

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HIS MAJESTY THE KING

Respondent

-and-

JEFFREY EVELY

Appellant

**APPEAL BOOK
("APB")**

October 10, 2025

CHARTER ADVOCATES CANADA

[REDACTED]

Christopher Fleury
LSO #: 67485L

[REDACTED]

Hatim Kheir
LSO No: 79576J

[REDACTED]

Counsel for the Appellant, Jeffrey Evely

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Notice of Appeal or Combined Notice of Application
for Leave to Appeal and Notice of Appeal
Form 12, Criminal Appeal Rules, Court of Appeal for Ontario

COA-25-**CR**-1029
Court File No. (if known)

M
Motion No. (if known/applicable)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HIS MAJESTY THE KING

(Appellant/Respondent/Applicant/Moving Party/Responding Party)

- and -

JEFFREY EVELY

(specify name)

(Appellant/Respondent/Applicant/Moving Party/Responding Party)

NOTICE OF APPEAL [OR COMBINED NOTICE OF APPLICATION
FOR LEAVE TO APPEAL AND NOTICE OF APPEAL]

APPEAL INFORMATION (complete as applicable)

1. Place of trial/proceedings below: **Ontario Court of Justice at 161 Elgin Street, Ottawa**
2. Name of judge: **Justice Lisa Miles**
3. Offence(s)/Sentence(s) under appeal:
(Include the applicable *Criminal Code* and/or *Controlled Drugs and Substances Act* section number(s) and any other applicable information in the chart below and add more rows, if necessary.)

Offence name	Section number	Plea	Result at trial	Sentence
Mischief	340(1)(c)	Not Guilty	Guilty	Conditional discharge and probation
Mischief	340(1)(d)	Not Guilty	Guilty	Conditional discharge and probation
Obstructing a Peace Officer	129(a)	Not Guilty	Guilty	Conditional discharge and probation

4. Length of trial/proceedings below: **3 days +1 for sentencing**
5. Date of conviction/acquittal/order/decision/verdict being appealed: **September 17, 2024**
6. Date of sentence (if any): **December 3, 2024**

7. If in custody, place of incarceration: N/A
8. Court File No. in court(s) below (if known): 22-A8184
9. Name of Judge of Summary Conviction Appeal Court (if applicable): Justice Pierre Roger
10. Date of Judgment of Summary Conviction Appeal Court (if applicable): July 18, 2025
11. Result of Summary Conviction Appeal (if applicable): Appeal dismissed

TAKE NOTICE that the appellant/applicant (check all that apply):

- ☒ Appeals against **conviction** upon grounds involving a question of law alone;
- ☐ Applies for leave to appeal against conviction upon grounds involving a question of fact or a question of mixed law and fact, and if leave be granted hereby appeals against conviction;
- ☐ Applies for leave to appeal against sentence, and if leave be granted hereby appeals against sentence;
- ☒ Applies for leave to appeal from the decision of the summary conviction appeal court upon grounds involving a question of law alone.

THE GROUNDS FOR GRANTING LEAVE TO APPEAL/APPEAL ARE:

Grounds of Appeal

1. The Summary Conviction Appeal Judge (the “**SCAJ**”) erred in law by finding that common law police powers included the ability to lockdown the core of downtown Ottawa and establish checkpoints to regulate who may enter.
2. The SCAJ erred in law by finding that police were acting in the course of their lawful duty when restricting access to downtown Ottawa.
3. The SCAJ erred by finding that the Appellant’s s. 9 right to be free of arbitrary detention was not violated when he was arrested.
4. It follows that the SCAJ erred by finding that the Appellant’s s. 8 right to be free of unreasonable search and seizure was not infringed when he was searched incident to arrest.
5. As a result of the errors contained in Grounds 3 and 4, the SCAJ erred by failing to conduct a s. 24(2) analysis and failing to exclude evidence obtained as a result of the *Charter* breaches.
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Grounds for Granting Leave to Appeal

1. The above grounds for appeal are of particularly strong merit and likely to succeed.
2. The above grounds for appeal are significant to the general administration of justice and important beyond the Appellant’s case. In particular, whether common law police powers go so far as to authorize police to subject large swathes of area to police restriction and to require passersby to provide identification before being permitted area is a question of general importance. The answer to the question has serious implications for the nature and extent of police powers and the rights and freedoms of Canadians.
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE RELIEF SOUGHT IS:

(Indicate particular relief sought.)

1. That leave to appeal be granted;

2. That this appeal be allowed and the Appellant's convictions be quashed or, in the alternative, a new trial be ordered; and

3. Such further and other relief as the Appellant may advise and this Honourable Court may allow.

IF A NEW TRIAL IS ORDERED AND THE APPELLANT HAS A RIGHT TO A TRIAL BY JUDGE AND JURY, THE APPELLANT:

☐ Does; or ☐ Does not

want the new trial to be by judge and jury (*Criminal Code*, s. 686(5)).

THE APPELLANT/APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPEAL/APPLICATION:

1. By service in accordance with the *Criminal Appeal Rules* through (specify contact information)

Charter Advocates Canada

[REDACTED]

Christopher Fleury

[REDACTED]

Hatim Kheir

[REDACTED]

DATED at [REDACTED], **Ontario**, this **15th** day of
(specify city or town, etc.) (specify province)
August, 20 **25**.
(specify month)

[REDACTED]

Signature of appellant/applicant or lawyer

Christopher Fleury

Specify name and contact information

TO: The Registrar

AND TO: (Names and contact information of all other parties' lawyers or other parties)

Crown Law Office Criminal

[REDACTED]

OTTAWA POLICE SERVICE
OCC#: 22-43030 Inv.Off.: 1995

Police Case ID#: 427454
Sat., Feb. 19, 2022, 09:30 Room: 5

Information / Dénonciation

Form 2, sections 506, 508.1 and 788 / Formule 2, articles 506, 508.1 et 788

☐ IPV (Intimate Partner Violence / Violence contre un partenaire intime)

☐ S (Impaired driving with substances / Conduite avec capacités affaiblies par des substances)

☐ V (Vessel / Bateau)

22-A8184

Information Number / N° de la dénonciation

☐ Replacement Information / Dénonciation de remplacement

☐ Non-Disclosure Order Pursuant to s. 486.31
Ordonnance de non-divulgence, art. 486.31

☐ Publication ban pursuant to
Interdiction de publication en vertu de

☐ Non-communication s. 515(12)/516(2)
Non-communication, par. 515 (12)/516 (2)

☐ Provisions of 530(3) complied with
Dispositions du par. 530 (3) observées

Arrest Date: **Feb 19 2022**
Date d'arrestation

15 month Flag:
Alerte à 15 mois

18 month Flag:
Alerte à 18 mois

Sworn/Affirmed Date /
Deemed Sworn/Affirmed Date: **Feb 19th 2022**
Déclarée sous serment/affirmée solennellement le / réputée
être déclarée sous serment/affirmée solennellement le

15 month Flag:
Alerte à 15 mois

18 month Flag:
Alerte à 18 mois

CANADA
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO

EAST/DE L'EST
(Region / Région)

Information of: **SUZANNE ROZMAN**
Dénonciation de :

of **OTTAWA POLICE SERVICE**
de

(occupation / profession)

hereinafter called the informant. / ci-après appelé(e) le dénonciateur.

The informant says that they believe on reasonable grounds that
Le dénonciateur déclare qu'il a des motifs raisonnables de croire que

(1) **EVELY, Jeffrey Lloyd**

COUNT 1

Jeffrey Lloyd EVELY

on or about the 19th day of February in the year 2022 at the City of Ottawa in the East/De L'Est Region did willfully interfere with the citizens of centre town Ottawa lawful use and enjoyment of property, contrary to Section 430(1)(d) of the Criminal Code of Canada.

COUNT 2 AND FURTHER THAT

Jeffrey Lloyd EVELY

on or about the 19th day of February in the year 2022 at the City of Ottawa in the East/De L'Est Region did willfully obstruct, interrupts or interferes with the lawful use, enjoyment or operation of property, contrary to Section 430, subsection (1), clause (c) of the Criminal Code of Canada.

Continued...

Generated Date: February 19, 2022 08:52 AM

(Charges Continued / *Accusations, suite*)

COUNT 3 AND FURTHER THAT

Jeffrey Lloyd EVELY

on or about the 19th day of February in the year 2022 at the City of Ottawa in the East/De L'Est Region did wilfully obstruct Cst W. WALKER, a peace officer in the execution of his duty, contrary to Section 129, clause (a) of the Criminal Code of Canada.

22-A8184

Information Number / N° de la dénonciation

☐ Accused notified court under s. 530(3)

Tribunal avisé par l'accusé en vertu du par. 530 (3)

☐ Designation Filed

Désignation déposée

☐ Interpreter Required

Interprète requis

Date	Accused Accusé	Adjournment Date Date d'ajournement	Adjournment Details Détails sur l'ajournement	Designation Désignation	Counsel As Agent Avocat comparaitre	Fails to Appear Ornet de comparaitre	Bench Warrant Mandat d'arrêt	Discretion Discretion	Certificate of Default Certificat de défaut

Date Date	Clerk Greffier	Crown Couronne	For the Accused Pour l'accusé	Justice's initials Initiales du juge

At Bail Review dated

À la révision de l'ordonnance
de détention datée du☐ Original Order

Confirmed

Ordonnance
originale confirmée☐ New Order

Made

Nouvelle
ordonnance
rendue☐ Gladue Report

Requested

Rapport Gladue
demandé

(date / date)

Information Number / N° de la dénonciation

☒ Deemed to be sworn/affirmed – To be completed where information is laid other than in person:

Réputée être déclarée sous serment/affirmée solennellement – À remplir lorsque la dénonciation est déposée autrement qu'en personne :

I, **SUZANNE ROZMAN**, state that all matters contained in this information are true to my knowledge and
Je soussigné(e) (name of informant / nom du dénonciateur) déclare que tous les renseignements contenus dans la présente dénonciation

belief, pursuant to s. 508.1(2) of the *Criminal Code*.
sont, à ma connaissance, véridiques, en vertu du par. 508.1 (2) du Code criminel.

Dated at CITY of OTTAWA in the Province of Ontario, this 19th day of FEBRUARY, 2022
 Fait à (au) dans la province de l'Ontario, ce jour de

☐ To be completed where information is laid in person:
À remplir lorsque la dénonciation est déposée en personne:

Sworn/affirmed before me at the _____
Déclarée sous serment/affirmée solennellement devant moi à/au _____

of / de

in the Province of Ontario / dans la province de l'Ontario

this _____ day of _____, 20_____
ce _____ jour de _____

Informant / Dénonciateur

Justice of the Peace / Juge de paix

☐ Appearance Notice ☐ Undertaking ☐ Release Order for _____, 20____
Citation à comparaître Promesse Ordonnance de mise en liberté pour le _____ (day, month / jour, mois)

CHECK ONE OF THE FOLLOWING / COCHEZ LA CASE QUI CONVIENT

☐ Cancelled – Police to notify defendant
Annulé(e) – La police informera la partie défenderesse

☐ Cancelled – Summons
Annulé – Sommotion

☐ Confirmed on _____, 20____
Confirmé(e) le (day, month / jour, mois)

☐ Cancelled – Warrant issued
Annulé(e) – Mandat délivré

Justice of the Peace / Juge de paix _____, 20 _____
(day, month / jour, mois)

Justice of the Peace / Juge de paix

Date Date	Crown Elects to Proceed La Couronne choisit de procéder par	<input type="checkbox"/> Summarily Procédure sommaire	<input type="checkbox"/> By Indictment Acte d'accusation	<input type="checkbox"/> Summary Conviction Offence(s) Infraction(s) punissable(s) sur déclaration de culpabilité par procédure sommaire	<input type="checkbox"/> Indictable Offence(s) Acte(s) criminel(s)			
Date Date	Accused Accusé	Elects Trial by Choix d'un procès devant		Preliminary Hearing Requested Enquête préliminaire demandée	Justice Initials Initiales du juge	Abs. Juris. Comp. absolue	Pleads Plaide	
		Superior Court Cour supérieure	Ontario Court Cour de l'Ontario				Guilty to Counts Coupable des chefs d'accusation	Not Guilty to Counts Non coupable des chefs d'accusation
		Judge Juge	Judge & Jury Juge et jury	Judge On Counts Juge pour les chefs d'accusation	Yes Oui	No Non		

Date Date	Accused Accusé	Committed (or) Ord. Std. Trial *On Counts Renvoyé à procès *pour les chefs d'accusation	Discharged on Counts Libéré des chefs d'accusation	Found / Reconnu	
				Guilty on Counts Coupable des chefs d'accusation	Not Guilty on Counts Non coupable des chefs d'accusation

* ☐ With consent of accused and prosecutor, without taking or recording
Avec le consentement de l'accusé et du poursuivant, sans recueillir ou consigner

☐ (a) any evidence (or) ☐ (b) further evidence
a) des preuves (ou) b) des preuves additionnelles

Judge / Juge

22-A8184

Regina v. / La Reine c.

Information No. / N° de la dénonciation

Count / Chef		Sentence date / Date de détermination de la peine		<input type="checkbox"/> Withdrawn / Accusation retirée	
<input type="checkbox"/> Pre-sentence custody <i>Détention présentencielle</i>	days/months jours/mois	Time credited: Crédit octroyé	days/months jours/mois	<input type="checkbox"/> concurrent with concurrente avec	
Term that would have been imposed before credit granted: <i>Période d'emprisonnement imposée avant l'octroi de tout crédit</i>		days/months/years jours/mois/ans			
<input type="checkbox"/> Absolute discharge <i>Absolution inconditionnelle</i>	<input type="checkbox"/> Conditional discharge <i>Absolution conditionnelle</i>	<input type="checkbox"/> Suspended sentence <i>Condamnation avec sursis</i>			
<input type="checkbox"/> Imprisoned for <i>Emprisonnement pour</i>	days/months/years jours/mois/ans	<input type="checkbox"/> concurrent with concurrent avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Intermittent sentence for <i>Peine discontinuée</i>	days jours	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Conditional sentence for <i>Ordonnance de sursis</i>	days/months/years jours/mois/ans	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Probation <i>Période de probation</i>	months/years mois/ans	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Community service s.732.1(3)(f) / <i>Service communautaire, par.732.1 (3)f</i> hours / heures					
<input type="checkbox"/> Fine of \$ <i>Amende de</i>	VS \$ \$ sur. comp.	Time to pay délai de paiement			
<input type="checkbox"/> Restitution <i>Dédommagement</i>	<input type="checkbox"/> s. 738 / s. 739 art. 738 / art. 739	Amount: \$ Montant	Time to pay délai de paiement		
<input type="checkbox"/> Victim surcharge: \$ <i>Suramende compensatoire</i>	\$	Time to pay: délai de paiement			
<input type="checkbox"/> Dismissed <i>Rejeté</i>	<input type="checkbox"/> HTA cautioned <i>Avertissement (Code de la route)</i>	<input type="checkbox"/> Driving prohibition: <i>Interdiction de conduite :</i>	Months / Years mois/années	<input type="checkbox"/> s.743.21(1) / par. 743.21 (1)	
<input type="checkbox"/> Acquitted <i>Acquitté</i>	<input type="checkbox"/> Weapons prohibition: <i>Interdiction d'armes</i>	<input type="checkbox"/> s. 109(2): years par. 109 (2) ans	<input type="checkbox"/> s. 109(3) (Life) par. 109 (3) (perpétuité)	<input type="checkbox"/> s. 110: years art. 110 ans	<input type="checkbox"/> s. 110 (life) art. 110 (perpétuité)
<input type="checkbox"/> Stayed <i>Sursis</i>	<input type="checkbox"/> DNA: ADN	<input type="checkbox"/> 5.03 (Primary) 5.03 (primaire)	<input type="checkbox"/> 5.04 (Secondary) 5.04 (secondaire)	<input type="checkbox"/> Denied (DND) <i>Rejetée</i>	
<input type="checkbox"/> In Absentia <i>In absentia</i>	<input type="checkbox"/> S.O.I.R.A. order: <i>Ordonnance LERDS</i>	<input type="checkbox"/> 10 years 10 ans	<input type="checkbox"/> 20 years 20 ans	<input type="checkbox"/> Life <i>Perpétuité</i>	
<input type="checkbox"/> Other <i>Autre</i>	<input type="checkbox"/> s. 161 prohibition: <i>Interdiction, art. 161</i>	<input type="checkbox"/> s. 490 forfeiture order: <i>Ordonnance de confiscation, art. 490</i>	<input type="checkbox"/> Granted <i>Accordée</i>	<input type="checkbox"/> Denied <i>Rejetée</i>	

Count / Chef		Sentence date / Date de détermination de la peine		<input type="checkbox"/> Withdrawn / Accusation retirée	
<input type="checkbox"/> Pre-sentence <i>Détention présentencielle</i>	days/months jours/mois	Time credited: Crédit octroyé	days/months jours/mois	<input type="checkbox"/> concurrent with concurrente avec	
Term that would have been imposed before credit granted: <i>Période d'emprisonnement imposée avant l'octroi de tout crédit</i>		days/months/years jours/mois/ans			
<input type="checkbox"/> Absolute discharge <i>Absolution inconditionnelle</i>	<input type="checkbox"/> Conditional discharge <i>Absolution conditionnelle</i>	<input type="checkbox"/> Suspended sentence <i>Condamnation avec sursis</i>			
<input type="checkbox"/> Imprisoned for <i>Emprisonnement pour</i>	days/months/years jours/mois/ans	<input type="checkbox"/> concurrent with concurrent avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Intermittent sentence for <i>Peine discontinuée</i>	days jours	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Conditional sentence for <i>Ordonnance de sursis</i>	days/months/years jours/mois/ans	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Probation <i>Période de probation</i>	months/years mois/ans	<input type="checkbox"/> concurrent with concurrente avec	<input type="checkbox"/> consecutive to consécutif à		
<input type="checkbox"/> Community service s.732.1(3)(f) / <i>Service communautaire, par.732.1(3)f</i> hours / heures					
<input type="checkbox"/> Fine of \$ <i>Amende de</i>	VS \$ \$ sur. comp.	Time to pay délai de paiement			
<input type="checkbox"/> Restitution <i>Dédommagement</i>	<input type="checkbox"/> s. 738 / s. 739 art. 738 / art. 739	Amount: \$ Montant	Time to pay délai de paiement		
<input type="checkbox"/> Victim surcharge: \$ <i>Suramende compensatoire</i>	\$	Time to pay: délai de paiement			
<input type="checkbox"/> Dismissed <i>Rejeté</i>	<input type="checkbox"/> HTA cautioned <i>Avertissement (Code de la route)</i>	<input type="checkbox"/> Driving prohibition: <i>Interdiction de conduite :</i>	Months / Years mois/années	<input type="checkbox"/> s.743.21(1) / par. 743.21(1)	
<input type="checkbox"/> Acquitted <i>Acquitté</i>	<input type="checkbox"/> Weapons prohibition: <i>Interdiction d'armes</i>	<input type="checkbox"/> s. 109(2): years par. 109 (2) ans	<input type="checkbox"/> s. 109(3) (Life) par. 109 (3) (perpétuité)	<input type="checkbox"/> s. 110: years art. 110 ans	<input type="checkbox"/> s. 110 (life) art. 110 (perpétuité)
<input type="checkbox"/> Stayed <i>Sursis</i>	<input type="checkbox"/> DNA: ADN	<input type="checkbox"/> 5.03 (Primary) 5.03 (primaire)	<input type="checkbox"/> 5.04 (Secondary) 5.04 (secondaire)	<input type="checkbox"/> Denied (DND) <i>Rejetée</i>	
<input type="checkbox"/> In Absentia <i>In absentia</i>	<input type="checkbox"/> S.O.I.R.A. order: <i>Ordonnance LERDS</i>	<input type="checkbox"/> 10 years 10 ans	<input type="checkbox"/> 20 years 20 ans	<input type="checkbox"/> Life <i>Perpétuité</i>	
<input type="checkbox"/> Other <i>Autre</i>	<input type="checkbox"/> s. 161 prohibition: <i>Interdiction, art. 161</i>	<input type="checkbox"/> s. 490 forfeiture order: <i>Ordonnance de confiscation, art. 490</i>	<input type="checkbox"/> Granted <i>Accordée</i>	<input type="checkbox"/> Denied <i>Rejetée</i>	

Justice of the Peace / Juge de paix

Judge / Juge

Information No. / N° de la dénonciation 22-A8184
Return Date / Date à laquelle le document est rapporté _____, 20____

INFORMATION Against / DÉNONCIATION visant
EVELY, Jeffrey Lloyd

Address / Adresse

**2 DOWDALL CRES
OTTAWA, ON K2S1V1**

CHARGE / ACCUSATION

MISCHIEF

MISCHIEF/ OBSTRUCT PROPERTY

OBSTRUCT/RESIST A PUBLIC/PEACE OFFICER

Refer to front page for further counts. / Reportez-vous à la première page pour plus de chefs.

Information No. / N° de la dénonciation
Return Date / Date à laquelle le document est rapporté _____, 20____

INFORMATION Against / DÉNONCIATION visant

Address / Adresse

CHARGE / ACCUSATION

Refer to front page for further counts. / Reportez-vous à la première page pour plus de chefs.

Information No. / N° de la dénonciation
Return Date / Date à laquelle le document est rapporté _____, 20____

INFORMATION Against / DÉNONCIATION visant

Address / Adresse

CHARGE / ACCUSATION

Refer to front page for further counts. / Reportez-vous à la première page pour plus de chefs.

FOR ADMINISTRATIVE PURPOSES ONLY À DES FINS ADMINISTRATIVES SEULEMENT				
<input type="checkbox"/> Summons / Sommation <input type="checkbox"/> Show Cause / Audience de justification <input type="checkbox"/> Warrant 1 st / Mandat en 1 ^{re} instance				
<input type="checkbox"/> Replacement Information / Dénonciation de remplacement				
Reportable M.V. Offence (H.T.A. 199) <input type="checkbox"/> Infraction V.A. à déclarer (Code de la route 199)		C.V.O.R. No (Commercial Vehicles Only) Numéro C.I.U.V.U. (véhicules utilitaires seulement)		
Sex / Sexe M / F	Birth Date / Date de naissance Day / Jour Month / Mois Year / Année	Was defendant owner? / La partie défenderesse était-elle propriétaire? <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non		
Driver's Licence Number / Numéro du permis de conduire				
Plate No. / Numéro de plaque		<input type="checkbox"/> Involves a Collision / Infraction reliée à un accident		
Informant / Dénonciateur SUZANNE ROZMAN				
Date Sworn/Affirmed / Déclarée sous serment/affirmée solennellement le FEB 19th, 22		Date of Arrest / Date de l'arrestation Feb. 19, 2022		
<input checked="" type="checkbox"/> Deemed to be sworn/affirmed / Réputée être déclarée sous serment/affirmée solennellement le				
Officer / Agent de police LORETTE, RYAN L		No. / N° 1995		
Police Agency / Service de police OTTAWA POLICE SERVICE		Div. / Dist.		
Occurrence Number / N° d'incident 22-43030				
Courtroom / Salle d'audience 5				
At / À(Au) ONTARIO COURT (PROV. DIV) 161 ELGIN STREET OTTAWA ONTARIO				

FOR ADMINISTRATIVE PURPOSES ONLY À DES FINS ADMINISTRATIVES SEULEMENT				
<input type="checkbox"/> Summons / Sommation <input type="checkbox"/> Show Cause / Audience de justification <input type="checkbox"/> Warrant 1 st / Mandat en 1 ^{re} instance				
<input type="checkbox"/> Replacement Information / Dénonciation de remplacement				
Reportable M.V. Offence (H.T.A. 199) <input type="checkbox"/> Infraction V.A. à déclarer (Code de la route 199)		C.V.O.R. No (Commercial Vehicles Only) Numéro C.I.U.V.U. (véhicules utilitaires seulement)		
Sex / Sexe M / F	Birth Date / Date de naissance Day / Jour Month / Mois Year / Année	Was defendant owner? / La partie défenderesse était-elle propriétaire? <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non		
Driver's Licence Number / Numéro du permis de conduire				
Plate No. / Numéro de plaque		<input type="checkbox"/> Involves a Collision / Infraction reliée à un accident		
Informant / Dénonciateur				
Date Sworn/Affirmed / Déclarée sous serment/affirmée solennellement le		Date of Arrest / Date de l'arrestation		
<input type="checkbox"/> Deemed to be sworn/affirmed / Réputée être déclarée sous serment/affirmée solennellement le				
Officer / Agent de police		No. / N°		
Police Agency / Service de police		Div. / Dist.		
Occurrence Number / N° d'incident				
Courtroom / Salle d'audience				
At / À(Au)				

FOR ADMINISTRATIVE PURPOSES ONLY À DES FINS ADMINISTRATIVES SEULEMENT				
<input type="checkbox"/> Summons / Sommation <input type="checkbox"/> Show Cause / Audience de justification <input type="checkbox"/> Warrant 1 st / Mandat en 1 ^{re} instance				
<input type="checkbox"/> Replacement Information / Dénonciation de remplacement				
Reportable M.V. Offence (H.T.A. 199) <input type="checkbox"/> Infraction V.A. à déclarer (Code de la route 199)		C.V.O.R. No (Commercial Vehicles Only) Numéro C.I.U.V.U. (véhicules utilitaires seulement)		
Sex / Sexe M / F	Birth Date / Date de naissance Day / Jour Month / Mois Year / Année	Was defendant owner? / La partie défenderesse était-elle propriétaire? <input type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non		
Driver's Licence Number / Numéro du permis de conduire				
Plate No. / Numéro de plaque		<input type="checkbox"/> Involves a Collision / Infraction reliée à un accident		
Informant / Dénonciateur				
Date Sworn/Affirmed / Déclarée sous serment/affirmée solennellement le		Date of Arrest / Date de l'arrestation		
<input type="checkbox"/> Deemed to be sworn/affirmed / Réputée être déclarée sous serment/affirmée solennellement le				
Officer / Agent de police		No. / N°		
Police Agency / Service de police		Div. / Dist.		
Occurrence Number / N° d'incident				
Courtroom / Salle d'audience				
At / À(Au)				

Court File No. CR-22-00008184-00AP, ONSC 2025 4411

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

v.

JEFFREY EVELY

R E A S O N S F O R D E C I S I O N

BEFORE THE HONOURABLE JUSTICE P. ROGER
on Friday, July 18th, 2025, at OTTAWA, Ontario.

APPEARANCES:

E. Loignon-Giroux

Counsel for the Provincial Crown

C. Fleury

Counsel for Jeffrey Evely

(i)

SUPERIOR COURT OF JUSTICE

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Legend*[sic]* - Indicates preceding word has been reproduced verbatim and is not a transcription error.

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(ph) - Indicates preceding word has been spelled phonetically.

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1.

R. v. Jeffrey Evelyn
Reasons for Decision - Roger, J.

FRIDAY, JULY 18th, 2025.

R E A S O N S F O R D E C I S I O N

ROGER, J. (Orally):

Mr. Evelyn appeals the decision of Justice Miles of September 17th, 2024, finding him guilty of mischief and obstructing police.

Mr. Evelyn argues that the trial judge erred in finding that police powers, under common law, included the power to secure an area of the city, or to create the exclusion created by police. This argument is an important part of his appeal, as it informs some of his other arguments.

The appellant also argues that the trial judge erred in her determination of his section 9 *Charter* rights application brought at trial, more specifically, that there were no reasonable grounds for his arrest. Depending on the legality of his arrest, the appellant argues that the search incidental to his arrest was in breach of his section 8 *Charter* rights, and that the trial judge erred in her determination of this issue.

2.

R. v. Jeffrey Evely
Reasons for Decision - Roger, J.

Depending on the above, the appellant argues that the trial judge erred in failing to exclude the evidence obtained as a result of the *Charter* breaches.

As well, Mr. Evely argues that the trial judge erred when she found him guilty of mischief.

The Crown argues that the trial judge did not err.

These events occurred during what was referred to as the "Freedom Convoy". For over three weeks, parts of the downtown core of the City of Ottawa were occupied by the "Freedom Convoy". Eventually, the City of Ottawa, Province of Ontario, and Government of Canada declared states of emergency.

Early the morning of February 19, 2022, Mr. Evely was in the restricted area on Wellington Street, behind the police line. He was asked to stop on several occasions. He did not stop. He had to be tackled to the ground by the police officers. He was arrested and searched, which produced his wallet, and provided his identity. With this information, the police were later able to find videos of Mr. Evely's participation, which were admitted in evidence at trial. These were filed on this appeal.

3.

R. v. Jeffrey Evely
Reasons for Decision - Roger, J.

I find that the trial judge did not err.
Consequently, this appeal is dismissed.

On whether the police had authority to lock down parts of Ottawa, the trial judge followed the decision of this Court in *R. v. Romlewski*, 2023 ONSC 5571. That decision bears some similarities to the facts of this case. It provides, at paragraph 251, this Court's agreement that the trial judge in that case did not err when he found that there was a legitimate police operation and that the police were acting to secure the area to restore order.

Mr. Evely argues that this case is different because the area was secured with the protesters some distance away. However, this is immaterial considering that to secure the area and restore order the police had to maintain the ground that they had gained as the trial judge indicated in her decision. See particularly page 12 of the trial judge's reasons for decision.

Furthermore, it is also apparent at pages 12 and 13 of the trial judge's reasons for decision that she assessed whether this action involved a justifiable exercise of police powers. We see, at these pages, that the trial judge assessed whether the action

4.

R. v. Jeffrey Evely
Reasons for Decision - Roger, J.

5 was reasonably necessary in the circumstances,
engaging in the appropriate balancing exercise.
She described a carefully orchestrated operation
with the area restricted limited to the protest
footprint, distinguishing *Stewart*. She therefore
considered the ancillary powers doctrine and
considered whether the police action was
justifiable within the meaning of that doctrine.

10
15 With regards to the lawfulness of the arrest, the
trial judge properly found that there were
reasonable grounds for the arrest of Mr. Evely.
The appellant focused his arguments on the Court's
objective assessment of the officer's reasonable
grounds as it related to mischief. However, the
trial judge correctly addressed the officer's
ground to arrest Mr. Evely for mischief. She
20 properly assessed all the circumstances known to
the officer. The appellant argues that the police
officer, at the time, did not know Mr. Evely, and
did not have the information later revealed in the
25 videos, obtained later from his identification, and
filed at trial. That is certainly true. However,
this ignores that the trial judge is entitled to
consider all the relevant circumstances known to
the officer, and that the Court is not required to
30 take the narrowest view of the circumstances. The
context is important to the analysis, and

5.

R. v. Jeffrey Evely
Reasons for Decision - Roger, J.

5 considering the context, the trial judge's findings were reasonable, and her analysis of this issue correct. However, if I am wrong regarding the above, since the police had authority for their actions, the arrest for obstructing was legal.

10 Considering my above findings, the trial judge was also correct when she found that the search of Mr. Evely was legal, as it is not contested that if Mr. Evely was legally arrested, he could be searched, as he was searched in this instance.

15 With regards to the guilty finding on mischief, the brunt of the appellant's arguments on appeal focused on his arguments that the videos were improperly admitted. Considering my above findings, the videos were properly admitted and
20 could be considered by the trial judge. The evidence amply supports her findings that mischief was proven beyond a reasonable doubt.

25 Consequently, this appeal is dismissed.

30

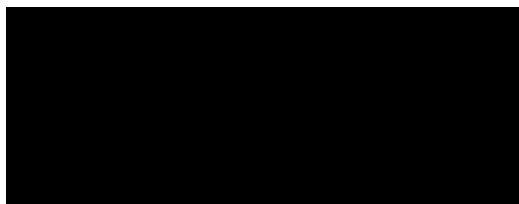
R. v. Jeffrey Evely

Certification**FORM 3****Electronic Certificate of Transcript*****Evidence Act, Subsection 5(2)***

I, AMANDA SCHRAA, certify that this document is a true and accurate transcription of the recording of R. v. Jeffrey Evely, in the Superior Court of Justice, held at Ottawa, Ontario taken from Recording 0411_CR36_20250718_082512__10_ROGERP.dcr, heard Friday, July 18th, 2025, which has been certified in Form 1 by J. Rugira.

July 23rd, 2025

(Date)

A large black rectangular box redacting the electronic signature of the authorized person.

(Electronic Signature of Authorized Person)

A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the certified recording of evidence and proceedings in the proceeding that is identified in the certificate.

Court File No.: 22-A8184

**ONTARIO
SUPERIOR COURT OF JUSTICE
(East Region)**

BETWEEN:

HIS MAJESTY THE KING

Respondent

-and-

JEFFREY EVELY

Appellant

NOTICE OF APPEAL

TAKE NOTICE that JEFFREY EVELY appeals against the convictions with respect to counts 1 and 2 for mischief contrary to ss. 430(1)(c) and (d), and count 3 for obstructing a peace officer contrary to ss. 129(a), made by Her Honour Judge Miles of the Ontario Court of Justice at 161 Elgin Street, Ottawa, Ontario on September 17, 2024.

**THE DATES UPON WHICH THE SUMMARY CONVICTION COURT HEARD
EVIDENCE ARE AS FOLLOWS:**

August 26-27, 2024.

THE GROUNDS FOR THIS APPEAL ARE:

1. That the trial judge erred in her determination that the Appellant's right to be free from arbitrary detention, guaranteed by s. 9 of the *Charter of Rights and Freedoms*, was not infringed by his arrest.
2. That the trial judge erred in her determination that the Appellant's right to be free from unreasonable search and seizure, guaranteed by s. 8 of the *Charter of Rights and Freedoms*, was not infringed by a police search following his arrest.
3. As a result of the above errors, the trial judge further erred in failing to exclude evidence obtained as a result of the *Charter* breaches.
4. That the trial judge erred in law in her assessment of the essential elements of mischief and their application to the evidence in this matter.
5. That the trial judge erred in her finding that police powers under common law included the ability of police to lockdown the core of downtown Ottawa with checkpoints at the perimeter.
6. That the trial judge erred in finding that police were in the course of their lawful duty when they restricted access to downtown Ottawa.

ON THE HEARING OF THIS APPEAL, THE APPELLANT WILL REPLY UPON THE FOLLOWING:

1. The transcript of proceedings,
2. The Appellant's appeal book,
3. The Appellant's factum, and
4. The Appellant's book of authorities.

THE RELIEF SOUGHT IS:

1. An Order allowing the appeal and substituting acquittals on counts 1, 2, and 3.

THE APPELLANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPEAL:

1. By service in accordance with rule 5, through

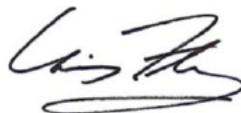
CHARTER ADVOCATES CANADA

513-180 John Street Toronto ON M5T 1X5

T: (613) 970-0527

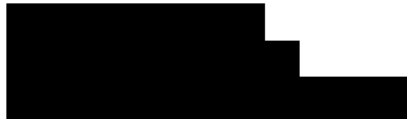
E: cfleury@charteradvocates.ca

DATED at Belleville, Ontario on this 31st day of December 2024



CHRIS FLEURY

CHARTER ADVOCATES CANADA



Counsel for the Appellant
Jeffrey Evely

Court File No.: 22-A8184

**ONTARIO
SUPERIOR COURT OF JUSTICE
(East Region)**

B E T W E E N :

HIS MAJESTY THE KING

Respondent

-and-

JEFFREY EVELY

Appellant

APPELLANT'S FACTUM

May 1st, 2025

CHARTER ADVOCATES CANADA

[REDACTED]

Christopher Fleury

LSO No: 67487L

[REDACTED]

Hatim Kheir

LSO No: 79576J

[REDACTED]

Counsel for the Appellant

Jeffery Evely

PART I – STATEMENT OF THE CASE

1. The Appellant, Jeffrey Evelyn, was charged with the *Criminal Code* offences of mischief and obstructing a peace officer.¹ He pleaded not guilty, and a trial was held before Justice L. Miles of the Ontario Court of Justice (the “**Trial Judge**”) on August 26 and 27, 2024. The Trial Judge’s decision was rendered orally on September 17, 2025. Mr. Evelyn was convicted of two counts of mischief and one count of obstructing a peace officer.

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

3. Mr. Evelyn is a veteran. He was responsible for organizing a sentry duty to guard the Ottawa War Memorial after it was vandalized at the outset of the Freedom Convoy protest. Mr. Evelyn regularly took the least popular shifts himself which were in the pre-dawn hours.

4. Mr. Evelyn was arrested in the early morning hours of February 19, 2021, while on his way to the War Memorial for his sentry duty shift. On February 18, the day prior, police had forcibly removed protestors and vehicles from an area near Rideau and Sussex and locked down the area, preventing members of the public from accessing it. Mr. Evelyn entered the area on foot and fled police when they demanded that he stop. He was arrested following a short 15 second pursuit.

5. Following Mr. Evelyn’s arrest, police used his identity to gather information from his social media profiles. That information was in turn used to identify Mr. Evelyn in a police drone video from February 18, 2021, and other open-source videos. The Trial Judge relied on this evidence in convicting Mr. Evelyn of mischief.

6. At trial Mr. Evelyn brought an application to exclude evidence under section 24(2) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”). The application argued that Mr.

¹ The Appellant faced two counts of mischief under sections 430(1)(c) and (d) of the *Criminal Code* related to the same occurrences. He also faced one count of obstructing a peace officer pursuant to section 129(a) of the *Criminal Code*.

Evely's arrest was unlawful and that any subsequent searches were therefore unreasonable contrary to sections 9 and 8 of the *Charter* respectively.

7. At the heart of the *Charter* application, and the defence of the obstruct charge, was whether police had lawful authority under the common law to lockdown downtown Ottawa by creating checkpoints and forcing every person wishing to enter to identify themselves. The Appellant argued that they did not and that he had no obligation to comply with police demands that he stop and identify himself. He argued that his arrest was arbitrary, largely on that basis.

8. The Trial Judge disagreed and found that police did have lawful authority for their actions. However, in doing so the Trial Judge failed to identify or apply the *Waterfield* test set out *Dedman v. The Queen* which outlines the limits of police authority to interfere with individual liberty or privacy while executing their duties.²

9. The Appellant frames the issues on appeal as follows:

1. Did the Trial Judge err in her finding that police powers under common law included the ability of police to lockdown downtown Ottawa?
2. Did the Trial Judge err in her determination that the Appellant's right to be free from arbitrary detention was not infringed by his arrest?
3. Did the Trial Judge err in her determination that the Appellant's right to be free from unreasonable search and seizure was not infringed by a police search following his arrest?
4. Did the Trial Judge err in failing to exclude evidence obtained as a result of the *Charter* breaches.
5. Did the Trial Judge erred in law in her assessment of the essential elements of mischief and their application to the evidence in this matter?

² *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2.

PART II – SUMMARY OF THE FACTS

1. Evidence at Trial

10. The trial and the defence motion to exclude evidence proceeded in a blended fashion with all evidence being heard together over the course of the two-day trial.

11. The Crown’s evidence consisted of three witnesses, namely: Cst. Christopher Meuleman, Cst. Matthew Purton, and Cst. Wade Walker. It also included an agreed statement of fact, two maps of downtown Ottawa, and video evidence obtained from Mr. Evelyn’s social media, open sources, and a police drone. The videos were admitted without the need for authentication but subject to the exclusion motion under section 24(2) of the *Charter*.

12. Overall, the police witnesses describe an incident occurring on February 19, 2022, at approximately 4:25 a.m., in a locked down area of downtown Ottawa near the Chateau Laurier. All three officers agreed that the area in question was locked down with civilian access restricted and residents being forced to provide proof that they lived or worked in the area.³ They described a short, approximately 15-second, pursuit⁴ of Mr. Evelyn after he refused to stop and speak with police.

13. Cst. Meuleman is a member of the York Regional Police. He was deployed to Ottawa on February 17, 2022, as part of a community response unit, to assist in removing the Freedom Convoy.⁵ He testified that in the early morning hours of February 19, he was stationed behind a police line near the Chateau Laurier, monitoring a crowd separated by temporary fencing.⁶ At around 4:25 a.m., Cst. Meuleman heard yelling and saw an Ottawa police vehicle following a man—later identified as the Mr. Evelyn—running southbound toward the police line on Wellington Street.⁷ Cst. Meuleman and Cst. Purton intercepted him.⁸

³ Transcript of Proceedings (August 26, 2024), Appeal Book, Tab 3, p. 38, ll. 5-13 (Meulman); p. 52, ll. 1-9 (Purton); p. 73, ll. 27-31 (Walker).

⁴ *Ibid.* at p. 73, ll. 18-20.

⁵ *Ibid.* at p. 11, ll. 12-14.

⁶ *Ibid.* at p. 14, ll. 4-22.

⁷ *Ibid.* at p. 16, ll. 7-20.

⁸ *Ibid.* at p. 17, ll. 11-14.

14. Cst. Meuleman further testified that he shouted for Mr. Evelyn to stop when he was 5-10 meters away. He tackled Mr. Evelyn with a bear hug, bringing him to the ground.⁹ Post-arrest, Mr. Evelyn was handcuffed and turned over to Ottawa police.¹⁰ Meuleman testified that Mr. Evelyn yelled, “I want to go to the War Memorial,” both while running and after arrest.¹¹

15. Constable Purton, also a member of the York Regional Police, arrived in Ottawa on February 17, 2022, as part of the quick reaction team.¹² On February 19, he was stationed with Cst. Meuleman south of Wellington Street, facing the Chateau Laurier¹³. His evidence essentially mirrored that of Cst. Meuleman’s. At around 4:25 a.m., Purton heard someone yelling and saw an Ottawa police officer chasing Evelyn, who was running westbound on the north sidewalk of Wellington near Sussex.¹⁴

16. Cst. Purton intercepted Mr. Evelyn with Cst. Meuleman. The pair took Mr. Evelyn to the ground in a controlled manner.¹⁵ Mr. Evelyn was then handcuffed by Cst. Walker.¹⁶ Purton emphasized the takedown was not excessively forceful.¹⁷

17. Post-arrest, Cst. Purton noticed that Mr. Evelyn wore a leather vest with a military name tag and military medals.¹⁸ On cross-examination Cst. Purton acknowledged seeing other veterans with medals during the protests.¹⁹

18. Cst. Walker was a member of the Ottawa Police in February of 2022 (although he later transferred to OPP). In the early morning hours of February 19, he was put on cordon security at the intersection of Rideau and Sussex.²⁰ The area was cordoned with barriers, police cruisers, and officers to prevent unauthorized entry.²¹

⁹ *Ibid.* at p. 19, ll. 6-23.

¹⁰ *Ibid.* at p. 20, ll. 20-23.

¹¹ *Ibid.* at p. 17, ll. 21-23 and p. 20, ll. 20-22.

¹² *Ibid.* at p. 41, ll. 15-21.

¹³ *Ibid.* at p. 43, ll. 5-14.

¹⁴ *Ibid.* at p. 44, ll. 11-16.

¹⁵ *Ibid.* at p. 46, ll. 7-11.

¹⁶ *Ibid.* at p. 47, ll. 5-10.

¹⁷ *Ibid.* at p. 46, ll. 25-30.

¹⁸ *Ibid.* at p. 47, ll. 11-20.

¹⁹ *Ibid.* at p. 49, ll. 15-24.

²⁰ *Ibid.* at p. 59, ll. 9-11.

²¹ *Ibid.* at p. 60, ll. 1-10.

19. At 4:25 a.m., Cst. Walker was standing in the intersection and heard a female officer yell “Stop” from north on Sussex. He saw Mr. Evelyn running southbound on the west sidewalk, pursued by officers at the cordon.²² Walker yelled “Stop” and moved to intercept. Evelyn turned west onto Rideau.²³

20. Mr. Evelyn reached the intersection of Mackenzie and Rideau, where Cst. Meuleman and Cst. Purton intercepted him. Cst. Walker testified that Mr. Evelyn attempted to push through, after which the officers took him down.

21. On cross-examination Cst. Walker acknowledged that following his arrest Mr. Evelyn identified himself, mentioning his service and wearing a black leather jacket with medals.²⁴ He also acknowledged that veterans had arranged with Ottawa Police to guard the War Memorial against vandalism.²⁵

22. An agreed statement of fact was submitted to the Trial Judge which provided some background regarding significant events in the timeline of the Freedom Convoy in January and February of 2022.²⁶ It essentially acknowledged that some elements of the Freedom Convoy interfered with the use and enjoyment of property between January 28 and February 18, 2025. It included the caveat, “For clarity: it is not admitted that any freedom convoy protestor, or the accused Jeffrey Evelyn, committed mischief or any other criminal offence on or about February 19, 2022.”²⁷

23. The Crown also relied on 6 videos submitted on a USB.²⁸ Referring to them in the order they were entered, the first video is an ariel drone video showing a line-up of police officers dressed in riot gear attempting to remove protestors from downtown Ottawa. Protestors are seen resisting police efforts. The second video is an open-source video which appears to show the same scene from the ground level. The final four videos show Mr. Evelyn making public statements during the

²² *Ibid.* at p. 61, ll. 20-30.

²³ *Ibid.* at p. 62, ll. 1-3.

²⁴ *Ibid.* at p. 78, ll. 24-28.

²⁵ *Ibid.* at p. 71, ll. 15-23.

²⁶ Trial Exhibit 1 – Agreed Statement of Fact, Appeal Book, Tab 6.

²⁷ *Ibid.* at para 9.

²⁸ Trial Exhibit 3 – USB containing map and 6 videos, Appeal Book, Tab 8.

Freedom Convoy. The videos were admitted on consent without the need to authenticate them but being subject to the *Charter* application to exclude evidence.

24. Mr. Evely testified on the exclusion motion only. Mr. Evely's evidence differed from the police witnesses as follows:

1. He only heard the female officer say "stop" initially and did not hear other officers until near Mackenzie Street.²⁹
2. During the takedown and arrest Mr. Evely raised his hands and went to the ground voluntarily as officers approached. The two officers guided him down. He assisted in the handcuffing by turning his thumb down and putting his hands behind his back.³⁰
3. He emphasized his veteran status and the ongoing sentry duty, asserting the War Memorial was still under veteran control.³¹

2. Reasons for Judgment (Charter Application)

25. The rulings on both the exclusion motion and the trial were issued on the same day, September 17, 2024.³² The Trial Judge ruled against the Appellant's *Charter* application finding that there was neither a breach of his rights under section 8 or 9 of the *Charter*. Given that finding, the Trial Judge did not engage in an analysis under section 24(2) of the *Charter* regarding whether the evidence ought to have been excluded.

26. The thrust of the Appellant's argument on the *Charter* application was that police did not have authority under common law to set up a large exclusionary zone in downtown Ottawa, preventing the public from access. Where Mr. Evely's arrest was based primarily on his entrance into that zone and refusal to stop for police, the Appellant asserted that his detention was arbitrary.

27. On the issue of common law police powers the Trial Judge did not agree. Her reasoning was as follows:

²⁹ Transcript of Proceedings (August 27, 2024), Appeal Book, Tab 4, p. 24, ll. 1-5.

³⁰ *Ibid.* at p. 13, l. 10 – p. 14, l. 20.

³¹ *Ibid.* at p. 14, l. 28 – p. 15, l. 1.

³² Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5.

*“It would be illogical and contrary to their objective if, after clearing the area, [police] could not restrict movement so as to prevent the protesters and vehicles from reoccupying the space they had just cleared. To say otherwise would allow for the absurd situation where protesters would be permitted to re-occupy the secured area to continue their illegal activities, and thereby, force police to start over each morning in their efforts to clear the protesters, secure the area, and restore order.”*³³

28. The Trial Judge went on to distinguish the case of *Stewart*³⁴ on the basis that this was not police “restricting access to a planned protest”. Rather it was police acting to “maintain order in the area they had already secured.”³⁵

29. Although the Trial Judge relied on decisions which address the *Waterfield* test set out *Dedman v The Queen*³⁶ it is noteworthy that she did not identify the test or apply it to the facts of the case at bar. Given, the finding that police had the authority to create checkpoints and prevent access to downtown Ottawa, Mr. Evely’s refusal to stop when demanded by police constituted grounds for arrest for obstructing a peace officer.

30. The Trial judge also found that grounds for arrest existed for the charge of mischief. This was based primarily on the fact that Mr. Evely was running in the direction of the protesters, towards the backs of officers who were maintaining the barricade and who were unaware of his approach and attempting to join the protest.³⁷

31. Where evidence of accused and the police officers differed, the evidence of the officers was preferred.³⁸

³³ *Ibid.* at p. 12, l. 23 – p. 13, l. 9.

³⁴ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255; overturning: *Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.

³⁵ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 13, ll. 10-25.

³⁶ *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2.

³⁷ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 17, ll. 6-9.

³⁸ *Ibid.* at p. 17-18.

32. Given that the arrest was not found to be arbitrary, the subsequent search of Mr. Evelyn was not found to be unreasonable. The Trial Judge agreed with the position of the Crown and dismissed the application. The video evidence described above was admitted.

3. Reasons for Judgment (Trial)

33. The Trial Judge began her reasons by reviewing the evidence of the 3 police witnesses described above.

34. She then reviewed the video evidence filed as exhibit three. The Ottawa Police Service drone footage (Video 1) and open-source video (Video 2) from February 18, 2022, captured clashes between police and protesters.³⁹ The court compared these videos to footage from Evelyn's social media, identifying him by his appearance—a red baseball cap with white writing (“Lest we forget” with “Lest” crossed out), a black vest with medals, and other unique features—allowing for identification of the man in the videos as Mr. Evelyn.⁴⁰ This evidence was crucial in establishing Mr. Evelyn's participation and intent, linking his actions on both February 18 and 19.⁴¹

35. On the mischief charges, the Trial Judge examined Mr. Evelyn's physical resistance and presence at the protest, as shown in the videos and described by police witnesses.⁴² She concluded that these actions indicated a shared intention to aid and abet other protesters in disrupting the lawful use of property, satisfying the elements of the charge. She concluded that not only did Mr. Evelyn's actions on February 18 (as captured on video) constitute mischief, but that his actions of fleeing police on February 19 did as well. She found that these actions constituted “encouragement or assistance” of other protestors at the scene, as “strength in numbers can be found to be an important source of encouragement.”⁴³

36. On the obstruct police charge the Trial Judge considered Mr. Evelyn's refusal to stop when ordered by Cst. Walker.⁴⁴ These actions were found to have made it more difficult for police to

³⁹ *Ibid.* at p. 23, ll. 25-30; p. 24, ll. 1-15.

⁴⁰ *Ibid.* at p. 31, ll. 5-25; p. 32, ll. 1-15; p. 34, ll. 5-25.

⁴¹ *Ibid.* at p. 35, ll. 5-20.

⁴² *Ibid.* at p. 28, ll. 15-30.

⁴³ *Ibid.* at p. 35, ll. 18-27.

⁴⁴ *Ibid.* at p. 35, ll. 30-36; p. 36, ll. 1-15.

carry out their duty to secure the area, clearly constituting an offense. The findings on the *Charter* application regarding police duties applied to this charge.

PART III – ISSUES AND THE LAW

37. The Appellant raises a number of interrelated issues on appeal. The Appellant characterizes the issues as follows:

1. What is the applicable standard of review?
2. Did the Trial Judge err in her finding that police powers under common law included the ability of police to lockdown downtown Ottawa?
3. Did the Trial Judge err in her determination that the Appellant’s right to be free from arbitrary detention was not infringed by his arrest?
4. Did the Trial Judge err in her determination that the Appellant’s right to be free from unreasonable search and seizure was not infringed by a police search following his arrest?
5. Did the Trial Judge err in failing to exclude evidence obtained as a result of the *Charter* breaches.
6. Did the Trial Judge erred in law in her assessment of the essential elements of mischief and their application to the evidence in this matter?

1. Standard of Review

38. The standard of review on pure questions of law is correctness, meaning that “the appellate court is free to place the opinion of the trial judge with its own.”⁴⁵ The standard of review on questions of fact is “palpable and overriding error”, meaning that the court ought only intervene if there is an obvious error that significantly impacts the case’s outcome.⁴⁶

39. Matters of mixed fact and law lie along a spectrum. Where an error with respect to a finding of mixed fact and law can be attributed to the application of an incorrect standard, a failure to

⁴⁵ *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 at para 8. (“*Housen*”)

⁴⁶ *Housen* at para 10.

consider a required element of a legal test, or similar error in principle, such an error can be characterized as an error of law, subject to a standard of correctness.⁴⁷

40. A lower court’s determination of a whether there was a *Charter* breach is reviewed on the standard of correctness. However, the evidence underlying the Charter breach can only be reviewed on the standard of “palpable and overriding error.”⁴⁸ When determining whether an accused was unlawfully detained under section 9 of the *Charter*, “the issue of whether the facts as found by the trial judge amount at law to reasonable and probable grounds is a question of law.”⁴⁹

2. The Trial Judge erred in her finding that police powers under common law included the ability of police to lockdown downtown Ottawa

Overview

41. At trial the Appellant argued that the actions of police in locking down downtown Ottawa and preventing all civilians from accessing public areas greatly exceeded their powers at common law. Police did not have the power to stop every single person entering that area. The Appellant relied on the seminal decision of *Dedman*,⁵⁰ wherein the Supreme Court of Canada adopted a two-part test from the English Court of Appeal case of *Waterfield* to determine whether an officer’s conduct is authorized by common law.

42. The Appellant’s argument at trial was that, where police did not have authority to demand that he stop, Mr. Evelyn’s refusal to comply with an unlawful police demand, based on a purported authority to stop each and every person entering the downtown core, cannot form the basis for his arrest.

43. At trial the Appellant’s counsel accepted that this Court’s findings in *Romlewski*⁵¹ were binding on the trial judge. Namely, that police had authority under common law to demand that Freedom Convoy protestors behaving unlawfully cease their unlawful behaviour and leave the vicinity. But counsel argued that these powers did not extend to the creation of a police perimeter

⁴⁷ *Housen* at para 36.

⁴⁸ *R. v. Farrah (D.)*, 2011 MBCA 49 at para 7.

⁴⁹ *R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. at para 20.

⁵⁰ *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2; See also: *Fleming v. Ontario*, 2019 SCC 45, [2019] 3 SCR 519.

⁵¹ *R. v. Romlewski*, 2023 ONSC 5571 at para 261; overturning: *R. v. Romlewski*, 2022 ONCJ 502.

around the downtown core of the City of Ottawa, restricting access to only those who lived or worked there.

44. The Trial Judge disagreed with the Appellant concluding that: “the legitimate police operation to end the illegal occupation of the downtown streets included police efforts to secure the area and restore order. This would include restricting peoples’ movements into the area that had been cleared by police during the day on February 18th, 2022.”⁵²

45. The Trial Judge came to this conclusion without reference or engagement with the test in *Waterfield*, adopted by the Supreme Court of Canada in *Dedman* and again in *Fleming*.⁵³

46. Appellant’s counsel relied on the analogous case of *Stewart*.⁵⁴ The Trial Judge differentiated *Stewart* stating that “This was not police action which restricted peoples’ ability to enter into an area where a planned demonstration was going to take place or attempts to impose conditions on entry to the protest area. The police were acting to maintain order in the area they had secured and not allow the illegal disruption to continue.”⁵⁵

Legal Framework

47. The common law confers broad authority on police to carry out a wide range of duties. In *Dedman*,⁵⁶ the Supreme Court of Canada relied on the legal test developed in the English Court of Appeal case of *Waterfield* to determine whether an officer’s conduct is authorized by common law. The test is two-fold:

1. Did the police conduct fall within the general scope of any duty imposed by statute or recognized by common law?
2. Did such conduct involve an unjustifiable use of powers associated with the duty?

⁵² Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at pg. 12, ll. 16-22.

⁵³ *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2; See also: *Fleming v. Ontario*, 2019 SCC 45 (CanLII), [2019] 3 SCR 519.

⁵⁴ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 (“*Stewart*”); overturning: *Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.

⁵⁵ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 13, ll. 18-25.

⁵⁶ *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2; See also: *Fleming v. Ontario*, 2019 SCC 45 (CanLII), [2019] 3 SCR 519.

48. The *Waterfield* test has been applied to, and found to provide authority for, the creation of a controlled perimeter around: a police officer who is executing an arrest;⁵⁷ a police officer who is questioning a suspect or a witness;⁵⁸ a crime scene to preserve evidence;⁵⁹ a hazardous area to preserve public safety,⁶⁰ and a potential target of violent crime in order to ensure the target's protection.⁶¹ The constitutionality of roadblocks involving vehicle traffic has also been considered many times at the appellate Court level and have frequently been found not to be arbitrary.⁶²

49. Police actions regulating the attendance of protestors at public demonstrations have rarely been found to be within the general scope of any duty recognized by common law. For example, in *Stewart v. The Toronto Police Services Board*⁶³ a police perimeter, including baggage searches, around a public park where demonstrators were gathering to protest a meeting of the G20 was found not to be within the general scope of any common law duty. Police were found not to have legal authority to impose such conditions on entry. The protest at issue in *Stewart* was characterized by peaceful protests intertwined with protestors intent on violence and property destruction. Such violence and property destruction presented “unprecedented peacekeeping and security challenges”.⁶⁴

50. Virtually identical issues were raised in another case involving the Toronto G20 protest: *Figueiras v. Toronto (Police Services Board)*.⁶⁵ With reasons mirroring *Stewart*, the Court of Appeal applied the *Waterfield* test and found that the creation checkpoints demanding bag searches did not fall within the ambit of common law ancillary police powers. Further, in preventing Mr. Figueiras’ from protesting for his chosen cause (animal rights), police conduct violated his freedom of expression under the *Charter*.

⁵⁷ *R. v. Wutzke*, 2005 ABPC 89 at paras 60-66.

⁵⁸ *R. v. Dubien*, [2000] Q.J. No. 250, J.E. 2000-461 (C.M.), at paras 14-26.

⁵⁹ *R. v. Edwards*, 2004 ABPC 14 at paras. 4-6, 24-48, 66;

⁶⁰ *R. c. Rousseau*, [1982] J.Q. no 490, [1982] C.S. 461 (Sup. Ct.), at pp. 461-62, 463-64.

⁶¹ *Knowlton v. R.*, 1973 CanLII 148 (SCC), [1974] SCR 443.

⁶² *Brown v. Regional Municipality of Durham Police Service Board*, 1998 CanLII 7198 (ON CA); see also: *R. v. Clayton*, 2007 SCC 32 (CanLII), [2007] 2 SCR 725.

⁶³ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255; overturning: *Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.

⁶⁴ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para 13.

⁶⁵ *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 at para 59.

51. Only one case has applied the test in *Waterfield* to the actions of police in clearing the Freedom Convoy. In *R v Romlewski*,⁶⁶ the accused was found in an area that had not yet been cleared of protesters and vehicles. When approached by police the accused sat down and refused to leave. He was charged criminally with obstructing police and mischief. At trial Mr. Romlewski argued that police did not have authority to demand that he leave. The Court applied the test in *Waterfield* and ultimately found that police did have authority under the common law to demand that Mr. Romlewski leave.

Analysis

52. In this case the conduct at issue, as confirmed by the respective police witnesses, was the lockdown of the downtown core of Ottawa with police checkpoints at the perimeter. No persons could enter the perimeter without being stopped by police. If persons could not prove that they lived and worked in the area, they were turned away.

53. Where the Trial Judge did not cite or apply the relevant legal test, no deference is owed to her finding that police actions were pursuant to common law authority.

54. The Trial Judge's finding relies primarily on the supposition that "It would be illogical and contrary to their objective if, after clearing the area, they could not restrict movement so as to prevent the protesters and vehicles from reoccupying the space they had just cleared." There was no evidence at trial and there were no factual findings of the Trial Judge which support this assertion.

55. The Trial Judge also improperly distinguishes *Stewart* on the basis that the case at bar did not involve police restricting access to a planned protest. Rather, it involved police acting to "maintain order in the area they had already secured."⁶⁷ There is no principled reason to distinguish the two cases on that basis. In particular, the Court in *Stewart* found that some protestors were intent on violence and property destruction. The situation in *Stewart* was in some ways much more serious than the case at bar where it was "unprecedented" and presented serious "peacekeeping and security challenges". Further evidence was led in *Stewart* that G20 protests across the globe

⁶⁶ *R. v. Romlewski*, 2023 ONSC 5571; overturning: *R. v. Romlewski*, 2022 ONCJ 502.

⁶⁷ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 13, ll. 10-25.

are typically characterized by “a high level of violence and destruction of property was common at G20 events.”⁶⁸

56. No such “high level of violence and destruction of property” were present at the Freedom Convoy. In *Stewart*, even in the anticipation of a high level of violence and property destruction, police common law powers were not found to include the ability to conduct searches at the perimeter of a public park. Notably the police action in *Stewart* was far less draconian. Police did not exclude the public entirely from the park, let alone the downtown core of a city.

57. The police conduct in this case did not fall within the general scope of any duty imposed by statute or recognized by common law. The accused must be acquitted obstruct charge on that basis. The impact upon section 9 of the *Charter* is described in further detail below.

3. The trial judge erred in her determination that the Appellant’s right to be free from arbitrary detention was not infringed by his arrest

58. Section 9 of the *Charter* provides that “Everyone has the right not to be arbitrarily detained or imprisoned.” A detention, including an arrest, will be considered arbitrary within the meaning of section 9 of the *Charter* if it is not authorized by law.⁶⁹

59. A warrantless arrest requires a subjective and objective component. An arrest without a warrant is lawful if the police officer has reasonable grounds to believe that the person arrested has committed an indictable offence. The subjective requirement requires that the police officer believes that he has reasonable grounds. The objective component requires that the belief be based on information that would lead a reasonable and cautious person in the position of the police to conclude that reasonable grounds existed for the arrest.⁷⁰

60. The arresting officer, Cst. Walker, asserted reasonable grounds to arrest Mr. Evelyn on both mischief and obstructing a peace officer. The Appellant does not take issue with subjective belief of Constable Walker. Rather the objective basis for that belief is at issue in this appeal.

⁶⁸ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para 12.

⁶⁹ *R v Le*, 2019 SCC 34 (CanLII), [2019] 2 SCR 692 at paras 30, 38.

⁷⁰ *R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 SCR 241 at paras 18-19.

61. With regards to the objective basis to arrest Mr. Evely for obstructing a peace officer, the Appellant repeats the analysis above that police were acting outside the scope of any common law duty. There was no objective basis to believe that he was obstructing a peace officer *in his lawful duties*.

62. With regards to the mischief count, at the time of arrest Mr. Evely was seen running down Sussex Avenue at approximately 4:25 in the morning. He was alone. Vehicle and pedestrian traffic were blocked by police. It appears on the evidence that Cst. Walker and perhaps one or two other police officers were the only other persons on Sussex Avenue at that time. Officers Meuleman and Durton of the York Regional Police were also a short distance away on Wellington.

63. The Trial Judge relies on a finding Mr. Evely was running in the “direction of the protesters, towards the backs of officers who were maintaining the barricade and who were unaware of his approach.”⁷¹

64. Not everyone who was in downtown Ottawa on February 18-19 was committing mischief simply by being present, and particularly not merely by travelling there. This Court found as much in upholding an acquittal in similar circumstances in *R. v. Decaire*.⁷²

“the trial judge’s suggestion that Ms. Decaire could have been there to passively protest or out of curiosity were reasonable theories. There was at this time a large-scale protest in Ottawa. Many citizens went to various protest to sites to observe, to peacefully protest, or in some cases, to passively support those who were protesting. That the trial judge suggested that Ms. Decaire might be one of those persons is not a speculative proposition but rather reasonable one and in accordance with the evidence before him regarding the Freedom Convoy.”

65. At the time of his arrest Mr. Evely was unknown to the officers. Simply travelling to the scene of criminal activity is not evidence of an attempt to join others in its commission. At best it is circumstantial evidence, which on its own, would not lead a reasonable and cautious person in the position of the Cst. Walker to conclude that reasonable grounds existed for the arrest.

⁷¹ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 17, ll. 6-9.

⁷² *R. v. Decaire*, 2024 ONSC 4713 at para 42.

66. There is no objective basis on which to form reasonable and probable grounds that Mr. Evely was interfering with anyone's lawful use, enjoyment or operation of their property or that he was attempting to do so.

4. The Trial Judge erred in her determination that the Appellant's right to be free from unreasonable search and seizure was not infringed by a police search following his arrest

67. A warrantless search that follows an unlawful arrest is unreasonable. Counsel at trial conceded that, if the arrest is found to be lawful, the search incident to arrest was lawful, and vice versa.⁷³ The Trial Judge agreed that the section 8 breach "rises and falls" on the determination of whether Mr. Evely's arrest was lawful.⁷⁴

68. Where the Appellant's arrest and detention was arbitrary any subsequent searches, including the search of his person for identification,⁷⁵ were not reasonable.

5. The Trial Judge erred in failing to exclude evidence obtained as a result of the *Charter* breaches.

The Evidence was "obtained in a manner"

69. Evidence can only be excluded if it is "obtained in a manner" that infringed the Applicant's Charter rights.⁷⁶

70. Evidence that satisfies the "obtained in a manner" requirement of s. 24(2) where it has a temporal, contextual, or causal connection to the *Charter* breach or some combination of the three. The approach is to be a generous one.⁷⁷

71. Here, the social media evidence, and in turn the drone video, was only found using the Applicant's name which was obtained by the arresting officers search of his person after he had been unlawfully arrested. There is a direct casual connection between the evidence and the breach. But for the Applicant's arrest, the evidence would not have been obtained. Further, there is a

⁷³ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 9, ll. 24-27.

⁷⁴ *Ibid.* at p. 9, ll. 3-6.

⁷⁵ *R. v. Harris*, 2007 ONCA 574 at para 40.

⁷⁶ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353 at para 59.

⁷⁷ *R v Davis*, 2023 ONCA 227 at para. 28.

contextual connection in that the social media searches were made as part of searches related to individuals arrested at the Freedom Convoy protest.

Admitting the evidence would bring the administration of justice into disrepute

72. First, the *Charter*-infringing conduct is serious. The decision of police to lockdown downtown Ottawa resulted in the creation check points and roadblocks surrounding the downtown core. Anyone wishing to enter was forced to show identification. Anyone who could not prove that they lived or worked in the area would be turned back and not permitted entry. Downtown Ottawa was subject to a type of martial law for a period of days. This infringement of rights falls at the extreme end of egregious conduct.

73. Second, the impact on the Applicant's *Charter*-protected interests was significant. The analysis on the second factor requires assessing "the interests engaged by the infringed right" and "the degree to which the violation impacted on those interests."⁷⁸

74. The infringement of the Applicant's freedom of expression described above was total. He was not permitted to stand guard at the War Memorial as part of his sentry duty. This was a matter of great personal importance to the Applicant.

75. As a result of attempting to attend at the War Memorial, the Applicant was arrested. He was taken to the ground and handcuffed. His liberty was further curtailed as he was handcuffed and moved about from officer to officer. The seriousness of the breach was compounded by the infringement of the Applicant's section 8 right to privacy.

76. Cumulatively, these breaches pose a serious impact on the Applicant's *Charter*-protected interests.

77. Third, society's interest in adjudication on the merits does not strongly weigh in favour of admission. The Freedom Convoy protests were political protests which arose in response to divisive legislation of questionable utility. The invocation of the *Act* was an unlawful use of

⁷⁸ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353 at para. 77.

government power.⁷⁹ Society's overall interests are in moving on from a politically divisive time of Canadian history. At best, this branch of the test is neutral.

78. The Trial Judge ought to have excluded the video evidence on this basis.

6. The Trial Judge erred in law in her assessment of the essential elements of mischief and their application to the evidence in this matter

79. Mr. Evelyn was convicted of mischief in relation to both the February 18 conduct shown on the respective videos, but also his February 19 conduct as observed by the three police witnesses. Where the video evidence ought to have been excluded any conviction in relation to that conduct cannot stand and ought to be reversed by this court.

80. In relation to the February 19 conduct, the Trial Judge found as follows:

“Mr. Evelyn was running towards the barricade to rejoin the protesters with whom he had been committing mischief earlier that day. This constitutes an act of assistance or encouragement of the other protesters at the scene, as strength in numbers can be found to be an important source of encouragement... I find, on the evidence as a whole, I accept that I am satisfied beyond a reasonable doubt Mr. Evelyn is guilty of mischief and I find him guilty on that count.”⁸⁰

81. The phrasing of the Trial Judge of “on the evidence as a whole” strongly implies that the video evidence played a role in the Trial Judge’s findings of Mr. Evelyn’s intentions which respect to the February 19 conduct. Were the videos to have been excluded, the February 19 observations of the three police witnesses are insufficient to establish liability for criminal mischief.

82. The above analysis with respect to reasonable grounds to arrest for mischief also applies here. At the time of his arrest Mr. Evelyn was unknown to the officers. Simply moving in the direction, without more, does not amount to the actus reus of attempting to commit mischief. Not everyone who was in downtown Ottawa on February 18-19 was committing mischief simply by

⁷⁹ See: *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42.

⁸⁰ Transcript of Reasons for Judgment (September 17, 2024), Appeal Book, Tab 5 at p. 35, ll. 18-28.

being present, and particularly not be travelling there. This Court found as such in upholding an acquittal in similar circumstances.⁸¹

PART IV – ORDER REQUESTED

83. The Appellant asks this Honourable Court to grant an order allowing the Appeal and substituting acquittals on the counts of mischief and obstruct.

84. In the alternative, the Appellant asks that an order be made for a new trial on all counts.

PART V – TIME LIMITS FOR ORAL ARGUMENT

85. The Appellant estimates that the hearing of this appeal can be completed in 3 hours.

All of which is respectfully submitted this 1st day of May 2025.

Christopher Fleury

LSO No: 67487L

Hatim Kheir

LSO No: 79576J

Charter Advocates Canada

Counsel for the Respondent
Jeffery Evely

⁸¹ *R. v. Decaire*, 2024 ONSC 4713 at para 42.

SCHEDULE “A” - Authorities to be Cited

- Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2.
- Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255.
- Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.
- Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235.
- R. v. Farrah (D.)*, 2011 MBCA 49.
- R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R.
- R. v. Romlewski*, 2023 ONSC 5571.
- R. v. Romlewski*, 2022 ONCJ 502.
- Fleming v. Ontario*, 2019 SCC 45 (CanLII), [2019] 3 SCR 519.
- R. v. Wutzke*, 2005 ABPC 89.
- R. v. Dubien*, [2000] Q.J. No. 250, J.E. 2000-461 (C.M.).
- R. v. Edwards*, 2004 ABPC 14.
- R. c. Rousseau*, [1982] J.Q. no 490, [1982] C.S. 461 (Sup. Ct.).
- Knowlton v. R.*, 1973 CanLII 148 (SCC), [1974] SCR 443.
- Brown v. Regional Municipality of Durham Police Service Board*, 1998 CanLII 7198 (ON CA).
- R. v. Clayton*, 2007 SCC 32 (CanLII), [2007] 2 SCR 725.
- Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208.
- R v Le*, 2019 SCC 34 (CanLII), [2019] 2 SCR 692.
- R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 SCR 241.
- R. v. Decaire*, 2024 ONSC 4713.
- R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353.
- R v Davis*, 2023 ONCA 227.
- Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42.

Court File No.: 22-A8184-AP

ONTARIO SUPERIOR COURT OF JUSTICE
East Region

BETWEEN

HIS MAJESTY THE KING

Respondent

and

JEFFREY EVELY

Appellant

SUMMARY CONVICTION APPEAL: FACTUM OF THE RESPONDENT

Emma Loignon-Giroux
Assistant Crown Attorney

Ottawa Crown Attorney's Office



PART I: RESPONDENT'S STATEMENT OF THE CASE

1. On February 18, 2022, a massive multijurisdictional police operation was underway to clear downtown Ottawa's streets of the so-called "Freedom Convoy". For over three weeks, Ottawa's downtown core had been occupied by the "Freedom Convoy." Parked vehicles littered normally busy streets and thoroughfares as the city came to a standstill and residents were unable to go about their daily business.
2. The seriousness and impact of this occupation were such that the City of Ottawa, the Province of Ontario and the Government of Canada all declared states of emergency. This culminated with the federal government invoking the *Emergencies Act*, R.S.C. (1985), c. 22 (4th Suppl) (hereafter the "*Emergencies Act*") for the first time in the *Act's* near forty-year history, to assist with bringing an end to the occupation. Numerous warnings were provided to participants, advising them to leave under penalty of arrest. As police cleared areas of Ottawa's downtown, they controlled access to the affected area and secured the territory they had gained.
3. In the early morning hours of February 19, 2022, Jeffrey Evely was in the restricted area on Wellington Street, behind the police line. As at least three uniformed police advised him to stop, Mr Evely continued on, eschewing orders and evading officers. He had to be taken to the ground and arrested.
4. Following Mr Evely's arrest, searches in open-source media revealed a sustained presence at the Freedom Convoy, including in a line of participants confronting police on February 18. in Ottawa's downtown core. His presence in that location on that day was no accident.
5. Justice Miles found Mr Evely guilty. In so doing, she rejected his *Charter* application seeking to exclude evidence gathered from Mr Evely's social media profiles. Justice Miles found that Mr Evely obstructed police through his actions and participated in the mischief occasioned by the Freedom Convoy. She convicted Mr Evely on all counts.
6. This appeal is, at its core, an oblique attack on the factual findings made by the trial judge and a re-litigation of the legal conclusions arising therefrom. The legal issues and foundations were clear-cut and agreed upon by parties at trial. The trial judge's factual findings are entitled to this court's deference and the appeal ought to be dismissed.

PART II: RESPONDENT'S STATEMENT AS TO FACTS

7. The Respondent takes no issue with the facts as set out at paragraphs 10-20, 22-23.
8. With respect to paragraph 21, the Respondent adds that Cst Walker testified that the arrangement veterans had with Ottawa Police to perform sentry duty at the War

Memorial required veterans to check in with police and inform them where they were going.¹ He clarified that this was not an official agreement and that, as the police operation was underway, veterans were still required to speak to officers before entering the area near the Cenotaph.²

9. With respect to paragraph 24, the Respondent clarifies that Mr Evelyn's evidence as listed in the paragraph was rejected by the trial judge.
10. The Respondent also adds that all three officers testified that Mr Evelyn attempted to evade Cst Meuleman and Cst Purton when they sought to intercept him as he was being advised by police to stop, and that he had to be taken to the ground to be arrested.³
11. The Respondent also adds that Ottawa Police disseminated warnings about potential consequences of attempting to join the area, namely the possibility of being charged with mischief.⁴
12. The Respondent makes no comment with respect to paragraphs 25-36, which constitute the Applicant's summary of the trial judge's reasons on the *Charter* application and on the trial proper.

Part III: RESPONSE TO APPLICANT'S ISSUES

13. The Appellant raises several grounds of appeal, many of which are interrelated. The Appellant first challenges the authority of police to secure the area Mr Evelyn sought to enter. Relatedly, the Appellant challenges the grounds for his arrest and the ensuing search. Finally, the Appellant challenges his conviction for mischief.
14. The Appeal ought to be dismissed. The trial judge made no error in finding that police had the authority to secure the area, and the factual findings underpinning this conclusion ought to attract this court's deference. Similarly, the trial judge made no error in dismissing the Appellant's *Charter* application raising sections 8 and 9. Finally, the trial judge made no error in her assessment of the essential elements of mischief.

¹ Cross-Examination of Cst Walker, Proceedings at Trial (August 26, 2024), p71, l19-23.

² Cross-Examination of Cst Walker, Proceedings at Trial (August 26, 2024), p72, l10-21.

³ Examination in Chief of Cst Meuleman, Proceedings at Trial (August 26, 2024), p19, l2-5, 10, 17-18; Cross-Examination of Cst Meuleman, Proceedings at Trial (August 26, 2024), p36, l12; Examination in Chief of Cst Purton, Proceedings at Trial (August 26, 2024), p46, l8-11, 16-18; Examination in Chief of Cst Walker, Proceedings at Trial (August 26, 2024), p65, l4-6, p67, l22-24; Cross-Examination of Cst Walker, Proceedings at Trial (August 26, 2024), p74, l9-12, p76, l4-5.

⁴ Cross-Examination of Cst Walker, Proceedings at Trial (August 26, 2024), p77, l26-30. See also Exhibit 1 at para viii (Appeal Book, Tab 6).

1.0 Police Authority to Lockdown Downtown Ottawa

15. The trial judge found that police had the authority to lockdown parts of downtown Ottawa and to set up a perimeter with checkpoints. In so finding, the trial judge considered the decision in *Romlewski*⁵ and opined as follows:

At issue is the enforcement of a secure area and establishing check points, forcing people to identify themselves and restricting movement within the area that had been cleared earlier in the day on February 18th. I find that the legitimate police operation to end the illegal occupation of the downtown streets included police efforts to secure the area and restore order. This would include restricting peoples' movements into the area that had been cleared by police during the day on February 18th, 2022.

By February 18th, 2022, police had begun a large-scale operation to remove protesters and vehicles, and by logical inference, the only way to secure the area and restore order was to maintain the ground they had gained throughout the day. It would be illogical and contrary to their objective if, after clearing the area, they could not restrict movement so as to prevent the protesters and vehicles from reoccupying the space they had just cleared. To say otherwise would allow for the absurd situation where protesters would be permitted to re-occupy the secured area to continue their illegal activities, and thereby, force police to start over each morning in their efforts to clear the protesters, secure the area, and restore order. If this were the case, there would have been no end to the protest or the police efforts to clear it.

This was not martial law as described by defence, but a carefully orchestrated operation to clear the streets of protesters and vehicles which were creating an unlawful disruption. The area restricted was limited to the protest footprint and included the area that had been cleared of protesters during the daytime operation. This is distinguishable from the Stewart case cited by defence. This was not police action which restricted peoples' ability to enter into an area where a planned demonstration was going to take place or attempts to impose conditions on entry to the protest area. The police were acting to maintain order in the area they had secured and not allow the illegal disruption to continue.⁶

⁵ *R. v. Romlewski*, [2023 ONSC 5571](#) (per Doyle J.).

⁶ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p12, l11-p13, l25.

1.1 Standard of Review

16. The question of whether police had the powers at common law to establish a secure area in Ottawa’s downtown is reviewable on a standard of correctness. However, the factual findings underpinning any such ruling are entitled to deference.

R. v. Shepherd, [2009 SCC 35](#) at para 20;

R. v. Bajich, [2019 ONCA 486](#) at para 10;

R. v. Black, [2023 ONCA 799](#) at para 5.

17. This Court must accordingly assess whether the factual findings made by the trial judge support the legal conclusion that the police had authority to secure an area in Ottawa’s downtown.

1.2 Police Powers at Common Law

18. A discussion of police powers must begin with a discussion of police duties. Officers’ duties compel them to act, while their authority empowers them to do so.

R. v. Simpson, 1993 CarswellOnt 83 at para 34 [WL];

R. v. Mann, [2004 SCC 52](#) at para 35.

19. Two sources of police officer’s duties are relevant to this appeal. *First*, police officers have various duties that are recognized at common law. This includes general duties to preserve peace, prevent crime, and protect life and property.

R. v. Mann, [2004 SCC 52](#) at para 26.

20. *Second*, police duties also arise from statutory authority, such as the *Community Safety and Policing Act*, 2019⁷ (hereafter “CSPA”):

82 (1) The duties of a police officer include,

(a) preserving the peace;

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

(c) assisting victims of crime;

⁷ [Community Safety and Policing Act, 2019](#), S.O. 2019, c. 1, Sched. 1, s. 82.

(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;

(e) laying charges and participating in prosecutions;

(f) executing warrants that are to be executed by police officers and performing related duties;

(g) performing the lawful duties that the chief of police assigns;

(j) performing such other duties as are assigned to him or her by or under this or any other Act, including any prescribed duties.

(2) A police officer has authority to act as such throughout Ontario.

(3) A police officer has the powers and duties ascribed to a constable at common law.

21. Stemming from these sources (and others), officers' duties are broad, far-ranging, and ever-changing. They exceed the enforcement of any specific Act and rather speak to an officer's role within society. The language in the *CSPA* is revelatory in this sense. The *CSPA* does not purport to identify every single one of an officer's duties, but rather sets out some of the duties that this role includes. Courts have similarly long opted not to restrictively define officers' duties, recognizing that "it would be difficult [...] to reduce within specific limits the general terms in which the duties of police constables have been expressed."

[*Dedman v. The Queen*](#), [1985] 2 S.C.R. 2.

22. Police officers' duties are imbued with the authority (or power) under which they are acting. This authority is similarly wide-ranging, and its sources can be overlapping.
23. For instance, police officers' authority may flow from various statutory instruments. Chief among these is their power to enforce the *Criminal Code*, namely by arresting persons they find committing an offence (s. 495 CC), as was referred to by the trial judge.⁸ Authority may also be granted through other statutory instruments such as emergency legislation.
24. The common law also constitutes an important source of authority, and one that may complement the statutory sources of officers' authority. For instance, police officers possess authority at common law allowing them to fulfil their duties. This includes the

⁸ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p9, l30-p10, l6.

authority to control access to certain areas relevant to their duties, such as by establishing a perimeter to preserve public safety or to protect an officer effecting an arrest.

Figueiras v. Toronto (Police Services Board), [2015 ONCA 208](#) at paras 59-60;

25. Such powers may be recognized at common law through the application of the ancillary powers doctrine. The premise behind the ancillary powers doctrine is a recognition that police actions which interfere with individual liberty are permitted if they are necessary to the fulfillment of recognized police duties.

R. v. Fleming, [2019 SCC 45](#) at para 45.

26. A two-step analysis determines if the police conduct is authorized by the ancillary powers doctrine. The first question is whether the conduct falls within the general scope of police statutory or common law duties, such as statutory duties set out in the *Community Safety and Policing Act*⁹ or common law duties articulated in the *Mann*¹⁰ decision. The second question has to do with whether the action involves a justifiable exercise of police powers associated with that duty. In other words, whether the action was reasonably necessary having regard to the totality of the circumstances. The ancillary powers doctrine has been codified in some way or another at both the federal¹¹ and provincial¹² level.

R. v. Fleming, [2019 SCC 45](#) at paras 45-47;

Figueiras v. Toronto (Police Services Board), [2015 ONCA 208](#) at paras 55-66;

R. v. MacDonald, [2014 SCC 3](#) at paras 35-36;

Cloutier v. Langlois, [\[1990\] 1 SCR 158](#) at para 50;

R. v. Clayton, [2007 SCC 32](#).

27. As discussed above, the ancillary powers doctrine has led to the recognition that police have common law authority to set up exclusion zones. In recognition that exclusion zones may occasion *Charter* breaches, the authority for their creation is accordingly governed by principles that recognize this limitation. Circumstances are to be considered in their totality, and on a case-by-case basis.

Figueiras v. Toronto (Police Services Board), [2015 ONCA 208](#) at paras 56-60, 66, 138

Teal Cedar Products Ltd v. Rainforest Flying Squad, [2021 BCSC 1554](#) at paras 1-2, 33, 62-63;

⁹ [Community Safety and Policing Act, 2019](#), S.O. 2019, c. 1, Sched. 1, s. 82.

¹⁰ *R. v. Mann*, [2004 SCC 52](#).

¹¹ [Interpretation Act](#), R.S.C., 1985, c. I-21, s. 31(2).

¹² [Legislation Act](#), 2006, S.O. 2006, c. 21, Sched. F, s. 78.

Tremblay c. Québec (Procureur général), [2001 CanLII 25403](#) (QC CS), leave to appeal to SCC ref'd, 28579.

Knowlton v. R., [\[1974\] SCR 443](#)

28. It is important to note that the question of the exclusion zone set up by police for the operation to clear downtown Ottawa of the Freedom Convoy has already received judicial attention. Most eminently, the *Romlewski* decision was discussed by parties during submissions at trial, and there was no question that the decision was binding on the trial judge.
29. In *Romlewski*, the accused was present on Sparks Street in downtown Ottawa on February 20, 2022. The accused was not part of a crowd, but challenged officers' authority when they ordered him to clear the area. Ultimately, the accused sat down in defiance and was arrested. *Romlewski* was convicted of obstructing police at trial. He appealed his conviction, renewing his challenge to police officers' authority on appeal.
30. The summary conviction appeal court found no error in the trial judge's finding that the officers involved in the accused's arrest were part of a "legitimate police operation" (para 250). In so finding, the summary conviction appeal court endorsed the trial judge's approach to the issue of police's authority to act:

[251] The trial judge did not err when he found at para. 21:

[21] Whether the Accused subjectively accepts the legitimacy of this policing action is irrelevant. I find on the evidence that there was a legitimate police operation underway to end the illegal occupation of the downtown streets. I find that Cst. Bastien and his fellow officers were acting in the execution of their lawful duties that afternoon. It is irrelevant whether the *Emergency Act* had been declared or not; the police were entitled to clear the streets of disruptive people, just as they would be entitled to do so on any day that a crowd had gathered that was so disruptive that it was breaching the peace. At that moment, the Accused was not part of the crowd they were approaching, but he interfered with the police as they moved toward it. My finding of the legitimacy of the police action is reinforced by the fact that this was not a round-up of protesters, or a "kettling" as has sometimes been seen in crowd control. There is no evidence that mass arrest was the objective. At each stage the police gave the Accused every opportunity to leave the area without arrest. On the evidence before me it is clear that the police were acting to secure the area to restore order.

[emphasis added]

31. The trial judge's finding that police were acting with lawful authority cannot be so narrowly construed as to include only police authority to clear the streets of downtown Ottawa. Rather, his conclusion, endorsed on appeal, is that there was a legitimate police operation to *end the occupation*. This authority explicitly included police authority to *secure the area* and restore order.
32. The summary conviction appeal judge went on to conduct an ancillary powers analysis. It found that police were acting within the scope of federal and provincial legislation, s495 of the *Criminal Code*, and the common law police duty. It found the enforcement operation fell within the scope of police's ancillary powers and that accordingly officers had the authority to act when they arrested Mr Romlewski (paras 260-268).
33. Although not binding, the *Snow* decision is also instructive on this question.¹³ Mr Snow was arrested for and charged with obstructing a peace officer in the execution of his duty on February 20, 2022. Mr Snow had returned to Ottawa's downtown on February 20, 2022, believing the streets had been cleared, and sought access inside the redzone in order to livestream himself near Parliament Hill. The trial judge described the police operation as it existed in the context of Mr Snow's case as follows:

It is with this backdrop that Mr. Snow encountered the officers that would eventually arrest him as part of the police operation to clear out the protest and liberate the downtown core from the paralysis caused by the virtual encampment of the protesters. Police had set up exclusion zones. The strategy was that once areas had been cleared, control of those areas would be maintained by barring, with exceptions, members of the public from entering those zones until such time as the restrictions could be lifted without risk of the protest resurging (p4, l15-27)
34. Mr Snow was a veteran and leader of the Ontario Libertarian Party, and had in his possession documents to that effect (p5, l6-14, l28-32). Mr Snow initially encountered police on Booth Street, near Albert Street in Ottawa. He was advised by police that the area was restricted, and he would not be allowed past Bronson Street. (p6, l.7-16) Mr Snow proceeded toward the checkpoint and was advised that he could be arrested and charged with obstructing police if he persisted. (p6, l16-21) At the exclusion perimeter, Mr Snow advised officers that he was leader of the Ontario Libertarian Party and of his intentions in passing the perimeter. (p6, l24-32) Officers advised that Mr Snow was not exempt from the exclusion restrictions and would therefore not be allowed to pass. (p7,

¹³ *R. v. Snow* [unreported], per Webber J. (November 22, 2024).

l1-9) Mr Snow insisted that he be allowed to pass or that officers would have to arrest him, which is ultimately what occurred. (p6, l25-32)

35. The trial judge turned his mind to whether the exclusion zone was lawful on February 20, 2022. He considered the decision in *Romlewski* yet undertook his own ancillary powers analysis given his view that *Romlewski* was distinguishable on the basis of the date, February 19, 2022. (p10, l20-32-p11, l1-8; p16, l8-19). Indeed, the trial judge found that the ancillary powers test would be materially different respecting February 20, 2022, as opposed to February 18 and 19, 2022. (p23, l24-29)
36. In construing the scope of the *Romlewski* decision, the trial judge considered the following:

Contrary to the Crown's submissions, as I said above, I concluded that I could not rely on the decision in *R. v. Romlewski*, 2023 ONSC 5571, to find that the continued use of the secured zones with the attendant restrictions on individual liberties were lawful. I could not rely on that case for that purpose. (p24, l20-27) [emphasis added]

37. On the issue of the continued need for an exclusion zone by February 20, 2022, the trial judge opined as follows:

I also found myself contemplating, given how much effort it took to clear the protest, that an onlooker may consider a police decision to completely remove all of that security en masse, in one broad sweep, the very next morning, might well have amounted to, an irresponsible bit of policing to risk the success that had been so hard fought for and gained. To risk its loss or its diminishment, in such short order, may have been considered, and I think I would have considered it to be perhaps foolhardy, but definitely risky. (p26, 4-15)
38. While the case was ultimately stayed for 11(b) reasons, the trial judge found that the exclusion zone continued to be lawful on February 20, 2022. (p11, l6-22)

1.3 Application

39. The Appellant argues that no deference is owed where a trial judge does not cite or apply the relevant legal test. With respect, this argument is an oblique attempt to raise a sufficiency of reasons argument not contained within the Notice of Appeal and attack underlying factual findings that ought to attract deference.
40. The legal issues before the trial judge were crystallized, well defined, and fulsomely argued. The trial judge directly engaged with the issues before her. Her reasons disclose

a fulsome understanding of the law and of the accused’s arguments, many of which are now repeated on appeal. The trial judge found that the legitimate police operation as discussed in the *Romlewski* decision included police efforts to secure the area and restore order.¹⁴ The trial judge correctly identified that the *Romlewski* decision was binding on her. There was accordingly no need to engage in a renewed analysis of the ancillary powers doctrine.

41. The Appellant suggests that the findings in *Romlewski* encompass police authority to “demand that Freedom Convoy protestors behaving unlawfully cease their unlawful behaviour and leave the vicinity” but do not extend to the creation of a perimeter around Ottawa’s downtown, restricting access to those who live and work there.¹⁵ This is a distinction without a difference. Such a narrow construing of the *Romlewski* case’s *ratio* was correctly rejected by the trial judge, and ought to be again on appeal. To so restrict the reach of the *Romlewski* decision flies in the face of the summary conviction appeal judge’s explicit findings concerning the lawfulness of police actions to secure the area on February 19, 2022.
42. Even so, it is clear from the trial judge’s reasons that she turned her mind to the police duties being performed and to the balancing exercise that form part of the ancillary powers doctrine. The trial judge echoed Doyle J’s findings in *Romlewski* that police were executing their common law duties to preserve the peace, prevent crime, and protect life and property and as set out in the *Police Services Act* (now the *CSPA*).¹⁶ The trial judge further considered whether the police action of enforcing a secure area and establishing checkpoints was justifiable within the meaning of the ancillary powers doctrine. She opined as follows:

This was not martial law as described by defence, but a carefully orchestrated operation to clear the streets of protesters and vehicles which were creating an unlawful disruption. The area restricted was limited to the protest footprint and included the area that had been cleared of protesters during the daytime operation.¹⁷

43. The trial judge correctly found that the police action of securing the area using checkpoints was lawful in the circumstances, and accordingly that police officers were acting in the lawful execution of their duties. This ground of appeal must fail

¹⁴ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p12, l12-23.

¹⁵ Appellant’s Factum, paras 43-44.

¹⁶ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p11, l6-10.

¹⁷ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p13, l10-17.

2.0 Lawfulness of the Arrest

44. The trial judge dismissed the Appellant’s section 9 *Charter* application, finding that there were reasonable grounds for Mr Evelyn’s arrest. The trial judge rejected Mr Evelyn’s evidence where it differed from that of the officers’, ultimately finding that it was objectively reasonable for Cst Walker to conclude that Mr Evelyn was committing an offence by attempting to join the protesters and by obstructing police in their lawful duty to keep the area secure.¹⁸ She accordingly dismissed the Appellant’s *Charter* application.

2.1 Standard of Review

45. While a trial judge’s ruling that the police had reasonable grounds to arrest an accused is reviewable on a standard of correctness, the factual findings underpinning any such ruling are entitled to deference.

R. v. Shepherd, [2009 SCC 35](#) at para 20;

R. v. Bajich, [2019 ONCA 486](#) at para 10;

R. v. Black, [2023 ONCA 799](#) at para 5.

46. This Court must accordingly assess whether the factual findings of the trial judge support the legal conclusion that the officer had the requisite reasonable grounds to make the arrest.

2.2 Reasonable Grounds

47. It is trite that s. 495(1) of the *Criminal Code* allows police officers to arrest a person if they have reasonable grounds to believe the person has committed an indictable offence, or if they find a person committing a criminal offence. Reasonable grounds to believe has both a subjective and an objective component. Subjectively, the officer must believe that they have grounds. In addition, that belief must be objectively reasonable.

R. v. Storrey, [\[1990\] 1 SCR 241](#) at paras 16-17

48. Much ink has been spilled on the meaning of the term “reasonable grounds.” What emerges from the jurisprudence, however, is that this is not an onerous standard. It does not amount to proof beyond a reasonable doubt or require the officer to establish a *prima facie* case. It does not even import a requirement of “more likely than not” or “50% probability”.

R. v. Shepherd, [2009 SCC 35](#) at para 23;

¹⁸ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p18, l30-p19, l18.

R. v. Bush, [2010 ONCA 554](#) at para 37;
Ontario (Alcohol and Gaming Commission, Registrar) v. 751809 Ontario Inc.
(c.o.b. Famous Flesh Gordon's), [2013 ONCA 157](#) at paras 18-19.

49. The question of whether the reasonable grounds standard has been met is assessed from the perspective of the arresting officer and is based on the information known to the officer at the time they made their decision to arrest. The subjective branch of reasonable grounds to believe simply requires that the officer have an honest belief that the person has committed the offence. The inquiry at this stage is into the honesty of the arresting officer's belief.

R. v. Bush, [2010 ONCA 554](#) at para 37;
R. v. Notaro, [2018 ONCA 449](#) at para 37.

50. Where that subjective belief is found to exist, the sole remaining issue is whether the belief was objectively reasonable. In so assessing, courts should not dissect the officer's grounds by looking at each factor in isolation. In fact, the court's objective assessment of the officer's reasonable grounds to believe (at trial or on appeal) is not restricted to only those items listed by the officer during their testimony at trial; the court must consider all the circumstances and may consider any other information reasonably known to the officer at the time.

R. v. Wang, [2010 ONCA 435](#) at para 17;
R. v. Bush, [2010 ONCA 554](#) at paras 54-58;
R. v. Ibrahim, [2014 ONCA 477](#) at paras 2-3.

2.3 Application

51. The Appellant takes issue with the trial judge's conclusion that Cst Walker had reasonable grounds to arrest the Appellant for mischief, repeating his argument that police were acting outside the scope of their duties. The Respondent will address the argument as it relates to the offence of mischief, reserving the right to make further comment on the argument as it relates to the offence of obstructing police in oral submissions.
52. The trial judge specifically addressed the officer's grounds to arrest the Appellant for mischief. She considered his subjective grounds, namely his belief that Mr Evelyn was trying to join the protesters and cause mischief.¹⁹ In her analysis, the trial judge correctly turned her mind to the circumstances as they were known to the officer. This includes the multiple public notices and directions to the public, which were widely disseminated, the

¹⁹ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p15, l15-16.

duration of the occupation on the date of the offence, and the impact on the community.²⁰

53. The trial judge ultimately found that the officer's subjective grounds were objectively reasonable, specifically finding that "it was objectively reasonable on all of the evidence for Constable Walker to conclude that Mr. Evelyn was committing an indictable offence by attempting to join the protesters to continue the ongoing mischief [...]"²¹
54. The Appellant argues that not everyone present within the redzone on February 18 and 19 was committing mischief and that, because Mr Evelyn was unknown to the officers and simply traveled to the scene of criminal activity cannot constitute reasonable grounds for an arrest.²²
55. This argument directly strikes at the trial judge's factual findings, but also ignores that the officer is entitled to consider "all the circumstances" known to them. The officer – and accordingly the reviewing court – is not required to take the narrowest view of the circumstances surrounding the situation. In fact, such an approach would be antithetical to the case law related to group mischief, which has consistently highlighted that context is key when assessing whether a person is engaging in mischief as a party.

See: *R. v. Mammolita* (1983), [9 C.C.C. \(3d\) 85](#) (Ont. C.A.);

R. v. Tysick, [2011 ONSC 2192](#);

R. v. Pascal, [2002 CarswellBC 3838](#) (P.C.) [WL];

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

R. v. Romlewski, [2023 ONSC 5571](#);

R. v. Blackman, [2024 ONSC 3595](#).

56. Furthermore, it is important to recall that the reasonable grounds standard is materially different from the reasonable doubt standard. Accordingly, the *Décaire* decision is of little assistance to determining the issue of whether Cst Walker had reasonable grounds to arrest Mr Evelyn for mischief.
57. The trial judge made factual findings with respect to the grounds that existed for Mr Evelyn's arrest. These findings ought to attract deference, as do the inferences drawn from such findings, including the inference that Mr Evelyn was attempting to join the protesters in the area to continue the ongoing mischief occasioned by the Freedom Convoy. In the

²⁰ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p14, l20-32.

²¹ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p19, l5-9.

²² Appellant's Factum, para 65.

unique circumstances faced by Mr Evelyn, there were ample reasonable grounds for his arrest, as was correctly found by the trial judge.

58. The trial judge correctly found that the Appellant's arrest was lawful, such that this ground of appeal also ought to be rejected.

3.0 Lawfulness of the Search

59. Should this Honourable Court find as the Crown argues that the trial judge correctly found Mr Evelyn's arrest to be lawful, the ensuing search ought to be found to be lawful. This is because police officers are duty-bound to identify persons in their custody, and failure by such persons to identify can constitute obstruction of justice. Eliciting background information for the purposes of arrest does not in itself reveal any intimate details about the accused's life and does not constitute eliciting evidence from a detainee.

R. v. Moore, [\[1979\] 1 S.C.R. 195](#)

R. v. Palmer, [2016 ONSC 153](#) at para 113

60. However, the Respondent takes the position that there is no reasonable expectation of privacy in publicly disseminated information such as that which is found on social media.

R. v. Patterson, [2018 ONSC 4467](#)

61. The Respondent is aware of two local decisions arising in the "Freedom Convoy" context having addressed this question.
62. In *R. v. Fisher*, unreported, Justice Brown addressed the issue of whether the obtention of the accused's name constituted a search within the meaning of s8. In that case, no arresting officer had been called, and the court also found a s9 breach. The s8 breach was grounded in the absence of reasonable and probable grounds. However, on the s24(2) analysis, the court found that the evidence ought to be admitted:

My finding that the search and seizure of Mr. Fisher was unreasonable was ground in the fact that it emanated from his unlawful arrest. His name and date of birth were provided following that arrest.

In assessing the seriousness of this breach, however, I must note that the violation here was of the most technical nature, given the operation of the Emergencies Act order in place. The red zone was established pursuant to the Emergencies Act, which permitted authorities to establish secured areas in which to re-establish public order.

As testified to by a number of the officers who appeared before me, those who lived and worked within the red zone were permitted to be in that secured area. A necessary corollary of determining who was lawfully and who was unlawfully in the area would of course be a requirement that those within the secured area would be required to identify themselves and establish their right to be there. Clearly, any person within such a zone would be subject to the basic and minimal requirement to identify themselves and their purpose for being in a secured area.

R. v. Fisher (unreported), Ruling on S. 24(2) Application, 1 June 2023, Ottawa (Brown J.) at p9

63. The evidence was accordingly admitted, and Mr Fisher was found guilty
64. In *R. v. Meister*, unreported, Justice Brunet addressed a similar question. Mr Meister was similarly charged with obstructing police and committing mischief. He was alleged to have parked his truck at the intersection of Rideau Street and Sussex Drive. He was arrested and charged during the police operation to clear the streets. Justice Brunet dealt with Meister's identification differently, noting that this is done as a matter of course pursuant to an arrest (p15)

R. v. Meister (unreported), Charter Ruling, 12 July 2023, Ottawa (Brunet J.) at p15

65. These cases may be instructive in the context that this court finds any basis to interfere with the trial judge's finding that there was no s9 violation. The Crown's primary position is that there is no such violation.

4.0 Section 24(2)

66. The Respondent's position is that no *Charter* breaches occurred such that the s. 24(2) analysis is not engaged. Even if such a breach did occur, however, the Respondent's position is that no evidence ought to be excluded pursuant to s24(2).
67. Should this Honourable Court find that the trial judge erred in finding that no *Charter* breaches occurred and that the record is sufficient this Court is entitled to embark on its own s24(2) analysis.

R v Balendra, [2019 ONCA 68](#), at para 62.

68. On the first issue of whether the evidence was obtained in a manner that infringed a right under the *Charter*, it ought to be reminded that the information obtained by police has

to do with Mr Evelyn's name. Officers who take a person into their custody are duty-bound to identify them.

R. v. Moore, [\[1979\] 1 S.C.R. 195](#)

R. v. Palmer, [2016 ONSC 153](#) at para 113

69. The Respondent repeats his comments above respecting the social media evidence concerning Mr Evelyn. With respect to the drone video, the Respondent submits there is an insufficient link to satisfy the threshold "obtained in a manner" issue. The drone video arises from proprietary footage from the Ottawa Police Service. The *reason* for its retrieval ought to be distinguished from the *cause* of its identification. Put differently, there is a distinction between the discovery of the person and the securing of evidence from that person. There is no evidence suggesting that police retrieved the drone footage *because* any evidence was obtained from Mr Evelyn.

R. v. Goldhart, [\[1996\] 2 S.C.R. 463](#) at paras. 43-45.

70. With respect to the first *Grant* factor, namely the seriousness of the breach, it must be recalled that good faith on the part of police will reduce the need for the court to dissociate itself from the police conduct. Indeed, it is understandable that the police may not know the extent of their powers when judges disagree as to the correct state of the law. Where there is caselaw that supports the officer's actions – such as is the case here – the officer is acting in good faith.

R. v. Grant, [2009 SCC 32](#) at para 75;

R. v. Bielli, [2016 ONSC 6866](#) at para. 10;

R. v. Gardner, [2021 ONSC 3468](#) at paras. 75-77

71. It is indisputable in this case that officers were acting in good faith and indeed on what they reasonably believed to be their common law authority. There is no need for the court to dissociate itself from such conduct.
72. With respect to the seriousness of the alleged section 8 breach, the Respondent notes such would be at the lowest possible end of a breach. Furthermore, where the police honestly believe – as in this case – that they have reasonable grounds for an arrest, but the court finds they did not, such a miscalculation is not a serious breach.

R. v. Buchanan, [2020 ONCA 245](#) at para 54.

73. The first *Grant* factor is accordingly, at best, neutral.

74. With respect to the impact on the accused, the Respondent notes that any alleged breach would be technical in nature. Moreover, discoverability ought to play an important role in assessing the impact of the breach on the accused. The Respondent accordingly relies on its comments above respecting the open-source media and drone footage.

R. v. Grant, [2009 SCC 32](#) at paras 122, 125

75. Finally, with respect to the adjudication on the merits, the Respondent submits that in light of the Freedom Convoy's prolonged impact on the Ottawa community, there is a high interest in the adjudication of the case on the merits such that this factor weighs heavily in favour of admission.
76. On balance, the Respondent respectfully submits that the admission of the evidence in question would not bring the administration of justice into disrepute.

5.0 Elements of Mischief

77. The trial judge found that the elements of mischief had been satisfied such that the Appellant ought to be found guilty.
78. The Appellant suggests that such a conclusion could not lie had the evidence been excluded pursuant to s.24(2). The trial judge specifically found that the evidence established a mischief on February 19:

At the time of his arrest, Mr. Evely was running towards the barricade to rejoin the protesters with whom he had been committing mischief earlier that day. This constitutes an act of assistance or encouragement of the other protesters at the scene, as strength in numbers can be found to be an important source of encouragement; see *Mammolita*. I find, on the evidence as a whole, I accept that I am satisfied beyond a reasonable doubt Mr. Evely is guilty of mischief and I find him guilty on that count.²³

5.1 Standard of Review

79. Whether there was sufficient evidence grounding the Appellant's conviction is ultimately a question of fact, reviewable for palpable and overriding error.

R. v. D'Onofrio, [2013 ONCA 145](#) at para 1

²³ Reasons for Judgment, Proceedings at Trial (September 17, 2024), p35, l18-28.

80. Put differently, it is not sufficient that this Court would have made different findings or drawn different inferences from the facts. Court of appeal should not substitute their own view of the evidence for the findings of fact made by the trial judge.

R. v. Morin, [\[1992\] 3 SCR 286](#) at p 297.

HL v. Canada (Attorney General), [2005 SCC 25](#) at para 74

81. It is accepted, however, that the determination of whether the facts and inferences as found by the trial judge amount to the essential elements of the offence is a question reviewable for correctness.

5.2 Legal Principles – Mischief and Party Liability

82. In the case of multiple accused persons, courts should consider whether the individuals are co-principals or parties under s. 21(1) or s. 21(2). With respect to s. 21(1), a person may be a party to an offence and liable as either principal or aider or abettor. To incur liability as an aider or abettor, there must be: i) an act or omission of assistance or encouragement; ii) which must take place with the knowledge that the crime will be or is being committed; and iii) it must be done for the purpose of assisting or encouraging the perpetrator in the commission of the crime. The act may be mere presence at the scene of the crime, provided the aider or abettor is there for that purpose. The strength of numbers may be an important source of encouragement sufficient to support a finding of liability flowing from s. 21(1).

R. v. Mammolita (1983), [9 C.C.C. \(3d\) 85](#) (Ont. C.A.), 1983 CarswellOnt 1235 at para. 17.

83. Many cases that have considered the offence of mischief in the context of protests, picketing and blockades have emphasized that context is key and may transform a person's "mere" presence into participation in a criminal endeavour.

See: *R. v. Mammolita* (1983), [9 C.C.C. \(3d\) 85](#) (Ont. C.A.);

R. v. Tysick, [2011 ONSC 2192](#);

R. v. Pascal, [2002 CarswellBC 3838](#) (P.C.) [WL];

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

R. v. Romlewski, [2023 ONSC 5571](#);

R. v. Blackman, [2024 ONSC 3595](#).

1.3 Application

84. The same principles apply in this case. The principles of party liability were squarely before the trial judge and in fact referred to in her decision. The Appellant's contention that the reference to "on the evidence as a whole" signifies that the trial judge imported the evidence from February 18, 2022, into her finding that mischief was also committed on February 19, 2022, invites speculation.
85. There is no requirement that a person engage in multiple acts for mischief to be made out. The trial judge found that the conduct of Mr Evely on February 19th, amounted to an act of assistance or encouragement of the other protesters at the scene. Applying *Mammolita*, she found this act was sufficient to constitute a source of encouragement that established the offence of mischief.
86. This conduct must be understood in the context of the broader circumstances associated with the Freedom Convoy on that day. As instructed in *Remley*, *Romlewski*, and *Blackman*, the court ought to take a broad view of the context in order to assess the conduct on the day in question.
87. The inferences drawn by the trial judge were available to her on the record, including as it relates to February 19, 2022. This ground of appeal amounts to an attack on the findings of fact made by the trial judge, which findings ought to receive this Honourable Court's deference.

Part IV: ORDER REQUESTED

88. The Respondent asks this Honourable Court to dismiss the Appeal.

Part V: TIME ESTIMATES

89. The Respondent estimates that 3 hours will suffice for the hearing of this Appeal.

All of which is respectfully submitted,

Emma Loignon-Giroux
Assistant Crown Attorney

Ottawa Crown Attorney's Office

[REDACTED]
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[REDACTED]
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SCHEDULE B – RELEVANT LEGISLATIVE PROVISIONS

Emergencies Act, R.S.C. (1985), c. 22 (4th Suppl).

Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9.

Highway Traffic Act, R.S.O. 1990, c. H.8.

Information No. 0411-998-22-8184-00

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

JEFFREY LLOYD EVELY

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

BEFORE THE HONOURABLE JUSTICE L. MILES

On August 26, 2024, at OTTAWA, Ontario

APPEARANCES:

J. Wright

Counsel for the Crown

C. Fleury

Counsel for Jeffrey Lloyd Evely

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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

Transcript Ordered: December 2, 2024
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THE COURT: Mr. Wright, you have the trial matter?

J. WRIGHT: I do, Your Honour. The defence counsel is Mr. Fleury on that case.

THE COURT: Fleury, okay.

J. WRIGHT: We had stood the matter down in number nine court and agreed to come back at 12:20, so I've tried to reach Mr. Fleury. I've not received a response yet.

THE COURT: Okay.

J. WRIGHT: But --

THE COURT: You emailed him?

J. WRIGHT: I did, yes.

THE COURT: Okay. Do we have a phone number?

J. WRIGHT: I can look. I may have a phone number.

THE COURT: Yeah. 12:20, okay.

J. WRIGHT: Thank you.

THE COURT: If it doesn't start until then, are you still feeling like there's enough time to get it done?

J. WRIGHT: I think so.

THE COURT: Okay.

J. WRIGHT: Sorry, could I ask Your Honour, is Your Honour here and available tomorrow?

THE COURT: Yeah. We had a couple of two-day matters that have now -- well, are not going ahead, so I was set to go ahead for today and tomorrow on something, anything.

J. WRIGHT: Thank you.

ANOTHER MATTER SPOKEN TO.....

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THE COURT: Any luck, Mr. Wright?

J. WRIGHT: Yes. I managed to get ahold of Mr. Fleury. He was between 20 and 30 minutes away. That was as of maybe ten minutes ago.

THE COURT: So, it's going to be noon, probably, before we start?

J. WRIGHT: I think that's realistic. Yeah, I imagine Your Honour didn't receive *Charter* materials?

THE COURT: I did not.

J. WRIGHT: Is it possible to email those or would hard copies be preferable?

THE COURT: Email is fine.

J. WRIGHT: Thank you.

RECESS.....

UPON RESUMING.....

C. FLEURY: Good morning, Your Honour.

THE COURT: Good morning.

C. FLEURY: It's Chris Fleury, F-L-E-U-R-Y, for the record, counsel for Mr. Evely, who's before the court.

THE COURT: Good morning. Good morning, sir, or afternoon, sorry.

Okay. Mr. Fleury, before you arrived, I was made aware of some *Charter* materials which have been shared with me through the clerk. It was transferred here so I had not seen any of those materials, so being up front about that. I did try to read what I could in the time while we were waiting for you to make your way back, and I was told that you were told to come back later so

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I understand why you weren't here. And so, I have some of the materials. It looks as if -- the only thing I had a question about is, Mr. Wright, a Book of Authorities. I didn't see a Book of Authorities from the Crown. Is there supposed to be one and I don't have it, or it hasn't been filed?

J. WRIGHT: No, it hasn't been filed. Generally, my materials were hyperlinked, but I can --

THE COURT: Oh, okay. You know what, I'll check that. I didn't look for that. Okay.

C. FLEURY: Your Honour, from the defence perspective, I was cc'd on Mr. Wright's email. There is a Form 1 --

THE COURT: Yeah.

C. FLEURY: -- notice. There is a notice of constitutional question, --

THE COURT: Yeah.

C. FLEURY: -- which is separate from that, and then there is a Book of Authorities in three volumes.

THE COURT: Yeah.

C. FLEURY: It looks like there's one volume that's missing. The volume that's missing is a single case. It's the *RJR-MacDonald* case from there Supreme Court of Canada, which is really just being relied on for the purposes of the s. 1 analysis, but I can forward that case as well. And again, everything is hyperlinked with the exception of, I think there's one or two cases for which I couldn't find. The case is not on CanLII, but our materials do include hyperlinks

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as well.

THE COURT: Okay. So, I have volume one of three, volume two of three, and volume three of three.

5 C. FLEURY: Oh, they're all there. Okay, excellent.

THE COURT: Yeah. You're saying volume three is just that one decision.

10 C. FLEURY: No. Volume two is just that one decision.

15 THE COURT: Volume two, okay. Again, obviously, I haven't had an opportunity to read any cases, so I just want to make sure everyone is aware of the limitations in terms of what I've been able to read. I have taken a look at the notice of constitutional question, the Form 1. I have not finished reading the Crown's response, but will do so, but I'm ready to get started.

20 J. WRIGHT: So, I'd just indicated to Madam Clerk before we began, Your Honour, that the Crown won't be proceeding on count one. That's an allegation involving 431(d) of the *Criminal Code*. The Crown's proceeding on the other two counts. So, count one could be marked withdrawn at the request of the Crown, please.

25 THE COURT: Okay, thank you.

THE CLERK OF THE COURT: Your Honour, proceed with arraignment?

THE COURT: Are you ready for arraignment?

30 C. FLEURY: Yes, please.

THE CLERK OF THE COURT: Please remain standing.

This is Information number 22-A8184.

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Jeffrey Lloyd Evely, E-V-E-L-Y, you are charged with, on or about the 19th day of February in the year 2022, in the city of Ottawa, in the East Region, did wilfully obstruct, interrupt, or interfere with the lawful use of [sic], enjoyment or operation of property, contrary to s. 430(1)(c) of the *Criminal Code of Canada*.

And further, that on or about the 19th day of February in the year 2022, at the city of Ottawa, in the East Region, did wilfully obstruct Constable W. Walker, a peace officer, in the execution of his duty, contrary to s. 129(a) of the *Criminal Code of Canada*.

On May 25th, 2022, the Crown elects to proceed summarily. How do you wish to plead, guilty or not guilty?

J. EVELY: Not guilty, Your Honour.

THE CLERK OF THE COURT: Thank you.

J. WRIGHT: Thank you, Your Honour. To provide just a brief outline, we've come to an Agreed Statement of Facts which I'll pass up in a moment. The nature of the allegations involve the February 2022 Freedom Convoy and the charges arise out of that event. I'll just hand up the Agreed Statement of Facts at this point.

The Agreed Statement of Facts deal largely with the background of what the Freedom Convoy entails. There's three Crown witnesses who will be addressing the events leading up to Mr. Evely's arrest specifically, and the evidence for the Crown, in addition to that, would consist of a series of videos. There are six videos, four

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of which originate from Mr. Evelyn's social media, one is an open-source video from February 18th, and one is drone footage from the Ottawa Police from February 18th. So, that will be the evidence for the Crown.

The first officer who I intend to call would be Constable Meuleman. That's spelled M-E-U-L-E-M-A-N, first name Chris.

THE COURT: Let me just take a look at the Agreed Statement of Facts.

J. WRIGHT: Thank you.

THE COURT: Do you want an order excluding witnesses?

J. WRIGHT: Yes, please.

THE COURT: So, I'll make an order that all potential witnesses in this matter, either for the Crown or the defence, are directed to leave the courtroom at this time and remain outside until they are called to testify. Witnesses must not speak or communicate in any way, including electronically, about their evidence with any other witness directly or indirectly until the trial is completed. And counsel, I'll ask you to notify any potential witnesses of this order that are not in the court. Thank you.

Mr. Wright, I don't know if that's -- that doesn't look like it's part of your Agreed Statement of Fact, am I right?

J. WRIGHT: Sorry, Your Honour. That was, I guess, on the printer after my document.

THE COURT: No worries.

J. WRIGHT: Thank you. I'm not sure what that

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C. Meuleman - in-Ch.

is.

THE COURT: Can I just confirm that the Agreed Statement of Fact ends with an entry, "February 18th, 2022, police operations were underway to clear the downtown core," is that the last?

J. WRIGHT: That's right, yes.

THE COURT: That's good? Okay. And do you wish this to be an exhibit?

J. WRIGHT: Yes, please.

THE COURT: Is that on consent?

C. FLEURY: Yes.

THE COURT: That will be Exhibit One on the trial.

EXHIBIT NUMBER ONE - Agreed Statement of Facts
-produced and marked

J. WRIGHT: Thank you. Could Mr. or Constable Meuleman be paged, please.

THE CLERK OF THE COURT: Meuleman.

J. WRIGHT: Meuleman, if I'm pronouncing that correctly.

...CONSTABLE MEULEMAN PAGED INTO COURT

J. WRIGHT: And he'll just be on the right?

THE CLERK OF THE COURT: Yes.

J. WRIGHT: Thank you.

CHRISTOPHER MEULEMAN: SWORN

EXAMINATION IN-CHIEF BY J. WRIGHT:

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C. Meuleman - in-Ch.

Q. Good afternoon, Constable Meuleman. I'll just ask, first of all, do you have any materials with you today?

A. Yes, I do, my memo book and a copy of the email recap that I send after the incident.

Q. Okay. And who created those items?

A. I did.

Q. When were they created?

A. My notes were made at the time and just after, and the email was the next day.

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

A. I do.

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

A. Yes, just to refresh my memory for certain details.

J. WRIGHT: Okay. Your Honour, I'd make that request as needed.

THE COURT: Any changes, additions, deletions, to anything since you created it?

THE WITNESS: No.

THE COURT: Thank you. Mr. Fleury?

C. FLEURY: No issue, Your Honour. I'd just ask that the witness be clear when he is referring to his notes.

THE WITNESS: Okay.

THE COURT: So, you have permission to do so. Just let us know when you're referring to anything. Thank you.

J. WRIGHT: Q. Constable Meuleman, I understand you're employed with York Regional Police Service, is that

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C. Meuleman - in-Ch.

correct?

A. That's correct.

Q. And you were likewise employed at the time, February 19th, 2022?

A. That's correct.

Q. And can you indicate how long you've been with that police service for?

A. I've been with York Regional Police since 2019, August 2019.

Q. Okay. And in 2022, what was your assignment, what was your role within the police service?

A. As a uniform officer assigned to, they call it the community [indiscernible] response unit, and we were requested to assist up here in Ottawa.

Q. Okay. And can I ask when you would have first come to Ottawa?

A. We arrived in Ottawa the day before this incident, I believe on February 18th.

Q. Okay. And on February 19th, was that your first day that you were working, so to speak?

A. In Ottawa, yes.

Q. Okay. And what, in general, did your role entail when you came to Ottawa?

A. It did keep changing, but originally, from our briefing, we were assigned as a quick response team to be mobile throughout the area responding to incidents where we were directed or required to be.

Q. And can you just indicate to the court what a quick response team is?

A. Just coming from command, a decision of, at the lead of commanders that were monitoring the crowds or monitoring the incident, wherever they needed us to be, so we

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C. Meuleman - in-Ch.

were just rapid deployment to be where they wanted us to go.

Q. Thank you.

J. WRIGHT: And, sorry, Your Honour, I should just indicate, Constable Lorrette (ph) is just in the courtroom behind me. He's not anticipated to be a witness. I should just clear that with the court though.

THE COURT: As an exception to the exclusion?

J. WRIGHT: Yes, I'd ask for that.

THE COURT: Okay.

J. WRIGHT: Again, I don't anticipate he'll be called as a witness, but just out of abundance of caution.

THE COURT: Any issue?

C. FLEURY: No, given that we don't anticipate he's going to be a witness.

THE COURT: If that changes, just flag it and we'll ask him to step out. Constable Lorrette, is that --

CST. LORET: Yes, Your Honour.

THE COURT: -- the name? All right. Thank you. Go ahead.

J. WRIGHT: Q. Sorry, Constable Meuleman.

Again, returning to February 19th, what time of day did your assignment start?

A. I will check my notes just to get the time correct. We were briefed around 4 p.m., 16:00 hours, on the 18th.

Q. Okay. And on the 19th, when did your shift begin or did it continue?

A. Continuation into the overnight, and actually, I'll stand corrected, we came in on the evening of

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C. Meuleman - in-Ch.

the 17th. My apologies for, as I look at the date of starting this shift, we came in the prior day, so we would have left York Region on 17th.

Q. Understood. So, you would have arrived in
5 Ottawa on the 17th?

A. Correct.

Q. Not been involved in police operations on that day. Would you have been involved in police operations on the 18th?

10 A. We were -- the 18th is when my shift started at 16:00 hours.

Q. Okay. So, four in the afternoon on --

A. Going --

Q. -- 18th?

15 A. -- into the evening.

Q. Okay. And, generally, where were you assigned to?

A. We were assigned a liaison officer, and we were just patrolling through areas of the city. I'm not
20 entirely familiar with the city of Ottawa, but we followed that officer's lead.

Q. Okay. And, ultimately, were you involved in an arrest concerning this case?

A. Yes.

25 Q. Okay. When did that take place?

A. Just looking at my notes, I know it was the early morning hours of the 19th, started at around 4:25 in the morning.

Q. And around that time, can you describe the
30 situation broadly? Again, I know you're not familiar with the area necessarily, but indicate roughly where physically you would have been?

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C. Meuleman - in-Ch.

5 A. So, before this incident, we were, like I said, we were mobile, but then around 11 o'clock, we were tasked to take up station in static point in front of the Chateau Laurier around 11 p.m. on the 18th. There was eight to ten officers, all from York Region, and our Ottawa liaison officer, and we relieved another [indiscernible] unit that was on the line, and we were -- we took over there as a line. So, there's a fencing and barricade in front of us. We had our police cars lined up behind that and we were just monitoring the crowd on the other side.

Q. Okay. And when you describe a line, in this context, what does that mean?

15 A. The public order line that we relieved. They were holding a line I think it was out of Vancouver, but I might be mistaken, and they were holding a line, and we relieved them. They all left and it was the ten of us and our police cars that maintained observations of that fence line.

Q. Okay. And, again, when you describe a line, is that a line of police officers or a fence or both?

20 A. There was both. There was a fence line, like some fencing and barricades in front of us, and then we were behind it.

Q. Okay. And can you describe the police presence? I know you've indicated there were some other forces involved.

25 A. Yeah. I believe it was Vancouver's public order that we relieved. There was our Ottawa liaison, and other York Region officers part of our team that were on this point. Throughout the course of the night, I saw other police services, RCMP and various other police services coming and going in the area, but for our detail, it was all York Region officers.

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C. Meuleman - in-Ch.

Q. Okay. And again, in terms of the civilian or pedestrian presence in the area, can you describe that?

A. Oh, it was pretty light. Like I said, overnight, it's pretty -- it was very cold that day. I
5 remember it feeling like minus 30 and windy, plus snow on the ground. So, on the opposite side of the barricades and fence line, the crowd side would change. When we got there, there was maybe a hundred people and it would ebb and flow. It
10 would drop down to 50, maybe a couple hundred, but it would -- it would change throughout the night, and as the night went on and got colder, it would diminish a little bit and more often. More people'd show up and come and go as they were on the other side of the fence line barricade.

Q. Okay. And what were they doing, if you're
15 able to say?

A. A lot of them were just hanging out. Some of them were trying to taunt us and goad us into engaging with them. Myself and my fellow officers would just sort of ignore them. Some of them were -- I remember there was one
20 gentleman, not the person -- not today's gentleman, but another gentleman was banging on a drum for a while. We were -- you know, I remember commenting and thinking to myself how impressed when he kept banging his drum for hours on end and never stopped. There appeared to be some people drinking,
25 just came around with the odd comment towards police on the other side of the line.

Q. Okay. And to be clear, again, you were separated from them by a fence as well?

A. Yeah, there's some temporary fencing.

Q. Okay. Could you describe the fencing?

A. Actually, there's movable temporary fencing.
It was about waist high. I can't remember exactly what it

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C. Meuleman - in-Ch.

looked like, but there was temporary barricades in front of us. You could see over it.

Q. Okay. And, ultimately, were you involved in the arrest of anyone?

A. Yes.

Q. How did that come about?

A. At about 4:25 in the morning, myself and my partner that I was with, Officer Purton, I think it's the south side of the road, Wellington in front of the Chateau, where on that side we could hear someone yelling, looked like coming from around the Chateau, and we saw a -- I could see an Ottawa police vehicle following someone, an officer get out of that vehicle, and was in foot pursuit with a gentleman telling him to stop, and myself and Officer Purton intercepted that gentleman that was being chased by the officer and brought that foot pursuit into a stop. He was coming up from -- the way he was running, going around the Chateau and he was angling around the corner, he'd be coming up kind of behind the other officers and police vehicles holding the line, so he was behind the line and coming up behind us.

THE COURT: Just give me one sec. Thank you.

J. WRIGHT: Q. The officer you mentioned who comes out of the vehicle, was that officer ever identified to you?

A. Yes. I believe it was -- in my notes, I have Officer Walker, 2342.

Q. And, again, just to paint the picture, can you describe the area that this individual would have been in? And I understand it's behind the police line. What's going on in that area?

A. So, the way I would describe it, like that's sort of like the secured area. We're holding a line and this

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C. Meuleman - in-Ch.

area's now behind us, so there's other streets and the rest of Ottawa is open to freely move around on that side, however, the convoy and other areas being held on the other side of the fence line. So, the way we had our officers and our police cars were towards the fence line and monitoring the crowd on the other side, and the way Mr. Evelyn was running was coming up from -- coming up behind those officers and seemed to be like charging towards the back side of those other officers. And because he's coming behind, it didn't look like anybody else had seen him coming. I didn't know what his intentions were, so that's why I made the decision, and Officer Purton and I made the decision to intercept because we didn't know what, why he was coming up from behind us like this and running.

Q. Okay. And on that point, what concerns, if any, did you have about the situation?

A. My concerns for my fellow officers who might be caught by surprise by this gentleman running up behind them. I did not know what his intentions would be. He was not just walking up and then talking to officers. He was in a full run. I did hear him yell, "I want to go to the War Memorial." I'm not sure whether -- I did learn the fact that there's -- that's just in front of us as well. However, just by the fact that he was running at full tilt, it did not make any sense to me why he'd be running this way coming up from behind officers and in an area that behind us I believe was secure and there shouldn't be people from the protest or otherwise coming up behind us in this case.

Q. And he was yelling. Are you able to indicate when that would have been during the course of this interaction?

A. I believe, from what I remember, he was

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C. Meuleman - in-Ch.

yelling it as he was running, and he said it again after we arrested him.

Q. And if you're able to describe, how far would you have been from this individual when you first take note of him?

A. I believe the Chateau's on the north side. We were on the -- and the roadway that's in front of me, Wellington there, I was on the south side of that roadway.

Q. Are you able to provide a distance?

A. If I remember, I think Wellington's three or four lanes across, so about 25 metres.

Q. Can you describe the individual, please?

A. Yeah, I remember he was male. He had a red hat on and a black jacket. I believe he had blue jeans on.

He was male white about 40, 45 years old.

Q. Would you recognize him if you saw him again?

A. I've recognized him from seeing him outside the courtroom and in the courtroom today.

Q. Can you indicate who the individual is who you recognize?

A. The gentleman sitting beside defence counsel at the desk.

THE COURT: Identifying the accused, for the record.

J. WRIGHT: Thank you.

THE COURT: Is ID admitted?

C. FLEURY: It is admitted that the person arrested was Jeffrey Evely. We are going to watch some videos later. It's my understanding then the person who is in those videos is not admitted to be Mr. Evely.

J. WRIGHT: Q. Constable Meuleman, when you and

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C. Meuleman - in-Ch.

your partner made the decision to intervene, what did you do?

A. We ran north across the road, got in front of him. He didn't stop when we said, asked him, told him to stop, and we put our hands on him, and essentially, tackled him to the ground.

Q. You indicated you asked him to stop?

A. Yes.

Q. And do you recall if you specifically did that or Constable Purton?

A. I remember saying "Stop".

Q. How far was the individual when you had said "Stop"?

A. I remember he came around the corner and we were in front of him five, ten metres.

Q. And, again, can you describe what reaction this individual would have had to that direction?

A. He didn't stop at all. He continued to run. He didn't slow down. He continued to run straight at us.

Q. And if you're able to, can you describe how the individual was essentially tackled?

A. I remember I grabbed him. I lunged at him. I more or less bear hugged him, put my arms around his upper body, and brought him towards the ground.

Q. Do you recall where you would have been physically when you bring this individual to the ground?

A. Like in relation -- what do you mean?

Q. In relation to, I suppose, the police line?

A. We were still behind it. I know we were approaching the cor -- sorry, I can't remember what the street is beside the Chateau. It would be in the north -- in the southeast corner of the Chateau, so it's the -- the next intersection behind us, but right around that corner as he

20.

C. Meuleman - in-Ch.

rounded that corner slightly.

THE COURT: Sorry, can I just understand. He's coming from the intersection, the street you're not sure of?

THE WITNESS: Yes, so --

THE COURT: And then onto --

THE WITNESS: -- would have been running --

THE COURT: -- Wellington?

THE WITNESS: Yes. He was running south and then

--

THE COURT: Okay.

THE WITNESS: -- made the bend around in front of the Chateau --

THE COURT: Thank you.

THE WITNESS: -- onto Wellington.

J. WRIGHT: Q. Upon being tackled, was there any further issue or incident?

A. Well, he was pretty verbally aggressive with us, saying he wanted to go to the War Memorial. We picked him up. We handcuffed him. I searched his [indiscernible] side. We located some ID as Mr. Evelyn and he was turned over to the Ottawa police officer that was on scene as well.

Q. I take it there was no further physical issues with respect to this individual?

A. No.

Q. Can you describe the weather on that day?

A. Really cold. Yeah, a lot of snow on the ground, a little bit slippery when you add some of the snow, and very cold.

Q. And it may be clear from your description already, but can you describe vehicular traffic in the area?

A. Well, Wellington Road was closed. There was

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C. Meuleman - in-Ch.

no vehicles moving on Wellington at that point. The name of the street is escaping me, but the street that runs north-south beside the Chateau, there was light vehicle travel on that roadway that was open.

5 THE COURT: Can we understand that to be Sussex, do I have that right?

J. WRIGHT: I believe so. I'll just --

THE COURT: Is there any issue?

J. WRIGHT: Perhaps now would be a good time.

10 I'll just -- if I may present a map to this witness?

THE COURT: Yeah.

J. WRIGHT: Q. This here is two maps. I don't know how this is going to go with your geography, but we have one street here. This will be -- that will be Sussex here. This is Rideau across. I'll just put that aside for a second.

A. Okay.

20 Q. So, again, the map that's more zoomed in that I provided you, --

A. Yeah.

Q. -- going by normal orientation, the street that goes north-south -- well, there's two streets that go north-south.

25 A. Okay.

Q. The further east or to the right, that's Sussex?

A. Okay.

30 Q. The street beside that, just one second, I believe is Mackenzie. Sorry, just one second.

So, the two streets that go north to south approximately, the further right being Sussex, then Mackenzie Street, --

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C. Meuleman - in-Ch.

A. Okay.

Q. -- and the street that goes left to right or east to west is Rideau Street?

A. Okay.

Q. Now, again, with the smaller map, or more zoomed-in map, are you able to indicate where the interaction would have taken place?

A. The more zoomed-in one?

Q. Yes.

A. Right on the corner. So, the Chateau is here, I believe, and the line was over here, so he came around this Mackenzie Road, around the Chateau.

J. WRIGHT: Sorry, Madam Clerk, can we borrow a pen by any chance?

THE CLERK OF THE COURT: Do you want like a red one?

THE WITNESS: I have one in my pocket.

J. WRIGHT: Thank you.

Q. Yeah, if you don't mind, could you just put an X where you first observed the individual, if you're able to?

A. Yeah. I believe he hugged right around the Chateau, that first street. So, I was on the - it doesn't show it - on the south side of, across from the Chateau on the south side.

Q. Okay. So, in terms of where the individual was when you first observed him, are you able to indicate on that map - if you're not that's okay - but if you're able to indicate on that map where you first observed him, could you put an X there?

A. Sorry, I know it seems silly, just with the close proximity and then I know I was on the south side, I

23.

C. Meuleman - in-Ch.

believe that the first street between Mackenzie, I remember he came around the corner right hugging the Chateau.

Q. Okay.

THE COURT: Does the other map assist because you can actually see [indiscernible]?

THE WITNESS: Yeah, so I can see where the Fairmont Chateau's over here, I can see --

THE COURT: Yeah.

THE WITNESS: -- Mackenzie --

THE COURT: Yeah.

THE WITNESS: -- and then I know there's a parliamentary building on the south side there. So, and then where the line was, like it was right in front of the, going across right in front of the Fairmont Chateau. So, it was just, I don't remember going very far, just a bit of a diagonal across the road from the south side to the north, and from what I recall, it's the first corner.

Q. Okay. So, I'll just step over there if I may.

A. So, I know the line was in front of the Chateau. It was maybe a little bit to the west of the Chateau, but essentially, in front of the Chateau, and then, this first corner, I don't remember going that far. It was a quick line at an angle across the road.

Q. Okay. So, sorry, you've got two Xs on this

--

A. Yeah, to indicate where --

Q. -- [indiscernible] map here?

A. -- I was.

Q. Okay.

A. So, when I first could hear, made my observation, I was on the south side of -- you said this was

24.

C. Meuleman - in-Ch.

Rideau?

C. FLEURY: Am I able to see this as well?

J. WRIGHT: Yeah.

THE COURT: Absolutely.

5 THE WITNESS: So, I know the Chateau is here, and then the line was in front of the Chateau, the barricades, the temporary barricades and some of our police cars. I was standing over here, and then I remember we took an angle across, and from what I recall, he took the first street
10 coming around the corner and beside the Chateau.

J. WRIGHT: Q. Okay. And I know you put an X There. Can you just put an M just to indicate that's where you would have been?

A. Right up here.

15 Q. So, you've got --

A. [indiscernible]

Q. Sure. The triple or quadruple line is where the police line is?

A. Yes, the temporary barricades.

20 Q. And can you indicate where you would have come in physical contact with the subject.

A. Right around the corner.

Q. Okay. Can you put an A there for arrest?

A. Sure.

25 Q. Thank you. Okay. And so, the distance between where you would have first observed him and you would have arrested him would be approximately how far?

A. I think that's three or four lanes, I don't know, 20 metres going across the road.

30 Q. Okay. So, so I just want to make sure I understand clearly though, the distance the subject traveled would only be between the X that says subject and the X that

25.

C. Meuleman - in-Ch.

says accused?

A. Yeah, we could see him. Like I could -- we could see and hear something around the corner.

Q. Um-hm.

A. So, we see him running, he comes around the corner, we start making our way that way, and just after the corner is when we engage with him.

Q. Okay. So, the distance he would have traveled before being arrested, just to be clear, is the distance you could see him around the corner to that X that says accused?

A. Yeah. So, he was coming this way.

Q. Okay. Are you able to approximate that distance?

A. From when I first observed him to when we engaged with him, I couldn't say.

Q. Okay. Thank you.

THE COURT: I just want to be clear, you could see him running before he actually turned the corner?

THE WITNESS: Yes.

THE COURT: Yeah. Thank you.

THE WITNESS: Yeah, because we were on the south side of the street so I can --

THE COURT: Yeah, you had a view down the, --

THE WITNESS: Yeah, --

THE COURT: -- down Mackenzie?

THE WITNESS: -- a little bit, yeah.

THE COURT: Thank you.

J. WRIGHT: Your Honour, could I ask the marked map be marked Exhibit Two, please?

THE COURT: Any issue?

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C. Meuleman - in-Ch.

C. FLEURY: It's actually my map, Your Honour. I was planning on using it for cross, but --

THE COURT: Do you have other copies or --

C. FLEURY: I do, yes.

THE COURT: Okay. Any issue with making that an exhibit?

C. FLEURY: No.

THE COURT: Okay. Exhibit Two, should we call that zoomed-in map of area?

J. WRIGHT: Yes, please.

THE CLERK OF THE COURT: Just to clarify, this exhibit is entered by the Crown?

J. WRIGHT: Yes, please.

THE COURT: Thank you. Provided by defence and entered by the Crown. Thank you.

EXHIBIT NUMBER TWO - Zoomed-In Map
-produced and marked

J. WRIGHT: Q. Up until the point of arrest, did you make any further observations other than of the individuals on the other side of the line in terms of what was going on beyond the police line as it were?

A. Earlier in the day, we'd actually driven through some of that area. There was -- I remember walking -- when we were, not walking. Sorry, we drove through it. It felt like a movie set. It was very surreal. I remember we had, it's like the road was wide, but there's vehicles parked everywhere, stopped, shel -- like impromptu shelters put up, and we had to sort of snake our way through and back and forth across the road. There's like a single lane getting through all this area, and it seemed to go for numerous blocks.

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C. Meuleman - in-Ch.

Obviously, you could only go slow, but it felt like it was something surreal and out of a movie, trying to make it look like a war zone or something like that because there's vehicles and garbage and barricades and just things everywhere, all over the roadway.

J. WRIGHT: Okay. If I could have just one moment.

THE COURT: Sorry, vehicles, garbage, and?

THE WITNESS: Barricades.

J. WRIGHT: Thank you, Constable Meuleman. Those are all my questions. Mr. Fleury may have some questions, and Her Honour may or may not have questions.

THE COURT: I'm looking at the time, Mr. Fleury, do you want to -- should we take the lunch break and then start cross or do you want to get started and --

C. FLEURY: I think --

THE COURT: I know we started really late, but the staff has been here, so.

C. FLEURY: Absolutely, yeah. No, I think it makes sense to --

THE COURT: That all right?

C. FLEURY: -- break for lunch.

THE COURT: Okay. Is two o'clock okay?

THE CLERK OF THE COURT: Yeah, whatever --

THE COURT: Two o'clock?

C. FLEURY: Great.

THE COURT: Okay.

RECESS.....

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C. Meuleman - Cr-Ex.

UPON RESUMING.....

THE COURT: Good afternoon. All right, I'm ready.

5 CHRISTOPHER MEULEMAN: RESUMES STAND, PREVIOUSLY SWORN

CROSS-EXAMINATION BY C. FLEURY:

Q. Good afternoon, officer.

A. Hello.

10 Q. So, I want to, before we get into sort of the details of the occurrence that you've described, I just want to ask some questions about certain notetaking generally. You've received training on notetaking, I take it, in the course of your career of a police officer?

15 A. Yes.

Q. Okay. And you're trained to take notes contemporaneously, correct?

A. Correct.

20 Q. And you're trained to take notes that are say as thorough as reasonably possible in the circumstances?

A. Right.

Q. Okay. And the reason that you have to take contemporaneous and thorough notes is to assist you in order to testify, that's one of the reasons?

25 A. Correct.

Q. Because memory fades over time, generally speaking?

A. That's correct.

30 Q. Okay. And like in the, in this case in particular, we are talking about events that are approximately two and a half years in the past?

A. Okay. Year and a half, February 2022, so.

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C. Meuleman - Cr-Ex.

Q. Yeah. So, I'll tell you -- well, let me ask this first, at 4:25, 4:30 in the morning, that's the time period that we're talking the, I'll say the situation in downtown Ottawa was say less dynamic than it was say during the middle of the day the day before in the sense that there's less protesters and there's less conflict with police, would you agree with that?

A. Yes.

Q. Okay. And the reason I've asked that is that I've been involved in some other Freedom Convoy trials where police officers didn't have time to take notes given the dynamic of the situation, but I take it, in this case, you were able to take notes immediately afterwards?

A. Yes, shortly after, yes.

Q. Okay. And you weren't limited in your ability to take notes by the dynamic nature of the situation, you could write your notes in a fulsome way?

A. Yeah.

Q. So, I take it that, if there's something that's not included in your notes, then we're able to conclude that that wasn't important for the purposes of your investigation?

A. Well, my notes are there to refresh my memory. I do have a clear and independent recollection of that night too.

Q. Okay. So, your -- prior to this occurrence that we're talking about, early morning hours of February 19th, you've never interacted with Mr. Evelyn to the best of your knowledge?

A. I don't think so.

Q. Okay. And prior to -- so, I understand you came to Ottawa on February 17th. Between about January 28th

30.

C. Meuleman - Cr-Ex.

when the Freedom Convoy arrived in Ottawa and February 17th when you arrived, I take it you have no firsthand knowledge of what was happening in Ottawa during that time?

5 A. No, just media reports and information that way.

Q. So, you weren't there?

A. No.

Q. Were you aware or did you see a number of veterans at the Freedom Convoy protests?

10 A. To my knowledge, I'm not sure which -- there's lots of different, various people there, so what their background was, I don't know.

Q. Okay. Did you see, for example, veterans with military regalia, medals, that sort of thing on their jackets?

A. I know Mr. Evelyn had some on his jacket when he was arrested, but before that I, not that I know of.

Q. Were you aware of veterans performing a sentry duty at the War Memorial in Ottawa during the Freedom Convoy protest?

A. I don't know anything about that.

Q. At the time of these events that we're talking about, had the War Memorial been, call it, taken back by police? Did police have authority over that area of the War Memorial, or did they -- was that still an area where protesters were?

A. To my recollection, I believe the War Memorial was still on the other side of the line. We hadn't gone past that yet.

30 Q. So, the purpose, I want to ask you a couple questions about the purpose of this police action that you're a part of. I take it that the purpose was to remove all

31.

C. Meuleman - Cr-Ex.

vehicles and protesters from downtown Ottawa?

A. I believe that was what was happening during the day, yes.

Q. Okay. Are you able to say or give an indication of how far -- actually, let me ask this first. February 18th was the first day that vehicles were, or that police were attempting to remove protesters and vehicles, correct?

A. I believe so, yes.

Q. Okay. So, are you able to say how much progress, for lack of a better word, was made during February 18th, how much of the city had --

A. I'm not sure.

Q. Okay. Do you know what the total target area that police were looking to say cordon off and remove protesters from? Do you know how large that area was?

A. No. I was not given that information.

Q. When did you leave downtown Ottawa?

A. On that shift or?

Q. Well, how long were you here as a part of the police effort to remove protesters?

A. So, we arrived the day before, and just thumbing through my notes real quick, sorry, I returned home on the 22nd.

Q. And was the downtown core of Ottawa, was that still subject to say police checkpoints and barricades at that time when you left?

A. I don't recall when we left. I think things were starting to be shrunk down, but I couldn't say to exactly what those checkpoints were at the time we left. I believe they were still in place, just to an extent.

Q. And when you say shrunk down, that accords

32.

C. Meuleman - Cr-Ex.

with my understanding that there's a larger area, eventually it shrinks down and it shrinks down --

A. Yes.

Q. -- over time? Okay. I'll find the map here.

5 So, I've got the -- I apologize, I don't know the exhibit number, if we're at -- if this is two, okay. I've got Exhibit Two, a copy of that in front of me. Do you have the map in front of you as well that --

A. Yeah.

10 Q. -- you're marking on?

A. From earlier, yes.

Q. Okay. So, above the word "subject", there's an X, which I understand that's where you first spotted Mr. Evely?

15 A. Yes. I believe it was around there.

Q. Okay. And there's an arrow pointing approximately southbound indicating that he was running, when you first observed him, he was running southbound on Mackenzie Avenue?

20 A. Yeah. He'd come around the corner.

Q. Okay. So, there is -- you mentioned also an officer getting out of a vehicle that was possibly in pursuit of Mr. Evely, as I understand it, and then an officer got out of the vehicle, is that right?

25 A. Yes.

Q. Okay. Where was the officer who got out of the vehicle?

A. Behind him.

30 Q. The vehicle was on Mackenzie Avenue? I'm just trying to understand.

A. I know there's a vehicle and an officer got out of the passenger door of that vehicle, and that officer

that got out of the passenger side was engaged in a foot -- like, running behind in a foot pursuit we would call it. I believe it was Mackenzie Avenue. I -- I just know there's an Ottawa police cruiser close by.

5 Q. Okay. So, my understanding from reading the notes of Constable Walker of the Ottawa Police Service is that Mr. Evelyn was running southbound on Sussex and not Mackenzie. Would you agree that you're possibly mistaken, that it was Sussex as opposed to Mackenzie?

10 A. If you -- look, I'm not totally familiar with the area of Ottawa. I know where I was in front of the Chateau, and I know -- I know those two streets. Mackenzie's quite small, so it could very well have been Sussex.

Q. Okay.

15 A. Knowing the streets is not -- I know I was on Wellington in front of the Chateau. I know exactly where I was, but the side streets I'm not too --

Q. Okay. So, it's possible that he was running southbound on Sussex, made a, for him, a right-hand turn west onto Rideau, you'd agree that that's possible?

A. Yes.

Q. Okay. So, this certainly sounds like a set of events that happened very quickly, would you agree with that?

25 A. Yes.

Q. You were talking about, in your direct examination, I think the furthest apart you were was something like 20 or 25 metres, and then you're working to -- you run towards each other closing the distance, correct?

30 A. No, I said I was on the south side of the street and the distance across the street that I ran is about three or four lanes, about 20 metres, and that's what I closed

34.

C. Meuleman - Cr-Ex.

in and met Evelyn there. That's how far I moved.

Q. So, it sounds like something like perhaps five seconds, ten seconds between when you see him and he's under arrest?

5 A. Yeah. It was -- it was pretty quickly. He closed the gap. We closed the gap. We're running towards each other, essentially.

Q. So, you mentioned an officer got out of a vehicle. In your direct examination, I believe you said that
10 was Constable Walker, correct?

A. Yes, I believe so.

Q. Okay. My understanding, from reading Constable Walker's notes, is that he was not, in fact, in a vehicle, that he was standing at the intersection. Do you
15 think it's possible that you're mistaken about which officer got out of the vehicle?

A. I know Officer Walker was there. I believe it was him that was chasing him and he helped us handcuff Mr. Evelyn when we arrested him.

20 Q. How many officers were there total when Mr. Evelyn was arrested?

A. At least three of us, but how many I don't recall.

Q. It's possible there was more than three?

25 A. I'm sure more officers came around.

Q. Okay. Was there -- you mentioned Constable Walker is chasing him. Was there another officer chasing Mr. Evelyn at all?

A. Not that I recall, but I can't remember.

30 Q. Do you agree with me that there's -- I'd say there's been a couple of details with regards to your testimony that you've potentially been mistaken on, would you

35.

C. Meuleman - Cr-Ex.

agree with that?

A. The street perhaps, yeah.

Q. Okay. And the date that you initially came, you revised that in your direct examination from February 18th I think initially to February 17th?

A. Yeah, my shift started on the 18th and I arrived the night before on the 17th.

Q. Okay. And likewise, you agree that you were potentially mistaken about which officer got out of the vehicle?

A. I know Officer Walker, I believe, was the one that was chasing him because he's the one that came up right after Officer Purton and I arrested Mr. Evely.

Q. So, when -- I want to ask you some questions about this, the manner in which Mr. Evely is taken down. It sounds like, first of all, you've agreed that that happened very quickly, within a matter of seconds?

A. Yes.

Q. Okay. He's running at, essentially, full speed towards you, is that right?

A. Yeah, he's running towards us.

Q. And you're running towards him?

A. Correct.

Q. You described, in your direct examination, I think the word was a bear hug was how --

A. Yeah, I remember. Yeah, I remember grabbing the top half of Mr. Evely.

Q. Okay. And you'd agree that that wasn't, that's not described in your report, this bear hug?

A. I know he's taken to the ground. I know what I did.

Q. Okay. He didn't suffer any injuries, I take

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C. Meuleman - Cr-Ex.

it?

A. Not that I recall.

Q. Okay. And likewise, you didn't suffer any injuries?

A. No.

Q. I want to put it to you that you're mistaken about this aspect of a bear hug and that Mr. Evelyn did come to the ground voluntarily in what was a very dynamic situation, but that, again, I'll put it to you directly, that Mr. Evelyn put his hands up in the air and went to the ground, do you have any recollection of that?

A. No.

Q. Would you agree that it's possible that that happened and that that's how he did go to the ground?

A. No. I remember grabbing him and taking him to the ground.

Q. So, Mr. Evelyn told you, you said in your direct examination, that he told you that he was a veteran, correct?

A. I can't remember if he said he was a veteran, but we could see the medals on -- he had some medals either on his vest or under his one jacket whether -- when we picked him up, he had some medals on him.

Q. And he said he was on his way to the War Memorial?

A. Yes.

Q. And you said, I think your words in direct examination were, to guard the War Memorial?

A. I just remember him saying, "I'm going to the War Memorial."

Q. Did he mention a sentry duty?

A. No.

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C. Meuleman - Cr-Ex.

Q. This -- I'm looking at Exhibit Two again and there's a line on the bottom left-hand corner that I think you've drawn extending across Sussex. Is that -- or sorry, Rideau, sorry -- is that where the line of police officers that you were describing, is that where that was?

A. No. I was indicating the curb line on the south side of Rideau and --

C. FLEURY: Sorry, if I could just show the witness?

THE COURT: Yeah.

A. Yeah, where I drew the X with the word "me".

Q. No, right --

A. Oh, --

Q. -- this way.

A. -- yes. It was around there. I know it was to the west.

THE COURT: The police barricade.

C. FLEURY: Q. That was the police barricade?

A. Yes.

THE COURT: The fencing that you described?

THE WITNESS: Yes.

THE COURT: Yeah.

C. FLEURY: Q. So, at the time that this happened at 4:25 in the morning, I take it things were -- things were pretty quiet? There weren't civilians -- first of all, there weren't any civilians behind the line there?

A. Not that I can recall, no.

Q. Okay.

THE COURT: Sorry, which --

Q. Behind that police line in the --

A. Right -- sorry, like do you mean --

Q. -- area that's controlled by police.

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C. Meuleman - Cr-Ex.

A. -- like, yeah, behind us?

Q. Yes.

A. There might be the odd person walking, but it was pretty quiet at four o'clock in the morning.

5 Q. So, my understanding is that, if a civilian lived or worked in the area, then they would be permitted in there to get to their home or to get to their place of work, correct?

A. Yes.

10 Q. But if someone did not live or work in the area, they couldn't provide proof of that, then they wouldn't be allowed --

A. Yes.

15 Q. -- inside that police area? Okay. I gather, from the arrest report I was provided and from your direct examination, Mr. Evelyn was cooperative after his arrest, would you agree with that?

20 A. Somewhat. He wasn't resistive or anything like that, but he wasn't happy to be arrested, and he was verbally just kind of obnoxious, like didn't agree with why we were there and why I arrested him, but other than that, he was somewhat cooperative.

Q. He was --

A. He didn't put up a fight or anything.

25 Q. Physically compliant with you?

A. Yeah.

C. FLEURY: Okay. Thank you. Those are my questions.

J. WRIGHT: I don't have anything.

30 THE COURT: Thank you. Thank you, Officer.

THE WITNESS: Thank you.

THE COURT: Can I see Exhibit Two.

39.

M. Purton - in-Ch.

THE CLERK OF THE COURT: [indiscernible] copy?

THE COURT: Yeah, on a break is fine. I just haven't seen it up close. If I could just have a moment, please. Thank you.

J. WRIGHT: Next witness is Matt Purton.

THE COURT: How do you spell the last name?

J. WRIGHT: P-U-R-T-O-N.

MATTHEW PURTON: SWORN

EXAMINATION IN-CHIEF BY J. WRIGHT:

Q. Constable Purton, can I just ask if you have any materials there with you?

A. I do.

Q. Can I ask what you have?

A. I have my notebook from the day, as well as a copy of a police report that I submitted.

Q. Okay. And with respect to those materials, who created them?

A. I did.

Q. When did you create them?

A. At the time of or shortly after the arrest and the incident I'd made my notes, and the police report I made subsequent when I returned to York Region.

Q. And since those respective times, did you make any alterations, deletions, additions?

A. I did not.

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

A. I do.

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

40.

M. Purton - in-Ch.

A. Yeah, for specifics like time.

J. WRIGHT: So, Your Honour, I'd make that request as needed.

THE COURT: Any issues, Mr. Fleury?

C. FLEURY: No. I'd just make the same request, that if the witness is referring to his materials, that he'd just make that clear on the record.

THE WITNESS: Certainly.

THE COURT: You have permission to refer to your notes --

THE WITNESS: Thank you.

THE COURT: -- and your report to refresh your memory, just let us know when you're doing so. Thanks.

J. WRIGHT: Q. Constable Purton, I understand, Ultimately, you would have been involved in the arrest of Mr. Evely?

A. I was.

Q. Can I ask, just leading up to that, how was it that -- well, sorry, if I can go back a bit, I understand you're employed with the York Regional Police Service?

A. I am.

Q. How long have you been working with that police service?

A. I came to York in 2018.

Q. And before that?

A. I worked in Alberta as a sworn peace officer as well.

Q. And how long there?

A. Since 2006.

Q. And, ultimately, I understand you would have

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M. Purton - in-Ch.

been in Ottawa on February 19th in response to the Freedom Convoy event?

A. That's correct. We came to Ottawa on February 17th, myself. This incident occurred on the
5 overnight between the 18th and 19th, early morning. Excuse me.

Q. Okay. And, again, getting back to this incident, what time would your shift have started?

A. So, I'll just check my notes. So, my shift
10 started at four o'clock on the 18th.

Q. Okay. And --

THE COURT: Four --

THE WITNESS: Four p.m., sorry.

THE COURT: Thank you.

15 C. FLEURY: Q. Are you able to indicate what physical area you would have been assigned to?

A. I was assigned to the downtown core as a quick reaction team. That's what, the title that we were given. My area was Mackenzie north of Wellington, Sussex
20 north of Rideau, Rideau near Williams/Colonel By, and south of Rideau is what we were told the area was.

Q. And what was your assignment as part of the quick reaction team? What did that team do?

A. So, our initial assignment was as a quick
25 reaction team and we were to maintain areas that were already cleared by the public order units. I was not acting as a public order unit capacity. At that time, I wasn't even a member of the public order unit.

Q. And can you just explain the difference for
30 us who aren't aware of the difference between public order and quick response?

A. Public order officers are trained to deal

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M. Purton - in-Ch.

with large crowds. They're the ones that you would usually see at the front of like a protest, basically, if you want to say face-to-face with protesters, whereas, myself as a uniform officer, I didn't have the equipment or the training to do that at that time.

Q. And, again, can you describe the area that you would have been assigned to in terms of police presence, civilian presence, et cetera?

A. Yeah. So, like I said, initially, I was assigned as a quick reaction team. When I came into the downtown core, we were assigned an Ottawa Police liaison with your group to bring us into downtown to show us where we were. We ended up in front of the Chateau Laurier just, it would be just west of Sussex, initially, just to see and get a lay of the land. While we were there, we were then reassigned a different role where we would be relieving Vancouver public order who were maintaining a barrier just on the west side of the Chateau Laurier.

Q. Okay. And can you describe what the barrier looked like?

A. Metal fencing about four and a half feet high, the type that's outside the courthouse that blocks the centre of the road. It's your steal rectangular fence with slats in the middle.

Q. Okay, got it. And were there civilians or pedestrians in the area?

A. There were on the west side of that fence.

Q. What were they doing, if anything?

A. Talking. People were yelling. People were mingling.

Q. And in terms of the area, was there any -- were there vehicles or vehicular traffic in the area?

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M. Purton - in-Ch.

A. Not other than our police vehicles, which were on the east side of the barricades near Sussex.

Q. Can you describe the weather on that day?

A. It was very cold and snowy.

5 Q. And leading up to the arrest, where would you have been physically located?

A. So, I was standing in front of the Senate Building, which is on the south side of Wellington across from Chateau Laurier. I was standing with PC Meuleman at the time.
10 We were speaking with a parliamentary security officer I believe they're called --

Q. Okay.

A. -- kind of taking a break from the front where we were initially standing.

15 Q. And just to be clear, what had you been doing at the front?

A. So, we relieved Vancouver public order who were standing at the fence line maintaining that line and stopping people from coming into or over the barricades. From
20 Sussex where Rideau meets I think -- sorry, I'm not sure of the street that's just east of Sussex, maybe one-ways, right where the Rideau Centre ends, from about that point to where we were standing on the west side of Chateau Laurier was a secured area for police.

25 Q. Okay. And can you tell us anything more about that in terms of the secured area, what does that look like?

A. So, we weren't allowing any vehicular traffic. There was really no vehicular traffic downtown
30 because of the convoy and the protesters in general, but we were not allowing any vehicular traffic through that area. We were allowing residents and people who worked downtown, we

44.

M. Purton - in-Ch.

would allow them through if they could provide identification stating that they needed to get from point A to point B, but we were informed that it was on a case-by-case basis.

Q. Okay. And, again, ultimately, you're
5 involved in the arrest of Mr. Evelyn, I take it?

A. I was.

Q. When did that individual first come to your attention?

A. So, while I was standing at the Senate, I
10 would have been standing facing kind of north, northeast back towards the Chateau Laurier. I initially heard somebody yelling to my east and on the north side of the road, and that drew my attention to Mr. Evelyn running on the north side of Wellington, running westbound. At that time, I also saw a
15 police officer, an Ottawa police officer in uniform, chasing Mr. Evelyn westbound.

Q. And just to be clear, was Mr. Evelyn on Wellington when you first observed him?

A. No. He was on the sidewalk on the north side
20 of Wellington.

Q. Understood.

A. Yeah. I believe Rideau Street changes at the end of the Rideau Centre, if I'm correct.

Q. Okay.

A. So, from there, it's Wellington westbound.
25 He would have been at the corner of Sussex and Wellington when I first saw him, that area.

Q. Okay. And you indicated he was running?

A. Yes.

Q. Did you make any other observations of him?
30

A. He was wearing a red hat.

Q. Anything else?

45.

M. Purton - in-Ch.

A. At that time, no.

Q. Okay. And you indicated you heard another or you heard someone else say something?

5 A. I heard somebody yelling "Stop" and that's when I, that's what drew my attention to that direction. The person was yelling "Stop" numerous times. Once I looked in that direction, I realized it was an Ottawa police officer.

Q. Okay. Did you see the -- you saw the officer who was actually yelling?

10 A. Yeah. The officer was running behind him.

Q. Okay. And was that officer ultimately identified to you?

A. It was.

Q. Who was that?

15 A. That was, I believe it's Constable Walker.

Q. Okay. And upon seeing that and hearing that, what did you do?

20 A. So, I ran across the street. Since I was on the south side, I ran to the north side in the direction of Mr. Evely. My concern was that he was running, one, from a police officer who was yelling "Stop," but two, he was also running towards the backs of all the officers that are facing the current protesters, so they would not see him coming. So, I ran across the street and intercepted him with PC Meuleman.

25 Q. And why was running towards the back of the police officers of concern to you?

30 A. I knew, at that point, towards the end of the protest, there was hostility towards the police. I didn't know Mr. Evely at all. Officer safety was a concern. There is numerous officers that are facing westbound and looking at the protesters and they would not have seen Mr. Evely coming from behind and I had no idea what his intentions were,

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M. Purton - in-Ch.

running towards and running from a police officer who's telling him to stop, and then running towards the backs of officers in a secured area.

Q. Did you have any interaction with Mr. Evelyn?

A. I did.

Q. Can you describe that, please?

A. So, I stepped in front of Mr. Evelyn as he was running and he tried to get around me. I grabbed Mr. Evelyn with PC Meuleman and we took him, in a controlled fashion, to the ground, face first. He was then, his arms were brought behind his back, and he was handcuffed by another officer.

Q. You indicated Mr. Evelyn tried to get around you?

A. Yes.

Q. How did he do that?

A. Just by a, like a side, a side step, not taking a wide run, just kind of like a, almost like a one-on-one football sidestep is the easiest way to describe it.

Q. Got it. And can you describe the manner in which Mr. Evelyn was taken to the ground?

A. I believe I was on his left side and PC Meuleman was on his right side and we basically spun him as we were going to the ground. So, he landed face first like on his chest down to the ground.

Q. Okay. Can you describe how hard he would have hit the ground?

A. Not -- not hard in a -- I mean, it was a controlled fashion. We were holding onto him on the way to the ground. I -- I don't think that it was very hard, but he did hit the ground.

Q. Okay. Prior to taking physical control of Mr. Evelyn, did you have any verbal communication with him?

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M. Purton - Cr-Ex.

A. I don't recall if I yelled stop or not.

Q. Okay. I take it you'd never met Mr. Evelyn before?

A. I had not.

Q. Can I have one moment. Following taking Mr. Evelyn to the ground, what occurred?

A. So, Mr. Evelyn was arrested by Constable Walker --

Q. Okay.

A. -- and handcuffed. We rolled Mr. Evelyn over to sit him up and that's when I noticed that he was wearing like a leather vest with his name, a military name tape on one side --

THE COURT: Military, sorry?

THE WITNESS: Name tape.

THE COURT: Okay.

THE WITNESS: Like his nametag.

THE COURT: Yeah.

THE WITNESS: As well as he had his medals displayed.

J. WRIGHT: Constable Purton, those are all my questions. Mr. Fleury may have some questions for you and Her Honour may have some questions.

THE WITNESS: Okay. Thank you.

CROSS-EXAMINATION BY C. FLEURY:

Q. Good afternoon, Constable Purton.

A. Good afternoon.

Q. So, I want to start just with some general questions about notetaking. You've received training on notetaking in the course of your career as a police officer,

--

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M. Purton - Cr-Ex.

A. I have.

Q. -- correct? Okay. And you're trained to take notes contemporaneously with events as they occur?

5 A. When, yeah, when you're able to take the notes, yes.

Q. Okay. And you're trained to be as thorough as reasonably possible when you take those notes?

A. Yeah. They're taken to, for finer points, to refresh your memory, yes.

10 Q. Okay. And in these events, they occurred approximately 4:25, 4:30 in the morning?

A. Correct.

15 Q. Okay. So, I take it that, my understanding is that the situation in downtown Ottawa at that time in the morning was much less dynamic than it was at other points, which gave you an opportunity to take notes immediately afterwards?

20 A. Yes. We were given -- there was a relief given. We weren't made to stand out in the cold for 12 hours. Like we were given breaks to go inside. So, we did have relief to be able to go take notes.

Q. Okay. And that, call it the dynamic nature of the situation involving the convoy, that didn't limit your ability to take notes, would you agree with that?

25 A. I -- yeah, I don't think that I was not able to take notes.

Q. Okay. And you indicated in direct examination that you had never met Mr. Evelyn before this interaction?

30 A. I had not.

Q. Okay. And did you come to Ottawa around February 17th?

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M. Purton - Cr-Ex.

A. I did.

Q. Okay. So, between January 28th, approximately when the first trucks started arriving in Ottawa, and February 17th, I take it that you were not in
5 Ottawa at that point?

A. I was not, no.

Q. So, you have no direct knowledge of what happened prior to February 17th?

A. Direct knowledge, no, just media knowledge,
10 that was it.

Q. In the course of your time in Ottawa, did you see a number of other veterans as well in addition to Mr. Evely?

A. I did.

15 Q. Okay. And you saw veterans wearing their military medals as well?

A. I did.

Q. Okay. You'd say that was relatively common to see veterans and -- veterans who were identified through
20 their medals and military regalia?

A. I wouldn't call it common, but there were other veterans there. There was also police officers with ribbons on their vests as well. It's not uncommon for people to display them.

25 Q. Were you aware that veterans were conducting what's called a sentry duty at the War Memorial, meaning that they're guarding the War Memorial? Were you aware of that?

A. I was aware of that, but I don't recall if I was aware of that prior to the interaction of Mr. Evely or
30 post.

Q. Okay. You're aware that there was initially some I'll call it disorderliness around the War Memorial, and

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M. Purton - Cr-Ex.

then the veterans took it upon themselves to guard the War Memorial, were you aware of that?

A. I can't say that I was at that time. I know that the entire downtown core was kind of a mess. I don't
5 know exactly who was guarding what or who was responsible for what other than the area that we were assigned.

Q. Do you agree that -- I just want to turn to the overall purpose of the police action. It was to remove protesters and vehicles from downtown Ottawa, generally
10 speaking, would you agree with that?

A. I wouldn't be able to speak to that. I'd only speak to what I was assigned to do.

Q. Okay. Are you able to give any indication of, I think you touched on this in your direct, but how large
15 the area was that had been taken back, for lack of a better word, during February 18th?

A. So, I don't know the exact area that was taken back. I know where it was taken back to, if that makes sense. I know the end point where they stopped was just on
20 the west side of Chateau Laurier on Wellington. I don't know where it started, where - like if you want to call it an initial public order deployment - it started and then stopped. I can tell you where it stopped. I don't exactly know where it began, so I wouldn't be able to tell you the exact area
25 that they had taken back, if you want to use those terms.

Q. Do you know the overall size of that area, what the planned maximum size was?

A. No.

Q. Like the goal of area to take under police
30 control?

A. No, I was not privy to that. I wasn't part of the public order deploy -- like public order unit

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M. Purton - Cr-Ex.

deployment, so that wouldn't have been my role.

Q. Do you know how long the, this situation existed in downtown Ottawa, and by this situation, I mean police checkpoints and controlling who goes in and out of certain areas? How long did that last for?

A. I don't know when the checkpoints, et cetera began. I arrived on February 17th. I know when the convoy initially started, but I don't know when checkpoints began or what checkpoints began. That wasn't privy -- I'm not privy to that information.

Q. By that, when I say checkpoints, I just want to be clear that I'm talking about police officers stopping people who are trying to get into the city and asking if they live or work in the area as you're describing, that's what I mean by checkpoints?

A. So, I don't know because that was not my, again, that was not my role. My understanding from my briefing with regards to what you're saying, checkpoints and people coming into the city, would have been OPP's jurisdiction.

THE COURT: Sorry, I'm just going to -- into the city or into the downtown core?

C. FLEURY: Into the downtown core.

THE COURT: Okay. Because I was going to say, the city's much wider, so I just want to make sure. Okay.

C. FLEURY: Thank you.

THE WITNESS: My understanding is that it was OPP that was in charge of checkpoints for residents, et cetera, coming into the downtown core. It was nothing to do with York Regional Police.

C. FLEURY: Q. Okay. It was your understanding

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M. Purton - Cr-Ex.

that, if someone did not live or work in the downtown core, that they would be denied entry?

A. Again, I can't say that. I can speak to my specific location, but I can't speak to the entire downtown core because I wasn't privy to that. That wasn't my role.

Q. So, your location at that time then, if someone didn't live or work in the downtown core, they weren't permitted to come through the police line?

A. That's what we were told, yes.

Q. Okay. So, when you first saw Mr. Evelyn, I think you mentioned it was on the north side of Wellington Street on the sidewalk and just on, I want to say this, or your side of Sussex Street, does that sound right?

A. Not my side. Are you saying --

Q. I should say, sorry, I'll say the west side of Sussex Street?

A. Approximately there, yeah.

Q. Okay.

A. And I'm referring to Wellington as -- I'll refer to Wellington from the end of the Rideau Centre. I don't know exactly where it changes from Rideau to Wellington.

Q. Right.

A. In those -- there's those two one-ways.

Q. Yeah. No, and it's described at some points in the police reports as Rideau, but I have the same understanding you do, that it's the same road, that it --

A. Yes.

Q. -- turns one into the other, okay. So, on the -- he's running on the north side of Wellington, or Rideau, on the sidewalk you said?

A. Yes.

Q. Okay. And then he runs along the sidewalk up

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M. Purton - Cr-Ex.

towards Mackenzie Street?

A. Sorry, where's Mackenzie Street?

Q. Mackenzie Street is, well, if I can show the witness maybe Exhibit Two or if he --

THE COURT: I have it.

C. FLEURY: Q. I just have a copy.

THE WITNESS: Thank you.

THE COURT: The witness has been given Exhibit Two.

C. FLEURY: Q. So, there is, on the right-hand side, there's a road going north-south which is Sussex, and then on the left there is a road going north-south that it -- it says -- it's a little bit cut off, but you can see ackenzie Avenue, it's supposed to be Mackenzie Avenue?

A. Okay. So, my apologies. I thought that this was Sussex.

Q. Okay.

A. Mackenzie. There's a condo building here, am I correct?

Q. I'm not sure.

A. So, this would be the Rideau Centre --

Q. Would be --

A. -- right here?

Q. Yes.

A. Okay. So, --

Q. The south side of the --

A. My apologies, Your Honour. I thought that this was Sussex. It's actually Mackenzie. So, when I was referring to him running from Sussex, it would have been from Mackenzie is when I first saw him in the area of Mackenzie, and he was intercepted by me just on the east side of the front steps for Chateau Laurier.

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M. Purton - Cr-Ex.

Q. Okay.

A. My apologies, I thought this was Sussex, not this one.

Q. So, you saw him running, are you saying southbound along Mackenzie?

A. No. No, still -- still westbound on the north side of Wellington, --

Q. Yeah?

A. -- but when I first saw him, he was around Mackenzie, not Sussex.

Q. Oh, okay.

A. So, he was further west --

Q. Okay.

A. -- than I initially stated because Sussex is this street --

Q. Right, okay.

A. -- if that clarifies.

Q. Yeah. So, he -- he was running, for what you're saying, he's running for a distance before you observed him?

A. Yeah. I observed him in the area of Mackenzie and Wellington, running westbound on Wellington.

Q. Okay. And he -- it sounds like a pretty short distance, so it sounds like the takedown of Mr. Evelyn must have occurred pretty quickly, within seconds?

A. It did.

Q. Okay.

A. Yeah.

Q. So, you mentioned an officer yelling "Stop"?

A. Yes.

Q. Do you know who that officer was who was yelling "Stop"?

55.

M. Purton - Cr-Ex.

A. I don't. I believe it was Constable Walker, but it's -- I'm looking in the direction of somebody yelling. I can't tell exactly who's yelling.

Q. Okay. Was Mr. Evely yelling?

5 A. I don't believe Mr. Evely was yelling. He was agitated when we were dealing with him, which is fair after being arrested, but I don't believe he was yelling.

Q. Okay. And was he -- did you observe other officers chasing Mr. Evely, not just Walker but anyone else?

10 A. I observed a police car coming in the same direction, so at Sussex and Wellington is where they had police cars parked, which was kind of the east side of the secured area.

15 Q. Okay. After Mr. Evely was taken down, do you remember how many officers were there?

A. There was myself, PC Meuleman, PC Walker, and another Ottawa officer arrived to transport. I believe he was the one that was driving the vehicle at the time that I saw the car coming.

20 Q. Okay.

A. And that would have been PC Tang is who we ultimately turned Mr. Evely to at the vehicle.

THE COURT: Tang?

THE WITNESS: T-A-N-G.

25 THE COURT: Thank you.

C. FLEURY: Q. So, I want to ask you about this takedown of Mr. Evely. You mentioned that yourself and PC Meuleman together took Mr. Evely to the ground --

A. We did.

30 Q. -- correct? Okay. And I believe you said you were on Mr. Evely's left side, is that --

A. I believe I was. I don't recall exactly what

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M. Purton - Cr-Ex.

side I was on. I believe I was on the left side.

Q. Okay. And Meuleman was presumably on his right side?

A. Yeah.

Q. Okay. And can you describe, where were your hands when you took Mr. Evelyn to the ground?

A. I would have grabbed, normally I would grab his arms, right, because I want to control his hands. I believe I grabbed his arms and we turned him to the ground.

Q. Okay. And likewise, where were Constable Meuleman's hands?

A. I don't know where his hands was. I -- I wouldn't know where he placed his hands on Mr. Evelyn.

Q. Okay. Do you agree that the -- do you know where the War Memorial is in Ottawa?

A. I do.

Q. Okay. Would you agree that that's the general direction that Mr. Evelyn was running?

A. Well, that's one of the things that's west of the location. It's -- but so was the rest of the convoy, Parliament Hill, all the other buildings are also west.

C. FLEURY: Okay. Just one moment, an indulgence, Your Honour?

THE COURT: Yes, take your time.

C. FLEURY: Those are all my questions. Thank you.

THE COURT: Thank you. Any re-exam?

J. WRIGHT: No, thank you.

THE COURT: Free to go. Thank you so much.

THE WITNESS: Return this to you, Your Honour.

THE COURT: Thank you.

THE WITNESS: Thank you.

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W. A. Walker - in-Ch.

J. WRIGHT: Your Honour, I don't mean to slow things down while we're on a roll, but could I ask for the afternoon break --

THE COURT: Sure.

J. WRIGHT: -- at this stage?

THE COURT: Yeah.

J. WRIGHT: Thank you.

THE COURT: It is just shy of three o'clock, so 20 minutes?

J. WRIGHT: Thank you.

RECESS.....

UPON RESUMING.....

J. WRIGHT: Thank you, Your Honour. If I may, I'll call my next witness who's Wade Walker, W-A-L-K-E-R.

THE COURT: Thank you. First name Wade?

J. WRIGHT: First name Wade, W-A-D-E.

THE COURT: Thank you.

WADE ADAM WALKER: AFFIRMED

EXAMINATION IN-CHIEF BY J. WRIGHT:

Q. Good afternoon, Constable Walker. Just before we get started, do you have any materials that are with you?

A. Yes, I do. I have my information as well as a copy of my notebooks from the report, but I also have an independent recollection of the events of that day.

Q. Okay. And just to go back, those materials that you indicated, who created those?

A. I created those.

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W. A. Walker - in-Ch.

Q. When were they created?

A. The day of the events, the 16th of -- sorry, the 19th of February.

Q. And since the time of their creation, have there been any additions, deletions, alterations?

A. No.

Q. And you already indicated you have an independent recollection of the events in question?

A. Yes, I do.

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

A. Yes, I please.

J. WRIGHT: Your Honour, I'd make that request as needed.

THE COURT: Mr. Fleury.

C. FLEURY: The same request as the other witnesses, Your Honour, that he just make it clear when he's looking at his notes or report.

THE COURT: Thank you.

THE WITNESS: Certainly. I'll turn them down for now and then just request.

THE COURT: You have permission if you need to, you just let us know when you are.

THE WITNESS: Thank you, ma'am.

J. WRIGHT: Q. Constable, Walker, I understand you're currently employed, not currently with the Ottawa Police. Which service are you currently with?

A. I transferred over to the Ontario Provincial Police out of the West Parry Sound detachment.

Q. Okay. And how long have you been working with that police service?

A. I transferred over in October of last year.

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W. A. Walker - in-Ch.

Q. And prior to that, you were with Ottawa Police?

A. That's correct.

Q. For how long?

A. I got into Ottawa Police at approximately 2015.

Q. And I understand, in February of 2022, you would have been working in relation to the Freedom Convoy?

A. Yes. I was working an overtime shift and was put on cordon security at Richelieu [sic] (ph) and Sussex Road?

Q. And that's on the 19th of February specifically?

A. That's correct.

Q. And can you indicate what your role would have been in that area?

A. My role for that particular night was just to maintain the cordon as there'd been a lockdown on the streets to prevent anyone entering into the area. So, I was to sit at the cordon gates and just ensure that no one else would trespass into the area.

Q. Okay. And where were the cordoned gates that you were assigned to?

A. The cordoned gates that I was initially assigned to is on Colonel By, just south of that main intersection running along where the mall is there. I don't recall the hotel name there, but there's a hotel just south of that intersection on Colonel By where he had a cordon at the exit there.

Q. And just, physically, what does a cordon look like in this case?

A. The cordon in this case, there were physical

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W. A. Walker - in-Ch.

barriers put in which constitute both concrete blocks, which had been shipped in and placed down, as well as police cruisers that had been placed in the area, and uniformed officers who were manning the area to direct people that they were not to enter into the areas.

Q. And can you give us a sense of the scale in terms of the police presence, the number of police cruisers and the number of police officers in that area?

A. I would not be able to give you an accurate count of all the officers because there were multiple cordoned areas and I was in a small location of that. I -- like there were ones just east of that main intersection where the incident happened, as well as north, and then further officers to the west in front of the Laurier Hotel and beyond that. At the particular time, I was posted with about four officers down by Colonel By and I had wandered up to speak to another Ottawa officer in a cruiser placed in the middle of that intersection.

Q. Okay. And to be clear, what intersection was that again?

A. That would be the intersection of like Richelieu there and Sussex. So, Sussex and Colonel By are two roads that meet each other. Sussex is the northbound road from that intersection, Colonel By is the southbound road for that, and Richelieu runs east to west.

Q. Okay. Just have one moment.

J. WRIGHT: So, Your Honour, if I may, I'm just going to share my screen at this point.

Q. Constable Walker, can you see that well?

A. Yes, I can.

Q. And I'll just zoom in slightly, and I'll just keep that up. Do you recognize that area?

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W. A. Walker - in-Ch.

A. Yes, I do.

Q. Can you just describe, generally, what that area is?

A. So, that's the area just north of where we currently are. It's where the cordon would've taken place. Where the dot is is practically exactly where I was standing during the incident.

Q. Okay.

A. The cordon that I was speaking about where I was initially manned is just south of that before you reach like the Mackenzie Bridge portion there.

Q. Okay.

A. There were also cordons to the east of that, north of that on Sussex, as well as towards Mackenzie and the Laurier Hotel to the west.

Q. Okay. And you indicated you were placed when the incident started approximately where the dot is, that's the red dot?

A. That's correct.

Q. Okay. And can you just tell us what first alerted you to the issue that there might be an incident?

A. So, at the time, I had been speaking to another Ottawa officer in the middle of the intersection when I heard a female voice cry out from the north up Sussex Road shouting "Stop". It's not exactly well lit just north of that intersection, so I looked up to see what was going -- going on. I saw officers at the cordon north of the intersection yelling after a man wearing a black jacket and I recall jeans running up the road southbound towards us on the west side of the road. As an officer was calling out for the male to stop, I saw him coming towards me and I yelled out for him to stop and began running towards him. When he reached the northwest

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W. A. Walker - in-Ch.

corner of the intersection, even though he could directly see me and saw me moving to intercept him, he turned to the west and began running westbound on Richelieu Road.

Q. If I could just stop you there for a second, I'll go back and just let you continue in a second?

A. Certainly.

Q. But in terms of the first voice you hear, you indicate that's a female voice?

A. That's correct.

Q. Okay. And did you ever identify that person?

A. No, I did not identify that officer.

Q. And you indicated there were other individuals yelling?

A. I only recall that one officer northbound of me, but then I began yelling at him to stop because I believed that maybe there'd been a confusion where he didn't see or understand it was for him, but I was ahead of him, so he would have clearly seen I was a uniformed officer directly before him. He would have observed me moving to intercept him, and I was telling him to stop, at which point, he turned away from me and continued running.

Q. All right. So, just the one individual before you is yelling, it seemed to you, for him to stop, but apart from that, you were the next person to yell stop that you can recall?

A. Yes.

Q. And you indicated the individual in question would have seen you yelling stop, is that correct?

A. That's correct.

Q. Why do you say that or believe that to be the case?

A. Because I was directly in the middle of the

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W. A. Walker - in-Ch.

intersection well-lit in the area, and I was moving to intercept him. So, I would have been ahead of me [sic]. He would have seen me and he obviously did not slow down and continued to run to the west once he hit the intersection, without slowing down or acknowledging anything, and continued to run towards Wellington Road.

Q. Okay. And, again, I don't know if you can see my cursor on the screen?

A. I can.

Q. I'll just move it, but can you direct me to the point where you would have first observed this individual?

A. So, if you move to where the red dot is, --

Q. Yeah.

A. -- that's where I would have been standing. First, I would have seen him coming out of Sussex Road, would have been just north of that on the western side of the road, probably about two or three millimetres up from where the intersection is on this map.

Q. To move up?

A. Yes. And then onto the left side, so the west side.

Q. That side?

A. Yes. So, he was on the -- on the walkway of that road coming down when I observed him.

Q. Okay. And I'll just put a cross mark there. That was the spot, correct?

A. Yes.

Q. And did you indicate, I'm not sure if you said or not, but was that walkway a restricted area?

A. So, everything in the cordoned area was restricted to both vehicle and foot traffic, which is why cordons had been set up with officers manning them.

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W. A. Walker - in-Ch.

Q. Okay. And did the individual actually get by you?

A. Yes, he did. He turned before I could catch up to him and I continued to pursue him, yelling for him to stop. He proceeded towards, like past Mackenzie, at which point, he was in front of the Laurier Hotel and there were officers that were ahead of him. They heard me call out, observed the male, and they were able to intercept him to stop him from proceeding.

Q. Okay. Before he was intercepted, did you have any verbal communication with him apart from what you've already indicated about indicating to him to stop?

A. Yeah, nothing else that I recall, just me yelling "Stop".

Q. He didn't say anything to you?

A. I can't recall if he said anything back. I just observed that he wasn't following direction.

Q. Okay. And can you describe the location, perhaps with the assistance of the map, that the individual's ultimately stopped?

A. I believe, as per my recollection, it was at Mackenzie, just on the west side.

Q. Okay. And this is Mackenzie here?

A. That's correct.

Q. And the west side?

A. Yes, that would be that side of the road.

Q. Was he actually on Mackenzie or was he on Rideau/Wellington?

A. Yeah, he was on Rideau still, but it was at that intersection where the other officers were lining up prepared to take their posts.

Q. Okay. Approximately here where I have a

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W. A. Walker - in-Ch.

checkmark now?

A. Correct.

Q. Okay. What did you do at that stage?

A. At that point, he attempted to force his way
5 through the officers ahead of him. They stopped him. They
took him to the ground. At that point, I caught up and told
him that he was under arrest for mischief, as well as
obstructing police, and I handcuffed him as I was the Ottawa
Police officer on scene.

10 Q. Again, if I can just take a step back, when
you say tried to force his way through, what do you mean by
that?

A. I mean, the officers were obviously ahead of
him. He, from my perspective, attempted to juke them and then
15 force his way through. Two officers put hands on him. He
continued to try to push through them once they had put hands
on him. So, at that point, they took him down to the ground
and I caught up to them.

Q. Okay. And you indicated you arrested him?

20 A. That's correct.

Q. For which offences?

A. Mischief as well as obstruct.

Q. Okay. And breaking those two offences down,
from your perspective, what were the grounds for the mischief
25 charge?

A. The grounds for the mischief charge were
directions that had been given to the public multiple times
prior, in broadcast, from the Ottawa Police on both news and
Ottawa broadcasts, which had indicated that any further
30 interactions or attempts to get into the area would be
considered mischief because it was depriving the proper use of
the downtown area and city to its residents and that people

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W. A. Walker - in-Ch.

would be able to, or sorry, that people would be charged for infractions or attempting to participate in that.

Q. Okay. And did you have an opinion about how, I forget your exact words, but how use of property was being affected?

A. The use of property would have been for depriving it from the locals, the interruptions upon their lives, their lack of joyful use of the property for locals within Ottawa.

Q. And sorry, how was that being accomplished, for lack of a better word?

A. One was from the area being taken over by people who were participating in the protests. There was weeks of them using the horns, taking over the streets, setting up encampments. There'd been a lot of demands from the public, specifically to the police and to the City, to rein in the area for weeks. At this particular point, the *Emergency Act* had been enacted by this point as well because I believe that was put in place on the 16th, where the order had been put in that people were not allowed to take over roads and other areas and that had been directed by both the Chief of Police of Ottawa and through the HIS (ph) command structure to the officers set up on the cordon.

Q. Okay. And with respect to the obstruct?

A. The obstruct was refusing to comply with the orders of the police, attempting to escape custody. And he did identify once he was stopped, however, and placed under arrest.

Q. Okay. And to be clear, what, again, what was your goal or role on that evening?

A. So, my specific direction and role that evening was to prevent people proceeding into the area to

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W. A. Walker - in-Ch.

continue to create mischief as directed by our command structure of depriving the downtown core of, basically, its enjoyment by the locals.

Q. And did this individual's actions have any impact on your ability to conduct that job?

A. Well, it impacted it in the aspect of that we had set up a cordon that was clearly marked, clearly defined, with uniformed officers to give directions to people, and he specifically broke the cordon to join it without, or sorry, with prior warning in obviously clearly marked areas.

Q. And can you go back into the marking of the areas, why you'd indicate it was clearly marked?

A. Again, there's clearly uniformed police officers. People would have been very aware of the particular situation at the time as it was a long, ongoing protest with much national coverage. There were cordons that were set up at all the roads and multiple police officers. I could understand if he'd come out of another area or bypassed it and they hadn't noticed him, and at that point, if he'd stopped and complied with officers, I would have given him the benefit of the doubt that it would have been a mistake or he had not received direction. But as he could clearly see me when I was proceeding to intercept him and he attempted to evade me and then force his way through following officers, I believed that he was proceeding with the intent to join the protest and conduct mischief.

J. WRIGHT: Could I just have one moment, Your Honour?

THE COURT: Um-hm.

J. WRIGHT: Q. Just to be clear, did you -- were you able to identify the other officers involved in the takedown?

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W. A. Walker - in-Ch.

A. I was able to get their names and badge numbers. I have them in my notes, if I may refer to them for that?

THE COURT: Yeah.

THE WITNESS: Thank you, ma'am.

A. So, the two officers were York Regional Police officers in uniform capacity with their patches. Their names as recorded by me in my notes was Meuleman, badge number 2750, and Constable Durten [sic], 2636

Q. Okay. What was the time of arrest?

A. If I may refer to my notes once again?

THE COURT: Yes.

A. So, the time of arrest was at approximately 4:26 hours in the morning of the 19th of February.

Q. Are you able to describe the situation around 4:26 in terms of whether pedestrian presence, police presence, et cetera?

A. At that particular time, there was only police presence. There was no one else in the area other than the protesters that were further west on Wellington, but they were well away from where we were at the time. For that particular cordoned-off area of the town, as that had been taken in prior days, it was police presence only.

J. WRIGHT: Thank you, Constable Walker, those are all my questions. Your Honour, I'm just going to save the map that I've been showing. I'll just keep it up if it's needed for cross-Examination, but ultimately, I will ask to make that an electronic exhibit.

THE COURT: Okay. Any issue with that, Mr. Fleury. Can we make it an exhibit now?

C. FLEURY: That's fine with me, Your Honour.

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W. A. Walker - Cr-Ex.

THE COURT: It will be an electronic exhibit?

J. WRIGHT: Yes, please, if I may. I'll provide it along with the other exhibits on the USB.

THE COURT: Okay. So, we'll call it electronic map. Is that Exhibit Three, Madam Clerk?

THE CLERK OF THE COURT: Yes, Your Honour.

THE COURT: Thank you.

EXHIBIT NUMBER THREE - Electronic Map
-produced and marked

CROSS-EXAMINATION BY C. FLEURY:

Q. Good afternoon, Constable Walker.

A. Good afternoon.

Q. So, as I understand your testimony, you were positioned at the corner of Rideau and Sussex at the events that we're talking about?

A. That's correct. I was in the centre of the intersection at the time it took place.

Q. And you were standing, you were not sitting in a vehicle?

A. No, I was standing.

Q. Okay. And as I understand it, you actually didn't have a vehicle there and you had to find a vehicle later on to make your notes?

A. That's correct.

Q. Okay. So, you indicated that there was a vehicle, I believe you indicated there was a vehicle just, is it north of Rideau on Sussex?

A. It would have been in -- sorry, if I interrupted.

Q. Well, I'm just, I'm asking where that vehicle

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W. A. Walker - Cr-Ex.

is that you noticed that Mr. Evelyn had passed?

A. So, he never passed a police cruiser. If you're talking about the one I was adjacent to?

Q. Yes.

A. I didn't observe one further north but there was a cordon up there with officers. The vehicle that, a police vehicle that was at the intersection, I was standing directly next to it speaking to the driver when we heard that, the shouting for Mr. Evelyn to stop.

Q. So, in -- so, are we talking this vehicle was at the north, I guess, west corner of the intersection?

A. So, the vehicle would have been directly in the centre of the intersection.

Q. Okay.

A. Again, there was no traffic through the area, it was all cordoned off, so it was just placed directly in the middle.

Q. Okay. And where does the shout of stop come from, is that from north on Sussex?

A. That's correct.

Q. Okay. And was anyone, at that point, chasing Mr. Evelyn, did you observe that?

A. I did not observe anyone chasing him. I saw someone waving from the cordon to the north, and that he was proceeding up the road on the west side.

Q. Okay. And I take it that, by the time you observed him, he was pretty close, within metres of Rideau?

A. That's correct.

Q. Because you weren't able to get from the middle of the intersection to the corner before he did?

A. That is correct.

Q. Okay. So, before this interaction, I take it

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W. A. Walker - Cr-Ex.

you had never met Mr. Evelyn before?

A. No.

Q. Okay. Were you aware or did you observe, in the context of being an Ottawa Police officer during these events, did you observe a number of veterans at the Freedom Convoy protest? Did you --

A. Yes.

Q. -- notice that?

A. Yes, there were.

Q. Okay. And they were often visible in the sense that they would be wearing their medals or military regalia?

A. Yes. There were many that were going to the cenotaph or other areas during the protest.

Q. Were you aware of a sentry duty that was being performed in the sense that the veterans were guarding the War Memorial from vandalism and disorder during the Freedom Convoy?

A. I was aware that they'd spoken to Ottawa Police about that, that there'd been an arrangement, but that arrangement was that they were still supposed to check in with police and inform them that that's where they were going and to comply with us.

Q. But there was, when you say this agreement, broadly speaking, the agreement was that the veterans would take it upon themselves to guard the War Memorial from things like vandalism or general disorderliness?

A. So, I was not the officer involved. I do know of the event that you're speaking of that preempted that where there had been altercations at the cenotaph with protesters who were disrespecting the grave of the unknown soldier and other issues that had been taking place there.

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W. A. Walker - Cr-Ex.

Ottawa Police, to guard the cenotaph and the War Memorials, had set up barriers around it and there'd been issues with, with that from veterans who were concerned that we were sealing off an area that they felt that they had a right to be and they'd spoken to officers about it on the TV. I do know that there was a Constable Steven Curts (ph) who'd been recorded on video speaking to veterans and had made a statement about whether they were going to guard it because that's what Ottawa Police were attempting to do and they stated that they were going to do it. As far as I'm aware, there was no official agreement from that, but that veterans had taken that as acquiescence from the Ottawa Police that they would be able to proceed to do so. There was still the understanding, and on prior nights, I had spoken to people at the cordons around the War Memorial, that they were still supposed to speak to officers before entering because there's no way to determine if someone is proceeding to do that or to continue on to create mischief as it was being directed under the orders at the time, and that they were supposed to at least inform police if they were cooperating with us and to proceed directly to the cenotaph.

Q. So, I want to ask you about this, the police action that was happening February 18th to 19th, the purpose of that action was to remove vehicles and protesters from downtown Ottawa, correct?

A. That would be obviously at the directions of the Ottawa Police and under the *Emergencies Act*. My contribution in this part was just to cordon off that area and prevent further encroachment or other people into the area.

Q. Do you know the size of the footprint as it existed at that time, and by footprint, I mean the area that police were in control of?

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W. A. Walker - Cr-Ex.

5 A. No. I was not part of the command staff. I wouldn't have had an overall of it. I know of my area at that particular time. I know that the cenotaph was part of it and it was being pushed towards Wellington, but I cannot recall at that time how large the footprint would have been.

Q. You said you know the cenotaph was part of the area that was under police control?

10 A. We had borders at it south of where the cenotaph is. As, again, because it was a long time ago and there's multiple areas, I cannot tell you if at that particular night it had been sealed off at that point, but I do believe it was.

15 Q. Okay. So, this chase that happens from approximately Rideau and Sussex to Mackenzie and Sussex, that's, how long would you estimate that is in terms of distance? It looks like about 50 metres, something like that, would you agree?

20 A. Yeah, it's not very long, but like pursuit, if you wish to call it that, would have been at most like 15 seconds.

Q. Okay. And the entire time that he was proceeding, my understanding is that Mr. Evely was on the sidewalk of, I guess, first on Sussex and then on Rideau, but he stays on the sidewalk the entire time?

25 A. That's correct, and he's running the whole time.

Q. Okay. And at that point, you say there are no civilians that are in that area, correct?

30 A. No. It was very early in the morning. We'd cordoned off the area. We'd restricted traffic there and there were only officers that were in that particular area.

Q. So, Mr. Evely's eventually taken to the

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W. A. Walker - Cr-Ex.

ground by these two other officers that you described. Did you see the takedown?

A. Yes, I was directly behind them, probably about ten steps behind.

5 Q. And can you describe, in more detail, what did you see the officers do?

A. So, they blocked off in front of him. They didn't move towards him, but they moved to intercept him. They were standing stationary when he ran up into them. He
10 ran into them as if to charge through the two officers. At that point, they grabbed him and they stopped him. They slowly took him to the ground as he was resisting being held. He was, as I recall, yelling that we were cowards. I came up behind them to assist them and put handcuffs --

15 Q. I just want to back you up. I don't mean to interrupt, but to just get some more detail on some things I might have missed. Did you say that he was, I guess, first held and then taken to the ground in the sense that, what I hear you saying is that he tries to sort of keep running?

20 A. Correct. That's how I observed it.

Q. Okay. And how long does that occur for before he's taken to the ground?

A. It's almost immediately. After they hold him, it's for a second or two, as I recall, and then he was
25 taken down to the ground.

Q. Where were Constables Meuleman and Purton at that time?

A. They were lined up with other officers from the York Region, but they were the two that were directly
30 ahead of him, so --

Q. I mean, sorry, in relation to Mr. Evelyn?

A. West of him.

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W. A. Walker - Cr-Ex.

Q. Okay.

A. So, they would have been ahead of him.

Q. And when he's taken down, where are they in relation to him?

5 A. They would still have been west of him. They had hands on. They took him down to the ground and held him there, and then I caught up and placed handcuffs on him.

Q. Does that mean they're both on one side of him and he's -- one on either side?

10 A. Yes, generally speaking. Obviously, it's hard to state exact placements when it's a dynamic takedown on people because you move to shift around to stop them from getting up, but they would have both been there initially with him, and then with hands on him taking him to the ground to
15 hold him there.

Q. Do you agree that it's something that, I think you used the words as well, it happened very quickly in terms of the takedown?

A. Yes.

20 THE COURT: Sorry, Mr. Fleury, but you cut the officer off, so I just want to go back. You indicated he was yelling? You recall Mr. Evelyn yelling something as he was being taken down?

25 THE WITNESS: I recall that he called us cowards throughout his arrest.

THE COURT: Thank you. Go ahead.

30 C. FLEURY: Q. Well, I'm going to suggest to you, Officer, and I don't know if Mr. Evelyn's going to testify or not, but if he does, my understanding is that he's going to say that he did not try to run through the officers, that he, in fact, put his hands up and it was very quickly taken down by the two York Region Police officers, do you agree with

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W. A. Walker - Cr-Ex.

that?

A. Again, and for his testimony, I can't speak for what he will or won't testify, but I can state what I observed, which to my recollection, he attempted to push through them and then was taken down at that point.

Q. And did he tell you that he was on his way to the War Memorial? Did that come up in the course of your interactions with him, either before or after the arrest?

A. Not that I can recall.

Q. So, there's this other officer who yells "Stop." You don't know what led, what interaction led I think I'll say her - I think you said it was a female officer - you know, led her to say "Stop"? You don't know what the interaction was there with Mr. Evely?

A. No, I do not because I don't know what, who she was and I don't know what their interaction would have been. My proceeding on that though is that that's what drew my attention to him, and when I observed him coming down, he obviously was looking towards where I was and he could see me, and when I yelled "Stop," he continued to proceed on, at which point, that's where I formed grounds that he was trying to proceed through the cordon.

Q. Did you -- did you make eye contact -- I'm going to suggest to you, you didn't make eye contact with Mr. Evely?

A. He was looking directly forward while running. I yelled towards him and attempted to intercept. He hit the corner and immediately turned to his right, which would have been westbound and continued to run at the same clip, but I would say that, even with peripheral vision and having a large officer - because I am a bigger gentleman - wearing a full uniform yelling "Stop" multiple times, that if

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W. A. Walker - Cr-Ex.

he was not attempting to evade me, he would have at least stopped to determine what was going on. However, he continued to proceed at the same speed having been yelled at by two officers, and then proceeding into two following officers that were directly ahead of them, attempted to force his way through them.

Q. Okay. So, he was, just to get a sense of where his head was pointed, he was on the sidewalk, the west side of the street on, it would be Sussex, looking straightforward, and then you're in the middle of the intersection?

A. That's correct, and I was moving to intercept him. I was, I would say, probably about ten feet from him when he turned the corner, and then continued to follow behind him on the road yelling "Stop."

Q. And you never followed up to obtain the name of that officer who was initially yelling "Stop"?

A. No, I did not.

Q. So, you had mentioned, in the course of your evidence, you referenced a number of public warnings that were made to protesters. You have no -- I take it you have no information about whether or not Mr. Evelyn heard or received any of those warnings?

A. Again, I would not be able to speak on his behalf. I'm sure if you ask him, he'll be able to tell you whether he has any knowledge of any of those. But I can state that, from the Ottawa Police, at the very least on the 9th and the 16th of February, there were posts put out on their media channels specifically stating that anyone attempting to join the area would be charged with mischief.

Q. Okay. But you have no information about whether Mr. Evelyn received those specific warnings?

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W. A. Walker - Cr-Ex.

A. Obviously not. You would have to ask him.

Q. I believe your testimony was that he wasn't, Mr. Evelyn wasn't yelling at any point, correct, he was just running?

5 A. I can't recall if he yelled out anything at this particular time. I don't have an independent recollection of any utterances he made.

Q. Okay.

10 A. If I may refer to my notes, I'll see if there was anything I recorded?

Q. Sure, I didn't --

THE COURT: Go ahead.

Q. -- see anything there, but feel free to refresh your memory?

15 A. Yeah, I don't see anything in my notes, sir.

Q. Okay. My understanding is that, after his arrest, there was, perhaps, I'll call it a verbal back and forth between himself and police, but that he was physically cooperative with police?

20 A. Yes. He wasn't fighting us once he was placed in handcuffs. He was read his rights to counsel and is cautioned. As I recall, he did not say a lawyer he wished to speak to at the time when given his caution. He called us cowards as well. He made utterances about being a veteran and
25 that he'd served his country. We did observe that he had the medals on his, I believe it was a black leather jacket that he was wearing at the time of the events.

Q. Do you agree that, I realize there are many things that are westbound of that location that Mr. Evelyn
30 could have been running to, but in a general sense, he was running in the direction of the War Memorial?

A. So, sorry, it could have been that he was

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W. A. Walker - Cr-Ex.

running towards the War Memorial, but --

Q. I'm not asking you to speculate about where he was running, but one thing that was in that general direction was the War Memorial?

5 A. One of the things in that direction is the War Memorial, but he could also have been running to the south side if he was proceeding to that because it would be further south of the intersection. He was staying to the north side, so he could also have been proceeding to the other protesters
10 down Wellington.

C. FLEURY: Thank you. Those are all my questions.

THE COURT: Any re-exam?

J. WRIGHT: No, thank you.

15 THE COURT: Thank you, Officer. You're free to go.

THE WITNESS: Thank you, Your Honour.

J. WRIGHT: So, Your Honour, that's all the oral
20 testimony that I'll be calling. The remaining testimony, as indicated earlier, just contains videos.

THE COURT: Okay. Can I just have a second. Can you sit down for a second, Mr. Wright.

J. WRIGHT: Sorry.

25 THE COURT: That's okay. You're not taking photos or --

UNIDENTIFIED SPEAKER: Oh no, I'm just trying to get a signal.

THE COURT: Okay.

30 UNIDENTIFIED SPEAKER: Because we're in the basement.

THE COURT: Thank you. You're prohibited, you

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know that, from --

UNIDENTIFIED SPEAKER: Yes, I understand

THE COURT: -- taking photos or recording?

UNIDENTIFIED SPEAKER: I do.

THE COURT: Thank you.

UNIDENTIFIED SPEAKER: Sorry, Your Honour.

THE COURT: No worries. I just wasn't sure if it was a selfie the way you had it.

UNIDENTIFIED SPEAKER: No.

THE COURT: All good. Thank you. Okay, Mr. Wright?

J. WRIGHT: So, if I may, I'll just start with that.

THE COURT: Okay.

J. WRIGHT: I'm just going to start, Your Honour, if I may, with the longest video, which is approximately 12 minutes. It's the Ottawa Police drone footage from February 18th.

THE COURT: One sec here, drone footage from?

J. WRIGHT: February 18th.

THE COURT: Thank you.

J. WRIGHT: There's no sound on this video.

THE COURT: Okay.

J. WRIGHT: 13:58 seconds.

THE COURT: Thank you.

J. WRIGHT: Oh-oh, bad start. Okay. I'll just play from the start.

THE COURT: Thank you.

...VIDEO RECORDING IS PLAYED

J. WRIGHT: So, that's a video played to its end.

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THE COURT: Thank you.

J. WRIGHT: Next video I propose to play is video entitled "Police Clash with Protesters in Ottawa" again from February 18th, appears to cover the same area and time frame.

THE COURT: What is the time frame? I saw it as noonish, like 12, that last one 12:07 p.m.?

J. WRIGHT: Yes, approximately. I'll just check in the timestamp. It starts at 12:01.

THE COURT: Okay.

J. WRIGHT: So, this video, there's no timestamp, but that's the Crown theory at least, it's approximately a similar time.

THE COURT: This is also drone footage?

J. WRIGHT: This is not. This is open-source footage.

THE COURT: Thank you.

J. WRIGHT: I believe it was originally from CTV. I could be wrong. It's a three-minute video.

THE COURT: Thank you.

...VIDEO RECORDING IS PLAYED

J. WRIGHT: So, that's that video in its entirety.

THE COURT: Thank you.

J. WRIGHT: The next series of videos, there's four that are all from Mr. Evely's social media. This is a video entitled "Canadian War Veterans Silenced and Shamed by_Freedom Convoy", five minutes.

THE COURT: Sorry, I didn't catch the title.

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J. WRIGHT: "Canadian War Veterans Silenced and Shamed by_Freedom_Convoy".

THE COURT: Okay, just a moment. Thank you.

J. WRIGHT: So, it's five minutes again. If we've run out of time, Your Honour, please just let me know. There's just a few --

THE COURT: Ah, I do see the time. It might be a good time to end. Can we --

J. WRIGHT: Understood.

THE COURT: -- pick it up tomorrow? I don't know. It's five-minutes total, but I think it would be better to pick it up tomorrow.

J. WRIGHT: Understood.

THE COURT: Do we have a sense of, are we on track tomorrow?

THE CLERK OF THE COURT: We're back in here tomorrow.

THE COURT: Back in this courtroom?

C. FLEURY: I think so, Your Honour.

THE COURT: Okay.

C. FLEURY: As I understand it, there's really just the videos in terms of the Crown's case.

THE COURT: Okay. And then you'll have to make your election.

C. FLEURY: Yes. And we're looking at zero to one witness.

THE COURT: Okay.

C. FLEURY: So, I anticipate we'll be in a position to finish tomorrow.

THE COURT: Okay. All right. Thank you. See everyone at 10 a.m. tomorrow. Have a good evening.

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UNIDENTIFIED SPEAKER: Your Honour, I realized I
didn't stand up when you spoke to me, so I
apologize.

THE COURT: Oh, that's okay.

UNIDENTIFIED SPEAKER: Thank you.

THE COURT: No problem. Have a good evening.

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FORM 3
ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

5 I, Natasha Malozewski, certify that this document is a true
and accurate transcript of the recording of R. v. Jeffry
Lloyd Evely, in the Ontario Court of Justice held at Ottawa,
Ontario, taken from Recording No. 0411_CR02_20240826_
10 095039__6_MILESLIS, which has been certified in Form 1.

December 20, 2024



(Date)

(Signature of Authorized Person)

Natasha Malozewski
ACT ID: 4177239415

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20
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*A certificate in Form 3 is admissible in evidence
and is proof, in the absence of evidence to the
contrary, that the transcript is a transcript of
the recording of evidence and proceedings in the
proceeding that is identified in the certificate.*

Information No. 0411-998-22-8184-00

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

JEFFREY LLOYD EVELY

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

BEFORE THE HONOURABLE JUSTICE L. MILES
On August 27, 2024, at OTTAWA, Ontario

APPEARANCES:

J. Wright

Counsel for the Crown

C. Fleury

Counsel for Jeffrey Lloyd Evely

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<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
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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

Transcript Ordered: December 2, 2024
Transcript Completed: December 20, 2024
Ordering Party Notified: December 20, 2024

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

J. WRIGHT: Thank you, Your Honour. So, as indicated yesterday, I just have four additional videos. I'll just start with the first one, the title of the document being "Canadian War Veterans Silenced and Shamed by_Freedom_Convoy", and that's a five-minute video.

THE COURT: Thank you.

J. WRIGHT: Four minutes and 55 seconds. I'll just play it from the start.

...VIDEO RECORDING IS PLAYED

J. WRIGHT: The next video is titled "Twitter_5" posted February 18th, 2022. It's 24 seconds.

...VIDEO RECORDING IS PLAYED

J. WRIGHT: Next video that the file tells, "FB video download.online", FB number five posted February 20th, 2022, two minutes and 23 seconds.

...VIDEO RECORDING IS PLAYED

J. WRIGHT: The next video "Twitter_3" posted February 20th, 2022.

...VIDEO RECORDING IS PLAYED

THE COURT: Mr. Wright, did you say when the first video that you played was posted?

J. WRIGHT: The first video yesterday or today?

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THE COURT: No, today. The one where, on the freedom stage?

J. WRIGHT: No. It is not indicated on the file. If I could just have a moment. It says uploaded February 15th, 2022.

THE COURT: Uploaded February 15th?

J. WRIGHT: Yes.

THE COURT: Thank you. Okay.

J. WRIGHT: So, all those videos and the map that was provided to the witness yesterday --

THE COURT: Yeah.

J. WRIGHT: -- are contained on this USB. I'd just ask to file them collectively.

THE COURT: Any issue?

C. FLEURY: Your Honour, just to clarify, the videos are being admitted, excuse me, without the need to call an officer to authenticate them, but they are still subject to our --

THE COURT: Thank you.

C. FLEURY: -- *Charter* application.

THE COURT: Okay.

THE CLERK OF THE COURT: I just wanted to clarify with the USB also includes the videos as well, just to number it? Okay.

THE COURT: Is that still -- we made that map Exhibit --

THE CLERK OF THE COURT: Three.

THE COURT: -- Three. Can we just make the whole USB Exhibit Three, --

THE CLERK OF THE COURT: Okay.

THE COURT: -- please.

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EXHIBIT NUMBER THREE (AMENDED) - USB

-previously marked Electronic Map

5 THE COURT: And so, I just want to make sure that I'm understanding, the defence has taken the position that the videos are admitted without the need to call an officer. I understand they're still subject to your *Charter* application. And I'm just not sure I heard exactly how those
10 videos, when you said they're open source and there would have been a police officer who would have said that they obtained those videos on open source, social media?

15 J. WRIGHT: Right. So, the OPS drone footage is an exception, that's OPS --

THE COURT: Right.

J. WRIGHT: -- footage.

THE COURT: Okay.

20 J. WRIGHT: The second video, again, not from -- it's from open source, but not alleged to have been found, a source connected to Mr. Evely.

THE COURT: Right.

25 J. WRIGHT: Whereas the subsequent four videos, the first one from YouTube and the other ones from Facebook and Twitter respectively, they're from accounts that purport to be from Jeffrey Evely.

THE COURT: Okay. Thank you.

30 J. WRIGHT: And Your Honour, that is the case for the Crown, and I'll be closing the case.

THE COURT: Thank you.

J. WRIGHT: Thank you.

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THE COURT: Mr. Fleury.

C. FLEURY: Your Honour, if I could just have a moment to speak with Mr. Evelyn about --

THE COURT: Of course.

C. FLEURY: -- his choice to testify?

THE COURT: Of course. How much time would you like?

C. FLEURY: I don't think that we need much time. There wasn't anything that came out in the evidence today that we hadn't already seen and weren't anticipating. So, perhaps just ten minutes.

THE COURT: Sure. I'll give you ten minutes.

RECESS.....

UPON RESUMING.....

C. FLEURY: (no audio to 10:40:32) is not relying on the *Emergencies Act* as authority for, essentially, the arrest and the checkpoints that we're talking about in this case, that it's solely a common law issue under *Waterfield*.

J. WRIGHT: From my perspective, I don't think the *Emergencies Act* is certainly not in play for the officers involved and I agree with their perspective.

THE COURT: Certainly was not in play?

J. WRIGHT: Right, or certainly not a factor in [indiscernible] consider in any great detail.

THE COURT: It was mentioned briefly by Constable Walker, and other than that, I didn't hear anything. The other question I had was if you were continuing with the notice of constitutional

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question, had you served the attorney general and complied with all of those requirements?

C. FLEURY: We did, Your Honour, --

THE COURT: Okay.

C. FLEURY: -- but now --

THE COURT: Doesn't appear to be --

C. FLEURY: Seems to be moot.

THE COURT: -- in play? Right.

C. FLEURY: Yeah.

THE COURT: Okay. When you're ready.

C. FLEURY: Mr. Evely, do you want to take the stand?

JEFFREY EVELY: AFFIRMED

EXAMINATION IN-CHIEF BY C. FLEURY:

THE COURT: Give me one second, Mr. Fleury, just because it's loud. Okay.

C. FLEURY: Q. Mr. Evely, can you tell the court a little bit about your career, what have you spent your life doing in terms of your career?

A. My pleasure. I finished an electronics program at Community College in 2000, joined the Canadian Armed Forces in 2001 as an aerospace telecommunications and informations systems technician.

THE COURT: I'm so sorry, Mr. Evely, you're talking so fast I can't --

THE WITNESS: My apologies, ma'am.

THE COURT: Yeah. So, finished electronics program at Community College, and then I know you were talking about military, but I missed everything in terms of the year and that kind of

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thing. Can you start over.

THE WITNESS: In 2001, I joined the Canadian Armed Forces as an aerospace telecommunications and information systems technician. I was posted to various locations starting in Greenwood. I spend a lot of time maintaining airfield equipment. I volunteered in the community as an amateur boxing coach. I was posted to Gander for three years where I taught air defence radar maintenance. I volunteered in the community as a mixed martial arts coach, and I was deployed to Afghanistan in 2009 where I supported the unmanned aerial vehicle detachment for the Canadian Armed Forces. It was an intelligence, surveillance and reconnaissance mission that we used to basically glean intelligence and go after bad guys --

Q. So, Mr. Evely, I'm just going to stop you there. I'm not --

A. Sure.

Q. -- sure we need a full biography --

A. Certainly.

Q. -- necessarily, but are you still in the military?

A. No, sir.

Q. When did you get out of the military?

A. I was released. I was medically released from the military in September of 2021.

Q. And what was your rank when you were released?

A. Master warrant officer.

Q. Okay. And can you explain to the court where is a master warrant officer in the hierarchy of ranks in the military?

A. It's the second highest non-commissioned

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officer rank.

Q. And what does that mean for the court to be a non-commissioned officer?

A. It's basically a personnel manager. A personnel manager, so morale and welfare, beans, bullets, beds (ph).

Q. Okay. There has been I'd say talk in this trial of a sentry duty. What is a sentry duty, broadly speaking?

A. Broadly speaking, you could describe it as something like a watch or a guard duty. So, in the case of the monuments, since we're discussing that, it's been a tradition for a uniformed Canadian Armed Forces member to stand on guard for duty at Canada's war monuments, but it does broadly apply to things like camps and fire pickets and things like this when we're on deployment or exercise.

Q. Okay. And can you tell us about a, about the sentry duty at the or during the Freedom Convoy protest?

A. Yes.

Q. First of all, how did that come about?

A. So, the City of Ottawa had fenced off the national war monuments. The official line was to protect it from convoy participants. Veterans from all over the country descended on Ottawa to show solidarity against this act of corrupting our monuments, and it was our position that any veteran should be able to visit that monument and touch that monument any time they please. The act of fencing it off for many of us was a political act for the purpose of using the monument as a prop to smear peaceful protesters at the convoy.

So, after forming a line that extended across the lawn of the Parliament in linked arms with veterans from all over the country, we went down to the monument where the fence

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was removed with bolt cutters and stacked up in an orderly, neat fashion on the sidewalk for city workers to come and pick up. We did all of this with the full supervision of police, and at that time, police were expressing their concern for the protection of the monument from the protesters, and so we told them, Bryan Marr (ph) in particular, retired Captain Bryan Marr, is on video saying that we would put a sentry on that monument 24/7 in order to allay any security concerns about it. I was the one who ran the shift schedule for said sentry duty, and so I tended to end up with the shifts that nobody else wanted, and generally, I ended up on 4 a.m.

Q. Okay. So, can I take you then -- maybe I'll just ask this as well. What does a -- what does a sentry duty signify or express? When someone sees a sentry duty, what does that -- what's the meaning of that?

A. I would say, in the context of Canada's War Memorial, it's that we stand on guard for thee, and in this case in particular, with the use of the monument as a political prop, we saw that to be a gross indignity to our fallen, and so we wanted to voice our opposition to that. That was later expressed during replaying (ph) ceremonies at Rolling Thunder in April. Many veterans, many combat wounded gave speeches at the monument where they said as much, that monument belongs to everybody, not just the City of Ottawa and especially not just Jim Watson. So, our expression was that one of solidarity amongst veterans in support of the dignity of our fallen.

Q. I want to take you, Mr. Evely, to February 19th. Where were you going on February 19th when you encountered police officers?

A. I was walking to the war monument for my 4 a.m. sentry duty.

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Q. Okay. What time was it that you first encountered police?

A. It would have been shortly after 4 a.m. I had difficulty finding parking. I was messaging with the veterans who were at the monument to let them know that I might be a few minutes late and that was the reason for the delay.

Q. Can you tell us, when did you first encounter police, take us through that?

A. I parked on -- I parked toward the east end of Edward and I walked up George through the market. I encountered -- I saw the stairway going up to Mackenzie, and I looked left and I saw a police car. Having -- with the knowledge that we had made this agreement with OPS and had been dealing with the police liaison teams the entire time, I decided to approach the police car to identify myself and to carry on to the monument. As I approached, a female officer rolled down the window and she asked me where I was going, and I said, "I'm going up to the war monument." Actually, I believe what she actually said was, she said something like, "You can't go in there." And I said, "I'm one of the veterans guarding the war monument." I opened up my overcoat so that she could see my medals and she said -- she said, "No, you can't go up there," and I said, "Yes, I can." And then I continued onward. I told her to contact her PLO, and I said, "Yes, I can," and I continued walking, at which point, she said, "No", and then she said "Stop", and so that was when the chase began.

Q. Okay. And where were you at that point, and perhaps if I could show you exhibit, whichever one the smaller map was, if that was Two?

A. Thank you, ma'am. Sorry, could you repeat

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the question?

Q. Right. So, my question is, where exactly were you when you first encountered this female police officer that you're talking about?

5 A. So, I was on Sussex. It would have been just approaching the intersection with Rideau and they were sitting parked in the right lane facing south. Passenger side was towards me. I would have been on the west side of the street just approaching the corner.

10 Q. Okay. And then you mentioned, I think your words were that the chase began. Where did you go at that point?

15 A. I was running in the direction of the monument, so I would have been heading east on Wellington and I traveled the half block from Sussex to Mackenzie, which was the point at which I realized that there were other officers there who were running toward me, and so just as they approached, I put my hands up and started to go to the ground when they put their hands on me.

20 Q. Okay. I've got questions about that, but --

A. Sure.

Q. -- I do want to back up because you mentioned you noticed some officers. Where were the officers that you said you noticed?

25 A. They were coming from my left, so that would have been the south side of Wellington, and it would have been in front of Chateau Laurier. There were these cordons that were put across in front of Chateau Laurier on the west side of Elgin Street, so they would have been just west of
30 Elgin and on the south side of Wellington. I didn't see them until they started crossing the street.

Q. What about officers behind you?

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A. Those were the only officers that I saw. There were -- there was the female officer who got out of the car that I saw coming from behind me. She was overtaken by a male officer, and they caught up while I was on the ground.

5 Q. Okay. And you mentioned, before I interrupted you, you were, I believe, just about to talk about how you were taken to the ground?

A. Yes.

Q. Can you describe that for the court?

10 A. Certainly. Once I saw the other officers as they were coming toward me, they got close enough so that they could extend their hands out and I put my hands up like this as they touched me, and I just kind of bent my knees and went down to my, onto my stomach, face down. There was one officer
15 that had me by the left arm and another one who had me by the right arm as I was going to the ground. The one on my left arm brought my hand behind my back. The one on my right arm tried to bend my arm the wrong way to put my hand behind my back and so I assisted him by putting my thumb down and
20 putting my arm behind my back as they cuffed me.

THE COURT: You'll have to describe what he's been doing for the record, please, --

C. FLEURY: Sure. I think --

25 THE COURT: -- with his hands and arms so that we have the transcriptionist have it.

THE WITNESS: Certainly.

C. FLEURY: Q. Right. So, you began, I believe, Mr. Evelyn, by noting that you put your hands it looks like almost above your head --

30 A. Yes.

Q. -- as you approached the police officers is what you described, and then we have, it sounds like the one

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officer grabbed your hand as it was up in the air and put it behind your back is what you've indicated, I believe, and then the other officer, maybe you'll have to assist me here, attempted to bend your arm the wrong way --

5 A. Um-hm.

Q. -- I think is what you said, while it was above your head, is that correct?

A. Yes, that's correct. The --

Q. Which way did it bend that was the wrong way?

10 A. It was my right arm that was being bent the wrong way. And insofar as how my left arm came to be behind my back, I just want to clarify that it was while I was on the ground. They were, my hands were roughly at the height of my head with my elbows out. I was going down to the ground, and when I got there, the officer on my left side brought my hand down and behind my back, but the officer on my right side left my hand near the top of my head and tried to basically twist my shoulder the wrong way, as my hand won't go any further back, so I assisted by, like I said, turning my thumb down and putting my hand behind my back.

15 Q. So, in terms of distance or time, how long were you running?

A. Just a few seconds.

20 Q. Okay. Do you know the distance, or can you approximate the distance for us?

A. You know, we're talking about 15 metres probably.

25 Q. Okay. Was the War Memorial itself, was that under police control at the time of these events that we're talking about, or was that -- were the protesters and veterans still there?

30 A. The protesters and veterans were still there.

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I had been messaging them while I was on my way.

Q. Okay. So, you're taken to the ground, Mr. Evely. What happens after that?

A. They cuffed me and assisted me to my feet. I got up. I just kind of came straight up as we were getting up. There -- as I was on the ground, I had some choice words for them. I said, "I'm a veteran guys, don't forget to kick the shit out of me. I saw what you did to that veteran yesterday." I was referring to Chris Deering whom we watched in the video. There's a few seconds at the end of that video where you can hear people remarking on how the police had kicked him in his pinned leg. I saw Chris sermonize for about an hour before they --

Q. So, Mr. Evely, I'm not --

A. -- took him down.

Q. -- going to --

A. Sure.

Q. -- necessarily be looking for that level of detail.

A. Okay.

Q. Did -- you're eventually released from custody though, I take it?

A. Yeah, a couple of days later, yeah.

Q. Okay. Do you remember how many days?

A. I believe it was two.

C. FLEURY: Okay. Those are all my questions.

Thank you.

CROSS-EXAMINATION BY J. WRIGHT:

Q. Mr. Evely, good morning. My name's John Wright. I'm assistant Crown. I'll have some questions for you as well. If there's something I'm saying that doesn't

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make sense or you can't hear me properly, just let me know and I'll ask again or rephrase.

I just want to go back, I guess, to the start of your involvement here or your coming to Ottawa. Were you
5 there already when this issue with respect to the monument arose, for lack of a better word, or did you come specifically when that became an issue?

A. No, I was coming to the convoy anyway.

Q. Okay. And with regards to this sentry duty,
10 that was something that was organized by a group of veterans. Do I understand correctly that there wasn't any kind of formal organization? It's not as though it's part of the Legion or some other --

A. Oh, God no.

Q. -- official organization? It was more an *ad hoc*
15 group, if I can put it that way?

A. It was organic, yeah. Grassroots I would say.

Q. All right. And it's organized by
20 individuals, I'm assuming all veterans, but they're veterans who support the Freedom Convoy specifically?

A. I would say support freedom specifically.

Q. Okay. The issue was somewhat political from your perspective in that you felt the city had taken steps
25 that made the Freedom Convoy look bad?

A. Yeah. They lied.

Q. Okay.

THE COURT: One sec. Sorry, city took steps to make the -- to make the protesters look bad and you agreed with that?
30

THE WITNESS: Yes. I believe that Jim Watson put that fence up in an attempt to smear the convoy and that

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nobody peed on it.

J. WRIGHT: Okay.

THE COURT: Just one sec, sorry. I just want to make sure I'm getting all of it.

5 THE WITNESS: I saw the video, I should clarify. There was a woman from out of town, who I assumed to be out of town, and she probably had too much to drink. She took one step up on the Tomb of the Unknown Soldier and somebody helped her right down.

10 I was posted to Ottawa for the last seven years in my 20-year career. I saw that something like that happened multiple times and never required anything more than a polite correction in the past. It's just well known that, when outsiders are in town and having something to drink, that
15 they're not familiar with their surroundings and that kind of thing is going to happen. I would say this more happened probably during the 150th Canada Day than happened at the convoy. I was at both and that would be my assessment.

J. WRIGHT: Q. Okay. And can I ask again with
20 respect to the sentry duty and the discussions that were had with police, I'd like to ask you a little bit about that. Were you physically there for any of the discussions with the police liaison team or other --

A. I was at the monument. It was Bryan Marr,
25 retired captain, who spoke directly with the police liaison, and it was on video, so I saw it for myself.

Q. So, you watched the video afterwards?

A. Yeah. I mean, I was right there, but I didn't -- I wasn't --

30 Q. Within earshot?

A. -- involved.

Q. Sorry.

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A. I wasn't within earshot, no. No, sir.

Q. I'm sorry, I don't mean to interrupt.

A. No problem.

Q. But you weren't within earshot?

A. No.

Q. Okay. And you were under the impression that there were some ongoing discussions with police services or no?

A. My understanding is that there were ongoing discussions with police services. I was still running the sentry duty, and they tended to come in and check in on us, and we would share information on the signal channel that I created to coordinate between the volunteers.

Q. And when did the sentry duty actually start or when did you become involved?

A. As soon as the fence came down.

Q. Okay. And do you have an approximate day? Is that like September 11, 12, or sorry, February 11, 12?

A. Yeah, it would have been February. I don't recall exactly, no.

Q. It would be several days, I guess, before your ultimate arrest on the 19th?

A. Yeah, absolutely.

Q. Okay. And you would have been aware that, for lack of a better word, things were escalating between demonstrators and the police leading up to the 18th, 19th?

A. No. I didn't observe any of that. I -- from what I saw, the rapport was very good. I saw police officers hugging protesters. I found that we had a very good rapport between those volunteering for the sentry duty and the snow clearing of the monument and the officers who engaged with us. Even when they were ununiformed and just kind of poking

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around, we all kind of understood that they had a job to do and so we extended them a professional courtesy.

Q. But you understood, leading up to the February 18th date, that the police were going to begin an operation to start removing people, you understood that, right?

A. No, I did not understand that.

Q. You didn't see any fliers?

A. I saw a flyer with a bunch of spelling mistakes in it, but it didn't look like it had any legitimate authority behind it. I assumed it to be just a scare tactic.

Q. Okay. And it was directing people to leave, correct?

A. Yes, something like that, but it was -- there was no, you know, under the authority of anybody, and there were -- it was unprofessional, so I found it to be -- I couldn't give it any credibility.

Q. Okay. And did you hear from any police officers or see any police liaison team --

A. No.

Q. -- members coming around telling people you have to leave?

A. No. I saw it on social media.

Q. Okay. And on February 18th specifically, you would have noticed that police operations had begun?

A. Yes.

Q. And you would have understood what they were doing, that they were trying to remove people from the area?

A. It looks like a mass arrest.

Q. Okay.

THE COURT: Sorry, just one sec.

THE WITNESS: Yeah, I could probably add some

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clarification to that too.

THE COURT: Sorry?

THE WITNESS: I should add some clarification to that too.

THE COURT: Go ahead.

THE WITNESS: I --

C. FLEURY: It seems to me we're straying a little bit from the *Charter* issues, which Mr. Evely's not testifying for the purposes of the substance of the case. It's just the *Charter*. And of course, the -- it's -- from what I can tell, these questions are going to -- it's a *mens rea* element it seems to me. I guess I question whether it's relevant to the *Charter* issues.

THE COURT: Can you clarify that for me, what do you mean?

C. FLEURY: Well, I --

THE COURT: Just thinking about your chief, so.

C. FLEURY: Well, I don't think Mr. Evely's knowledge of what happened, what he was told about whether or not to leave, the efforts police made of the fliers, these sorts of things, that wasn't raised in direct and it's not a, in my submission, it's not relevant to the *Charter* issues whether or not the arrest was arbitrary.

THE COURT: Mr. Wright?

J. WRIGHT: All right. So, I guess I can move forward a bit faster, Your Honour. I think, ultimately, again, Mr. Evely's testifying about what he was doing on that specific day, so I think I'm at liberty to cross-examine him.

Again, how much does that affect the grounds of a

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5 police officer, I'm kind of inclined to agree.
But I would like to clarify with respect to, or I
suppose mount somewhat of a challenge to this
idea that Mr. Evelyn's solely attending the area
for the purpose of going to the War Memorial. If
Your Honour determines that that's not relevant,
what his purpose was in the area, I accept that
and I'll move on.

10 THE COURT: Well, I guess it's whether it's
relevant to the police's grounds to arrest.

J. WRIGHT: Right.

THE COURT: That's right?

C. FLEURY: Right.

15 THE COURT: Do I have that clear? Yeah.

J. WRIGHT: All right. If I may, I'll ask
another question?

THE COURT: Ask the question. Don't answer, sir.
I just want to hear the question.

THE WITNESS: Okay.

20 J. WRIGHT: So, I was going to ask if Mr. Evelyn
understood, when he entered the restricted or
cordoned area, that the police didn't want him to
do that.

25 C. FLEURY: Sorry, it seems we're back into the
same place about Mr. Evelyn's knowledge, Your
Honour. I don't know if that goes to the
subjective or objective grounds of the police
officer.

30 THE COURT: Right. I'm looking at your chief,
right, because you asked, you did ask him
questions about entering into that area.

C. FLEURY: I asked him, in general, yes, to take

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us through the events of that evening, yes.

THE COURT: I'm going to allow the question.

J. WRIGHT: Q. Mr. Evelyn, I'll try and repeat my question, but when you entered the area, you understood that that was something that the police didn't want you to do?

A. It's a bit of a complex question because I think what we're asking is whether they were trying to clear the downtown. I didn't know what they were doing. I knew what they had done on 18 February, but it was unclear to me whether they were just clearing the intersection at Sussex and Wellington or if they were going to clear the entire downtown. I know that there was some issue with traffic at that particular intersection, so I could see that being the issue, but the idea that they would clear the entire protest seemed to be a bit, a bridge too far for me --

Q. Okay.

THE COURT: Just one sec.

A. -- and not allow people in, I guess, that's where it really kind of blew my mind. And, sir, are you asking whether I knew prior to encountering the female officer in the car?

Q. Yeah, and I can clarify.

A. I can answer that.

Q. Okay.

A. So, as I stated previously, I reached the top of George Street and I was about to turn left on Sussex. Well, really, I looked at the stairs between Sussex and Mackenzie and thought that maybe I should go up the stairs and just sneak my way back into the monument to avoid some trouble, but I decided --

THE COURT: Sorry, you said to sneak --

THE WITNESS: Yes, just to --

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THE COURT: -- your way? Thank --

THE WITNESS: -- sneak in, yeah.

THE COURT: -- you.

THE WITNESS: To sneak along the canal or
5 something. But ultimately, I decided that the police had
engaged with the veterans in good faith and we still had
veterans at the monument and there was a sentry duty that had
been ongoing for probably over a week at that point, and we
hadn't encountered any issues. We had a rapport, and so I
10 thought it was in my best and everyone's best interest that I
attempt to engage in good faith and that was why I decided to
turn left and go down Sussex so that I would pass the police
car.

J. WRIGHT: Q. Right. And again, you used the
15 term sneak?

A. Um-hm.

Q. I guess on some level, you understood that at
least there was a possibility that individuals weren't, --

A. Yes.

Q. -- specifically, you might not be welcome in
20 that area?

A. Right. I dismissed it as a silly thought
because this is Canada.

Q. Okay. And the female officer tells you to
25 stop?

A. Yes.

Q. You understood what that meant?

A. I guess so, yeah.

Q. Okay. You didn't accept that?

30 A. No.

Q. And then, would you agree, you're told to
stop by other officers?

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A. I didn't hear any other officers.

Q. Okay. Didn't notice there were other officers in the area?

A. I didn't notice any other officers until I was just approaching the intersection at Mackenzie.

Q. Okay. And I guess, hypothetically, had another officer told you to stop, given that you weren't interested in listening to the first officer, it makes sense you wouldn't listen to those officers either?

A. My intention was to go to the monument. My impression in the moment was that this individual was misinformed and that she should probably take the time to talk to her police liaison team.

Q. Okay. But you weren't going to stick around and find out the results of that?

A. Results of what, I'm sorry?

Q. Any discussion?

A. With whom?

Q. Well, you indicated you wanted the female officer to have a discussion with I suppose other police officers?

A. The liaison team, yeah.

Q. The liaison team?

A. Um-hm.

Q. But you weren't waiting around to find out the results of that discussion?

A. I wasn't going to leave the monument.

Q. Okay. And you decided to go running?

A. Yes.

Q. Okay. You didn't want to walk to the monument?

A. No.

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Q. Okay. I'm suggesting -- sorry.

A. I suppose I wanted to.

Q. No, that's fair. So, again, you would have normally walked to the monument?

A. Um-hm.

Q. When you understood that the police in that area were not happy with what you were doing, you decided to run?

A. Yeah.

Q. Okay. I watched the way they brutalized the veterans the day before and I had observed through the psychological operations of the Government of Canada engaged in against its own citizens that it is pretty apparent to me the veterans are a target and they use the mental health issue to stigmatize us. The CSIS produced a report recently saying that we were potential terrorists, so yeah, there's a lot of fear and stigmatization around veterans.

And I also understood that the media had presented the convoy as something aggressive and evil, white supremacist Nazis, and so they brought in outside police forces who were not familiar with the scene on the ground, who had no rapport with the people there, who would have been of the understanding that they were coming there to beat up evil Nazi white supremacist veterans and that's what they did. So, I assumed that they were going to do the same to me, which was beat me up, run me out of town, drop me off in a vacant lot in Bar Haven with no access to a phone, toilet or heated space.

Q. Okay. Did you think the female officer was going to do that to you?

A. Yes.

Q. Okay. Did you think she was going to do that immediately when she said "Stop"?

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A. I mean, what -- to say that I think she was going to do that?

Q. Yeah, I asked if you thought the female officer was going to do those things that you mentioned earlier to you?

A. Just as I approached the car you mean, prior to the chase?

Q. At any point, did you think the female officer was going to do those things to you?

A. I don't see why not.

Q. Okay. When did those fears crystallize?

A. When did they crystallize?

Q. Yeah. When did you think that was a realistic possibility, if you thought it was a realistic possibility?

A. Starting on 18 February.

Q. Okay. But you didn't -- you didn't know the female officer on the 18th of February?

A. No.

Q. When did you specifically become concerned about her?

A. It was a broad concern with respect to the police forces.

Q. Okay. I just want to be clear though, did you have a specific concern with respect to the female officer who told you to stop?

A. It was nothing that she did that really raised the concern. It was the actions the previous day --

Q. Okay.

A. -- on the part of police.

Q. I'm going to suggest, let me know if you agree with this or disagree with this, but I'm going to

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suggest you knew that you could stop and you weren't going to be physically attacked by the police?

A. I don't think I knew that at all.

Q. Okay. Did you think if you turned around and walked the other way you were going to be physically attacked by the police?

A. No, I don't believe that, but I don't think that's the kind of country that we live in. Any veteran should be able to attend that monument, any person should be able to attend that monument, and it was my position that the police were engaged in abuse of authority.

Q. Okay. Just to be clear, you never took any notes with respect to the events of February 19th?

A. No.

Q. Okay. That's two years ago now?

A. Two and a half.

Q. Do you think your memories have faded a little bit over time?

A. Everybody's memories fade a little bit over time.

Q. Okay. Do you think you might be mistaken about how you were taken to the ground or brought to the ground?

A. No, not at all.

Q. Okay. Now, you weren't willing to listen to the female officer and you were determined to go to the War Memorial?

A. Um-hm.

Q. Why did you -- why is it that we should accept that -- sorry, I'll rephrase. Why is it that your position is that you would have stopped for the two other officers?

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A. Well, because that would have required some kind of brute force on my part to overcome it and I wasn't willing to go that far.

5 Q. Okay. So, you're willing to ignore verbal commands?

A. Yes.

Q. You weren't willing to --

A. Brutalize police officers.

Q. -- brutalize police officers?

10 A. Yeah.

J. WRIGHT: Okay. Okay. I don't have any other questions. Thank you, sir.

THE WITNESS: Okay.

15 THE COURT: Just let me catch up. I appreciate you're done, but I just want to make a note about the last exchange. Thank you. Re-exam, Mr. Fleury?

C. FLEURY: Nothing arising out of that. Thank you.

20 THE COURT: Thank you. You're free to step down, sir.

THE WITNESS: Ma'am.

THE COURT: Any other evidence, Mr. Fleury?

25 C. FLEURY: No. That's just the testimony of Mr. Evely. Thank you.

THE COURT: Thank you. I'm looking at the time. It may be a good time for a break. Are you both prepared to make your submissions today?

J. WRIGHT: Yes.

30 THE COURT: Okay. Should we take the break and then we'll do that?

J. WRIGHT: Thank you.

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THE COURT: All right. I'll take 20 minutes.

RECESS.....

UPON RESUMING.....

5 THE COURT: Apologies, counsel, I know I was just a couple minutes late. Okay, I'm ready.

C. FLEURY: Thank you, Your Honour. I'll begin the submissions on the *Charter* motion, if I may.

THE COURT: Thank you.

10 C. FLEURY: Your Honour, Mr. Evelyn's raised a number of issues in the *Charter* motion, that's s. 9, s. 8, and then 24(2), but fundamentally, what the motion is about, in my submission, is the police ability to demand that each and every person, including Mr. Evelyn, stop and identify themselves and be subject to exclusion in this situation that exists in downtown Ottawa on February 19th.

20 Fundamentally, we say that the police did not have the authority to create the checkpoints and the roadblocks that they did in the course of, in the course of removing trucks and protesters and vehicles from downtown Ottawa. And to be clear, and this is acknowledged in the written materials as well, there is certainly a case, *Romlewski*, which does apply the relevant test and finds that police do have authority to remove protesters to the extent that they're engaged in unlawful activity. Our position is that that case does not go as far as would be required in Mr. Evelyn's case to say that police, upon excluding, or I should say, upon removing

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protesters and vehicles, that they can subject the city to this sort of exclusion zone, if I can call it that.

5 So, disregarding the facts of the case, Your Honour, I would say, just in terms of where there's unity of the evidence, we have what is I'd say described by all to be a fairly short and quick chase. Mr. Evelyn is first observed running. There is a little bit of a -- one of 10 these things, it's not like the others, in terms of Constable Meuleman's evidence. The other three witnesses in this case, Purton, Walker, and then Mr. Evelyn, all describe a fairly similar occurrence in terms of where Mr. Evelyn is coming from and where he ends up finding himself upon 15 arrest.

With regards to the, call it the larger context or background, the evidence I'd 20 characterize it as relatively minimal, just the Agreed Statement of Facts that's been presented to Your Honour, and I'll make further submissions on this in a moment, but in my submission, it just does not provide the factual background necessary to justify the police, the steps that 25 were taken by police, quite frankly, extraordinary steps that were taken by police in setting up these, I don't think the term red zone came up in the trial, but this exclusion zone in downtown Ottawa. The police agreed, each police 30 witness agreed that there were checkpoints that were set up and that no individual -- that an individual would be forced to identify themselves

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5 and that they would, if they could not prove that they lived or worked in the area, then they would not be able to get through. In my submission, Your Honour, this is just an extraordinary and unprecedented use of police power.

10 It lasted, from the evidence of Constable Meuleman was, as I recall, February 18th, and I think all the witnesses agreed that this police action started on February 18th and that this exclusion zone continued at least until February 22nd when Constable Meuleman left downtown Ottawa. He mentioned that he thought that the footprint gradually shrunk and that it wasn't sort of eliminated in one go, but that the footprint gradually shrunk over time in terms of this exclusion zone.

15 So, Your Honour, we've provided a number of cases with regards to s. 9, *Storrey, Wong*, some of the leading cases I take it to be relatively uncontroversial law that a warrantless arrest requires a subjective and objective component. The arrest is lawful -- an arrest without a warrant is lawful if the police officer has reasonable and probable grounds to believe that the person has committed an indictable offence. So, there's the subjective requirement, which Constable Walker certainly indicated that he believed that wasn't really challenged. What I take issue with is the objective component, and in particular, whether or not police powers extended as far as were taken in this case.

30 So, in determining the scope of police

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5 authority, in my submission, the correct case is the case of *Dedman*, which has been provided in the materials. *Dedman*, of course, adopts the *Waterfield* test, a two-part test which asks, did the police conduct fall within the general scope of any duty imposed by statute or recognized by common law, and did such conduct involve an unjustifiable use of police powers associated with that duty?

10 So, *Waterfield* - and we rely on this in the written materials - *Waterfield* has been certainly used to provide police authority for, justify police authority for the creation of some exclusionary zones and the power to exclude the public from what would otherwise be a public area. So, for example, a perimeter can be created around someone executing an arrest, and there's -- I wonder if I have the paragraph number, but this is in the materials as well with citations, that it's not an issue that police can certainly set up a perimeter to preserve a crime scene, to sort of cordon off a hazardous area, those sorts of things. Police authority certainly does extend that far. But in my submission, in the context of a, excluding protesters from what I would submit is a constitutionally-protected activity, excluding protesters from a protest zone or a site of a protest is, that's just a bridge too far.

25 So, Your Honour, we have submitted a number of cases which apply the *Waterfield* test in the context of a protest. So, there's the

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5 case of *Stewart v. Toronto (Police Services Board)*. It's a civil case where Mr. Stewart's suing the Police Services Board, but it does apply to the *Waterfield* test. In this case, police create a perimeter. It's in the context of the G-20 protest in Toronto. Police create a perimeter around a public park. Demonstrators are gathering for the purposes of the protest. It was found that -- and the perimeter included bag searches, so if a person wanted to get into the public park, they had to submit to a search of the bag. In this case, police [*sic*], or sorry, the court found that this was actually not a lawful use of police authority to demand a warrantless search of a bag prior to entering a, what would otherwise be a public park.

10 I should note that, in this case, in *Stewart*, there were, on the evidence in that case, there were strong police concerns with regards to violence, the destruction of property. There was an unprecedented peacekeeping and security challenge according to the evidence in that case. So, it wasn't -- *Stewart* is not a sort of a case where police are just, I would say, going out on their own to cordon off an area that would be subject to protests without more. There's, again, serious concerns in *Stewart* about violence, about property destruction, and it's given, in the context of the case again, there's the G-20 where there have been, internationally, real violence and property destruction that happens at these events, and that was the concern

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of the police in that case.

Then the other case arises out of the same. This is *Figueiras*, which is also in the materials, a very, very similar case where Mr. Figueiras is arrested essentially for the same reason, of refusing to submit to a search. I should say as well, in *Stewart*, *Stewart* actually, it's quite strikingly similar to this case where Mr. Stewart actually goes past the, refuses to submit to a search and manages to get past the police checkpoint and is then arrested. So, it's quite similar to this in the sense that he disregards the police demand for a search, and again, it was found that the demand in that case was unlawful.

So, returning to -- I mentioned *Romlewski* briefly at the beginning. To my knowledge, this is the only case that applies *Waterfield* in the context of the Freedom Convoy. I'm not aware of another case. As I mentioned -- well, so *Romlewski* involves -- it's not -- *Romlewski* is not behind the lines when this happens. *Romlewski* is in an area that police are trying to clear. He's asked to move. He sits down and he refuses to leave.

So, at the trial, he's unrepresented, as I understand it, and he challenged police authority, and the judge in that case applies the *Waterfield* test, and found that they did have authority to demand that Mr. Romlewski leave in the context of removing vehicles that are illegally parked, and in the context of removing

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5 unlawful activity from downtown Ottawa, but that,
in my submission, *Romlewski* does not go as far as
to say that police can create checkpoints and
exclude every single person from downtown Ottawa.
And could they have, you know, controlled the
flow of traffic so that trucks don't come back
into downtown Ottawa? Absolutely. I think that
that would make sense. But excluding, again,
excluding every single person who would otherwise
10 be engaged in a peaceful activity, for example,
in this case, going to stand watch on the, at the
War Memorial for sentry duty, that's just, in my
submission, beyond the scope of police authority.

15 And I'd say it's clear on the evidence, in
terms of the exclusionary nature of this
checkpoint, that no one could have, I think on
the evidence, no one could have gotten in or out
if they didn't live or work in the area and
weren't able to provide that information. It is,
20 I'd say, an absolutely extraordinary infringement
of civil liberties, and again, is, I'd say,
virtually unprecedented in terms of Canadian law.
It's much further than the, again, the *Stewart*
and the *Figueiras* cases that we're talking about
25 where police are -- we're talking about searching
bags outside of a public park, not the lockdown
of the entire downtown core of a large urban
centre.

30 And I'm not -- I don't mean to, in the
course of making these submissions, minimize the
challenge to police that they obviously had in
terms of particularly removing trucks from

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5 downtown Ottawa, but in my submission, and particularly on the evidence in this case, there's no reason to believe that this was necessary, quite frankly, to create these checkpoints and to prevent, again, peaceful protesters, curious onlookers, anyone who would otherwise be walking down Sussex or Wellington or Rideau to do that. There's no evidence in this case, I would say, about -- I would say I don't even know if there's evidence in terms of whether, why this would have been necessary to create these checkpoints to create a -- to prevent any, again, citizens from using and enjoying the sidewalk in downtown Ottawa.

10 So, that's really everything I've said up until this point has to do with the reasonable and probable grounds for the arrest on the obstruct charge. The obstruction or the grounds, as I understand them on the obstruct - I just want to find them - all essentially tie into this idea that the authority to demand that Mr. Evelyn stop is a lawful authority. So, he -- I believe Constable Walker's evidence was to the effect he ignored police direction. He was fleeing from a police officer and that he was running towards the Freedom Convoy protest. But all of these grounds, in my submission, they tie back to this assumption that the police demand that Mr. Evelyn stop, that that was a lawful demand.

25 Just speaking briefly about the, because Mr. Evelyn was also arrested on mischief, in my submission, there's just no basis to reasonably

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5 believe that Mr. Evelyn was engaged in mischief on
this particular day, and I'm just sort of putting
aside the obstruct, the grounds for the obstruct.
Mr. Evelyn is running down a completely empty
sidewalk in downtown Ottawa. This is not a case
where, you know, in the mischief in the context
of the Freedom Convoy usually involves parking a
truck on the road, perhaps being arm-in-arm with
other protesters blocking -- blocking a street.
10 Mr. Evelyn, I'd say there's no evidence before the
court that, on February 19th at 4:25 in the
morning, that Mr. Evelyn was interfering with any
citizen of Ottawa's reasonable use and enjoyment
of their property.

15 So, turning briefly to the s. 8 issue, if
it is, I take it, to be relatively
uncontroversial that, if the arrest itself is
arbitrary, then the search that flows from it is
an unlawful search and an unreasonable search and
20 that's really, I would concede that the s. 8
issue rises and falls on the s. 9 issue.

THE COURT: Are we in agreement on that?

J. WRIGHT: Yes.

THE COURT: Thank you.

25 C. FLEURY: So, in the context of the arrest,
there is, I believe it was Constable Purton, I
may be mistaken on that, who conducted the search
of Mr. Evelyn's person, finds his wallet and
identifies him.

30 From there, we have Mr. Evelyn's
information is used to subsequently obtain his
Facebook and Twitter profile and conduct, I'd say

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5 open source, an open-source investigation. In my
submission, Your Honour, all of this evidence
ought to be excluded. I just note that the
requirements under 24(2) with regards to
"obtained in a manner", that the approach caselaw
has found that the approach should be a
relatively generous one where there is a temporal
or contextual, sorry, or causal connection to the
10 *Charter* breach. In my submission, Your Honour,
it's very clear that, without the identification
of Mr. Evely, police would not have found any of
this, any of this evidence.

15 In my submission, Your Honour, just
turning to the *Grant* test, the *Charter*-infringing
conduct is serious here, Your Honour. Again, I
would describe it as unprecedented. I certainly
can't recall another situation where we've seen,
in a Canadian city, checkpoints and lockdowns,
locking down essentially a portion of the entire
20 city. It is, again, an extraordinary
infringement on civil liberties demanding that a
person stop and identify themselves, absent some
other legal basis for that. It's, I would say,
it's a systemic, in my submission, a systemic
25 breach. It certainly wasn't something that was
unique to Mr. Evely, but it's really all of the
citizens of downtown Ottawa were subject to this,
were subject to this requirement.

30 I'd say that the impact on Mr. Evely's
Charter-protected interests was significant. He,
I think from his testimony, the sentry duty was
no doubt quite important to him. He testified

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5 that he took a leadership role over it, that he
was organizing. I believe his evidence was that
he was organizing the schedule and that he took
the least popular shifts himself, the early-dawn
hours. It's obviously something that was very
important to him, that through this deprivation
of his liberty, he was not able to do, and
something which, in my submission, certainly has
an expressive component, and we're not, I guess,
10 going down that road with regards to the
constitutionality of the *Emergencies Act*, but I'd
just say, with regards to the impact on Mr.
Evely's *Charter*-protected interests, that there's
certainly an expressive component to what he was
going to do, and depriving him of doing that
certainly impacted his *Charter*-protected
15 interests.

The third branch that almost inevitably
weighs against the defence and in favour of a
20 trial on the merits or adjudication on the
merits, I would say, given the strength of the
first two factors though, Your Honour, my
submission is that the evidence obtained should
be -- should be excluded.

25 Subject to any questions, Your Honour,
those are my submissions.

THE COURT: Thank you, Mr. Fleury.

J. WRIGHT: Thank you, Your Honour.

30 So, I'll focus my submissions, if I may,
mainly on the issue of grounds for arrest, and
I'll focus my submissions more on the combination
of the case of *Romlewski* and the evidence of

Constable Walker as it applies to this case.

5 In my submission, again, the *Romlewski* case is binding. It involves fairly similar evidence in that we're talking about, broadly, the same situation. It's February 19th. It's a little bit later in the day than the case before Your Honour here today. Mr. Romlewski, or David, as he prefers to be called, is arrested on Spark Street, whereas, as indicated in that case, he has a verbal sparring with the police. It's all captured on video, that David is taking himself through, essentially, a body camera or a camera that he has with him, and he's directed a number of times to leave. He refuses to leave. When 10 the police line advances, he's essentially picked up and arrested and charged.

15 Ultimately, in that case, David's actions consist of sitting down. Again, the broader context informs the reason why David's guilty of a mischief. Again, it's contextual in that what's going on around David specifically and what's going on around more broadly in the city is relevant to that analysis, and his physical location, while not determinative, is a major 20 factor in determining whether he's guilty or not of a mischief as a party to what's going on more broadly. That's not a new concept. It's discussed as well in the *Mammolita* case, which is a Court of Appeal case, again, referred to in 25 *Romlewski*.

30 In this case, in my submission, there's a much stronger and a much more active obstruction.

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Again, in the *Romlewski* case, Justice Wadden at the trial level, and what's approved of at the appeal level by Justice Doyle, is that, essentially, I'm paraphrasing, but it didn't matter whether or not the *Emergencies Act* or emergency legislation had been invoked, police ability and police power to clear the streets in that case was justified under common law, and they would have been justified in taking the actions they did on that day or any other day where the *Emergency Act* had not been enacted.

Once again, my submission, there's clear binding authority that, in this general context, police had the ability to clear the streets of both vehicles and individuals who were contributing to the broader mischief. It would make no sense, in my submission, that upon clearing a street, police would then be forced to allow all those individuals who'd they just cleared right back in behind them to potentially again contribute to the same mischief that they'd been contributing to. And, again, in the *Romlewski* case, we can imagine it's an obstruct to sit down in front of police and refuse to leave. Would it have been an obstruct for Mr. Romlewski or David to simply run by the police line and hang out behind the police line? No, that would obviously be an obstruct as well, and that's akin to the facts in this case, in my submission.

This court has heard some evidence about the extent to which there were lockdowns. I'm

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5 certainly not disagreeing that, to some extent,
continuing through the 19th and subsequent days,
there were checkpoints as it were, and a degree
of restriction in terms of individuals coming in
and out of the downtown core. I don't think the
court need engage with, again, reasonable
hypotheticals or what the situation would have
been on the 22nd of February. In my submission,
again, while I have argued, and I'll have to
10 argue that, on later dates in other cases, there
was a similar justification for a creation of a
zone of exclusion and maintaining that zone of
exclusion up until the 20th, for instance, but
that's not the case here. We're dealing with Mr.
15 Evelyn and his actions on the 19th, on the early
morning.

So, again, at that stage, Your Honour, the
police operation is continuing. It is somewhat
of a pause, if I can put it that way, in that the
20 police are holding their ground and things seemed
to have calmed down for the evening. Your Honour
has seen some footage of the situation on the
18th, and ultimately, I'll be arguing that Mr.
Evelyn's identified in the demonstrator line
25 that's formed in opposition to the police line
there, and in my submission, it's pretty clear we
can see an example of the mischief that's going
on in that case, but I'm just referring to that,
the drone video as an example of the situation,
30 the dynamics that the police were trying to deal
with at that stage. And again, it just makes no
logical sense that, upon pushing through a

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certain area, that police would not be able to take reasonable steps to exclude individuals from that area that they just cleared.

We don't get to the point where Mr. Evelyn is searched, and again, there's no evidence that that was actually being done at any point, but we don't get to the point where Mr. Evelyn's even asked for identification on the facts, in my submission. Mr. Evelyn decides fairly early on that he's going to do a runner and runs past the police towards the police line.

In my submission, again, it goes beyond just being in that area, and when we consider the evidence of Constable Walker, it's not just that Mr. Evelyn is in the area, it doesn't even seem to be the case that it's just the issue that he's running, but he's not responding and appears to be ignoring police demands to stop, which informs Constable Walker's view that he is obstructing the police and he is going to engage in mischief by joining an unlawful protest, as he put it.

So, in my submission, it's not like in some cases where, again, we're dealing with reasonable and probable grounds where the court might have more information later on and be able to say, well, maybe some of these officers' conclusions were incorrect. In my submission, even in those cases, the officer may still have reasonable and probable grounds. An officer is allowed to be incorrect. And there can be a reasonable difference of opinion between individuals in terms of making conclusions about

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what a person is doing, whether or not an offence is being committed.

5 In this case, again, we have the benefit of Mr. Evely's testimony, which, in my submission, amounts to, essentially, a confession to the offence of obstruct. Now, that's not something that Constable Walker would have had access to at the time, but in my submission, he's just absolutely correct in his conclusions. And 10 the factors that he'd considered, in my submission, are reasonable and appropriate: the location of Mr. Evely, what he's doing, that he's running, that there's direction from another police officer to stop, that he himself is 15 telling Mr. Evely to stop, and he's running in the direction of the police line.

I think it goes even further than that. Again, with the benefit of Mr. Evely's testimony, we know that, approaching the general area, Mr. 20 Evely had the idea that he may have to sneak in or that that may be an option, which again, in my submission, makes it clear that it would have been obvious to anybody the police are attempting to control access to this area.

25 So, again, in my submission, it's somewhat dissimilar -- I've provided or made reference to the case of *Fisher* in my written materials. THE COURT: Yeah. I didn't see a hyperlink to it.

30 J. WRIGHT: Oh, I'll send that in a moment. I just realized that I hadn't done that. I think I may have -- I hope I may have e-filed it at some

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point, but I may have omitted to do that.

THE COURT: Yeah. I didn't get a copy and I don't know if Mr. Fleury did, but I'd appreciate a copy because you refer to paragraphs and I don't have it.

J. WRIGHT: Right. I'm certainly happy to do that. I think it ultimately becomes less relevant --

THE COURT: Right.

J. WRIGHT: -- because the *Fisher* case essentially involves a missing arresting officer and there's --

THE COURT: Involves --

J. WRIGHT: Sorry?

THE COURT: It involves what?

J. WRIGHT: A missing arresting officer.

THE COURT: Okay.

J. WRIGHT: And there's essentially a line of cases now specifically related to the Freedom Convoy in Ottawa where that becomes an issue due to the nature of the police operation, from my perspective at least, in that individuals are physically detained by one police officer, pulled through the line, for instance, and in the midst of the confusion, there's not an individual who comes to court and says I saw this person do X, Y, Z. Rather, we have a situation where a hand-off officer is the first officer who's identifiable by the Crown to indicate where the person came from.

It becomes more of an issue or less of an issue, depending on the case. There are some

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5 cases where an individual is pulled through the
line, arrested immediately after the line, and
that may be potentially less of an issue. I'm
just referring to the case of *Shepherd (ph)*. In
Fisher, it was ultimately determined to be a
10 *Charter* breach, but no evidence was excluded. I
was relying on that case mainly for that point,
and that even, if the court were to find that
there was a lack of reasonable and probable
grounds potentially related to that issue, again,
not knowing where the evidence was going, perhaps
there would be some indication from Constable
Walker that he was entirely relying on the voice
he heard from the other officer. I don't think
15 that's the situation here, but I'll provide that
case in any event, but as I say, I think it's
entirely distinguishable and Constable Walker has
formed appropriate grounds, independent of
whatever officer may or may not have had
20 interactions with Mr. Evely previously. So,
those are my submissions on the reasonable
grounds issue.

My submission on the offence of obstruct
essentially follow along. Obviously, this court
25 can't consider Mr. Evely's testimony with respect
to the offence, or the substantive analysis, but
in my submission, again, there's a reasonable
inference that individuals intend the probable
consequences of their actions, and when you look
30 at Mr. Evely's actions, in my submission, there's
a clear inference that he's ignoring police
commands, and specifically, obstructing Constable

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Walker whose assignment it would have been to control the area and keep individuals out.

And if I may, Your Honour, with respect to the 24(2) analysis, should Your Honour disagree with me, I just rely on my written submissions.

THE COURT: Okay.

J. WRIGHT: With respect to the mischief count, again, I think -- and if I may just have access to Zoom again for a moment, I just wanted to pull up a couple of snapshots or frames from the videos?

Again, from my perspective, it's a stronger case than that of *Romlewski*, where, ultimately, on appeal, it was decided that Mr. Romlewski was a party to the mischief. Again, from my perspective, there's a similar act in terms of the obstruction, and we also have a similar background in that the *Romlewski* case also involved a social media component. There was a single post in that case that became relevant and that was, appeared to be from David's Facebook account, if I'm recalling correctly, from January, late January, where David would have posted something along the lines of, "Keep those horns honking."

There's somewhat of a distinction in this case in that we see a lot of social media evidence, and Mr. Evely, in my submission, is clearly around the convoy for a substantial period of time. He seems to be substantially involved, sort of the interesting point where he's giving a speech earlier in the

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demonstration, and there appears to be this difference of philosophies or disagreement with respect to the speech that Mr. Evely's providing. So, I think that does create a bit of an interesting issue in that I think there could be an argument. Maybe Mr. Evely's not actually philosophically aligned with the individuals in the Freedom Convoy. I think, while there's certainly or probably a multitude of philosophies that were present there, I think what we do see from the social media and the open-source evidence is that, whatever the philosophical differences, Mr. Evely is there to support what's going on more broadly in the demonstration. He's inviting people to come to Ottawa. And I think the distinguishing aspect and why it's not possible to say, well, Mr. Evely might just be inviting people to protect the War Memorial specifically and not actually be involved in the blocking of streets and the honking of horns, I think the distinguishing aspect or the important aspects are his involvement in obstructing the police operation, and again, I'll just pull up a snapshot.

THE COURT: Are you talking about in the video or --

J. WRIGHT: Yes.

THE COURT: Okay.

J. WRIGHT: So, this is a snapshot from the police drone footage. In my submission, Mr. Evely is clearly identifiable where I have my mouse now in the red hat. And in my submission,

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again, this is a line that's clearly been formed in opposition to the police line and in opposition to the police effort to remove individuals and vehicles from the streets. This line is, itself, blocking the street. And while this takes place on February 18th specifically, my position is, the involvement in this video alone would ground a conviction for mischief in that it's very similar to the case of *Mammolita* where individuals have, essentially, while not again, maybe not physically in this picture that we can see, but individuals are essentially standing shoulder-to-shoulder, may or may not be linked arms. So, in my submission, this is the kind of evidence that's referred to in *Mammolita* where there's discussion of the significance of an individual's presence in the area.

I'm just going to pull up one more snapshot. This is from the second video I showed, and again, my position is this is Mr. Evelyn here to the right, and again, my position is he's readily available, or readily identifiable, given the hat.

Apart from that, I'd also call the court's attention to the video where, again, no one can be seen physically, but in my submission, we can hear Mr. Evelyn essentially comparing the police to Nazis, being largely critical of them. My position is, again, in that case, while potentially the involvement in that video, again, should the court accept that that's Mr. Evelyn, again, calling the police Nazis is not very nice,

5 it may be not a criminal offence in and of
itself, but in my submission, it does shed light
with respect to the *mens rea* and shows that Mr.
Evelyn, while I'm sure he is engaged in sentry
duty, in my submission, that's clearly not all
he's doing. He's specifically also involved,
intermittently, in an obstruction of the police
in support of the Freedom Convoy.

And just on that video specifically --

10 THE COURT: Which video, the one you just showed
me?

J. WRIGHT: No, sorry, the video where we can
hear an individual, --

15 THE COURT: Yeah.

20 J. WRIGHT: -- again, compare the police to
Nazis, and in my submission, there are a couple
of aspects that lend credence to identification
in that case, one that's coming from Mr. Evelyn's
social media. That's not conclusive, potentially
in and of itself, in that you can post videos
from other peoples' social media accounts. We
also, again, hear Mr. Evelyn's voice which I think
can be compared to other videos where he's giving
speeches. In my submission, he has a somewhat
25 distinctive voice, again, maybe not conclusive in
and of itself, but what you also here is
discussion of different generations and the
impact of the police and government officials on
millennials specifically, that appears to be
30 rather specific to Mr. Evelyn in that we hear from
his previous speeches that he seems to have
specific concerns with respect to generational

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issues, if I can put it that way, and the interaction of different generational groups.

Subject to questions, Your Honour, those are my submissions.

THE COURT: No questions. Thank you. Any reply?

C. FLEURY: I'd like to reserve the right to make my reply to the substantive charges until after we get the decision on the *Charter* issue, or am I expected to make my submissions on the substantive issues now?

THE COURT: No, I suppose you don't have to. I thought we were blending. Nobody mentioned that we weren't and so I thought that's sort of how we were tackling things, but --

C. FLEURY: Okay. I can --

THE COURT: No-no. I'm not going to force you to do that, especially if that wasn't the game plan, so --

C. FLEURY: Well, I guess I don't think we had ever talked about it. I just --

THE COURT: No. I'm just -- maybe it was just an assumption on my part that I shouldn't have made. So, I have no difficulty if that's the way you want to do it. Mr. Wright, you were about to --

J. WRIGHT: Sorry. Yes, apologies. I didn't mean to drone on and on about substantive issues if we were only dealing with the *Charter*, sorry about that.

C. FLEURY: Well, I don't think, just to be clear, I don't think the evidence is going to change. I don't anticipate calling evidence on the substance of the case.

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5 What I would say, just in reply to the
 Charter issues, my recollection of Constable
Walker's evidence was that Mr. Evelyn, being
running towards the police line, was not part of
his grounds for arrest. I understand that
that's, both Meuleman and Purton did emphasize
that in the course of their testimony, but I
don't recall - I may be mistaken on this - but I
don't recall Constable Walker relying on that
10 particular factor as forming the grounds for
arrest, and in my submission, really, all of his
grounds tie back to this issue of whether or not
the demand to stop Mr. Evelyn is a lawful one.

15 And I'd say, yeah, I should be in a
position to make submissions on the substance I'd
say after lunch.

THE COURT: Are you expecting me to give you a
decision on the *Charter* after lunch? I guess, I
shouldn't ask you that question, but I'll tell
20 you I won't be.

C. FLEURY: Okay.

THE COURT: I was going to take some time. You
both referred to cases and so I won't be in a
position to give a decision after lunch, but I'm
25 not pressing you for submissions on the
substantive. You can -- we can come back for a
decision on the *Charter* and then go from there,
but I'm in your hands.

C. FLEURY: I'd just like an opportunity to go
30 through the videos again, but then, again, I
anticipate I can make submissions after lunch.

THE COURT: You want to do that even though I'll

reserve on the *Charter*?

C. FLEURY: That's fine.

THE COURT: Are you sure?

C. FLEURY: Yeah.

THE COURT: I don't want to put you off the game plan that you had, that wasn't my intention.

C. FLEURY: It wasn't so much a game plan. I guess, Mr. Wright and I just didn't hammer out every single detail, which we probably should have.

THE COURT: You're okay to come back after lunch then and address that?

C. FLEURY: Yes.

THE COURT: Okay. I expect, just so that you both understand, I am not here next week, so I would expect it would be after next week in terms of a decision, but I can structure it so that it's a decision on the *Charter*, and then if you've made your submissions on the substantive, I'll have a decision on that too.

C. FLEURY: Okay.

THE COURT: Does that work? Okay. So, can we say two o'clock? Thank you.

RECESS.....

UPON RESUMING.....

THE COURT: Before we launch into submissions, I understand there may be some issues when I'm not in the courtroom. Is there anything you want to bring to my attention?

J. WRIGHT: No. So sorry, Your Honour, I didn't mean to derail anything, certainly.

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THE COURT: Haven't derailed anything.

J. WRIGHT: Nothing to do with Mr. Evelyn --

THE COURT: That's what I understand.

J. WRIGHT: -- specifically. I was concerned, during the break, there appeared to be some name-calling going on in the body of the court --

THE COURT: Right.

J. WRIGHT: -- that I found to be inappropriate for the court setting. Again, I don't mean to over-dramatize that, but I wanted to bring it to the attention of Madam Clerk. I thought it could be done in a subtle way, but I don't mean to derail anything on the other hand.

THE COURT: You're not derailling anything. And sometimes subtlety is maybe not the best way to go in the sense that, whether I'm in the courtroom or not, people will conduct themselves with respect in here or you will be asked to leave. Have I made myself clear? There will be no name-calling or other disruptive behaviour in this courtroom. Have I made myself clear? You'll be asked to leave. That will be the end of it. I will not put up with it. It's not fair to Mr. Evelyn and it's not fair to the people that work here. Have I been clear? If I hear about it again, everyone will be asked to leave. I'm not going to start figuring out who's at fault. You'll just be asked to leave.

Mr. Fleury?

C. FLEURY: Thank you, Your Honour. And thank you for the opportunity to look back over the videos again.

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THE COURT: Yes. Did you have enough time,
because --

5 C. FLEURY: I did, and I was a little caught off
guard, and I'm sure I'd expressed that, about
making concluding submissions right away.

THE COURT: Right.

10 C. FLEURY: But after, again, having the break to
think about it, I don't think that there's
actually too much left to say. It's really, most
of my comments are going to be restricted to the
-- my submissions, sorry, are going to be
restricted to the videos and the probative value,
if any, of the videos themselves.

15 THE COURT: I want to make it clear that I didn't
mean to put any pressure on you to do things in a
way that you had not been anticipating, so I just
reiterate that I'm happy to give the decision on
the *Charter* and then you can make submissions
after that, if that is your preference?

20 C. FLEURY: I don't think it's going to make a
difference, Your Honour.

THE COURT: Okay. All right. I'm just being
clear that that's available to you. Okay.

25 C. FLEURY: So, to start, just assuming for the
moment that the *Charter* argument is successful
and that the evidence is excluded, then at that
point, we really have, well, one, there's the
obstruct charge, in my submission, and that
scenario could not stand given that the demand
30 would have been determined to be unlawful if
we're successful on the *Charter*.

THE COURT: Do you mean the demand to stop?

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C. FLEURY: Yes.

THE COURT: Yeah.

C. FLEURY: Yeah. So if -- and then in that scenario, we're left with the mischief charge, and in my submission, there was no mischief that occurred on February 19th. It's actually the opposite of what most of these Freedom Convoy mischief cases are, and most of the -- really everyone that I've seen and I've been involved in and the cases that I've read having to do with the Freedom Convoy, inevitably, the demand of the officer is please leave, please get out of here, and the person refuses and they stay stationary. Mr. Evelyn's the opposite. He's running at full speed down the sidewalk, and there's just no, in my submission, no evidence before the court that his running down the sidewalk at 4:25 in the morning interfered with the use and enjoyment of that sidewalk by the citizens of Ottawa. There's just no, in my submission, no evidence of that.

On that point as well, usually, in the protest context, and Mr. Wright referred *Mammolita*, one of the leading cases, a person can be, I acknowledge, a person can be a party to mischief, notwithstanding that their individual actions wouldn't constitute a mischief, but collective action can constitute a mischief if a person is like a metaphorical brick in a wall standing across a roadway.

With regards to February 19th, I question, what is the mischief that Mr. Evelyn is allegedly a part of? Is it the protesters who the officers

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5 referred to were on, I believe, the west side of
a line? We have very little information on what
was actually going on other than Mr. Evelyn, other
than what happened with Mr. Evelyn that evening.
So, in my submission, his actions do not amount
to a mischief and we don't have, in my
submission, enough evidence to even conclude that
a mischief was going on at that time, and if so,
how was Mr. Evelyn actually a part of it?

10 So, making another assumption now, I
suppose in the alternative, if the videos are
admitted and Your Honour is not inclined to agree
with us on the *Charter* issue, in my submission,
the videos have very, very little, if any,
15 probative value. There are -- Mr. Evelyn is, you
know, observed giving speeches. He's saying
things that, in some cases, are critical of
police. None of these -- none of his statements
are criminal, and none of his statements, in my
20 submission, are probative of his guilt or
innocence on the mischief or the obstruct charge.

25 There is -- Mr. Wright referred to Mr.
Evelyn, in one of the videos, he's standing in
front of the War Memorial and he says to the
effect of, please come to Ottawa, encouraging,
presumably encouraging people to come to Ottawa.
I just want to emphasize the context of that
video is, in the background, you can see veterans
30 taking care of, I believe it's shoveling snow on
the monument, but in any event, veterans taking
care of the monument, and it's in that context he
says, we could use a lot of help and come down to

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5 Ottawa. In my submission, regardless of the context, it's not probative of criminal activity but in this case, there is a very innocent explanation. It's certainly nothing verging on counseling or anything like that.

10 Now, with regards to there are two videos, the OPS drone footage and the, I believe, the title of the video is "Police Clash with Protesters in Ottawa" and that's the open-source video which shows the clash between police and protesters in Ottawa, with regards to those videos, in my submission, there is just not proof beyond a reasonable doubt that Mr. Evelyn is indeed the person which the Crown purports him to be in those videos.

15 We have, in the case of the drone video, it looks to be, in my submission, at some point, the drone must be a hundred feet or more overhead. It does zoom in at points, but the view is primarily from the top. We don't get a good look at the person's face. The Crown, Mr. Wright, made submissions regarding Mr. Evelyn's hat, that he has a red hat. I certainly agree that, in some of the social media videos, he is wearing a red hat, but lots of people wear red hats, Your Honour. I don't -- in my submission, that's not enough to convict him beyond a reasonable doubt of, on a mischief charge. It's just not, in my submission, not proven on the evidence in this case, particularly, where there's no -- in any case where I've -- I've seen similar drone videos in other cases. In all of

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5 those cases, there were some supplementary
evidence provided by a police officer who was
actually there who can say this is what was going
on, this is what the protesters were doing, this
is what police were doing, what police were
saying, this is the overall context, and we have
none of that in this case.

I'd emphasize that --

THE COURT: Not in the Agreed Statement of Facts?

10 C. FLEURY: Not with regards to the video.

THE COURT: Just give me a moment.

C. FLEURY: But I'm not suggesting that it's not
clear that, one, it's from February 18th.

15 There's police who are identified. It's the
Freedom Convoy protest.

THE COURT: No.

20 C. FLEURY: I'm not suggesting that any of that
isn't clear, that there's just a context that's
missing in terms of what were police actually
doing; what was their goal? I mean, obviously,
they're attempting to remove trucks from downtown
Ottawa, but we don't know what was said, we don't
know what the protesters were responding to, if
anything. It's just, it's a drone video with no
25 audio and no other supplementary evidence, I'd
say that.

30 And, likewise, with the open-source video,
which shows it's a very, very brief, in my
submission, flash of a gentleman in a red hat it
looks like, when I looked at the video, I
couldn't get a good front view of the person's
face. In my submission, it's just not, again,

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without more, without a witness who would identify Mr. Evely, it's just not, in my submission, proof beyond a reasonable doubt with regards to anything that happened on February 18th.

I also want to emphasize that the information particularizes the obstruct as obstructing Constable Walker. We have no information in terms of Constable Walker's, whether he's in the video there at all, whether he's in close proximity, whether he's part of that, that push, if you will, by police to move forward. I believe his evidence was that he actually started his shift later in the day, so presumably, he's, if there's an inference at all, it's that he's not there. So, in my submission, Mr. Evely could not have possibly obstructed Constable Walker in the context of these videos where Constable Walker isn't even, isn't there, hasn't started his shift.

I'm going to leave it there for the videos, Your Honour, and I would just echo with regards to the obstruct charge and the allegations on February 19th, I rely on the same arguments for the purposes of the demand, and that the demand was not unlawful [*sic*], demand for precisely the same reasons, and I'm not going to spend the next half hour repeating them unless Your Honour would like me to do so.

THE COURT: No. I took good notes.

C. FLEURY: Okay, thank you. And subject to any questions, Your Honour, those are my submissions.

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5 THE COURT: It's unusual to go back and forth,
but it's on the trial proper sort of, and so I
didn't know if you had anything more you wanted
to say in reply. I would allow it just because
we've kind of mixed the two together.

10 J. WRIGHT: No, Your Honour. Just briefly, I'll
just indicate I had provided Your Honour the case
of *DeCaire* as well. I didn't make reference to
that case, but it is a very recent Superior Court
case that is relevant to these Freedom Convoy
prosecutions, I suppose party liability as well.
My position would obviously be that the case at
bar is more similar to *Romlewski* and it's
distinguishable from both, but I've provided that
15 case as well, out of fairness, I think. I don't
have anything else to add, subject to questions.

20 THE COURT: Okay, thank you. Okay. So, as I
indicated before lunch, it would be my intention
to put the matter over for a decision. One thing
I meant to ask is whether Mr. Evelyn is traveling
to be here for his trial?

C. FLEURY: He is. He's a resident of Sydney,
Nova Scotia.

25 THE COURT: Yeah, I noticed that in the evidence.
And yourself as well, I take it, you traveled to
be here?

C. FLEURY: I'm from Belleville, so it's not a --

THE COURT: Okay.

C. FLEURY: It's not a hard drive, not too far.

30 THE COURT: So, I won't apologize for not being
ready today because I think, to do it justice, I
have to take the time to review and read the

cases and review the evidence. I just can't do that on the fly. I don't think it would be fair to any, but I do apologize because it is going to inconvenience you to come back. So, I can --

5 C. FLEURY: I wonder, Your Honour, is it possible for Mr. Evelyn to appear remotely for the --

THE COURT: Of course.

C. FLEURY: -- purposes of that --

THE COURT: Any objection, Mr. Wright?

10 J. WRIGHT: No. No objection.

THE COURT: I have no difficulty with that.

C. FLEURY: Okay.

THE COURT: Okay. And I was going to say, we can also build in a little bit so you're not having to come back -- we finished the trial in time, which is great, so I can build in a few weeks so you're not having to travel back so quickly, which will give me a little bit more time.

20 So, I'm in the parties' hands with respect to -- I can suggest sort of the week I'm looking at and then we can take a look at schedules, is that -- and Madam Clerk, I -- you know what, I have access to a schedule, so let me see so I can pull that up, and if not, we'll have to call trial coordination, but --

25 THE CLERK OF THE COURT: Yeah, I can call --

THE COURT: -- I'm proposing to do it at like a nine, 9:15, 9:30 slot so that I can just sort of build it in. So, I'm looking at the week of September 16th.

30 C. FLEURY: I have a Monday and Tuesday that week, I could make that work.

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THE COURT: Yeah.

C. FLEURY: After that, I'm in Toronto.

THE COURT: Okay. Will you also appear remotely?

C. FLEURY: Probably not.

THE COURT: Okay. Does that make a lot of traveling for you if I make it on the Tuesday?

C. FLEURY: No. No, Tuesday works. Thank you.

THE COURT: Okay. I'm going to say Tuesday at 9:30. I'm in number ten. I'm in a trial all that week. I picked Tuesday so that I can give counsel on my trial a bit of a warning that the next morning I'll be delivering a decision.

THE CLERK OF THE COURT: Was that 9:30, Your Honour?

THE COURT: I did say 9:30. Actually, why don't we make it 9:15. Is that okay, not too early?

C. FLEURY: I'm flexible, Your Honour.

THE COURT: Yeah? I'll say 9:15. That will give us a bit more time before the 10 a.m.

J. WRIGHT: So, Your Honour, I may be at the Ontario Review Board. Would it be possible for one of my colleagues to step in?

THE COURT: Of course.

J. WRIGHT: Just, again, not knowing what the result will be, I'm not sure -- if something was more substantive going to happen, I would prefer to be here, but if it's just for a decision, I -- that's fine from my perspective, but --

THE COURT: Right. Well, we can, if Mr. Evelyn's going to be appearing remotely, then we can just do the decision. One decision would end the matter, but the other might result in the next

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step, but we could put that over to another day,
and again, appear remotely if everyone is in
agreement. Is that okay, Mr. Fleury?

C. FLEURY: Yes.

THE COURT: Okay. Then that date will simply be
for the decision one way or the other, and any
further steps, if necessary, we'll schedule to
another day.

Okay. Mr. Evelyn, September 16th, 9:15
a.m. in number ten for a decision.

THE CLERK OF THE COURT: Sorry, was that 16th or
17th, --

J. EVELYN: Yes, ma'am.

THE CLERK OF THE COURT: -- Your Honour?

THE COURT: Oh, I have said the wrong date?
17th.

THE CLERK OF THE COURT: 16th is a Monday

THE COURT: That's not a very good start.

September 17th, Tuesday, at 9:15, and we'll see
you then. You're free to leave. Thank you.

J. EVELYN: Thank you, ma'am.

C. FLEURY: Thank you.

THE COURT: Thank you, counsel, for your able
submissions and conduct during the trial, I
appreciate it.

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FORM 3
ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

5 I, Natasha Malozewski, certify that this document is a true
and accurate transcript of the recording of R. v. Jeffrey
Lloyd Evely, in the Ontario Court of Justice held at Ottawa,
Ontario, taken from Recording No. 0411_CR02_20240827_
095123__6_MILESLIS, which has been certified in Form 1.

10
December 20, 2024

(Date)

(Signature of Authorized Person)

15 Natasha Malozewski
ACT ID: 4177239415

20 *A certificate in Form 3 is admissible in evidence
and is proof, in the absence of evidence to the
contrary, that the transcript is a transcript of
the recording of evidence and proceedings in the
proceeding that is identified in the certificate.*

Information No. 0411-998-22-8184-00

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

JEFFREY L. EVELY

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

DELIVERED BY THE HONOURABLE JUSTICE L. MILES
On September 17, 2024, at OTTAWA, Ontario

APPEARANCES:

S. Lewis

Counsel for the Crown

C. Fleury

Counsel for Jeffrey L. Evely

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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

Transcript Ordered: October 21, 2024
Transcript Completed:
Ordering Party Notified:

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R. v. Jeffrey L. Evelyn
Reasons for Judgment

TUESDAY, SEPTEMBER 17, 2024

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

5 MILES, J (Orally):

So, I'll start with the ruling on the
Charter application.

Mr. Evelyn is charged with two offences
arising out of the Freedom Convoy protest and the
10 police enforcement action to remove protesters
and vehicles from downtown Ottawa in February
2022. The events surrounding the allegations in
question occurred on or about the 19th of
February 2022. It is alleged that Mr. Evelyn was
15 wilfully obstructing, interrupting, or
interfering with the lawful use, enjoyment or
operation of property, contrary to s. 430(1)(c).
He is also charged with wilfully obstructing
Constable Walker in the execution of his duty,
20 contrary to s. 129(a) of the *Criminal Code*. Mr.
Evelyn brings a *Charter* application alleging
violations of ss. 8 and 9 of the *Charter* in
seeking the exclusion of evidence collected
against him in the course of the police
25 investigation into this matter. These are my
reasons on the *Charter* application.

Factual Background

30 The parties have filed an Agreed Statement
of Fact filed as Exhibit One, which outlines the
factual background of the events known as the
Freedom Convoy protest. Parties agree that

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5 people began arriving in the Ottawa area between
January 28th and February 19th, 2022 to protest
the legislative response to the COVID-19
pandemic. Participants in the protest parked
their vehicles on the streets of downtown Ottawa.
The vehicles extended to the entirety of the
parliamentary precinct and the majority of the
downtown core of Ottawa, making passage virtually
impossible on several downtown streets for
10 periods of time.

Many of the vehicles were equipped with
horns and some of the protesters honked their
horns in a sustained manner and at all hours from
the beginning week of the occupation until it
abated between 11 p.m. and 7 a.m. following the
granting of an interim injunction by the Superior
Court on February 7th, 2022.

15 It is agreed that the Freedom Convoy
protest affected some downtown residents' ability
to move freely and enjoy their property. Some
downtown businesses, community centres, and
establishments chose to close, including the
Rideau Centre, the National Arts Centre, museums,
public libraries, as well as the COVID-19 clinic
at the University of Ottawa; see paragraph eight
of the Agreed Statement of Fact.

20 It is agreed that the Freedom Convoy
protest affected some downtown residents' ability
to move freely and enjoy their property. Some
downtown businesses, community centres, and
establishments chose to close, including the
Rideau Centre, the National Arts Centre, museums,
public libraries, as well as the COVID-19 clinic
at the University of Ottawa; see paragraph eight
of the Agreed Statement of Fact.
25 Paragraph ten of the Agreed Statement of
Fact outlines a timeline of the response to the
Freedom Convoy, including but not limited to
February 6th, 2022. The Mayor of Ottawa declared
a state of emergency in Ottawa. February 9th,
2022, Ottawa police issued a message to
30

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5 demonstrators advising that anyone blocking the streets or assisting others in blocking of streets may be committing a criminal offence and that anyone continuing this activity may face charges.

10 A further notice is issued by Ottawa Police on February 16th advising protesters that they will face severe penalties if they do not cease further unlawful activity, and to remove their vehicles and/or property immediately from all unlawful protest sites.

15 February 18th, 2022, police operations were underway to clear the downtown core. Mr. Evelyn does not admit that he nor any other Freedom Convoy protester committed mischief or any other criminal activity on or about February 19th, 2022.

20 The Issues Before the Court

25 Mr. Evelyn was arrested in the early morning hours of February 19th, 2022. He submits that his arrest was unlawful and that any subsequent searches were, therefore, unreasonable, contrary to ss. 9 and 8 of the *Charter*. The applicant argues that all evidence obtained as a result of the infringement of his *Charter* rights should be excluded pursuant to s. 24(2) of the *Charter*.

30 The applicant does not dispute that the common law police powers extended to the ability to clear the roadways of downtown Ottawa of protesters and vehicles which were creating an

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unlawful disruption; see paragraph 38 of the applicant's *Charter* application.

5 In dispute is the police power to cordon off and lockdown the downtown core with police check points at the perimeter. No persons could enter the perimeter without being stopped by police. If persons could not prove that they lived or worked in the area, they were turned away. It is the applicant's position that police had the authority to remove protesters to the extent that they were engaged in unlawful activity, but that it did not extend to creating an exclusion zone in downtown Ottawa.

10 Following his arrest, police used Mr. Evelyn's identity to gather information from his social media profiles to identify him in drone video footage from February 18th, 2022 and open-source video. He seeks exclusion of this evidence.

20 The Relevant Facts on the *Charter* Application.

25 The evidence of Constable Meuleman, spelled, M-E-U-L-E-M-A-N, Constable Purton, P-U-R-T-O-N, and Constable Walker, as well as Mr. Evelyn, establishes the following facts which are not in dispute. The officers who testified at trial believe they had the authority to restrict access to the area that had been cleared by police earlier in the day on February 18th, 2022. All three officers testified that their role was to maintain the area cleared by the public order unit and not allow protesters back into the

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5 cleared area. There was a fence barrier erected by police in front of the Château Laurier west of Sussex. Protesters were on the west side of the fence milling about and yelling, and at times, taunting the officers. Police were maintaining the barrier at the Château Laurier overnight. The area behind to the east of the barrier was under police control. There was no vehicular traffic allowed and pedestrians were required to show identification to prove they lived or worked in the area before being allowed into the restricted area.

10 Mr. Evelyn entered the restricted area shortly after 4 a.m. on February 19th, 2022. Mr. Evelyn did not live or work in that area. Mr. Evelyn was told he could not enter. He continued walking. He was told to stop by a female officer. He ignored that directive and began to run into the restricted area towards the fence line which separated police from the protesters. When arrested, Mr. Evelyn was running west on Wellington, past the Château Laurier in the direction of the War Memorial. He was also running in the direction of the fence barricade and the officers maintaining it, the Parliament buildings, as well as other protesters who remained encamped beyond the fence line. Mr. Evelyn was wearing a vest or jacket with his medals on it. Mr. Evelyn mentioned he was a war vet when he was arrested. Mr. Evelyn had choice words, that was his expression, for the officers during the arrest, but was physically cooperative

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once on the ground after the arrest.

Where the Accounts Diverge Between the Three
Officers and Mr. Evelyn.

5 All three officers testified that
Constable Walker was yelling "Stop" and pursued
Mr. Evelyn on foot. Mr. Evelyn testified he did
not see Constable Walker chasing him or hear him
yell at him to stop. The three officers
10 testified that Constable Walker yelled "Stop"
numerous times. Mr. Evelyn did not stop and
continued running in the direction of the
barrier.

15 The three officers describe seeing Mr.
Evelyn try to run past Constable Meuleman and
Constable Purton without stopping and that he had
to be taken to the ground by force. Mr. Evelyn
testified that, when he saw the two York Regional
Police officers coming toward him, he put his
20 hands up beside his head, and as they put their
hands on him, he bent his knees and went down
onto the ground on his stomach voluntarily. All
three officers recall seeing his war medals, but
none of the officers testified that Mr. Evelyn
25 told them he was going for sentry duty at the War
Memorial.

Law and Analysis

30 The arresting officer must have reasonable
grounds to believe that the person has committed
an indictable offence. The arresting officer
must subjectively have reasonable grounds on

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5 which to base the arrest, and those grounds must
be justifiable from an objective point of view.
A warrantless search that follows an unlawful
arrest is unreasonable. The s. 8 breach rises
and falls on the determination of whether Mr.
Evelyn's arrest was lawful. The applicant has the
burden on a balance of probabilities. More
specifically, police have the power to perform a
warrantless search and seizure incidental to a
10 lawful arrest in order to prevent any possible
escape, protect themselves against any weapons
that may be in possession of the arrested
individual, and preserve evidence of the offence
for which the person is arrested. In order for
the search incident to arrest to be lawful, the
15 arrest must be *Charter*-compliant or lawful.

Mr. Evelyn argues that the police lacked
reasonable and probable grounds to arrest him for
mischief and obstruct police. The arrest
20 violated his right not to be arbitrarily detained
pursuant to s. 9, and therefore, the search
incident to that arrest violated his right under
s. 8 of the *Charter* to be secure against
unreasonable search and seizure. Counsel have
25 conceded at trial that, if the arrest is found to
be lawful, the search incident to arrest was
lawful.

Was Mr. Evelyn's Arrest Lawful?

30 An arrest is lawful under s. 495(1) of the
Code where the arresting officer has reasonable
grounds to believe that the person has committed

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an indictable offence. The arresting officer must subjectively have reasonable grounds on which to base the arrest, and the grounds must be justifiable from an objective point of view; see *R. v. Storrey*, S-T-O-R-R-E-Y, (1990) 1 Superior Court Reports or S.C.R. 241.

A reasonable person placed in the position of the officer must be able to conclude that there were reasonable and probable grounds for the arrest. In assessing reasonable and probable grounds, the court is concerned with the circumstances which are known to the officer at the time of the arrest. Before reasonable grounds exist, the officer must conduct the inquiry which the circumstances reasonably permit. The officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable; see *R. v. Golub*, G-O-L-U-B, (1997) 34 O.R. (3d) 743.

The obligation of police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations; see *R. v. Chehil*, C-H-E-H-I-L, (2013) SCC 49.

The applicant agrees with the decision in *Romlewski*, R-O-M-L-E-W-S-K-I, that holds that common law police powers extended to the ability to clean the roadways of downtown Ottawa protesters and vehicles which were creating an unlawful disruption; *R. v. Romlewski* cite is

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2023, ONSC 5571.

At paragraph 250, Justice Doyle found no error in the trial judge's finding that police officers involved in the arrest of David were part of a legitimate police operation. They were acting in the execution of their duties at common law to preserve the peace, prevent crime, and protect life and property. Justice Doyle also found they were acting in execution of their duties as set out in the *Police Services Act*. At paragraph 251, Justice Doyle also agreed with the trial judge where he found in his decision, Justice Wadden, at paragraph 21:

"Whether the accused subjectively accepts the legitimacy of this policing action is irrelevant. I find, on the evidence, that there was a legitimate police operation underway to end the illegal occupation of the downtown streets. I find that Constable Bastien, B-A-S-T-I-E-N, and his fellow officers were acting in the execution of their lawful duties that afternoon. It is irrelevant whether the *Emergency Act* had been declared or not. The police were entitled to clear the streets of disruptive people, just as they would have been entitled to do so on any day that a crowd had gathered that was so disruptive that it was breaching the peace. At that moment, the accused was not part of the crowd. They were approaching, but he interfered with the police as they moved toward it. My finding

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of the legitimacy of the police action is reinforced by the fact that this was not a round-up of protesters, or a kettling as has sometimes been seen in crowd control. There is no evidence that mass arrest was the objective. At each state [sic], the police gave the accused every opportunity to leave without arrest. On the evidence before me, it is clear that the police were acting to secure the area to restore order."

At issue is the enforcement of a secure area and establishing check points, forcing people to identify themselves and restricting movement within the area that had been cleared earlier in the day on February 18th. I find that the legitimate police operation to end the illegal occupation of the downtown streets included police efforts to secure the area and restore order. This would include restricting peoples' movements into the area that had been cleared by police during the day on February 18th, 2022.

By February 18th, 2022, police had begun a large-scale operation to remove protesters and vehicles, and by logical inference, the only way to secure the area and restore order was to maintain the ground they had gained throughout the day. It would be illogical and contrary to their objective if, after clearing the area, they could not restrict movement so as to prevent the protesters and vehicles from reoccupying the space they had just cleared. To say otherwise

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would allow for the absurd situation where protesters would be permitted to re-occupy the secured area to continue their illegal activities, and thereby, force police to start over each morning in their efforts to clear the protesters, secure the area, and restore order. If this were the case, there would have been no end to the protest or the police efforts to clear it.

This was not martial law as described by defence, but a carefully orchestrated operation to clear the streets of protesters and vehicles which were creating an unlawful disruption. The area restricted was limited to the protest footprint and included the area that had been cleared of protesters during the daytime operation. This is distinguishable from the *Stewart* case cited by defence. This was not police action which restricted peoples' ability to enter into an area where a planned demonstration was going to take place or attempts to impose conditions on entry to the protest area. The police were acting to maintain order in the area they had secured and not allow the illegal disruption to continue.

I turn now to the subjective and objective grounds for the arrest. Mr. Evelyn testified on the *Charter* application. I have determined that Mr. Evelyn's accounts of the events and his actions on the date are not relevant to what was in the mind of the officer at the time of arrest.

Constable Walker testified it was his role

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5 to assist officers in maintaining the cordoned-off area and prevent people from entering or trespassing into that area and prevent further mischief. He noted that the restricted area only had police presence at that time. There was no one else other than protesters west of the police barrier on Wellington Street. I note this to be the direction that Mr. Evelyn was running towards when he was being pursued by Constable Walker.

10 Constable Walker heard a female officer cry out, shouting "Stop." He saw a man, later identified as Mr. Evelyn, running in the direction where he was standing. He yelled at the man to stop. The man kept running. The man turned before he could catch up to him and he took off after him in pursuit, yelling at him to stop. He observed him attempt to run through the officers who intervened and took him to the ground by force.

20 Constable Walker testified about the public notices and the directions to the public, which had been made multiple times via news broadcast and Ottawa police broadcasts, warning protesters that any further attempts to get into the area could result in arrest and a charge of mischief for interfering with the lawful use and enjoyment of property. He described that locals were being deprived of the ability to use and enjoy the property, protesters having taken over the streets, set up encampments, using their horns and continuing to do so despite requests by people to stop. I note the Agreed Statement of

25

30

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5 Fact has the admission that the Freedom Convoy protest did affect some downtown residents' ability to move freely and enjoy their property and some downtown businesses that I have listed above did choose to close during the occupation.

10 With respect to his grounds to arrest for obstruct police, Constable Walker testified that Mr. Evelyn was refusing to comply with orders of police, more specifically, attempts to evade the officers and evade Constable Walker when he yelled "Stop" multiple times and pursued him on foot. Constable Walker testified that Mr. Evelyn could clearly see him, that Mr. Evelyn was attempting to evade him and force his way through the officers. He believed he was trying to join the protesters and cause mischief. He noted that, if Mr. Evelyn was not evading him, he would have stopped to determine what was going on.

20 Mr. Evelyn's actions by running, by refusing to stop from multiple officers who were yelling at him to stop, constituted the grounds in his mind for the obstruct police charge. I accept Constable Walker's evidence and find that he subjectively had reasonable grounds to arrest Mr. Evelyn for obstruct police and mischief.

25 The next question is whether the subjective grounds were justifiable from an objective point of view. I have considered the evidence of Mr. Evelyn in this part of the analysis. I note the following to be relevant. Mr. Evelyn testified that, as he approached George Street, he considered sneaking in along the

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canal, but instead decided to attempt to engage the police in good faith by approaching the police car to explain that he was going to the War Memorial for sentry duty. In using the term "sneak", he acknowledged that he understood on some level that he would not be welcome in that area but dismissed it. He advised the female officer that he was on his way to the War Memorial for sentry duty. The female officer told him he could not enter the restricted area. He opened his coat to show her his medals. She repeated he could not enter, and he said, "Yes, I can," and continued walking.

He testified that she said, "Stop," and that's when the chase began. He described how he began to run east on Wellington in the direction -- west, sorry, on Wellington in the direction of the War Memorial. He testified he understood "Stop" by the female officer, but didn't accept it. I find that Mr. Evelyn, on his own testimony, was aware that he was entering a restricted area controlled by police. Regardless of his own views on their powers to do so, he was aware he could not enter the area controlled by police without their approval to do so, and when told he could not, he dismissed the police direction and walked into the restricted area anyway. He refused to comply with the clear police direction to stop and began to run.

In assessing Mr. Evelyn's evidence, I considered the following. It was four o'clock in the morning. Mr. Evelyn entered into the

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5 restricted area after being told by police he
could not enter. He testified that he considered
sneaking in, and by his own evidence, was aware
he was not allowed in the area. He disregarded
the first officer's demand to stop and began to
run. He was running in the direction of the
protesters, towards the backs of officers who
were maintaining the barricade and who were
unaware of his approach. By his own evidence, he
10 chose not to stop when directed to do so by the
female officer. I reject his evidence that he
did not see Constable Walker, who is not a small
man and who was standing in the middle of the
intersection in a well-lit area, in uniform,
15 within Mr. Evelyn's view and within earshot,
yelling at Mr. Evelyn to stop. It is not credible
that he neither saw Constable Walker, nor heard
him as he yelled at him to stop multiple times
and then gave chase.

20 Both York Regional Police officers who
were further away could clearly hear and see
Constable Walker pursuing Mr. Evelyn. It defies
belief that Mr. Evelyn did not see or hear him in
those circumstances. Mr. Evelyn ignored Constable
Walker and attempted to evade capture by running
25 past him, who was in the middle of the
intersection, and yelling at him to stop. He
tried to run past the York Regional officers but
was taken down by force.

30 I do not accept Mr. Evelyn's evidence that
he stopped of his own accord, put his hands up,
and knelt to the ground when they took hold of

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5 him. I note the officers had to cross the street to intercept Mr. Evelyn, who was running along the sidewalk beside the Chateau Laurier. I do not accept his evidence that he ran to them and suddenly decided to stop of his own accord. This is inconsistent with his behaviour to this point. His explanation for why he would suddenly stop when he had not stopped for two other officers who were yelling at him to stop is not credible.

10 Mr. Evelyn could have stopped. He could have waited for the female officer to make inquiries. He could have left. He did none of those things.

15 He acknowledged he had been at the Convoy prior to that night. He acknowledged he saw fliers directing people to leave. He added that he did not recognize their authority to do so. In his words, he didn't give it any credibility. He testified that he knew the police operation to clear the protesters had begun on February 18th, but did not believe they had the authority to not allow people in the area. He testified that he feared being brutalized by police, but also acknowledged that, if he had stopped and walked away, he did not believe he would have been attacked by police. He simply believed he had the right to walk freely, and the police engaged in an abuse of authority in not allowing him to enter the restricted area.

25
30 In many respects, Mr. Evelyn's evidence supports the officer in that he admitted he purposely ignored a police command to stop and

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5 was intent on occupying the area knowing that he
was not supposed to. I consider this evidence in
assessing the objectively reasonable
justification for the arrest and find that it was
objectively reasonable on all of the evidence for
Constable Walker to conclude that Mr. Evelyn was
committing an indictable offence by attempting to
join the protesters to continue the ongoing
mischievous and obstructing police in their lawful
10 duty to keep the area secure by refusing to stop
when directed to do so and attempting to evade
Constable Walker who pursued him when he failed
to stop as directed. For these reasons, I find
there were reasonable and probable grounds to
15 arrest Mr. Evelyn for the mischief and obstruct
police, and having determined that the arrest was
lawful, in the circumstances, the *Charter*
application will be dismissed.

I will turn now to the trial decision.
20 I'll repeat, on the trial, Mr. Evelyn is charged
with two offences arising out of the Freedom
Convoy protest and the police enforcement action
to remove protesters and vehicles from downtown
Ottawa in February of 2022. The events
25 surrounding the allegations in question occurred
on or about the 19th of February 2022. It is
alleged that Mr. Evelyn was wilfully obstructing,
interrupting or interfering with the lawful use,
enjoyment, or operation of property, contrary to
30 s. 430(1)(c). He is also charged with wilfully
obstructing Constable Walker in the execution of
his duty, contrary to s. 129(a) of the *Criminal*

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Code.

Background

5 The parties filed an Agreed Statement of Fact, filed as Exhibit One. I have reviewed the background to these events on February 19th, 2022 involving Mr. Evelyn in my *Charter* ruling. They apply here and I will not repeat them.

10 The Crown called three witnesses, Constable Meuleman, Constable Purton from York Regional Police, and Constable Walker from the Ottawa Police Service. The Crown also filed a number of videos which were filed as Exhibit Three. Mr. Evelyn did not testify at trial.

15 The Evidence of Constable Meuleman

20 He testified that he first noticed Mr. Evelyn when he heard yelling and he noticed an OPS, an Ottawa Police Service, vehicle and an officer in foot pursuit of an individual yelling at him to stop. Constable Meuleman testified he ran across the road and got in front of Mr. Evelyn and asked him to stop, which he ignored. Mr. Evelyn continued to run straight at them and
25 didn't slow down or stop. He described how he essentially had to tackle him to the ground. He described Mr. Evelyn as verbally aggressive and recalled him saying he wanted to go to the War Memorial. He was handcuffed and searched and
30 handed over to Constable Walker.

The officer agreed that he could have been mistaken about which officer got out of vehicle,

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5 but was certain that it was Constable Walker who
was chasing Mr. Evelyn. Constable Meuleman's
recollection was that Mr. Evelyn had been running
southbound on MacKenzie and turned the corner
onto Wellington. He testified he was not
mistaken about how Mr. Evelyn was arrested. He
did not go to the ground voluntarily and was
taken to the ground by himself and his partner.
He recalled Mr. Evelyn having some medals on his
10 vest or under his jacket and that he said he was
on his way to the War Memorial, but did not
mention sentry duty.

To the extent that Officer Meuleman is
mistaken about where Mr. Evelyn was coming from, I
15 note he is not from the Ottawa area. It was
4 a.m., dark, and his attention is drawn after
hearing yelling when Mr. Evelyn was already
running from officers. In any event, nothing
turns on his point and it is not a contradiction
20 that causes the court concern with the
credibility or reliability of the rest of his
evidence.

The Evidence of Constable Purton

25 He testified he could hear someone yelling
"Stop." This drew his attention, and he observed
the accused running with an officer, later
identified to be Constable Walker, running behind
the individual yelling at him to stop. He heard
30 the officer yell "Stop" numerous times. He
described stepping in front of Mr. Evelyn as he
was running and that Mr. Evelyn stepped around him

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as if to keep running. He grabbed him and brought him to the ground with the assistance of Constable Meuleman. Constable Purton could not recall if he yelled stop or not. He noticed a leather vest with a military name tag as well as medals displayed.

The Evidence of Constable Walker

On February 19th, he was working in the area of Colonel By near the Westin Hotel. His role was to assist officers in maintaining the cordoned-off area and prevent anyone from trespassing in the area to prevent further mischief. He was speaking with another officer when he heard a female officer cry out, shouting "Stop." He looked up and saw officers yelling after a man running up the road towards where he was. The man turned to the west and began running west on Rideau Street. Constable Walker testified he began yelling at the man to stop. He observed a uniformed officer move towards the man to intercept him. The man moved away and kept running.

He testified he was in the middle of the intersection in a well-lit area. The man turned before he could catch up to him and he pursued him, yelling at him to stop. He continued running in front of the Chateau Laurier where officers intercepted him. He testified the man, acknowledged to be Mr. Evely, was not following directions. He observed him attempt to force his way through the officers, who forced him to the

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ground. It was Constable Walker's testimony that Mr. Evelyn could clearly see him, that he attempted to evade him and force his way through the officers.

In cross, when challenged that his purpose was to remove vehicles and persons from the area, Constable Walker testified that his purpose was to prevent people from entering the area. He agreed the chase was over a short distance and did not last long, maybe 15 seconds. Mr. Evelyn was on the sidewalk, but added that he was running the entire time. He agreed there were no civilians in the area, only police in the area as it had restricted access. He was about ten steps behind Mr. Evelyn and saw him being taken to the ground. When challenged, he indicated that he observed Mr. Evelyn try to keep running and then being taken to the ground by force. He caught up at that point, placed handcuffs on him, and effected the arrest.

He recalled Mr. Evelyn calling them cowards through the arrest. He disagreed with the suggestion that Mr. Evelyn put his hands up and was then taken to the ground and was adamant that Mr. Evelyn tried to push past the officers and was intercepted and taken to the ground. Constable Walker did not recall Mr. Evelyn telling them he was on his way to the War Memorial. He yelled "Stop" multiple times.

A Summary of the Video Evidence

There were six videos played during the

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trial and filed as Exhibit Three. I have reviewed them and would summarize the content as follows. The first video, which is some 13 minutes and 58 seconds, is OPS, Ottawa Police Service, drone footage from February 18th, 12:01 p.m. There was no sound on this video. It depicts footage of the clash between police and protesters at a time when the operation to clear the protesters was underway. I observed multiple lines of police officers and a large number of protesters facing off with the officers. Protesters are pushing against the line of officers. The camera pans over the crowd and zooms in and out, showing the scale of the operation at that location, and the interaction between protesters and police at this point in time. At times, you can see protesters are linked arm-in-arm, see 10:50 timestamp, on the video as an example. Protesters are shoveling snow to create a barrier for police in their effort to move forward to clear the crowd.

Video number two is protesters' clash with the police, open-source footage, possibly from CTV News. It is about three minutes in length. There is sound. It is a cacophony of noise and yelling. Police and protesters are facing off. Pushing and shoving can be seen. You can hear singing, people yelling, "Hold the line." Officers are trying to maintain the perimeter they have established in the efforts to clear the protesters. They are moving forward, and protesters are trying to resist being moved back.

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Someone is yelling, "Come on guys, move back."
At 2:02 timestamp, the focus of the footage is on
a group of protesters at the line with police. I
will return later to this timestamp in the
footage with respect to Mr. Evelyn.

At 2:09 timestamp, police step forward. A
group of protesters are trying to maintain their
position. They have their arms around each
other, and an individual is pulled forward by an
officer and arrested. Police are yelling their
objection to this interaction with police.

There is then a series of four videos that
are taken from Mr. Evelyn's social media. The
first video is a five-minute video titled
Canadian War Veterans Silenced and Shamed by the
Freedom Convoy. It is uploaded February 15th,
2022. Mr. Evelyn is introduced and takes the
stage. He explains the hat that he is wearing,
which is a red baseball cap. There are black or
dark coloured ear flaps covering his ears. He
explains that the hat says, "Lest we forget," and
he has crossed out the word "Lest." I note he is
wearing a dark jacket with medals on it and a red
cape. At one point, he introduces himself as
Jeff Evelyn, see 0:50 seconds timestamp, and talks
about being retired from the military and being
from Sydney, Nova Scotia.

The second video is entitled Twitter
Number Five, or Twitter_Number Five, posted
February 18th, 2022, and depicts Mr. Evelyn at the
War Memorial. I note it to be an excellent view
of the red hat he explained in his speech from

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5 the freedom stage. I note the writing he talked
about can be clearly seen. There are also pins
or medals on either side of the white writing.
There is white writing on the bill of the cap,
and he is wearing what I would describe as mirror
or aviator sunglasses. His jacket or vest is
black. We can see a red poppy and his hood
appears to be brown or green in colour. At 0.07
10 timestamp, he turns his head and I can see the
white writing on the back of the red cap. He
states, "They are clearing snow and taking care
of the monument." He states, "We can use a lot
of help, come to Ottawa."

15 The third is a Facebook video download
posted February 20th, 2022. Mr. Evely is inside
and takes the podium to give a speech or a talk.
There is a good view of his red cap with the
writing he explained in the footage from the
freedom stage. I note he is wearing a black vest
with medals on it, and a red poppy above the
20 medals on the right [sic] side -- on the left
side. He appears to have brown or green hoodie
on underneath. He states towards the end of the
video, "I am Jeff Evely, by the way."

25 The fourth video is a Twitter_Number
Three. You don't see Mr. Evely, but he appears
to be at the police barrier line at night and
speaking to or at police. It is posted February
20th, 2022.

30 The Law

An accused person is presumed to be

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innocent. The Crown always bears the onus of proving the charges against the accused beyond a reasonable doubt. That is a very high onus and one that never shifts. An accused person is not required to testify or to call any evidence, nor is he obligated to explain anything. The purpose of a trial is to determine whether the Crown has proven the guilt of the accused on the specific charges alleged beyond a reasonable doubt. This decisive question is whether, considering the evidence as a whole, the Crown has proven the guilt of the accused beyond a reasonable doubt. I recognize that I must consider all of the evidence and be sure that the accused committed the offence before I can be satisfied beyond a reasonable doubt of his guilt.

Credibility and Reliability

The twin considerations of credibility and reliability are the filter through which the court considers a witness' evidence. Evidence is credible when a witness is attempting to be truthful. Reliability has to do with the accuracy of the evidence. It is essential to consider reliability separately from credibility since even an honest witness can be mistaken. The evidence of police officers is not due any special weight just because they are officers. A trial judge must apply the standard of scrutiny on, or assessment of all of the evidence and all of the witnesses, including police testimony. There is no presumption of truthfulness applied

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to police evidence; see, *R. v. Chanmany*, C-H-A-N-M-A-N-Y, (2016) ONCA 576.

For the Mischief

5 In the context of public protests and
blockades, persons may be found criminally liable
for mischief by their own actions, or in aiding
and abetting other protesters. An Agreed
Statement of Fact was filed as Exhibit One. In
10 it, there is an admission that the Freedom Convoy
protest affected some downtown residents' ability
to move freely and enjoy their property. Some
downtown businesses, community centres, and
establishments chose to close, and list of
15 examples of which large institutions chose to
close is set out in my reasons on the *Charter*
application and I will not repeat them here.

20 It is not disputed that the police had the
common law authority to clear the roadways of
downtown Ottawa of protesters and vehicles which
were creating an unlawful disruption. In *R. v.*
Mammolita, M-A-M-M-O-L-I-T-A, (1983) 9 C.C.C.
(3d) 85 from our Ontario Court of Appeal, the
court considered the liability of protesters as
25 aiders and abettors of mischief and found that
the act of assistance or encouragement may be the
presence of the accused at the scene of a crime
during its commission if the aider or abettor is
there for that purpose and that strength of
30 numbers may be an important source of
encouragement; see paragraph 17.

Courts have found liability in mischief

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5 from minimal forms of conduct that exceeded mere
presence at the protest. In *R. v. Pascal*, (2002)
Carswell B.C. 3838, the B.C. Court found that the
accused's presence dressed in camouflage at a
roadblock formed by vehicles following her
earlier involvement with the police on the same
day at another site, waving a Mohawk flag in
support of the protest, was sufficient evidence
to find that she shared a common intention with
10 others engaged in the later roadblock.

In *R. v. Decaire*, D-E-C-A-I-R-E, (2024)
ONSC 4713, at paragraph 25, Justice Somji noted
that:

15 "Here, unlike in *Paschal*, the officers did
not present evidence that Ms. Decaire's
conduct either at the time of arrest or
earlier would suggest she formed a common
intention with those persons whose vehicles
were parked on Nicholas Street to obstruct
20 the roadway."

Analysis

25 The credibility of the three officers was
not seriously challenged. The only real
challenge to their version of events was a
suggestion put to them that Mr. Evelyn had
surrendered by putting his hands up when
confronted by Constable Meuleman and Constable
Purton. All three officers disagreed with this
proposition and maintained their evidence that
30 Mr. Evelyn tried to run or push past them and had
to be taken to the ground by force. For the

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record, I found all three officers to be credible and reliable. Their testimony was, as between them, corroborative, internally logical, and cohesive. I accept their evidence at this trial.

The evidence establishes that Mr. Evelyn entered the restricted area which had been cleared of protesters earlier in the day, on February 18th. He was running towards the barricade which separated police from the area still occupied by the protesters. He ignored police commands to stop.

There is no evidence on the trial that establishes that Mr. Evelyn was going to the War Memorial for sentry duty. None of the officers who testified indicated that they heard Mr. Evelyn say anything about sentry duty. He is described as agitated and calling the officers cowards upon arrest.

The Video

With regard to the video evidence, as a trier of fact, I am permitted to draw my own conclusions about the identity of the person on the video tape - see *R. v. Nikolovski*, N-I-K-O-L-O-V-S-K-I, (1996) 3 Superior Court Report, 1197 - if I am satisfied that the video is sufficiently detailed to permit comparisons. Identification is often an accumulation of features, including eyes, hair, mouth, nose, spacing of features, colour of skin, colour of hair, any distinguishing features or clothing worn by the individual observable on the video. In the case

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at bar, the video is of excellent quality and clarity.

I have reviewed the video evidence introduced at trial and find the following. The four videos from Mr. Evelyn's social media, I understand it to be admitted that this is footage of Mr. Evelyn on different dates at the Freedom Convoy protest. These were taken from his social media accounts, including Facebook and Twitter. I note the following, which is relevant to my analysis and conclusions of the video in dispute, which I will describe as the OPS, or Ottawa Police Service, drone footage from February 18th, and open-source video, possibly from CTV News, titled, "Protesters Clash with Police." The distinctive red ballcap worn by Mr. Evelyn with the white writing on it explained by him to be, "Lest we forget" with the word "Lest" crossed out, medals or pins to, on either side of the white writing, white writing on the bill cap, white writing on the back of the cap. In several videos, he's also wearing black or dark-coloured earflaps over both ears. He is seen in a black vest with medals on it, and a red poppy over the medals on the left side, over the breast. On the freedom stage, he is wearing what appears to be a black or dark jacket with medals on it, or a black vest on top of a dark jacket with medals on it. In the War Memorial footage and the Facebook video, he is wearing dark green or brown hoodie under the black vest with the medals on it. He has some facial hair which is trim. I would

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describe it as trim and not fulsome and has grey in it. In several of the videos, including the Twitter_Number Five, at the War Memorial, he is wearing aviator or mirror sunglasses.

Video number one, in dispute, the drone footage from Ottawa Police Service, I was able to compare the known video of Mr. Evelyn to the two videos introduced by the Crown, the drone footage and the open-source footage. Drone footage from February 18th, I note the following similarities relevant to this comparison. At 2:59 timestamp, you can clearly see the individual with a red baseball cap with the same white writing on it and the medals or pins on either side of that white writing, the black or dark-coloured earflaps and the aviator or mirror sunglasses. I note in this footage, which pans in and out and shows the larger crowd, there is no one else wearing a red ball cap with the white writing as I have described. The individual has the same complexion as Mr. Evelyn as seen in the known footage, as well as what I would describe as a thin, angular face, with some facial hair kept trim with grey showing in the beard. This is the same as in the other known footage of Mr. Evelyn, as well as my own observations of Mr. Evelyn during the trial when he was sitting at counsel table. He is wearing a black jacket or vest with medals and a red poppy above the medals.

At 5:36 timestamp, there is a very clear view of the side profile of the individual where we can see the word "Forget" and the word "Lest"

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R. v. Jeffrey L. Evelyn
Reasons for Judgment

5 crossed out. At 11:51 timestamp, there is a good
view of the individual and his clothing which
matches the clothing worn by Mr. Evelyn when he is
giving the speech on the freedom stage. At 12:34
timestamp, police step forward and the
individual, as I have been describing, is seen
lowering his head. He has his arm around another
protester and is resisting police efforts to move
the protesters back. The person he is linked
10 with is wearing a tan jacket and a black hat; see
12:55 timestamp. He is pushing out with his
hands towards the officers. Having looked at
this part of the footage in detail, I am
satisfied that the person depicted in the footage
15 is Jeff Evelyn for all of the reasons I have
outlined above.

I am also satisfied that this same
interaction with police is shown from the ground
view in video number two, described as open-
20 source footage, possibly from CTV News, titled
"Protesters Clashing with Police." The
interaction is the same when you compare both
videos. The individual that Mr. Evelyn is linked
with is wearing the same clothing and linked in
25 the same way, their arms around each other's
backs. The arrest of the individual depicted in
the open-source footage can be seen in the drone
footage. Even the woman dressed in black with
the black toque and long blond hair can be seen
30 in the drone footage at 13:13 timestamp and can
also be seen in the open-source footage at 2:52
timestamp.

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5 The open-source footage, which is video
number two and shows protesters clashing with
police, it shows, as I have indicated, what we
can see in the drone footage but from the ground
view. For reasons I have already stated, I am
satisfied this is the same interaction that can
be seen in that drone footage. A side profile of
the individual can clearly be seen in this
10 footage at 2:41 timestamp, linked with the
individual wearing the same clothing, the tan
jacket and the black hat. The ballcap is red
with white writing on the bill, and the pins can
be seen beside the white writing on the front of
the cap, which can't be made out on this view
15 with the black flaps, but there are the black
flaps for the ears, but it is flipped up.

20 I note the skin colour to be the same,
thin, angular profile as I have described before
with the trim, but distinct facial hair with
grey, which is distinguishable and identifiable.

25 I am satisfied beyond a reasonable doubt
that the person in the drone footage and the
open-source footage titled, "Protesters Clash
with Police" is Jeff Evelyn. I made this finding
on the basis of the comparisons to the known
footage of Mr. Evelyn from the same period of
time, but also my own observations of Mr. Evelyn
in the courtroom. Noting the distinct features I
have already talked about, as well as the
30 distinctive red ballcap and other clothing worn
by Mr. Evelyn in the known footage.

Video depicts the open-source clash with

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5 police. It depicts Mr. Evelyn standing shoulder
to shoulder with the other protesters, refusing
to move when police efforts had begun to clear
the unlawful demonstration. The drone footage is
also, depicts the same thing. His actions to
stand linked arm-in-arm with other protesters and
physically resisting when police were moving
forward demonstrates his intention to assist in
the ongoing mischief and constitutes the *mens rea*
10 for the offence. The evidence of Mr. Evelyn
participating in the clash with police on
February 18th establishes that he was not a mere
bystander. His conduct and actions demonstrated
that he had a shared common intention with the
15 other protesters, and he was aiding and abetting
the mischief. On this evidence, the offence of
mischief is made out in my view.

At the time of his arrest, Mr. Evelyn was
running towards the barricade to rejoin the
20 protesters with whom he had been committing
mischief earlier that day. This constitutes an
act of assistance or encouragement of the other
protesters at the scene, as strength in numbers
can be found to be an important source of
25 encouragement; see *Mammolita*. I find, on the
evidence as a whole, I accept that I am satisfied
beyond a reasonable doubt Mr. Evelyn is guilty of
mischief and I find him guilty on that count.

30 The obstruct police, s. 129 states that
everyone who resists or wilfully obstructs a
public officer or peace officer in the execution
of his duty is guilty of an offence. Definition

36.

R. v. Jeffrey L. Evelyn
Reasons for Judgment

of obstruct adopted by our court of appeal was, "Making it more difficult for the police to carry out their duties"; see *R. v. Tortolano*, T-O-R-T-O-L-A-N-O, (1975) 28 C.C.C. (2d) 562. I adopt my comments in the *Charter* ruling wherein I found that police were acting in the lawful execution of their duty by restricting access to the area which had been cleared of protesters. I will not repeat all of my findings here.

I accept the evidence of Constable Meuleman and Constable Purton and Constable Walker. Mr. Evelyn entered the restricted area, was ordered to stop by Constable Walker, and refused to do so. Constable Walker was in the middle of the intersection in a well-lit area in plain view when he yelled at Mr. Evelyn to stop. Mr. Evelyn refused to comply with the command and continued running. He was intercepted and forcibly taken to the ground by Constable Meuleman and Constable Purton. I find that the command to stop was lawful. Mr. Evelyn's refusal to comply clearly made it more difficult, if not impossible, for police to carry out their duty. Mr. Evelyn's refusal to stop, his decision to run in order to evade police, constitutes an obstruction of Constable Walker. The offence is clearly made out and I find Mr. Evelyn guilty of obstructing Constable Walker in the proper execution of his duty.

37.
R. v. Jeffrey L. Evely
Reasons for Judgment

FORM 3
ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

I, Natasha Malozewski, certify that this document is a true and accurate transcript of the recording of R. v. Jeffrey Evely, in the Ontario Court of Justice held at Ottawa, Ontario, taken from Recording No. 0411_CR10_20240917_084512__6_MILESLIS, which has been certified in Form 1.

October 30, 2024	
_____ (Date)	_____ (Signature of Authorized Person) Natasha Malozewski ACT ID: 4177239415

A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the recording of evidence and proceedings in the proceeding that is identified in the certificate.

Court File #:

ONTARIO COURT OF JUSTICE
East Region

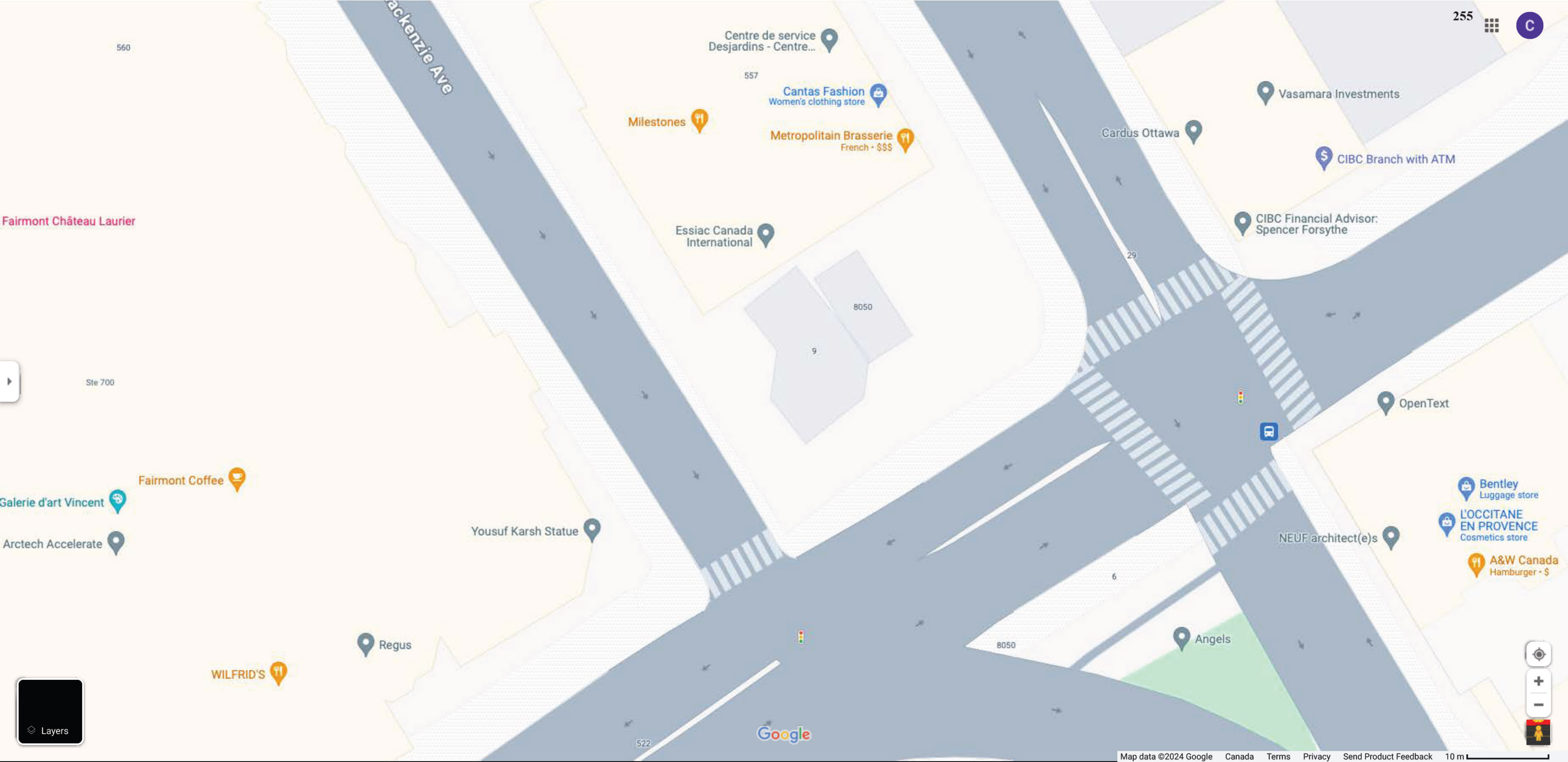
B E T W E E N:

HIS MAJESTY THE KING*- and -***JEFFREY LLOYD EVELY**

Agreed Statement of Fact

1. Starting on January 28, 2022, and continuing through to February 19, 2022, individuals from all over Canada began to arrive in Ottawa to protest the legislative response to the COVID-19 pandemic. This became known as the “Freedom Convoy”.
2. Participants in the Freedom Convoy protest parked their vehicles on the streets of downtown Ottawa. These included hundreds of tractor trailers, semi-trucks, pickup trucks, heavy trucks, as well as passenger vehicles, camper vans, trailers and cars on some lanes of some streets.
3. The vehicles associated with the “Freedom Convoy” extended to the entirety of the parliamentary precinct and the majority of the downtown core of Ottawa, bounded by Wellington Street in the north, Laurier Avenue in the south, Lyon Street in the west and the Rideau Canal in the east.
4. The vehicles forming part of the “Freedom Convoy” were parked in most lanes of roadways and sideroads of downtown Ottawa. Sometimes all lanes of major arteries such as Kent Street were frequently occupied, making passage virtually impossible for periods of time.
5. Many of the vehicles parked in Ottawa’s downtown core were equipped with horns, including air horns and train horns. Some members of the “Freedom Convoy” honked their horns in a sustained manner and at all hours, beginning the first week of the occupation. This noise continued until it abated between 11PM and 7AM following the granting of a Superior Court interim injunction on February 7, 2022.
6. This Freedom Convoy protest affected some downtown residents’ ability to move freely and enjoy their property.
7. Some downtown businesses, community centers and establishments chose to close.
8. These institutions included the Rideau Centre, the National Arts Centre, museums, public libraries as well as the COVID-19 clinic at the University of Ottawa, which closed during the “Freedom Convoy.”
9. For clarity: it is not admitted that any freedom convoy protestor, or the accused Jeffrey Evely, committed mischief or any other criminal offence on or about February 19, 2022.
10. A selected timeline of the response to the Freedom Convoy includes the following events:
 - i. **February 6, 2022** – Mayor of Ottawa, Jim Watson, declares a state of emergency in Ottawa (supporting materials, 1B).

- ii. **February 7, 2022** – An interlocutory injunction is granted by the Superior Court of Ontario (McLean J.), prohibiting the use of air horns or train horns in downtown Ottawa for 10 days (supporting materials, 1C).
- iii. **February 9, 2022** – Ottawa Police issues a Message to Demonstrators advising that “anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence” and that anyone continuing this Activity may face charges (supporting materials, 1D).
- iv. **February 11, 2022** – The Province of Ontario declares a province-wide state of emergency pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (supporting materials, 1F).
- v. **February 12, 2022** – The Ontario Government issues Regulation 71/72, “Critical Infrastructure and Highways” under the Emergency management and Civil Protection Act, R.S.O. 1990, c. E.9 (supporting materials, 1F).
- vi. **February 14, 2022** – An injunction is granted by the Superior Court of Ontario (McWatt A.C.J.) pursuant to s. 440 of the *Municipal Act, 2001*, S.O. c. 25 (supporting materials, 1G).
- vii. **February 15, 2022** – The Federal Government registers three regulations under the *Emergencies Act*, RSC 1985, c. 22 (4th Supp) (supporting materials, 1I).
 - i. SOR/2022-20 – “Proclamation Declaring a Public Order Emergency”
 - ii. SOR/2022-21 – “Emergency Measures Regulations”
 - iii. SOR/2022-22 – “Emergency Economic Measures Order”
- viii. ix. **February 16, 2022** – Ottawa Police issue a Notice to Demonstrators advising that “you will face severe penalties if you do not cease further unlawful activity and remove your vehicle and/or property immediately from all unlawful protest sites” (supporting materials, 1J).
- ix. x. **February 18, 2022** – Police operations were underway to clear the downtown core.



255



560

Centre de service
Desjardins - Centre...

557

Cantas Fashion
Women's clothing store

Milestones

Metropolitain Brasserie
French • \$\$\$

Essiac Canada
International

8050

9

29

Vasamara Investments

CIBC Branch with ATM

CIBC Financial Advisor:
Spencer Forsythe

OpenText

Bentley
Luggage store

L'OCCITANE
EN PROVENCE
Cosmetics store

A&W Canada
Hamburger • \$

NEUF architect(e)s

Angels

Regus

Yousuf Karsh Statue

Fairmont Coffee

Galerie d'art Vincent

Arctech Accelerate

WILFRID'S

522



TAB 8

Trial Exhibit 3: USB Stick containing an electronic map and 6 videos

Filed with the Court by Counsel for His Majesty the King on August 27, 2024

Video 1:



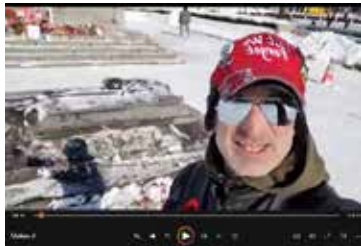
Video 2:



Video 3:



Video 4:



Video 5:



Video 6:



Form / Formule 1
APPLICATION
DEMANDE

ONTARIO COURT OF JUSTICE
 COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.1, Criminal Rules of the Ontario Court of Justice)
 (Règle 2.1, Règles de procédure en matière criminelle de la Cour de
 justice de l'Ontario)

22-A8184

Court File No. (if known)
 N° du dossier de la cour (s'il est connu)

BETWEEN: / ENTRE

HIS MAJESTY THE KING / SA MAJESTÉ LE ROI

- and / et -

JEFFREY EVELY

(defendant(s) / défendeur(s))

1. APPLICATION HEARING DATE AND LOCATION
DATE ET LIEU DE L'AUDIENCE SUR LA DEMANDE

Application hearing date: **August 26, 2024**
 Date de l'audience sur la demande
 Time **10 am**
 Heure
 Courtroom number: **TBD**
 Numéro de la salle d'audience
 Court address: **161 Elgin Street, Ottawa**
 Adresse de la Cour

2. LIST CHARGES
LISTE DES ACCUSATIONS

Charge Information / Renseignements sur les accusations			
Description of Charge Description de l'accusation	Sect. No. Article n°	Next Court Date Prochaine date d'audience	Type of Appearance (e.g. trial date, set date, pre-trial meeting, etc.) Type de comparution (p. ex., date de procès, établissement d'une date, conférence préparatoire au procès, etc.)
Mischief (2x)	430(1) (c) & (d)	August 19, 2024	Trial Management
Disobey lawful order	127(1)	August 19, 2024	Trial Management
Obstruct peace officer	129(a)	August 19, 2024	Trial Management

3. NAME OF APPLICANT
NOM DE L'AUTEUR DE LA DEMANDE

Jeffrey Evely

4. CHECK ONE OF THE TWO BOXES BELOW:
COCHEZ LA CASE QUI CONVIENT CI-DESSOUS

☐ I am appearing in person. My address, fax or email for service is as follows:
 Je compareis en personne. Mon adresse, mon numéro de télécopieur ou mon adresse électronique aux fins de signification sont les suivants :

☒ I have a legal representative who will be appearing. The address, fax or email for service of my legal representative is as follows:
 J'ai un représentant juridique qui sera présent. L'adresse, le numéro de télécopieur ou l'adresse électronique de mon représentant juridique aux fins de signification sont les suivants :

Christopher Fleury

5. CONCISE STATEMENT OF THE SUBJECT OF APPLICATION**BRÈVE DÉCLARATION DE L'OBJET DE LA DEMANDE**

(Briefly state why you are bringing the Application. For example, "This is an application for an order adjourning the trial"; "This is an application for an order requiring the Crown to disclose specified documents"; or "This is an application for an order staying the charge for delay.")

(Expliquez brièvement pourquoi vous déposez la demande. Par exemple : « Il s'agit d'une demande d'ordonnance d'ajournement du procès. », « Il s'agit d'une demande d'ordonnance exigeant de la Couronne qu'elle divulgue les documents précisés. », ou « Il s'agit d'une demande d'ordonnance d'annulation de l'accusation pour cause de retard. »)

See: Appendix A

6. GROUNDS TO BE ARGUED IN SUPPORT OF THE APPLICATION**MOTIFS QUI SERONT INVOQUÉS À L'APPUI DE LA DEMANDE**

(Briefly list the grounds you rely on in support of this Application. For example, "I require an adjournment because I am scheduled to have a medical operation the day the trial is scheduled to start"; "The disclosure provided by the Crown does not include the police notes taken at the scene"; or "There has been unreasonable delay since the laying of the charge that has caused me prejudice.")

(Énumérez brièvement les motifs que vous invoquez à l'appui de la demande. Par exemple : « J'ai besoin d'un ajournement parce que je dois subir une intervention médicale le jour prévu pour le début du procès. », « Les documents divulgués par la Couronne ne contiennent pas les notes de la police prises sur les lieux. » ou « Un retard excessif a suivi le dépôt des accusations qui m'a causé un préjudice. »)

See: Appendix A

7. DETAILED STATEMENT OF THE SPECIFIC FACTUAL BASIS FOR THE APPLICATION**DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE LA DEMANDE**

See: Appendix A

8. INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN THE APPLICATION**INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER DANS LA DEMANDE**

☐ Transcripts (Transcripts required to determine the application must be filed with this application.)
Transcriptions (Les transcriptions exigées pour prendre une décision sur la demande doivent être déposées avec la demande.)

☐ Brief statement of legal argument
Bref exposé des arguments juridiques

☐ Affidavit(s) (List below)
Affidavits (Énumérez ci-dessous)

☒ Case law or legislation (Relevant passages should be indicated on materials. Well-known precedents do not need to be filed. Only materials that will be referred to in submissions to the Court should be filed.)
Jurisprudence ou lois. (Les passages pertinents doivent être indiqués dans les documents. Les arrêts bien connus ne doivent pas être déposés. Il ne faut déposer que les documents qui seront mentionnés dans les observations au tribunal.)

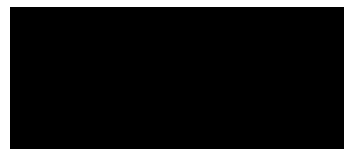
☐ Agreed statement of facts
Exposé conjoint des faits

☒ Oral testimony (List witnesses to be called at hearing of application)
Témoignage oral (Liste des témoins qui seront appelés à témoigner à l'audience sur la demande)

Jeffrey Evelyn

☒ Other (Please specify)
Autre (Veuillez préciser)

Submissions of Counsel



July 26, 2024

(Date)

Signature of Applicant or Legal Representative / Signature de l'auteur de la demande ou de son représentant juridique

To: **Ottawa Crown Attorney's Office**

À : (Name of Respondent or legal representative / Nom de l'intimé ou de son représentant juridique)



(Address/fax/email for service / Adresse, numéro de télécopie ou adresse électronique aux fins de signification)

NOTE: Rule 2.1 requires that the application be served on all opposing parties and on any other affected parties.

NOTA : La règle 2.1 exige que la demande soit signifiée à toutes les parties adverses et aux autres parties concernées.

Court File No.: 22-A8184

ONTARIO
COURT OF JUSTICE
EAST REGION

B E T W E E N:**HIS MAJESTY THE KING****Respondent****-and-****JEFFREY EVELY****Applicant**

SCHEDULE A TO FORM 1 (CHARTER APPLICATION)

PART 5 – CONCISE STATEMENT OF THE SUBJECT OF THE APPLICATION

1. The Applicant, Jeffrey Evely, is accused of the *Criminal Code* offences of mischief and obstructing police. The charges against Mr. Evely are particularized as occurring on or about February 19, 2022. The charges arise out of what is widely known as the “Freedom Convoy” protest, and the police enforcement action which ultimately removed protestors and vehicles from downtown Ottawa.

2. Mr. Evely is military veteran. He was responsible for the scheduling of a sentry duty to guard the National War Memorial after some vandalism had occurred there at the outset of the Freedom Convoy protest. Mr. Evely regularly took the least popular shifts himself which were in the pre-dawn hours.

3. On February 18, 2021, police began to remove vehicles and protestors from the downtown core. Following the removal of protestors, Police blocked off large sections of the downtown core and prevented the public at large, including Mr. Evely, from accessing it. This included the Ottawa War Memorial.

4. Mr. Evelyn was arrested in the early morning hours of February 19, 2021, while on his way to the War Memorial for his sentry duty shift. Mr. Evelyn submits that his arrest was unlawful and that any subsequent searches were therefore unreasonable contrary to sections 9 and 8 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) respectively.

5. In this Application Mr. Evelyn argues that police did not have the common law power to create checkpoints and lockdown downtown Ottawa, forcing every single person wishing to enter to identify themselves.

6. Where the Crown may be relying on the *Emergencies Act* *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “**Act**”)¹, and the *Emergency Measures Regulations*, SOR/2022-21 (the “**Regulations**”)², as providing authority for the police enforcement action, and ultimately providing grounds for Mr. Evelyn’s arrest, the Applicant makes two additional arguments. The Applicant argues that the decision to invoke the *Act* was *Ultra Vires* and that the *Regulations* were in breach of his rights under section 2(b) of the *Charter* and not saved by section 1.

7. Following Mr. Evelyn’s arrest, police used his identity to gather information from his social media profiles. That information was then used to purportedly identify Mr. Evelyn in a police drone video from February 18, 2021 and an open-source video. The Crown is seeking to rely on the social media evidence, open-source video evidence, and drone video evidence against Mr. Evelyn at trial. Mr. Evelyn requests that this Court exclude all evidence obtained as a result of the infringement of his *Charter* rights, pursuant to section 24(2) of the *Charter*.

¹ *Emergencies Act*, RSC 1985, c 22 (4th Supp).

² *Emergency Measures Regulations*, SOR/2022-21.

PART 7 – DETAILED STATEMENT OF THE SPECIFIC FACTUAL BASIS FOR THE APPLICATION

8. The following are the anticipated facts to be led at the hearing of this Application, based primarily on the disclosure provided to the Applicant and Mr. Evelyn's anticipated evidence.

9. Beginning on January 28, 2022, vehicles and persons from all over Canada began to arrive in downtown Ottawa with the primary purpose of protesting federal and provincial government's legislative responses to the Covid-19 pandemic. The vehicles included tractor trailer style trucks and other commercial vehicles. This protest became known by participants and the public alike as the Freedom Convoy.

10. Participants in the Freedom Convoy protest parked their vehicles on the streets of downtown Ottawa. These included tractor trailers, semi-trucks, pickup trucks, heavy trucks, as well as passenger vehicles, camper vans, trailers and cars on some lanes of some streets.

11. The vehicles associated with the "Freedom Convoy" extended to the majority of the downtown core of Ottawa, bounded by Wellington Street in the north, Laurier Avenue in the south, Lyon Street in the west and the Rideau Canal in the east.

12. While vehicle numbers and locations were fluid throughout most of the protest, the vehicles forming part of the "Freedom Convoy" were parked in most lanes of roadways and sideroads of downtown Ottawa making passage by vehicle more difficult than it would otherwise be.

13. Some of the vehicles parked in Ottawa's downtown core were equipped with horns, including air horns and train horns. Some members of the "Freedom Convoy" honked their horns at all hours, beginning the first week of the occupation. The honking continued until it abated between 11 pm and 7 am following the granting of a Superior Court interim injunction on February 7, 2022.

14. While the Freedom Convoy protest affected some downtown residents' ability to enjoy their property, the protest was overwhelmingly peaceful in nature.

15. Some downtown businesses, community centers and establishments *chose* to close. These institutions included the Rideau Centre, the National Arts Centre, museums, public libraries as well as the COVID-19 clinic at the University of Ottawa.

16. On February 14 the Federal Government invoked the *Act* and passed the *Regulation*. The *Regulation* prevented individuals from participating in certain types of assemblies, outlined in more detail below.

17. Mr. Evelyn is military veteran. He was responsible for organizing a sentry duty to guard the Ottawa War Memorial after some vandalism had occurred there at the outset of the Freedom Convoy protest. Mr. Evelyn regularly took the least popular shifts himself which were in the pre-dawn hours.

18. On February 18, 2022, police began an enforcement action aimed at removing the protestors and vehicles from the downtown core. During the day police succeeded in removing some protestors and vehicles from some areas of downtown Ottawa.

19. Upon clearing the streets of protestors and vehicles, police closed major roads in downtown Ottawa and set up roadblocks and check points. Members of the public were not permitted to pass these checkpoints without showing identification. If a person did live or work in the area, they would not be permitted past the checkpoint.

20. The Applicant was first observed by Cst. Walker of the Ottawa Police on February 19, 2022, at approximately 4:25 in the morning. At that time, he is running southbound on Sussex Drive towards Rideau Street. An unknown police officer is heard to yell "stop sir". The identity of

the officer yelling “stop sir” is unknown. The reason they were yelling “stop sir” is unknown. It is anticipated these unknowns will remain a mystery during and following the trial.

21. The area of Sussex Drive where Mr. Evely was first observed was inaccessible to the public. Entry could only be made by passing a police checkpoint.

22. Cst. Walker was standing at the intersection of Sussex and Rideau. He attempted to intercept the Applicant. Cst. Walker chased the Applicant a short distance toward Mackenzie Drive where he was quickly intercepted by officers Meuleman and Durton of the York Regional Police.

23. Cst. Walker placed the Applicant under arrest for the *Criminal Code* offences of obstructing a peace officer and mischief. The Applicant understands that Cst. Walker’s grounds for arrest are essentially as follows:

- a. the Applicant had bypassed a blocked and manned road;
- b. he ignored police direction;
- c. he fled;
- d. he attempted to charge past police to join the Freedom Convoy protest; and
- e. the public had been warned that participation in the Freedom Convoy protest would result in arrest.

24. The Applicant was searched incident to arrest. His wallet was located in his left jacket pocket. His wallet contained various forms of identification including an Ontario Driver’s license in the name of Jeffrey Evely. He was held for show cause and ultimately released with conditions later in the day February 19.

25. Following The Applicant’s release, police used his identification to locate and download his social media profiles. The Crown intends to rely on this evidence at trial.

26. Police used the social media evidence to purportedly identify him in a police drone video from February 18, 2024, and an open-source video. The Crown also intends to rely on these videos at trial.

PART 6 – GROUNDS TO BE ARGUED IN SUPPORT OF THE APPLICATION

27. The Applicant raises the following interrelated issues in this application:

- A. Police did not have authority under common law to lockdown downtown Ottawa.
- B. The invocation of the *Act* was *Ultra Vires*.
- C. The *Regulation* was in breach of the Applicant's Freedom of Expression.
- D. The *Regulation* was not a reasonable limit of the Applicant's freedom.
- E. His arrest was arbitrary.
- F. Any subsequent searches were unreasonable.
- G. Evidence obtained as a result of the arbitrary arrest and unreasonable searches should be excluded.

A. Police did not have authority under common law to lockdown downtown Ottawa.

Overview

28. The actions of the police in locking down downtown Ottawa and preventing all civilians from accessing public areas greatly exceeded their powers at common law. Police did not have the power to stop every single person entering that area. Mr. Evelyn's refusal to comply with an unlawful police demand, based on a purported authority to stop each and every person entering the downtown core, cannot form the basis for his arrest.

Common Law Police Powers to Restrict Assembly

29. The common law confers broad authority on police to carry out a wide range of duties. In *Dedman*,³ the Supreme Court of Canada relied on the legal test developed in the English Court of Appeal case of *Waterfield* to determine whether an officer's conduct is authorized by common law. The test is two-fold:

- i. Did the police conduct fall within the general scope of any duty imposed by statute or recognized by common law?
- ii. Did such conduct involve an unjustifiable use of powers associated with the duty?

30. The *Waterfield* test has been applied to, and found to provide authority for, the creation of a controlled perimeter in the following circumstances:

- a. around a police officer who is executing an arrest;⁴
- b. around a police officer who is questioning a suspect or a witness;⁵
- c. around a crime scene to preserve evidence;⁶
- d. around a hazardous area to preserve public safety⁷
- e. around a potential target of violent crime in order to ensure the target's protection⁸

31. The constitutionality of roadblocks involving vehicle traffic has also been considered many times at the appellate Court level and have frequently been found not to be arbitrary.⁹ But, police actions regulating the attendance of protestors at public demonstrations have rarely been found to

³ *Dedman v. The Queen*, 1985 CanLII 41 (SCC), [1985] 2 SCR 2; See also: *Fleming v. Ontario*, 2019 SCC 45 (CanLII), [2019] 3 SCR 519.

⁴ *R. v. Wutzke*, 2005 ABPC 89 at paras 60-66.

⁵ *R. v. Dubien*, [2000] Q.J. No. 250, J.E. 2000-461 (C.M.), at paras 14-26.

⁶ *R. v. Edwards*, 2004 ABPC 14 at paras 4-6, 24-48, 66;

⁷ *R. c. Rousseau*, [1982] J.Q. no 490, [1982] C.S. 461 (Sup. Ct.), at pp. 461-62, 463-64.

⁸ *Knowlton v. R.*, 1973 CanLII 148 (SCC), [1974] SCR 443.

⁹ *Brown v. Regional Municipality of Durham Police Service Board*, 1998 CanLII 7198 (ON CA); see also: *R. v. Clayton*, 2007 SCC 32 (CanLII), [2007] 2 SCR 725.

be within the general scope of any duty recognized by common law. For example, in *Stewart v. The Toronto Police Services Board*¹⁰ a police perimeter, including baggage searches, around a public park where demonstrators were gathering to protest a meeting of the G20 was found not to be within the general scope of any common law duty. Police were found not to have legal authority to impose such conditions on entry. The protest at issue in *Stewart* was characterized by peaceful protests intertwined with protestors intent on violence and property destruction. Such violence and property destruction presented “unprecedented peacekeeping and security challenges”.¹¹

32. Virtually identical issues were raised in another case involving the Toronto G20 protest: *Figueiras v. Toronto (Police Services Board)*.¹² With reasons mirroring *Stewart*, the Court of Appeal applied the *Waterfield* test and found that the creation checkpoints demanding bag searches did not fall within the ambit of common law ancillary police powers. Further, in preventing Mr. Figueiras’ from protesting for his chosen cause (animal rights), police conduct violated his freedom of expression under the *Charter*.

33. To the Applicant’s knowledge only one case has applied the test in *Waterfield* to the actions of police in clearing the Freedom Convoy. In *R v Romlewski*,¹³ the accused was found in an area that had not yet been cleared of protesters and vehicles. When approached by police the accused sat down and refused to leave. He was charged criminally with obstructing police and mischief. At trial Mr. Romlewski alleged that police did not have authority to demand that he leave. The Court applied the test in *Waterfield* and ultimately found that police did have authority under the

¹⁰ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255; overturning: *Stewart v. The Toronto Police Services Board*, 2018 ONSC 2785.

¹¹ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para 13.

¹² *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 at para 59.

¹³ *R. v. Romlewski*, 2023 ONSC 5571; overturning: *R. v. Romlewski*, 2022 ONCJ 502.

common law *to demand that Mr. Romlewski leave*. The Court’s analysis relied in part on the authority provided by way of the *Act* and the *Regulations*, which Mr. Romlewski did not contest.

Analysis

34. Returning to the two-part test in *Waterfield*:

- a. Did the police conduct fall within the general scope of any duty imposed by statute or recognized by common law?
- b. Did such conduct involve an unjustifiable use of powers associated with the duty?

35. In this case the conduct at issue was the lockdown of the downtown core of Ottawa with police checkpoints at the perimeter. No persons could enter the perimeter without being stopped by police. If persons could not prove that they lived and worked in the area, they were turned away. Simply put: the City of Ottawa had devolved into a state of martial law.

36. While the Freedom Convoy presented policing challenges, and no doubt caused some unease among the citizens of Ottawa, any disturbances created by the Freedom Convoy did not rise to the level which would require or justify this type of unprecedented police conduct.

37. The situation is similar to *Stewart* in that the Freedom Convoy protest was “unprecedented” and presented serious “peacekeeping and security challenges”. But evidence was led in *Stewart* that G20 protests across the globe are typically characterized by “a high level of violence and destruction of property was common at G20 events.”¹⁴ No such a “high level of violence and destruction of property” were present at the Freedom Convoy. In *Stewart*, even in the anticipation of a high level of violence and property destruction, police common law powers were not found to include the ability to conduct searches at the perimeter of a public park. Notably the police action in *Stewart* was far less draconian. Police did not exclude the public entirely from the park, let alone the downtown core of a city.

¹⁴ *Stewart v. Toronto (Police Services Board)*, 2020 ONCA 255 at para 12.

38. The Applicant agrees with the decision in *Romlewski* that holds that common law police powers extended to the ability to clear the roadways of downtown Ottawa of protestors and vehicles which were creating an unlawful disruption. But *Romlewski* does not go so far as to say that police can also cordon off and lockdown the downtown core of the City of Ottawa.

39. The police conduct in this case did not fall within the general scope of any duty imposed by statute or recognized by common law.

B. The Invocation of the *Act* was *Ultra Vires*.

40. It is the Applicant's understanding that the Crown is relying primarily on common law police powers to justify the lockdown in downtown Ottawa, and ultimately provide authority for the arrest of the Applicant. However, in the event that individual responding police officers in this case state in evidence that they were relying on the *Act*, the Crown has reserved the right rely upon that *Act*. For that reason, the Applicant contests the invocation of the *Act* as being *ultra vires*. He also contests the *Charter* compliance of the *Regulations* as addressed below

41. In making these assertions the Applicant relies heavily on the decision of Justice Mosley of the Federal Court of Appeal in *Canadian Frontline Nurses v. Canada (Attorney General)* ("*CFN*").¹⁵ In that case several individual applicants and two civil liberties organizations challenged both the invocation of the *Act* and the *Charter* compliance of the two regulations issued under the *Act*. They raised identical issues to the issues raised by the Applicant. In a lengthy, well-reasoned decision following the review of thousands of pages of evidence and several days of submission, Mosley J. found that the *Act* was not properly invoked, and the subsequent regulations were unlawful and not a reasonable limit of the applicants' freedoms. The Applicant considers

¹⁵ [*Canadian Frontline Nurses v. Canada \(Attorney General\)*, 2024 FC 42.](#)

these issues to be a matter of settled law. In the alternative, the decision in *CFN* forms a highly persuasive precedent.

42. Section 17 of the *Act* sets out that “special temporary measures for dealing with the emergency” may be relied upon where “the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates” the taking of such measures. Public order emergency is defined at section 16 of the *Act* as an emergency “that arises from threats to the security of Canada and that is so serious as to be a national emergency.” Section 3(a) of the *Act* defines a national emergency as “an urgent and critical situation of a temporary nature that (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it...”.¹⁶

43. It is unknown to the Applicant whether the Crown intends to lead evidence in the present case regarding “threats to the security of Canada” and whether a “national emergency” was present. To date no evidence on this point has been presented to the Applicant. Rather, the evidence relates entirely to the situation in downtown Ottawa in January and February of 2022.

44. Even in *CFN*, where the Government of Canada presented its case at its highest, leading thousands of pages of relevant evidence including the affidavits of police and other witnesses, the Federal Court found that the high threshold for invoking the *Act* not was met.

45. The Applicant relies on the sound reasoning of Mosley J in his conclusions on the issue:

[294] While these events are all concerning, the record does not support a conclusion that the Convoy had created a critical, urgent and temporary situation that was national in scope and could not effectively be dealt with under any other law of Canada. The situation at Coutts was dealt with by the RCMP employing provisions of the Criminal Code. The Sûreté du Québec dealt with the protests in that province and the Premier expressed his opposition to the Emergencies Act being deployed there. Except for Ottawa, the record does not indicate that the police of local jurisdiction were unable to deal with the protests.

¹⁶ *Emergencies Act*, RSC 1985, c 22 (4th Supp).

[295] Ottawa was unique in the sense that it is clear that the OPS had been unable to enforce the rule of law in the downtown core, at least in part, due to the volume of protesters and vehicles. The harassment of residents, workers and business owners in downtown Ottawa and the general infringement of the right to peaceful enjoyment of public spaces there, while highly objectionable, did not amount to serious violence or threats of serious violence.

[296] This is not to say that the other grounds for invoking the Act specified in the Proclamation were not valid concerns. Indeed, in my view, they would have been sufficient to meet a test of “threats to the security of Canada” had those words remained undefined in the statute. As discussed in Suresh and Arar, the words are capable of a broad and flexible interpretation that may have encompassed the type of harms caused to Canada by the actions of the blockaders. But the test for declaring a public order emergency under the EA requires that each element be satisfied including the definition imported from the CSIS Act. The harm being caused to Canada’s economy, trade and commerce, was very real and concerning but it did not constitute threats or the use of serious violence to persons or property.

[297] For these reasons, I am also satisfied that the GIC did not have reasonable grounds to believe that a threat to national security existed within the meaning of the Act and the decision was *ultra vires*. While I agree that the evidence supports the conclusion that the situation was critical and required an urgent resolution by governments the evidence, in my view, does not support the conclusion that it could not have been effectively dealt with under other laws of Canada, as it was in Alberta, or that it exceeded the capacity or authority of a province to deal with it. That was demonstrated not to be the case in Quebec and other provinces and territories including Ontario, except in Ottawa.¹⁷

C. The Regulations were in breach of the Applicant’s Freedom of Expression.

46. The relevant provisions of the *Regulations* prohibiting public assembly are as follows:

Prohibition — public assembly

2 (1) A person must not participate in a public assembly that may reasonably be expected to lead to a breach of the peace by:

- (a) the serious disruption of the movement of persons or goods or the serious interference with trade;

¹⁷ [*Canadian Frontline Nurses v. Canada \(Attorney General\)*, 2024 FC 42 at paras 294-297.](#)

- (b) the interference with the functioning of critical infrastructure; or
- (c) the support of the threat or use of acts of serious violence against persons or property.

....

Travel

4 (1) A person must not travel to or within an area where an assembly referred to in subsection 2(1) is taking place.

47. These sections of the *Regulation* infringe the *Charter* section 2(b) right to freedom of expression. In particular, they satisfy the criteria enumerated in *Irwin Toy Ltd. v. Quebec (Attorney General)*:¹⁸

- i. the Applicant was engaged in expressive activity;
- ii. nothing about the method or location of the expressive activity removes it from the scope of protected expression; and
- iii. the impugned government action has either the purpose or the effect of restricting freedom of expression.

48. Expression protected by section 2(b) has been defined broadly as “any activity or communication that conveys or attempts to convey meaning.”¹⁹ Expression is not only speech or text but can include actions where those actions communicate a meaning. For example, the actions of private citizens in building a very visible structure on Parliament Hill and maintaining a vigil for more than two years, was found to convey meaning for the purposes of the test in *Irwin Toy*.²⁰

49. In this case the *Regulation* impeded the Applicant’s ability to complete his sentry duty at the National War Memorial. A sentry duty has both a broader meaning and a specific meaning in this case. Both are relevant for the purposes of the *Irwin Toy* analysis. Broadly speaking sentry

¹⁸ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927.

¹⁹ *Thomson Newspapers Co. v. Canada (Attorney General)*, 1998 CanLII 829 (SCC), [1998] 1 SCR 877 at para 81.

²⁰ *Weisfeld v. Canada (C.A.)*, 1994 CanLII 3503 (FCA), [1995] 1 FC 68.

duties are conducted by militaries around the world. They express solidarity with military veterans who gave their lives in combat and a thankfulness for their sacrifices. In this case specifically, where the Ottawa police attempted to gate off the National War Memorial following an incident of vandalism, veterans felt the need to express that the War Memorial belonged to them. Not the City of Ottawa or the Ottawa Police. It was *their* duty to guard the War Memorial and prevent further vandalism or disrespectful behaviour. This was acknowledged, at least tacitly, by the agreement with the Ottawa Police that veterans, including the Applicant, would stand guard at the War Memorial for the duration of the Freedom Convoy.

50. Nothing about the method of a sentry duty, or location of the National War Memorial removes it from the scope of protected expression.

51. The prohibition on public assembly in downtown Ottawa had the obvious effect of limiting the Applicant's ability to carry out his sentry duty, and to in turn express himself. He was arrested for attempting to do so. In effect the *Regulation* was a total prohibition on the Applicant's chosen form of expression.

52. The Applicant again relies on the reasoning of Mosley J in *CFN* in deciding virtually identical issues:

[308] I agree with the Applicants that the scope of the Regulations was overbroad in so far as it captured people who simply wanted to join in the protest by standing on Parliament Hill carrying a placard. It is not suggested that they would have been the focus of enforcement efforts by the police. However, under the terms of the Regulations, they could have been subject to enforcement actions as much as someone who had parked their truck on Wellington Street and otherwise behaved in a manner that could reasonably be expected to lead to a breach of the peace.

[309] One aspect of free expression is the right to express oneself in certain public spaces. By tradition, such places become places of protected expression: *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at para 61. To the extent that peaceful protestors did not

participate in the actions of those disrupting the peace, their freedom of expression was infringed.²¹

D. The Regulations are not a reasonable limit of the Applicant’s freedoms.

53. The party seeking to uphold a limitation on a right or freedom guaranteed by the *Charter* bears the burden on a preponderance of probability to demonstrate that the infringement is justified: *R v Oakes*.²² Two central criteria must be satisfied. First the objective must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”²³ This is usually referred to as a “pressing and substantial objective”. Second, the means chosen must be shown to be reasonable and demonstrably justified as proportionate to the objective.²⁴ The infringing measures must be justified based on a “rational inference from evidence or established truths”²⁵ Bare assertions will not suffice: evidence, supplemented by common sense and inference, is needed.²⁶

54. The Applicant concedes that the Federal Government had a pressing and substantial objective when they enacted the measures: to clear out the blockades that had formed as part of the Freedom Convoy protest. The Applicant also concedes that the provisions at issue were rationally connected to that goal.

55. The Applicant takes issue with whether the measures were minimally impairing.

²¹ *Canadian Frontline Nurses v. Canada (Attorney General)*, 2024 FC 42 at paras 308-309.

²² *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at paras 66-67.

²³ *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 para 69.

²⁴ *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 70.

²⁵ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 at para 128.

²⁶ *R. v. Sharpe*, 2001 SCC 2 (CanLII), [2001] 1 SCR 45 at para 78.

56. Minimal impairment requires that the measures affect the rights as little as reasonably possible; they must be “carefully tailored”²⁷ The *Regulation* fails the minimal impairment test for two reasons: 1) it applied throughout Canada; and 2) there were less impairing alternatives available.

57. The *Regulation* did not simply prohibit illegal and disruptive conduct, such as blocking roadways or honking truck airhorns late at night, but criminalized the attendance of every single person at or near the Freedom Convoy protests regardless of their actions. This included the Applicant’s sentry duty which was not disruptive at all.

58. Further the *Regulation* exposed everyone in the country to its reach: the fact that it was not enforced in particular areas is inconsequential because they still applied everywhere. The *Regulation* impaired the right to free expression more than was necessary. It captured bystanders who did not agree with the blockades, did not create them and protested in a non-disruptive way. The *Regulation* also criminalized travelling to a protest where there might have been a blockade, no matter the person’s purpose for being there and whether an actual breach of the peace had occurred or not. This is not minimally impairing.

59. In *CFN*, Mosley J expressed the concern that “from a section 1 justification perspective ... there was no standard applied to determine whether someone should be the target of the measures or process to allow them to question that determination.” Accordingly, the infringement caused by the *Regulation* was not a reasonable limit on the right to free expression and is not justified under s. 1.

²⁷ *Frank v Canada (Attorney General)*, 2019 SCC 1 at para 66.

E. The Applicant's arrest was arbitrary

Overview of Arbitrary Detention

60. Section 9 of the *Charter* provides that “Everyone has the right not to be arbitrarily detained or imprisoned”.

61. A detention, including an arrest, will be considered arbitrary within the meaning of section 9 of the *Charter* if it is not authorized by law.²⁸

62. A warrantless arrest requires a subjective and objective component. An arrest without a warrant is lawful if the police officer has reasonable grounds to believe that the person arrested has committed an indictable offence. The subjective requirement requires that the police officer believes that he has reasonable grounds. The objective component requires that the belief be based on information that would lead a reasonable and cautious person in the position of the police to conclude that reasonable grounds existed for the arrest.²⁹

63. When reviewing the existence of reasonable grounds, “the Court is concerned only with the circumstances known to the officer” at the time of the arrest.³⁰ Where reasonable grounds are conveyed by another officer, the arrest will only be lawful if the instructing officer had reasonable and probable grounds.³¹

²⁸ *R v Le*, 2019 SCC 34 (CanLII), [2019] 2 SCR 692 at paras 30, 38.

²⁹ *R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 SCR 241 at paras 18-19.

³⁰ *R. v. Wong*, 2011 BCCA 13 at para 19.

³¹ *R. v. Gerson-Foster*, 2019 ONCA 405 at para 84.

Analysis

64. Mr. Evelyn was placed by under arrest by Cst. Walker in the early morning hours of February 19, 2021. The Applicant's understanding is that Cst. Walker's grounds for arrest were as follows:

- a. the Applicant had bypassed a blocked and manned road;
- b. he ignored police direction;
- c. he fled;
- d. he attempted to charge past police to join the Freedom Convoy protest; and
- e. the public had been warned that participation in the Freedom Convoy protest would result in arrest.

65. Assuming that the person who was initially yelling at Mr. Evelyn to "stop sir" was even a police officer, the Court is left with no idea why that person wanted Mr. Evelyn to stop. If it was a police officer, it is noteworthy that the officer was not yelling "stop, you're under arrest", or something to that effect. The logical inference is that the initial officer yelling at Mr. Evelyn to stop did not form grounds for arrest.

66. All of Cst. Walker's grounds for arrest rest on the assumption that he had authority to compel the Applicant to stop for no reason other than being present in a zone controlled by police. That purported authority relies on the premise that the police decision to lockdown downtown Ottawa, setting up roadblocks and checkpoints, was made pursuant to a police duty, whether at common law or under the *Act*. For the reasons set out above, there was no such police duty. Accordingly, Cst. Walker's grounds for arrest lack an objective basis.

67. This case is factually similar to *Stewart, supra* where Mr. Stewart physically challenged the police perimeter and defied police authority by rushing past the police and into the park. In that

case the Court of Appeal agreed with Mr. Stewart that where officers were not acting pursuant to any known duty, an arrest of Mr. Stewart for not complying with officer's demands was arbitrary.

68. With regards to the mischief count, at the time of arrest Mr. Evelyn was seen running down Sussex Avenue at approximately 4:25 in the morning. He was alone. Vehicle and pedestrian traffic were blocked by police. It appears on the evidence that Cst. Walker was the only other person on Sussex Avenue at that time. Officers Meuleman and Durton of the York Regional Police were also a short distance away. There is no objective basis on which to form reasonable and probable grounds that Mr. Evelyn was interfering with anyone's lawful use, enjoyment or operation of their property.

69. Lastly, while fleeing from police can constitute circumstantial evidence of guilt, and form part of an officer's grounds for arrest, it is not clear what underlying crime Mr. Evelyn might have been guilty of committing. Where the flight itself is alleged to constitute disobeying an officer's demand, that demand must be lawful, which it was not in this case.

F. The subsequent search was unreasonable

70. Section 8 of the Charter guarantees that "everyone has the right to be secure against unreasonable search and seizure."

71. If the arrest is unlawful or arbitrary, any search flowing from it will also be unlawful.

72. The Applicant advances breaches of both 8 and 9 of his *Charter* Rights. The Crown has the burden of proving both that the arrest and the search were legal. Where the arrest the Crown is relying upon to justify the search incident to arrest is subject to a section 9 challenge, the Crown will carry the burden on both of the overlapping section 8 and 9 claims and must prove that the arrest was legal.

73. Demands for identification to a detainee constitutes a search. The Court of Appeal has held that:

A person under police detention who is being asked to incriminate himself has more than a reasonable expectation of privacy with respect to the answers to any questions that are put to him by the police. That person has a right to silence unless he or she makes an informed decision to waive that right and provide the requested information to the police: *R. v. Hebert*, 1990 CanLII 118 (SCC), [1990] 2 S.C.R. 151, [1990] S.C.J. No. 64, 57 C.C.C. (3d) 1. In the circumstances, Harris's identification in response to the officer's question constitutes a seizure and attracts s. 8 protection.³²

74. As Mr. Evelyn's arrest was arbitrary, all subsequent searches, including the search of his person which located his identification, were unreasonable.

G. Evidence obtained as a result of the arbitrary arrest and unreasonable searches should be excluded.

The Evidence was "obtained in a manner"

75. Evidence can only be excluded if it is "obtained in a manner" that infringed the Applicant's Charter rights.³³

76. Evidence that satisfies the "obtained in a manner" requirement of s. 24(2) where it has a temporal, contextual, or causal connection to the *Charter* breach or some combination of the three. The approach is to be a generous one.³⁴

77. Here, the social media evidence, and in turn the drone video, was only found using the Applicant's name which was obtained by the Arresting Officer's search of his person after he had been unlawfully arrested. There is a direct casual connection between the evidence and the breach. Further, there is a contextual connection in that the social media searches were made as part of

³² *R. v. Harris*, 2007 ONCA 574 at para. 40.

³³ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353 at para 59.

³⁴ *R v Davis*, 2023 ONCA 227 at para. 28.

searches related to individuals arrested at the Freedom Convoy protest. Again, but for the Applicant's arrest, the evidence would not have been obtained.

Admitting the evidence would bring the administration of justice into disrepute

78. First, the *Charter*-infringing conduct is serious. The decision of police to lockdown downtown Ottawa resulted in the creation check points and roadblocks surrounding the downtown core. Anyone wishing to enter was forced to show identification. Anyone who could not prove that they lived or worked in the area would be turned back and not permitted entry. Downtown Ottawa was subject to a type of martial law for a period of days. This infringement of rights falls at the extreme end of egregious conduct.

79. Second, the impact on the Applicant's *Charter*-protected interests was significant. The analysis on the second factor requires assessing "the interests engaged by the infringed right" and "the degree to which the violation impacted on those interests."³⁵

80. The infringement of the Applicant's freedom of expression described above was total. He was not permitted to stand guard at the War Memorial as part of his sentry duty. This was a matter of great personal importance to the Applicant.

81. As a result of attempting to attend at the War Memorial, the Applicant was arrested. He was taken to the ground and handcuffed. His liberty was further curtailed as he was moved about from officer to officer. The seriousness of the breach was compounded by the infringement of the Applicant's section 8 right to privacy and the search of his person conducted upon arrest.

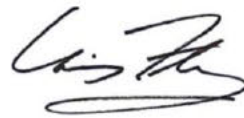
82. Cumulatively, these breaches pose a serious impact on the Applicant's *Charter*-protected interests.

³⁵ *R. v. Grant*, 2009 SCC 32, [2009] 2 SCR 353 at para. 77.

83. Third, society's interest in adjudication on the merits does not strongly weigh in favour of admission. The Freedom Convoy protests were political protests and arose in response to divisive legislation of questionable utility. The invocation of the *Act* was an unlawful use of government power. Society's overall interests are in moving on from a politically divisive time of Canadian history. At best, this branch of the test is neutral.

84. The Applicant requests that the Court exclude the identification evidence and all evidence obtained as a result including: the social media evidence, the police drone video and the open source video.

Dated this 26th of July, 2024.



CHRIS FLEURY

CHARTER ADVOCATES CANADA



Counsel for the Applicant
Jeffrey Evely

Form / Formule 2**RESPONSE****RÉPONSE**

ONTARIO COURT OF JUSTICE
COUR DE JUSTICE DE L'ONTARIO

East / Est

Region / Région

(Rule 2.2, Criminal Rules of the Ontario Court of Justice)
(Règle 2.2, Règles de procédure en matière criminelle de la
Cour de justice de l'Ontario)

22-A8184

Court File No. (if known)
N° du dossier de la cour (s'il est connu)

BETWEEN: / ENTRE

HER MAJESTY THE QUEEN / SA MAJESTÉ LA REINE

- and / et -

Jeffrey Lloyd Evelyn

(defendant(s) / défendeur(s))

1. NAME OF RESPONDENT

NOM DE LA PERSONNE INTIMÉE

Crown Counsel

2. CHECK ONE OF THE TWO BOXES BELOW

COCHEZ LA CASE QUI CONVIENT CI-DESSOUS

- ☒ I am appearing in person. My address, fax or email for service is as follows:
Je comparais en personne. Mon adresse, mon numéro de télécopieur ou mon adresse électronique aux fins de signification sont les suivants :

Crown Attorney's Office, [REDACTED]

- ☐ I have a legal representative who will be appearing. The address, fax or email for service of my legal representative is as follows:
J'ai un représentant juridique qui sera présent. L'adresse, le numéro de télécopieur ou l'adresse électronique de mon représentant juridique aux fins de signification sont les suivants :

3. CONCISE STATEMENT OF REASONS FOR RESPONDING

BRÈVE DÉCLARATION DES MOTIFS DE LA RÉPONSE

(Briefly state why you are opposing the Application. For example, "The Applicant has not provided any medical evidence about pending surgery"; "The Crown disclosure is complete"; or "The length of time is not unreasonable, the Applicant has acquiesced to any delay, and there has been no prejudice flowing from the time to trial.")

(Expliquez brièvement pourquoi vous vous opposez à la demande. Par exemple : « L'auteur de la demande n'a pas produit de preuve médicale au sujet de son intervention chirurgicale imminente. », « La Couronne a divulgué tous les documents qu'elle pouvait. », « Le temps écoulé n'est pas excessif. L'auteur de la demande a accepté n'importe quel retard et le temps écoulé jusqu'au procès ne lui a causé aucun préjudice. »)

See section 1.0 at Tab A of these materials

4. RESPONSE TO THE APPLICANT'S GROUNDS TO BE ARGUED IN SUPPORT OF APPLICATION (#6 on application)

RÉPONSE AUX MOTIFS DE L'AUTEUR DE LA DEMANDE QUI SERONT INVOQUÉS À L'APPUI DE LA DEMANDE (point 6 de la demande)

See section 3.0 at Tab A of these materials

5. DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR OPPOSING APPLICATION

DÉCLARATION DÉTAILLÉE DES FAITS PRÉCIS SUR LESQUELS SE FONDE L'OPPOSITION À LA DEMANDE

See section 2.0 at Tab A of these materials

6. INDICATE BELOW OTHER MATERIALS OR EVIDENCE YOU WILL RELY ON IN RESPONSE TO THE APPLICATION
INDIQUEZ CI-DESSOUS D'AUTRES DOCUMENTS OU PREUVES QUE VOUS ALLEZ INVOQUER EN RÉPONSE
À LA DEMANDE

- ☒ Brief statement of legal argument
Bref exposé des arguments juridiques
- ☐ Affidavit(s) (List below)
Affidavits (Énumérez ci-dessous)
- ☒ Case law or legislation (Relevant passages should be indicated on materials. Well-known precedents do not need to be filed. Only materials that will be referred to in submissions to the Court should be filed.)
Jurisprudence ou lois. (Les passages pertinents doivent être indiqués dans les documents. Les arrêts bien connus ne doivent pas être déposés. Il ne faut déposer que les documents qui seront mentionnés dans les observations au tribunal.)
- ☐ Agreed statement of facts
Exposé conjoint des faits
- ☒ Oral testimony (List witnesses to be called at hearing of application)
Témoignage oral (Liste des témoins qui seront appelés à témoigner à l'audience sur la demande)
- Chris Meuleman, Matthew Purton, Wade Walker**
- ☒ Other (Please specify)
Autre (Veuillez préciser)

August 11, 2024

(Date)

Signature of Respondent or Legal Representative / Signature de l'intimé ou de son représentant juridique

The Clerk of the Ontario Court of Justice, Ottawa Ontario. Chris Fleury, Counsel for theTo: **Applicant by email**

À : (Name of Applicant or legal representative / Nom de l'auteur de la demande ou de son représentant juridique)

(Address/fax/email for service / Adresse, numéro de télécopie ou adresse électronique aux fins de signification)

NOTE: Rule 2.2 requires that a response to an application be served on the applicant and on any other affected parties.
NOTA : La règle 2.2 exige qu'une réponse à une demande soit signifiée à l'auteur de la demande et aux autres parties concernées.

ONTARIO COURT OF JUSTICE
East Region

BETWEEN

HIS MAJESTY THE KING

Respondent

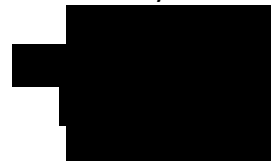
and

JEFFREY LLOYD EVELY

Applicant

**CHARTER MOTION:
CROWN REPOSE**

Crown Attorney's Office



1.0 CONCISE STATEMENT OF REASONS FOR RESPONDING

The Applicant's Section 8, 9, 2(b) Charter protected rights were not breached. As a result, the Respondent submits that there is not basis to exclude evidence obtained pursuant to Section 24(2) of the *Canadian Charter of Rights and Freedoms*.

2.0 DETAILED STATEMENT OF SPECIFIC FACTUAL BASIS FOR OPPOSING APPLICATION

1. In large part the Respondent agrees with the factual basis set out by the applicant at paragraphs 8-26 of the application.
2. Paragraph 14 describes the protest as overwhelmingly peaceful in nature. The respondent does agree that there were relatively few incidents of actual physical violence. The suggestion of overwhelming peacefulness is in the respondents view somewhat undercut by the previous paragraphs.
3. Additionally, the Crown anticipates that arresting officers will indicate the Applicant was running in the direction of a number of officers facing away from the accused.
4. The nature of the videos that the Applicant seeks to exclude are essentially speeches and one video of a confrontation with police where the Applicant compares the police to Nazis.
5. The Applicant allegedly posted the videos to his own "facebook" and "twitter" pages.

3.0 RESPONSE TO THE APPLICANT'S GROUNDS TO BE ARGUED IN SUPPORT OF THE APPLICATION

3.1 Governing Principles

Grounds for Arrest

6. *Romlewski* was a case that also originated out of the "Freedom Convoy". David (as he prefers to be called), was arrested on the same day as Mr. Evelyn during police operations to remove demonstrators from the streets of downtown Ottawa.
7. David, having been directed to leave the area of Sparks Street, declined and verbally challenged the police officers for several minutes. All of this was captured on David's video camera and played at trial.
8. Justice Wadden initially convicted David of obstruct but acquitted him of mischief. On appeal David appealed his conviction on the obstruct count, the Crown appealed the acquittal on the counts of mischief.

9. Justice Doyle sitting as a summary conviction appeal court upheld the conviction on the obstruct count and overturned the acquittal on the mischief counts.
10. The *Romlewski* decision is binding on this court.
11. As part of the elements of the offence of obstruct, it is necessary that the police be acting in the lawful execution of their duty.
12. At paragraph 251 Justice Doyle indicated:

[251] The trial judge did not err when he found at para. 21:

[21] Whether the Accused subjectively accepts the legitimacy of this policing action is irrelevant. I find on the evidence that there was a legitimate police operation underway to end the illegal occupation of the downtown streets. I find that Cst. Bastien and his fellow officers were acting in the execution of their lawful duties that afternoon. It is irrelevant whether the Emergency Act had been declared or not; the police were entitled to clear the streets of disruptive people, just as they would be entitled to do so on any day that a crowd had gathered that was so disruptive that it was breaching the peace. At that moment, the Accused was not part of the crowd they were approaching, but he interfered with the police as they moved toward it. My finding of the legitimacy of the police action is reinforced by the fact that this was not a round-up of protesters, or a “kettling” as has sometimes been seen in crowd control. There is no evidence that mass arrest was the objective. At each stage the police gave the Accused every opportunity to leave the area without arrest. On the evidence before me it is clear that the police were acting to secure the area to restore order.

13. Justice Doyle endorsed Justice Wadden’s decision which was a finding that police action ending the illegal occupation of the downtown streets was justified under common law. The enactment of emergency legislation was irrelevant.

Section 8

14. Section 8 of the *Charter* provides that everyone has the right to be secure from unreasonable searches and seizures.
15. A claim under s. 8 proceeds in two steps. At the first step, the court must determine whether the state conduct intruded on the claimant’s reasonable expectation of privacy. If the answer to this question is yes, then the state conduct is a search, and the court must go on to determine whether the search was reasonable. If the state conduct did not intrude on the claimant’s reasonable expectation of privacy, then there is no search and the claim

fails without consideration of the reasonableness of the state action: *R. v. Edwards*, [1996] 1 S.C.R. 128 at para. 45; *R. v. Wise*, [1992] 1 S.C.R. 527 at para. 3; *R. v. Marakah*, 2017 SCC 59 at paras. 10-12; *R. v. Spencer*, 2014 SCC 43 at para. 16; *R. v. Evans*, [1996] 1 S.C.R. 8 at paras. 10-11; *R. v. A.M.*, 2008 SCC 19 at para. 8; *R. v. Tessling*, 2004 SCC 67 at paras. 18, 33; *R. v. Lotozky*, [2006] O.J. No. 2516 (CA) at para. 12.

16. As a general rule, the claimant has the onus of establishing both the existence of a reasonable expectation of privacy and the unreasonableness of the search or seizure: *R. v. Jones*, 2017 SCC 60 at para. 11. However, a warrantless search is presumptively unreasonable. Therefore, where the claimant establishes that the state intruded on a reasonable expectation of privacy without a warrant, the burden shifts to the Prosecutor to establish that the search was reasonable: *R. v. Collins*, [1987] 1 S.C.R. 265 at paras. 21-22; *R. v. Haas*, [2005] O.J. No. 3160 (CA) at para. 31.
17. To the extent that a subjective expectation of privacy can be presumed or inferred in the circumstances, the law has not required the accused to testify in order to prove that they subjectively expected privacy in the subject matter of the search: *R. v. Jones*, 2017 SCC 60 at para. 22.
18. A search will be reasonable and will not violate s. 8 if it is authorized by law, the law is reasonable, and the search was carried out in a reasonable manner: *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at para. 48; *R. v. Caslake*, [1998] 1 S.C.R. 51 at para. 10; *R. v. Collins*, [1987] 1 S.C.R. 265 at para. 23.

3.2 PRINCIPLES APPLIED

ISSUE 1. Grounds For Arrest

19. The Applicant challenges Emergency Act legislation. The Respondent's position is that this requires a notice of constitutional question and compliance with notice requirements.
20. Any inquiry on this subject with respect to Emergency legislation is not necessary as there is binding case law on this point confirming that police had the common law power to remove disruptive individuals from the streets of downtown Ottawa on February 19, 2022.
21. The Applicant may suggest that while police had the power to remove individuals from the streets there was no power to secure the area. In other words, police could remove

individuals but were then obligated to allow those individuals to immediately re-occupy the area.

22. The Respondent's position is that this would not make sense for obvious reasons. It would be impractical and dangerous to allow disruptive individuals to re-occupy the downtown streets especially while the police operation was ongoing.
23. Mr Evelyn had been actively engaged in obstruction of the police operation. The Crown's position is that he was continuing to obstruct the police operation running into a secure area. It would have been reasonable for officers to have believed Mr Evelyn was obstructing the officers and that he was a party to the broader mischief.
24. While from the Crown's perspective there is no need to engage with the argument that about the constitutional question on emergency legislation. Legislation is and was presumed to be valid. There are no binding decisions finding the emergency legislation to be ultra vires at this point. In the alternative, should the court both engage with the constitutional challenge and find legislation to violate Mr. Evelyn's Charter protected rights it would also not mean that officers were not entitled to rely on and enforce legislation that would have been and is still presumed to be valid.
25. The Crown seeks summary dismissal of the issue of constitutional question.

ISSUE 2 UNREASONABLE SEARCH

26. The argument concerning a breach of Section 8 depends fully on a finding that the officers lacked reasonable grounds to arrest/detain Mr. Evelyn.
27. The subject matter of the search was publicly available videos largely posted by Mr Evelyn himself.
28. Mr. Evelyn seems to have made the decision that the videos in question should be digested publicly and took on a role in promoting them as part of his political messaging.
29. Mr. Evelyn has no privacy interest in these videos whatsoever.
30. In another case related to the "freedom convoy" Justice Brown in *Fisher*, found a Section 8 breach in relation to a demand for identification following an unlawful arrest.¹
31. However in the 24(2) decision of Justice Brown in the same case, Justice Brown indicates:

¹ *R v Fisher* (unreported) Charter Ruling Page 21

... Mr Fisher had no privacy interest in his name, nor his image, nor his activities on the days of and following the protest, because he broadcast it live on the internet for all to see. Mr. Fisher made no effort to protect his identity through these broadcasts. People who broadcast their activities, whatever that activity is, should be well aware that it can be used in evidence, and that no privacy interest attaches...²

32. Ultimately the Crown position is that there was no breach related to Section 9 and there would therefore be no connected Section 8 breach.
33. While it may be that a demand for identification is considered a search in certain cases. A search of publicly available social media evidence is not the kind of evidence where there is a subjective or objective expectation of privacy. The Crown's position is that in this case the social media evidence would not be considered subject of a search in a legal sense.

ISSUE 3. -24(2) Analysis

34. The Applicant has failed to make out a breach of the Applicant's Charter protected rights. In the event the court does find a breach of the Applicant's rights under one or more of these sections the Respondent argues that the evidence should not be excluded.
35. If the Court does find that there was a breach of the Applicant's Charter rights the Court should then determine whether evidence should be excluded pursuant to the test in *R v. Grant*:
 - The seriousness of the *Charter* infringing state conduct
 - The impact of the breach on the *Charter* protected interests of the accused, and
 - Society's interest in adjudication on the merits
36. In two of the most recent Supreme Court Cases dealing with application of the *Grant* factors involved Section 9 breaches. *McColman*³, and *Beaver*⁴ cases both involved accused persons who were found to have been arbitrarily detained. In the case of *Beaver*, both he and Lawson were detained in violation of section 9. Mr. Lawson's confession was ultimately admitted given that the police were able to make a "fresh start" such that the evidence was not obtained in a manner that breached the Charter. Mr. Beaver's confession was excluded. Should the court find that in the case at bar there was a breach of Section 9, while that would potentially have an impact on the elements of the offence for Count 4, based on this type of a breach, exclusion of evidence would not be appropriate. The nature of the detention would be similar to the case of *McColman*. Distinguishing aspect being that the evidence in

² R v Fisher unreported 24 (2) Ruling, page 13

³ R. v. McColman, 2023 SCC 8 (CanLII), <<https://canlii.ca/t/jw9tr>>.

⁴ R. v. Beaver, 2022 SCC 54 (CanLII), <<https://canlii.ca/t/jtdtn>>

McColman involved breath samples which were an intrusion but not an egregious intrusion. In this case the evidence the Applicant seeks to exclude would be evidence he himself publicly posted online. There is no privacy interest attached. The Crown would also question if this evidence was “obtained in a manner” that was sufficiently connected to the arrest on February 19th.

Seriousness of the Charter Infringing State Conduct

37. The Crown takes the position that if the Court were to find a breach of the Applicant’s Charter Rights, the Crown (subject to the Court’s findings) may argue that the seriousness was at the low end of the spectrum.

38. The situation if the Court were to find both Section 9 and 8 breaches would be somewhat akin to situation in *Fisher*. Justice Brown in that decision indicated at page 12:

*With respect to the s.8 breach, I observe that there is an absence of any meaningful connection between this breach and the social media activity Mr. Fisher was engaged in prior to his arrest and following his release. It was not police actions that led to the creation of Mr. Fisher’s social media.*⁵

The Impact of the Breach on the Charter Protected Interests of the Accused

39. The Crown takes the position that if the Court were to find a breach of the Applicant’s Charter Rights, the Crown (subject to the Court’s findings) may argue that that the impact of any breach would have been low.

Society’s Interest in Adjudication on the Merits

40. The subject matter of this case involves an allegation of a vast and widespread interference with property. The resulting police operation was one of if not the largest police operations in Canada. The interference with officers in the course of a widespread emergency makes the allegations before the court far more serious than they would be if the actions committed in isolation. The third prong of the test normally favors inclusion of evidence.

Balancing

41. Subject to the finding of the Court, the Crown position is that there were no Charter breaches. If the Court were to find a breach of the Applicant’s Charter protected rights, and subject to the Court’s findings the Crown may argue that society’s interest in adjudication of the case on its merits favors inclusion of evidence.

⁵ R v Fisher unreported 24 (2) Ruling, page 12.

Certificate of Completeness of Appeal Book
Form 17, Criminal Appeal Rules, Court of Appeal for Ontario

COA-25-CR-1059

Court File No. (if known)

M

Motion No. (if known/applicable)

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HIS MAJESTY THE KING

Respondent

- and -

JEFFREY EVELY

(specify name)

Appellant

CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

I, **Christopher Fleury**, lawyer for the appellant (if applicable), certify that the
 (name of lawyer for the appellant or appellant)

appeal book in this appeal is complete and legible.

DATED at [REDACTED], **Ontario**, this **14th** day of
 (specify city or town, etc.) (specify province)

October, 20 **25**.
 (specify month)



Signature of appellant or lawyer

Christopher Fleury
Charter Advocates Canada

[REDACTED]
 Specify name and contact information

**Form 2
BACKSHEET**

COA-25-CR-1029

Court File No. (if known)

M

Motion No. (if known/applicable)

COURT OF APPEAL FOR ONTARIO

HIS MAJESTY THE KING

- and -

JEFFREY EVELY

(specify name)

APPEAL BOOK (APB)

(specify title of document)

(if an affidavit, specify name of deponent and date sworn/affirmed)

Chris Fleury, Charter Advocates Canada,

(specify name and contact information of person serving or filing the document)