

ONTARIO SUPERIOR COURT OF JUSTICE
East Region

BETWEEN:

HIS MAJESTY THE KING

Appellant

-and-

EVAN BLACKMAN

Respondent

RESPONDENT'S FACTUM

March 6th, 2024

CHARTER ADVOCATES CANADA

[REDACTED]

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Evan Blackman

PART I - RESPONDENT'S STATEMENTS AS TO FACTS

A. The Charges

1. The Respondent, Evan Blackman, was charged with the *Criminal Code* offences of mischief and obstructing a peace officer. He pleaded not guilty and was acquitted by Justice Crewe of the Ontario Court of Justice (the "**Trial Judge**") following one day of trial on October 23, 2023. The Trial Judge's decision was rendered orally that same day.

2. The charges against Mr. Blackman are particularized as occurring on or about February 18, 2021. The arrest occurred in the context of a large and sustained police effort to remove protestors from the downtown Ottawa-core. The protest began weeks earlier with vehicles and protestors arriving in downtown Ottawa on January 28, 2022. The protest was largely in reaction to the legislative response by Federal and Provincial Governments to COVID-19. The protest became known to protestors and the public alike as the "Freedom Convoy."

B. Evidence at Trial

3. An agreed statement of fact was submitted to the Trial Judge which provided some background regarding significant events in the timeline of the Freedom Convoy in January and February of 2022.¹ This background is helpful in understanding the overall context of the Crown's case. But for the purposes of determining Mr. Blackman's criminal liability, these events are largely irrelevant.

4. The evidence of Mr. Blackman's conduct on February 18th was limited to a 13-minute 59-second video captured by a police aerial drone, supplemented by the testimony of the arresting officer, Sergeant Jason Riopel. In the drone video, Mr. Blackman first appears on screen at the two-minute mark wearing a black hat and a red jacket. He is placed under arrest approximately 12-minutes 35 seconds into the video. For the last minute and 25-seconds Mr. Blackman is in police custody.

¹ *Agreed Statement of Fact*, Trial Exhibit 1.

Only about 10-minutes 35-seconds of video depict Mr. Blackman's pre-arrest conduct on February 18th. Within the 10-minutes 35-seconds, there are significant portions where Mr. Blackman is not in the frame.²

5. When Mr. Blackman first appears on the video, he can be observed pulling other protestors back who were previously in a physical altercation with police. He then puts his hand up towards protestors preventing them from engaging further with police.³ For approximately 6-minutes prior to his arrest Mr. Blackman remains on his knees in front of the police line.

6. Mr. Blackman's Facebook profile was obtained by police and relied on by the Crown at trial.⁴ The profile was largely irrelevant to the issues before the Trial Judge. Most notably, a post from February 17 states "Here to support, here to stay". The post is accompanied by pictures of downtown Ottawa with Parliament in the background. There was no evidence presented at trial regarding Mr. Blackman's whereabouts between the start of the Freedom Convoy protest in Ottawa on January 28th and his apparent arrival in Ottawa on February 17th.

7. Sgt Riopel was the only Crown witness. He had never interacted with Mr. Blackman prior to the events immediately proceeding his arrest.⁵ He had no evidence about how long Mr. Blackman had been present in Ottawa or whether he had a vehicle parked in downtown Ottawa.⁶

8. In-chief, Sgt. Riopel testified that Mr. Blackman had taken a knee while the police line moved forward.⁷ However, under cross-examination, he agreed that Mr. Blackman can be observed kneeling at the 4-minute and 48-second mark of the video. Sgt. Riopel further agreed that Mr. Blackman is not seen standing on the video at any point until his arrest at the 12-minute and 38-second mark.⁸ At the 7-

² *Aerial Drone Video*, Trial Exhibit 2.

³ *Aerial Drone Video*, Trial Exhibit 2 at 2:00-2:20.

⁴ *Facebook Profile of Evan Blackman*, Trial Exhibit 3.

⁵ *Proceedings at Trial*, October 23, 2023, pp. 31 ll. 19-30.

⁶ *Proceedings at Trial*, October 23, 2023, pp. 31 ll. 31 - pp. 32 ll. 17.

⁷ *Proceedings at Trial*, October 23, 2023, pp. 13 ll. 16-17.

⁸ *Proceedings at Trial*, October 23, 2023, pp. 37 ll. 21-27.

minute and 16-second mark, Mr. Blackman removes his hat, places it over his chest, and begins to “look to the heavens and raise his voice.”⁹ It was put to Sgt. Riopel in cross-examination that Mr. Blackman was signing O Canada at that time. Sgt. Riopel could neither confirm nor deny that assertion.¹⁰

9. Sgt. Riopel agreed in part with Defence Counsel’s characterization of Mr. Blackman’s actions as pulling other protestors back from the police line and attempting to stop them from engaging with police.¹¹

10. When the police line advanced, the first few officers went around Mr. Blackman. Once the line had moved past Mr. Blackman, he was arrested by Sgt. Riopel. The timing between the police line moving forward and Mr. Blackman’s arrest was virtually instantaneous. Mr. Blackman was already on his knees prior to arrest and only had to be moved to his stomach. Sgt. Riopel testified that during the arrest Mr. Blackman grabbed his arm.¹² However, he conceded on cross-examination that the grabbing of his arm did not obstruct him from effecting the arrest.¹³ Mr. Blackman was “very compliant” and “polite” while in the custody of Sgt. Riopel.¹⁴

C. Reasons for Judgment

11. The Trial Judge acquitted Mr. Blackman on all counts.

12. In addressing the charge of obstructing a peace officer, His Honour began by noting that, while Mr. Blackman grabbed Sgt. Riopel’s arm, Sgt. Riopel confirmed that the action did not interfere with his duty.¹⁵

13. The Trial Judge then addressed the fact that Mr. Blackman was kneeling. Crown Counsel had argued that the act of kneeling constituted a wilful refusal to

⁹ *Proceedings at Trial*, October 23, 2023, pp. 38-39 and pp. 87 ll. 27-29.

¹⁰ *Proceedings at Trial*, October 23, 2023, pp. 39 ll. 1-2.

¹¹ *Proceedings at Trial*, October 23, 2023, pp. 34 ll. 2-5.

¹² *Proceedings at Trial*, October 23, 2023, pp. 13 ll. 8-12.

¹³ *Proceedings at Trial*, October 23, 2023, pp. 43 ll. 8-12.

¹⁴ *Proceedings at Trial*, October 23, 2023, pp. 14 ll. 4-5.

¹⁵ *Proceedings at Trial*, October 23, 2023, pp. 86 ll. 8-13.

comply with an order to leave. The Trial Judge found that there was no evidence that at the time that Mr. Blackman got on his knees, he had been informed that he had to leave.¹⁶ His Honour further found that there was an absence of evidence with regards to the manner of an alleged refusal to leave on the part of Mr. Blackman.¹⁷

14. Notably, during the Crown's submissions, the Trial Judge raised a concern with the lack of evidence as to when Sgt. Riopel told Mr. Blackman to leave. If it had been after Mr. Blackman knelt down, his kneeling could not be taken to be a signal of a refusal to leave. The Trial Judge also questioned if there had been enough time between any order to leave and the arrest.¹⁸ The Trial Judge did not accept the Crown's submission that merely seeing the police push protesters would be sufficient to give notice to Mr. Blackman that he could not be present.

15. The Trial Judge then considered the two counts of mischief. His Honour distinguished Mr. Blackman's matter from an oral decision released by Justice Boxall. Justice Boxall found that the accused before him "knew that many residents...of Ottawa found that the blocking of these streets and related activity was interrupting and interfering" with their use of public property. The Trial Judge found that similar facts were not present in the case at bar.¹⁹ There was no evidence that Mr. Blackman knew he was not welcome "at least until the police told him to leave, whenever precisely it was that that happened."²⁰

16. The Trial Judge found that the evidence of Mr. Blackman's involvement in the Freedom Convoy was limited to approximately nine minutes captured by the drone footage. During that time, he is seen yelling and gesticulating wildly. But at times he was also "holding other protesters back" and "trying to be a peacemaker."²¹

¹⁶ *Proceedings at Trial*, October 23, 2023, pp. 86 ll. 23-26.

¹⁷ *Proceedings at Trial*, October 23, 2023, pp. 88 ll. 6-9.

¹⁸ *Proceedings at Trial*, October 23, 2023, pp. 55 ll. 22-30.

¹⁹ *Proceedings at Trial*, October 23, 2023, pp. 88-90.

²⁰ *Proceedings at Trial*, October 23, 2023, pp. 90 ll. 5-9.

²¹ *Proceedings at Trial*, October 23, 2023, pp. 90 ll. 22-30.

17. His Honour accepted that Mr. Blackman was present “to make a nuisance of himself to police and anybody else who was present”. However, based on the “limited evidence” of Mr. Blackman’s “limited involvement” in the protest, the evidence did not prove beyond a reasonable doubt that Blackman was guilty of mischief.²²

PART II - RESPONSE TO APPELLANT’S ISSUES

18. In its Factum the Appellant raises three related grounds of appeal. It alleges that the Trial Judge:

- i. erred in his analysis of party liability;
- ii. misapprehended the evidence; and
- iii. misstated the *mens rea* element of obstructing a peace officer.

A. Standard of Review

19. This appeal is largely an attempt by the Crown to reframe unfavourable findings of fact as errors of law. Determinations of the sufficiency of the evidence are findings of fact.²³ Similarly, inferences with respect to an accused’s state of mind are findings of fact.²⁴ Findings of fact are entitled to “considerable deference”²⁵ on appeal and are reviewable on a standard of palpable and overriding error.²⁶

20. The standard of review on a pure question of law is correctness.²⁷

21. Where the Crown appeals an acquittal, it must show that the alleged “error (or errors) of the Trial Judge might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal.”²⁸

²² *Proceedings at Trial*, October 23, 2023, pp. 91 ll. 1-13.

²³ *R. v Cyr-Langlois*, [2018 SCC 54 \(CanLII\)](#), at para. 45 [Cyr].

²⁴ *Lampad v The Queen*, [1969 CanLII 695 \(SCC\)](#), at 380-81; cit’d approvingly in *Cyr* at para. 45.

²⁵ *R v D’Onofrio*, [2013 ONCA 145 \(CanLII\)](#), at para 1.

²⁶ *Canada (Attorney General) v Bedford*, [2013 SCC 72 \(CanLII\)](#) at para 56.

²⁷ *Housen v Nikolaisen*, [2002 SCC 33 \(CanLII\)](#) at paras 8-9.

²⁸ *R. v Graveline*, [2006 SCC 16 \(CanLII\)](#), at para. 14.

22. The Trial Judge's reasons "should be read as a whole, in the context of the evidence, the issues and the arguments at trial, together with an appreciation of the purposes or functions for which they are delivered."²⁹ The Ontario Court of Justice is a busy trial court. The Trial Judge gave reasons following a brief recess which occurred immediately following the closing submissions of counsel. The Trial Judge noted at the outset of his decision that it was "a bit of a rushed decision."³⁰ The Reasons for Judgment should be read with a measure of latitude for brevity given the need for judicial efficiency.

B. The Trial Judge did not err in his analysis of party liability

23. The Trial Judge found that the Crown had not proven Mr. Blackman's participation in any mischief beyond a reasonable doubt, whether as a principal or as a party. He correctly stated and applied the applicable legal principles. He did not commit any error in doing so, whether on a standard of correctness or palpable and overriding error.

24. The Crown relies on *R. v. Mammolita*³¹ to support its argument that Mr. Blackman's presence is sufficient to prove that he was either a principal or party to the broader mischief being committed by the Freedom Convoy. In *Mammolita*, the accused stood shoulder to shoulder across a roadway while others walked in a circle. The Court found that one may be liable as a principle if standing shoulder to shoulder because it is "a very positive act" and even then, only if he has the requisite *mens rea*.³² The Court noted that it may be possible to infer *mens rea* from the act of standing shoulder to shoulder. With respect to those on the fringe of the obstruction, the Court held that they may be liable if they are preventing others from circumventing the group on the roadway.

25. In both instances, liability flows from an individual's contribution to the effectiveness of the blockade. Where one stands shoulder to shoulder, he is not

²⁹ *R v Villaroman*, [2016 SCC 33 \(CanLII\)](#) at para 15.

³⁰ *Proceedings at Trial*, October 23, 2023, pp. 85 ll. 19-21.

³¹ *R. v. Mammolita*, [1983 CanLII 3563 \(ON CA\)](#).

³² *Mammolita* at pp 89.

merely standing somewhere but is acting as a metaphorical brick in a human wall. Similarly, those on the fringe can be liable as principals if their actions are supporting the main blockade by preventing others from going around. In each case, they are acting in conjunction with a group of nearby people to achieve the effect of obstructing passage.

26. By contrast, there is no evidence in the present matter that Mr. Blackman contributed in any way to the effectiveness of the Freedom Convoy's obstruction of the street. There was no evidence connecting him to any vehicles. Unlike *Mammolita*, he was not participating in an organized action such as standing shoulder-to-shoulder or walking in a circle. In fact, there was good reason to doubt his unity of purpose with those around him. On the aerial drone video, he was observed pulling other protesters away from police and acting as a "peacemaker." These are findings of fact by the Trial Judge, subject to deference on appeal.

27. In *R. v. Remley*³³, a decision of this Court in relation to similar charges, the Court referenced a "caveat" to *Mammolita* which was applied by the New Brunswick Provincial Court in *R. v. Colford*.³⁴ The caveat is that the requirements to be found guilty of mischief outlined in *Mammolita* require that the:

*...acts constituting the actus reus must be such as to lead one to the conclusion that they equate with and tend towards showing a sense of unity or "one-ness" with the acts of the principals so that a definite contribution to the events complained of is proven or necessarily inferred.*³⁵

28. Such a "one-ness" with the acts of those who blocked roads with vehicles or even with those around Mr. Blackman on the street is missing. Unlike, *R v Pascal*³⁶, Mr. Blackman wore no uniform. Nor did he chant slogans or carry signs. Unlike *Mammolita*, Mr. Blackman made no "definite contribution" to the blockade. He even

³³ *R. v. Remley*, [2024 ONSC 543](#) [Remley].

³⁴ *R v Colford*, (1993), [1993 CanLII 15355 \(NB PC\)](#) [Colford].

³⁵ *Remley*, at para. 104 cit'g *Colford*.

³⁶ *R v Pascal*, 2002 CarswellBC 3838 (Prov. Ct.) [WL] at para. 54.

appeared to be trying to prevent it, or at the least reduce protestor's conflict with police.

29. The Crown argues that the Trial Judge erroneously distinguished *Mammolita* by noting that there is no evidence that Mr. Blackman was aware police wanted him to leave before Sgt. Riopel had instructed him to do so. However, this did not form a part of the trial judge's mischief analysis. The remark was made during the His Honour's reasons with respect to the charge of obstructing a peace officer.³⁷ It is noteworthy that the accused in *Mammolita* was not charged with obstructing a peace officer. While the reliance on that case in the Trial Judge's reasons appears misplaced, it did not impact His Honour's findings on liability on either the mischief or obstruct charge.

30. The Trial Judge correctly applied the principles of party liability to the facts as he found them. His Honour found that "at its highest" the Crown's case establishes that Mr. Blackman arrived in Ottawa on February 17, 2021. The most relevant Facebook post says "Here to support, here to stay". There is no evidence as to Mr. Blackman's whereabouts between the start of the protest in Ottawa on January 28 and his apparent arrival in Ottawa on February 17. Nor is there any significant evidence as to Mr. Blackman's relationship to the Freedom Convoy movement as a whole. While his Facebook post does mention a vague "support", the evidence in the aerial drone video is mixed. The Trial Judge correctly notes that Mr. Blackman held other protestors back and acted as a "peacemaker".³⁸

31. The Trial Judge correctly applied the law to the applicable facts. His Honour committed no error in acquitting Mr. Blackman of mischief, both as a principal and as a party. The Crown's argument to the contrary should be rejected.

³⁷ *Proceedings at Trial*, October 23, 2023, pp. 86 ll. 22-32.

³⁸ *Proceedings at Trial*, October 23, 2023, pp. 90 ll. 27-32.

C. The Trial Judge did not misapprehend the evidence

32. The Crown argues that the Trial Judge's finding that Mr. Blackman was not aware that he was not welcome to be where he was until the police told him to leave is inconsistent with the Trial Judge's finding Mr. Blackman's intention was to "make a nuisance of himself to the police and anybody else who was present."

33. The Trial Judges full statement on the later point is instructive:

So on the limited evidence I have of his limited involvement in the activities of the convoy overall, and the manner in which the video unfolded, I am not prepared to find beyond a reasonable doubt that Mr. Blackman is guilty of mischief.

I certainly think that there is evidence upon which I could infer that he was there to make a nuisance of himself to police and anybody else who was present, but whether I can say that rises to the level of a criminal offence is another question, and I cannot.³⁹

34. The Trial Judge's reasons rightly focused on the ambiguity caused by Sgt. Riopel's inability to indicate precisely when Mr. Blackman was told to leave. This is not inconsistent with a finding that Mr. Blackman was there to make a nuisance of himself. The word nuisance is used by the Trial Judge in the colloquial sense. It cannot be read to infer that His Honour is implying criminal or civil liability. In the colloquial sense, one can easily be a nuisance to others, and simultaneously not be guilty of a criminal offence. In fact, in the full quotation above, the Trial Judge explicitly makes this distinction.

35. On this point the Crown further argues that "it was clear given the posture, positioning, clothing, and numbers of police officers, that they were present for a police operation to remove individuals from the area."⁴⁰ A version of this argument was made by Crown Counsel in closing submissions; essentially that the large line of uniformed police officers, combined with the shoving of protestors, without any verbal or written warning, was enough for Mr. Blackman to know that police were

³⁹ *Proceedings at Trial*, October 23, 2023, pp. 91 ll. 1-13.

⁴⁰ *Appellant's Factum* at para 72

asking him to leave the area. The Trial Judge responded to those submissions as follows “*that’s pretty wild west... pardon the expression.*”⁴¹ The mere presence of a line of uniformed police officers who are shoving a line of protestors, is not self-evidently a direction to Mr. Blackman that he must leave the area. The Trial Judge did not accept this argument and refused to draw this inference, a finding which is owed deference by this Court.

36. The Crown further argues that “the lack of clarity with respect to exact wording or timing of the direction to leave does not lead to the inference that the warning was not made.”⁴² The Trial Judge did not reject the evidence of Sgt. Riopel that a demand to leave was in fact made. His Honour focused on the ambiguity in the evidence of the timing of that demand, addressed in further detail below.

37. On the evidence overall the Crown states that “There was considerable circumstantial evidence of Mr. Blackman’s intent without any need for direct verbal warning.”⁴³ The trial itself, including reasons for judgement, was completed in less than one day. The evidence consisted of one witness, a 14-minute drone video with no audio, an agreed statement of fact, and a few pages of excerpts of Mr. Blackman’s Facebook profile. Where the evidence was fresh in the minds of all participants, the Trial Judge did not review the evidence in detail in his reasons. But His Honour was fully aware of the evidence and the inferences that Crown Counsel was asking him to make. He declined to draw such inferences. These are factual findings, entitled to deference on appeal.

D. The Trial Judge did not misstate the *mens rea* element of obstructing a peace officer

38. The Crown alleges that the Trial Judge misapplied the law of obstructing a peace officer by stating that “the Crown was required to prove that Mr. Blackman

⁴¹ *Proceedings at Trial*, October 23, 2023, pp. 57 ll. 17-19.

⁴² *Appellant’s Factum* at para. 73.

⁴³ *Appellant’s Factum* at para. 74.

was made aware in some fashion that Sgt Riopel wanted him to leave and intentionally refused to do so.”⁴⁴

39. There has been some debate in Canadian law regarding the *mens rea* requirement for obstructing a peace officer, and specifically whether it is a general or specific intent offence. For the reasons expressed by Paciocco J (as he was then) in *R. v. Yussef* ⁴⁵, the Respondent submits that this debate is “not a helpful way to interpret the section” and in any event, not necessary to resolve the issues raised in this appeal. Paciocco J concludes that: “the offence is only committed by those who act intentionally and do so *intending to make it more difficult for the police to execute their duty*. [emphasis added]”⁴⁶ Paciocco J concludes:

“The final *mens rea* consideration relates to section 129(a)’s actus reus requirement that the “peace officer” is “in the execution of his duty”. I agree with *R. v. Gunn, supra* that *what the accused must know are the facts relating to what the peace officer is doing*. [emphasis added]”

40. While a warning or direction to leave is not an element of the offence of obstructing a peace officer, the accused must be made aware in some way “what the police officer is doing” in order for him to intentionally obstruct the officer. The most straightforward way to prove that the accused was aware of what the peace officer was doing would be via a direct verbal or written warning by the officer. But it could, *in theory*, be proven in other ways. The problem for the Appellant is that it was not proven beyond a reasonable doubt in this case. The Trial Judge made exactly this point when he stated that the Crown must prove that “Mr. Blackman was made aware in some fashion that Sgt Riopel wanted him to leave.” The words “in some fashion” are instructive. This language does not rule out the possibility that a willful intention to obstruct could be established on circumstantial evidence, and

⁴⁴ *Appellant’s Factum* at para. 75, referencing *Proceedings at Trial*, October 23, 2023, pp. 86 ll. 1-6.

⁴⁵ [2014 ONCJ 143](#) at para 47.

⁴⁶ *Yussef* at para 49.

without a direct warning by police. This point was also articulated by the Trial Judge during Crown Counsel's submissions:

*"if you're going to ask a Court to find that someone committed a criminal offence by not following a police direction, then, number one, it seems to me, you have to establish that, before the – before the person refused, he understood what the order was and was given time to comply with it."*⁴⁷

41. The Trial Judge's expressed concerns about the deficiencies of the Crown's case were valid and his articulation of the law on the issue was correct.

42. The Crown further criticizes the Trial Judge's focus on the "ambiguity caused by Sgt. Riopel's inability to indicate precisely when Mr. Blackman was told to leave and what exact words were used."⁴⁸ These issues were flushed out extensively in a lengthy exchange between Crown Counsel and the Trial Judge during Counsel's closing submissions.

43. The exchange was initiated by Crown Counsel's submission that "the Court can take notice of taking a seat or a knee in the face of police enforcement, it's widely recognized as symbolic of non-violent resistance."⁴⁹ By getting down on his knees, the Crown argued that Mr. Blackman was signaling to police an intention not to comply with their direction.

44. After expressing some skepticism that the Court could indeed take notice of such a fact, the Trial Judge notes that when the police line begins to move forward, Mr. Blackman is arrested immediately. Implicit in the Trial Judge's reasoning is that the police moving the line forward could not be a signal to Mr. Blackman to leave as the arrest occurred too quickly. The Trial Judge was obviously aware of the case law surrounding quick "lapses of judgement"⁵⁰ and that the accused must be given at least a minimal opportunity to respond to the officer's direction.

⁴⁷ *Proceedings at Trial*, October 23, 2023, pp. 60 ll. 15-22.

⁴⁸ *Appellant's Factum* at para. 70.

⁴⁹ *Proceedings at Trial*, October 23, 2023, pp. 50 ll. 26-29.

⁵⁰ *R. v. Khan*, [2013 ONCJ 194](#) quoting with approval: *R. v. Cole* [2009] O.J. No. 5838.

45. The Trial Judge then returns to the question of whether, prior to the police line moving forward, Mr. Blackman "...signalled the lack of intent to comply with the order?"⁵¹ After a brief exchange, the Trial Judge poses a further question: "precisely when it is that you say Mr. Blackman committed the act of refusing to comply with the order?"⁵²

46. It is in this context that the precise timing and wording of the Order becomes relevant. If Mr. Blackman was informed of the order after getting on his knees, the Trial Judge expressed concern that "how can I say that, just by getting on his knees, he is – he is refusing to comply with the order? I don't know if the order has been made yet."⁵³ Further: "...how much time is there between the issuance of that command and the takedown of Mr. Blackman?"⁵⁴

47. Crown Counsel was not able to respond directly to these concerns raised by the Trial Judge in submissions at trial, nor have they responded to them in their written argument on appeal.

48. There is no indication that Mr. Blackman heard police or new about the direction to leave, whether made by Sgt. Riopel or anyone else. There is no evidence that Mr. Blackman witnessed the police line moving forward at any point until literally two seconds prior to his arrest. His actions in holding other protester's back were characterized by the Trial Judge as those of a "peacemaker". There is simply insufficient evidence to prove beyond a reasonable doubt that Mr. Blackman was willfully obstructing police when he stepped toward the police line on February 18th.

49. When reading the transcript as a whole, it is clear that the Trial Judge was deeply engaged in the *mens rea* analysis, both concerning the evidence that Mr.

⁵¹ *Proceedings at Trial*, October 23, 2023, pp. 53 ll. 6-8.

⁵² *Proceedings at Trial*, October 23, 2023, pp. 54 ll. 2-4.

⁵³ *Proceedings at Trial*, October 23, 2023, pp. 55 ll. 17-21. Note: The transcript incorrectly attributes this quote to Crown Counsel. It is the Respondent's understanding that the Applicant agrees that the transcript is in error, and is seeking to have the transcript corrected.

⁵⁴ *Proceedings at Trial*, October 23, 2023, pp. 55 ll. 26-28.

Blackman could have reasonably been aware of the police's intentions, and whether he had signalled a willful intent not to comply with their order. His Honour's articulation of the legal principles was correct. No error of law was made.

E. Conclusion

39. This Crown Appeal is largely an attempt to reframe unfavourable findings of fact as errors of law. The Trial Judge considered the Crown's theories of liability in light of the evidence and found that the evidence did not make Mr. Blackman a principle or a party to the mischief of the Freedom Convoy, or as willfully obstructing police. These findings are squarely within the Trial Judge's purview as a trier of fact. Accordingly, this Court should dismiss the appeal.

PART III - ADDITIONAL ISSUES

50. If Mr. Blackman had been convicted by the Trial Judge, Defence Counsel's intention was to bring an Application for a stay of proceedings pursuant section 24(1) of the *Charter*. The grounds for application pertained to the freezing of Mr. Blackman's bank account under the authority of the *Emergency Economic Measures Order*. Mr. Blackman argues that this was in violation of his section 8 *Charter* rights, an argument recently accepted by Justice Mosley of the Federal Court in similar circumstances.⁵⁵ An *O'Connor* application was also filed to obtain RCMP and banking records in support of the 24(1) Application. Because the underlying charges were dismissed, neither the *O'Connor* Application nor the 24(1) Application proceeded.

51. The Respondent requests that in the event that this Appeal is granted, the matter be set back to the Ontario Court of Justice for the hearing of the *O'Connor* Application and the 24(1) Application.

⁵⁵ *Canadian Frontline Nurses v. Canada*, [2024 FC 42](#) at paras 325-341.

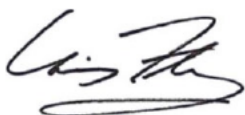
PART IV - ORDER REQUESTED

52. The Respondent respectfully requests that this Honourable Court dismiss this appeal and confirm the Trial Judge's acquittal of Mr. Blackman.

PART V - TIME ESTIMATES

53. The Respondent agrees with the Appellant that the total oral argument in this appeal can be completed in 4 hours or less. The Respondent anticipates that his total submissions will be 1.5 hours or less.

All of which is respectfully submitted this 6th day of May 2024.



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