae Hounsell,  
16 H-O-U-N-S-E-L-L.

17

18 **RYAN HOUNSELL, Sworn, Examined by Ms. Rohrke**

19

20 THE COURT CLERK: Thank you. You may be seated. There's  
21 water there if you wish.

22

23 A Thank you.

24

25 THE COURT: If you could just, yes, drop the mike  
26 over? Thank you. When you are ready.

27

28 MS. ROHRKE: Thank you, My Lord.

29

30 Q MS. ROHRKE: Constable Hounsell, can you confirm that  
31 you are one of the named defendants in this action?

32 A Yes, I am.

33

34 Q And you're employed with the Saskatoon Police Service?

35 A Yes, I am.

36

37 Q Can you advise of your rank, please?

38 A I am a constable.

39

40 Q Okay. How long have you been with the Saskatoon Police Service?

41 A I have been with them for approximately 12 years now.

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Q Can you just provide us with a brief overview of your employment with them?

A I started off on Patrol. I did that for approximately seven years. And then now I've been on the Mountain Bike Unit for approximately four -- four and a half years now.

Q And prior to working at -- or for SPS, were you employed as a police officer anywhere else?

A No, I wasn't.

Q Okay. In approximately August of 2012, what unit were you working in?

A I was working in the East Division. We were in patrol car number 231.

Q And was that in traffic enforcement or --

A No, that's just regular Patrol, East Side Patrol unit.

Q And perhaps -- what's the difference between Traffic and Patrol? If you can just explain?

A Patrol responds mostly to dispatched calls as they come in, and they also work proactively, looking for suspicious behaviour, whereas Traffic focuses more on projects where they'll set up speed traps and stop signs and that kind of thing.

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

A Yes, I was.

Q And do you recall what your shift was that day?

A I worked 1800 hours to 0500 hours. I got off an hour early to go on holiday with my family.

Q So I'm not used to the 24-hour clock.

A So it's 6:00 in the evening --

Q Okay.

A -- until one hour early was 5:00 in the morning.

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

A I was working with my partner, Constable Boyce.

Q Okay. And were you in uniform on that night?

A Yes, I was.

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Q What uniform were you wearing?

A My full uniform, similar to what I have on right now.

Q Okay.

A A full navy blue, red stripes on the sides, badge on the front, flashes on the shoulders --

Q And were you --

A -- full duty belt.

Q Sorry.

A Sorry.

Q Were you operating a vehicle?

A I was the passenger of our patrol car 231.

Q 231? And was that a marked vehicle or an unmarked vehicle?

A That's a fully marked vehicle.

Q So that vehicle would have been equipped with emergency lights and sirens and loud hailers?

A Yes, it has all of those, as well as the badging on the sides and the light bar up top.

Q The -- so there's big lights on the top?

A Absolutely, yes.

Q Okay. Do you know if that vehicle was equipped with audio or video equipment at that time?

A I -- it did not have working audio and video.

Q Okay. Were you wearing a microphone on that evening?

A I believe that I would have been. Like, I can't say for sure. I was still newly implemented. But I'm not sure if I was wearing it or not. But --

Q Okay.

A -- it wasn't working this --

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

1 A Yes, I did.

2

3 Q Can you just generally describe what that contact was, starting from the  
4 beginning of the -- of the incident?

5 A Sure. Yeah. It's -- I started off -- we began our shift. We were about one hour  
6 into our shift, and at approximately 1903 hours, 7:03 PM, we heard a call of  
7 distress from an officer. I thought I could recognize Constable Keating's voice,  
8 but as per protocol, you always say who you are and where you are. He was  
9 unable to get either of those pieces of information out. So eventually -- they just  
10 called for a unit for assistance. A second call came in stating that they were at  
11 the Shoppers on 8th Street. So myself and Constable Boyce rushed to that  
12 location as fast as we could. A further update came in, stating that McAvoy and  
13 Schaefer were fighting with a male.

14

15 Upon arriving at scene, I exited the patrol car. And I could see that McAvoy  
16 and Schaefer were fighting with someone that was -- fighting with someone,  
17 and -- and they were -- they were shouting, you know, commands such as stop  
18 resisting, stop fighting. But my attention was immediately turned to Jarvis  
19 Stewart, because Constable Keating was bringing him to my -- towards my car,  
20 with the Silent Patrolman.

21

22 So I immediately took control of Jarvis Stewart and began to walk him towards  
23 my patrol car. I was in a little bit of a hurry because I knew that there was still a  
24 fight going on between the other officers. So I tried to rush Jarvis to my car. He  
25 was dragging his feet at this time and walking slowly.

26

27 Eventually, I got him into the car, and I rushed over to help the other three  
28 officers. At this point, it was Constable Boyce, Constable McAvoy, and  
29 Constable Schaefer. At this time, I took the opportunity to take control of  
30 James's head. He was thrashing around violently, screaming, swearing. He was  
31 breathing very hard and -- as though he'd been fighting for quite some time. I  
32 could also see that McAvoy and Schaefer seemed to be out of breath, as well.  
33 And James was also spitting blood at this time. He had blood around his face,  
34 and he was spitting it.

35

36 I immediately took control of James's head at this time, and from that point on,  
37 eventually they were able to put him into handcuffs with my assistance. And  
38 once he was in handcuffs, McAvoy and Schaefer separated themselves, and  
39 then it was just myself and Constable Boyce that controlled James at this time.  
40 Boyce was able to search him with my assistance, and then we just waited a  
41 moment for Constable Smith to arrive at our location with a marked patrol car,

1 because the other two were traffic cars and don't have what's called a Silent  
2 Patrolman, which is a Plexiglas piece to protect officers from their arrest in the  
3 back.

4

5 So myself and Constable Boyce moved James to the patrol car. At this time, he  
6 continued with his shouting, screaming, calling us names, saying that we were  
7 hurting him and that we were assaulting him. At times he would stop and  
8 become a deadweight, and we would have to almost carry him to the patrol car.  
9 Eventually --

10

11 Q I'm just going to stop you there for two seconds, Constable Hounsell. When you  
12 say he would stop and you would almost have to carry him, was he losing  
13 consciousness? Is that why he was stopping?

14 A Oh, no. Not at all. He was completely conscious. He was -- he was deliberately  
15 stopping and dragging his feet and trying to keep us from putting him in --  
16 complete our arrest by putting him in the back of the car. Eventually, he was in  
17 the patrol car, and that was my last dealing with him at the scene. I immediately  
18 turned my attention back to my patrol car that had Jarvis waiting in the back,  
19 secured in handcuffs.

20

21 Q So I'm just going to go back to a couple things you said and ask you to explain  
22 them a little bit further. You indicated that handcuffs were placed onto the  
23 plaintiff with your assistance. Can you just expand on that?

24 A My job at that time -- we were -- we're taught that when you control the head,  
25 you control the body. So I focussed on controlling his head at that time, keeping  
26 him from thrashing around, causing any more injury to himself, or spitting on  
27 officers. So I did not physically reach back to grab his hands and put them in  
28 handcuffs, but my -- my ability to help with that was by controlling his upper  
29 body.

30

31 Q And how would you control someone's head?

32 A At the time that I approached when he was thrashing back and forth, at that time  
33 his head was to the left. I placed my knee on the side of his face and applied  
34 pressure so that he would stop moving. As soon as I did that, he became  
35 compliant, and they were able to put him in handcuffs after that.

36

37 Q So when you say you placed your knee, would have this been a situation where  
38 you were putting your entire body weight against your knee?

39 A Absolutely not. No. I was balancing on either one -- whether it be one knee or  
40 two knee, I don't recall, but I can balance on my -- I can balance on my own,  
41 and apply as much force as I need to to a gain compliance for my arrest.

1

2 Q And the force necessary would be the force to prevent him from continuing to  
3 thrash about and spit blood?

4 A Absolutely, yes.

5

6 Q So you indicated that by the time you arrived, the handcuffs weren't yet on the  
7 plaintiff; is that correct?

8 A I don't believe that they were.

9

10 Q Okay. And then once you got into the police -- once you got the plaintiff into  
11 the police car, you didn't have any further involvement with him at the scene,  
12 correct?

13 A That's correct.

14

15 Q When you were transporting the plaintiff from where he had been taken to the  
16 ground to the police car, did you notice any injuries on him?

17 A At the time, I didn't notice any injuries. I -- like I said, I had seen that he had  
18 blood in his face area when he was on the ground when I approached the scene.  
19 But as I walked him to the patrol car, we were simply trying to get him to the  
20 patrol car, and I didn't -- I didn't really see his face at that time or didn't pay  
21 attention to it.

22

23 Q So you indicated that he was spitting blood by the time you got there. Do you  
24 believe that any of your pressure put on his -- that you put on him or your force  
25 you put on him would have caused any further injury?

26 A Absolutely not. There's no way that anything that I did could have caused any  
27 injury to him at all.

28

29 Q Okay. So at any point, did you advise why -- the plaintiff why he was under  
30 arrest?

31 A No, I didn't. When I walked him to the patrol car, Constable Smith's patrol car, I  
32 was done with him at that point. I went back to my patrol car.

33

34 Q Okay. So after the plaintiff was placed in the back of the -- Constable Smith's  
35 police car, what was your involvement after that?

36 A We transported Jarvis to Detention. It was either while we were en route to  
37 Detention or perhaps after we arrived at Detention, I could hear Constable  
38 Smith, who was transporting James in, I could hear him call for assistance  
39 again, stating that he needed somebody to meet him in the sally port area, where  
40 is an area where we take the prisoner from our car and bring him into Detention  
41 through an elevator. It's in the police station, in our old police station. So at this



1 point, he asked for someone with a spit sock and more officers to assist him in  
2 the sally port. I said that -- something to the effect of either we'll be there in a  
3 second or we're just ahead of you or something, so we'll meet you there with a  
4 spit sock. A second call came in from Constable Smith that I remember. I could  
5 hear a male screaming in the background, and Constable Smith was announcing  
6 that the male was smashing his head against the Silent Patrolman in the car.

7  
8 Once they arrived to Detention, I was able to obtain a spit sock. I went to the  
9 basement, and it was myself and one other officer. I am not sure. Maybe -- I  
10 don't want to guess -- we were talking to him through the window, explaining  
11 that we're going to have to put a spit sock on him. At this time, he was again  
12 behaving irrationally. He was shouting at officers. He had-- his eyes were wide,  
13 and he was staring at us, trying to intimidate us at this time. We were able to  
14 eventually talk him into allowing us to put a spit sock on him, and that was --  
15 that completely ended my involvement with the plaintiff. I took the stairs up,  
16 and he went up the elevator with other officers.

17  
18 MS. ROHRKE: My Lord, if you'll just indulge me for one  
19 moment, I'm going to put (INDISCERNIBLE) --

20  
21 THE COURT: Very good. Now, is this going to go on  
22 the stick --

23  
24 MS. ROHRKE: It is on the (INDISCERNIBLE) --

25  
26 THE COURT: And that will allow it to convert to a full  
27 exhibit?

28  
29 MS. ROHRKE: Yes.

30  
31 THE COURT: All right.

32  
33 MS. ROHRKE: Yes.

34  
35 THE COURT: We have a plan.

36  
37 Q MS. ROHRKE: So, Constable Hounsell,  
38 (INDISCERNIBLE).

39  
40 MS. ROHRKE: Madam Clerk, perhaps  
41 (INDISCERNIBLE).

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Q So, Constable Hounsell, can you confirm that this is the sally port area of the old SPS headquarters?

A That's correct.

Q And my understanding is that police car would have been the police car that had the plaintiff in it?

A That's correct.

Q I'm just going to play the -- I'm going to hit play. If you could indicate when -- when you enter (INDISCERNIBLE).

A Okay. There's constable -- there's me right there with the buzz cut and no beard and thick glasses.

Q So your back is turned?

A My back is turned to us, yeah.

Q (INDISCERNIBLE) on the left?

A Yeah.

Q Okay. So at this stage, is the plaintiff saying anything?

A I don't recall. I know that he was shouting from the back of the car, but I don't know if at this moment he was.

Q Can you describe his behaviour while he was in the back of the car?

A He was turned around in his seat, almost facing backwards, staring at police, wide-eyed, trying to intimidate us is the impression I got. He didn't look like he was going to come out of the car gently, that's for sure.

Q And I'm just -- I'm going to ask a couple more questions, then I'll hit play. So at any point during this interaction -- sorry. At any point during this interaction, did you hear any officer threaten the plaintiff?

A Absolutely not, no.

Q Did they threaten physical violence for the plaintiff?

A I never heard any officer say that, no.

Q You never heard anything? And did you ever threaten physical violence to the plaintiff?

A No. Of course not.

1 Q Was the plaintiff compliant in putting the spit sock on?

2 A After some discussion, he was compliant, yes.

3

4 Q And do you recall what that discussion was?

5 A I don't -- I don't recall. I know typically, I will explain to someone that this is  
6 policy, and because of your behaviour, we have to put a spit sock on because we  
7 don't want blood -- it's important for officers to have the protection from having  
8 blood or bodily fluids spit in our face. I know it's happened to me twice before.  
9 I've been spit in my mouth and my eye, and it's quite the process when it  
10 happens.

11

12 Q So when you were having that discussion with the plaintiff, you didn't threaten  
13 him?

14 A No.

15

16 Q Okay. So I'm just going to hit play so we can see that interaction. Is that you  
17 (INDISCERNIBLE)?

18 A That's me. I'm just reaching down with the spit sock. I assume James has his  
19 head leaned out the door there and is about to stand up.

20

21 Q (INDISCERNIBLE)?

22 A That's correct.

23

24 Q Okay.

25

26 MS. ROHRKE: My Lord, I would ask that our USB drive  
27 be marked as a full exhibit.

28

29 THE COURT: That will become part of the stick that  
30 has been marked P what for Ident.?

31

32 THE COURT CLERK: 17.

33

34 THE COURT: P-17 for Ident. And again, just for the  
35 record, Ms. Rohrke, that stick now has what on it?

36

37 MS. ROHRKE: That stick currently has on it the audio  
38 for dispatch that is also on --

39

40 THE COURT: Yes.

41

- 1 MS. ROHRKE: Right.  
2
- 3 THE COURT: We have a duplicate. That's not the end  
4 of the world.  
5
- 6 MS. ROHRKE: Yes. It's got the interaction between the  
7 plaintiff and Constable Schaefer in cells.  
8
- 9 THE COURT: Yeah.  
10
- 11 MS. ROHRKE: It has the sally port video, and then it also  
12 has another video that I'll be putting to one of our other witnesses.  
13
- 14 THE COURT: Okay. All right. So we will still leave it  
15 for Ident.  
16
- 17 MS. ROHRKE: Sure.  
18
- 19 THE COURT: Okay.  
20
- 21 Q MS. ROHRKE: So suffice it to say, once you explained  
22 the purpose of the spit sock, the plaintiff was compliant at that stage?  
23 A Yes.  
24
- 25 Q And I'm not familiar with the spit sock. So maybe can you describe -- it's not  
26 like putting a plastic bag over your head, is it? What -- can you just describe  
27 what a spit sock is?  
28 A No. It's -- it's a very baggy, loose mesh-like material. If you can imagine a  
29 minnow net or something that a child would have. And it has kind of a cinched  
30 bottom, a little bit, so you can put it over someone's face. They can still move  
31 around freely, talk, breathe, everything is fine. But if they are to spit at you, it  
32 would kind of splash back in and protect you -- shelter you from getting any  
33 bodily fluids exchanged between them and yourself.  
34
- 35 Q Okay. So -- and after you put this spit sock on the plaintiff, did you have any  
36 further involvement with him?  
37 A Not at all, no.  
38
- 39 Q So you didn't see him in cells?  
40 A No.  
41

- 1 Q You didn't -- you weren't involved in booking him upstairs?  
2 A No.  
3
- 4 Q At any point during the interaction at the Shoppers Drug Mart, did you kick or  
5 punch the plaintiff?  
6 A No.  
7
- 8 Q Did you pick his head up and smash it into the ground to cause injury to him?  
9 A No.  
10
- 11 Q Did you -- do you specifically recall using profanities towards the plaintiff?  
12 A No.  
13
- 14 Q Did you notice whether there were any witnesses around during the incident at  
15 the Shoppers Drug Mart?  
16 A I wasn't looking for witnesses, but I did not notice any witnesses, either.  
17
- 18 Q So you -- did you take any witness statements?  
19 A No, I didn't.  
20
- 21 Q Did you provide any verbal instructions to anyone that they should detain the  
22 plaintiff for any length of time?  
23 A No.  
24
- 25 Q Once the plaintiff was in Detention, do you have any authority to determine  
26 when they're released?  
27 A No.  
28
- 29 Q Whose authority would that be?  
30 A That would be the sergeant in Detention. In that night, the sergeant was  
31 Sergeant Mitzel.  
32
- 33 Q Okay. In preparing your reports, did you make any recommendation as to  
34 whether the plaintiff should be detained?  
35 A No.  
36
- 37 Q So do you recall what time your shift ended that day? I think you said 5 AM?  
38 A 5:00, yeah.  
39
- 40 Q So after this incident, you -- what did you do?  
41 A We went back, and we took more calls, more dispatches, made more arrests.

1 Just a pretty standard evening after that.

2

3 Q So we've heard some evidence about the Panasonic Arbitrator video cameras  
4 that were installed in these cars, and that they were in that pilot project phase  
5 over the period of time that we're talking about.

6 A Okay.

7

8 Q Were you part of the group of individuals who was trained to use those  
9 Panasonic Arbitrators in August of 2012 or early 2012?

10 A I was asked. I don't know of any pilot project or anything, but I was asked to  
11 take them, a camera car, if they had one available.

12

13 Q But do you specifically recall having training on it?

14 A I didn't have any training --

15

16 Q Okay.

17 A -- besides somebody showing me how to work a microphone, kind of thing.

18

19 Q Okay. Subsequent to this incident, did you file what's known as a use of force  
20 report?

21 A No, I didn't.

22

23 Q So I'm going to ask you to take the binder in front of you and flip to tab 23,  
24 which is P-4, My Lord.

25

26 MS. ROHRKE: Madam Clerk, I'm done with the screens  
27 with this witness.

28

29 THE COURT: Thank you, Ms. Clerk. Those are --  
30 they're fancy machines, but they block the jury's view.

31

32 MS. ROHRKE: Yes, My Lord.

33

34 THE COURT: We will fix it.

35

36 Q MS. ROHRKE: So that tab 23 should be the use of  
37 force -- a blank use of force report, Constable Hounsell.

38 A Yes. I see it here.

39

40 Q Okay. Are you familiar with that form?

41 A Yes.

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Q Okay. What -- if -- if you were to fill out this form, would the information contained in this form also be contained within your notes?

A Absolutely. This -- all it is is a form that is very, very brief handwritten summary of what's highly detailed in your report. And in every officer's report. I guess it's a statistical tool. Really, the only thing that I find useful on a use of force report is it asks the question, was your use of force effective. And, of course, in that point, you can say, yes, it was effective, whereas in your report, it already says that anyway. So it doesn't offer anything new that your report doesn't already say in great detail.

Q So there's nothing that would be -- that would be included in a use of force report that isn't in your notes?

A No.

Q Okay. Prior to the incident on August 24th, 2012, had you ever had any previous interaction with the plaintiff?

A No.

Q Prior to learning his identity on August 24th, 2012, did you know who the plaintiff was or were you aware of him?

A No, not at all.

Q Do you have any -- did you have any malicious feelings towards the plaintiff with respect to this incident?

A No.

MS. ROHRKE: My Lord, those are all the questions I have for this witness.

THE COURT: Thank you, Ms. Rohrke.

Mr. Stewart, do you have any cross-examination for this witness?

MR. STEWART: Yes, I do, My Lord. Thank you.

THE COURT: Very good. When you are ready. No.

MR. STEWART: I am ready, My Lord. Thank you.

**Mr. Stewart Cross-examines the Witness**

- 1  
2 Q MR. STEWART: Constable Hounsell, thank you for being  
3 here today. I made a comment to Constable Schaefer, no hard feelings, and I  
4 address the likewise to you, sir. No hard feelings, sir.
- 5 A Thank you, sir.  
6
- 7 Q Being a police officer is not -- it's a thankless job, and I understand that, and I  
8 respect that. And I appreciate you being here today.
- 9 A Thank you, sir.  
10
- 11 Q I have here from the defence, it's a Saskatoon Police Service general occurrence  
12 hard copy page. It's called the narrative prosecutor's case summary dash 1. The  
13 author is 738, Keating, Jay. I'm just going to bring it up and show you. This is  
14 provided from the defence, and I'd just like you to -- to get your -- just tell the  
15 jury what it is, what it looks like, and what you believe it to be, and we'll ask  
16 (INDISCERNIBLE).
- 17 A This looks like what's called a prosecutor case summary, something that's a very  
18 brief kind of two-paragraph summary that they read at the beginning of a trial,  
19 criminal trial, just to kind of say what's going to happen throughout the trial. It  
20 looks like the author was Jay Keating in this case.  
21
- 22 Q And does there -- does there happen to be a time stamp on that narrative, sir?
- 23 A It says that -- it says related date slash time, and if I'm not mistaken, I believe  
24 that's the time that it was dictated into our system by Constable Keating. So it  
25 would have been sometime after the process, of course, after everything was  
26 dealt with and notes were done and everything. The last thing you do is you  
27 leave your report. That time on here is 2313, which is 11:13 at night.  
28
- 29 Q Thank you very much, Constable.  
30
- 31 MR. STEWART: Do you have that -- a copy of that one? I  
32 can find the tab number if you want, but I'm sure you can find it.  
33
- 34 MS. ROHRKE: (INDISCERNIBLE) we have it.  
35
- 36 MR. STEWART: Yeah.  
37
- 38 THE COURT: You --  
39
- 40 MR. STEWART: Constable McAvoy [sic], I'm just going  
41 to --



- 1  
2 THE COURT: Would you like to enter it as an exhibit?  
3  
4 MR. STEWART: Yes, I would, My Lord.  
5  
6 THE COURT: So, Madam Clerk, that will be P-exhibit?  
7  
8 THE COURT CLERK: 9.  
9  
10 THE COURT: 9.  
11  
12 MR. STEWART: I'm --  
13  
14 THE COURT: Madam Clerk.  
15  
16 MR. STEWART: -- I'm going to have to just take it back  
17 from you for a moment.  
18  
19 THE COURT: Yes. The clerk will tag it up and then  
20 give it back to you, Mr. Stewart.  
21  
22 MR. STEWART: Thank you, My Lord.  
23  
24 THE COURT: Okay. And then when you're done, don't  
25 forget to give it back to her because we need it for the record. There you go,  
26 Mr. Stewart.  
27

28 **EXHIBIT P-9 - Prosecutors Case Summary, August 24, 2012**  
29

- 30 Q MR. STEWART: Constable McAvoy [sic], would you just  
31 please -- please read this into the record for me?  
32 A Yes, sir. I'm Constable Hounsell, but I will -- I will gladly --  
33  
34 Q Yes. I'm sorry. I apologize.  
35 A -- read this. That's all right. So prosecutor case summary by Jay Keating, 738,  
36 with a time stamp. (As read)  
37

38 On August 24th, 2012, at 1900 hours, I attempted to stop Sask  
39 licence 131-hotel-foxtrot-golf as the plate was being misused.  
40 Jarvis Stewart was operating Sask -- or Sask licence  
41 131-hotel-foxtrot-golf, and James Stewart was the passenger. The

1 vehicle pulled into the Shoppers Drug Mart parking lot at 8th  
2 Street and Grovenor Avenue where both occupants exited the  
3 vehicle. They were told numerous times to get back into the  
4 vehicle and disobeyed those commands. Jarvis Stewart walked by  
5 me, hitting me with his left shoulder, claiming that he did not  
6 abide by our laws, and that I had no right to stop him. James  
7 Stewart continued as the same statements -- or sorry, continued  
8 with the same statements, and both repeatedly told me to fuck off.  
9 Jarvis Stewart was placed under arrest for obstruction, and James  
10 Stewart continued to fail to comply with my commands.  
11 Additional units arrived on scene, and James Stewart resisted  
12 arrest and assaulted Constable Schaefer and Constable McAvoy.  
13 Both subjects maintained that they did not abide by our rules  
14 and/or laws and stated that they were being held against their will.  
15 Sask licence 131-hotel-foxtrot-golf belongs to a Honda Civic that  
16 has not been or has not been registered since 2010. The vehicle  
17 they were driving, a 1991 Toyota Celica, has not been registered  
18 since 2006. Both James and Jarvis Stewart will be held until the  
19 AM to see a J.P., justice of the peace.

20

21 Q Thank you very much, Constable.

22 A You're welcome.

23

24 Q Both James and Jarvis Stewart will be held until the AM to see a J.P. Did you  
25 notice anything on that that there was someone else giving him that instruction  
26 or direction? Did you notice any other names or anything on that?

27

28 MR. GIBBINGS: The very significant difficulty with this,  
29 My Lord, is that he did not put this to Constable Keating.

30

31 THE COURT: Yes. No. Yes, it should have been put to  
32 Mr. Keating. But it is a police document. And again, I say respectfully,  
33 Mr. Stewart, getting Constable Hounsell to read that, all it did is nicely articulate  
34 the police's case.

35

36 MR. STEWART: M-hm. M-hm.

37

38 THE COURT: Okay. Well, but I am not sure -- does it  
39 help you to nicely articulate the police's case?

40

41 MR. STEWART: Well, My Lord, it says right here, both

1 James and Jarvis Stewart will be held until the AM to see a J.P. We should have  
2 been released. We should have been released. But it says right here, this is  
3 Constable Keating saying both James and Jarvis Stewart will be held until the A.M.  
4 to see a justice of the peace.

5

6 THE COURT: Well, but --

7

8 MR. STEWART: So Constable Keating -- Constable  
9 Keating said it was out of his hands. Constable Keating said he told Detention, that  
10 Detention then decided that I was going to be remanded. But there's nothing in this.  
11 And I just wanted Constable Hounsell to read this because this is not his file, so he  
12 can't lie about it like Constable Keating did.

13

14 THE COURT: Okay.

15

16 MR. STEWART: So that's why I got him to read it.

17

18 THE COURT: It was Friday night.

19

20 MR. STEWART: Mm.

21

22 THE COURT: And the courthouse isn't operating.  
23 They've got to wait for the J.P.

24

25 MR. STEWART: M-hm.

26

27 THE COURT: And that was, I think, Constable Schaefer  
28 explained that. But in any event, that's an argument you can make. But again,  
29 getting an officer to reiterate in detail the police's case against you, I just don't  
30 know how that helps you. But you might want to think about what the question is  
31 you want answered.

32

33 MR. STEWART: I'll give this to you.

34

35 THE COURT: Yes. Thank you.

36

37 Q MR. STEWART: You're a professional police officer,  
38 Constable Hounsell. You -- you are a professional police officer?

39 A Am I? Yes, I am.

40

41 Q Yeah. Do you have your Saskatoon Police Service general occurrence hard

1 copy notes in front of you at the moment, Mr. Hounsell -- Constable Hounsell?

2 A I do not. I -- the only thing I have with me is my police notebook.

3

4 Q Okay. Would you happen to -- or would you be able to get a copy of your  
5 Saskatoon Police Service general occurrence notes or should I try to give you  
6 one of mine?

7 A I don't have one on me, unless someone can provide me with one.

8

9 MS. ROHRKE: My Lord, if you give me a moment, I can  
10 probably find a copy.

11

12 THE COURT: Ms. Rohrke will help you.

13

14 MR. STEWART: Thank you very much, My Lord. Thank  
15 you very much, Ms. Rohrke.

16

17 MS. ROHRKE: It might take me a moment.

18

19 THE COURT: I realize it was a surprise. I will not get  
20 angry. And maybe you could just read out what the title and date is, Ms. Rohrke.

21

22 MS. ROHRKE: So these are detail 6, author 675, Ryan  
23 Hounsell, dated Friday, August 24th, at 2047.

24

25 A 8:47.

26

27 THE COURT: All right. The witness has the occurrence  
28 report. You have a copy. Please proceed.

29

30 MR. STEWART: Fantastic. Thank you, My Lord.

31

32 Q MR. STEWART: Thank you, Constable Hounsell. If you'd  
33 just like to look at your notes, it's about -- oh, I'm going to say maybe halfway  
34 down, not even halfway down. It starts on the left-hand side, the last sentence is  
35 "as James Stewart", period, and then it said, "at this time I observed Constable  
36 Boyce." Do you -- do you know where that is? It's almost the middle of the  
37 page.

38 A Is this the first page?

39

40 Q It would be the second -- yes. So on the first page in the second paragraph.

41 A Okay.

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Q About halfway down, at the -- it would be -- who became later to be known as James Stewart and then -- and then it appeared: At this time, I observed Constable Boyce to be at the lower half. Did you -- are you -- are you -- do you know where that is in the document there?

A I'm still trying to find it here.

Q No worries. No worries. So -- it's okay.

A Oh, at this time I observed Constable Boyce to be lower half of this male.

Q Yes. Yes. Okay. All right. Fantastic. So bear with me. I'm just going to read this. These are your notes; is that correct?

A That's correct.

Q Constable? Thanks.

A This is my -- this is my report. My notes are in my notebook --

Q Yeah. I'm sorry.

A -- but this is my report.

Q I'm sorry. Yeah. I'm not familiar with the nomenclature. Sorry. You're right. This is -- is not your notes, per se. Thank you. So (As read)

At this time I observed Constable Boyce to be lower half of this male as he was lying facedown to the lower half of James as he was laying facedown on the ground. I observed that James had blood on his face and on ground near his face. I also observed James to have a very flushed face as though -- as though he had just been fighting very heavily. James was also breathing heavily and screaming very loudly as he squirmed around on the ground. I immediately relieved one officer, who is unknown to me at this time, at the upper half of James Stewart body -- James Stewart's body, and controlled James Stewart's head as he continued to scream at officers. Immediately upon applying pressure to the top of Stewart's left side of Stewart's head as his face was turned to the left side, I observed Stewart to stop struggling. James was still swearing at police and stating everything to the effect of Jesus Christ, what are you doing, I didn't do anything. At this point, as James appeared to be not physically fighting with myself and Constable Boyce, in my opinion, from my point at James's head, he was first turned on to his right side to be searched by Constable

1 Boyce, and then on to his left side to again be searched by  
2 Constable Boyce.

3  
4 Constable Hounsell, at this time, where is Constable Keating, Schaefer, and  
5 McAvoy?

6 A I don't know where Constable Keating was. But Constable Schaefer and  
7 McAvoy had been at your sides.

8

9 Q Okay.

10 A And as soon as we gained control of you by having you in handcuffs, the two of  
11 them were out of breath, and they left.

12

13 Q Okay. Okay.

14 A It was just myself and Constable Boyce when we searched you.

15

16 Q Okay. Okay. So when you got to the scene, we'll go back up to the beginning  
17 of -- of this paragraph here. When you got up to the scene, it was Constable  
18 Keating that basically had my brother, and he -- he more or less handed him off  
19 to you. He was just, like, yeah, you've got to deal with this guy. Is that sort of --

20 A That's --

21

22 Q Please just explain, yeah.

23 A No. That's -- that's --

24

25 Q Yeah.

26 A -- correct. I don't -- I can't say whether or not -- I know I remember it was a very  
27 short distance, you know, 30 feet away.

28

29 Q M-hm.

30 A To -- to walk Jarvis to the car. I don't know if Constable Keating helped me on  
31 that short voyage there or if it was just myself. But the first thing that I did, I  
32 was handed your brother, Jarvis, by Constable Keating.

33

34 Q Okay. Fantastic. Thank you very much, Constable Hounsell. So in -- in your --  
35 in your notes here, in your -- in your hard copy here, it says -- on the fourth line  
36 down, it says: (As read)

37

38 Jarvis was walking slowly at this point and stating something to  
39 the effect of, quote, unquote, I'm not fighting. And then I  
40 attempted to rush Jarvis to get in to the back of my PC, as I knew  
41 that there was still at least still one fight happening with other

1                   officers. And I felt as though my assistance was immediately  
2                   required.

3

4                   Why you did feel that your assistance at this stage when you -- you've come in  
5                   and you've seen -- now, there's other officers. So now you're the third or  
6                   potentially fourth officer. So why did you feel that you needed to go and now  
7                   assist while there was already other guys there? Why did you feel like that  
8                   you --

9                   A   Quite simply, because you weren't under control at that time.

10

11                  Q   Okay. Okay.

12                  A   So as long as there's still a fight happening, then I -- it's my job to be there and  
13                  to assist as best as I can.

14

15                  Q   Fantastic. Fair enough. And so once again, we get into this fighting. What  
16                  would you consider a fight? And then what would you consider what I was  
17                  doing? Let's just put it that way. Like, would you -- would you consider a fight  
18                  two -- two men with -- with knuckles or just sort of -- what would you consider  
19                  a fight-or-flight and please explain, Constable Hounsell.

20

21                  THE COURT:                                 Maybe -- maybe -- again, the question is  
22                  legitimate. Maybe we put it this way.

23

24                  When you saw James Stewart interacting with the other policemen, how would you  
25                  characterize it? Was he fighting? Was he resisting? Was he wrestling? Was he  
26                  fleeing? What would be the words you would describe of him doing with the other  
27                  officers?

28

29                  MR. STEWART:                                 Thank you, My Lord.

30

31                  A   Thank you, My Lord. He was definitely quite -- honestly, by definition, he was  
32                  resisting arrest. And the other officers were fighting to gain control of him.

33

34                  Q   MR. STEWART:                                 Okay. Okay. Fantastic. Once you did take  
35                  control of me, you then -- it says here that: (As read)

36

37                                 I then observed Constable Boyce to say that Constable Smith was  
38                                 at our location with an open back seat to place James Stewart into.  
39                                 Myself and Constable Boyce then stood James Stewart to his feet  
40                                 and walked him towards Smith's car.

41

1 That's correct?

2 A That's correct.

3

4 Q Okay. Fantastic. (As read)

5

6 Stewart continued to scream, not that we were hurting him, as we  
7 carefully walked him to Smith's car. James at points would stop  
8 moving and attempt to drag his feet as police officers have to  
9 nearly carry him while en route to Constable Smith's car.

10 A M-hm.

11

12 Q Would you say that I appeared to be doing that purposefully, my -- my -- what  
13 was it? I was screaming, and I would stop moving and attempt to drag my feet.  
14 Would you say that was me acting purposefully?

15 A Yes. Definitely.

16

17 Q Okay. Okay.

18 A But if I could also make a correction? Sometimes what we do is we dictate our  
19 reports. We speak into a phone. None of us are the best typers. So we speak into  
20 a phone, and then the people that work in our report-writing area write the  
21 reports for us. So I did notice that there was a spelling mistake put in by the  
22 person who typed my report. I did not type my report. I dictated my report. It  
23 was something to the effect of "James was screaming not that we were hurting  
24 him." It was "James was screaming now that we were hurting him."

25

26 Q "James was screaming now that we were hurting him"?

27 A Yes.

28

29 Q Okay.

30 A Something -- or something to the effect of -- but the "not" should have been a  
31 "now."

32

33 Q Okay.

34 A As -- as dictated by me but by mistyping with -- mistyped by one of our report  
35 clerks.

36

37 Q Okay. Fantastic, Constable Hounsell. Thank you. Thank you very much. Just --  
38 there's only a couple more things. We're just about done here. So you have a  
39 duty as an arresting officer or as an officer who has been placed in charge of  
40 somebody who is -- who is arrested to make sure that they get a call to a lawyer;  
41 is that correct?



1 A Uh --

2

3 Q Like, if someone has been arrested and someone hands that arrested person to  
4 you, as a professional, as -- your duty as -- as -- as a police officer is to get that  
5 person a lawyer call or a call to a lawyer; is that correct?

6 A I don't necessarily agree with that. I'm not --

7

8 Q Okay.

9 A -- necessarily a person responsible for getting you a lawyer. It may have been  
10 arranged so that a different officer --

11

12 Q Okay.

13 A -- would get you the lawyer call.

14

15 Q Okay.

16 A But sometimes I would be.

17

18 Q Okay. Very fair. Thank you, Constable.

19

20 THE COURT: But that is worth clarifying, Mr. Stewart.

21

22 You will agree, Constable, and if you don't agree, please say so, that everyone who  
23 is arrested must be given, at a reasonable opportunity, access to a lawyer?

24

25 A Yes, My Lord. Absolutely.

26

27 THE COURT: Okay.

28

29 A Given an opportunity by an officer.

30

31 THE COURT: Right.

32

33 A Not necessarily the officer that transported them.

34

35 MR. STEWART: Absolutely.

36

37 THE COURT: Not necessarily in the car, but at least at  
38 the station?

39

40 A Yes, My Lord.

41

1 Q MR. STEWART: Thank you very much. I'm just going to  
2 have another spot here in your notes. (INDISCERNIBLE) this -- the third  
3 sentence on the second page -- sorry, the fourth line on the second page. It's the  
4 first line -- or I'm sorry. The first word is "shorts", period, but then the -- the  
5 second word is "Stewart at this point." And it'll be line 4 on the second page.  
6 (As read)

7

8 Stewart at this point stated that he wished to speak to a lawyer.

9

10 Do you have that there? Constable Hounsell?

11 A I'm looking at page 2, line 4. I don't -- are you sure it's page 2?

12

13 Q Oh, I guess it's page 8 of 9. I'm sorry. I just mean the document itself is two  
14 pages.

15 A Okay.

16

17 Q I say that -- it says here, police attention centre, I observed Jarvis Stewart to be  
18 very -- that's the first line. Do you have that?

19 A Okay.

20

21 Q Maybe --

22 A I -- I then observed Constable Boyce.

23

24 THE COURT: Why don't you read the first line on the  
25 second page, on your second page?

26

27 A On mine?

28

29 THE COURT: Yes. Of the one you're looking at.

30

31 A Yes, Sir. The first line --

32

33 THE COURT: Second page.

34

35 A -- of the second page on my mine, it says: (As read).

36

37 James head, he was turned first to his right side to be  
38 searched by Constable Boyce, and then onto his left side  
39 again to be searched by Constable Boyce.

40

41 THE COURT: So are we playing with the same deck of

1 cards, Mr. Stewart?

2

3 MR. STEWART: I don't believe so, My Lord.

4

5 A Also, you referred to a two-page document. My report was three pages. So I'm  
6 not sure we're talking about the same one.

7

8 Q MR. STEWART: Detail 6. 675. That's two pages. Oh, well.  
9 I guess we're just going to have to have a look at yours here. I'll give you what I  
10 have, and maybe I can have a look at yours (INDISCERNIBLE) they're not the  
11 same.

12 A Your -- your text font is different than mine, it looks like, so maybe it was --

13

14 Q Oh, that's why.

15 A -- maybe it was just spread out differently.

16

17 Q (INDISCERNIBLE) they won't be.

18 A Yeah.

19

20 Q Different format.

21 A That's right.

22

23 Q Okay. Sorry. (INDISCERNIBLE) I'll just clarify and see if I can find it. Yes. So  
24 we'll start here. "I observed Jarvis Stewart to be a very muscular." I'll just give  
25 you this back.

26 A Sure. No, I can see it on this one here, now, too.

27

28 Q Yeah.

29 A "I observed Jarvis Stewart to be a very muscular Caucasian male." Yeah.

30

31 Q I'll just -- (INDISCERNIBLE) --

32 A Sure. Okay.

33

34 Q Thank you very much.

35 A You're welcome.

36

37 Q Okay. Okay. So the -- the -- I can't see the fourth line, but the next line after  
38 "Stewart was wearing a black T-shirt," it says (As read)

39

40 Stewart at this point stated that he wished to speak to a lawyer.

41

1 Do you have that line there in front of you, Constable Hounsell?

2 A Yes, I do.

3

4 Q Okay. Fantastic.

5 A Yes, I do.

6

7 Q Thank you, Constable. I'll continue. (As read)

8

9 Stewart at this point stated that he wished to speak to a lawyer, at  
10 which point I placed him in the north phone room and gave him a  
11 phone book to search for his lawyer's phone number with. There  
12 had been a previous call in from Constable Smith to have  
13 assistance in the sally port in the basement, as he had the second  
14 male, being James Stewart, acting irrationally in the back of his  
15 PC.

16

17 I want you to pay close attention to the next line.

18

19 I left Jarvis Stewart alone in the phone room to search for his  
20 telephone number for legal assistance as I went to the basement.  
21 At this time, I observed a number of other officers waiting to  
22 assist Constable Smith.

23

24 Constable Hounsell, do you think that there was enough officers to take care of  
25 me that you should have stayed with Jarvis Stewart in the phone room?

26 A No, sir.

27

28 Q Okay.

29 A I was the only officer that stated that I would be responsible for bringing the  
30 spit sock. And that's the first thing Constable Smith requested.

31

32 Q Okay. I'm going to have to show some video here, because you were actually  
33 tossed a spit sock, and there was three people. It was you, Boyce, and -- and  
34 Mitzel -- who -- who were expected to take my brother to get his phone call.  
35 That -- that room to get the phone call, that room has a phone. But that phone  
36 does not work. Is that correct, Constable Hounsell?

37

38 THE COURT: Yes, Ms. Rohrke.

39

40 MS. ROHRKE: My Lord, this is in relation to Jarvis  
41 Stewart. I would suggest this is not relevant. This has been the subject of previous

1 cases.

2

3 MR. STEWART: No, this is relevant. This is -- this is --  
4 this is direct -- this is direct police duty and obligation to a person who's asked --  
5 Stewart at this point stated that he wish --

6

7 THE COURT: Yes. But Jarvis -- Jarvis has already sued  
8 the police and lost.

9

10 MR. STEWART: Yeah.

11

12 THE COURT: So let's just talk about you.

13

14 MR. STEWART: But all I'm -- what I'm trying to get at is  
15 that it doesn't seem to be good faith that you're leaving someone in a phone room to  
16 go down when there's already six, seven, eight, nine other cops.

17

18 Q MR. STEWART: And so basically what I'm saying is as a  
19 police officer who has a professional and -- and -- and a -- professional  
20 obligation and -- and a -- duty, Stewart at this point stated that he wished to  
21 speak to a lawyer. And then you left. And all I'm saying and my question to you  
22 is do you believe that's an action in good faith?

23

24 THE COURT: But why did you think it was important  
25 when you were dealing with Jarvis to get him in the phone room, heard the request  
26 for the spit sock. Why did you think it was important to leave Jarvis and go join the  
27 melee?

28

29 A Well, My Lord, I believed that it was perfect timing, actually. Jarvis needed  
30 time to look for his lawyer, and I also happened to be the one that stated that I  
31 would bring the spit sock directly to Constable Smith.

32

33 THE COURT: Okay. Did you get back to Jarvis and his  
34 phone?

35

36 A Yes, I did.

37

38 THE COURT: Okay. How long -- how long, do you  
39 figure?

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41 A Tops, maybe three minutes.

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THE COURT:

Okay.

Q MR. STEWART:

Tops, maybe three minutes?

A That would be a guess, sir.

Q A guess? Okay.

A I had just -- just time for me to ride the elevator down, hand over the spit sock, and you can see go back up the stairs quickly afterwards.

THE COURT:

Okay.

Q MR. STEWART:

And so then you came back to see Jarvis, and then you got him his call to a lawyer?

A I fulfilled his request at that time.

Q My brother says he never got a call to a lawyer. But you're saying you fulfilled his request?

A After he did --

THE COURT:

Yes. Again. We are focussing on you.

MR. STEWART:

I -- I --

THE COURT:

Jarvis sued, and he lost.

MR. STEWART:

Right. That's -- you see, the point is I don't care about the win or the lose. See, the question is whether or not he is fulfilling his duties in good faith. And he is saying -- he is saying that he was given the spit sock, he had to leave. There was all this stuff going on, this crazy -- all this stuff. I have a video. He's saying it was three minutes. That's fine. I'm saying as a professional police officer, do you think it's in good faith that you would just leave someone?

THE COURT:

Okay. So let him answer that question.

MR. STEWART:

Okay. Thank you, My Lord.

THE COURT:

Were you acting in good faith when you did that?

1 A Absolutely, I was. Every time that -- that one of my arrests or someone that I'm  
2 responsible for putting on the lawyer call for, if they requested they wanted to  
3 look up a lawyer in their phone book, it's going to take them at least three  
4 minutes. Sometimes it takes them 15 minutes. Sometimes it takes them more  
5 than that. So I was able to do two things at once. While you were given the  
6 opportunity to search for your counsel, I was also able to go provide Constable  
7 Smith with the spit sock.

8

9 Q MR. STEWART: Thank you, Constable Hounsell. I'll just  
10 go back to your notes really quick. The last paragraph --

11 A My -- my report, sir?

12

13 Q I'm sorry. Yes, I'm sorry.

14 A Okay.

15

16 Q Your -- your Saskatoon Police general occurrence hard copy --

17 A Yes, sir.

18

19 Q -- report. Absolutely. So on -- on mine, it's the second page, obviously. It was  
20 the very last paragraph, starting with "at this time, I attended." So you -- like,  
21 your -- basically the very last, I think, paragraph.

22 A Yeah.

23

24 Q Okay. (As read)

25

26 At this time, I attended to the north interview room, again, with  
27 Jarvis Stewart, where I asked him if he had found his lawyer's  
28 phone number, to which he stated that his lawyer lives in B.C.,  
29 and that he did not want to talk to him anymore at 1935 hours.  
30 Jarvis Stewart stated at this point that he really had to use the  
31 washroom, and at 1936 hours I took him to the washroom and  
32 returned him back to his phone room, where he wished to speak  
33 to the Detention sergeant. I then paced [sic] on this information to  
34 Sergeant Mitzel, and this ends Constable Hounsell's involvement  
35 in this occurrence.

36

37 Did my brother say that he no longer wished to speak to a lawyer, Constable  
38 Hounsell?

39 A Yes, he did.

40

41 Q Okay. Is there a form or anything? Like, do you get that in writing? Is that --





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Q The first time you'd seen it? Okay. So did it -- did it -- did it feel strange for you or did you -- did you feel maybe concerned that once the court proceedings started to take place, it was -- it was determined that there was no sound. Did it -- were you concerned at all at that point, that there was no sound for this -- for this incident?

A I was concerned in the fact that I wished that there was sound. But am I surprised that there was no sound? Not at all.

Q Okay.

A The -- the cameras were working only partially at the best of times at that time.

Q At the best of times? Fantastic. Fantastic. So you didn't file a use of force report?

A No, sir.

Q You did not file a use of force? But you said that you used a bit of force, a knee to the head and a few other things, more like a pain compliance, would you say?

A Pain compliance would -- would sum it up, I suppose.

Q Okay. And so on the use of force report, there's -- there's a box for pain compliance. But you decided that there wasn't enough force used to fill out the use of force report. Is that correct?

A Yes, sir.

Q So you -- you took it upon yourself, even though there was force used, you just decided that there wasn't enough force used to really generate you filling one of these forms out; is that correct?

A I'd like to speak more about that, as a matter of fact.

Q Please -- please do. Please do.

A The use of force forms are a generalized form that's used to quickly summarize -- I think it gets passed on a use of force committee. They determine if your force was reasonable or not. As a police officer, we're trained on what's called a use of force model. It's a continuum, a circle, that shows your uses of force that stack next to the -- I guess for better -- lack of a word, the arrest or the -- the criminal's behaviour, based on that. On our use of force model, the very first thing on there is actually communication or sorry, officer presence, goes to communication, below through soft and hard physical techniques, all the way up to lethal force and intermediate weapons. So on our use of force continuum, officer presence, simply being seen by somebody in your uniform as

1 a police officer is a use of force. So it's kind of a grey area when it comes to  
2 filling out a use of force report form, because, quite technically, according to  
3 our own use of force model, we are using force every single time that we speak  
4 with someone. So it's left to each officer's own discretion when they feel if a use  
5 of force report is required to be filled out or not. And the majority of incidents  
6 that use force don't require a use of force reporting form.

7  
8 Q Thank you very much, Constable Hounsell. Just the last couple of questions.  
9 During my criminal trial, Constable Hounsell, the Crown prosecutor, Bryce  
10 Pashovitz, he said that there were a number of use of force reports. And I don't  
11 have one. I don't actually have a physical one here. His -- his line was on page  
12 480 of my criminal trial back in April. Bryce Pashovitz: Yes, there's a number  
13 of them. I'll just have to try and -- the Court: Well, just a minute. I know the  
14 use of force are not in your permission, but did not --

15  
16 THE COURT: This really shouldn't be quoting Bryce  
17 Pashovitz. But what you can ask the constable is: Are you aware if there was a use  
18 of force report prepared in relation to this James and Jarvis Stewart incident?

19  
20 A Yes, My Lord. In preparation for this trial, I learned that Constable McAvoy  
21 stated that he filled out a use of force reporting form.

22  
23 THE COURT: Do you happen to know if that use of  
24 force report was lost?

25  
26 A My understanding is it's unknown where it ended up, Sir.

27  
28 Q MR. STEWART: Fantastic.

29  
30 THE COURT: Just in a couple of questions.

31  
32 MR. STEWART: Right? You're so good, My Lord. Thank  
33 you.

34  
35 Q MR. STEWART: And I think -- I think we're just about it.  
36 (INDISCERNIBLE) oh, yeah. Okay. Oh, I was charged with obstruction and  
37 assault. Constable Hounsell, did you -- did you notice me assault anyone?

38 A I did not notice you assault anyone. I noticed you resisting arrest.

39  
40 Q And so you went to my criminal trial to testify against charges of assault, not  
41 charges of resisting arrest; is that correct?

1  
2 THE COURT: Well, the charge was --  
3  
4 MR. STEWART: The charge was two assault. Charges to --  
5  
6 THE COURT: Assault with the intent to resist arrest.  
7  
8 MR. STEWART: To resist, right?  
9  
10 THE COURT: So --  
11  
12 MR. STEWART: Because resist is just 129 (a), (b), or (c),  
13 right? It's 129 (a), 129 (b), or 129 (c).  
14  
15 THE COURT: And -- and clearly, the trial judge thought  
16 you may have been overcharged. And that's why he acquitted you.  
17  
18 MR. STEWART: Yeah.  
19  
20 THE COURT: On the assault charge.  
21  
22 MR. STEWART: Yeah. It didn't go --  
23  
24 THE COURT: But that happens all the time.  
25  
26 MR. STEWART: Doesn't it, though?  
27  
28 THE COURT: Yes.  
29  
30 MR. STEWART: Doesn't it? Yeah. All the time. No further  
31 questions.  
32  
33 Thank you very much, Constable Hounsell.  
34  
35 THE COURT: Thank you, Mr. Stewart.  
36  
37 A Thank you.  
38  
39 THE COURT: Thank you, Mr. Stewart. Ms. Rohrke.  
40  
41 MS. ROHRKE: My Lord, I just have one follow-up

1 question.

2

3 THE COURT: I knew you would.

4

5 MS. ROHRKE: I'm sorry.

6

7 THE COURT: It's all right. No need to apologize.

8

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

10

11 Q MS. ROHRKE: Constable Hounsell, can you just take a  
12 look at your occurrence report again for a second there? And you were referring  
13 to that second paragraph. When you were talking about the typo that perhaps  
14 happened from being -- when it went from dictation to actually typing. (As  
15 read)

16

17 Stewart continued to scream that not --

18

19 That should have been "now"?

20 A I wish I could find it, but that sounds correct. I know it was an -- a "not" to a  
21 "now."

22

23 Q Um --

24 A If I can find it on here, I could be 100 --

25

26 Q I'm on page it. Hopefully we have the same font.

27 A Okay. On page 2. On page 2, yeah.

28

29 Q Page 2, second paragraph, one, two, three line down -- three lines down,  
30 starting on the far right.

31 A (As read)

32

33 Stewart continued to scream not that we were --

34

35 Q And that should have been "now"?

36 A -- hurting him. Can -- (As read)

37

38 Stewart continued to scream now that we were hurting him as we  
39 carefully walked him to Smith's car.

40

41 Q That's what it should have said?

1 A Yes.

2

3 Q Do you believe that any of your actions could have caused him any pain in  
4 transporting him to that vehicle?

5 A Absolutely not.

6

7 Q Were you using any techniques that would cause pain at that stage?

8 A We weren't using any locks or holds or anything. We were just trying to walk  
9 him to our car.

10

11 Q Okay.

12

13 MS. ROHRKE: Thank you, My Lord. Those are all of my  
14 questions.

15

16 THE COURT: Thank you, Ms. Rohrke. Now, let's make  
17 sure we get that exhibit. Have you turned that back to my clerk? The occurrence  
18 report? Oh, you have it, Madam Clerk? Okay. Good.

19

20 Thank you very much, Constable. You are free to go.

21

22 A Thank you, My Lord.

23

24 THE COURT: Thank you. So you can step down and  
25 make good your escape.

26

27 (WITNESS STANDS DOWN)

28

29 THE COURT: You have to leave the test papers here.

30

31 So where we are at?

32

33 MS. ROHRKE: My Lord, we have another witness that is  
34 prepared to testify today.

35

36 THE COURT: Okay.

37

38 MS. ROHRKE: If you'd prefer to start now, or we can  
39 take a brief adjournment. Whatever you would -- your preference is.

40

41 THE COURT: Do you want a couple minutes? We

1 started at quarter to two. It's almost three. I mean, my -- my instinct would be to  
2 put -- because, I mean, every witness is a little shorter.

3

4 MS. ROHRKE: And I think we'll continue that way, My  
5 Lord.

6

7 THE COURT: Yes. Now, you -- if you don't want to tell  
8 me, you don't have to, but how many more witnesses --

9

10 MS. ROHRKE: I anticipate only having two more  
11 witnesses, My Lord.

12

13 THE COURT: Okay. Including this one?

14

15 MS. ROHRKE: Yes.

16

17 THE COURT: See, my instinct would be to put him on.  
18 The chief is relatively brief, have a break, so that Mr. Stewart can prepare and have  
19 an efficient cross. Does that make sense to you?

20

21 MS. ROHRKE: That's fine with me, My Lord. Our -- our  
22 second witness won't be here until tomorrow morning, if that's all right.

23

24 THE COURT: Understood. Understood. So we will get  
25 rid of this witness, done.

26

27 MS. ROHRKE: Okay.

28

29 THE COURT: Yes.

30

31 MS. ROHRKE: Give me two seconds to grab him, My  
32 Lord.

33

34 THE COURT: I think the police officers have gone out.

35

36 MS. ROHRKE: My Lord, our next witness will be  
37 Constable Adam Boyce.

38

39 THE COURT: Excellent.

40

41 THE COURT CLERK: (INDISCERNIBLE).

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CONSTABLE BOYCE: I'll swear.

THE COURT CLERK: Take the Bible in your right hand and state your name for the Court, spelling your surname for the record.

CONSTABLE BOYCE: Yeah. My name is Adam Boyce. My last name is spelt B-O-Y-C-E.

**ADAM BOYCE, Sworn, Examined by Ms. Rohrke**

THE COURT CLERK: You may be seated.

A Thank you.

THE COURT CLERK: (INDISCERNIBLE).

Q MS. ROHRKE: Good afternoon, Constable Boyce.

A Hi.

Q So can you just confirm that you are one of the named defendants in this action?

A Yes.

Q And you are employed by the Saskatoon Police Service?

A Yes.

Q Can you advise of your rank, please?

A Constable.

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

A December 2008.

Q And can you just provide a brief history of kind of what departments you've been since starting with the police?

A I did six years as a Patrol officer, and then I moved into the Mountain Bike Unit and have been in there for going on five years now.

Q What do you do in the wintertime? If you are --

A Walk.

Q Okay. Just --

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MS. ROHRKE: That was just out of curiosity, My Lord.  
I'm sorry.

Q Prior to working for SPS, were you employed as a police officer anywhere else?  
A No.

Q No. And in, say, August of 2012, what rank and position did you hold with SPS?

A Constable, working on Patrol.

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

A Yes.

Q Do you recall what shift you were working that day?

A Night shift. So six -- seven, eight, until six in the morning.

Q Okay. And can you just describe the nature of your duties that day?

A Just normal Patrol work, so responding to any calls from the public where they need our assistance or anything on view that we might come across, traffic infractions, just -- yeah. Patrol work.

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

A I was working with a partner, Constable Hounsell.

Q And were you in uniform?

A Yes.

Q And were you operating a vehicle that night?

A Yes. Patrol --

Q What vehicle?

A -- 231, patrol car marked 231.

Q Sorry. Two --

A 31.

Q Okay. And what kind of vehicle was that?

A Crown Vic with police badging on the side, equipped with lights and sirens overhead, as well as a loud hailer.



1 Q So the typical police car we would see on the street?

2 A Yeah.

3

4 Q Okay.

5 A Yeah.

6

7 Q So do you recall on that night whether the police car you were operating had the  
8 Panasonic Arbitrator in-car camera system?

9 A Yes, it did.

10

11 Q Was it working that night?

12 A I believe so. But --

13

14 Q Okay.

15 A -- I didn't review any video after the incident or anything. So I don't know if it  
16 did end up working.

17

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

20 A Yes.

21

22 Q Can you just generally describe what happened?

23 A Yeah. Over the radio, I heard Constable Keating calling in for help. I did note  
24 that he called in twice. He said that he was at the Shoppers on 8th Street. We  
25 activated our lights and sirens and went to the Shoppers on 8th Street, and --

26

27 Q Where were you when you heard the call, sorry?

28 A I believe we were close to Broadway and Taylor. So we went to go -- we went  
29 back down Broadway towards 8th Street, and then eastbound on 8th Street  
30 towards Shoppers Drug Mart.

31

32 Q And then you arrived at Shoppers Drug Mart?

33 A Yes.

34

35 Q And I'm going to give you -- if you'll notice, to your left there is a map of the  
36 Shoppers Drug Mart.

37 A Okay.

38

39 Q I'm going to give you a sticky with your police car number on it.

40 A Okay.

41

- 1 Q If you can just put on that map where you believe you parked --  
2 A Sure.  
3  
4 Q -- your car when you pulled in there?  
5 A From what I remember, we were on the west side, I would say no  
6 (INDISCERNIBLE) became the first entrance. So my police car would be  
7 somewhere right around 474.  
8  
9 Q So fairly close to -- to --  
10 A Yeah.  
11  
12 Q -- car 474? Okay.  
13 A Yeah.  
14  
15 Q So upon arrival at the Shoppers Drug Mart, can you just describe what  
16 happened next?  
17 A Yeah. Upon arrival, I saw Mr. James Stewart on the ground with other officers.  
18 He -- the other officers were struggling to control him as he was trying to turn  
19 around, as he was on his belly. So I went over and controlled the lower half of  
20 his legs and body. Once we gained control of him, we rolled him over to one  
21 side, searched down his waistline, just checking what he had in his pockets for  
22 weapons or any ID, rolled him over, searched down the other side. Once the  
23 search was completed, we stood him up and walked him to Constable Smith's  
24 car and placed him in the back.  
25  
26 Q Okay. So I'm going to go back a little bit. When you say you were controlling  
27 his legs --  
28 A Yeah.  
29  
30 Q -- can you just describe kind of what that would mean?  
31 A So legs are difficult to control when they're flailing about, but usually what I'll  
32 end up doing is I'll place my knee across the back of their knee. And then it  
33 allows -- it doesn't allow them to have as much leverage. So I would be placing  
34 some pressure down on his legs.  
35  
36 Q And when you arrived, was he flailing his legs?  
37 A Kicking his legs.  
38  
39 Q Okay.  
40 A I don't know if I'd call it flailing, but kicking his legs, yeah.  
41

- 1 Q Okay. And do you recall when you arrived whether he had handcuffs on or not?  
2 A I thought he did have handcuffs on at that time.  
3  
4 Q You thought he --  
5 A Did have handcuffs on.  
6  
7 Q Yeah. So who were the officers that were attending to the plaintiff at the time  
8 you arrived?  
9 A Constable Schaefer and Constable McAvoy.  
10  
11 Q And so then you and Constable Hounsell arrive?  
12 A Yes.  
13  
14 Q And can you just describe, once you arrived, what Constable Schaefer and  
15 McAvoy did, from your perspective.  
16 A Well, I don't really know what happened.  
17  
18 Q If you don't recall, that's fine.  
19 A Because I was on the legs, and I knew there was officers, originally Constable  
20 McAvoy and Schaefer beside me. But then just from working with Constable  
21 Hounsell so long, I knew at some point he was the next officer beside me. And  
22 that's where we started to communicate, okay, let's search this guy, roll him this  
23 way, roll him that way.  
24  
25 Q So by the time you were searching him, it was just you and Constable Hounsell?  
26 A Yes.  
27  
28 Q Okay. So then at any point, did you have any specific recollection if the plaintiff  
29 was saying anything to you?  
30 A I don't remember any words said.  
31  
32 Q Was he making any noise? Can you recall?  
33 A I would -- I'm sure he was yelling, but I don't know exactly what was said.  
34  
35 Q It was eight years ago, eh?  
36 A Yeah.  
37  
38 Q And do you have any specific recollection about -- or taking him from going  
39 to -- from the ground to the back of -- whose police car did you put him in the  
40 back of?  
41 A Constable Smith's.

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Q Do you have any recollection about that kind of route?

A No.

Q Okay. So once you had the plaintiff in the back of Constable Smith's police car, did you have any further involvement with him at the scene?

A No, not at the scene.

Q Did you have any -- did you physically -- aside from controlling his legs and -- and making sure they weren't kicking, did you physically touch the plaintiff anywhere else that you recall?

A No.

Q So at any time, did you kick the plaintiff?

A No.

Q At any time, did you punch the plaintiff?

A No.

Q At any time, did you pick the plaintiff's head up and smash it into the ground?

A No.

Q Did you witness any of the other officers kick the plaintiff?

A No.

Q Did you witness any of the other officers punch the plaintiff?

A No.

Q Did you witness any of the other officers pick the plaintiff's head, face, whatever, off, and smash it into the ground?

A No.

Q When you got the plaintiff on his feet, did you notice if he had any injuries on him?

A I didn't notice any injuries.

Q So not to say that he didn't have injuries, you just simply didn't notice?

A I didn't notice.

Q At any point, did you advise the plaintiff that he was under arrest?

A No.

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Q So subsequent to that, did you have any further involvement with the plaintiff that evening?

A Yes. Constable Smith radioed in that he was struggling with him in the sally port at Detention, so I went down the elevator to the bottom of the basement where the sally port was and stood there while he got out of the car and walked in the elevator.

Q Did you touch him at any point --

A No.

Q -- during that? Did you say anything to him during that -- during that event?

A I think I waved at him through the window.

Q Okay. You didn't say anything to him?

A No.

Q You didn't threaten him?

A No.

Q Did you hear anyone else threaten him?

A No.

Q Did you prepare any reports regarding that incident that evening?

A Yes.

Q In preparing those reports, did you make any recommendations whether the plaintiff should be detained for any length of time?

A No.

Q Once the plaintiff was in Detention, would you have any authority to decide when he was going to be released?

A No.

Q Would you even provide any sort of recommendation to anyone if he should be released?

A Regarding this incident?

Q Regarding this incident.

A No.

1 Q Did you notice any witnesses around that evening?

2 A I -- I didn't notice any witnesses. I was too busy dealing with Mr. Stewart.

3

4 Q I believe in connection with this incident, you have seen the video from  
5 Constable Keating's car, being car 477 [sic].

6 A No, I haven't.

7

8 Q You've never seen that video?

9 A I've never seen it.

10

11 Q I apologize. Never mind. Subsequent to this incident, did you file what's known  
12 as a use of force report?

13 A I did not.

14

15 Q Okay. Would a use of force, in your experience, contain any information that  
16 was not included in your incident -- in your occurrence report or in your  
17 handwritten notes?

18 A No.

19

20 Q Prior to learning -- or sorry. Prior to this interaction on August 24th, 2012, did  
21 you -- did you know who the plaintiff was?

22 A No.

23

24 Q Did you have any malicious feelings with respect to this incident?

25 A No.

26

27 MS. ROHRKE: My Lord, I have no further questions of  
28 this witness.

29

30 THE COURT: Faster than I thought. I am half-inclined  
31 to call upon you to cross. Are you able to carry on or do you want a break?

32

33 MR. STEWART: If -- if it's --

34

35 THE COURT: I will defer to you. You will tell me what  
36 you want.

37

38 MR. STEWART: I would prefer to just have a -- like, a  
39 five, seven -- a ten-minute break until 3:10, if that's -- if that's doable, My Lord,  
40 three -- ten -- ten minutes.

41

1 THE COURT: You know what? It will be our afternoon  
2 break. We will take the full 15 minutes.  
3  
4 MR. STEWART: Fantastic, My Lord.  
5  
6 (WITNESS STANDS DOWN)  
7  
8 (JURY RETIRES)  
9  
10 THE COURT: Please be seated. So we should just have  
11 a little talk now. So you have got one more witness.  
12  
13 MS. ROHRKE: Yes, My Lord.  
14  
15 THE COURT: But they are not available until tomorrow  
16 morning?  
17  
18 MS. ROHRKE: Currently, I have him coming here  
19 tomorrow morning at 9:30.  
20  
21 THE COURT: Okay. So should we -- should I be telling  
22 the jury to bring that overnight bag kit tomorrow or did you -- did you see -- you  
23 don't have to stand.  
24  
25 MS. ROHRKE: My Lord, I'm going to defer to  
26 Mr. Gibbings on these questions you have.  
27  
28 THE COURT: Oh, okay.  
29  
30 MR. GIBBINGS: I think what is likely to happen is that  
31 that witness, if we were, say, to start at 10:00, would be over -- subject to  
32 cross-examination, of course --  
33  
34 THE COURT: Right.  
35  
36 MR. GIBBINGS: -- but I think it -- I think it'll be fairly  
37 short. We'd be done by noon.  
38  
39 THE COURT: Right.  
40  
41 MR. GIBBINGS: We could then have a discussion about

1 the questions.  
2

3 THE COURT: Right. Now, but we -- I thought that kind  
4 of was settled.  
5

6 MR. GIBBINGS: Oh, okay.  
7

8 THE COURT: Well, I -- I sent my questions to --  
9

10 MR. GIBBINGS: My -- my --  
11

12 THE COURT: -- Mr. Stewart. He reviewed them. He  
13 had that addition, and I explained to him why the addition doesn't work, and he said  
14 he was comfortable with the rest.  
15

16 MR. GIBBINGS: Right. And my -- my thought was that we  
17 would review it again after all the evidence was in.  
18

19 THE COURT: Okay.  
20

21 MR. GIBBINGS: But that may take no time at all. I don't  
22 know.  
23

24 THE COURT: Right.  
25

26 MR. GIBBINGS: And then I'd be prepared to make closing  
27 arguments tomorrow.  
28

29 THE COURT: Yes. And again, to be sure -- to be clear,  
30 you will go first. Mr. Stewart will go last.  
31

32 MR. GIBBINGS: Correct.  
33

34 THE COURT: All right.  
35

36 MR. GIBBINGS: And then I think if you're ready to do  
37 your charge, we could then ask the jury to begin to deliberate.  
38

39 THE COURT: But that would be sort of late tomorrow  
40 afternoon?  
41



1 MR. GIBBINGS: Yeah. Yeah.  
2  
3 THE COURT: Or should we -- you do charge, he do --  
4 sorry. You do argument, he do argument, we start at 9:00, Friday morning.  
5  
6 MR. GIBBINGS: Yeah. Yeah.  
7  
8 THE COURT: So I tell them tomorrow, when we  
9 dismiss, bring a kit.  
10  
11 MR. GIBBINGS: Yeah.  
12  
13 THE COURT: You may be here for the weekend.  
14  
15 MR. GIBBINGS: Yeah.  
16  
17 THE COURT: Okay.  
18  
19 MR. GIBBINGS: Sure.  
20  
21 THE COURT: All right. And we will adjourn a little  
22 early today, so I want to talk about those questions, specifically that good faith  
23 question.  
24  
25 MR. GIBBINGS: Sure.  
26  
27 THE COURT: All right?  
28  
29 MR. GIBBINGS: Yeah.  
30  
31 THE COURT: So you -- oh, do you have your chart?  
32 Those questions I sent you, with you?  
33  
34 MR. STEWART: I -- I believe I do, My Lord.  
35  
36 THE COURT: Okay. All right.  
37  
38 MR. STEWART: But I -- I will certainly have them  
39 tomorrow.  
40  
41 THE COURT: No, no. I would like to talk about it a

1 little bit later tonight, if possible.

2

3 MR. STEWART: Tonight? Okay. I should have a record of  
4 them, My Lord.

5

6 THE COURT: Okay. It's really just the good faith one I  
7 want to deal with.

8

9 MR. STEWART: Okay.

10

11 THE COURT: Because that's -- that's the more  
12 problematic. The other ones are common sense.

13

14 MR. STEWART: Mm. Fantastic, My Lord.

15

16 THE COURT: We will make the call.

17

18 MR. STEWART: I appreciate it. Thank you.

19

20 THE COURT: Okay. Madam Clerk, 15 minutes.

21

22 (ADJOURNMENT)

23

24 THE COURT: Thank you. Please be seated. Bring in the  
25 jury.

26

27 THE SHERIFF: Yes, My Lord.

28

29 (JURY ENTERS)

30

31 THE COURT: Please be seated. Mr. Stewart, do you  
32 have any cross-examination for this witness?

33

34 MR. STEWART: Yes, I do, My Lord.

35

36 THE COURT: Please proceed.

37

38 MR. STEWART: Thank you, My Lord.

39

40 **Mr. Stewart Cross-examines the Witness**

41

- 1 Q MR. STEWART: Constable Boyce, thanks for showing up  
2 today.  
3 A Yeah.  
4  
5 Q Just between you and me, no hard feelings, sir.  
6 A Okay.  
7  
8 Q I'm just going to give you a couple of quick questions, and then we'll get into a  
9 couple things, and then I should be done. "Yes" or "no," you were being  
10 questioned today with respect to the torts of assault, battery, false arrest, false  
11 imprisonment, intentional infliction of mental suffering, negligence causing  
12 personal injury, negligent standard of care, and abuse of process; is that correct?  
13 You're aware that you're being sued for those torts?  
14 A Yes.  
15  
16 Q Okay. Do you understand that the evidence that you will give today is  
17 important?  
18 A Yes.  
19  
20 Q Do you understand the implications of your having sworn to tell the truth today?  
21 A Yes.  
22  
23 Q Okay. You have informed yourself on the subject matter of the case we will be  
24 discussing today?  
25 A Yes.  
26  
27 Q Okay. You are a peace officer employed with the Saskatoon Police Service?  
28 A Yes.  
29  
30 Q Okay. You were on active duty on August 24th, 2012?  
31 A Yes.  
32  
33 Q Did you arrest me without a warrant that evening?  
34 A I did not arrest you.  
35  
36 Q Fantastic. Fantastic. You went to court, criminal court, on April 16th, 2013, to  
37 testify me against [sic] a charge of obstruction and two charges of assault to a  
38 peace officer? Is that correct?  
39 A Yes.  
40  
41 Q Okay. Did you knowingly commit an abuse of process by -- by having me

1 charged with these crimes I did not to cover for your own malfeasance or  
2 misconduct, I guess you could say?

3

4 MR. GIBBINGS: My Lord.

5

6 THE COURT: Yes. You have got to ask that in another  
7 way.

8

9 MR. STEWART: Okay. Okay. All right.

10

11 THE COURT: Well, how about this? How about this?

12

13 Constable, did you decide what to charge Mr. Stewart with?

14

15 A No.

16

17 THE COURT: That was one of the other officers?

18

19 A Yes.

20

21 THE COURT: Your involvement was relatively limited?

22

23 A Yes.

24

25 MR. STEWART: Fantastic. Thank you.

26

27 Q MR. STEWART: But you were there to testify at my  
28 criminal trial; is that correct?

29 A Yes.

30

31 Q Yeah. Fantastic. Okay.

32

33 THE COURT: But -- and again, just -- just on that, that  
34 would be the norm, that --

35

36 MR. STEWART: M-hm.

37

38 THE COURT: -- even if -- even if you play a small part,  
39 all the officers who were there call in and get to say, well, this was my two bits'  
40 worth.

41

- 1 MR. STEWART: M-hm. M-hm. So they're all -- they're all  
2 very much aware --  
3
- 4 Q MR. STEWART: You're all -- you're all very much aware  
5 of what each of you, then, is bringing to the table as far as that charge? You're  
6 not -- you're -- you're -- you don't look at Constable Hounsell and say, Oh, what  
7 are you doing here? Like, you're all very much aware that the five of you are  
8 there for a specific reason; is that correct?  
9 A Yes.
- 10
- 11 Q Okay. I'd like you to look at your Saskatoon Police Service general occurrence  
12 notes -- or sorry, general occurrence hard copy of the -- of your handwritten  
13 notes that are written. So what do they call that again? The -- they're not your  
14 notes. They're just your --  
15
- 16 THE COURT: Occurrence report.  
17
- 18 MR. STEWART: Occurrence report. I should write that in  
19 pencil. Occurrence report.  
20
- 21 THE COURT: And my guess is you don't have your  
22 occurrence report with you?  
23
- 24 A No, I do not, My Lord.  
25
- 26 THE COURT: So, Ms. Rohrke, may I again impose  
27 upon your good nature?  
28
- 29 MS. ROHRKE: My Lord, if you'll indulge me for a  
30 moment, I've got a large binder --  
31
- 32 THE COURT: I will.  
33
- 34 MS. ROHRKE: -- to look through for a second here.  
35
- 36 THE COURT: You don't have an extra copy that we  
37 could show the constable?  
38
- 39 MR. STEWART: Yeah. Yeah, I -- I think I might have  
40 double.  
41

1 THE COURT: Okay.  
2  
3 MS. ROHRKE: My Lord, I have it.  
4  
5 MR. STEWART: Oh, okay.  
6  
7 MS. ROHRKE: Perhaps I'll just compare it with --  
8  
9 MR. STEWART: Yeah. It might be different, fonts.  
10  
11 MS. ROHRKE: -- the plaintiff's, just to make sure that  
12 they're the same size font and we don't have that --  
13  
14 THE COURT: Yes.  
15  
16 MR. STEWART: All right.  
17  
18 MS. ROHRKE: Is that good?  
19  
20 MR. STEWART: Fantastic.  
21  
22 MS. ROHRKE: Okay.  
23  
24 A Thank you.  
25  
26 Q MR. STEWART: Says, narrative details-dash-4. Is this -- is  
27 this author 705, Boyce, Adam, is that your -- your general occurrence report?  
28 A Yes.  
29  
30 Q Constable Boyce? Thank you, sir. I'd just like to bring your attention to -- one,  
31 two, three -- I guess it would be the fourth -- one two -- fourth -- it says "when  
32 we arrived, I noted." That -- that line there: (As read).  
33  
34 When we arrived, I noted that one male was on the ground  
35 in handcuffs, and a second male was standing beside other  
36 officers in handcuffs.  
37  
38 Is that a fair representation of -- of your observation, Constable Boyce?  
39 A Yes.  
40  
41 Q So one male was on the ground, in handcuffs, and a second male was standing

1 beside other officers in handcuffs. So the male that was on the ground in  
2 handcuffs, it says here: (As read)

3

4 The male on the ground was identified as James Stewart, and the  
5 standing male was Jarvis Stewart.

6

7 So the male on the ground, me, being me, obviously, now, I was down  
8 facefirst?

9 A You were on your stomach.

10

11 Q I was on my stomach? Okay. So you went: (As read)

12

13 As I got out of the PC, I noted that James was still trying to turn  
14 over and resisting officers who were dealing with him.

15

16 And that's a fair statement to make?

17 A Yes.

18

19 Q Okay. (As read)

20

21 I went over to James and gained control of his legs as they were  
22 kicking.

23

24 Is that correct?

25 A Yeah.

26

27 Q Okay. (As read)

28

29 I maintained control of his legs, and James finally began to calm  
30 down. At this point, Constable Hounsell took the upper half of his  
31 body and I took the lower half and began to search James, turning  
32 him over onto his right shoulder first and emptying the pockets.  
33 We then turned him over onto his left shoulder and emptied the  
34 pockets. All the property found was taken by Constable Schaefer.

35

36 Is that correct?

37 A Yes.

38

39 Q What was the property found?

40 A I don't know. You'd have to ask Constable Schaefer.

41

1 Q Hm. Did you find a wallet when you searched me?

2 A I don't remember.

3

4 Q You don't remember anything? You don't remember finding a wallet or ID or it  
5 was just -- anything you found, you just gave to Constable Schaefer?

6 A Yes.

7

8 Q Okay. There's nothing in your notes here that says anything to be specific. It just  
9 says "all the property found was taken by Constable Schaefer." So you made no  
10 inventory of those? You didn't -- you made no note? You made nothing? There  
11 was -- there wasn't loose cash, there wasn't dollar bills, gold coins? It was just  
12 all the property found was taken by Constable Schaefer; is that correct?

13 A Correct.

14

15 Q Okay. When you searched me, Constable Boyce, did you find any weapons?

16 A All the property that I found was given to Constable Schaefer. I don't  
17 remember --

18

19 THE COURT: But do you recall if there was a weapon?

20

21 A No, My Lord. I do not recall if there was a weapon.

22

23 Q MR. STEWART: Potentially, then, on searching me, there  
24 could have been a wallet, and there could have been ID in that wallet? Is that  
25 correct, Mr. Boyce -- Constable Boyce?

26

27 THE COURT: Well, but I think the constable doesn't  
28 remember. He wasn't the big player here.

29

30 MR. STEWART: No, I know he wasn't the big player.

31

32 THE COURT: He turned all the stuff over.

33

34 MR. STEWART: He turned all the stuff over. Yeah. Okay.

35

36 Q MR. STEWART: I understand this is -- you were just a bit  
37 player in this, Constable Boyce. I understand that. And I'm -- I'm just trying to  
38 get all the information I can, because this is my case. You see, I paid the \$2,000  
39 for the jury, and I paid the \$50 to you to question and paid the \$50 for all the  
40 other cops to question.

41



1 THE COURT: You should really review the price  
2 structure.  
3

4 MR. STEWART: M-hm. Now --  
5

6 THE COURT: You could have asked Constable  
7 Schaefer where the wallet went.  
8

9 MR. STEWART: Yeah. Well, he doesn't say there was a  
10 wallet. He just said, he found all the property. So I don't actually have -- I can't  
11 actually confirm that he found my wallet. I mean, I had my wallet on me. And then,  
12 of course, they took it, which -- I had my wallet. I had my ID, but obviously, all the  
13 property found was taken by Constable Schaefer.  
14

15 THE COURT: All right. Okay. But you're giving  
16 testimony again.  
17

18 MR. STEWART: Okay. Right.  
19

20 THE COURT: Remember, what is cross-examination?  
21

22 MR. STEWART: Questions and answer. Yes.  
23

24 THE COURT: Question, answer. Question, answer.  
25

26 MR. STEWART: Yeah. I know.  
27

28 Q MR. STEWART: So I'll just ask you one more time,  
29 Constable Boyce. Did you find my wallet?  
30 A I don't remember --  
31

32 Q Okay.  
33 A -- the property.  
34

35 Q No. Okay. Just the last question or the last -- well, there's two lines. But the first  
36 page, the first page, the very little last paragraph there. (As read)  
37

38 While en route to Detention, Jarvis kept stating that he was going  
39 to civilly sue all the police officers who were involved in this  
40 incident.  
41

1 Did you believe that statement to be true, Constable Boyce, that he was -- he  
2 was legitimately going to civilly sue these police officers for this? Did you  
3 believe that --

4 A At that time, I had no belief "yes or no." I was indifferent to it.

5

6 Q Fantastic. You were just basically writing it down in your notes that --

7 A Yes.

8

9 Q -- this is coming out? Fantastic.

10

11 MR. STEWART: Constable Boyce, I want to -- I want to  
12 thank you today, and that's -- that's -- that's all the questions I have, My Lord.

13

14 THE COURT: All right. And I compliment you on your  
15 efficient cross-exam.

16

17 MR. STEWART: Thank you, My Lord.

18

19 THE COURT: We have one more witness where he can  
20 really hone your skills.

21

22 Ms. Rohrke, any re-exam?

23

24 MS. ROHRKE: My Lord, I have nothing.

25

26 THE COURT: Okay. So, Constable, you can step down,  
27 and you are certainly free to go.

28

29 A Thank you, My Lord.

30

31 (WITNESS STANDS DOWN)

32

33 THE COURT: One more witness. I take it, members of  
34 the jury, you are not uncomfortable with starting at 9:00 -- or sorry, 9:30  
35 tomorrow? And on Friday, which will be the last day, I am thinking we might even  
36 start at 9. That's a little early for lawyers, but you may have experienced it yourself.  
37 Okay.

38

39 So we will adjourn the jury, and we will see you tomorrow at 9:30. As always, try  
40 to get here a couple of minutes early, okay? Thank you very much. Appreciate your  
41 patience today.

1

2 (JURY RETIRES)

3

4 **Discussion**

5

6 THE COURT: Please be seated. So as you know,  
7 tomorrow, Mr. Gibbings will speak first to the jury. You get the last shot at  
8 argument. And I will -- and I am telling you now, Mr. Gibbings, I am going to be  
9 pretty flexible with Mr. Stewart's last argument.

10

11 MR. GIBBINGS: I understand.

12

13 THE COURT: It's just -- I am not going to be policing  
14 him, you know, tightly.

15

16 MR. GIBBINGS: I understand.

17

18 THE COURT: Okay. But you are not -- I just remind  
19 you, respectfully, you are not giving testimony, right?

20

21 MR. STEWART: I'm -- I'm still on a leash, My Lord.

22

23 THE COURT: You are -- you are over-the-forest.  
24 Over-the-forest. This is what you have heard, and this is the result. And, of course,  
25 the jury will receive my instructions, and then they will get those questions that I  
26 sent you. And the last three, was more force used than necessary, was what was  
27 done to him an abuse of process, was there intentional infliction of mental  
28 suffering, those are not particularly technical. They are common sense. Those are  
29 decisions they will make on the evidence.

30

31 MR. STEWART: Okay.

32

33 THE COURT: And I think I will tell them, just use your  
34 common sense. The first question, however, is a question of art. The first question:  
35 Did the defendant -- so then did each defendant, and there will be a jury -- there  
36 will be a set of questions for each of the five defendants. The first question is did  
37 the defendant act in good faith at all times in his dealings with the plaintiff? Yes or  
38 no? If it's "yes," you've got a problem, because it's full stop, full stop. If it's "no," go  
39 to the next question. And if any -- and if any of those next three questions are  
40 answered "yes," that triggers a discussion, a second round of discussion, about the  
41 damages you should receive.

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41

So the question is, in my address to the jury, how do I deal with the good faith? So I thought I'd like to read to you -- because I've been doing my homework -- what I intend to say.

MR. GIBBINGS: Okay.

THE COURT: And you get to critique my syntax, all right? So this is what I'm saying to the jury. (As read)

You will note the first question asks of each of the defendants whether they acted in good faith at all times in their dealings with the plaintiff. If the answer is "yes," the direction is for you to stop. The conduct of police in the Province of Saskatchewan is governed by *The Police Act*, Section 10 (3) of *The Police Act* protects police officers from claims for damages in negligence and other civil wrongs on condition that they are acting in good faith. Therefore, if you conclude a police officer acted in good faith, he is not liable for damages, even if, in effecting the arrest, more force was used than necessary. I would point out that these good faith defences protect not only police, but the bulk of civil servants in the province, although each of them has their own clause in their own Act.

And then this is the important part: (As read)

The presence of good -- the presence of the good faith clause requires that for any of the defendants to be liable, (1) the jury must conclude on a balance of probabilities that that defendant's conduct was a malicious abuse of public authority, or -- (1) or (2), the jury must conclude on a balance of probabilities that the defendant's conduct is so markedly inconsistent with their public responsibility that the jury cannot reasonably conclude that the defendant was performing his responsibilities in good faith. You must sit back as a group and look at the evidence as a whole and employ your common sense to determine whether the good faith defence operates to save the defendants, or if you accept the argument of the plaintiff. Please remember you must engage in that analysis for each of the defendants.

So there's a checklist for each of the defendants. And they will have in that

1 checklist in their hands when I'm talking to them.  
2

3 So, Mr. Gibbings, are you comfortable with that approach?  
4

5 MR. GIBBINGS: That's my understanding of -- of the good  
6 faith defence. I'm perfectly comfortable --  
7

8 THE COURT: Yes. Well, I know. As I say, I am sure  
9 that is the law.  
10

11 MR. GIBBINGS: -- I'm perfectly --  
12

13 THE COURT: I just -- I hope I said it the way you were  
14 comfortable with it.  
15

16 MR. GIBBINGS: Very comfortable, My Lord.  
17

18 THE COURT: Okay. Mr. Stewart, are you comfortable  
19 with that approach?  
20

21 MR. STEWART: Very comfortable, My Lord.  
22

23 THE COURT: Okay. All right. So we are all playing  
24 with the same deck.  
25

26 MR. GIBBINGS: I wonder, My Lord, maybe this is of no  
27 assistance to you at all, but I have a brief on the abuse of process tort that might  
28 assist you in your charge.  
29

30 THE COURT: Right.  
31

32 MR. GIBBINGS: Maybe it does, and maybe it doesn't.  
33

34 THE COURT: Well, no. I mean, I don't mind putting it  
35 on the file.  
36

37 MR. GIBBINGS: Yeah.  
38

39 THE COURT: Because then it will be there. I mean, in  
40 the event -- in the event there is an appeal by one or the other, it is there. As I say, I  
41 don't intend dealing with the good faith -- I don't intend to depart from those

1       remarks I just read from you.  
2

3 MR. GIBBINGS:                               (INDISCERNIBLE).  
4

5 THE COURT:                                 But you -- you can go on for pages. But --  
6       but that's a mistake because the jury -- their eyes just glass over.  
7

8 MR. GIBBINGS:                               Right.  
9

10 THE COURT:                                 Why doesn't this man shut up? Right?  
11

12 MR. GIBBINGS:                               Yes, My Lord.  
13

14 THE COURT:                                 Yes. Okay.  
15

16 MR. GIBBINGS:                               This is just in the event that they get past  
17       that good faith defence --  
18

19 THE COURT:                                 Yes.  
20

21 MR. STEWART:                               Oh, thank you.  
22

23 MR. GIBBINGS:                               -- and get to abuse of process and  
24       whether it can be shown (INDISCERNIBLE).  
25

26 THE COURT:                                 Yes.  
27

28 MR. GIBBINGS:                               So I've provided you with a couple of  
29       authorities, My Lord.  
30

31 THE COURT:                                 Okay. But as I say, I am going -- I am  
32       going to be above the forest on that one.  
33

34 MR. GIBBINGS:                               Sure. Do you want to -- that's one for the  
35       file. Do you want one for yourself, My Lord?  
36

37 THE COURT:                                 Sure. Sure. So anything from you,  
38       Mr. Stewart?  
39

40 MR. STEWART:                               My Lord, I'm just curious. There was a --  
41       a witness list that went out a number of weeks. That witness list had eight names on

1 it. I'm just curious as to the -- the witness tomorrow.  
2

3 THE COURT: Ms. Rohrke does not have -- it will be  
4 somebody from that last. That is correct, Ms. Rohrke?  
5

6 MS. ROHRKE: That is correct, My Lord.  
7

8 THE COURT: Ms. Rohrke is not obligated to say who it  
9 will be. You can say it, if you wish, but I do not compel you.  
10

11 MR. GIBBINGS: My Lord, I think it's been revealed  
12 already.  
13

14 THE COURT: Okay.  
15

16 MR. STEWART: It has?  
17

18 THE COURT: So are you in a position to share with  
19 Mr. Stewart who is going to be up?  
20

21 MR. GIBBINGS: We will leave it until tomorrow.  
22

23 THE COURT: We will leave it until tomorrow. Okay.  
24

25 MR. STEWART: Ha-ha.  
26

27 THE COURT: If you show up before 9:30, you will  
28 probably see him or her. Okay. All right. So 9:30.  
29

30 MR. STEWART: My Lord, and then why is the witness not  
31 here now?  
32

33 THE COURT: Well, again, I assume you were just  
34 trying to calculate when you would be done today?  
35

36 MS. ROHRKE: That's exactly right, My Lord. I've been  
37 trying to estimate all week.  
38

39 THE COURT: Yes. No. So --  
40

41 MR. STEWART: Right. But I -- I just -- I just find it quite

1       ironic, sir, that you'd -- you'd get me on -- for time, and here we are now, and we're  
2       wasting the rest of the afternoon. Thank you, My Lord.  
3  
4       THE COURT:                               Well, no. All right. And that's a fair and  
5       proper use of the word "ironic." I was thinking -- I mean, you were running on with  
6       that witness, and it was going into territory --  
7  
8       MR. STEWART:                             M-hm. M-hm.  
9  
10      THE COURT:                             -- that had nothing to do --  
11  
12      MR. STEWART:                            Okay.  
13  
14      THE COURT:                             -- I was panicking --  
15  
16      MR. STEWART:                            Okay.  
17  
18      THE COURT:                             -- that we weren't going to be able to  
19      finish by Friday.  
20  
21      MR. STEWART:                            Okay. Fair.  
22  
23      THE COURT:                             And if we had that same cross on every  
24      witness, we wouldn't finish.  
25  
26      MR. STEWART:                            Fair.  
27  
28      THE COURT:                             But as the witnesses came who had a  
29      little less involvement with you --  
30  
31      MR. STEWART:                            M-hm.  
32  
33      THE COURT:                             -- all of a sudden, you were efficient.  
34  
35      MR. STEWART:                            So my comments are -- are straight, then.  
36      We're --  
37  
38      THE COURT:                             Yes. Yes. No.  
39  
40      MR. STEWART:                            Okay. Fantastic.  
41



1 THE COURT: And you are --  
2  
3 MR. STEWART: My Lord.  
4  
5 THE COURT: -- your comment about irony --  
6  
7 MR. STEWART: Any --  
8  
9 THE COURT: -- totally appropriate.  
10  
11 MR. STEWART: Thank you, Sir -- My Lord.  
12  
13 THE COURT: Madam Clerk, 9:30.  
14  
15  
16 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, MAY 2, 2019  
17  
18  
19 May 2, 2019 Morning Session  
20  
21 The Honourable Court of Queen's Bench for Saskatchewan  
22 Mr. Justice R.S. Smith  
23  
24 (No Counsel) For the Plaintiff  
25 R. Gibbings, Q.C. For the Defendants  
26 A. Rohrke For the Defendants  
27 B. Werezak Court Clerk  
28  
29  
30 **Discussion**  
31  
32 THE COURT: Good morning, everyone. Please be  
33 seated.  
34  
35 MR. GIBBINGS: Good morning, My Lord.  
36  
37 MS. ROHRKE: Good morning, My Lord.  
38  
39 THE COURT: So we are ready to proceed, Ms. Rohrke?  
40  
41 MS. ROHRKE: Yes, My Lord.

1  
2 THE COURT: Deputy, bring in the jury.  
3  
4 Why don't you put your last witness on the stand?  
5  
6 MS. ROHRKE: Sure. My last witness is going to be  
7 Constable Aaron Smith.  
8  
9 THE COURT: You can sit down while we're waiting for  
10 the jury.  
11  
12 CONSTABLE SMITH: Thank you, My Lord.  
13  
14 THE COURT: And this will be the witness that  
15 completes that exhibit that is still for Ident.?  
16  
17 MS. ROHRKE: It certainly will, My Lord.  
18  
19 THE COURT: Thank you.  
20  
21 (JURY ENTERS)  
22  
23 THE COURT: Please be seated. Good morning,  
24 members of the jury. We are prepared to proceed with another witness from the  
25 defendants.  
26  
27 Ms. Rohrke, your witness is?  
28  
29 MS. ROHRKE: Constable Aaron Smith.  
30  
31 THE COURT: Aaron Smith. Okay. Madam Clerk.  
32  
33 THE COURT CLERK: (INDISCERNIBLE).  
34  
35 CONSTABLE SMITH: The Bible, please.  
36  
37 THE COURT CLERK: Take the Bible in your right hand and  
38 state your name for the Court, spelling your surname for the record.  
39  
40 CONSTABLE SMITH: Aaron Jeffrey Smith, A-A-R-O-N  
41 S-M-I-T-H.

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**AARON SMITH, Sworn, Examined by Ms. Rohrke**

THE COURT CLERK: You may be seated.

Q MS. ROHRKE: Good morning, Constable Smith.

A Good morning.

Q You're employed with the Saskatoon Police Service?

A Yes, I am.

Q How long have you been with them?

A Since 2009.

Q And what's your position with them?

A Constable.

Q Okay. Can you just provide a brief history of what departments you've been in since you started with them?

A Yes. I've worked in the Patrol Division, as well as the Guns and Gangs Unit.

Q And prior to being an officer with SPS, were you employed as a peace officer anywhere else?

A No, I was not.

Q And in August of 2012, what year would have you been in?

A Patrol.

Q Patrol? And just to clarify, you were not one of the named defendants on this trial?

A No, I'm not.

Q However, I understand that you were on duty on August 24th, 2012?

A Yes, I was.

Q Do you recall what shift you were working that day?

A That was a night shift.

Q So what would have the hours been?

A From 6 PM to 6 AM.

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

2 A I was alone.

3

4 Q Were you in uniform?

5 A Yes, I was.

6

7 Q Can you describe that uniform? I appreciate you might have to point to one of  
8 the officers in the gallery just to provide the jury with an idea of what you were  
9 wearing.

10 A Absolutely. So I was wearing the standard-issued uniform, such as Constable  
11 Hounsell right there. The badge was displayed on my chest, and issued duty  
12 equipment was on my belt, along with a radio.

13

14 Q And were you operating a vehicle that night?

15 A Yes, I was.

16

17 Q Can you describe that vehicle?

18 A It was police unit 242. It was a marked patrol car. It was a Ford Crown Victoria.

19

20 Q And it was equipped with emergency lights, siren, and loud hailer?

21 A Yes, it was.

22

23 Q And we heard some evidence earlier that as of August 2012, there was a pilot  
24 project going on with respect to that -- the in-car camera systems, the Panasonic  
25 Arbitrator.

26 A Yes.

27

28 Q That vehicle 242 that you were driving, was it a part of that pilot project?

29 A No, it wasn't. Not at that time.

30

31 Q So did it have audio and video equipment installed in it?

32 A No, it did not.

33

34 Q Did you have a microphone on that day?

35 A No, I didn't.

36

37 Q Was there rear video in that video?

38 A No.

39

40 Q Did that vehicle have a Silent Patrolman, though?

41 A Yes, it did.

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

A Yes, I did.

Q Can you just generally describe what happened that evening?

A Yes. The time was approximately 7:03 PM. I was assigned to routine Patrol. I was patrolling in the area of 8th Street and McKercher Avenue -- or sorry, McKercher Drive in the area of Saskatoon. I heard a call on our main dispatch channel, channel 1, that some Traffic members were actively fighting with two suspects in the area of the Shoppers Drug Mart on 8th Street. So at that point, I started travelling westbound on 8th Street to assist them with that arrest. Traffic was quite heavy that day, so it was difficult to navigate going westbound on 8th Street. I did arrive approximately three minutes later, and at that point, that's when I entered into the parking lot at the Shoppers Drug Mart on 8th Street. At that point, I noticed that there was two Traffic cars that were already on scene, along with one other marked patrol car. And the officers who were on scene were trying to take two males into custody.

Q So by the time you arrived, can you describe where Jarvis Stewart would have been? Now, the individual you now know to be Jarvis Stewart, where would very been upon your arrival?

A Generally, it was the west parking lot or the west side of the parking lot on the west side of the Shoppers Drug Mart. I can't tell you specifically where exactly he was, but I know exactly where the traffic stop had taken place and generally where the patrol cars were sitting.

Q And sorry. Was he in a patrol car or was he still outside of a patrol car when you arrived?

A As far as I know, he was still outside of a patrol car.

Q Okay. And what about the plaintiff? Where was he?

A He was laying on the ground and still being handcuffed.

Q And was he -- from your vantage point, can you tell what his behaviour was like, laying on the ground?

A Yes. When I arrived on the scene, I immediately exited my car to assist the officers who were already on scene. Mr. Stewart was already handcuffed. He was laying stomach-down onto the pavement, and he was screaming profusely. At that point, I ran over to where Constable Schaefer and Constable McAvoy were dealing with him to assist in his arrest.

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Q And do you recall specifically anything that the plaintiff was screaming at that stage?

A At that point, no. He was just screaming very loudly. It was profanities, and I don't remember specifically --

Q Okay.

A -- which quotes were being -- were being yelled.

Q Okay. And you've indicated that Constables Schaefer and McAvoy were dealing with him at that time?

A Yes, they were.

Q And what -- what, if anything, did you notice about Constable Schaefer and McAvoy when you arrived?

A Well, it appeared to me that they had just been involved in some type of an altercation. Like I said, Mr. Stewart was already handcuffed, so I -- I wasn't a witness to what had happened just prior. But at that point, it seemed like all the members that were on scene were out of breath, and it looked like they had just been involved in a physical confrontation. So at that point, that's when I assisted with the arrest.

Q So you arrive on scene. And what's your interaction with the plaintiff, then?

A I immediately attended to where he was being handcuffed or he was already handcuffed behind his back, I should say. And at that point, I assisted Constables Schaefer and McAvoy in standing him up and walking him to the back of my patrol car.

Q And do you recall any of the plaintiff's behaviour in walking him to the back of the patrol car and those types of things?

A Yes. He was extremely agitated and -- and belligerent. He was still yelling profanities and those type of things.

Q Was he compliant walking to the patrol car?

A He -- well, he did walk. I don't recall that we had to force him into the patrol car. But he was just yelling and not being physically uncooperative, just verbally uncooperative.

Q At any point, did you ask the plaintiff for his name?

A Yes, I did.

- 1 Q And what was his response?  
2 A He refused to provide his name.  
3
- 4 Q Had the plaintiff -- do you recall if the plaintiff had been advised for the reason  
5 for his arrest?  
6 A Yes. After I arrived on scene and as we were escorting him to the back of our  
7 car, I did overhear that -- I believe it was Constable Schaefer that told him he  
8 was under arrest for obstruction.  
9
- 10 Q Okay. So you get him to the police car. And then what happens?  
11 A He was placed in the back, and for the next few minutes, we basically closed the  
12 doors. And I briefly spoke with the other officers who were on scene. Then I  
13 got into the front of my patrol car to try to confirm his identity. I asked him his  
14 name a couple of times. He refused to tell me his name. And at that point, he  
15 started to get more and more agitated and began to spit blood all over the back  
16 of my patrol car.  
17
- 18 Q So in walking him to the back of the police car, did you notice any injuries on  
19 the plaintiff?  
20 A Yes, I did. There was blood coming from his lips and his mouth area, as well as  
21 most likely his nose. It was kind of difficult to tell. But there was a bit of blood  
22 coming from his face and his nose. There was also some scratches on his face  
23 which appeared to be fairly recent, as if they had probably just most likely  
24 happened.  
25
- 26 Q And was this an alarming amount of blood? Was blood pouring out of these  
27 wounds? Can you kind of maybe just provide a bit more of a description of it?  
28 A No, it -- I wouldn't characterize it as pouring out. There was blood that was  
29 visible, and it was -- his face was bleeding, but it was not to the point where it  
30 was dripping or anything like that.  
31
- 32 Q So would it be fair to say that in your career, you deal with a lot of different  
33 behaviours of people?  
34 A Yes.  
35
- 36 Q And a lot of agitated people?  
37 A Yes.  
38
- 39 Q In your experience with the plaintiff, what would his level of agitation have  
40 been while you were dealing with him?  
41 A He would -- I would characterize it as extremely agitated.

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Q So can you kind of give us some maybe descriptors or -- or examples of body language for that?

A Body language, I guess you would characterize it as being either physically or verbally non-cooperative, yelling, anything that doesn't allow us to perform our job easily. He was -- again, he was yelling profanities profusely in the back of my car. And to the point where he started to spit blood in the back of the car, that's -- that's a cue for -- for an officer like myself that this person is potentially dangerous, just with that general behaviour. Normal people do not react in those type of ways.

Q So when you say "spit blood," was this spitting straight -- like, in your -- seeing the back of your police car, was this straight blood? Was it, like, globing blood and saliva? Kind of maybe describe that? Which I realize is kind of gross, but --

A I didn't physically examine what he was spitting up blood, but I -- I was able to clearly see that it was blood mixed with saliva, and it definitely came from his mouth.

Q Okay. And can you talk about his behaviour, then, once had you him in the back of that police car?

A Yes. Like I said, he was -- he kept -- continued to yell profanities, and I -- I did make some notes on some of the specific quotes that he was yelling.

Q Perhaps you can just let the jury know what those specific quotes are.

A Sure.

Q You can refer to your notes, I believe.

A I would have to refer to my notes.

MS. ROHRKE: My Lord, is that all right?

THE COURT: When did you make those notes?

A Just after the time that the arrest had been effected.

THE COURT: You can refer to them at any time.

A Thank you, My Lord. So at some point after we had placed him in the back of my car, I know that Constable Keating had attempted to read him his rights at some point while he was in the back of my car and prior to me leaving the scene. And I did make a note that he continued to yell, quote, fuck you, you



1 faggots, repeatedly. And as we -- as I continued to transport him into Detention,  
2 his level of agitation continued to escalate. And there was a second -- a second  
3 quote that I had written down. He continually yelled, quote, faggot, you must  
4 have a small dick, end quote.

5

6 Q MS. ROHRKE: So once you got him in the back of the --  
7 of the police car, and you indicated that Constable Keating read him his rights?

8 A Yes.

9

10 Q Then you transported him to SPS headquarters?

11 A Yes.

12

13 Q Can you talk about that drive?

14 A Again, he continued to yell at me in -- in the back of the car and spit blood once  
15 in a while. By the time I made it into Detention, there was numerous gobs of  
16 bloody spit all over the back of the -- the car. And while I was en route, based  
17 on his level of agitation, I did request that additional units meet me in the sally  
18 port because I -- I kind of predicted that there was going to be another physical  
19 confrontation with him. At some point during the drive, which is probably only  
20 five to seven minutes, something around there, he started to smash his head on  
21 the Silent Patrolman, which is a piece of Plexiglas that separates the back from  
22 the front of the car. And I did call in to our dispatch on channel 1 that he had --  
23 he had started to smash his head on the Silent Patrolman.

24

25 Q Constable Smith, I'm just going to play an audio recording for you. This has  
26 already been entered (INDISCERNIBLE).

27

28 (AUDIO/VIDEO PLAYED)

29

30 THE COURT: Let's see if we can turn that up.

31

32 (AUDIO/VIDEO PLAYED)

33

34 UNIDENTIFIED SPEAKER: I'm just wondering if there's enough cord  
35 to actually put it down (INDISCERNIBLE) so that the clerk (INDISCERNIBLE).

36

37 THE COURT CLERK: (INDISCERNIBLE).

38

39 THE COURT: (INDISCERNIBLE).

40

41 (AUDIO/VIDEO PLAYED)

- 1  
2 MS. ROHRKE: (INDISCERNIBLE) enter the laptop for  
3 evidence (INDISCERNIBLE).  
4
- 5 MR. STEWART: Yeah.  
6
- 7 MS. ROHRKE: (INDISCERNIBLE) My Lord. That's  
8 fine. The jury will have access to the copy (INDISCERNIBLE).  
9
- 10 THE COURT: (INDISCERNIBLE).  
11
- 12 MS. ROHRKE: I will.  
13
- 14 THE COURT: Okay. So that is D -- D-17 for Ident. is  
15 now D-17, full exhibit.  
16
- 17 **EXHIBIT D-17 - USB Drive with Detention Video (Formerly D-17 FOR**  
18 **IDENTIFICATION)**  
19
- 20 Q MS. ROHRKE: So, Constable Smith, suffice it to say that  
21 you did call in to Dispatch to note the time of when he smashed his head against  
22 the Silent Patrolman?  
23 A Yes, I did.  
24
- 25 Q Do you recall how many times he would have done that, approximately?  
26 A I wasn't keeping track or -- or counting as it was happening, but it was definitely  
27 more than once, and it was to the point where I believed that it needed to be  
28 called in on -- on the radio, because that was our common practice at the time,  
29 since we didn't -- did not have the cameras in the back of the car. So it -- it was  
30 definitely more than once, but I did not keep track how many times he had  
31 banged his head.  
32
- 33 Q Thank you. Did you make any other calls into Dispatch on your way -- en route  
34 back to SPS? Do you recall?  
35 A Well, I believed that I had asked for additional units to meet me in the sally  
36 port, and I believe that was it.  
37
- 38 Q I'm going to suggest to you, simply because the audio doesn't work, but it does  
39 indicate that at some point you asked for a spit sock. Do you recall that?  
40 A Yes. I -- I do know that I -- I asked for a spit some at some point. I'm not sure if  
41 it was called in on the radio or not. But I know that the members who had met

1 me in the sally port, once we arrived at the police station, that they had brought  
2 a spit sock at my request because Mr. Stewart was spitting blood.

3

4 Q And why would you ask for a spit sock? What's the purpose of it?

5 A To prevent blood being spit on myself or any of the other members who were  
6 going to be interacting with the -- the arrest.

7

8 Q And if you end up with blood on yourselves, what's the concern there?

9 A Well, the potential for contagious disease is the most obvious concern.

10

11 Q Okay. So -- and I'm going to back up a little bit. We heard from the plaintiff  
12 earlier this week in regard to something called a pick car. Do you have any  
13 knowledge of what a, quote, pick car is?

14 A Pick car? No.

15

16 Q So the plaintiff alleged earlier this week that there was a second car following  
17 your vehicle back to SPS Detention. I believe it was a black unmarked car. And  
18 that the purpose for that car was to prevent, quote, the public from seeing his  
19 injuries in the back of your police car. Do you have any knowledge of that?

20 A No.

21

22 Q Did you request a vehicle follow behind you to prevent the public from seeing  
23 the injuries that were on the plaintiff's face?

24 A No, I did not. There is a chance that another unit followed me in, based on the  
25 fact that I was a single officer transporting the arrest, and based on his level of  
26 agitation, et cetera, that another car -- it is possible another car followed me in  
27 just as a backup officer in case something happened on the way in. But I have  
28 no knowledge of what a pick car is, and there was definitely nobody trying to  
29 obstruct the view into my police car.

30

31 Q So it would have been more for an officer safety concern, if there was a car  
32 following you?

33 A Yes.

34

35 Q Okay. So once you got back to Detention and the sally port, then what  
36 happened?

37 A Eventually, I -- I believe it was Constable Hounsell attended to the sally port  
38 with the spit sock, and the sock was placed over Mr. Stewart's head, and he was  
39 then brought into Detention.

40

41 Q And what was the plaintiff's demeanour like in the sally port?

1 A He was still verbally uncooperative, but at that point, there was -- he -- he did  
2 physically cooperate. There was no more physical struggle with him or anything  
3 like that. He was brought up to the Detention counter, where he was booked in.  
4

5 Q At any point -- when you -- I'm going to go back to the Shoppers Drug Mart  
6 parking lot. When you arrived, at any point did you see any officer kick or  
7 punch the plaintiff?

8 A No, I did not.  
9

10 Q Did you see any officer smash the plaintiff's face into the ground?

11 A No.  
12

13 Q Did you witness any of the other officers threaten the plaintiff?

14 A No, absolutely not.  
15

16 Q Did you kick or punch the plaintiff?

17 A No.  
18

19 Q Did you smash the plaintiff's face into the ground?

20 A No, I did not.  
21

22 Q Did you threaten the plaintiff?

23 A Absolutely not.  
24

25 Q Did you threaten the plaintiff at all on the drive back to SPS?

26 A No.  
27

28 Q Did you threaten the plaintiff at all when you arrived back in the sally port?

29 A No.  
30

31 Q Did you hear any other officer threaten the plaintiff --

32 A No.  
33

34 Q -- in the sally port? Did any other officer punch, kick, or do any harm to the  
35 plaintiff in the sally port, physical harm?

36 A No.  
37

38 Q I'm going to get you to turn to tab 25 in the binder in front of you, which is P-1,  
39 My Lord.  
40

41 THE COURT:

Thank you.

- 1
- 2 Q MS. ROHRKE: So you would agree that this would be a  
3 mug shot of the plaintiff?
- 4 A Yes.
- 5
- 6 Q And my understanding is this is a mug shot from that evening?
- 7 A It appears to be.
- 8
- 9 Q Okay. So in terms of process and how --
- 10
- 11 MR. STEWART: I -- I object, My Lord. That's -- it's on  
12 record that was -- that mug shot was taken the next day. That's -- it's not -- it wasn't  
13 that evening. That mug shot was taken the next day.
- 14
- 15 THE COURT: That was your testimony, yes.
- 16
- 17 MR. STEWART: No, no. I have proof of it.
- 18
- 19 MS. ROHRKE: I apologize. I can -- I can rephrase the  
20 question, My Lord.
- 21
- 22 THE COURT: Okay. All right. Very good.
- 23
- 24 Q MS. ROHRKE: That mug shot is in relation to this  
25 incident?
- 26 A Yes, it appears to be.
- 27
- 28 Q Okay. So -- and you can confirm to me that this mug shot would have been  
29 taken after the plaintiff had been smashing his head against the Silent Patrolman  
30 in your vehicle numerous times?
- 31 A Yes. It -- it would have been. There was no -- no mug shot on our system, to my  
32 knowledge, prior to our interaction or the arrest of Mr. Stewart.
- 33
- 34 Q And suffice it to say, you're not going to take a mug shot at the scene?
- 35 A No.
- 36
- 37 Q So this mug shot would have had to have been taken post --
- 38 A After his arrest, yes.
- 39
- 40 Q Okay. After his arrest and after his transport?
- 41 A Yes. After he was lodged into Detention.

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Q Thank you.

A That's the normal process, for our detention process.

Q So you get back to Detention. At any point, did you advise the plaintiff of his right to counsel?

A Yes, I did.

Q And can you just tell the jury what that interaction looked like?

A Yes. So after Mr. Stewart was booked into Detention, it's normal procedure for whoever is transporting the arrest into Detention to always make sure that the arrest is offered their opportunity to contact a lawyer. I did offer Mr. Stewart his opportunity to contact a lawyer after he was booked in. And that most likely would have happened right at the Detention booking counter. He told me that he did not want to. I asked him once again, and he still refused.

Q And do you happen to -- I'm going to ask you if you happen to recall specifically a direct quote from that evening?

A Yes. I did write down exactly what I had asked him that -- that -- at that point in my notebook.

Q Could you perhaps read that out --

A Yes.

Q -- to the jury?

A So I asked him, Do you want to call a lawyer? He replied, quote, no. I then asked him again, Are you certain you do not want to contact a lawyer? And he replied, quote, yes, what part of "no" don't you understand, N-O, end quote.

Q Thank you. When you arrived on scene at the Shoppers Drug Mart, did you notice if there were any witnesses around? Or bystanders, I should say.

A There -- there were bystanders, yes. It was approximately 7 PM. There was lots of people standing around, yes.

Q Did you take any witness statements?

A No, I did not.

Q Did you -- were you approached by any bystanders?

A No.

Q Suffice it to say, your role in this was transporting the plaintiff?

1 A Yes.

2

3 Q So after this incident in cell -- or in Detention where you ask him if he wants to  
4 call a lawyer and he advises you on two occasions he does not, then what did --  
5 what happens?

6 A At that point, he was escorted into his cell.

7

8 Q And did you have any further involvement with him?

9 A No, I did not.

10

11 Q And once you finished transporting him and he's in cells, who then makes the  
12 decisions with respect to the release of the plaintiff?

13 A That would be the Detention sergeant.

14

15 Q So you would have no role in that?

16 A No, I did not.

17

18 Q You would have no authority over that?

19 A No.

20

21 Q And correct me if I'm wrong, but a sergeant would be above a constable?

22 A Yes.

23

24 Q Okay. So the authority of a sergeant would trump your authority?

25 A Yes.

26

27 MS. ROHRKE: My Lord, those are all of my questions  
28 for this witness.

29

30 THE COURT: Thank you, Ms. Rohrke. Mr. Stewart, do  
31 you have any cross for this witness?

32

33 MR. STEWART: Yes, I do, My Lord.

34

35 THE COURT: Very good.

36

37 **Mr. Stewart Cross-examines the Witness**

38

39 Q MR. STEWART: Constable Smith, where were you  
40 yesterday? We finished at -- what time did we -- what time court -- Your  
41 Honour --

1  
2 MR. STEWART: My Lord, what time did we finish  
3 yesterday with the last witness? Can you check on the record, please?  
4  
5 THE COURT: It was just before 4.  
6  
7 Q MR. STEWART: So where were you yesterday, Constable  
8 Smith?  
9 A I was at work.  
10  
11 Q Why weren't you here?  
12 A I wasn't called to be here yesterday.  
13  
14 Q Um. Why -- what -- why did you feel it was more important to be at work and  
15 not here as a witness?  
16  
17 THE COURT: It is the lawyers that schedule the  
18 witnesses.  
19  
20 MR. STEWART: Oh, really? Okay.  
21  
22 THE COURT: So Ms. Rohrke --  
23  
24 MR. STEWART: So it was their mistake.  
25  
26 THE COURT: -- Ms. Rohrke was no doubt surprised at  
27 how efficiently we got through the witnesses yesterday.  
28  
29 MR. STEWART: We got it pretty efficiently, didn't we?  
30  
31 THE COURT: Yes.  
32  
33 MR. STEWART: Yeah.  
34  
35 THE COURT: And particularly, you -- as I said, your  
36 last cross-examination was reasonably good, reasonably efficient.  
37  
38 MR. STEWART: M-hm. It was. Yeah.  
39  
40 THE COURT: So we should focus on --  
41



1 MR. STEWART: So we've got lots of time. That's what I'm  
2 getting at. Like, we missed an hour yesterday. So I'm going to take plenty of time  
3 today with you.

4  
5 Q MR. STEWART: Did you bring all your notes with you,  
6 Mr. Smith? Constable Smith?

7 A Yes.

8  
9 Q Okay. Did you testify at my criminal trial, Constable Smith?

10 A No.

11  
12 Q No, you didn't -- you did not testify at my criminal trial? Okay.

13 A No.

14  
15 Q Constable Smith, why are you here today?

16 A I was called to be here as a witness.

17  
18 Q That's why you're here today?

19 A Yes.

20  
21 Q Okay. Did you bring any -- you know, audio or video evidence from your car?

22 A No.

23  
24 Q No? There wasn't any?

25 A There was none.

26  
27 Q No, there wasn't any. You didn't really assist with my arrest or you did assist  
28 with my arrest?

29 A I assisted with picking you up off of the ground and escorting you into the back  
30 of my car.

31  
32 Q So you did not assist in any way with putting handcuffs on me?

33 A No, I did not.

34  
35 Q Okay. Okay. Why did you drive me away?

36 A Why did I -- I transported you into Detention.

37  
38 Q I know you did. Yeah. But why?

39 A Because you were under arrest.

40  
41 Q Who told you to drive me away?

1 A The lead investigator, Constable Keating, and Constable Schaefer advised me  
2 that you were under arrest for obstruction, and --

3

4 Q I'm sorry. I'm sorry. You said the lead investigator, Constable Keating?

5 A The person who was leading the charges and responsible for the arrest.

6

7 Q The -- and he gave you the order to drive me away?

8 A It was not an order. He requested that I --

9

10 Q And he --

11 A -- transport you into Detention.

12

13 Q -- he asked you -- he asked you politely --

14 A Yes.

15

16 Q -- to drive me to Detention?

17 A Yes.

18

19 Q Okay. Okay. So it wasn't really an order, then? It was just more of, like, a  
20 request to drive me? Like, hey, can you just -- hey, can you just take this guy to  
21 jail for me?

22 A Yes.

23

24 Q Kind of thing?

25 A Yes.

26

27 Q Just take him to jail? Okay. And you -- and you -- at that time, you knew why I  
28 was being taken to jail?

29 A Yes.

30

31 Q And were you -- and you were convinced that I knew why I was being taken to  
32 jail?

33 A Yes.

34

35 Q Okay. Did you tell me where I was being taken?

36 A Not that I recall, no.

37

38 Q No. So do you remember at any time, did I ask you where you were taking me?

39 A No.

40

41 Q No, you don't remember that either. Did you question the request of Constable

1 Keating? Did you think, hey, you know, maybe this guy doesn't need to be taken  
2 away, do you think? You know, did you act in good faith? Did you look at me,  
3 and, like, you know, this guy is being taken away, I'm not really sure why, he  
4 seems to be all right. You know, did you question anything about that request?  
5 Did you say, hey, you know, are you sure you want me to take him downtown?  
6 Did you question that at all?

7 A No.

8

9 Q It's just he asked you, and you -- you obliged him?

10 A Yes.

11

12 Q Okay. Okay. Did you notice any injuries on my face?

13 A Yes, I did.

14

15 Q Okay. I'd like you to look at your occurrence notes, your occurrence, details 5,  
16 the ones that are actually printed, and not your handwritten notes. Do you have  
17 that in front of you, please?

18 A Yes, I do.

19

20 Q Okay. On this first page, Constable Smith, the second-last line, it starts, I  
21 informed James. Oh, can I -- does the jury get a copy of this? Does the jury  
22 have --

23

24 THE COURT: If you exhibit it, they will.

25

26 MR. STEWART: All right. Well, we will. Well, I'll just  
27 give this to you really quick.

28

29 THE COURT: And you can exhibit it through this  
30 witness.

31

32 MR. STEWART: Okay. That's what I'll do. Well, I would  
33 like to put --

34

35 THE COURT: Do you want to do that first?

36

37 MR. STEWART: Yes. I'll take his handwritten notes and  
38 his general occurrence copy, and I will put them both into evidence, please.

39

40 THE COURT: Very good. We will just put the  
41 documents to him. We will mark them separately, I think.

1  
2 MR. STEWART: All right.  
3  
4 THE COURT: Handwritten notes will be -- what is the  
5 next P exhibit?  
6  
7 THE COURT CLERK: (INDISCERNIBLE).  
8  
9 THE COURT: I can't hear you.  
10  
11 THE COURT CLERK: 19.  
12  
13 MR. STEWART: (INDISCERNIBLE).  
14  
15 THE COURT: Yes. It's all right. Constable Smith, are  
16 those your incident report and handwritten notes?  
17  
18 A Yes. Yes, it is.  
19  
20 THE COURT: Very good.  
21  
22 THE COURT CLERK: Okay.  
23  
24 MR. STEWART: Thank you, Constable. Thank you, My  
25 Lord.  
26  
27 THE COURT: You will hand it to the clerk. The  
28 handwritten notes will be Exhibit P-10. The incident report will be Exhibit P-11. If  
29 you tag those up, Madam Clerk, and give them back to Mr. Stewart.  
30  
31 So all I ask, Mr. Stewart, is that you give them back to the clerk after you're done  
32 so we can have them in the room.  
33  
34 **EXHIBIT P-10 - Handwritten Notes of Constable Smith, August 24, 2012**  
35  
36 **EXHIBIT P-11 - Incident Report of Constable Smith, August 24, 2012**  
37  
38 MR. STEWART: (INDISCERNIBLE).  
39  
40 Q MR. STEWART: The second-last line, Constable.  
41 (INDISCERNIBLE) (As read)

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41

As I informed James that if he continued to spit blood everywhere, that he would also be charged with mischief.

You just testified that you didn't threaten me at all. Would you consider that a threat, Constable Smith?

A No, I would not.

Q No, you would not? Would it seem odd to you that someone would be spitting blood everywhere?

A Yes. It was odd.

Q M-hm. Did you get me any medical assistance?

A No, I did not.

Q Did you get me a call to a counsellor or someone who, you know, might be better able to somebody who was mentally, you know, experiencing difficulties?

A No.

Q No, you didn't. (INDISCERNIBLE). Okay. All right. I just note on the last line here: (As read)

It should also be noted that Constable McAvoy and Constable Schaefer had already informed him that he had been placed under arrest for obstruction.

So, Constable Smith, you said that you saw Constable Keating read me my rights and my -- my -- my lawyer warning or whatever. But in your handwritten notes, in your handwritten notes, the very last page of your handwritten notes, can you -- can you turn to that third page, please --

A Sure.

Q -- of your handwritten notes? It starts with: (As read)

James declined to speak with a lawyer at the Detention --

What -- can you just read that for me, please?

A Sure. It says: (As read)

James declined to speak with a lawyer at the Detention encounter.

1 I asked a second time, Are you certain you do not want to contact  
2 a lawyer? He replied, quote, yes, what part of "no" don't you  
3 understand? N-O. Then he was escorted to his cell, charges being  
4 submitted by Constable Keating, supplemental report submitted.  
5

6 Q So why didn't you say that you knew what the charges were? Like, you were at  
7 the booking desk. You -- you saw me get read my rights, and you -- you saw  
8 me -- you saw me get charged with everything. So why would you say charges  
9 are being submitted? Why wouldn't you just say right at the booking desk or  
10 right in your notes, well, these were what the charges were. Why would -- why  
11 do you say the charges are being submitted by Constable Keating? I thought you  
12 knew what the charges were when I was in my car.

13 A I did.

14  
15 Q Okay. But it says here, charges being submitted. So where -- wouldn't you say  
16 this -- this guy was -- you know, you asked me if I wanted to see a lawyer. And  
17 I'm just curious, why did you ask me if I wanted to speak to a lawyer?

18 A Because at that point, I was the one that was escorting you into Detention, and  
19 the normal course is for that person to offer a lawyer call.  
20

21 Q But -- but you didn't -- you didn't tell me what I was being charged with. You  
22 just said -- oh, you are -- you expect me to believe that I was just under arrest,  
23 and then -- and then you'll find out later, but -- but you can -- you can still talk  
24 to a lawyer now. Like, I'm -- I'm -- I'm misunderstanding, Constable Smith.  
25 Normally when somebody gets arrested, they're -- they're told what they're  
26 arrested for. And it appears, once again, that I don't know what I've been  
27 arrested for. And it appears you don't, either, according to your notes, because it  
28 doesn't actually say anything in here about what the actual charges are. It just  
29 says charges being submitted. So -- so to read your handwritten notes at the  
30 time of the scene and that evening -- like, what's the last part? It says 2045. Is  
31 that a time? Is that --

32 A That's the time, yes.  
33

34 Q That's a time. So what time -- 2045. What time is that?

35 A 8:45 PM.  
36

37 Q 8:45. And this incident took place at 7:05. And you drove me to the police  
38 station at approximately what time?

39 A I don't know exactly what time it was.  
40

41 Q Well, let's go and have a look at some video.

- 1  
2 MR. STEWART: My Lord, I'm going to have to bring the  
3 screens up because we've got some video to watch.  
4
- 5 THE COURT: Okay.  
6
- 7 MR. STEWART: Is there a plug around here where I can  
8 plug this in? The battery (INDISCERNIBLE).  
9
- 10 UNIDENTIFIED SPEAKER: I don't have a clue.  
11
- 12 MR. STEWART: You don't have a clue?  
13 (INDISCERNIBLE). Well, I'll just leave it here. If it dies, it dies  
14 (INDISCERNIBLE). All right. (INDISCERNIBLE).  
15  
16 Can I get these up, please? (INDISCERNIBLE). That TV is not on. Could we get  
17 that TV on, please?  
18  
19 Oh, look. A big black car.  
20
- 21 Q MR. STEWART: So this is part of the sally port, Constable  
22 Smith, of the old station; is that correct?  
23 A Yes, it is.  
24
- 25 Q Can you kind of give the viewers an idea of what we're looking at, please?  
26 A There is a down ramp that goes into the basement of the building. And then  
27 there's that yellow door is an elevator, which goes up to the second floor where  
28 the Detention area is.  
29
- 30 Q You drove me to Detention this evening on this video. You testified that you  
31 were aware -- or you weren't aware that there could have been a vehicle behind  
32 you. There you are driving in, and there's a car behind you. It looks like a black  
33 car, but it looks like it's following fairly closely. But you're saying it's just a  
34 coincidence. He's there specifically because I'm being violent; is that correct?  
35 A Yes.  
36
- 37 Q Okay. So it's got nothing to do with, like, a pick car or a shield car or a brake  
38 car, nothing like that?  
39 A I don't know what that is.  
40
- 41 Q You've never -- you know, have you ever heard of the term brake test or a brake

- 1 check?
- 2 A I have heard the term brake check, yes.
- 3
- 4 Q Yeah? Tell me what it means to you.
- 5 A It would mean slamming on the brakes.
- 6
- 7 Q Anything else?
- 8 A No.
- 9
- 10 Q Constable Smith, can you explain to the jury the inside of your car, your marked
- 11 police cruiser, 242, was it?
- 12 A Yes.
- 13
- 14 Q Can you explain to them what the Silent Patrolman in the back seat and a person
- 15 that would be in handcuffs, could you explain to them, you know, what -- what
- 16 that back seat is like? Is it seat belts? Is it, like, baby seat? Is it velcro? Can you
- 17 just tell them what that -- what the back of that car is like?
- 18 A Sure. The back seat is open. It's made out of fiberglass. There's -- the Silent
- 19 Patrolman is constructed of steel on the bottom half with a piece of clear
- 20 Plexiglas at the top.
- 21
- 22 Q Is there seat belts? Did -- did you put me in in seat belts?
- 23 A No, I did not.
- 24
- 25 Q No. So I was handcuffed in the car?
- 26 A Yes.
- 27
- 28 Q I was handcuffed in the car in a plastic seat with no seat belts. Where were
- 29 those handcuffs? Those handcuffs were behind my car?
- 30 A Yes, they were.
- 31
- 32 Q Handcuffed behind my back in a plastic seat in a police car that has a -- a shield
- 33 car right behind him. So I -- I assume, then, that that police car is just there
- 34 strictly as a coincidence? It's -- it's not to allow you to speed up and slow down
- 35 and cause me some discomfort in the back of a car where I have no ability to
- 36 defend myself? Is that the -- there's no way that could possibly happen; is that
- 37 correct?
- 38 A Absolutely not.
- 39
- 40 Q Absolutely not. Absolutely not. Thank you, Constable Smith. We're just going
- 41 to -- we're just going to keep watching some videos here. Hang on.



1  
2 MR. STEWART: All of the video is going into the  
3 evidence; is that correct? All of my detention videos are going in, not just snippets?  
4 The entire thing -- the jury will be able to watch all of my detention?  
5  
6 THE COURT: Well, everything that we see here in the  
7 courtroom will go in. Not -- there's 18 hours.  
8  
9 MR. STEWART: Well, there's more than that, because  
10 there's many multiple cameras.  
11  
12 THE COURT: M-hm. Right.  
13  
14 MR. STEWART: Yeah. So I'd like to see as much -- I'd like  
15 you people to see as much of me in jail as you possibly can, because that's --  
16 that's -- it's my court. It's my -- this is my -- (INDISCERNIBLE) --  
17  
18 THE COURT: Well, actually -- actually, let's just be  
19 clear on that.  
20  
21 MR. STEWART: Okay.  
22  
23 THE COURT: It is my court.  
24  
25 MR. STEWART: Is it? Okay. So tell them -- tell them, My  
26 Lord, what I paid my money for. Just tell them what I paid the \$2,000 for. Please  
27 just tell the jury.  
28  
29 THE COURT: For a chance to make your case in front  
30 of a jury.  
31  
32 MR. STEWART: Okay. For a chance to make my case in  
33 front of a jury. So I'm going to do all I can to make my case. They're already trying  
34 to say you can't watch all the 18 hours. Well, I've been doing this for, like, seven  
35 years now. I'm trying to show you -- I'm trying to show you my truth. And if that's  
36 what you're going to say, that I have to sit in this courtroom now and I have to go  
37 through all my -- all of my jail footage to show you all the bullshit that they put me  
38 through, then I think I'd like to do that.  
39  
40 THE COURT: Why don't you go through what you think  
41 is relevant here?

1  
2 MR. STEWART: Okay. What I think is relevant here. I just  
3 showed you these two cars. We'll go to the next video, because I have many.  
4  
5 MS. ROHRKE: My Lord, I don't have an objection if  
6 Mr. Stewart would like all of the Detention video to be marked as an exhibit, even  
7 if it isn't --  
8  
9 THE COURT: Well, that makes life easier for you,  
10 Mr. Stewart.  
11  
12 MR. STEWART: Does it not?  
13  
14 THE COURT: So the whole 18-plus hours will be on  
15 flash drive, available to the jury in the jury room.  
16  
17 MR. STEWART: Fantastic.  
18  
19 THE COURT: Okay. So now, physically, where is that  
20 flash drive?  
21  
22 MR. STEWART: Oh, it --  
23  
24 THE COURT: Because, again, if it's to be in the jury  
25 room, it's got to be tagged up, right?  
26  
27 MR. STEWART: Better than a flash drive, My Lord. I've  
28 got it on a DVD, and I also have the two mug shots. I had those mug shots that  
29 were released to me from the police station. Those mug shots are on here. I can  
30 actually put them on the screen. They're both -- they're just a copy. They're each the  
31 same mug shot. One is just a different name of a file.  
32  
33 THE COURT: You are comfortable with that?  
34  
35 MS. ROHRKE: My Lord, I haven't seen that CD before,  
36 so I would just like the opportunity, perhaps over the noon hour, to take a peek at it,  
37 confirm what's on it --  
38  
39 THE COURT: Sure. No problem at all.  
40  
41 MS. ROHRKE: -- and then --

1  
2 MR. STEWART: She --  
3  
4 THE COURT: If it's -- if it's exactly what you say, there  
5 will be zero problem.  
6  
7 MR. STEWART: Yeah. It's just -- I'll -- I'll say it again, I  
8 wrote on it, James Detention plus mug shot times two and --  
9  
10 THE COURT: So give it to the clerk --  
11  
12 MR. STEWART: -- 12 incident files.  
13  
14 THE COURT: -- give it to the clerk. And, Madam  
15 Clerk, we will mark that P-12 for Ident., because Ms. Rohrke hasn't had had a  
16 chance to take a look at it, but she is prepared to consent if it is exactly as you say.  
17  
18 MR. STEWART: Thank you, My Lord.  
19  
20 **EXHIBIT P-12 - FOR IDENTIFICATION - DVD of James Stewart's Detention and**  
21 **Two Mugshot Photos**  
22  
23 Q MR. STEWART: Okay. So there is the car that you just  
24 drove in. Is this you getting out? Is this you getting out, Mr. Constable Smith?  
25 A Yes. It appears to be me.  
26  
27 Q So that appears -- so can you say that's you, Constable Smith? Is that you?  
28 A Yes.  
29  
30 Q That is you? Okay. That's me in the back of that car. And there's the black car,  
31 nice and close. So now you've -- just tell the people what you're doing.  
32 A It looks like I got your property out of the front seat and placed it onto the trunk.  
33  
34 THE COURT: Yes. Actually, it's not the witness's  
35 obligation to narrate. You should ask questions, okay?  
36  
37 MR. STEWART: Okay. Fantastic.  
38  
39 Q MR. STEWART: So what -- at the moment here, who are  
40 you talking to, just outside the range of the camera? Who are you talking to  
41 there?

- 1 A I'm not sure. I can't see who is off the camera.  
2
- 3 Q There was a -- a member in a black car that drove behind you. Do you think he  
4 might have been that driver of that car?  
5 A Possibly. I'm not sure who it was.  
6
- 7 Q Possibly. You're not sure who it was. So this guy right there, you don't really  
8 know where he came from? He wasn't the guy driving the black car?  
9 A It's possible he was driving the black car. I'm not sure.  
10
- 11 Q It's possible he was driving the black car. It's possible. Do you have a rear-view  
12 mirror in your car, Constable Smith?  
13 A Yes.  
14
- 15 Q Do you typically look in the rear-view mirror when you're driving, Constable  
16 Smith?  
17 A Sometimes, I do, yes.  
18
- 19 Q That's good. Constable Smith, when you were driving the car that evening, did  
20 you notice a black unmarked car behind you?  
21 A No, I did not.  
22
- 23 Q Constable Smith, did you do a brake check that evening?  
24 A No.  
25
- 26 Q Okay. I'd just like to show the jury that that black car was shown leaving the  
27 parking lot behind me.  
28
- 29 THE COURT: We've seen that, yes.  
30
- 31 MR. STEWART: I -- I know.  
32
- 33 Q MR. STEWART: And I'm just letting you know. And you  
34 saw him come right in. Um, can you tell me, you don't know this guy, he's just  
35 there, tell me what he's -- he's telling me. Can you -- is there -- can you maybe  
36 shed some light? What is this conversation that's taking place?  
37 A I'm not sure.  
38
- 39 Q You're not sure. So you -- he's just saying things to me in some language, and  
40 I'm -- I'm just saying things to him in some language, and you're just standing  
41 there; is that correct?

1 A Mr. Stewart, you need to appreciate that this was seven years ago. So I don't  
2 recall everything that was specifically said.

3

4 Q Do you recall anything?

5 A No, I do not.

6

7 Q That's great stuff. You're here today as a witness. I'm glad they called you as a  
8 witness. You're doing great. You're doing great. Thank you, Constable. I know  
9 it's tough. I know it's tough getting dealt a bum hand. I know it's tough getting  
10 into situations that you have no control over. And I appreciate you being here  
11 today. There's no -- no ill will between us. I want you to know that. Constable  
12 Smith, do you consider yourself to be a professional police officer?

13 A Yes.

14

15 Q Constable Smith, do you have duties and obligations if you are an arrested -- or  
16 an arresting police officer? If you're the person who is arresting someone, do  
17 you think that there is duties and obligations that you have to uphold?

18 A Yes.

19

20 Q Okay. Would it be fair to consider that those obligations were explained in the  
21 Canadian *Criminal Code* 497 and 498 with regards to release from custody by a  
22 peace officer?

23 A I'm not sure what specifically those sections say.

24

25 Q Okay. Fantastic. Well, I'm just going to give you a copy of the Canadian  
26 *Criminal Code* here, and I'd just like to enter this.

27

28 MR. STEWART: Do I enter this into evidence, the  
29 Canadian *Criminal Code*, or do I just say the snippet? What do I do here?

30

31 THE COURT: Just -- no, you don't need the whole  
32 *Code*. Just show it to Ms. Rohrke. If we can concede that it is an extract from the  
33 *Code*, then it will be in the -- as an exhibit and will be in the jury room.

34

35 MR. STEWART: Thank you very much, My Lord.

36

37 THE COURT: Although asking -- again, asking Officer  
38 Smith interpretative legal questions of the *Code* is offside.

39

40 MR. STEWART: I -- I --

41

- 1 THE COURT: He can testify as to things he did and  
2 things he saw.  
3
- 4 MR. STEWART: Right. But I'm -- I'm -- I just want to  
5 know, in good faith, like, if I am a plumber and I start plumbing in a toilet  
6 backwards, and I flood out the downstairs with poo, you know, and I -- I kind of  
7 expect to be called on that. So if -- if he has a professional duty to make sure the  
8 arrest is proper or he's a professional policeman who has roles and duties and he's  
9 taking someone to Detention, I would like to think in good faith that he would have  
10 gone, you know, and taken some --  
11
- 12 THE COURT: Well, just put that to him.  
13
- 14 MR. STEWART: No, I -- I will, but that's --  
15
- 16 THE COURT: You just say hey --  
17
- 18 MR. STEWART: -- I'm just waiting for this.  
19
- 20 THE COURT: -- should -- should you not have -- yes.  
21
- 22 MR. STEWART: That's what I'm doing, you see.  
23
- 24 THE COURT: Yes.  
25
- 26 MR. STEWART: So -- oh, here we go. Oh, yeah. Sorry.  
27 Let's just back this up while we're doing this. Thanks.  
28
- 29 MS. ROHRKE: My Lord, I have no issue that this is a  
30 copy of the *Criminal Code* as of March 27th, 2019. I have no knowledge as to  
31 whether these sections of the *Criminal Code* were different as at August 24th,  
32 2012.  
33
- 34 THE COURT: Well, yes. There has not been substantial  
35 changes. I think I will invoke --  
36
- 37 MS. ROHRKE: I was going to say, I would lean on your  
38 expertise on that one.  
39
- 40 THE COURT: -- the -- the periodically-used doctrine of  
41 close enough.

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41

So, Constable, Mr. Stewart is putting before you an extract of the *Criminal Code*.  
A Yes, My Lord.

THE COURT: And actually, I just -- on my own, on my own motion, I will make that an exhibit. That will be Exhibit -- is that P-13, Madam Clerk?

THE COURT CLERK: Yes.

THE COURT: All right. So you will mark it up -- you will mark it up when he gives it to you.

**EXHIBIT P-13 - Excerpt from Criminal Code, Section 497**

Q MR. STEWART: Can you please start reading at number 497?

THE COURT: No. No. I do not want --

MR. STEWART: Oh.

THE COURT: -- I do not want a recitation. Ask him a specific question.

Q MR. STEWART: Okay. Did you follow -- let me just (INDISCERNIBLE). Did you follow your Section 497 and 498 of the *Criminal Code*, your duties to an arrested person?

A Yes, I believe I did.

THE COURT: Well, but you have to put the duty to him.

MR. STEWART: Okay. Put the duty to him?

Q MR. STEWART: Did you fulfill your duties and obligations as -- as an arresting officer?

A Yes, I believe I did.

Q You believe you did? Okay. I'm just going to -- I'm just going to read 497, subject to subsection 1.1. (As read)





- 1 Q And that would -- or, like, communication with one another?  
2 A Yes.  
3  
4 Q When you asked me my name, was that -- was that after I had been in handcuffs  
5 and in the car?  
6 A Yes.  
7  
8 Q So I had been arrested?  
9 A Yes.  
10  
11 Q So it's my right as an arrested person to remain silent; is that correct?  
12 A Yes, it is.  
13  
14 Q But then you asked me my name, and I -- I didn't give it to you. Is that correct?  
15 A Yes.  
16  
17 Q And then you think that's bad, because you're just, like, he's being  
18 uncooperative. There was a number of times you said he's verbally  
19 uncooperative. But you're the person who saw that I was arrested. An arrested  
20 person has the right to remain silent, does he not?  
21 A Yes.  
22  
23 Q So then why were you asking me all these questions?  
24 A To try to identify you.  
25  
26 Q Mm. Okay. I'm just going to direct your attention to this video here in the sally  
27 port. I just see -- I'd like to see if you can identify a couple of these officers for  
28 me? So now there's four people here. You are one of them; is that correct?  
29 A Yes, I am.  
30  
31 Q Okay. And so that guy is still leaning on the car, the trunk, but you don't really  
32 know why he just showed up, coincidentally. You still don't know who that guy  
33 is, right? You don't remember?  
34 A I believe that's Constable Cassidy.  
35  
36 Q Okay. Now, who are these people coming?  
37 A I believe that's Constable Matieshin, Constable Boyce.  
38  
39 Q And there's -- it looks like Constable Hounsell with a bag. Would you -- was  
40 that Constable Boyce that waved? Let me just -- let me just rewind that here.  
41 The second guy is Boyce, and that's him. Is that him waving? Okay.

- 1 A I believe that's Constable Boyce waving, yes.  
2
- 3 Q Okay. Constable Boyce waving. Okay. Constable Boyce testified yesterday that  
4 he didn't actually see my face. I asked him, did you notice any injuries to my  
5 face? And Constable Boyce said he didn't notice any injuries. Constable Smith,  
6 for the record, did you notice any injuries to my face?  
7 A Yes, I did.  
8
- 9 Q Constable Smith, did you notice any blood coming from my face?  
10 A Yes.  
11
- 12 Q Constable Smith, did you give me any medical attention?  
13 A No, I did not.  
14
- 15 MR. STEWART: I'm going to have to stop this video real  
16 quick, My Lord.  
17
- 18 Q Okay. Constable Smith, so there's -- there's everybody looking at me. There you  
19 are. There's a bunch of guys around. Constable Hounsell was worried that his  
20 assistance was indeed necessary, as you can see, he is there, and my brother is  
21 upstairs, all by himself, in a phone room with a phone that doesn't work. But  
22 that's good faith. So I'd just like you to maybe tell the people, who is this guy  
23 now talking to me? There's another guy there, a big guy. Who is that guy and  
24 what's he saying?  
25 A I'm not even sure who that is.  
26
- 27 Q Okay.  
28 A I can't tell at this point. And --  
29
- 30 Q You can't tell.  
31 A -- I'm not sure what he was saying.  
32
- 33 Q Not sure what he was saying. Okay. So now, what seems to be going on here  
34 exactly?  
35 A I believe they moved the car ahead for a little bit more room.  
36
- 37 Q Okay. Okay.  
38 A And we are preparing to take you out of the back of the car.  
39
- 40 Q Preparing to take me out. And there's another silver -- silver-haired gentleman.  
41 He comes in there, and Hounsell is about to do the spit sock, and watch his face.

- 1 It looks like he says something right here. You watch his head. It's there -- right  
2 there. You see his head? No, no, no, no, no, you're going to -- no, no, no, no,  
3 you're going to -- you're going to -- what -- what is he saying there? What is that  
4 conversation? What is that conversation that's taking place right there?
- 5 A Again, I -- I don't recall what was being said.  
6
- 7 Q You don't recall. And I was -- I was telling you all to fuck off and you're  
8 faggots and you're pieces of shit. Is that what I was -- is that what I was saying?
- 9 A At that point, not right then.  
10
- 11 Q At that point, no, I was. No, I'm not.  
12 A Yeah.  
13
- 14 Q But what am I -- but what am I saying at this point?  
15 A I'm not sure exactly what you were saying.  
16
- 17 Q You're not sure exactly. Do I look unsteady? Do I look a little physically  
18 unstable?  
19 A No. You're walking quite fine.  
20
- 21 Q Perfectly normal? You see, Hounsell testifies that it was quite difficult for me to  
22 walk to a car. That's because I testified that my -- my face was smashed. And so  
23 I could have had a very much unbalanced bit of equilibrium, but you're all  
24 testifying that I'm dragging my feet and I'm refusing to walk properly. But every  
25 time I see anything, I seem to be walking -- well, fine in handcuffs. So there's  
26 Boyce. And now they're going to go -- where -- where is everybody else? What  
27 happened? What happens next? You go up the stairs, right? To Detention -- to  
28 Detention booking desk?  
29 A Yes. Yes.  
30
- 31 Q Okay. So that's -- that's Hounsell there, right? That's Hounsell there in the -- in  
32 the -- and he's downstairs. So he's going to -- now he's going to go back up and  
33 see my brother. Is that -- is that -- that's what we get from that video?  
34 A I'm not sure what Constable Hounsell was doing.  
35
- 36 Q You're not sure? But it looks like it's Constable Hounsell. You can -- you can  
37 see the --  
38 A It does look like him.  
39
- 40 Q -- that it is Constable Hounsell --  
41 A Yeah.

- 1  
2 Q -- and Constable Boyce. Fantastic.  
3 A But I'm not sure what he did after he goes offscreen.  
4  
5 Q No, no. You're not sure. I'm not sure, either, what he did. But that -- is that them  
6 right there? Is that Boyce right there?  
7 A That appears to be Constable Boyce.  
8  
9 Q That appears to be Constable Boyce. Okay. I'm going to bring up another video.  
10 This is the video of the booking desk. Can you please explain to them what  
11 view this is or where this is, Constable Smith?  
12 A This is the Detention counter where the arrests are booked in.  
13  
14 Q And this is one of the videos, because there's multiple cameras; is that correct?  
15 A I believe there's multiple cameras, yes.  
16  
17 Q What does it say on that little sign? Can you read that in the white sign along  
18 the booking desk there? What does that say? Can you read that?  
19 A I can't read it.  
20  
21 Q Do you remember what it said in the booking, back in the other -- in the other  
22 police station?  
23 A No, I don't remember what it said.  
24  
25 Q You don't remember. Would it say something like, maybe, all subjects in this  
26 area are -- are all -- are all people here are subject to video and monitoring and  
27 recording? Would it be potentially maybe say something about that?  
28 A Yes.  
29  
30 Q So people in this area could be monitored and recorded? They could be; is that  
31 correct?  
32 A I would concede that, yes.  
33  
34 Q Okay. So I'm just going to back up a minute here, and we'll just watch an  
35 exchange that takes place. Constable Smith, who's that guy?  
36 A That's Special Constable Matieshin.  
37  
38 Q Matieshin?  
39 A Yes.  
40  
41 Q This gentleman here, isn't that the guy who was driving the black car?

- 1 A It appears to be Constable Cassidy, yes.  
2
- 3 Q It appears to be guy. And -- and what was his name?  
4 A Constable Cassidy.  
5
- 6 Q Oh, but you didn't know it was Constable Cassidy in the sally port. He just  
7 showed up, right?  
8 A I actually did say that it was Constable Cassidy in the sally port.  
9
- 10 Q Oh, you did. Okay. By coincidence. Okay.  
11 A Yeah.  
12
- 13 Q And here he is, look. There he is. He's got his hands on me here. So now, the  
14 booking desk is I'm arrest -- you're under arrest. You're under arrest. Give us all  
15 your name. Give us -- give us -- give us all your information. Well, why don't  
16 you give me your name? And then this proceeds to happen. Constable Smith,  
17 tell them -- tell them all the swear words. Tell them everything. What was --  
18 what was I doing there? Please tell them.  
19 A I don't know specifically what you were saying there.  
20
- 21 Q You don't know what I was specifically saying there? At any time at the  
22 booking desk? I wasn't giving them my name, my -- my -- my -- my occupation,  
23 I wasn't giving them anything? You don't know? You just --  
24 A I do recall that you answered the booking questions, yes.  
25
- 26 Q Oh, you recall that I answered the booking questions?  
27 A Yes.  
28
- 29 Q Hm. Okay. Interesting. Interesting. We're going to watch this a little more  
30 because you're there for the entire time, right? You're watching this? You know,  
31 because you saw me in the back of Constable Keating's car, that you know that  
32 I've been arrested for obstruction, assault, resisting. You were there when  
33 Constable Keating read from his card, were you not?  
34 A Yes, I was.  
35
- 36 Q Okay. Okay. So now, they're moving around. They're doing a bunch of things. I  
37 have a bag on my head, as you can see, so it's kind of tough to see. But they  
38 have -- they have some guys moving around. So I'm not -- I'm just curious.  
39 While I'm doing this, do you have any -- do you have any thoughts? Is there  
40 anything going on in your brain right now about, you know, who I am or what's  
41 going on or why everybody seems to be so interested in me? Is there anything?

1 You just stand there, like, you're just getting paid. So maybe just explain a little  
2 bit of what's going on there, because you haven't moved.

3 A I'm not sure what you're asking for --

4

5 THE COURT: The better question would be: You're  
6 standing there looking at Mr. Stewart at the booking counter. What did you regard  
7 as your function at that moment?

8

9 A Is that the question, Mr. Stewart?

10

11 Q MR. STEWART: M-hm.

12 A My -- my role here is to assist in booking you in. Special Constable Matieshin is  
13 required for your search and removing the handcuffs. The other officers were  
14 there in case a physical altercation broke out again.

15

16 Q Hm. Interesting. So Matieshin, he was there for -- for -- for searching me; is  
17 that correct?

18 A Yes, he was.

19

20 Q Okay. Because he's going to search me here, see? He's going to search me here.  
21 But I've already been searched, you see? I was searched by Constable Hounsell  
22 and Constable Boyce. And all my possessions were already -- were already  
23 taken from me. Typically when you arrest someone, you -- you -- you try to get  
24 their identification; is that correct?

25 A Yes.

26

27 Q Okay. Did you find any identification on me?

28 A I don't recall finding any identification on you.

29

30 Q You don't recall finding any. So here he is. Here he is, searching me. Do you  
31 remember if he found any? Did they find anything on me there? Do you -- do  
32 you recall? I mean, you were right behind me, Constable Smith. Do you  
33 remember them finding guns, drugs, a machine gun, in my ass? Did you find  
34 anything?

35 A No.

36

37 Q No. You found nothing. Okay. So I'm still -- it looks to me like I'm still  
38 answering questions and still, you know, trying to figure out a few things.  
39 Maybe you could tell the jury, you know, what else I was potentially doing.  
40 Was I threatening officers? Did I threaten people?

41 A Not that I recall, no.

1

2 Q You don't recall me threatening people. Did I threaten to kill their family or  
3 anything?

4 A Not that I recall.

5

6 Q No. Did I say I was going to come back and blow up the police station?

7 A Not that I can recall.

8

9 Q Did I say I'm going to come back and --

10

11 THE COURT: I am not sure this line of questioning is  
12 helping you make your case. Right?

13

14 MR. STEWART: I think it is.

15

16 Q MR. STEWART: You're standing right behind me, and --  
17 and you can see, ladies of the jury, like -- and this is where they take -- they try  
18 to take my hoodie off. See, I've still got -- I'm still handcuffed, and they say,  
19 Take your hoodie off. I'm, like, yeah, that's smart. How do I do that? You can  
20 see. Like, I'm -- I'm certainly being belligerent and -- and wild and acting like a  
21 two-year-old having a temper tantrum. Look at him. Look at him. So anyways.  
22 So there I am, telling these people. But you just -- you don't really recall much.  
23 There you are. You're right directly behind me. And you're here today as a  
24 witness. But you can't really shed any more light on this. So none of was  
25 recorded; is that correct, Constable Smith?

26 A It is recorded. It's on video.

27

28 Q Oh, it is recorded? It's just video. But there's no audio?

29 A It appears that there's no audio.

30

31 Q Yeah. Yeah. It just seems to be a common theme, doesn't it? No audio. Okay.  
32 So I'm just going to fast-forward now. As you can see here, I can't do anything.  
33 I've got hiccups and stuff, and everybody seems to be very interested in -- in  
34 fulfilling my rights. So they're just going to take my shoes, take my belt. They're  
35 just going to take all my clothes, and take me away here. But we'll just watch --  
36 we'll just watch. There's hands all over me. What was this guy's name again?  
37 Matieshin? If that's his name? Matieshin, you see? So somebody has told him  
38 that I assaulted somebody, right? Is that -- is that how it goes? Somebody by  
39 now has said that I am responsible for the assault of police. Is that correct? At  
40 this point now, some -- someone has said to someone, now that I'm there, that  
41 this guy assaulted police. Is that correct?

1 A I don't know if --

2

3 Q You don't know. So --

4 A -- Special Constable Matieshin was told that or not.

5

6 Q So everybody there -- nobody has any idea why I'm there? I'm just --

7

8 THE COURT: Well, except Constable Smith doesn't  
9 know.

10

11 MR. STEWART: No.

12

13 THE COURT: Some may have known.

14

15 MR. STEWART: Some may have known. Some -- some --  
16 some --

17

18 THE COURT: Yes. And --

19

20 MR. STEWART: -- some people may have known why I  
21 was there.

22

23 THE COURT: -- but whether the special constable is  
24 not.

25

26 Q MR. STEWART: You knew why I was there, didn't you?

27 A Yes.

28

29 Q Yeah. You knew I'd been charged, didn't you?

30 A You hadn't been charged at that point, no.

31

32 Q I hadn't been charged? I was just under arrest and -- and taken downtown to a  
33 booking desk; is that correct?

34 A You were under arrest.

35

36 Q Oh, I was under arrest?

37 A Yes.

38

39 Q For -- but for what exactly?

40 A For obstruction and assaulting a police officer.

41



1 Q And we all knew that there; is that what you're saying? You're expecting  
2 everyone to believe that we all knew that that was -- that was on point?  
3 Everyone knew it was obstruction and assault up there?

4 A Again, I can't -- I can't --

5

6 THE COURT: Well, he has already testified. Some of  
7 them might not have known.

8

9 MR. STEWART: Yeah.

10

11 Q MR. STEWART: Some of them might not have known. It's  
12 interesting, isn't it? Isn't it, Constable Smith? So here I am. I've got out of the  
13 handcuffs. And you can see I'm -- I'm agitated. You can tell, like, I'm trying to  
14 reason with people, and now I take my -- so I'm interested now. You see this --  
15 this state. Do I look like I'm mentally deranged? Do I -- I -- do I look mentally  
16 deranged to you, Mr. Constable Smith?

17 A At this point, no.

18

19 Q No. At this point, no. So there seems to be a lot of -- a lot of explaining going  
20 on. Um. And so at some point here, you're going to get me a call to a lawyer or  
21 you're going to ask me -- oh, is that you pointing? I'm sorry, sir. So where was it  
22 that you -- you said -- let's just go back. Can we just -- let's just watch that  
23 again. Let's just watch that (INDISCERNIBLE).

24 A Sure.

25

26 Q Okay. Let's just see -- okay. There you are. Let's just go back a little bit more.  
27 We've got -- we've got lots of time. Lots of time. (INDISCERNIBLE). So  
28 watch as this guy takes the (INDISCERNIBLE) on me. See, somebody has told  
29 him -- somebody has told this guy that I assaulted cops. See, this is what  
30 happens. Somebody said --

31

32 THE COURT: No, no, no.

33

34 MR. STEWART: No, no, no, no. Watch.

35

36 THE COURT: No, no. You are testifying.

37

38 MR. STEWART: No. Watch this guy.

39

40 THE COURT: Ask the question.

41

- 1 Q MR. STEWART: Constable Smith, is this acceptable  
2 behaviour for the uncuffing of a suspect?
- 3 A Yes.
- 4
- 5 Q It is, eh? Okay. Let's continue to watch. And watch how -- note the one arm  
6 where it comes out at an awkward angle. And you'll see my -- you'll notice my  
7 hand flinch. I'd like you to -- you're standing right behind me. You're a  
8 professional policeman, sir. Is this how you take handcuffs off?
- 9 A Yes, it is.
- 10
- 11 Q Okay. That's -- oh, but they're not off yet. Oh, you're kind of hurting me. You  
12 don't have to put them out there. Ow. What's that? Ow. Oh, that's great. Thanks.  
13 You've done this before. Is that -- is that -- would you say that's a good  
14 execution of taking off handcuffs, Constable Smith?
- 15 A Yes.
- 16
- 17 Q Okay. Okay. So now, I am, and there you are, right behind me. You're right  
18 behind me. I'm taking my --
- 19
- 20 UNIDENTIFIED SPEAKER: (INDISCERNIBLE).
- 21
- 22 Q MR. STEWART: I'm sorry. I'm sorry. You're right behind  
23 me, taking my hoodie off. Okay. And so where -- because you said Keating --  
24 you said Keating read me my rights. So why would you feel it -- why would you  
25 feel obligated to -- to -- to get me a lawyer call, if you already knew that -- that  
26 Constable Keating had -- had said, do you want a call to a lawyer? And then --  
27 and then where is it exactly that -- that I look at you and say "no?" No? Where  
28 is it? Where is it? Is that -- is that where -- is that where you asked me for the  
29 lawyer call? Is that where you asked me for the lawyer call?
- 30 A I'm not exactly sure where or when. It was at the counter.
- 31
- 32 Q Well, we just saw the counter, and we just saw you. Was that where you gave  
33 me my -- my --
- 34 A That is -- that is where I gave the opportunity --
- 35
- 36 Q -- what -- what do they call that --
- 37 A -- to contact a lawyer, yes.
- 38
- 39 Q That's where you gave me the opportunity to call a lawyer. Okay. Thank you.  
40 And that's Hounsell there? Is that Hounsell right there?
- 41 A It appears --

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Q It appears to be?

A -- it appears to be.

Q And he's supposed to be dealing with my brother and his phone call? Okay. Okay. Because that's what he said. He testified that he came back in, what -- three minutes, My Lord? In three minutes, he came back to see my brother. Okay. Okay.

MR. STEWART: You can kill the screens, please. Thank you.

Q Constable Smith, you've been a police -- a constable for a few years during this incident -- by the time it was August 24th, 2012, you had been a -- a professional policeman for -- for how long, approximately?

A Approximately three years.

Q Three years. Fantastic. Were you ever involved in -- in Traffic or traffic safety or the enforcement of traffic at all in your -- in your dealings, duties, up until August 24th, 2012?

A Generally, yes.

Q Generally, yes. So you'd be familiar with something called the *Traffic Safety Act*?

A Yes.

Q Okay. Fantastic. I'm just going to turn to a couple of sections in the *Traffic Safety Act*. If you -- if you're unfamiliar with them or you need a copy, I'm sure one can be provided.

MR. STEWART: Is that correct, My Lord?

THE COURT: That's right. But again, Constable Smith isn't here for a pop quiz on the *Traffic Safety Act*. But if you've got a specific question --

MR. STEWART: I certainly do. I certainly do. Yeah, I --

THE COURT: Okay. Well, then put the specific question --

- 1 MR. STEWART: -- certainly do.  
2
- 3 THE COURT: -- to him.  
4
- 5 MR. STEWART: Okay. Fantastic.  
6
- 7 Q MR. STEWART: The specific question is under Section --  
8 I've got to find it here. Hang on. Sorry. You drove me away at the request of  
9 Constable Keating that evening; is that correct?
- 10 A Yes.  
11
- 12 Q Yeah. And you knew then that that vehicle was probably going to be  
13 impounded; is that correct?
- 14 A At that point, I'm not sure what was happening with the vehicle.  
15
- 16 Q You're not sure. Okay. Did you notice if Constable Keating issued Jarvis, my  
17 brother, a notice of seizure and impoundment or a notice of seizure and  
18 immobilization? Did you notice him give my brother any -- any notices to the  
19 effect of the vehicle?
- 20 A No.  
21
- 22 Q No? So I'm just going to look. It says here in the *Traffic Safety Act*, a notice of  
23 seizure -- it's under Section 174. Seizure and impoundment or immobilization,  
24 RE: A proscribed offence. It says a -- subsection 3: (As read).  
25
- 26 A notice of seizure and impoundment or immobilization  
27 must be in the prescribed form and must state as much of  
28 the following information as a peace officer is able to  
29 ascertain.  
30
- 31 THE COURT: I will just interrupt you there,  
32 Mr. Stewart. I know you have issued with the *Highway Traffic Act*. You did not  
33 notice a seizure. There is no question about that.  
34
- 35 MR. STEWART: No question.  
36
- 37 THE COURT: But you weren't arrested under the  
38 *Highway Traffic Act*. You were --  
39
- 40 MR. STEWART: No. I -- yeah.  
41

1 THE COURT: -- arrested under the *Criminal Code* for  
2 obstruction --  
3  
4 MR. STEWART: Obstruction.  
5  
6 THE COURT: -- and for assault of a police officer --  
7  
8 MR. STEWART: Yeah.  
9  
10 THE COURT: -- with intent to resist arrest.  
11  
12 MR. STEWART: Yeah. I certainly was.  
13  
14 THE COURT: So the provisions that are applicable are  
15 the *Criminal Code* --  
16  
17 MR. STEWART: Yes.  
18  
19 THE COURT: -- not the *Highway Traffic Act*.  
20  
21 MR. STEWART: No. But we just read the *Criminal Code*,  
22 and -- and we read that I should have been released right away, and I wasn't.  
23  
24 THE COURT: Yes.  
25  
26 MR. STEWART: So that's -- that's fine. But the -- the  
27 officers were -- the officers were involved in a traffic stop. And as such, if they had  
28 been doing their duty --  
29  
30 THE COURT: But that -- this is an argument.  
31  
32 MR. STEWART: No.  
33  
34 THE COURT: This is an argument. And Constable  
35 Smith wasn't --  
36  
37 MR. STEWART: Okay.  
38  
39 THE COURT: -- involved in the traffic stop. He doesn't  
40 know if you got a notice of seizure. We know you did not get a notice of seizure.  
41

1 MR. STEWART: Right. And all I was going to say is --

2

3 Q MR. STEWART: Constable Smith, do you feel as a  
4 professional policeman, do you feel that other policemen should have  
5 standards?

6 A Standards in general? Yes.

7

8 Q Yeah. Like, ethical standards, honesty, and integrity?

9 A Yes.

10

11 Q Fantastic. I do, too.

12

13 MR. STEWART: So we know, My Lord, that they don't  
14 have any notice of seizure and impoundment. We know that.

15

16 THE COURT: Yes. No, that's been clearly established.

17

18 MR. STEWART: Yeah. Absolutely. Yeah.

19

20 Q MR. STEWART: So we're just going to go back to your  
21 notes again, Constable Smith, here, your -- your occurrence notice here. It  
22 says -- let's see. One, two, three. Oh, it'll -- it'll be your occurrence -- occurrence  
23 notes, the hard -- the hard copy ones, the -- the printed ones. It'll be third --  
24 two-thirds of the way down. After arriving on scene. Can you -- can you find  
25 that in your notes, please?

26 A Sure.

27

28 Q Thank you. Thank you. It'll be one, two, three, four, the fifth paragraph from the  
29 bottom, after arriving on scene, James. Can you -- are you there?

30 A Yes, I am.

31

32 Q Okay. Thank you. Thank you, Constable. (As read)

33

34 After arriving on scene, James was stood up and escorted to the  
35 book of patrol car 242 where he was placed in the back by  
36 Constable Schaefer and Constable McAvoy. It should be noted  
37 that I did observe that James had blood all over his face and his  
38 mouth and did appear to have a number of scratches on his face.  
39 After being placed in the back of patrol car 242, James began  
40 cursing and swearing, as well as yelling at the top of his lungs. He  
41 was stating repeatedly, fuck you, faggots.

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Do you -- do you remember -- do you recall if he made any mention about his face or how -- if he was in pain or anything like that? Do you remember if --

THE COURT: And when you say "he," you mean you?

MR. STEWART: I -- I -- yes. Yes.

Q MR. STEWART: Do you remember if I made any -- I was stating repeatedly, Fuck you, you faggots, but do you remember at all, was there any -- at any time, did I mention anything about being in pain or look what you've done to my face or -- or bringing attention to anything as far as physical injuries? Was there anything else I said, or was it just strictly a belligerent, you know, was there -- it was just all F-bombs? Is that -- is that correct, Constable Smith?

A Generally, yes.

Q Generally. So you didn't really hear me complain about being in pain?

A No.

Q I didn't say anything to the effect of, you know, why did you do this to me? It wasn't anything like that? It was just strictly belligerent, lots of F-words -- F-bombs?

A Again, it was seven years ago.

Q M-hm.

A But I don't recall any of that.

Q Okay.

A I don't recall you asking for medical attention --

Q Okay.

A -- or referring to the injuries on your face.

Q Okay. Okay. But you did inform me that if I continued to spit blood everywhere, that I would be charged with mischief?

A Yes, I did.

Q Okay. Is it normal to warn somebody before they're arrested? Is it normal to, you know, warn somebody, hey, you know, if you keep doing that, you're going to be arrested. Is it normal to warn somebody?

1 A Not normal, but --  
2  
3 Q Not normal to warn somebody?  
4 A -- it does take place.  
5  
6 Q But typically, you know, maybe in good faith, you'd be, like, hey, man, you  
7 keep doing that, you know, I'm going to have to -- I'm going to be forced to  
8 arrest you. But -- but you don't normally warn anybody? You just walk up and  
9 say, You're under arrest? That's --  
10  
11 THE COURT: Okay. Why don't we just keep the  
12 questions a little tighter, okay?  
13  
14 MR. STEWART: Okay. So --  
15  
16 THE COURT: I mean, because we haven't got all  
17 morning.  
18  
19 MR. STEWART: We don't?  
20  
21 THE COURT: No, we don't.  
22  
23 MR. STEWART: Well, why not?  
24  
25 THE COURT: Because I have decided that we don't  
26 need all morning.  
27  
28 MR. STEWART: Oh, you've decided we don't need all  
29 morning.  
30  
31 THE COURT: Yes. Yes. So the question is --  
32  
33 MR. STEWART: Well, I'm -- My Lord -- My Lord, I find it  
34 pretty ironic. I mentioned this to you yesterday. You've -- you really liked the use of  
35 my word. You excused the jury yesterday because their witness wasn't here. And  
36 we wasted -- we wasted over an hour yesterday. And now you're telling me, oh, we  
37 don't need this time, but you gave me -- you gave me grief all day. You gave me  
38 grief all day about taking too much time. And now you've decided -- you've  
39 decided on my civil trial that it's -- we don't need any more time. Is that correct?  
40  
41 THE COURT: I was giving you -- I was giving you grief



1       because your questions were improper.  
2  
3 MR. STEWART:                               Yeah.  
4  
5 THE COURT:                                Okay? Also, the fact of the matter is you  
6       did pay the jury deposit, but that doesn't mean --  
7  
8 MR. STEWART:                               I'm sorry. What?  
9  
10 THE COURT:                                You did pay the jury deposit. Yes.  
11  
12 MR. STEWART:                               I did pay. Yeah. Yeah. Tell them how  
13       much.  
14  
15 THE COURT:                                Yes. But that doesn't mean -- you know,  
16       you've fallen in love with the sound of your voice, and you get to speak ad  
17       infinitum.  
18  
19 MR. STEWART:                               Okay. You said (INDISCERNIBLE).  
20  
21 THE COURT:                                So. Again, the tight question is:  
22       Constable Smith. Is it usual or common that someone is warned before they're  
23       arrested?  
24  
25       A Generally, no.  
26  
27 Q MR. STEWART:                             Okay.  
28  
29 THE SHERIFF:                               My Lord, I just noticed you're a little  
30       bit -- would it be possible to take the morning break for my jury?  
31  
32 THE COURT:                                All right. Sure. No problem at all.  
33  
34 THE SHERIFF:                               (INDISCERNIBLE).  
35  
36 THE COURT:                                We will --  
37  
38 THE SHERIFF:                               Washroom break.  
39  
40 THE COURT:                                -- take -- yes. We started at 9:30. It's  
41       almost 11. Let's take 15 minutes.

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MR. STEWART: Sure.

THE COURT: And just -- just for the record, Constable Smith, there's rules regarding witnesses in cross. I don't want you talking to anyone, okay? Not the lawyers, not your colleagues, right?

A Yes, My Lord. Absolutely.

THE COURT: Done.

(WITNESS STANDS DOWN)

(JURY RETIRES)

(ADJOURNMENT)

THE COURT: Thank you. Please be seated.

You can carry on with your cross, Mr. Stewart.

MR. STEWART: I'll wait for the jury, My Lord.

THE COURT: Oh, I am sorry. Well done. Bring in the jury.

THE SHERIFF: Yes, My Lord.

(JURY ENTERS)

THE COURT: All rise. Madam Clerk. Please be seated.

When you are ready, Mr. Stewart.

(WITNESS RE-TAKES THE STAND)

Q MR. STEWART: Just a handful of questions, Constable, and we'll be done. You testified that I was smashing my own face on the Silent Patrolman; that's correct?

A Smashing your head, yes.

1 Q Smashing my head? Okay.

2 A Yes.

3

4 Q So could you just kind of explain to the jury, like, how I was doing that?

5 A You were taking your head, making contact with the Silent Patrolman using  
6 your forehead.

7

8 Q So I just kind of walked up to it -- and in the back of the car, or was I -- was I  
9 smashing -- like, physically? Was it -- was it a great distance between the Silent  
10 Patrolman or was it -- was it, like, tap-tap-tap-tap? Was it like a  
11 woodpecker? Or was it -- was it more of a smashing, would you say?

12 A It was smashing.

13

14 Q It was smashing? And it was more than once?

15 A Definitely more than once.

16

17 Q And it was definitely around the top forehead area?

18 A Yes.

19

20 Q Okay. Constable Schaefer, he testified, and he --

21

22 (PORTION OF PROCEEDINGS NOT RECORDED)

23

24 A -- if you had have asked for medical attention, we would have made sure that  
25 you did.

26

27 Q But I didn't ask for medical attention? According to --

28 A But you did not, no.

29

30 Q -- according to you. No, I didn't. So do you think that's good faith?

31

32 THE COURT: Good faith is a legal question.

33

34 MR. STEWART: If you acted in good faith? That's a legal  
35 question? If you think --

36

37 THE COURT: Well, no. But you can say: Do you think  
38 you acted in good faith vis-à-vis Mr. Stewart?

39

40 A Yes, I do.

41

1 MR. STEWART: Thank you very much, Constable Smith. I  
2 have no further questions.

3  
4 THE COURT: Any re-exam, Ms. Rohrke?

5  
6 MS. ROHRKE: My Lord, I have a few questions. I  
7 apologize.

8  
9 THE COURT: I have no problem with that.

10

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

12

13 Q MS. ROHRKE: Constable Smith, I'm just going to go  
14 back to a couple of questions that the plaintiff asked you and get you to clarify a  
15 couple things. Are you able to release somebody from the scene after they're  
16 arrested if they won't identify themselves?

17 A No.

18

19 Q Why?

20 A Because we do need to confirm that person's identity before any release  
21 paperwork can be drawn up.

22

23 Q Thank you. At any point in transporting the plaintiff from the Shoppers Drug  
24 Mart to Detention, did you purposefully drive erratically?

25 A No, I did not.

26

27 Q So in your viewpoint from the driver's seat, was the plaintiff intentionally  
28 hitting his head against the Silent Patrolman?

29 A Yes.

30

31 Q Now, I want to talk about actually being in Detention. Is it typical to search  
32 someone upon arrival at Detention?

33 A Yes.

34

35 Q Is that standard?

36 A The policy is -- the standard policy is for everyone who comes into our  
37 Detention facility, that they're searched.

38

39 Q Even though the plaintiff, say, was searched on scene?

40 A Yes.

41

1 Q And my final question. Would you confirm, was the defendant arrested under  
2 the *Traffic Safety Act*?

3 A Not to my knowledge, no.  
4

5 Q Ultimately, what were the charges under? What act?

6 A The *Criminal Code*.  
7

8 MS. ROHRKE: I have no further questions, My Lord.  
9

10 THE COURT: Very good. Is that the case for the  
11 defence?  
12

13 MS. ROHRKE: That is, My Lord.  
14

15 THE COURT: I take it there are no read-ins from the  
16 questioning? Very good.  
17

18 So, ladies and gentlemen, that's the evidence of the trial. The next step will be the  
19 address by -- is it you, Mr. Gibbings?  
20

21 MR. GIBBINGS: Yes, it will be.  
22

23 THE COURT: The final address of Mr. Gibbings and  
24 Mr. Stewart. They will make their arguments to you. They will not testify, but they  
25 can give an overview of the evidence. They can say, hey, I think this is what the  
26 evidence means. Okay?  
27

28 Now, the question is when do we do that. You might want some time to --  
29

30 MR. GIBBINGS: No, I'm prepared to start right now, My  
31 Lord.  
32

33 THE COURT: You are prepared to start right now?  
34

35 MR. GIBBINGS: Yes.  
36

37 THE COURT: What about you, Mr. Stewart?  
38

39 MR. STEWART: I'll -- I'll wait. I'll wait for the defence to  
40 do theirs.  
41

1 THE COURT: Okay. But I mean, when he is done, will  
2 you be ready? Or look. When he is done --  
3  
4 MR. STEWART: I can -- I can --  
5  
6 THE COURT: Yes. You can advise me if you need  
7 some time.  
8  
9 MR. STEWART: Yeah. Absolutely. I'll --  
10  
11 THE COURT: And if you need some time, I will give  
12 you some time.  
13  
14 MR. STEWART: You -- you will? You will give me some  
15 time?  
16  
17 THE COURT: I will. I will.  
18  
19 MR. STEWART: That's great, My Lord.  
20  
21 THE COURT: Thank you, Mr. Gibbings.  
22  
23 THE SHERIFF: My Lord? The constable  
24 (INDISCERNIBLE).  
25  
26 THE COURT: Oh, I am sorry. Constable Smith. You are  
27 free to go.  
28  
29 A Thank you, My Lord.  
30  
31 (WITNESS STANDS DOWN)  
32  
33 THE COURT CLERK: (INDISCERNIBLE).  
34  
35 THE COURT: Thank you, Deputy.  
36  
37 **Final Submissions by Mr. Gibbings**  
38  
39 MR. GIBBINGS: Members of the jury. You may be  
40 surprised to see me standing up, as Ms. Rohrke has clearly been in charge of these  
41 proceedings. Thank you very much for your attention over these last few days.

1 They've been long days. You've probably learned it's not like television. These  
2 things don't get wrapped up in an hour. I certainly have appreciated your attention.

3  
4 I want to start by reminding you of a couple of things His Lordship said to you at  
5 the outset. He said to you, Listen carefully to what was being said on the stand.  
6 Take notes, by all means, but listen carefully to what was being said on the stand.  
7 And at the same time, watch the demeanour of the witnesses as they gave their  
8 testimony. And then to apply your common sense to what you hear and see, that  
9 common sense that we all acquire as part of our life experience. As I said to you in  
10 my opening, there's no magic. There's no magic formula that I know or the judge  
11 knows. It's the same common sense that you yourself have.

12  
13 We've spent a lot of time, I would suggest, in the last few days, re-litigating the  
14 charge of which Mr. Stewart was convicted, the obstruction of an officer in the  
15 lawful execution of his duty. Mr. Stewart was found guilty of that charge. You  
16 know that from the documents that have been filed, the court-certified documents  
17 that show that he was convicted of that charge. We don't need to re-litigate that  
18 issue. For Mr. Stewart, that's an unfortunate fact that he has to face.

19  
20 The Provincial Court determined that the traffic stop was lawful. Despite  
21 Mr. Stewart's efforts to re-litigate that issue as to whether or not it was a valid  
22 traffic stop, that's been determined already. It was determined by the Provincial  
23 Court, and it was confirmed when Jarvis Stewart sued Constable Keating in the  
24 Court of Queen's Bench, and Mr. Justice Gabrielson again found that the stop was  
25 lawful. Both of those courts determined that the arrest of Mr. Stewart was lawful.

26  
27 You do not, in my respectful submission, need to turn your minds to those  
28 questions at all. And I would suggest to you that the lawfulness of the traffic stop  
29 and the lawfulness of the arrest as found by the Provincial Court and by the Court  
30 of Queen's Bench is in and of itself evidence of good faith.

31  
32 What you need to turn your mind to is what happened during the course of that  
33 arrest, of that event, and thereafter. Now, obviously, the two sides of it, they are  
34 quite different perspectives on -- on that. And I think it's fair to say that both sides  
35 would prefer, much prefer, that there was audio. That would give us better  
36 information. You heard Mr. McGillivray speak of the issues the police service was  
37 having during the course of this trial period, the audio and visual equipment. We  
38 know that Constable Keating wasn't trained. We know that there were problems,  
39 regular problems, with the microphones. We know from his evidence, and it's  
40 uncontradicted, by the way, that you can't tamper with the audio, that if the  
41 suggestion is made that one of these officers went in and deliberately wiped out the

1 audio, the sole evidence you have is that that not possible to do.

2  
3 But because there isn't perfect evidence doesn't mean there isn't any evidence,  
4 which is what Mr. Stewart attempts to suggest to you. There is the evidence, both  
5 of the plaintiff and of the defendant officers as to what took place. Well, how do  
6 you choose? How do you choose between them? How do you judge?

7  
8 I will remind you of another thing that His Lordship asked you to keep in mind, and  
9 that was is there a self-interest or an interest being promoted here? I suggest that  
10 there is, and it's been made plain, shown crystal-clear, by the words of Mr. Stewart  
11 himself on the stand. Remember when he first began to testify, and I urge you to go  
12 back and listen to the tape of his evidence. As he began to speak, within the first  
13 few moments, he was saying that how he was brought up, how he was taught, what  
14 he had read, what he seen on the Internet, was that, quote, police don't respect  
15 people, quote, you don't see respect from cops, close quote. Quote, cops are the  
16 worst people. The first part of his testimony -- and again, I urge you to go back and  
17 listen to it -- the first part of his testimony, he really didn't talk about the incident at  
18 all. And you will recall that His Lordship then asked him to focus, to speak about  
19 the incident himself. You probably know the saying that if someone shows you  
20 who they are, believe them the first time.

21  
22 When Mr. Stewart began to speak of the incident, among the first things he talked  
23 about is hearing the command from Constable Keating, Return to your car. And  
24 what did he say at that point? He didn't say "I'm not going to comply because this is  
25 an unlawful stop, blah, blah, blah, blah." He said, right there, I said to myself, I'm  
26 not going to comply because, quote, I don't like these people, close quote. Quote,  
27 these are violent people, close quote. That accords, I suggest to you, with the  
28 thought, that notion, that doctrine, if you will, accords with the documents that  
29 were found in the vehicle after the arrest. W.

30  
31 E've heard some reference to Freemen on the Land, sovereign citizens, et cetera,  
32 where those documents -- and Mr. Stewart acknowledged that he had written these  
33 documents, that he adopted what was in those documents. In those documents, he  
34 speaks of himself as a first-class Canadian citizen. The police are second-class  
35 citizens. You heard him say that in his view, he doesn't need a licence, and it said  
36 that in the documents, too. It doesn't -- he tried to say at one point that these  
37 documents were just gobbledygook, but he also said, I agree with that, I wrote that,  
38 that's good stuff in there.

39  
40 You heard Mr. Stewart agree -- or I'm sorry, argue with Constable McAvoy where  
41 he said, I don't need a licence. The *Highway Traffic Act* is not a law. This is a free



1 and open democratic society, and you're entitled to a little deception here and there,  
2 said Mr. Stewart.

3  
4 Frankly, you don't need to decide whether Mr. Stewart is right or wrong in those  
5 views, though I suggest he is. But you can see in him throughout the fervency of  
6 his belief, how readily he says, right in this courtroom, I don't like these people. It  
7 should suggest to you how resistant he would have been on that night. He's  
8 demonstrated to you how committed he is to these notions that the police do not  
9 have control over him. I suggest to you that shows, again, how resistant he would  
10 have been on that night, as the police officers described. It illustrates that the words  
11 were said by Jarvis, not by James, though, that I don't believe in your laws, that that  
12 would have been said. And there was some suggestion that James said that, as well,  
13 during the course of the altercation.

14  
15 Contrast his testimony with the testimony of the officers. Mr. Stewart has taken a  
16 lot of time and energy to try to show differences in that testimony, as he should.  
17 That's what you do. I suggest to you that those differences were minor differences.  
18 That's a common thing. We're seven years after the fact, of course. You will have  
19 had situations where you observe events, and you try to cement that into your  
20 memory, and there are others there with you. And as you compare, you find, well,  
21 that's not quite what I remember. I thought I heard this or I thought I saw that. You  
22 find it often in your own lines. Perhaps you will find it in the jury room when you  
23 go back to deliberate to this issue, that you had different recollections of what took  
24 place.

25  
26 The differences, I suggest, in the testimony, again, are minor. And what it should  
27 say to you is (a) seven years ago, but (b) it's clear that these officers didn't get  
28 together to fine-tune some story, to concoct some version of events. We've seen and  
29 we've heard about a lack of use of force reports. You've heard that that's a -- a  
30 statistical exercise, and you've heard and seen in that document that it's a document  
31 which, in fact, tells several magnitudes less of information than is in the narrative  
32 reports that, again, you will have an opportunity to review. Those reports  
33 consistently said that the plaintiff was highly resistant. And there is consistent  
34 evidence from those who had an opportunity to observe it that the plaintiff was  
35 swinging his face side to side on the pavement on his own. And two officers, at  
36 least that's my recollection, two officers -- try to stop him from -- from doing that.

37  
38 I suggest, based on the testimony you heard from him, based on the documents that  
39 were found in his car, based on this fee schedule where he wants to be compensated  
40 at any point in time where he feels that he's been unlawfully dealt with, that he will  
41 prosecute to the fullest extent of the law. I suggest to you that letter that he wrote to

1 the Court back in March responding to the traffic tickets, all can lead to a proper  
2 inference that what Mr. Stewart was trying to do here was to prove his view that  
3 the police were violent by resisting as much as he could, by requiring as much force  
4 as was necessary to deal with him, and by creating his own injuries, in order to  
5 pursue this action.

6  
7 I suggest to you here that the officers here are credible, and there's no credible  
8 evidence that they did anything beyond what was necessary to deal with him.  
9 We've seen videos of him at the police station, at the sally port and in Detention.  
10 The plaintiff says when he got into that sally port, there were officers there, and  
11 they were threatening him. You saw the video. You saw it the other day, and you  
12 saw it again this morning. What I saw was a bunch of police officers standing  
13 around. There's no indication anybody was threatening him. All deny it, including  
14 Constable Smith, who says he heard none of that.

15  
16 He says, Mr. Stewart does, that he should have been released sooner than he was.  
17 Again, this was a Friday night. The courts are not open until Saturday. And you  
18 heard, and it's uncontradicted, that it is not the decision of any of these officers  
19 when they turn the individual over to the Detention sergeant, it is the Detention  
20 sergeant who deals with that issue. At the outset, it was the late Sergeant Mitzel. In  
21 the morning, it was Sergeant Bradford. And Mr. Stewart put into evidence -- I think  
22 it's last exhibit, P -- no, sorry. Not the last exhibit. I think it's Exhibit P-8. He put  
23 into evidence that Sergeant Bradford, having reviewed the file, was not  
24 comfortable in releasing the individuals on an officer in charge, an OIC is what's  
25 it's referred to, and that they should be held for the J.P. That's part of his evidence.  
26 Even if one of the officers suggested -- even if Constable Keating had suggested or  
27 McAvoy, the fact is that there should be -- should have been a concern with respect  
28 to these individuals as to whether they would show up in court, at least particularly  
29 James Stewart, because on that night it was discovered three warrants for his arrest  
30 for doing what? Not showing up in court. It would be reasonable to hold him until a  
31 justice of the peace could impose the relevant conditions.

32  
33 You're going to be provided with a series of questions for you to answer. One of  
34 those questions has to do with whether or not there has been an abuse of process in  
35 this matter. The abuse -- I'm going to talk a little bit about law, and again, I'll  
36 caution you. I'm speaking about law. His Lordship is the final arbiter of what the  
37 law is on this. If I make a mistake, he will correct me, and you must be guided by  
38 him.

39  
40 The tort of abuse of process requires two things. First, it requires a collateral and  
41 improper purpose, such as extortion. Not exclusively extortion, but such as

1 extortion, something as serious as that, a collateral and improper purpose. And  
2 secondly, a definite act or threat in furtherance of a purpose not legitimate in the  
3 use of the process. The courts have held that you need to have those two things for  
4 abuse of process. Because, say the courts, there is clearly no liability where the  
5 defendant merely employs regular legal process to its proper conclusion, such as  
6 pursuing the criminal charges that were laid against Mr. Stewart. Even, say the  
7 courts, if that was one with bad intentions, which I suggest there is no evidence of  
8 here. But the courts have said even if they did have bad intentions, unless there is  
9 this collateral and improper purpose such as extortion and a definite act or threat,  
10 there is no abuse of process tort.

11  
12 There is an example of the application of these principles in a case out of Ontario.  
13 It's called *Brown v. Durham Regional Police Force*. In that case, the members of a  
14 motorcycle club brought an action against members of the local police service,  
15 saying that they were conducting repeatedly road checks on them, and that  
16 constituted harassment, which was unlawful, and amounted to an abuse of process.  
17 The Court there said: (As read)

18  
19 I find it unnecessary to analyze that evidence in detail because I  
20 believe, I think, the plaintiff's argument is ill-founded in law. As  
21 pointed out in the authorities, it is not sufficient that the legal  
22 process be pursued, even with bad intentions. There must, in  
23 addition, be a definite act or threat.

24  
25 There is no evidence, members of the jury, that there were any actions such as that  
26 by any of the defendants. And I suggest to you if you come to that question before  
27 you, you have no alternative but to say that there was no abuse of process.

28  
29 Another question that will be put to you is whether there was intentional infliction  
30 of mental suffering on Mr. Stewart. Let me tell you my view of what the law  
31 requires with respect to that claim.

32  
33 First of all, there must be flagrant or outrageous conduct. I invite you to think  
34 carefully about whether anything in the evidence suggested that any actions of  
35 these officers were flagrant or outrageous. Secondly, these actions must be  
36 calculated to produce harm. Calculated, not, oh, it might or it might not cause harm.  
37 Calculated, deliberate, to cause harm. And thirdly, and remember, this is intentional  
38 infliction of mental suffering -- a visible and provable illness. Visible and provable  
39 illness, mental illness. There is no evidence before you, either medical or even from  
40 Mr. Stewart, that there was mental illness following any of this to any degree. And  
41 absent that, he cannot succeed on that claim.

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You will have a question whether you as to whether or not the force used in the course of these events was reasonable. I have already touched upon that in my remarks to this stage. I won't repeat myself, again, except to say that the -- the reasonable assumption here is that Mr. Stewart was as combative as the officers say that he was.

And then there is the overarching question that will be asked of you. Did these officers act in good faith? As you have heard me say in the opening, police officers in this province are afforded the protection under *The Police Act*, and at Section 10 of *The Police Act*. And I will paraphrase it again for you. Under that section, a police officer, acting in accordance with his authority, is not liable for any loss or damage suffered by any person by reason of anything done by that police officer or omitted to be done by that police officer, if the act or the omission was in good faith.

His Lordship will, no doubt, instruct you on what the test is for good faith. And again, I ask you to be guided by him. But there are two -- again, my understanding of the law is this, is there are two types of bad faith, if you look at the flip side of good faith, two types of bad faith. One is where there is actual malice, actual malice towards the individual. Now, we know from the evidence -- well, first of all, you have heard the officers deny any malice, but secondly, we know from the evidence and why that denial is perfectly reasonable, they didn't know Mr. Stewart before these events. They didn't know anything about Mr. Stewart before these events. They didn't learn -- begin to learn anything about him until after he was arrested. So I suggest to you there is no actual malice, so you can't find bad faith on that test.

The second type of bad faith, if you will, is more general. But it still requires acts which are so markedly inconsistent with the relative -- sorry, relevant legislative context, and by that I think is meant what the authorities of these police officers are -- they are so markedly inconsistent with their authority that you could not reasonably conclude that they were performed in good faith. The test, as I said to you in the opening, is expressed in various adjectives. It's recklessness, indicating a fundamental breakdown of the orderly exercise of authority. I invite you to think about that in the evidence here and ask yourself: Is there a fundamental breakdown of orderly exercise of authority? I suggest to you there is no evidence of that. Or there is an act which is inexplicable, incomprehensible. I suggest to you the evidence is that each and every one of the actions of these officers was perfectly explicable, perfectly comprehensible, and explained.

Or it may be -- it may be bad faith in the situation of an actual abuse of power. And

1 I've spoken to you about the abuse of process. But the abuse of power might  
2 potentially apply. But even if you were to look at what these officers did and say,  
3 you know, that wasn't such a great thing, in fact, I think they might have been  
4 negligent in what they did there. Maybe they were negligent in not getting witness  
5 statements. Maybe they were negligent in not asking around. Negligence is not bad  
6 faith. The purpose for the protection for police officers is to protect them in the  
7 lawful performance of their duties, even if they make a mistake here and there.

8  
9 You can readily appreciate why that is necessary. Do you making mistakes from  
10 time to time? Do you get sued? Do I make mistakes from time to time? Do I get  
11 sued? These officers are out doing the most difficult job that can be imagined. They  
12 have to make decisions quickly. They have to make decisions on the spur of the  
13 moment. They have to deal with very difficult individuals. From time to time, in  
14 retrospect, in hindsight, their judgment might have been better. I suggest to you, by  
15 the way, I'm not suggesting anything in their judgment was less than, that that  
16 would -- but even if it wasn't, they still acted in good faith.

17  
18 So, members of the jury, again, I thank you for listening and for your service. And I  
19 will leave you with this, that when you go back in that jury room and you examine  
20 the documents, you listen to the tapes of the evidence, you look at the videos, you  
21 must come to the conclusion, I submit to you, that this action must fail. Thank you  
22 very much.

23  
24 THE COURT: Thank you, Mr. Gibbings.

25  
26 Mr. Stewart, the clock on the wall says 10 to 12. If you want, I will gladly adjourn  
27 to 1:15. If you tell me you need to 1:30, you will have it.

28  
29 MR. STEWART: 1:30, My Lord.

30  
31 THE COURT: 1:30 it is. Okay. And, members of the  
32 jury, I will say, well, great. We have heard Mr. Gibbings. We will hear  
33 Mr. Stewart. And so it won't be a long day today. Now, what you -- I think on  
34 Friday, I will give you my final address, my final instructions to you. We will do  
35 that at 9 AM, right? Or as we say at the court, the crack of dawn. 9 AM. But we  
36 may not need it, but I want -- everyone has got to bring an overnight kit, including  
37 meds, all right? Just in case. As I say, I have an appetite to keep you in the jury  
38 room until a decision is made. Okay. So -- but for now, we will have a pleasant  
39 lunch hour. And enjoy your lunch, Deputy. Escort the jury out.

40  
41 THE SHERIFF: Yes, My Lord.

1  
2 MR. GIBBINGS: My Lord, could I have a brief moment  
3 when the jury is --  
4  
5 THE COURT: Sure. I will sit. Let the jury go.  
6  
7 MR. GIBBINGS: Yeah.  
8  
9 (JURY RETIRES)  
10  
11 **Discussion**  
12  
13 THE COURT: Do you have a concern, Mr. Gibbings?  
14  
15 MR. GIBBINGS: My Lord, I --  
16  
17 THE COURT: Please be seated.  
18  
19 MR. GIBBINGS: -- My Lord, I wonder if I might be  
20 excused this afternoon. There's an emergency at home.  
21  
22 THE COURT: No problem at all. Ms. Rohrke has been  
23 doing all the heavy lifting.  
24  
25 MR. GIBBINGS: Clearly. Clearly. Thank you very much,  
26 My Lord.  
27  
28 THE COURT: All right. No problem at all. All right.  
29 1:30.  
30  
31 MR. STEWART: Thank you, My Lord.  
32  
33 THE COURT: Excellent.  
34  
35  
36 PROCEEDINGS ADJOURNED UNTIL 1:30 PM  
37  
38  
39  
40  
41

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1 May 2, 2019 Afternoon Session  
2  
3 The Honourable Court of Queen's Bench for Saskatchewan  
4 Mr. Justice R.S. Smith  
5  
6 (No Counsel) For the Plaintiff  
7 A. Rohrke For the Defendants  
8 B. Werezak Court Clerk  
9

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10  
11 **Discussion**

12  
13 THE COURT: Thank you very much. Please be seated.  
14 Good to bring in the jury?

15  
16 MS. ROHRKE: My Lord, can I just address a couple of  
17 housekeeping matters --

18  
19 THE COURT: Sure.

20  
21 MS. ROHRKE: -- prior to that? So over the noon hour, I  
22 did review the CD that the plaintiff provided. I'm comfortable that it contains the  
23 information we had --

24  
25 THE COURT: Excellent.

26  
27 MS. ROHRKE: -- discussed.

28  
29 THE COURT: Well done, Mr. Stewarts. And thank you,  
30 Ms. Rohrke. So the CD, Mr. Stewart, provided of multiple hours in the holding cell  
31 will be Exhibit P --

32  
33 THE COURT CLERK: (INDISCERNIBLE) marked P-12.

34  
35 THE COURT: P-12 for Ident., now P-12, full exhibit.

36  
37 **EXHIBIT P-12 - DVD of James Stewart's Detention and Two Mugshot Photos**  
38 **(Formerly P-12 FOR IDENTIFICATION)**

39  
40 MS. ROHRKE: And, My Lord, the other kind of  
41 housekeeping matter I wanted to address was that at the beginning of the trial,

1 Mr. Gibbings and I provided both you and the clerk and the plaintiff with binders,  
2 filled with documents. Some of those documents didn't end up being exhibited.

3

4 THE COURT: Correct.

5

6 MS. ROHRKE: So I thought I should perhaps advise you  
7 you, and maybe the court -- the court copy should remove the tabs.

8

9 THE COURT: Yes. Except I think you should remove  
10 the tabs.

11

12 MS. ROHRKE: I'm fine with that. Do you want me to just  
13 do that on a break or --

14

15 THE COURT: Yes. Do that on a break.

16

17 MS. ROHRKE: Okay. I'm comfortable with that.

18

19 THE COURT: And we can do it after I give my charge  
20 to the jury.

21

22 MS. ROHRKE: Sure. Okay. Thank you, My Lord.

23

24 THE COURT: And -- because the important thing is the  
25 jurors only got what was exhibited.

26

27 MS. ROHRKE: That was all that was ever provided to  
28 them.

29

30 THE COURT: Okay. All right. Bring in the jurors.

31

32 THE SHERIFF: Yes, My Lord.

33

34 (JURY ENTERS)

35

36 THE COURT: Please be seated. Mr. Stewart, whenever  
37 you're ready, sir.

38

39 **Final Submissions by Mr. Stewart**

40

41 MR. STEWART: My Lord, I have a couple of, sort of, I



1 guess, professional questions on how to address a couple of things with regards to  
2 this closing statement. I was -- I wasn't sure if you wanted to tell the jury about last  
3 month's emergency meeting or I should tell the jury about last month's emergency  
4 meeting where you came into the case, replacing Justice Konkin at, like, April 1st.

5

6 THE COURT: Yes.

7

8 MR. STEWART: Did you want me to talk to them about  
9 that or did you want to talk to the jury about that?

10

11 THE COURT: I don't think we have to talk about it.

12

13 MR. STEWART: Well, I do. But that's fine.

14

15 THE COURT: Justice -- okay. But Justice Konkin was  
16 the pretrial judge. The pretrial judge is never the trial judge.

17

18 MR. STEWART: I thought Konkin was the trial judge,  
19 because then I got Justice Mills as my -- as my mediation judge.

20

21 THE COURT: He was the case management judge, yes.

22

23 MR. STEWART: Right. Right.

24

25 THE COURT: Yes. This would be a bit of a  
26 high-maintenance process. So you had a case management judge, and you had a  
27 pretrial judge.

28

29 MR. STEWART: Okay.

30

31 THE COURT: And then you got me as the trial judge.

32

33 MR. STEWART: Okay. So -- so then you came in on April  
34 1st.

35

36 THE COURT: Right.

37

38 MR. STEWART: And then that's when we had the  
39 emergency meeting. Okay.

40

41 THE COURT: Yes.

1  
2 MR. STEWART: And through that emergency meeting, I  
3 requested that if they were going to use a court case against me, the fact -- the fact  
4 that I was found guilty, then I wanted them to be able to read that -- and there was a  
5 certified -- a certified Provincial Court case. And I fully expect it, because I never  
6 got one. I never got a written decision. So I fully expected to see a certified  
7 provincial copy. And then so Andrea and -- and Gibbings, Ms. Rohrke and  
8 Mr. Gibbings, they -- they allegedly -- well, they have provided this -- this  
9 document. And it's -- it's --  
10  
11 THE COURT: That's the transcript.  
12  
13 MR. STEWART: I don't know what it is, but I'm waiting  
14 for the actual certified provincial record of my -- of -- that you're saying is a fact of  
15 my guilt of obstruction.  
16  
17 THE COURT: Conviction.  
18  
19 MR. STEWART: Sorry. Conviction. Yeah. I'm --  
20  
21 THE COURT: Yes.  
22  
23 MR. STEWART: -- I'm waiting for the -- the actual -- the  
24 certified --  
25  
26 THE COURT: But you --  
27  
28 MR. STEWART: -- you said there was a certified  
29 provincial document. So I'm just -- I'm still waiting for that.  
30  
31 THE COURT: Okay. You did exhibit the --  
32  
33 MS. ROHRKE: Yes, My Lord.  
34  
35 THE COURT: -- court-certified?  
36  
37 MS. ROHRKE: I apologize, because I wasn't expecting  
38 this. If you'd give me a moment?  
39  
40 THE COURT: No. No. It's under one of the tabs.  
41

1 MS. ROHRKE: Yes. It's our tab 27, which is Exhibit D-7,  
2 is a certified copy of the endorsement after trial of Judge Singer that indicates that  
3 the accused was present. He was not in custody. He was found guilty and provided  
4 with an absolute discharge. It was certified January 7th, 2015, by the clerk of the  
5 Provincial Court.  
6

7 THE COURT: So that's tab 27.  
8

9 MR. STEWART: Yeah.  
10

11 THE COURT: So it's usually only certification of the  
12 fact of the conviction.  
13

14 MR. STEWART: M-hm. But it -- it's usually --  
15

16 THE COURT: Yes.  
17

18 MR. STEWART: -- a written decision, with reasons.  
19

20 THE COURT: Yes.  
21

22 MR. STEWART: Yeah.  
23

24 THE COURT: In the Provincial Court --  
25

26 MR. STEWART: M-hm --  
27

28 THE COURT: -- they often give oral decisions.  
29

30 MR. STEWART: M-hm.  
31

32 THE COURT: And that's okay, as long as they comply  
33 with *R. v. Shepherd*, which I know you are familiar with.  
34

35 MR. STEWART: I am, yes.  
36

37 THE COURT: Yes. As long as they comply with  
38 *R. v. Shepherd* in the sense they have enough reasons --  
39

40 MR. STEWART: Enough reasons? But  
41 (INDISCERNIBLE) --

1  
2 THE COURT: -- and even in the Queen's Bench, we  
3 will, from time to time --  
4  
5 MR. STEWART: M-hm.  
6  
7 THE COURT: -- give oral reasons.  
8  
9 MR. STEWART: And that's -- and that's my point, My  
10 Honour. Justice Singer had no reasons. That's why there was never anything  
11 actually --  
12  
13 THE COURT: Yes. Although, again --  
14  
15 MR. STEWART: -- put out.  
16  
17 THE COURT: -- did you -- did you appeal those  
18 convictions?  
19  
20 MR. STEWART: I certainly did, My Lord.  
21  
22 THE COURT: Okay.  
23  
24 MR. STEWART: They wouldn't let me, actually, because I  
25 was waiting for a written decision. And then when I did appeal, then they said, oh,  
26 you took too long. So then they basically squashed my appeal, they said.  
27  
28 THE COURT: But -- and again --  
29  
30 MR. STEWART: Judge Curry said my -- my -- my appeal  
31 was moot because I took too long.  
32  
33 THE COURT: Right.  
34  
35 MR. STEWART: But I was waiting for the written  
36 decision, but it never actually came.  
37  
38 THE COURT: But -- and again, I mean, I can  
39 understand that being a complaint. But that's another complaint.  
40  
41 MR. STEWART: Mm. Interesting. So this --

1  
2 THE COURT: Because there's all sorts of issues --  
3  
4 MR. STEWART: Right. So then this *R. v. Stewart*, 2013, SJ  
5 Number 799, this is supposed to be a -- what is this supposed to be, again? This is  
6 supposed to be the certified Provincial Court? Is that what this is?  
7  
8 THE COURT: No.  
9  
10 MR. STEWART: I'm not --  
11  
12 THE COURT: No. That's -- no. Tab 27 is what's in. It's  
13 just -- it's proof of the fact that you were convicted.  
14  
15 MR. STEWART: Okay. So, My Lord, so --  
16  
17 THE COURT: You wouldn't -- you know, you wouldn't  
18 want to put in the reasons --  
19  
20 MR. STEWART: Yeah. I --  
21  
22 THE COURT: -- because the reasons why you were  
23 convicted would kind of be prejudicial to you.  
24  
25 MR. STEWART: Yeah. Isn't that amazing. So this  
26 *R. v. Stewart*, SJ Number 799 that was included, then what is this?  
27  
28 THE COURT: I don't know.  
29  
30 MR. STEWART: My Lord, this is entered as evidence in  
31 the -- by the defence (INDISCERNIBLE) that the defence was going to rely on,  
32 that this is some form of a written decision. And that's just -- it's got Erin Maerz's  
33 name on it, and she's a clerk -- or a -- so I -- I don't even know if this is some kind  
34 of a legitimate document. It doesn't appear to be so.  
35  
36 THE COURT: Are you familiar with this?  
37  
38 MS. ROHRKE: I am, My Lord.  
39  
40 THE COURT: Okay.  
41

1 MS. ROHRKE: Would you like me to explain what I --  
2  
3 THE COURT: Why don't you enlighten the group?  
4  
5 MR. JARVIS STEWART: Yeah.  
6  
7 MS. ROHRKE: Sure. So, My Lord, prior to the start of  
8 this trial, the plaintiff sent an email advising that he had never seen the reasons of  
9 Mr. Justice Singer that were provided orally. Those reasons were on Quicklaw.  
10  
11 THE COURT: Okay.  
12  
13 MS. ROHRKE: So I went on -- I had our articling student  
14 go on to Quicklaw, find the reasons, which is simply a copy of the transcript of  
15 reasons from Justice Singer, that Quicklaw then cited or -- or produced in their  
16 research database. I printed it off. I attached it to an email and forwarded it back to  
17 Mr. Stewart, indicating that reasons were provided.  
18  
19 THE COURT: Oral reasons.  
20  
21 MS. ROHRKE: Oral reasons were provided.  
22  
23 THE COURT: Which were then -- which were then  
24 picked up by Quicklaw.  
25  
26 MS. ROHRKE: Quicklaw. Exactly.  
27  
28 THE COURT: And public.  
29  
30 MS. ROHRKE: Exactly. The only reason there's a name  
31 on the bottom is because that's simply what happens when you log into a research  
32 database. It's on your user name.  
33  
34 THE COURT: Okay.  
35  
36 MS. ROHRKE: So, My Lord, those are -- and, I mean, we  
37 have certified copies of the transcripts, My Lord, but we didn't -- I'm not sure if the  
38 plaintiff wants certified copies in.  
39  
40 THE COURT: Yes. Okay. So the reasons -- just -- this is  
41 a transcript of his oral judgment, which outlines the reasons why he found you

1 guilty.  
2

3 MR. STEWART: Mm.  
4

5 THE COURT: I'm not sure it helps you if we give this to  
6 the jury.  
7

8 MR. STEWART: Oh, it does, My Lord.  
9

10 THE COURT: It does?  
11

12 MR. STEWART: Oh, absolutely. It's the -- as he says, it's  
13 the essence of the offence. It's the essence of the interference. And then that  
14 becomes -- that automatically takes the jump and becomes obstruction.  
15

16 THE COURT: That's right, because it --  
17

18 MR. STEWART: And it -- it never -- actually in there, it  
19 doesn't even mention that -- that Justice Singer even -- even acquitted me on the  
20 assault charges. There's not even a word -- "assault" is not even in that document,  
21 Sir -- My Lord.  
22

23 THE COURT: So how -- how does that help you?  
24

25 MR. STEWART: Because it's a fraudulent document.  
26 You're trying to say that Justice Singer found me guilty off the record. There's no  
27 record of my guilt, My Lord. This is what I'm trying to get at, you see? That's all  
28 this has been.  
29

30 THE COURT: Okay.  
31

32 MR. STEWART: See, Justice Singer -- you have to  
33 understand, jury, see, originally, my brother, Jarvis Stewart, he sued Constable  
34 Keating by himself. He just sued Constable Keating. And in that -- in that case,  
35 Ana Singer was the lawyer who was tasked to represent him, okay? Ana Singer is  
36 the daughter of Barry Singer, who was the judge of this case that found it guilty,  
37 even though we were acquitted on the assault. And so that's why they were, like, it's  
38 a fact, Justice Singer, it's a fact. And that's why, because -- yeah. You're just trying  
39 to perpetrate a fraud because Justice Singer cooked us off the books. It's not a  
40 real -- I never had a real trial, and this is what they're trying to do here is they're  
41 just --

1  
2 THE COURT: Okay.  
3  
4 MR. STEWART: -- they're just -- that's what they're trying  
5 to do. So anyway. Now you know. That's -- that's good.  
6  
7 THE COURT: Yes. But again, again, in terms of the  
8 evidence --  
9  
10 MR. STEWART: Yeah. Okay.  
11  
12 THE COURT: -- the evidence that the jury is interested  
13 in is you may -- you may have objection to the procedure, but --  
14  
15 MR. STEWART: M-hm.  
16  
17 THE COURT: -- you were convicted of obstruction of  
18 justice.  
19  
20 MR. STEWART: I certainly was.  
21  
22 THE COURT: Period. End of thought.  
23  
24 MR. STEWART: Yeah. End of thought.  
25  
26 THE COURT: End of thought.  
27  
28 MR. STEWART: End of thought. Okay. All right.  
29 Fantastic.  
30  
31 THE COURT: So -- and this would be your time to  
32 address the jury.  
33  
34 MR. STEWART: But that's not the case, My Lord. But  
35 that's fine. If you want to call it a fact, you can. I'm not calling it a fact.  
36  
37 THE COURT: Okay.  
38  
39 MR. STEWART: But I will address the jury the second --  
40  
41 THE COURT: The system -- the system calls it a fact.



1  
2 MR. STEWART: Okay.  
3  
4 THE COURT: Okay.  
5  
6 MR. STEWART: Yeah. Not a big fan of the system.  
7  
8 THE COURT: I know. I know.  
9  
10 MR. STEWART: I'm going to also look into Bradford's  
11 notes. I think it was B-9 -- or sorry, P-9. It was details dash 8 was the narrative of a  
12 Matthew James Bradford. My friend, Robert Gibbings here, he made mention in  
13 his closing argument. Do we have that Bradford James document in --  
14  
15 THE COURT: Exhibit D-9.  
16  
17 MR. STEWART: I think it's D-9 or P-9.  
18  
19 THE COURT: Well, no. P is your exhibit.  
20  
21 MR. STEWART: Oh, okay. It might be D-9, then. It's --  
22  
23 THE COURT: What do you have as D-9, Madam Clerk?  
24  
25 THE COURT CLERK: D-9 (INDISCERNIBLE) copy of the  
26 ticket (INDISCERNIBLE). Are you talking about P-9? (INDISCERNIBLE).  
27  
28 MR. STEWART: Oh. (INDISCERNIBLE). So this was  
29 from Matthew Bradford, and -- and it was -- it was all my -- my friend Robert  
30 Gibbings could tell you during his closing arguments, that -- that it was -- it was --  
31 somebody else was responsible for the overholding. And I -- I sued them, because  
32 you can't keep a man in jail. And so they used this Matthew James Bradford after  
33 the fact, obviously, to try to cover up for themselves. And so the date on that is  
34 Tuesday, April 23rd, 2013. And so the note says --  
35  
36 MR. JARVIS STEWART: (INDISCERNIBLE).  
37  
38 MR. STEWART: I know. The note says: In reference to a  
39 request received concerning weekend court procedures -- so we had our trial on the  
40 16th, 17th, and 18th of April. In this case, given that the arrests were made at 1700  
41 hours on 2012 August 24th, the paperwork would not be completed in time for the

1 evening J.P., justice of the peace, appearance, which would occur around 2200  
2 hours. So he's saying that a guy was coming in at 10:00, but there was a lot of  
3 paperwork, and you're not going to get out of jail. I reviewed the files the following  
4 day, the morning of 2012 August 25th, my brother's birthday, for their appearance  
5 in front of the J.P. at the Provincial Court via video link. So the justice of the peace  
6 didn't actually have to be physically present, but they're -- they're telling you, oh,  
7 they're going to wait until the morning to see a justice of the peace, yet he's not  
8 actually physically there.

9  
10 So then in reviewing this file, in particular, there were serious concerns about the  
11 Stewarts' respect for the lawful authority of police and their appearance in court on  
12 a future date. That morning, I initially had decided to remand the Stewarts as I had  
13 reasonable grounds that they would not respect the authority of the Court.  
14 However, upon their appearance in front of the J.P., they were reasonable and  
15 agreed to attend a future court date. Therefore, I had to have undertakings prepared,  
16 and the J.P. had to return to the police station from court in order to sign the  
17 paperwork. The Stewarts were then released from Detention upon the authority of  
18 those undertakings. The very last line says: As to why they were not released on an  
19 OIC by the Detention sergeant prior to 10 AM appearance the next day, I cannot  
20 speak to that. So this is just another example of them covering up for each other.

21  
22 I'm just going to finally say that --

23  
24 MR. JARVIS STEWART: (INDISCERNIBLE).

25  
26 MR. STEWART: Yeah. Okay. Ladies of the jury, I'd just  
27 like to say -- ladies of the jury, I'd just like to say, once again, for my opening  
28 statement, I never would have believed this had it -- had it -- had it not happened to  
29 me, and I still don't believe it. It's not very often you're told that you're falling in  
30 love with the sound of your own voice. But it's in your hands now, ladies. And  
31 that's all that's left for me is to just write a book about it, and that's what I'm going  
32 to do. I'm going to write a book about it. Your names won't be in it, obviously, but  
33 their names will, because they all work for us. So they'll be in it. Andrea will be in  
34 it.

35  
36 And when I finish writing the book, I'll wait a couple years, and then I'll file a  
37 Freedom of Information request, and I'm going to get all the accounting and all the  
38 invoices and all the money that Saskatoon taxpayers paid for all this nonsense, and  
39 I'll put it in my book.

40  
41 And I don't care if you think I'm an idiot, and I don't care if you think I'm a good



1  
2 MR. STEWART: No, My Lord.  
3  
4 THE COURT: Ms. Rohrke.  
5  
6 MS. ROHRKE: No, My Lord. Thank you very much.  
7  
8 THE COURT: Deputy, remove the jury.  
9  
10 THE SHERIFF: Yes, My Lord.  
11  
12 THE COURT: 9:00.  
13  
14 (JURY RETIRES)  
15  
16 THE COURT: So I will invite you to now adjust this  
17 book, and -- sit down, please. Please. Please. The -- Mr. Gibbings has never  
18 actually formally said, hey, the questions you prepared are satisfactory to the  
19 defence. But as he went through them with the jury, I -- I assume it's implicit that  
20 they are.  
21  
22 MS. ROHRKE: I believe so, My Lord. The questions that  
23 you had provided previously --  
24  
25 THE COURT: Yes.  
26  
27 MS. ROHRKE: -- in my view, are -- are fine.  
28  
29 THE COURT: Okay. Very good. Then that's the ones we  
30 will use.  
31  
32 MS. ROHRKE: Thank you, My Lord.  
33  
34 THE COURT: 9:00 tomorrow morning. Madam Clerk.  
35 Also, Madam Clerk, when you're done here, come see me.  
36  
37  
38 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, MAY 3, 2019  
39

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IN THE MATTER OF JAMES STEWART v. GORDON KEATING,  
BRADLEY MCAVOY, VINCENT SCHAEFER,  
RYAN HOUNSELL, and ADAM BOYCE

AFFIDAVIT OF COURT OFFICIAL UNDER SECTION 31 OF  
*THE EVIDENCE ACT.*

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I, JESSICA CAUDRON, Court Transcriber, HERBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Five hundred three (T503), inclusive, contain true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.

SWORN BEFORE ME at Regina,  
Saskatchewan, this 14 day of  
August, 2019.

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Jessica Caudron

R Coombs  
A Commissioner for Oaths  
for Saskatchewan.

My Commission expires:

June 30, 2023

**Certificate Under Section 30 of  
The Evidence Act, R.S.S. 2006**

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I, Valarie Groff, Deputy Local Registrar of the Court of Queen's Bench in the Province of Saskatchewan HEREBY CERTIFY:

1. That the digital recording(s) stored on the Saskatchewan Justice Z: drive as file held in courtroom number #1 is the record of evidence taken before The Honourable Mr. Justice R. S. Smith of the Court of Queen's Bench in and for the Province of Saskatchewan at the Court House, 520 Spadina Crescent East, Saskatoon, Saskatchewan, in a judicial proceeding involving an action between:

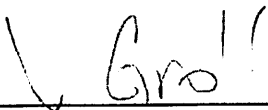
Style of Cause: James Stewart vs. Gordon James Keating et al

Date: April 30, 2019

File Number: QB 1063/14

2. That at the time the said recording was made, I was in charge of the sound recording equipment.

Dated at Saskatoon, in the Province of Saskatchewan, this 21st day of May, A.D. 2019.

  
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Deputy Local Registrar  
Court of Queen's Bench for Saskatchewan

**Certificate Under Section 30 of  
The Evidence Act, R.S.S. 2006**

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I, Bonita Werezak, Deputy Local Registrar of the Court of Queen's Bench in the Province of Saskatchewan HEREBY CERTIFY:

1. That the digital recording(s) stored on the Saskatchewan Justice Z: drive as file held in courtroom number #1 is the record of evidence taken before The Honourable Mr. Justice R. S. Smith of the Court of Queen's Bench in and for the Province of Saskatchewan at the Court House, 520 Spadina Crescent East, Saskatoon, Saskatchewan, in a judicial proceeding involving an action between:

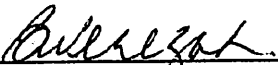
Style of Cause: James Stewart vs. Gordon James Keating et al

Date: April 29, 30, May 1, 2 & 3, 2019

File Number: QB 1063/14

2. That at the time the said recording was made, I was in charge of the sound recording equipment.

Dated at Saskatoon, in the Province of Saskatchewan, this 21st day of May, A.D. 2019.

  
\_\_\_\_\_  
Deputy Local Registrar  
Court of Queen's Bench for Saskatchewan