

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

EVAN BLACKMAN

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE F.D. CREWE
on October 23, 2023, at OTTAWA, Ontario

APPEARANCES:

J. Wright
C. Fleury

Counsel for the Crown
Counsel for Evan Blackman

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Legend
[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - Indicates preceding word has been spelled phonetically.
[indiscernible] - Impossible to discern, interference, audio failure or audio distortion.

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R. v. Evan Blackman
Arraignment

MONDAY, OCTOBER 23, 2023

THE COURT: All right. So are we ready to proceed with Mr. Blackman's matter?

MR. WRIGHT: I think we are. I'd ask to proceed with arraignment.

THE COURT: All right. Let's have arraignment, please.

CLERK REGISTRAR: On Information 22-A8288, Evan Blackman, you are charged on or about the 18th day of February in the year 2022, at the City of Ottawa, in the East Region, did wilfully interfere with the residents of downtown Ottawa lawful use and enjoyment of property, contrary to section 430(1)(d) of the *Criminal Code of Canada*.

You are FURTHER charged that, on or about the 18th day of February in the year 2022, at the City of Ottawa, in the East Region, did wilfully obstruct, interrupt or interfere with the lawful use, enjoyment or operation of property, contrary to section 430(1)(d) of the *Criminal Code of Canada*.

You are FURTHER charged that, on or about the 18th day of February in the year 2022, at the City of Ottawa, in the East Region, did without lawful excuse disobey a lawful order made by Order-in-Council by solicitor Sylvia Jones on February 12, 2022, by failing to leave the area of the Freedom Convoy demonstration for which no punishment or other mode of proceeding is expressly provided by

2.
Arraignment

law, contrary to section 127(1) of the *Criminal Code of Canada*.

5 You are LASTLY charged that, on or about the 18th day of February in the year 2022, at the City of Ottawa, in the East Region, did wilfully obstruct Sergeant Riopel, R-I-O-P-E-L, a peace officer in the execution of his duty, contrary to section 129(a) of the *Criminal Code of Canada*.

10 The Crown elected to proceed summarily. How do you plead, guilty or not guilty?

EVAN BLACKMAN: Not guilty.

CLERK REGISTRAR: Thank you. Please have a seat.

15 THE COURT: All right. Thank you.

MR. FLEURY: Your Honour, just very briefly, my understanding - and I believe confirmed by Mr. Wright right now - is that count 3 is not proceeding.

20 THE COURT: The...

MR. FLEURY: That's the....

THE COURT: ...disobey a lawful order?

MR. FLEURY: That's right.

THE COURT: That's to be withdrawn, Mr. Wright?

25 MR. WRIGHT: Yes, withdrawn - invite a finding of not guilty, whatever the case may be, at this stage.

THE COURT: All right. We'll just note it withdrawn.

30 CLERK REGISTRAR: Yes, Your Honour.

THE COURT: All right. So then we're proceeding on counts 1, 2 and 4. Counts 1 and 2 sound an

awful lot alike.

MR. WRIGHT: They're intended to capture generally the same conduct, Your Honour.

THE COURT: Okay.

MR. WRIGHT: So, ultimately, were there to be findings of guilt, it would be captured by *Kienapple*.

THE COURT: One would - okay, I got you. Okay. There's, there's two formal motions before me, one for - one with respect to the - what's commonly referred to as an *O'Connor* application and, secondly, a *Charter* application.

...DISCUSSING PROCEDURAL MATTERS

...SECTION 10(B) APPLICATION ABANDONED BY THE DEFENCE

...DISCUSSING *O'CONNOR* APPLICATION

THE COURT: I think we'll have some - we'll have some submissions on behalf of the Crown before we hear any of it, but that it's, it's kind of irrelevant to this case, in any event, but we'll - I don't want to prejudge any of it so we'll, we'll get to that when we get to it. So - all right. So we're ready to start hearing evidence, then, are we, Mr. Fleury?

MR. FLEURY: From the defence perspective, yes.

THE COURT: Yes, okay. Well, then, let's, as they say, get on with it, Mr. Wright.

MR. WRIGHT: If I could just start by filing an Agreed Statement of Facts.

THE COURT: Okay.

MR. WRIGHT: My friend has a copy and we've come to an agreement with respect to those facts.

THE COURT: Perfect. Yes, works for me.

MR. WRIGHT: It deals with essentially the background of Freedom Convoy.

THE COURT: So we'll make that Exhibit 1.

CLERK REGISTRAR: Yes, Your Honour. Is there an exhibit copy?

MR. WRIGHT: Yes.

CLERK REGISTRAR: Thank you.

THE COURT: Thank you. That makes things go more smoothly.

EXHIBIT NUMBER 1: Agreed Statement of Facts

- Produced and marked

MR. WRIGHT: Thank you. And the only witness anticipated for the Crown, at this stage, would be Sergeant Jason Riopel...

THE COURT: Okay.

MR. WRIGHT: ...who is just outside. I'll just ask to call him. Just before we do that, I would ask for an order excluding witnesses.

THE COURT: Sure.

MR. WRIGHT: I'd ask for an exception for Sergeant Stephen Plummer...

THE COURT: Yes.

MR. WRIGHT: ...who I'll also ask to assist me and remain in the courtroom.

THE COURT: Sure. All right. So all witnesses shall leave the courtroom and remain outside until called to testify in this trial.

Obviously, there's nobody in the court right now but counsel shall advise all witnesses and potential witnesses for either side and both sides of the existence of this order and caution

them not to be in the courtroom prior to
testifying, and also caution them not to discuss
their evidence with any other witness or
potential witness in this trial until the
conclusion of the trial.

CLERK REGISTRAR: Your Honour, could I get the
spelling of the officer that's being excluded?

MR. WRIGHT: Stephen Plummer. I'll just make
sure I have it right. S-T-E-P-H-E-N, Plummer,
P-L-U-M-M-E-R.

CLERK REGISTRAR: Thank you.

THE COURT: All right. And he will be exempted
from the order. And is that on consent, Mr.
Fleury?

MR. FLEURY: It is, Your Honour, and my
understanding is that Mr. Plummer is not going to
be....

THE COURT: He has no relevant evidence to....

MR. FLEURY: That's correct.

THE COURT: Yes. He's not going to be called as
a witness by the Crown, in any event, so all
right.

MR. WRIGHT: If I could just step outside,...

THE COURT: Sure.

MR. WRIGHT: ...I'll ask the witness to come in.
Thank you.

THE COURT: Sure thing.

...WAITING FOR WITNESS

JASON RIOPEL: AFFIRMED

THE COURT: Good morning, sir.

THE WITNESS: Good morning, Your Honour.

THE COURT: Mr. Wright, whenever you're ready.

MR. WRIGHT: Thank you.

EXAMINATION IN-CHIEF BY MR. WRIGHT:

5 Q. Sergeant Riopel, do you have any materials
with you this morning?

A. I do, yes.

Q. Could you just outline what they are?

10 A. I have a copy of my notes and a copy of my
investigative action.

Q. And who authored those documents?

A. I authored both of them.

Q. When?

15 A. My notes - my written notes were at the time
of the event, of the arrest, and my investigative action was on
April 26th.

Q. And since that point, have there been any
alterations, additions or deletions?

20 A. There has not.

Q. Okay. Do you have an independent
recollection of the events in question?

A. Yes, I do.

25 Q. Would it assist you to be able to refer to
those materials?

A. Yes, it would.

Q. Okay.

MR. WRIGHT: Your Honour, I'd make that request,
as necessary.

30 THE COURT: Mr. Fleury, did you have any
questions of Sergeant Riopel with respect to the
making of his notes or his investigative action

or any submissions with respect to the Crown's request?

MR. FLEURY: Not at this stage, Your Honour. I don't take any issue with the officer relying on his notes.

THE COURT: All right. Thank you. So, sir, you may refer to your notes and your investigative summary to refresh your memory, as and when required.

A. Thank you, Your Honour.

THE COURT: Thank you. The only thing I would ask is that, if a particular question requires you to refer to one of those documents, if you could just indicate which one you're consulting so that counsel can follow along.

A. Yes, of course.

THE COURT: Thank you.

MR. WRIGHT: Q. Sergeant Riopel, I take it you're employed with the Ottawa Police?

A. I am, yes.

Q. And how long have you been working for the Ottawa Police?

A. I believe seven... - approximately 17 years.

Q. Okay. And in what capacity?

A. Currently, as a patrol sergeant.

Q. Okay. Was that your working capacity in February of 2022?

A. Partly. Specifically on this date, in the role of myself, was a team lead with our Emergency Response Unit.

Q. Okay. And can you describe what the Emergency Response Unit - what is that? What does it do?

A. I'll refer specifically to our role here because we have a very broad role within the Ottawa Police.

Q. Understood.

A. But ESU is what we're referred to as. ESU, in this particular case, was tasked with our crowd control, dealing with the various crowd dynamics, and specifically on this date was to assist in removing some of the protesters that were in various locations.

Q. And what area were you deployed to initially, if I could ask that?

A. So, initially, we were tasked with specifically downtown. On this particular day - and I'll just refer to my notes for the exact location - so it would be - and I'm referring to my investigative action - so it was on Rideau Street near the Westin Hotel.

Q. Okay. And what time did you arrive in that location?

A. We, we arrived there early in the morning. I believe our deployment time was about 7:00 a.m.

Q. Okay.

A. And we were - we were put on - in position, if I remember, it was just around 8:45-nine o'clock that morning, is when we were actually set up and getting ready to, to remove the protesters.

Q. And you indicated that that was your assignment on that day. Was there a specific indication of how that would be done or how that would be conducted?

A. We, we received direction early in the morning. It changed throughout the day based on the crowd dynamics. However, at this particular time, our task was to set up on Rideau and - or, rather, the intersection of Rideau, right in front of the Westin. And I'm drawing a blank as to what

exactly that street is that the Westin is on.

Q. Okay.

A. But we were tasked to set up there and move towards the intersection of Rideau and I believe Sussex.

5 Q. Okay. And are you able to describe how many police officers would've been in the area, approximately?

A. Oh, in my exact area, I would say there would've been at least 50 to 60 officers. That's a hard number to give like specifically but, in general, there was close to
10 1,000, I believe, in the - in that entire area, but just on my line, at least - at least 60, 60 police officers.

Q. Okay. And can you describe the area in terms of civilian presence?

A. Yeah. So when we had established what I
15 would consider to be our line - and when I say "our line," I'm referring to literally just a lineup of police officers - in front of us, we had a variety - or, rather, a number of civilians, pedestrians. Definitely, the number would've been in the hundreds.

20 Q. Okay. And can I ask, what were they doing? Again, it may be difficult to talk about specifics...

A. Mm-hmm.

Q. ...but generally?

A. The crowd dynamics were, were very different.
25 For the most part, people were just standing in front of us, talking, and some were engaging with the police. Others were yelling, screaming, waving flags, kinda walking back and forth. But, for the most part, the crowd was - in a very general sense, was very cooperative.

30 Q. Okay. Ultimately, were you involved in the arrest of anyone this day?

A. Yes, I was. Referring to specifically the

reason we're here, I was involved in a few other arrests but, yes, I was involved in an arrest resulting in, in this trial.

Q. If I can go back for a moment. Were you involved in arrests prior to the one that brought you to court today?

A. I believe I assisted in at least two other arrests prior to this where I was - I just assisted because of the nature of the, the arrest, but I was not an arresting officer. This was the first - for the entire protest, this was my first arrest.

Q. Okay. And how did the arrest in this case transpire?

A. So our task was to move our line forward, and the purpose of moving the line forward was to try to remove all protesters or anyone that might be in the area that was engaging in what at the time would've been considered an unlawful protest or an unlawful gathering.

Q. Mm-hmm.

A. And so, while we were moving the line forward, and it was done very slowly, very methodically, with lots of warning, anyone that was resisting our - resisting moving back or preventing us from moving forward, we were directed, at that point, to single them out and make the arrest.

Q. You mentioned a warning or warnings. How was that conveyed?

A. The warnings started I believe days earlier. We had all of the police officers, liaison officers that were out giving pamphlets, flyers, however you want to call them, indicating that they had to leave and that, you know, if they refused to leave - and I'm paraphrasing the pamphlet - essentially indicating the reasons why this was illegal and why they were not allowed to be there and that they would have to

leave and, if not, they could be arrested. So those warnings started days earlier.

Q. Mm-hmm.

A. And we were also tasked with handing some of these flyers out, so that's how I know.

Q. And, sorry, can I ask, just before you go on,...

A. Sure.

Q. ...in terms of - you indicated you were specifically involved in handing out those flyers or you would've witnessed that personally?

A. Both.

Q. Okay.

A. So I would - our team, like we were given flyers to hand out and, again, it was always about keeping communication with the crowd and, and letting them know what was - what the expectation was.

Q. And to be clear, the handing out of those flyers that you were involved with, was that on the 18th or earlier?

A. Earlier.

Q. Okay.

A. We did not hand - I personally did not hand out flyers on the 18th.

Q. Understood. And, sorry, if you could continue from there. You were indicating, I believe, that that was one of the - one of the elements, and I'll just ask that you continue on...

A. Correct.

Q. ...from the 18th.

A. So, referring to the warnings before moving, while we were stationed on the line, engaging with people, every

officer was told to have conversation with everyone and advise them that they had to leave, they were not allowed to be here, and that this was an unlawful gathering, and failing to leave may result in an arrest.

5 That's - again, for the most part, it's - I have to paraphrase, I don't have the exact wording, but that was the clear message that we were told to give, and multiple times throughout that day, that morning, even around this time, that
10 was the message I was saying to everybody I spoke to. We weren't - for the most part, we weren't engaging in just casual conversation,...

Q. Mm-hmm.

A. ...it was anytime somebody spoke to us, we
15 had a very prompt response.

Q. And what led up to the arrest in this case?

A. In this case, what led up to the arrest was we were advised to move the line forward. In doing so, Mr. Blackman was preventing us from doing that. He was verbally -
20 prior to moving the line, he was verbally aggressive toward the officers on my team, that I can speak of, and was not taking orders, was yelling and screaming in the officer's face. I engaged at least once, that I can recall, telling him he had to calm down, he had to leave. He refused.

25 And at that point, when we were given the orders by our command to move the line forward, slightly before I went to push him back - so I would've been second - just to, to kind of illustrate how, how the situation was set up and how
30 people were,...

Q. Yes, please.

A. ...as a team leader, a TL, I'm responsible

for four officers that were on the line.

Q. Mm-hmm.

A. So they would've stood in front of me. I would've been behind them. And so they - there would've been a barrier or at least a line or a person or two between myself and Mr. Blackman.

But, at one point, when we were starting to move forward or prior to moving forward, he came up close to the officers and I remember, at one point, I had reached over - and I'm trying to recall exactly at what point - but I went to push him back and he had grabbed, grabbed my arm.

And that was right around the time that the line started to move forward. And when I went to grab him, I believe he had gone to the ground. He had kind of either taken a knee or sat on the ground while we were moving forward. And at that point, it was interfering with our ability to move the line and so I believe my teammates literally just walked around him and I engaged in arresting him.

Q. And from that point on, how was the arrest conducted?

A. So once the - once the line moved past him, so the officers that were in front of me - and I say my four officers - there's dozens of officers on either side, and that line had to move consistently so we can't - we can't, you know, bend or misshape the line, it's designed to be a straight line. So the officers went around. Mr. Blackman was, I believe, on the ground when we made the arrest. I didn't have to bring him to the ground, he was already there.

So he was brought to his stomach and placed in

handcuffs - I believe the yellow flex cuffs is what we call them, so not the steel handcuffs - ...

Q. Mm-hmm.

A. ...and advised of his arrest. And at that point, he was very compliant - in fact, I'll term polite. And so he - after that, he was brought to our, our staging area that we had for anybody who was arrested.

Q. Are you able to indicate the time of Mr. Blackman's arrest?

A. Sure. My notes, my handwritten notes indicate around 12:15 p.m., so just after lunch. That's - my notes indicate that, and so that's, that's the time that I would rely on.

Q. If I could have a moment.

A. Excuse me.

Q. Can you just describe Mr. Blackman in terms of his physical characteristics, if you recall any clothing?

A. Yeah, I believe he had a toque on. If my memory serves, that he also - he had a beard, but what stood out the most about him at the time was it was a - like a red snowsuit. I believe it was a snowmobiling suit. I could be wrong but it was definitely a red, red top and bottom snowsuit.

Q. And can I ask, were you involved in the processing of Mr. Blackman following his arrest?

A. So I'll explain how that happened. We, we had an area that was designed for anyone who was arrested or detained, and my role was to bring him to that area and wait until he was processed. So I wasn't involved in the, the actual processing as to from the time - excuse-me - from the time that he was handed to what we would call our arrest team or our processing team. I wasn't involved in that, but I was responsible from the time that he was handcuffed to the time

that he was handed off. I, I had custody of him through that time.

Q. Okay. And how long did that take or how long did he remain in your custody, if you're able to approximate?

5 A. I don't have it in my written notes but I do recall it was lengthy. It was at least 45 minutes to an hour, I believe, was our wait time, because I was essentially put into a queue, if you will, but it was a lineup.

Q. Understood.

10 A. So I don't have it written here but I do remember it was - it was at least 45 minutes that we waited.

MR. WRIGHT: Okay. Your Honour, if I may, I'd just like to play a video. I'll ask the officer if he's able to identify this video.

15 THE COURT: Sure.

THE WITNESS: Excuse me. Thank you.

MR. WRIGHT: Your Honour, there's no sound. It's a 13-minute and 58-second video. I intend to play it all the way through.

20 THE COURT: Okay.

MR. WRIGHT: If there's anyone who can't see, please let me know.

THE COURT: Yes.

25 MR. WRIGHT: Q. So, Sergeant Riopel, I'll just play this all the way through. If there's a point where you're able to identify yourself or the accused, please let me know.

A. Sure.

...VIDEO RECORDING COMMENCES PLAYING

30 A. So that's myself, if you - sorry, if you don't mind pausing.

Q. Yeah, I've paused it there. That's 2 minutes and 11 seconds. And, sorry, where were you indicating that you

were able to see yourself?

A. I, I am - yeah, so we are Alpha 4. If you actually wouldn't mind, is it - can you bring it back maybe just 10 seconds?

Q. Yeah. (Pause)

A. And play it from there. I'll show you - I'll tell you when to hit pause, if you wouldn't mind.

Q. Yeah, I'll be on the ball. (Playing video)

A. And pause. Oh, I'm sorry, actually, if - can you continue from there?

Q. Yeah. (Playing video)

A. No, so I actually may have stepped out of the line right there. I thought - I thought I had seen my shoulder flash but that wasn't it, my apologies.

Q. No problem.

A. And I believe it's zooming in right now. I believe that gentleman in the red suit with the hat and toque, I believe that's Mr. Blackman.

Q. I have paused at 2 minutes and 28 seconds. And just to be clear,...

A. Right....

Q. ...that's the gentleman you're...

A. Yes.

Q. ...referring to,...

A. Where your cursor is.

Q. ...centre of the screen?

A. There's an engagement that we'll have in a tiny bit that I'll - for a level of certainty, but my memory, I recollect that.

Q. Okay. (Playing video)

A. And if you pause, apologies.

Q. No problem.

A. It's, it's hard - if you bring your cursor slightly to - it's my left. I'm assuming the same for you. Right - one more - right there. That is me.

Q. Okay.

5 A. So you can see me holding the vest of the, the officer to my right. That's going to be me.

Q. Okay. I'll just continue playing from there. That's 2 minutes and 53 seconds. (Playing video)

10 A. So, at this point - sorry, I'll get you to pause it.

Q. Mm-hmm.

15 A. At this point, you saw me come back. I just return back to the line. We had our radio pieces as a team lead was directed right from our command, so we were receiving very different radio communications from everybody else. And I had received information - all, all of our TLs received information that we were gonna be ready to press the line and move the line forward shortly.

Q. Okay.

20 A. And so, at that point, I had just gone to our command who was slightly behind us and just advised that, "Listen, we're gonna - if we're gonna be pushing, that's fine, but we may have to make an arrest" - which I was referring to Mr. Blackman at that time.

25 Q. Okay. And why, why did you indicate specifically Mr. Blackman?

30 A. I can't remember exactly what my thought process was verbatim but I knew that - I assumed that, at that point, he'd be problematic because of his behaviour towards us. He was verbally - you can see here, verbally aggressive towards us, more so than everybody else. I do recall him at times saying that, you know, they're not gonna move, he - he's not

gonna be removed from here.

And we - our arrest authorities - not our authorities but our directions for arrest came from our command, just to say we have to be careful as to who we're arresting, as
5 to - and why, as to not incite the crowd, so I just advised if we're gonna make an arrest, I just wanted to have a team available as well in case we had any type of resistance from the crowd in this area.

10 Q. Understood. At 6:55, I'll just continue playing. (Playing video)

A. So it's at that point, sir, if you'd pause it - so here you can see the line was moved forward and now it's, it's slightly to the right of my screen.

15 Q. Mm-hmm.

A. But that's when Mr. Blackman was placed under arrest. So if you - maybe if you can just rewind it so we can see it and I'll explain that.

20 Q. That's 12, sorry, 46. (Pause) I've gone back to - so that's 12:07.

A. So, if you focus on here, Your Honour, if you can see what I'm referring to,...

THE COURT: Yes.

25 A. ...Mr. Blackman is on the ground right here, and my team is right in front of him. So, if we just focus on there....

MR. WRIGHT: Q. Can you just sort of describe for the rest of us...

A. Yeah, my apologies.

30 Q. ...where you're pointing?

A. So there is a gentleman in a green jacket. If you - if you look just to the right of the screen, there's a

gentleman with a red hat.

Q. There's a lot of red hats, actually.

A. On - my apologies. If you bring your cursor up, right there. So right there.

Q. Right.

A. If you move to the gentleman to his - to - on the screen to the right,...

Q. Yeah.

A. ...in a brown jacket. Directly on the ground in front of him, you can slightly see a red - yes, that's Mr. Blackman right there.

Q. Okay.

A. And so that - that's where I was pointing to, sorry, to show His Honour the, the reference point on the screen.

Q. Understood. That's 12:07. I'll just play it from there. Do you have any other information at this point that you can add?

A. Just at this point that we were given direction on the radio that we were gonna be moving the line.

Q. Okay. (Playing video)

A. So now the line is moving. Mr. Blackman is still on the ground and that's when my team has to go around him. And you'll see right there, that's me bringing him to his stomach. (Playing video) And so there he is, at the bottom of the screen.

Q. I'm just going to pause at that point.

A. Sure. So, at the bottom right,...

Q. Okay.

A. ...there's a - you'd have to bring your cursor there. Yeah, exact... - that's exactly where it is. So that officer with the yellow sleeves is standing - is blocking

the view of Mr., Mr. Blackman, but that's me just to the right.

Q. This is you here?

A. Correct.

Q. Okay. (Playing video)

5 A. So I'm just removing his gloves and putting
the - what we call our flex cuffs onto him right now. (Playing
video)

...PLAYING OF THE VIDEO RECORDING ENDS

10 MR. WRIGHT: That's the end of the video. That's
13:58.

THE COURT: Okay.

15 MR. WRIGHT: Q. Sergeant Riopel, I just have a
few other questions. Again, in terms of where everyone is
situated, we can see the traffic lights here. I take it, this
is in the middle of a road?

A. Yes.

Q. Okay. And can you describe - obviously,
we've panned down. I don't think I'm telling tales out of
school here, but this is southward that it's panned down?

20 A. The camera - so to the top of the screen is
north.

Q. Right.

A. The bottom of the screen is south.

Q. Okay.

25 A. Directly on the right, which would be east,
that's the Westin Hotel.

Q. Mm-hmm.

30 A. I'm not - I can't recall the building to the
right - or, sorry, to the left, what building that is. I
believe it's a government building. I can't recall which one.
So this is - we're actually in a controlled intersection.
There's snow everywhere because plows are just unable to get

through here, at some point.

Q. Mm-hmm.

A. So the whole area is covered with snow, but this is an intersection, and this particular road flows south...

Q. Mm-hmm.

A. ...toward the - I believe it's the Mackenzie King bridge is slightly behind us.

Q. Okay. And further north, beyond what we see in terms of the camera and the individuals there, can you describe the scene in that area, what was going on?

A. So, further north, there's the intersection of Rideau and Sussex.

Q. Mm-hmm.

A. I do recall that there was big rigs that were permanently there, blockaded in there, for quite some time, as well as some people. And so I wasn't - I can't tell you exactly at this moment what was happening but I am certain there were vehicles that were parked there. One of them I think was actually disabled and was not able to be moved, but all the rigs, at this point, had been turned off and were just stationary up at that intersection.

Q. In terms of police operation, we see there to be essentially 10 minutes or so - I'm just approximating - but 10 minutes or so of non-movement?

A. Yes.

Q. Is that - is that typical for the operation or was that abnormal?

A. That's typical.

Q. Okay.

A. In a situation like this, our training and our command, we have to be aware of crowd dynamics. So, our intent, we had scheduled five days for the removal of that

entire area, and the purpose behind that was to be slow and methodical, not to incite the crowd.

Communication was key. The message was to be consistent. And so it took quite some time for us to move even from here to the intersection up above because the point is to move forward and then reassess what the crowd dynamics were, if they were still the same, if things were increasing or decreasing, and we would - we would adjust our behaviour accordingly. And so it is very common. In fact, it's practice that we would move this slowly in an environment like this.

Q. In terms of individuals who declined or refused to move, was it feasible to, to leave them behind and just move the line around them?

A. No, in this - in this particular photo or the freeze-frame where you have....

Q. Mm-hmm.

A. You can see that we are all looking forward. Our focus is what's in front of us, not necessarily what's behind us. We do have rear coverage so that no one is to come in - and they may be offscreen here - but under no circumstance would we push through a line and leave an individual or multiple individuals behind us that would not have been controlled by another officer. The risk - it would pose a risk to our safety and anyone else behind us.

MR. WRIGHT: If I could have a moment.

THE COURT: Sure.

MR. WRIGHT: (Pause) Thank you, Sergeant Riopel. Before, before I finish asking my questions, I should just confirm, I understand there's no issue with respect to ID of the person arrested. I should just confirm that on the record.

MR. FLEURY: That's correct.

THE COURT: Thank you.

MR. WRIGHT: Thank you. So those are all my questions. Mr. Fleury may have some questions for you. His Honour may have some questions.

THE WITNESS: Of course.

CLERK REGISTRAR: Your Honour, is the video going to be made an exhibit?

MR. WRIGHT: I will ultimately be making that request, Your Honour. I have a USB I can file. There's one other document on it that I can address after.

THE COURT: Why don't we just call that Exhibit 1 at this point.

MR. WRIGHT: Thank you.

CLERK REGISTRAR: I do have Exhibit 1 as the Agreed Statement of Facts. Will the video be entered as Exhibit 2?

THE COURT: Oh, sorry, Exhibit 2, yes.

CLERK REGISTRAR: Thank you, Your Honour.

EXHIBIT NUMBER 2: - Video - Produced and marked
...DISCUSSING TIMING OF LUNCH RECESS

MR. FLEURY: I'm just going to share my screen. I've got the same video that Mr. Wright was using.

THE COURT: Yes.

CLERK REGISTRAR: Your Honour, just for the record, I do have OPS on Zoom.

...CONFIRMING IDENTITY OF PARTY ON ZOOM

...PARTY DISCONNECTS FROM ZOOM

CROSS-EXAMINATION BY MR. FLEURY:

Q. Good morning, Sergeant Riopel.

A. Good morning.

Q. I want to start off with note-taking. You
5 have received training on note-taking as, I take it, you're an
experienced officer.

A. Yes, I've received training on that.

Q. Okay. And you understand the importance of
being thorough and complete in your note-taking, correct?

10 A. I do.

Q. Okay. And one of the reasons that it's
necessary for a police officer to be thorough, complete -
thorough and complete in their note-taking is that those notes
are eventually provided to the accused, correct?

15 A. Correct.

Q. And the notes are used for the purposes of
making full answer and defence to the charges that the accused
is facing.

A. Sorry, repeat that?

20 Q. The - well, even more simply, the notes are
used to help the accused persons defend themselves, correct?

A. The notes are used to refresh an officer's
memory as to the event.

Q. When the notes are given to the accused as
25 part of the disclosure, though, I'm suggesting that the accused
relies on those notes to help defend himself in court.

A. I can't speak to the purpose of when they're
disclosed to defence. My understanding and my experience is
that notes are taken as a refresher for the officers to review
30 and refresh their memory to the events.

Q. Right. And it is necessary for you to be
thorough and complete in your note-taking for that purpose.

A. To refresh my memory, correct.

Q. Okay.

A. The events as to what we document are different for every, every event, but names, dates, times, locations, things like that are, are what to be - is what to be put in the notes.

Q. This just stuck out to me, and I'm not going to spend any time on it, but flex cuffs, those are Zip Ties?

A. It's a specific type of - it is a Zip Tie device, but it's as a - it's one specific for mimicking handcuffs.

Q. Okay. Okay. So I'm going to - we're at the back of the video but I'm going to start right where Mr. Wright left off, and I want to just let it zoom out right at the very end.

...VIDEO RECORDING COMMENCES PLAYING

Sorry, I didn't stop it there. (Pause) I apologize. (Pause) Okay. So this is at 13:58, and I know that you've generally described this scene already. You'd agree with me that the officers, as I understand it, they're forming a line along the entire street, from building to building, correct?

A. Yes, correct.

Q. Okay. And you've mentioned that that was - in your estimation, it was 50 to 60 officers?

A. Ballpark, looking at it now, it may be slightly more. I can't account for how many officers were there.

Q. Okay. And the lineup - the lineup of officers that actually extends - for example, on the left side of the screen, it appears to extend beyond even where the

protesters are.

A. Yes, and so if my memory serves me correct, at that exact location, you can - you can vaguely see, in front of them, there's a walking path.

Q. Okay.

A. And so this would've been in an effort to prevent anyone from coming down through our sides or in an - in an area that wasn't - we couldn't leave that area open, so there was - there was access to that area further north of the - northwest of this video.

Q. Okay. And this entire line was present during the entire video clip. Even though we zoom in, at some points, the line itself is present from one side of the street to the other for the entire clip.

A. I would - I would assume so, yes. I can't say for certain but, yes, that's a reasonable - a reasonable expectation.

Q. Okay. And in terms of not speaking of protesters but of persons who might live or work in the area, did you witness any of those people say in your time generally in downtown Ottawa, in these five days that you're describing?

A. In the five days? Like in....

Q. On, on February....

A. This day and then....

Q. On February 18th, I understood your evidence that there were five days allocated to clear the streets of downtown Ottawa.

A. Correct.

Q. So what I'm asking is that, in those five days, and particularly on the 18th - but if there's another day, that's fine - did you witness any persons who were living and working in downtown Ottawa who were trying to walk down the -

down the road or do anything in downtown Ottawa?

A. On this particular day, I can't specifically say. Throughout the entire event, certain, yes, but at this particular moment, I can't recall if any of these people were trying to come by.

5

We did have something in place where I do recall if somebody lived in the area or worked in the area, if they were able to prove that and identify that, then they would be escorted from one point to another, if the police had an intent to occupy that area, or in this case anywhere in this particular area behind us, if they were able to show that, the direction was that somebody would walk them to and from an area.

10

Q. Got you. So if a person - I won't say a hypothetical. As I understand your evidence, then, a person proves that they are - they have to provide some documentation that they live or work in the area and then they're escorted directly to where they need to go by an officer.

15

A. Essentially, yes.

20

Q. Okay. So a person is not permitted - in, in this exact circumstance, in the 13 minutes that we're talking about, a person is not permitted to, say, just walk their dog or take their child for a walk, something like that, they're not permitted to do that at this time in downtown Ottawa.

25

A. I mean, throughout downtown Ottawa, if someone wanted to, yes, I believe they were allowed to do so, if they lived there. But again, in an - in an occupied area - for instance here, so I would say "an occupied" for us is a - so if we're looking at, at the line here, from the - that line of yellow police vests down, that would be a controlled area for us. It was - it would not be okay for someone to just be randomly walking around - for instance, walking their dog. It

30

may have happened but they would've been advised to leave and escorted out.

Q. So, in addition to the lineup of police, I think you can see it at the very bottom of the screen, I believe those are the heads of the horses, and I noticed that there were
5 - I don't want to press forward again because I think if I get the next second, it will go back, but I think it does zoom out and you can see - I recall in your testimony there were, I believe, in the range of six or eight horses there as well.

10 You'd agree with that?

A. Yeah, I was thinking eight, maybe, maybe ten, but...

Q. Okay.

A. ...I think, certain, eight.

15 Q. Okay. So there are - there are horses there as well behind the police line. There are also what I believe are SWAT vehicles. Like there's a - there's a truck or a van there of some kind as well, correct?

A. There is a vehicle there, yes.

20 Q. Okay.

A. I don't know whose that was. It was a joint operation...

Q. Okay.

25 A. ...so I can't attest - it doesn't look like the Ottawa Police tactical vehicle but it may have been the RCMP.

Q. Okay. And you mentioned that there were - there was a truck, I think you said, had been disabled. How close are - we don't see any trucks in the video or any
30 traffic...

A. Correct.

Q. ...in the video. How close is, say, the

nearest truck that is on a street?

A. I couldn't tell you the nearest but I am certain, from my memory, the one - a vehicle for sure that would've been closest would've been at the very next intersection to the north of us, which was Sussex and Rideau.

There was at least one vehicle - I believe it was a Toyota - that was on the south side of the intersection, so that would've been the closest vehicle to us, and then within that intersection - rather, just on the streets around it, there was numerous rigs and other vehicles that were parked and had been there for days. That area had been occupied from the start of the protest.

Q. So those vehicles that you're describing, they - as I understand your evidence, they would've been blocking the street that we're talking about now, which Mr. Blackman is on.

A. Yes.

Q. Okay.

A. Yeah, there - and actually, sorry, let me - I will - I'll, I'll clarify that. They were not blocking this particular access to this side of the road. If my memory serves me correct, so the intersection obviously has four, four points of entry and exiting.

On the north side of Sussex, there was rigs that were blocking that entire access. On the west side, which would be to the left of the screen, there were vehicles slightly blocking there, and there were barricades further west preventing any vehicle movement in any direction. But I believe....

Q. Sorry, I just want to interrupt you very

briefly,...

A. Sure.

Q. ...and I'll let you continue, but are those police barricades or are those the protesters' barricades?

5 A. Police. I think, at one point, there may have been both, but for sure police.

Q. Okay.

10 A. And then at the top of this intersection, there is access to this road from the - from the lights, so there's not a vehicle blocking this particular point of access to this road. And then at that same Sussex and, excuse me, Rideau, if you were to head eastbound, I don't believe there was vehicles blocking there.

Q. Okay.

15 A. So there was a point, if someone were to be on Rideau driving west, I believe they would've been able to turn left down this street.

20 Q. So I want to take you to the first place that I could identify Mr. Blackman on the film, which is actually - it's a little bit before you identified him in your testimony. So I'm at 1:55, and I'm going to start the video. (Playing video) And now we're at - we're at 2 minutes. Do you see Mr. Blackman on the screen there?

A. I do, yes.

25 Q. Okay. So I'm going to play the video.

THE COURT: Okay, well, just - sorry, before you move on, can we - can we isolate exactly where that is on the screen so that we can have correctly the - we can protect the record in that regard?

30 MR. FLEURY: Yes. Thank you, Your Honour. I apologize for that. It looks to me that he's on

the left side there, in the red jacket, black hat, to the left of what looks to be a Canadian flag.

THE COURT: All right.

A. Yes.

MR. FLEURY: Q. Okay.

A. Yeah, he's wearing a backpack as well.

Q. Yes.

A. So you can see there's just a strap over the shoulder.

Q. And he has a beard.

A. Correct.

THE COURT: So that would be, sorry, two or three persons from the left side, at about the middle of the frame going - if you go up and down. So he's, he's clearly wearing a red jacket. You can see the backpack strap, the black hat, and you can see the beard. All right. Thank you.

MR. FLEURY: Q. So I take it that, just from your notes which have been provided and your testimony, that you had never seen or interacted with Evan Blackman before this particular occasion that you described.

A. Not to my knowledge. I mean, if, if we had previous and there was any type of conversation, I can't recall that.

Q. Okay.

A. We, we did engage with a number of protesters multiple times throughout but there's nothing in my memory that serves I had any interaction with him, that I can recall, previous to this.

Q. Okay. So you don't know, for example, if Mr. Blackman parked a vehicle in downtown Ottawa. You have no

knowledge of that.

A. I don't.

Q. Okay. You have no knowledge of when he got to downtown Ottawa.

5 A. No, prior to this, I didn't. I believe we actually had that conversation at some point after but, even still, I can't recall. When, when I had actually custody of him, we were waiting for him to be proset [sic] - processed, rather.

10 There was conversation. I do recall that he had said he was from out of town. I believe he had indicated he got there a few days earlier, but that I cannot - I can't attest to with, with a level of certainty. So, to answer your
15 question, no, I can't tell you if he had parked a vehicle. I am certain that vehicles were not allowed to be parked in this area.

Q. Okay.

A. So - and that, that was for some time.

20 Q. Okay. Is it fair to say that you don't know whether Mr. Blackman arrived before or after the police arrived? Like, for example, was the - you can't say whether or not the street was cordoned off by police, by that police line that we were talking about. You can't say if that happened before or
25 after Mr. Blackman arrived there at the scene.

A. Sorry, I just want to make sure I'm understanding your question. Do you mind repeating that one more time?

30 Q. Sure. So the - we've described, for that entire 13 minutes, the roadway is blocked by police from side to side.

A. Yes.

Q. Maybe I'll - I should ask this first. When did that occur? I mean, you mentioned setting up at between 8:45 and 9:00. Was the roadway blocked at that time?

A. The roadway had some control from officers that were there previous to us - and "us" referring to ESU. I don't know to what degree. Once ESU arrived, we had set up and slowly moved our way to this point, and that was around 8:45-
5 nine o'clock. Our instructions were to be on the road in position before nine o'clock.

Q. Okay. And you don't know if Mr. Blackman was there at nine o'clock, if he arrived at 10 o'clock or
10 11 o'clock, you don't know.

A. Correct, I'm not aware of that.

Q. Okay. Okay, so I'm going to play the video forward just a few seconds. We're at 2 minutes. (Playing
15 video) And did you see - so we're at 2:05. And in that 5 seconds, do you agree with me that Mr. Blackman was attempting to pull some of the protesters back, away from the police line?

A. I'm sorry, I didn't - I didn't see that. If
20 you wouldn't mind rewinding and I'll...

Q. Yeah.

A. ...pay attention for that.

Q. (Rewinding and playing video) So, for example, at the - we're stopped at 2:07. You can see Mr.
25 Blackman's glove at the top, towards the right middle of the screen. He has his - what appears to be his hand on another protester. Again, I'll ask the same question: Do you agree that he was attempting to pull people back away from the police at that time?

A. I can see him grabbing. I don't know what his intent was but I can see him grabbing at people around him.

Q. Okay. And he's grabbing at people around him

in the direction away from police.

A. It appears that he's pulling them - it looks like he's pulling them back. I don't know if it's an effort to pull them back or move himself forward, but that's the movement that I would agree with for sure.

Q. Okay. I'm going to play the video. (Playing video) Okay. Stopped it at 2:13. Do you agree with me that Mr. Blackman, at that point, he arrives in front of police and puts his hands up against the protesters and away from police?

A. I would agree.

Q. That's what he's doing right now?

A. Sorry, yes, I would agree with that.

Q. Okay. (Playing video) And at this moment, as I understood it, I believe in your evidence that it was approximately 2:53 was the first time that you identified yourself in front of the line. We're at 2:13 now on the video. So, I take it that you're not at the front of the line, at this moment.

A. I, I may be. The likelihood is yes. And actually I can see myself right here so, yes, I am there.

Q. Sorry, can you point yourself out?

A. Yes, so if you - are you able to move your cursor?

Q. Yeah.

A. So, so right to the - I'm the head right to the right of you, one down. That's me. And so I'm able to identify myself with - there's a green light on my vest. So could you just move the cursor down? You'll see right there, that's a green light, and that's what our team leads receive, and I'm wearing - I have the stripes on my arm for, for my rank, and we're - that's my team, Alpha 41, A41.

Q. Okay. So I'm going to play the video again.

(Playing video) So this is - we're stopped at 2:21.

Mr. Blackman appears to be saying something to the police. How far away - it's difficult to tell on the video. It looks like he's maybe three or four feet away from police at that point. Are you able to say? Do you have a recollection of how far he was away?

A. At this particular point, I would say, yeah, three feet is probably a pretty good estimate. The angle I'm looking at, there's a body. The gentleman just - I believe it's a gentleman, sorry - so if you'd just look slightly to - on the screen where Mr. Blackman is, there's a person wearing a sign on their chest, it looks like, just to the right of him on the screen - our right on the screen. They're almost in contact with police, and so I would say he's roughly about three feet away from, from the line.

MR. FLEURY: Okay. And I apologize to the Court for going back and forth here...

THE COURT: It's all right.

MR. FLEURY: ...but I'm going to go....

THE COURT: You're covering the timing each time so I think that, that assists.

MR. FLEURY: Q. I want to go back and I want to play the first part of the video again, just to confirm something. And actually I'm going to go to right before Mr. Blackman appears on video for the first time. So we're at 1:31.

(Playing video) Are you able to identify yourself at this stage?

A. I don't believe I'm on the screen here. I would've been - if we're looking at our screen, I believe I would be right - I would be to the left of the screen but not in this image.

Q. Okay.

...PLAYING OF THE VIDEO RECORDING ENDS

THE COURT: Okay, would this be a convenient time to take the recess, Mr. Fleury?

...DISCUSSING LENGTH OF RECESS

5

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right. Mr. Fleury.

10

MR. FLEURY: Thank you, Your Honour. So I haven't moved the video at all.

THE COURT: Okay.

MR. FLEURY: We're at 1 minute and 38 seconds.

15

So this is before Mr. Blackman comes onto the screen for what I believe is the first time. So we're just going to watch the 20 or so seconds...

THE COURT: Okay.

MR. FLEURY: ...before that.

...VIDEO RECORDING COMMENCES PLAYING

20

Q. So, Sergeant Riopel, I take it that you - so you've already testified - I can't recall the exact timestamp, but it was around 1 minute and 40 seconds, I asked you if you were able to identify yourself on the screen. You said you weren't. Did you see yourself in that 20 or so seconds that we just watched?

25

A. My apologies, I wasn't looking for that.

It's hard - so it's hard to identify myself specifically until I see certain elements of my, my uniform that are somewhat different than every other officer. At this point, I can't tell you, with any level of certainty, if I'm one of these officers.

30

I can tell you for certain which ones I'm not

but I - there's two in the bottom left corner of the screen. One of those officers may be me but I can't - I can't tell you for any level of certainty right now.

5 Q. Okay. And really the only - where I'm going with this is that, before Mr. Blackman arrives, you'd agree with me that there's a pretty physical confrontation between police and protesters in this area, correct?

A. There's some shoving going back and forth...

Q. Okay.

10 A. ...in this particular area, yes.

Q. Yes. Okay. You mentioned in your direct evidence that, at some point, Mr. Blackman gets on his knees, is that correct?

A. Yes.

15 Q. Okay. Do you know how long he was on his knees before his arrest?

A. I can't recall.

Q. Okay. I want to take you to - I'm going to go to 4....

20 A. There's - oh, sorry.

Q. So we're at 4:48, for the purposes of the record. Mr. Blackman is at the - towards the bottom left, at the very bottom, you can see the black hat and red jacket.

A. I see him.

25 Q. And my question for you is whether or not he is on his knees at this point? And I'm just going to play the video a little bit to provide some context. (Playing video)

A. It, it appears that he is.

30 Q. Okay. And I know it, it zooms in and out a number of times in the, I believe, about seven minutes between now and the arrest. Or do you know if Mr. Blackman - I mean, my read of the video is that he is on his knees from now until the

time of his arrest. Do you agree with that or do you disagree with that?

5 A. I would - I'd have to watch the video to, to agree with that. My memory serves, at some point, I think he does get up in between - he, he had gotten back on his knees just prior to the arrest but I - my memory serves that he was up again, at some point, between then. And I mean obviously I'd hate to have to watch the video again to answer that purpose [sic].

10 Q. Well, I'm just going to play the video now. I'm going to - my intention was to stop it at around 7:17, but I'm going to play it, and I want you to tell me if Mr....

THE COURT: So we're starting at 5:02?

MR. FLEURY: 5:02.

15 Q. And there's something that I wanted to get to at 7:17, but I will just ask you, Sergeant Riopel, if you see him get up, I want you to identify that.

A. Of course.

20 Q. (Playing video) So I'm going to stop it right there. We're at 7:16. Do you - you've now had a chance to review the video. Do you agree that he was on his knees that entire time?

A. For the entire time that we just watched?

Q. Yes.

25 A. Yes, I would agree with that.

Q. Okay. So now Mr. Blackman has - we're at 7:16 - he's taken off his hat. He has his hand on his chest. He's on his knees. He - I'll play it, just for a moment. He appears to be speaking, possibly singing in an animated way.
30 (Playing video) I'm going to suggest to you that he was singing O Canada at that point. Do you - do you recall what he was doing?

A. I don't. It's possible. I can't recall what he was singing or saying at that moment.

Q. Okay. You mentioned in your direct evidence I think swinging arms or flailing arms. I'm going to suggest to you that Mr. Blackman was not swinging his arms or acting wildly in a - with the intention of hitting police or in a way that would suggest that he was going to hit the police. It was more like he was speaking animated, in an animated sort of way. Would you agree with that?

A. I would agree that to describe it as animated is one way to articulate it, but I would agree with the idea that I never felt that his intent - when I described his motions as swinging was never to hit the police. I never - I wouldn't draw that conclusion.

Q. Okay. And we're at 7:20 on the video. Do you agree with me that Mr. Blackman hasn't been - there's been no physical contact, up until this point, between Mr. Blackman and police, correct?

A. From what I can recall from the video, yes, there's nothing that - at least not intentional.

Q. Okay. I'm just going to play from now until the arrest, and I just want to confirm that Mr. Blackman is on his knees the entire time. So we're starting at 7:20. And I can appreciate - I just want to say that there are going to be moments where it backs out and you may not be able to tell, but I just want you to let me know if, on the video, it refreshes your memory in terms of when he may have stood up or if he didn't stand up.

A. Absolutely.

Q. (Playing video) And now he's off the screen entirely, sorry, at 7:30.

A. Correct.

Q. (Playing video) Oh, so I should - I'm just going to stop it right there. We're at 8:37, and it zoomed out, so that you can see the trucks and the traffic that are blocking the roadway to the - I believe to the north of where the police and the protesters are. Are those the trucks that you were referring to earlier?

A. Yes.

Q. Okay. (Playing video)

A. And if you can pause it right there. Sorry, just for clarification, at some point you had asked - you had pointed out a section of officers that were along the wall, and I'd indicated there was a small walking path.

Q. Yeah.

A. This gives a better direction. If you actually look to the bottom left of the screen, you'll see a series of railings.

Q. Yeah.

A. And then there's a small metal barricade that is just a single on its own. That's the walking path that I was referring to that the officers were standing in front of that leads up there.

Q. Okay.

A. Which that whole area is an open walking path, so pedestrian traffic was not restricted at this area, at this point.

Q. Okay. But if a pedestrian approached the police line, like we were talking about earlier, then they would've been escorted to their, their residence or their employment by police.

A. It would be discretionary, but if they could identify themselves and say this is where they were - this is where they lived, rather, then yes.

Q. Okay. So I want to keep going on the video. (Playing video) Okay, so we're at 12:38. The police line has moved forward. Mr. Blackman is in the process of being arrested. Do you agree with me that there's nowhere on the video, at least, where he gets up in the portion that we just watched?

A. I would agree with that, yes.

Q. Okay. Does that refresh your memory in terms of whether or not Mr. Blackman got up during that period?

A. Yes, and with, with respect to watching that timeframe, yes. At some point, I know he, he had gotten up and gotten back down. I couldn't tell you exactly when.

Q. Okay.

A. But I would absolutely agree that, in the time that we watched this video, he had been on his knees, from what we could see.

Q. Okay. And as I understood your evidence, and I think it's confirmed on the video, the - any physicality with the police happens during the arrest, correct? During your arrest of Mr. Blackman.

A. In what sense?

Q. That I believe you described him grabbing your arm, at some point in your, your testimony.

A. Yes.

Q. I took it that that occurred in these moments that we're talking about during the arrest.

A. Yes.

Q. Okay.

A. That's what I was referring to.

Q. Okay. And there was no physicality with police before that.

A. No. Not to my memory and not that I see on

the video.

Q. Okay. And you don't - I have a copy of your notes and your report - in your notes and your report, you don't indicate exactly what was said to Mr. Blackman, correct?

A. When, sorry?

Q. At any point, that it doesn't - you don't say what was the precise wording of what you said to Mr. Blackman or what any other officer said to Mr. Blackman.

A. Correct, not the precise wording.

Q. Okay. And, likewise, you don't have the wording of his response.

A. No, I do not.

Q. Okay. So you can't be sure exactly what was said to Mr. Blackman.

A. Verbatim, no. The message, yes, I - I'm certain what the message was. But the verbatim words used, I cannot account for that.

Q. Okay. And, likewise, you can't be sure of exactly what Mr. Blackman's verbal response was.

A. Verbally, no.

Q. Okay. I want to take you to - I'll just find it here in my own notes. And I want to - I want to confirm this one piece. As I understood it in your direct evidence, at some point, you leave the line and have some coordination with - I don't know what you'd call it, leadership - and say, "I need to pull this guy up, we might need to arrest him," something like that.

A. Yes, I was - I had asked for just an assistance in case we had to make an arrest.

Q. Okay.

A. So just that they - so that was referring to my - what we call our POU command, and you can see them in the

Jason Riopel - Cr-Ex.

Jason Riopel - Re-Ex.

5 videos, but they're in charge of allocating resources. And so, whenever we have to make an arrest, we're going to be down a man or two, so there is a point in the video that you can see me go back and talk to them. I've identified that we may have a problem and that we may have to make an arrest. They agreed to go ahead and make the arrest, if needed, and that they would provide resources, if needed.

10 Q. Mr. Blackman, you described him, I think, grabbing your arm. I'm going to suggest to you that that didn't obstruct you from arresting Mr. Blackman, is that right?

A. No. I would - I would agree, it didn't obstruct me from arresting him.

15 MR. FLEURY: Okay. (Pause) I'm just going through my notes, Your Honour. I had quite....

THE COURT: Take your time. There's no - there's no rush, Mr. Fleury.

MR. FLEURY: I had quite a bit on right to counsel, which I'm not going to go through...

THE COURT: Yes.

20 MR. FLEURY: ...because that's no longer an issue. (Pause) Those are all my questions. Thank you.

25 THE COURT: Thank you, sir. Any redirect, Mr. Wright?

MR. WRIGHT: Just very briefly, if I may.

THE COURT: Yes.

RE-EXAMINATION BY MR. WRIGHT:

30 Q. Sergeant Riopel, just a couple of points. In terms of any instructions to leave the area, was there any particular physical direction that individuals were pointed

towards?

A. What - sorry, what do you mean?

Q. Sorry. So, I take it, people along the line were told to leave the area?

A. Yes.

Q. Was there any direction that they were specifically told, "This is the area you need to go"?

A. We, we did have a - kind of an exit route, if you will, for pedestrians. Vehicles, I believe, at that point - I can't recall exactly if vehicles were allowed to leave. They were going to be allowed to return to grab their vehicle once the area was clear, but driving at that time was prohibited just because of the pedestrian traffic.

Q. Okay.

A. But pedestrians were allowed to leave and given multiple areas that they could walk out, and I believe, from this particular point, the exit route was on Rideau eastbound to leave the area. So that would've been the street directly to the north of us, and I believe that eastbound towards Orleans would've been the route to take to leave the area.

Q. Understood. And in terms of - we can see some of it on the video, I had recalled that - but in terms of the areas that you indicated were blocked by vehicles, can I just confirm specifically, are we talking about blocking to traffic, blocking to pedestrians or both?

A. So the vehicles that were blocking the roadway, it would've been near impossible for a vehicle to move through there, but pedestrian traffic was able to move freely around the vehicles.

Q. Did you take note of anyone actually leaving the area, anyone following direction generally?

5 A. Lots of people left that line - so I'll say the line again - if you see the crowd in front of us in that direct area on this particular video, lots of people would leave, and especially once we started pressing the line and they saw that the odd person would get arrested, there were a few people that left. Did they leave the protest? I can't tell you, but I can tell you they, they left the direct area.

MR. WRIGHT: Understood. Thank you. I don't have any other questions.

10 THE WITNESS: Thank you.

THE COURT: Thank you. Thank you much, Sergeant Riopel. You are free to go.

SGT. RIOPEL: All right. Thank you, Your Honour.

15 THE COURT: Okay. So was that the evidence you propose to call, Mr. Wright?

MR. WRIGHT: That's largely the evidence. There's just one other document I'm filing on consent.

20 THE COURT: Yes.

MR. WRIGHT: It's the result of an open-source media search.

THE COURT: Okay. So....

25 MR. WRIGHT: It's alleged to be Mr. Blackman's Facebook profile for a certain period of time.

THE COURT: So we'll make this Exhibit 3.

CLERK REGISTRAR: Three, Your Honour.

EXHIBIT NUMBER 3: Facebook extraction - Produced and marked

30 MR. WRIGHT: And....

MR. FLEURY: It's admitted, Your Honour, that....

MR. WRIGHT: Sorry.

MR. FLEURY: With regards to Exhibit 3, that that is Mr. Blackman's, the accused before the court, Facebook profile.

THE COURT: Thank you, sir.

MR. FLEURY: There will certainly be submissions about the use and what can be made of the various posts.

THE COURT: Fair enough.

MR. WRIGHT: In terms of filing, Your Honour - sorry, I'm just sharing my screen in terms of the documents I have on the USB I intend to file, so one document being the OPS drone footage. I'm going to rename this file which....

THE COURT: Which file? It's Exhibit....

MR. WRIGHT: It is labelled, "Exhibit 1, Facebook Extraction."

THE COURT: Yes.

MR. WRIGHT: Which is just an electronic copy of what I've just filed, and I'd ask to file it electronically as well in case there's an issue reading any of the sections. It can be expanded on the electronic file or made larger, so for that reason, I'd ask to file it in both formats.

THE COURT: So I'm not sure I totally got what you're saying but you're - but this document, you want to mark as Exhibit 3.

MR. WRIGHT: Yes, please.

THE COURT: This being the excerpts from Mr. Blackman's Facebook page.

MR. WRIGHT: Yes.

THE COURT: But was there anything that I've missed in addition to that?

MR. WRIGHT: So I just wanted to file the USB which contains both the drone footage...

THE COURT: Yes.

MR. WRIGHT: ...and a PDF version of the Facebook extract.

THE COURT: Okay. I got you. So that's the - in part, what we've already seen, the drone video of the gathering, for want of a better term, which we've made Exhibit 2. Yes?

CLERK REGISTRAR: Yes, Your Honour.

THE COURT: Okay. Any comments about that, Mr. Fleury, at this point?

MR. FLEURY: No, Your Honour.

THE COURT: All right.

MR. FLEURY: Those exhibits are on consent.

THE COURT: Thank you.

MR. WRIGHT: And, Your Honour, I'm just renaming the PDF just to be "Facebook Extraction" to avoid confusion.

THE COURT: All right.

CLERK REGISTRAR: So I'll rename the exhibit they're in.

THE COURT: All right. So is that the end of the Crown's case?

MR. WRIGHT: That is the Crown's case. Thank you.

THE COURT: Okay. Did you want to take, take the break at this point, Mr. Fleury, to decide whether you propose to call evidence or where we go from here?

MR. FLEURY: I can make the decision right now,...

THE COURT: Okay.

MR. FLEURY: ...Your Honour. We're not calling any evidence.

THE COURT: Okay. So then we'll come back after, after lunch, and we'll have some submissions about where we go from here.

MR. WRIGHT: Thank you.

...DISCUSSING LENGTH OF LUNCH RECESS

R E C E S S

U P O N R E S U M I N G :

THE COURT: Okay. *Romlewski* and *Sheppard*.

Mr. Wright, I guess it's your - ...

MR. WRIGHT: Yes, Your Honour.

THE COURT: ...your turn to go first.

SUBMISSIONS BY MR. WRIGHT:

Yeah. So, Your Honour, again, I'll try and make my submissions brief,...

THE COURT: Yes.

MR. WRIGHT: ...when we're only dealing with that much evidence.

THE COURT: Right.

MR. WRIGHT: It shouldn't have to go too long, I think. We're dealing....

THE COURT: It shouldn't. It shouldn't take too long. I wouldn't have thought, no.

MR. WRIGHT: We are dealing with a 13-minute video that, in my submission, captures the meat of the Crown's case. In my submission, we see

direct evidence both for mischief and obstruct.

5 The only other evidence really is the Facebook evidence, which is limited in this case, in terms of the value. There is some value I think in the pro-Convoy messaging that we can see. The Court could consider that, discounting the possibility of maybe more outlandish arguments like Mr. Blackman just stumbled into the protest and wound up in the front of the protest line by accident. I don't think it's realistic, based on the evidence anyway, but....

10 THE COURT: But what, what evidence - you say there's direct evidence of mischief...

15 MR. WRIGHT: Yes.

THE COURT: ...and the obstruct of Sergeant Riopel. What evidence do you say constitutes that direct evidence?

20 MR. WRIGHT: Well, I'll lead in perhaps to the obstruct first, Your Honour.

THE COURT: All right.

MR. WRIGHT: And again, just indicating there's a well-established inference that individuals intend the natural probable...

25 THE COURT: Yes.

MR. WRIGHT: ...consequences of their actions.

THE COURT: Yes.

30 MR. WRIGHT: And in this case, Mr. Blackman is obstructing Sergeant Riopel who's assigned, along with other members of the ESU Team, to clear the area of protesters after the demonstration is deemed, in his mind, to be illegal.

5 So Mr. Blackman is not required to completely frustrate the goals of Sergeant Riopel and, more broadly speaking, the efforts of the police, and he's certainly not required to have acted violently for the Crown to prove its case.

10 And ultimately, I think much may be made of Mr. Blackman's lack of physical violent resistance. And I think my friend may point to, as he has in evidence, to elements of the video where it seems perhaps Mr. Blackman is pulling out of his way - and there may be ultimately some ambiguity there - is he encouraging others not to act violently? Is he trying to prevent others from being
15 arrested? Is he trying to move himself forward?

20 Ultimately, it doesn't really matter, in my submission, in terms of the analysis, guilt or not guilty. It may well all come into play more in terms of sentencing submissions but, in my submission, it's clear Mr. Blackman is not leaving. It's clear he's not encouraging others to leave. In fact, he takes a seat or knee right in front of the police line.

25 And I think 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. Again, there's two elements to that.
30 THE COURT: Sorry, you say that it's widely - I'm not sure if I understand that submission. Are you saying that this is something that I can take

judicial notice of?

MR. WRIGHT: I am making that submission.

THE COURT: That taking a knee is - in front of police is resistance and therefore obstructing the police?

MR. WRIGHT: I think that there is that element. I don't think it's a necessary - it's necessary for the Crown to prove that to make out the obstruct count, but I think Your Honour can take judicial notice. That's why we recognize, like going back to even Ghandi, and we see many instances throughout the years of individuals in symbolic protest movement taking a seat or a knee in front of the police.

THE COURT: Or when the football quarterback takes a knee, is that the same thing? At the - at the American National Anthem?

MR. WRIGHT: Well, I think it's a different issue. So again I'm....

THE COURT: Yes, I know, I know it is, but....

MR. WRIGHT: I'm talking specifically about in front of...

THE COURT: Yes.

MR. WRIGHT: ...a police line. I suppose it could have different meanings and different contexts. I think that's, that's I guess a fair point.

THE COURT: Yes, but - no, but I - maybe I didn't - I don't mean to make light of the - of the argument and I'm - I don't mean to crack wise, that's never, never my intent. But I just - I have some trouble figuring out why it is that

just simply taking a knee...

MR. WRIGHT: Mm-hmm.

THE COURT: ...or two knees and remaining in place is actively resisting a police direction to, to leave.

MR. WRIGHT: Right. Right. So....

THE COURT: I don't - I don't - I'm not sure I understand that.

MR. WRIGHT: And my position is - again, I don't want to get caught up too much in the wording...

THE COURT: Yes.

MR. WRIGHT: ...but an active resistance perhaps is not necessary in this case. When police are telling you to leave,...

THE COURT: Yes.

MR. WRIGHT: ...you have to leave.

THE COURT: Well, I mean, let's look at it from, from this angle,...

MR. WRIGHT: Mm-hmm.

THE COURT: ...which I think we kind of have to, in the circumstances. It's really at the very tail end of the video that the police line starts to move. So that's the time, it seems, when it's time to fish or cut bait, as we say back east, time to - time to move. If you're going to move, that's the time to move, isn't it? I mean, for people who are being told to move?

MR. WRIGHT: Right, but it doesn't have to get to that point, Your Honour. Are the police required to say, "Okay, it's time to move?"

THE COURT: No, no. No, no.

MR. WRIGHT: "No, we're still not moving."

THE COURT: Well, okay, well, back it up a bit.

MR. WRIGHT: Right.

THE COURT: Even if you don't have to wait until that time...

MR. WRIGHT: Mm-hmm.

THE COURT: ...that they're starting to move, where is the evidence that, before that, he has signalled the lack of intent to comply with the order? Has he physically - he hasn't physically done anything that signals an intent to fail to comply with the order.

MR. WRIGHT: I, I would submit that taking the knee or seat is that physical act of: I'm getting comfortable, I'm not moving. That's what it, it says, in my submission.

THE COURT: Well, I think you - you've got a hard sell on that. If all he did was, was take a knee or two knees, whichever, whichever way you want to put it, or sat down, I mean, how, how is that an act of physical resistance?

MR. WRIGHT: Mm-hmm. And, and again, perhaps physical resistance is, is the wrong word, but it's an obstruction. If I go and I take a seat in the middle of the street on Elgin,...

THE COURT: Yes.

MR. WRIGHT: ...I'm not - am I physically resisting the vehicles?

THE COURT: Yes.

MR. WRIGHT: Probably not. Am I pushing the vehicles? No. Am I in their way?

THE COURT: Okay, but to finish the point I was making to you, it's not clear to me...

MR. WRIGHT: Mm-hmm.

THE COURT: ...precisely when it is that you say Mr. Blackman committed the act of refusing to comply with the order. Is it - is that something that's alleged to, to have happened when he first takes the knee or is this when he is told, "Okay, it's time to move; we're going to be moving in your direction now"?

When was he told that it was - that they had to move, was that before he took the knee, was it after he took the knee? We don't have any evidence on that.

MR. WRIGHT: And in my submission, really - again, these elements,...

THE COURT: Yes.

MR. WRIGHT: ...in my submission, make it easier to make this assessment, taking the knee, there being an element of verbal warn....

THE COURT: No, but I mean - but the order has to be made at some point. The order, "You guys have to go," I mean, you can't just assume they all saw a pamphlet or....

MR. WRIGHT: Right. No, that's fair.

THE COURT: Or that they were listening to the news and knew that the police were going to be doing this the next day. I mean, before you arrest somebody and charge them with a criminal offence, you have to satisfy yourself that they, they know what it is you want them to do, and the way you do that is by, by issuing a directive to them, "Okay, time to go, guys."

MR. WRIGHT: Right, and....

THE COURT: Words to that effect.

MR. WRIGHT: Right, and I think we do have some direct evidence. We don't know exactly what the wording was but we do have some direct evidence...

THE COURT: But....

MR. WRIGHT: ...of a warning or...

THE COURT: But when?

MR. WRIGHT: ...direction?

THE COURT: When was it given?

MR. WRIGHT: I think that's fair, it's unclear. Presumably, it has to be before the police line move in,...

THE COURT: Well, yes,...

MR. WRIGHT: ...based on the evidence.

MR. WRIGHT: ...but it may have been after he took a knee. So 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.

MR. WRIGHT: Right, so - and again....

THE COURT: And if it hasn't and it's - and then the police line starts to move, if the - if the issue - if the command was issued some time just before the line started to move, then how much time is there between the issuance of that command and the takedown of Mr. Blackman? Because that happens pretty quickly once they start to move.

MR. WRIGHT: Sure. Sure. In my submission, this all provides some assistance but it - in my

submission, this discussion, it - in my submission, it misses the point, to some extent,...

THE COURT: No.

MR. WRIGHT: ...and....

THE COURT: It doesn't miss the point. It's not missing the point at all, Mr. Wright.

MR. WRIGHT: All right.

THE COURT: I think you have to understand what I'm getting at and deal with it, deal with the question.

MR. WRIGHT: So....

THE COURT: We - first of all, we - okay, here's, here's the problems that the Crown has. Number one, you don't know when the directive was issued by Sergeant Riopel or somebody else that was close enough to Mr. Blackman that he would be sure to have heard it. We don't know when that happened.

Secondly, we don't know exactly what it was that was said.

Thirdly, we don't know what he said in response.

MR. WRIGHT: That being said, Your Honour, I think we can go back - and again, what is clear from the video is that there are police officers pushing individuals or there's back and forth...

THE COURT: Yes.

MR. WRIGHT: ...pushing.

THE COURT: Yes.

MR. WRIGHT: Mr. Blackman clearly saw that.

THE COURT: Yes.

MR. WRIGHT: He's right there.

THE COURT: Yes.

MR. WRIGHT: What is the inference to Mr. Blackman and to every single person on the line?

THE COURT: What?

MR. WRIGHT: You're not welcome here and you're supposed to leave.

THE COURT: Okay. What - but, but, but....

MR. WRIGHT: And....

THE COURT: So, so you're saying - is it your - is it your submission, then, that the police didn't need to say anything, all they had to do is start pushing?

MR. WRIGHT: Yes, that is my submission. When....

THE COURT: Boy, that's a - that's a - you know, that's pretty wild west, Mr. Wright, pardon the - pardon the expression.

MR. WRIGHT: Right. And I'm not saying that is what happened.

THE COURT: It's not what happened. It's what - it's the police set out to do this in a very meticulous, a very strategic, and a very organized fashion. And, I mean, lots of people were very impressed with the way in which the police did this, and I'll count myself among those, because the fact that, that for the most part, this was done in a fashion that achieved the ultimate objective without, without there being a lot of - and I know there was - there was some people who say to the contrary.

5 In fact, if you'll read Mr. Blackman's Facebook posts, there's mention of two people who died. I didn't hear anything about that. But, but, in any event, there were - there was somebody who stepped in front of a - of a police line and may have gotten tramped on by a - by a - by a horse.

MR. WRIGHT: Mm-hmm.

10 THE COURT: But, other than a couple of isolated incidents, a lot of people and a lot of trucks and a lot of machinery were moved in very quick fashion, in a very peaceable way, and I think that's to the credit of the people who were doing the moving,...

15 MR. WRIGHT: Yes.

THE COURT: ...the police. But, with all of that said, if someone is - 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.

25 And, I mean, I have - I have - I certainly don't think the burden you have, Mr. Wright, is as - is as little as you would have the Court believe, that a person by, by taking a knee or in some fashion demonstrating that he's comfortable where he is, is enough to make, make him guilty of a criminal offence. That's what this is.

30 MR. WRIGHT: Right, and it's all contextual,...

THE COURT: Yes.

MR. WRIGHT: ...in my submission.

THE COURT: Yes.

MR. WRIGHT: In every case, is that enough to make up an obstruct? Clearly not.

THE COURT: Yes.

MR. WRIGHT: In this case, however, we're dealing with fairly unique circumstances. We can all see from the video,...

THE COURT: Yes.

MR. WRIGHT: ...there's a police line,...

THE COURT: Yes.

MR. WRIGHT: ...behind which there's another police line,...

THE COURT: Yes.

MR. WRIGHT: ...behind which there are police horses.

THE COURT: Well, we can't see that, but we're told that they're there because Sergeant Riopel said they were.

MR. WRIGHT: Right.

THE COURT: Anybody who watched it on TV saw that there were - there were horses and....

MR. WRIGHT: Right. Well, we can see it on the video at some point, but....

THE COURT: Okay. I must have missed that part but anyways....

MR. WRIGHT: The issue is the police, obvious to everyone who's there,...

THE COURT: Yes.

MR. WRIGHT: ...are not there for a holiday.

THE COURT: Right.

MR. WRIGHT: They're not there just to shake

hands....

THE COURT: No, they mean business.

MR. WRIGHT: Right.

THE COURT: Yes, it's clear.

MR. WRIGHT: Right.

THE COURT: Yes.

MR. WRIGHT: The goal of the police operation and the goal of the police line would've been clear to everyone present on the ground, and that's why we see a line of demonstrators...

THE COURT: Mm-hmm.

MR. WRIGHT: ...form in opposition to that.

THE COURT: Yes.

MR. WRIGHT: In my submission, that's clear. And everyone who has formed that line, in my submission, it is clear that they're there to slow down, if not stop the police operation.

THE COURT: Can I see the Information, please?

Thank you.

MR. WRIGHT: So, ultimately....

THE COURT: No, just hang on a sec.

MR. WRIGHT: Sorry.

THE COURT: (Pause) Okay. The - I mean, the, the count that we're dealing - well, you've withdrawn count 3 so, so count 4 is that Mr. Blackman wilfully obstructed Sergeant Riopel,...

MR. WRIGHT: Mm-hmm.

THE COURT: ...a peace officer in the execution of his duty, contrary to section 129. So, by particularizing the Information in that fashion, that you, as the Crown, have to prove, beyond a

reasonable doubt, that he obstructed Sergeant Riopel.

MR. WRIGHT: Yes.

THE COURT: Not the police line, but that he - that he obstructed Sergeant Riopel.

MR. WRIGHT: Mm-hmm.

THE COURT: And by, by particularizing it in that fashion, you've also required that it be proved that, before the obstruction happened, the wilful obstruction of Sergeant Riopel happened, there was some sort of an order issued to Mr. Blackman by Sergeant Riopel, have you not?

MR. WRIGHT: Respectfully, I don't think so, Your Honour.

THE COURT: Well, you - you're, you're particularizing your, your charge that he did wilfully obstruct Sergeant Riopel,...

MR. WRIGHT: Yes.

THE COURT: ...not that he wilfully obstructed some broad order that was issued by a pamphlet or that some broad order that was made clear by then Chief - or Chief Sloly - or I guess, at that point, it was the Acting Chief Bell.

MR. WRIGHT: Yes.

THE COURT: Because by that time, I think Chief Sloly was gone.

MR. WRIGHT: Yes.

THE COURT: So, so it's not enough to prove that they - that that person or persons had made this particular individual aware of the order to leave, you have to prove that, before he obstructed Sergeant Riopel, Sergeant Riopel made

him aware, "Gotta go."

MR. WRIGHT: Right. So the issue that I'm taking, Your Honour, is with the specific wording of an order from Sergeant Riopel. I certainly agree that it's incumbent...

THE COURT: Well, if you....

MR. WRIGHT: ...on the Crown....

THE COURT: Sorry to interrupt you but, but if it's not an order from Sergeant Riopel, then in what fashion do you say he obstructed Sergeant Riopel?

MR. WRIGHT: Right. So Sergeant Riopel...

THE COURT: Mm-hmm.

MR. WRIGHT: ...had his police duties on that day.

THE COURT: Yes.

MR. WRIGHT: They involved clearing the streets.

THE COURT: Yes.

MR. WRIGHT: He wasn't the only one involved in that...

THE COURT: No.

MR. WRIGHT: ...but he was involved in that.

THE COURT: That's right. He was a team leader.

MR. WRIGHT: Yes.

THE COURT: Four people working for him or three, I can't remember which he said now, but anyways....

MR. WRIGHT: In any event, that's his duty on that day; that's what he's trying to do.

THE COURT: Yes.

MR. WRIGHT: And I think we heard very clearly what people who weren't leaving, what impact they

had on his police duties. Did they make it easier for him? No, clearly, they made it more difficult.

THE COURT: Right.

MR. WRIGHT: Is it necessary that Sergeant Riopel told Mr. Blackman, "Hey, buddy, it's time to go"?

THE COURT: Well, he's got to make it clear to him somehow that he wants him to leave, whether it's by, by word or by action.

MR. WRIGHT: And in my submission, it - the goal of the police operation and the goal of Sergeant Riopel within that operation would've been clear. I don't think that it requires - even though we do have some evidence of a direct warning to Mr. Blackman,...

THE COURT: Mm-hmm.

MR. WRIGHT: ...I don't think that's necessary. Similar to....

THE COURT: Well, what do you think, Mr., Mr. Wright,...

MR. WRIGHT: I've been wrong before.

THE COURT: ...is that normal?

MR. WRIGHT: But, but in my submission, a somewhat analogous situation might be there's a road stop, someone calls for an ASD, and a passerby walks up and knocks the ASD out of the officer's hands.

THE COURT: Well, that's clearly an interference with the officer's duty.

MR. WRIGHT: But, but imagine I'd done that, no one told me that wasn't allowed....

THE COURT: Don't have to be.

MR. WRIGHT: Right.

THE COURT: That's a different - that's not the situation, Mr. Wright, with respect. If someone sees a police officer with somebody detained on the roadside and they're in a vehicle or out of - standing beside their vehicle and the officer is standing there with some sort of an instrument, people are - to use your phrases, people are well aware of what, what, what alcohol consumption devices are and what they look like and where they're administered. People are well aware of that. If he knocks it out of the officer's hand in those circumstances, he's clearly trying to interfere with his investigation.

MR. WRIGHT: And....

THE COURT: You don't have to be told,...

MR. WRIGHT: Exactly.

THE COURT: ..."Don't do that." But this is not that situation. If you want people to leave an area - and particularly when you particularize your Information in the fashion that you have, you have to prove that he wilfully obstructed - and "wilfully" means intentionally, for all intents and purposes - he intently - he intentionally obstructed Sergeant Riopel by disobeying with his - the execution of his duty.

MR. WRIGHT: And the only point I'm disagreeing with is....

THE COURT: You don't have to disagree. What you have to tell me is why I'm, I'm bound to convict.

MR. WRIGHT: Right. So the issue, from my perspective, is the disobey.

THE COURT: Yes.

MR. WRIGHT: So, in my submission, Sergeant Riopel doesn't have to issue the order. Again, like, like the analogous - and what I submit was an analogous situation - when the officer's duty is clear,...

THE COURT: Yes.

MR. WRIGHT: ...which in this case I'm saying it is, you don't need that. You have some evidence of that.

THE COURT: Mm-hmm.

MR. WRIGHT: But, in my submission, you don't need that.

THE COURT: I don't agree with you.

MR. WRIGHT: I'll, I'll let Your Honour....

THE COURT: Yes, I mean, the - these charges, I've only seen two of these trials,...

MR. WRIGHT: Yeah.

THE COURT: ...and in both cases, there's been a charge of obstructing the police officer. As you know, because you've prosecuted both of them, in the other one, we don't even know who the officer was.

MR. WRIGHT: Yes.

THE COURT: And I acquitted the guy on the obstruct in that case, not for this - not because he wasn't there. I didn't find that a terribly big problem in the circumstances, and I don't remember why it was I acquitted him now, but there was - oh, my, my - because you failed to prove that there was - there was access for him to leave, if he wanted to comply with the order.

MR. WRIGHT: Right.

THE COURT: In this case, I don't know that that could be said because I have a clear picture from a drone footage of what was behind him, and anybody who wanted to comply with an order, if an order had been made, anybody who wanted to go along with that could've done so.

MR. WRIGHT: Right.

THE COURT: So the only - except in the circumstances involving Mr. Blackman, as I say, the, the movement of the line and the arrest of Mr. Blackman seemed to be like that [snapping sound]. It seems to be...

MR. WRIGHT: Mm-hmm.

THE COURT: ...simultaneous. So we don't know when the order was made. It was clearly made because the officer said it was.

MR. WRIGHT: Mm-hmm.

THE COURT: He said they were told, "You gotta go."

MR. WRIGHT: Mm-hmm.

THE COURT: When it was, we didn't hear. There was no evidence on that. I don't have the evidence on that. Precisely what it was, we also don't have. And if someone is to be found guilty of refusing to do that, then they have to be shown, by action or by word, to have wilfully refused to do that.

MR. WRIGHT: Mm-hmm.

THE COURT: And if you - and if you're going to use the fact that he was on his knees, well, first of all, if that was - if, if that happened

before it was made clear to the assembled that they had to go, then, then the getting down on the knee is of no assistance to the Crown in those circumstances.

We don't know exactly what it was that he said or did that constituted the obstruct. And Sergeant Riopel was very fair in his evidence, he said he agreed with Mr., Mr. Fleury that the putting his hand on the officer's arm certainly didn't interfere with his - the carrying out of his duty.

And, I mean, it may have been that he was trying to stand up because he saw all the police line starting to move. Maybe he was trying to get up and the quickest way to do it was grab a hold of the officer's arm. I don't know. I mean, I don't want to speculate about what he was doing. MR. WRIGHT: I think that's fair, Your Honour. That element I think is too late in the course of action...

THE COURT: Yes.

MR. WRIGHT: ...when you're being arrested. I don't think I can point to the grabbing of the arm, the way the evidence...

THE COURT: Yes.

MR. WRIGHT: ...came out.

THE COURT: I don't think you can prove this charge is what I think.

MR. WRIGHT: I'm getting that impression, Your Honour. So I'll move on in a moment but I think

- again, I've provided the case of *Romlewski*, which again I don't think assists...

THE COURT: Okay.

MR. WRIGHT: ...in the, the aspect of the case I'm struggling to, to convince Your Honour of.

THE COURT: Mm-hmm.

MR. WRIGHT: It's the same *actus reus*, essentially,...

THE COURT: Yes.

MR. WRIGHT: ...where someone is, is sitting or kneeling down. I think Your Honour would point to a clearer record in terms of the warnings in the *Romlewski* case.

THE COURT: Yes. Well, what did - what did they say in *Romlewski*? Just give me a second. Let me have a look.

MR. WRIGHT: Sure. I hadn't highlighted that portion.

THE COURT: No, that's okay. It's not a very long decision. It's only several pages so it's not a big decision. Let me have a look.

MR. WRIGHT: But I do recall, just off the top of my head, that there had been a video capturing what exactly he said.

THE COURT: Okay. Well, you see, if you read the first paragraph:

As he was speaking to the police,...

MR. WRIGHT: Yes.

THE COURT: "He" being the accused.

...a line of ... police officers
approached, tasked with clearing the
area. The Accused refused to leave the
area, and instead sat down on the
ground.

MR. WRIGHT: Mm-hmm.

THE COURT: Well, you see, that was a sitting on
the ground that clearly took place after the
direction was issued to leave...

MR. WRIGHT: Mm-hmm.

THE COURT: ...and he refused to leave. He
refused to comply with the demand that had been
made. We don't know when the demand was made
here, whether it was before or after he sat down
or put a - put his knee on the ground. So, you
know, as you know, Mr. Wright, cases are -
criminal cases are decided on the facts.

MR. WRIGHT: Mm-hmm.

THE COURT: And let me just have another look a
little further here. (Pause) Okay. You see, if
you look at paragraph 9, this is what Constable
Bastien, B-A-S-T-I-E-N, said. He said - and I'm
looking at line 3 in that paragraph:

He and his fellow officers moved forward,
ordering people to move or be arrested,
and as they did so, a person, later
identified as the Accused, sat down on
the ground in front of them.

MR. WRIGHT: Mm-hmm.

THE COURT: So that's a direct challenge to their order to leave. I mean, in those circumstances, sitting on the ground in front of them was a direct challenge to the order that was issued to leave.

MR. WRIGHT: Mm-hmm.

THE COURT: We don't have that time - we don't have that - at least not in my - let me just re-scan the evidence of the sergeant. (Pause) You see, here's what - here's what Sergeant Riopel said, "I told him..." - he was yelling and screaming in the officer's face. You could see on the video that he was doing that.

MR. WRIGHT: Mm-hmm.

THE COURT: He was yelling. He was yelling, certainly, and he was gesticulating fairly wildly with his - with his hands. Don't know what it was he was saying, as he was yelling and screaming. "I told him to calm down and leave and he refused." That's what he says, "I told him to calm down and leave. I went to push him back."

And then it's - he says that he was - he describes the team that he was with:

I went to push him back. He came close to the officers. I went to push him back and he grabbed my arm. He went to the ground and, and interfered with our ability to move and I arrested him.

That's what he says.

MR. WRIGHT: Mm-hmm.

THE COURT: He doesn't know what he said to him but he said, "I told him to calm down and leave. He refused." Refused to do which, to calm down or to leave? I mean, seriously, I'm not being - I'm not being difficult. I'm not trying to be difficult. And he said, "I went to push him back." I think there's, there's too many problems with your - I don't have a problem with Sergeant Riopel's evidence.

MR. WRIGHT: Mm-hmm.

THE COURT: I don't have a problem with the way he acted in the circumstances because the task that the police were shouldered with that day was a big job. That was a big task. Nobody was enjoying themselves on that line that day, contrary to what everybody - to what everybody on the other side of the line thought, that they were just trying to make life difficult for them.

That was a tough job. I don't envy anybody, the job that the police were given to do that day, and as I said, I think they deserve enormous credit for the way in which they did it. And I include Sergeant Riopel in that because he was one of the senior officers there and he was a team leader.

But the problem is here, there's, there's a - there's some gaps in the evidence. And it's understandable in the circumstances of this case

5 why there would be gaps. There's a problem with
- I mean, he didn't - he didn't pull out his
notebook, "Oh, wait a second, I'm gonna pull out
my notebook here and make some notes about what I
said to you and what you said back to me."

MR. WRIGHT: Yes.

10 THE COURT: Obviously, that's not happening, but
he has a recollection of why he - why he arrested
him and so on. But, I mean, I think that the
evidence falls short here of demonstrating an
interference with the officers, and I don't think
you're going to persuade me otherwise on that.
Do you want to tell me why he's guilty of
mischievous?

15 MR. WRIGHT: I'll do my best.

THE COURT: All right.

20 MR. WRIGHT: In terms of the mischief,
ultimately, I'm going to argue it's a similar
case to *Sheppard*, which is the other case I've
provided. Mr. Sheppard is arrested in almost the
same location. There's some additional evidence
in regards to Mr. Sheppard in terms of he's
testified, so he's indicated more clearly, I
suppose, the reason for his presence.

25 That being said, I'm submitting the inference is
clearly there in terms of individuals on that
side of the protest line and what their intent
is.

30 THE COURT: Let me just - let me just take a look
at *Sheppard*. I have - I have a copy of it here
from - is this the one that you gave me or is -

because I brought a copy down that I had highlighted. (Pause) So the part that - which part of *Sheppard* did you want to rely on for the - with respect to the mischief?

5 MR. WRIGHT: Well, as I recall, Justice Boxall indicated he didn't have to engage really with the party liability argument because really what, what Mr. Sheppard is doing there is blocking the road, and that's just according to my
10 recollection - and I'll stand to be corrected - but ultimately, we've got the identical situation with Mr. Blackman. Mr. Blackman is standing shoulder to shoulder, kneeling shoulder to shoulder, as it were, with a number of
15 individuals who are blocking the road.

THE COURT: Yes.

MR. WRIGHT: At the end of the day, that - in my submission, the mischief is made out. It goes
20 further than that, of course. In my submission, he's part of a much larger mischief and the scale of the mischief is facilitated by the number of individuals there.

Your Honour has heard evidence and seen on the
25 video some evidence of the involvement of vehicles, trucks. Again, we don't need specific evidence, in my submission, that Mr. Blackman brought his own truck or his own vehicle and it was parked there, for him to be a party of that.

30 THE COURT: We don't have that and I don't - I think you're right; we don't need that.

MR. WRIGHT: Right. Again, any one person by

themselves wouldn't be able to accomplish this kind of a scaled mischief, but when many people are involved, it becomes feasible and it becomes much more difficult to remove them.

Again, in terms of the aspects of Mr. Blackman's conduct that associates himself with the broader movement, again, we can see his placement on the front of the line. He appears to be challenging the police. Again, it becomes clear which side of the conflict he's on there. He's yelling or singing at police. I would point to those elements or signs of party liability.

At the end of the day, in my submission, that also may be unnecessary. I'll point to *Mammolita*, which is a case my friend provided in his casebook, at paragraph 17.

THE COURT: *Mammolita*? I don't have any cases here.

MR. WRIGHT: I....

THE COURT: I know you guys filed them but I don't - I never got those, for some reason.

MR. WRIGHT: I can just read part of that paragraph.

THE COURT: Yes, sure, go ahead.

MR. WRIGHT: Just on the topic of party liability.

THE COURT: Yes.

MR. WRIGHT: And it goes on to indicate mere presence by itself is not enough, essentially, but it goes on to continue, later on in the

paragraph:

5 However, the act of assistance or
 encouragement may be the presence of the
 accused at the scene of the crime during
 its commission, if the aider or abettor
 is there for that purpose... The
 strength of numbers may at times be an
 important source of encouragement...

10 So, really, at the end of the day, Your Honour,
 we have more than just mere presence but the fact
 that he's there is a significant aspect to the
 mischief and to his party liability.

15 And again, in my submission, there are no other
 reasonable inferences other than he's there to
 support the protest. Again, were he an
 individual who was just living or working
20 downtown, you don't just walk up and find
 yourself by accident in front of the police line
 at the very pointy end of it, as it were.

25 So, in my submission, there's really no other
 alternatives other than he's there to support the
 protest which is contributing to a larger
 mischief.

30 THE COURT: Okay. Yes, maybe I'll hear from
 Mr. Fleury on that count.

MR. WRIGHT: Thank you.

THE COURT: What do you say about the mischief,
Mr. Fleury?

SUBMISSIONS BY MR. FLEURY:

Your Honour, I'd just like to - I'm not going to recap all of the evidence, obviously,...

THE COURT: Yes.

MR. FLEURY: ...but I just want to point a couple things out...

THE COURT: Yes.

MR. FLEURY: ...before I get to an analysis of the mischief.

THE COURT: Yes.

MR. FLEURY: The evidence before Your Honour is essentially a 14-minute video, 13 minutes 59 seconds. The first two minutes, Mr. Blackman isn't in it, as far as I can tell, and the last approximately minute and a half, two minutes, is after his arrest.

So you're left with something like eight and a half minutes of video of Mr. Blackman, supplemented by Sergeant Riopel's evidence. And that's essentially all of the evidence before Your Honour. There's the Facebook profile as well, which is quite limited.

During the entire period of the video - and Sergeant Riopel agreed with this - the roadway was blocked by a lineup of 60 police officers. It included eight or so horses. It was supplemented by, according to Sergeant Riopel, 1,000 officers in the sort of downtown area.

Before his appearance in the video, Mr. Blackman's appearance in the video, we have no evidence. We have no evidence about what he did or did not do at any time before his involvement in the video.

There's some indication in the Facebook profile that he may have - you know, there's a post, February 17th, that says, "Here to support, here to stay." And there's a picture of what looks like Parliament. He may have arrived the day before. That's certainly....

THE COURT: Where does - what page of the exhibit is that?

MR. FLEURY: It's page 5, and there's a post - it's difficult to read. It's....

THE COURT: It's hard to read that. It's not - I don't know, your eyes are not as old as mine but....

MR. FLEURY: Well, I've actually - I read it digitally so I'm familiar with what it says.

THE COURT: Oh, I see, okay.

MR. FLEURY: But it says, "Here to support, here to stay. Where you at?"

THE COURT: Okay.

MR. FLEURY: So, to the extent that there's any evidence on when Mr. Blackman arrived in Ottawa, it appears he was not in - again, I'm just reading the Facebook profile all together - there's no indication that he was in Ottawa before February 17th.

THE COURT: Okay.

MR. FLEURY: There's no indication that he's a part of the Convoy protest in general at any point prior to him being involved or being on the video.

THE COURT: Okay. All right.

MR. FLEURY: So, when we do see Mr. Blackman in the video, in my submission - and Sergeant Riopel certainly didn't disagree with this - that Mr. Blackman is actually holding other protesters back and then, at one point, puts his hands up, not towards the police but towards protesters, which, in my submission, is again attempting to hold the protesters back and to deescalate a volatile situation.

Because in the video, we see in the first two minutes - I shouldn't say that - at some point before Mr. Blackman is involved, there are - there's a pushing; there's a physicality to what's happening. The protesters are pushing, the police are pushing back, and Mr. Blackman arrives, and that physicality actually stops; that he puts his hand back and stops the protesters. He stands approximately three feet away, is what Sergeant Riopel tells us, and he's - again, as Your Honour notes, he's certainly speaking in an animated fashion and gesticulating and so forth.

Sergeant Riopel had evidence that Mr. Blackman was verbally aggressive, although he never actually articulated exactly what that was. In

my submission, Your Honour, just looking at the video, it appears that Mr. Blackman actually has a calming effect on the situation, as opposed to aggravating the situation.

So, at approximately five minutes into the video, Mr. Blackman is on his knees. And Sergeant Riopel confirmed that. He confirmed that he doesn't get up from that - from approximately a minute-five of the video to a minute - I can't remember if it's 10:30 or 11:30 of the video, but from - in any event, from the time - from five minutes into the video to the time of his arrest, he's, he's on his knees.

At one point, he takes his hat off, puts his hand on his chest, and you wouldn't agree with me that he's singing O Canada but it certainly looks like a - it's like a patriotic sort of moment, if I can call it that.

And again, I agree with Your Honour that Sergeant Riopel was quite, let's say, forthright in what he remembered and what he didn't remember. That being said, there is - as Your Honour notes, there's, there's a lot - there's an absence of evidence on a number of points.

And Sergeant Riopel - and I don't fault him, for the reason that Your Honour articulated, that having a notebook and making detailed entries, in all of the circumstances, was probably

impossible. But, in any event, we're left with this absence of evidence on a number of points, which Your Honour notes, and I'm not going to repeat.

On the mischief charge, did some persons in downtown Ottawa commit mischief between January 28th and February 18th? I would say undoubtedly yes, that some protesters are guilty of mischief, and some protesters have been found guilty of mischief, and this is - the guilt is not within the Agreed Statement of Fact but there's certainly a suggestion of that within the Agreed Statement of Fact.

That being said, Mr. Blackman is not liable as a party for everything that happened during the Freedom Convoy, even if he joined at the very last minute.

In my submission, what Mr. Blackman would be liable or not liable for, as a party to mischief, would be his role, if you can call it a role, within that eight and a half minutes; that he arrives - we don't know where he was before that but he certainly arrives there. He's certainly in the group of protesters, that's clear on the video.

And if there is a mischief there, then Mr. Blackman, by the *Mammolita* - is it *Mammolita* or *Malmolita*? That by that 1983 Court of Appeal

case....

THE COURT: Do you have that case handy? Do you have a hard copy of it?

MR. FLEURY: I don't have a hard copy, Your Honour, I apologize.

THE COURT: What's the cite?

MR. FLEURY: It's *R. v. Mammolita*, M-A-M-M-O-L-I-T-A.

THE COURT: Yes.

MR. FLEURY: [1983] CarswellOnt 1235.

THE COURT: That's - it's not in, in the OR's in any fashion?

MR. FLEURY: I couldn't find it on CanLII or in a publicly-available source.

THE COURT: Okay. All right.

MR. FLEURY: Actually, the reason I have it is that it's part of I believe a brief that Mr. Wright gave me in another case, is the reason that I have it.

MR. WRIGHT: I can find it on CanLII.

THE COURT: I recall seeing that case somewhere. Didn't we refer to that in the Carr matter, Mr. Wright?

MR. WRIGHT: Yes. Yes.

THE COURT: All right. So, so it's one of the casebooks from that case.

MR. WRIGHT: Yes. I can print off a copy in a moment, Your Honour.

THE COURT: Oh, that would be great.

MR. FLEURY: Yes, I think we're in - likely in agreement on the principle, though - and I don't disagree with what Mr. Wright said in submissions

5 - in the sense that what that case stands for is the principle that, if a person is standing shoulder-to-shoulder blocking a roadway, it's no defence to say, "Well, I wasn't blocking the roadway, it was all those other people blocking the roadway;" that you can be a party to a mischief like that.

THE COURT: Yes.

10 MR. FLEURY: The issue in this case - I just want to find where I was in my notes.

THE COURT: Yes.

15 MR. FLEURY: Mr. Blackman arrives to a roadway. He's there for eight, eight and a half minutes. The roadway runs north-south, was my understanding. To the south is a lineup of police officers who are not permitting anyone to go through.

20 To the extent that they are, they're permitting people to go directly to their place of residence or employment, as escorted by police officers, and subject to being proven by the person who wants to go, to travel freely in that area. So that's to the south.

25 To the north, there is - and it was on the video - we see trucks and cars and all sorts of vehicles blocking the roadways to the north.

30 In my submission, Your Honour, Mr. Blackman arrived to a roadway that was essentially closed. I shouldn't even say "essentially", it was

5 closed, but no one could use that roadway. There was no Ottawa citizen, and there is no Ottawa citizen who stood up and said in court today, "I - my reasonable use or my use and enjoyment of that particular property, that public property, was interfered with."

10 And the reason that there is no evidence like that is because there's no citizen of Ottawa, in my submission, who would come and say that. Everyone understands that, at that - as, you know, in agreement with Sergeant Riopel's evidence, that the roadway is closed. You can't - you, you can't walk a dog, I think, was the example that...

15 THE COURT: Yes.

20 MR. FLEURY: ...we used in the evidence. If you want to walk a dog, which would ordinarily be your right in downtown Ottawa, that, that right is just - that was extinguished, at least in those eight minutes that we're, we're talking about.

25 And I don't know if I've ever described anything as martial law in a criminal case, but this is certainly approaching that, that we've got the *Emergency Measures Act* that has been invoked, and we have what are essentially like police checkpoints stopping people and making sure that they are who they say they are, and that they're allowed to go where they say they're going.

30

It's an extraordinary situation, Your Honour, and in my submission, it differentiates the facts from this case and the *Mammolita* case.

On the obstruct charge, Your Honour, I know Your Honour is....

THE COURT: I don't think you need to waste much breath on that. I'm not - I'm not there on that count, on that charge.

MR. FLEURY: Okay. Other than relying on the facts, as I've already articulated them, I'll leave it at that with regards to the obstruct, and unless there are any other questions from Your Honour, those are my submissions.

THE COURT: All right. Thank you. Do you want to respond to, to that, Mr. Wright?

REPLY BY MR. WRIGHT:

Just very briefly. Again, I think my friend is pointing to the issue of the police enforcement and saying, "Well, that's really what's causing the interference here."

In my submission, it's not really - it doesn't really work, in my submission. You can't say, "Well, I was driving dangerously on the 417, weaving back and forth, and there were 18 police vehicles that were chasing me; it was really them that were causing the dangerous driving, not me." I'll just leave it at that.

THE COURT: Okay. Just give me a moment.

Reasons for Judgment - Crewe J.

(Pause) All right. Did you - did you want to get me a copy of that case?

MR. WRIGHT: Yes, I've got it printed off just down the hall.

THE COURT: All right. And if you would - if you would bring me that. I'll take a break and go upstairs and read it, and consider your submissions, and I'll give you a decision on the mischief.

MR. WRIGHT: Thank you. If I could just step out?

THE COURT: Yes, of course. (Pause) Thanks. Okay.

...DISCUSSING LENGTH OF RECESS

R E C E S S

U P O N R E S U M I N G :

THE COURT: Okay. This is a bit of a rushed decision, obviously, but hopefully it makes some sense.

R E A S O N S F O R J U D G M E N T

CREWE J. (Orally):

Count 4 of the Information reads as follows, that Mr. Blackman, on or about the 18th day of February in the year 2022, at the City of Ottawa, did wilfully obstruct Sergeant Riopel, a peace officer in the execution of his duty, contrary to section 129(a) of the *Criminal Code*.

5 The Crown is obliged to prove, in those
circumstances, having particularized the
Information in that fashion, beyond a reasonable
doubt that Mr. Blackman was made aware in some
fashion that Sergeant Riopel wanted him to leave
and intentionally refused to do so.

10 Mr. Blackman took Sergeant Riopel by the arm as
the sergeant tried to push him back at one point,
and Sergeant Riopel very fairly agreed in cross
that, being grabbed by the arm, did not interfere
with his performance of his duty nor did it
15 obstruct him. I won't say any more about the
fact that he was kneeling down or may have been
kneeling at the time.

20 I was invited by the Crown to infer that, by
going down on his knees, as he did a few minutes
into the video (Exhibit 2), Mr. Blackman wilfully
refused to comply with the order to leave. The
problem, this doesn't directly address the issue
which requires the Crown to prove the direct
interference with Sergeant Riopel. More to the
point, however, it is not clear, at the point
25 that he kneels down, that he has even been made
aware of the requirement that he leave which is,
in my view, drastically different from the
situation presented in the decision of the Court
of Appeal for Ontario in *Mammolita*, which I have
30 but which I have now evidently misplaced. I must
have left it on my desk. I don't believe that
decision assists the Crown in the circumstances

of this case.

5 Sergeant Riopel very fairly agreed that he could not recall precisely how he had told Mr. Blackman to leave, and he also couldn't recall his response, though on his evidence he opined that Mr. Blackman refused.

10 In-chief, as he described his discussion with the team directing the project and from whom he was taking his directions, he indicated to them that he may have to arrest an individual.

15 Asked by Crown counsel why he was focusing on Mr. Blackman, he was unable to say why he had focused on him and he said this, "I don't recall my exact thought process." He said, "I assumed he would be problematic as he had been verbally aggressive with the officers." That may not be a direct quote but close.

20 I feel that Sergeant Riopel and all members of his team acted reasonably and fairly with all of those present. They had a lot on their plate.

25 Sergeant Riopel was unable to agree or disagree that Mr. Blackman was singing "O Canada" when he was down on his knees. You certainly can see him remove his hat and kneel down and look to the heavens and raise his voice. There is no
30 audio, so you can't tell whether he was saying something or singing something or, in fact, signing "O Canada". It is hard to tell exactly

what he was doing, but the phrase "save the drama for your mama" springs to mind.

In any event, for the lack of evidence regarding the manner of his alleged refusal together with the timing of his arrest precisely as the police line started to move, I am not satisfied beyond a reasonable doubt that he is guilty of the obstruct.

With respect to the mischief count, I'll briefly refer to the reasons of Justice Boxall of this Court in *R. v. Sheppard* released orally by Justice Boxall on April 14th of this year, and at p. 8, I will note that at the bottom of that page Justice Boxall says:

"I will set out some of the facts. On February 18th, Mr. Sheppard was in Ottawa. Earlier in January and February, he had spent time on the streets of Ottawa, mingling and perhaps more with persons generally known as the Freedom Convoy. He is not charged with anything related to his activities prior to February 18th, and ... I am prepared to accept that his activity prior to [that date] was lawful.

On his evidence, he returned to Ottawa earlier in the week in response to a YouTube request from Keith Wilson, who he described as ... a leader of the Freedom Convoy, ... and Mr. Wilson was looking for persons to return, come out in Ottawa.

And further down the page, p. 9, he continues:

5 "Mr. Sheppard knew that many residents, not all, but many residents [of] Ottawa did not wish the convoy participants to remain, and many residents, not all, but many residents of Ottawa found that the blocking of these streets and related activity was interrupting and interfering with those persons' use of public property they had a lawful right to access."

10 He continues at the bottom of p. 9:

15 "In his testimony, he acknowledged that he knew his presence was not wanted or welcome, and that the convoy was interrupting and interfering with some residents of Ottawa. He also testified that when the police pushed him, he knew they wanted him to go. We can see that, on the video, he was pushed more than once.

20 Nevertheless, he did not go, although he testified he could leave at any time if he wanted."

25 I will end my cite from the decision there. That is a different fact scenario than we have in this case.

30 The evidence we have in this case, at its highest, has Mr. Blackman first surfacing in Ottawa the day before he was arrested, on February 17th. According to a Facebook posting that was seized from his Facebook account, one of his online supporters urged him not to get arrested, and that is a thought that is echoed by someone else who one might well infer was his

wife based on the similarity in names. In any event, the day he was arrested was the next day, February the 18th.

It is not clear on the evidence that he was aware that he was not welcome to be where he was that morning, at least until the police told him to leave, whenever precisely it was that that happened.

The evidence here, quite fairly, consists of a 13-plus-minute video seized via drone as well as the evidence of Sergeant Riopel. So, for the first two minutes of the 13-minute video, Mr. Blackman is not present on the screen. Whether he was there or not is not clear but, in any event, he wasn't in the video. For the last two minutes, he was under arrest. So for a period of nine minutes or thereabouts, that is the evidence of Mr. Blackman's activities during the so-called Freedom Convoy.

During that period of time, he can be seen to be talking, and I don't think it would be mischaracterizing it as talking aggressively, yelling, gesticulating wildly with his arms, although at times, as fairly pointed out by his counsel, it appears that he was either holding other protesters back or at times trying to be a peacemaker. Sergeant Riopel agreed to some extent with that characterization of his activities.

5 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.

10 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.

15 For those reasons, he is found not guilty on all of the counts that the Crown hasn't already withdrawn.

20 *****

92.
Certification

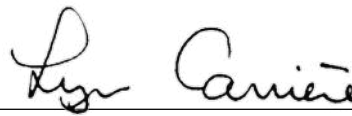
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November 12, 2023

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**Superior Court of Justice and Ontario Court of Justice
Request for Judicial Approval of Transcript**

1. Transcript Information (To be completed by the Authorized Court Transcriptionist)

Name of Judicial Official: Justice Crewe Date submitted (mm/dd/yyyy): 10/31/2023

In the matter of: R. v. Evan Blackman

Transcript ordered by: Crown Attorney's Office Date transcript ordered (mm/dd/yyyy): 10/26/2023

The attached transcript(s) submitted for judicial approval is/are from the: ☐ Superior Court ☒ Ontario Court

The transcript(s) contains: ☒ Reasons for Judgment ☐ Reasons for Sentence
☐ Charge to the Jury ☐ Ruling(s) Number of rulings: _____

Proceeding Type: ☐ Civil ☐ Family ☒ Criminal

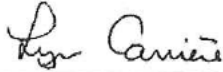
Event Type: ☐ Continuation of Hearing ☐ Appeal Court ☒ Timelines as per the CTSP Manual

Return of the transcript is requested by (mm/dd/yyyy): 11/07/2023

2. Confirmation and Signature (To be completed by the Authorized Court Transcriptionist)

I confirm that, as per section 5.2 of the Court Transcript Standards and Procedures Manual, this transcript has been proofread for accuracy and adheres to the formatting standards set out in Section 3 of the Manual. I will not release this transcript without the required judicial approval. In addition, a signed copy of this approval form will be provided to the ordering party with the final transcript.

Name of Authorized Court Transcriptionist: Lynn Carrière



Authorized Court Transcriptionist Signature

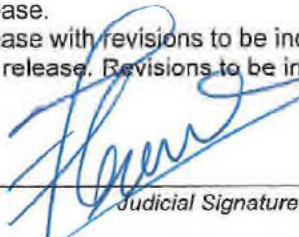
Authorized Court Transcriptionist Email

10/31/2023
Date (mm/dd/yyyy)

3. Judicial Approval (To be completed by the Justice)

The attached transcript(s) is/are:

- ☒ Approved for release.
☐ Approved for release with revisions to be incorporated (as noted below).
☐ Not approved for release. Revisions to be incorporated and returned for further judicial review and approval (as noted below).


Judicial Signature

11/01/2023
Date (mm/dd/yyyy)

Judicial notes on revisions to be made (including timelines for the corrected transcript):

NOTE: A justice may decline to review a transcript in its entirety if they determine it contains an inappropriate amount of errors. Transcripts may be returned to the Authorized Court Transcriptionist with instructions on how to proceed.

When judicial edits include changes other than correcting punctuation, grammar or spelling, the Authorized Court Transcriptionist is directed to include the following disclaimer to their certification of the transcript:

This certification does not apply to the (Ruling(s), Reasons for Judgment, Reasons for Sentence, or Charge to the Jury) which was/were judicially edited.