

IN THE PROVINCIAL COURT OF SASKATCHEWAN

SASKATOON, SASKATCHEWAN

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

JAMES STEWART
AND JARVIS STEWART

TRANSCRIPT OF PROCEEDINGS
AT TRIAL

VOLUME I
(PAGES 1 TO 183)

COMMENCING: April 16, 2013

(A TRANSCRIPT OF RECORDINGS)

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INDEX

<u>WITNESSES CALLED ON BEHALF OF THE CROWN:</u>	<u>PAGE</u>	<u>VOL.</u>
GORDON JAMES KEATING		
Examination-in-Chief on <i>Voir Dire</i> By Mr. Pashovitz	14	I
The Court Examines the Witness on <i>Voir Dire</i>	62	I
Examination-in-Chief on <i>Voir Dire</i> Continues By Mr. Pashovitz	68	I
Cross-Examination on <i>Voir Dire</i> By Mr. Jarvis Stewart	78	I
Cross-Examination on <i>Voir Dire</i> By Mr. James Stewart	92	I
Cross-Examination on <i>Voir Dire</i> By Mr. Jarvis Stewart	103	I
CLAYTON SCHAEFER		
Examination-in-Chief on <i>Voir Dire</i> by Mr. Pashovitz	105	I
Cross-Examination on <i>Voir Dire</i> by Mr. Jarvis Stewart	131	I
Cross-Examination on <i>Voir Dire</i> by Mr. James Stewart	147	I
The Court Examines the Witness on <i>Voir Dire</i>	158	I
BRAD MCAVOY		
Examination-in-Chief on <i>Voir Dire</i> by Mr. Pashovitz	160	I
Cross-Examination on <i>Voir Dire</i> by Mr. Jarvis Stewart	184	II
Cross-Examination on <i>Voir Dire</i> by Mr. James Stewart	194	II
ADAM BOYCE		
Examination-in-Chief on <i>Voir Dire</i> by Mr. Pashovitz	218	II
Cross-Examination on <i>Voir Dire</i> by Mr. Jarvis Stewart	224	II
Cross-Examination on <i>Voir Dire</i> by Mr. James Stewart	232	II
Re-Examination on <i>Voir Dire</i> by Mr. Pashovitz	234	II

RYAN BAY HOUNSELL

Examination-in-Chief on <i>Voir Dire</i> by Mr. Pashovitz	235	II
Cross-Examination on <i>Voir Dire</i> by Mr. Jarvis Stewart	249	II
Cross-Examination on <i>Voir Dire</i> by Mr. James Stewart	264	II
The Court Examines the Witness on <i>Voir Dire</i>	269	II
Submissions on Assault Charge Non-Suit by Mr. Pashovitz	290	II
Decision of the Court (Assault Charge Non-Suit)	305	II

JARVIS JAMES STEWART

The Court Examines the Witness	315	II
Cross-Examination by Mr. Pashovitz	369	III
Submissions by Mr. Pashovitz	488	III
Submissions by Mr. Jarvis Stewart	540	III
Submissions by Mr. James Stewart	545	III
Decision of the Court Reserved	560	III

EXHIBITS FILED ON BEHALF OF THE CROWN:

	<u>PAGE</u>	<u>VOL.</u>
P-1 Saskatchewan License Plate 131 HFG Seized from the Toyota Celica By Constable Gordon Keating at the Traffic Stop	53	I
P-2 Traffic Ticket Number 7473276 Issued to Jarvis Stewart on October 27 th , 2011	56	I
P-3 Traffic Ticket Number 7473277 Issued to Jarvis Stewart on October 27 th , 2011	57	I

<u>EXHIBITS FILED ON BEHALF OF THE CROWN:</u>		<u>PAGE</u>	<u>VOL.</u>
P-4	Traffic Ticket Number 7473278 Issued to Jarvis Stewart on October 27 th , 2011	58	I
P-5	Letter Dated November 14 th , 2011 From Ministry Of Justice and Attorney General To Jarvis Stewart	59	I
P-6	Notice of Affidavit and Notice of Claim and Right to Travel By James of the Stewart Clan Dated March 26 th , 2012 (4 pages)	60	I
P-7	Notice of Affidavit and Notice of Claim and Right to Travel By Jarvis Stewart (3 pages)	60	I
P-8	Video of Traffic Stop of James Stewart and Jarvis Stewart Conducted August 24 th , 2012 By Constable Gordon Keating	76	I
P-9	SGI Records for the Toyota Celica Driven by Jarvis Stewart	378	III
P-10	Affidavit of Traffic Stop Sworn By Jarvis Stewart, Filed In Court September 4 th , 2012	455	III

<u>EXHIBITS FILED ON BEHALF OF DEFENCE:</u>		<u>IDENT</u>	<u>PAGE</u>	<u>VOL.</u>
D-1	Letter To Jarvis Stewart From The Saskatoon Police Withdrawing The Traffic Tickets		331	II

<u>EXHIBITS FILED ON BEHALF OF DEFENCE:</u>	<u>IDENT</u>	<u>PAGE</u>	<u>VOL.</u>
D-2	SGI Inspection Document and Bill Of Sale Papers Relating to the Toyota Celica	333	II
D-3	Compilation of Police Videos Created By Jarvis Stewart	368	II
		461	III

IN THE PROVINCIAL COURT OF SASKATCHEWAN

SASKATOON, SASKATCHEWAN

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

JAMES STEWART AND
JARVIS STEWART

TRANSCRIPT OF TRIAL PROCEEDINGS HELD IN SASKATOON,
SASKATCHEWAN, COMMENCING ON APRIL 16, 2013, BEFORE THE
HONOURABLE B. SINGER, A JUDGE OF THE PROVINCIAL COURT OF
SASKATCHEWAN.

APPEARANCES:

B. Pashovitz	Ministry of Justice Saskatoon, Saskatchewan COUNSEL FOR THE CROWN
James Stewart	ON HIS OWN BEHALF
Jarvis Stewart	ON HIS OWN BEHALF

1 (COURT DEALS WITH OTHER MATTERS)

2 MR. PASHOVITZ: Good morning, Your Honour.

3 THE COURT: Good morning.

4 MR. PASHOVITZ: I think that leaves us with
5 the matters involving James and Jarvis Stewart.

6 THE COURT: All right.

7 MR. PASHOVITZ: I'm Bryce Pashovitz for the
8 Crown. And I have carriage of these matters.

9 THE COURT: All right.

10 MR. PASHOVITZ: They're --

11 THE COURT: Just a --

12 MR. PASHOVITZ: -- just coming forward.

13 THE COURT: -- just a moment, please.

14 Come forward, Mr. Stewart and Mr. Stewart. Have a
15 seat there, please. I just have to make a couple of
16 notes, and then I'll make some comments, and then
17 we'll get going.

18 All right, Mr. Pashovitz, is
19 it your intention to have a trial set, both -- all
20 matters to proceed at the same time?

21 MR. PASHOVITZ: Yes, Your Honour. And just
22 procedurally, there were a number of case
23 managements that were held, but I believe the
24 endorsements will show that even though the matter
25 is set for trial today, I think formally there had
26 not been not guilty pleas entered on the two

1 Informations, so --

2 THE COURT: Well, we're having a trial,
3 so I'm going to enter not guilty pleas.

4 MR. PASHOVITZ: Thank you, Your Honour. The
5 Crown is ready to proceed. I have five Saskatoon
6 Police Service officers on my witness list, plus a
7 special constable, Amy Radke from the Saskatoon
8 Police Service is available as a witness, as well,
9 too. And that came out as a request during one of
10 the case managements by both Mr. Jarvis and Mr.
11 James Stewart.

12 THE COURT: All right.

13 MR. PASHOVITZ: One thing I can advise, Your
14 Honour -- and I apologize. I don't want to stray
15 too far into other issues, but I am advised there is
16 a civil action that has been commenced against
17 Constable Keating, one of the Saskatoon Police
18 Service members. And I did receive a call last week
19 -- and I see she's here in the courtroom this
20 morning -- from an Anna Singer, indicating that
21 she's acting on behalf of Constable Keating. So
22 when I heard that Judge Singer --

23 THE COURT: That's the first --

24 MR. PASHOVITZ: -- was walking in --

25 THE COURT: -- that's the first I heard
26 of that.

- 1 MR. PASHOVITZ: Yes. I just -- we all know
2 about the appearance, so I just wanted to raise that
3 with the Court, as well, too, Your Honour, so --
- 4 THE COURT: Just -- just so you
5 understand what that's about, my daughter is a
6 lawyer, and she works for the firm of Scharfstein
7 -- whatever they're called.
- 8 MR. JARVIS STEWART: Warfin (ph), yeah --
- 9 THE COURT: And --
- 10 MR. JARVIS STEWART: -- I've been in contact with
11 them.
- 12 THE COURT: Pardon me?
- 13 MR. JARVIS STEWART: I've been in contact with
14 them, yeah.
- 15 THE COURT: Yes.
- 16 MR. JARVIS STEWART: I was not --
- 17 THE COURT: They --
- 18 MR. JARVIS STEWART: -- aware of that.
- 19 THE COURT: Just let me finish. They --
20 they act for the Police Association or the Police
21 Department, I guess -- I -- I think. And as I
22 understand it, their firm defends the police when
23 they're sued. I don't know anything about the case.
24 Does it bother -- matter to you?
- 25 MR. JAMES STEWART: It's your case, man.
- 26 MR. JARVIS STEWART: Yeah, I'm just going to say,

1 "No." I think the evidence speaks for itself.

2 THE COURT: Yes.

3 MR. JARVIS STEWART: I don't have a problem with
4 it, no.

5 THE COURT: All right.

6 MR. JARVIS STEWART: Thanks --

7 THE COURT: Okay.

8 MR. JARVIS STEWART: -- for bringing it to my
9 attention, but --

10 THE COURT: Yes, okay. You are Jarvis?

11 MR. JARVIS STEWART: Jarvis, yes.

12 THE COURT: Yes, how --

13 MR. JARVIS STEWART: I'm Jarvis.

14 THE COURT: -- do you do?

15 MR. JARVIS STEWART: And I'm --

16 COURT CLERK: I'm just going --

17 MR. JARVIS STEWART: -- representing --

18 COURT CLERK: -- to ask you to (inaudible).

19 MR. JARVIS STEWART: -- myself, yes.

20 THE COURT: How do --

21 MR. JARVIS STEWART: I'm sorry.

22 THE COURT: -- you do? No, that's okay.

23 And you're James?

24 MR. JAMES STEWART: Yes, I'm James, Your Honour.

25 THE COURT: I received your notice.

26 MR. JARVIS STEWART: Okay.

1 THE COURT: And thank you very much for
2 that.

3 MR. JARVIS STEWART: Okay.

4 THE COURT: And I -- and on the notice
5 you say that you're -- you'll be representing
6 yourself along with your brother?

7 MR. JARVIS STEWART: Yeah.

8 THE COURT: Okay, so that -- that -- that
9 doesn't mean you won't get to ask questions if you
10 wish to --

11 MR. JAMES STEWART: Oh, okay.

12 THE COURT: -- because you're -- you're
13 also charged.

14 MR. JAMES STEWART: Yes.

15 THE COURT: I'll just explain the usual
16 process in -- in the court. First of all, because I
17 received this -- this *Charter* notice, what we do is
18 have -- it's usually -- it's called a *voir dire*.
19 But what it is -- is -- is the -- all of the
20 circumstances regarding the breach of the *Charter*
21 -- strictly speaking, you have to prove those, so
22 -- but you do it through the Crown's case. And so
23 what the -- what we traditionally do in this court
24 is we have the *voir dire* on that at the same time as
25 we have the trial. So the two are, sort of, melded
26 together. And they -- what -- and it's for me to

1 sort it out at -- at the end, what evidence applies
2 to what, and what -- what doesn't. And so we just
3 run it like a regular trial. And -- and -- but it
4 -- but you're entitled to ask questions about the
5 *Charter* breach things when it's your turn to ask
6 questions. Okay?

7 MR. JARVIS STEWART: Yeah.

8 THE COURT: So that's -- that's the
9 process that we're going to follow with regard to
10 that *Charter* -- the *Charter* application. And that's
11 the usual one we always follow. And that -- and
12 that seems to work the best.

13 MR. JARVIS STEWART: Okay. Thank you.

14 THE COURT: Secondly, the -- I don't know
15 if you've had trials before or seen a trial, but I
16 -- when you're -- when you represent yourself, we
17 run the trial the same way as -- as when -- when
18 -- as if you had a lawyer --

19 MR. JARVIS STEWART: Mmhmm.

20 THE COURT: -- except -- with a couple of
21 exceptions. First of all, the usual process
22 applies. The prosecutor's job is -- is to call his
23 witnesses first. He'll call their first -- his
24 first witness. And I don't know who it is, but he's
25 told me he has five police officers, so it's
26 probably going to be a police officer. So he'll

1 call that witness first. The witness will testify.
2 Well, he'll -- he'll lead the witness through their
3 -- their -- what we call a direct examination, his
4 evidence.

5 Then you each have the
6 opportunity to cross-examine the witness, if you
7 want, or just you, if you want. It's up to you.
8 But you have the -- you have the opportunity then to
9 ask that witness questions. And that's all. Okay?

10 MR. JARVIS STEWART: (No audible response.)

11 THE COURT: I don't want to hear any
12 statements about what you think happened and all of
13 this. You just get to ask questions. Then the
14 second -- then he calls his next witness. And when
15 -- he calls -- well, and you go through each one,
16 just like that.

17 And when he's done, then you
18 get an opportunity to call your own witnesses,
19 whether it's yourself or someone else or some --
20 something like that.

21 MR. JARVIS STEWART: Okay.

22 THE COURT: And that's when I hear your
23 side of it. So, first, we get the Crown's side in,
24 then we get your side in. And then we do it that
25 way.

26 MR. JARVIS STEWART: Okay.

1 THE COURT: Are there any questions?

2 MR. JARVIS STEWART: I do, actually. Just --

3 THE COURT: Sure.

4 MR. JARVIS STEWART: -- with all -- with all due
5 respect, I don't mean to -- to --

6 THE COURT: No, you just --

7 MR. JARVIS STEWART: -- confront you --

8 THE COURT: -- ask your question.

9 MR. JARVIS STEWART: -- on procedure, but --

10 THE COURT: That's what I'm here for.

11 MR. JARVIS STEWART: -- I'm -- I'm pretty sure I
12 can prove *prima facie* -- at first glance that these
13 men, the witnesses have violated my rights.

14 THE COURT: Well, that's okay --

15 MR. JARVIS STEWART: I -- I can --

16 THE COURT: -- but --

17 MR. JARVIS STEWART: -- prove --

18 THE COURT: -- but that isn't the way it
19 works. They -- they testify first on the --

20 MR. JARVIS STEWART: Okay.

21 THE COURT: -- on the --

22 MR. JARVIS STEWART: Fair enough.

23 THE COURT: -- charge.

24 MR. JARVIS STEWART: Fair enough. I just wanted
25 to put that on the record. Thank you very much.

26 THE COURT: Well, that's okay. You --

1 the -- so I'm going to stick to that procedure
2 because that's -- that's what --

3 MR. JARVIS STEWART: Okay.

4 THE COURT: -- because I get in trouble
5 with the Court of Appeal if I don't.

6 MR. JARVIS STEWART: Sure.

7 THE COURT: Okay, so I'm going to stick
8 to that procedure, and the prosecutor -- I'll
9 -- I'll ask him to stick that procedure, too. So
10 that's the way we're going to do it. And let me see
11 if there's anything else. Yes, you have paper and
12 all of that, you're all set, you've got everything
13 you need?

14 MR. JARVIS STEWART: Yeah, I guess, yeah.

15 THE COURT: Okay. All right, well, let's
16 go ahead then.

17 MR. PASHOVITZ: And just if I may, Your
18 Honour, as indicated earlier, we were having a
19 series of case managements. The last one -- I just
20 want to confirm, I did mail disclosure dated
21 April 9th to both Mr. Jarvis Stewart and Mr. James
22 Stewart. I just didn't know if they had received
23 that or not yet?

24 MR. JARVIS STEWART: Yeah.

25 MR. PASHOVITZ: They live out of town, so --
26 okay.

1 MR. JAMES STEWART: What is it --

2 THE COURT: What is it?

3 MR. JAMES STEWART: -- in relation to?

4 THE COURT: Yes.

5 MR. JAMES STEWART: I mean, we've --

6 THE COURT: Why don't you --

7 MR. PASHOVITZ: The --

8 THE COURT: -- show it to them now?

9 MR. PASHOVITZ: I'll provide it to them, now,

10 Your Honour, and the file copy of my letter. The

11 last case management led to a request for further

12 information about in-car camera systems for various

13 police cars.

14 THE COURT: Oh, yes.

15 MR. PASHOVITZ: So that's what's been

16 provided this morning to them. It was mailed last

17 week.

18 THE COURT: Well, have you given it to

19 them now?

20 MR. PASHOVITZ: I'm giving it to them now,

21 yes.

22 THE COURT: Well, go ahead.

23 MR. PASHOVITZ: So I'll just do that.

24 MR. JARVIS STEWART: It's seven months late.

25 MR. PASHOVITZ: And the Crown is ready to

26 proceed, Your Honour.

- 1 THE COURT: All right, go ahead.
- 2 MR. PASHOVITZ: I'll call as my first witness
- 3 -- oh, just procedurally, Your Honour, two different
- 4 Informations, there's one against Jarvis Stewart and
- 5 one against James Stewart. They're all as a result
- 6 of the same incident, so what the Crown is proposing
- 7 -- I believe we ironed this out at the earlier case
- 8 management -- some of the earlier ones I wasn't
- 9 Crown on -- to proceed on Information ending 280
- 10 against Jarvis Stewart, and then apply the evidence
- 11 to Information ending 281 against James Stewart --
- 12 THE COURT: Well, I'll --
- 13 MR. PASHOVITZ: -- Your Honour.
- 14 THE COURT: -- hear all of the evidence
- 15 on both Informations at the same time.
- 16 MR. PASHOVITZ: And -- and that's fine, as
- 17 well --
- 18 THE COURT: All right.
- 19 MR. PASHOVITZ: -- Your Honour. Just to
- 20 avoid a multiplicity of proceedings. So I will get
- 21 Constable Keating, Your Honour.
- 22 THE COURT: All right. Yes?
- 23 COURT CLERK: Can I just ask a question?
- 24 What exhibits were entered, would you like me to
- 25 enter them all on both of those individuals?
- 26 THE COURT: Yes, I'm hearing --

1 COURT CLERK: They're (inaudible) --
2 THE COURT: -- at the same time.
3 COURT CLERK: -- at the same time?
4 THE COURT: Yes.
5 COURT CLERK: Okay.
6 MR. PASHOVITZ: Thank you.
7 THE COURT: Yes. I'd better turn that
8 on, or I won't be able to hear a thing.
9 MR. PASHOVITZ: And I -- just before I go
10 -- and I apologize for this, Your Honour. I do
11 anticipate playing one of the in-car camera videos
12 during the proceedings. I just didn't want to lose
13 this, and have to start it all up again, so --
14 THE COURT: Just --
15 MR. PASHOVITZ: -- it will be done --
16 THE COURT: -- just -- just --
17 MR. PASHOVITZ: -- for the first witness.
18 THE COURT: -- go ahead. Let's get
19 going.
20 COURT CLERK: Would you prefer to give your
21 -- state your full name for the record, please?
22 THE WITNESS: It's Constable Gordon James
23 Keating, G-O-R-D-O-N, the surname is K-E-A-T-I-N-G.
24
25 GORDON JAMES KEATING, having been
26 duly SWORN on Voir Dire, states:___
27 COURT CLERK: Thank you.

1 MR. PASHOVITZ: And just on that note, Your
2 Honour -- again, as you've indicated, we're
3 proceeding on a *voir dire* --
4 THE COURT: And trial.
5 MR. PASHOVITZ: -- and trial.
6 COURT CLERK: I didn't -- I'm sorry, Your
7 Honour.
8 THE COURT: No, I don't -- I don't have
9 any separate swearing on the *voir dire*.
10 COURT CLERK: Oh, so I don't need to
11 re-swear him?
12 THE COURT: Yes.
13 COURT CLERK: Okay, thank you.
14 MR. PASHOVITZ: Okay. Thank you, Your
15 Honour.

16 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR DIRE:

17 Q Good morning, Constable.
18 A Good morning.
19 Q You're employed as a constable with the Saskatoon
20 Police Service --
21 A That --
22 Q -- is that correct?
23 A -- that's correct.
24 Q And you're a peace officer in and for the Province
25 of Saskatchewan; is that correct?
26 A That's correct.

- 1 Q How long have you been a peace officer, Constable?
- 2 A December 7th, 2009 begins my employment with
- 3 Saskatoon Police Service.
- 4 Q Okay, very good.
- 5 A Prior to that, I was a police officer in Nova
- 6 Scotia.
- 7 Q With which police service in Nova Scotia?
- 8 A The New Glasgow Police Service, from May of 2009
- 9 until December.
- 10 Q Okay. I'll get you to speak up nice and loud, too,
- 11 because we're in a large courtroom, and we're being
- 12 recorded, as well, too. Were -- were -- were you on
- 13 active duty on August 24th, 2012?
- 14 A I was.
- 15 Q Here in Saskatoon, Saskatchewan?
- 16 A That's correct.
- 17 Q What were the nature of your duties on that
- 18 particular day?
- 19 A I'm assigned to the traffic section of Saskatoon
- 20 Police Service. And I was -- I was doing traffic
- 21 enforcement on 8th Street on August 24th, 2012.
- 22 Q Were you working alone or were you with a partner?
- 23 A I was alone at that time.
- 24 Q Okay. And I'm told there's different shifts with
- 25 the Saskatoon Police Service. Was this a day shift
- 26 or a night shift or some other type of shift or --

- 1 A This was a night shift.
- 2 Q Okay. What type of uniform were you wearing and
3 -- the same one as you're wearing today?
- 4 A I was wearing the same uniform I'm wearing today,
5 yes.
- 6 Q Okay, your working Saskatoon Police Service uniform,
7 I --
- 8 A That's --
- 9 Q -- take it?
- 10 A -- correct.
- 11 Q What type of police car were you operating that day?
- 12 A I was operating a tan coloured traffic unit, which
13 is an unmarked Ford Crown Victoria. It has blue and
14 red lights placed in the upper windshield. There
15 are blue and red strobe lights in the headlights.
16 There's blue and red strobe lights on the side
17 mirrors, and a directional arrow in the back
18 windshield, blue and red lights in the back
19 windshield, flashing red strobe lights in the brake
20 lights, and blue and red flashing strobe lights in
21 the white reverse light section on the rear of the
22 Crown Victoria.
- 23 Q Okay. Anything as far as siren ability, as well, or
24 not?
- 25 A It's also equipped with emergency sirens.
- 26 Q And was it equipped with -- and I'm probably using

1 the wrong term here -- an in-car camera system?

2 A It is -- it was, yes.

3 Q Okay. Was it operating on that particular day?

4 A The in-car camera turns on when the emergency lights
5 are activated. And to my knowledge, it was
6 operational that day.

7 Q Okay, well, Constable, at this time, it may be best
8 to tell the Court what caught your attention, where
9 you were, what you did, take us all the way
10 through?

11 A (No audible response.)

12 Q I'm sure --

13 A (No audible response.)

14 THE COURT: Were you --

15 Q -- I'll have a few --

16 A (No audible response.)

17 THE COURT: -- were you --

18 Q -- more questions --

19 A (No audible response.)

20 THE COURT: -- alone?

21 Q -- for you, when you're done.

22 A I was alone, yes, Your Honour. On August 24th, 2012,
23 at approximately 7:00 p.m., I was eastbound in
24 traffic unit 477 on 8th Street. I was in the
25 left-hand lane, approaching Grosvenor Avenue. At
26 this time, I noted a white Toyota Celica in the left

1 turn lane to enter the Shopper's Drug Mart parking
2 lot located at 8th and Grosvenor. At this time, I
3 noted a continuous sticker in the bottom right-hand
4 corner of the license plate.

5 THE COURT: I'm sorry, a what?

6 THE WITNESS: A white SGI continuous
7 sticker, or what was -- is a homemade sticker that
8 was meant to look like an SGI continuous sticker.

9 THE COURT: What did you notice?

10 THE WITNESS: (No audible response.)

11 THE COURT: Were you -- did you notice it
12 was homemade?

13 THE WITNESS: I noticed that there was
14 something odd about the sticker, Your Honour. It
15 wasn't a -- it didn't appear to be an SGI issued
16 continuous sticker.

17 I ran the -- the plate on
18 SGI. And it came back to a Honda Civic that was
19 -- had expired registration in 2010. I confirmed
20 that the plate that was on the back of the Toyota
21 Celica was the plate that I had run, and it was. It
22 still came back to a Honda Civic.

23 So I pulled in-behind the
24 Toyota Celica in the left-hand turn lane on 8th and
25 Grosvenor, and waited for the car to make a legal
26 left-hand turn on a green light, and activated my

1 emergency red and blue lights to initiate a traffic
2 stop.

3 At this time, the car
4 proceeded into the parking lot, making a right-hand
5 turn, eastbound through the separation in the
6 concrete median, and then made a left-hand turn, and
7 then a left-hand turn into a parking lot (sic) -- a
8 parking spot facing west-bound in front of the
9 Shopper's Drug Mart.

10 At this time, I noted that
11 the driver's side door -- or sorry -- the passenger
12 side door opened first. And a male exited the
13 vehicle. And then the driver's side door opened,
14 and the male driver exited the vehicle. At this
15 time, I used the loud haler in 477, otherwise known
16 as the loudspeaker, to instruct both occupants to
17 get back into the vehicle.

18 As it was August and I had my
19 driver's side window down, I observed and heard as
20 the passenger, who is, now, known to me as James
21 Stewart, told me to "Fuck off", and kept walking. I
22 exited my patrol vehicle, and observed as the driver
23 walked towards me. I told him to get back in his
24 vehicle. He failed to do so, walked by me, brushing
25 his left shoulder into my left shoulder as he walked
26 by. I instructed the male, who is, now, known to me

1 as Jarvis Stewart, to stop, requested his driver's
2 license. He refused and began yelling at me that I
3 had no right to detain him.

4 At this time, James Stewart,
5 who was approximately two car lengths away from my
6 location, began telling me to go fuck myself.

7 I again asked Jarvis Stewart
8 for his driver's license, explained that he had been
9 stopped -- it was a traffic stop for the misuse of
10 plates. He continued to ask me if I was a peace
11 officer or a police officer and would not provide me
12 with his name or any photo identification. I
13 explained to Mr. Stewart, if he didn't have his
14 driver's license on him, his name and date of birth
15 would be sufficient, as I could run it on my inboard
16 -- onboard computer through the SGI system.

17 And Mr. Stewart failed to
18 provide his name, date of birth, or any type of
19 photo identification. He continued to ask me if I
20 was a police officer or a peace officer. He
21 continued to tell me that he didn't believe in our
22 laws or that I had any right to detain him, and
23 attempted to walk away.

24 I informed Jarvis Stewart
25 that if he did not provide me with his
26 identification or did not adhere to my commands with

1 regards to the traffic stop that he would be
2 arrested for obstruction. I gave Mr. Stewart ample
3 opportunities to provide his name, date of birth, or
4 photo ID. He continually stated -- asked me if I
5 was a peace officer or a police officer, and
6 continued to rant about how he didn't believe in our
7 laws. All the while his brother was continually
8 telling me to fuck off.

9 Mr. Stewart made a 180 degree
10 turn, and began walking towards Shopper's Drug Mart.
11 I again --

12 THE COURT: I'm sorry, which Mr.
13 Stewart?

14 THE WITNESS: -- informed him --

15 THE COURT: I apologize.

16 THE WITNESS: I'm sorry. Jarvis Stewart
17 made the 180 degree turn and started walking towards
18 Shopper's Drug Mart. I again asked him for his
19 identification, again explained to him the traffic
20 stop, and if he continued to walk away, that he
21 would be arrested for obstruction.

22 He again told me to fuck off
23 and that he had -- I had no right to detain him.
24 And at this time, I informed him that he was under
25 arrest for obstruction. I took Mr. Jarvis Stewart's
26 left wrist, placed him in a handcuff, and he

1 attempted -- attempted to pull away. I gained
2 control of his right wrist, placed it in a handcuff,
3 and at this time, he was arrested for obstruction.

4 While arresting Mr. Jarvis
5 Stewart, James Stewart began marching towards me in
6 an aggressive manner. He had both fists clenched.
7 His teeth were clenched. He began swearing at me to
8 let his brother go.

9 As I had one individual in
10 custody and Mr. James Stewart was clearly agitated,
11 I requested back-up to my location, through -- using
12 my portable radio, I contacted our communication
13 centre.

14 It should be noted -- excuse
15 me -- traffic unit 477 that I was operating that
16 day, we don't have a secure area to place
17 individuals that are under arrest, so I could not
18 place Mr. Jarvis Stewart in the rear of the patrol
19 car.

20 I maintained my position on
21 the driver's side of 477 with Mr. Jarvis Stewart in
22 custody, and watched James Stewart as he continued
23 to yell and scream in my direction, telling me to
24 let his brother go. He continued -- continually
25 telling me to go fuck myself.

26 Mr. James Stewart walked

1 towards me, again with both fists clenched. At this
2 time, I was unsure if he was going to stop. I
3 raised my right foot in -- in anticipation that he
4 would be charging towards me, and I would be
5 prepared to kick him, to get him away from me. I
6 told him to stop. He did. He turned around, went
7 back towards the Shopper's Drug Mart, continually
8 ranting and swearing, and then came back towards me
9 again.

10 Again I lifted -- lifted my
11 right leg and prepared to kick at him, if he did
12 come too close.

13 MR. PASHOVITZ:

EXAMINATION-IN-CHIEF ON VOIR
14 DIRE CONTINUES:

15 Q I apologize, Constable. I need to interrupt you
16 here before I forget. Can you at this time
17 demonstrate for the Court and all of us what you
18 were doing with the detained individual, and how
19 your right leg was positioned for us, please?

20 A Yeah, sure. If 477 is here at an angle, I had
21 Mr. Jarvis Stewart in handcuffs right here.
22 Mr. James Stewart was walking towards me, clenched
23 -- clenched fists, clenched teeth. He's sweating
24 profusely. As he got to about where you are, I
25 raised my right leg, simply like this, prepared to
26 kick at him, if he got too close. Like I said, I

1 told him to stop. He stopped, turned around, went
2 back. I -- he made it to the Shopper's Drug Mart
3 awning, where he made another 180 degree turn,
4 continually ranting and swearing, and came back
5 towards me again in the aggressive manner, both
6 fists clenched, teeth clenched, sweating profusely.
7 I then lifted my right leg. If he got too close, I
8 was prepared to kick at him.

9 Q I'll just stop you there, Constable, because we're
10 leaving a record here. So you're indicating that
11 your police car number 477 was on your left-hand
12 side when you --

13 A That's correct.

14 Q -- motioned just now?

15 A That's correct. It would be right here.

16 Q Okay. And when you said about from you to me, we're
17 talking about six to eight feet --

18 A Yes.

19 Q -- would you agree?

20 A I would agree, it's approximately eight feet.

21 Q And how high off the ground did you lift your foot?

22 A (No audible response.)

23 Q You can use centimetres or inches, whichever is
24 easiest for you.

25 A Six to seven inches.

26 Q Okay. Please, proceed from then on?

1 A Mr. James Stewart then began circling around in
2 front of me, approximately from where you are, eight
3 to ten feet, with his fists still clenched, still
4 yelling and screaming. And at this time, I heard
5 what I believed to be a police siren rapidly
6 approaching my -- my location. I noted traffic unit
7 474, which is an unmarked blue Crown Victoria,
8 eastbound on 8th Street. It pulled into the parking
9 lot with its emergency lights and siren activated.
10 It stopped approximately three car lengths from my
11 location. I observed as Constable Schaefer exited
12 the driver's side, and Constable McAvoy exited the
13 passenger side of 474. At this time, I told them
14 that Mr. James Stewart was arrestable for
15 obstruction, and observed as Constable Schaefer told
16 Mr. James Stewart to stop. It should be noted that
17 when 474 entered the parking lot, James Stewart
18 yelled, "Here come the fucking heroes." Mr. Stewart
19 -- James Stewart began walking westbound through the
20 parking lot. Constable Schaefer again told him to
21 stop. He ignored that command. Constable McAvoy
22 and Constable Schaefer attempted to arrest him. I
23 observed as they struggled with him. Mr. Stewart
24 -- James Stewart began flailing around his arms and
25 legs, and ended up on the -- the ground, where I
26 noticed that he immediately placed both his left and

1 right hands in the pockets of his hooded sweater,
2 and would not produce his hands for Constable
3 Schaefer and Constable McAvoy. I watched as he
4 continued to flail around, and they struggled to
5 gain control of him. I noted a marked police car
6 enter the parking lot, and Constable Hounsell and
7 Constable Boyce exited that police car. They took
8 custody of Jarvis Stewart for me, as they have a
9 secure area in the rear of their patrol vehicle to
10 house arrested persons. I then attended to
11 Constable Schaefer and Constable McAvoy, and
12 assisted with gaining control of James Stewart and
13 placing him in handcuffs. Mr. James Stewart was
14 subsequently placed in the rear of Constable Smith's
15 police car, who arrived on scene shortly after.

16 Q Okay. I'll just take you back then. Which street
17 did you observe this vehicle on?

18 A The Toyota Celica I had observed in the left-hand
19 turn lane on 8th Street, headed eastbound. He was
20 indicating to make a northbound turn into the
21 Shopper's Drug Mart parking lot located at 8th and
22 Grosvenor.

23 Q We're talking about Saskatoon, Saskatchewan here?

24 A We are.

25 Q Okay. 8th Street, a public highway as defined by the
26 *Traffic Safety Act*?

- 1 A It is.
- 2 Q It may be best for you just to carry on from what
3 happened after you just finished there. Did you
4 take any steps to look inside the vehicle that you
5 had stopped, and if so, tell us about that?
- 6 A I still had not identified either Mr. Jarvis Stewart
7 or James Stewart, as they had failed to provide
8 their date of birth, their names, or any type of
9 photo identification. Constable McAvoy had attended
10 to the Toyota Celica with the -- the improper plate
11 on it. He had located a piece of paper --
- 12 Q And did he eventually show you this, as well, too --
- 13 A He did.
- 14 Q -- or not? Okay, sorry. Carry on then.
- 15 A It was an Affidavit signed by a James Stewart, and
16 there was one signed by a Jarvis Stewart. I used
17 SGI on my computer inside my car, and confirmed that
18 the photo ID -- or the photo on SGI of Jarvis
19 Stewart was the -- the male driver of the vehicle
20 that I arrested for obstruction. And James Stewart
21 also had a photo on SGI. And that the individual
22 that was in the passenger seat.
- 23 Q Are those same two individuals here in the courtroom
24 today?
- 25 A Yes. Jarvis Stewart is wearing a yellow and red
26 rugby shirt. And James Stewart is wearing a grey

1 hooded sweater.

2 Q Thank you.

3 A (No audible response.)

4 MR. PASHOVITZ: Identifying the accused for
5 the record, Your Honour.

6 Q If you could carry on from what you did after that
7 then, Constable?

8 A I then attended to Jarvis Stewart, who was in the
9 back of Constable Hounsell and Constable Boyce's
10 police vehicle. I told him that he -- that he was
11 arrested for obstruction, I read him his *Charter*
12 rights and caution and police warning. For the
13 direct quote, I'd have to refer to my notes.

14 Q That's fine.

15 A I then attended to Constable Smith's patrol vehicle,
16 where James Stewart was being detained. I told him
17 that he was under arrest for obstruction and, as
18 well, resisting arrest. I read him his *Charter*
19 rights and caution and police warning.

20 Q Before I move on to the next area, did you at that
21 point in time tell them that you had found out what
22 their names were, or did they at that point in time
23 provide you with their names?

24 A They never --

25 Q Or can --

26 A -- provided me with their names. I told him that I

1 had gotten their names through the SGI system.

2 Q Okay. What happened after those --

3 A Excuse me.

4 Q -- pieces of information were provided to each of
5 them?

6 A Again, for the exact quotes, I read them their
7 *Charter* rights and caution and police warning. For
8 the exact quotes, I'd have to refer to my notes.
9 Then I attended to the Toyota Celica, where I
10 obtained the VIN number off the front left-hand dash
11 area of the vehicle. I -- the CPIC query of that
12 vehicle showed that it hadn't been registered since
13 2006. I then seized the plate off the back of the
14 Toyota Celica, which I've brought to court today, as
15 it belonged to a Honda Civic that had not been
16 registered since 2010. Sergeant Spot of the traffic
17 section had arrived on scene, and he was going to
18 stay with the vehicle until it was towed.

19 Q What type of vehicle did he arrive in, do you
20 remember off the top of your head or not?

21 A That was a -- that's a white unmarked Chevy
22 Silverado pick-up truck.

23 Q Okay. Please, proceed.

24 A It is equipped with emergency red and blue lights,
25 as well.

26 Q Okay.

- 1 A I then attended to SPS detention, where both James
2 and Jarvis Stewart had been taken by Constable Boyce
3 and Constable Hounsell and Constable Smith. A CPIC
4 query of Jarvis Stewart --
- 5 Q Oh, that's --
- 6 A -- revealed that he was --
- 7 Q -- that's okay. Sorry. Did you take any more steps
8 to look inside the Toyota vehicle, as far as finding
9 any other pieces of paper with anybody's names on
10 them or not?
- 11 A There were SOTs issued to Jarvis Stewart.
- 12 Q I'm sorry, for my benefit, what does -- what are
13 SOTs?
- 14 A Summary Offence Tickets.
- 15 Q Oh, okay.
- 16 A They're involved -- Mr. Stewart had a traffic stop
17 was issued -- I believe there was three tickets.
18 I'd have to refer to them. They're -- I brought
19 them here today. They were issued to him alone, and
20 he had --
- 21 Q And you have those here with you today?
- 22 A I do. They're --
- 23 Q And that's --
- 24 A -- in this --
- 25 Q -- fine.
- 26 A -- envelope.

- 1 Q I don't need to -- to jog your memory about those.
2 I'll ask you about in a bit, so --
- 3 A Sure.
- 4 Q So when you were telling these individuals that they
5 were under arrest, were you reading that from a card
6 at all, or was this all just off the top of your
7 head, due to the nature of the situation?
- 8 A That they were under arrest?
- 9 Q Earlier on. I apologize. When you were telling
10 them to stop, when you were telling them that you
11 would arrest them for obstruction?
- 12 A I didn't read from a card, no.
- 13 Q Okay.
- 14 A I read their *Charter* rights and caution and the
15 police warning from the stamp that's inside my
16 police-issued notebook.
- 17 Q Okay. When you were being asked whether you were a
18 peace officer or a police officer, did you give any
19 comments back at all?
- 20 A I told them that I was a police officer.
- 21 Q When you were being told to fuck off, did you give
22 any comments back to that?
- 23 A No, I wasn't -- I had eyes on Mr. James Stewart, as
24 he was, as I had mentioned, a couple car lengths
25 away from my location. I was dealing with the
26 driver, Jarvis Stewart, as I was attempting to

1 identify the driver, and my traffic investigation
2 with regards to the misuse of the plates, and
3 finding out if this vehicle was actually registered
4 and if Mr. Jarvis Stewart had a driver's license. I
5 maintained visual contact with Mr. Stewart.
6 However, I didn't engage in any type of conversation
7 at the time.

8 Q Okay. When exactly did you activate your emergency
9 lights, Constable?

10 A I was approximately a quarter of the way through my
11 left-hand turn after I had observed Mr. Jarvis
12 Stewart make a safe and legal left-hand turn into
13 the parking lot. I made sure the intersection was
14 clear, made my left-hand turn, and as I made my
15 -- about a quarter of the way through, I activated
16 my -- my emergency lights. I also gave a quick
17 chirp of the siren, to get people's attention.

18 Q Do you --

19 A I did the --

20 Q -- remember when -- I'm sorry to interrupt. Do you
21 remember you did that, the chirp of the siren?

22 A It would be at the same time I initially turned the
23 lights on. It's my practice, in order to get the
24 attention of drivers -- I do this at every single
25 traffic stop. I turn the lights on, which is two
26 clicks on the -- on the lights and siren activation

1 system. Two clicks turns on both the rear and the
2 front lights. The third click over provides a chirp
3 of the siren. And if you leave that on, then the
4 siren continually stays on. I turned it over all
5 the way to the third one, and let the siren chirp,
6 and then I put it back to the second position, which
7 keeps the front and rear lights going.

8 Q Okay. So --

9 A I did -- this is my practice. I've done this since
10 I became a police officer.

11 Q With respect to this particular stop, which -- which
12 emergency lights were flashing then, from the time
13 you started them going, until the time you stopped
14 in the parking lot?

15 A The first click activates all of the rear lights, so
16 anything in the back windshield, the back brake
17 lights, the two strobes will start. Then the red
18 and blue flashing strobe lights that are in the
19 white reverse lights in the back. I turned it to
20 the second position, which eliminates those, as well
21 as the front wigwags, which are in the headlights,
22 the front red and blue -- blue -- blue strobe
23 lights, which are on the corner markers, the front
24 red and blue strobe lights on the side mirrors, as
25 well as the bigger red and blue lights that are in
26 the front windshield.

- 1 Q Okay. And how long did you let the siren chirp for,
2 and how many times did you chirp the siren, to use
3 your phrase, if you can remember?
- 4 A The siren chirped for two seconds, just one, two,
5 just to get the driver's attention.
- 6 Q And did you chirp the siren again during this call
7 or not?
- 8 A No. Because Mr. Jarvis Stewart, who was operating
9 the vehicle, made his left-hand turn and then made
10 the right-hand turn and pulled into the parking spot
11 facing westbound.
- 12 Q Where did you position your police car in light of
13 that?
- 14 A Excuse me. It's -- the parking lot at Shopper's
15 Drug Mart where he pulled in could only afford me to
16 park my -- park my vehicle at a -- almost a
17 northwest angle, so the front of my Crown Vic would
18 have been -- the front left portion of the bumper
19 would have been approximately in the middle of
20 Mr. Stewart's Toyota Celica, at an angle.
- 21 Q And how far back was your police car from his
22 bumper, approximately?
- 23 A Probably five to -- five, six feet.
- 24 Q Okay. How did you communicate to the driver of the
25 vehicle, were you using the voice you're using, now,
26 or were you using a megaphone or something like that

1 or --

2 A Initially when I conduct a traffic stop, it's my
3 practice I use at every traffic stop --

4 THE COURT: Well, just tell me what you
5 did then.

6 THE WITNESS: Okay. I attempted to make
7 the -- do a CPIC query of the plate, which is on a
8 different screen on my computer. At this time I
9 noted that the passenger and the driver were both
10 getting out of the vehicle. I used the megaphone or
11 loud haler in my police vehicle to tell them to both
12 get back into the vehicle. And then the sequence of
13 events that I explained earlier.

14 Q Okay. And tell us about the use of this megaphone
15 or loud haler, and tell us what you said and --

16 A Excuse me. It's a -- it's a speaker that's mounted
17 in the front -- front area of the patrol vehicle. I
18 used the -- the microphone inside and told
19 -- instructed the -- the driver and the passenger to
20 get back in the vehicle, and I simple said, "Get
21 back in the vehicle."

22 Q That's the phrase that you used that day?

23 A Yes.

24 Q How loud of a haler are we talking about here?

25 A I'm not sure what the actual amplification is. It's
26 loud enough that people at traffic stops could

- 1 understand clearly.
- 2 Q How many times did you say, "Get back in your
3 vehicle"?
- 4 A Just once because -- I believe --
- 5 Q Through that loud haler, I should say. I apologize.
- 6 A -- I believe it was just once. And then the two of
7 them exited the vehicle -- were already out of the
8 vehicle, and I just got in my police vehicle, and
9 told them to get back in.
- 10 Q So when you used your loud haler, you were still
11 seated in the driver's seat of your police car; is
12 that --
- 13 A That's --
- 14 Q -- correct?
- 15 A -- correct.
- 16 Q Was the --
- 17 A So --
- 18 Q -- door of your police car open yet or not?
- 19 A Not yet.
- 20 Q Did your emergency lights remain flashing?
- 21 A Yes, they did through the entire time.
- 22 Q At this time I'm asking you to focus in on the
23 driver of the vehicle. Again, the name that you
24 eventually found out that -- to be his was whose?
- 25 A Jarvis.
- 26 Q Okay, so who spoke to whom first, once he exits the

- 1 driver's side of that vehicle?
- 2 A (No audible response.)
- 3 Q Did he say something to you first or did you say
4 something to him first with your own voice, as
5 opposed to the loud haler that you'd just used?
- 6 A No, I told him to get back in the vehicle.
- 7 Q What response did you receive?
- 8 A I'd have to refer to my notes for the exact
9 phrasing, but Mr. Stewart just stated -- excuse me
10 -- stated that I had no right to detain him, pushed
11 by me with his left shoulder, making contact with my
12 -- my left shoulder, and then the sequence of events
13 that I've explained earlier.
- 14 Q Okay. So where were you positioned when the
15 shoulder brush --
- 16 A Excuse me. I would have exited my patrol vehicle
17 through the driver's side. I closed the driver
18 door. I would have been towards the front fender of
19 my police vehicle, on the driver's side.
- 20 Q Okay. And whose shoulder touched whose?
- 21 A Mr. Jarvis Stewart was attempting to walk by me.
22 His left shoulder made contact with my left
23 shoulder --
- 24 Q And what --
- 25 A -- or left arm.
- 26 Q Okay. What did you say as a result of that?

- 1 A That's when I started to explain to Mr. Stewart
2 about the -- the traffic stop, asking him to stop
3 and provide identification, his name, date of
4 birth.
- 5 Q Okay. Did you tell him the reason for your traffic
6 stop?
- 7 A Yes. Misuse of plates.
- 8 Q Okay. I'm sorry, what was that again?
- 9 A It's misuse of plates.
- 10 Q Did you --
- 11 A I told him -- I told him that -- I explained that
12 the -- the vehicle description did not match the
13 registration to that plate.
- 14 Q Did you get a response back from him as a result of
15 providing that information?
- 16 A No. There was no comment on -- on the actual
17 traffic stop itself. He began talking about how I
18 had no right to detain him. And he immediately
19 started questioning whether or not I was a peace
20 officer or a police officer.
- 21 Q So what did you say in response to that?
- 22 A I informed him --
- 23 Q I'm sorry. This may be painstaking, but I just need
24 to know --
- 25 A No, that's --
- 26 Q -- exactly --

- 1 A -- okay.
- 2 Q -- what you said, exactly what the responses were.
- 3 You did --
- 4 A I --
- 5 Q -- the narrative initially, but --
- 6 A -- I informed him that I was a police officer, and I
- 7 again explained to him the reason for the traffic
- 8 stop and requested his driver's license or his name
- 9 and date of birth, so I could look it up on SGI.
- 10 Q Okay. And the response you received to that was?
- 11 A No, he just -- he continually stated non-factual
- 12 laws, went on about I had no right to detain him, he
- 13 didn't need a driver's license because they were
- 14 travelling on the roads and not using them,
- 15 continued on in -- with that -- those phrases, and
- 16 then attempted to walk away.
- 17 Q Okay, so when you say, "Attempted to walk away,"
- 18 describe exactly what you saw him doing for the
- 19 Court?
- 20 A He brushed by me, like I said, then engaged me in
- 21 conversation after he'd walked by. When he -- I
- 22 asked again for the driver's license or name and
- 23 date of birth, he made a 180 degree turn, and
- 24 started walking toward Shopper's -- excuse me
- 25 -- Shopper's Drug Mart.
- 26 Q What did you say to him next?

- 1 A That's when I explained that if he didn't provide me
2 with his name, date of birth, or photo
3 identification, I'd arrest him for obstruction.
- 4 Q Okay. And did you say anything more than that, or
5 it just ended by saying, "Obstruction"?
- 6 A No. Just obstruction.
- 7 Q Okay. What response did you get back to that?
- 8 A He came back towards me, continued on with the peace
9 office/police officer questioning, again would not
10 provide name, date of birth, just continued on with
11 the -- the same -- the same phrasing as previous.
- 12 Q Okay. Where was he positioned when this was
13 happening?
- 14 A I would have been by my driver's door, now, on the
15 left-hand side of the vehicle. He was within a foot
16 to two feet away, so right beside the -- the rear
17 passenger side door on the driver's side.
- 18 Q Okay. So he had come back to you then; is that
19 correct?
- 20 A That's correct.
- 21 Q Okay, so then how did that end up?
- 22 A He refused to provide any -- any name or
23 identification, again made a 180 degree turn, and
24 then walked away towards Shopper's Drug Mart.
25 Again, I informed him that if he didn't comply, I
26 would arrest him for obstruction. He continued on.

- 1 And at that time, I informed him, he was under
2 arrest.
- 3 Q Okay. What exactly did you say to him when you
4 -- and then -- I'm sorry, this is what I was getting
5 at. You didn't read that from a card, did you?
- 6 A No.
- 7 Q No?
- 8 A (No audible response.)
- 9 Q But you said that verbally?
- 10 A That's correct.
- 11 Q Do you remember exactly what you said to him?
- 12 A I told him he was under arrest for obstruction.
- 13 Q Okay. And how -- where was he positioned, where
14 were you positioned at that point in time?
- 15 A He was past the rear bumper of my patrol vehicle, so
16 he -- maybe ten to 15 feet away. I had to walk to
17 him to arrest him.
- 18 Q Okay. What direction was he facing?
- 19 A (No audible response.)
- 20 Q Was he still moving or stopped, or do you remember?
- 21 A He was walking towards the front awning of Shopper's
22 Drug Mart, so it would have been eastbound through
23 the parking lot.
- 24 Q Okay. Did you get a response when you said, "I'm
25 arresting you for obstruction?"
- 26 A No.

- 1 Q Tell us what happened after that then, as far as any
2 more --
- 3 A I --
- 4 Q -- comments?
- 5 A -- I took his left arm, the left wrist to place it
6 in a cuff. He tried to pull away. I gained control
7 of his right arm and placed it behind his back,
8 placed the right cuff into -- his right wrist into
9 the right cuff. And then I positioned him next to
10 my patrol vehicle.
- 11 Q Okay. How far back did you have to take him to get
12 him beside the patrol vehicle, approximately how
13 many feet?
- 14 A Back to where the -- the rear passenger door is
15 would be approximately eight to ten feet.
- 16 Q And how did that go, as far as any incidents in that
17 regard or not?
- 18 A No. Mr. Stewart was compliant after being placed in
19 handcuffs.
- 20 Q I'm sorry?
- 21 A Mr. Jarvis Stewart was compliant after being placed
22 in handcuffs.
- 23 Q Okay.
- 24 A He didn't provide his name, but he wasn't
25 resisting.
- 26 Q Okay. Did you say anything more to him at that

1 point in time or did he say any more comments to you
2 at that point in time?

3 A No. Then my focus was on James Stewart because --

4 Q Why?

5 A -- because he was walking aggressively towards me,
6 telling me to let his brother go, telling me to go
7 fuck myself. And I placed Mr. Jarvis Stewart behind
8 me, facing my patrol vehicle, at an angle, and then
9 squared myself off with Mr. James Stewart.

10 Q Okay. When you say "placed", how was Mr. Jarvis
11 Stewart placed as you've described, how was he
12 positioned beside the vehicle?

13 A Oh, I just moved -- motioned and then moved him over
14 to the -- the left, my left, so he was here, away
15 from his brother.

16 Q Okay. Was he placed inside the PC at that point in
17 time?

18 A No.

19 Q No?

20 A I --

21 Q Do you know which direction his face was facing or
22 not?

23 A It would have been northbound.

24 Q Okay, well, sorry, was his face facing towards your
25 vehicle or --

26 A Towards --

- 1 Q -- away from it?
- 2 A -- the vehicle.
- 3 Q Okay. And compliant at that point in time, you
- 4 said?
- 5 A He was compliant.
- 6 Q So tell us more about James Stewart then?
- 7 A James Stewart walked towards me in an aggressive
- 8 manner. He had both fists clenched, his teeth were
- 9 clenched, his forehead was wrinkled. He was
- 10 sweating profusely, yelling and screaming. I told
- 11 him to get back. He kept walking towards me. I
- 12 told him to get back again. That's when I raised my
- 13 right foot off the ground approximately six inches.
- 14 At this time, he made a 180 degree turn, walked back
- 15 towards Shopper's Drug Mart, made it to the awning,
- 16 turned around again, came back towards me, again
- 17 both fists were clenched, still sweating profusely,
- 18 his forehead was wrinkled, demanding I let his
- 19 brother go, continually telling me to go fuck
- 20 myself. Again, I told him to get back. I again
- 21 raised my foot off the ground. And then he started
- 22 just circling approximately eight feet away, six to
- 23 eight feet, just circling around, yelling and
- 24 screaming.
- 25 Q Where was James Stewart when you arrested Jarvis
- 26 Stewart?

- 1 A He was -- I believe he was almost at the awning of
2 the Shopper's Drug Mart, between the -- six to eight
3 feet away from the awning.
- 4 Q Okay. And how far away from you and Jarvis Stewart
5 was James Stewart at that point in time?
- 6 A I'd estimate --
- 7 Q If you want to point to something here --
- 8 A -- I'd estimate --
- 9 Q -- if you want to state in feet?
- 10 A -- three car lengths, two and-a-half to three car
11 lengths.
- 12 Q Okay.
- 13 A When I use car lengths, I mean standard size of the
14 Crown Victorias.
- 15 Q Okay.
- 16 A Two and-a-half to three lengths.
- 17 Q How long did it take -- you said you called for
18 back-up?
- 19 A That's correct.
- 20 Q Approximately how long did it take for back-up to
21 arrive?
- 22 A I'm not sure of their on-scene time, but it couldn't
23 have been any more than a couple of minutes.
- 24 Q Okay.
- 25 A It was a fast response.
- 26 Q All right. What did you see James Stewart do, once

- 1 that back-up police car pulled into --
- 2 A When --
- 3 Q -- right in the --
- 4 A -- 474 was approaching there at the -- the lights at
- 5 8th and Grosvenor, James Stewart took note of them.
- 6 He said, "Here come the fucking heroes," and then
- 7 started walking westbound through the parking lot.
- 8 Q Towards --
- 9 A I believe it's a Wendy's --
- 10 Q Okay.
- 11 A -- that's there.
- 12 Q So is that towards Shopper's Drug Mart, as well?
- 13 A No.
- 14 Q Or away --
- 15 A The opposite --
- 16 Q -- from --
- 17 A -- opposite direction.
- 18 Q Okay.
- 19 A Southwest --
- 20 Q All right.
- 21 A -- bound.
- 22 Q During the call for backup, did you say anything
- 23 about assisting you in arresting anybody at that
- 24 point in time or not or --
- 25 A I'm not sure what -- what quotes I used in calling
- 26 for backup. I remember -- I know that I requested

- 1 another unit attend to my location.
- 2 Q What did you say once those officers did get to the
3 scene or --
- 4 A When Constable Schaefer and Constable McAvoy exited
5 474, I told them to arrest James Stewart for
6 obstruction.
- 7 Q Where was James Stewart when you told Constable
8 Schaefer and Constable McAvoy that information?
- 9 A He was roughly between where my patrol -- patrol
10 vehicle was parked -- 474 was approximately three
11 car lengths away from the rear of mine, so they had
12 just come through the -- the concrete separation in
13 the parking lot. Their PC was facing northbound.
14 He was approximately in the middle of those two
15 police cars, and then began walking westbound.
- 16 Q Okay. So did he begin walking westbound after you
17 told the other two police --
- 18 A After --
- 19 Q -- officers?
- 20 A -- I told them.
- 21 Q Okay. Can you use some, I guess, distances or feet
22 for me, as far as saying how far away the two
23 constables were when you told them to arrest him and
24 -- and where James Stewart was, as far as feet away
25 from you when you told them to arrest him?
- 26 A Constable Schaefer and Constable McAvoy were

1 approximately three car lengths away because they
2 were just exiting their vehicle.

3 Q Okay.

4 A I immediately told them to arrest him -- Mr. James
5 Stewart. He was in the -- well, like I said, I'm
6 estimating he was in the middle, so approximately
7 one and-a-half car lengths between the two vehicles.
8 He was essentially right in the middle.

9 Q Okay. I understand now. I appreciate that. So how
10 far did he get, as far as when you say he, at that
11 point in time, walked away?

12 A He walked towards the -- the concrete median that's
13 there, that's the separation. Constable McAvoy ran
14 after Mr. Stewart. Constable Schafer began running.
15 And they -- they made contact with him before he
16 made it to the -- the roadway of the parking lot.

17 Q Okay.

18 A So approximately ten to 15 feet.

19 Q Did you hear James Stewart saying anything at that
20 point in time?

21 A There was a lot of yelling and screaming. I don't
22 have any specific quotes. I know that Constable
23 Schaefer instructed Mr. James Stewart to stop
24 because I heard that. And then he continued on
25 -- he continued, he didn't listen to Constable
26 Schaefer. And they ended up getting in a physical

- 1 altercation.
- 2 Q Okay. On that note, when this was all said and
3 done, did you observe any visible injuries on Jarvis
4 Stewart?
- 5 A No.
- 6 Q Okay. Did you observe any physical injuries on
7 James Stewart?
- 8 A I didn't, no.
- 9 Q Okay. Did you have any role in the actual arrest,
10 though, of James Stewart?
- 11 A (No audible response.)
- 12 Q Or that was more Constable --
- 13 A No, I --
- 14 Q -- I'm sorry.
- 15 A -- didn't --
- 16 Q When I -- when I talk about that, I mean the
17 physical arrest of --
- 18 A I did --
- 19 Q -- James Stewart?
- 20 A -- assist in -- in gaining control of Mr. Stewart.
21 When I arrived at their location, they already had
22 one cuff on his left wrist. And I assisted with the
23 cuffing procedure with the -- the right wrist.
- 24 Q And we're talking about James Stewart's --
- 25 A That's correct.
- 26 Q -- eventual arrest? Okay. And how was he

- 1 positioned by the time you got to where Schaefer and
2 McAvoy were?
- 3 A He was on the ground, face-down, still struggling
4 with them. I believe he was pointed to the
5 -- heading northwest, his head was to the
6 northwest.
- 7 Q Okay. When you say "ground", what type of -- are we
8 talking about?
- 9 A Asphalt.
- 10 Q Okay. You're with the Saskatoon traffic section; is
11 that correct?
- 12 A That's correct. Since January 1st, 2012.
- 13 Q Okay. Roughly how many traffic stops have you
14 conducted?
- 15 A In my career?
- 16 Q Yes.
- 17 A Thousands, I issued over 1,500 tickets alone last
18 year. In previous years, I don't have the numbers,
19 but I've conducted thousands of traffic stops.
- 20 Q All right. In the course of those traffic stops
21 have you -- stops have you ever had occasion to find
22 a driver without a valid driver's license?
- 23 A Yes.
- 24 Q Have you had occasion to stop a vehicle that turned
25 out not to be properly registered?
- 26 A Yes, I have.

1 Q Have you ever found that someone has had a warrant
2 out for their arrest when you've dealt with them as
3 a driver in a traffic stop?

4 A Yes, I have.

5 Q Constable, it may be best at this time to produce
6 and show to me that license plate that you have
7 there with you?

8 A This is the license plate that was on the -- the
9 back of the Toyota Celica. It's Saskatchewan marker
10 131 HFG.

11 Q If you could turn it, please, towards His Honour,
12 and just describe for the Court what you're talking
13 about when you say that that continuous sticker
14 caught your attention, please?

15 A An SGI issued continuous sticker is -- is white with
16 black lettering and usually has a gloss finish.
17 This appears to be done on a piece of paper, a
18 photocopier, and it appears to be typed out. I'm
19 not sure of the font, but it is not an SGI-issued
20 continuous sticker. It's held on with clear tape,
21 and it is paper, and it appears to be some type of
22 photograph.

23 Q Where was that license plate seized from, Constable?

24 A The back of Jarvis Stewart's white Toyota Celica.

25 Q Okay. I'll obtain that from you then.

26 A (No audible response.)

1 MR. PASHOVITZ: Your Honour, I would propose
2 as the first exhibit in these proceedings to file as
3 Exhibit P-1 Saskatchewan --

4 THE COURT: Where did you get it?

5 THE WITNESS: (No audible response.)

6 MR. PASHOVITZ: I'm sorry. Oh, I apologize.

7 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
8 DIRE CONTINUES:

9 Q Where did you obtain it from today?

10 A I attended to the Saskatoon Police Service exhibits
11 -- excuse me -- and signed it out.

12 Q And what was done with it, I guess, between the time
13 it was seized from the Toyota Celica and the time it
14 was placed into the exhibit room?

15 A From the time it was -- I seized this, personally,
16 off the back of the Toyota Celica. And I personally
17 placed this into exhibits at Saskatoon Police
18 Service, where it's been held until today's date,
19 where I signed it out. And then I brought this
20 exhibit to court today, and it has never left my
21 possession.

22 Q Okay. Thank you, Constable.

23 A (No audible response.)

24 THE COURT: When -- when did you take it
25 off the Celica?

26 THE WITNESS: At the traffic stop --

- 1 THE COURT: Oh, right there --
- 2 THE WITNESS: -- at 8th and --
- 3 THE COURT: -- at Grosvenor --
- 4 THE WITNESS: -- Grosvenor.
- 5 THE COURT: -- Park?
- 6 THE WITNESS: Yes, that's correct.
- 7 THE COURT: Okay. All right. Do you
- 8 have any problem with that being an exhibit?
- 9 MR. JARVIS STEWART: No.
- 10 MR. JAMES STEWART: No.
- 11 THE COURT: Okay. That will be P-1.
- 12 MR. PASHOVITZ: Saskatchewan License Plate
- 13 131 HFG, if the endorsed -- I'm sorry -- the exhibit
- 14 sticker could reflect that?
- 15 COURT CLERK: (No audible response.)
- 16
- 17 EXHIBIT P-1: Saskatchewan
- 18 License Plate 131 HFG
- 19 Seized from the Toyota
- 20 Celica By Constable Gordon
- 21 Keating at the Traffic Stop
- 22 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
- 23 DIRE CONTINUES:
- 24 Q Constable, you've talked about some summary offence
- 25 tickets, as well?
- 26 A That's correct.
- 27 Q Can you tell us about those, and if you have those
- 28 -- or at least copies of those with you today, can
- 29 you produce those for us, as well?

1 A I attended to the Saskatoon Police Service exhibits,
2 where I was provided with this envelope. These are
3 the -- the affidavits and summary offence tickets
4 that were seized from the Toyota Celica on August
5 the 24th, 2012. I placed these into exhibits myself
6 on that date. They have remained at the SPS
7 exhibits until today's date, when I signed them
8 out.

9 Q Okay. And I see that's -- for the record -- a
10 sealed plastic envelope; is that correct?

11 A That's correct.

12 Q With some documents inside?

13 A That's correct.

14 Q Could you --

15 A All of the documents that are inside are listed on
16 the stickers that are on the outside.

17 Q Okay. Just, please, unseal that for me, and just
18 walk us through each document that you have there?

19 A (No audible response.)

20 MR. PASHOVITZ: And I would propose to file
21 each one as an exhibit, as well, too.

22 THE WITNESS: Did you want to address the
23 SOTs first?

24 MR. PASHOVITZ: Please.

25 Q You could start in numerical order, if there's three
26 of them.

- 1 A There are three SOTs -- all three are made out to
2 Jarvis Stewart.
- 3 Q What's the number of the first one?
- 4 A Ticket number 7473276.
- 5 Q And I'm led to believe there's some handwriting on
6 top of that ticket; is that correct?
- 7 A This -- this ticket was issued to Jarvis Stewart on
8 October the 27th, 2011.
- 9 Q Oh, I apologize. Some red handwriting; is that
10 correct?
- 11 A That's correct.
- 12 Q Could you tell the Court what it reads, please?
- 13 A It states:
14
15 "Under protest and duress, I do
16 not consent or wish to contract."
- 17 Q I'll obtain that from you, please.
- 18 A (No audible response.)
- 19 MR. PASHOVITZ: Your Honour, we propose to
20 file as Exhibit P-2 in these proceedings ticket
21 number 7473276, please?
- 22 THE COURT: All right.
- 23 MR. JARVIS STEWART: I -- with all due respect, I
24 don't really see what this has to do with this.
25 This is an old -- an old traffic ticket from another
26 stop years ago. I don't -- I don't see the
27 relevance.

- 1 THE COURT: All right, well, maybe it
2 will become clear.
- 3 MR. JARVIS STEWART: Fair enough.
- 4 THE COURT: But I suspect that the --
5 there was -- because he searched your vehicle to
6 find out the name of the -- information about the
7 identity of the driver, so that's why I think
8 it's --
- 9 MR. JARVIS STEWART: Oh, I --
- 10 THE COURT: -- relevant.
- 11 MR. JARVIS STEWART: Okay, okay.
- 12 THE WITNESS: That's correct --
- 13 MR. JARVIS STEWART: That's --
- 14 THE WITNESS: -- Your Honour.
- 15 MR. JARVIS STEWART: -- that's what he's going to
16 say there.
- 17 THE COURT: Yes. Well, how much weight I
18 give it is another question --
- 19 MR. JARVIS STEWART: Thank you.
- 20 THE COURT: -- but it's an exhibit.
21 P-2.
22
23 EXHIBIT P-2: Ticket Number
24 7473276 Issued to Jarvis
25 Stewart on October 27th, 2011
- 26 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
27 DIRE CONTINUES:
- 28 Q The second ticket there, the number and what's

1 written on it in red, please?

2 A The second ticket number is 7473277. And it, again,
3 states in red handwriting:

4
5 "Under protest --"

6 THE COURT: What --

7 THE WITNESS:
8 "-- and duress, I do not consent
9 or wish to contract."

10 THE COURT: -- what's the date of issue
11 of that one?

12 THE WITNESS: The date --

13 THE COURT: The same --

14 THE WITNESS: -- of --

15 THE COURT: -- date?

16 THE WITNESS: -- the date of issue, Your
17 Honour, is October 27th, 2011.

18 MR. PASHOVITZ: I propose to file it as
19 Exhibit P-3, ticket 7473277.

20 THE COURT: All right.

21
22 EXHIBIT P-3: Ticket Number
23 7473277 Issued to Jarvis
24 Stewart on October 27th, 2011

25 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
26 DIRE CONTINUES:

27 Q And then the next ticket there, Constable?

28 A The third SOT is number 7473278. And, again, issued
29 to Jarvis Stewart on October 27th, 2011. And in red
30 handwriting, it states:

1

2

"Under protest and duress, I do
not consent or wish to contract."

3

4

MR. PASHOVITZ: As Exhibit P-4, Your

5

Honour, I would propose to file as ticket number

6

7473278.

7

THE COURT:

P-4.

8

9

EXHIBIT P-4: Ticket Number

10

7473278 Issued to Jarvis

11

Stewart on October 27th, 2011

12

MR. PASHOVITZ:

Thank you.

13

MR. PASHOVITZ:

EXAMINATION-IN-CHIEF ON VOIR

14

DIRE CONTINUES:

15

Q Is there any documentation there that's in anyone

16

else -- or also reflects names, Constable?

17

A (No audible response.)

18

Q If so, please, tell us what the -- the heading of it

19

is.

20

A There's a letter from the Ministry of Justice and

21

Attorney General dated November 14th, 2011 made out

22

to Jarvis Stewart. And it's concerning returned

23

tickets with the previous three numbers that I just

24

read off.

25

Q And that was found in the vehicle, as well?

26

A It was, yes.

27

MR. PASHOVITZ:

Okay. Exhibit P-5, Your

28

Honour, Saskatchewan Government letter dated

29

November 14th, 2011 to Jarvis Stewart.

1 THE COURT: P-5.
2

3 EXHIBIT P-5: Letter Dated
4 November 14th, 2011 From
5 Ministry of Justice and
6 Attorney General to
7 Jarvis Stewart

8 THE WITNESS: There are also Notice of
9 Affidavits and Notices of Claim and Right to Travel
10 for James Stewart and Jarvis Stewart located inside
11 the -- the vehicle.

12 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
13 DIRE CONTINUES:

14 Q I'll just conclude with those then, Constable. How
15 many pages are we talking about there?

16 A It appears the one for James Stewart is four pages
17 long, and for Jarvis Stewart appears to be three
18 pages long.

19 Q Where were those located?

20 A They were also located with the SOTs inside the
21 Toyota Celica on that date.

22 Q Okay, so what's the first one you have in your hand
23 then?

24 A This --

25 Q The name of it, I should say?

26 A -- it's signed by James Stewart.

27 Q Okay, I'll obtain that from you, please.

28 A (No audible response.)

29 MR. PASHOVITZ: If I could propose to file

1 as the next exhibit in these proceedings Notice
2 of Affidavit, March 26th, 2012, James of the
3 Stewart Clan, Your Honour? Four pages, for the
4 record.

5 THE COURT: P-6.

6
7 EXHIBIT P-6: Notice of
8 Affidavit and Notice of
9 Claim And Right to Travel
10 Written By James of the
11 Stewart Clan Dated
12 March 26th, 2012 (4 pages)

13 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
14 DIRE CONTINUES:

15 Q And then the last document is in whose name?

16 A This is --

17 Q Or --

18 A -- in Jarvis Stewart's name. And it's a Notice and
19 Claim of Right to Travel.

20 Q How many pages again -- sorry?

21 A That's three pages long.

22 MR. PASHOVITZ: Then as the next exhibit in
23 these proceedings?

24 THE COURT: P-7.

25 MR. PASHOVITZ: Yes, thank you. Notice and
26 Claim of Right to Travel for Jarvis Stewart, Your
27 Honour. Three pages, for the record.

28
29 EXHIBIT P-7: Notice of
30 Claim of Right to Travel
31 Written by Jarvis
32 Stewart (3 pages)

1 MR. PASHOVITZ:

EXAMINATION-IN-CHIEF ON VOIR
2 DIRE CONTINUES:

3 Q Constable, I asked you earlier about an in-car
4 camera system in your police car. You're aware that
5 you had one operating on that particular day; is
6 that correct?

7 A That's correct. They were -- the Saskatoon Police
8 Service was doing a trial project with the in-car
9 cameras. They were in the testing phase.

10 Q Okay, so on that note -- well, have you seen the
11 video with respect to this incident --

12 A I haven't --

13 Q -- ever?

14 A -- seen it.

15 Q You have not seen it ever?

16 A (No audible response.)

17 Q Okay, well, what I'll propose to do is to play a
18 video for you. I'll ask you whether it's an
19 accurate representation of the stop you conducted
20 that day, first of all. And then I may, from
21 time-to-time, just pause it, just for you to
22 identify for us other individuals that you may --

23 A (No audible response.)

24 THE COURT: Can you just --

25 Q -- see on the video?

26 A (No audible response.)

- 1 THE COURT: -- can you explain a few
2 things about the video first?
- 3 THE WITNESS: Yes, Your Honour.
- 4 THE COURT: When -- is it on all the
5 time?
- 6 THE WITNESS: It -- what happens is that
7 there's a recorder in the trunk of the vehicle. And
8 it's constantly recording. When you turn on the
9 -- the lights and activate the emergency equipment,
10 it goes back a couple of minutes, and it will then
11 record and play back through everything that took
12 place up until the time you activated the lights,
13 and then continue to record after that.
- 14 THE COURT: So -- so it's always on, but
15 it only -- it makes a different recording of
16 incidents before and during --
- 17 THE WITNESS: It will --
- 18 THE COURT: -- and after?
- 19 THE WITNESS: -- that's right. It will
20 save, once you turn on the lights. It will save the
21 previous couple of minutes and then it will -- so
22 that way --
- 23 THE COURT: So --
- 24 THE WITNESS: -- the best --
- 25 THE COURT: -- so --
- 26 THE WITNESS: -- way to describe it is for

1 a traffic offence, Your Honour, it will actually go
2 back and show the offence, instead of just the time
3 that I turned the lights on.

4 THE COURT: Okay, so --

5 THE WITNESS: Excuse me.

6 THE COURT: -- emergency lights go on,
7 but -- I just have to write this down. But video
8 saved represents what occurred a few minutes --

9 THE WITNESS: At the time of this, I
10 believe it went back almost two minutes. I'm not
11 sure --

12 THE COURT: Two minutes --

13 THE WITNESS: -- of the exact --

14 THE COURT: -- before?

15 THE WITNESS: That's correct.

16 THE COURT: During and after, as well?

17 THE WITNESS: It will -- there's a button
18 that's placed on the front of the dash, and it
19 illuminates when the camera goes on. You have to
20 press that button to actually turn the --

21 THE COURT: Okay.

22 THE WITNESS: -- camera system --

23 THE COURT: And --

24 THE WITNESS: -- off.

25 THE COURT: -- until turned off?

26 THE WITNESS: (No audible response.)

- 1 THE COURT: Did you turn it off?
- 2 THE WITNESS: I would have turned it off
3 after the completion of everything, probably when I
4 got back into my -- well, I'll have to look at the
5 video --
- 6 THE COURT: Yes.
- 7 THE WITNESS: -- but it was probably after
8 Mr. Jarvis Stewart and James Stewart were taken to
9 SPS detention, when I got back in my patrol vehicle,
10 on my way to detention, I would assume that I would
11 have turned it off at that point.
- 12 THE COURT: You're not -- you're not
13 sure?
- 14 THE WITNESS: I'm not -- I haven't watched
15 the video, Your Honor, so I'm not sure.
- 16 THE COURT: All right. So how long is
17 the video?
- 18 MR. PASHOVITZ: It's -- by my count, it's 24
19 minutes, I'm estimating, Your Honour.
- 20 THE COURT: All right. Okay. Do you
21 wish to show it?
- 22 MR. PASHOVITZ: I did -- would, Your Honour.
- 23 THE COURT: Okay. You've seen this?
- 24 MR. PASHOVITZ: Yes.
- 25 THE COURT: Okay.
- 26 MR. JAMES STEWART: Oh, yeah.

1 MR. JARVIS STEWART: This is the only video you
2 have though, right?

3 THE WITNESS: (No audible response.)

4 MR. JARVIS STEWART: Out of the ten cars, there's
5 only one video, just so we're clear?

6 THE WITNESS: (No audible response.)

7 MR. JAMES STEWART: And there is --

8 MR. JARVIS STEWART: Right?

9 THE WITNESS: (No audible response.)

10 MR. JAMES STEWART: -- no audio?

11 THE WITNESS: (No audible response.)

12 MR. JAMES STEWART: We're trying --

13 MR. JARVIS STEWART: There's no --

14 MR. JAMES STEWART: -- to figure out --

15 THE COURT: Just --

16 MR. JARVIS STEWART: -- audio?

17 MR. JAMES STEWART: -- why there's no --

18 THE COURT: -- just a minute.

19 MR. JAMES STEWART: -- audio.

20 THE COURT: Just a moment.

21 MR. JARVIS STEWART: There's just --

22 THE COURT: Let's --

23 MR. JARVIS STEWART: -- there's just --

24 THE COURT: Will you --

25 MR. JARVIS STEWART: -- one video?

26 THE COURT: -- let's just wait. You'll

- 1 have a chance to ask. All right, I'll need to see
2 it better than that, so --
- 3 MR. PASHOVITZ: I'm in your hands, Your
4 Honour, as far as where we want the screen
5 positioned.
- 6 THE COURT: Well, the screen is fine
7 there, if you could just turn it a twitch towards
8 me?
- 9 MR. PASHOVITZ: (No audible response.)
- 10 THE COURT: Or maybe that will make it
11 even more -- yes, that's better. And I may get --
- 12 MR. PASHOVITZ: Plus --
- 13 THE COURT: -- and if --
- 14 MR. PASHOVITZ: Yes.
- 15 THE COURT: -- you could back up your --
- 16 MR. PASHOVITZ: I will.
- 17 THE COURT: -- machine there and make it
18 bigger? Now, I have to be able to see it, the
19 witness has to be able to see it, and the accused
20 has to be able to see it.
- 21 MR. PASHOVITZ: Can you guys see it?
- 22 MR. JARVIS STEWART: Yeah, no problem.
- 23 MR. JAMES STEWART: I can see it.
- 24 THE COURT: Yes. And --
- 25 MR. PASHOVITZ: (No audible response.)
- 26 THE COURT: Do you know what, the best

1 place for it would be over here, if -- if you could
2 do that, that way?

3 MR. PASHOVITZ: We could do that, Your
4 Honour.

5 THE COURT: And that way everyone is --

6 COURT CLERK: Can you just --

7 THE COURT: -- is sure to --

8 COURT CLERK: -- (inaudible) --

9 THE COURT: -- see it.

10 COURT CLERK: -- (inaudible).

11 THE WITNESS: Do you want to try to do
12 that?

13 THE COURT: Yes.

14 MR. PASHOVITZ: Do you want to (inaudible) it
15 all --

16 THE COURT: Why don't --

17 MR. PASHOVITZ: -- or the machine?

18 THE COURT: -- we do that. And I'm just
19 going to take a two minute break anyways --

20 MR. PASHOVITZ: Certainly, Your --

21 THE COURT: -- I -- I think.

22 MR. PASHOVITZ: -- Honour.

23 COURT CLERK: All rise. This Court stands
24 adjourned for a few moments.

25 (COURT ADJOURNED)

26 (COURT RECONVENED)

- 1 THE COURT: Yes, do you want to hit the
2 lights?
- 3 COURT CLERK: (No audible response.)
- 4 THE COURT: We're going to -- I'm going
5 to turn the lights down a bit here, just so that we
6 can see it better. Perfect.
- 7 MR. PASHOVITZ: Thank you, Your Honour.
- 8 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
9 DIRE CONTINUES:
- 10 Q Constable --
- 11 A (No audible response.)
- 12 THE COURT: All right, can everybody see
13 it?
- 14 MR. JARVIS STEWART: (No audible response.)
- 15 MR. JAMES STEWART: (No audible response.)
- 16 THE COURT: Okay.
- 17 (VIDEO PLAYING)
- 18 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
19 DIRE CONTINUES:
- 20 Q Constable Keating, for the record, now, in the
21 courtroom we've set up a screen. We're looking at a
22 video image. Does that appear to show something
23 that looks familiar to you or not?
- 24 A Yes. That's the in-car video from traffic unit 477
25 from August the 24th. And that's the white Celica
26 that was operated by Jarvis Stewart on that date,
27 with Sask marker 131 HFG.

1 Q Okay. I'm maybe putting you on the spot here, but
2 do you know which direction your police car is
3 facing, and which direction that white Toyota is
4 facing here?

5 A Yeah. We are both in the left-hand turn lane,
6 facing eastbound at 8th Street and Grosvenor, waiting
7 to make a left-hand or northbound turn into the
8 Shopper's Drug Mart, Grosvenor Plaza parking lot.

9 Q Okay. Are you able to see the date and time stamp
10 at the top of that video, Constable, from where you
11 are or not?

12 A It's 2012/08/24 and it appears to be 1901 hours when
13 the video starts.

14 Q Okay.

15 A It's seven, 7:01 p.m.

16 Q All right. And I think you started off your
17 testimony with this, as far as the approximate time
18 that you started looking at this vehicle. Do you
19 have your recollection of that time?

20 A I -- I have it written down as approximately 1900
21 hours.

22 Q Okay.

23 A Approximately.

24 Q Okay, I appreciate that being clarified. All right.
25 Again, as I indicated, I may pause the video from
26 time-to-time, just as certain individuals who are

1 police officers enter into the video, but I think
2 for the most part, for the first few minutes, I'm
3 just going to play it. And, please, pay attention.

4 A (No audible response.)

5 (VIDEO PLAYING)

6 Q Constable, I'm just pausing it here for the record,
7 with the counter saying 19:07:15. Someone just
8 entered the video there, and walked back to the
9 left. Do you recognize that individual?

10 A Yeah, that appeared to be me.

11 Q Okay. And, again, right now, 19:07:15, do you
12 recognize the individual whose back is turned
13 towards the camera there?

14 A I'd actually -- I'd have to have you move the screen
15 a bit closer.

16 Q I'll just continue to play it then. I may ask you
17 about that a little bit later.

18 A (No audible response.)

19 (VIDEO PLAYING)

20 Q We're, now, at 19:07:38. Now, do you recognize that
21 individual on the right-hand side --

22 A It's --

23 Q -- or not?

24 A I just can't see from where I am.

25 Q Okay.

26 A If I could get closer to the screen then --

- 1 Q I'd appreciate the help, sure, if you want to step
2 forward. And if you're unable to, that's fine.
3 We'll just continue to play it.
- 4 A It's Constable McAvoy. He's attending to the
5 passenger side of the vehicle right now.
- 6 Q Okay, sorry. I'll just get you to repeat that, once
7 you're back near the mic, just so we have that
8 recorded.
- 9 A It's Constable McAvoy.
- 10 Q And the individual to his left?
- 11 A I --
- 12 Q I'll just play it again for a bit.
- 13 A (No audible response.)
- 14 (VIDEO PLAYING)
- 15 Q Did you recognize that individual --
- 16 A Again, I'd --
- 17 Q -- (inaudible) --
- 18 A -- have to approach --
- 19 Q -- (inaudible)?
- 20 A -- the screen.
- 21 Q That's fine. We'll play on.
- 22 A (No audible response.)
- 23 (VIDEO PLAYING)
- 24 Q Constable, again, if you may approach, and if you
25 can let me know if you recognize anybody at 19:09:28
26 of the video?

1 A (No audible response.)

2 Q And if you could see what the number is of that
3 vehicle that just pulled up, as well?

4 A That's patrol unit 222. This is Constable McAvoy
5 here in the middle.

6 Q If you can't identify people, that's fine, too,
7 so --

8 A This is myself here, on the left.

9 Q Okay.

10 A But I -- sorry, due to the -- the glare, I can't
11 -- I can't identify them (inaudible) for certain.

12 Q That's fine. I'll just get you to repeat the car
13 number when you get back to the microphone.

14 A That's Saskatoon Police Service vehicle number 222.
15 Constable McAvoy is in the -- the middle of the
16 three individuals. And my -- I'm to the left of the
17 screen, in the front of 477.

18 Q Thank you, Constable.

19 A (No audible response.)

20 (VIDEO PLAYING)

21 THE COURT: Mr. Pashovitz, does this show
22 anything relevant to the case?

23 MR. PASHOVITZ: Well, you may have already
24 heard some questioning by the two individuals who
25 have been charged about the number of videos. For
26 the record, I can state that this is the only video

- 1 that I'll be playing in this case. I felt I should
2 play the entirety of the video, just to show the two
3 individuals who are charged. I'm not --
- 4 THE COURT: Well, they've seen it.
- 5 MR. PASHOVITZ: -- I'm not hiding anything.
6 I'm just playing the video that I have, so --
- 7 THE COURT: Is there anything relevant
8 -- further?
- 9 MR. PASHOVITZ: No, no, not in my opinion,
10 Your Honour.
- 11 THE COURT: Do you --
- 12 MR. PASHOVITZ: I just thought --
- 13 THE COURT: -- agree with that?
- 14 MR. JARVIS STEWART: I agree, yeah.
- 15 MR. PASHOVITZ: -- I should play the --
- 16 MR. JARVIS STEWART: We've been --
- 17 MR. PASHOVITZ: -- entire video, so --
- 18 THE COURT: There's nothing on this
19 particular video that's relevant from this point on?
- 20 MR. JARVIS STEWART: Pretty much, no. I mean,
21 it's just -- just the unlawful --
- 22 THE COURT: Pictures of --
- 23 MR. JARVIS STEWART: -- searches --
- 24 THE COURT: -- pictures of cars.
25 MR. JARVIS STEWART: -- of our car. Yeah. I
26 mean, we've been having them -- ten -- over ten

1 police vehicles responded to this scene, and this
2 was the only video we have received. And even the
3 audio on this video, as you can see on the fourth
4 audio button, has been muted out. For some reason,
5 we've never been given an adequate explanation as to
6 why that happened or where, if -- if there is any
7 other video, so --

8 THE COURT: All right. Okay, well, if
9 you say -- if there's nothing relevant, there's no
10 sense in wasting Court time in showing the rest of
11 this.

12 MR. JARVIS STEWART: That's it, thank you, Your
13 Honour.

14 THE COURT: Is that okay?

15 MR. JAMES STEWART: Yeah.

16 THE COURT: All right. That's good.

17 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
18 DIRE CONTINUES:

19 Q I'll just -- if I may --

20 A (No audible response.)

21 THE COURT: I have a question about that
22 though. Is there no audio?

23 THE WITNESS: There's no audio, Your
24 Honour. Actually number 4 has nothing to do with
25 what's going on with --

26 THE COURT: Well, I don't --

- 1 THE WITNESS: -- this particular --
- 2 THE COURT: -- care about that. There's
- 3 just no audio?
- 4 THE WITNESS: There's no -- there's no
- 5 audio. The -- the microphone -- this, again, was at
- 6 the trial phase. There's only two vehicles in the
- 7 fleet that had the cameras. This was one of them.
- 8 The audio was not working.
- 9 THE COURT: All right.
- 10 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
- 11 DIRE CONTINUES:
- 12 Q Constable, having reviewed that --
- 13 A (No audible response.)
- 14 MR. PASHOVITZ: For the record, I've paused
- 15 it at 19:13 on the counter.
- 16 Q Does that video accurately depict the traffic stop
- 17 that you conducted on the date in question?
- 18 A That was the traffic stop I conducted, yes.
- 19 MR. PASHOVITZ: Your Honour, I propose to
- 20 file as the next exhibit in these proceedings -- I
- 21 think we're at P-8 -- the video, please.
- 22 THE COURT: All right.
- 23 MR. PASHOVITZ: I propose to just leave it in
- 24 the computer, in case it's going to be shown again
- 25 in cross-examination, so I don't have to queue it up
- 26 again.

- 1 THE COURT: Just leave it --
- 2 MR. PASHOVITZ: But I would --
- 3 THE COURT: -- leave it --
- 4 MR. PASHOVITZ: -- file the --
- 5 THE COURT: -- there for now, but --
- 6 MR. PASHOVITZ: -- folder.
- 7 THE COURT: Is that the only thing that's
- 8 on that disk?
- 9 MR. PASHOVITZ: That's the only thing that's
- 10 on that disk. That's correct, Your Honour.
- 11 THE COURT: All right then, it can be
- 12 P-8.
- 13
- 14 EXHIBIT P-8: Video of
- 15 Traffic Stop of James Stewart
- 16 And Jarvis Stewart Conducted
- 17 August 24th, 2012 by
- 18 Constable Gordon Keating
- 19 THE COURT: You can turn the light on,
- 20 make life easier for yourself.
- 21 COURT CLERK: (No audible response.)
- 22 THE COURT: Thanks.
- 23 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
- 24 DIRE CONTINUES:
- 25 Q Constable, I didn't want to pause the video right
- 26 off the start, but it's my recollection that once
- 27 you stopped behind the vehicle that's shown in the
- 28 video, that an individual is seen exiting out of
- 29 that white Toyota; is that correct?

- 1 A Out of the passenger side, yes.
- 2 Q The name of that individual?
- 3 A That was James Stewart.
- 4 Q Did he say anything to you at that point in time?
- 5 A When I used the loud haler to tell them -- both
6 individuals to get back in the vehicle, James
7 Stewart simply told me to fuck off.
- 8 Q Okay. Do we ever see in the video Jarvis Stewart,
9 when you've watched it just now?
- 10 A Not from this angle.
- 11 MR. PASHOVITZ: If -- well, Your Honour, I
12 wouldn't mind taking the morning break now. I know
13 I took a few minutes to queue up that video. I just
14 want to review my notes. I don't believe I have any
15 more questions for examination-in-chief of this
16 officer, but I just wanted to check my notes.
- 17 THE COURT: Right.
- 18 MR. PASHOVITZ: And if I don't have very many
19 questions, I'm sure we can commence the
20 cross-examination as soon as we come back.
- 21 THE COURT: All right. Let's take a
22 break then.
- 23 MR. PASHOVITZ: Thank you, Your Honour.
- 24 COURT CLERK: How long do you want to take,
25 Your Honour?
- 26 THE COURT: Fifteen minutes should be

1 about it.

2 COURT CLERK: Okay. All rise. This court
3 stands adjourned for 15 minutes.

4 (COURT ADJOURNED)

5 (COURT RECONVENED)

6 (RECORDING BEGINS WITH COURT IN SESSION)

7 MR. PASHOVITZ: -- Your Honour.

8 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
9 DIRE CONTINUES:

10 Q Thank you for answering all of my questions,
11 Constable. Please, answer any questions that are,
12 now, asked of you.

13 A (No audible response.)

14 THE COURT: All right. Cross-examine
15 -- I take it, you're going to be doing that?

16 MR. JARVIS STEWART: Yeah, I guess so.

17 MR. JAMES STEWART: And I may have some
18 questions, Your Honour.

19 THE COURT: Okay, well, let's go with one
20 first, and then the next.

21 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR DIRE:

22 Q So why did you pull us over, Jay?

23 A (No audible response.)

24 THE COURT: I'm sorry, I didn't hear the
25 question?

26 Q Why -- why did you pull us over?

- 1 A (No audible response.)
- 2 Q What authority did you think you had under *The*
3 *Traffic Safety Act* to pull us over and start making
4 demands of us in a private parking lot?
- 5 A (No audible response.)
- 6 Q Under what authority were you --
- 7 A (No audible response.)
- 8 THE COURT: The question --
- 9 Q -- acting under?
- 10 A (No audible response.)
- 11 THE COURT: -- was: Why did you pull
12 them over?
- 13 THE WITNESS: (No audible response.)
- 14 Q Under Section 209.1 of *The Traffic* --
- 15 A (No audible response.)
- 16 THE COURT: Just --
- 17 Q -- *Safety Act*?
- 18 A (No audible response.)
- 19 THE COURT: -- just let him answer your
20 question.
- 21 THE WITNESS: Your Honour, I pulled
22 over Mr. Stewart because I ran the plate that
23 was currently on the back of his white Toyota
24 Celica. It came back to a Honda Civic. So the
25 reason I pulled him over was for misuse of
26 plates.

1 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
2 DIRE CONTINUES:

3 Q And so you didn't -- you never at any point imparted
4 this information to either of the occupants of the
5 vehicle, you just gave them demands to get back in
6 the car?

7 A (No audible response.)

8 Q I'm just going by --

9 A (No audible response.)

10 THE COURT: Just -- just --

11 Q -- what it says in your notes, big guy.

12 A (No audible response.)

13 THE COURT: -- just let him answer,
14 okay?

15 MR. JARVIS STEWART: (No audible response.)

16 THE COURT: Ask -- you're not to state
17 things. You're to ask questions. You're -- he was
18 ask -- he was -- I think he was asking you if you
19 ever told them that?

20 THE WITNESS: I did explain to Mr. Jarvis
21 Stewart, after he exited his vehicle, the reason for
22 the traffic stop, yes.

23 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
24 DIRE CONTINUES:

25 Q Yeah, but you never specifically asked us for
26 license and registration, even though you had no
27 lawful authority to anyways; is that right?

- 1 A I don't understand the question.
- 2 Q Well, Section 209.1 of *The Traffic Safety Act* --
- 3 A (No audible response.)
- 4 THE COURT: Just -- just ask the
- 5 question. Just --
- 6 Q You -- you never specifically asked me for a license
- 7 or registration, did you?
- 8 A I asked you numerous times, Mr. Stewart --
- 9 Q Oh, really?
- 10 A -- for your driver's --
- 11 Q But --
- 12 A -- license.
- 13 Q -- but you failed --
- 14 A And when you --
- 15 Q -- you failed to put that in your notes though?
- 16 A -- and when you didn't provide it, I also explained
- 17 to you that you could provide your name and date of
- 18 birth --
- 19 Q Okay.
- 20 A -- and I could --
- 21 Q But there's --
- 22 A -- look it up on the SGI system.
- 23 THE COURT: Well --
- 24 Q -- there's nothing about that in your notes?
- 25 A That I'd --
- 26 Q There's --

1 A -- ask you? I'd have to refer to my notes.
2 Q Well, there's nothing --
3 A (No audible response.)
4 THE COURT: You -- go ahead.
5 Q -- nothing about that --
6 A (No audible response.)
7 THE COURT: Just a minute.
8 Q -- in your notes.
9 A (No audible response.)
10 THE COURT: Just a minute. Let him --
11 let him do that.
12 MR. JAMES STEWART: Let him refer to --
13 THE COURT: He has to --
14 MR. JAMES STEWART: -- his notes.
15 THE COURT: -- answer that first because
16 I'm interested in that.
17 MR. JAMES STEWART: Let him refer to his notes.
18 THE COURT: Okay. Is there anything --
19 THE WITNESS: Can I refer --
20 THE COURT: -- in your notes --
21 THE WITNESS: -- to my notes?
22 THE COURT: -- concerning telling him why
23 you stopped him?
24 THE WITNESS: Can I -- can I refer to my
25 notes?
26 THE COURT: Yes, of course. It's okay.

1 Lawyers do that all of the time, too.

2 MR. JARVIS STEWART: It's my first time, Your

3 Honour.

4 THE COURT: I know.

5 MR. JAMES STEWART: Thank you, Your Honour.

6 THE COURT: That's good.

7 MR. JAMES STEWART: And hopefully our last.

8 THE WITNESS: I have in my notes the reason

9 for pulling you over. I didn't make specific notes

10 to that.

11 THE COURT: There's no notes to that.

12 THE WITNESS: Not in my written notes, Your

13 Honour.

14 THE COURT: How about your police report?

15 THE WITNESS: I'd have to refer to the --

16 THE COURT: Please do.

17 THE WITNESS: -- police report. It's

18 actually going to be here.

19 THE COURT: All right. That's -- there's

20 a difference, right, between his police report and

21 his notes?

22 MR. JARVIS STEWART: Yeah, that's fine.

23 THE COURT: Yes, that's --

24 THE WITNESS: I have listed in here, Your

25 Honour, that on two separate occasions that he

26 failed to comply with my commands. Those would be

1 my standard commands at a traffic stop, license and
2 registration.

3 THE COURT: The -- the question was
4 whether you recorded the reason for pulling him
5 over.

6 THE WITNESS: I have it recorded the reason
7 for pulling him over was misuse of plates, both in
8 my notebook and --

9 THE COURT: You do --

10 THE WITNESS: -- in my --

11 THE COURT: -- have that recorded?

12 THE WITNESS: That's in my notebook,
13 yes --

14 THE COURT: Oh, I'm sorry.

15 THE WITNESS: -- and in my --

16 THE COURT: I misunderstood --

17 THE WITNESS: -- report.

18 THE COURT: -- you.

19 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
20 DIRE CONTINUES:

21 Q But you never explained that information to us
22 then?

23 A Yes, I did.

24 Q And so then after you had us under arrest and
25 detained and ten police cars and 18 officers had
26 showed up and put us in the back of separate

1 vehicles, did you explain -- did you read us our
2 rights?

3 A I did.

4 Q You did?

5 A (No audible response.)

6 Q Really?

7 A (No audible response.)

8 Q Because it shows in the video you going through my
9 car before ever having explain my rights to me. It
10 says in your notes here that you read me my rights
11 at 1914 hours, but it shows you on the -- on the
12 video there going through my car at 1907 hours, so
13 you were searching my car unlawfully and illegally
14 before ever having read me my rights; is that
15 right?

16 A I didn't search your vehicle. We had looked through
17 your -- Constable McAvoy looked through your
18 vehicle. And I --

19 Q He didn't search --

20 A -- had seen there --

21 Q -- your vehicle (sic) --

22 A -- in looking --

23 Q -- my vehicle --

24 A (No audible response.)

25 THE COURT: Let him answer.

26 THE WITNESS: Constable McAvoy stated that

1 there was documentation with the names of Jarvis
2 Stewart and James Stewart there, and produced those
3 documents, those being the SOTs, and the letter that
4 we previously put in evidence.

5 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
6 DIRE CONTINUES:

7 Q So at the moment you charged me, and it was always
8 your intention to charge me with obstruction?

9 A (No audible response.)

10 Q You didn't think there was something further, you
11 weren't conducting an investigative detention on
12 your own volition in searching me and my car to try
13 to come up with further criminal evidence?

14 A Sir, you were under arrest for obstruction.

15 Q I was under arrest for obstruction?

16 A (No audible response.)

17 Q Okay. And then you thought that gave you the right
18 to detain me for 18 hours, throw me into jail and
19 deny me a phone call?

20 A (No audible response.)

21 Q I mean, you -- you didn't follow us back to
22 detention, you didn't come back to detention for
23 over an hour after the incident, so you must
24 have --

25 A (No audible response.)

26 THE COURT: So what --

1 Q -- stayed with --
2 A (No audible response.)
3 THE COURT: -- what is --
4 Q -- my car --
5 A (No audible response.)
6 THE COURT: -- your question?
7 Q -- searching it?
8 A (No audible response.)
9 THE COURT: You have to -- that's the
10 hard part here.
11 MR. JARVIS STEWART: Well, okay --
12 THE COURT: Because I know --
13 MR. JARVIS STEWART: -- I want --
14 THE COURT: You'll have a chance to tell
15 your story.
16 MR. JARVIS STEWART: Okay, fair --
17 THE COURT: But I have --
18 MR. JARVIS STEWART: -- enough.
19 THE COURT: -- you'll have to ask him --
20 MR. JARVIS STEWART: Fair enough.
21 THE COURT: -- questions.
22 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
23 DIRE CONTINUES:
24 Q So how -- how long did you remain searching my
25 vehicle?
26 A I had got the paperwork from Constable McAvoy, and I

- 1 attended to your location. I read you *Charter*
2 rights and caution. I don't have that -- it
3 wouldn't have been more than a couple of minutes.
4 Q But you didn't -- so you didn't -- at that point, I
5 -- I instructed you that I wanted to talk to a
6 lawyer?
7 A I'd have to refer to my notes, sir, when I read
8 you --
9 Q Okay, well --
10 A -- your *Charter*.
11 Q -- it's -- it's --
12 A (No audible response.)
13 MR. JAMES STEWART: Well, refer --
14 Q -- in your notes.
15 A (No audible response.)
16 MR. JAMES STEWART: -- to your --
17 Q Go ahead --
18 A (No audible response.)
19 MR. JAMES STEWART: -- notes.
20 Q -- and refer to your notes.
21 A (No audible response.)
22 THE COURT: Go ahead.
23 Q I asked --
24 A (No audible response.)
25 THE COURT: Go ahead.
26 Q -- you specifically --

1 A (No audible response.)

2 THE COURT: If you don't remember, look
3 at your notes.

4 Q -- if I could talk to a lawyer?

5 A At 1914 hours, I read you your *Charter* rights and
6 caution and asked you if you understood. You
7 stated, "Yeah." When asked if you wished to speak
8 to a lawyer, you stated, "Sure." And then you were
9 transported by Constable Hounsell and Constable
10 Boyce to SPS detention.

11 Q So did you think that was -- you were fulfilling
12 your implementational duty for my right to seek
13 counsel by just handing me off to another officer
14 and taking me away to jail and staying at the side
15 of the road?

16 A I don't have a secure area to place arrested persons
17 in the back of my traffic unit. That's why
18 Constable Boyce and Constable Hounsell brought you
19 down to SPS --

20 Q Okay.

21 A -- detention.

22 Q But then you never bothered to follow them to
23 detention to actually help me with my right to
24 counsel; is that right?

25 A (No audible response.)

26 Q You stayed at the side of the road?

- 1 A Once you are processed by SPS detention, I was
2 there.
- 3 Q Oh, okay, okay. And so why did you make the call to
4 keep me in jail overnight?
- 5 A (No audible response.)
- 6 Q It says at the end of your notes here that:
7
8 "Both of them will be held until
9 they see a Justice of the Peace in
10 the morning."
- 11 Why did you think that you somehow had the authority
12 to keep me in jail overnight?
- 13 A You were charged with obstruction under the *Criminal*
14 *Code*. And it's your right to see a Justice of the
15 Peace.
- 16 Q You -- without reasonable delay; right?
- 17 A (No audible response.)
- 18 Q You kept me in jail for 18 hours, so what --
- 19 A I don't --
- 20 Q -- do you have --
- 21 A -- deal with the detention aspect of it. I don't --
- 22 Q Well, it says --
- 23 A -- deal with the --
- 24 Q -- right in --
- 25 A -- Justice of the Peace.
- 26 Q It says right in your notes that:
27
28 "Both of them will be held until
29 they see a JP (sic) in the

1 morning."

2 So it's --

3 A That was an instruction that was given to me by the

4 detention sergeant, that you would both be held in

5 detention until you saw a Justice of the Peace.

6 Q Really?

7 A (No audible response.)

8 Q So, now, it's the detention sergeant telling

9 -- okay, that's interesting. That says -- there's a

10 lot of inconsistencies in your notes. Yikes, it's

11 quite a story, but I think I'm done with questioning

12 for now. Thank you very much.

13 A (No audible response.)

14 THE COURT: Are you sure --

15 MR. JAMES STEWART: I have some --

16 THE COURT: -- there's no --

17 MR. JAMES STEWART: -- questions, Your --

18 THE COURT: -- more questions?

19 MR. JARVIS STEWART: Yeah --

20 MR. JAMES STEWART: -- Honour.

21 MR. JARVIS STEWART: -- that's fine --

22 THE COURT: Are you --

23 MR. JARVIS STEWART: -- for now.

24 THE COURT: All right.

25 MR. JAMES STEWART: I have a few more questions,

26 Your Honour.

1 THE COURT: Okay, go ahead.

2 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
3 DIRE CONTINUES:

4 Q The car you were driving was unmarked?

5 A That's correct. It's a tan-coloured traffic unit.

6 Q When you pulled us over in the parking lot and you
7 got out of your vehicle, were you wearing your
8 uniform?

9 A Yes, I was.

10 Q What constitutes a uniform?

11 A This is what I was issued by the Saskatoon Police
12 Service as a police uniform.

13 Q Does that uniform include a hat?

14 A We are issued a four-inch cap.

15 Q A four-inch cap?

16 A (No audible response.)

17 Q Were you wearing it at that time?

18 A No. I'm not required to.

19 Q You're not required to?

20 A (No audible response.)

21 Q Now, would that be for identification purposes, or
22 is that something that is handed down by the --

23 A The four-inch cap is used for ceremonial purposes,
24 as well as for when we're doing traffic control
25 during the daylight hours in certain instances when
26 it becomes a safety issue. We don't have to wear

- 1 them.
- 2 Q Fantastic.
- 3 A It's not --
- 4 Q That's fine. Thank you for answering that question.
- 5 When you got out of your car, did you identify
- 6 yourself as a police officer and the nature of the
- 7 stop?
- 8 A I didn't specifically state that I was a police
- 9 officer, no, but --
- 10 Q You did --
- 11 A -- I did --
- 12 Q -- not specifically state you were a police officer;
- 13 is that correct?
- 14 A (No audible response.)
- 15 Q You did not specifically state?
- 16 A Okay, I -- when I conduct traffic stops, I don't get
- 17 out of my vehicle and announce that I am a police
- 18 officer, no.
- 19 Q But it is an unmarked car?
- 20 A It has flashing red and blue lights.
- 21 Q You did not have a microphone on you at the time?
- 22 A With regards to --
- 23 Q To your in-car --
- 24 A -- in-camera service?
- 25 Q -- camera service, ICCS?
- 26 A Yes. There was a microphone that was attached. It

1 actually fits in this little pouch right here. This
2 was the trial phase for these cameras. There was
3 one in 477 and one in 478. For some reason, the
4 audio was not working.

5 Q Okay, that's fine. Now, did you know that, going
6 out that day, that your microphone was not working?

7 A I did not.

8 Q Okay. Is that something that should be checked on a
9 regular basis?

10 A There is a policy, now, that states with regards to
11 checking the in-camera service and recording devices
12 before going out, as well as doing a walk around of
13 the vehicle.

14 Q And so you do that now?

15 A I do that, yes.

16 Q Fantastic, fantastic. Now, after you checked your
17 computer -- that was an on-board computer?

18 A That's correct.

19 Q When you were checking the license plate?

20 A Yes.

21 Q And you were operating your vehicle and operating
22 that computer at the same time?

23 A That's correct.

24 Q Fantastic. Did you notify dispatch of -- of your
25 intention to pull this car over, or did you notify
26 dispatch of the unusual license plate?

- 1 A No.
- 2 Q You did not?
- 3 A (No audible response.)
- 4 Q So did dispatch have any idea where you were at that
5 time?
- 6 A They would have seen me. My vehicle was on GPS.
- 7 Q But they wouldn't have really any idea where you,
8 specifically, were?
- 9 A Where I was standing, or where my vehicle was?
- 10 Q Where you were?
- 11 A (No audible response.)
- 12 Q They didn't really have any idea where you were?
- 13 A (No audible response.)
- 14 Q They may have looked at GPS, but as far as they were
15 concerned, you were just working?
- 16 A I was on duty, that's correct.
- 17 Q Fantastic. Now, when you actually saw on your
18 computer that there was some irregularities on that
19 license plate, did you then notify dispatch?
- 20 A No.
- 21 Q Why not?
- 22 A I'm not required to notify dispatch when I do a
23 traffic stop.
- 24 Q How tall are you?
- 25 A Six foot seven.
- 26 Q Six foot seven?

- 1 A (No audible response.)
- 2 Q Now, when you said that my brother, Jarvis Stewart,
3 brushed past you and hit you shoulder-to-shoulder,
4 would you say that's a little odd for someone who is
5 five, nine and-a-half?
- 6 A Yeah. I clarified that in my testimony. I said
7 that he touched my left arm.
- 8 Q He touched your left arm?
- 9 A (No audible response.)
- 10 Q He just touched it, or he brushed --
- 11 A He brushed --
- 12 Q -- past it?
- 13 A -- by. With his left shoulder, he made contact with
14 my --
- 15 Q Would you --
- 16 A -- left arm.
- 17 Q -- consider it much like a football tackle?
- 18 A (No audible response.)
- 19 Q Like, were you trying to block or pick, or would it
20 just be, like, a slight brushing?
- 21 A (No audible response.)
- 22 Q Would you just, please, explain --
- 23 A No. He --
- 24 Q -- what that --
- 25 A -- brushed by --
- 26 Q -- the --

- 1 A -- me.
- 2 Q -- the nature of that contact?
- 3 A I would not call it a football tackle.
- 4 Q He just brushed by you?
- 5 A That's correct.
- 6 Q When you said that you explained to Jarvis and
7 myself about obstruction and you were explaining the
8 traffic stop, can you, please, define your
9 definition of obstruction?
- 10 A Mr. Stewart was operating a motor vehicle. He has
11 to provide a driver's license, stating that he's
12 allowed to operate a motor vehicle. I gave him
13 ample opportunity to provide me with photo
14 identification or his date of birth and his name, so
15 I could look it up on SGI.
- 16 Q When you say "ample opportunity", Jay (sic) Keating,
17 what do you mean by "ample opportunity"?
- 18 A I gave him numerous opportunities when I was
19 explaining --
- 20 Q When you --
- 21 A -- why I was --
- 22 Q -- say "numerous" --
- 23 A -- stopping him.
- 24 Q -- is it more than two?
- 25 A Oh, yeah.
- 26 Q More than three?

- 1 A There would have been -- there was five separate
2 occasions.
- 3 Q Five separate occasions?
- 4 A (No audible response.)
- 5 Q Now, if we notice on that video, at approximately
6 seven o'clock, that car is pulled over. And at
7 approximately 7:07, you're searching the vehicle?
- 8 A (No audible response.)
- 9 Q Now, would you say that that would be a legitimate
10 discussion threshold to be able to explain to
11 someone who may not quite understand what
12 obstruction or what was really going on?
- 13 A (No audible response.)
- 14 Q Do you think that six or seven minutes is an
15 adequate threshold to be beating people up and
16 throwing them in squad cars?
- 17 A I'm sorry, I -- I didn't --
- 18 Q Do you think --
- 19 A (No audible response.)
- 20 THE COURT: What -- what's --
- 21 Q -- it's an adequate --
- 22 A (No audible response.)
- 23 THE COURT: -- what's -- what's --
- 24 Q -- threshold?
- 25 A (No audible response.)
- 26 THE COURT: -- the question? I'm sorry, I

1 don't --

2 Q Do you think --

3 A (No audible response.)

4 THE COURT: -- understand the --

5 Q -- it's an --

6 A (No audible response.)

7 THE COURT: -- question.

8 Q -- adequate amount of time to explain to someone
9 -- in this case, two people -- the nature of your
10 traffic stop, within seven minutes, if you have
11 explained yourself five times?

12 A (No audible response.)

13 Q If you're saying that you explained yourself five
14 times about the nature of this obstruction, and
15 we're led to believe that this all happened within
16 about seven minutes, I want you to, please, explain
17 to me your definition of "explain" with your
18 definition of "obstruction"?

19 A The sequence of events took place very rapidly. You
20 -- both of you exited the vehicle immediately once I
21 pulled in behind you. You, sir, went over by the
22 Shopper's Drug Mart and began screaming at me and
23 ranting about how I had no right to detain either of
24 you. I explained to your brother -- you probably
25 couldn't hear my explanation to him, since you were
26 over there ranting in the corner -- numerous times

1 about having a driver's license, and if he did fail
2 to provide his identification or name and date of
3 birth, that I would charge him with obstruction.

4 Q What time did you put the handcuff on Jarvis?

5 A I'd have to refer to my notes. I believe --

6 Q Please --

7 A -- it was --

8 Q -- refer.

9 A -- I believe it was 1905. Yeah, it would have been
10 1905, I arrested your brother, Jarvis Stewart, for
11 obstruction.

12 Q You arrested him, or is that when you placed him in
13 handcuffs and were looking --

14 A At that --

15 Q -- to direct --

16 A -- time --

17 Q -- my brother away from me because I was
18 approaching?

19 A (No audible response.)

20 Q Which one --

21 A At that --

22 Q -- is it?

23 A -- time, he was arrested for obstruction.

24 Q He was arrested?

25 A (No audible response.)

26 Q He was well aware, he was arrested?

- 1 A I informed him of his arrest.
- 2 Q And that was after the five times you explained to
3 him that he would be arrested because of the
4 obstruction?
- 5 A That's correct.
- 6 Q Was it sunny that day?
- 7 A According to the video, it appears to be sunny.
- 8 Q Very sunny?
- 9 A (No audible response.)
- 10 Q Would you say it's difficult to see down 8th Street
11 on a sunny day, such as seven o'clock, front or
12 back, east or west because of the sun maybe glaring
13 in your face or coming in through a rear
14 windshield?
- 15 A (No audible response.)
- 16 Q Would you say it's difficult as a driver?
- 17 A I'm not sure where the position of the sun was, but
18 on occasion, yes, it would be difficult to see.
- 19 Q So sometimes someone driving forward may not
20 necessarily -- coming through an intersection, may
21 not necessarily be able to look right behind them
22 immediately?
- 23 A That would be correct.
- 24 Q Okay. Thank you. I -- one -- one further question.
25 I was wearing a hat and a hoodie, and yet you
26 believe that I was sweating profusely and had my

1 forehead wrinkled; is that correct?
2 A That's correct.
3 Q Thank you.
4 A (No audible response.)
5 MR. JAMES STEWART: No further questions, Your
6 Honour.
7 THE COURT: Any re-exam?
8 MR. JARVIS STEWART: Yeah, may I -- may I ask him
9 a couple more questions, just if I may, please?
10 THE COURT: Well, it's unusual. I asked
11 you if you had any more, but --
12 MR. JARVIS STEWART: I'm sorry.
13 THE COURT: -- if you --
14 MR. JARVIS STEWART: I just --
15 THE COURT: Go ahead.
16 MR. JARVIS STEWART: -- I just forgot --
17 THE COURT: I'll -- ask me --
18 MR. JARVIS STEWART: -- one thing.
19 THE COURT: -- just tell me what you're
20 asking first, and I'll --
21 MR. JARVIS STEWART: I was just going to question
22 Jay about the case of *R. v. Pascal Martin* just
23 because Jay -- Jay testified in another case that
24 involved similar circumstances, when he informed an
25 accused person to get back in their car over the
26 vehicle loudspeaker, and when the accused did not

1 obey his commands, he -- he went out -- went out of
2 his car, and took him to the ground, handcuffed him
3 and -- and took him to the ground and -- and
4 arrested him for assaulting a police officer. And
5 he -- the trial Judge, Justice Labach, he found no
6 -- no -- it says right here:

7
8 "I do not accept Constable
9 Keating's evidence that this
10 occurred. The accused denied
11 either walking away or swinging
12 his fist at -- at the officer and
13 the explanation was
14 corroborated."

15 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
16 DIRE CONTINUES:

17 Q So I'm just curious, Jay --

18 A (No audible response.)

19 MR. PASHOVITZ: Your Honour, I apologize. I
20 just rise to object. He is reading from a reported
21 case that I am aware of. Actually, it was brought
22 to my attention by Mr. Stewart and Mr. Stewart.

23 THE COURT: I'm still not sure what --

24 MR. PASHOVITZ: I just --

25 THE COURT: -- I'm still not sure what
26 the question is.

27 MR. PASHOVITZ: -- I question the
28 relevance --

29 THE COURT: Well, it --

30 MR. PASHOVITZ: Well --

1 THE COURT: -- may be relevant, but I
2 don't know what the question is yet. Just tell me
3 what the question is.

4 MR. JARVIS STEWART: The question is, basically,
5 is this a common thing for you? Do you -- do you
6 assault people and then go up on the stand and lie
7 about it?

8 MR. PASHOVITZ: I object to that, Your
9 Honour.

10 MR. JARVIS STEWART: Yes, fair -- fair enough. No
11 more questions.

12 MR. PASHOVITZ: I have no re-examination of
13 Constable --

14 THE COURT: All right.

15 MR. PASHOVITZ: -- Keating, Your Honour.

16 THE COURT: Okay --

17 MR. PASHOVITZ: Thank you.

18 THE COURT: -- Constable, you're
19 -- you're free to go.

20 THE WITNESS: Thank you, Your Honour.

21 MR. PASHOVITZ: If I could just ask Constable
22 Keating to ask Constable Schaefer to come in?

23 THE WITNESS: (No audible response.)

24 MR. PASHOVITZ: And in the meantime, I'll
25 take down -- or sorry -- take out the disk.

26 THE COURT: And give it to the clerk.

1 She can make it an exhibit -- an exhibit. Could I
2 see that plate, too?

3 COURT CLERK: Pardon me?

4 THE COURT: The license plate, P-1?

5 COURT CLERK: Yes, you sure can.

6 THE COURT: Thanks.

7 COURT CLERK: If you could state your full
8 name for the record, please?

9 THE WITNESS: It's Constable Clayton
10 Schaefer.

11 COURT CLERK: Okay. If you could spell your
12 first and last name, please?

13 THE WITNESS: C-L-A-Y-T-O-N
14 S-C-H-A-E-F-E-R.

15
16 CLAYTON SCHAEFER, having
17 been duly SWORN, states:

18 COURT CLERK: Thank you.

19 THE COURT: I'm sorry. Two Fs or one F?

20 THE WITNESS: One F, Your Honour.

21 THE COURT: Okay.

22 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR DIRE:

23 Q Good morning, Constable Schaefer.

24 A Good morning.

25 Q You're employed as a peace officer with the
26 Saskatoon Police Service; is that correct?

27 A Yes. And I have been for the past ten years.

1 Q Okay. And you are a peace officer in and for the
2 Province of Saskatchewan; is that correct?

3 A Yes, I am.

4 Q Okay. Were you a peace officer with any other
5 service before the Saskatoon Police Service or --

6 A Yeah. I worked for the Department of Highways with
7 the Highway Transport Patrol from 1996, prior to me
8 getting hired here in Saskatoon.

9 Q Okay, I apologize. So what's the timeframe then, as
10 far as when you first became a peace officer, and
11 how long you were there, and then on to the next
12 force, please?

13 A In 1996 until 2002, and then 2002 on with the
14 Saskatoon Police Service -- Service.

15 Q Okay. And were you on active duty on August 24th,
16 2012?

17 A Yes, I was.

18 Q Were you working alone or with a partner or --

19 A No. I was with Constable McAvoy. I was assigned to
20 the traffic section.

21 Q Okay.

22 A And I --

23 Q And were you wearing the same working Saskatoon
24 Police Service uniform that you're wearing now
25 or --

26 A Yeah, I'm wearing the same uniform as I did that

1 day.

2 Q Okay. What type of vehicle were you using that
3 evening?

4 A I was driving an unmarked Crown Victoria, unit
5 number is 474. And it's a blue Crown Victoria. It
6 doesn't have police markings on it. It's not white
7 like a traditional police car. However, it is
8 equipped with emergency lights at the front and rear
9 and the sides, as well as a siren.

10 Q Okay. Do you know the number of the car that
11 Constable Jay Keating was using on this same evening
12 or not -- or --

13 A I believe it was car 477.

14 Q Okay. And does it have similar type of equipment as
15 the one that you were driving on that evening?

16 A Similar, but not exact. His was equipped with an
17 in-car camera system. Mine did not.

18 Q Okay.

19 A But his also had lights and a siren, as well.

20 Q Okay. Well, at this time, Constable, tell us what
21 you were called to attend to, what time that was,
22 take me all the way through, please?

23 A Okay. It was approximately seven o'clock that
24 evening. I was with Constable McAvoy. And we were
25 in the 1100 block of 8th Street. I was the operator
26 of the vehicle. We were parked in a parking lot,

1 and I was operating a radar, getting people speeding
2 on 8th Street heading westbound. And over the radio
3 I could hear Constable Keating requesting our
4 assistance. I've never heard Constable Keating
5 request for assistance in the past, so this would be
6 the first time, and it's not common for him to do
7 this. There was, like, stress in his voice, saying,
8 "I need immediate assistance." And he indicated he
9 needed it at 8th and Grosvenor, where Shopper's Drug
10 Mart is. So Constable McAvoy and myself -- myself
11 gathered our equipment from the -- and were in the
12 car, and we ended up heading eastbound on the 8th
13 Street and to his location with full lights and
14 siren. When we got there -- it took about -- about
15 a minute to -- to get there, a minute, a minute
16 and-a-half. We just had to go around a little bit
17 of traffic to get to where -- the location where he
18 requested assistance at.

19 Q Carry on.

20 A We ended up getting into the parking lot of
21 Shopper's Drug Mart. And I had noticed that
22 Constable Keating, who was working alone at the
23 time, had one male in custody. And he requested
24 that we take another male into custody. He
25 indicated, "Arrest that man," and he indicated to me
26 to arrest who now I know as James Stewart, the

1 person in the white coat. I could have drawn a
2 photo or a picture, I guess, of the layout, if you
3 like?

4 Q Well --

5 A But I'll --

6 Q -- maybe I'll just --

7 A -- I'll see if I can describe it.

8 Q Sure.

9 A The -- it was just west of the Shopper's Drug Mart,
10 in the parking lot at 8th and Grosvenor. I had
11 pointed my car directly at the scene. There were
12 some curbs in the way. It was a nice evening. It
13 wasn't raining. It was just a regular summer
14 evening. Constable Keating had ordered me to -- or
15 wanted me to arrest James Stewart, but there was no
16 time for us to discuss the matters of why he wanted
17 him arrested. He just wanted him taken into
18 custody. He already had his hands full with
19 Mr. Jarvis Stewart, as well. Jarvis was already
20 handcuffed by Constable Keating. And he -- there
21 wasn't a lot of conversation, other than, "Have him
22 placed under arrest."

23 Q Mmhmm.

24 A I heard James say, "Here come the heroes," while he
25 was looking at us. I -- at this time, I was already
26 out of the car, walking towards him. I had -- had

1 indicated that it was a summer day, the pavement was
2 dry. And because of the reasons of him being a
3 taller male than myself, he was already in a
4 situation with Constable Keating, and the fact that
5 I wanted control of the situation a little better, I
6 had had asked him to lay on the ground. It's a
7 normal police technique to have a person on the
8 ground for better control, for handling. It was
9 under -- so I had made the -- the demand for him to
10 go to the ground. He stated, "No, I'm not doing
11 that," and began walking towards his Celica. Just
12 maybe to paint the picture a little bit better,
13 Constable Keating had his emergency vehicle with the
14 lights on. There was no siren, but it was parked
15 directly behind a white Toyota Celica in the parking
16 lot. He already made a traffic stop on this -- no
17 this vehicle. Beside the white Celica was another
18 vehicle. I don't know the make and model, but there
19 was two occupants of the vehicle. They were, kind
20 of, watching what was going on, the events that were
21 unfolding.

22 Q You're welcome.

23 A So -- so James was walking towards the vehicle. It
24 made a -- it looked in my mind that he was trying to
25 evade police. He already heard Constable Keating
26 say, "Arrest that person." And this is because I

1 heard Constable Keating without any issues, and
2 James was closer to -- to Constable Keating than
3 myself. So I had asked him to go to the ground. He
4 said, "No, I'm not doing that." I repeated the
5 command to go to the ground. He said, "No." So
6 then I approached him. I -- in order to make the
7 -- effect the arrest, I grabbed him to his arm. I'm
8 not sure which arm. However, I made contact with
9 him. I also noted that he had had his hands stuffed
10 in the pockets of his bunny hug that he was wearing
11 that day. And he had lowered his body weight,
12 almost like a stance a person would take, as if they
13 were ready to start a fight. At this point, I had
14 grabbed his arm, trying to effect the arrest. And
15 Constable McAvoy, who was the passenger in my car,
16 came around and went behind him and -- and did a
17 -- like, wrapped his arms around the back of -- of
18 James. He didn't go to the ground immediately. He
19 was requested to, "Go to the ground, go to the
20 ground." And then he had been taken to the ground
21 by myself and Constable McAvoy. At this point, he
22 had fallen to the ground. I did direct his head to
23 the ground, as well. And he had landed in such a
24 way that his right arm was under his body.
25 Constable McAvoy had requested, "Get your arm out in
26 front." Again, I did not see his hands at the time.

1 It was unknown if there was a weapon in his pouch or
2 in his -- his pockets because he didn't take his
3 arms out at any time. So for officer -- officer
4 safety reasons, as well as to handcuff him, we
5 requested that his arm come out behind his back. I
6 had tried to pull out his arm, his right arm from
7 his body, as he was laying on his face and the front
8 body -- like, his stomach. And as I was pulling his
9 arm out, I felt him tugging the arm back in. He was
10 hollering and yelling, trying to get some sort of
11 support from the crowd around him that was, now,
12 forming. At the same time, I noticed that his
13 -- his head was flipping back and forth, trying to
14 see us. It looked as if he was rubbing his face
15 into the ground at some point, too.

16 Q What type of ground are we talking about here?

17 A It was pavement, asphalt. There would have been a
18 little bit of dust or gravel from the road, from
19 vehicles. However, it was not wet at all.
20 Constable McAvoy had applied some pressure on his
21 arm. I heard James say, "You're going to break my
22 arm." We said, "Well, then pull your arm out from
23 beneath you." Eventually the arm was -- the right
24 arm was brought out and put behind his back, and I
25 had placed a handcuff on his right arm. And I had
26 given his right arm to Constable McAvoy to handcuff

1 his left to his right through -- over his back. He
2 was then searched. Constable Boyce and Constable
3 Hounsell came in during the handcuffing and assisted
4 us in ensuring that he was handcuffed and secured.
5 He was searched, and he was eventually stood up and
6 put into the back of a marked patrol car with a
7 silent patrolman. There is no silent patrolman in
8 the traffic cars, so we had patrol transport him
9 down to detention.

10 Q Do you know which patrol officers did that or not?

11 A Constable Smith had transported him to detention.

12 Q Okay. And we're talking about --

13 A James.

14 Q -- James --

15 A Yeah.

16 Q -- Stewart? Okay.

17 A I don't recall who transported Jarvis.

18 Q Okay.

19 A There was profanity and obscenities shouted at us by
20 James. I don't recall what Jarvis had said to me.
21 I didn't have much dealing with Jarvis at all at
22 that point. So he was transported to detention, and
23 then our focus was, now, on the -- the vehicle
24 stopped, looking at the vehicle that they were
25 driving. It was not roadworthy at all. There was a
26 lot of defects with the vehicle. I had noted right

1 away that there was a huge indent into the driver's
2 door. It looked like -- as if it -- you know, it
3 wouldn't have opened easily. Like, it was just
4 -- it looked like it was in a collision with another
5 vehicle. So there was concern for structural
6 integrity, why this vehicle should not be on the
7 road. Also, walking around the vehicle, we noted
8 that there were some issues with the taillights
9 being painted over, problems with the side marker
10 lights being painted over, so we had spoken to
11 Constable Keating about what -- what the issue was
12 with this vehicle, and why it should not go back on
13 the road. Constable Keating also mentioned to us
14 that he had a plate with a sticker on it that said,
15 "Continuous"; however it looked like a photocopy on
16 it. I had looked at the plate myself, and saw the
17 photocopy that said, "Continuous" on it. The plate
18 did not match the vehicle. And when we looked at
19 the -- the VIN number on the dash, it almost looked
20 like it was not able to be read very easily. It
21 -- it looked like -- almost it would have been
22 tampered with at one point. However, after looking
23 at it closely, it was just hard to read. There was
24 one part in our minds that we thought that this
25 vehicle may have been stolen. We had done a search
26 on the plate, the history of it, the -- the vehicle

1 identification number, and the last known registered
2 person was out of B.C. Searching it a little bit
3 more, we had found that that person had been
4 deceased for some time. We were wondering, well,
5 how does that connect to these -- these men, and how
6 the vehicle came from B.C.?

7 Q Sorry to interrupt, but --

8 A For --

9 Q -- were all of these checks being done while the
10 vehicle was still at the scene --

11 A Yes --

12 Q -- or --

13 A -- it was.

14 Q Okay. Sorry, carry on then.

15 A So there would have been a little bit of time from
16 when they had been transported from patrol until the
17 time that myself and Constable McAvoy and Constable
18 Keating had attended to detention. We also waited
19 for a tow truck to arrive to take it to our
20 compound. It turned out that it wasn't stolen.
21 However, the investigation went that way for a
22 certain point. And then we just determined that it
23 was just not registered. We did locate later on
24 that there was a bill of sale in the vehicle. That
25 vehicle appeared to have been bought legitimately.
26 However, it took a little bit of time to find that.

- 1 Q About how much time, Constable?
- 2 A (No audible response.)
- 3 Q I'm maybe putting you on the spot here, but --
- 4 A Probably about an hour, an hour and-a-half.
- 5 Q Okay.
- 6 A Okay.
- 7 Q That may be about all I need to ask you, as far as
- 8 the narrative then, Constable. Or is there anything
- 9 else that you had on the tip of your mind or --
- 10 A Yeah. I had -- still didn't know who these -- these
- 11 men were at the time. I had arrived in detention,
- 12 and normally we -- we come up from the basement,
- 13 through an elevator shaft, and into the second floor
- 14 where we go to the booking room. As I -- the
- 15 elevator's doors opened, I heard this yelling and
- 16 screaming from a prisoner. It turned out to be Mr.
- 17 James Stewart, who was yelling from the back of our
- 18 detention. I did approach him because I wanted to
- 19 know who he was. And he remembered me from the
- 20 incident. However, I asked him for his name and
- 21 date of birth, just so we can determine his
- 22 identity. He didn't give it to me. He wanted to
- 23 know my name and my identity. And he read my badge
- 24 number, so he knew who I was. I wasn't -- I wasn't
- 25 sure if he was under the influence of a drug. I am
- 26 also -- part of my training is in the drug

1 recognition expert program. And just because he was
2 so irate, I didn't want to open the door to the cell
3 to talk to him, to see if there was anything that he
4 may have been under the influence of. So I never
5 did determine --

6 MR. JARVIS STEWART: Well, objection --

7 THE WITNESS: -- if he was --

8 MR. JARVIS STEWART: -- for a second. You had
9 already searched this man and found no drugs, no
10 alcohol, no --

11 THE COURT: Just -- just --

12 MR. JARVIS STEWART: -- anything?

13 THE COURT: -- just -- just a moment.

14 That's not relevant information anyways. Let's go
15 ahead.

16 MR. PASHOVITZ: Yes. Thank you, Your
17 Honour.

18 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
19 DIRE CONTINUES:

20 Q Did --

21 A I --

22 Q -- did he identify himself to you in cells?

23 A No, he didn't.

24 Q No?

25 A (No audible response.)

26 Q Okay.

- 1 A I did talk to Jarvis, who did say that he -- his
2 name was Jarvis, and his brother's name was James.
- 3 Q Was that in cells, as well?
- 4 A Yeah, it was.
- 5 Q You spoke to Jarvis after you -- you spoke to
6 James?
- 7 A Yeah. I went around the -- because they were
8 -- sort of, the cells were back-to-back. And Jarvis
9 at the time was cooperative, and he was -- seemed
10 -- you know, I guess, in a normal mental state,
11 considering what just happened. But it seemed like
12 James was out of control.
- 13 Q And I think that's sufficient then, Constable. I'll
14 take you back to the scene.
- 15 A Okay.
- 16 Q I'm just curious about the -- the timing of
17 everything that you've discussed for us.
- 18 A Mmhmm.
- 19 Q And approximately what time was it that you got this
20 call for assistance or --
- 21 A About seven o'clock in the evening.
- 22 Q Okay.
- 23 A Sorry, 1700. That would be about five o'clock. My
24 apologies. About five o'clock.
- 25 Q All right. And then what time did you get to the
26 scene itself?

1 A (No audible response.)

2 Q And if you need to refer to your notebook for the
3 exact times, feel free.

4 A You know, I should. Your Honour, may I --

5 THE COURT: Yes.

6 THE WITNESS: -- refer to my notes --

7 THE COURT: Go ahead.

8 THE WITNESS: -- for this?

9 THE COURT: Sure.

10 THE WITNESS: I had arrived at the scene at
11 about 1905, according to my notebook. And I had
12 arrived at detention at about 1957. And that's when
13 I spoke with James.

14 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
15 DIRE CONTINUES:

16 Q Okay. So from time at the scene until time at
17 detention, less than 60 minutes?

18 A Just --

19 Q Do I have the math right there?

20 A -- just under 60 minutes, yeah.

21 Q Okay. And how quickly did things happen at the
22 scene?

23 A (No audible response.)

24 Q Can you tell the Court as far as you arrive at the
25 scene, from that time until the time of James's
26 arrest?

1 A (No audible response.)

2 Q Or can you walk me through that, please, as far as
3 how quickly things happened?

4 A Within a minute. It took us approximately a minute
5 to get from where we were set up for doing radar to
6 8th and Grosvenor to assist Constable Keating. From
7 the time that I had arrived, to the time that James
8 was taken into custody and arrested, approximately a
9 minute -- less than a minute.

10 Q Do you have a notation of that time in your notebook
11 at all or not, Constable?

12 A (No audible response.)

13 Q Feel free to review it again, as well.

14 A No, I don't, but it -- I had watched Constable Smith
15 record a time in his notebook where he read James
16 for -- for obstruction for his rights to counsel.

17 Q Okay. Do you recall that time or not?

18 A No, I don't.

19 Q Okay. No, and that's fine. So back to the scene
20 then. Tell me about what you saw when you got
21 there, tell me how much information was passed to
22 you by Constable Keating, and tell us what you did
23 as a result of that?

24 A Okay.

25 Q Walk me through that, more slowly, please. I'm
26 interested.

1 A Okay. When we arrived, Constable McAvoy and myself,
2 we had positioned our car, sort of, in a field of
3 view where we can see the Shopper's Drug Mart. And
4 there's a -- the extension where Grosvenor would go
5 to take you to the mall. So we're, kind of, at a 45
6 degree angle, so our vision was Shopper's Drug Mart,
7 the persons being under arrest, the -- the police
8 vehicle, and the vehicle that was stopped, as well
9 as a person who just -- or a vehicle who happened to
10 be on the lot. There was also a few people milling
11 about, you know, doing their business at Shopper's
12 Drug Mart, in that area. Upon my arrival, there was
13 Constable Keating's vehicle with its emergency
14 lights flashing still. He had been --

15 Q How -- can you tell the Court, how visible were
16 those to you with your eyes?

17 A Very visible. You can see them from the street,
18 from 8th Street.

19 Q Tell us about the lights that you saw on that
20 vehicle with your own eyes?

21 A Okay.

22 Q Colours --

23 A There was --

24 Q -- how many, et cetera?

25 A From the side of that vehicle, you can see the blue
26 light that would have been in the signal light -- or

1 sorry the rear view mirror. There's a -- there's
2 lights, sort of, integrated into the rear view
3 mirrors of the patrol car. And that would have been
4 the one that would have been most prominent, as well
5 as a visor light. There's a light that's mounted
6 just above the rear view mirror. I would have saw
7 those two, as well as the front headlight would have
8 been flashing, as well, because there's two lights
9 on either side that would be flashing. I wasn't
10 able to see the back of it, but I -- I've driven
11 that car myself, and I've done a check on it. And
12 there's also a red and blue light in the back
13 window. In addition, the taillights would also
14 flash.

15 Q Okay. Thank you for that. Please, proceed as far
16 as what the scene looked like to you.

17 A Okay. Constable Keating was standing by the -- his
18 -- his patrol vehicle 477. And he already had
19 Jarvis in handcuffs. But he -- it appeared to me
20 that he was, kind of, backing away from James, with
21 still maintaining control with one hand on Jarvis's
22 handcuffs. Jarvis was standing near the wall, on
23 the west side of the Shopper's Drug Mart.

24 Q I'm sorry, would that be Jarvis --

25 A I'm sorry.

26 Q -- or James?

1 A James, James. Thank you. James would have been
2 standing. He wasn't in custody. He had his hands in
3 his front pockets of his bunny hug. I stand up out
4 of my patrol car, and he states -- James says to me
5 -- or to our direction, "Here come the heroes."
6 Constable Keating say -- says to me, "Arrest that
7 man," or, "Arrest that person," or, "Arrest him."
8 It was clear to me that that person needed to be
9 placed under arrest. James walks away from the
10 Shopper's Drug Mart, walks across the parking lot,
11 away from Constable Keating, and towards where his
12 Celica was parked. I -- and, again, based on the
13 fact that Constable Keating's a very large man, he's
14 already asked for assistance, I've noticed the size
15 of James. He's a bigger person than myself. And I
16 wanted to have control over him. Using the minimum
17 amount of force I could to effect that arrest, I
18 wanted to have control of -- of him, by having him
19 lay on the -- on the pavement. We call it a prone
20 position. And we've been trained this from police
21 college to have him proned-out. If he's laying
22 (sic) on the ground, there's no way of (sic) him to
23 run away from us, to flee, I guess. He says, "No,
24 I'm not doing that."
25 Q I'm sorry. So what's the first thing that you,
26 yourself, say to James?

- 1 A "Get on the ground."
- 2 Q Where was James positioned when Constable Keating
3 told you the phrase, "Arrest him," "Arrest that
4 man," "Arrest that person"?
- 5 A He was still close to the Shopper's Drug Mart, by
6 the west wall. Just -- it seemed -- and I picture
7 in my mind, it was just off the sidewalk. There's a
8 -- kind of, a deep sidewalk, walkway, that, kind of,
9 has an overhang from the building that people can
10 shelter themselves from the rain or whatnot.
- 11 Q Did you believe that James Stewart had heard
12 Constable Keating say, "Arrest him," or, "Arrest
13 that man," "Arrest that person"?
- 14 A I do.
- 15 Q Tell -- tell the Court about why you believe that?
- 16 A Just from the fact that Constable Keating directed
17 it loud enough so I can hear it, and James was close
18 to -- or closer to Constable Keating than myself.
- 19 Q Are you able to say how close James was to Constable
20 Keating?
- 21 A (No audible response.)
- 22 Q Or by pointing to something here in the room or
23 whatever is easiest for you?
- 24 A I was at the -- the curb that you would turn into
25 the -- the parking lot by Grosvenor. It's
26 -- there's enough room for a vehicle to park facing

1 westbound. There's enough room for another vehicle
2 to park towards the building. And there's enough
3 room for traffic to -- to go in-between the
4 vehicles. The parking lot -- I would estimate it
5 -- oh, probably 150 feet. That was my distance to
6 where Constable Keating was. And James would have
7 been about 30 feet from Constable Keating when he
8 said, "Arrest that person." I heard him at about
9 150 feet.

10 Q Okay. I appreciate that. Carry on then, as far as
11 what you said to James and what his responses were?

12 A Okay. I had ordered him to get on the ground once.
13 He says, "No, I'm not going to do that." I ordered
14 him twice to go on the ground. "No, I -- no," was
15 the statement. He still was in motion, walking
16 towards his Toyota. And we approached him. And we
17 had -- again, I had tried to affect the arrest by
18 making contact with him by grabbing one of his arms.
19 Again, I don't recall which arm it was, but I made
20 contact with him. He had taken a stance where he
21 would have his hands still in the pockets of his
22 bunny hug. And he dropped his body weight.
23 Constable McAvoy then went around him and held on to
24 his body. It was apparent that -- we have a use of
25 force continuum. And it appeared that he was
26 actively resisting, using that phrase, basically

1 saying he did not want to be arrested. He wasn't
2 making a -- not a runaway to flee, but he was not
3 complying with the police. For that use of force,
4 we could use different levels of force at our
5 disposal. This would have been something where we
6 could use anywhere from a soft body contact, whereas
7 we're holding him using a twist-lock, using pressure
8 points, to an actual hard control tactic, where we
9 would physically take control of him and put him to
10 the ground. I already started with the soft control
11 technique of holding onto his arm, but he pulled
12 away from me on that point. And this is where
13 Constable McAvoy went around him, grabbed him, and I
14 directed him to the ground using his head, and
15 Constable McAvoy also followed through with his body
16 weight on him. The way he landed was on his front.
17 And he had his right arm under his body. Constable
18 McAvoy already had his left hand. Your Honour, I
19 can demonstrate, kind of, the best I can by
20 standing. Left hand behind his back. Constable
21 McAvoy was on his back, applying pressure upwards to
22 get -- essentially a pain compliance for him to
23 remove his right hand out from under his body, to
24 put back to effect the cuffing. James did say,
25 "You're going to break my arm." Constable McAvoy
26 said, "Put your right arm behind your back." I was

1 -- the crook of the elbow would be sticking out of
2 the body a little bit, and I would have been pulling
3 on the -- the right arm. But I also felt him
4 pulling back into his body. Eventually, after
5 -- you know, this is all going on about ten, 15
6 seconds. It happened very quickly. The -- the
7 right arm was pulled out behind his body because his
8 left hand was already behind him. A handcuff was
9 -- was put on his right wrist, and then it was
10 connected to his back with his left hand. He would
11 have been rolled to his side, and he would have been
12 searched. And just to -- you know, looking for
13 anything for weapons of escape, anything for officer
14 safety, he was searched for. He was stood up, and
15 then he was taken by other officers. It was -- I
16 believe it was Constable Hounsell who had directed
17 him, and Constable Smith, I believe, directed him,
18 and put him in the back of that patrol car. I don't
19 recall the number of that car. But he was placed in
20 there. I did notice that there was some scrapings
21 on -- on his face, on James's face from the -- the
22 contact he had with the arrest.

23 Q Are you able to -- when you say "the contact with
24 the arrest", can you elaborate on that for me,
25 please, as far as --

26 A There was some scratches, some little scratches

1 across his nose, across his cheeks. There was also
2 an abrasion on his forehead.

3 Q Did you see what had come into contact with his face
4 to lead to those?

5 A It would have been on the pavement of the ground.

6 Q Did you have any role in doing that or not, can you
7 tell me about that?

8 A Yeah, I would have because I would have held onto
9 his head to take him down to the ground. But I also
10 noted him -- like, there could have been some
11 -- well, there would have been contact with the
12 ground at that point. But I also noticed that he
13 was pushing his face back and forth against the
14 pavement, looking to see where we were in relation
15 to -- you know, where -- because I had to -- I had
16 my arm on -- on -- or his hands on his right arm,
17 trying to pull him out. And I'd seen his head going
18 back and forth. At one point, I approached the
19 patrol car. I had not opened the door, but I had
20 opened the front driver's door, rolled down the back
21 window, and advised him that he was under arrest for
22 obstruction. And then this is when Constable Smith
23 was behind me. And I asked Constable Smith to read
24 him for rights to counsel for the obstruction. And
25 he had his notebook out. He recorded that. I heard
26 Constable Smith read to James for his arrest, that

1 he -- the reasons for his arrest for that.

2 Q Okay. Up until that point in time, I take it then,
3 you weren't reading from a card, certainly?

4 A No.

5 Q Anything you said was just off the tip of your
6 memory --

7 A That's right.

8 Q -- as opposed to from a card? You've been talking
9 about James Smith (sic) and Jarvis -- I'm sorry
10 -- James Stewart and Jarvis Stewart. Are they in
11 the courtroom here today?

12 A (No audible response.)

13 Q Can you point to them, please?

14 A Yes. This was Jarvis and that's James. Jarvis is
15 in the striped shirt.

16 Q Thank you.

17 A (No audible response.)

18 MR. PASHOVITZ: Identifying the same two
19 individuals as the other witness, Your Honour.

20 Q All of these events occurred in Saskatoon,
21 Saskatchewan; is that correct?

22 A Yes, it happened at 8th and Grosvenor, which are
23 public streets in Saskatoon, in the Province of
24 Saskatchewan.

25 Q Thank you, Constable.

26 A (No audible response.)

- 1 MR. PASHOVITZ: If I may just have a moment,
2 Your Honour? I believe those are all of my
3 questions.
- 4 Q You were in the traffic section back on the date of
5 this incident; is that correct?
- 6 A That's right.
- 7 Q You still are?
- 8 A I still am.
- 9 Q And how long have you been with the traffic section,
10 approximately?
- 11 A I was two years in hit-and-run. It's an
12 investigative role. It's still uniformed. And then
13 I went to three years into enforcement.
- 14 Q How many traffic stops have you conducted,
15 approximately?
- 16 A Thousands.
- 17 Q Okay.
- 18 A This is -- for somebody to act this way, it's not a
19 normal occurrence during a traffic stop. However,
20 for the traffic violations that I had noted on -- on
21 their traffic stop, it's very typical of other
22 vehicles that we'd see in Saskatoon: This being
23 painted or tinted taillights; vehicles driving with
24 body damage on it; vehicles that were unregistered;
25 and persons driving without a driver's license.
- 26 Q Okay. Thank you very much for answering all of my

1 questions. Please, answer any other questions that
2 may be asked of you.

3 A Thank you.

4 THE COURT: Cross-exam?

5 MR. JARVIS STEWART: (No audible response.)

6 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
7 DIRE:

8 Q So you really had no idea why we'd -- why -- why
9 we'd been pulled over then that day, really?

10 A (No audible response.)

11 Q You had -- no one had indicated to you anything,
12 this was a traffic stop?

13 A (No audible response.)

14 Q Jay Keating didn't indicate anything to you over the
15 dispatch?

16 A (No audible response.)

17 Q You just got to the parking lot in emergency
18 fashion?

19 A I did have somewhat of an idea, just based on my
20 history of seeing traffic stops. There was an
21 officer that requested assistance. I got there as
22 soon as I could. It was a priority for us to attend
23 to --

24 Q But he --

25 A (No audible response.)

26 THE COURT: Yes.

1 THE WITNESS: -- an officer --
2 THE COURT: He's asking --
3 Q -- he didn't --
4 A (No audible response.)
5 THE COURT: -- you if you knew when you
6 arrived there why -- why they were pulled over?
7 THE WITNESS: Yeah. I -- I -- for the
8 specific reason, no, but I had noted that when
9 I --
10 Q So you --
11 A -- arrived --
12 Q -- didn't know?
13 A -- that there was --
14 Q Okay.
15 A -- a traffic --
16 Q No, that's --
17 A -- stop that --
18 THE COURT: Okay.
19 Q -- all right.
20 A -- was conducted.
21 THE COURT: That's --
22 Q That's -- no, "No" is no.
23 A (No audible response.)
24 THE COURT: -- that --
25 Q But then you decided to use force to effect this
26 arrest?

- 1 A (No audible response.)
- 2 Q You didn't know why you were there, but, now, you
- 3 decided to use force; is that correct?
- 4 A That's correct.
- 5 Q So you decided to use force, and you didn't know
- 6 why?
- 7 A No. I knew why I was using force.
- 8 Q You did?
- 9 A It's because --
- 10 Q Did you file a use of force report for this?
- 11 A Yes, I did.
- 12 Q You did, really?
- 13 A (No audible response.)
- 14 Q Is there a reason that Bryce hasn't been given that,
- 15 or why we don't have that information?
- 16 A That's not something that normally comes --
- 17 Q Oh, okay.
- 18 A -- in with the --
- 19 Q Well, that's --
- 20 A -- the package.
- 21 MR. JARVIS STEWART: For the record, we've never
- 22 been given any use of force reports in anything.
- 23 Q So and --
- 24 A If I can just --
- 25 Q -- then you --
- 26 A -- can I --

1 Q -- said --

2 A -- stop you there, Jarvis? I just want to go back
3 to why.

4 Q I don't really want to go back. I'm asking the --

5 A I --

6 Q -- questions here, bro. So then --

7 A I'm trying to --

8 Q -- at that point --

9 A -- answer them --

10 Q -- you had --

11 A -- there Mr. --

12 THE COURT: Well, you --

13 Q -- used force --

14 A (No audible response.)

15 THE COURT: -- answered them.

16 Q -- and you --

17 A Thank you --

18 Q -- and you got --

19 A -- Your Honour.

20 Q -- him down on the ground?

21 A (No audible response.)

22 Q So then you're -- you're -- you're alleging that
23 this male was rubbing his own face off the pavement?

24 A Yes.

25 Q That's in your notes, he was rubbing his -- so you
26 don't think that you tackling him on the pavement

1 and you taking control of his head and taking it to
2 the pavement, and your partner hip-tossing him, you
3 don't think that resulted in the cuts and
4 abrasions?

5 A (No audible response.)

6 Q You think it was because you took this man to the
7 ground, and he started grinding his own face off the
8 ground; is that what I'm led to believe?

9 A There was about four questions there. I'll just
10 -- I had -- I had to do with part of it, but not all
11 of it.

12 Q So -- but you were the senior-most officer on the
13 scene?

14 A (No audible response.)

15 Q Right?

16 A (No audible response.)

17 Q You're a ten year veteran, you're a drug recognition
18 evaluator, you're a member of the sunshine list?

19 A (No audible response.)

20 Q So you were the senior-most officer at this scene?

21 A (No audible response.)

22 Q But you didn't know what was going on, and, now,
23 you'd used force; is that right?

24 A I'm not sure what the sunshine list is?

25 Q You'd make \$100,000 a year working for the Saskatoon
26 Police Service?

- 1 A If that's what the sunshine list is --
- 2 Q You're --
- 3 A -- yes.
- 4 Q -- you're well paid to be, you know, to protect the
5 public, and in this case, you've attacked the
6 public, you've attacked a man, not knowing the
7 reason why, and, now, you're alleging that he
8 grinded -- he was grinding his own face off the
9 pavement to elicit sympathy from the crowd; is that
10 correct?
- 11 A Yeah, that was --
- 12 Q That was --
- 13 A -- that was in --
- 14 Q -- fair?
- 15 A -- my notes.
- 16 Q Okay. And then --
- 17 A (No audible response.)
- 18 THE COURT: That's -- that's --
- 19 Q -- at that point --
- 20 A (No audible response.)
- 21 THE COURT: -- that's -- that's not what
22 he said. He said he may have caused some of it, but
23 some of it --
- 24 MR. JARVIS STEWART: Okay.
- 25 THE COURT: -- he didn't do.
- 26 Q So -- and then at that point, you never arrested

- 1 anybody or you never read anybody their rights?
- 2 A (No audible response.)
- 3 Q You didn't read this man his rights, you simply
- 4 handed him off to another officer?
- 5 A (No audible response.)
- 6 Q And then, according to your notes, it says you spoke
- 7 to him through an open window in the car, and said
- 8 that he was being arrested for obstruction of
- 9 justice?
- 10 A Yes.
- 11 Q But this man was never arrested for obstruction of
- 12 justice, was he?
- 13 A (No audible response.)
- 14 Q He was arrested for obstruction of a peace officer?
- 15 A (No audible response.)
- 16 Q And you failed to mention anything about the assault
- 17 charge at that point?
- 18 A (No audible response.)
- 19 Q So this man really had no idea why he was under
- 20 arrest, did he?
- 21 A His reasons -- I explained his reasons of his
- 22 arrest. I told him that he was --
- 23 Q Arrested for --
- 24 A -- arrested --
- 25 Q -- obstruction of --
- 26 A -- for obstruction.

1 Q -- justice, but, see, obstruction of justice is
2 Section 139 of the *Criminal Code*. See, that's
3 normally charged and gets laid in a courtroom, but
4 you -- you arrested him for obstruction of a peace
5 officer, or supposedly?

6 A (No audible response.)

7 Q And, see, that's Section 129 of the *Criminal Code*,
8 and that's what he actually got charged with?

9 A (No audible response.)

10 Q But according to your notes, you said he was being
11 arrested for obstruction of justice, and you didn't
12 say anything about assault?

13 A (No audible response.)

14 Q So at this point, this man really had no idea why
15 he'd just been attacked and beaten up and thrown on
16 the ground and handcuffed, and, now, he didn't know
17 the reason for his -- for his arrest, did he?

18 A I made note of why I had arrested him. I told him
19 through the open window --

20 Q Obstruction --

21 A -- that he was --

22 Q -- of justice?

23 A -- being charged for obstruction.

24 Q Of justice?

25 A Obstruction.

26 Q Not obstruction of a peace officer?

- 1 A It was obstruction, is what I told him.
- 2 Q Just obstruction?
- 3 A Just obstruction.
- 4 Q Okay, so he --
- 5 A (No audible response.)
- 6 THE COURT: That's not -- is that your
7 evidence now because that's not what you just said?
- 8 THE WITNESS: I advised him, he was under
9 arrest for obstruction. If I did say, "Of justice",
10 then --
- 11 Q Then you were --
- 12 A -- then --
- 13 Q -- wrong, weren't --
- 14 A -- then I'm --
- 15 Q -- you?
- 16 A -- that's what I said.
- 17 Q Yeah, I guess, so at this point, now, this man has
18 been arrested, and he has no idea?
- 19 A (No audible response.)
- 20 Q He's been beaten up, he's in the back of a car?
- 21 A (No audible response.)
- 22 Q And at that point, did you offer to give this man
23 medical assistance when you noticed he was bleeding,
24 he'd been beaten up?
- 25 A (No audible response.)
- 26 Q Did you offer to take him to the hospital or get him

- 1 medical treatment?
- 2 A No, I didn't.
- 3 Q No, not at all, hey?
- 4 A (No audible response.)
- 5 Q And you just decided at that point that he needed to
- 6 be taken away to jail?
- 7 A (No audible response.)
- 8 Q He was under arrest for obstruction of justice, but
- 9 he needed to be out of here, you couldn't just write
- 10 him up his Information, he needed to go to jail
- 11 now?
- 12 A He would have been looked at --
- 13 Q Okay, so --
- 14 A -- by the staff --
- 15 Q -- what did --
- 16 A -- at the --
- 17 Q -- you do at the --
- 18 A -- at the detention.
- 19 Q -- scene for an hour then?
- 20 A (No audible response.)
- 21 Q If this -- if this traffic stop occurred at seven
- 22 o'clock, but you didn't attend to detention until
- 23 almost eight o'clock, what did you do in the
- 24 meantime?
- 25 A I was looking at your vehicle.
- 26 Q Looking at the vehicle, so you have no interest in

1 getting these men their implementational
2 informational duty to counsel?

3 A (No audible response.)

4 Q You had no -- you -- you really didn't care that
5 these men didn't -- had no idea why they'd been
6 placed under arrest and were, now, in detention
7 cells?

8 A (No audible response.)

9 Q You weren't concerned with that?

10 A (No audible response.)

11 Q You were more concerned with just looking at the
12 car?

13 A No. I did care.

14 Q You did care?

15 A And that's why --

16 THE COURT: Let him --

17 THE WITNESS: -- the transport --

18 THE COURT: -- answer.

19 THE WITNESS: -- officer did take that -- I

20 -- I had the transport officer take him to

21 detention, as part of their duty.

22 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
23 DIRE CONTINUES:

24 Q Okay, so in that point, you didn't help him getting
25 a -- making a call to a lawyer, you didn't -- you
26 didn't read him his rights, you had this -- this

1 transporting officer do all of that?

2 A That's correct.

3 Q Okay. And so you told the transporting officer that
4 he was under arrest for obstruction of justice?

5 A Yes.

6 Q You did?

7 A (No audible response.)

8 Q Really?

9 A (No audible response.)

10 Q So why did the transport officer then threaten to
11 -- to charge him with mischief?

12 A He probably wasn't -- I don't know. I can't -- I
13 can't explain that.

14 Q Really?

15 A (No audible response.)

16 Q It was because -- was it because no one would really
17 identify themselves (sic) to this man, or tell him why
18 he'd been placed under arrest or was in -- in their
19 custody and why he wouldn't be getting medical
20 attention?

21 A (No audible response.)

22 MR. PASHOVITZ: I apologize, Your Honour. I
23 just rise to object. I think that calls for
24 speculation on the part of this witness, to answer
25 what would be in someone else's mind.

26 MR. JARVIS STEWART: Okay, okay.

1 Q But you are the -- the certified drug recognition
2 evaluator of the Saskatoon -- or -- or -- all right,
3 a certified drug --

4 A Yes --

5 Q -- right?

6 A -- I am.

7 THE COURT: I -- I didn't allow this
8 evidence in. And if -- if you want to raise it --

9 MR. JARVIS STEWART: Oh, I'm --

10 THE COURT: -- you can.

11 MR. JARVIS STEWART: -- just -- I just wanted to
12 raise something about his testimony because he just
13 says --

14 Q You said in your notes that you believed his
15 behaviour was outrageous, that he was on some sort
16 of drug, and/or mentally deranged. And -- and I'm
17 just curious, what evidence did you have as a
18 certified drug recognition evaluator?

19 A (No audible response.)

20 Q I mean, you searched this man multiple times, you
21 searched his car?

22 A (No audible response.)

23 THE COURT: Do you want him to answer
24 that question?

25 Q You found --

26 A (No audible response.)

1 THE COURT: Do you want him to answer why
2 he thought all of those things?
3 MR. JARVIS STEWART: Yeah, I --
4 THE COURT: Is that --
5 MR. JARVIS STEWART: -- want him to answer that,
6 yeah.
7 THE COURT: All right.
8 MR. JARVIS STEWART: I'd like to know why --
9 THE COURT: Go ahead --
10 MR. JARVIS STEWART: -- why he --
11 THE COURT: -- and answer --
12 MR. JARVIS STEWART: -- why --
13 THE COURT: -- why did -- if you wrote
14 that in your report, did you?
15 THE WITNESS: Yes, I did.
16 THE COURT: Okay. Tell me why you -- and
17 just let him answer this now. Tell me why you
18 thought all of those things about him?
19 THE WITNESS: The behaviours of a person
20 such as James -- such as James would indicate to me
21 that, typically, a person who had taken a stimulant,
22 such as cocaine or a methamphetamine, would act in
23 such an irrational way, with his heightened anger,
24 the fact that he wasn't listening to officers. It
25 was very typical of somebody -- I was unable to do
26 the recognition because he was not the person

1 driving the vehicle.

2 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
3 DIRE CONTINUES:

4 Q Oh, that's the reason?

5 A (No audible response.)

6 Q Okay. But you were still able to -- to grill us
7 both about where the drugs were; right?

8 A I didn't. I didn't indicate in my report --

9 Q No?

10 A -- that I asked you anything about drugs.

11 Q Well, okay. But you did -- you did at one point
12 think this was a stolen vehicle, too?

13 A Yes, I did.

14 Q So is it possible that you acted as if this was a
15 stolen vehicle, right through the arrest, before you
16 actually realized that it was, in fact, my car, and
17 I had all of the paperwork in the glove box?

18 A That was part of that timeline in the hour.

19 Q Oh, so --

20 A We wanted to ensure --

21 Q -- you just --

22 A -- that it wasn't --

23 Q -- you just --

24 A -- stolen.

25 Q -- made a mistake, you thought it was stolen, you
26 arrested two guys, you beat them up, ten cars came

- 1 out of everywhere?
- 2 A (No audible response.)
- 3 Q It was ten cars; right?
- 4 A (No audible response.)
- 5 Q Ten cars responded to this scene?
- 6 A I don't recall how many cars.
- 7 Q You don't recall?
- 8 A (No audible response.)
- 9 Q Okay. Do -- do you recall how many officers?
- 10 A (No audible response.)
- 11 Q Was it 18 officers?
- 12 A No, I don't recall.
- 13 Q You don't recall that at all?
- 14 A (No audible response.)
- 15 Q You have no recollection?
- 16 A (No audible response.)
- 17 Q So you stayed at the scene for an hour, looking at
- 18 the car, but you don't recall how many cars showed
- 19 up?
- 20 A At the scene, when I was looking at your car, there
- 21 was four officers.
- 22 Q Four officers?
- 23 A (No audible response.)
- 24 Q Just four?
- 25 A (No audible response.)
- 26 Q Really?

- 1 A (No audible response.)
- 2 Q And you --
- 3 A There was --
- 4 Q -- don't --
- 5 A -- four.
- 6 Q -- remember seeing ten police vehicles?
- 7 A No, I don't.
- 8 Q How many police vehicles do you remember seeing?
- 9 A I saw four.
- 10 Q Just four?
- 11 A (No audible response.)
- 12 Q There's a big difference between four and ten, isn't
- 13 there?
- 14 A (No audible response.)
- 15 MR. JARVIS STEWART: Yeah. No further questions.
- 16 THE COURT: Okay.
- 17 MR. JAMES STEWART: I have a couple questions,
- 18 Your Honour.
- 19 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
- 20 DIRE CONTINUES:
- 21 Q At the scene, who was the highest ranking officer?
- 22 A I was until the acting Sergeant Scott arrived.
- 23 Q The acting Sergeant Scott?
- 24 A Yeah.
- 25 Q Was he driving the pick-up truck?
- 26 A Yes, he was.

- 1 Q Okay. So you would then outrank Keating though?
- 2 A We're the same rank.
- 3 Q You're in the same rank, so do you typically give
- 4 him orders, or does he typically give you orders, or
- 5 do you guys -- or have the ability to act
- 6 independently?
- 7 A We do act independently.
- 8 Q But when he gave you an order to arrest that man,
- 9 did you then ask the subject, me, the accused, why,
- 10 or did you look to get any kind of threshold or any
- 11 kind of understanding before you attacked me?
- 12 A Let me back up. I was under the impression that the
- 13 call was of an immediate nature, an officer
- 14 requesting assistance is an immediate nature for us.
- 15 We arrived there. I was acting on grounds that I
- 16 believed you were arrestable for an offence. So I
- 17 affected the arrest.
- 18 Q Okay.
- 19 A And you had resisted the arrest by walking away. I
- 20 didn't attack you.
- 21 Q Okay, but you're -- the car that you were driving,
- 22 did it have an in-car camera system installed, or
- 23 did it not?
- 24 A No.
- 25 Q It did not?
- 26 A We didn't have it --

- 1 Q Were --
- 2 A -- installed yet.
- 3 Q -- were you aware of that?
- 4 A Yes.
- 5 Q You were aware that there was no camera and no
6 microphone in that vehicle?
- 7 A That's right.
- 8 Q Does this normally happen for the Saskatoon
9 Police?
- 10 A We were in a transition period where we just had
11 purchased a few cameras for a trial period. We had
12 to make sure that we were satisfied with the make
13 and manufacture of the camera system. I don't make
14 the decisions on which cars get the cameras.
15 However, when we purchase cameras, the equipment
16 goes in, and we get training.
- 17 Q Yes. I --
- 18 A There is --
- 19 Q -- understand that. My next question is: Do you
20 have a right to refuse in the police service?
- 21 A (No audible response.)
- 22 Q Do you have a right to refuse a job such as a car
23 that is unsafe for duty?
- 24 A (No audible response.)
- 25 Q Do you have a right to refuse driving that
26 vehicle?

1 A I -- I didn't feel --

2 THE COURT: I'm sorry.

3 THE WITNESS: -- it was --

4 THE COURT: I don't understand the

5 question.

6 MR. JAMES STEWART: The question, Your Honour,

7 is: To have the ICCS in the vehicle, the in-car

8 camera system, is both for the safety of the

9 officers and the safety of the general public. My

10 question is: Does he feel --

11 THE COURT: There --

12 MR. JAMES STEWART: -- safe --

13 THE COURT: -- there was no in-car

14 cameras at that time.

15 MR. JAMES STEWART: Correct. So does he feel

16 safe driving a vehicle such as that?

17 THE COURT: Would you rather have a

18 camera in the car or not?

19 THE WITNESS: I -- I didn't have a camera

20 prior, so I didn't know what it was all about. Now

21 that I have a camera in the car, I would like to

22 have a camera in the car --

23 THE COURT: Sure.

24 THE WITNESS: -- having driven them.

25 THE COURT: Okay.

26 MR. JAMES STEWART: Thank you.

1 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
2 DIRE CONTINUES:

3 Q Thank you. Because you didn't have a camera in the
4 car, do you think that there are situations where
5 your actions could be mistrued (sic) as above the
6 necessary means, in so much as you will not be shown
7 on the camera?

8 A (No audible response.)

9 Q In other words, the accountability of not having a
10 camera, and you knowing not having a camera, would
11 that then possibly -- maybe subconsciously affect
12 how you deal with people?

13 A (No audible response.)

14 MR. PASHOVITZ: I apologize, Your Honour. I
15 rise to object. Maybe that might be something
16 better left for argument, but I think this officer
17 may have difficulty answering that question. And I
18 question it's --

19 THE COURT: He's asking --

20 MR. PASHOVITZ: -- relevancy to --

21 THE COURT: -- you --

22 MR. PASHOVITZ: -- what happened on --

23 THE COURT: I think he's asking: Do you
24 feel that you act different now that there's a
25 camera, than you did before --

26 MR. JAMES STEWART: Thank you --

1 THE COURT: -- when there --

2 MR. JAMES STEWART: -- My Lord.

3 THE COURT: -- wasn't one?

4 THE WITNESS: I don't think so. I think my
5 actions would have been the same. And I think they
6 would have been the same in this case.

7 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
8 DIRE CONTINUES:

9 Q Fair. According to dispatch, when Keating gave his
10 message of officer in need of assistance, did he
11 identify himself over the dispatch as Constable
12 Keating needing assistance?

13 A I believed he said it was -- by car number.

14 Q By car number?

15 A (No audible response.)

16 Q You believe, but you're not sure?

17 A Well, there's only officers that would be privy to
18 using those radios.

19 Q Okay, so --

20 A So I knew that it was one of our officers.

21 Q But you didn't know who, and you didn't know the
22 reason why?

23 A The reason why, I would have --

24 Q Just a simple "Yes" or "No"?

25 A Then no.

26 Q Okay. Thank you. Now, you were saying something

1 about the use of force continuum or a minimum amount
2 -- amount of force being used, and then you admitted
3 to using force?

4 A Yes.

5 Q You didn't fill out a form, or you did fill out a
6 form?

7 A I did fill out a form.

8 Q Do we have that form here as any part of your notes?

9 A No, I don't.

10 Q Do we have a copy of that anywhere?

11 A No. That goes to our use of force committee.

12 Q Would the committee have a copy of that?

13 A I -- I believe they would, yeah. It's part of their
14 -- part of the report.

15 Q Okay. Now, another question here. This is very
16 interesting because Keating said, "I was punching
17 and kicking and flailing my arms." And you go on to
18 say that I put my hands in my pockets and reduced my
19 body weight in a combative stance?

20 A (No audible response.)

21 Q Now, I'm under the impression that I was walking
22 away. Now, you guys all seem to have different
23 stories. And I'd just like to know from you, for
24 the record, was I punching and flailing and kicking;
25 was I walking away; or was I burying my hands in my
26 pockets and reducing my body -- my body stance?

- 1 A I --
- 2 Q Which one?
- 3 A -- I seen you walking away. And then after you were
4 told to go to the ground, then you put your hands in
5 your pockets and -- and you put that stance --
- 6 Q Okay.
- 7 A -- that you just demonstrated.
- 8 Q Can you, please, describe for me what a use of force
9 continuum is?
- 10 A Well, it's a -- it's a model. It's representing an
11 officer's perception and how he would react to a
12 situation, based on what's given to him by a
13 situation. I perceived you as walking away, so I
14 had perceived you as resisting arrest. In order to
15 affect the arrest, I wanted to use force to ensure
16 that you were taken into custody. Now, it takes in
17 all situations of being cooperative, which I didn't
18 see you being in this case, to where you were being
19 actively resistive, you're leaving -- you're leaving
20 the scene; okay? There's also provisions for
21 officers to react to that. Like I mentioned, you
22 could use control tactics, which I had done, to take
23 you into custody. I could have used additional
24 techniques, such as a baton or pepper spray, but I
25 did not.
- 26 Q Fair. That's great. Thank you for answering that

- 1 question. When you saw me, did you physically say,
2 "Stop"?
- 3 A (No audible response.)
- 4 Q Did you physically say, "Do not move"?
- 5 A (No audible response.)
- 6 Q Did you physically give me any command to keep me in
7 a single position?
- 8 A Yes. I said, "Go to the ground."
- 9 Q "Go to the ground"?
- 10 A (No audible response.)
- 11 Q But that's not -- that's -- that's an action. You
12 never physically said, "Stop"?
- 13 A (No audible response.)
- 14 Q Did you say, "Stop"?
- 15 A I said, "Go to the ground."
- 16 Q Thank you. Fantastic. Did you say who you were and
17 who you worked for?
- 18 A (No audible response.)
- 19 Q Did you say, "Hello, my name is Constable Clayton
20 Schaefer, and I am working for the Saskatoon Police
21 Service, and I am about to arrest you for --" did
22 you say any of that?
- 23 A No. However, the use of force takes in officer
24 presence --
- 25 Q That's fantastic --
- 26 A -- as a --

- 1 Q -- excellent. So at what time did you finally
2 figure out what -- who I was or what my name was?
3 A It wasn't until after I spoke to --
4 Q After?
5 A -- to your brother in detention.
6 Q And that would have been about an hour --
7 A Yes.
8 Q -- after? Now, in that whole timeframe, that hour,
9 you found a number of documents in the car?
10 A Yes.
11 Q You did find documents in the car?
12 A They were presented to me by officers that --
13 Q Had been on --
14 A -- or Constable Keating --
15 Q -- the scene.
16 A -- had found the --
17 Q At what time --
18 A -- paperwork.
19 Q -- then did you find the legal documentation for
20 Jarvis's car?
21 A (No audible response.)
22 Q Was it an hour after, half an hour after?
23 A (No audible response>)
24 Q Was it handed to you, or did you physically find
25 it?
26 A It was handed to me after, but I had called our

- 1 radio room, and -- and requested a search done on
2 the -- on the VIN. And they weren't able to find
3 any answers as to who the owner was of the vehicle.
4 Q Okay. But you did find a bill of sale in Jarvis's
5 name for that car; is that correct?
6 A I didn't find it, but it was made known to me --
7 Q And it was made known to you?
8 A -- in -- in --
9 Q Yes.
10 A -- course of the investigation.
11 Q So you were aware then that there was a bill of sale
12 in Jarvis's name for that car?
13 A Yes. And then that's --
14 Q Who was --
15 A -- when our --
16 Q -- that car purchased by; were you aware of --
17 A No.
18 Q -- who did he --
19 A It looked like it was -- no, I don't remember which
20 one, but I believe it was Jarvis.
21 Q Okay. He purchased that car from SGI.
22 A Okay.
23 MR. JAMES STEWART: Okay. No further questions,
24 Your Honour.
25 MR. PASHOVITZ: No re-examination, Your
26 Honour. Thank you.

- 1 THE COURT: All right. You said -- you
2 indicated that there was a crowd around there, and,
3 indeed, there was two people in the vehicle next,
4 watching?
- 5 THE WITNESS: There was.
- 6 THE COURT: Two -- two civilians?
- 7 THE WITNESS: Yes.
- 8 THE COURT: Did you or any of the
9 officers -- other officers get statements from
10 them?
- 11 THE WITNESS: No, I did not, no.
- 12 THE COURT: Okay. Did you or any of the
13 other officers, to your knowledge, get their names?
- 14 THE WITNESS: No, I didn't.
- 15 THE COURT: All right. Thank you. All
16 right, anything arising out of that?
- 17 MR. JAMES STEWART: No, Your Honour.
- 18 MR. JARVIS STEWART: If I could just make a
19 comment about that. We actually asked --
- 20 THE COURT: Well, not a comment.
- 21 MR. JARVIS STEWART: Sorry, but --
- 22 THE COURT: If you have a question --
- 23 MR. JARVIS STEWART: -- he -- he --
- 24 THE COURT: -- arising out of that --
- 25 MR. JARVIS STEWART: -- he didn't --
- 26 THE COURT: -- of this witness.

- 1 MR. JARVIS STEWART: -- he didn't get any -- any
2 witness statements. And I've made that aware in the
3 car because by the end of the scene, there were
4 probably at least 50 to a hundred people watching
5 this whole event. There were --
- 6 THE COURT: All right.
- 7 MR. JARVIS STEWART: -- police --
- 8 THE COURT: Okay.
- 9 MR. JARVIS STEWART: -- like I said, ten police
10 cars everywhere --
- 11 THE COURT: Yes. You --
- 12 MR. JARVIS STEWART: -- so --
- 13 THE COURT: -- can tell me when it's your
14 turn to give evidence.
- 15 MR. JAMES STEWART: Yes, fair enough. Thank you,
16 Your Honour.
- 17 THE COURT: Okay. All right, thank you.
- 18 THE WITNESS: Thank you, Your Honour.
- 19 THE COURT: Let's -- that will be it for
20 the morning, I think. Two o'clock?
- 21 MR. PASHOVITZ: Yes, thank you, Your Honour.
- 22 MR. JAMES STEWART: Sure.
- 23 COURT CLERK: All rise. This court stands
24 adjourned until 2:00 p.m.
- 25 (COURT ADJOURNED)
- 26 (COURT RECONVENED)

- 1 COURT CLERK: I declare this court
2 re-opened after an adjournment.
- 3 THE COURT: Enough calisthenics, hey?
- 4 MR. PASHOVITZ: Mmhmm.
- 5 THE COURT: All right.
- 6 MR. PASHOVITZ: Constable McAvoy is next on
7 the witness list, Your Honour. I can go get him.
- 8 THE COURT: Please. Who?
- 9 COURT CLERK: Would you prefer to give your
10 evidence by swearing an oath on the Bible, or would
11 you prefer to give your evidence by making a solemn
12 affirmation?
- 13 THE WITNESS: Affirmation.
- 14 COURT CLERK: Okay. Raise you right hand.
15 State your full name for the Court.
- 16 THE WITNESS: Constable Brad McAvoy,
17 B-R-A-D M-C-A-V-O-Y.
18
- 19 BRAD MCAVOY, having been
20 duly AFFIRMED, states:_____
- 21 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR DIRE:
- 22 Q Good afternoon.
- 23 A Okay.
- 24 Q You're a peace officer with the Saskatoon Police
25 Service; is that correct?
- 26 A Yes, I am.
- 27 Q And you're a peace officer in and for the Province

1 of Saskatchewan?

2 A Yes, I am.

3 Q How long have you been a peace officer with the
4 Saskatoon Police Service?

5 A I've been with the Saskatoon Police Service for just
6 a little over five years, and previous to my
7 employment, I was a peace officer, I was a special
8 constable at the University of Saskatchewan, as
9 well.

10 Q Okay. Can you tell me the timeframe there, as far
11 as when you became a special constable with the
12 University of Saskatchewan, approximately what year
13 or --

14 A It would have been five years previous. The exact
15 date --

16 Q No.

17 A -- ten years ago.

18 Q Okay. All right.

19 A It would have been ten years ago, a little over ten
20 years ago.

21 Q Okay. I appreciate that. Were you on active duty
22 on August 24th, 2012?

23 A Yes, I was.

24 Q Were you working alone or with a partner?

25 A I was working with Constable Schaefer, and we were
26 in unmarked traffic car 474 at the time.

- 1 Q Okay. A traffic car?
- 2 A Yes, sir.
- 3 Q You're with the traffic unit?
- 4 A Yeah. I'm employed with the traffic unit. And this
5 is into my second year as a -- in -- in the traffic
6 unit.
- 7 Q Okay. So what were you and your partner doing that
8 evening then?
- 9 A About -- in the matter at hand, at about seven
10 -- about seven o'clock in the p.m., Constable
11 Schaefer and I were conducting an enforcement duty,
12 specifically radar enforcement or laser enforcement,
13 speed enforcement.
- 14 Q Okay.
- 15 A At around the 11 (sic), 1200 block of 8th Street
16 East. At this time, we heard a call over the radio
17 from Constable Keating requesting another officer at
18 the Shopper's 8th Street and Grosvenor Avenue.
19 Constable Schaefer and I started heading in that
20 direction. And shortly after the first call came
21 in, while we were en route, there was a second radio
22 call from Constable Keating requesting officers to
23 step on it. As we started coming faster towards
24 that location, there was a third call on the radio
25 from Constable Keating that one of the males
26 involved was heading towards the front doors of

1 Shopper's. We arrived shortly to the location. As
2 we were pulling into the lot, we could see there was
3 a male walking towards Constable Keating. When
4 Constable Schaefer brought the vehicle to a stop, I
5 exited the passenger door. This male was between
6 myself and Constable Keating. And upon exiting the
7 vehicle, I heard Constable Keating instruct to
8 arrest this male for obstruction. This male had
9 changed his path slightly, and was walking across
10 the front of our patrol car, towards the driver's
11 side of the vehicle. I was able to hear Constable
12 Schaefer giving this male direction to get down on
13 the ground, that he's under arrest, while I was
14 coming around the front of the patrol car. Once I
15 got around to the male on the front of the patrol
16 car, I noticed he had his hands in his pockets, and
17 he hadn't complied with Constable Schaefer's
18 demands, and was continuing to walk away from us. I
19 grabbed onto this male, and upon grabbing onto his
20 arms, he immediately tensed up, pulled his arms
21 tight into his body, and not -- and wasn't willing
22 to give up his arm, and didn't take them out of his
23 pockets. Constable Schaefer joined me. And this
24 male was twisting, trying to get out of our grasps
25 -- I'm sorry -- grasp with his arms still pulled
26 tight up against his body. At that point, we

1 decided to do a modified hip toss to take him down
2 to the ground, with me being --

3 MR. JAMES STEWART: A what?

4 THE WITNESS: -- on his back. And trying
5 to get his left arm under control. Constable
6 Schaefer at that time was working on the right arm.
7 While he was on the ground, I was giving him
8 direction to stop resisting, and put his arms behind
9 his back. He was still twisting and trying to get
10 away out of our grasp. I was able to gain control
11 of his left arm, got it up behind his back, in a
12 -- in a little arm bar, by putting pressure on his
13 wrist, elbow, and shoulder, while Constable Schaefer
14 was still attempting to get his right arm out. His
15 right arm was eventually able to get out, and we
16 -- the handcuff was placed on that. And then we
17 were able to secure him, with both hands handcuffed
18 behind his back.

19 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
20 DIRE CONTINUES:

21 Q Okay. What did you do with the individual then?

22 A Basically, by the time we got him handcuffed, other
23 officers arrived, patrol officers with vehicles that
24 were able to secure him, with the silent patrolmans
25 in the back. And after we got him in handcuffs, I
26 -- I got up and patrol members took him and put him

1 in the car.

2 Q Okay.

3 A At that time, I went to -- I was able to speak with
4 Constable Keating as to what was going on. He
5 relayed to me the basics of the stop and what was
6 happening and why he was calling for help. And then
7 we turned our attention to having to look at the
8 vehicle to try and identify these individuals.

9 Q Tell us about that then?

10 A I was informed that the -- the vehicle and the
11 plates information didn't match, these individuals
12 hadn't produced or didn't have any identification on
13 them. I went to search in the vehicle. I'd looked
14 through the glove box of the vehicle. Inside there,
15 I located documents. There were some previous
16 traffic tickets that had been issued to -- I believe
17 it was Jarvis Stewart, with big red writing written
18 across them that indicate, "I do not wish to
19 contract." The exact phrase -- it's in my notebook,
20 if I may refer to that, if at all possible, Your
21 Honour.

22 Q No, that's fine.

23 A Okay.

24 Q Carry on.

25 A As well as there was some bill of sale for what we
26 ultimately were able to trace out to was this

1 vehicle, as well as there were a couple of documents
2 -- a notice -- I think it was -- I can't remember
3 the proper -- what they're properly called, or what
4 they're titled on the sheets, but Notice of Right to
5 Travel, as well as Affidavits of Detention, I think,
6 it was, something like that. Both -- all of these
7 -- these documents and the phrases that I -- I -- as
8 I was reading briefly through them, they identified
9 a James Stewart and Jarvis Stewart.

10 Q So what did you do as a result of finding those
11 documents then?

12 A With those documents and the names, we were able to
13 search them through SIMS or CPIC, as well as through
14 SGI's database. And we were eventually able to
15 identify the individuals that we had arrested as
16 being a James Stewart and a Jarvis Stewart. The
17 individual that Constable Schaefer and myself
18 arrested was James Stewart.

19 Q Okay. Is that same James Stewart here in the
20 courtroom today?

21 A He's seated with the grey hoodie on.

22 Q Okay. Would you recognize Jarvis Stewart, if you
23 were to see him again?

24 A The gentleman seated with the striped shirt on.

25 Q Okay, thank you, Constable.

26 A (No audible response.)

- 1 MR. PASHOVITZ: The same individuals as
2 earlier identified, for the record, Your Honour.
- 3 Q Constable, did -- after reviewing those documents,
4 did you have any direct contact with James Stewart
5 or Jarvis Stewart still at the scene or --
- 6 A Those --
- 7 Q -- not --
- 8 A -- time they --
- 9 Q -- or did you pass --
- 10 A -- were inside --
- 11 Q -- that on to someone else?
- 12 A -- in the back of the patrol cars. I don't believe
13 I had any other contact with those individuals.
- 14 Q Okay. Did you read any rights or warnings to them
15 from a card at all, or was that someone else's --
- 16 A I --
- 17 Q -- responsibility?
- 18 A -- no, I didn't do that. The -- I -- I had nothing
19 to do with the reading of those audible rights and
20 warnings, I don't believe.
- 21 Q Okay. So I'm just curious, as far as you being able
22 to enlighten me. Sometimes I hear about dispatches
23 being the communications officer relaying something.
24 Was this the type of situation where that was
25 happening, or did you actually hear Constable
26 Keating's --

- 1 A We --
- 2 Q -- voice --
- 3 A -- heard --
- 4 Q -- over the --
- 5 A -- Constable --
- 6 Q -- radio?
- 7 A -- Keating's voice directly over the radio.
- 8 Q Okay, so what's the first phrase that you heard, as
- 9 best as you can, repeat it for me?
- 10 A Requesting other officers to -- to assist at that
- 11 location, at the Shopper's on 8th Street. As we were
- 12 west of it, we started heading east.
- 13 Q Okay. So what did you do as a result of hearing
- 14 that, how quickly did you move?
- 15 A Initially, we didn't -- I don't believe we were
- 16 going all that -- with a lot of -- a lot of haste.
- 17 Simply asking for other officers is not necessarily
- 18 very urgent. We recognized the individual's voice.
- 19 He said shortly after that first call came in, as we
- 20 were already heading in that direction, Constable
- 21 Keating asked for officers to step on it at that
- 22 point in time. The lights and sirens on our vehicle
- 23 were activated.
- 24 Q Okay. You hadn't activated them before?
- 25 A Not when we first pulled out, no --
- 26 Q Okay.

1 A -- of where -- of our position. We had to go a
2 little bit west to turn around to come back east,
3 but we hadn't activated our emergency equipment at
4 that time.

5 Q Okay.

6 A It wasn't until the request for officers to step on
7 it that we activated emergency equipment and -- and
8 head there with our lights and sirens both fully
9 activated.

10 Q So then how much time went by from the time you
11 heard the phrase, "Step on it," until the time you
12 got to the actual scene, approximately?

13 A To be honest with you, I -- I couldn't be a hundred
14 percent. I was more focused on assisting Constable
15 Schaefer with navigating our direction there, as to
16 where we were going, getting him information.

17 Q Were you still on 8th Street at that point in time?

18 A We were on 8th Street at this time.

19 Q But how far out -- down were you?

20 A (No audible response.)

21 Q We're talking --

22 A When we started, when we originally left, we were in
23 about the 1100, 1200 block, so that would put it
24 -- a landmark would be the -- a little best west,
25 where we routine -- I'm sorry. We were between the
26 Colonial and Clarence Avenues.

- 1 Q Okay.
- 2 A And then when the first call in, we came -- we had
3 to pull out, go down half a block, U-turn to come
4 back, and head towards that location. And we were
5 already going eastbound when the second call came in
6 and -- at which point, emergent -- our emergency
7 equipment was activated.
- 8 Q Okay. So which cross street did the call take you
9 to?
- 10 A (No audible response.)
- 11 Q You were staying on 8th Street, and then you ended up
12 on 8th and which one?
- 13 A The location was at 8th Street and Grosvenor Avenue,
14 the Shopper's Drug Mart parking lot at that
15 intersection.
- 16 Q Okay. Who did you focus in on first, once you got
17 to the scene, did you look at Constable Keating
18 first, or --
- 19 A Oh, when we --
- 20 Q -- did you look --
- 21 A -- pulled into --
- 22 Q -- at these other --
- 23 A -- the lot, we --
- 24 Q -- individuals?
- 25 A -- could see that Constable Keating was on his feet,
26 and he had a male in front of him, who appeared to

- 1 be handcuffed. That turned out to be Jarvis. And
2 as I indicated, there was a male that was walking,
3 kind of, towards Constable Keating at the time.
4 When we got out of the car, he changed direction a
5 little bit, to walk across the front of our car, not
6 directly towards Constable Keating.
- 7 Q So what direction was he walking at that point in
8 time, or --
- 9 A More of --
- 10 Q -- to which --
- 11 A -- a westly (sic) --
- 12 Q -- (inaudible)?
- 13 A -- direction.
- 14 Q Oh.
- 15 A And, again, when I exited the vehicle, Constable
16 Keating said to arrest him for obstruction. And he
17 was between myself and Constable Keating --
- 18 Q How clearly --
- 19 A -- when that --
- 20 Q -- could you hear Constable Keating say that?
- 21 A I heard him clearly. You know, I had no problem
22 understanding what he said. I heard him clearly.
- 23 Q And about how far away were you from Constable
24 Keating at that point in time?
- 25 A I couldn't be -- I couldn't be certain. I -- I
26 wouldn't -- I wouldn't really want to speculate on

- 1 it.
- 2 Q No, that's fine.
- 3 A I don't know the exact distance --
- 4 Q And where --
- 5 A -- but --
- 6 Q -- was James -- the individual --
- 7 A He was between myself -- he was closer to Constable
- 8 Keating than -- than I was to Constable Keating. He
- 9 was -- he was not exactly between, but he was
- 10 between myself and Constable Keating.
- 11 Q Did you hear James Stewart say anything at all at
- 12 that point in time, upon hearing Constable Keating
- 13 say, "Arrest him for --"
- 14 A No.
- 15 Q "-- obstruction"?
- 16 A To be honest with you, I don't.
- 17 Q Okay. So who spoke first between yourself and
- 18 Constable Schafer --
- 19 A Constable --
- 20 Q -- at that --
- 21 A -- Schaefer --
- 22 Q -- point in time?
- 23 A -- was the one -- was giving him -- sorry -- was
- 24 giving James instruction to get on the ground, he's
- 25 under arrest, while I was making my way around the
- 26 -- around the patrol car.

- 1 Q Okay. So are those the phrases that you were
2 hearing --
- 3 A I was --
- 4 Q -- with your --
- 5 A -- hearing --
- 6 Q -- own ears?
- 7 A -- Constable Schafer giving him instructions, "Get
8 on the ground," he's under arrest.
- 9 Q Okay. Were you saying anything yourself at that
10 point in time?
- 11 A No, I wasn't.
- 12 Q Did you ever say anything to this individual?
- 13 A Not until I -- the only thing -- the only thing I
14 started saying things to is when we were on the
15 ground --
- 16 Q Okay.
- 17 A -- at that point. That's -- that's when I first
18 recall saying something to him, and giving his
19 -- put his hands behind his back, stop -- stop
20 resisting.
- 21 Q Okay, so who touched whom first between yourself and
22 Constable Schaefer and --
- 23 A I would --
- 24 Q -- and James --
- 25 A -- have been --
- 26 Q -- Stewart?

1 A -- I got a -- I -- I was able to get my hand on him
2 first, over Constable Schaefer. At which point, he
3 tensed up, pulled his hands up against his body with
4 his hands still in his pocket, and it was, kind of,
5 twisting to get out of a grasp.

6 Q Okay. Can you tell the Court why it was that you
7 had to put your hand on him first, as opposed to
8 some other method of completing this arrest?

9 A At this time, there was a bit of an urgency, in that
10 we were called numerous times, once to assist, and
11 then to get there quicker from Constable Keating.
12 As I was coming around, I said I could hear this
13 individual being given direction to get on the
14 ground, and there would be no reason for this
15 individual not to hear Constable Keating say he's
16 under arrest for obstruction. Given the situation
17 and the urgency with which we were being called,
18 basically I -- for me, it was -- is if he wasn't on
19 the ground, complying with the demands given by
20 Constable Schaefer by the time I got around, we were
21 going to take him into custody, using as -- as
22 little or as much force as we had to.

23 Q Okay. So tell us how that went?

24 A (No audible response.)

25 Q If you can, walk us through it, step-by-step with
26 respect to --

1 A I grabbed --

2 Q -- who touched who?

3 A -- onto his arms. He tight (sic) -- he pulled in
4 tight against his body and was twisting a bit in
5 attempts to get out of grasp.

6 THE COURT: Were you in -- were you in
7 front of him or behind him?

8 THE WITNESS: At this time, I was behind
9 him. When Constable Schaefer grabbed on, he was
10 still twisting, and -- and in an attempt to better
11 control him, it was decided to take him down. It's
12 not a direct hip toss. It's a twisting of the body,
13 to try -- and over a leg or part of my body, to trip
14 him up and get him down to the ground, in order to
15 allow a better opportunity to gain -- gain control
16 of his hands, which were still in his pockets when
17 he hit the ground. While there, it was just a
18 matter of trying to get a free arm -- a free hand,
19 apply some pressure, and twist to it to gain control
20 of the arm. I was able to get the left arm up, back
21 behind his back, putting pressure on his wrist and
22 his elbow and a bit on his shoulder, which -- you
23 know, telling him to just give up his arm, put his
24 arms behind his back. And, kind of -- Constable
25 Schaefer was eventually able to get his right arm
26 free and get handcuffs on it. And we were able to

1 get them back behind his back and handcuff him back
2 there.

3 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
4 DIRE CONTINUES:

5 Q Okay. During all of that time period, did James
6 Stewart say anything to you, or did you hear him say
7 anything specifically to you?

8 A He was complaining at some point over pain, over the
9 -- his arm and his shoulder, I believe, over the
10 -- the pressure that was being applied to his -- his
11 arm, his left arm. I -- I'm assuming it was his
12 left arm. I don't know what Constable Schaefer was
13 doing to his right arm either, but I -- I'm guessing
14 that it would have been to his left arm.

15 Q How long did things take from start to finish, as
16 far as when you first arrived on the scene, until,
17 as you say, you were able -- able to get handcuffs
18 on him and get him back up on his feet. Can you
19 estimate that for me?

20 A From the time that we got there to the time that he
21 was in handcuffs, I would say, probably, no more
22 than a minute, maybe even a little bit less.

23 Q Okay. During that time period, were you able to
24 -- or did you have any time period to look over to
25 see what was happening with Constable Keating and
26 Jarvis Stewart or not?

1 A No. As -- as we were pulling into the lot, it
2 appeared that he was -- Jarvis was under control.
3 It appeared that Constable Keating was standing
4 behind him. And I could see his hands were, kind
5 of, going back behind his back. So I guess he -- I
6 assumed he was in handcuffs and under control at
7 that time, as he wasn't asking for our help, but
8 instead telling us to arrest the other person.

9 Q Okay. I want to produce and show to you some items
10 that are exhibits in these proceedings, P-2 to P-7.

11 A (No audible response.)

12 MR. PASHOVITZ: I believe they're on the
13 Bench, if I could obtain those?

14 COURT CLERK: Sure.

15 Q I just want to show those to you, to -- and ask you
16 whether they are items that you recognize or not?

17 A (No audible response.)

18 COURT CLERK: You asked for P-2 to P-7, is
19 that correct?

20 MR. PASHOVITZ: Sure. I can take the whole
21 stack, if you wanted to leave them like this.

22 COURT CLERK: Here you go then.

23 Q I just want to produce and show you, first of all,
24 Exhibits P-2, P-3, and P-4 in these proceedings. Do
25 you want to take a look at these items --

26 A Sure.

1 Q -- and let me know if you recognize them or not?

2 A They're three summary offence tickets issued for
3 Jarvis Stewart. They appear to have the same
4 phrasing that was on items that were found inside
5 the -- the glove box of the car, that:

6
7 "Under protest and duress I do not
8 consent or wish to contract."

9 Q Okay. So what did you, yourself, do with those
10 tickets, upon finding them in the glove box of the
11 car?

12 A I believe I went and told Constable Keating and
13 Constable Schaefer, I recognized the phrasing of the
14 items that I had located, and gave them some
15 background on the individuals that we -- that -- the
16 type of individuals that we were -- were dealing
17 with at the time, as well as we then looked at
18 -- looked these individuals up on our system to try
19 and identify them, using the names on the -- located
20 on the documents that were -- were found.

21 Q Okay. I'll take those back from you. Do you
22 recognize these two documents?

23 A (No audible response.)

24 Q These are Exhibits P-5 -- I'm sorry -- P-6 and P-7
25 in these proceedings.

26 A (No audible response.)

27 Q Take your time, if you need to.

1 A Okay. Yeah, as I was referring to in my previous
2 testimony, the documents that I located that I -- I
3 couldn't quite say what the titles were on them, but
4 one was a Notice and Claim of Right to Travel -- or
5 Notice and Claim of Right to Travel for a Jarvis
6 Stewart, as well as a Notice and Affidavit with the
7 names of -- of James Stewart on it, as well, were
8 items that were located inside the glove box.

9 Q That's those items there?

10 A Yeah.

11 Q Okay. And you've already told us what you did with
12 those items --

13 A Yes.

14 Q -- as well?

15 A Yeah.

16 Q Can you tell the Court the type of clothing you were
17 wearing on the date of this incident?

18 A I was dressed as I am right now, in -- in my working
19 uniform.

20 Q Okay. And can -- can you tell the Court, you said
21 you activated your lights and sirens; is that
22 correct?

23 A That's correct. The lights and sirens on our
24 vehicle were going at the time.

25 Q Was your vehicle similar to the patrol unit being
26 used by Constable Keating on this same night or

- 1 not?
- 2 A I believe he was in a marked (sic) -- I'm sorry
3 -- an unmarked traffic car, as well, a different
4 colour, but the equipment would be similar. We had
5 a red and white -- or I'm sorry -- red and blue
6 strobes in the side mirror caps, red and blue
7 strobes on the -- the top of the windshield, just
8 under the roof line, full siren on -- package on the
9 vehicle, lights in the headlight areas of our
10 vehicle, as well, for strobes, as well. Yeah, just
11 a different colour of a patrol car than Constable
12 Keating's.
- 13 Q So what colour was yours?
- 14 A Ours was a dark -- a dark blue or dark grey.
- 15 Q And, sorry, what was your car's number again?
- 16 A 474.
- 17 Q You had your siren going completely; is that
18 correct?
- 19 A Yes, we did.
- 20 Q I may be putting you on the spot here. Have you
21 ever heard the phrase of -- of "chirping a siren" or
22 anything like that or --
- 23 A No. Our siren was fully going --
- 24 Q Okay.
- 25 A -- as we were --
- 26 Q Do you know what it means to chirp a siren

- 1 though --
- 2 A Yeah.
- 3 Q -- or not?
- 4 A Yeah.
- 5 Q Can you tell me about that, as your understanding?
- 6 A "Chirping the siren", to me, and how I would
- 7 describe something like that, would be having --
- 8 turning the siren on for -- briefly for a second and
- 9 then turning it off. That's how I would describe
- 10 "chirping the siren". I don't know how other
- 11 officers would describe that, but to me, that's what
- 12 that would mean. In our case, our siren was going
- 13 fully, as it was busy, there was a lot of traffic
- 14 because it was cruise weekend. And we were needing
- 15 to get people out of our way, due to the expediency
- 16 of needing to go to that location, as requested by
- 17 Constable Keating.
- 18 Q Do you know the names of the other officers?
- 19 A (No audible response.)
- 20 Q I'm sorry, did you transport any of --
- 21 A No.
- 22 Q -- these individuals --
- 23 A Our traffic --
- 24 Q -- in your --
- 25 A -- cars aren't equipped with silent patrolmen --
- 26 Q Okay.

- 1 A -- in the backseats, so patrol members were
2 responsible for transporting the individuals --
- 3 Q Do you --
- 4 A -- to detention.
- 5 Q -- know the names of those patrol members?
- 6 A I don't know who transported who.
- 7 Q Okay. Do you know how many cars ended up
8 responding?
- 9 A To be honest with you, I don't.
- 10 Q Okay. How long did you stay at the scene there?
- 11 A We were there for a fair amount of time, needing to
12 look through the vehicle, and then ultimately having
13 it getting towed from the scene, as well.
- 14 Q Okay. Did you make any observations yourself, as
15 far as the -- the fitness of the vehicle or anything
16 like that, or was that someone else's
17 responsibility?
- 18 A No. Myself and Constable Schaefer had a look at the
19 vehicle. The vehicle had some equipment -- vehicle
20 equipment deficiencies on it, as -- that we noted.
21 There had been a black paint applied to the
22 taillights that I remember. It was a combined
23 taillight system, so that black paint covered and
24 interfered with the effectiveness of the lamps on
25 seven separate components of the taillights system,
26 as well as there was significant side impact damage.

1 I can't be a hundred percent on what side it is
2 right now. I know there was a side impact damage to
3 the side of the vehicle, into the frame. As well, I
4 believe there was some issues with the side marker
5 lights on the front being painted out, as well, and
6 reflectors on the front, as well.

7 Q All of these incidents you've described happened
8 here in Saskatoon, Saskatchewan --

9 A Yes.

10 Q -- is that correct?

11 A They did.

12 Q Thank you very much for answering all of my
13 question. Please, answer any other questions that
14 may be asked of you.

15 A (No audible response.)

16 (END VOLUME I)

IN THE PROVINCIAL COURT OF SASKATCHEWAN

SASKATOON, SASKATCHEWAN

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

JAMES STEWART
AND JARVIS STEWART

TRANSCRIPT OF PROCEEDINGS
AT TRIAL

VOLUME II
(PAGES 184 TO 368)

COMMENCING: April 16, 2013

(A TRANSCRIPT OF RECORDINGS)

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1 (BEGIN VOLUME II)

2 THE COURT: Cross-examine?

3 MR. JARVIS STEWART: (No audible response.)

4 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR DIRE:

5 Q All right, so, Brad, you had no idea why we'd been
6 pulled over then, did you?

7 A No, I didn't.

8 Q You had no idea whatsoever why we'd been pulled
9 over, and then you heard Constable Keating say that
10 he was to be arrested for obstruction; is that
11 right?

12 A That's correct.

13 Q But your partner didn't hear that. In his
14 testimony, he -- he didn't -- didn't indicate that
15 Keating had told him what the reasons were to arrest
16 this man, so --

17 A I don't know what my --

18 Q And that's --

19 A -- partner heard.

20 Q -- and -- and -- and that's fine. But you -- you
21 decided to arrest this man for obstruction, and you
22 knew that; that's what you're saying?

23 A That's correct.

24 Q And so then you decided at this point to use force
25 to effect this arrest?

26 A That's correct.

1 Q Did you think that an obstruction arrest was really
2 -- or did you think the circumstances regarding this
3 arrest, do you think there was some dire need to
4 -- to really use force against this man and take him
5 down?

6 A As --

7 Q If he would --

8 A -- as I --

9 Q -- if --

10 A -- already described the full totality of the
11 situation, yes, by the time --

12 Q So you didn't --

13 A -- if he wasn't --

14 THE COURT: Just let --

15 THE WITNESS: -- complying --

16 THE COURT: -- him answer.

17 THE WITNESS: -- to the demands being given
18 to him by Constable Schaefer by the time I got
19 around the vehicle, yes, there would be some force
20 that would be used.

21 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
22 DIRE CONTINUES:

23 Q Okay. But you never identified yourself to this
24 man?

25 A I was in a full working uniform in a vehicle
26 equipped with lights and sirens.

1 Q You were in an unmarked vehicle, so you showed up to
2 the scene, and you never identified yourself to
3 anybody, you just instigated force against this man
4 because --

5 A Well --

6 Q -- Jay Keating told you to?

7 A -- my identity in this capacity as a traffic officer
8 has never been an issue in approximately 2,000
9 traffic stops that I conducted last year.

10 Q Mmhmm.

11 A And about another 1,000 that I've conducted at this
12 point.

13 Q Really?

14 A (No audible response.)

15 Q So you thought that the best way to go about this
16 obstruction arrest was to use force?

17 A As I've --

18 Q And you've --

19 A -- explained already, the totality of the situation,
20 had he not complied with Constable Schaefer's
21 demands by the time I got around the vehicle, yes --

22 Q Okay.

23 A -- there was --

24 Q And then --

25 A -- going to be some hands-on.

26 Q -- and then you noticed that this man was bleeding

1 after -- after you'd had him taken down to the
2 pavement and ten -- ten police vehicles -- cars
3 showed up?

4 A (No audible response.)

5 Q We have the GPS --

6 A I have --

7 Q -- reports of this --

8 A -- no idea how many police cars showed up.

9 Q Well, you -- you should have an idea. You were at
10 the scene.

11 THE COURT: Well, what's -- what's -- is
12 your question?

13 MR. JARVIS STEWART: I'm sorry.

14 THE COURT: Did you notice --

15 MR. JARVIS STEWART: I'm sorry.

16 THE COURT: -- if he was bleeding? No,
17 no, don't be sorry. Just listen. Is that what you
18 want to know?

19 MR. JARVIS STEWART: Yeah.

20 THE COURT: Okay, well, answer that
21 first.

22 THE WITNESS: I'm sorry, which question
23 would you like me to answer?

24 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
25 DIRE CONTINUES:

26 Q Were you aware that ten vehicles showed up to the

1 scene?

2 A I -- I said -- already explained, I don't know how
3 many vehicles showed up on scene.

4 THE COURT: Were you -- were you -- I'm
5 sorry. I was -- I'm more interested in one of the
6 other questions you asked. Did you notice whether
7 he was bleeding or not?

8 THE WITNESS: Yeah. After we got him
9 under control, I know there was some scrapes and
10 abrasions to his face. While we were trying to
11 get him into custody, his head was free, and I
12 noticed that his head was moving against the
13 pavement.

14 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
15 DIRE CONTINUES:

16 Q Okay, so you noticed that this man was injured, but
17 then after you effected this arrest, you made no
18 attempt at all to get this man --

19 A They were --

20 Q -- medical attention?

21 A -- minor road rash abrasions that I deemed --

22 Q Or really?

23 A -- that no --

24 Q Is that --

25 A -- did not look --

26 Q -- is that what --

- 1 A -- like they required --
- 2 Q -- the doctor told you?
- 3 A I don't know. They looked like road rash.
- 4 Q You don't --
- 5 A They did --
- 6 Q Are you a --
- 7 A -- not look to --
- 8 Q -- doctor?
- 9 A -- be severe.
- 10 Q They did not look to be severe?
- 11 A No, sir --
- 12 Q But you didn't --
- 13 A -- they did not.
- 14 Q -- you didn't actually take any time to actually
- 15 look or observe his injuries, you actually just
- 16 went --
- 17 A They were --
- 18 Q -- straight to --
- 19 A -- scrapes.
- 20 Q -- you just went straight to the car though, and
- 21 started searching through the car?
- 22 A They were scrapes.
- 23 Q Okay, but the first thing you did was went to the
- 24 car and begin searching the car?
- 25 A After the other officers took control of him, yes.
- 26 Q Okay, so you started searching the car. So then

- 1 when you searched the car, you actually found the
2 ownership papers, didn't you?
- 3 A (No audible response.)
- 4 Q You found --
- 5 A I found the bill of sale for the vehicle --
- 6 Q Yeah.
- 7 A -- that I noted --
- 8 Q From --
- 9 A -- from SGI for a vehicle that was listed as a total
10 loss.
- 11 Q That's right.
- 12 A When we --
- 13 Q And then --
- 14 A -- further looked this vehicle up on SGI, it was
15 still listed as a total loss vehicle, and never been
16 actually certified to be driving on the road in the
17 Province of Saskatchewan --
- 18 Q Really --
- 19 A -- let alone --
- 20 Q -- but --
- 21 A -- the province -- the entire country.
- 22 Q Really?
- 23 A (No audible response.)
- 24 Q But you also found my safety fitness papers from in
25 -- in the glove box?
- 26 A As I had mentioned that there were some vehicle

1 equipment violations that --
2 Q Equipment violations --
3 A -- with the --
4 Q -- but you did --
5 A -- taillights --
6 Q -- find the --
7 A -- and the side --
8 Q -- safety --
9 A -- impact --
10 Q So you --
11 A (No audible response.)
12 THE COURT: Let him --
13 Q -- found --
14 A (No audible response.)
15 THE COURT: -- let him -- let him answer
16 the question. I'm quite interested in his answer
17 here. You're not --
18 MR. JARVIS STEWART: Yeah.
19 THE COURT: -- letting him answer.
20 THE WITNESS: To be honest with you, I
21 didn't notice -- I can't remember if there was a
22 safety in the glove box or not. I do know that we
23 did look this vehicle up on the database, and it
24 was still being listed as not -- as being unsafe
25 and not being fit for the road, as a total loss
26 vehicle.

1 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
2 DIRE CONTINUES:

3 Q But you did find my safety papers then?

4 A (No audible response.)

5 Q So --

6 A I don't remember if I did or not.

7 Q You don't remember?

8 A (No audible response.)

9 Q Okay, so -- you don't remember?

10 A (No audible response.)

11 Q You don't seem to remember much about this incident,
12 do you?

13 A (No audible response.)

14 Q You don't remember how many cars showed up; you
15 don't remember any of the paperwork you found out;
16 you don't really remember why you used force?

17 A (No audible response.)

18 Q You did file a use of force report; is that
19 correct?

20 A Yes, I did.

21 Q All right. And so is there a reason that Bryce,
22 here, hasn't given us the use of force reports from
23 this incident?

24 A I've -- that's -- I can't answer that. You'd have
25 to the -- the Crown Prosecutor that --

26 Q That --

1 A -- question --

2 Q -- okay.

3 A -- sir.

4 Q Okay. That's fair, that's fair. What else have we
5 got? Yeah, and the last thing I wanted to ask you
6 is, in your notes here, you made the comment that
7 these individuals are also known for violence
8 against police officers?

9 A Yes, sir.

10 Q Okay, what are -- what are you basing that on?

11 A The document --

12 THE COURT: Do you -- just a minute, just
13 a minute, before you answer that. Do you want him
14 to answer that? Ordinarily, any evidence of what we
15 call bad character or anything like that --

16 MR. JARVIS STEWART: Okay.

17 THE COURT: -- isn't admissible against
18 you. And ordinarily I wouldn't -- you know, if the
19 -- had the prosecutor asked you that, I wouldn't
20 have allowed him to ask that. So it's up to you
21 whether you want that answered or not.

22 MR. JARVIS STEWART: Yeah, okay, I don't want that
23 answered. That's fine.

24 THE COURT: Okay.

25 MR. JARVIS STEWART: I have no further questions
26 then --

1 THE COURT: All right.

2 MR. JARVIS STEWART: -- for this man.

3 THE WITNESS: So that wasn't to be
4 answered?

5 THE COURT: No, don't answer it.

6 MR. JARVIS STEWART: Take it away.

7 MR. JAMES STEWART: Thank you, Your Honour.

8 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR DIRE:

9 Q Brad -- it's Brad?

10 A Yes, sir.

11 Q Brad, my name is James. Have you ever seen me
12 before, outside of that --

13 A No --

14 Q -- time?

15 A -- I've never seem you before prior to that.

16 Q You don't know anything about me?

17 A No.

18 Q Fantastic, fantastic. And that's the same, I don't
19 know anything about you. I do know that you're
20 there to serve and protect. Now, you seemed to
21 arrive on scene fairly quickly. And you seemed to
22 know exactly what was going on because you said
23 there was some urgency. And I'd just like to ask
24 you to clarify what you heard on the dispatch that
25 would give you some idea as to urgency of the matter
26 or the specifics as to what was going on at that

- 1 time?
- 2 A I didn't hear a dispatch. I heard Constable Keating
3 requesting another officer at the Grosvenor parking
4 mall -- or sorry -- at the Shopper's on 8th. The
5 second time was a request from Constable Keating,
6 shortly after the first one, telling officers to
7 step on it.
- 8 Q Okay, fantastic.
- 9 A And the third --
- 10 Q And --
- 11 A -- item was an individual male walking away from
12 him, towards the front doors --
- 13 Q Walking away?
- 14 A -- of Shopper's.
- 15 Q So you heard from Constable Keating, but you weren't
16 aware that it was actually him, you just recognized
17 his voice?
- 18 A Yes, I recognized it as Constable Keating's voice on
19 the radio.
- 20 Q Okay, but he didn't identify himself on the radio?
- 21 A I recognized it as being --
- 22 Q Right.
- 23 A -- his voice --
- 24 Q But he did --
- 25 A -- on the --
- 26 Q -- not --

1 A -- radio.

2 Q -- did he -- or did he not identify himself --

3 A I don't need --

4 Q -- on dispatch?

5 A -- to have him to identify it.

6 THE COURT: Just answer the question.

7 Q Could you, please --

8 A As to --

9 THE COURT: You know, that's --

10 Q -- answer the question?

11 A It was --

12 THE COURT: -- a simple question.

13 THE WITNESS: -- Constable Keating's --

14 Q Did he --

15 A -- voice.

16 Q -- did he or did he not identify himself on that

17 radio to you or anyone?

18 A No, he didn't --

19 Q Thank you.

20 A -- but I recognized --

21 Q Thank you.

22 A -- his voice --

23 Q Thank you.

24 A -- as Constable --

25 THE COURT: We understand --

26 Q Thank you.

1 A -- Keating.

2 THE COURT: -- you recognized --

3 Q Thank you.

4 A (No audible response.)

5 THE COURT: -- his voice. You said it --

6 Q Thank you.

7 A (No audible response.)

8 THE COURT: -- four times.

9 THE WITNESS: I'm sorry.

10 MR. JAMES STEWART: Fantastic.

11 THE WITNESS: I'm sorry.

12 THE COURT: But just answer his

13 question.

14 THE WITNESS: Okay.

15 THE COURT: You don't have to do that.

16 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR

17 DIRE CONTINUES:

18 Q Now, when you arrived on scene, your car was in full

19 emergency mode --

20 A Yeah.

21 Q -- with the lights flashing, sirens wailing?

22 A That's correct.

23 Q Are those sirens loud, Brad?

24 A They are, yes.

25 Q Fantastic. I'm not going to ask you for a decibel,

26 but would you say that they would be difficult to

1 hear someone engaging in conversation beside a car
2 that was in full emergency mode?

3 A When our police -- when our vehicles are placed into
4 the parked mode, the siren cuts out. And I wouldn't
5 have been getting out of the vehicle until it had
6 stopped moving. So there would be no siren from the
7 time that I got out of the vehicle, in order to hear
8 Constable Keating's instructions to arrest that male
9 for obstruction.

10 Q So you heard Constable Keating's instructions?

11 A Yes, I did.

12 Q Within one minute of arriving on that scene, you
13 were engaging in physical contact; is that correct?

14 A Again, as I already explained, yes.

15 Q In one minute?

16 A (No audible response.)

17 Q Do you find that there is a shortage of threshold
18 there, as far as explain your actions to someone and
19 having them understand you, and if --

20 A Given the --

21 Q -- and if so, do you think that time would be longer
22 than a minute?

23 A As I already explained, given the totality of the
24 situation and the urgency that we were being
25 requested, you had from the time that I got around
26 the car with Constable Schaefer giving you

1 instruction to, "Get down on the ground, you're
2 under arrest," to comply with that.

3 Q Okay, so I'm going to read from your notes here.
4 You were informed at this point that:

5
6 "There was a traffic stop, and the males
7 were exiting the vehicle and were refusing
8 his demands to get back in the car, and
9 appeared to be trying to get away from him.
10 These attempts are what constitutes the
11 obstruction."

12 Those are -- those are in your words?

13 A (No audible response.)

14 Q It's page 12 --

15 A Yeah.

16 Q -- of 42?

17 A I'm looking at it.

18 Q Do you believe that you could have explained all of
19 that within one minute of coming out of your car?

20 A (No audible response.)

21 Q And -- and apparently -- apparently -- I don't
22 understand what obstruction is, but apparently all
23 of you guys do, which is fine because that's your
24 job. Do you think that it would behoove you to
25 explain your actions to someone, when they don't
26 know what's going on?

27 A Which question would you like me to answer?

28 Q Why don't you explain yourself?

29 A (No audible response.)

1 Q How can you say in one -- in one minute -- in one
2 minute you arrived, and -- and in one minute, he was
3 already being physically attacked -- me?

4 A (No audible response.)

5 Q And you're saying here that you were informed at
6 this point that there was a traffic stop and the
7 males were exiting the vehicle and refusing his
8 demands to get back in the car, and appeared to be
9 trying to get away from him?

10 A (No audible response.)

11 Q This all happened within one minute?

12 A (No audible response.)

13 Q You were able to see and understand the urgency and
14 the total -- the -- the totality of that within one
15 minute?

16 A When we were called -- when Constable Keating asked
17 for additional officers to come to the scene, we
18 started heading there. While we were going there,
19 Constable Keating said, "Step on it." That's an
20 urgent statement --

21 Q Okay.

22 A -- from Constable Keating.

23 Q So --

24 A When we arrived at the scene --

25 THE COURT: Yeah, let him answer.

26 THE WITNESS: -- as I got out of the

1 vehicle, Constable Keating said to arrest this male
2 for obstruction. Given that he's calling for us to
3 get there fast, that tells me that this isn't a
4 run-of-the-mill friendly, everyday traffic stop. As
5 you were standing between -- as you were between
6 myself and Constable Keating, I had no concern that
7 you didn't hear Constable Keating's instructions to
8 arrest him for obstruction.

9 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
10 DIRE CONTINUES:

11 Q You had no concern -- I'm sorry?

12 A No.

13 Q Okay.

14 A I had no concern --

15 Q Okay.

16 A -- that you didn't hear him --

17 Q Okay.

18 A -- as I heard him, as you -- and you were closer to
19 him, and I could hear him fine, and you should be
20 able to hear him no problem.

21 Q I should be.

22 A You continued to walk away. Constable Schaefer was
23 giving you instructions to, "Get on the ground,
24 you're under arrest." You didn't comply with those
25 demands either. You continued to walk away. At
26 that point in time, by the time I got around the

1 -- the car, given the totality of the situation in
2 that there was an urgency being requested by
3 Constable Keating, and that you weren't -- weren't
4 following directions given to you, and, yes, I was
5 going to grab onto you to try and take you into
6 custody.

7 Q Okay.

8 A As you continued -- you then proceeded to tense up,
9 pull your arms into your body, in what I can only
10 interpret as an attempt to keep your arms --

11 Q I'm going --

12 A -- from our --

13 THE COURT: Okay, let him --

14 Q -- to interrupt you.

15 A -- control --

16 THE COURT: -- let him answer.

17 MR. JAMES STEWART: But he's going into detail
18 and I -- and he's answered my question.

19 THE COURT: Oh, okay.

20 Q My next question is: Do you believe I have the
21 right to resist when someone tries to grab me?

22 A That was -- sorry?

23 Q Do you believe I have the right to resist when
24 someone tries to grab me?

25 A (No audible response.)

26 MR. PASHOVITZ: I apologize --

1 THE WITNESS: You --

2 MR. PASHOVITZ: -- Your Honour. That may be
3 one of the many issues we'll be asking the Court to
4 rule on, as opposed to this officer answering that
5 question. That maybe boils down to a legal issue,
6 as opposed to --

7 THE COURT: Yes, I -- I --

8 MR. PASHOVITZ: -- evidence from this
9 officer.

10 THE COURT: -- if -- it all depends what
11 evidence I accept here. If I accept that he was
12 told that he was under arrest and then resisted,
13 well, no, he doesn't have the right. That's a legal
14 issue.

15 MR. JAMES STEWART: That's correct.

16 THE COURT: And if -- but if he -- if I
17 accept that he was never told he was under arrest,
18 then it may -- then that's a legal issue, too. But
19 I guess we're --

20 MR. JAMES STEWART: Absolutely.

21 THE COURT: -- so I don't know the
22 answer. He -- if I don't know the answer, he
23 doesn't know the answer. It's a legal conclusion,
24 it's not a -- it's not a fact. I mean, I don't care
25 what his opinion is. He could be dead wrong or dead
26 right. I don't care.

1 MR. JAMES STEWART: Absolutely, absolutely. I
2 -- I'm -- I'm --
3 THE COURT: Yes.
4 MR. JAMES STEWART: -- I appreciate that.
5 THE COURT: And it all depends on what
6 the evidence is. And it may or may not be what he
7 thinks it is.
8 THE WITNESS: Yeah, that's fine.
9 THE COURT: Okay. So I -- so it -- it
10 doesn't really help.
11 MR. JAMES STEWART: Okay, fair.
12 THE COURT: Okay.
13 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
14 DIRE CONTINUES:
15 Q Did you identify yourself as a police officer?
16 A No. I was in full working uniform and operating a
17 -- sorry -- a vehicle equipped with sirens --
18 Q An unmarked --
19 A -- and lights.
20 Q -- car?
21 A Yes.
22 Q Did you at any time say who you were and what you
23 were attempting --
24 A No, I did --
25 Q -- to do?
26 A -- not.

1 Q All right. Did you hear your partner, Vince
2 Schaefer, say who he was and what he was attempting
3 to do?
4 A No. I heard him telling you to -- "You're under
5 arrest, get on the ground."
6 Q But you didn't hear anything that came from me, as
7 far as an acknowledgement of what you were doing or
8 an affirmation as to, oh, I understands who you
9 are?
10 A I don't -- you'd better explain that.
11 THE COURT: "Yes" or --
12 THE WITNESS: In --
13 Q I mean it --
14 A (No audible response.)
15 THE COURT: -- "yes" or "no" --
16 Q -- happened within --
17 A (No audible response.)
18 THE COURT: -- would do --
19 Q -- a minute?
20 A (No audible response.)
21 THE COURT: -- it.
22 THE WITNESS: Sorry, I --
23 THE COURT: "Yes" or "No"?
24 THE WITNESS: What's the exact question you
25 want?
26 THE COURT: The question is: Did you

1 hear anything from him about what was --

2 THE WITNESS: I didn't --

3 THE COURT: -- going on?

4 THE WITNESS: -- hear him acknowledge that
5 -- that we were there --

6 THE COURT: Okay.

7 THE WITNESS: -- or not. Thank you.

8 COURT CLERK: Okay.

9 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
10 DIRE CONTINUES:

11 Q Can you, please, define "obstruction" for me,
12 Mr. McAvoy?

13 A Something that would interfere with me in the lawful
14 execution of my job, in my duties of doing my job.

15 Q Did you think at any time to question Jay Keating as
16 to why you were going to use force on someone in a
17 parking lot who did not seem to have any weapons,
18 did not seem to be physically engaged in any
19 fighting, and -- and, if anything, that person seems
20 to be walking away?

21 A Well, at the time that we were getting out of the
22 car, walking away, yes. As I had already explained
23 the totality of it: Being requested to get there
24 fast, it was an urgent situation from another
25 officer. When we got there, you were told you were
26 under arrest for obstruction. I don't know the

1 details -- the entire details of what happened prior
2 to our arrival. All I know is, another officer is
3 instructing me to arrest an individual for
4 obstruction. And I believe wholeheartedly that no
5 other officer would not tell me to do something that
6 they wouldn't do themselves, if they had opportunity
7 to do so. As I already explained to you, he was
8 already engaged with another individual and was
9 calling for help. And when we got there, he gave
10 explicit -- "Arrest him for obstruction," at which
11 point, another officer was giving you instruction
12 to, "Get on the ground," that, "You're under
13 arrest," which you still did not comply with. As
14 for a weapon, I didn't know if you had one or not.
15 As I already stated, your hands were inside your
16 pockets. Pockets are a great place to hide weapons,
17 if a person does have them. Hence, I'm not going to
18 play -- take -- I'm not going to play around with
19 somebody --

20 Q So you decided --

21 A -- who has been told to --

22 Q -- to grab me?

23 A That's correct, yes.

24 Q From behind?

25 A That's correct because you were walking away still.

26 Q Okay. Possibly having weapons in my pocket, but you

1 -- you're --
2 A I didn't --
3 Q -- not sure?
4 A -- know at the time.
5 Q You're not sure, but you decided to then make --
6 A Yes.
7 Q -- physical --
8 A I did.
9 Q -- contact?
10 A Yeah.
11 Q Not knowing if I had a weapon or not; not knowing
12 that I had engaged in a fight or not; not knowing
13 really anything?
14 A I knew that you were under arrest for obstruction.
15 Another officer was asking for assistance.
16 Q I've just got a couple more questions. You said you
17 noticed some scrapes and some blood on my face?
18 A Mmhmm.
19 Q Did you notice that before you took me down?
20 A (No audible response.)
21 Q Was my face -- would you say --
22 A I didn't see you -- your face before I took you
23 down.
24 Q I'm sorry, you didn't see my face --
25 A Not that I --
26 Q -- before you --

- 1 A -- remember.
- 2 Q -- took me down?
- 3 A Not that I remember, what the shape of it was in,
4 before I took you down, no.
- 5 Q Okay, that's fair. Now, you also said that -- well,
6 you said that I had my fists clenched, and I was
7 putting my hands in my pockets?
- 8 A Your hands were in your pockets.
- 9 Q Or hands were in my pockets, so would that appear to
10 you as a physical confrontation, or would that
11 appear to you as someone who was -- well, how would
12 that -- how -- how does that appear to you, when
13 someone puts their hands in their pockets?
- 14 A You were walking towards Constable Keating when we
15 arrived. You changed your vector to walk across in
16 front of our car. I could see you had your hands in
17 your pockets. I don't know what happened prior to
18 us arriving at the scene.
- 19 Q But you arrived, took me down, threw me in the squad
20 car, case closed, "I'm going to go search the car"?
- 21 A (No audible response.)
- 22 THE COURT: He's already --
- 23 THE WITNESS: That's an over --
- 24 THE COURT: -- he's already explained why
25 he -- why he took you down.
- 26 MR. JAMES STEWART: Yeah.

1 THE COURT: Yes.

2 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
3 DIRE CONTINUES:

4 Q Now, I'm just curious as to -- Keating's testimony
5 said that I was punching and kicking with my arms
6 and legs. Constable Schaefer says I had my arms
7 -- or Constable Schaefer said I went down in a -- in
8 a lowered body stance. You said I had my hands in
9 my pockets. I'm just curious that you didn't see my
10 face, that you are still able to take me down, why
11 you thought I was a threatened -- a threatening
12 individual?

13 A (No audible response.)

14 Q What was it that -- that -- that -- what was it that
15 made you --

16 A Okay, I --

17 Q -- truly believe --

18 A As I explained already, the totality of the
19 situation. Another officer --

20 Q But you didn't --

21 A -- was calling --

22 Q -- know the --

23 A -- for circumstances --

24 Q -- totality? You didn't know anything about the
25 situation?

26 A The totality of what I knew when I got there.

1 Q What did you know?

2 A An officer was calling for help, he's telling
3 officers to get there fast. I get there, somebody
4 is walking towards him. It looks like he's got
5 somebody handcuffed, under arrest. While we were
6 coming, he's indicating that there is a male walking
7 away from him. When I get out of the car, he says,
8 "Arrest him for obstruction." This individual is
9 given orders from another officer to get on the
10 ground, they're under arrest, does not comply with
11 those orders. Given the fact that we're being
12 called there and told to get there fast, tells me
13 that this -- there is something wrong.

14 Q Okay.

15 A Okay? Well, there isn't -- we don't just call for
16 officers to get there fast for no reason.

17 Q That would make sense to me. That would be a bit a
18 situation?

19 A Yes.

20 Q Had you ever thought about finding out the situation
21 before acting, or did you just feel that it was just
22 so -- the totalitary (sic) of the -- the totality of
23 the situation --

24 A (No audible response.)

25 THE COURT: I -- I -- I think --

26 Q -- meant that --

1 A (No audible response.)

2 THE COURT: -- I've concluded from his
3 evidence that he trusted the other officer.

4 MR. JAMES STEWART: That's fine. I'm --

5 Q So now -- that's fine, so, now, Bradley, through
6 this, we've got a situation here where you charged
7 me with assault, and yet I haven't seen anything in
8 here -- anything in any of these notes -- and I
9 would have liked to talk to Vincent Schaefer, too,
10 but he's no longer here -- because he charged me
11 with assault. And I would just like to ask you,
12 Brad, where and when and how I assaulted you?

13 A The -- the assault -- resisting our arrest is -- is
14 more -- would be more what I would --

15 THE COURT: Yes, there --

16 THE WITNESS -- say it would --

17 THE COURT: -- there was --

18 THE WITNESS: -- be.

19 THE COURT: -- no assault, was there?

20 THE WITNESS: I didn't get -- there was no
21 assault on myself.

22 THE COURT: Right.

23 THE WITNESS: I don't --

24 THE COURT: That's --

25 THE WITNESS: -- again, I don't --

26 THE COURT: -- I haven't heard --

1 THE WITNESS: -- know what happened --
2 THE COURT: -- anything from you --
3 THE WITNESS: Yeah. I don't know --
4 THE COURT: -- or from Constable --
5 THE WITNESS: -- what happened --
6 THE COURT: -- Schaefer about --
7 THE WITNESS: -- about --
8 THE COURT: -- that.
9 THE WITNESS: -- something else so --
10 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
11 DIRE CONTINUES:
12 Q But you guys weren't assaulted?
13 A I don't know what --
14 Q Even though --
15 A -- Constable --
16 Q -- I was charged with two counts of assault --
17 A Okay.
18 Q -- you guys weren't assaulted; is that correct?
19 A It was more, from my classification, it was
20 resistance.
21 Q Resistance -- resisting of arrest?
22 A Yeah.
23 Q Resisting?
24 A (No audible response.)
25 COURT CLERK: (Inaudible)?
26 THE COURT: I'm sorry?

1 COURT CLERK: How late do you plan on
2 sitting today?
3 THE COURT: I -- not past five, that's
4 for -- not past quarter to five.
5 COURT CLERK: Okay. Thank you.
6 THE COURT: I was just being asked how
7 long we're going to sit tonight. And I said --
8 MR. JAMES STEWART: Okay.
9 THE COURT: -- not past quarter to five
10 because I have some family obligations tonight.
11 MR. JARVIS STEWART: That works --
12 MR. JAMES STEWART: Yes, that's --
13 MR. JARVIS STEWART: -- for us.
14 MR. JAMES STEWART: -- okay. We'd rather not sit
15 too long here, Your Honour.
16 THE COURT: It's long enough, hey?
17 MR. JAMES STEWART: Just the last couple of
18 questions.
19 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
20 DIRE CONTINUES:
21 Q You were aware that there was no ICCS in the car?
22 A I'm sorry?
23 Q In-car camera system?
24 A (No inaudible response.)
25 Q You were aware that --
26 A Oh.

- 1 Q -- there was nothing --
- 2 A Oh, yeah.
- 3 Q -- in -- in --
- 4 A No, our car --
- 5 Q -- installed?
- 6 A -- wasn't equipped with a camera.
- 7 Q So you were deaf, dumb, and blind, for all intents
- 8 and purposes?
- 9 A I'm sorry? I don't understand --
- 10 Q Well, no one --
- 11 A -- what you're --
- 12 Q -- could see --
- 13 A -- referring to?
- 14 Q -- no one could --
- 15 A The fact that my car --
- 16 Q -- see what --
- 17 A -- car didn't --
- 18 Q -- you saw?
- 19 A -- have a camera in it.
- 20 Q Right.
- 21 A It did not have a camera.
- 22 Q And it didn't have a microphone either?
- 23 A There was no in-car --
- 24 Q So we can't --
- 25 A -- camera system --
- 26 Q -- hear or see --

- 1 A -- into the car.
- 2 Q -- anything that happened?
- 3 A There was no camera in the car --
- 4 Q Correct.
- 5 A -- so, therefore, you couldn't --
- 6 Q Now, do you --
- 7 A -- see anything --
- 8 Q -- feel that --
- 9 A -- in the car.
- 10 Q -- your actions may be -- may have been different,
11 had you had an in-car camera system installed?
- 12 A I would have never done anything different than what
13 I already did in that situation, regardless --
- 14 Q In that situation --
- 15 A -- about cameras.
- 16 Q -- you would not --
- 17 A I hold myself --
- 18 Q -- have changed --
- 19 A -- to the same --
- 20 Q -- a thing?
- 21 A -- standard, no matter what I do, I deal with people
22 in the exact same way, regardless of a camera or
23 not.
- 24 Q Thank you, Bradley.
- 25 A (No audible response.)
- 26 MR. JAMES STEWART: No further questions, Your

1 Honour.

2 THE COURT: Any re-exam?

3 MR. PASHOVITZ: No re-examination, Your

4 Honour.

5 THE COURT: All right.

6 MR. PASHOVITZ: Thank you.

7 THE COURT: Thanks. You're free to go.

8 MR. PASHOVITZ: Okay, I think Constable Boyce

9 is out in the hallway, Your Honour. Maybe Constable

10 Schaefer could ask him to come in.

11 THE COURT: Okay. Can you, please,

12 Constable McAvoy?

13 THE WITNESS: (No audible response.)

14 THE COURT: Could you ask the other --

15 THE WITNESS: Yeah.

16 THE COURT: -- constable --

17 THE WITNESS: I will.

18 COURT CLERK: Would you prefer to give your

19 evidence by swearing an oath on the Bible, or would

20 you prefer to give your evidence by making a solemn

21 affirmation?

22 THE WITNESS: The Bible.

23 COURT CLERK: Now, state your full name for

24 the Court?

25 THE WITNESS: Adam Boyce.

26 COURT CLERK: Could you spell your first

1 and last name?

2 THE WITNESS: A-D-A-M, last name B-O-Y-C-E.

3

4 ADAM BOYCE, having been
5 duly SWORN, states:

6 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR DIRE:

7 Q Good afternoon, Constable. You're employed as a
8 peace officer with the Saskatoon Police Service; is
9 that correct?

10 A Yes.

11 Q And how long have you been so employed?

12 A Since December of 2008.

13 Q Okay. You were on active duty on the evening of
14 August, 24th, 2012; is that correct?

15 A Yes.

16 Q You were called to attend to a scene just off 8th
17 Street, here in Saskatoon, Saskatchewan; is that
18 correct?

19 A Yes.

20 Q Were you working alone or with a partner?

21 A No. I was working with my partner, Constable
22 Hounsell.

23 Q Okay. And what type of police car were you on (sic)
24 -- in, I should say?

25 A A marked police car, marked with the number 231.

26 Q Okay. Were you driving that police car, or were
27 you --

1 A Yes --

2 Q -- the passenger?

3 A -- I was.

4 Q Okay. Well, tell us what call you were asked to
5 attend to, as far as what you had on your mind, and
6 then tell us where you went to and what you did?

7 A Over the radio, we heard Constable Keating calling
8 for help, stating that he was at the Shopper's Drug
9 Mart on 8th Street. We began -- began to drive
10 there. Again, he called in approximately ten
11 seconds later, saying that he needed officers there
12 as quick as possible. Once we arrived, I got out of
13 the driver's seat, and saw one male standing,
14 handcuffed, and one -- with officers -- sorry -- and
15 one male on the ground, handcuffed with officers.
16 The male on the ground, I noted, was trying to roll
17 over and get away from the officers, as well as he
18 was kicking his legs. So to prevent anybody from
19 getting injured, I went over to the male on the
20 ground, and gained control of his legs. This took
21 several seconds, but eventually I managed to do
22 that, and the male calmed down, at which point, we
23 were able to begin to search him to see if there
24 were any other weapons or any identification on
25 him.

26 MR. JAMES STEWART: I -- I object.

- 1 THE WITNESS: And so --
- 2 MR. JAMES STEWART: I'm sorry, "Any other
3 weapons"?
- 4 THE WITNESS: (No audible response.)
- 5 MR. JAMES STEWART: I'm sorry. You're saying
6 there was a weapon found?
- 7 THE WITNESS: (No audible response.)
- 8 MR. JAMES STEWART: You said, "There were any
9 other weapons"?
- 10 THE WITNESS: I'm sorry. To see if there
11 was any weapons.
- 12 MR. JAMES STEWART: Thank you.
- 13 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR
14 DIRE CONTINUES:
- 15 Q Carry on?
- 16 A We searched his right side first, and then rolled
17 him over, and searched his left side. Any property
18 that was found was given to Constable Schaefer, who
19 was already there. This male was later identified
20 as James Stewart. And he was taken to another
21 patrol car, and placed in the back. At this point,
22 I went to -- back to my patrol car. And Jarvis
23 Stewart was in the back, handcuffed. And I was told
24 that he was arrested and needed to go to detention.
25 So at this point, we got back in our PC and drove
26 him to SPS detention, where he was booked in to his

- 1 cell.
- 2 Q Okay. Did you take any role in arresting either of
- 3 these individuals, as far as reading them their
- 4 rights and warnings from a card at all or not?
- 5 A No, I did not.
- 6 Q No?
- 7 A (No audible response.)
- 8 Q Did any other police officer do that in your
- 9 presence, as far as you remember --
- 10 A Not that --
- 11 Q -- or not?
- 12 A -- I remember.
- 13 Q Okay. All right. Can you tell me about the
- 14 physical appearance of -- starting, first of all,
- 15 with Jarvis Stewart, did he appear to have any
- 16 visible injuries to you or not?
- 17 A Not that I remember.
- 18 Q Okay. Is he the one that you spent more time with,
- 19 being that you transported --
- 20 A Yes.
- 21 Q -- him -- him --
- 22 A Yes.
- 23 Q -- or not? Okay, turning to the other individual,
- 24 do you recall if James Stewart had any visible
- 25 injuries or not?
- 26 A I believe he had some blood around his nose --

- 1 Q Okay.
- 2 A -- if I remember correctly.
- 3 Q But he wasn't transported by yourself --
- 4 A No.
- 5 Q -- it was by a different constable?
- 6 A A different officer, yes.
- 7 Q Okay. Did -- I want to just take you back to the
8 call then. So where were you positioned when you
9 first heard the call from --
- 10 A When we first got the call, we were at Broadway and
11 Taylor.
- 12 Q Okay. And was this the type of call where you could
13 hear Constable Keating himself over the radio --
- 14 A Over the --
- 15 Q -- or --
- 16 A -- radio, yes.
- 17 Q Okay. And what were the words, exactly, that you
18 heard?
- 19 A (No audible response.)
- 20 Q Or as best you can?
- 21 A As best as I can, he called in saying that he needed
22 help, and he was at Shopper's Drug Mart on 8th
23 Street.
- 24 Q So how quickly did you and your partner respond to
25 that call?
- 26 A Approximately --

- 1 Q Do you know?
- 2 A -- it took us two minutes to get there.
- 3 Q Okay. So in your mind, did you consider that to be
4 an urgent request for help at that point in time?
- 5 A (No audible response.)
- 6 Q Or tell us what went through your mind when you
7 heard that over the radio?
- 8 A Yes, absolutely, I felt that it was very urgent, as
9 I heard stress in Constable Keating's voice, and I
10 was fearful that himself or somebody else may be
11 getting injured.
- 12 Q And you say there was a second call over the radio;
13 is that correct?
- 14 A Yes, he called in again on the radio, stating that
15 he required assistance still, and he was at
16 Shopper's Drug Mart on 8th Street.
- 17 Q Okay. And how much time went by between the first
18 call --
- 19 A Approximately --
- 20 Q -- and the second?
- 21 A -- ten seconds.
- 22 Q How many -- do you remember, how many police cars
23 were on the scene already when you arrived there?
- 24 A The best I can remember, there was two unmarked
25 traffic police cars there --
- 26 Q Okay.

1 A -- when I arrived.

2 Q Okay, so as best you remember, yours was the first
3 marked police car getting there?

4 A Yes, I believe so.

5 Q All right. Did you see any police lights or hear
6 any sirens when you drove up to the scene, or not
7 -- or --

8 A Our -- our sirens were going, so I couldn't tell you
9 if there was other sirens going. As for police
10 lights, I don't remember if anybody had theirs on.

11 Q Okay. Your sirens were going?

12 A Our sirens were going, yes.

13 Q Thank you very much for answering all of my
14 questions. Please, answer any other questions that
15 may be asked of you, all right?

16 A (No audible response.)

17 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR DIRE:

18 Q All right, Adam, so you took -- you took control of
19 us and -- or sorry -- you -- you arrived to the
20 Shopper's Drug Mart on -- on 8th Street there, and
21 you really had no -- no idea why, did you?

22 A Just that an officer needed assistance.

23 Q Just -- it was an officer needing assistance, that
24 was the only thing you knew?

25 A (No audible response.)

26 Q So you showed up, and you didn't identify yourself

- 1 to anybody, and you immediately gained control of
2 James Stewart's legs; is that right?
- 3 A Yes.
- 4 Q Did you strike this man at all?
- 5 A No.
- 6 Q No?
- 7 A (No audible response.)
- 8 Q You didn't give him any shots with your knees or
9 strike him with your fists and say, "Quit
10 resisting"?
- 11 A No.
- 12 Q No?
- 13 A (No audible response.)
- 14 Q And how many -- how many police cars showed up to
15 the scene?
- 16 A I don't know.
- 17 Q You don't know?
- 18 A (No audible response.)
- 19 Q You don't remember or you don't know?
- 20 A I don't know.
- 21 Q You don't know?
- 22 A No.
- 23 Q Really?
- 24 A (No audible response.)
- 25 Q Okay. Because the GPS reports said ten -- ten
26 police vehicles and over 18 officers, so is it

- 1 possible that there was more than two or three men
2 on top of my brother?
- 3 A (No audible response.)
- 4 Q You don't know?
- 5 A I don't remember.
- 6 Q You don't remember, or you don't know?
- 7 A I don't remember.
- 8 Q You don't remember. Okay, so you don't remember.
9 So, now, you've showed up and you've used force
10 against this man, and you've helped with the arrest,
11 even though you didn't read anybody their rights or
12 gave them any warnings, and then you put them -- you
13 placed me in the back of your car, and you watched
14 as my brother was placed in the back of car 242?
- 15 A (No audible response.)
- 16 Q And then I began to ask you some questions, didn't
17 I, about me being in custody?
- 18 A (No audible response.)
- 19 Q And you didn't really seem to have anything to say
20 to me, did you?
- 21 A (No audible response.)
- 22 Q I asked you why I was detained, why I'd been
23 arrested, and you didn't really seem to have any
24 answers for me, did you?
- 25 A I don't remember.
- 26 Q Do you remember turning the volume up in your car to

1 the maximum amount, so that you couldn't hear me in
2 the back while you drove me to detention; do you
3 remember that?

4 A No.

5 Q Do you remember leaving the lights and sirens on in
6 your car while you drove back to detention, with me
7 handcuffed in the back, and you going around the
8 corners really quickly, in order to bounce me around
9 in the back of your car; do you remember that?

10 A I did not drive back to our detention with my lights
11 and sirens on.

12 Q Oh, really?

13 A (No audible response.)

14 Q Because that's not what it showed on the video. We
15 have video of you leaving the parking lot in car 231
16 with your lights and sirens going, so is it possible
17 you just don't remember that, or you just --

18 A I did not drive to SPS detention the entire way with
19 my lights and sirens on.

20 Q You're saying that under oath?

21 A (No audible response.)

22 Q Because we had the video of your car leaving the
23 parking lot with its lights and sirens going?

24 A I may have left the parking lot with my lights and
25 sirens going --

26 Q Oh, you may have?

- 1 A -- but I did not --
- 2 Q Oh, you may have?
- 3 A -- drive the entire way to --
- 4 Q But there's no --
- 5 A -- SPS detention --
- 6 Q -- there was no camera in your car --
- 7 A -- with my lights and sirens going.
- 8 Q -- that would -- that would have recorded any of
- 9 that?
- 10 A (No audible response.)
- 11 Q Car 231 was another one of the cars that just didn't
- 12 have any in-car camera system, there was nothing in
- 13 that car to record the audio/video or -- or what you
- 14 did when you got back to detention?
- 15 A I don't know if there was a camera in that car.
- 16 Q You don't know?
- 17 A No.
- 18 Q Okay, you don't know a lot about this, hey?
- 19 A (No audible response.)
- 20 Q That's all right. So -- but when you did get back
- 21 to detention, then you booked me in to -- to
- 22 detention; right?
- 23 A (No audible response.)
- 24 Q You booked me in to cells?
- 25 A (No audible response.)
- 26 Q And you and your partner, Hounsell, you kept asking

- 1 me about drugs, didn't you?
- 2 A (No audible response.)
- 3 Q Where the drugs were; how much cocaine I'd done;
- 4 where were the drugs; did I throw the drugs out the
- 5 window of the car; is that right?
- 6 A (No audible response.)
- 7 Q Is that right?
- 8 A (No audible response.)
- 9 Q You asked me about drugs?
- 10 A I don't remember.
- 11 Q You don't remember?
- 12 A (No audible response.)
- 13 Q Okay. So then once you had me processed then, and
- 14 you had me through booking, and they'd booked me
- 15 into the front counter, and I'd indicated to you
- 16 that I wanted to talk to a lawyer; what did you do
- 17 with me then?
- 18 A If you would have told me that you wanted to talk to
- 19 a lawyer, you would have been put into a phone
- 20 room --
- 21 Q Exactly.
- 22 A -- to call a lawyer.
- 23 Q Exactly. I would have been put into a phone room.
- 24 So you put me into the phone room, didn't you?
- 25 A (No audible response.)
- 26 Q Right?

- 1 A (No audible response.)
- 2 Q You put me into -- you placed me into the phone
3 room?
- 4 A I don't remember if it was me or another officer.
- 5 Q You don't remember now?
- 6 A (No audible response.)
- 7 Q You don't really remember much about this. Have you
8 studied your notes at all?
- 9 A (No audible response.)
- 10 Q I have you on video placing me in a phone room, and
11 then leaving to the basement. Does that sound like
12 an accurate description of what happened, you put me
13 in the phone room and then left?
- 14 A (No audible response.)
- 15 Q Is that right?
- 16 A (No audible response.)
- 17 Q You went down to the basement?
- 18 A I don't remember.
- 19 Q You don't remember?
- 20 A (No audible response.)
- 21 Q Okay, but you do know that the Saskatoon Police
22 -- the -- the phone room in the -- with the
23 Saskatoon Police Service, that phone doesn't work,
24 does it?
- 25 A (No audible response.)
- 26 Q That phone is inoperable from the person inside the

- 1 room?
- 2 A (No audible response.)
- 3 Q That phone needs to be dialed out from outside of
- 4 the room?
- 5 A Correct.
- 6 Q So you placed me into a phone room with a phone that
- 7 didn't work, and then left; is that right?
- 8 A (No audible response.)
- 9 Q You still don't remember?
- 10 A I don't remember.
- 11 Q You don't remember?
- 12 A (No audible response.)
- 13 THE COURT: Is there anything in your
- 14 notes that might assist you?
- 15 THE WITNESS: I can look, Your Honour.
- 16 THE COURT: Please, do.
- 17 THE WITNESS: I have nothing in my notes
- 18 indicating that I gave him a lawyer call, Your
- 19 Honour.
- 20 THE COURT: Do you have any -- well, do
- 21 you remember having control of him, though, in
- 22 detention?
- 23 THE WITNESS: Yes. I remember bringing him
- 24 into detention, but I don't remember if -- if I,
- 25 myself, would have given him a lawyer call, Your
- 26 Honour, I would have made note. I do it every time.

1 If somebody else was giving him --

2 THE COURT: Is there --

3 THE WITNESS: -- a lawyer, though --

4 THE COURT: -- after taking --

5 THE WITNESS: -- I don't know.

6 THE COURT: -- him to detention, is there

7 anything in your notes, so -- concerning your

8 dealings with him, after taking --

9 THE WITNESS: Concerning my --

10 THE COURT: -- him --

11 THE WITNESS: -- dealings with him?

12 THE COURT: -- after taking him to

13 detention?

14 THE WITNESS: No.

15 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR
16 DIRE CONTINUES:

17 Q Well, you don't really seem to remember that much
18 here, and so I guess that's all the questions I'm
19 going to have for you right now. Thanks.

20 A (No audible response.)

21 THE COURT: Thank you.

22 MR. JAMES STEWART: I have a couple of
23 questions.

24 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR DIRE:

25 Q When you took control of my leg -- I'm the accused,
26 I'm the one on the ground. We've all recognized

1 that. So I don't know about using the third person
2 or the first person. But when you took control of
3 my legs, how many other officers were physically in
4 contact with me or right on top of me; they may not
5 have been touching me, but they were on top of me?

6 A (No audible response.)

7 Q Because I don't remember because I had a face full
8 of pavement, so when you took control of my legs,
9 how many other officers were there besides yourself?

10 A There were two other officers when I took control of
11 your legs. When we began to search you, there was
12 just myself and Constable Hounsell.

13 Q Constable Hounsell?

14 A Yes.

15 Q And you're Adam Boyce?

16 A Yes.

17 Q So you two were searching me, but the other three
18 guys, Keating, Schaefer, and McAvoy, they physically
19 removed themselves from me and left just you two on
20 top of me; is that correct?

21 A When we searched you, yes.

22 Q So you guys searched me?

23 A Yes.

24 Q Okay, so what did you find when you searched me?

25 A I don't remember. I didn't make note of your
26 property.

1 Q Well, Adam, I -- I don't think you can remember a
2 whole lot, so I'm not going to ask any more
3 questions. Thank you.

4 A (No audible response.)

5 MR. PASHOVITZ: Your Honour, if I may, I do
6 have a proposed question or two for re-examination.

7 MR. PASHOVITZ: RE-EXAMINATION ON VOIR DIRE:

8 Q You were asked in cross-examination about the call
9 to a lawyer; correct, Constable?

10 A Yes.

11 Q And what was the name of your partner again that
12 night?

13 A Constable Hounsell.

14 Q Did you see Constable Hounsell assist either
15 individual, or specifically Jarvis Stewart with
16 respect to a call to a lawyer that night or not?

17 A I can't remember.

18 Q Okay. Is it possible that it was his role that
19 night --

20 A It's --

21 Q -- to assist with the lawyer call?

22 A -- very possible, yes.

23 Q That's -- thank you, Constable, that's all I have
24 for you.

25 A (No audible response.)

26 THE COURT: Okay. Thank you.

1 MR. PASHOVITZ: I can go and get Constable
2 Hounsell, Your Honour.
3 COURT CLERK: Would you prefer to give your
4 evidence by swearing an oath on the Bible, or would
5 you prefer to give your evidence by making a solemn
6 affirmation?
7 THE WITNESS: I'll make an affirmation.
8 COURT CLERK: Okay. Now, raise your right
9 hand, and state your full name for the Court?
10 THE WITNESS: Constable Ryan Bay Hounsell.
11 THE COURT: And could you spell your
12 first and last name?
13 THE WITNESS: R-Y-A-N H-O-U-N-S-E-L-L.
14 THE COURT: Could you -- could you spell
15 your last name again, please?
16 THE WITNESS: Sure. H-O-U-N-S-E-L-L.
17 THE COURT: Thank you.
18
19 RYAN BAY HOUNSELL, having
20 been duly AFFIRMED, states:

21 MR. PASHOVITZ: EXAMINATION-IN-CHIEF ON VOIR DIRE:
22 Q Good afternoon, Constable.
23 A Good afternoon.
24 Q You're employed as a peace officer with the
25 Saskatoon Police Service; is that correct?
26 A Yes, I am.
27 Q And you're a peace officer in and for the Province

- 1 of Saskatchewan?
- 2 A That's correct.
- 3 Q How long have you been employed as a peace officer?
- 4 A Just over five years now.
- 5 Q Okay. And were you on active duty on August 24th,
- 6 2012?
- 7 A Yes, I was.
- 8 Q Were you working with a partner that night?
- 9 A I was working with my partner, Constable Boyce.
- 10 Q Okay. In a marked police car?
- 11 A In marked police car number 231.
- 12 Q Okay. Do you recall if that police car had
- 13 operating in it at that time the in-car camera
- 14 system or not?
- 15 A I couldn't say either way. I know that they were
- 16 just starting to implement them at that time. They
- 17 were under a trial period, I think, at that time.
- 18 And I don't know if the patrol car that we were
- 19 operating had one or not.
- 20 Q Okay. Tell us about that night then?
- 21 A (No audible response.)
- 22 Q I'm led to believe you received a call to assist
- 23 another officer; is that correct?
- 24 A That's correct.
- 25 Q Tell us --
- 26 A It was --

1 Q -- about the time of that, and take me all the way
2 through.

3 A Sure. It was at 1903 hours. I was the passenger of
4 my marked patrol car number 231. We had received a
5 -- pardon me -- we had received a call for
6 assistance from another officer on the -- that came
7 in as being the Shopper's Drug Mart on 8th Street.
8 We assumed it was the Shopper's Drug Mart at the
9 2100 block in Grosvenor -- Grosvenor Avenue and 8th
10 Street. We'd arrived. I'd observed that there were
11 two other patrol cars at this time. A male that I
12 recognized as Constable Keating had one individual,
13 walking him towards our patrol car as we showed up.
14 Another individual was on the ground, face-down, had
15 two officers trying to control him at that time. I
16 exited my patrol car. Constable Keating approached
17 with one male whom I later came to know as Jarvis
18 Stewart. At this point, he asked if we could place
19 Mr. Stewart in the back of our patrol car. I took
20 hold of his right arm, and we walked him to my
21 patrol car, and placed him the back seat of the
22 patrol car as quickly as possible because I could
23 see -- still see that there was another
24 confrontation going on between the other officers
25 and the remaining male, James Stewart. So as soon
26 as I placed James (sic) -- or sorry -- Jarvis

1 Stewart in the back of my patrol car, I'd rushed
2 back to assist the other officers, at which point I
3 took control of Mr. James Stewart's upper body, his
4 head specifically. I could see that there was blood
5 around his face and on his mouth and he seemed to
6 be, kind of, spitting. And I wanted to make sure
7 that he was unable to spit on any officers, spit any
8 blood on anyone. So I controlled his head, at which
9 point we -- at which point we were able to -- I
10 believe James was already in handcuffs at this time.
11 I -- I couldn't say or not. I was controlling his
12 head. But once we were able to search him for
13 -- give him a quick search -- search for weapons,
14 that type of thing, we were waiting for another
15 marked patrol car, one that would have a silent
16 patrolman that James Stewart could be placed into.
17 So we waited. I believe it was Constable Smith that
18 showed up. I don't recall his patrol car number,
19 but we placed James into the back of that car. And
20 at which point, I was -- returned to my patrol car.
21 I observed Constable Keating to be reading Jarvis
22 Stewart his rights and warnings, at which point, we
23 had transported Jarvis into detention cells. At
24 that point, I placed Jarvis into the north phone
25 room, at his request, he wished to have a -- I -- I
26 gave him a phone book, so he could locate his

1 lawyer. At which point, I heard Constable Smith
2 calling in, stating that James Stewart was agitated
3 in the back of his patrol car and was spitting blood
4 and so on in the back of the patrol car. I noted I
5 -- I noted that I had a spit sock -- what's referred
6 to as a spit sock. It's, kind of, a mesh hood that
7 goes around a person to prevent them from spitting
8 bodily -- bodily fluids on you. So I went down into
9 the basement, at which point I spoke with James and
10 explained to him that I needed to place this spit
11 sock on his head. And basically that -- that went
12 fairly smooth. We placed the sock on his head. And
13 that was end of my involvement. And I went back up,
14 at which point Jarvis stated that he didn't want to
15 speak to his lawyer anymore. His lawyer lived in
16 B.C., so I took him to the washroom, I guess, and
17 that was about it for my involvement.

18 Q Okay. I'll -- I'll take you back to the call. How
19 many calls did you hear from Constable Keating?

20 A I believe it was maybe broken into two parts. First
21 of all, you could hear a struggle, and that he
22 required another unit. And it was later on that it
23 came in that he -- he actually got his location out.
24 I think maybe other officers were on, wondering
25 which location he was exactly at. There's more than
26 one Shopper's on 8th Street, but I -- I -- there was

1 -- there was the initial call that came in, and then
2 there was at least one update. I don't recall
3 whether it was from Constable Keating or -- or
4 dispatch or another officers that had seen his
5 location or what, so --

6 Q Okay. So when you first dealt with Jarvis Stewart
7 at the scene, did you notice any visible injuries to
8 him or not?

9 A I couldn't say. I didn't -- I definitely -- I -- I
10 was, kind of, more focused on the -- the -- he
11 seemed to be the more relaxed of the two
12 individuals, and I was definitely more focused on
13 the male, on James, as he was doing the majority of
14 the screaming and yelling and swearing. And so I
15 quickly -- as quick as possible placed Jarvis into
16 the back of my patrol car, where he would be
17 detained, and I could rush back to assist the other
18 officers.

19 Q Okay. So when you later returned to your police
20 car, did you take any steps to read from your card,
21 as far as any rights to counsel or --

22 A No.

23 Q -- arrest --

24 A I --

25 Q -- information, or that was Constable Keating?

26 A Constable Keating, I had observed, had already done

1 that, so I didn't at all.

2 Q Okay, so that wasn't part of your role in the
3 investigation?

4 A No.

5 Q Turning to James Stewart then, did you observe at
6 the end of the day what his injuries were?

7 A (No audible response.)

8 Q You talked about seeing blood earlier?

9 A You know, I can't remember what exactly the injuries
10 that he had were, but I know he must have been
11 bleeding from -- whether the mouth or the face or
12 somewhere above the neck because there was -- like I
13 said, there was blood and saliva around his face
14 when he was on the ground.

15 Q Okay. And you later dealt with him at the police
16 station itself --

17 A Later --

18 Q -- is that --

19 A -- at the --

20 Q -- correct?

21 A -- police station. He would have been taken in
22 after we were, so he would have been in detention,
23 went up the elevator into the detention/booking
24 area, at which point I responded to the call from
25 Constable Smith for assistance in what's called the
26 Sally port. I would have returned to the lower

1 level with the spit sock. And that's, again, where
2 I saw -- basically, that's the first time that I saw
3 James Stewart's face, I would say.

4 Q Okay. And do you have a recollection as far as how
5 his face looked to you at that point in time with
6 respect to any injuries or not --

7 A I --

8 Q -- or --

9 A -- don't recall as far as injuries go. It was more
10 of an angry look, as though he was trying to
11 intimidate the officers, screaming --

12 Q Can you --

13 A -- and swearing.

14 Q -- describe his demeanor during the time you dealt
15 with him in the detention area?

16 A Sure. I -- I never dealt with him in detention.

17 Q I'm sorry, I apologize. The Sally port, did you
18 say?

19 A In the Sally port, yeah. In the Sally port, I could
20 see that the interior of the police car, the back
21 portion was covered with saliva and blood all over
22 the back window area, as though he'd been spitting
23 numerous times in the back of the patrol car. I
24 could -- you know, when -- when I came down the
25 elevator, I was able to hear shouting of some type,
26 but when I approached James and I explained what was

1 going to happen with the hood, he was -- you know,
2 momentarily he objected to it, but then I explained
3 that it was just procedure, and he was perfectly
4 fine with it, and there was very little problems
5 that I had with James at that time.

6 Q Okay. Back to the scene then. I asked you about
7 Jarvis Stewart, but you -- did you take any steps
8 yourself to read from your card with respect to
9 James Stewart or any arrest information there --

10 A No.

11 Q -- or that was --

12 A Not at all.

13 Q -- someone else's --

14 A No.

15 Q -- role?

16 A That was constable -- I don't know who that would
17 have been, but it wasn't me.

18 Q Okay. So just to get this clear in my mind, you and
19 your partner transported Jarvis Stewart downtown; is
20 that correct?

21 A That's correct, yes.

22 Q And it was an Officer Smith that transported James
23 Smith (sic) downtown?

24 A That's my understanding, yes.

25 Q Do you know how long it took you to respond to this
26 call, approximately?

- 1 A I would say roughly one minute. I -- I don't know
2 exactly where we were when the call came in, but
3 it's very rare that you sense that type of urgency
4 in an officer's voice, and you respond to it with
5 absolute priority number 1.
- 6 Q How rare, or how many times have you had a call like
7 that?
- 8 A It's probably the second time in my five years that
9 I've worked with the police service.
- 10 Q And how quickly did things happen at the scene, from
11 the time you got there until the time that James
12 Stewart was --
- 13 A I mean --
- 14 Q -- in handcuffs?
- 15 A -- you know, I don't -- like I said, I -- I don't
16 know if -- I don't recall putting handcuffs on James
17 with -- to begin with. I believe that he was
18 already handcuffs.
- 19 Q Okay, sorry.
- 20 A I -- I couldn't say for sure. I was -- I was
21 controlling his head at that time, so I wasn't part
22 of any cuffing procedure. But as soon as arriving
23 at the scene, it was instantaneous to exit my patrol
24 car. I probably had my door open before the car was
25 in park, kind of thing, so I immediately rushed out.
26 Constable Keating was walking at a fast pace towards

1 myself. I could tell by the fact that he was
2 walking and not sprinting towards my location that
3 the sense of urgency had worn off a little bit at
4 that point, so I quickly took control of -- as I
5 said, of Jarvis's right arm, and escorted him to my
6 patrol car. I still tried to do that as quickly as
7 possible because I wanted to get back to where I
8 observed two officers dealing with James --

9 Q Okay.

10 A -- so --

11 Q So how long did those duties go on with -- with
12 James until?

13 A With James?

14 Q I'm just curious --

15 A About --

16 Q -- about how --

17 A Yeah, do you --

18 Q -- long this took?

19 A -- know what, I -- I would be estimating, but I -- I
20 couldn't say if someone had called for another car.
21 The way that it works is, with the traffic officers
22 that had originally gotten there, the two patrol
23 cars, they don't have what's called a silent
24 patrolman, so you can't put a prisoner in the back.
25 It's just an open area, kind of, like, a taxicab.
26 So Constable Smith was later on called to our

1 location. I don't know if he was called as part of
2 the first call for assistance, or if he was called
3 later on for transport purposes because he had a
4 silent patrolman. So because of that, I'm not
5 certain how quickly Constable Smith would have got
6 there, but I imagine it must have been within three
7 or four minutes.

8 Q Okay. I don't have too many more questions for
9 you.

10 A Okay.

11 Q You say that you controlled James Stewart's head;
12 correct?

13 A That's correct.

14 Q Okay. And there was -- at some point in time, a
15 time when he was under the control of the Saskatoon
16 Police Service, and, I guess, compliant, if I can
17 use that term, as far as --

18 A That's correct, yes. When -- when -- when my
19 partner and I, Constable Boyce, had control of James
20 Stewart, besides cursing and yelling, I -- he didn't
21 seem to be thrashing about or anything.

22 Q How long did that part of it take?

23 A (No audible response.)

24 Q You say you put Jarvis Stewart in your police car?

25 A Yeah.

26 Q And then you turned your attention back to where

1 James Stewart --

2 A That's --

3 Q -- was?

4 A -- what I would estimate to be possibly four
5 minutes. We were just waiting, basically, for
6 Constable Smith to come to our location, so I
7 couldn't say exactly how long that would have
8 taken.

9 Q And when -- what I'm curious about is, how long did
10 it take for you police officers to get James Stewart
11 under control, if I can use that term?

12 A Okay.

13 Q Is that what you're saying is four minutes?

14 A Oh, no, no. That would have been less time than
15 that. From the time that basically the other
16 officers -- as soon as myself and Constable Boyce
17 got hands on James, the other officers would have
18 released. At which point, we're, kind of, fresh to
19 the situation, and we would attempt to, kind of,
20 de-escalate the situation from where it was before.
21 So I felt at that time that James wasn't physically
22 resisting a whole lot at that point, when -- when I
23 -- when I first got hands onto him. I just
24 basically controlled his head, so that he wouldn't
25 be able to -- like I said, turn his head towards
26 officers.

- 1 Q Okay. What was he doing, if you can recall?
- 2 A He was yelling and shouting and I don't even
3 remember the exact things that he was saying.
4 Something along the lines of, "I didn't do anything.
5 What are you doing?"
- 6 Q Did you see him spit at a police officer or --
- 7 A I didn't see him spit at anyone, but I could see him
8 spitting blood out of his mouth.
- 9 Q And would you be able to identify James Stewart and
10 Jarvis Stewart again, if you had to?
- 11 A Yeah, I would --
- 12 Q Could you point them, please --
- 13 A -- identify Jarvis --
- 14 Q -- so we know?
- 15 A -- as the yellow and red shirt, and James has a
16 black t-shirt with a grey hoody.
- 17 Q Thank you very much for answering all of my
18 questions, Constable. Please, answer any other
19 questions that --
- 20 A (No audible response.)
- 21 THE COURT: Cross-examine --
- 22 Q -- may be asked --
- 23 A (No audible response.)
- 24 Q -- of you.
- 25 A (No audible response.)
- 26 THE COURT: -- please?

1 THE WITNESS: You're welcome.

2 MR. JARVIS STEWART: Thank you, Your Honour.

3 MR. JARVIS STEWART: CROSS-EXAMINATION ON VOIR DIRE:

4 Q So you had no idea why you showed up to the parking
5 lot, did you?

6 A I didn't know the initial traffic stop, but I knew
7 there was an officer in need of assistance, that's
8 all.

9 Q But you had no idea why?

10 A No, that's correct.

11 Q Okay. And then so when you did show up, you took
12 custody of me, essentially, you took control of me,
13 that was one of the first things you did, you took
14 me from Jay Keating?

15 A That's correct.

16 Q Okay. And so at that point, were you aware that I
17 hadn't been read any rights or warnings or -- or
18 even been told the reason for my arrest?

19 A No. I --

20 Q You weren't --

21 A -- wasn't.

22 Q -- aware of that? Okay, so then -- but then you
23 took control of me, and then put me in the back of
24 your car?

25 A That's correct.

26 Q So you're aware -- you weren't aware at that point

- 1 then that I wasn't aware of why I'd even been
2 arrested?
- 3 A (No audible response.)
- 4 Q I -- I really had no idea, and neither --
- 5 A I --
- 6 Q -- did you? Jay Keating made no attempt to tell
7 anybody what was going on; right?
- 8 A I -- that -- my main concern would have been officer
9 safety, so I wasn't concerned with that at that --
- 10 Q Officer --
- 11 A -- time.
- 12 Q -- safety?
- 13 A Correct.
- 14 Q Okay. Okay, so your main concern was officer
15 safety, but then you did get control of me, and you
16 put me in the back of your car, and then you raced
17 back to the scene. And at this point, you saw my
18 brother proned out on the pavement with handcuffs on
19 behind his back; is that right?
- 20 A I believe he had handcuffs on.
- 21 Q You --
- 22 A Yes.
- 23 Q -- believe he did? Okay. And so there was how many
24 officers standing over him at that point?
- 25 A (No audible response.)
- 26 Q There was Constable Keating --

1 A I --
2 Q -- Constable McAvoy, Constable --
3 A -- I --
4 Q -- Schaefer, and, now, -- and, now, Constable Boyce;
5 right?
6 A I thought that there was two officers, and I thought
7 that myself and Constable Boyce relieved those two
8 officers, but I --
9 Q You --
10 A -- I don't --
11 Q -- thought --
12 A -- know where --
13 Q -- there was two, but --
14 A -- the other officers --
15 Q -- because --
16 A -- were then.
17 Q -- as it turns out, there was -- Keating was there;
18 Schaefer was there; McAvoy was there; and, now, your
19 -- your partner, Boyce --
20 A It could be.
21 Q -- was on the --
22 A I couldn't --
23 Q -- back of him --
24 A -- speculate that.
25 Q -- so, now, there's four officers on top of this
26 man, who is face-down on the pavement with handcuffs

- 1 on behind his back, and you considered this a fight?
- 2 A (No audible response.)
- 3 Q You said there's still -- there was still at least
- 4 one fight happening, so I had to race back to the
- 5 scene; is that right?
- 6 A That's correct.
- 7 Q So you thought --
- 8 A In my --
- 9 Q -- you thought that a man, face-down on the
- 10 pavement, with handcuffs on behind his back, and
- 11 four police officers standing over top of him, you
- 12 thought that was a fight?
- 13 A When someone is fighting with the police, I consider
- 14 it a fight --
- 15 Q He was --
- 16 A -- sir, yes.
- 17 Q -- he was fighting with handcuffs on behind his
- 18 back?
- 19 A Yes, sir.
- 20 Q On -- on -- face-down on the pavement?
- 21 A That would be my description, yes.
- 22 Q Really?
- 23 A (No audible response.)
- 24 Q Okay, and so were the other -- were the other police
- 25 officers really striking this man, were they kicking
- 26 him, telling --

- 1 A Not --
- 2 Q -- him to stop resisting?
- 3 A -- not that I observed.
- 4 Q So --
- 5 A I definitely did hear other officers when I first
6 arrived at the scene --
- 7 Q Okay.
- 8 A -- stating something to the effect of, "Stop
9 resisting," or, "Stop fighting."
- 10 Q So then -- then you took control of this man's head;
11 is that what you meant by kneeling on his head and
12 calling him a douchebag?
- 13 A I don't recall those words --
- 14 Q Oh.
- 15 A -- but I definitely would use my knees to hold
16 someone's head down.
- 17 Q So you -- you -- you already saw that he was
18 face-down on the ground with handcuffs on behind his
19 back, and you kneeled on his head?
- 20 A I would control the head --
- 21 Q Controlled --
- 22 A -- but using my knees.
- 23 Q -- his head --
- 24 A That's correct.
- 25 Q -- so you --
- 26 A Yes.

- 1 Q -- kneeled on his head, and you were aware that this
2 man hadn't really done anything?
- 3 A I wasn't aware of the --
- 4 Q Nobody --
- 5 A -- circumstances --
- 6 Q -- nobody --
- 7 A -- besides --
- 8 Q -- told you the circumstances, you just decided to
9 take it on -- upon yourself to go and control his
10 head by kneeling on it; is that right?
- 11 A He was fighting with the police, and I controlled
12 his head, that's correct.
- 13 Q He was fighting with the police?
- 14 A (No audible response.)
- 15 Q Okay, okay. So you controlled his head. And so
16 then he said, "Jesus Christ, what are you doing? I
17 didn't do anything." So you stopped, you let him
18 go, you got up. And at that point -- some point,
19 you went back to your car, and then you transported
20 me back to detention; is that right?
- 21 A That sounds correct.
- 22 Q That sounds about correct?
- 23 A (No audible response.)
- 24 Q Okay. And so I was handcuffed in the back of the
25 car?
- 26 A I would believe --

- 1 Q With handcuffs?
- 2 A -- that you would be.
- 3 Q Yeah?
- 4 A Yes.
- 5 Q And then you guys left that scene in your car with
6 the lights and sirens going; is that right?
- 7 A I -- it would be --
- 8 Q You and --
- 9 A -- it would be common for us to turn the lights off
10 prior to leaving the scene. I couldn't --
- 11 Q Oh, really?
- 12 A -- say if the lights were on at that time, but --
- 13 Q So you're sure you didn't leave the lights and
14 sirens going the whole time, and then drive
15 aggressively back to the detention, bouncing me in
16 the back of the car?
- 17 A Oh, I'm a hundred percent certain that we wouldn't
18 have had the lights and sirens --
- 19 Q Oh, really?
- 20 A -- on.
- 21 Q Are you a hundred percent certain that your partner
22 didn't turn the volume up all the way in the car, so
23 that he didn't have to answer my questions about why
24 I had been arrested?
- 25 A I'm a hundred percent certain my partner has never
26 turned the volume up --

- 1 Q Oh, really?
- 2 A -- a hundred percent --
- 3 Q A hundred --
- 4 A -- of the way, yes.
- 5 Q -- percent certain?
- 6 A That's correct.
- 7 Q All right. All right, so then at that point, you
8 got me back to the -- to the Saskatoon detention
9 cells, and at that point, you could hear me because
10 the car wasn't running anymore, and I was asking you
11 questions; right?
- 12 A (No audible response.)
- 13 Q And I was asking you the whole time about why I'd
14 been detained and arrested, and why you guys had me
15 in custody, and you weren't really able to tell me
16 anything concrete as to what was going on; right?
- 17 A That could be. At that point, you had --
- 18 Q You really --
- 19 A -- already been explained --
- 20 Q -- you really --
- 21 A -- that by Constable Keating --
- 22 Q -- had no idea --
- 23 A -- so --
- 24 Q -- that it was an obstruction charge at that point,
25 did you?
- 26 A I -- I wasn't -- I wasn't the arresting officer,

1 so --

2 Q You weren't aware?

3 A -- I didn't know --

4 Q You didn't know?

5 A -- what you were charged with.

6 Q No?

7 A (No audible response.)

8 Q Okay, so even when I asked you about, you know,

9 about what the circumstances were, you didn't really

10 make any attempt to try to, you know, contact Jay

11 Keating and -- and get him to tell me what -- what,

12 sort of, legal circumstances I was in, you made no

13 effort to do that?

14 A Is that the officer that had already explained that

15 to you, is that what you're asking?

16 Q No. I'm asking if you made any attempt to contact

17 Mr. Keating?

18 A Well, I never made any attempt to contact --

19 Q Okay.

20 A -- Constable --

21 Q So --

22 A -- Keating --

23 Q -- but then --

24 A -- at all, no.

25 Q -- but then at that point, you took me back and you

26 booked me into the Saskatoon detention cells; that's

1 right?

2 A (No audible response.)

3 Q Right?

4 A That's correct, yes.

5 Q And you completely searched me, turned my pockets

6 inside-out, took my belt out, took my cell phone,

7 took everything?

8 A No.

9 Q Took all of my personal possessions?

10 A That wouldn't have been me, but that would have been

11 a detention special in --

12 Q It wouldn't --

13 A -- or constable.

14 Q -- have been you, but you -- you were standing right

15 there, watching; right?

16 A That's correct.

17 Q Okay.

18 A Yes.

19 Q And then at that point, I indicated to you that I

20 wanted to talk to a lawyer; is that right?

21 A That's correct, yes.

22 Q That is correct. And so what did you do then?

23 A And then I would have placed you in the north phone

24 room, and provided you with a phone book, and given

25 you the opportunity to search for a lawyer of your

26 choice.

- 1 Q Really?
- 2 A (No audible response.)
- 3 Q The opportunity to search for a lawyer?
- 4 A (No audible response.)
- 5 Q Is that what you thought I indicated to you, that I
- 6 wanted to search for a lawyer's number, or that I
- 7 actually wanted to talk to a lawyer?
- 8 A I don't really understand the difference --
- 9 Q Well, you see --
- 10 A -- off the top --
- 11 Q -- I wanted to --
- 12 A -- of my head.
- 13 Q -- talk to a lawyer. I didn't want to look up his
- 14 name in a phone book. I wanted to talk -- to talk
- 15 to him?
- 16 A Okay.
- 17 Q So did you make any attempt to help me talk to a
- 18 lawyer?
- 19 A I gave you every attempt to talk to a lawyer, yes,
- 20 sir.
- 21 Q Every attempt?
- 22 A (No audible response.)
- 23 Q You gave me every attempt to talk to a lawyer, so
- 24 you put me in the north phone room, and you shut the
- 25 door behind me; is that right?
- 26 A (No audible response.)

- 1 Q Or was that Constable Mitzul (ph)?
- 2 A No, that would have been me.
- 3 Q That would have been you?
- 4 A (No audible response.)
- 5 Q Are you sure because I have it on video, hey?
- 6 A Yeah.
- 7 Q I have the whole thing on video --
- 8 A Okay, well --
- 9 Q -- and I -- I can -- I'm pretty sure it wasn't you,
- 10 but that's --
- 11 A Oh, okay.
- 12 Q -- all right.
- 13 A Well --
- 14 Q So you gave me a phone book to look up my lawyer's
- 15 number with, and then what did you do?
- 16 A Then I returned to the Sally port area.
- 17 Q So you left, you left me in a phone -- or in a room
- 18 with a phone that doesn't work, so that I could talk
- 19 -- you know, talk to a lawyer, so this is 45 minutes
- 20 after the initial -- and you left?
- 21 A I believe it was about 30 minutes after the initial,
- 22 and --
- 23 Q And so then you left me in there with a phone that
- 24 doesn't work?
- 25 A That's the way all of the detention phones operate,
- 26 is they have to be dialed --

- 1 Q I'm aware --
- 2 A -- from the outside.
- 3 Q -- I'm aware of that, yeah. But you didn't think I
- 4 needed my cell phone, my cell phone -- that was off
- 5 limits, I couldn't have my cell phone to talk to a
- 6 lawyer?
- 7 A Had you have asked for your cell phone for a
- 8 specific lawyer's number, I definitely would have
- 9 gotten it for you.
- 10 Q Oh, well, you just said that I -- I said my lawyer
- 11 lives in B.C., so you didn't think I wanted to talk
- 12 to him?
- 13 A I asked you, and you stated that your lawyer lived
- 14 in B.C., and you no longer wished to speak to him.
- 15 Q No. And then you actually told me that I couldn't
- 16 make a toll free call, that I had to phone within
- 17 business hours, that I didn't have access to my cell
- 18 phone; is that correct?
- 19 A (No audible response.)
- 20 Q You completely --
- 21 A That's --
- 22 Q -- frustrated my rights to counsel?
- 23 A -- that is absolutely incorrect --
- 24 Q Really?
- 25 A -- because I wouldn't even say --
- 26 Q Okay.

- 1 A -- that to anyone.
- 2 Q We -- we can watch the video. I will remind you --
- 3 A Absolutely, sir.
- 4 Q -- you're under oath here, man.
- 5 A Absolutely.
- 6 Q We can watch -- we can watch the video when this is
- 7 all said and done.
- 8 A Absolutely.
- 9 Q So at that point, I -- you say that I -- I indicated
- 10 to you that I no longer wanted to speak to a lawyer;
- 11 is that right?
- 12 A That's correct.
- 13 Q That's correct, but you never gave me a Prosper
- 14 warning?
- 15 A (No audible response.)
- 16 Q Is that correct?
- 17 A I wasn't the one that arrested you, so, no, I
- 18 didn't.
- 19 Q Oh, okay, so you just -- you just decided that I'd
- 20 waive my right to counsel, now, after sitting in the
- 21 north phone room for 20 minutes, trying to use the
- 22 phone that didn't work, now, you advised me that I
- 23 had waived my right to counsel, you weren't really
- 24 that interested in giving me a Prosper warning, and
- 25 then -- and then so what did you do with me?
- 26 A After you declined a lawyer, I took you to the

- 1 washroom, as per your request.
- 2 Q I declined a lawyer, did I?
- 3 A (No audible response.)
- 4 Q I declined a lawyer?
- 5 A That's correct.
- 6 Q It says right in your own words here, in your own
7 notes, that I asked to speak to a lawyer.
- 8 A That's right. And then you changed your mind after
9 I --
- 10 Q I changed --
- 11 A -- let you look --
- 12 Q -- my mind --
- 13 A -- in a phone book.
- 14 Q -- after you put me in a room with a phone that
15 doesn't work?
- 16 A The phone --
- 17 Q Did you think I was, maybe, frustrated out of my
18 right to counsel?
- 19 A Well, the phone does work, sir. It just has to be
20 dialed by a police officer.
- 21 Q But you didn't dial. You went down to the basement?
- 22 A Had you asked me to dial a certain number, I
23 certainly --
- 24 Q I -- was I --
- 25 A -- would have.
- 26 Q -- was I supposed to have known that the phone

1 didn't work, that I would be required to ask you to
2 dial it on my behalf?

3 A Okay. No. I'm not going to --

4 Q No?

5 A (No audible response.)

6 Q All right. We'll watch the video, Ryan. We'll see
7 -- we'll see what's in the video, bud. I've got no
8 further questions for you, man.

9 A (No audible response.)

10 MR. JAMES STEWART: I have some questions.

11 THE COURT: Mmhmm.

12 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR DIRE:

13 Q So you put your knee on my head?

14 A That's correct.

15 Q At that time, how many people were on me or around
16 me?

17 A I believe it was just Constable Boyce. But I was
18 focusing on your head, and making sure you weren't
19 spitting on people. I -- I simply was focused on
20 myself, sir.

21 Q You're saying you were focusing on the fact that I
22 was not spitting on people?

23 A (No audible response.)

24 Q Did you see me at any time spit?

25 A I saw you spit, that's correct.

26 Q Where and when did I spit?

- 1 A You would have spat when you were on the ground
2 because that was the entire time that I was dealing
3 with you, is when you were on the ground.
- 4 Q What did I spit?
- 5 A You spit blood and saliva.
- 6 Q Blood and saliva?
- 7 A (No audible response.)
- 8 Q How much blood do you think was there?
- 9 A (No audible response.)
- 10 Q A little bit, like, a -- maybe a teaspoonful, or do
11 you --
- 12 A I said --
- 13 Q -- think it maybe have been, like, a cup of blood?
- 14 A -- I'm --
- 15 Q Give me some idea as to how much blood was coming
16 from my face?
- 17 A More than a teaspoon, I suppose.
- 18 Q More than a teaspoon, less than a cup?
- 19 A Yeah.
- 20 Q Did you see that blood on my face before or after I
21 -- I was -- I was accosted by these cops?
- 22 A (No audible response.)
- 23 Q Did you see any markings on my face before?
- 24 A I never saw you before you deal -- dealt with the
25 police, sir.
- 26 Q Please, explain what you saw of me when you first

1 saw me?

2 A You were proned-out in a parking lot with, I
3 believe, two officers who were telling you to stop
4 resisting or whatever the words that they were using
5 were. And you were -- you were proned down. And
6 you had some blood around your face. And you were
7 shouting, swearing.

8 Q I -- did I have handcuffs on?

9 A I believe you did, but I couldn't say for sure.

10 Q You couldn't -- you couldn't tell for sure, but I
11 was on the ground?

12 A That's correct.

13 Q Flat on the ground, the pavement?

14 A That's correct.

15 Q Is that a position that you would say is frequented
16 by people who fight with police?

17 A (No audible response.)

18 Q Like, you said, "You were fighting," that's -- like,
19 it's fighting, so, like, I've been in fights before,
20 I've been beat up before. I've never been beat up
21 by five cops, but I'm just trying to get your sense
22 of the word "fighting"?

23 A (No audible response.)

24 Q You said that I was still fighting when I was down
25 on the ground, face-first, with handcuffs on, with
26 police around me, I was still fighting; is that

- 1 correct?
- 2 A Well, from my observations, it appeared that way,
3 yes.
- 4 Q Okay. Now, did Constable Keating, did Constable
5 McAvoy, or did Constable Vince Schaefer, did they
6 make any comments to you about a combat or a
7 fighting or a striking or aggression by me?
- 8 A I didn't have time to question them on that.
- 9 Q There was --
- 10 A I just --
- 11 Q -- not a lot of time?
- 12 A No.
- 13 Q You -- you would agree with me that there was not a
14 lot of time?
- 15 A Not a lot of time to -- to hear that, no.
- 16 Q Things happened --
- 17 A That's correct.
- 18 Q -- very quickly?
- 19 A Absolutely.
- 20 Q According to the video, about seven minutes?
- 21 A Okay.
- 22 Q That's not -- that's not a lot of time?
- 23 A (No audible response.)
- 24 Q Are you ever trained on threshold, Mr. Hounsell, as
25 far as, like, approaching someone and then getting a
26 threshold as to what they understand or what they

1 hear about you, before you actually make any
2 actions?

3 A I'm not familiar with that term, sir, no.

4 Q Not threshold, not, like, waiting or -- you know, if
5 someone asks you a question, would you feel that,
6 you know, a 30 second window of time to talk about
7 that would be a fine threshold, or would that be too
8 soon?

9 A I -- I'm having trouble understanding your question.

10 Q Okay. If I'm going to ask you a question, and
11 you're going to respond, but it takes you a few
12 moments to respond, I would consider that as a
13 threshold. You have to understand the question
14 before you can respond to that question.

15 A Okay.

16 Q Are you taught in your training about threshold,
17 about asking people or giving someone a command, and
18 then allowing a threshold of time before continuing
19 with something?

20 A We are -- it is based on officer's perception to
21 allow a certain amount of time for a person to
22 respond to something.

23 Q I -- I --

24 A Does that -- does that answer --

25 Q Okay.

26 A -- it at all?

1 Q It does.

2 A Okay.

3 Q They allow a certain amount of time. Do you believe
4 that in the situation of seven minutes basically
5 transpiring from beginning to end, do you think that
6 seven minutes was a fair threshold as to what was
7 going on?

8 A (No audible response.)

9 Q Do you think that maybe people acted in a rush or
10 people assumed too much and maybe did things that
11 they should not have immediately?

12 A I'm --

13 THE COURT: You know, a witness can only
14 testify as to what he saw and heard.

15 MR. JARVIS STEWART: Yeah.

16 THE COURT: You know, his opinion on that
17 really doesn't help me --

18 MR. JARVIS STEWART: Yeah, don't worry about that.

19 THE COURT: -- very much.

20 MR. JAMES STEWART: Fair, fair enough.

21 MR. JAMES STEWART: CROSS-EXAMINATION ON VOIR
22 DIRE CONTINUES:

23 Q Thank you, Mr. Hounsell. I have no further
24 questions.

25 A Thank you.

26 THE COURT: You've described Mr. Stewart

1 on the ground as shouting and screaming and swearing
2 and that sort of thing. And you've described blood
3 coming from his face. You've also said "fighting".
4 And I'm just curious as to what you meant by
5 fighting?

6 THE WITNESS: (No audible response.)

7 THE COURT: Is it just all of this noise
8 he was making or --

9 THE WITNESS: Well, my perception was based
10 on the fact that I was called to --

11 THE COURT: Like, you've described the
12 word "fighting". I just want to know exactly what
13 you meant. I'm not criticizing you --

14 THE WITNESS: Sure.

15 THE COURT: -- or anything.

16 THE WITNESS: No, no.

17 THE COURT: I'm just asking you --

18 THE WITNESS: That's all right.

19 THE COURT: -- what -- what -- why you
20 thought he was fighting?

21 THE WITNESS: I suppose struggling could
22 also be used. I -- I observed the two officers to
23 be continually shouting something to the effect of,
24 "Stop resisting," or, "Stop fighting." And to me
25 that insinuates that a person is, in fact, resisting
26 and -- and is fighting.

- 1 THE COURT: That's nothing you actually
2 saw, it's just from --
- 3 THE WITNESS: Besides the fact that a
4 person that Mr. -- that James was shouting and, kind
5 of, trying to lift his head up and move it around,
6 that's about all I -- I saw.
- 7 THE COURT: All right. And were you
8 involved in searching him?
- 9 THE WITNESS: Yes, sir.
- 10 THE COURT: Was anyone else?
- 11 THE WITNESS: Myself and constable -- well,
12 myself and Constable Boyce. And I can't say whether
13 or not I actually searched him or if I just,
14 perhaps, may have went down his arms or may -- maybe
15 just focused on the head, but as per our standard
16 searching techniques, one person will control the
17 head. If you control the head, the body is
18 controlled, generally speaking.
- 19 THE COURT: So -- so -- okay, so if I
20 understand this then, there were two officers there
21 who have him on the ground, then you and Boyce took
22 over, and they -- and they left --
- 23 THE WITNESS: That --
- 24 THE COURT: -- or they weren't
25 involved --
- 26 THE WITNESS: -- that's --

- 1 THE COURT: -- in it?
- 2 THE WITNESS: -- correct. The other -- the
3 other officers -- I don't believe that they had any
4 involvement after that.
- 5 THE COURT: Did any of the police
6 officers strike him or hit him in any way?
- 7 THE WITNESS: I didn't see anyone strike
8 him or hit him in any way.
- 9 THE COURT: Anything arising out of the
10 questions I asked?
- 11 MR. PASHOVITZ: No re-examination nor --
- 12 THE COURT: Okay.
- 13 MR. PASHOVITZ: -- out of that, Your Honour.
- 14 THE COURT: Thank you.
- 15 MR. PASHOVITZ: Thank you.
- 16 THE COURT: Thank you. You're free to
17 go.
- 18 MR. PASHOVITZ: I'm hesitant to close the
19 Crown's case on the *voir dire* before I refer to my
20 notes, Your Honour. And we're --
- 21 THE COURT: Yes, you --
- 22 MR. PASHOVITZ: -- at 3:20, Your --
- 23 THE COURT: -- go ahead.
- 24 MR. PASHOVITZ: -- Honour, so --
- 25 THE COURT: And these gentleman have
26 indicated that they have a bunch of video. And I'm

1 assuming that the Crown isn't calling anyone to
2 introduce the video. I assume it came from the
3 police and that you have no problem with them just
4 showing the video?

5 MR. PASHOVITZ: I don't anticipate any
6 problem with that, Your Honour --

7 THE COURT: All right.

8 MR. PASHOVITZ: -- no.

9 THE COURT: Okay.

10 MR. PASHOVITZ: I guess I'll cross that
11 bridge when I come to it, but --

12 THE COURT: Yes. If they --

13 MR. PASHOVITZ: -- you're exactly --

14 THE COURT: -- decide they want --

15 MR. PASHOVITZ: -- right. If there's --

16 THE COURT: -- to show me --

17 MR. PASHOVITZ: -- a video --

18 THE COURT: -- something me some, then
19 it's -- I'm sure it's not, you know, pictures of
20 their holidays or something.

21 MR. PASHOVITZ: No.

22 THE COURT: Yes.

23 MR. PASHOVITZ: I wouldn't be asking --

24 THE COURT: Okay.

25 MR. PASHOVITZ: -- to have anybody come --

26 THE COURT: All right.

1 MR. PASHOVITZ: -- back.

2 THE COURT: Okay, so let's -- you think
3 about that, as well. And we'll just take a short
4 break.

5 MR. PASHOVITZ: Thank you --

6 MR. JAMES STEWART: Thank you --

7 MR. PASHOVITZ: -- Your Honour.

8 MR. JAMES STEWART: -- very much --

9 MR. JARVIS STEWART: Thank you.

10 MR. JAMES STEWART: -- Your Honour.

11 THE COURT: Okay.

12 COURT CLERK: All rise. Court will be
13 adjourned for a few minutes.

14 (COURT ADJOURNED)

15 (COURT RECONVENED)

16 COURT CLERK: This court is, now, reopened.
17 You may be seated.

18 MR. PASHOVITZ: Yes, thank you for the
19 adjournment, Your Honour. Just to clarify, at one
20 of the earlier case managements, there was a request
21 by defence to have Special Constable Amy Radke (ph)
22 here. I didn't have any questions of her, but she
23 is the individual who looks after disclosure of
24 audio/visual evidence, for example, those in-car
25 camera systems so.
26 So she is here in the

1 hallway. So I'm not sure if these individuals will
2 be wanting to call her sometime today or not. She
3 is available. So I just wanted to say that on -- on
4 the record.

5 I'm not calling her as a
6 Crown witness, so with that, being that this is a
7 *voir dire*, I'm closing the Crown's case on this *voir*
8 *dire*. And unless --

9 THE COURT: Where -- and what --

10 MR. PASHOVITZ: -- there's any --

11 THE COURT: -- about any --

12 MR. PASHOVITZ: -- questions --

13 THE COURT: -- other evidence? We -- I
14 -- I was hoping that we would do the *voir dire* and
15 the trial at the same time.

16 MR. PASHOVITZ: Well, we can do that, Your
17 Honour.

18 THE COURT: Is there any evidence on the
19 trial that you were --

20 MR. PASHOVITZ: No, there would --

21 THE COURT: -- other evidence?

22 MR. PASHOVITZ: -- be nothing more from the
23 Crown for the trial either.

24 THE COURT: Or either?

25 MR. PASHOVITZ: (No audible response.)

26 THE COURT: Okay.

1 MR. PASHOVITZ: That's correct, Your Honour.

2 Thank you for clarifying that.

3 THE COURT: All right. And then before
4 we proceed further then, could you point out to me
5 the evidence of the assault?

6 MR. PASHOVITZ: Your Honour, the -- and I'll
7 look at that section closer. It's a -- it's a
8 -- the assault peace officer section, I think it's
9 -- well, I don't think. I've always thought of it
10 as being similar to the -- the threat by -- sort of,
11 the assault by threat section of the *Criminal Code*,
12 under Section 265. So there are some nuances there
13 with respect to assaulting peace officers, where
14 even if you're resisting a peace officer, that could
15 still amount to assaulting --

16 THE COURT: It's a separate --

17 MR. PASHOVITZ: -- a peace officer.

18 THE COURT: -- charge. It says assault
19 by resisting.

20 MR. PASHOVITZ: Mmhmm.

21 THE COURT: Or assault -- assault with
22 intent to resist. So it's a specific intent type of
23 assault.

24 MR. PASHOVITZ: Right.

25 THE COURT: But it also involves an
26 assault.

- 1 MR. PASHOVITZ: Right.
- 2 THE COURT: And I don't -- can you point
3 -- like, you know, if I was their lawyer, or if they
4 had a lawyer, the lawyer might be making a non-suit
5 now --
- 6 MR. PASHOVITZ; Mmhmm.
- 7 THE COURT: -- with regard to that.
- 8 MR. PASHOVITZ: And I -- I would think
9 there's some evidence there, Your Honour.
- 10 THE COURT: Well, what --
- 11 MR. PASHOVITZ: Lastly --
- 12 THE COURT: -- well, what is it?
- 13 MR. PASHOVITZ: Well, as you've asked the
14 officer, there was the evidence of Constable
15 Hounsell with respect to the fighting, things of
16 that nature.
- 17 THE COURT: Well, but he couldn't
18 describe any fighting.
- 19 MR. PASHOVITZ: Right, right. And then back
20 to Constable Schaefer and Constable --
- 21 THE COURT: Yes. Who -- neither one of
22 the two named individuals who are supposed to have
23 been assaulted --
- 24 MR. PASHOVITZ: Right.
- 25 THE COURT: -- said there was any
26 assault. I have made specific note of that in their

1 evidence.

2 MR. PASHOVITZ: Right. It was more so the
3 resisting, the lowering the body, things of that
4 nature, so --

5 THE COURT: Perhaps.

6 MR. PASHOVITZ: -- that.

7 THE COURT: But there was certainly no
8 evidence of an assault.

9 MR. PASHOVITZ: Right.

10 MR. JARVIS STEWART: Right.

11 MR. PASHOVITZ: So that's what I was pointing
12 out, as far as the last officer testified to, this
13 is what I think would get us through a non-suit at
14 least.

15 THE COURT: Well, the last officer sees
16 him on the ground.

17 MR. PASHOVITZ: Right. And --

18 THE COURT: And he's --

19 MR. PASHOVITZ: -- but sees -- his phrase was
20 "fighting", sees him fighting with the other
21 officers.

22 THE COURT: But -- but he couldn't
23 describe -- the fighting involved shouting,
24 swearing, and screaming.

25 MR. PASHOVITZ: Right.

26 THE COURT: And it was -- he said mostly

1 obscenities. So I -- I don't -- you know, I don't
2 really see evidence of -- of the assault. Do you
3 want a chance to look at that and --

4 MR. PASHOVITZ: I -- I can --

5 THE COURT: -- because --

6 MR. PASHOVITZ: -- Your Honour.

7 THE COURT: Yes. Because I --

8 MR. JARVIS STEWART: Mmhmm.

9 THE COURT: -- it's quite important
10 because it -- you know, it goes to the whole
11 section.

12 MR. PASHOVITZ: That's true. I can look at
13 it. There are some nuances there with that section
14 that I wouldn't mind a chance to look at --

15 THE COURT: All right.

16 MR. PASHOVITZ: -- having heard the evidence.

17 THE COURT: Okay, let me just explain
18 something then. Part of the job of the Judge when
19 -- when you don't have counsel is to point out
20 certain things that if you had a lawyer, you would
21 probably raise, or if you -- if you know about it,
22 you'd probably raise.

23 One of those things -- one of
24 the very common things that we do is, if -- if -- if
25 there is no evidence that you have to meet in your
26 case, the lawyer would say, "I want a non-suit on

1 that particular thing." And a non-suit means there
2 is no evidence I have to meet, so I shouldn't have
3 to testify or do anything like that.

4 MR. JARVIS STEWART: Yeah.

5 THE COURT: And I've raised that with the
6 prosecutor, that -- that in my -- and I -- I would
7 like an opportunity, too, to look through my notes,
8 but in my recollection of what I heard today, there
9 was no evidence from either Constable Schaefer or
10 Constable McAvoy that there was any assault on -- on
11 either of them.

12 And what you're -- James is
13 actually charged with is assaulting them --

14 MR. JAMES STEWART: Yeah.

15 MR. JARVIS STEWART: Mmhmm.

16 THE COURT: -- with a specific intent.

17 MR. JAMES STEWART: Yeah.

18 MR. JARVIS STEWART: Mmhmm.

19 THE COURT: But the -- it may be the
20 wrong charge from what -- what happened here, but
21 that's what the charge that was -- is before me, and
22 that's the one I'm concerned about.

23 The prosecutor, quite
24 rightly, wants an opportunity to review his
25 material, too, to see whether he agrees with me or
26 not because if he does, that -- that may be the end

1 of that charge. I don't know. Okay?

2 MR. JAMES STEWART: Okay.

3 THE COURT: So what I'm suggesting
4 -- it's 3:30, and it's going to take me a while to
5 read through my notes anyway, and -- and it may take
6 you a while, too, to review your position on that.

7 We have three days set for
8 this, so I would -- what I'm going to suggest is
9 that we come back tomorrow morning, and that will
10 give everyone a chance to review that, to see
11 whether that's one of the charges you're going to
12 have to meet. Okay?

13 MR. JARVIS STEWART: I -- I'm sorry, I don't
14 really understand, one of the charges I'm going to
15 have to meet?

16 THE COURT: You don't have to meet
17 anything. It's just whether James does.

18 MR. JARVIS STEWART: Okay.

19 THE COURT: But we're having both trials
20 together, so --

21 MR. JARVIS STEWART: Okay, because we --

22 THE COURT: And you --

23 MR. JARVIS STEWART: -- we --

24 THE COURT: -- certainly asked questions
25 about that.

26 MR. JARVIS STEWART: Yeah. I mean, we -- we had

1 been raising this issue from the very beginning.

2 THE COURT: Well, I --

3 MR. JARVIS STEWART: We've had multiple

4 requests --

5 THE COURT: Yes.

6 MR. JARVIS STEWART: -- for disclosure.

7 THE COURT: Well --

8 MR. JARVIS STEWART: And all these --

9 THE COURT: -- and -- and -- and I see

10 that. And what -- and what I'm -- what I'm -- what

11 concerns me a little bit here is that -- and I was

12 reviewing the Informations -- I think this has been

13 case managed a few times?

14 MR. PASHOVITZ: It has been --

15 MR. JAMES STEWART: Six.

16 MR. PASHOVITZ: -- Your Honour.

17 MR. JARVIS STEWART: Six.

18 THE COURT: And so I'm assuming that some

19 prosecutor has reviewed it at least a few times, to

20 see -- you know, which is what we ask them to do on

21 case management. So I -- I don't know if -- if --

22 MR. JARVIS STEWART: Yeah.

23 THE COURT: And anyways --

24 MR. JARVIS STEWART: The exact --

25 THE COURT: -- that's why --

26 MR. JARVIS STEWART: -- total issue.

1 THE COURT: -- I want to, sort of, set it
2 over because you may be caught by surprise.

3 MR. PASHOVITZ: No, I appreciate that, Your
4 Honour.

5 THE COURT: So -- okay, so I'm just going
6 to -- I'm going to -- rather than continue on with
7 your case today -- because I'm not sure if you're
8 going to -- your case today, rather than know that
9 we have to meet that.

10 We have lots of time, so I'm
11 just going to adjourn everything until tomorrow
12 morning. He's closed his case. And if you're going
13 to be calling evidence, we should know what we're
14 calling the evidence on; right?

15 MR. JARVIS STEWART: Exactly.

16 MR. JAMES STEWART: Yeah.

17 THE COURT: Okay.

18 MR. JARVIS STEWART: That's what --

19 MR. JAMES STEWART: Okay.

20 MR. JARVIS STEWART: -- we're trying to get a --

21 THE COURT: Now, I --

22 MR. JARVIS STEWART: -- a straight answer --

23 THE COURT: -- may be wrong.

24 MR. JARVIS STEWART: -- on before.

25 THE COURT: I mean, when I review it, I
26 may be wrong, and he may be able to point out

1 something to me that --

2 MR. JAMES STEWART: Well, you won't be wrong.

3 THE COURT: Well, we'll see. Thank you.

4 MR. JARVIS STEWART: So we can wait for -- we can

5 wait then for our -- our video for tomorrow then?

6 THE COURT: Yes.

7 MR. JARVIS STEWART: We don't have to --

8 THE COURT: Let's -- let's do that.

9 MR. JARVIS STEWART: Okay.

10 THE COURT: But do you require -- the --

11 and while -- while you're standing, do you require

12 this special constable to give evidence on anything,

13 the one who's -- he's asked to come here, but she

14 -- he's not calling her?

15 MR. JARVIS STEWART: No. We were -- we -- we more

16 or less subpoenaed her because we -- we had some

17 problems with the installation records for these

18 police vehicles. They -- there's been over

19 -- there's at least -- probably 11 vehicles that

20 responded in emergency fashion to this scene. And

21 the Crown here is still insisting that this is the

22 only video that exists, and there is -- and there is

23 no audio.

24 And so we asked to see the

25 installation records for the cars. I mean, these

26 are \$15,000 --

1 THE COURT: And did you receive those?

2 MR. JAMES STEWART: No.

3 MR. JARVIS STEWART: I mean, I don't --

4 MR. JAMES STEWART: These are all we got.

5 MR. JARVIS STEWART: -- think we would -- this

6 would qualify as adequate for a vehicle --

7 THE COURT: It says the dates --

8 MR. JARVIS STEWART: -- and it --

9 THE COURT: -- it was installed?

10 MR. JARVIS STEWART: And that's just it. We want

11 the actual -- because that's all they did, was told

12 us the dates. And, I mean, some of them one of them

13 is the day -- the day it happened. You know, like,

14 the -- the dates are ridiculous. They all -- I

15 mean, the incident happened on the 24th of August,

16 but then all of the cars were finished by the 22nd of

17 October. None of them had any --

18 THE COURT: Well, that's not -- that's

19 not ridiculous. I don't think -- if I read -- I

20 -- from the paper, I read that they -- these things

21 weren't installed until a long time after that.

22 MR. JARVIS STEWART: And that's why we wanted to

23 see the installation records.

24 THE COURT: Or weren't part -- part of

25 their policy --

26 MR. JAMES STEWART: Yeah.

1 THE COURT: -- to use them.

2 MR. JARVIS STEWART: Yeah, and that's fine. And

3 that's --

4 MR. JAMES STEWART: And -- and we --

5 MR. JARVIS STEWART: -- why we --

6 MR. JAMES STEWART: -- we --

7 MR. JARVIS STEWART: -- wanted to just see the

8 installation records --

9 THE COURT: Yes.

10 MR. JARVIS STEWART: -- from the vehicles.

11 THE COURT: Well, is that --

12 MR. JARVIS STEWART: I would have had --

13 THE COURT: -- enough for you?

14 MR. JAMES STEWART: Negative.

15 MR. JARVIS STEWART: Well, not -- not really, no.

16 THE COURT: Okay, so you --

17 MR. JARVIS STEWART: I'm not really --

18 THE COURT: -- want this person --

19 MR. JARVIS STEWART: -- satisfied --

20 THE COURT: -- here tomorrow?

21 MR. JARVIS STEWART: Oh, if she's going to be --

22 MR. JAMES STEWART: Absolutely.

23 MR. JARVIS STEWART: -- I mean, if Bryce can get

24 -- just get the -- I don't require her to be here.

25 I don't want to mess up her schedule, but she was

26 just the name that was on one of our disclosure

1 requests, so I thought she would have been the
2 person to bring these.

3 THE COURT: Well, would --

4 MR. JARVIS STEWART: Our --

5 THE COURT: -- it be enough for him to
6 check into whether unit number 131, which you
7 indicate was attended, which is the one that got
8 their -- their camera that day, whether it was on or
9 not, whether there's a video tape from that day?

10 MR. PASHOVITZ: That's already been done,
11 Your Honour.

12 THE COURT: Mmhmm.

13 MR. PASHOVITZ: So -- and just thinking on my
14 feet, with respect to the special constable, it's
15 -- her evidence, I think, is not related to what
16 happened, just not basically on the night in
17 question. Maybe she could provide her evidence this
18 afternoon, if they want to ask her some questions
19 about these --

20 THE COURT: No. I'm not --

21 MR. PASHOVITZ: -- installation records.

22 THE COURT: -- asking them to open their
23 case until we know what we're dealing with here.

24 MR. PASHOVITZ: True enough. She's available
25 to come back tomorrow morning.

26 THE COURT: You see, because neither of

1 these charges -- I -- I mean, if -- if count number
2 2 is taken off the plate here, off the table, then
3 they are each charged with obstructing Constable
4 Keating. Well, none of the other vehicles were
5 there during the time that Constable Keating was
6 alleged -- has alleged he was obstructed.

7 MR. PASHOVITZ: That's correct, Your Honour.

8 THE COURT: And so it wouldn't help to
9 have video from the other cameras anyways, if this
10 -- if there's no charge of assault.

11 MR. JARVIS STEWART: With -- with all due respect,
12 Your Honour, I disagree because I thought there
13 might have been some audio from the cars. The cars
14 are supposed to record audio. And there was ten
15 cars. And they were all right around the scene.
16 And so I thought if --

17 THE COURT: But -- but this is --

18 MR. JARVIS STEWART: -- there was any --

19 THE COURT: -- but the only obstruction
20 that's being alleged is something that happened
21 between you and -- both of you and Constable Keating
22 before any of these other cars arrived.

23 MR. JARVIS STEWART: Okay, that's fair.

24 MR. JAMES STEWART: I see what he's saying.

25 MR. JARVIS STEWART: I see what you're saying.

26 THE COURT: Yes.

1 MR. JARVIS STEWART: I understand.

2 THE COURT: Yes.

3 MR. JARVIS STEWART: Yeah.

4 THE COURT: So --

5 MR. JARVIS STEWART: Understood.

6 THE COURT: -- it may not be necessary

7 -- well, we -- we won't know until tomorrow --

8 MR. JARVIS STEWART: Okay, understood. Thank

9 you.

10 THE COURT: -- where we're going with

11 that anyways, so --

12 MR. JARVIS STEWART: Okay.

13 THE COURT: -- could you -- if you could

14 just ask her to come back?

15 MR. PASHOVITZ: (No audible response.)

16 THE COURT: That's the simplest thing, I

17 guess.

18 MR. PASHOVITZ: Yes, Your Honour.

19 THE COURT: Okay. Thanks a lot.

20 COURT CLERK: Order in court. All rise.

21 THE COURT: I'm going to leave all of

22 this stuff here, if we're tomorrow.

23 COURT CLERK: We are here tomorrow.

24 THE COURT: Okay. Thanks.

25 COURT CLERK: I declare this Court closed

26 in the name of Her Majesty the Queen.

1 MR. JARVIS STEWART: Thank you.

2 (COURT ADJOURNED APRIL 16TH, 2013)

3 (COURT RECONVENED APRIL 17TH, 2013)

4 COURT CLERK: I declare this Court opened

5 in the name of Her Majesty the Queen. The

6 Honourable Judge Singer presiding. You may be

7 seated.

8 THE COURT: Good morning.

9 MR. JARVIS STEWART: Good morning, Your Honour.

10 MR. JAMES STEWART: Good morning, Your Honour.

11 MR. PASHOVITZ: Good morning, Your Honour.

12 Thank you for the adjournment early yesterday, Your

13 Honour. We're returning to the continuation of this

14 -- pertaining to the Jarvis Stewart trial, of

15 course.

16 I'm prepared to provide some

17 submissions this morning, if you like.

18 THE COURT: Yes, I'd like --

19 MR. PASHOVITZ: Or if you --

20 THE COURT: -- to hear.

21 MR. PASHOVITZ: -- have any questions for me

22 at the outset?

23 THE COURT: Very much so.

24 MR. PASHOVITZ: If I may, I have something to

25 file. It's the summary off of "Crankshaw's Criminal

26 Code" under Section 270(1)(e) and the phrase is

1 "intent to resist lawful arrest". So I'll provide
2 that to -- one copy for defence. And there is a
3 copy of a case that was of interest there, in my
4 opinion. It's the case of *The Crown and Sanderson*,
5 which I thought was similar to the circumstances
6 that we have here.

7 The phrase in the *Code*
8 Section 270(1)(e):

9
10 "Assaults a person with intent to
11 resist or prevent a lawful arrest
12 or detention of himself or another
13 person."

14 So the Court was asking us
15 whether that's the wrong charge, or it might not so
16 much it's not the wrong charge, it's just I'll have
17 to elaborate on the facts that I think support that
18 charge as far as your concern about not even
19 -- sorry -- about this non-suit application.

20 With respect to my reading of
21 that section and the reading of the case, I would
22 respectfully submit that there is enough evidence to
23 allow the non-suit application to be dismissed, Your
24 Honour.

25 When I read the case of *The*
26 *Crown and Sanderson*, I looked at the summary of the
27 facts, which starts on page 2, and continues on to
28 page 3. There's a brief summary of the facts, which

1 indicates that -- at paragraph 4, the young woman
2 wanted to get some of her belongings from the
3 bedroom. The boyfriend remained standing in the
4 doorway of the bedroom. This was a situation where
5 it was a domestic situation. The police were called
6 to assist to quell a volatile situation, plus assist
7 her in removing some of her belongings.

8 So it goes on to say the
9 police asked him a number of times to move aside.
10 He refused. The police officers arrested him for
11 obstructing a peace officer. The boyfriend resisted
12 arrest. A scuffle ensued. The police used pepper
13 spray to subdue the boyfriend. He was then also
14 charged with assault to resist arrest. And that's
15 the common phrase that we often see in these cases,
16 is assault/resist arrest.

17 MR. JAMES STEWART: Okay, may I object to that,
18 please?

19 THE COURT: No.

20 MR. JAMES STEWART: Your Honour --

21 THE COURT: No, no, no.

22 MR. JAMES STEWART: -- that --

23 THE COURT: No, no --

24 MR. JAMES STEWART: -- they were sent to --

25 THE COURT: -- no, no, no.

26 MR. JAMES STEWART: Oh, okay.

1 THE COURT: He makes his submissions.
2 MR. JAMES STEWRAT: Fair.
3 THE COURT: Then I'll hear from you,
4 so --
5 MR. JARVIS STEWART: Okay.
6 THE COURT: -- write down what you want
7 to say --
8 MR. JAMES STEWART: Fair.
9 MR. JARVIS STEWART: Okay.
10 MR. JAMES STEWART: All right.
11 THE COURT: -- so you don't forget.
12 MR. JAMES STEWART: I won't.
13 THE COURT: And then --
14 MR. JAMES STEWART: Thank you.
15 THE COURT: -- you can tell me later.
16 MR. JAMES STEWART: Thank you, Your Honour.
17 THE COURT: Okay, we take --
18 MR. JAMES STEWART: I apologize --
19 THE COURT: -- turns.
20 MR. JAMES STEWART: -- for the outburst. Thank
21 you, Your Honour. I apologize.
22 MR. PASHOVITZ: Being that this is an
23 appealed case, Your Honour, there's a further detail
24 of the facts on page 3, paragraph 13. And I found
25 this of interest, as well, too:
26
27 "MacLauren wanted to enter the

1 bedroom to collect her clothes.
2 Sanderson blocked her entry.
3 Constable Paul asked him to move.
4 Sanderson refused. Constable Paul
5 told him that he would be arrested
6 for obstructing a police officer
7 if he persisted. Sanderson still
8 did not move. Constable Paul
9 arrested him and reached to take
10 him by the shoulder. Sanderson
11 resisted and a struggle ensued.
12 The police used pepper spray to
13 subdue him."

14 So those are the
15 circumstances there. And just to -- I've read the
16 case. What it boiled down to was there was
17 -- similar to this case -- a number of charges laid
18 at trial. I think the *Kienapple* principle was
19 brought into play. And the accused was only
20 convicted of the assault/resist arrest. But on
21 appeal, he was actually -- a conviction was entered
22 for all of the offences to which the trial judge had
23 heard.

24 Now, turning to the
25 circumstances of this case, Your Honour. And I've
26 reviewed my notes; you've reviewed your notes. And
27 I'll try my best just to provide the recollection
28 that I have of the testimony, Your Honour.

29 Starting first with the
30 -- with the last witness, you clarified this with
31 the last witness, and this is Constable Hounsell:
32 "He was fighting with police when I first got there,

1 so I controlled his head, so he would not spit."
2 Then you questioned him about, "What does fighting
3 mean to you?" He said, "Well, what was happening
4 was shouting and swearing." So that's that
5 evidence.

6 It's -- if I may, take an
7 aside, now. It's always difficult to jot down exact
8 pieces of testimony.

9 THE COURT: No, I -- I -- I appreciate
10 that. I have the same issue, and -- you know --

11 MR. PASHOVITZ: So I've --

12 THE COURT: And I -- I have the same
13 thing written down, yes.

14 MR. PASHOVITZ: With respect to what I do,
15 do, is I do have a checklist of what I anticipate
16 the evidence will be, and I try and check that off.
17 So I don't have many exact quotes.

18 THE COURT: Mmhmm.

19 MR. PASHOVITZ: I'm just curious about what
20 the Court's recollection is of Constable Keating's
21 testimony because I was noting down with respect to
22 my notes and my checklist that he testified that
23 once Jarvis Stewart was in handcuffs --

24 THE COURT: Okay.

25 MR. PASHOVITZ: -- he looked over and
26 observed McAvoy and Schaefer struggle to gain

1 control of Stewart -- James Stewart, that is. He
2 was resisting them.

3 I have noted down, at least
4 checked, that -- and I'm not sure if the Court has
5 this or not -- "James Stewart kicked both of his
6 legs, flailed his arms about."

7 THE COURT: Just a moment.

8 MR. PASHOVITZ: And I did note the word
9 "struggle", as well, too.

10 THE COURT: Mmhmm.

11 MR. PASHOVITZ: "Struggled with Schaefer and
12 McAvoy." So that's -- that's, I would respectfully
13 submit, some evidence, as well, Your Honour. It's
14 similar to the term that kept being used over and
15 over again by the Ontario Court of Appeal in the
16 *Sanderson* case, Your Honour.

17 Then we have McAvoy -- I'm
18 sorry -- Constable McAvoy testifying. "Keating told
19 me to arrest this male for obstruction," that he
20 trusted officer Keating, is what the Court pointed
21 out. The word that Constable McAvoy used was,
22 again, "struggle".

23 He was asked, of course, "how
24 --" in cross-examination, "How did I assault you?"
25 His answer was, "It was more of a resisting." But I
26 would respectfully submit that those circumstances,

1 a struggle, resisting, are similar -- quite similar,
2 as we all now --

3 THE COURT: I think --

4 MR. PASHOVITZ: -- know, when --

5 THE COURT: -- I think the way --

6 MR. PASHOVITZ: -- two cases are --

7 THE COURT: -- I envisioned it --

8 MR. PASHOVITZ; -- the same --

9 THE COURT: -- from McAvoy's evidence, he
10 had his arms around him, and he wasn't going down.

11 MR. PASHOVITZ: Right.

12 THE COURT: And so that's -- that's
13 basically it. I'm not -- you know, I think -- I
14 think it takes more than that for an assault.

15 MR. PASHOVITZ: Right. And with --

16 THE COURT: I'm not --

17 MR. PASHOVITZ: -- respect to --

18 THE COURT: -- I -- I -- I don't --

19 MR. PASHOVITZ; -- constable --

20 THE COURT: -- think the argument is that
21 he wasn't resisting arrest.

22 MR. PASHOVITZ: Mmhmm.

23 THE COURT: The argument is that he was
24 -- he didn't commit an assault with the intent to
25 resist arrest.

26 MR. PASHOVITZ: Well, I'm not sure what your

1 notes are with respect to Constable Keating --

2 THE COURT: Yes. Well, I'm just --

3 MR. PASHOVITZ: -- as far as the --

4 THE COURT: -- I'm just looking that over

5 again. I had looked at it last night, but I'm just

6 -- and it may require listening to the tape, as

7 well, but let's have a look here. Again, it's a

8 situation -- it's like the last officer that

9 testified, where he said, "He didn't listen, there

10 was a physical altercation." But then when he went

11 -- was asked to describe anything, really it's the

12 police physically altercation with the accused, not

13 -- if that's a word -- and not the other way

14 around.

15 "I got there, he was already

16 on the ground, face down." His wrist -- they had

17 both of his wrists. That was it.

18 MR. PASHOVITZ: Mmhmm. And then Constable

19 Schaefer -- my notes: Keating was calling for

20 backup, urgency in his voice, no time to talk for

21 details. "I was acting on grounds that he was

22 arrestable for an offence. I wanted to effect that

23 arrest. He was not complying with police, walking

24 away." Then hands in his pockets. Then lowering

25 his body weight. So I said, "Go to the ground.

26 That's how we are trained right from police

1 college."

2 And this is at the same time
3 that Constable McAvoy did a take-down of him. While
4 on the ground, he was repeatedly told to put his
5 hands behind his back. His right arm was under his
6 body. I tried pulling it out. He kept it tucked in
7 under his body. He kept pulling it back to his
8 body.

9 So then I would respectfully
10 submit, it is similar to the -- again, *Sanderson* --

11 THE COURT: Yes, but --

12 MR. PASHOVITZ: -- case --

13 THE COURT: -- it's not --

14 MR. PASHOVITZ; -- as far as --

15 THE COURT: -- but it's not --

16 MR. PASHOVITZ: -- the struggle.

17 THE COURT: -- an assault. It's not what
18 we would call an assault.

19 MR. PASHOVITZ: Mmhmm.

20 THE COURT: If I pull on your arm, you're
21 not assaulting me.

22 MR. PASHOVITZ; Mmhmm.

23 THE COURT: Right?

24 MR. PASHOVITZ: Well, the -- those are my
25 submissions, Your Honour. I was -- I wouldn't say
26 happy. I'm -- well --

1 MR. JARVIS STEWART: You're not happy?

2 MR. PASHOVITZ: When I found the *Sanderson*

3 case, again, as I indicated --

4 THE COURT: Well --

5 MR. PASHOVITZ: -- no two cases are

6 identical, but --

7 THE COURT: -- you see --

8 MR. PASHOVITZ: -- it is --

9 THE COURT: -- it's unclear from reading

10 the *Sanderson* case --

11 MR. PASHOVITZ: And that's because --

12 THE COURT: -- what happened --

13 MR. PASHOVITZ: -- it's the --

14 THE COURT: -- between the accused and

15 the police officer.

16 MR. PASHOVITZ: And that's because --

17 THE COURT: What happened --

18 MR. PASHOVITZ: -- it's the --

19 THE COURT: -- between the accused and

20 the police officer?

21 MR. PASHOVITZ: And that's because --

22 THE COURT: They basically --

23 MR. PASHOVITZ: -- of this --

24 THE COURT: -- they go on and spell a

25 whole bunch of things that happened between him and

26 the -- and the girlfriend.

- 1 MR. PASHOVITZ: Right. And that's because it
2 is an appealed case, Your Honour --
- 3 THE COURT: Yes.
- 4 MR. PASHOVITZ: -- so it's not --
- 5 THE COURT: No, I know that.
- 6 MR. PASHOVITZ: -- the trial transcript.
- 7 THE COURT: I understand that, but it's
8 hard to hang much on that --
- 9 MR. PASHOVITZ: Mmhmm.
- 10 THE COURT: -- just -- and just -- I was
11 just glancing at it. Maybe I'm wrong. Hang on a
12 minute.
- 13 MR. PASHOVITZ: Again, with respect to -- if
14 I'll just conclude with this: Constable Keating, I
15 think, combined with Schaefer, combined with McAvoy,
16 I would respectfully submit that there is some
17 evidence of an assault here, assault/resist arrest.
18 That's the phrase that's often used. And it's
19 similar to the *Sanderson* case, where, not only was,
20 of course, there enough there to have a case to
21 meet, but also there was enough there for a
22 conviction at trial, which was upheld on appeal.
- 23 So those -- unless you have
24 any more specific questions, Your Honour, those
25 would be my submissions.
- 26 THE COURT: All right, just -- just a

1 moment.

2 MR. JAMES STEWART: That's the best you've got.

3 That's the best you've got, buddy? That's the best
4 you've got?

5 MR. JARVIS STEWART: That's really something,
6 dude. That's really something.

7 MR. JAMES STEWART: Right on, dude.

8 MR. JARVIS STEWART: Wow, good job, man.

9 Prosecutorial discretion, bro.

10 MR. JAMES STEWART: Wow, cracked the case.

11 MR. JARVIS STEWART: Remember, it's not fighting,
12 or it is fighting if you're yelling and screaming.

13 And their definition was, define (inaudible).

14 THE COURT: You know, no, there's no
15 -- it -- I -- I -- I don't find the -- the *Sanderson*
16 case very helpful because -- well, it goes through a
17 lot of the circumstances of the obstruction and what
18 happened, what the police observed to see whether
19 they were within their duty or not. It doesn't talk
20 about any of the interaction -- any of the -- very
21 much of the interaction between the police and the
22 accused, so I don't know what -- what -- what that
23 conviction was based upon.

24 MR. PASHOVITZ: Other than the word
25 "struggle" kept coming up in that case.

26 THE COURT: Yes, yes.

1 MR. PASHOVITZ: The word "struggle" --

2 THE COURT: No, I --

3 MR. PASHOVITZ: -- was used --

4 THE COURT: -- so we don't --

5 MR. PASHOVITZ: -- in this case.

6 THE COURT: Yes. And I think the word

7 "struggle" and "fighting" came up in this case, but

8 when -- when you actually analyze what was going on

9 the -- the police were struggling with -- to get him

10 down on the ground and to get his arm out to

11 handcuff him. And that's the evidence that I heard.

12 I didn't hear any evidence of what -- you know, what

13 in the *Criminal Code* would amount to an assault by

14 the accused on the police officers. You know, there

15 was no application of force by him. There was no

16 threat of application of force by him. The -- but

17 that's realistic here. You've got a policeman

18 behind him, holding him. And he's --

19 MR. PASHOVITZ: I -- and, again, when I read

20 my notes with respect to Constable Keating, kicking

21 arms, flailing about, I would submit that that's --

22 THE COURT: Yes, well, I'm not --

23 MR. PASHOVITZ: -- if -- if you don't have

24 that --

25 THE COURT: Well, I --

26 MR. PASHOVITZ: -- you -- well --

1 THE COURT: -- I mean, I remember that
2 being said by -- and I'm just trying to find out
3 what -- what the context of that was. I'm going to
4 get to the ground. He didn't go there. I had to
5 take him to the ground. Right -- get your arm out,
6 require his arm behind his back. I tried to pull
7 -- oh, that's McAvoy, pardon me. Some screaming and
8 yelling going on. James told to stop and listen.
9 There was a physical altercation. I got there on
10 the ground. He was facedown, pointed northwest,
11 left wrist, got the -- had the handcuff on, and the
12 right wrist, I assisted in pulling that out. Then
13 he was asked how many traffic stops he's made.

14 I don't think there would be
15 sufficient evidence to put to a jury on -- on -- on
16 whether there -- an assault took place. I mean,
17 just because a police officer says somebody was
18 fighting, but then has to describe it, and says he's
19 shouting and screaming, and just because another
20 police officer says he's struggling, but in -- when
21 he goes to describe it, it's the police officer
22 pushing him to the ground because he wouldn't go to
23 the ground.

24 And another officer thinking
25 that he might spit, so he puts his head -- a knee on
26 his head. That -- you know, that -- they may have

- 1 thought he was going to assault them, but there's
2 certainly no evidence from what I actually heard --
- 3 MR. PASHOVITZ: Mmhmm.
- 4 THE COURT: -- that -- that there was an
5 assault.
- 6 MR. PASHOVITZ: Okay, thank you, Your Honour.
7 Those are my submissions then.
- 8 THE COURT: Yes. I don't need to hear
9 from you. I -- with regard to the charge of count
10 number 2 on Information 281, that's the charge
11 against James Stewart, that he assaulted Constable
12 Schaefer and Constable McAvoy, I'm finding that
13 there is insufficient evidence led in the Crown's
14 case --
- 15 MR. JAMES STEWART: Right on. Thank you --
- 16 THE COURT: -- of -- that --
- 17 MR. JAMES STEWART: -- Your Honour.
- 18 THE COURT: -- there was an assault with
19 an intent to resist -- with any intent -- that there
20 was an assault at all. And so that -- that being
21 the case, I'm doing what's called a non-suit.
- 22 MR. JAMES STEWART: Okay.
- 23 THE COURT: I'm allowing that -- that to
24 be dismissed before you have to answer the case. So
25 that -- that's gone. It's dismissed.
- 26 MR. JAMES STEWART: Thank you, Your Honour.

1 COURT CLERK: So (inaudible) is dismissed,
2 Your Honour?

3 THE COURT: Dismissed, yes.

4 COURT CLERK: Okay.

5 THE COURT: Dismissed, I think that's the
6 proper way you do it.

7 So the only things that are
8 before me, now, are willfully obstructed Constable
9 Keating, both of -- both of you are charged with
10 that.

11 Now, Jarvis is charged with
12 willfully obstructing Constable Keating by
13 disobeying a lawful command at a traffic stop. And
14 James is -- is charged with obstructing Constable
15 Keating engaged in the lawful execution of his duty
16 by interfering with the lawful arrest of Jarvis.

17 And that's what's before me
18 now.

19 MR. JAMES STEWART: Okay.

20 THE COURT: Okay. And so that I -- there
21 is, I think, enough evidence that you have to try
22 and meet the case. And, as well, you have all of
23 your *Charter* arguments, too, still that we were
24 -- we have to deal with both of those.

25 So the Crown has finished its
26 case -- its case on both of those matters. And

1 -- and the *voir dire* evidence is in. So it's your
2 turn to lead evidence, now, if you wish. You don't
3 have to lead evidence if you don't want to. It's up
4 to you to lead evidence, if you do. And that
5 includes giving evidence yourself, if you wish.

6 MR. JAMES STEWART: Okay.

7 THE COURT: So -- so it's your -- it's
8 your case now. I don't -- I don't know yet whether
9 we'll need it or not.

10 MR. JAMES STEWART: Good morning, Your Honour.
11 We would like to present some evidence, but at the
12 moment, I do have just a couple of questions
13 regarding -- just yesterday, with the testimony of
14 the officers and just what's going on today, with
15 regards to the obstruction. There's a couple things
16 in regards to the charge, willfully obstruct
17 Constable Keating, a peace officer engaged in the
18 lawful execution, as to that, I have a difficult
19 time with some of the words. I don't understand the
20 term "traffic stop", when it was partaken in a
21 parking lot. We were --

22 THE COURT: Well, that's a legal
23 argument. After I hear all of the facts and -- and
24 determine -- you see --

25 MR. JARVIS STEWART: Okay.

26 THE COURT: -- I have to determine if it

1 did take place in a parking lot or not --

2 MR. JAMES STEWART: Yeah -- no.

3 MR. JARVIS STEWART: Okay.

4 MR. JAMES STEWART: And that's fine.

5 THE COURT: -- before that becomes an

6 issue.

7 MR. JARVIS STEWART: Okay.

8 THE COURT: So -- so if you want to give

9 evidence on that, then you have to give evidence.

10 MR. JAMES STEWART: No. Fantastic. And that's

11 just what I was --

12 THE COURT: Yes.

13 MR. JAMES STEWART: -- coming to.

14 THE COURT: Yes.

15 MR. JARVIS STEWART: I can -- I can do it.

16 THE COURT: No, you can give --

17 MR. JAMES STEWART: We actually will --

18 THE COURT: -- evidence on the whole -- on

19 everything that happened --

20 MR. JAMES STEWART: Yeah.

21 THE COURT: -- but all I'm really

22 interested in is the obstructions --

23 MR. JARVIS STEWART: Okay.

24 THE COURT: -- because the rest of it

25 doesn't count.

26 MR. JAMES STEWART; Oh, and we're -- and -- and

1 we're quite happy with just dealing with the
2 obstruction, Your Honour.

3 THE COURT: Yes.

4 MR. JAMES STEWART: There's -- there's no -- no
5 talk of the assault here.

6 MR. JARVIS STEWART: No.

7 THE COURT: Okay, so -- so --

8 MR. JAMES STEWART: We're dealing --

9 THE COURT: -- but -- but I have to --

10 MR. JAMES STEWART: -- with --

11 THE COURT: -- but -- but --

12 MR. JAMES STEWART: -- Constable Keating

13 ultimately would be the --

14 THE COURT: -- but legal --

15 MR. JAMES STEWART: -- only witness.

16 THE COURT: -- conclusions can only be

17 made once I've determined what happened.

18 MR. JAMES STEWART: That's right.

19 MR. JARVIS STEWART: Okay, and that's fine.

20 MR. JAMES STEWART: That's right.

21 THE COURT: And I've only heard half of
22 the case.

23 MR. JAMES STEWART: Yeah, yeah.

24 MR. JARVIS STEWART: To start with then, we

25 -- you're aware of the case for *R. v. Pascal Martin*,
26 the case in which --

1 THE COURT: That's legal --

2 MR. JARVIS STEWART: -- Jay Keating --

3 THE COURT: -- argument. I want to hear

4 facts. Facts means --

5 MR. JAMES STEWART: Just the evidence.

6 THE COURT: -- that somebody has to get

7 on the stand --

8 MR. JAMES STEWART: Just the evidence.

9 MR. JARVIS STEWART: Okay.

10 THE COURT: -- and testify.

11 MR. JARVIS STEWART: Okay. Thanks.

12 MR. JAMES STEWART: Just the evidence first.

13 MR. JARVIS STEWART: Oh, okay.

14 MR. JAMES STEWART: We'd like to submit this.

15 It's a combination of the --

16 MR. JARVIS STEWART: Of the video. Can we run the

17 video first?

18 MR. JAMES STEWART: It has -- it also has

19 dispatch, like, the dispatch of the -- what the

20 officer was saying.

21 THE COURT: Is this something that the

22 Crown gave to you?

23 MR. JAMES STEWART: Oh, yeah.

24 MR. JARVIS STEWART: Yeah.

25 MR. JAMES STEWART: Absolutely. It's all right

26 here.

1 MR. JARVIS STEWART: Yeah.

2 THE COURT: No, that -- is that something
3 you put together?

4 MR. JARVIS STEWART: Well, yeah.

5 MR. JAMES STEWART: Well, this --

6 MR. JARVIS STEWART: It's just from the --

7 MR. JAMES STEWART: -- this we --

8 MR. JARVIS STEWART: -- from the video --

9 MR. JAMES STEWART: -- we summarized.

10 MR. JARVIS STEWART: -- from the Crown.

11 MR. JAMES STEWART: But we have all of the raw
12 stuff that the Crown gave us right here. So I can
13 -- I can give you the raw stuff that the Crown gave
14 us.

15 THE COURT: Well, just a minute.

16 MR. PASHOVITZ: Well, I -- I can't answer
17 that --

18 THE COURT: Yes.

19 MR. PASHOVITZ: -- until I --

20 THE COURT: I can't --

21 MR. PASHOVITZ: -- see it myself, Your
22 Honour.

23 THE COURT: I -- you know, the -- the
24 evidence -- it's an exception to the rule that
25 -- that -- and it's only because the Crown is
26 consenting here -- that -- that we're putting in the

1 videos as you received them. I don't want anything
2 that you've -- you've put together.

3 MR. JARVIS STEWART: Oh, no, absolutely not. This
4 is straight from --

5 THE COURT: I want the raw stuff, if
6 that's what you're going to do.

7 MR. JAMES STEWART: Sure, okay.

8 THE COURT: But --

9 MR. JAMES STEWART: That's --

10 MR. JARVIS STEWART: I just want a clarification.
11 Put that away, put that away. It's not -- it's of
12 no use and value here.

13 THE COURT: Well, it is. It's -- it --
14 it might -- it might be. I don't know that
15 though --

16 MR. JARVIS STEWART: Well, he just meant --

17 THE COURT: -- you see, with --

18 MR. JARVIS STEWART: -- that's the -- the
19 combination video. That's just -- he's just, kind
20 of, trying to put it all together. A lot of it is
21 just --

22 MR. JAMES STEWART: Yeah -- no, we have --

23 MR. JARVIS STEWART: -- (inaudible) of --

24 MR. JAMES STEWART: -- the raw video.

25 MR. JARVIS STEWART: -- nothing, so --

26 THE COURT: Just --

1 MR. JAMES STEWART: Never mind.

2 THE COURT: -- just a minute. Just

3 -- just --

4 MR. JARVIS STEWART: Oh, we --

5 THE COURT: -- it's not --

6 MR. JARVIS STEWART: -- lost him.

7 THE COURT: If -- if you want to do the

8 combination video, rather than the raw video, then

9 whoever put it together has to get on the stand and

10 tell me what they did.

11 MR. JARVIS STEWART: Okay.

12 THE COURT: You see, all of this is based

13 on evidence.

14 MR. JAMES STEWART: Okay.

15 THE COURT: And -- and evidence is things

16 that you say in the stand after you've been sworn to

17 tell the truth.

18 MR. JAMES STEWART: Okay.

19 THE COURT: Okay, that -- so after we go

20 through that procedure, that's one of the things.

21 And then you want to -- if you want to give evidence

22 about your -- what you saw and heard, as well,

23 that's good, too.

24 MR. JAMES STEWART: Okay.

25 THE COURT: But -- but I can't hear that

26 compilation until I have something to base it on.

1 MR. JAMES STEWART: Okay, fair enough.

2 MR. JARVIS STEWART: I will --

3 THE COURT: And the Crown --

4 MR. JARVIS STEWART: -- get up on --

5 THE COURT: -- has the opportunity to ask

6 you questions about what you left out and what you

7 didn't leave out and stuff like that.

8 MR. JARVIS STEWART: If you are?

9 MR. JAMES STEWART: Okay.

10 THE COURT: Okay.

11 MR. JAMES STEWART: So --

12 THE COURT: So if you want to give

13 evidence, now, is your chance.

14 MR. JARVIS STEWART: I will give evidence.

15 THE COURT: Okay. Who is first?

16 MR. JARVIS STEWART: (No audible response.)

17 MR. JAMES STEWART: (No audible response.)

18 THE COURT: Jarvis.

19 COURT CLERK: Okay, would you prefer to

20 give your evidence by swearing an oath on the Bible,

21 or would you prefer to give your evidence by making

22 a solemn affirmation?

23 MR. JARVIS STEWART: A solemn affirmation.

24 COURT CLERK: Raise your right hand and

25 state your full name for the Court.

26 MR. JARVIS STEWART: Jarvis James Stewart.

1 COURT CLERK: And, please, spell your first
2 and last name?

3 MR. JARVIS STEWART: J-A-R-V-I-S S-T-E-W-A-R-T.
4

5 JARVIS JAMES STEWART, having
6 been duly AFFIRMED, states:

7 THE COURT: Okay, now, the usual way of
8 doing this is -- is because you're your own lawyer
9 here.

10 THE WITNESS: Okay.

11 THE COURT: Yes. You don't have to ask
12 questions and then answer them. What you do is just
13 tell me -- tell me what happened that day. Let's
14 start with that.

15 THE WITNESS: Okay. I was basically just
16 across --

17 THE COURT: And go -- go slow because I
18 have to --

19 THE WITNESS: I'm sorry.

20 THE COURT: -- make notes.

21 THE WITNESS: I'm sorry. I'll try to --

22 THE COURT: That's okay.

23 THE WITNESS: -- go slow. I'll do my best
24 here. I'm a little nervous. I apologize, but --

25 THE COURT: That's all right. I'm in
26 court every day; you're not.

27 THE WITNESS: I -- I pulled in to the

1 Shopper's Drug Mart parking lot that night. We were
2 going to get some mail. And I stepped out of my
3 car. And at that point, I noticed an unmarked
4 police car had pulled in behind me. Thanks very
5 much. Had pulled in behind my car. And I got out
6 of my car. It didn't -- he didn't really seem to be
7 in any hurry or anything. And I got out of my car.
8 And a man just started barking demands at me over
9 the loudspeaker in the car. I didn't see this man.
10 He didn't identify himself to me. Well, like I
11 said, it was an unmarked vehicle.

12 And I stood there and just
13 said, "Hey, like, who are you and what's going on?
14 Why are you --" because at this point, he's yelling
15 at the loudspeaker in the car at me. And there was
16 a lot of people. It was classic cruise weekend. It
17 was Friday night on 8th Street. There was a lot of
18 people looking, so when he yelled at me over the
19 loudspeaker, a lot of people were looking. So I
20 just stood there and said, "What seems to be the
21 problem? Who are you? And what's going on?"

22 And this man got out of his
23 car and aggressively approached me and assaulted me,
24 ran at me, attempted to tackle me, grabbed me into
25 an arm bar, and just started screaming at me. He
26 completely lost it. I had no idea what it was

1 about, what was going on. This man refused to
2 identify himself to me, and just informed me that I
3 was under arrest, and I needed to comply, I was
4 under arrest.

5 I objected to this. I -- I
6 told him to just get his hands off me. I didn't
7 know what it was about. I wanted him to identify
8 himself to me, and explain what the situation was,
9 why he was, you know, assaulting me at this point.
10 And he knocked my hat off my head, and grabbed my
11 sunglasses and threw them off to the ground and
12 threatened to pepper spray me, unless I was
13 -- unless I complied to have my handcuffs on behind
14 my back.

15 Now, I certainly didn't want
16 to be pepper sprayed, so I complied. I -- I put my
17 hands behind my back, and allowed this man to arrest
18 me, but he still was very aggressive with me, and
19 would not answer any of my questions regarding
20 whatever seemed to be the problem at this point. I
21 had no idea. But he did really seem to want to
22 arrest me. That was first and foremost in his mind.

23 So I complied with his
24 demands under -- against getting pepper sprayed, to
25 be handcuffed on behind my back. And at this point,
26 the man was still freaking out, would not answer any

1 of my questions. And for some reason, he phoned
2 backup, he just decided to call backup. He was
3 freaking out.

4 Now, at no time did I refuse
5 to identify myself. At no time did I refuse
6 anything. I had my driver's license in my pocket.
7 I believed that because I was in a private parking
8 lot, that he didn't really have much authority over
9 me to affect a traffic stop, and I can back that up
10 with case law. But at the same time, I never
11 refused to identify myself. I know Section 209.1 of
12 *The Traffic Safety Act* and what it entails, and I
13 knew what my rights were in that parking lot. And I
14 simply wanted to know who this man was and what was
15 going on.

16 And at this point, he started
17 to tell me, "Just shut the fuck up, douchebag." I
18 didn't -- he didn't want to answer any of my
19 questions. So I asked this man if he was a police
20 officer or a peace officer. And he told me that he
21 was a peace officer. He said, "I'm a peace
22 officer." And I said, "How have you observed me
23 breach the peace?" And he said nothing. And I
24 asked him again, "How have you observed me breach
25 the peace?"

26 And by this time, cop cars

1 were coming from all directions because he'd phoned
2 backup. And at this point when I asked him again
3 how he'd observed me breach the peace, he told me
4 again, "Just shut the fuck up, douchebag." And I
5 began to really worry about my safety because there
6 seemed to be nothing I could say to this man that
7 would get him to de-escalate the situation and just
8 relax and take his hands off me.

9 At that point, I just
10 remember cars coming from all directions. Ten
11 police vehicles ended up responding to the scene,
12 with -- cars came from all directions in the parking
13 lot.

14 And another -- the first car
15 that arrived into the parking lot was an unmarked
16 black car. And my brother was with me at this
17 traffic stop. And he was protesting what this
18 -- this police officer was doing to me. He was
19 protesting the actions of this man and was making
20 him aware that he was assaulting me and he needed to
21 let me go.

22 We didn't really -- really
23 take kindly to this -- to this treatment and the
24 fact that he wasn't answering our questions. And
25 upon the vehicles responding to the parking lot,
26 like we said, the first vehicle that responded was

1 an unmarked car operated by Constable McAvoy and
2 Constable Schaefer.

3 And they immediately got out
4 of the car, ran towards my brother. And Jay Keating
5 just pointed at my brother and said, "Take him down,
6 take him down." That was it. That was the only
7 instruction that was given. That was the only thing
8 that I heard. And I had to stand there and watch
9 it, while Jay Keating just was violently swinging me
10 around using the handcuffs behind my back as a pain
11 compliance device.

12 And subsequently it led to
13 about -- well, I mean, ten police vehicles responded
14 to that scene, so I'm going to say there's probably
15 seven or eight people piling on top of my brother,
16 pinning him to the ground, violently striking him,
17 punching him, telling him to stop resisting.

18 And at this point I was, kind
19 of, freaking out. I didn't really know what to do.
20 I had no recourse as to make these men stop. I did
21 not understand what had happened at all. No one had
22 given me any explanation as to what was going on,
23 what the reasons were for this. And, now, they were
24 violently attacking my brother, savaging my
25 brother.

26 So subsequently some of the

1 officers that responded to the scene -- one of them
2 grabbed me and took me back to his squad car. This
3 man never identified himself to me. He took me from
4 Jay Keating. At this point, no one had read me my
5 rights. No one had informed me of the reason for my
6 detention. He took me back to their squad car,
7 threw me in the back of it.

8 My brother, at this point,
9 was still being pummeled on the ground. He was
10 still being pinned to the ground. They pinned him
11 to the ground for several minutes. And then I had
12 to watch as they dragged him up off to the other car
13 and put him in the back of that car. And we both
14 sat in the parking lot for probably about ten
15 minutes, while the police just searched my vehicle,
16 searched everything, searched right through the
17 car.

18 At this point, there was,
19 like I said, ten -- ten police vehicles and about 18
20 or 19 officers at the scene. And they had the
21 whole, entire parking lot shut off. There were cop
22 cars everywhere with lights and sirens. And they
23 proceeded to just go through my vehicle.

24 And still no one would really
25 answer my questions. People kept demanding to know
26 what my name was, and I told them, "My name is

1 Jarvis." I told them it was my car. And then it
2 seemed to steer towards some sort of drug
3 investigation. They started asking me where the
4 drugs were, how much coke I'd done or -- you know,
5 or did I throw the drugs out the window of the car
6 when I moved into the parking lot, where were the
7 drugs?

8 And they were savagely going
9 through the back of my car, violently going through
10 everything, the backseat, the trunk, which is all
11 -- you can see it all on the video, corroborated.

12 Within four and-a-half
13 minutes of us being pulled over by Jay Keating, we
14 were both in handcuffs in the back of separate squad
15 cars, and ten police vehicles and 18 officers had
16 responded. And Jay Keating was going through my
17 vehicle, without either of us having known what
18 -- the reasons for being stopped.

19 And then we were taken back
20 to detention cells. I was booked into Saskatoon
21 detention by two different officers. Those were the
22 two that testified yesterday, officers Boyce and
23 officer Hounsell -- or constables or whatever you
24 want to call them. And they took me back to
25 detention and completely searched me, took all of my
26 personal possession away from me, took my belt, took

1 my wallet, took my cell phone, emptied my pockets,
2 took -- you can see it all on the video, searching
3 through even the -- the pockets in my wallet, and
4 then put me into detention cells.

5 And the whole time, I -- I
6 didn't consent to these searches. I told these men
7 that I thought they were all acting unlawfully. I
8 didn't really appreciate them searching me without
9 any reasonable cause. But they still were pretty
10 insistent, or I think thought they were going to
11 find drugs or something on my person that would
12 constitute a criminal offence because I was
13 threatened the whole time that if they found drugs,
14 I would be charged. And as soon as they searched,
15 me, you know, I'm going to be charged.

16 So they searched me through,
17 and the whole time I requested to talk to a lawyer
18 before any of this happened. And they seemed to be
19 more intent on booking me and searching me and
20 getting me into detention before they were going to
21 let me talk to a lawyer. So they did that and got
22 me in. And finally I requested to talk to a lawyer
23 and two of the constables put me into the phone room
24 in the Saskatoon Police detention cells and then
25 left -- and then left. And I can corroborate that
26 with video of me in the north corner.

1 And the phone that I've cited
2 multiple case law for that in my *Charter* application
3 there about the phone room in the Saskatoon Police
4 detention cells because it doesn't actually work. A
5 person that goes into the phone room can't actually
6 operate the phone. The phone is operated from
7 outside of the room.

8 Now, I did not know this. I
9 had no idea about this going into it. I thought I
10 was just going to go in that room and be able to
11 talk to a lawyer -- or my lawyer, I should say,
12 because I have a lawyer. My uncle is a lawyer. I
13 actually know several, and there was multiple people
14 I could have phoned at that point, multiple people I
15 could have phoned just to make arrangements in my
16 life because I can't just -- you know, I had no
17 intention of going to jail. You know, I had things
18 to do at home.

19 I had arrangements to take
20 care of. It was actually -- the day it happened was
21 my birthday, so I was going to have a party at home
22 the next day. So I had some things to take care
23 of.

24 So they stuck me in this
25 north phone room, and then they left. These
26 officers decided there was something else more

1 important to do and left to go to the basement or
2 -- or do something else. And they left me in the
3 room. And it's corroborated on the video of me in
4 the room, basically losing my cool, getting
5 completely frustrated because I'm stuck in a room
6 with a phone that doesn't work.

7 And these men that put me in
8 this room seemed to think it was funny. They seemed
9 to think this was a cute little -- you know, a game
10 they were playing, to just deny me my right.

11 And so I got really scared.
12 I stayed in the phone room for about five minutes.
13 I think we'll -- I'll enter the video here, so we
14 can watch that. But I stayed in the phone room for
15 about five or ten minutes before I was actually so
16 scared that I needed to use the washroom.

17 So at this point they had put
18 me in there and forgotten about me, so I started
19 yelling and banging on the door, so someone would
20 -- so -- to come and just -- you know. And so I
21 -- I -- I called someone to the door finally, and
22 they allowed me to use the washroom.

23 And at this point, I was
24 pretty upset, and I told them as such. I told them,
25 "I don't know what you think you're doing, but I
26 have the right to talk to a lawyer." Your phone

1 doesn't work. And they informed me, "Yes, we know
2 that. You know, we know our phone doesn't work. We
3 need to dial out for you." I said, "Okay, well I
4 want to talk to my lawyer. He lives in B.C."

5 Now, at this point one of the
6 constables did a really great job of frustrating my
7 right to counsel because he began to tell me that I
8 could not make a toll free call. He told me that I
9 could only make a call between normal business
10 hours, to -- to a lawyer, to someone that we knew
11 -- that they knew had to be a lawyer. I couldn't
12 just phone anybody, and that I didn't have the right
13 to use my cell phone. The conditions of me being in
14 jail were that I had no right to use my cell phone
15 and make the call to anybody.

16 And so I was pretty worried
17 at this point, but I thought, still, well, okay,
18 I'll -- I'll phone somebody. You know, that's fine.
19 So they put me back in the phone room, and I
20 instructed them that I did want to talk to my uncle,
21 who is a lawyer in B.C. I did want to talk to him.
22 I wasn't really that concerned about his toll free
23 call system, whether or not I was going to make the
24 call on his phone or my cell phone. My cell phone
25 was able to operate out, no problem, and I had his
26 number right in there.

1 So he -- he informed me that,
2 "Okay, just sit tight in the phone room," and he'd
3 take care of it, he'd go and get me my cell phone.

4 Anyways, I waited in the
5 phone room for another -- probably ten or 15 minutes
6 before detention staff came back to the phone room
7 and just grabbed me, told me, "Let's go, it's time
8 to go," pulled me out of the phone room, and took me
9 out and took me back to cells, despite my protests.
10 Now, and the whole time, I -- I informed them, "I
11 have not made a call. I'm not satisfied with my
12 right to counsel. I am not satisfied with any of
13 this." And they said, just basically, "Shut up,
14 buddy. Right here," pulled me away, and threw me
15 into detention cells.

16 And one of the officers at
17 that point, who I had never met -- it was different
18 guys, it was a different chain of command the whole
19 way through. I dealt with at least a dozen officers
20 that night. One of the officers informed me,
21 basically, "Don't worry, it will all be over soon."
22 He just appeased me, "Don't worry, it will all be
23 over soon." So I did start to relax a little bit.
24 I mean, I was in jail and I hadn't phoned a lawyer,
25 but I thought maybe at this point, they were really
26 close to releasing me. I thought, okay, I'll be

1 able to get out of jail here. You know, at least I
2 can phone a lawyer on my own time.

3 Well, at that point,
4 Constable Schaefer came back to my cell. Now, me
5 and my brother were attempting to communicate within
6 the bottoms of the prison cells, so I could see how
7 he was doing because at this point, my brother had
8 been badly beaten up, and I didn't know how he was.
9 Nobody seemed to want to inform me as to how he was
10 doing because he just had his head smashed off the
11 pavement in the parking lot. And the last I saw
12 him, you know, he was bloodied and bleeding, all
13 messed up.

14 So anyways, Constable
15 Schaefer came back to my cell to start asking me
16 some questions. And I informed Constable Schaefer
17 that I had not talked to a lawyer, I was not
18 satisfied with my right to counsel. And I had no
19 real right to answer any of his questions until I
20 talked to a lawyer, until I had -- and he didn't
21 really seem to care. He didn't really seem to think
22 that my legal rights mattered. He just performed
23 his little investigative detention there, while I
24 was in jail, and asked me a bunch of questions, and
25 I insisted that I inform them or -- or tell him who
26 my brother was because he didn't seem to think -- he

1 didn't seem to know who my brother was. He couldn't
2 identify him, even though the -- he was in
3 detention, and he'd just been booked in and given
4 the front desk all of his information. Neither of
5 us ever refused to identify ourselves at any time.
6 We'd just been booked in.

7 You can watch all of the
8 video. We were quite compliant in going through
9 jail, despite having just been beaten up and
10 arbitrarily detained. But there was no problem
11 anyone identifying themselves or saying who we were.
12 We both were -- had nothing to hide. We both have
13 clean criminal records and a clean driving abstract.
14 There was nothing to hide. There was never any
15 reason for us not to identify ourselves, but
16 Constable Schaefer really wanted to know everything
17 about me and this stop. And, again, the subject
18 matter turned quickly to drugs, where the drugs
19 were, you know, where were they going to find the
20 drugs in the car? You know, what's going on with
21 the drugs?

22 And I told him at that point,
23 I just -- "I don't want to answer any more of your
24 questions. I want to speak to a lawyer." And he
25 said, "Fine," he'd take care of it. And so he left
26 and left me in cells. And it wasn't until probably

1 an hour and 20 minutes after the initial check-stop
2 that I was in detention cells that Jay Keating came
3 back and visited me in detention. And he informed
4 me that, yeah, he was going to give me a bunch of
5 tickets -- traffic tickets, and that was it. And I
6 asked him if he thought this was -- if he thought
7 that he had the right because he was going to give
8 me some traffic tickets, to arbitrarily detain me
9 and throw me in jail. And he thought that was no
10 problem at all, and I was going to spend the night
11 in jail, and, you know how dare I, basically. And
12 that was that. That was pretty much as close.

13 And then still -- I still
14 informed him that I hadn't talked to a lawyer. I
15 wasn't satisfied with my right to legal counsel.
16 And he basically did -- just informed me that he
17 didn't care, he wasn't really concerned about that.
18 And then he sarcastically made a comment that he
19 thinks from -- the detention staff had said I waived
20 my right to counsel somehow.

21 And he -- he even put that in
22 his notes, which I thought was pretty shocking that
23 all the way through that he would just say that I
24 waived my right to legal counsel. And I can -- I
25 can show the video. And we'll all see what happened
26 to me in the phone room. And I was never given an

1 adequate chance to phone legal counsel.

2 But, anyways, Jay Keating
3 gave me a bunch of tickets for this offence, which
4 were subsequently withdrawn from the Saskatoon
5 Police Service. And I have a letter here that I can
6 enter into evidence, if you'd like, from the
7 Saskatoon Police, saying all of the tickets that I
8 received at that stop are withdrawn.

9 THE COURT: Just a moment because I have
10 a number of tickets here.

11 THE WITNESS: Yeah. And I also have my
12 -- my invoice from SGI, where I bought my car.
13 They're alleging that my car wasn't registered. And
14 my car was, in fact, registered in my name. I
15 haven't had -- an invoice here from SGI. I also
16 have the safety papers from that vehicle. The
17 vehicle --

18 THE COURT: This will --

19 THE WITNESS: -- was --

20 THE COURT: -- be D-1.

21 COURT CLERK: D-1?

22 THE COURT: The letter from the police.

23
24 EXHIBIT D-1: Letter
25 To Jarvis Stewart From
26 The Saskatoon Police
27 Withdrawing Traffic Tickets

28 THE COURT: Have you seen this letter?

- 1 MR. PASHOVITZ: (No audible response.)
- 2 COURT CLERK: Have you seen this?
- 3 MR. PASHOVITZ: No, I haven't.
- 4 THE COURT: Have a look at it. I'm going
- 5 -- I think I'll make it D-1. It's --
- 6 MR. PASHOVITZ: Sure.
- 7 THE COURT: But let me know if you have
- 8 any objection.
- 9 THE WITNESS: And I also have this --
- 10 THE COURT: Just -- just a moment. That
- 11 will be D-1. Okay, and what else do you want to
- 12 show me?
- 13 THE WITNESS: I also have the safety
- 14 fitness certificate from the vehicle I was driving,
- 15 as well as the sales invoice from the vehicle I was
- 16 driving.
- 17 THE COURT: Just a moment. Okay, they're
- 18 not -- that's good. All right, show those to the
- 19 prosecutor to see if he has any problem with them
- 20 going in as exhibits.
- 21 THE WITNESS: The Crown also has my
- 22 driver's license. They -- sorry.
- 23 MR. PASHOVITZ: Thanks.
- 24 THE COURT: Any problem with that?
- 25 MR. PASHOVITZ: No, that's fine, Your Honour.
- 26 THE COURT: All right. All three -- the

1 two safety -- or the safety certificate and the copy
2 and the -- that's a -- that's a bill of sale from
3 SGI; is it?

4 THE WITNESS: Yeah.

5 THE COURT: Yes?

6 THE WITNESS: (No audible response.)

7 THE COURT: The bill of sale will be P

8 (sic) -- D-2.

9

10 EXHIBIT D-2: SGI Inspection
11 Documents And Bill of Sale
12 Papers Relating to the Toyota
13 Celica (3 pages)

14 THE WITNESS: And that's pretty much -- oh,

15 I'm sorry.

16 THE COURT: When were you released?

17 THE WITNESS: I'm -- I'm sorry?

18 THE COURT: When were you released from

19 jail?

20 THE WITNESS: We weren't released. We were
21 in prison probably at about 7:20, 7:30 on the 24th of
22 August, and we weren't released until the following
23 day at about 1:00 p.m., I'd say. I still -- I'm not
24 -- I'm still not sure exactly when I was released,
25 but we were in prison or in detention for
26 approximately 18 hours.

27 THE COURT: Were you given any reason for
28 being there?

1 THE WITNESS: No, never. And I asked the
2 whole, entire time, what was going on, what was the
3 reason for my detention. And no one ever came to
4 check up on me. The only person that made any
5 -- after the police dealt with me, the only person
6 that made any attempt to communicate with me was the
7 matron in jail. And he simply told me there was
8 nothing he could do. There's nothing he could do.

9 So I would like to enter the
10 video, if I could do that now?

11 THE COURT: All right. How -- how did
12 you make that video?

13 THE WITNESS: I just -- it's just compiled
14 from the video that we got from the Crown. It's
15 just because all of the detention cell video. It's
16 -- it's just the dash-cam video that we watched
17 yesterday. I'd like to just go over that really
18 quickly again, but I could fast-forward through it
19 to show you what happened quickly. And then it's
20 just some footage that we got from the Saskatoon
21 Police Service detention cells. We got all of this
22 video straight from the Crown.

23 THE COURT: Do you have a problem with
24 that?

25 MR. PASHOVITZ: I guess I'll cross that
26 bridge when I --

1 THE COURT: Yes.

2 MR. PASHOVITZ: -- come to it --

3 THE COURT: We'll have to --

4 MR. PASHOVITZ: -- Your Honour.

5 THE COURT: -- see it first.

6 MR. PASHOVITZ: I don't have a problem with

7 it being played, but --

8 THE COURT: Yes, let's have a look at it

9 first, and then we'll see.

10 THE WITNESS: Okay.

11 THE COURT: I'm going to ask that we

12 place a microphone over there, and he can stand

13 there, and turn the machine on and off --

14 COURT CLERK: All right.

15 THE COURT: -- and fast-forward or

16 whatever.

17 COURT CLERK: (Inaudible) that one.

18 THE WITNESS: I'm sorry.

19 MR. PASHOVITZ: No, not a problem at all.

20 THE COURT: Okay. No, you can stay there

21 by the -- by the computer.

22 THE WITNESS: Okay.

23 THE COURT: And you can get it going,

24 however you want to do it. And while it's

25 proceeding, you tell me what it is and --

26 THE WITNESS: Is it this one, right?

1 THE COURT: You have to -- if you have to
2 stop it to do that --

3 MR. JAMES STEWART: Look at the bottom screen.

4 THE COURT: -- you go ahead.

5 MR. JAMES STEWART: Just look at the bottom
6 screen.

7 COURT CLERK: Yeah, (inaudible).

8 (VIDEO PLAYING)

9 THE WITNESS: All right. Okay, perfect, so
10 I'll fast-forward through this further --

11 THE COURT: Okay, so just say --

12 THE WITNESS: -- for the purpose of --

13 THE COURT: -- what this is --

14 THE WITNESS: -- expediency --

15 THE COURT: -- please?

16 THE WITNESS: -- expediency. This is the
17 video recording of Jay Keating's car behind my
18 vehicle, pulling into the Shopper's Drug Mart
19 parking lot on 8th Street. Do you mind if I bump it
20 ahead a little bit here? I'll just move it around
21 for you. You can see the timeframe at the top of
22 the screen. It's just after -- about two minutes
23 after seven.

24 THE COURT: Go ahead.

25 THE WITNESS: So right here -- oops, I went
26 a little too far here. At this point, we pull into

1 the Shopper's Drug Mart parking lot, and we park our
2 car. And I don't really even notice Jay Keating's
3 lights in this car. He doesn't have lights on the
4 top of his car. There are lights inside the dash or
5 something, so I don't really even notice the lights
6 flashing. And we get out of our car and then notice
7 that this man has confronted us.

8 So at this point, it's 7:02
9 and 30 seconds. Now, this footage, you don't see
10 anything else happen. All you see is the trunk of a
11 car until -- but in the interim here, Jay gets into
12 a physical altercation with myself. Jay just
13 attacks me.

14 THE COURT: By Jay --

15 THE WITNESS: And this --

16 THE COURT: -- you mean Keating?

17 THE WITNESS: Yes, sorry, Constable Keating
18 attacks me and phones backup. And subsequently ten
19 police vehicles respond to this scene in emergency
20 fashion, lights and sirens going. And the first
21 other -- this is an unmarked vehicle, and the first
22 vehicle that responds to the scene is unmarked.

23 So subsequently at 1907, now,
24 you don't see anything happen, except cars piling
25 up, but, now, just about here -- now, at this point,
26 ten vehicles have responded, and me and my brother

1 have both been basically violently assaulted, and
2 we're both sitting in the back of separate squad
3 cars.

4 And Jay Keating has handed me
5 off to another officer, and handed my brother off to
6 another officer. And, now, he appears back in the
7 screen here and begins to search my vehicle. There
8 he is now. He hasn't read anybody their rights. He
9 hasn't told anybody the reason for the -- for this
10 stop or this -- why he's used force against us.

11 And, now, as you can see,
12 he's breaking into my car. He went to my car there,
13 and it was locked. And he went back and got the
14 keys out of my pocket in the back of the car and
15 decided, now, that they're going to go through and
16 search my car. And, now, you can see, this is
17 Sergeant McAvoy -- or Brad McAvoy -- Constable
18 McAvoy -- sorry. And that's Jay Keating at the
19 back. Now, he's going through the trunk of my
20 vehicle. And the only thing I have in the back of
21 my car are my plumbing tools to make a living. We
22 were actually on our way to get some mail from
23 Shopper's Drug Mart, and go and do a plumbing job.
24 So the only thing in the back of my car at this
25 point are a couple of toolboxes. And they realize
26 this.

1 So at this point, they leave
2 to go back and ask me, now -- start grilling me,
3 where the drugs are, "Where are the drugs, Jarvis?"
4 "Do you know, like, where -- where are we going to
5 find the drugs?" "Where's the coke?" I say,
6 "Listen, I don't know what's going on or what
7 -- what this is about?"

8 And they start asking me if
9 I've searched -- if I -- if I stashed the drugs
10 under the car? Did I throw the drugs out of the
11 -- out of the car when I pulled into the parking
12 lot? Like, what's going on? And I -- at this
13 point, I -- I begin to -- I'm frightened, and I -- I
14 -- I say, "Like, I really -- like, I know my rights
15 here, and I should really be talking to a lawyer
16 before you start asking me about this. I don't know
17 what you're talking about. I don't use drugs. I
18 don't have drugs. You haven't found anything. I
19 don't know what you're talking about. Why are you
20 asking me these questions?"

21 And they were pretty
22 insistent that something was really wrong. They
23 were calling me all kinds of names and just freaking
24 out at me and how dare I, you know, do this? "And
25 why were all of these cops here?" "And what the
26 hell was going on?"

1 And nobody really seemed to
2 know what was going on. So they're still just
3 grilling me in the back of the car here, and I'm
4 asking them who they are. No one at this point has
5 identified themselves to me. I'm asking them who
6 they are and what the problem seems to be, "What's
7 -- what's going on? What is it that I've done that
8 you're detaining me, now, and you've beaten the crap
9 out of my brother and have us back -- in the back of
10 separate squad cars?"

11 So, of course, this is the
12 commanding officer, now, I believe. This is -- Jay
13 Keating didn't seem to know who this guy was, but
14 this is Jeffrey Nashgal (ph) and his partner, D.J.
15 Swanstrom (ph). And that's Brad McAvoy. Now, on
16 -- on the screen, Mr. McAvoy is searching under my
17 vehicle. They went right through my car,
18 absolutely, all through the wheel wells, underneath
19 my car with a flashlight, through every part of my
20 car just in an attempt to find something criminal, I
21 guess. I don't really know why they went through my
22 car, but at this point, as you can see, there's four
23 officers on the screen. At some point, there was at
24 least -- probably six or seven guys going through my
25 car. There's still probably two guys going through
26 the front door of my car.

1 And, now, here's Constable
2 McAvoy attempting to explain what happened and why
3 they'd used force and why the whole parking lot is
4 filled up with police cars.

5 And they don't really know at
6 this point. No one has asked me any questions as to
7 why -- they don't -- it has nothing to do with a
8 traffic stop because nobody ever asked me for
9 license or registration or -- or anything to do with
10 any of that. It was all about drugs. It was all
11 -- you know. And -- and when I started asking
12 questions, they just told me to shut up.

13 So then I'll -- I'll
14 fast-forward the tape. I mean, all you really see
15 here, now, is just cops searching through my car.
16 It's not really -- I mean, there's not really much
17 to see.

18 But I still haven't been read
19 my rights. I'm still in the back of the car. My
20 brother hasn't been read his rights yet. My brother
21 hasn't been read his rights, and we still haven't
22 been given a reason for our detention, but the cops
23 are still searching through our car. And they're
24 still -- some of them are still asking us
25 questions.

26 So it's not until about

1 -- and there's still -- there's still probably about
2 50 to 100 people watching. It's classic cruise
3 weekend, and 8th Street was just lined up with
4 people, so there's people everywhere.

5 So at some point the cops
6 become frustrated with us, and decide to just get us
7 out of there. Jay comes up and just decides that he
8 needs these guys out of here right now.

9 I'm backing the video up here
10 because it's not until this point -- 19:14:30
11 -- until we leave. He gets us, he puts us in the
12 back of a squad car, and we leave the -- leave the
13 parking lot, on to SPS detention cells.

14 Now, I guess that's not
15 really that important, so I'll fast-forward it here.
16 You can see Jay Keating. This is at 19 -- this is
17 20 minutes after. They're still going through my
18 car. At this point, I've been -- me and my brother
19 are both at SPS detention cells, and they're still
20 searching throughout my vehicle. And it remains
21 this way for -- I mean, Jay Keating didn't come back
22 to SPS detention cells for probably an hour
23 and-a-half after this traffic stop. So he stayed at
24 the side of the road, going through my car, going
25 through my car.

26 Now, this is 1923. They're

1 still going through my vehicle. Oh, sorry, I went
2 too far ahead. But anyways, so that's Sergeant Spot
3 (ph) arriving. That's 25 minutes after seven, and
4 then they're still going through my car and
5 searching it.

6 And this is where the video
7 just ends. The -- the police's dash-cam video just
8 ends there at 25 minutes after. But I didn't see
9 the cop there for an additional -- probably hour
10 before I got back to prison.

11 But, anyways, this is me
12 arriving in Saskatoon Police detention cells, in the
13 car 231. Now, this is Constable Boyce getting out
14 of the front driver's side, and Constable Hounsell
15 getting out of the passenger side. Now, they're
16 putting their gloves on. And they've been
17 threatening and intimidating me. They've refused to
18 answer any of my questions. And they've been
19 threatening and intimidating me the entire way back
20 to detention.

21 They kept the radio in the
22 car volume all the way to the top, so they couldn't
23 hear me in the back. And they had me handcuffed in
24 the back of the car, behind my back. And they drove
25 really aggressively around -- around corners on the
26 way to the police station in an attempt to bounce me

1 around in the back of the car.

2 And despite me yelling at him
3 to slow down, there was nothing I could do. They
4 seemed to think this was really quite funny.

5 As you can see, I'm quite
6 compliant. I don't really put up much resistance.

7 But this entire time, I'm
8 questioning these two officers as to why they -- why
9 they have me detained, why they're arresting me, why
10 they're booking me in the jail. And they don't
11 really seem to have any answers for me. All they
12 can really do is insult me and call me a douchebag.

13 And so I do start to inform
14 them that if they don't really -- if they don't
15 really know what's going on, they should ask a
16 superior officer, otherwise they're going to be
17 -- I'm going to -- you know, file some civil action
18 against them because I don't really appreciate being
19 arbitrarily detained here and being booked into
20 jail.

21 But they don't really seem to
22 care about that. They're still convinced at this
23 point that I have something in my pockets, or
24 they're going to search me because they're telling
25 me the whole time, "When we find drugs, we're going
26 to charge you." "If we find anything on you, you're

1 going to be charged." "And once -- and once we find
2 the drugs, you're going to get charged. Don't
3 worry."

4 You know, so this is me at
5 the front desk in Saskatoon Police detention cells.
6 Now, you'll notice the whole time, Constable
7 Hounsell -- Hounsell -- he's in the top right of the
8 screen. He's constantly on his radio because he's
9 in contact with the people that are still at the
10 traffic stop. And he's still talking with Keating
11 and asking because they're still trying to find
12 something criminal against me. They're still trying
13 to come up with a criminal charge to try to justify
14 the fact that they just kicked the shit out of two
15 guys and thrown them in jail.

16 So he's still asking me
17 questions. You can see Constable Hounsell and
18 Constable Boyce are asking me questions about drugs,
19 how much coke had I done? "We're going to find the
20 drugs, when we go through you here. We're going to
21 search you right through."

22 And I'm telling them that I
23 don't consent to any searches. "You have no
24 reasonable cause to -- to detain me or to search me.
25 And this is all against my --" you know, I -- I
26 knew the *Charter* at this point. I mean, I knew my

1 rights at this point, and I knew this was a
2 violation of my *Charter* rights to just search me
3 like this. They've already patted me down at the
4 scene twice. They've already basically searched me
5 at the scene, patted me down, grilled me about
6 everything that I could have possibly had.

7 But they're determined, now,
8 to search me again. So -- and at this point, again,
9 he's -- he's come over again and they're grilling
10 me. I'm at the front desk. Like, "What are we
11 going to find?" You know, "What's -- what's -- as
12 soon as we find what's in your pockets, you're going
13 to be charged." You know, that's it, that's that.
14 "We're going through you. There's nothing you can
15 do. You're going to be searched."

16 So here they are booking me
17 in, now. As far as Jay saying I refused to identify
18 myself. I don't know. This is about 15 minutes
19 after the initial stop. And I'm -- I'm telling them
20 all of my information. They've got my -- my
21 driver's license at this point and they've got my
22 name. They know -- I -- I -- there's no way I would
23 ever refuse to identify myself. The fact that he's
24 arrested me for obstruction for disobeying his
25 lawful commands and not mention anything about
26 refusal to identify or anything like that is absurd.

1 I think it's absolutely absurd.

2 So I'm telling this man I
3 don't consent to his searches. And he's going right
4 through everything. He ends up turning my pockets
5 inside-out. He ends up taking my belt. They take
6 all of my possessions. They take my shoes. They've
7 already got my hat, my sunglasses, my necklace. I
8 had some mail -- or I had, like, a little thing that
9 I needed to pick up some mail from Shopper's Drug
10 Mart, and they took that. They took everything away
11 from me.

12 Are -- is this -- do you want
13 to watch this or?

14 THE COURT: Sure, go ahead.

15 THE WITNESS: Yeah? It doesn't take very
16 long. It should be over pretty shortly here. So
17 that's the ticket for my mail, as well as my cell
18 phone. And you can see the cops have no problem
19 just going through. He -- he looks at my mail, he
20 reads it right through. He goes through my cell
21 phone, checks my numbers, checks to see who I've
22 been calling.

23 He started smelling my cell
24 phone. This is why I'm -- you know, they were so
25 convinced I had drugs, he starts smelling my phone
26 right here. I don't know why he's smelling my

1 phone. And he does it several times. Look at that.
2 Ew, it smells. I -- I don't know what that's
3 about.

4 Maybe I should have asked him
5 something about it yesterday, if there's something
6 he was smelling for, but, anyways, so, now, my
7 pockets are turned inside-out. They've taken my
8 shoes. They've taken my belt. They've taken
9 everything. They've refused to answer any of my
10 questions about why I'm in there and why I've been
11 detained. And it didn't -- and you can see
12 Constable Hounsell radioing in, now, back, that they
13 haven't found anything. "There's no drugs, we
14 haven't found anything on this guy."

15 Okay, and I'm insisting that
16 I want to talk to a lawyer. I want to talk to a
17 lawyer now. I don't need to answer any more of your
18 questions or do any -- any more for you guys. I
19 want to talk to my lawyer because you've just jacked
20 me up.

21 And so I'll fast-forward it
22 here, just a second because this is -- he's still
23 got my phone, smelling my phone. They take
24 -- there's my belt. They take my belt out of my
25 pants.

26 They don't find anything that

1 they're looking for, I guess. I don't know.

2 Okay, so at this point, I've
3 indicated, I want to talk to a lawyer. And so this
4 is -- I'm going to pause it right here because
5 Constable Hounsell said on the stand yesterday that
6 he gave me a phone book and put me in the north room
7 -- phone room. Now, Constable Hounsell is the
8 furtherest (sic) person from me. And you can see
9 Constable Boyce pointing towards the phone room.
10 But that's literally what he did. He pointed
11 towards the room. "The phone room's over there."
12 "Yes, it's just over there." So as you can see
13 -- and in his testimony yesterday, he said that he
14 got me a phone -- a phone book and -- and -- to look
15 up my lawyer's number with, and put me in the north
16 phone room, to use the phone. He pointed to a room
17 with a phone in it, with a phone that doesn't work,
18 and then decided he needed to leave. The three of
19 them decided, that's -- that's good enough, that's
20 their implementational duty fulfilled for my right
21 to counsel. Now, I'm in jail and I'm in the phone
22 room.

23 And I had no idea this phone
24 would not work. I mean, I didn't think there would
25 have been a problem giving me my cell phone, so I
26 could make a call. Here it is again. This is just

1 from another angle. But you can actually see a
2 little better from this angle, when they put me in
3 there. So they're just pointing at the room.

4 And this is Constable Mitzul.
5 I never heard his -- got a report from him or
6 anything, but you can see, he puts me in the phone
7 room, and he literally skips away. Like, a little
8 girl. He's all too happy to go, now, talk on the
9 elevator with his buddies and laugh it up about the
10 guy they just stuck in the phone room.

11 So here I am. This is the
12 north phone room. And they put me in the room. And
13 you can see the first thing I do is reach for the
14 phone. I'm not -- Constable Hounsell there says he
15 -- he put me in there, so I could look up my
16 lawyer's number with. Well, I knew my lawyer's
17 number, and I was going to phone him. So the first
18 thing I did was went into that room and I picked up
19 the phone and tried to dial. But wait a minute,
20 it's not a proper phone. It doesn't even have
21 numbers on it. There's no dial tone. You know, it
22 might as well say "Fisher Price" on the side of it.

23 So I'm pretty nervous at this
24 point because my brother's been beaten up, and I
25 don't really know how he is, and they have
26 completely searched me, taken all of my possessions,

1 and I really have no idea why I'm in jail. It's my
2 birthday. I've just -- I was just over at my
3 friend's house. They're probably getting worried
4 about me. I'm going to have a party at my house the
5 night after, so at this point, I need to make some
6 arrangements because I'm in jail and I really don't
7 -- I really don't know what for, and I really don't
8 know, you know, what legal jeopardy I'm in.

9 So here I am. And this is
10 really painful to watch because I'm trying to use a
11 phone that doesn't work, and I don't realize that it
12 doesn't work. I'm thinking at any time a dial tone
13 is going to click in, it's going to get an operator
14 or something. There's no numbers you can dial. And
15 when you lift the receiver, there's no dial tone
16 -- no -- no dial tone.

17 So here I -- here I sit. And
18 the officers thought there was something more
19 -- more important to do. And that'll be my right to
20 counsel.

21 So this is them after putting
22 me in the phone room and leaving. That's Constable
23 Hounsell, the first one on the elevator. This is
24 Constable Boyce, and this is Constable Mitzul.

25 Now, you can see them start
26 to laugh here and joke it up because they think it's

1 pretty funny to stick somebody in the phone room and
2 not give them a call. This is quite humorous for
3 them.

4 And they're -- yeah, they're
5 going down to the Sally port, I believe, to help
6 with my brother because my brother is coming into
7 detention next. But we'll get to that in a second
8 here. I can probably fast-forward it because this
9 isn't really that interesting.

10 So here I am, still in the
11 phone room. And, now, I've given up on the phone.
12 And I'm trying to yell or get the attention of
13 people because there's a bunch of people at the
14 front desk. I'm trying to get the attention of
15 someone to let them know that their phone's not
16 working. So I'm still, you know, trying the phone
17 to figure out what's going on. I figure, maybe it's
18 going to ring at some point or something's going to
19 happen. I'm not really sure what I'm expecting.

20 But at this point, I am
21 trying to attract the attention of the detention
22 staff because, yeah, I have a phone that doesn't
23 work, and they're not really interested.

24 So this is why our Constables
25 Hounsell, Boyce, and Mitzul there needed to -- to
26 leave, is they needed to be in the basement. This

1 is my brother right now. You can see Constable
2 Boyce there waving at my brother the whole time,
3 attempting to threaten and intimidate him.

4 Now, there's seven officers
5 in here to pull my brother out of the back of this
6 vehicle. Now, my brother is already in handcuffs
7 and already been beaten.

8 MR. PASHOVITZ: I just -- I apologize. I
9 wonder if that could be paused for a moment, Your
10 Honour?

11 (VIDEO PAUSED)

12 MR. PASHOVITZ: I indicated I would consent
13 to this being played to see whether it's appropriate
14 or not, but there's a whole lot of editorialism
15 going on here.

16 THE COURT: Well, that's -- he's --

17 MR. PASHOVITZ: And that's what --

18 THE COURT: -- giving his --

19 MR. PASHOVITZ: -- I object to.

20 THE COURT: -- evidence.

21 MR. PASHOVITZ: Pardon me?

22 THE COURT: That's -- he's already

23 -- this is his evidence.

24 MR. PASHOVITZ: That, what --

25 THE COURT: What he's --

26 MR. PASHOVITZ: -- I heard --

1 THE COURT: -- saying.

2 MR. PASHOVITZ: -- just now is complete and

3 utter hearsay. How can he say that these police

4 officers --

5 THE COURT: Oh, I see --

6 MR. PASHOVITZ: -- are threatening --

7 THE COURT: -- what you mean.

8 MR. PASHOVITZ: -- my brother? He is --

9 THE WITNESS: Well, because they're waving

10 at him.

11 MR. PASHOVITZ: Well, I think the video

12 speaks --

13 THE COURT: Well --

14 MR. PASHOVITZ: -- for itself. There's no --

15 THE COURT: -- yes, you --

16 MR. PASHOVITZ: -- audio.

17 THE COURT: -- you can only testify as to

18 things you saw and heard. Now --

19 THE WITNESS: Okay.

20 THE COURT: -- if you want to play this

21 video, that's fine.

22 THE WITNESS: I apologize, Bryce.

23 THE COURT: But -- but -- but --

24 THE WITNESS: I'll get back --

25 THE COURT: -- you shouldn't --

26 THE WITNESS: -- to my video.

1 THE COURT: -- talk about things you
2 didn't see.

3 MR. PASHOVITZ: I -- I'm sure the Court --

4 THE COURT: Yes.

5 MR. PASHOVITZ: -- wouldn't have taken -- or
6 given that any weight in any event, but I just
7 wanted that --

8 THE COURT: Well, I'm not --

9 MR. PASHOVITZ: -- noted on --

10 THE COURT: -- sure if I would --

11 MR. PASHOVITZ: -- the record.

12 THE COURT: -- or would have not.

13 MR. PASHOVITZ: Thank you, Your Honour.

14 THE COURT: Yes.

15 (VIDEO PLAYING)

16 THE WITNESS: Okay, so here's --

17 THE COURT: Thank you for --

18 THE WITNESS: -- my brother.

19 THE COURT: -- pointing that --

20 THE WITNESS: And --

21 THE COURT: -- out.

22 THE WITNESS: -- arriving at Saskatoon
23 Police detention cells. And, now, there are, now,
24 seven officers that are going to pull him out of the
25 vehicle.

26 THE COURT: Yes -- no, let's just show

1 this part because you weren't --

2 THE WITNESS: Yeah.

3 THE COURT: -- there.

4 THE WITNESS: And you can see Constable

5 Hounsell --

6 THE COURT: You just show --

7 THE WITNESS: -- there had --

8 THE COURT: -- this part. Okay? You --

9 THE WITNESS: This is -- I can -- if you'd

10 like to see that full video, I can do that, but I

11 -- I specifically left the images with my brother

12 off the video, just out of respect to him. He's

13 completely compliant with officers. There's no --

14 THE COURT: Well --

15 THE WITNESS: -- altercation.

16 THE COURT: -- only testify as to things

17 you saw in the video.

18 THE WITNESS: Okay.

19 THE COURT: Just things you saw --

20 THE WITNESS: Okay.

21 THE COURT: -- and heard. I mean, if he

22 wants -- when -- he'll have a chance to tell me

23 about it.

24 THE WITNESS: Okay.

25 THE COURT: And maybe he'll want to show

26 me the video. I don't know.

1 THE WITNESS: Fair, fair.

2 (VIDEO PLAYING)

3 THE COURT: This you could talk about, if
4 you want because you're there.

5 THE WITNESS: This is just me in the phone
6 room with a phone that doesn't work. I'm still
7 waiting to make a call to somebody, but they seem to
8 have forgotten about me. And at this point, I'm
9 really scared. This really seemed like an eternity
10 in there, just knowing that my brother had been
11 beaten up.

12 You can see me, now, really
13 frustrated. I'm yelling out to try to get the
14 attention of whoever is in detention there, that I
15 need to use the phone.

16 So the -- finally somebody
17 notices me. Now, at this point, I -- I tell them
18 that their phone doesn't work. I don't know what
19 they're trying to pull here, but I have rights, I
20 need to talk to a lawyer. And I also informed them
21 that I really need to use the bathroom. Now, I'm
22 pretty scared at this point, and I need to use the
23 facilities. Since this whole thing has happened, I
24 haven't been able to use the washroom. So I need to
25 use the bathroom.

26 So at this point, he takes me

1 to the bathroom. I can probably fast-forward that
2 because I'm sure that's not of interest. But at no
3 time did I ever waive my right to counsel. At no
4 time did I ever say I was satisfied with my call
5 -- call to counsel. I was completely frustrated out
6 of my right to counsel.

7 But at this point, I informed
8 him that I want my cell phone, as well. "I would
9 like to make a call to my lawyer, and if you guys
10 are going to try to frustrate me and tell me that I
11 can't make toll free calls, that I have to phone a
12 lawyer, that I'd like my cell phone to make a call
13 then, I don't need to use your phone."

14 So at this point he takes me
15 to go and use the washroom. This is -- I'll
16 fast-forward this because this is pretty uneventful.
17 So I go and use the washroom, and he brings me back
18 into the north phone room, so that I can make the
19 call.

20 So, now, I've instructed him
21 that I do want to talk to my lawyer. He never -- I
22 mean, it's up to him to -- to make the call. He
23 never asked me for the number. He never asked me
24 for anything. I asked him for my cell phone. I
25 asked him -- or told him that I wanted to talk to my
26 lawyer. And I explained it to him in great detail.

1 I seemed to know what my rights were a lot more
2 clearly than this constable did.

3 And I'm explaining as such,
4 right now, that I -- I don't know what you're trying
5 to pull here, but I need to make some calls. You
6 guys have arrested me and I'm in jail. I need to
7 know that -- what I'm been -- what I'm actually
8 being charged with because it's not even that much
9 good for me to talk to a lawyer if I don't even know
10 what I'm being charged with or what my legal
11 jeopardy is.

12 So I'm explaining this to
13 him, that, "I want my cell phone, and if you don't
14 have a good enough reason and you're not even going
15 to let me talk to a lawyer, like, I want to leave.
16 I want to go home at this point. I'm not happy
17 being here. This is an arbitrary detention the
18 whole way. And if I -- if you're not going to tell
19 me what I'm being charged with and you're not going
20 to have any regard for my rights, I'd like to go
21 home."

22 And so I explained that to
23 him. And he said, "Great, no problem." And he goes
24 back, as far as I'm concerned, to go maybe make the
25 call for me or get my cell phone. I'm still waiting
26 to make a call and get my cell phone. So I tell him

1 to get on it, "Go get my cell phone," you know, "Go
2 phone my lawyer. His name is Gordon MacDonald. He
3 lives in B.C."

4 And so at this point, I'm
5 still not sure what I'm waiting for. Is the phone
6 going to ring? I don't -- I don't really know
7 what's -- what's going on. Or is he going to come
8 back with my cell phone and let me make a call on
9 that? You know, I really don't know what, but no
10 one really seems to have any regard for me or my
11 rights at this point. I'm pretty concerned for my
12 personal safety because, now, it's been -- oh, it's
13 probably been at least 45 minutes to an hour since
14 the initial stop. And nobody seems to have any
15 regard for my rights. No one even seems to be
16 willing to answer any of my questions.

17 The -- the initial -- the
18 arresting officer isn't back at detention. He's
19 still back at the scene with my car.

20 And so I can fast-forward
21 this a bit, because this is literally just footage
22 of me waiting in the phone room for the phone to
23 ring or waiting for something to happen in the phone
24 room. I'm just waiting, waiting, waiting for 20
25 minutes. I'm still waiting to make a call.

26 No one's come back to see me

1 now. I haven't gotten my cell phone. The phone
2 hasn't rang. No one's offered to really dial it for
3 me or -- or inquired about that. I'm still -- so
4 I'm still just waiting for my cell phone, waiting to
5 make the call, not really sure what's going on
6 because I'm -- I'm pretty sure they're still trying
7 to find something in my car. They're still -- so I
8 -- I really don't know what I'm being charged with
9 at this point or what their -- monkey business these
10 people are playing.

11 Oh, I must missed it. So
12 finally at this point -- I'll fast -- I'll back it
13 up a bit here. Finally at this point -- I'm going
14 to call this guy Rambo. I don't know who this
15 -- this constable is that comes to the -- the room
16 here, but I've never seen this man before that's
17 about to show up to the room. He's a huge guy,
18 probably the biggest cop. And he simply says,
19 "Let's go, let's go." And I say, "Hey, I haven't
20 made a call yet, what's going on?" "Let's go." And
21 he simply points to the -- to cells. "You're going
22 to cells." And his partner there says, "Like, let's
23 go, right now."

24 And you can see me
25 protesting, putting my hands up, saying, "I haven't
26 even made a call yet. What's going on?" "Let's go,

1 let's go." And they usher me into a cell. That's
2 it. I don't have the right. Two guys. I've never
3 really -- I've never even said -- I've never seen
4 the -- the two guys before, now, at this point, but
5 they stick me in the cell.

6 And so there he is. And I'll
7 call him Rambo because he's huge. And at this point,
8 I start to explain myself. At this point, he puts
9 me in the cell, and I say to this man, "So that's it
10 then? You just throw me in jail, and you don't even
11 let me make a phone call? You beat the crap out of
12 my brother. I have no idea what's going on, and,
13 now, I don't even have the right to counsel? Like,
14 I don't know what you're trying to pull here, but,
15 you know, please, if you can figure it out, like,
16 I'd like to talk to a lawyer, I'd like to know
17 what's going on, and I'd like to go home because you
18 don't really seem to have a good reason to keep me
19 in here."

20 So I explain it to this man,
21 and this man placates me. This man says to me,
22 "Don't -- don't worry, buddy. It will all be over
23 soon. Don't -- you know, just don't -- don't sweat
24 it, no problem." And I say, "Okay, but I'd really
25 like -- you know, like to know what's going on at
26 this point because you've just -- as far as I'm

1 concerned, I have no rights from -- from you people.
2 And you -- you don't seem to be the least bit
3 concerned about my wellbeing or safety. Like,
4 you've just throw me in here."

5 And he leaves. I never saw
6 that man again either. So, now, basically, I'm in
7 jail for the night, that's it. That was the closest
8 I ever got to making a phone call. I had to beg and
9 plead the detention staff, like I said. And I'll
10 pause it right here just because. But I had to beg
11 and plead the detention staff to -- to make a call
12 on my behalf. I had to beg them to phone my
13 neighbour at two in the morning, so they could go
14 and let my dogs out because I didn't have any other
15 way. And they would -- literally would not let me
16 use the phone. They would not let me use my cell
17 phone. They would not let me make arrangements.

18 And it was brutal because,
19 like I said, it was on my birthday, and I -- I had
20 -- my -- my phone was blowing up. People wanted to
21 know. I mean, I just disappeared off the face of
22 the earth. I was literally over at my friend's
23 house an hour before, you know. I'd just gone to
24 Shopper's Drug Mart to get some mail and get some
25 energy drinks. And, now, I'm in jail, and nobody
26 knows where I'm at. And I'm supposed to be back at

1 my buddy's house, and I can't even make a call to
2 anybody and -- and let them know where I am.

3 So at this point, I'm back in
4 jail. And this is Constable Schaefer. Constable
5 Schaefer has come back for a visit. Now, I
6 explained to Constable Schaefer at this point -- I
7 ask him, and you can see me speaking with my hands.
8 I ask him why I'm in here, "Why am I in jail right
9 now? Why did you put me in here?"

10 It doesn't want to work
11 there. So I ask him, "Why -- why did you put me in
12 here?" And he begins to, again, ask me questions.
13 And I say, "No, I'm not interested in answering your
14 questions. I'm not answering anything. And you
15 tell me why I'm in here. I want to know why I'm
16 here, and why -- and why I haven't talked to a
17 lawyer."

18 And he -- he tries to placate
19 me again, and just, "Oh, just relax, buddy, and
20 answer my questions." I say, "No, I'm in prison
21 here. I need to know why I'm charged, and I need to
22 talk to a lawyer. And I haven't been able to do
23 that yet." And so he's still insisting that I
24 -- that I need to -- I need to tell him who my
25 brother is. "Who's your brother? Identify your
26 brother." And I tell him that he's just been booked

1 into jail. He's just informed detention staff.
2 Life, no one is refusing to identify themselves (sic).
3 But he needs to get the name of my brother. So I
4 inform him, "My brother's name is James, James
5 Stewart. Yes, he's the guy that you've violently
6 beaten up and thrown in the other jail, and the guy
7 that's bleeding all over the place and hasn't had
8 any -- any medical assistance."

9 And so he writes it up in his
10 notes. And that's the last I see of him. And then
11 he leaves. He doesn't give me any reason for
12 detaining me or any reason for being arrested.

13 Because at this point, Gordon
14 James Keating, Constable Keating, I don't really
15 trust James -- Gordon James Keating. He hasn't
16 really given me the time of the day from the
17 beginning. So at this point, I'm trying to ask
18 Schaefer what -- what's going on, why I've been
19 arrested. And he still just wants to seem to put
20 the questions back on me. And he still won't
21 identify himself to me. He'll only give me a badge
22 number. He won't give me his name. He seems to
23 keep asking my name and my brother's name, but he
24 won't give me his name, and he won't really tell me
25 what this is about or what I'm doing.

26 And I did inform him that I

1 hadn't talked to a lawyer yet, I was not satisfied.
2 And he seemed to think that was no problem, you
3 know, that will -- that will get taken care of when
4 it gets taken care of. Don't worry about a thing.
5 But he leaves me in there.

6 That pretty much finishes the
7 video. There are some other bits of video that I
8 can put on that show Constable Keating come back to
9 the cell and give me some traffic tickets and
10 whatnot. But it's pretty uneventful. It's mostly
11 just 18 hours of me in jail. A couple people check
12 on me. And that's pretty much it.

13 (VIDEO STOPPED)

14 THE COURT: Okay, thank you. Can you go
15 back on the stand there?

16 THE WITNESS: Peace.

17 THE COURT: Is there anything else that
18 you want to give evidence on?

19 THE WITNESS: Would you like me to file
20 case law, or is that --

21 THE COURT: That's not evidence.
22 That's --

23 THE WITNESS: Okay. Even -- okay, I -- I
24 would just --

25 THE COURT: Is there --

26 THE WITNESS: -- like --

- 1 THE COURT: -- any -- is there anything
2 else that happened that you want me to know about?
- 3 THE WITNESS: No, that pretty much covers
4 it, I guess. Yeah, I'm pretty happy with that.
5 Thank you, Your Honour.
- 6 THE COURT: Just -- just --
- 7 THE WITNESS: Oh.
- 8 THE COURT: All right. Okay.
9 Cross-exam?
- 10 MR. PASHOVITZ: Yes.
- 11 THE COURT: I don't know if you want to
12 take a break first or --
- 13 MR. PASHOVITZ: I can carry on, Your Honour.
14 Just --
- 15 THE COURT: All right.
- 16 MR. PASHOVITZ: The video has been marked as
17 an --
- 18 THE COURT: No, it hasn't yet. I'm
19 sorry. That would be -- you have -- before I mark
20 it as an exhibit, is there -- would you like to
21 cross-examine him on it, or would you --
- 22 MR. PASHOVITZ: Not at -- well, we can just
23 leave it in the computer.
- 24 THE COURT: Well, I'll do it --
- 25 MR. PASHOVITZ: Possibly --
- 26 THE COURT: -- for identification at this

1 put.

2 MR. PASHOVITZ: Certainly.

3 THE COURT: D-3.

4 MR. PASHOVITZ: We can maybe mark a cover for
5 it or something like that.

6 THE COURT: Yes, D-3. Just make a note
7 that D-3 will be the video that's for identification
8 at this time.

9 COURT CLERK: Okay.

10 THE COURT: I guess it's a compilation of
11 videos.

12

13

14

15

16

EXHIBIT D-3 (FOR
IDENTIFICATION): Compilation
Of Police Videos Created by
Jarvis Stewart_____

17 MR. PASHOVITZ: Thank you, Your Honour.

18 (END VOLUME II)

IN THE PROVINCIAL COURT OF SASKATCHEWAN

SASKATOON, SASKATCHEWAN

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

JAMES STEWART
AND JARVIS STEWART

TRANSCRIPT OF PROCEEDINGS
AT TRIAL

VOLUME III
(PAGES 369 TO 562)

COMMENCING: April 16, 2013

(A TRANSCRIPT OF RECORDINGS)

ROYAL REPORTING SERVICES LTD.
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1 (BEGIN VOLUME III)

2 MR. PASHOVITZ:

CROSS-EXAMINATION:

3 Q Mr. Stewart, were you driving a Toyota that had a
4 license plate on it that was actually matching a
5 Honda?

6 A Yeah.

7 Q Okay.

8 A Oh, I don't know that it's matching a Honda. I have
9 no idea about that.

10 Q Can you tell me about that plate on the back of that
11 Toyota that day?

12 A It's a Saskatchewan license plate, man.

13 Q Okay. But it wasn't registered to that Toyota that
14 you were driving that day, was it?

15 A You tell me.

16 Q Well --

17 A You guys seem to know all about it.

18 THE COURT: Just answer the question.

19 Don't be smart with him. Just answer the question.

20 If you don't know --

21 THE WITNESS: Okay, I'll --

22 THE COURT: -- you don't know.

23 THE WITNESS: -- just --

24 THE COURT: If you do know, answer the
25 question.

26 THE WITNESS: The car was registered to me.

1 I'm not sure about the plate.

2 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

3 Q The car was registered to you?

4 A Mmhmm.

5 Q Okay, what's your definition of "registered"?

6 A In my name.

7 Q Okay.

8 A Belonging to part of a registry.

9 Q So are you talking about the fact that you bought
10 the car from SGI salvage, and then the car is in
11 your name?

12 A Yeah.

13 Q Is that what you're talking about?

14 A Yeah.

15 Q You're talking about the bill of sale part,
16 correct?

17 A I'm talking about the registration of the vehicle.

18 Q Oh, so you're talking about the registration of the
19 vehicle?

20 A Yeah.

21 Q Okay. So was that Toyota Celica properly, legally
22 registered on the day of this incident?

23 A It was in my name, yeah.

24 Q Well, you're not answering my question --

25 A (No audible response.)

26 THE COURT: Who is it --

- 1 Q -- again?
- 2 A (No audible response.)
- 3 THE COURT: -- registered with?
- 4 THE WITNESS: SGI.
- 5 THE COURT: How did you register it?
- 6 THE WITNESS: I bought it from them.
- 7 THE COURT: Did you pay for them
- 8 -- anything to register it?
- 9 THE WITNESS: I didn't insure it, if that's
- 10 what you're asking.
- 11 THE COURT: I'm asking if you paid
- 12 anything to register it?
- 13 THE WITNESS: I don't recall. It might say
- 14 on the sales invoice, but --
- 15 THE COURT: So all you did was buy it
- 16 from them?
- 17 THE WITNESS: (No audible response.)
- 18 THE COURT: You never got plates for it?
- 19 THE WITNESS: I never got plates for it,
- 20 no.
- 21 THE COURT: All right.
- 22 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:
- 23 Q Okay, so, then I take it, you would agree that that
- 24 Toyota Celica was not legally registered with the
- 25 Province of Saskatchewan on the day you were driving
- 26 it?

1 A Well, I guess it depends on your definition of
2 "legally registered". It says in *The Traffic Safety*
3 *Act* that when the administrator makes a move to -- I
4 could actually quote it. It's in my book, but once
5 the administrator learns of information to register
6 the car to a certain person, then they need to take
7 action in effect to that. So I bought the car from
8 SGI. As far as I was concerned, the car was in my
9 name, which makes it registered to me, to be part of
10 a registry. The Saskatchewan Auto Fund, which is a
11 division of SGI, is responsible for all of the
12 vehicle licensing or vehicle registration and
13 driver's licensing in the province. I bought my
14 vehicle from them. I informed them that I wanted
15 the vehicle registered in my name. I safetied the
16 vehicle in my name, so it was registered to me. It
17 just wasn't insured.

18 Q I think you're talking about two different things,
19 but we'll talk about that later. Do you know
20 anything about the license plate that was on the
21 back of that Toyota Celica that day?

22 A Well, know about it, what about it?

23 Q Well, did you know that it actually -- when it was
24 ran on the system, it matched a Honda Civic?

25 A I don't know anything about you guys' system. It's
26 just a plate I put on the back of my car for

1 identification purposes.

2 Q What were you trying to identify with that plate you
3 put on the back of your car?

4 A I don't know. If -- in case anything happened to my
5 car, I need to get it towed, someone needed to
6 identify my vehicle. I mean --

7 Q Did you make that homemade continuous sticker --

8 A I don't remember --

9 Q -- and put it on the back --

10 A -- where I got --

11 Q -- of the plate, too?

12 A -- the plate, to be honest.

13 Q Pardon?

14 A I don't remember where I got the plate.

15 Q But you got that plate yourself?

16 A I -- like I said, I don't remember. I think I got
17 it off an old used car. I have a whole pile of
18 license plates at home.

19 Q Do you remember putting it on your -- that Toyota
20 Celica?

21 A Not expressly, no. I have a couple cars, so --

22 MR. PASHOVITZ: Your Honour, I wonder if I
23 could obtain Exhibit P-1 in this case, the license
24 plate?

25 Q I'm just producing and showing to you Exhibit P-1 in
26 these proceedings, Saskatchewan 131 HFG. Do you

1 want to take a look at that item?

2 A (No audible response.)

3 Q Does that appear to be the license plate that you
4 had on your car --

5 A It appears --

6 Q -- that day?

7 A -- to be.

8 Q Can you tell me about that continuous sticker in the
9 bottom right-hand corner?

10 A (No audible response.)

11 Q Is that something you recognize or not?

12 A Yeah. It's a continuous sticker.

13 Q Okay. Did you take any steps to put that continuous
14 sticker on that license plate yourself or not?

15 A No, I don't think so. I'm pretty sure that was on
16 the plate when I got it.

17 Q Okay. And do you remember paying SGI or paying any
18 license issuer any money to obtain this license
19 plate before you put it on your Toyota Celica?

20 A Not expressly, no. Is this about insurance, or is
21 this about registration? I mean, my car could have
22 been insured in B.C., right, but I just put a
23 Saskatchewan license plate on it, so it's registered
24 out here, so you guys know about it. This is about
25 third party insurance.

26 THE COURT: So do you think by putting

1 the plate on it, you've registered it?

2 THE WITNESS: I thought the car was
3 registered already.

4 THE COURT: Did you -- what steps did you
5 take to register the car?

6 THE WITNESS: I actually was in contact
7 with SGI. I let them know that I bought the car
8 from them. I mean, I don't think -- I don't even
9 think it's my place, when I buy the car from them,
10 then it's up to them to register it into my name. I
11 don't really think it's in my place. I mean, why
12 should I tell them, "Hey, you, I bought my car from
13 you."

14 THE COURT: So you mean every year when I
15 pay them money to get my registration, I shouldn't
16 be doing that?

17 THE WITNESS: No. I don't -- no, you
18 should -- you should do that. I mean, it's -- it
19 depends on the circumstances. If you have a car, I
20 mean, technically all you're doing when you're
21 getting registration is just buying insurance. The
22 registration doesn't expire. Registration in this
23 province is taken care of by the Saskatchewan Auto
24 Fund. And Saskatchewan Auto Fund is a non-profit
25 division of SGI. It's not for profit, which means
26 you don't need to repay them every year. The only

1 thing that expires is the driver's -- or is your
2 vehicle insurance, and not your registration.

3 THE COURT: All right.

4 MR. PASHOVITZ: Your Honour, if I may at this
5 time -- I did provide notice at one of the earlier
6 case managements of the Crown's intention to
7 introduce SGI registration materials. Just for the
8 Court's benefit --

9 THE COURT: Yes.

10 MR. PASHOVITZ: -- these do show that that
11 license plate that I've just shown to Mr. Stewart
12 was actually a license plate that matched a 1992
13 Honda Civic four door. And these documents also
14 show that through an SGI search that they were
15 unable to find that the 1991 Toyota Celica in
16 question was registered in the Province of
17 Saskatchewan on August 24th, 2012. So I'd file those
18 as the next exhibit in these proceedings. I think
19 we're at P-9, Your Honour. I can show a copy of
20 this --

21 THE COURT: Do you --

22 MR. PASHOVITZ: -- to --

23 THE COURT: -- have a problem with that?

24 MR. PASHOVITZ: -- to Mr. Stewart, so he --

25 THE WITNESS: So you're saying --

26 MR. PASHOVITZ: -- knows what I'm --

1 THE WITNESS: -- that Saskatchewan
2 Government Insurance is saying my vehicle is
3 unregistered? But I --

4 THE COURT: That's what --

5 THE WITNESS: -- have a --

6 THE COURT: -- that's what --

7 THE WITNESS: -- bill of sale?

8 THE COURT: -- that says, yes.

9 MR. PASHOVITZ: He can look at the documents
10 before I file them with the Court --

11 THE COURT: You may have --

12 MR. PASHOVITZ: -- Your Honour.

13 THE COURT: -- a legal disagreement with
14 SGI about what amounts to registration.

15 THE WITNESS: Well, and --

16 THE COURT: But all he --

17 THE WITNESS: -- and to be honest --

18 THE COURT: -- all that document says is
19 -- is that -- is that whoever the author of that
20 document is says that it's not registered.

21 THE WITNESS: Okay. And I really thought
22 that I could deal with this in traffic court. I
23 mean, I have a trial set for --

24 THE COURT: Just -- just look at the
25 papers, and see whether you have an objection to the
26 Crown filing them.

- 1 THE WITNESS: No, we're good. That's all
2 right. Whatever.
- 3 THE COURT: All right. Okay, P-9.
- 4 MR. PASHOVITZ: It's four pages, Your Honour,
5 SGI records.
6
7 EXHIBIT P-9: SGI Records for
8 The Toyota Celica Driven by
9 Jarvis Stewart (4 pages)
- 10 THE COURT: Notice was given?
- 11 MR. PASHOVITZ: Yes, it was, at the case
12 management, Your Honour.
- 13 THE COURT: All right.
- 14 MR. PASHOVITZ: Thank you.
- 15 THE COURT: Thanks.
- 16 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:
- 17 Q Do you --
- 18 A (No audible response.)
- 19 COURT CLERK: (Inaudible) that.
- 20 THE COURT: I'm okay. Well, here, here.
- 21 Q I don't want to dwell on this too much more, Mr.
22 Stewart, but -- do you treat the registration of a
23 vehicle differently from insuring a vehicle; is that
24 correct?
- 25 A Yeah.
- 26 Q Well, was your Toyota Celica insured on the date in
27 question, if that's what you're focusing in on is
28 insurance, as opposed to registration or --

1 A It's irrelevant.

2 THE COURT: Answer the question.

3 THE WITNESS: No, it wasn't insured.

4 MR. PASHOVITZ: Yes. I just want to see if I
5 could obtain Exhibit P-7 in these proceedings?

6 THE COURT: That would -- the clerk has
7 that.

8 COURT CLERK: I think that's the one.

9 MR. PASHOVITZ: Thanks. That's the one.

10 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

11 Q I just want to produce and show to you Exhibit P-7
12 in these proceedings. It's titled "Notice and Claim
13 for Right to Travel for Jarvis Stewart." Do you
14 want to take a look at that document and let me know
15 if you recognize it or not?

16 A Yeah. It's in my car when I got pulled over.

17 Q All right. You can keep that original in front of
18 you. I just wanted to ask you some questions about
19 it; okay?

20 A (No audible response.)

21 Q I just want to read portions and just ask for you to
22 elaborate on what they refer to, just for the
23 record.

24
25 "Know all men and women by these
26 presence that I, Jarvis Stewart,
27 being first duly affirmed, depose
28 and sayeth that I have researched
29 the organic laws of the *Charter of*

1 *Rights and Freedoms of Canada,*
2 including case law, i.e. common
3 law, and, now, affirm that I have
4 secured the unalienable and
5 fundamental unrestricted and
6 unregulated right to travel upon
7 both the public walkways and the
8 highways and transport of my
9 personal and (inaudible) property,
10 duly conveyed, unhindered by any
11 private, corporate, or statutory
12 law, act, or Ministry of
13 Transportation regulation or
14 so-called requirement. This
15 unalienable right to travel is
16 guaranteed by the *Canadian*
17 *Constitution Act*, Part I, Section
18 7 of the *Canadian Bill of Rights*,
19 and the *Charter of Rights and*
20 *Freedoms*, and upheld by many court
21 decisions in support of that
22 right. And I will explicitly
23 reserve, assert, and defend that
24 right. This Affidavit is
25 submitted upon demand of a
26 driver's license, registration, or
27 proof of insurance as part of the
28 official record of any ensuing
29 action and must be introduced as
30 evidence in said action."

31 You've read that along with me, Mr. Stewart?

32 A Sure.

33 Q Would you agree with me that this seems to say that
34 you're telling people that you don't believe you
35 need a driver's license?

36 A Sure.

37 Q Okay. Does this document seem to be such that
38 you're saying to people that you don't believe you
39 need to be registering the vehicle that you're

1 driving?

2 A I'm not really sure what you mean by, "This says to
3 people." This was in my glove box. Nobody ever
4 asked to look at this. This was found through an
5 illegal, unlawful search of my vehicle. So I don't
6 think it says that I'm saying anything because this
7 is supposed to be read by someone that was given
8 permission.

9 Q Okay. This was in your glove box though; correct?

10 A That was in my glove box.

11 Q Jarvis Stewart has the name on it?

12 A (No audible response.)

13 THE COURT: He's -- he's asking you what
14 you believe?

15 THE WITNESS: (No audible response.)

16 THE COURT: Do you believe that you don't
17 have to have -- register your vehicle?

18 THE WITNESS: No, I don't -- I wouldn't say
19 that I believe I don't have to register my vehicle,
20 no. I mean, I registered my vehicle.

21 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

22 Q Do you believe that you don't have to have a
23 driver's license to drive on our roads?

24 A Pretty much, yeah.

25 Q Okay. Just the next paragraph, do you want to walk
26 along with me?

1 A (No audible response.)

2 Q "I, Jarvis Stewart, do not
3 under any circumstances utilize
4 the public highways for commercial
5 purpose. I am not a legal
6 'person' engaged in interstate
7 commerce, nor do I derive income
8 from the travel and transport of
9 goods. I am not a 'driver' nor am
10 I an 'operator' of a 'motor
11 vehicle'. The driver's license is
12 for 'motor vehicles' involved in
13 commerce only. My private, self-
14 propelled voluntary conveyance
15 contrived as carriage is not
16 involved in commerce. Therefore,
17 it is not a motor vehicle. The
18 corporate province of
19 Saskatchewan, *Highway Traffic Act*
20 does not disclose the true intent
21 and purpose of the statutes,
22 though a motor vehicle is
23 adequately and clearly defined."

24 So would you agree with me that this says that you
25 don't believe you need to have a driver's license?

26 A Didn't you just ask me that question?

27 Q I'm just walking you through -- this is your
28 document. I'm just walking through what you --

29 A Sure.

30 Q -- believe it means.

31 A I had a driver's license, if that's what you're
32 asking me. Yeah, I believe people in Canada don't
33 need a driver's license, but I had mine in my pocket
34 when I got pulled over. And I gave it to the
35 constable who pulled me over, so I'm not really sure

1 what this is about. I had a driver's license.

2 Q But your vehicle wasn't registered though?

3 A My vehicle was registered, man. I bought my vehicle
4 from SGI. My vehicle wasn't insured.

5 Q So you're -- you're saying that you bought your
6 vehicle from SGI, but it wasn't -- but it -- can you
7 walk me through that again?

8 A Sure. I think it's no problem to drive with no
9 driver's license, as long as someone takes care and
10 attention, okay, and doesn't drink and drive, okay.
11 I had a driver's license. I had -- you have my
12 driver's abstract, and it's completely clean. I
13 don't have a single thing on it, but one seatbelt
14 ticket, okay. So I don't think this has anything to
15 do with traffic safety or driver's licenses or
16 anything. That's just a belief I have, okay. It's
17 just a theory. But as far as me being unregistered,
18 you're accusing me of driving an unregistered
19 vehicle, I have told you, I bought my vehicle from
20 SGI. Those -- that's -- you know, the -- the -- the
21 company that's in charge of vehicle registrations in
22 the province. So I bought it from them. I told
23 them to register it in my name. I had safety
24 fitness papers in -- in -- inspections done in my
25 name for this vehicle. This vehicle was registered
26 to me. This vehicle belonged to me. I had all of

1 the paperwork for this vehicle in the glove box of
2 my car when I got pulled over. And I was perfectly
3 willing to give it to anybody at the side of the
4 road. So I'm really not sure what you're asking me
5 right now, Bryce, or what -- what the relevance of
6 this is.

7 Q Well, there's no secret here. It's my theory that
8 you never wanted to comply with any of the traffic
9 laws of the Province of Saskatchewan?

10 A That's your --

11 THE COURT: He said --

12 THE WITNESS: -- theory, is it?

13 THE COURT: -- he says he didn't believe
14 in driver's licenses, but he had one.

15 Q What about the next paragraph then?

16 A (No audible response.)

17 Q "I, Jarvis Stewart --"

18 A What about --

19 Q "-- am not effectively --"

20 A -- what about --

21
22 Q "-- connected with a trade or
23 business in the corporate monopoly
24 of the defector Canadian
25 government, whether federal,
26 provincial, country, or municipal.
27 I am not a resident 'Canadian
28 citizen'. I am domiciled in a
29 foreign jurisdiction to both the
30 corporate state and federal
31 governments. I have not knowingly

1 or willingly waived any of my
2 inalienable rights. Therefore, I,
3 Jarvis Stewart, have determined
4 and hereby affirm by Affidavit
5 under oath, by virtue of my
6 declared sovereign state
7 citizenship and American case law,
8 that I am not required to have
9 government permission to travel,
10 not required to have a driver's
11 license --"

12 A You've got her, buddy. You're right.

13
14 Q "-- not required to have
15 vehicle registration of my
16 personal property --"

17 A Touchdown.

18
19 Q "-- nor to the surrender (sic)
20 -- nor to surrender the lawful
21 title of my duly conveyed property
22 to the Province as security
23 against government indebtedness
24 and the undeclared federal
25 bankruptcy."

26 A That's right, Bryce. I'm free to travel on the
27 roads. Do you have a copy of the *Criminal Code*
28 there? I can show you the definition of a highway.

29
30 Q "Any administrative rule,
31 regulation, or statutory act of
32 any state legislature or judicial
33 tribunal to the contrary is
34 unlawful and clearly
35 unconstitutional, a violation of
36 my inalienable birth rights that's
37 null and void. The rule of law
38 has clearly adjudicated that where
39 rights secured by the constitution
40 are involved, there can be no
41 rule-making or legislature which
42 would abrogate them."

1 A Yeah, you see, Bryce, I've got the right to travel
2 freely on the roads, without people kicking the shit
3 out of me. That's what that means, man. I have the
4 right to travel in Canada, without being just held
5 against my will and arbitrarily detained and thrown
6 in jail for 18 hours. That's what that says. Can I
7 have a copy of the *Criminal Code*, please?

8 THE COURT: Okay.

9 Q Sure.

10 A Have you read the definition of a highway in the
11 *Criminal Code*?

12 Q Go ahead, Mr. Stewart.

13
14 A "Highway means a road to which
15 the public has the right of
16 access, and includes bridges over
17 which or tunnels through which a
18 road passes."

19 The public has a right to access; right? That's me,
20 I'm the public, I have the right to access that
21 road, man.

22 Q Do you want to flip that over?

23 A (No audible response.)

24 Q You can read along with me, if you like.

25
26 "Any action involving a citation
27 or ticket issued, confiscation,
28 impoundment, or search and seizure
29 of my private property by a peace
30 officer, a constable, or any other
31 public service or employee which
32 carries a fine or jail time is a
33 penalty or sanction thus

1 converting a right into a crime.
2 Any citation or ticket is thus
3 null and void under every
4 circumstance without exception,
5 government officials must hold to
6 the *Constitution of Canada, 1982*
7 supreme over any other laws,
8 regulations, or orders. Every
9 peace, executive officer, judicial
10 officer has sworn an oath to
11 preserve the peace, protect the
12 lives, property, and rights of the
13 citizens, and their
14 Constitutionally protected rights
15 to infringe on America's
16 constitutional rights is a direct
17 violation of their oath or office.
18 Any action by a police, executive
19 officer, officer of the court,
20 public servant, or government
21 official to assert unlawful
22 authority under the colour of law
23 will be construed as a direct and
24 willful violation of my
25 constitutionally protected rights,
26 and will be prosecuted to the full
27 extent of the rule of law."

28 A Do you understand the irony of what you just told
29 me, Bryce? Do you understand that?

30 Q Do you agree with this?

31 A Sure.

32 Q What I've just read to you?

33 A Sure. I agree. That's why I'm going to sue you for
34 malicious prosecution, man.

35 Q Well, just read along with me.

36 A Sure.

37
38 Q "This also certifies that
39 I, Jarvis Stewart, have previously

1 completed and passed the test
2 measuring my competency to safely
3 control a motorized vehicle upon
4 the public highways within North
5 America."

6 A That's right, I had my driver's license, didn't I?

7
8 Q "I have also met or exceeded
9 all commonsense requirements
10 concerning the rules of the road
11 and the ability to maneuver a
12 self-propelled voluntary
13 conveyance contrived as a carriage
14 in a safe and responsible manner."

15 Do you agree with that, as well, too?

16 A Sure. Is that a question?

17 Q I'm just asking if you still agree with the
18 document --

19 A Sure.

20 Q -- that was found in your glove box? Follow along
21 with me, with number 1:

22
23 "The right to travel freely,
24 unencumbered and unfettered is
25 guaranteed as a right and not a
26 mere privilege. That the Right to
27 travel is such a basic right that
28 it does not even need to be
29 mentioned for it is self-evident
30 by commonsense that the right to
31 travel is a basic commitment of a
32 free society to come and go from
33 length and breadth freely
34 unencumbered and unfettered
35 distinguishes the characteristic
36 required for a free people to
37 exist in fact."

38 Would you -- do you agree with that?

39 A Yes. I probably wouldn't have put this in my glove

1 box, if I didn't agree with it, hey.

2 Q Okay, the last paragraph:

3
4 "Further, the right to travel by
5 private conveyance for private
6 purposes upon the common way
7 cannot be infringed. No license
8 or permission is required for
9 travel when such travel is not for
10 the purpose of commercial profit
11 or gain on the open highways
12 operating under license in
13 commerce. The above-named common
14 law citizen listed is not
15 operating in commerce and as such
16 is thereby an oblige from the
17 requirement of a license as such.
18 Further, the Saskatchewan Province
19 is forbidden by law from
20 converting a basic right into a
21 privilege and requiring a license
22 or a fee charged for the exercise
23 of the basic right. And if the
24 Government of Saskatchewan, Canada
25 does erroneously convert basic
26 rights into privileges and require
27 a license or fee, a citizen may
28 ignore the license or fee with
29 total immunity for such existence
30 of a basic right. Now, if a
31 citizen exercises a basic right
32 and a law of any province is
33 contrary to such -- of such
34 exercise of that basic right, the
35 said supposed law of any province
36 is a fiction of law, and 100
37 percent, totally unconstitutional,
38 and no courts are bound to uphold
39 it, and no citizen is required to
40 obey such unconstitutional law or
41 licensing requirement. Please,
42 see *Marbury v. Madison*, 5 U.S.
43 137, year (1803), which has never
44 been overturned in over 194
45 years."

1 Do you agree with that?

2 A Yes.

3 Q Okay. Would you agree that there weren't many motor
4 vehicles around in 1803?

5 A I don't know. I wasn't around back then.

6 Q All right.

7
8 "Now, further, if a citizen relies
9 in good faith on the advice of
10 counsel and on the decisions of
11 the Supreme Court of Canada, that
12 citizen has a perfect defence to
13 the element of willfulness and
14 since the burden of proof of said
15 willfulness is on the prosecution
16 to prove beyond a reasonable
17 doubt, said task or burden is
18 totally impossible to specifically
19 perform, there is no cause."

20 Would you agree with that?

21 A Yeah.

22 Q Okay. So I'm suggesting to you that you never once
23 intended on this evening in question to comply with
24 any demands of any --

25 A No, I --

26 Q -- police --

27 A -- complied --

28 Q -- officer?

29 A -- perfectly with demands.

30 Q You complied perfectly with --

31 A Oh, yeah.

32 Q -- the demands?

- 1 A I complied --
- 2 Q You --
- 3 A -- with them under threat of pepper spray to be
4 handcuffed behind my back. I complied with that,
5 didn't I?
- 6 Q So you agree with everything that I've just read to
7 you with respect to the document that was found in
8 your glove box?
- 9 A Nobody ever --
- 10 Q Correct?
- 11 A -- asked me for my license or registration, bro.
12 Nobody ever asked me. They told me to, "Get back in
13 the car. Get back in the car, right now." And they
14 kicked the shit out of me. If someone would have
15 asked me for my license or registration, I would
16 have been all too happy to provide it. No problem
17 at all.
- 18 Q So even with this document in mind, even with your
19 realization that you believe you don't need a
20 driver's license, you don't need to register a
21 vehicle, you're saying that you were compliant
22 with --
- 23 A (No audible response.)
- 24 MR. JAMES STEWART: I object --
- 25 Q -- all of the police officer's --
- 26 A (No audible response.)

- 1 MR. JAMES STEWART: -- to that.
- 2 Q -- demands?
- 3 A (No audible response.)
- 4 MR. JAMES STEWART: He does believe in
5 registering the vehicle. The vehicle was
6 registered.
- 7 THE COURT: Just wait.
- 8 MR. JAMES STEWART: But he's saying --
- 9 THE COURT: Just -- just --
- 10 MR. JAMES STEWART: -- he doesn't --
- 11 THE COURT: -- just -- just -- just
12 -- just let him answer the questions. And you can
13 object. It -- he --
- 14 THE WITNESS: One more time --
- 15 THE COURT: -- he can object.
- 16 THE WITNESS: -- with the question, Bryce?
- 17 THE COURT: Huh?
- 18 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:
- 19 Q With this document in mind, with those beliefs there
20 that you've agreed to, you're, now, saying to the
21 Court that you've complied with the demands of the
22 police officer in question?
- 23 A Yeah.
- 24 Q Because it sounds to me, when an individual believes
25 the things that are written in that Notice and Claim
26 Right to Travel, that you would just be doing

1 exactly the opposite, if a police officer asked you
2 for your driver's license and registration?

3 A Well, he didn't ask me for my driver's license and
4 registration. Even if he did, it's his right in *R.*
5 *v. Lukes* that it's the authority of a peace officer
6 to stop and request information, Section 209.1 of
7 *The Traffic Safety Act* says --

8 THE COURT: But that only --

9 THE WITNESS: -- expressly --

10 THE COURT: -- that only --

11 THE WITNESS: -- section --

12 THE COURT: -- that section only applies
13 if the officer does not see you committing an
14 offence.

15 THE WITNESS: And he hadn't seen me commit
16 an offence.

17 THE COURT: Well, he said he did. He
18 said he -- he checked your license plate while you
19 were on 8th Street, and that it didn't match the
20 vehicle. That's an offence.

21 THE WITNESS: That's an offence? Okay. So
22 would that offence -- with that offence, I could
23 deal with that in traffic court; right?

24 THE COURT: If that's all that happened,
25 yes.

26 THE WITNESS: That's not -- that's not a

- 1 criminal --
- 2 THE COURT: If that's --
- 3 THE WITNESS: -- offence.
- 4 THE COURT: -- all that happened,
5 that's --
- 6 THE WITNESS: That's not a criminal
7 offence. I just --
- 8 THE COURT: That's --
- 9 THE WITNESS: -- read the definition.
- 10 THE COURT: -- that may be, but that's
11 not what we're here about.
- 12 MR. PASHOVITZ: Your Honour, I wonder if I
13 could have the exhibits that were filed by
14 Mr. Stewart this morning, the inspection
15 certificates, things of that nature?
- 16 THE COURT: Yes. I have all of that here
17 -- or some of it here.
- 18 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:
- 19 Q Do you remember off the top of your head --
- 20 A (No audible response.)
- 21 COURT CLERK: Thank you.
- 22 Q -- what day or month you got the vehicle from SGI
23 salvage?
- 24 A Oh, it was August of 2011, something like that.
- 25 Q I'll produce and show to you the inspection
26 certificates and the document from SGI Salvage.

- 1 Would you agree with me that the SGI Salvage
2 document seems to have a date of -- they say
3 07/20/2011?
- 4 A Yeah.
- 5 Q Does that sound accurate, as far as when you
6 obtained the Toyota Celica?
- 7 A Yeah.
- 8 Q So you would agree, July 20th, 2011?
- 9 A Yeah.
- 10 Q And would you agree that your inspection
11 certificates refer to dates in August of 2011?
- 12 A Yeah.
- 13 Q All right. But the date of this incident we're
14 talking about is August, 2012; correct?
- 15 A Mmhmm.
- 16 Q All right, so would you agree with me, it's one
17 thing to have a vehicle pass an inspection in
18 August, 2011, but a year later, it may well not be
19 fit to drive on the road?
- 20 A Not really. I don't know. There was nothing wrong
21 with it.
- 22 Q Can I obtain those back from you?
- 23 A (No audible response.)
- 24 Q Can you tell the Court what the condition of your
25 vehicle was on August 24th, 2012?
- 26 A (No audible response.)

- 1 Q Had it just been in a collision?
- 2 A There was some damage to the door. It was pretty
3 minor. It was a previously salvaged vehicle, so I
4 wouldn't say it was in mint condition or -- or
5 anything like that, but -- I don't know. It was
6 just my beat up old car. It wasn't really that bad.
7 It was roadworthy. I had driven it in from Hanley,
8 and there no -- no mechanical issues. Like I said,
9 it had been safetied, so --
- 10 Q Pardon me, on that last point?
- 11 A It had been safetied.
- 12 Q A year earlier though?
- 13 A Yeah.
- 14 Q And there had been a collision in-between the safety
15 and August 24th, 2012?
- 16 A Oh, well, not a collision. There was some damage to
17 the door, but no collision.
- 18 Q All right. Mr. Stewart -- and you can stop me any
19 time, Your Honour. Mr. Stewart, I want to produce
20 and show to you this document. It's headed
21 "Affidavit Submitted by Jarvis Stewart, this
22 document is a matter of public record, this document
23 is to be served into my court file dated
24 September 4th --"
- 25 A (No audible response.)
- 26 THE COURT: Which --

1 Q -- 2012.

2 A (No audible response.)

3 THE COURT: -- which exhibit is that?

4 MR. PASHOVITZ: I'm sorry?

5 THE COURT: Which exhibit is that?

6 MR. PASHOVITZ: I just -- it's not an exhibit
7 yet.

8 THE COURT: Oh, I see.

9 MR. PASHOVITZ: I just wanted to produce and
10 show it to him.

11 THE COURT: Oh, this is some -- all
12 right.

13 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

14 Q Can you tell me if you recognize that document?

15 A Yeah. It's an Affidavit we filed.

16 Q Okay. If you turn to page 2, it appears to me that
17 there's a signature there in blue. Is that your
18 signature?

19 A Yeah.

20 Q So you voluntarily provided this letter to Saskatoon
21 Police Service and/or the prosecutor's office?

22 A I wouldn't say voluntarily. I mean, I filed it
23 because I thought that I was compelled to try to
24 prove my innocence against the malicious accusations
25 that you and the police officers were bringing
26 against me, so -- but, again, I mean, technically,

- 1 this was voluntary.
- 2 Q And you completed that document?
- 3 A Sure, yeah.
- 4 MR. PASHOVITZ: I'll just --
- 5 THE COURT: Is this --
- 6 MR. PASHOVITZ: -- produce and show a copy to
- 7 the Court, Your Honour.
- 8 THE COURT: -- is there a date on it?
- 9 THE WITNESS: September the 4th, 2012.
- 10 THE COURT: Are -- are you filing this as
- 11 a statement reduced in writing or what does --
- 12 MR. PASHOVITZ: No, I'm not, Your Honour.
- 13 What I'm proposing is to cross-examine him on this
- 14 statement, so I'm not intending to file it, as an
- 15 exhibit, unless the Court wants me to, but I do have
- 16 some questions for him with respect to what he wrote
- 17 in this letter -- or sorry -- I apologize
- 18 -- Affidavit Submitted by Jarvis Stewart.
- 19 THE COURT: But -- all right, well, I'll
- 20 have to determine whether it should be an exhibit at
- 21 some point.
- 22 MR. PASHOVITZ: Certainly, Your Honour.
- 23 THE COURT: Okay.
- 24 MR. PASHOVITZ: If you like, Your Honour, I
- 25 can provide you with at least a copy of it now. And
- 26 I want to have the original before Mr. Stewart. And

1 I do have some questions for him about it.

2 THE COURT: Not a problem.

3 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

4 Q Mr. Stewart, if you want to just look at the second
5 full paragraph, it's the first larger paragraph?

6 A (No audible response.)

7 Q I just want to ask you about the first couple of
8 sentences there. And I'll have you read along to
9 refresh your memory.

10
11 "On the evening of August 24th,
12 2012, I was traveling with my
13 brother in my personal conveyance
14 headed to Shopper's Drug Mart to
15 pick up some mail. As I made a
16 left at the -- into the parking
17 lot, I noticed flashing lights
18 behind my vehicle."

19 You've read that?

20 A Mmhmm.

21 Q Are you agreeing with that statement in your
22 Affidavit?

23 A Yeah, I guess so. I mean, at some point, I noticed
24 flashing lights. I'm pretty sure it was after I
25 stopped my car. And then I wrote this a couple of
26 days after, it had -- my recollection is a little
27 rough at that point because -- but, yeah, that's
28 fine, I -- yeah, that's fine.

29 Q Well, wouldn't you agree that your recollection of
30 the incident would be better a couple of days after

1 the incident, as opposed to --

2 A Well, I --

3 Q -- now, some --

4 A -- had a ringer --

5 Q -- months after?

6 A -- of a headache from staying up. I had, like, a
7 migraine headache for, like, a week after being in
8 jail for that long.

9 THE COURT: Are you adopting this as your
10 statement now?

11 THE WITNESS: Oh, yeah, this --

12 THE COURT: Are you adopting --

13 THE WITNESS: -- is my statement.

14 THE COURT: -- this?

15 THE WITNESS: Yeah.

16 THE COURT: And is it --

17 THE WITNESS: I mean, I --

18 THE COURT: -- as the truth?

19 THE WITNESS: Yeah, I wrote this. Yeah,

20 this is the truth.

21 THE COURT: Okay.

22 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

23 Q Next:

24

25 "I pulled my vehicle into a
26 parking stall and put it in park.
27 I noticed at this point the car
28 was just black or grey in colour.
29 Upon exiting my vehicle, I heard a

1 man start to shout at me over some
2 loudspeaker. I did not understand
3 the commands, nor did -- did I
4 recognize the person in the car."

5 Are you adopting that as your statement?

6 A Yeah.

7 Q That you heard -- I'm sorry:

8
9 "Shout at me over some kind of
10 loudspeaker, but did not
11 understand the commands."

12 A Yeah.

13 Q Can you explain that to me?

14 A (No audible response.)

15 Q If someone is shouting at you through a loudspeaker,
16 how is it that you're not able to "understand the
17 commands", to use your words?

18 A I didn't really understand what he wanted me to do.
19 I didn't really understand the commands at first.
20 It was a loudspeaker over a car. I heard some sort
21 of, "Get back." I wasn't sure if he wanted me to
22 get down, get back in the car, get -- it was
23 something to do. And I just stood there and said,
24 "I don't understand. Who are you, and what seems to
25 be the problem?"

26 Q Okay. I just want you to read the next sentences to
27 refresh your memory. For the record:

28
29 "I calmly exited my vehicle to see
30 what was the matter. This man
31 never identified himself. There
32 were no identifiable markings on

- 1 his car, and he was wearing all
2 black, with no badge or
3 identifiable markings."
- 4 A Yeah.
- 5 Q Are you adopting that --
- 6 A Yeah.
- 7 Q -- as your statement? Now, Mr. Stewart, the
8 officer, Constable Keating, was here in court
9 yesterday, wearing his working Saskatoon Police
10 Service uniform, with the badge right on it; you
11 would agree?
- 12 A Yeah.
- 13 Q He said he was wearing that same uniform on the date
14 in question; you'd agree with that?
- 15 A Yeah, I guess so.
- 16 Q But you're saying you didn't notice a badge on
17 him?
- 18 A Well, it's hard to see when a guy comes out of his
19 car and starts running at you and then tackles you,
20 to see what he's wearing.
- 21 Q So -- so is that -- so you're telling this Court,
22 that's what happened then?
- 23 A Yeah.
- 24 Q That this man got out of his car and --
- 25 A Attacked me.
- 26 Q Right off the bat?
- 27 A Yeah.

1 Q Directly towards you and tackled you?

2 A Yeah.

3 Q He didn't say anything in-between?

4 A No.

5 MR. JAMES STEWART: No, he said, "Blah, blah,
6 blah."

7 THE WITNESS: Yeah.

8 MR. JAMES STEWART: He said, "Blah, blah, blah."

9 THE WITNESS: He said -- he said maybe
10 something about -- to the effect I was under arrest,
11 but that was about it. But he never said what for.
12 He never said who he was. And I simply said, "Who
13 are you and what seems to be the problem?"

14 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

15 Q Mmhmm.

16 A At that point, the man attacked me.

17
18 Q "The man in the car then
19 aggressively ran towards me and
20 grabbed me and violently twisted
21 man arm behind my back. I
22 objected to this treatment. I
23 was, now, suffering extreme pain.
24 And I did not know this man, nor
25 did he identify himself."

26 A Yeah.

27 Q Do you adopt that as your statement?

28 A Yeah.

29 Q So:

30
31 "I asked what he was doing, and

1 the man simply said I was under
2 arrest for obstruction. I began
3 to object loudly, as I felt I was,
4 now, in danger, and at risk of
5 being hurt even further. The man
6 wrenched my arms behind my back,
7 and put handcuffs on me so tightly
8 that my wrists bled."

9 A Yeah.

10 Q You agree -- you're adopting that as your
11 statement?

12 A Well, yeah. He actually threatened to pepper spray
13 me first. That's why I pretty much complied to be
14 handcuffed. He knocked my hat off my head, took my
15 sunglasses off, and threw them to the ground. So
16 this is, kind of, the short version, but, yeah, it's
17 pretty much what happened.

18 Q Well, did he threaten to pepper spray you because I
19 don't see that in here?

20 A Yeah -- no, I just, I guess I forgot to include that
21 when we -- when I -- when I wrote this up, but,
22 yeah, he did threaten to pepper spray me.

23
24 Q "I eventually came to know this
25 man as -- I eventually came to
26 know this man as Constable Jay
27 Keating, number 738. The man was
28 very belligerent and started to
29 swear at me, telling me to 'Fuck
30 off' and to 'Shut the fuck up,
31 douchebag.' I honestly could not
32 believe the situation escalated so
33 quickly. I began to, now, fear
34 for my own life and my brother's.
35 The man continued to bark orders
36 into a chest microphone. I heard

1 him calling for backup. The
2 entire time, my head was spinning,
3 and I had a sinking feeling in my
4 stomach. I tried to stay calm. I
5 told this man and my brother, who
6 was, now, every agitated and
7 worried, to, please, try and
8 relax, as this was obviously some
9 sort of misunderstanding."

10 Do you adopt that as your statement?

11 A Yeah.

12 Q So who were you telling to relax?

13 A The police officer and my brother. I was telling
14 everybody to relax.

15 Q And so you're saying that this man -- as you call
16 him, this man who threatened to pepper spray you and
17 just tackled you, but then yet you're telling him
18 and your brother to relax?

19 A Yeah -- no, more or less, I was just telling the
20 -- the cop to relax. I mean, I was just -- I don't
21 know. I mean, it was a tense situation. The guy
22 was screaming at me. I was just saying, "Relax." I
23 don't really know what you're trying to get at.
24 Someone's assaulting me, and you tell them to relax,
25 or just say, "Relax," what does that -- I don't
26 understand what you're getting at.

27 Q I just want to refresh your memory with the next
28 paragraph.

29
30 "Before too long, I heard sirens
31 and another police cruiser come
32 flying into the parking lot, over

1 the medians, and almost struck my
2 brother, as he was pleading with
3 Keating to let me go. The cruiser
4 came to a stop a few feet from
5 -- from my brother, and two more
6 unidentified men got out."

7 Do you adopt that as your statement?

8 A Yeah, man.

9 Q So you, now, know those individuals to have been
10 Saskatoon Police Service officers; correct?

11 A Schaefer and McAvoy, yeah.

12 Q Right, but you're saying that they -- you were
13 describing them as "two more unidentified men"?

14 A That's right.

15 Q So how is it that you're saying that they're
16 unidentified men?

17 A Well, at that point, they were unidentified, weren't
18 they?

19 Q Well, would you agree with me --

20 A I know --

21 Q -- they would be --

22 A -- them, now, as Constable Schaefer and Constable
23 McAvoy, but at that point, no one identified
24 themselves (sic) to me. I didn't know who these men
25 were. They weren't even driving a police vehicle.
26 It was unmarked, so they were unidentified men.

27 Q But wasn't that same vehicle coming into the parking
28 lot with its lights flashing?

29 A It didn't have any lights on the hood, if that's

- 1 what you're asking me.
- 2 Q Well, did you --
- 3 A It wasn't a normal --
- 4 Q -- did you see --
- 5 A -- police vehicle.
- 6 Q -- any flashing red and blue lights on that vehicle,
7 where these two --
- 8 A I --
- 9 Q -- unidentified men got out?
- 10 A -- I don't recall on that vehicle.
- 11 Q Did you recall that vehicle having a siren operating
12 when it pulled into the parking lot off of 8th
13 Street, and then the two unidentified men getting
14 out of it?
- 15 A I heard -- I mean, ten vehicles showed up, so at
16 some point, I did hear sirens and see flashing
17 lights, but the first two vehicles were unmarked,
18 and I don't remember seeing, really, flashing lights
19 on any of them. If they were, they were inside the
20 dash, and they weren't red and blue, they were
21 just --
- 22 Q Oh, so are you saying that you saw flashing lights
23 on the first unmarked police vehicle, like you said
24 in this statement, or are you saying that you
25 didn't?
- 26 A On the first -- which vehicle are you talking about,

1 the one that's pulling in now?

2 Q Constable Keating's, the first one?

3 A Well, eventually I saw flashing lights on Constable

4 Keating's vehicle, but I don't really know what

5 flashing lights means. I can buy flashing lights at

6 Princess Auto.

7 THE COURT: Oh, come on.

8 THE WITNESS: Okay, I -- I --

9 THE COURT: You knew --

10 THE WITNESS: -- I -- I saw --

11 THE COURT: -- the fellows arrived --

12 THE WITNESS: -- flashing --

13 THE COURT: -- in the marked --

14 THE WITNESS: -- I saw flashing lights.

15 THE COURT: Just a --

16 THE WITNESS: I --

17 THE COURT: -- minute. You knew the

18 fellows who marked (sic) -- who came in the marked

19 police vehicle were policemen; right?

20 THE WITNESS: Who came in marked? No

21 one --

22 THE COURT: The ones --

23 THE WITNESS: -- came in --

24 THE COURT: -- who came in marked police

25 vehicles, with the fellow who put you in the back of

26 the police car?

- 1 THE WITNESS: Well, at that point, yeah.
- 2 THE COURT: You knew they were policemen?
- 3 THE WITNESS: Yeah.
- 4 THE COURT: Because they came in a marked
5 police vehicle or because they were wearing a
6 uniform?
- 7 THE WITNESS: Well, I mean, at some point,
8 I figured out they were police, but the first two
9 cars that showed up were unmarked, and the --
- 10 THE COURT: But they were wearing
11 uniforms, weren't they?
- 12 THE WITNESS: Yes. But literally they were
13 moving so quickly that I didn't really have time to
14 decide that these men were police. They --
- 15 THE COURT: All right.
- 16 THE WITNESS: -- never identified --
- 17 THE COURT: Okay, I don't --
- 18 THE WITNESS: -- themselves.
- 19 THE COURT: -- this -- go -- go ahead
20 with your cross-examination.
- 21 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:
- 22 Q The two men -- sorry.
23
24 "Keating then instructed these men
25 to 'Take him down', as he gestured
26 towards my brother."
27 Do you adopt that as your statement?
- 28 A Yeah.

- 1
2 Q "But the two men never identified
3 themselves, and simply attacked my
4 brother in the most savage display
5 of violence that I've ever seen."
- 6 A Yeah.
- 7
8 Q "My brother was then violently
9 assaulted and beaten in front of
10 me."
- 11 Do you agree with that as --
- 12 A Yeah.
- 13 Q -- adopting your statement? Okay. The two men
14 never identified themselves, is what you're saying?
- 15 A Mmhmm.
- 16 Q But did you at least, now, recognize them to be in
17 working Saskatoon Police Service -- or at least
18 police officer uniforms with side arms, badges, just
19 like we saw yesterday in court?
- 20 A I mean, yeah, I guess they were dressed like them.
21 They just weren't acting like police officers or
22 peace officers. That's, I guess, my point, but,
23 yeah, I mean, at some point, I realized this is
24 police, okay, but, I -- yeah.
- 25 Q But at which point though?
- 26 A Oh, probably at the point when they started to
27 attack my brother. I mean, I guess I understood Jay
28 Keating -- I mean, I asked Jay Keating several times
29 if he was a police officer or a peace officer. And
30 he says that in his notes. And he pretty much just

1 told me to, "Shut the fuck up, douchebag." At one
2 point, he did say that he was a peace officer. And
3 I asked him how he observed me breach the peace.
4 And, again, he told me to, "Shut the fuck up,
5 douchebag." So I didn't really think I was dealing
6 with a peace officer at that point. He might have
7 looked like one, but he didn't really seem like a
8 peace officer to me because he was just threatening
9 me.

10 Q When did you ask him if he was a peace officer or a
11 police officer?

12 A After -- after he assaulted me and handcuffed me.

13 Q Okay. After he assaulted you and handcuffed you?

14 A Yeah.

15 Q So it was at that point that you asked him if he was
16 a police officer or a peace officer?

17 A Yeah, because I wanted to know what was going on.

18 Q But you also -- but by that point in time you
19 already had handcuffs on your hands?

20 A Yes.

21 Q Correct?

22 A Behind my back.

23 Q By that point in time, he'd already told you that,
24 "I'm arresting you for obstruction," correct?

25 A I don't really ever remember him actually arresting
26 me for obstruction. If he did arrest me for

1 obstruction, I'm pretty sure I would have said,
2 "Obstruction of what? Like, what have I done to
3 -- to do this." I'm pretty sure -- I didn't
4 actually find out the charge of obstruction of a
5 peace officer in the lawful execution of his duty
6 for disobeying lawful commands at a traffic stop
7 -- I didn't actually know I was being charged with
8 that until the next day in front of a justice of the
9 peace.

10 Q Yes, but --

11 A Okay. I never knew that charge. At some point, I
12 think early on when I was in detention cells,
13 somebody told me that I was going to be charged with
14 obstruction. And at that point, I knew it was
15 ridiculous because it was a stand-alone charge of
16 obstruction, and that just screams contempt of cop.
17 But apparently you -- you take it pretty seriously.
18 But, yeah, I mean, at some point, I realized these
19 were police officers, yes. And -- and, you know,
20 they were beating my brother up. They weren't
21 listening to any of my demands. They weren't
22 identifying themselves. They weren't telling me
23 what was going on. So, yes, they looked like police
24 officers, but they weren't acting like police
25 officers or peace officers.

26 Q But didn't you just earlier tell this Court that one

1 of the first things this individual, later
2 identified as Constable Keating, said to you was
3 that, "You're under arrest for obstruction"?
4 A No, I don't -- I think I might have just erred in my
5 notes when saying that. I was pretty -- this is
6 just after we'd gotten the first disclosure package,
7 and I understood that it was obstruction. So I
8 might have just erred when I wrote that. I mean,
9 even if -- if he told me I was under arrest for
10 obstruction, that's all it was. It wasn't
11 obstruction of a peace officer, like I said, from
12 Constable Schaefer's notes with my brother, he said
13 he was under arrest for obstruction of justice. So
14 I don't really -- someone just telling you that
15 you're under arrest for obstruction and not giving
16 you a reason doesn't really -- I don't know what
17 I've obstructed, I don't know what I could have
18 possibly done or complied with, with these -- with
19 these commands being made of me that would have
20 prevented criminal charges. I don't know. Like I
21 said, I complied with his request to be -- to be
22 handcuffed behind my back. I was arrested. There
23 was no problem. If he had a problem, he could have
24 taken care of it there, but he didn't really see it
25 fit to read me my rights or do anything, just arrest
26 me and then violently arrest my brother, beat us up,

1 and then chuck us in the back of squad cars. So --

2 Q I just want to refresh your memory by having you
3 read along the one, two, three, four, the fifth full
4 paragraph. It's the smaller paragraph. It starts
5 off:

6
7 "At this point, two more
8 unidentified men returned to the
9 car I was in and proceeded to call
10 me 'douchebag', laughing and
11 taunting me and telling me I was
12 going to jail."

13 You'd agree with that statement and adopt it?

14 A Yeah.

15
16 Q "I asked him what the reasons
17 were for such a violent assault
18 and that I did not understand what
19 was happening to me. As I began
20 to ask questions to these men, one
21 of them turned on the radio in the
22 car on so loudly that I was unable
23 to speak and understand the men.
24 They continued to laugh and taunt
25 me. I later came to know these
26 men as Constable Hounsell, number
27 675 and Constable Boyce, number
28 705."

29 A Yeah.

30 Q So what kind of -- kind of radio are you talking
31 about here?

32 A Just the car radio. I don't know. It was the
33 stereo system in the car.

34 Q Okay, so you -- you're not talking about turning up
35 the police radio loudly with the communication calls

- 1 or --
- 2 A No. Like --
- 3 Q -- anything like --
- 4 A -- like --
- 5 Q -- that?
- 6 A -- the radio, like, music.
- 7 Q Music, loud music?
- 8 A Yeah.
- 9 Q Did you have an idea as far as how fast -- I'm sorry
- 10 -- loud music. All right. Follow long with me with
- 11 the next paragraph to refresh your memory.
- 12
- 13 "I remained handcuffed in the back
- 14 of the car as the men proceeded to
- 15 drive the car quickly away from
- 16 the scene. I had no seatbelt on.
- 17 My hands were still cuffed and
- 18 bleeding. The men began to drive
- 19 quickly around every turn, and I
- 20 was thrown around in the back of
- 21 the car, injuring my neck, back,
- 22 shoulders, and wrists. Not being
- 23 from Saskatoon, I tried to ask
- 24 these men where they were taking
- 25 me, but they refused to answer my
- 26 questions. They still had the
- 27 radio blaring."
- 28 You'd agree with that, as well, too?
- 29 A Yeah.
- 30 Q You played the video yourself this morning here in
- 31 court; correct?
- 32 A Mmhmm.
- 33 Q Okay. Would you agree with me that what we see

1 there when you get into the Sally port, as they call
2 it, are the two officers opening the door of that
3 police car?

4 A Yeah.

5 Q And then standing back; correct?

6 A Yeah.

7 Q And letting you get out of the police car on your
8 own; correct?

9 A Yeah.

10 Q And letting you walk across the Sally port towards
11 the elevator doors?

12 A Yeah.

13 Q They don't touch you at all?

14 A Not as far as I remember, no.

15 Q If you want to refresh your memory by reading the
16 last line of the first page and then over to the
17 next paragraph.

18
19 "We arrived at an unknown
20 location, where I was greeted by
21 more people in black who did not
22 identify themselves. I was asked
23 numerous questions about drugs,
24 alcohol, where did I hide the
25 drugs, if I had any weapons,
26 et cetera. I tried to remain calm,
27 as I could, but, now, being
28 detained against my will and
29 feared for my life. For the
30 record, there were no drugs,
31 alcohol, or weapons found in my
32 car or on my person."

33 You'd adopt that statement as your own?

- 1 A Yeah.
- 2 Q And you wrote this statement a few days after the
3 incident; correct?
- 4 A Yeah.
- 5 Q So are you telling the Court that when you were
6 driven in a police car, a marked police car, into
7 that Sally port and taken up the elevator to the
8 booking desk, you were still calling that an unknown
9 location?
- 10 A Well, yeah, I didn't know at this point because this
11 was written a week or two after, so it was -- yeah,
12 it was the front desk, the Sally port.
- 13 Q Well, you must have known by that point in time you
14 were in what's called a police station?
- 15 A Yeah -- no, I'm -- actually, I've never been in a
16 police station before, bro. That's why I really
17 didn't know -- I don't know what their process is, I
18 didn't know what was going to happen to me.
- 19 Q I'm going to refresh your memory by reading the next
20 paragraph:
21
22 "I was then denied a phone call
23 for a period of almost an hour
24 before I gave up. I was stripped
25 of my shoes and personal
26 belongings. Another unidentified
27 man then sexually assaulted me,
28 grabbing my testicles violently."
- 29 A Yeah.

1 Q You didn't tell the Court that in your direct
2 examination today, did you, about:

3
4 "Unidentified man then sexually
5 assaulted me, grabbing my
6 testicles violently."

7 A No. I guess I forgot about that, but he did search
8 me and it was on the video.

9 Q That's what you're talking about is --

10 A Yeah.

11 Q -- you've referred to a pat-down at the scene;
12 correct?

13 A Yeah. It's more than a pat-down, man. They emptied
14 my pockets out. They took all of my personal
15 possessions. They grabbed my balls. They spread my
16 legs. It was more than a pat-down.

17 Q So that's what you're referring to when you say:

18
19 "Unidentified man then sexually
20 assaulted me, grabbing my
21 testicles violently."

22 A Yeah.

23 Q That was a search?

24 A Yeah. You saw it on video. He turned my pockets
25 inside-out, took my shoes, took my phone, took my
26 wallet, took everything, right. I'd -- I'd say
27 that's a search and seizure.

28 Q So with respect to your stay in the police cells
29 then, this was a Friday night when this occurred;

- 1 correct?
- 2 A Mmhmm.
- 3 Q You're talking about cruise night, it was a busy
4 time on 8th Street; correct?
- 5 A Mmhmm.
- 6 Q Did the police say anything to you about checking
7 into that Toyota Celica to see whether it had -- it
8 had been stolen or not?
- 9 A I told them that it hadn't been stolen, that it was
10 my car. They continually told me to shut the fuck
11 up.
- 12 Q So --
- 13 A So --
- 14 Q -- were you just voluntarily telling them that that
15 was my car?
- 16 A Yeah.
- 17 Q That was my car, that was my car?
- 18 A Yeah.
- 19 Q Or were they questioning you --
- 20 A No.
- 21 Q -- about the car?
- 22 A No. They were questioning me about drugs. I was
23 telling them voluntarily about my car.
- 24 Q All right. Do you remember when you were telling
25 them that, was that at the scene and --
- 26 A The whole --

- 1 Q -- back at --
- 2 A -- time.
- 3 Q -- the police station?
- 4 A The whole time.
- 5 Q The whole --
- 6 A They were --
- 7 Q -- time?
- 8 A -- grilling me the entire time, from the moment at
- 9 the side of the road, right through, right through
- 10 jail, the whole time.
- 11 Q Right -- right through jail --
- 12 A And they --
- 13 Q -- as well --
- 14 A -- they were --
- 15 Q -- too?
- 16 A -- they took us at five o'clock in the morning, and
- 17 made us go get fingerprinted and mug shot. And they
- 18 were still asking questions then. And I still
- 19 hadn't phoned a lawyer at that point. I thought it
- 20 was nice that you didn't include the mug shots in
- 21 the -- in the file, too. That was interesting.
- 22 Q Well, I just want to take you back to that paragraph
- 23 that I just read with you.
- 24
- 25 "I was then denied a phone call
- 26 for a period of almost an hour
- 27 before I gave up."
- 28 Would you agree with that statement then and adopt

1 it?

2 A Yeah, pretty much.

3 Q Okay, what do you mean in this statement when you
4 say, "Before I gave up"?

5 A (No audible response.)

6 Q Can you elaborate on that for me, please?

7 A I mean I did everything I possibly could do to try
8 to let them make me a phone call before basically
9 -- yeah, I was forced to give up because they
10 chucked me in the back of a cell, and no one would
11 listen to me.

12 Q So do you want to follow along with the -- one, two,
13 three, four -- fifth paragraph on this paper:

14
15 "I was deprived of sleep all
16 night, then made to exit my cell
17 sometime around 5:00 a.m. to get
18 fingerprinted. I was then told I
19 would be in court at 9:00 a.m. I
20 was then made to wait until almost
21 11:30 before I was brought to see
22 more unidentified men. These men
23 then railroaded me through some
24 sort of trial that I did not
25 understand, as I hadn't had
26 anything to eat or drink in almost
27 20 hours, and I had not slept all
28 night, as I lay awake shivering.
29 I was then returned to my cell,
30 and told that I would be held
31 until Monday. I lost my sanity at
32 that point, and suffered an
33 extreme nervous breakdown."

34 A Yeah.

35 Q You'd agree with that statement?

- 1 A I would agree with that.
- 2 Q Can you elaborate on it, when you say:
3
4 "I was brought to see more
5 unidentified men."
- 6 A Yeah. They took me to see a Justice of the Peace,
7 as well as a bunch of other unidentified officers.
- 8 Q But you were aware that they took you to see a
9 Justice of the Peace though; correct?
- 10 A Yeah.
- 11 Q So do you, now, know who these unidentified men
12 were?
- 13 A No.
- 14 Q You just call them "unidentified men" here?
- 15 A The police have refused to identify themselves.
16 You've only in ten vehicles responded to the scene.
17 We only have six police reports. Over 18 police
18 officers responded to that scene. I have six
19 reports. And no one has identified anybody at the
20 detention cell to me, despite my diligent
21 requests --
- 22 Q So --
- 23 A -- so --
- 24 Q -- I'm just curious --
- 25 A -- I don't know --
- 26 Q -- about your --
- 27 A -- who --

1 Q -- definition of "unidentified men". Are you saying
2 that these were police officers, but you just didn't
3 know their names or badge numbers --

4 A That's right.

5 Q -- or --

6 A Yeah.

7 Q -- is it just that there's some other --

8 A I'm pretty sure I knew they were police officers at
9 that point. It was in detention cells. They were
10 dressed up like police, but they didn't identify
11 themselves (sic) to me.

12 Q So then rather than say "police officers", you've
13 called them "unidentified men" in your statement?

14 A Sure, yeah.

15 Q And, basically, the last full paragraph:

16
17 "Finally, I was released against
18 my will and forced to say that I
19 would appear at a later date. I
20 just did whatever I thought would
21 get me released."

22 Do you agree with that statement, as well, too?

23 A Yeah, basically. At that point, didn't really know
24 what to do to get my release from -- I mean, they
25 wouldn't even let me make a phone call, so I really
26 wasn't sure what I could do to expedite being let
27 out of prison. I mean, I was requesting -- the only
28 person I dealt with all night was the matron. The
29 detention sergeant never came to see me, never came

1 to check on me. So, yeah, I just wanted to go home
2 at that point.

3 Q And then you were released eventually?

4 A Eventually, yeah.

5 Q And you were being questioned all the way through;
6 is that what you're saying?

7 A Yeah.

8 Q About what again?

9 A About drugs, alcohol -- you name it. Pretty much
10 everything, but license and registration, believe it
11 or not.

12 Q Because you're saying that you provided -- well,
13 tell me about that at the scene. What exactly did
14 you do to provide your identification, your driver's
15 license?

16 A Well, I -- it was never asked for. I don't -- I
17 don't know. I was put under arrest so quickly, that
18 I was never given an opportunity. My driver's
19 license was in my pocket. I never refused to give it
20 to anybody. Nobody ever asked.

21 THE COURT: I'm sorry. I understood you
22 to say before that you gave them your driver's
23 license?

24 THE WITNESS: Oh, no. They took it out of
25 my pocket.

26 THE COURT: When did that happen?

1 THE WITNESS: I'm not sure. Probably at
2 the side of the road, or else back at detention, but
3 at some point -- I mean, he's got my driver's
4 license scanned into evidence, so at some point,
5 they got my driver's license. But they took
6 everything against my will. And I don't remember
7 when exactly. I was searched at the side of the
8 road, patted down. I was searched back -- again, at
9 detention.

10 THE COURT: You don't recall --

11 THE WITNESS: So at some --

12 THE COURT: -- when they took your -- the
13 police took your driver's license?

14 THE WITNESS: I -- I don't really recall if
15 it was at the side of the road, or if it was back at
16 detention, but there was -- I never refused to give
17 anybody my license.

18 MR. PASHOVITZ: CROSS-EXAMINATION CONTINUES:

19 Q What do you recall Constable Keating saying to you
20 then, back at the scene?

21 A Not much, other than -- like I said, he made a
22 couple of demands over the loudspeaker of the car,
23 and I simply said, "Whoa, hey, like, what's going
24 on? Who are you, and what seems to be the problem?"
25 And at that point, he ran at me and attacked me, and
26 then just basically informed me that I was under

1 arrest, I was under arrest. That was it. And I
2 said, "Whoa, hey, I object to this treatment. You
3 know, get your hands off me." And I -- I don't -- I
4 really don't recall because it all happened so fast,
5 but I'm -- I'm pretty sure at that point, he never
6 said anything about being under arrest for
7 obstruction. I think it was just my recollection of
8 the -- of the ordeal after, but at the beginning, he
9 just, basically, threatened me with arrest. And
10 when I asked him what was going on, he basically
11 just told me to, "Shut the fuck up." It wasn't
12 -- it wasn't really up to me. He didn't see any
13 -- fit to answer any of my questions when I asked
14 him who he was and what -- what the problem seemed
15 to be. He didn't even identify himself. He didn't
16 say what the problem was. He didn't say anything.

17 Q Okay. Tell me how you exited your vehicle?

18 A I opened the door and got out, man.

19 Q Okay. And then what did you do after that?

20 A I just basically stood by the side of my car. I
21 realized at that point that this man wanted me to do
22 something. I mean, he pulled his vehicle in so
23 close to mine, and was, now, yelling at me over a
24 loudspeaker. I figured something was up, so I just
25 got out of my car and stood there.

26 Q Okay. Do you remember seeing what James Stewart

- 1 did, once your vehicle stopped?
- 2 A Pretty much the same thing. He got out of his car
3 and just stood there and put his hands up, and said,
4 "Hey, man, what's going on."
- 5 Q Okay. I would suggest to you that what you did was,
6 you got out of your car, and you just started
7 walking right past the police officer?
- 8 A Yeah -- no, that's not what happened at all.
- 9 Q I would suggest to you that when you walked past the
10 police officer, you brushed up against him, kind
11 of --
- 12 A No.
- 13 Q -- how -- how cool guys, kind of -- when you're
14 passing someone --
- 15 A No, that's --
- 16 Q -- on the street --
- 17 A -- really --
- 18 Q -- they, kind of --
- 19 A -- that's --
- 20 Q -- give you a brush, just to show you --
- 21 A -- that's ridiculous.
- 22 Q -- just to show you who's boss and things like that?
- 23 A Yeah -- no, that's ridiculous.
- 24 Q No?
- 25 A That's an --
- 26 Q Just to show --

- 1 A -- absurd notion.
- 2 Q -- that you're not going to comply with any of his
3 demands?
- 4 A No. Not that --
- 5 Q Because you don't believe in these driver's
6 licenses?
- 7 A I had one in my pocket, bro.
- 8 Q You don't believe in driver's licenses?
- 9 A Okay, but I had one in my pocket.
- 10 Q You don't believe that you have to have your vehicle
11 registered?
- 12 A I did have my vehicle registered.
- 13 Q Did you provide the police with any registration
14 documents?
- 15 A They never asked for any.
- 16 Q They never asked for any registration documents?
- 17 A No.
- 18 Q They never asked for a driver's license?
- 19 A No.
- 20 Q They never asked your name?
- 21 A No. Well, they asked my name. I gave them my name.
22 Q When?
- 23 A No problem. Oh, the whole time. My name is Jarvis
24 Stewart. I know under Section 209.1 of *The Traffic*
25 *Safety Act*, that if he pulls me over, I have to give
26 him my name, address, and date of birth. And I had

1 no problem doing that. I had nothing to hide.

2 Q When did you do that?

3 A The whole time.

4 Q The whole time?

5 A I told him my name's Jarvis Stewart. I never hid

6 behind that at all. There was never a refusal to

7 identify myself. And there's absolutely nothing in

8 Jay Keating's notes to corroborate any sort of

9 refusal to identify myself or refusal to produce any

10 documents.

11 Q I suggest to you that he was asking you for your

12 driver's license, your identification, and --

13 A Where are --

14 Q -- you were walking --

15 A -- you --

16 Q -- away, saying, "Fuck you. I don't have to believe

17 in your laws."

18 A I suggest to you --

19 Q "Are you a peace --"

20 A -- that maybe --

21 Q "-- officer or a --"

22 A -- Jay --

23 Q "-- peace officer?"

24 A -- Jay Keating is lying. I -- I mean, I -- there's

25 absolutely nothing in his notes to say that he asked

26 me for any information. The only thing in his notes

1 is that he told me to get back in my car, get back
2 in my car right now. And then he just says, "He
3 failed to comply with my commands." That's what I
4 got arrested for, was obstruction of a peace
5 officer, for failing -- for disobeying lawful
6 commands. So it was never failure to identify
7 myself. It was never refusal to identify myself.
8 Just because I disobeyed lawful commands, I didn't
9 do what he said. And he -- he thought that was a
10 challenge to his authority for some reason. And so
11 he attacked me.

12 Q I suggest to you that you were walking away, and
13 then he said to you, "If you continue to walk away,
14 I'm going to arrest --"

15 A No.

16 Q "-- you for obstruction"?

17 A No, that never happened.

18 Q And then you did a 180 and --

19 A No. He --

20 Q -- came back and confronted him?

21 A No. He came right at me and attacked me. It's very
22 similar to the case of *R. v. Pasqual Martins*, where
23 Jay Keating was found to have grossly violated
24 someone's *Charter* rights under very -- the same
25 circumstances, just attacking someone at a traffic
26 stop.

- 1 Q And I would suggest to you that it was only when you
2 came back and confronted him and said, "I don't
3 believe in your laws, fuck you," and then did
4 another 180 --
- 5 A No. None --
- 6 Q -- away --
- 7 A -- of that --
- 8 Q -- that then he --
- 9 A -- none of --
- 10 Q -- told you, you're --
- 11 A -- that happened.
- 12 Q -- under arrest --
- 13 A No, none of that --
- 14 Q -- for obstruction?
- 15 A -- happened, no. I never -- I never refused
16 anything. He just arrested me right away. That was
17 it. He phoned backup.
- 18 Q Well, do you remember what he was saying, as far as
19 phoning backup?
- 20 A Well, we can listen to the audio, if you want to.
21 If you haven't listened to that, man, that's, you
22 know, something you should be doing, but he
23 basically said on -- on -- on the audio, "I need
24 another car at Shopper's Drug Mart on 8th -- on 8th
25 Street right away, please. And if you can get here
26 fast, please." And that was it. That was the only

- 1 instructions he gave his other officers.
- 2 Q Okay. What --
- 3 A (No audible response.
- 4 MR. JAMES STEWART: Yeah.
- 5 Q -- were you doing at that point in time?
- 6 A Asking what was going on.
- 7 Q Okay. What was your brother doing at that point --
- 8 A Asking --
- 9 Q -- in time?
- 10 A -- what was going on.
- 11 Q Okay. And that's when he called for backup?
- 12 A He called for backup numerous times. He freaked out
- 13 calling for backup numerous times. I don't even
- 14 know what to tell you.
- 15 Q And he was calling for backup when you were standing
- 16 there, asking --
- 17 A I'm pretty sure --
- 18 Q -- Constable Keating --
- 19 A -- he --
- 20 Q -- what's going on?
- 21 A -- he -- he might have called for backup before
- 22 -- even before he even dealt with me because cop
- 23 cars were at the scene within a minute. It all
- 24 happened within a minute, right.
- 25 Q So you're -- you're -- well, okay, listen. Do you
- 26 remember when he called for backup?

- 1 A (No audible response.)
- 2 Q Do you remember where you were standing when he
3 called for backup?
- 4 A Not really --
- 5 Q Do you --
- 6 A -- no.
- 7 Q -- remember where your brother was when he called
8 for backup?
- 9 A (No audible response.)
- 10 Q You're, kind of --
- 11 A Standing --
- 12 Q -- adlibbing as you go here.
- 13 A -- just standing outside of my car.
- 14 Q Okay. What were you doing when he called for
15 backup?
- 16 A Asking what was going on.
- 17 Q Okay. How were you positioned when he called for
18 backup?
- 19 A I was just standing there with my hands up.
- 20 Q Were you handcuffed at that point in time?
- 21 A No.
- 22 Q No?
- 23 A Oh, when he -- when he called for backup?
- 24 Q Yes.
- 25 A Oh, yeah, probably. I mean, he called for backup
26 multiple times, so, yeah, I was handcuffed, yeah.

- 1 Q Okay. So you were handcuffed when he called for
2 backup?
- 3 A Well, I said he called for backup. I don't know
4 when he called backup. How am I supposed to know
5 when he called backup? Like, I heard him a couple
6 times, but he might have called it before the
7 initial stop.
- 8 Q Okay.
- 9 A Cars got there right away, so I don't know when he
10 called backup.
- 11 Q Okay, I just -- I don't -- do you remember hearing
12 with your own ears him calling for backup?
- 13 A (No audible response.)
- 14 Q I'm not saying that you need to say whether he
15 called for backup earlier or not --
- 16 A Yeah.
- 17 Q -- but was there a point in time --
- 18 A Yeah.
- 19 Q -- when you were --
- 20 A Yeah, there was --
- 21 Q -- on --
- 22 A -- one point in time when he said that my -- yeah,
23 yeah.
- 24 Q What were you -- I don't know -- I don't need to
25 know the time or what he said, I just want to know
26 what you were doing at that moment in time?

1 A Just standing there with handcuffs on behind my
2 back, listening to him call backup and scream at
3 us.

4 Q Okay. What was your brother, James, doing at that
5 point in time?

6 A James was basically standing and -- and protesting
7 it, as well. At one point, he started to head
8 towards Shopper's Drug Mart because I told him that
9 this cop was being -- was just freaking out, so
10 maybe he should go phone a supervisor or -- or make
11 arrangements because this guy had just absolutely
12 lost it. But Jay was just, more or less, making
13 demands to both of us, ordering us around, barking
14 at us, screaming at us. It was laced with
15 profanity, so we were just trying to comply and keep
16 this guy happy, to do what he said. But he didn't
17 really seem to have any -- to know what he was
18 doing. He just wanted us to -- I don't even know
19 what he wanted me to do. I mean, after I was in
20 handcuffs, he -- he was moving me around the scene,
21 just yelling at me, telling me to "Shut the fuck
22 up." But I'm not sure about disobeying lawful
23 commands. I'm not sure what he actually asked me to
24 do or was requiring me to do. I'm not really sure
25 what the -- what the lawful commands even were.
26 They -- they certainly weren't to get a driver's

1 license or registration. That never even entered
2 into it.

3 Q Do you recall him telling you the reason for the
4 traffic stop?

5 A Oh, after I was handcuffed, yeah, he said that there
6 was a problem with my registration a while -- and it
7 was quite some time from the initial stop. And I
8 told him it was my car. I told him it was my car,
9 and it was -- he -- he seemed to think it was
10 unregistered. But that was well after I'd been
11 -- that was even -- that was probably even by the
12 time I was in the back of the patrol car, by the
13 time he said there was something about my -- my
14 registration or my vehicle or something. Something
15 came up. I think he said, yeah, it was
16 unregistered. And I said, "No, it's not. It's my
17 car. I have all of the paperwork in the glove box."

18 Q So he didn't tell you the reason for the stop before
19 he said to you, "I'm going to arrest you for
20 obstruction" or --

21 A No.

22 Q You're saying that happened after?

23 A Yeah.

24 Q As far after as when you were in the back of a
25 police car?

26 A Yeah, pretty much. I mean it all happened really,

- 1 really fast. And when you're not expecting
2 something like that to happen, it's hard. But,
3 yeah, that's pretty much.
- 4 Q I suggest to you that Constable Keating had no idea
5 what to expect with respect to this traffic stop?
- 6 A Yeah, I guess.
- 7 Q Yes. I suggest to you that most traffic stops
8 involve pulling behind a car, having the driver sit
9 in the driver's seat, and the police officer
10 approaching the window to tell them why they're
11 stopped and to ask --
- 12 A Yeah.
- 13 Q -- for driver's license and registration?
- 14 A Most traffic stops don't happen in parking lots
15 though.
- 16 Q But you heard the commands, you didn't know what
17 they were, you couldn't understand them; correct?
- 18 A (No audible response.)
- 19 Q But you heard the loud hailer?
- 20 A Yeah.
- 21 Q Okay. And so then what did you do?
- 22 A Just, basically, stood by the back of my car and put
23 my hands up and asked, "Who are you and what's going
24 on?"
- 25 Q Did you get back in the driver's seat of your
26 vehicle that you'd just been driving?

- 1 A No.
- 2 Q Do you remember that that was one of the commands,
3 was to get back in your vehicle?
- 4 A Not really expressly. I mean, he -- he might have
5 said that over the loudhailer. That's what it says
6 in his notes, but I don't really remember actually
7 hearing that at the time. I remember just him
8 freaking out, and I didn't really understand what
9 was going on or what I was required to do. So I
10 stood there, and just said, "Hey, like, whoa, like,
11 what's -- who are you and what's going on?"
- 12 Q And your brother, James, just basically stood there
13 and protested, as well, too?
- 14 A Yeah. Well, I wouldn't say "protested". He just
15 was asking questions. At that point, he wasn't
16 protesting. He was just asking --
- 17 Q Just asking --
- 18 A -- who this man --
- 19 Q -- questions?
- 20 A Yeah.
- 21 Q Was he approaching closer to you and Constable
22 Keating?
- 23 A Was he approaching? When?
- 24 Q When you were handcuffed and Constable Keating had
25 you, was your brother approaching the two of you,
26 getting closer and closer?

- 1 A Not really. I mean, he was more or less just
2 standing there.
- 3 Q Was he saying, "Let go of my brother, you have no
4 reason to arrest my brother"?
- 5 A Yeah.
- 6 Q Swearing?
- 7 A (No audible response.)
- 8 Q All right. Was he --
- 9 A He wasn't --
- 10 Q -- approaching --
- 11 A -- swearing so much at that point.
- 12 Q Was he approaching closer and closer --
- 13 A No.
- 14 Q -- during that part of the --
- 15 A He was just --
- 16 Q -- incident?
- 17 A -- standing there, saying, "What are you doing to my
18 brother?" "Why are you assaulting him?"
- 19 Q All right. Do you remember Constable Keating saying
20 back to him, "Stay back, or else I'll arrest you for
21 obstruction"?
- 22 A I remember Constable Keating just freaking out, but
23 I don't ever remember him being told expressly to
24 stay back or this bit about him kicking at him. I
25 thought that was ridiculous. We both just stood
26 there and asked him what was going on.

- 1 Q Do you remember Constable Keating lifting his
2 legs --
- 3 A No.
- 4 Q -- as your brother approached?
- 5 A No.
- 6 Q Do you remember him having to do that twice --
- 7 A No.
- 8 Q -- lifting his leg --
- 9 A No.
- 10 Q -- as your brother approached? No?
- 11 A (No audible response.)
- 12 Q That didn't happen at all?
- 13 A I -- no, I don't remember seeing anything. That
14 -- it all happened really quick, but I don't
15 remember -- as far as Constable Keating's testimony
16 that my brother was circling around and coming at
17 him and coming back -- we were both just standing by
18 the back of our car, asking him what was happening.
- 19 Q Asking him what was happening?
- 20 A Mmhmm.
- 21 Q And did you say anything to Constable Keating at
22 that point in time about a parking lot or this is
23 just --
- 24 A Yeah.
- 25 Q -- a parking --
- 26 A I did --

- 1 Q -- lot?
- 2 A -- actually.
- 3 Q Do you remember what you said or not?
- 4 A I said, "We're in a parking lot, man. What's this
5 about?"
- 6 Q Why did you say that to him?
- 7 A Well, because there's case law that says I don't
8 need to show him my license and registration in a
9 private parking lot, so I thought if that was his
10 concern then -- maybe -- but he never asked me for
11 that anyways, so that's -- obviously wasn't a
12 concern of his.
- 13 Q Okay. Would you agree with me that you didn't put
14 anything in your September statement about a parking
15 lot, about not thinking that you had to comply with
16 demands because it was in a parking lot?
- 17 A Yeah, sure. I didn't really think it was that
18 relevant then. I was just more concerned with the
19 fact that we'd been beaten up and I didn't really
20 know that this was going to come down to traffic
21 offences.
- 22 Q Well --
- 23 A Or perceived traffic offences --
- 24 Q -- so are you --
- 25 A -- I suppose.
- 26 Q -- saying that you had a discussion with him about,

- 1 "Why are you stopping me like this in a parking
2 lot?" or not?
- 3 A I mentioned it to him, yeah. I said several things
4 to different officers at the side of the road.
- 5 Q But you didn't put that in that statement that you
6 typed out in September?
- 7 A I guess not.
- 8 Q I'm suggesting to you, that's because you thought of
9 that, I guess, since September, between then and
10 today's trial date?
- 11 A No.
- 12 Q This whole --
- 13 A I don't think --
- 14 Q -- parking lot --
- 15 A -- so.
- 16 Q -- defence?
- 17 A No. Even Your Honour Singer here will tell you
18 about the case of *R. v. Brown*, which elucidates on
19 the Section 209.1 ruling of *The Traffic Safety Act*.
20 I was well informed. I knew what I was doing.
- 21 Q But you didn't put that in that September statement,
22 as far as --
- 23 A Well, I didn't think it was necessary.
- 24 Q There's a few things in that statement that you've
25 said different here in court, wouldn't you agree?
- 26 A I guess, yeah. I mean, some inconsistencies maybe,

1 but --

2 Q So just to have this clear in my mind -- well, we
3 have the one video that was played in court. You
4 saw that yesterday; correct?

5 A Yeah.

6 Q And you played a portion of it again today;
7 correct?

8 A Yeah.

9 Q Okay. You'd agree with me that you're not on that
10 video?

11 A I would --

12 Q Correct?

13 A -- agree.

14 Q Okay, so you're telling this Court that you got out
15 of the vehicle and stood there, basically with your
16 hands up, and then you were tackled by Constable
17 Keating?

18 A Yeah.

19 Q I'm suggesting to you that you got out of the
20 vehicle and walked straight away from your vehicle,
21 just as we see your brother, James, doing in that
22 very same video?

23 A Yeah -- no, no. I just got out of my car and stood
24 there and asked questions, man. I don't know this
25 brushing past people. He initiated physical contact
26 with me by attacking me. He's done it before to

1 people.

2 Q Well, you just told this Court, when I asked you
3 what your brother, James, was doing, as far as
4 getting out of the vehicle, that he just did the
5 same as you, got out of the vehicle and stood there;
6 right?

7 A More or less, yeah, just went to the back of the
8 vehicle and stood there and asked what was going on,
9 yeah.

10 Q Well, what did you do, did you just stand right by
11 your door, or did you start walking past your
12 vehicle, walking past the police car, towards
13 Shopper's --

14 A No, I just --

15 Q -- Drug Mart?

16 A -- stood at the back of the door, at the back of my
17 car, like it says in Keating's notes. He went to
18 the back of his Celica and stood there, and asked
19 him who -- who he was and what's going on.

20 Q Well, did you say to him, "I don't have to follow
21 your laws," "F you," "Are you a peace officer or a
22 police officer --"

23 A No, he --

24 Q -- at that point?

25 A -- attacked me. I didn't say anything to him, other
26 than, "Who are you and what's going on?" And he

- 1 attacked me.
- 2 Q He attacked you before all of the --
- 3 A Yeah.
- 4 Q -- before he told you the reason for the stop?
- 5 A Yeah.
- 6 Q Before he told you, "I'm going to arrest you for
- 7 obstruction?"
- 8 A Yeah. You see, if there'd been audio from his car,
- 9 we'd know all of this, right, and we'd prevent the
- 10 case of he said, she said. Just like the Saskatoon
- 11 Police say. But his audio somehow from the car went
- 12 missing that would corroborate either of our
- 13 stories. He's got us as being quite belligerent,
- 14 although despite having no criminal record and a
- 15 clean driving history, nothing in my car, he's got
- 16 me coming out of the car, committing suicide,
- 17 crashing into the cop, he's dropping f-bombs. Who
- 18 are we going to believe here? Jay Keating's already
- 19 been on the stand and it was found that he lied
- 20 about this in another case, *R. v. Pasqual Martin*.
- 21 The exact same type of story.
- 22 Q It's -- it just seems like a horrible coincidence
- 23 for you, an individual with --
- 24 A A horrible --
- 25 Q -- this --
- 26 A -- coincidence? I've never done anything to

- 1 anybody. Why would I just assault a cop? Why would
2 I get out of my car and bump into a police officer?
3 That's insane.
- 4 Q It --
- 5 A It's insanity. No reasonable person would do that.
- 6 Q Well, it just seems strange to me that an individual
7 with this document in his glove box, saying that I
8 don't need a driver's license, and I don't need to
9 register my car, would be so unfortunate to have
10 such a bad occurrence with a Saskatoon Police
11 Service officer, as far as him tackling you?
- 12 A (No audible response.)
- 13 Q I'm suggesting to you that you were never going to
14 comply with any lawful demands of this police
15 officer because it's in your nature?
- 16 A I complied with his -- with his requests to be
17 handcuffed at the threat of being pepper sprayed.
- 18 Q He says you didn't. He says --
- 19 A He says --
- 20 Q -- that he --
- 21 A -- I didn't.
- 22 Q -- gave you --
- 23 A He says a --
- 24 Q -- the reason --
- 25 A -- lot of things.
- 26 Q -- for the stop.

- 1 A Don't --
- 2 Q Do you disagree with that?
- 3 A Yes.
- 4 Q He says that he told you -- or asked you for your
5 driver's license; do you disagree with that?
- 6 A He never asked me for my driver's license, no.
- 7 Q He says that he asked you for your identification;
8 do you disagree with that?
- 9 A Well, you -- you just asked me that. What -- what
10 -- he never asked me for my ID, man.
- 11 Q And then he says that you walked away from him, and
12 then he told you that you'd be arrested for
13 obstruction --
- 14 A Yeah, I never --
- 15 Q -- if you continued --
- 16 A -- walked away --
- 17 Q -- to walk away?
- 18 A -- from anybody, man.
- 19 Q And your responses --
- 20 A He got --
- 21 Q -- were --
- 22 A -- out of his car, hit the ground running, and
23 attacked me.
- 24 Q Did you ever say to him, "I don't have to follow
25 your laws"?
- 26 A No, I really didn't.

- 1 Q Even though you have this document in your glove
2 box, which you've told the Court you believe in?
- 3 A You --
- 4 Q That you don't --
- 5 A -- yeah -- no, I --
- 6 Q -- have to follow --
- 7 A -- I --
- 8 Q -- the laws with respect --
- 9 A -- it never got --
- 10 Q -- to driver's licenses?
- 11 A -- to a question of law. It never got to a
12 discussion about driver's license and registration.
13 He assaulted me, and I objected to that treatment.
14 And I ended up arrest -- under arrest for
15 obstruction. And that was it. Nobody ever asked me
16 for my license. Nobody ever asked me for my
17 registration. Nobody ever -- nobody ever asked me
18 about anything to do with my car.
- 19 Q He just tackled you right off the bat?
- 20 A Yeah.
- 21 Q And all the rest of this happened after the fact?
- 22 A Yeah.
- 23 Q Do you remember being shown this -- the documents
24 from your glove box, as far as those tickets and
25 your Notice of -- and Claim and Right to Travel that
26 had your names (sic) on it -- your name on it, I

- 1 should say?
- 2 A Being shown them?
- 3 Q Yes. Do you remember being shown those traffic
- 4 tickets?
- 5 A (No audible response.)
- 6 Q Do you remember being shown this, again, Notice and
- 7 Claim Right to Travel that has your name on it?
- 8 A (No audible response.)
- 9 Q Do you remember being show those by the police to
- 10 you --
- 11 A No.
- 12 Q -- at the scene?
- 13 A No.
- 14 Q No?
- 15 A Never.
- 16 MR. PASHOVITZ: If I could have Exhibits P-2,
- 17 three, and four, please?
- 18 COURT CLERK: (No audible response.)
- 19 Q I just want to produce and show to you Exhibits P-2,
- 20 three, and four in these proceedings. They appear
- 21 to be titled Ticket Number 7473276, 777. Do you
- 22 want to look at those, and let me know, do you
- 23 recognize those --
- 24 A Sure.
- 25 Q -- or not? Do you recognize those?
- 26 A I recognize them.

- 1 Q And tell me what those are?
- 2 A Traffic tickets.
- 3 Q Okay. And are they in your name?
- 4 A Yeah.
- 5 Q Okay. Were they in your glove box of your Toyota
- 6 Celica that day?
- 7 A Yes, they were.
- 8 Q Did you write in red marker on those tickets?
- 9 A I did.
- 10 Q Can you read, for the record, what you wrote there?
- 11
- 12 A "Under protest and duress,
13 I do not consent or wish to
14 contract."
- 15 Q Can you tell the Court what that means, being that
- 16 you wrote that in red marker on each of those three
- 17 tickets?
- 18 A Yeah. I didn't really think these tickets were of
- 19 any force or effect on me, so I just sent them back
- 20 to the Ministry of Justice.
- 21 Q And why did you think that those tickets were of no
- 22 force or effect to you?
- 23 A Well, because he pulled me over driving blacked-out
- 24 taillights. And he seemed to think that something's
- 25 wrong with my taillights. And I told him that I
- 26 didn't think that was an adequate reason for pulling
- 27 me over. And I had safety fitness certificates that
- 28 said there was nothing wrong with my headlights from

1 an SGI inspection centre, so I just simply disputed
2 the tickets and sent them back to the Ministry of
3 Justice.

4 Q I'll take those back from you.

5 A Is this about traffic tickets?

6 MR. JAMES STEWART: Your Honour, is this going to
7 take much longer? I'm looking --

8 THE COURT: Pardon me?

9 MR. JAMES STEWART: -- to make -- possibly -- is
10 -- maybe you can ask him if this is going to take
11 much longer?

12 THE COURT: I don't know.

13 MR. PASHOVITZ: Your Honour, on that note, I
14 -- I don't think I have too many more questions. I
15 -- if I have a few minutes, maybe we could probably
16 break for lunch. I just wanted to -- or we can even
17 break for lunch, now, and I can continue at two
18 o'clock, so --

19 THE COURT: Well, I'm happy --

20 MR. PASHOVITZ: I'm in your hands.

21 THE COURT: -- I'm happy to continue.

22 It's quarter to 12. There's lots of time yet.

23 MR. PASHOVITZ: Okay. If I could just --

24 THE COURT: (Inaudible) do we --

25 MR. PASHOVITZ: -- take a few --

26 THE COURT: -- need a break?

1 MR. PASHOVITZ: -- minutes, I can just
2 check --

3 MR. JAMES STEWART: I would like --

4 MR. PASHOVITZ: -- my notes to --

5 MR. JAMES STEWART: -- a break, too.

6 MR. PASHOVITZ: -- if I could just have a few
7 minutes, I could check my notes --

8 THE COURT: Well, why don't --

9 MR. PASHOVITZ: -- to see if there's --

10 THE COURT: -- you just look --

11 MR. PASHOVITZ: -- anything more I need --

12 THE COURT: -- through them?

13 MR. PASHOVITZ: -- to ask.

14 THE COURT: I want to make some notes
15 here, too, so --

16 MR. PASHOVITZ: Certainly --

17 THE COURT: -- just go ahead --

18 MR. PASHOVITZ: -- Your Honour.

19 THE COURT: -- and --

20 (BRIEF PAUSE IN PROCEEDINGS)

21 MR. PASHOVITZ: Can I just obtain that
22 exhibit back?

23 COURT CLERK: (No audible response.)

24 MR. PASHOVITZ: Your Honour, I don't propose
25 to file this -- well, I apologize, Your Honour. I
26 can wait until you're done your notes.

- 1 THE COURT: No, that's okay.
- 2 MR. PASHOVITZ: I did provide the Court with
3 a copy of the September statement, so the Court had
4 an easier time following through with -- along, I
5 should say, with my cross-examination. I don't
6 propose to file a copy of it, but if the Court wants
7 to have a copy --
- 8 THE COURT: Well, he's --
- 9 MR. PASHOVITZ: -- of it --
- 10 THE COURT: -- basically adopted it
11 today. Yes, he's also said it was voluntary. And
12 he provided it to somebody, I guess, and --
- 13 MR. PASHOVITZ: So, it -- it can go in as an
14 exhibit then, Your Honour. I will be --
- 15 THE COURT: I -- I don't --
- 16 MR. PASHOVITZ: -- referring to it --
- 17 THE COURT: -- see any --
- 18 MR. PASHOVITZ: -- in my closing --
- 19 THE COURT: -- reason why --
- 20 MR. PASHOVITZ: -- argument.
- 21 THE COURT: -- it couldn't. It's just a
22 question of whether it should. And that's -- I
23 don't know.
- 24 MR. PASHOVITZ: I would submit that it
25 should. He's adopted these statements in his
26 evidence here today. I will be referring to it in

1 my closing arguments, so I would submit that it
2 ought to go in as an exhibit in these proceedings.

3 THE COURT: All right, I'm willing -- the
4 parts that he's adopted, you read -- he read to you
5 anyways, so --

6 THE WITNESS: Yeah.

7 THE COURT: -- I'm going to --

8 THE WITNESS: That's fine.

9 THE COURT: -- so I think, just for ease
10 of understanding, I'll -- I'll put this in --

11 THE WITNESS: Sure.

12 THE COURT: -- as an exhibit.

13 COURT CLERK: (Inaudible)?

14 MR. PASHOVITZ: I do.

15 COURT CLERK: Okay.

16 THE COURT: That would be P whatever.

17 COURT CLERK: P-10.

18 THE COURT: Okay.

19 COURT CLERK: I think that's just a copy,
20 Your Honour.

21 THE COURT: That -- that's just a copy,
22 yes.

23 COURT CLERK: Oh, okay, I see.

24 MR. PASHOVITZ: It would be Affidavit of
25 Jarvis Stewart then, I think would be the best way
26 to identify it, for the record, Your Honour.
27

1 EXHIBIT P-10: Affidavit of
2 Traffic Stop Sworn by
3 Jarvis Stewart, Filed In
4 Court September 4th, 2012

5 MR. PASHOVITZ: And I have no further
6 questions.

7 THE COURT: I -- I'd like you to do
8 something for me before you leave. And I -- I know
9 we want to take a break right away, but if you could
10 show me on -- on the video, could you take it to the
11 part where, in the video, the first part of the
12 video, with -- from Constable Keating's vehicle,
13 where -- where he comes into the picture and moves
14 up to the vehicle?

15 MR. PASHOVITZ: (No audible response.)

16 THE WITNESS: (No audible response.)

17 THE COURT: I'd just like to look at that
18 one more time, if you could show me.

19 THE WITNESS: Like, the initial stop or --

20 THE COURT: Not --

21 THE WITNESS: -- whatever you --

22 THE COURT: -- no, not --

23 THE WITNESS: -- mean?

24 THE COURT: -- not that part. Where he
25 actually physically walks into the picture, and
26 goes --

27 THE WITNESS: And goes into --

28 THE COURT: -- goes beside --

1 THE WITNESS: -- the vehicle?

2 MR. PASHOVITZ: Sure.

3 THE COURT: -- the vehicle. I forget

4 whether it was about four minutes into it --

5 THE WITNESS: Yeah.

6 THE COURT: -- or three minutes into it.

7 THE WITNESS: I'll just find it.

8 THE COURT: I'd just like to look at that

9 carefully, if you don't mind.

10 (VIDEO PLAYING)

11 THE COURT: It could be right around

12 there, I think.

13 THE WITNESS: Well, it's not there yet.

14 Right here. This is four -- basically four

15 and-a-half minutes after the initial stop. And

16 here's Jay trying to look in the car. And it's

17 locked.

18 THE COURT: Okay, stop.

19 THE WITNESS: Stop it?

20 THE COURT: Yes. Stop right there.

21 Okay, thank you. You can quite clearly see his

22 badge. Thank you.

23 THE WITNESS: That's it?

24 THE COURT: That's it. All right.

25 MR. PASHOVITZ: Turn it off for lunch?

26 THE WITNESS: Certainly.

1 MR. PASHOVITZ: Do you want to do it?
2 THE COURT: Or do you want to leave that
3 there, in case your brother wants to use it later?
4 THE WITNESS: (No audible response.)
5 MR. JAMES STEWART: Sure, we can --
6 THE WITNESS: Yeah.
7 MR. JAMES STEWART: -- leave it there.
8 THE WITNESS: Just leave it.
9 THE COURT: Okay.
10 MR. PASHOVITZ: Okay.
11 THE COURT: Why don't we take our lunch
12 break then, and come back at two o'clock?
13 MR. PASHOVITZ: Thank you, Your Honour.
14 THE WITNESS: Okay.
15 THE COURT: Okay.
16 COURT CLERK: Order in court. All rise.
17 This court stands adjourned until 2:00 p.m.
18 (COURT ADJOURNED)
19 (COURT RECONVENED)
20 COURT CLERK: This court is, now, reopened.
21 You may be seated.
22 THE COURT: So, Jarvis, you've just
23 testified. And that -- that takes us to the -- the
24 stage where I have to ask you if you have any other
25 witnesses for your case?
26 MR. JARVIS STEWART: (No audible response.)

- 1 THE COURT: Now, we're hearing both
2 together, so if -- if you -- you know, if your
3 brother is going to testify in his case, I'll apply
4 it to both. But if -- are there any other
5 witnesses, other than -- than him that you are
6 calling today?
- 7 MR. JARVIS STEWART: Can I -- I guess I can't
8 recall the arresting officer then, hey?
- 9 THE COURT: Well, no, you've --
- 10 MR. JARVIS STEWART: Okay.
- 11 THE COURT: -- had your chance to --
- 12 MR. JARVIS STEWART: And that's fine.
- 13 THE COURT: -- ask him questions.
- 14 MR. JARVIS STEWART: I -- I realize that. I'm not
15 really sure on procedure. So, no, there'll be --
- 16 THE COURT: Yes.
- 17 MR. JARVIS STEWART: -- I have no further
18 witnesses, thank you.
- 19 THE COURT: Okay, okay. Are you calling
20 any evidence?
- 21 MR. JAMES STEWART: Am I calling any evidence?
- 22 THE COURT: Yes. That means, if you -- a
23 witness or yourself. You don't have to call any
24 evidence, or you can. It's up to you. In any case,
25 the Crown still has to prove their case, right.
- 26 MR. JAMES STEWART: The Crown still --

1 THE COURT: So -- but if you --

2 MR. JAMES STEWART: -- has to prove --

3 THE COURT: -- want --

4 MR. JAMES STEWART: -- their case? Okay.

5 THE COURT: -- if there's anything that

6 you want to call evidence on, for instance, if you

7 want to testify, you're entitled to do that, but you

8 don't have to.

9 MR. JAMES STEWART: Yeah, I -- I -- I -- I'm

10 -- I'm still really waiting for this guy to get the

11 ball rolling. I don't really see any reason for me

12 to testify. I mean, it's -- it's --

13 THE COURT: That's okay.

14 MR. JAMES STEWART: I -- I -- I don't really see

15 the need to testify. I'm supposed to be proven --

16 THE COURT: Well, if --

17 MR. JAMES STEWART: -- guilty, instead of

18 innocent. I am. I haven't done anything, so I'm

19 not sure exactly what I was supposed to testify to,

20 as far as, like --

21 THE COURT: Well, I --

22 MR. JAMES STEWART: -- what happened.

23 THE COURT: -- I don't know. It's up --

24 MR. JARVIS STEWART: Don't testify.

25 THE COURT: -- it's up to you --

26 MR. JARVIS STEWART: Don't then.

- 1 THE COURT: -- to decide. The case
2 against -- that -- that he's trying to prove against
3 you is that you obstructed Constable Keating by
4 interfering with the lawful arrest of Jarvis
5 Stewart. That's what -- that's what he has to
6 prove.
- 7 MR. JAMES STEWART: That's what he has to prove,
8 yeah. He can --
- 9 THE COURT: And whether --
- 10 MR. JAMES STEWART: -- go ahead --
- 11 THE COURT: -- you can --
- 12 MR. JAMES STEWART: -- and prove.
- 13 THE COURT: -- you want to -- you want me
14 to hear any --
- 15 MR. JAMES STEWART: No, I don't need --
- 16 THE COURT: -- other evidence --
- 17 MR. JAMES STEWART: -- no, I don't need to say
18 anything. Thank you very much --
- 19 THE COURT: You think --
- 20 MR. JAMES STEWART: -- Your Honour.
- 21 THE COURT: -- that there's enough?
- 22 MR. JAMES STEWART: I -- I'm happy. You know,
23 he's got to prove that. There's nothing here that
24 I've seen, so I'm not --
- 25 THE COURT: Okay.
- 26 MR. JAMES STEWART: -- I'm not going to say

1 anything.

2 THE COURT: All right. So you're not
3 calling evidence. That -- that's the end of the
4 evidence then on the trial and on the *voir dire*. We
5 don't need that anymore. Except that I'm going to
6 make that an exhibit, that a full exhibit, unless
7 you have a problem with that disc that he's
8 compiled?

9 MR. PASHOVITZ: No, that would be with
10 consent, Your Honour.

11 THE COURT: Okay. All right.

12 COURT CLERK: We'll -- we'll get a case for
13 it.

14
15 EXHIBIT D-3: Compilation of
16 Police Videos Prepared by
17 Jarvis Stewart

18 THE COURT: I just want to make sure you
19 understand, James, that -- that what -- what you can
20 argue, now, you can't tell me anymore facts that you
21 want me to accept from your point of view. You
22 can't say, you know, his -- but his car was white,
23 or -- you know, or something like that because
24 that's what I saw. You know, it's just something
25 -- because that's not in evidence. You understand
26 that?

27 MR. JAMES STEWART: (No audible response.)

28 THE COURT: I'm not asking you to

1 testify. I just wanted to make sure that you
2 understand that I have to look at everything I've
3 heard, both from your brother's case and from the
4 Crown's case, to make up my mind.

5 MR. JAMES STEWART: Okay. No, Your Honour, at
6 this time I -- I don't see how I could add any
7 evidence.

8 THE COURT: Okay, okay, that's good.
9 That's -- I just want to make sure.

10 MR. JARVIS STEWART: Yeah. Thank you --

11 MR. JAMES STEWART: Thank you --

12 MR. JARVIS STEWART: -- Your Honour.

13 MR. JAMES STEWART: -- Your Honour.

14 THE COURT: Okay.

15 COURT CLERK: Okay.

16 THE COURT: Okay, well, you, sort of,
17 caught me off guard there, so what I'd -- what
18 happens then, next, is argument. And ordinarily
19 Jarvis, where you call evidence, which you did, you
20 would go first on the argument and then the Crown
21 would go next. And similarly on the -- the breach
22 of your *Charter* rights.

23 I want to raise something
24 with the Crown first though, before we get into
25 that. There was evidence led by Jarvis as -- a
26 number of things that could amount to a *Charter*

1 breach. And particular evidence that he was -- that
2 he wasn't given an opportunity to contact a lawyer,
3 a real opportunity; and, secondly, that he was
4 overheld, there was no particular reason to hold him
5 in custody. And he -- he gave notice of those, and
6 he asked for some remedies under 24(1). So I know
7 that you're aware that that was coming.

8 I do want to give you the
9 opportunity, though, because there was no evidence
10 called by the Crown as an explanation of the
11 overholding or anything like that.

12 If -- if you -- I mean,
13 you'll have to assess in your own mind whether you
14 think he led enough evidence that there's something
15 for you to answer. I don't know that yet. I
16 haven't given it much thought. But there's
17 certainly -- it's on the table. You know, there's
18 certainly some evidence of that.

19 But I would like to give you
20 the opportunity before -- if you wish to call any
21 evidence in explanation of either of those two
22 breaches?

23 MR. PASHOVITZ: I appreciate that, Your
24 Honour. So just thinking on my feet, being that the
25 -- especially the overholding table (sic) -- issue
26 is on the table -- I may seek an adjournment, just

1 on that argument, to see whether I would be calling
2 anybody from --

3 THE COURT: The --

4 MR. PASHOVITZ: -- detention.

5 THE COURT: -- the only reason I raise
6 that particular one is because I think the evidence
7 I have before me is that someone was asked why he
8 was held. And they said it was the sergeant of the
9 -- in the detention that made -- made the decision
10 and --

11 MR. PASHOVITZ: That's -- that's correct,
12 Your Honour.

13 THE COURT: Yes.

14 MR. PASHOVITZ: So I just -- I want to tread
15 carefully. I think I'm this -- and I've done this
16 in other cases, where I've just argued with respect
17 to that argument on the evidence that has been
18 heard. And I've just argued -- I call --

19 THE COURT: I -- I'm not --

20 MR. PASHOVITZ: -- them the --

21 THE COURT: -- sure the -- I -- even if
22 -- even if the breach is made out, I'm not sure how
23 to fix anything anyways, but -- but it's one of
24 those -- it's one of those ones where the remedy is
25 maybe unrelated to the -- because it's not an
26 exclusion of evidence type thing.

1 MR. PASHOVITZ: No.

2 THE COURT: It's --

3 MR. PASHOVITZ: That would certainly be my
4 argument, Your Honour.

5 THE COURT: Yes.

6 MR. PASHOVITZ: Just to tread carefully, I --
7 I would just, again, with you raising it, now, be
8 possibly seeking --

9 THE COURT: Okay.

10 MR. PASHOVITZ: -- leave to argue that --

11 THE COURT: Well, then --

12 MR. PASHOVITZ: -- point later.

13 THE COURT: -- then -- then I think what
14 we're going to do is adjourn until tomorrow morning.
15 We have the day set for argument anyways. And that
16 will give everybody a chance to focus on what the
17 issues are. There -- there -- there are several
18 *Charter* issues that have to be dealt with before I
19 deal with the -- or I want to hear argument on
20 anyways before I deal with the -- anything else,
21 like, the -- the charge itself.

22 The first -- the first issue
23 is the -- is the search of the vehicle. The -- as I
24 -- as I heard the evidence, it was a warrantless
25 search. And unless it's authorized by statute or is
26 for some other reason a reasonable search in the

1 circumstances, the evidence that was -- was garnered
2 by that search should be excluded, or possibly
3 should be -- or I guess that's the argument, of
4 whether it should be excluded or not.

5 So that's the -- that's the
6 first issue because it deals with exclusion of
7 evidence.

8 The second *Charter* issue that
9 -- that's -- that I think came up is -- well, it was
10 raised by -- by Mr. Jarvis (sic) as an arbitrary
11 detention issue. I'm not sure that's a -- whether
12 that's a *Charter* issue or whether that's an issue
13 that goes to something else, but it's something I
14 would like to hear discussion on.

15 The third issue is -- was the
16 -- his inability to contact a lawyer when he was
17 placed in the phone room, and the lack of assistance
18 by the police in that regard.

19 And the related issue is why
20 he wasn't -- he wasn't released right away on an
21 obstruction charge. And I guess it applies to both
22 Mr. Jarvises (sic).

23 Now, all of these -- those
24 are -- so I want to hear argument on all of those.
25 And then -- because they've raised them.

26 Then I want to hear, I guess,

1 if the breaches are made out, I guess I have to
2 decide what to do with them, so some of them are
3 24(2) and some are 24(1) type breaches or
4 applications. So what the appropriate remedy then
5 is.

6 And the third thing is then
7 -- is -- is whether the Crown has made out the
8 offence of obstruction in each case -- or the last
9 thing. And any assistance either -- you know, you
10 can give me and -- and the Crown can give me in
11 -- in all of this, I'd appreciate.

12 So I'll leave argument until
13 tomorrow. That will give me a chance to go through
14 -- go through my notes of the circumstances again --

15 MR. JAMES STEWART: Okay.

16 THE COURT: -- so I have a good idea in
17 my head what I think I'm going to do with regard to
18 what -- deciding what happened and who to believe
19 and that sort of stuff.

20 And -- and I'll -- is there
21 anything else that should be done in the meantime?

22 MR. PASHOVITZ: I can give you copies of the
23 cases that I've printed off, Your Honour. I can
24 provide copies to Mr. James Stewart --

25 THE COURT: I have these --

26 MR. PASHOVITZ: -- and Mr. --

1 THE COURT: -- cases that --

2 MR. PASHOVITZ: -- Jarvis Stewart, so --

3 THE COURT: -- they gave me. I don't

4 know if you got copies of them?

5 MR. PASHOVITZ: I -- I -- I'm -- I know the

6 names of those cases. I don't think I received a

7 stack like that. I think that was provided to the

8 case management Judge. But I just thought I would

9 try and -- it's an area that has many cases, but I

10 thought I would try and pare it down to four cases.

11 I'm going to file the *Mann* case from the Supreme

12 Court of Canada --

13 THE COURT: Mmhmm.

14 MR. PASHOVITZ: -- on the issue of

15 investigative detention. And then I have the

16 *Lundquist* (ph) case from our Saskatchewan Court of

17 Appeal, which deals with an obstruction conviction

18 that was upheld in a traffic stop. It was a

19 situation that I think is similar to this one, where

20 that was the detention with respect to a breath

21 sample. And the individual didn't comply with that,

22 and was charged with obstruction. And the Court

23 pointed out that when there is a duty to comply with

24 an officer's demand and that's not complied with,

25 there can be an obstruction charge and conviction.

26 Next, I have the -- the

1 *Phillipon* (sic) case. I believe -- *Papilion* -- I
2 apologize -- case, which is a Saskatchewan Court of
3 Queen's Bench case, which recently -- at least in
4 Saskatchewan -- did interpret *Mann* and did apply it
5 to a traffic stop type of case.

6 Then lastly -- and I've
7 already provided a copy of this case early on to
8 Mr. James Stewart and Mr. Jarvis Stewart -- there's
9 the case that you're well familiar with, Your
10 Honour, the *Tisdale* case. So I --

11 THE COURT: Oh, yes.

12 MR. PASHOVITZ: -- can file copies of those
13 cases.

14 THE COURT: Yes, please. I'd appreciate
15 that.

16 And then I have one further
17 question. I have two traffic charges, as well,
18 for --

19 MR. JAMES STEWART: Mmhmm.

20 THE COURT: -- James Stewart.

21 MR. JAMES STEWART: Yeah.

22 THE COURT: Were these set for trial?

23 MR. JAMES STEWART: (No audible response.)

24 THE COURT: These aren't set for trial,
25 these are unrelated matters. What -- what are these
26 all about?

- 1 MR. JAMES STEWART: If I may speak, Your Honour?
- 2 THE COURT: Yes, please.
- 3 MR. JAMES STEWART: We had a number of pre-case
4 management cases that happened leading up to this
5 trial.
- 6 THE COURT: Mmhmm.
- 7 MR. JAMES STEWART: And on one of those dates,
8 October the 16th, to be exact, we were staked-out by
9 members of the RCMP at Grasswoods because they did
10 not want us to make it to court. And I think the
11 reason they didn't want us to make it to court was
12 because they had some friends in the Saskatoon
13 Police that did some bad things to me. And I think
14 they wanted to make sure they could prevent me, or
15 at least show some intimidation factors.
- 16 THE COURT: Well, what do you want to do
17 about these charges?
- 18 MR. JAMES STEWART: (No audible response.)
- 19 THE COURT: One is drive while suspended,
20 and the other is operate an unregistered motor
21 vehicle.
- 22 MR. JAMES STEWART: Yeah. And, like I said, they
23 pulled me over in a parking lot. I was --
- 24 THE COURT: I don't want to hear the
25 circumstances. I want to know what's happening to
26 them. Is it a guilty plea, a not guilty plea --

1 MR. JAMES STEWART: Oh, it's --

2 THE COURT: -- or is it --

3 MR. JAMES STEWART: -- it's -- I'm --

4 THE COURT: -- a trial?

5 MR. JAMES STEWART: -- it's not guilty, Your
6 Honour. I -- I -- I -- I was going to --

7 THE COURT: Are they set --

8 MR. JAMES STEWART: -- leave that for --

9 THE COURT: -- for trial?

10 MR. JAMES STEWART: No. I was -- I was looking
11 at that as a *Charter* application, as well.

12 THE COURT: Well, there's no *Charter*
13 application until you enter a plea. Well, you have
14 pled not guilty, but there's no trial date set or
15 are they --

16 MR. JAMES STEWART: No, there's --

17 THE COURT: -- supposed to go to --

18 MR. JAMES STEWART: -- no trial date --

19 THE COURT: -- trial, as well?

20 MR. JAMES STEWART: -- set. There's nothing. I
21 was just -- I was making a comment to the traffic
22 development -- TDA is the -- is the traffic
23 prosecutor, and I told him the circumstances, and he
24 said, "It sounds to me like a *Charter* application."

25 THE COURT: Right. Well, it has to be
26 set for trial, so in the meantime, let's get a trial

1 date and, I guess, if you want -- and if you're
2 alleging *Charter* breaches, then it should be in
3 front of a Judge, not a J.P.

4 So I wonder if you could
5 assist him in getting trial dates for these?

6 MR. PASHOVITZ: I can do that -- well,
7 between now and tomorrow.

8 THE COURT: Yes.

9 MR. PASHOVITZ: I -- I'm thinking they can
10 just go as self-represented individuals to the
11 window of the clerk's office --

12 THE COURT: Yes.

13 MR. PASHOVITZ: -- and just --

14 THE COURT: But -- but --

15 MR. PASHOVITZ: -- speak --

16 THE COURT: -- I -- I think -- I'll give
17 these to you.

18 COURT CLERK: Yes, sure.

19 THE COURT: And if you can advise that
20 the -- a Judge has to hear this, not a J.P.?

21 COURT CLERK: Yes, I can look after that --

22 THE COURT: Okay.

23 COURT CLERK: -- Your Honour.

24 THE COURT: That's the simplest thing.

25 COURT CLERK: Yes.

26 THE COURT: Okay, you go with the clerk

1 after court --

2 MR. JAMES STEWART: After court?

3 THE COURT: -- and get a date -- get

4 dates set for these.

5 MR. JAMES STEWART: Okay, thank you, Your

6 Honour.

7 THE COURT: Okay. Because there's not

8 guilty pleas entered already.

9 COURT CLERK: Okay. Okay, I'll handle it

10 -- that.

11 THE COURT: Okay.

12 COURT CLERK: Thank you, Your Honour.

13 THE COURT: And I'll give --

14 MR. PASHOVITZ: And I'll trade --

15 THE COURT: -- I'll give you --

16 MR. PASHOVITZ: -- these cases for those --

17 THE COURT: -- back --

18 MR. PASHOVITZ: -- tickets, Your Honour.

19 THE COURT: -- this copy of that thing.

20 MR. PASHOVITZ: Thank you, Your Honour.

21 COURT CLERK: Oh, this is the copy then --

22 THE COURT: Yes.

23 COURT CLERK: -- of those other cases, Your

24 Honour.

25 THE CCURT: Thank you.

26 COURT CLERK: And this is a copy of that

1 (inaudible).

2 THE COURT: Okay, so we'll adjourn

3 -- will come back --

4 MR. JARVIS STEWART: Can I --

5 THE COURT: -- at 9:30.

6 MR. JARVIS STEWART: -- can I just say

7 something --

8 THE COURT: Yes, sure.

9 MR. JARVIS STEWART: -- really quickly? I just

10 thought maybe -- did you have any thoughts as to a

11 Section 7 violation? I know there's been numerous

12 -- I mean, it's the reason there was so many case

13 managements is, we haven't received anything that

14 would resemble adequate disclosure.

15 THE COURT: Well --

16 MR. JARVIS STEWART: We've listened to the

17 officers' testimony, the use of force reports, the

18 mug shots they took --

19 THE COURT: Okay.

20 MR. JARVIS STEWART: -- of us.

21 THE COURT: Okay. Use -- use of force

22 reports are the property of the police, they're not

23 part of the Crown's case. There's a procedure

24 -- the --

25 MR. JARVIS STEWART: An *O'Connor* --

26 THE COURT: -- this -- this is --

- 1 MR. JARVIS STEWART: -- application.
- 2 THE COURT: -- kind of, hard to
3 understand.
- 4 MR. JARVIS STEWART: An *O'Connor* application,
5 right?
- 6 THE COURT: Yes.
- 7 MR. JARVIS STEWART: And we've -- we sent them
8 one.
- 9 THE COURT: And you have to make the
10 *O'Connor* application before the trial.
- 11 MR. JARVIS STEWART: And we --
- 12 MR. JAMES STEWART: We did.
- 13 MR. JARVIS STEWART: -- did.
- 14 THE COURT: No, you didn't because
15 there's no *O'Connor* application.
- 16 MR. JARVIS STEWART: I -- I talked to --
- 17 MR. JAMES STEWART: Judge -- Justice --
- 18 MR. JARVIS STEWART: -- Justice Lavoie, and I gave
19 him my *O'Connor* application. And he said it would
20 not be necessary. He said under first party
21 disclosure obligations pursuant to *MacNeil* (ph),
22 that this man had to give me all of the relevant
23 information -- relevant information regarding the
24 conduct of this officer. We already have him in a
25 case where he's -- he's --
- 26 THE COURT: Just a minute.

1 MR. JAMES STEWART: We have the --

2 MR. JARVIS STEWART: -- it's the exact --

3 THE COURT: Just a minute.

4 MR. JAMES STEWART: -- *O'Connor*.

5 MR. JARVIS STEWART: -- same type of --

6 MR. JAMES STEWART: We have --

7 MR. JARVIS STEWART: -- misconduct.

8 MR. JAMES STEWART: -- the *O'Connor*.

9 THE COURT: Okay.

10 MR. JAMES STEWART: We typed it up.

11 THE COURT: Okay, okay.

12 MR. JAMES STEWART: And Judge Lavoie didn't --

13 MR. JARVIS STEWART: And so we asked --

14 MR. JAMES STEWART: -- want it.

15 THE COURT: All right, though.

16 MR. JARVIS STEWART: -- Justice Lavoie --

17 THE COURT: Just a minute here. Let's

18 -- let's -- let's get this straightened out

19 beforehand. Do you know anything about this?

20 MR. PASHOVITZ: I know that I haven't

21 disclosed any use of force reports, Your Honour.

22 THE COURT: Mmhmm.

23 MR. PASHOVITZ: I do know that there's a

24 civil action because -- with respect to one of our

25 *MacNeil* disclosure letters to both James Stewart and

26 Jarvis Stewart, we indicated that we're aware that

1 you've filed a complaint --

2 THE COURT: I --

3 MR. PASHOVITZ: -- to the Public

4 Complaints --

5 THE COURT: How -- how does it --

6 MR. PASHOVITZ: -- Commission.

7 THE COURT: -- and how does that matter,

8 now, that I threw out the assault charge?

9 MR. JARVIS STEWART: Oh, just -- it just shows Jay

10 Keating's misconducts, how he treats the public

11 really. I mean, we wanted his discipline records

12 because we thought they were relevant.

13 I mean, we're both -- we both

14 have clean criminal records. I've never

15 assaulted --

16 THE COURT: Well --

17 MR. JARVIS STEWART: -- anybody. I've never -- I

18 have a clean driving abstract.

19 THE COURT: -- I didn't know this when

20 you had him on the stand, that you didn't have his

21 -- I know -- I know you made an application for his

22 -- under *MacNeil* for his disciplinary records. And

23 they're entitled to that.

24 MR. JAMES STEWART: We didn't get any --

25 MR. JARVIS STEWART: I didn't get --

26 MR. JAMES STEWART: -- of those.

- 1 MR. JARVIS STEWART: -- any of that. That's why I
2 said my Section 7 *Charter* right had been violated.
- 3 THE COURT: Okay, just a minute.
- 4 MR. PASHOVITZ: I can show you the letter,
5 Your Honour, that we provided in response to that,
6 along with the letter that confirms that we -- we've
7 become aware of the Police Complaints Commission
8 complaint.
- 9 THE COURT: On this case or other cases?
- 10 MR. PASHOVITZ: (No audible response.)
- 11 THE COURT: Oh, well, we'll see what
12 you've got. If you've read *MacNeil*, then you know
13 that those -- those reports, even when you get them,
14 are just for the purposes of cross-examining a
15 witness, and if you have something from him
16 already --
- 17 MR. JARVIS STEWART: I don't have anything though.
18 That's the problem. I haven't --
- 19 THE COURT: Well, let's --
- 20 MR. JARVIS STEWART: -- received --
- 21 THE COURT: -- let's see --
- 22 MR. JARVIS STEWART: -- anything.
- 23 THE COURT: -- what they sent you.
- 24 MR. PASHOVITZ: So that's -- well, that's
25 just confirming that there was the police complaint,
26 Your Honour, so, again, if they've -- or one of them

1 has laid a complaint, one would think that they
2 would have obtained that material through that
3 process?

4 THE COURT: No, no, no, no, no --

5 MR. PASHOVITZ: No?

6 THE COURT: -- no, no. That's not what

7 *MacNeil* says.

8 MR. JARVIS STEWART: You can't --

9 MR. PASHOVITZ: No, no, I apologize.

10 MR. JAMES STEWART: Permission to speak, Your

11 Honour.

12 THE COURT: No, just a minute.

13 MR. PASHOVITZ: I think we're --

14 THE COURT: I just want to hear --

15 MR. PASHOVITZ: -- getting the --

16 THE COURT: -- what he says.

17 MR. PASHOVITZ: I'm sorry, I apologize.

18 We're getting the two issues -- there's two
19 different issues here, Your Honour. There's the use
20 of force reports, which, again, I have not
21 disclosed. I don't have those in my possession.

22 With respect to the request
23 for *MacNeil* disclosure, I can provide copies of the
24 letters that were provided to James and Jarvis
25 Stewart.

26 THE COURT: That's -- that's what I want

1 to see, not the ones saying about the police
2 complaints.

3 MR. PASHOVITZ: Yes. There's a number of
4 them. I'll just have to try and --

5 THE COURT: Well, just -- just a minute.
6 I know the use of force are not in your possession.
7 But did not Judge Lavoie indicate that you were
8 supposed to get them in your possession and turn
9 them over?

10 MR. PASHOVITZ: That may well have occurred
11 before I was on the file, Your Honour, but -- yeah,
12 this is the first I've heard of -- of that.

13 THE COURT: Well, I -- I wish I'd known
14 this before because it has to do with their ability
15 to have a fair trial --

16 MR. PASHOVITZ: Mmhmm.

17 THE COURT: -- and cross-examine the
18 witness. And they -- it went by that already.

19 MR. JAMES STEWART: That's because they're trying
20 to railroad us.

21 MR. PASHOVITZ: I'll just --

22 MR. JAMES STEWART: You're trying to railroad us,
23 Bryce.

24 MR. PASHOVITZ: -- I'll trade you copies.
25 This is the letter with respect to the *MacNeil*
26 disclosure request.

- 1 THE COURT: All right. Well, they've
2 answered your question on the *MacNeil*. Yes,
3 Constable Keating has no complaint.
- 4 MR. JAMES STEWART: Well, Your Honour, Justice
5 Lavoie said that wasn't relevant *MacNeil* disclosure,
6 as this one assault, and the officer acted using
7 physical force -- physical force --
- 8 THE COURT: There's --
- 9 MR. JAMES STEWART: -- so --
- 10 THE COURT: -- there's been no discipline
11 -- what did it say?
- 12 MR. PASHOVITZ: (No audible response.)
- 13 THE COURT: Did it say that -- read
14 -- read it into the record?
- 15 MR. PASHOVITZ: Oh.
16
17 "Constable Gordon James Keating
18 has no *MacNeil* disclosure to
19 report."
20 It's my reading --
- 21 THE COURT: Oh.
- 22 MR. PASHOVITZ: -- of *MacNeil* that I don't
23 think there would be anything more for him to report
24 until there is a finding of some respect, with
25 respect to the --
- 26 THE COURT: There's been --
- 27 MR. PASHOVITZ: -- complaint that I think --
- 28 THE COURT: -- no discipline --

1 MR. PASHOVITZ: -- was laid --

2 THE COURT: -- hearings.

3 MR. PASHOVITZ: -- by one of these

4 individuals against Constable Keating. So that's

5 what that boils down to, Your Honour. That's my

6 reading of the case and this letter.

7 THE COURT: The note says here:

8

9 "List of police officers for which

10 disciplinary records may or may

11 not be disclosed."

12 And there is none to disclose, they say.

13 MR. JARVIS STEWART: Well, and that's the problem,

14 is that's just what they say. I mean, we have case

15 law here that says Constable Keating has grossly

16 violated --

17 THE COURT: That doesn't --

18 MR. JARVIS STEWART: -- a man's Section --

19 THE COURT: -- whether a Judge finds to

20 believe someone or not, it doesn't mean there's a

21 disciplinary record on them.

22 MR. JARVIS STEWART: Okay.

23 THE COURT: Yes.

24 MR. JARVIS STEWART: Okay.

25 THE COURT: Yes. And if they say -- I'm

26 prepared to accept -- if the prosecutor says there's

27 no -- or the police say there's no disciplinary

28 records, there's no disciplinary records.

1 MR. JAMES STEWART: Judge Lavoie said -- Your
2 Honour, Judge Lavoie said that was not *MacNeil*
3 disclosure. He told --

4 MR. JARVIS STEWART: No, that's fine.

5 THE COURT: Well, I don't know --

6 MR. JARVIS STEWART: If you're -- if you're --

7 THE COURT: -- what else would be.

8 MR. JARVIS STEWART: -- if you're willing to take
9 his word for it, I mean, all we can say is --

10 THE COURT: I don't --

11 MR. JARVIS STEWART: -- we --

12 THE COURT: -- know what else would be.
13 *MacNeil* just says --

14 MR. JARVIS STEWART: -- we have --

15 THE COURT: -- if there is a disciplinary
16 record, then it should be disclosed. If there's not
17 one, then it -- there's nothing to disclose.

18 MR. JARVIS STEWART: Okay.

19 MR. JAMES STEWART: Okay.

20 MR. JARVIS STEWART: I guess we'll take --

21 THE COURT: I don't know --

22 MR. JARVIS STEWART: -- his word --

23 THE COURT: -- what else --

24 MR. JARVIS STEWART: -- for it.

25 THE COURT: -- he could possibly say. Is
26 there any -- anything else I should know about?

1 MR. JARVIS STEWART: No. I mean, I -- I -- I
2 think that's it. I've -- we've --

3 THE COURT: Well, no, I'm not -- I'm not
4 concerned about the disclosure issues because
5 it's --

6 MR. JARVIS STEEWART: Okay.

7 THE COURT: -- for number 1, it's a bit
8 late in the day to raise it, but, number 2, what
9 -- what they provided you there is -- is, to my
10 mind, that's what -- all that *MacNeil* requires, is
11 if there is disciplinary records, then you have
12 -- they have to disclose it. If there's not -- now,
13 the issue of the use of force, it's not covered, I
14 don't think, by anything I could see that Judge
15 Lavoie did in any of the case managements, unless
16 I'm mixed up here. Let me have a look here. No,
17 there's no -- there's no particular note about it
18 here.

19 MR. JARVIS STEWART: About discipline records or
20 use --

21 THE COURT: About --

22 MR. JARVIS STEWART: -- of force reports?

23 THE COURT: -- about use of force
24 reports. And where is the -- where is your *O'Connor*
25 application?

26 MR. JAMES STEWART: He told us not to hand it

1 in --

2 MR. JARVIS STEWART: No, no.

3 MR. JAMES STEWART: -- until we got here.

4 MR. JARVIS STEWART: I've got a copy of it though.

5 I have it here somewhere.

6 THE COURT: And it was handed in?

7 MR. JAMES STEWART: No, he -- he -- he said --

8 MR. JARVIS STEWART: No, it was handed in.

9 MR. JAMES STEWART: No, he returned --

10 MR. JARVIS STEWART: It was handed --

11 MR. JAMES STEWART: -- it back.

12 MR. JARVIS STEWART: -- in, and he basically told

13 me we really didn't need to do it, but I definitely

14 gave it to him. That's a copy of it. And he told

15 me --

16 THE COURT: Yes, I don't --

17 MR. JARVIS STEWART: -- it wasn't really --

18 THE COURT: -- I'm not sure how relevant

19 it is, since the assault charge isn't before me.

20 MR. JARVIS STEWART: Okay, that's fair, that's

21 fair.

22 THE COURT: Yes.

23 MR. JARVIS STEWART: I just --

24 THE COURT: Yes.

25 MR. JARVIS STEWART: -- wanted to bring it up

26 because --

1 THE COURT: It's just the obstruction
2 charge --

3 MR. JARVIS STEWART: Yeah, that's fair.

4 THE COURT: -- which allegedly took place
5 a long time before any of the assault business.
6 Okay.

7 MR. PASHOVITZ: Thank you, Your Honour.

8 THE COURT: Okay.

9 COURT CLERK: Order in court, all rise. I
10 declare this Court closed in the name of Her Majesty
11 The Queen.

12 (COURT ADJOURNED APRIL 17TH, 2013)

13 (COURT RECONVENED APRIL 18TH, 2013)

14 COURT CLERK: In the name of Her Majesty
15 The Queen, I declare this court opened. The
16 Honourable Judge Singer presiding.

17 (COURT DEALS WITH OTHER MATTER)

18 THE COURT: Okay.

19 MR. PASHOVITZ: This is -- good morning, Your
20 Honour.

21 THE COURT: Mmhmm.

22 MR. PASHOVITZ: Returning to the Stewart
23 trial.

24 THE COURT: Mmhmm.

25 MR. PASHOVITZ: Just for procedural purposes,
26 I'm thinking that the Crown should make its

- 1 submissions first.
- 2 THE COURT: Yes.
- 3 MR. PASHOVITZ: I know there was the *voir*
4 *dire*, and there were a number of *Charter*
5 applications, so --
- 6 THE COURT: And --
- 7 MR. PASHOVITZ: -- the onus is on the accused
8 with respect to a balance of probabilities burden
9 with respect to --
- 10 THE COURT: Ordinarily --
- 11 MR. PASHOVITZ: -- some of those matters.
- 12 THE COURT: -- we reverse all of the
13 orders when there's unrepresented accused, so it's
14 not unusual, if you want to go first.
- 15 MR. PASHOVITZ: No. That's fine. I just
16 wanted to have that on the record.
- 17 THE COURT: Yes.
- 18 MR. JARVIS STEWART: With all due respect, I think
19 I've proven on a balance of probabilities that my
20 rights were violated. I was looking for --
- 21 THE COURT: Sit down.
- 22 MR. JARVIS STEWART; -- a reason.
- 23 THE COURT: Just sit down for a minute.
24 The -- I just -- did you just hear what I said?
- 25 MR. JARVIS STEWART: (No audible response.)
- 26 THE COURT: The Crown --

1 MR. JARVIS STEWART: You told me --

2 THE COURT: -- the Crown --

3 MR. JARVIS STEWART: -- to sit down.

4 THE COURT: -- is going to go first --

5 MR. JARVIS STEWART: Okay.

6 THE COURT: -- in the submissions. It's

7 -- it's -- unless you wish to go first?

8 MR. JARVIS STEWART: No, go ahead.

9 THE COURT: Yes, it's okay. I just don't

10 know why you were popping up.

11 MR. JARVIS STEWART: Okay. No.

12 THE COURT: Okay.

13 MR. JARVIS STEWART: Let him go.

14 THE COURT: Okay.

15 MR. JAMES STEWART: He's just being a little

16 emotional, Your Honour.

17 THE COURT: Yes, well, take it easy.

18 MR. PASHOVITZ: I'll provide my Crown Brief

19 of Law and Argument to the Court, Your Honour, with

20 respect to the issues that you raised yesterday.

21 THE COURT: Thank you. Do you have for

22 the defence?

23 MR. PASHOVITZ: And there's two copies, as

24 well, Your Honour.

25 THE COURT: All right.

26 MR. PASHOVITZ: So what I've laid out or I've

1 jotted down the -- I believe the four issues that
2 were identified by the Court yesterday with respect
3 to the *voir dire* issues.

4 And, as well, I included some
5 cases at the end, just to assist the Court with
6 respect to the -- the merits of the obstruction
7 charges. At the end of my submissions, I'll be
8 trying to review the evidence as I recall it with
9 respect to the trial that shows that both James
10 Stewart and Jarvis Stewart are guilty of obstructing
11 Constable Keating.

12 But back to the Brief, back
13 to the issues that were raised by the Court
14 yesterday, I don't plan on reading --

15 THE COURT: Well, I --

16 MR. PASHOVITZ: -- my Brief --

17 THE COURT: -- I -- I --

18 MR. PASHOVITZ: -- word-for-word, but --

19 THE COURT: -- I only raised them because
20 they were in the Notice --

21 MR. PASHOVITZ: Exactly --

22 THE COURT: -- provided.

23 MR. PASHOVITZ: -- Your Honour. No, and I
24 appreciate you clarifying that, as well.

25 Issue number 1, search of the
26 vehicle, it's my review of the case law that,

1 according to the Supreme Court of Canada, when an
2 officer stops a driver for a traffic offence, the
3 officer may require the driver to produce identity
4 documents. If the driver does not produce them, the
5 officer may search the vehicle for them. That's my
6 review of those cases, Your Honour.

7 And, again, with respect to
8 what happened at the scene, we have the evidence
9 from Constable Keating as far as the lack of
10 identification. I think other officers corroborated
11 that, as well, too.

12 Further, I don't know if I
13 want to say in the alternative, but I just put
14 further, provincial legislation, as well, provides
15 the police with the authority in certain
16 circumstances to tow and impound a driver's vehicle,
17 which is what happened here. As well, the authority
18 to tow and impound a vehicle carries with it the
19 duty and responsibility to take care of the vehicle
20 and its contents and allows the police to do an
21 inventory of the vehicle's contents, as well.

22 Therefore, the Crown
23 respectfully submits that upon our review of what
24 happened on the night in question that section 8 of
25 the *Charter* was not breached due to the initial
26 search of the vehicle, due to the fact that the

1 police can search it for identification documents.

2 However, further, if the
3 Court does find that the initial search did breach
4 Section 8, that the evidence found in the search
5 ought not to be excluded due to that breach,
6 pursuant to Section 24(2) of the *Charter*, as its
7 discovery was inevitable -- inevitable, due to the
8 fact that the vehicle was seized and the evidence
9 would have been found in the glove box in any event
10 through an inventory search.

11 The Crown respectfully
12 submits that even if the evidence is excluded by a
13 Section 24(2), similar to the rights --

14 THE COURT: What about --

15 MR. PASHOVITZ: -- to counsel --

16 THE COURT: -- but does --

17 MR. PASHOVITZ: -- issue --

18 THE COURT: -- an inventory search allow
19 them to seize anything?

20 MR. PASHOVITZ: (No audible response.)

21 THE COURT: Or just make a list of
22 everything that's there?

23 MR. PASHOVITZ: (No audible response.)

24 THE COURT: It's for -- it's for -- to
25 -- it's for safety (sic), isn't it?

26 MR. PASHOVITZ: (No audible response.)

- 1 THE COURT: I mean, safekeeping?
- 2 MR. PASHOVITZ: Safekeeping.
- 3 THE COURT: Yes.
- 4 MR. PASHOVITZ: But if it's a lawful, I
- 5 guess, reason to be in the vehicle, if they find
- 6 something that supports the charge, like, what would
- 7 have happened here, as far as those right to travel
- 8 documents, et cetera, I think that would still allow
- 9 those to be introduced at a trial like this. That's
- 10 my read of the case law.
- 11 THE COURT: Well, I've -- I've never
- 12 -- for instance -- I'm just using the example of,
- 13 say, they find -- and nothing like this happened,
- 14 but --
- 15 MR. PASHOVITZ: Right.
- 16 THE COURT: -- let's say they find a
- 17 machine gun or something.
- 18 MR. PASHOVITZ: Right.
- 19 THE COURT: Then the inventory search
- 20 isn't -- isn't -- you're not permissible to seize.
- 21 You know, they have to stop and -- and get a warrant
- 22 and all of that to seize anything.
- 23 MR. PASHOVITZ: Fair enough, Your Honour.
- 24 THE COURT: Yeah.
- 25 MR. PASHOVITZ: And that may well what is
- 26 -- that may well have occurred in this case, as

1 well, too.

2 THE COURT: Yes.

3 MR. PASHOVITZ: I'm just arguing that --

4 THE COURT: And that --

5 MR. PASHOVITZ: -- in the --

6 THE COURT: -- goes to --

7 MR. PASHOVITZ: -- alternative.

8 THE COURT: -- the 24 anyways --

9 MR. PASHOVITZ: Exactly.

10 THE COURT: -- I think.

11 MR. PASHOVITZ: And it's the inevitability
12 that I'm hanging my hat on, even if the Court does
13 find a breach in the first place, which I submit,
14 due to the ability to search a vehicle for
15 identification documents, that there ought not to be
16 the finding of a breach there.

17 The next issue I've noted
18 down is the right to counsel issue. Constable
19 Hounsell testified that he placed Jarvis Stewart in
20 the north interview room, where there was a phone
21 book. I believe his testimony was that he went then
22 back down to the Sally port, as they call it, to
23 assist the other officers who were dealing with
24 James Stewart. Hounsell himself assisted by placing
25 the spit sock on James Stewart, and then went back
26 to the north interview room, and asked Jarvis

1 Stewart if he had found his lawyer's phone number.
2 Jarvis Stewart stated that his lawyer lived in -- I
3 think the quote was, "B.C.", and he did not want to
4 talk to him anymore.

5 As we heard yesterday, Jarvis
6 Stewart did testify. He testified and played the
7 video from the phone room. He was cross-examined,
8 however, about his earlier statement where he stated
9 in that statement, "I was then denied a phone call
10 for a period of almost an hour before I gave up. I
11 was stripped of my shoes and my personal belongings.
12 Another unidentified man then sexually assaulted me,
13 grabbing my testicles violently."

14 Your Honour, if the Court
15 does find that the Section 10(b) right with respect
16 to Jarvis Stewart was breached with respect to his
17 submissions about the call to a lawyer, as you
18 pointed out yesterday, the issue then would be, what
19 is the -- the remedy?

20 Unlike the classic case -- or
21 I shouldn't say "classic", but unlike the common
22 case where there is an application to exclude breath
23 sample results after a call to a lawyer issue or an
24 application to exclude an admission or a confession
25 after a call to a lawyer issue, in this case, the
26 offence -- the offence of obstruction had already

1 occurred prior to the call to a lawyer. So I found
2 the case of *The Crown and Galickus* (ph) from the
3 Ontario Court of Appeal. And it's a similar
4 situation, as far as the Court was left with the
5 issue of what the remedy was. The court did find
6 -- the trial judge did find that the accused, who
7 had flown in from Jamaica to Toronto, had been
8 -- had his Section 10(b) right breached, but the
9 evidence was subsequently not excluded under Section
10 24(2).

11 And the Court of Appeal read
12 as follows:

13 "Breach of a *Charter* guarantee
14 should not be considered in
15 imposing sentence, unless it
16 mitigated the seriousness of the
17 offence, or constituted a form of
18 punishment or undue hardship. It
19 was an error to conclude that
20 compensation for improper police
21 action should be a factor in
22 determining an appropriate
23 sentence."
24

25 The court goes on to say,
26 Your Honour:

27 "The only appropriate remedy for
28 denial of the right to retain and
29 instruct counsel was to consider
30 the exclusion of evidence. The
31 breach of Section 10(b) did not in
32 any way mitigate the seriousness
33 of the offence."
34

35 THE COURT: Have -- have you -- have you

1 read the Supreme Court -- I think-- I can never
2 pronounce it -- *Asagarelic* (ph).

3 MR. JAMES STEWART: *Asagarelic*.

4 MR. JARVIS STEWART: *Asagarelic*.

5 THE COURT: *Asagarelic*.

6 MR. PASHOVITZ: I have, Your Honour.

7 THE COURT: Yes. Doesn't that -- doesn't
8 it make specific mention of this, and talks about
9 the remedies under 24 - possible remedies under
10 24(1), and comes to a similar conclusion, that the
11 only -- that the -- the traditional way of dealing
12 with it is mitigation of sentence, but the
13 traditional rules of sentencing would allow for
14 mitigation of sentence where the police do something
15 they're not supposed to anyway. And so that in that
16 case, they didn't -- they said 24(1) would not
17 result in -- in mitigation in sentence because
18 -- below the mandatory sentence.

19 MR. PASHOVITZ: That's -- that's correct,
20 Your Honour.

21 THE COURT: Yes.

22 MR. PASHOVITZ: It -- it can be addressed at
23 the sentencing stage. That's my read of that case,
24 as well, too.

25 THE COURT: Or it should be, I think they
26 say.

- 1 MR. PASHOVITZ: That was the --
- 2 THE COURT: That that's the --
- 3 MR. PASHOVITZ: -- application.
- 4 THE COURT: -- appropriate remedy, but
- 5 -- but that still leaves the person without a 24(1)
- 6 remedy when there's been a breach.
- 7 MR. PASHOVITZ: Well, I think the 24(1)
- 8 remedy would be -- my read of that *Asagarelic* case
- 9 is that there can be reduction in sentence, if there
- 10 is found to be that breach.
- 11 THE COURT: Well, there can be, but it
- 12 follows the rules of sentencing.
- 13 MR. PASHOVITZ: Correct.
- 14 THE COURT: Not because of 24(1). Now
- 15 -- and they raise that because Ontario took this
- 16 position.
- 17 MR. PASHOVITZ: Right.
- 18 THE COURT: And Saskatchewan, for
- 19 instance, took the position that a breach that
- 20 wasn't related to the nexus to the -- of the offence
- 21 -- wasn't properly connected to the offence so that
- 22 it prevented it -- so the exclusion of evidence
- 23 didn't apply.
- 24 The Saskatchewan position was
- 25 that it always resulted in a -- in a mitigation of
- 26 sentence as a 24(1) remedy. They -- the Supreme

1 Court took the same position of the Ontario Court of
2 Appeal, I think.

3 MR. PASHOVITZ: I -- I agree, Your Honour.

4 THE COURT: Yes, so --

5 MR. PASHOVITZ: Just --

6 THE COURT: -- but it still leaves us
7 without a 24(1) remedy.

8 MR. PASHOVITZ: Well, I --

9 THE COURT: If I find a breach.

10 MR. PASHOVITZ: That's correct, Your Honour.

11 THE COURT: Yes.

12 MR. PASHOVITZ: That *Asagarelic* case, that's
13 an interesting case, as well, too, because in that
14 case, that was an individual who, I believe, was
15 stopped for a driving offence.

16 THE COURT: Well, and he was grievously
17 beaten up and everything else after, and they still
18 said he couldn't go below the minimum --

19 MR. PASHOVITZ: That's --

20 THE COURT: -- mandatory.

21 MR. PASHOVITZ: -- exactly right. They were,
22 I believe, broken ribs.

23 THE COURT: They did -- they did mitigate
24 his sentence though.

25 MR. PASHOVITZ: Exactly. And a much more, I
26 would submit, serious case than -- than the one

1 that's before you today.

2 THE COURT: It may be, but I -- but I'm
3 just still -- what it -- but it does leave open the
4 question of what -- what remedy under 24(1). And
5 I'm -- all I'm saying is that, I think mitigation of
6 sentence is off the table now because of that case,
7 but there -- that doesn't mean it wouldn't happen.

8 MR. PASHOVITZ: Exactly.

9 THE COURT: However, it doesn't -- it
10 -- I'm left without a remedy.

11 MR. PASHOVITZ: I believe --

12 THE COURT: It doesn't -- it doesn't make
13 much sense to me.

14 MR. PASHOVITZ: Well, this -- I think that is
15 what the Court is left with, Your Honour.

16 THE COURT: Okay.

17 MR. PASHOVITZ: That *Galickus* case may -- may
18 assist the Court.

19 THE COURT: Yes.

20 MR. PASHOVITZ: And turning, now, to the
21 other issue of arbitrary detention and -- and over
22 holding, as far as the phrase that's used sometimes.
23 The Crown is relying, respectfully, on Sections 497
24 and 498 of the *Criminal Code* and the case of *The*
25 *Crown and Salisbury* from -- from the Court of
26 Appeal. And I'll -- I don't want to again read from

1 my Brief, which I've, kind of, been doing.

2 THE COURT: It's okay.

3 MR. PASHOVITZ: What it boils down to is
4 that --

5 THE COURT: I haven't read it yet, so
6 it's okay.

7 MR. PASHOVITZ: -- I would respectfully
8 submit -- I appreciate that, Your Honour. I would
9 respectfully submit that -- and I've been wrong many
10 times before -- I would respectfully submit that I
11 believe there is sufficient evidence to allow the
12 Court to conclude that there was no Section 9 breach
13 of arbitrary detention as far as over holding in
14 this case, just based on the facts that I'll be
15 reviewing for the Court that I heard in the evidence
16 at this trial.

17 But having said that, I do
18 want to see this matter proceed as quickly as
19 possible, but if the Court is, at the end of the
20 day, entertaining the possibility of finding that
21 there was over holding here and then an eventual --

22 THE COURT: I am --

23 MR. PASHOVITZ: -- remedy --

24 THE COURT: -- I am because my
25 recollection is that Schaefer says when he went to
26 talk to him, he was very cooperative and gave him

1 all of the information --

2 MR. PASHOVITZ: Mmhmm.

3 THE COURT: -- that he wanted.

4 MR. PASHOVITZ: Right, so -- and, again,

5 we've heard in the evidence things are turned over

6 to the detention sergeants, things of that nature,

7 so I -- I think it would be pure speculation on all

8 of our parts, as far as finding out -- or

9 speculating what happened with respect to the

10 release of these two individuals. Just thinking on

11 the top of my feet, I think there was evidence here

12 that there was possibly not just one trip to a

13 Justice of the Peace, but two trips. One wonders

14 how much that added. I believe that's --

15 MR. JARVIS STEWART: I have to object --

16 THE COURT: Just -- just --

17 MR. JARVIS STEWART: -- to that --

18 THE COURT: -- sit down.

19 MR. PASHOVITZ: -- what Jarvis testified --

20 MR. JARVIS STEWART: -- Your Honour.

21 MR. PASHOVITZ: -- Your Honour.

22 THE COURT: Just sit down.

23 MR. JARVIS STEWART: Holy cow.

24 THE COURT: You'll get a chance.

25 MR. PASHOVITZ: So --

26 THE COURT: It's okay. Take it easy.

1 MR. JAMES STEWART: It's not easy --

2 MR. JARVIS STEWART: This is difficult --

3 MR. JAMES STEWART: -- Your Honour.

4 MR. JARVIS STEWART: -- Your Honour.

5 THE COURT: Yes.

6 MR. JARVIS STEWART: This is difficult.

7 THE COURT: It would, but you have to

8 take it easy.

9 MR. JARVIS STEWART: Okay.

10 THE COURT: You have to relax. These are

11 -- he's just --

12 MR. JAMES STEWART: We're trying.

13 THE COURT: -- telling me what he says.

14 MR. JARVIS STEWART: I'm trying my best --

15 THE COURT: These are --

16 MR. JARVIS STEWART: -- Your Honour.

17 THE COURT: -- words.

18 MR. JARVIS STEWART: I'm doing my best right now.

19 THE COURT: Okay.

20 MR. PASHOVITZ: So I don't want to have the

21 Court decide this in a vacuum, Your Honour, so what

22 I'm proposing is hopefully having the Court provide

23 as much of the ruling as it can, but if the Court is

24 entertaining an actual --

25 THE COURT: Well, that's --

26 MR. PASHOVITZ: -- consideration of the --

1 THE COURT: -- that's --

2 MR. PASHOVITZ: -- over holding, I will have
3 to ask for reports of the detention sergeants. I'm
4 just thinking out loud because I've had cases or
5 I've seen colleagues' cases where, when we've delved
6 into that, there are issue that come up that we were
7 unaware of because what we have is the evidence with
8 respect to the --

9 THE COURT: But you were aware --

10 MR. PASHOVITZ: -- criminal offence.

11 THE COURT: -- you were aware of this.

12 It's in the *Charter* Notice that was given back at
13 the case management and --

14 MR. PASHOVITZ: Right.

15 THE COURT: -- and -- and -- and it's on
16 -- it's -- that's it. I mean, you were certainly
17 aware of this. And I asked you yesterday if you
18 -- you know, if you wanted an opportunity to call
19 someone in answer, we should have them here today.

20 MR. PASHOVITZ: Well, I -- I remember the
21 Court saying that. I've run into that issue before.

22 THE COURT: Yes.

23 MR. PASHOVITZ: I have to request reports, I
24 have to disclose the reports to defence counsel,
25 things of that nature. And then, again, I'm hanging
26 my hat on the *Salisbury* case, which also speaks of

1 the fact that in cases, this ought to be done at the
2 conclusion of the proceedings, if there is a
3 conviction because it's similar to the cases, I
4 think, out of -- there was one out of Ontario with
5 respect to -- I think they were calling it the --
6 the Toronto 18, where there was a conviction at
7 trial, but then there was an application for a
8 judicial stay due to entrapment, I think is what was
9 done there.

10 THE COURT: Yes.

11 MR. PASHOVITZ: It's a completely different
12 matter than the actual trial proper with respect to
13 obstruction charges that happened in the parking
14 lot.

15 THE COURT: It is.

16 MR. PASHOVITZ: So --

17 THE COURT: It is. And -- and if -- and
18 you may be right about that.

19 MR. PASHOVITZ: And it's --

20 THE COURT: And I don't --

21 MR. PASHOVITZ: -- very difficult --

22 THE COURT: -- I don't have *Salisbury*
23 with me. I used to carry it with me.

24 MR. PASHOVITZ: So I -- if I may, I'll just
25 review the circumstances as I see them. And maybe
26 the Court will conclude that there is enough

1 evidence to allow the Crown to show that they were
2 not -- sorry -- that Jarvis Stewart was not over
3 held.

4 THE COURT: All right.

5 MR. PASHOVITZ: My review of the evidence is
6 that -- well, of course, you're well familiar with
7 Sections 497 and 498, as far as --

8 THE COURT: I will --

9 MR. PASHOVITZ: -- potential --

10 THE COURT: -- be in a moment. I just
11 thought I'd better look at them while you're
12 talking. All right.

13 MR. PASHOVITZ: There's a number of grounds
14 there, Your Honour, which can allow the police, if
15 they have reasonable grounds to believe that there
16 should be a continued detention, those can be based,
17 among other things, in order to establish the
18 identity of the person, to secure or preserve
19 evidence, to prevent the continuation or repetition
20 of the offence, ensure the safety of a witness, or
21 else ensure attendance at court. Those are the
22 delineated clauses --

23 THE COURT: Okay.

24 MR. PASHOVITZ: -- in the *Code*.

25 THE COURT: In your disclosure there, I
26 mean, I watched the video of them being booked, and

1 they seemed very cooperative. They're filling in
2 all of -- all of the booking forms. Do you have the
3 booking forms?

4 MR. PASHOVITZ: I have the -- yes, I do, Your
5 Honour.

6 THE COURT: Is his name on the booking
7 form?

8 MR. PASHOVITZ: It is, Your Honour.

9 THE COURT: Well, and that's -- that
10 -- you know, that's not in evidence, but I watched
11 him give that. He said he was cooperative. He said
12 they knew who he was. He says they have his
13 driver's license, and -- and they did -- they did
14 establish his identity pretty early on.

15 MR. PASHOVITZ: Right. My next review of the
16 evidence, with respect to the Saskatoon Police
17 Service, what they had in mind at the time was, of
18 course, that, out of the same incident, James
19 Stewart and Jarvis Stewart were charged with
20 obstruction of a peace officer, each of them, by,
21 one, failing to comply with lawful commands, and
22 then another count of obstructing a peace officer by
23 interfering with a lawful arrest, and then there was
24 the count against James Stewart, assault/resist
25 arrest, as well.

26 The nature of those

1 allegations alone could be enough to cause the
2 police concern about the factors above. Again, we
3 have an offence against the administration of
4 justice, against a peace officer. There may be
5 concerns as far as continuation of an offence or
6 repetition of an offence.

7 Further, there was testimony
8 from Constable Schaefer that they were continuing to
9 investigate the possibility that the automobile in
10 question --

11 THE COURT: Okay.

12 MR. PASHOVITZ: -- was --

13 THE COURT: Well, I'm going -- I'm going
14 to stop you there because I do have real concerns --

15 MR. JAMES STEWART: Thank you --

16 THE COURT: -- about --

17 MR. JAMES STEWART: -- Your Honour.

18 THE COURT: -- over holding. And if
19 -- if it comes to that, we'll just have to get some
20 more evidence concerning that.

21 MR. PASHOVITZ: I -- I -- I appreciate --

22 THE COURT: Yes.

23 MR. PASHOVITZ: -- you noting that, Your
24 Honour.

25 THE COURT: Yes.

26 MR. PASHOVITZ: I thought with these

1 submissions, maybe I would --

2 THE COURT: Yes.

3 MR. PASHOVITZ: -- be able to --

4 THE COURT: No, I don't -- you know, I
5 can't -- I -- I'm not going to speculate.

6 MR. PASHOVITZ: Exactly.

7 THE COURT: You're asking me to speculate
8 why they over held him. Right now, my speculation
9 is -- is not in favour of the police.

10 MR. PASHOVITZ: Right. I appreciate you --

11 THE COURT: Yes.

12 MR. PASHOVITZ: -- raising that --

13 THE COURT: Yes.

14 MR. PASHOVITZ: -- for the record then, Your
15 Honour.

16 Turning to the next issue
17 that was raised by the Court, and this was put in
18 the Notice filed by defence, the issue of arbitrary
19 detention at the scene. Yesterday, I filed the four
20 cases that I filed: *Mann*; *Lundquist*; and *Papilion*;
21 and then the *Tisdale* case that you're well familiar
22 with.

23 In my Brief, I did summarize
24 what the Crown in the *Mann* case stated from the
25 Supreme Court of Canada, where they recognized the
26 limited power of officers to detain for

1 investigative purposes and stress that police powers
2 and duties are not necessarily correlative. To be a
3 lawful detention for investigative purposes, the
4 detention must be for a recent or ongoing offence.
5 The court summarized investigative detention as
6 follows:

7
8 “To summarize as discussed above,
9 police officers may detain an
10 individual for investigative
11 purposes if there are reasonable
12 grounds to suspect in all of the
13 circumstances that the individual
14 is connected to a particular crime
15 and that such a detention is
16 necessary.”

17 That’s the Supreme Court of
18 Canada. Now, our Saskatchewan Court of Appeal made
19 a ruling in the *Quist* (ph) case, which is similar to
20 the facts here. With respect to the review of the
21 *Quist* case, the court there was reviewing an
22 obstruction count. There was an investigation
23 pursuant to an impaired driving investigation. And
24 there were some italicized portions added in by the
25 Court. And those are the only portions that I’ll
26 read. Section 235 as it was at that time:

27
28 “The officer may by demand made to
29 that person forthwith or as soon
30 as practicable, require him to
31 provide and to accompany the peace
32 officer for the purpose of
33 enabling such samples to be
34 taken.”

1 The Court of Appeal then, in
2 the next paragraph, indicated:

3
4 Here, the Appellant cannot refuse
5 without reasonable excuse to
6 accompany the constable for the
7 purpose of enabling samples to be
8 taken because the statute
9 specifically requires him to do
10 so. Counsel for the appellant
11 argued there was no duty on the
12 part of the Appellant to remain in
13 the police van until Constable
14 Noel had made his --"

15 THE COURT: Is that --

16 MR. PASHOVITZ: "-- demand."

17 THE COURT: -- is that the -- the case
18 where they had him in the van, and he just took off
19 before the policeman had a chance to -- to give him
20 the actual demand?

21 MR. PASHOVITZ: I believe so --

22 THE COURT: It's --

23 MR. PASHOVITZ: -- Your Honour.

24 THE COURT: Yes, yes. Okay. I remember
25 now.

26 MR. PASHOVITZ: There's -- and there had to
27 be a differentiation, if it's actually refuse the
28 demand, then you should and ought to be charged with
29 refusing to provide a breath sample. But when you
30 bolt away before that's even allowed to happen, then
31 this led to an obstruction count and a conviction

1 that was upheld --

2 THE COURT: Yes --

3 MR. PASHOVITZ: -- by the --

4 THE COURT: -- it was.

5 MR. PASHOVITZ: -- Court of Appeal.

6 THE COURT: Yes.

7 MR. PASHOVITZ: The statute -- and -- and

8 this is what I found of interest with respect to

9 what the Saskatchewan Court of Appeal had to say:

10

11 "The statue imposes a duty on the
12 driver to remain in the presence
13 of the constable until the
14 constable has completed the duties
15 imposed upon him by the section."

16

 So then in my Brief, I've
17 copied Section 209.1 of *The Traffic Safety Act*. The
18 Crown respectfully submits that the precedent of
19 *Quist* is applicable to the case before this Court.
20 I won't read Section 209.1 in its entirety, but with
21 respect to (3) and (4):

22

23 "No person in charge of operating
24 a motor vehicle shall, when seeing
25 a request to stop by a peace
26 officer, fail to immediately bring
27 the vehicle to a safe stop."

28

 And then (4):

29

30 "No person in charge of or
31 operating a motor vehicle shall
32 fail when requested by a peace
33 officer to comply with the request
34 of a peace officer pursuant to

1 subsection (2)."

2 THE COURT: What section is that?

3 MR. PASHOVITZ: Section 209.1 of *The Traffic*
4 *Safety Act*, Your Honour.

5 My reading of that section
6 puts it on all fours with the ratio from the *Quist*
7 case, Your Honour, when there's --

8 THE COURT: Statutory --

9 MR. PASHOVITZ: -- that --

10 THE COURT: -- compulsion.

11 MR. PASHOVITZ: Exactly. Turning to the next
12 case that I've filed, the *Papilion* case. This is
13 from the Saskatchewan Court of Queen's Bench. This
14 was a traffic case. And the Court reviewed
15 -- reviewed the cases there.

16 And, again, I -- just going
17 back to that *Quist* case, there's some lines there
18 that just stand out, as far as the comparison to
19 this case. And, again, the Saskatchewan Court of
20 Appeal put it much better than I ever could:

21
22 "If that were so, then any person
23 stopped by a police officer
24 attempting to enforce Section 235
25 could completely frustrate
26 enforcement of the section by
27 simply driving off and running
28 away."

29 And, again, that's squarely
30 what we have before the Court today.

1 The *Papilion* case from the
2 Saskatchewan Court of Queen's Bench reviewed the
3 cases of *Houbin*, *Schaefer*, as well as Section 209.1
4 of *The Traffic Safety Act*. And the review of those
5 cases led to the Saskatchewan Court of Appeal,
6 stating that when they reviewed *Schaefer* and *Houbin*,
7 the Court of Appeal said neither of those cases
8 applied to the present facts of the case of
9 *Papilion*. In the present case, Constable Nordick
10 had a clear right to ask the respondent to produce
11 his driver's license. By the time the accused
12 produced his driver's license, Constable Nordick had
13 a clear right to impose investigative detention to
14 follow-up on the smell of alcohol he noted to be
15 coming from inside the vehicle. So that's just an
16 application of the *Mann* case and earlier cases.
17 That's the recent pronouncement from our
18 Saskatchewan Court of Queen's Bench.

19 Turning, now, to my
20 submissions with respect to the merits of the actual
21 obstruction charges, Your Honour. I've included the
22 -- I think some people call it the bicycle case, the
23 case from the Supreme Court of Canada, back to 1977,
24 as far as a conviction there for obstruction, as far
25 as not providing a name. *Hudson* was another case
26 which I thought might assist the Court. It's a

1 Saskatchewan case. The review of the case there
2 indicated that the accused refused several times to
3 give his name and address to the constable, who
4 observed him to be violating a city bylaw. The
5 accused's appeal from conviction was dismissed. The
6 offence was committed when the accused refused at
7 the request of the constable to give his name and
8 address. Since no arrest was made, his *Charter*
9 rights were not infringed.

10 The *Lightmark* (ph) case from
11 Alberta, the circumstances were as follows: A
12 confrontation between police and persons at a noisy
13 party resulted in beer bottles being thrown and
14 damage to a police car. The accused were told to
15 leave two or three times and did not. The accused
16 were convicted, since the decision to remain in the
17 face of obvious police power and authority to act
18 constituted obstruction.

19 MR. JAMES STEWART: Slow it down, big guy.

20 MR. PASHOVITZ: There's the *Jarvi* (ph) case,
21 leaning against a police car and refusing to leave
22 the area when demanded to do so by a police officer
23 constituted acts of obstruction.

24 In *Saunders*, the accused, was
25 charged with obstruction when he got into a fight
26 with a police officer who was in the process of

1 arresting a driver. The officer had not informed
2 the driver of the reason for his arrest. Dismissal
3 of the charge against the driver was not a defence
4 to the charge of obstruction. Any right of
5 resistance to the driver had belonged to him alone,
6 and did not extend to the accused. And as a result,
7 the accused was convicted.

8 *Watkins* from Ontario,
9 affirmed by their Court of Appeal, indicated that
10 obstruction is not limited to physical contact of a
11 police officer by the accused, which, again, is
12 similar to the case against James Stewart here.
13 When the police, having witnessed breaches of the
14 peace, gave the crowd a proper order to disburse
15 within five minutes, the continued presence of the
16 accused was in defiance of the police order, and
17 amounted to an obstruction of the police in the
18 execution of their duty.

19 And then the last case I
20 included was the case of *Hills* (ph) out of British
21 Columbia. The accused was convicted of obstructing
22 a peace officer. The accused interfered with the
23 arrest of another person by a police officer in "the
24 execution of his duty." And there -- I've included
25 because the other cases were basically just
26 headnotes, but there I've included the actual full

1 decision from the B.C. Court of Appeal because,
2 again, it's similar to the cases before the Bar here
3 today, and I wanted to include all of the details
4 there.

5 MR. JAMES STEWART: Sweet Gainsborough, right on.

6 MR. PASHOVITZ: Those are what I've included
7 in the Brief, Your Honour.

8 THE COURT: What --

9 MR. PASHOVITZ: Turning --

10 THE COURT: -- what --

11 MR. PASHOVITZ: -- now, to my review of the
12 evidence --

13 THE COURT: Yes, please.

14 MR. PASHOVITZ: -- I just wanted to start,
15 first of all, with *The Police Act, 1990*. That's
16 something that we have to all bear in mind, as well,
17 too. Section 36 of that *Act* reads as follows:

18
19 "Before entering on the duties of
20 a member, a member of a police
21 service shall take and subscribe
22 to an oath or affirmation."

23 And (2) indicates:

24
25 "A member has the power and the
26 responsibility to:
27 (a) perform all duties that are
28 assigned to constables or peace
29 officers in relation to:
30 (i) the preservation of peace;
31 (ii) the prevention of crime and
32 offences against the laws in force
33 in the municipality; and

1 (iii) the apprehension of
2 criminals, offenders and others
3 who may lawfully be taken into
4 custody."

5 So -- so peace officers do
6 have that duty, Your Honour. So I had wanted to
7 just start my submissions with that, and then turn
8 to what Constable Keating on -- did on the evening
9 in question. So it's my recollection that what
10 Constable Keating was doing was, he was acting in
11 his role as a peace officer. He was a member of the
12 traffic unit here in the Saskatoon Police Service.
13 He was driving on 8th Street here in Saskatoon. He
14 was following a vehicle, and he noticed that the
15 sticker on the plate looked different to him.

16 I'm not sure if I can obtain
17 -- I should have asked for this before -- the
18 license plate exhibit in these proceedings. I'm not
19 sure if it could be pulled out, and then I'll just
20 continue on --

21 MR. JAMES STEWART: Haven't we seen --

22 MR. PASHOVITZ: -- while that's --

23 MR. JAMES STEWART: Have we not --

24 MR. PASHOVITZ: -- being done.

25 MR. JAMES STEWART: -- seen enough evidence?

26 Like --

27 MR. PASHOVITZ: So I found it interesting

28 that Constable Keating was able to note that the

1 continuous sticker, as he called it, did not appear
2 to be appropriate. And then when you look at it
3 -- well, it speaks for itself, Your Honour. So
4 I'm --

5 MR. JAMES STEWART: (Inaudible) the case, too.

6 MR. PASHOVITZ: -- impressed with his ability
7 to notice that, Your Honour. But he didn't -- if I
8 can use a phrase -- he didn't jump the gun. He
9 didn't just chirp his sirens --

10 MR. JAMES STEWART: Oh, no.

11 MR. PASHOVITZ: -- and put on --

12 MR. JAMES STEWART: Not at all. (Inaudible).

13 THE COURT: Shhh.

14 MR. PASHOVITZ: -- his lights --

15 THE COURT: Be quiet.

16 MR. PASHOVITZ: -- right there.

17 THE COURT: Be quiet. I can't -- I can't
18 hear him when you're talking like that.

19 MR. JAMES STEWART: Okay, I'm sorry.

20 MR. JARVIS STEWART: Your Honour, we're sorry,
21 we're sorry.

22 THE COURT: Yes, you have to --

23 MR. JARVIS STEWART: I apologize --

24 THE COURT: Yes, you have to --

25 MR. JARVIS STEWART: -- Your Honour.

26 THE COURT: -- you have to be --

1 MR. JAMES STEWART: I apologize.

2 THE COURT: -- you know --

3 MR. JAMES STEWART: I apologize.

4 THE COURT: -- he's -- he's going to be
5 going quiet when you're talking --

6 MR. JAMES STEWART: I am sorry, Your Honour.

7 THE COURT: -- and you have to be
8 polite --

9 MR. JARVIS STEWART: Okay.

10 THE COURT: -- here. Okay?

11 MR. JAMES STEWART: (No audible response.)

12 MR. JARVIS STEWART: (No audible response.)

13 THE COURT: That's the way court works.
14 It's not a debating society. Okay, go ahead.

15 MR. PASHOVITZ: So we have him having his eye
16 caught by that continuous sticker. But what he
17 does, he says in his evidence, is he runs this
18 plate, 131 HFG, Saskatchewan. He knows he's
19 following a Toyota Celica. He sees that with his
20 own eyes. We see that on the video.
21 When he runs the system, lo
22 and behold, what does 131 HFG come back to?
23 Registered to a Honda Civic. So then he -- I
24 believe he says, checks it again, just to make
25 sure.
26 Upon seeing that that plate

1 is actually registered to a Honda Civic, and he's
2 following a Toyota Celica, he decides, as is his
3 obligation, his right, his duty to do, his ability
4 to do, to conduct a traffic stop of the vehicle that
5 he's following. That's a lawful traffic stop. He,
6 as he says, chirps his siren, puts his lights on,
7 pulls in-behind the vehicle in the parking lot in
8 question.

9 I -- I'll just use this
10 phrase now. It -- it should have just been a
11 traffic stop. That's all it should have been. But
12 as I believe Constable McAvoy testified when he was
13 arriving to the scene, I think his phrase was, "This
14 was not an ordinary traffic stop." Because we all
15 have heard what happened once that vehicle stopped
16 in that parking lot.

17 I -- we've all seen traffic
18 stops. I saw one the other night. I was driving
19 home. There was a police car stopped behind another
20 vehicle. The police officer was behind the wheel of
21 his vehicle. He was checking something in the
22 system. The driver of the suspect vehicle was
23 sitting behind the wheel of his vehicle. Everything
24 was getting done above board.

25 Here, what we see on the
26 video -- and I'll repeat this again -- is as soon as

1 these vehicles stop, the suspect vehicle and the
2 police vehicle, we see James Stewart get out of the
3 passenger side, walk straight away from that
4 vehicle. And I'll refer to that in a moment, as far
5 as that's consistent with what Constable Keating had
6 to say.

7 Jarvis Stewart -- and I'll
8 repeat this in a moment, but I just wanted to make
9 sure that I start off with this -- would have this
10 Court believe that he was stopped by an unidentified
11 man, got out by the door of his vehicle, and just
12 stood there, basically with his hands-up, and he was
13 then tackled. I would respectfully submit that the
14 video shows otherwise. I would respectfully submit
15 that the video shows that James Stewart gets out of
16 the passenger side, walks straight away. I would
17 respectfully submit that, just as Constable Keating
18 said that Jarvis Stewart got out of the door of the
19 driver's side and did the same thing, walked
20 straight away. And that's when words started to be
21 exchanged. That's when lawful commands were made
22 and not abided by, by Jarvis Stewart, leading to the
23 confrontation that occurred, as far as his shoulders
24 being bumped, swear words being uttered, phrases
25 such as, "We don't have to comply with your laws,"
26 or, "Are you a peace officer or a police officer?",

1 things of that nature.

2 So that's -- that's what
3 Constable Keating was faced with on that evening.
4 What looked like a traffic stop turned into
5 something as Constable McAvoy indicated that was not
6 an ordinary traffic stop at all. So I wanted to
7 start my submissions with -- with that in mind
8 because, again, we've -- we've had testimony here
9 from Jarvis Stewart. We've had questioning by these
10 two individuals. And it's easy for me to look at
11 things from their side of things, but I just wanted
12 to try my best to try and see things through the
13 eyes of Constable Keating on this night, as far as
14 he spots this continuous sticker which looks
15 strange. He checks the plate. It doesn't match.
16 "I'm going to do a traffic stop," pull behind the
17 vehicle, and hopefully things will just go as every
18 other traffic stop should.

19 So with respect to my review
20 of Constable Keating's evidence, he turned on the
21 lights of his vehicle. He followed the vehicle, he
22 brought it to a stop. I would respectfully submit
23 that the driver of that vehicle, who turned out to
24 be Jarvis Stewart, may not at that point in time,
25 right at the stop time of the vehicle, may not know
26 why he had been stopped, but clearly he knew that

1 the police officer is engaged in the lawful
2 execution of his duty. If you have lights coming
3 behind you, a siren chirping, as Constable Keating
4 said, again, at that moment in time, he may not know
5 exactly why he's being stopped, but he certainly
6 knows that there's a peace officer behind him in the
7 -- engaged in the lawful execution of his duty.

8 I would respectfully submit
9 that there was a lawful basis for the stop. There
10 was a lawful basis for then the demand for
11 identification and driver's license. Those are the
12 lawful commands that the Crown is alleging, and that
13 we submit have proven that James (sic) -- I'm sorry
14 -- Jarvis Stewart did not comply with.

15 I have referred to the case
16 of *Mann* and *Papilion* in my -- in my Brief. Again,
17 I've repeated it twice. I don't want to repeat it
18 again, as far as essentially what those cases say,
19 as far as, if individuals do not comply with lawful
20 commands, that that would essentially thwart the
21 investigative process completely.

22 The police are able to detain
23 a suspect for investigative purposes according to
24 *Mann*. Again, that was used recently in the *Papilion*
25 case.

26 So with that as my preface, I

1 just wanted to get to my review of the case as a
2 whole. Your Honour, respectfully, it's my view of
3 this evidence that both James Stewart and Jarvis
4 Stewart feel that they do not need to have driver's
5 licenses; feel that they do not need to register
6 their vehicles. That's abundantly clear from the
7 testimony of Jarvis Stewart. And it's also clear
8 from the Right to Travel documents that were
9 obtained in that car.

10 So when I say that this
11 should have been an ordinary traffic stop, and then
12 it turned out to be anything but, I would
13 respectfully submit that that's because these were
14 two individuals who felt that they did not have to
15 comply with the traffic laws here in our province.
16 And that's what Constable Keating was faced with.

17 I just wanted to point to the
18 evidence that supports that theory. Again, we have
19 here a Toyota Celica vehicle that was being driven
20 here on a highway in Saskatchewan, 8th Street
21 specifically, with a license plate on it that
22 matched a Honda. Inside that Toyota Celica
23 eventually were found *Traffic Safety Act* tickets
24 already marked, "Will not contract." There were
25 also, again, as I've indicated, already Right to
26 Travel documents inside that glove box. So,

1 respectfully, I would submit that what Constable
2 Keating was dealing with here were two individuals
3 that felt -- just as he testified in the case, were
4 individuals who felt that the laws with respect to
5 driving in this province did not apply to them.

6 With respect to the testimony
7 that was heard yesterday, I just wanted to review
8 that. I've been reviewing what Constable Keating
9 had to say, and I'll get more to him closer to the
10 conclusion of my submissions, but with respect to
11 Jarvis Stewart's testimony, again, this would go to
12 -- to credibility. He says his car was registered.
13 The court has seen the documents that show that that
14 car was not registered. As far as why this plate
15 was on his car, he stated, "It was a -- just a plate
16 that I put on my car." I think he justified that by
17 saying that, that way, there's a plate on the car,
18 in case someone needs to identify it or tell me
19 where my car is, or something of that nature. I
20 believe his testimony was that he has a lot of
21 license plates, and this continuous sticker that
22 caught Constable Keating's eye was already on the
23 plate, that he didn't make it up at home, I think
24 was what I asked him.

25 The plate, of course, has
26 already been shown to match, not that Toyota Celica

1 at all, but a separate Honda Civic. And that,
2 again, his car was not registered as he says it
3 was.

4 Again, he referred to the
5 safety checks that were done on the Toyota Celica,
6 as far as some justification that he operates cars
7 properly. Well, again, that safety inspection was
8 done a year earlier than the incident in question.
9 We have testimony that this vehicle was not
10 compliant with vehicle equipment regulations,
11 taillights taped or painted over, things of that
12 nature, as Constable Schaefer described.

13 With respect to his
14 testimony, he, I believe, testified that an unmarked
15 police car got behind him. He did not see flashing
16 lights. But, again, I did cross-examine him on the
17 earlier statement that he voluntarily provided that
18 indicated that when he wrote that statement in
19 September, 2012, "That there were flashing lights
20 behind me." So that, I think is something else that
21 can be looked to, as far as judging his credibility,
22 with respect to one statement at one time, and, now,
23 a different statement before the Court yesterday.

24 Again, Jarvis Stewart
25 testified that he said that Constable Keating
26 threatened to pepper spray him. Again, I reviewed

1 his entire earlier statement with him in cross-
2 examination. Nowhere in that earlier statement does
3 he say anything about being threatened about being
4 pepper sprayed.

5 With respect to his testimony
6 yesterday, I believe he testified that he didn't
7 think anything was wrong because he knew he was in
8 the parking lot. Again, I cross-examined him about
9 his earlier statement. Nowhere in that earlier
10 statement did he say anything about thinking that he
11 was okay because he was in a parking lot. I would
12 respectfully submit that that's something that's
13 contradictory, as well, that the Court can look to,
14 as far as judging his credibility, in order to
15 decide exactly what happened with respect to the
16 traffic stop on the night in question.

17 And if I may, Your Honour, I
18 didn't put this case in my Brief. I know it's been
19 mentioned, the Saskatchewan Court of Appeal case of
20 *The Crown and Lux*. I would respectfully submit that
21 on these facts, it's distinguished because in that
22 case of *The Crown and Lux*, that was a pure, as it's
23 called, random traffic stop in the parking lot of
24 the Bella Vista Hotel in Humboldt, Saskatchewan.
25 That was it. That's what the Court of Appeal
26 pointed out.

1 Here, although the dealings
2 were on a parking lot, and whether it's a private
3 parking lot -- I don't think so. I've been in that
4 parking lot. If they let me park there, I don't
5 think it's a private parking lot, but --

6 THE COURT: It's not -- it's not a public
7 highway, but -- but the evidence was that the police
8 officer saw the offence on a public highway.

9 MR. PASHOVITZ: Exactly, Your Honour. That's
10 why I didn't put that in my Brief.

11 With respect to Jarvis
12 Stewart, he said he was never asked -- he testified
13 he was never asked because -- for his
14 identification, he was never asked for his driver's
15 license, that he just hears something -- some
16 commands that he doesn't understand over the
17 loudspeaker, and then he's tackled, right off the
18 bat.

19 Your Honour, as far as the
20 Court deciding what happened with respect to this
21 incident, I would respectfully submit that
22 everything is entirely consistent with what
23 Constable Keating had to say, as far as the reason
24 for the stop; haling, "Get back in your car"; asking
25 for a driver's license and identification; and not
26 being provided that; then having to arrest Jarvis

1 Stewart; then having to call for backup to deal with
2 James Stewart, who is upset because Jarvis Stewart
3 had been arrested.

4 And, again, this is all under
5 the umbrella of the fact that, again, these are two
6 individuals, just as Jarvis Stewart said yesterday,
7 who believe that they do not need driver's licenses;
8 believe they do not need to register their vehicle.
9 So I can easily see how it happened exactly as
10 Contable Keating testified, that he made the demand
11 for driver's license and registration, and was met
12 with the responses, "We don't have to follow your
13 laws," "F you," "Are you a peace officer or a police
14 officer?"

15 Again, I refer -- I've
16 referred to this earlier in my earlier submissions,
17 but just reviewing the evidence that we heard
18 yesterday, I believe Jarvis Stewart testified that
19 he states he got out of the vehicle just like his
20 brother did, just got out and stand -- stood there.
21 And, again, we have the video that speaks for
22 itself. James Stewart is certainly not just
23 standing there. He gets out of the vehicle and
24 -- and walks, as we all know, towards the Shopper's
25 Drug Mart.

26 The video shows exactly what

1 happened. As you pointed out yourself yesterday,
2 Your Honour, the video also shows clearly that
3 Constable Keating's badge was visible.

4 Again, there was many
5 references to unidentified males, unknown places,
6 being driven around in the back of the police car
7 with the radio up loud, being bounced around. All
8 of those seem to be squarely, with respect to, I
9 guess, the -- the attitude that this individual has
10 with respect to peace officers and people in
11 authority.

12 With respect to the testimony
13 of Jarvis Stewart yesterday, and when he was
14 questioned about what he was doing when Constable
15 Keating -- not what time it was or anything like
16 that, but just what he was doing when Constable
17 Keating was calling for backup, he states he -- I
18 believe that he was already handcuffed. He was just
19 standing there. When questioned about what James
20 Stewart was doing when Constable Keating was calling
21 for backup, he states, "He was just standing there
22 and questioning the arrest," words of that nature.

23 Again, Your Honour, when
24 you're deciding credibility issues and what exactly
25 happened on the parking lot, I'd respectfully submit
26 that that is inconsistent with what Constable

1 Keating ended up doing. Constable Keating called
2 not once, but twice for backup. I question whether
3 he would be doing that, if, again, this was just a
4 routine traffic stop.

5 This, again, was not an
6 ordinary traffic stop. Swear words were being
7 uttered. An individual, James Stewart, Constable
8 Keating said, was swearing at him, was circling
9 around, was pacing around. That is entirely
10 consistent with a police officer, faced with that.
11 And, again, looking at it from Constable Keating's
12 eyes, faced with that, calling for backup, not once,
13 but twice. And Constable Hounsell testified that
14 he's only heard two such urgent requests for backup,
15 probably twice in his career. Hence, the response by
16 the other officers.

17 I've referred to the badge
18 being visible with respect to Constable Keating;
19 lights being used by Constable Keating; the siren
20 being chirped by Constable Keating; sirens being
21 used by Constable McAvoy and Schaefer, when they
22 arrived as the first backup vehicle. I'd all
23 -- respectfully submit that all of this goes to show
24 that Constable Keating was easily identifiable as a
25 peace officer, was in the lawful execution of his
26 duty, and that's a hurdle that's been crossed by the

1 -- by the Crown.

2 I -- I want to just touch on
3 this, with respect to, again, this being a trial,
4 the Court being allowed to judge credibility, being
5 allowed to makes its decision by what it's seen and
6 heard here in the courtroom. Your Honour, in
7 cross-examination yesterday, I was met with my
8 question being met with being asked a question, it
9 was met with an individual asking why this is
10 relevant; it was met with an individual saying it's
11 ironic that I was asking him certain questions; was
12 met with an individual who had to be told by the
13 Court to answer a question. And I would
14 respectfully submit that that's also evidence that
15 can be used by this Court in order to decide what
16 happened, what was said, and how -- who was acting
17 like what during this traffic stop. I would
18 respectfully submit that when you have that type of
19 response, as far as a question being answered with a
20 question, being asked why things are relevant, being
21 told things are ironic, and some questions not being
22 answered at all, to find an individual in a
23 respectful, controlled environment like a courtroom,
24 I can easily see that that same individual could be
25 confrontational to Constable Keating during a
26 traffic stop of this nature. I just wanted to put

1 that on the record, as well, Your Honour, as far as
2 your determination with respect to what happened in
3 the parking lot on the night in question.

4 With respect to my
5 submissions, Your Honour, this is not the type of
6 case that deals with the sometimes intricate issue
7 of ability to arrest for a *Traffic Safety Act*
8 offence or anything like that. It's on all-fours
9 with the cases that I've referred to in my Brief, as
10 far as [police officer identifiable, engaged in the
11 lawful execution of his duty, a legal stop, a lawful
12 demand, that demand is not complied with. That's
13 obstruction, that's what the cases that I've
14 included in my Brief have said. And many of those
15 case are -- are of a much lower nature that what we
16 have here today, specifically the Supreme Court of
17 Canada bicycle case. It's a bylaw case. The other
18 case out of Saskatchewan, I think, was another city
19 bylaw case, as far as an individual walking his dogs
20 without a license or things of that nature. This is
21 a scale above that, being that this is a Provincial
22 *Traffic Safety Act* offence, driving is a privilege,
23 not a right. I don't want to harp on those comments
24 anymore, Your Honour, because you're well familiar
25 with them.

26 So the Crown respectfully

1 submits that there is sufficient evidence for this
2 Court to return a verdict of guilty with respect to
3 Jarvis Stewart and obstruction by failing to comply
4 with the lawful demands by Constable Keating.

5 As well, with respect to
6 James Stewart, similar to the cases which I've filed
7 in my Brief, interfering with a lawful arrest. The
8 evidence that we heard from Constable Keating was
9 that James Stewart was circling around, was
10 swearing. The evidence we heard from Constable
11 Keating was that, not just once, but there were two
12 times that Constable Keating had to lift his leg. I
13 believe he stated it was his right leg, to keep
14 James Stewart away from himself. Hence, the charge
15 against James Stewart, which I would respectfully
16 submit has been proven beyond a reasonable doubt.

17 Some would even submit that
18 it could have been a charge of assault, based on the
19 definition of Section 265, with the threatening
20 gesture. I'm not arguing for any assault
21 convictions, of course, Your Honour, but I am
22 respectfully submitting that what we have here is
23 evidence beyond a reasonable doubt of obstruction by
24 both Jarvis Stewart and James Stewart.

25 And, again, if I can conclude
26 with this: It comes as no surprise. These are

1 individuals that drive around with these Right to
2 Travel documents in their glove box. They are
3 individuals -- one of them had his *Traffic Safety*
4 *Act* tickets written on, "Will not contract." Jarvis
5 Stewart testified about his attitude towards the
6 driving regulations in our province. That's what
7 Constable Keating was met with. They were
8 obstructive, in my mind, during the entire incident,
9 Your Honour.

10 MR. JAMES STEWART: Great case, Bryce.

11 THE COURT: So with regard to James then,
12 what you're relying on here is him circling around,
13 swearing at the officer, questioning what was going
14 on?

15 MR. PASHOVITZ: Yes.

16 THE COURT: And the officer's
17 apprehension that he was under a threat?

18 MR. PASHOVITZ: Exactly. Just --

19 THE COURT: But not --

20 MR. PASHOVITZ: -- the --

21 THE COURT: -- but not that -- not that
22 he did anything threatening?

23 MR. PASHOVITZ: No. That he did something
24 threatening, as well, Your Honour.

25 THE COURT: Which was?

26 MR. PASHOVITZ: That's -- the -- the entirety

1 of Constable Keating's evidence is what I'm relying
2 on, Your Honour.

3 THE COURT: So the --

4 MR. PASHOVITZ: And --

5 THE COURT: -- threat -- the threat is
6 clenched fists --

7 MR. PASHOVITZ: Exactly.

8 THE COURT: -- gritted teeth, sweating
9 profusely, and that was it, I think?

10 MR. PASHOVITZ: Yes. To the point that,
11 again, Constable Keating testified that he lifted
12 his leg, not once, but twice, in order to keep James
13 Stewart away from the arrested person, Jarvis
14 Stewart. That's -- if -- if -- I would respectfully
15 submit, the most concerning part of his testimony,
16 Your Honour.

17 THE COURT: But that his apprehensiveness
18 -- but nothing came of it?

19 MR. PASHOVITZ: (No audible response.)

20 THE COURT: I mean, the fellow never came
21 closer than six to eight feet.

22 MR. PASHOVITZ: And similar to the other
23 cases, where people were ordered to disperse and did
24 not disperse. Those amounted to obstruction counts.
25 The same thing here, when --

26 THE COURT: And what --

1 MR. PASHOVITZ: -- when --

2 THE COURT: -- did -- what did he order

3 him to do?

4 MR. PASHOVITZ: Well, I think in his

5 testimony --

6 THE COURT: I mean, I --

7 MR. PASHOVITZ: -- he said --

8 MR. JARVIS STEWART: Not a thing.

9 MR. PASHOVITZ: -- "Get back," "Stay away,"

10 words of that nature.

11 THE COURT: Which is what he did?

12 MR. PASHOVITZ: That's -- but that's --

13 MR. JAMES STEWART: Yeah.

14 MR. PASHOVITZ: -- that's in response to

15 Constable Keating having to say those words to James

16 Stewart, I think his testimony was, repeatedly.

17 Again, I'm just looking --

18 THE COURT: I'm not -- I'm not -- I'm not

19 -- I'm just -- I'm just trying to put -- picture all

20 of this. I mean, if -- if -- if you've taken

21 obstruction to be to make the policeman's job

22 harder, somebody yelling and swearing at you from

23 six to eight feet away makes the job harder. But

24 I'm not sure if that's enough. And that's -- that's

25 what I want to look at.

26 MR. PASHOVITZ: Mmhmm.

1 THE COURT: It certainly doesn't --
2 MR. PASHOVITZ: When you look at --
3 THE COURT: -- it certainly doesn't --
4 MR. PASHOVITZ: -- the totality --
5 THE COURT: -- help him -- him, doing his
6 job.

7 MR. PASHOVITZ: No. And when you look at --

8 THE COURT: Yes.

9 MR. PASHOVITZ: -- the totality -- and,
10 again, I'm trying to look at this through the eyes
11 of Constable Keating. When you look at the totality
12 of the situation, as a peace officer, he's by
13 himself. He's faced with this situation. He's
14 arrested Jarvis Stewart for obstruction already.
15 He's faced with an individual, as he said in his
16 testimony, circling, sweating profusely, clenched.
17 And then not only that, but the individual
18 approaches him once. He's told to get back. Does
19 he do it? Yes. But then he comes at him again, to
20 the point that he has to lift his leg a second
21 time.

22 The phrase that's used in the
23 Information is appropriate, Your Honour, as far as
24 interfering with a lawful arrest. It's not that he
25 assaulted Constable Keating. No. It's an
26 obstruction count by interfering with the lawful

- 1 -- interfering -- that's the word that's in the
2 count -- with the lawful arrest of -- of James (sic)
3 Stewart.
- 4 MR. JAMES STEWART: Jarvis Stewart.
- 5 MR. PASHOVITZ: I'm sorry. I apologize.
6 Jarvis Stewart.
- 7 MR. JAMES STEWART: You already arrested him.
8 You just admitted, he already arrested him.
- 9 MR. JARVIS STEWART: So how did he -- how did he
10 express the arrest?
- 11 MR. JAMES STEWART: (Inaudible) without being
12 arrested.
- 13 MR. JARVIS STEWART: How did I interfere with
14 him --
- 15 THE COURT: Okay.
- 16 MR. JARVIS STEWART: -- when I'm already arrested?
- 17 THE COURT: Okay, okay, guys.
- 18 MR. JARVIS STEWART: I apologize, Your Honour.
- 19 MR. JAMES STEWART: Your Honour, I'd like to take
20 a five minute recess. I have to use the bathroom,
21 and I have to plug the meter.
- 22 THE COURT: Good. That's not a --
- 23 MR. JARVIS STEWART: Can we recess?
- 24 THE COURT: Sure.
- 25 MR. JAMES STEWART: Fantastic.
- 26 MR. JARVIS STEWART: Thank you very much --

1 MR JARVIS STEWART: Thank you --

2 MR. JAMES STEWART: -- Your Honour.

3 MR. JARVIS STEWART: -- Your Honour. I appreciate
4 it.

5 THE COURT: Okay.

6 COURT CLERK: Order in court. All rise.
7 This court is adjourned for a few minutes.

8 MR. JARVIS STEWART: Thank you, Your Honour.

9 (COURT ADJOURNED)

10 (COURT RECONVENED)

11 COURT CLERK: This court is, now, reopened
12 after an adjournment. You may be seated.

13 MR. PASHOVITZ: I have nothing further, Your
14 Honour. Thank you for --

15 THE COURT: All right.

16 MR. PASHOVITZ: -- answering (sic) -- asking
17 the questions you asked me.

18 THE COURT: Okay. Thank you. Jarvis, do
19 you want to start?

20 MR. JARVIS STEWART: Can I just start -- what am I
21 allowed to present right now, Your Honour?

22 THE COURT: Your legal argument.

23 MR. JARVIS STEWART: Okay, my legal argument is
24 that Jay Keating's notes are completely inconsistent
25 with his testimony. In fact --

26 THE COURT: Just --

- 1 MR. JARVIS STEWART: -- I'm --
- 2 THE COURT: -- just -- just a moment.
- 3 You have to go slow.
- 4 MR. JARVIS STEWART: Okay. Jay Keating's
- 5 notes --
- 6 THE COURT: Keating's --
- 7 MR. JARVIS STEWART: -- are completely
- 8 inconsistent with the testimony that he provided in
- 9 court. There's absolutely nothing to indicate in
- 10 his notes that he asked me for license,
- 11 registration, or anything to do with paperwork
- 12 regarding the car.
- 13 If I'm even allowed, I can
- 14 read from his notes. And there's nothing in his
- 15 notes to indicate that he chirped the siren.
- 16 THE COURT: Okay. Just a moment.
- 17 Unfortunately, what's happened here is -- is a
- 18 problem that might arise when somebody doesn't
- 19 -- isn't a lawyer. His notes are not evidence,
- 20 unless you present them to him.
- 21 MR. JARVIS STEWART: Okay.
- 22 THE COURT: Do you remember when you were
- 23 on the stand, the way the prosecutor read to you
- 24 parts of that Affidavit, and asked if you adopted it
- 25 or not, and that sort of thing?
- 26 MR. JARVIS STEWART: Yes.

1 THE COURT: That's what has to happen
2 when you want to -- like, those notes aren't
3 evidence --

4 MR. JARVIS STEWART: Okay.

5 THE COURT: -- unless you specifically
6 point it to him and say, "What do you say in your
7 notes here about this?"

8 Now, I think you did ask him
9 about --

10 MR. JARVIS STEWART: Yeah, I did.

11 THE COURT: -- about any -- anything in
12 his notes about identity --

13 MR. JARVIS STEWART: Yes.

14 THE COURT: -- and that sort of thing.
15 And I -- I think I made a note of that.

16 MR. JARVIS STEWART: Okay.

17 THE COURT: But you cannot read to me
18 what his notes say.

19 MR. JARVIS STEWART: Okay.

20 THE COURT: Yes.

21 MR. JARVIS STEWART: That's fine.

22 THE COURT: Yes.

23 MR. JARVIS STEWART: Anyways, for the record then,
24 I will just say that his notes are completely
25 inconsistent. There's -- and nothing in his notes
26 indicate --

1 THE COURT: That -- that --

2 MR. JARVIS STEWART: -- that he --

3 THE COURT: -- that's in the --

4 MR. JARVIS STEWART: -- at any time --

5 THE COURT: -- evidence, yes.

6 MR. JARVIS STEWART: -- asked me for a license or

7 registration. In addition, I -- I never thought it
8 would make it this far because I thought the
9 testimony of Jay Keating would have been called into
10 question because of the case of *R. v. Pascal Martin*,
11 where Jay Keating showed some misconduct that had
12 the exact same circumstances as this -- as this
13 instance, and Jay Keating was found to have used
14 force against a man, and then gone up on the stand
15 and lied about it, accused this man of throwing a
16 punch at him, and then him walking away from him,
17 and Jay Keating had to take him down. After calling
18 out demands over the loudspeaker in his car, Jay had
19 to take this man down for some reason. And he ended
20 up violating the man's Section 7, 8, 9, and 10
21 *Charter rights* -- I'm sorry -- 8, 9, and 10 *Charter*
22 *rights* in this case.

23 So I -- I questioned the
24 testimony of Mr. Keating before he took the stand.
25 I even said in my *Charter* application that I wanted
26 him to testify under the penalty of perjury, if he

1 did lie.

2 And as far as I'm concerned,
3 regarding his notes and the -- the circumstances of
4 this event, he did lie. He lied on the stand in an
5 attempt to make me a criminal, a man that has no
6 criminal history.

7 I have a clean driving
8 abstract. We're pretty much upstanding, good guys.
9 And this man attempted to make me into a criminal to
10 cover up for his misconduct.

11 And that's more or less all I
12 have to say. I think the Crown here has shown some
13 serious misconduct. He failed to respond to my
14 motion before the case trial. I do have that here
15 for the record. He didn't really see it important
16 to get back to us regarding anything.

17 I do have our *O'Connor*
18 application. I do have my disclosure notice from
19 September 6th, asking for use of force reports,
20 police action reports, but I didn't -- never
21 received any of this disclosure. I was never -- I
22 was actually shut out.

23 I received -- I received, as
24 part of my disclosure, I received a criminal record
25 from someone named Daniel Stewart, who is not me.
26 My name is Jarvis Dean Stewart. I've never been

1 Daniel Stewart. But I received a criminal record
2 from a guy named Daniel Stewart for theft under
3 \$5,000; driving while ability impaired. I -- I
4 don't know what -- is this -- is this disclosure?
5 Is this -- are -- do you guys have the right person?
6 I don't know who this guy is. I don't know why this
7 is being provided in my disclosure, but I don't get
8 use of force reports.

9 I think this is a marked
10 departure from the normal as far as the Crown is
11 concerned. I think this is some egregious
12 misconduct. And I'm really not happy about this.
13 I'm really not happy about this at all.

14 So I think my *Charter*
15 violation notice speaks for itself. I think the
16 evidence is all there.

17 I really have nothing further
18 to say. Thank you very much.

19 THE COURT: James?

20 MR. JAMES STEWART: (No audible response.)

21 THE COURT: Is there anything you wish
22 to --

23 MR. JAMES STEWART: Absolutely --

24 THE COURT: -- say about --

25 MR. JAMES STEWART: -- Your Honour.

26 THE COURT: -- your case?

1 MR. JAMES STEWART: Thank you. According to Jay
2 Keating, he said he was explaining, explaining,
3 explaining, and explaining some more. And according
4 to our video, the whole encounter took approximately
5 five minutes. That was between use of force,
6 getting thrown in a squad car, and getting beaten
7 up.

8 So I really find it
9 interesting that this Jay Keating did quite a good
10 job of explaining his circumstances in a public
11 parking lot, at seven o'clock, in three minutes.

12 There was ten cars showed up.
13 I don't know how anybody can see this as not pulling
14 into a parking lot. We were going to Shopper's Drug
15 Mart. We had reason to go to Shopper's Drug Mart.
16 Just because a cop pulls up behind you as you're
17 pulling into a parking lot, and then turns his
18 lights on, does not mean he is instigating a traffic
19 stop.

20 This does not -- it's not
21 just a magic button, where you sprinkle fairy dust,
22 and, poof, this is, now, a traffic stop.

23 We were driving into
24 Shopper's Drug Mart. He did not trail us down the
25 road. He was not following us for blocks and blocks
26 and blocks. He pulled behind us, as we were pulling

- 1 into the Shopper's Drug Mart parking lot, and that
2 proves it on the video. He was --
- 3 THE COURT: Did the video --
- 4 MR. JAMES STEWART: -- quite aware --
- 5 THE COURT: -- the video shows him as
6 behind you on 8th Street.
- 7 MR. JAMES STEWART: Pulling into a parking lot.
- 8 THE COURT: Well --
- 9 MR. JARVIS STEWART: No, but he didn't --
- 10 MR. JAMES STEWART: There was no --
- 11 THE COURT: -- on 8th --
- 12 MR. JARVIS STEWART: -- put his --
- 13 MR. JAMES STEWART: -- lights on.
- 14 THE COURT: -- on 8th Street.
- 15 MR. JAMES STEWART: But he did not put lights on.
16 He did not put lights on.
- 17 THE COURT: How do you -- how do I know
18 that?
- 19 MR. JARVIS STEWART: It's in the video.
- 20 MR. JAMES STEWART: It says.
- 21 MR. JARVIS STEWART: The lights --
- 22 MR. JAMES STEWART: It says. Sit down. Sit
23 down. Sit down.
- 24 THE COURT: Yes.
- 25 MR. JAMES STEWART: In the video --
- 26 THE COURT: Yes.

- 1 MR. JAMES STEWART: -- there's a little light
2 switch at the bottom that shows the cop's -- I'm
3 sorry -- the police officer's dashboard equipment.
4 And then -- I -- I -- I have the video here.
5 There's a little button that shows exactly the
6 moment that he turned his lights on.
- 7 THE COURT: All right. That I'd like to
8 see.
- 9 MR. JAMES STEWART: Fantastic. Thank you, Your
10 Honour. And Jay Keating actually confirms this on
11 his notes, that he doesn't turn his lights on, and
12 he doesn't chirp until he's already entering the
13 intersection.
- 14 THE COURT: That's what he testified to.
- 15 MR. JAMES STEWART: That's what he testified.
16 And I don't ever recollect hearing a chirp. I don't
17 see it in his notes. I don't --
- 18 THE COURT: Well, just--
- 19 MR. JAMES STEWART: -- see it in --
- 20 THE COURT: -- a moment.
- 21 MR. JAMES STEWART: -- his notes. I don't --
- 22 THE COURT: What is --
- 23 MR. JAMES STEWART: -- see it --
- 24 THE COURT: -- the -- does the video show
25 that he turned the lights on, as he was entering the
26 intersection?

1 MR. JAMES STEWART: Absolutely.

2 THE COURT: Well, then that's correct,
3 that's what he said.

4 MR. JARVIS STEWART: He didn't --

5 MR. JAMES STEWART: Yeah, but how do I --

6 MR. JARVIS STEWART: -- he didn't --

7 MR. JAMES STEWART: Sit down, sit down. But my
8 point is, we didn't see that driving through an
9 intersection. How -- he's saying it's a traffic
10 stop. I didn't -- we didn't see anything.

11 THE COURT: Well, but --

12 MR. JAMES STEWART: We're driving into --

13 THE COURT: -- well, he is --

14 MR. JAMES STEWART: -- a parking lot.

15 THE COURT: -- well, but -- but you're
16 asking me not to believe him because you -- you just
17 told me that he turned his lights on after you were
18 in the parking lot. But, now, you're saying he
19 turned it on --

20 MR. JAMES STEWART: No, no, no.

21 THE COURT: -- when he was --

22 MR. JAMES STEWART: I never said --

23 THE COURT: -- behind you --

24 MR. JAMES STEWART: -- that.

25 THE COURT: -- which is exactly what he
26 said.

- 1 MR. JAMES STEWART: I -- I never said I didn't
2 -- I never said he turned the lights on when we were
3 in the parking lot.
- 4 THE COURT: Well, I misunderstood you
5 then.
- 6 MR. JAMES STEWART: I said he was not trailing
7 us.
- 8 THE COURT: I -- I misunderstood you
9 then.
- 10 MR. JAMES STEWART: Okay. All right.
- 11 THE COURT: The -- the --
- 12 MR. JAMES STEWART: This --
- 13 THE COURT: -- so -- so --
- 14 MR. JAMES STEWART: -- this is interesting.
- 15 THE COURT: -- it's no different than
16 what -- just sit down. You can't keep popping up
17 like that. We don't even let lawyers do that.
18 The -- what he testified was
19 that as -- as you were turning, he turned -- he
20 switched on his -- his emergency lights and chirped.
21 That's what his evidence was. And, now, you're
22 saying that's what the video shows?
- 23 MR. JAMES STEWART: (No audible response.)
- 24 THE COURT: Is that correct?
- 25 MR. JAMES STEWART: No. The only thing I'm
26 saying that the video shows is when he turned his

1 lights on.

2 THE COURT: And is that --

3 MR. JAMES STEWART: There was -- there's --

4 THE COURT: -- and that's --

5 MR. JAMES STEWART: -- nothing shown.

6 THE COURT: -- at that point in time?

7 MR. JAMES STEWART: Sure, yeah.

8 THE COURT: Is that right?

9 MR. JAMES STEWART: (No audible response.)

10 THE COURT: I don't know because I never

11 caught that, and it wasn't pointed out to me.

12 MR. JAMES STEWART: Okay, I think there's a bit

13 of a miscommunication.

14 THE COURT: Yes. I -- I don't care what

15 you saw. I'm -- all I -- all I want to know is

16 -- is -- is, does the video confirm what he said?

17 MR. JAMES STEWART: What did he say?

18 THE COURT: He said he turned them on as

19 he was turning left into the -- into the Grosvenor

20 Park Shopping Centre.

21 MR. JAMES STEWART: Okay. Perfect. Do you know

22 what, I'm quite happy with that. So my next

23 point --

24 THE COURT: Okay.

25 MR. JAMES STEWART: -- is then --

26 THE COURT: All right.

1 MR. JAMES STEWART: -- how does he know that we
2 knew that he was instigating a traffic stop? What
3 was the effect of him pulling us over? There was
4 -- like, there was -- there was -- like, my -- my
5 -- my brother was parking in a parking lot. Like,
6 there was -- like that's what you do in a parking
7 lot, you park.

8 So we pulled over, not for
9 the traffic stop. We pulled into the parking lot to
10 park. He had a letter to get from the post office.
11 We got -- I got out of the car. I was -- I got out
12 of the car. We were in a parking lot.

13 I don't understand how
14 there's a magical wand that a cop could come along
15 and say that he could just chirp his lights, and
16 immediately everything changes.

17 I -- I wasn't even aware that
18 he was going after us. And the next thing you know,
19 we're in a parking lot, and he yells at us over the
20 loudspeaker. And in his notes, he says that he
21 directs to both of us. He never said anything
22 about, "Man in the blue hat," "The man in the green
23 shirt." He says, "Get back into your car, get back
24 in your car right now." To who? He doesn't say,
25 "You in the red shirt," "You in the blue hat." He
26 just says, "I directed my -- my -- to both -- to

1 both people." How are we to even know that?

2 This is a man -- this is a
3 man who then arrested us, and went right back to the
4 car, had no intention, no business of even dealing
5 with us. "You're under arrest for obstruction.
6 I've got business to attend to in your car."

7 It -- it -- we -- it proves
8 on the video. The man had no -- he was sure that
9 this was a drug score. He was sure that Jarvis was
10 a bad person. And he took Jarvis down because
11 Jarvis asked him some questions.

12 And like our friend Bryce,
13 here, gets a little irritated when Jarvis asks some
14 questions because Jarvis seems to know what the fuck
15 he's talking about. Pardon me. What he's talking
16 about.

17 And it seems to me that a guy
18 like Bryce shouldn't really get agitated --

19 THE COURT: Just -- just --

20 MR. JAMES STEWART: -- as this --

21 THE COURT: -- just --

22 MR. JAMES STEWART: -- is his job --

23 THE COURT: -- just --

24 MR. JAMES STEWART: -- and then --

25 THE COURT: -- just direct --

26 MR. JAMES STEWART: -- why then --

1 THE COURT: -- your comments to me.

2 MR. JAMES STEWART: Okay.

3 THE COURT: Okay?

4 MR. JAMES STEWART: Then why then -- why then, if
5 he's getting agitated by someone asking him
6 questions, I would think for a moment some big,
7 giant gorilla like Jay Keating might get upset about
8 getting some questions asked to him, too.

9 And I quite -- I quite -- I
10 find it quite appalling that Jay Keating has in his
11 notes, "Explain, explain, explain, explain." I
12 don't know how many times he has the word "explain"
13 down. And he doesn't seem to do a very good job of
14 doing that.

15 And that's corroborated with
16 all of his other cronies, who took the stand. They
17 don't know what obstruction means. They don't know
18 what fighting means. The one man thinks fighting is
19 when I'm lying on the ground with handcuffs,
20 screaming. And he decides to take control of my
21 head. I have him on the stand doing that. We have
22 him thinking that fighting is me lying on the
23 ground.

24 So how can we decide what
25 obstruction is, when nobody seems to know? And how
26 can we even distinguish -- decide that this is a

1 traffic stop when we pulled into a parking lot? We
2 weren't being trailed by the cop. We had no idea.

3 THE COURT: Okay, let's -- let's just
4 focus on what he said about you.

5 MR. JAMES STEWART: About me?

6 THE COURT: He said -- now, I don't want
7 to hear evidence. I want to hear what -- what you
8 heard in the evidence. He said that you were
9 circling around, clenching your fists, clenching
10 your teeth, sweating. And you were yelling at him
11 to fuck off and -- and words like that. That's what
12 he testified to. Now, tell me why I should or
13 should not believe that.

14 MR. JAMES STEWART: Why you shouldn't believe
15 that?

16 THE COURT: Should or should not, yes.

17 MR. JAMES STEWART: Well, I'm -- I'm circling,
18 walking around. I think what he said was punching
19 and flailing. So I'm -- I think what he's saying is
20 I'm going this, and I'm walking around the parking
21 lot.

22 THE COURT: I didn't -- I don't recall
23 the punching and flailing.

24 MR. JAMES STEWART: It's in his notes.

25 THE COURT: But I don't recall --

26 MR. JAMES STEWART: It's all --

1 THE COURT: -- him saying --

2 MR. JAMES STEWART: -- there.

3 THE COURT: -- that on the stand.

4 MR. JAMES STEWART: His testimony said it, too.

5 His testimony said --

6 THE COURT: He maybe --

7 MR. JAMES STEWART: -- it, too.

8 THE COURT: -- did. I'd -- I'll have to

9 listen to it again.

10 MR. JAMES STEWART: So, do you know what, what

11 you just said there, as far as what another man said

12 about me, as far as you believing that other man, I

13 can't tell you whether or not to believe me. I

14 think that the man --

15 THE COURT: But that --

16 MR. JAMES STEWART: -- is a lying piece of shit.

17 Personally, that's what I think.

18 THE COURT: But that's what --

19 MR. JAMES STEWART: But as far as --

20 THE COURT: -- I have to --

21 MR. JAMES STEWART: -- what he --

22 THE COURT: -- but that --

23 MR. JAMES STEWART: -- is saying, I don't

24 necessarily see on that surface that why you would

25 not believe him, except for the fact that he said

26 this about other persons. A Pascal Martin --

1 MR. JARVIS STEWART: And lied about --

2 MR. JAMES STEWART: -- and he lied --

3 MR. JARVIS STEWART: -- it in court.

4 MR. JAMES STEWART: -- about it. And he -- he

5 held the man at the back of his car for ten minutes.

6 It's -- it's in the case law. He held the man there

7 for ten minutes, didn't say a thing to him, just

8 held him there. "We're going to wait." He didn't

9 say anything. And the judge even found that

10 difficult.

11 MR. JARVIS STEWART: Human rights.

12 MR. JAMES STEWART: But it was absolutely nothing

13 -- there was no conversation between the officer and

14 the accused for a good ten minutes.

15 And so here is a gentleman,

16 now, who seems to be quite irritated that he has to

17 explain himself, and explain himself, and explain

18 himself because we don't really understand what's

19 going on.

20 "Oh, no, that's it. Under

21 arrest for obstruction. Go to the car." "Go to

22 your chair. Go to the corner like a good little boy

23 while we search your car." And that's exactly what

24 they did.

25 And then, do you know what,

26 we're not even going to deal with you at detention.

1 We're going to keep working on your car. And then
2 they even admitted an hour later, "Well, we found
3 his identification in the box." I would have
4 happily given him my name, if any of them had said,
5 "Hey, we're from the Saskatoon Police Department.
6 We're here to elicit a traffic stop. We think
7 there's something wrong with your car."

8 Nothing like that was even
9 said. These people are like pirates. They operate
10 like mercenaries. They come up, and as soon as you
11 ask a couple questions about what's going on, they
12 take a very big offence to that. And then they get
13 physically violent.

14 And I did not -- I did not
15 -- I did not find that very helpful when he put his
16 hands on my brother. And I --

17 THE COURT: Yes. I don't want to hear
18 evidence from you.

19 MR. JAMES STEWART: There's no evidence.

20 THE COURT: What I want to here is why I
21 should believe him or not.

22 MR. JAMES STEWART: He -- he said -- he said --

23 THE COURT: And you say I shouldn't
24 believe him because of another case where he was
25 -- the judge didn't believe him?

26 MR. JAMES STEWART: Well, that's one thing. I

1 mean, you can -- you can -- I don't think you should
2 believe him on the fact that it took him fucking 30
3 -- it took him 30 minutes to explain the three
4 minute stop. We left him just prattle on the stand
5 for a good -- I mean, check his -- check -- just
6 check his testimony. He talked about one little
7 situation where it was things like -- for a good 45
8 minutes, and the whole entire encounter, the whole
9 entire encounter took less than four minutes. And
10 that's when I was set upon by five men. And, oh,
11 well, two jumped on and two jumped off. I don't
12 know who it was, but -- you know, they testified.

13 And so at any time, there was
14 five gentlemen on top of me, but they're not really
15 gentlemen, of course. Where was Keating in all of
16 this? Did he -- it's proven, he jumped on me, he
17 took me down. And then what did he do? Instead of
18 dealing with Jarvis or myself in the squad car, he
19 went back to the car. It's all on tape.

20 I apologize, Your Honour.
21 It's been a very emotional seven months. I've never
22 been beat up by police officers. I've never been
23 beat up by five men before, and I've never struck
24 someone and been charged with assault, and have it
25 dismissed that quickly. On the day of trial, this
26 should have all been taken care of months ago. I'm

1 very dissatisfied with the entire police -- justice
2 system, and it's been very difficult for me.

3 Thank you very much for your
4 time.

5 MR. JARVIS STEWART: Good job, bro.

6 THE COURT: I have to listen to the
7 evidence again, and I have to review the cases that
8 both of you have given me. And I'm going to have to
9 -- which means I'm going to have to reserve today,
10 my decision.

11 MR. JAMES STEWART: You're going to have to
12 -- excuse me? I'm sorry, I didn't understand.

13 THE COURT: That means I have to reserve
14 my decision, I have to put it off until I've had an
15 opportunity --

16 MR. JAMES STEWART: Okay.

17 THE COURT: -- to do all of that. I
18 started last -- yesterday, going through the
19 evidence. And I didn't get very far. I have a disc
20 with all of the evidence, of -- of the recording of
21 the evidence. And I'm trying to compare it to my
22 notes and fill in the gaps, but I want to make sure
23 I get everything just right before I make up my
24 mind.

25 It's going to take me a bit
26 of time to do that. And I'm just going to -- if you

1 just hold on a moment, I'm just going to grab my
2 diary. I'll be right back.

3 COURT CLERK: Order in court. All rise.

4 (COURT ADJOURNED)

5 (COURT RECONVENED)

6 THE COURT: This is close to my office.

7 Hang on a minute. How about the -- Friday the 3rd of
8 May, that's two weeks, are you available?

9 MR. JAMES STEWART: Yeah, I guess so, yeah. I
10 can make myself available. This is probably the
11 -- like, the 11th or 12th time I've been to court,
12 not dealing with this, so, yeah, let's do it one
13 more time.

14 MR. PASHOVITZ: I'm available, yes, Your
15 Honour.

16 THE COURT: All right, 9:30, this
17 courtroom. Could you inform the trial coordinator?

18 MR. PASHOVITZ: Yeah.

19 COURT CLERK: Is it (inaudible)?

20 THE COURT: May the 3rd, yes. Thank you.

21 MR. PASHOVITZ: Thank you, Your Honour.

22 MR. JAMES STEWART: Which courtroom, Your Honour?

23 THE COURT: Eight, courtroom 8.

24 MR. JAMES STEWART: What time will that be at,
25 Your Honour?

26 MR. JARVIS STEWART: 9:30.

1 THE COURT: Pardon me?
2 MR. JAMES STEWART: That will be at 9:30 in the
3 morning?
4 THE COURT: Yes, please.
5 MR. JAMES STEWART: Thank you very much, Your
6 Honour.
7 THE COURT: Yes. Thanks. I'd like a
8 copy of the front page of the Informations. Thank
9 you.

10 (END OF PROCEEDINGS)

