

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

GARY MCHALE

\*\*\*\*\*

EXCERPT OF PROCEEDINGS AT PRELIMINARY INQUIRY

BEFORE THE HONOURABLE JUSTICE B. ZABEL

on November 20 and 24, 2008, at HAMILTON, Ontario

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CHARGE: Section 430(1)(c) CC - Counsel to commit indictable offence

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APPEARANCES:

M. Hoffman

Counsel for the Crown

G. McHale

Unrepresented

ONTARIO COURT OF JUSTICE

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THURSDAY, NOVEMBER 20, 2008

Excerpt of proceedings

5  
TERRYLYNN BRANT: AFFIRMED

COURTROOM CLERK: Thank you, ma'am; you may be seated.

THE COURT: If we can move the microphone a bit closer to the lady.

10  
THE WITNESS: I've got it.

THE COURT: As long as you're comfortable. Let us know if you're not comfortable.

THE WITNESS: Okay.

THE COURT: You don't have to lean into it, it should pick up what you're saying.

15  
THE WITNESS: Okay.

THE COURT: Yes, counsel.

MR. HOFFMAN: Thank you, Your Honour.

EXAMINATION IN-CHIEF BY MR. HOFFMAN:

20  
Q. Ms. Brant, I understand that you work in the education field, is that right?

A. Yes, sir.

Q. In fact, you are a vice principal?

A. Well, I'm the principal now.

Q. Oh, the principal.

25  
A. Yes.

Q. And of which school?

A. Oliver M Smith....

COURT REPORTER: I'm sorry, Your Honour, if the witness could speak slowly and....

THE COURT: Thank you, madam reporter.

30  
THE WITNESS: Oliver M Smith....

MR. HOFFMAN: Q. And how would you spell the last

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name - if you could tell us the English spelling.

A. K-A-W-E-N-N-I:I-O.

Q. That is a school on the Six Nations territory?

A. Yes, sir.

Q. And I'm not asking you your exact address, but you live in that area as well?

A. Yes.

Q. How long have been involved in the education field?

A. Twenty-five years.

Q. All right. I want to move ahead to December the 1st, 2007.

A. Mm-hmm.

Q. And I understand on that day you were with your sister.

A. Yes.

Q. One of your sisters.

A. Yeah.

Q. Lynda Powless.

A. Yes.

Q. And that you went to a certain area because of what you heard was happening there.

A. Yes.

Q. All right. Where was it that you went?

A. Caledonia.

Q. And about what time was it that you went there?

A. I believe it was around ten thirty-ish.

Q. In the morning or the evening?

A. In the morning.

Q. How did you get there? In other words, what means of transportation?

A. My sister and I were attending Council and she

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drove - I rode with her.

5 Q. And when you said your sister and you were "attending Council", what Council is that?

A. Confederacy Council....

COURT REPORTER: I'm sorry, Your Honour, I didn't get that.

10 MR. HOFFMAN: Q. Yes. And do you know the English spelling of that?

A. R-A-T-I-N-O-N-S-H-O-N-N-I-N.

Q. Thank you very much. So, about ten thirty in the morning you get to a certain area in Caledonia. Have you lived in, in this - well, in Haldimand County, Six Nations Territory for a period of time?

15 A. Oh yes.

Q. So, if I asked you to describe what area of Caledonia, what could you tell us? Where was it near, what streets, what other landmarks, especially landmarks that have happened since 2006?

20 A. It's right, the area was right by the hydro electric transmission tower station.

Q. And on what street?

A. I guess it's called Argyle...

Q. All right.

25 A. ...I never pay attention to the name. But it used to be Highway 6.

Q. All right. And when you get there about ten thirty in the morning - first of all, why is it that you go to that area? What did you think or hear was gonna happen in that area?

30 A. I had in fact heard a radio broadcast of a local radio station that there was a demonstration going on.

Q. And as a result of hearing that broadcast, you

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went to that area?

A. Yes.

Q. What was your purpose in going there? What was your reason for going there?

A. Just to see for myself what was going on. There had been a number of things that had, had gone on in the past, many things that I had witnessed. And I just wanted to view the, view the situation for my own personal record, to see how people were being treated or things were unfolding. And there's always the concern - it is my community, of safety for my community, I do have a family. So, I'm always - as a principal of an elementary school, I'm always concerned with what things are happening, and running school buses and such, down some of those roads.

MR. HOFFMAN: Your Honour, Mr. McHale and I are are going to be presenting to you, by way of background information - going to be presenting to you, by way of background information, a Court of Appeal decision called Henco, H-E-N-C-O; that will give you some of the background of what's been happening in Caledonia the last few years. So, I don't intend to ask this witness to give us a detailed history, I'm just going to ask her, just generally - I'm not gonna ask you to explain what's been happening in Caledonia and Six Nations for the last few years; but just generally, starting in 2006, there was a development called Douglas Creek Estates that is now - some people say "occupied", some people say "reclaimed" by First Nations persons, and there's been various difficulties in Caledonia between then - since then involving both Native persons and non-Native persons from the

Terrylynn Brant - in-Ch.

Caledonia area and elsewhere.

5 MR. HOFFMAN: Q. Is that kind of a general summary, without getting into too much detail, of what's been happening since 2006?

A. Generally, yes, yeah, the, there's friction between the Haudenosaunee people and the....

10 Q. And I'll just ask you to spell that name again, the reporter just has to later type it out, so it's gonna be hard for her if it's a word not familiar with her.

A. Oh, okay.

Q. Do you want a piece of paper to write it down?

A. No, I just was thinking of another word.

15 Q. Okay.

A. The White people, I guess.

Q. All right.

COURT REPORTER: I'm going to need the spelling of what she said, Your Honour, I'm sorry.

THE COURT: Yes.

20 THE WITNESS: O-H-S-A-K-E-H-E-K.

MR. HOFFMAN: Thank you very much.

25 MR. HOFFMAN: Q. All right. So, getting back to December the 1st, about ten thirty in the morning, you and your sister get to this area in Caledonia on Argyle Street near the hydro tower. And where is that in relation to what I've called Douglas Creek? I know there's a native name and I just can never pronounce it properly....

A. Perhaps 500 metres down the road.

Q. All right.

A. K....

30 Q. All right; that's the native name. And how would you spell that?

A. K-A-N-O-N-S-T-A-T-O-N.



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5  
MR. HOFFMAN: It's a good thing I called a principal as the first witness to help us with the spelling.

MR. HOFFMAN: Q. All right. So, what is it that you and your sister - sorry, I take that back, I only want to know what you saw. What is it that you saw when you first arrived? Describe the scene for the court.

10  
A. There were a handful of people that - from the Six Nations there. There were several other individuals - I don't know where they all live - but there were several others, maybe another dozen or so, something like that. There were cars kind of on both sides of the road belonging to a variety of people, including ours, 'cause we pulled alongside the road when we pulled up. And I believe there was like about two or three officers at the beginning, plus their cars as well.

15  
Q. And you've already told us that this area is in what's traditionally known as the Town of Caledonia. The area where you first came to?

20  
A. Yes.

Q. And because we're obviously in a court in Hamilton and not in Cayuga for this case, I just wanted to make it clear, about how far, if you're able to estimate - and if not other people can - about how far is the Six Nations Reserve from the area where you went to at about ten thirty on the 1st of December, '07?

25  
A. That is the Six Nations Territory.

Q. Okay. The traditional - I didn't say territory, I said the traditional Reserve, how far is, is that from the area you went to, just so the judge will have an idea of geography - I'm not getting into who owns what land, just a geography kind of question.

30  
A. Well, with a good arm, you could probably throw

Terrylynn Brant - in-Ch.

a softball...

Q. All right.

A ...to the far corner, yeah.

Q. Now, you said that there was these two groups of people that you saw, people from Six Nations and some other people that you're not sure where they came from, but did not appear to be First Nation's people, is that correct?

A. Correct.

Q. What can you say about these two groups, were they intermingling, intermingling, were they separate, what can you tell the judge about that?

A. One group seemed to be carrying some placards and....

Q. And which group was that?

A. Not the group from Six Nations, there were very few.

Q. All right.

A. And they were concerned about a business that was located there.

Q. And that was what kind of business?

A. I don't know, I've never been in there.

Q. All right. How was - when you heard this on the radio - did you hear about what kind of protest, protest it was gonna be? Or did you come to learn later that day what kind of protest it was supposed to be?

A. Later on that day.

Q. Okay.

A. The radio didn't really specify.

Q. And we'll have other people who testify about this; but just since you're the first witness, what was your understanding, from what you heard, about what the people were protesting, the ones with the placards, the ones not from Six

Terrylynn Brant - in-Ch.

5 Nations, they were protesting about this business, and what kind of business, at least did they say it was?

A. Well, for almost every person that was there, they were protesting for a different reason, it seemed.

Q. Okay.

A. So, it's kind of confusing to say in general...

Q. Fair enough.

10 A. ...some were protesting the business, some appeared to be protesting - Douglas Creek Estates.

Q. Yes.

15 A. Some were protesting the fact that their town was being held hostage or - others were complaining about being inconvenienced, some were seeming to be making comments regarding justice, the system of justice in Canada - a variety - like every person seemed to have something different.

Q. And the...

A. But generally...

Q. ...yes?

20 A. ...I think the majority were kind of aiming it towards that business.

Q. And did you later receive information as to what type of business that was? Even if you didn't know at the time, later that day did you, did you get information - or did you hear people....

25 A. I think - I've driven by there, I think it says 'Smokes for Sale'.

Q. Smokes?

A. Yeah.

30 Q. And from your understanding, of living in that area, at least a business that advertised itself as 'Smokes' would be one that sells cigarettes.

A. Yes.

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5 Q. Okay. So, you get there; you get out of your vehicle?

A. Yes.

Q. And where do you go when you first get out?

10 A. We just kinda stood by the vehicle first, just to kinda try to figure out what was going on. We were approached, you know, by a few of our, people from our community, they were trying to figure out what was going on too.

Q. And did you see any people there not from your Six Nations Community that you recognized?

A. Yes.

15 Q. And have you been present at other protests, gatherings, groups of people in and around the area of Caledonia since 2006?

A. Yes, I've been at a number of peaceful demonstrations by my people.

20 Q. And as a result of being at those demonstrations, did you get to know, at least be able to recognize some of the people who were there on the 1st of December, 2007?

A. Yes, I recognized Gary McHale.

25 Q. All right. And I'm gonna ask you about that in a moment. Were you able to recognize people, both in the First Nations Community and also in the non-First Nations Community?

A. Yes; but not by name.

30 Q. All right. The people in the First Nations Community, did you know some of them by name?

A. Not really, no.

Q. All right. And same thing with the people....

A. A variety of a name, I should say.

Q. A variety of names, okay.

A. Yeah.

Q. In other words, what you're saying is in - on

Terrylynn Brant - in-Ch.

5 Six Nations, people sometimes have nicknames that they go by, or often have nicknames that they go by?

A. Yes, sir.

Q. All right.

A. I did also notice media that I recognized.

10 Q. All right. You just said that one of the people you recognized there was Mr. McHale. And I believe you made a gesture; but just so it's clear, when you say "Mr. McHale", do you see that person in court today?

A. Yes, sir.

Q. All right. And can you just point to that person?

A. Right there.

15 Q. That's the, you just pointed to the gentleman who's seated to my, seated to my left, right beside me?

A. Yes.

Q. Who I'm pointing at now?

A. Yes, sir.

20 MR. HOFFMAN: And just so it's clear for the record, Your Honour, that's Mr. Gary McHale who's being identified.

THE COURT: Yes.

MR. HOFFMAN: Thank you.

THE COURT: So noted.

25 MR. HOFFMAN: Q. And so this December 1st, 2007 was not the first time that you had seen Mr. McHale, you said?

A. No.

Q. And did you have any difficulty recognizing him when you saw him there on the 1st of December?

A. No, sir.

30 Q. Did anybody have to point him out to you, or did you just recognize him?

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A. Oh, I knew him.

5 Q. All right. Is he one of the people you did or didn't know by name when you first got there on December 1st?

A. Oh, I had known him from before.

Q. By name?

A. Yeah, well, just through the newspapers and such, I'd seen - and seeing him around.

10 Q. Was there anybody else you saw when you first got there that you knew, either by name or by face, from the non-First Nations Community, particularly someone who may have been doing something with a motor vehicle?

A. Mr. Doug Fleming - I learned his name that day.

15 MR. HOFFMAN: All right. And if I can just have one moment, Your Honour.

THE COURT: Yes.

MR. HOFFMAN: Q. Is he someone who you - sorry, I think you already answered this but I'm gonna ask it again. Had you seen him before December 1st, 2007? That's Doug Fleming?

20 A. Not that I can really recall that...

Q. Okay.

A. ...I noticed him.

Q. So, you saw him on that day?

A. No.

Q. Oh, you saw him on December 1st?

25 A. Yes.

Q. And did you see him just once or did you see him more than once that day?

A. Throughout the morning and early afternoon.

Q. So, it was over a number of hours...

A. Yes.

30 Q. ...that you saw him?

A. Yes, yes.

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5 Q. And could you describe him physically, just generally?

A. He's a smaller man.

Q. Yes.

A. That particular day he was wearing a pair of blue jeans, like a black bomber jacket, black cap.

10 Q. All right. Now, I don't believe there's any....

A. Fair skinned.

Q. Sorry?

A. Fair skinned.

15 MR. HOFFMAN: All right. I don't believe there's any dispute as to the identity of Mr. Fleming; he'll be seen on, on video and identified by people who know him.

20 But just so it's clear, if Mr. Fleming is here - he was a witness - I'm wondering if we could ask him to come in, and I could just ask this witness if that's who she's referring to?

THE COURT: Yes.

MR. HOFFMAN: Could we ask Mr. Doug Fleming to come into court.

...MR. DOUG FLEMING PAGED

25 MR. HOFFMAN: All right; I'll move on, I'm not going to....

THE COURT: Yes; perhaps he has stepped out.

MR. HOFFMAN: Absolutely.

MR. HOFFMAN: Q. Now, tell, tell us what it was you saw happening with Doug Fleming and, and the motor vehicle.

30 A. I'm not totally sure of the exact sequence of events, because it was kind of a, a unique experience...

Q. All right.

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A. ...but....

5 Q. So, when you first noticed Doug Fleming, about how long was that after you got there? In other words, was it still in the morning or was it into the afternoon?

A. No, it was still in the morning, it was still quite early. I had noticed Mr. Fleming in his little truck, and he had parked it across the road.

10 Q. When you say "across the road" - I think I know what you mean, but explain to His Honour what you mean by "across the road"?

A. Extremely perpendicular across the road. Totally on the road, not on the gravel.

15 Q. And that - and was that on Argyle Street?

A. Yes.

Q. And Argyle Street in that location, it's one lane in either direction, is that right? Argyle Street? And a paved road?

A. No, it's two lane there.

20 Q. Oh, is it like one lane going one way and one the other way?

A. Yes, yes.

Q. Okay.

A. Sorry.

Q. All right. So, that's right...

25 A. Okay.

Q. ...one lane going one way, one the other way. And it's a paved road service - surface, rather?

A. Yes.

Q. And a gravel shoulder, is that right?

A. Yes.

30 Q. And when you say that Mr. Fleming was blocking the road, do you mean his vehicle was faced the same way that



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5 traffic would normally be faced if travelling on the road?

A. No.

Q. Or was that - it was across the road, so blocking lanes of traffic?

A. Yeah, perpendicular.

10 MR. HOFFMAN: All right. And again, Your Honour, I don't think these are issues that are gonna be of any great dispute, and you'll see them on the video.

THE COURT: Yes.

MR. HOFFMAN: Perpendicular...

THE WITNESS: Yes.

15 MR. HOFFMAN: ...thank you very much.

MR. HOFFMAN: Q. All right. What, if anything, did you see Doug Fleming doing, or hear him saying when his truck was blocking the road the way you've described?

20 A. He was walking around quite a bit, like many people - most people were just mingling around all over the place. And they - I can't really say for sure his, his things that he was saying throughout the morning, like, but there was one particular point in time when I noticed that he was being counselled by the officers to remove his vehicle, they were encouraging him. And then eventually he decided to move it.

Q. Go on.

25 A. And at one point there was also - a female who was inside his vehicle locked herself in, you know, things like that, he wasn't gonna move the vehicle. Eventually, I was standing about from eight feet away or so, and he was getting into his vehicle, he was finally deciding to move it. And at that point, that's when I noticed Mr. McHale go up to him.

30 Q. And I'm gonna ask you about that in a moment; I want to take us back a little bit.

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A. Mm-hmm.

5  
Q. Before that point where Mr. Fleming - it appeared to you was gonna move his vehicle and Mr. McHale went up to him, before that, from the time you got there until that point, what could you say generally about the relationship or the words, if any, that were being said between the two groups of people you've described, the White people, or the non-Natives - and the Six Nations people? Was there any interaction of any kind that you could describe generally for the court?

10  
A. First of all, it wasn't totally Native versus non-Native, okay? There were non-Native individuals standing as colleagues or friends in support of Native people as well. And there was, you know, certainly a bunch of people that were there just looking, more so like myself.

15  
Q. So, maybe a better way for me to ask the question is...

A. Mm-hmm.

20  
Q. ...did you notice, what was the interaction, or type of interaction between various people or groups of people there from the time you got there? Just dealing with the time until Mr. McHale goes up to Mr. Fleming?

25  
A. There had been a point - Mr. McHale was pretty vocal that morning. I didn't really pay attention to him, just the fact that he was doing a lot of yelling. He had a angry exchange in front of a vehicle with two or three women from the community in front of another vehicle that was parked alongside. At one point I heard him say, "let's move it" or "rock it" or something he had said to his colleague that was with him. Then - I'm trying to think....

30  
Q. At some point - or at any point that day, did you hear anything - and I'm just gonna try to focus on the time from when you got there until you see Mr. McHale go up to Mr.

Terrylynn Brant - in-Ch.

Fleming.

A. Mm-hmm.

Q. Did you hear any discussions among any people about whose protest it was, or who was the organizer, anything like that?

A. I can't say that for sure.

Q. Fair enough. So, now let's get to the part where...

A. I should maybe change...

Q. ...go ahead.

A. ...I can't recall, I can't recall exact words.

Q. Well, if you could tell us generally what you recall being said about that, and who said it.

A. If, like watching what I, what I saw, it was definitely Mr. McHale's protest. He appeared to be the leader, he was the most vocal, he was kind of doing quite a bit of taunting.

Q. And what could you say about Mr. McHale's interaction with other people who - Mr. Fleming, or other people who appeared to be non-Natives?

A. He spoke quite - he went and he would kinda whisper back to individuals, you know, about what they were gonna say next and do this. There was one gentleman in particular who was a video man or cameraman or something that was like stuck to him like glue. And he would say, "Come on over here. Get this, did you get that?", kind of statements, making, ensuring that he photographed or videoed whatever he was doing, everything.

Q. Mr. McHale would say that to the person with the video camera?

A. Yes, yeah, the redhead.

Q. All right; now let's get to the part where I interrupted you and Mr. Fleming had talked to a police officer, you said, about moving his truck that was blocking the road. He

Terrylynn Brant - in-Ch.

5 went - and then where did Mr. Fleming go after that? When Mr. McHale came to talk to him, where were they in relation to the truck?

A. Right at the driver's door. Mr. Fleming, in fact, had the door open.

10 Q. So, Mr. Fleming goes to the truck; the door's open. Where does Mr. McHale - is he there or does he, does Mr. McHale come to that area?

A. Oh, he had been in the general vicinity within like 10 feet. And then he eventually came right up behind - Doug.

15 Q. Tell His Honour what you remember seeing and hearing at that point, when Mr. McHale comes up to Mr. Fleming. And start off by telling us how far away you were from that area, from where Mr. Fleming and Mr. McHale were?

A. I was very close. Maybe my judgment isn't that good, but certainly, you know, I could hear things...

Q. Any....

A. ...ten feet away, maybe eight.

20 Q. Any problems seeing or - first of all, any problems seeing them...

A. No, there was...

Q. ...from ten or eight feet away?

A. ...there was no one between myself and Mr. Fleming - well the door but....

25 Q. Sure.

A. I was very close, not, I was not trying to be right there, but I was very close.

Q. Tell His Honour what you saw and heard at that point.

30 A. Mr. Fleming appeared to be getting into his vehicle to - it looked like he kinda had a disappointed look, like he was going to go and start - in fact, I think he had his key in

Terrylynn Brant - in-Ch.

5 his hand - yeah, he had his key in his hand, like, and he was starting to get into the vehicle. He talked to Gary a few times; Gary, in fact, went up to him and - right to his ear.

Q. And when you say "Gary", you're referring to Mr. McHale?

A. Mr. McHale, yes.

Q. Go ahead.

10 A. Went right up to his ear, whispered things in his ear. Some of the - just catching some of the whispers - like "come on" - you know, like there was this obvious disappointment, words that were - a disappointment anyway, like you know. And I heard the words "you said", "come on", things like that.

Q. What did Mr. Fleming do after that?

15 A. He eventually got into the vehicle.

Q. And did what?

A. And moved.

Q. What, if anything, did you notice about Mr. McHale's reaction to that?

20 A. He had extremely disappointed to the fact, to the point of anger look on his face. He turned around and was very upset.

MR. HOFFMAN: If I could just have one moment, Your Honour?

THE COURT: Yes.

25 MR. HOFFMAN: Q. The pickup truck that you called "a small truck" - sorry, excuse me, you didn't say pickup, and I very much apologize for that; you said "a small truck". Don't, as much as you can, be influenced by what I just said, but do you remember what type of vehicle it was, this small truck?

A. It was a pickup truck.

30 Q. Okay.

A. No, it was a small, light coloured - I don't

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5 know, I don't want to say Nissan or Toyota or some kind of light, small - I believe it had a, like a cab thing on it.

Q. Two door? Four door?

A. Two.

MR. HOFFMAN: All right, thank you very much; those are my questions.

10 THE COURT: Now, Mr. McHale, you now have a chance, as I indicated to you earlier, to cross-examine this witness. Cross-examination, please.

CROSS-EXAMINATION BY MR. MCHALE:

15 Q. You said that you went to Caledonia because you heard a radio broadcast. Can you recall what that broadcast said?

A. Not the exact - it just said that there was a disturbance going on in Caledonia.

Q. So, the broadcast, as far as you remember, indicated that the protest was already on, ongoing?

20 A. Yes, it sounded like it, it was already started.

Q. And you indicated you arrived roughly at ten thirty, is that correct?

A. Yes.

Q. And there was two or three police officers there at that moment in time, according to what you said?

25 A. Just for the time, the only thing I can recall, is that opening had not been concluded at Council. And generally Council starts at ten; and that can be a 40 minute speech.

Q. Okay.

A. So, that's the best I can do for time.

30 Q. So, it could be...

A. I don't usually...

Q. ...later than ten thirty...

Terrylynn Brant - Cr-ex.

A. ...wear a watch....

Q. ...or....

COURT REPORTER: Sorry, Your Honour, one person at a time, please.

THE COURT: Yes.

MR. MCHALE: Sorry.

THE COURT: Ask your question again, please.

MR. MCHALE: Q. So, it could be later than ten thirty?

A. Slightly, but I don't think so.

Q. You indicated that you had not, could not recall seeing Doug Fleming at a previous event, is that correct?

A. I did not know his name. I perhaps saw him, but I did not know him by name before.

Q. Okay. And when you described him, can you, can you restate how you described him...

A. I...

Q. ...in your answer?

A. ...a pair of blue jeans, a black bomber jacket and like a toque, black toque, and he was fair skinned.

Q. Okay. So, your description...

A. Mm-hmm.

Q. ...pretty well everything you've just said is referring to what he was wearing, is that correct?

A. Well, I said he was fair skinned.

Q. Okay.

A. He was kinda - when he took his hat off one time he was kinda bald.

Q. Kinda bald?

A. Yeah. Or he had his hair shaved, like cut very, very short around.

Q. And someone that day must've told you what his

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name was, or how did you learn his name that day?

5 A. People would walk up to him and say "Doug, Doug". I believe you were one of the ones I recall calling his name.

Q. Now, you indicated that you didn't know what the type of business was there.

A. I'd never been in the store, is what I said.

10 Q. Okay. But is there not signs there that tell you what the store is?

A. I, right now I can't tell you that for sure.

Q. Okay. And you've lived in this community for all your life?

A. Yes, sir, pretty much.

15 Q. And that business has been there for how long?

A. A couple years.

Q. A couple years?

A. I do not shop in Caledonia, and have not for a few years, so I don't frequent that area too often.

20 Q. Okay. Now, you said it was definitely, your words were "definitely Mr. McHale's protest", is that correct, that you said that?

A. Yes.

25 Q. And is it correct that you, the reason you gave for that, is that he was, I was speaking to people and instructing the cameraman, was the example that you gave, is that correct?

A. Yes, among other things; but, yes, what you said.

30 Q. So, I was, in your view from that day, I was telling the cameraman to make sure he videotaped the various activities going on at the protest.

A. Yes, partly - you were doing other things, but that was one thing you were doing, yes.



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Q. Right. Are you aware that I run a web site?

A. I've heard that you do, yes.

Q. Do you know what the name of that web site is?

A. I'm sorry, I don't.

Q. Okay. You described - a phrase that you said that I, I used the words "rock it" or "move it".

A. Yes.

Q. What were you referring to when you made that statement?

A. The small vehicle that was in front of you, you were going, you were going to - you were moving it. In fact, you moved it - I thought that when it started up that that's how much you had moved it. I was on the other side of your - I was one person away.

MR. MCHALE: Your Honour, I'd like to be able to hand this to the witness.

THE COURT: Yes; you can show it to her and see if she recognizes it or can identify it, yes.

MR. MCHALE: Can I leave it with her?

THE COURT: Yes. Are you going to question her on it?

MR. MCHALE: Yes, I will.

THE COURT: Well, you can stand there so it's easier for both of you.

MR. MCHALE: Q. This is a rough drawing of what I seen at the scene. Is this, this is Argyle Street, Highway 6, is that how you recall?

A. Yes.

Q. And there's some business over in this corner?

A. Yes.

Q. And there was a police line formed across the road?

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A. No.

Q. Well, where were the police?

A. When I first arrived they were, there was just a handful...

Q. Okay...

A. ...there wasn't enough for...

Q. ...I'll....

A. ...there wasn't enough for a line.

Q. And at the time that you claim I was rocking the car, was there a police line across the road?

A. I don't believe so, because I was standing right here next to you looking that way...

THE COURT: Just a minute...

A. ...so it's kinda hard to tell what was....

THE COURT: ...do we have a pencil so that this lady - the witness just pointed to where she was. I'd like her to mark that, where she was.

MR. MCHALE: I have extra copies as well, Your Honour.

THE COURT: Yes. That will be an exhibit, and then we can all look at it.

MR. MCHALE: Q. So, this was the car you were....

THE COURT: Just for the record, the witness has marked where she was by - what mark did you make, witness?

A. An "X".

THE COURT: An "X"; thank you.

COURTROOM CLERK: Sketch of roadway will be Exhibit One for the trial.

THE COURT: Well, we will do that in a moment, let's just wait a moment.

MR. MCHALE: Q. So, this is the car you claim I

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was rocking?

A. Yes, sir.

Q. And it's presented in the right spot on the - so it's on this side of the road - not on the road, but on the gravel?

A. The two wheels here were, I believe, on the road, just slightly...

Q. Okay.

A. ...a little....

Q. And in general, the residents were over on this side and the Native people were over on this side?

A. No.

Q. Okay. Where, how did you see them?

A. Well, I'm Native and I was right here. So, that's...

Q. Okay.

A. ...your line where residents - I'm obviously behind them.

Q. Right.

A. And I'm Native, so....

Q. Okay. So, this is the car you're referring to that I'm rocking?

A. Yes.

Q. Okay. Because there was other cars that, that day, but that's the particular event you're referring to, the car that was over on this side?

A. Yes.

THE COURT: You're pointing to a, sort of a narrow rectangle?

MR. MCHALE: Yeah, the position where the car was.

THE COURT: And the witness marked an "X" by that car?

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MR. MCHALE: Yes.

MR. MCHALE: Q. Now, where do you claim I was standing at the time I was rocking the car?

THE COURT: Why don't you put that as an "M", perhaps, where Mr. McHale was standing, so we know.

MR. MCHALE: Q. So, you're indicating, by the way you marked it, you were very very close to me, within a couple of feet, would that be true?

A. Yes.

Q. Is there anybody else close by the two of us?

A. Yes.

Q. Who else was there?

A. I don't know his name.

Q. Was he there - our cameraman?

A. He had a camera, yes.

Q. All right. So, where was the guy with the camera standing by the car?

A. Make a "C"?

THE COURT: Perhaps "C" for cameraman.

MR. MCHALE: All right.

THE COURT: Thank you.

THE WITNESS: Okay.

MR. MCHALE: Q. And were there police by the car at that time?

A. By - I don't know what you mean by, by that time. Like "by" can be...

Q. Well...

A. ...they could be over and be by it, I'm not sure what...

Q. Okay, well during this...

A. ...like how close do you mean...

Q. ...during this event....

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A. ...I'm kinda confused....

THE COURT: Just a minute, let's slow down.

MR. MCHALE: All right.

THE COURT: Because madam reporter has to take down everything that's being said, and when two people are talking she can't do it. So, ask the question, please, and then let the witness respond.

MR. MCHALE: Q. In the same closeness as you are and we are to the car, is there officers that close to the, to the area?

A. On the side of the car, right here where we are, there was no officer to my, best of my knowledge, standing touching the car like we were.

Q. Okay, close...

A. Like that close....

Q. ...to the other areas of the car?

A. I believe there were some milling about.

Q. Okay.

A. Like walking back and forth...

Q. But no...

A. ...very close...

Q. ...no...

A. ...but I don't think...

Q. ...sorry....

A. ...they were not touching here.

THE COURT: So, there are officers in the vicinity...

A. Yes, Sir.

THE COURT: ...going back and forth?

A. Yes, Sir.

THE COURT: Thank you.

MR. MCHALE: Q. When that car finally moved, is

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there anything that happens that stands out in your mind?

5 A. Yeah, I was watching your foot, 'cause I thought you - when you said "move the vehicle" - I forget the words that you used, but "rock it" or "move it" - when you did that, I thought that's what moved the vehicle.

Q. And how do you....

A. And then I realized the car started.

10 Q. How do you claim that I was rocking the car? What did I do?

A. You were leaning against it, and you had your arm, pushed your arms on it to....

Q. So, it was - from what you saw, you believe that was a wilful effort to rock the car?

15 A. Yeah, you were leaning on it, yes.

Q. Okay. Did, from your view, did I instruct anybody else to do the same?

A. I believe you did, to the cameraman.

Q. Okay. And....

20 A. I don't know if you used the word "let's" or "we". Like...

Q. Can you...

A. ..."let's"....

Q. ...repeat what you believe I said?

A. You made a statement about moving it, anyway.

25 Q. Okay.

A. That's the best I can remember, I don't want to saying anything else in case I'm not correct, I can't remember....

Q. And none of the, none of the officers seen the response and what you saw by me rocking this vehicle?

30 A. Well, I was looking kinda down 'cause I was, the vehicle was moving. And I was, I backed away, as I was kinda concerned for my own safety at the time. But officers were

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generally in the vicinity making, you know....

5 Q. And as the vehicle moves away, and after your comment about....

A. There were many more things that happened before that but....

10 Q. But as the vehicle moves away, and you're concerned about my feet, or might get run over by my feet, anything else happens within the few moments of that, that stands out in your mind?

A. Before or after?

Q. Right as, as the vehicle moves away?

A. Not as it was moving away.

Q. Okay.

15 THE COURT: Are you finished with that sir?

MR. MCHALE: With that, yes.

THE COURT: That will be Exhibit One, then, please.

COURTROOM CLERK: Sketch of roadway with pencil markings made by Terrylynn Brant Exhibit One.

20 THE COURT: Thank you.

EXHIBIT NUMBER 1 - Sketch of roadway with pencil markings made by Terrylynn Brant - produced and marked

25 MR. HOFFMAN: Your Honour, it will be clear from the record that the witness did not agree with all the markings on there but...

THE COURT: No, we appreciate that.

MR. HOFFMAN: ...absolutely.

THE COURT: Yes.

MR. HOFFMAN: Thank you very much.

THE COURT: Of course.

30 MR. MCHALE: Q. Did you provide the OPP with a witness statement?

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A. Yes, sir.

Q. Can you recall when that took place?

A. No.

Q. Was it within a week of when the event occurred?

A. I believe - yes.

Q. And did the OPP videotape that statement?

A. No.

Q. Was a videotape....

A. I did not see it being videotaped.

Q. Do you recall how long the, your interview was?

A. Approximately 30 minutes.

Q. Okay. Do you recall whether or not you described in that interview a event where I grabbed your sister, Lynda Powless?

A. Yes.

Q. Can you....

A. I'm not sure I would use the words that you are, but yes, I recall discussing that.

Q. Could you give us details of, of what you explained to the officers about that particular event that day?

A. What do you mean by "details"?

Q. Well, during your interview, you, you spoke to the officers about an event by which there was a claim where I grabbed Lisa - Lynda Powless, and you gave details in the interview. Can you recall what you said?

A. If you - no, not really.

Q. Do you recall the event at all?

A. Yes.

Q. Well, can - okay, then from your memory now, can you explain what you recall took place at that time?

A. There were two specific - times when I noticed



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Mr. McHale - like you in heated discussions with women of the community. And the first woman I believe that I saw - your arm kinda went up towards her was at the car, and my sister was very close to that; so that's one time. And then shortly later, shortly after, you were walking on the road and she was very close to you, like right, right close to you, and I saw your arm as well going over her; so that was the second time.

10  
Q. So, you recall just me walking down the road, and I just - can you give...

A. I recall....

Q. ...any kind of indication how, how my arm moved or what I did?

A. Which time, sir?

15  
Q. The, The second event that you're describing.

A. I was looking at your back, the back side of you, and your, your left, I thought your left arm had gone up and come down across her, over her shoulder area. But you were blocking my view a bit, you're a little bit bigger than her.

20  
Q. Did you see any reason why I would've done that?

A. I don't know, it was - I just saw you being angry, you were just angry.

25  
Q. Do you recall that - when you describe this event, which you've already described now - but you then witness Clyde Powless drive up?

A. Yes, I did.

Q. So, from what you recall I, with my arm, reach over and grab your sister's shoulder, and then you remember that Clyde Powless drives up?

30  
COURT REPORTER: I'm sorry, Your Honour, the name, please?

MR. MCHALE: Clyde Powless.

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COURT REPORTER: Clyde Powless?

MR. HOFFMAN: C-L-Y-D-E, madam reporter, is the first name.

THE WITNESS: The order of events are confusing to me, I just remember many things that day. But I did see Clyde drive up, yes.

MR. MCHALE: Q. You describe - do you recall another event that you describe in your interview, of a woman blocking a car that was trying to make it through?

A. Yes.

Q. Do you recall what you said in your interview for that?

A. Yes.

Q. Can you describe that particular event?

A. An elderly woman approached the front of a small vehicle that was inching its way down the road, trying to inch its way. It wasn't driving fast or anything, just barely going. And she stood in front of it, she was holding a sign, and she refused to move. The car couldn't go anymore.

Q. And how long did she stand there for, from what you recall?

A. I don't really recall.

Q. Was it a short period....

A. A short, a short period, yes.

Q. Okay.

A. Well, I don't know what "short" is; 10, 15 minutes, maybe.

Q. Have you watched any videos from this particular event?

A. Yes, I've seen some.

Q. Can you tell us which videos you've seen, and when was the last time you looked at the video?

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5 A. It was within a day or so, that was the only time.

Q. So, is it possible you watched the video before you did the interview with the OPP?

A. Yes, it is.

Q. And who had, who made that video that you watched?

10 A. I don't recall.

Q. How long was the video?

A. I don't know, maybe 10 - it was not a real movie or anything like that, 10 or 15 minutes maybe, 5 minutes - maybe 10 minutes.

15 Q. You say your sister is the editor of Turtle Island News?

A. No, I didn't say that.

Q. Is your sister the editor of Turtle Island News?

A. Yes, sir.

20 Q. Did Turtle Island News run stories on this particular event?

A. I don't recall. I'm sure they did, but I just can't recall reading it or seeing it...

Q. Okay...

A. ...I....

25 Q. ...so you wouldn't be able to recall whether or not you actually read it?

A. No, sir.

MR. MCHALE: Your Honour, I would like to possibly play the interview from the OPP of her, to refresh her memory on some of the things that she has said.

30 THE COURT: Yes. Do you have that here, counsel?

MR. HOFFMAN: We do.

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5 THE COURT: How long will it take you to set it up?  
We can take the recess a bit early if you need some  
time to set it up.

Actually, we should take the recess now; if you can  
set it up and test it to make sure it works.

MR. HOFFMAN: All right; thank you very much.

10 THE COURT: Then we can dim the lights.

So, we'll take the morning recess; we will come  
back at ten to twelve.

COURTROOM CLERK: Order; all rise.

R E C E S S

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

COURTROOM CLERK: Court is resumed; please be  
seated.

THE COURT: Do we have the tape all set up then?

MR. HOFFMAN: We have the tape all set up.

20 THE COURT: Good.

MR. HOFFMAN: Detective Ecker helped. Since he's  
the one doing this interview...

THE COURT: Yes.

MR. HOFFMAN: ...I just thought it would be safer  
if I ask him to leave for this interview.

25 THE COURT: Yes.

MR. HOFFMAN: And my colleague will operate it.  
Mr. McHale will just tell us, for the record, when  
he wants it starting and when he wants it ending,  
and we'll do our best to do that.

THE COURT: Yes; Mr. McHale.

30 MR. MCHALE: Okay; we're starting the video at 21  
minutes into the video, and ending it at 22:30.

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MR. HOFFMAN: We're ready to start?

MR. MCHALE: Yes.

...VIDEO PLAYED

MR. MCHALE: Q. Do you disagree with anything that you had said during that interview, from what you recall now?

A. If we could play it again, I'll listen to it so I can answer that, yes.

MR. MCHALE: Okay...

THE COURT: Yes; let's play it over again.

MR. MCHALE: ...let's play it again.

THE COURT: Is the volume turned up as loud as it can be?

MR. HOFFMAN: I'm not sure that it is; I'll do that.

THE COURT: Let's ensure that it's turned as loud as possible.

...VIDEO PLAYED

THE WITNESS: There was a name that was a distortion, I can't quite - I didn't make out what that name was, so that part I don't know for sure.

MR. MCHALE: Q. Okay. Other than names is there - of the details of the sequence of events or how it describes the events, do you disagree with any of that at this moment?

A. Not from that perception, I guess it's the perception thing I'm having a difficulty with.

Q. Okay. So, just to go through the details a little bit....

A. In terms of the perception, when I said I didn't see it, meaning I wasn't standing there in front.

Q. Right?

A. I was behind. I clearly saw what I saw from behind, but what I meant that particular moment was, I wasn't like

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standing there to see it - from the front of you.

5 Q. Okay. So, just to recap some of the details and - so you see me walking...

A. Well...

Q. ...with...

A. ...it was a brisk stroll, you weren't just slowly walking.

10 Q. ...okay.

A. You were kinda going quickly.

Q. And I'm walking with - you identify your sister and Kelly (ph), that's correct?

A. Yes, all of you were walking.

15 Q. Yes. And then my arm came up.

A. Arms.

Q. Arms came up. Then you saw Bullet come up in his truck, Clyde Powless?

A. Yes, I saw Bullet in his truck.

Q. Then a crowd came by?

20 A. Not came by...

Q. Okay.

A. ...people rushed there...

Q. Rushed.

A. ...to form a crowd.

25 Q. And you claim you were behind me when you witness all this, correct?

A. I was moving around, I was between - from there - or I guess around - you kept moving too, so it's kinda hard to say I was always behind you.

30 Q. Sure. And you claim in the interview that it was your sister who told you afterwards that I had grabbed her because you didn't see it from behind, is that how you recall it now?

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5 A. No, from that - what I said there - I'm telling you now from my perception of what I saw. From the back I did see your arms go up, she was there, yes.

Q. Yeah, but in the interview....

A. In the interview, no, I - not from the front, I didn't see it from the front.

10 Q. Okay; but just to restate, to be clear, in the interview, you state your sister told you afterwards that I grabbed her.

A. Oh, yes, we talked about it after, yes.

Q. Okay. So, you went over, you went over the details of this event with your sister afterwards?

A. Yes.

15 Q. Okay. And at that moment of time, you didn't see anyone touching me. And from what you could perceive, there was no reason for me to be doing this?

A. You look afraid or angry or something, I guess that was your reason. I can't really understand - I don't know your real reason.

20 Q. Can you explain how you can see that if you're behind me?

A. You started out in front of that little car.

Q. Okay.

25 A. At that point, you had already hit somebody over there, and you were kind of yelling and being angry there and just - you weren't very - it wasn't too many more steps.

Q. Are you, Are you now stating that you, you saw me hit somebody over at the car?

A. No, I didn't see, I just heard someone holler "He hit her."

30 MR. MCHALE: Okay. Your Honour, I'd like to show her the copy of the Turtle Island News from a

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5 couple days after the event, it covers this story. She's claimed the editor was her sister, and she talked to the sister about the event. I want to find out if she's read the story.

THE COURT: Well, you asked her earlier if she read....

MR. MCHALE: Well, she wasn't sure.

10 THE COURT: Well, you can show the story to her and see if she read it; if not, then that will be the end of it.

MR. HOFFMAN: I would just ask, if maybe at the beginning, Your Honour, Mr. McHale could just point out what the date of that paper is.

15 THE COURT: Yes, just for the record, what date is the paper?

MR. MCHALE: Okay; it's Turtle Island News, Wednesday, December the 5th, 2007.

THE COURT: And what page is the article on?

MR. MCHALE: Page 2.

20 THE COURT: And the headline on the article?

MR. MCHALE: "Editor Injured Covering Protest That Turned Violent."

THE COURT: If you can show it to her and see if she recognizes that or not.

25 MR. MCHALE: Q. Have you read this, or saw these photos before?

A. I'm sure I would've, would've looked at it, yeah.

Q. Can you describe....

30 THE COURT: First of all, ask her - witness, when do you think you might have read that or looked at that?



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A. I can't be sure.

THE COURT: Around the time it was published?

A. I, I would've perused it probably, briefly, I'm not sure, I can't say for sure that I actually read it and paid attention to it, you know.

MR. MCHALE: Okay.

THE COURT: Yes; continue.

MR. MCHALE: Q. Based on the photos, can you tell me, from your perspective, what event it's trying to show?

A. It says "protest".

Q. Okay. More particularly, the fourth picture here....

THE COURT: Which page are we pointing to?

MR. MCHALE: Page 2.

MR. MCHALE: Q. Is the person in the photo your sister?

A. Yes.

Q. And is the caption of the photo trying to say that I'm grabbing her arm?

A. "When McHale wouldn't let go editor Lynda Powless grabs McHale's arm in attempt to free herself from his grip." Now what did you ask me?

Q. So, this, is this event the same as you're describing?

A. Is that that day, that happened that day, yes.

Q. And that's the event you've been describing of me reaching up?

A. Yeah, but I, it was a little bit before as well, like I saw you from the....

Q. Okay. The photo before is the same story, the photo above? Lynda - is that your sister in the photo?

A. Yes.

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Q. And is that me...

A. Yes...

Q. ...in the photo?

A. ...yes.

Q. And who is that gentleman?

A. That's Bullet, Clyde Powless.

Q. Clyde Powless. And what is he doing in the photo?

A. He's reaching up to tickle your neck.

Q. Tickle my neck?

A. Well, he's got - like this - I don't know what you want to call that. His fingers are like this.

Q. Well, at the end of this tickle, did I end up being bloodied?

A. I don't think so.

Q. Okay.

A. Not at that, right at that time, I don't believe so.

Q. Okay. So, there's another photo showing my hand....

A. You were bloody later though.

Q. Okay. So, this is not the event where I end up being bloodied?

A. I don't think so, no.

Q. Okay. So, the event that you, you believe being described here is the same one that you've been...

A. Yes.

Q. ...talking about, me grabbing...

A. This one here, yes.

Q. ...yes. And you think these photos are different events of the same protest?

A. Yes, part - yeah, different parts or different

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points in time, yes.

5 Q. Okay. So, doesn't this photo here, where you say Clyde is tickling me, isn't that the sequence of the photo where she's trying to - Lynda Powless is showing my hand on her? And then there's a zoom-in. Are these not the same event?

A. Yes, it looks like it's the same picture.

10 Q. So, at the time that I'm grabbing Lynda Powless...

A. Mm-hmm.

Q. ...Clyde Powless has his arms around me?

A. Yeah - well, I see one arm.

Q. One arm.

A. His hand, yeah.

15 Q. Okay.

A. And I can't see his other arm.

Q. And is this not all the same...

A. Day?

20 Q. ...sequence of photos? This photo here showing me being bloodied?

A. This is after.

Q. How much after is this?

A. I don't know. 'Cause you're not in the same, it doesn't look like you're in the same spot, from the background.

25 Q. Okay. So, but you testified that when my arm went up, I was just walking.

A. This - yeah, but it was before you got to this point on the road, you were like....

Q. Well, you just said this photo is the same event of when my hand goes up and....

30 A. At a certain point in time, yes. I described to you the time that was previous to this. Like, it was only seconds or whatever, but this is at a certain point I was talking

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about when you were just first walking.

5 Q. But you also testified that at the time I'm grabbing your sister's arm...

A. I didn't say you grabbed it.

Q. ...reached up.

A. Yeah.

Q. You then saw Clyde Powless drive up...

10 A. Yes, I remember seeing....

Q. ...but in the photo....

MR. HOFFMAN: Sorry, Your Honour, there's a couple of issues: one, is that we're getting into Mr. McHale not allowing the witness to finish; two, we're getting into Mr. McHale raising his voice a little bit, which is not a problem because it's nothing excessive, but he's standing right on top of the witness.

15 THE COURT: Yes.

MR. MCHALE: I can move back, Your Honour.

20 THE COURT: Have you finished with the paper then?

MR. MCHALE: Yes, yes.

THE COURT: First of all, we'll have to make the DVD that was played Exhibit Two. And then the paper just referred to Exhibit Three, please.

25 COURTROOM CLERK: Video interview of Terrylynn Brant, Exhibit Two.

THE COURT: Thank you.

EXHIBIT NUMBER 2 - Video interview of Terrylynn Brant - produced and marked

30 COURTROOM CLERK: Turtle Island News dated Wednesday, December 5, 2007, specifically page 2, article entitled Editor Injured During Protest Turned Violent, Exhibit Three.

Terrylynn Brant - Cr-ex.

THE COURT: Thank you.

EXHIBIT NUMBER 3 - Turtle Island News dated Wednesday, December 5, 2007 - produced and marked

THE COURT: Yes.

MR. HOFFMAN: In terms of the video, Your Honour, I can take it out now; or if Mr. McHale might want to play it again, I can just give....

MR. MCHALE: There'll be more captions I'm probably gonna go through before...

MR. HOFFMAN: All right; so I'll take it out after.

THE COURT: Yes, we'll deal with it later then; but it will be marked as Exhibit Two. Yes.

MR. HOFFMAN: And I'll perhaps give the clerk a jewel case now...

THE COURT: Yes...

MR. HOFFMAN: ...so she can mark that.

THE COURT: ...that's a good idea; thank you.

MR. MCHALE: Q. Just to recap what you already testified, I directly asked you, you saw Gary McHale, your sister and Kelly just walking, is that correct? You already testified to that?

A. I'm not sure what you mean by "just", like you weren't...

Q. Were walking.

A. ...it wasn't a Sunday stroll or anything, like you were all kind of moving briskly.

Q. And you testified McHale's arm came up?

A. Arms.

Q. Arms. And you testified, then you saw Clyde Powless drive up in the truck?

A. I didn't say "then"; I did see him drive up. I'm not sure at what point it was, but I did see his vehicle, like

Terrylynn Brant - Cr-ex.

when he come in.

Q. Well....

5 A. I'm not sure, in terms of the sequence of events, at which point he came in. I did see, you know, him....

Q. But you were asked on the interview...

A. Mm-hmm.

10 Q. ...why I raised my arm. And did you not say, "I didn't see anyone touching him"?

A. At the beginning, no, I didn't. When I was talking about - when you had your arms up like that and you were walking - you and Lynda, and Kelly was behind you, you were walking. At that point, I didn't see anybody's arms on you.

Q. Well...

15 A. Or didn't see any....

Q. ...in your view, how long did I have a hold of her for?

A. Well, you were walking three, four strides. She had - it looked like she had actually kinda stumbled.

20 Q. So, when the picture is captured, it's gotta be captured within that three or four seconds...

A. Yes.

Q. ...that you're referring to?

A. Yeah, yeah, just a few steps.

25 Q. But the photo showed Clyde Powless with his - hand on my neck.

A. Mm-hmm.

Q. But you state, "I didn't see anyone touching him."

A. At the time when you were touching - when you initially touched her.

30 Q. Well, it's three or four seconds, isn't this the same time?

Terrylynn Brant - Cr-ex.

5 A. It doesn't - not in the pictures you're showing me. You showed me pictures that were - you showed me the bloody picture, that's at a different time. Those are not....

Q. I'm not referring to the pictures, I'm talking about your testimony now.

A. Yes.

Q. Your testimony is - and was in the interview...

10 A. Mm-hmm.

Q. ...that I, your sister and Kelly are walking. Then you state my arms come up. Then you stated in the interview, "I then saw Bullet come up in the truck." Then you say, "Then a crowd came."

15 A. Then in my interview, the sequence of events then and now I'm not quite sure what the sequence of events regarding Bullet's arrival.

Q. Okay.

A. I didn't - I do know he arrived.

Q. But in the interview you were asked...

20 A. I saw him walking...

Q. ...by the officer....

A. ...across the road, right, I remember seeing that. I might've looked down, or something like that, for a split second, 'cause I had moved away from the fight area. People were rushing to it, I rushed away.

25 Q. But you were asked...

A. Mm-hmm.

Q. ..."Is there any reason why his arm came up?" And your answer was, "I didn't see anyone touching him."

30 A. At that point, yes, that's true. And then that's probably when Bullet would've went after that.

MR. MCHALE: Okay; I'll move on, Your Honour, to time frame in the interview 15:30 to 17:10.

Terrylynn Brant - Cr-ex.

THE COURT: Yes.

MR. MCHALE: If you would play that part.

MR. SADLER: It's just taking a moment to warm up,  
Your Honour.

THE COURT: Yes; that's fine.

...VIDEO PLAYED

THE COURT: Yes, Mr. McHale.

MR. MCHALE: Thank you.

MR. MCHALE: Q. Is there anything in that inter-  
view part that you would want to correct or disagree with?

A. No, I don't think so.

Q. Okay; so just to recap, you state that you  
actually hear the words that I say "rock it", is that correct?

A. "Rock it" or "move it", I believe it was  
something of that effect.

Q. Okay. And your statement on the video is that  
was said to my cameraman?

A. Yes.

Q. And he's so close that, by your view, you  
believe it's captured on video.

A. Yeah, I thought perhaps you could.

Q. Okay. You also say - or it's implied that the  
rocking motion is so much that it's obviously - you're, you're  
concerned.

A. Yes.

Q. So, it wasn't just a little push, it was enough  
that you could really see it being rocked.

A. There was one motion, and that's when I didn't  
realize that the car had actually started, I thought it was a  
rocking. The one big motion was the car moving.

Q. Okay.

A. So, I guess one big movement, but little bumps



Terrylynn Brant - Cr-ex.

or, I guess you would say.

5 Q. Are you changing your statement that I was rocking it...

A. No...

Q. ...or the car moved on its own?

A. ...no, that's what I said in there.

10 Q. Okay. I'm done with the video part. From where the, this event took place, you said earlier that the distance to the Reserve was - someone could throw a softball to the Reserve.

A. If you had a good arm, I said.

15 Q. Okay. Could you explain how you have to get to the Reserve from that spot?

A. Just walk.

Q. Give directions, roads.

A. Well, you can just walk straight through the field. Like, there's a field there, you just keep walking and you would hit the Reserve.

20 Q. South-bound...

A. Like from the road....

Q. ...north-bound, east, west?

A. Just heading north, I guess you would just head north into that large field that's there.

25 Q. Okay. So...

A. Where Highway 6 is, there's a big field there, on that map you showed me.

30 Q. Would I be correct to say, heading north is heading towards DCE?

A. No.

MR. HOFFMAN: Your Honour's probably aware, but DCE is Douglas Creek Estates.

THE COURT: Yes.

Terrylynn Brant - Cr-ex.

MR. MCHALE: Q. If you had to drive to the Reserve from that location...

A. Oh, driving....

Q. ...how would you have to go?

A. You head down Highway 6 to 5th Line, you could go right there.

Q. And so, from that point to....

A. Or either way; there's two concessions that come down off....

Q. From that point to 5th Line, how far is that?

A. I don't know.

Q. Can you estimate?

A. I don't know, maybe a kilometre.

Q. Okay. So, you've gotta drive down a kilometre. Then how far down 5th Line to get to the Reserve?

A. I don't know, I'm not very good with estimates.

Q. Well, the first distance was a, was a kilometre; what do you think it is for the 5th Line?

A. You can head to the Reserve either way; both ways would probably be less than two kilometres.

Q. Okay. So, just less than two kilometres.

A. Both ways, both directions, by road.

MR. MCHALE: Okay, Your Honour, I have no further questions.

THE COURT: Anything arising out of that, Crown counsel?

MR. HOFFMAN: Yes, there is, just about one area.

RE-EXAMINATION BY MR. HOFFMAN:

Q. Mr. McHale was asking you about videos that you saw of the events of December 1st; and he asked you when you saw them, and you said within a day or so. Do you remember that

Terrylynn Brant - Re-ex.

5  
general question and answer?

A. Yes.

Q. What I wanted to know is, when you said you saw some videos of the incident of December 1st within a day or so, did you mean a day or so of December 1st or a day or so of today?

A. December 1st.

10  
Q. All right. Where did you see those videos?  
How did you come about, how did it come about that you saw them?

A. I don't recall.

Q. In other words, was it at the police station...

A. No.

15  
Q. ...on your own, on TV, what could you - could you help us with any of those?

A. It was just TV, home video.

Q. Okay. Not with the police?

A. No.

MR. HOFFMAN: That's all, Your Honour.

20  
THE COURT: Thank you, witness. You're free to go, or you can remain in the courtroom; as you wish.

THE WITNESS: All right.

THE COURT: Your choice.

MR. HOFFMAN: Thank you very much. The next witness is going to be Lisa Parent.

...LISA PARENT PAGED

25  
MR. HOFFMAN: I'm assuming one o'clock is the normal break time?

THE COURT: Well, depending where we are with the witness, around there, yes.

MR. HOFFMAN: At some point, this witness has a video that lasts an hour thirty-five minutes.

30  
THE COURT: Oh.

MR. HOFFMAN: So, if I start it, you'll just tell

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me when to stop...

THE COURT: Well...

MR. HOFFMAN: ...or maybe even before.

THE COURT: ...if it's an hour and thirty-five minutes, we're not gonna start it before lunch.

MR. HOFFMAN: All right; I'll ask my preliminary questions.

COURTROOM CLERK: Lisa Parent? Come right this way and remain standing for one moment beside the witness stand. Do you wish to tell the truth on the Bible or another Holy Book or....

LISA PARENT: That's fine.

COURTROOM CLERK: Take the Bible in your right hand, please.

LISA PARENT: SWORN

COURTROOM CLERK: Thank you, ma'am; you may be seated.

MR. HOFFMAN: Do we have a glass of water for the witness, madam clerk?

COURTROOM CLERK: Yes.

MR. HOFFMAN: Thank you very much.

EXAMINATION IN-CHIEF BY MR. HOFFMAN:

Q. Mrs. Parent, could I ask you, not your address, but what city or town you live in?

A. Caledonia.

Q. And are you a long-time resident of Caledonia?

A. Going on 14 years now.

Q. On December 1st, 2007, did you end up attending an area in Caledonia that brings you here to court?

A. I did.

Lisa Parent - in-Ch.

5 Q. And what type of event did you think you were attending, from information you had heard?

A. Well, from the information that was available, it was advertised as a protest.

Q. And "advertised", where are we talking about?

A. I saw it in the newspaper.

THE COURT: Sorry?

10 A. The newspaper.

THE COURT: Newspaper.

MR. HOFFMAN: Q. And we've already heard some evidence, and we'll hear more. I'm not gonna ask you to tell us about the history of the events in Caledonia since 2006; but there's been a number of protests relating to land issues involving Natives and non-Natives in Caledonia since 2006, you're aware of that?

A. I'm aware of it, yes.

Q. And have you been to other of those events?

A. Well, I'm a videographer, so I videotape different events, yes.

20 Q. And tell, tell us a little bit about that, so the court will understand how you ended up being involved on the 1st of December, '07. You're a videographer, and you've been to different events with video, video equipment?

A. Mm-hmm.

25 Q. And what is the reason or purpose that you video record some of the events that are happening, that have happened in Caledonia relating to this land dispute, including December 1st, '07?

30 A. Well, my husband and I have a web site called [www.numberswatchdog.com](http://www.numberswatchdog.com), which is a news web site - it's, it's my function to attend events and videotape them so that we can put them on the web site.

Lisa Parent - in-Ch.

5 Q. With that background, let me get right to the 1st of December, 2007. What type of equipment did you attend with?

A. What did I use?

Q. Yes.

A. It's a Cannon ZR-8-5-1.

Q. And that records video?

10 A. It records video. That camera is a, it's a dual-purpose camera, it, it videotapes, and there's a card in the camera as well where you can take photographs.

Q. And is this a digital machine?

A. Digital, yes.

15 Q. What time did you in fact - first of all, where did you go on December 1st, '07, and when did you get there?

A. Sorry, what's the question?

Q. Where did you go and when did you get there?

A. Where did I go?

Q. In relation to this charge.

20 A. Oh, okay. Well, I, I drove to Caledonia - 'cause I live on the outskirts of Caledonia - and drove, stopped at Tim Horton's, got a coffee, and then drove down Argyle Street to - I parked at the power station at Argyle Street.

Q. There's only one Tim Horton's in Caledonia?

A. No, there's two.

25 Q. There's two; all right.

THE COURT: There's at least two.

MR. HOFFMAN: At least two; there may be more being built as we talk.

MR. HOFFMAN: Q. The Tim Horton's you went to, what street was that on?

30 A. It was at the south end of, on Argyle Street.

Q. And the hydro tower is where?

Lisa Parent - in-Ch.

A. The hydro station?

Q. The hydro station, sorry.

A. It's south of there, it's south of 6th Line...

Q. On what street...

A. ...probably...

Q. ...go ahead.

A. ...probably about two-thirds of the way down Argyle Street to the by-pass.

Q. Where did you end up parking?

A. Right in front of the power station...

Q. On Argyle...

A. ...on the west side.

Q. ...sorry, on Argyle Street?

A. On Argyle Street, yes.

Q. All right. And that's near the by-pass, you said?

A. It's about two-thirds of the way down.

Q. The by-pass, that's also called Highway 6?

A. Yeah - yes, sorry.

Q. So, about what time do you get there?

A. I got there around, around ten, ten after ten, ten fifteen, somewhere in that range, I think it is.

Q. A.m. or p.m.?

A. A.m.

Q. And when you parked the car, just give the judge a general idea of what you see overall when you first park and get out in that area.

A. Well, when I first parked, there were a group of people but they were further down the road; they weren't right where I was, they were down the road a ways. I saw cars on the side of the road, and I saw people kind of gathered on the east side of Argyle Street, and a few people kind of milling around on

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5 the west side as well. There was just people standing around when I first got there.

Q. Approximately how soon after you got out of your vehicle did you start videotaping?

10 A. I turned the camera on pretty much right after I got out; it was in, within a matter of moments of getting out of the car, and then walked down the road towards where the other people were.

Q. Did you videotape continuously, or did you stop at all during the course of videoing?

15 A. There were times when I did stop the video; I, I stopped it to change tapes, so I, I, I was - later on through the period of time I was a little bit concerned about the, the batteries. And so, when I didn't think anything significant was happening, I turned it off.

Q. When you say you stopped it to change cards, memory cards...

A. Tapes.

20 Q. ...tapes, sorry, that - each tape, the maximum length is what?

A. Sixty minutes.

Q. And did you wait till the absolute maximum before you changed it?

A. No, I did not.

25 Q. A little bit before?

A. A little bit before I changed, yes.

Q. Just to be safe.

A. Well, yes, you don't want to wait until it runs out.

30 Q. All right. And after you completed videoing, what happened to that footage, that tape?

A. After I finished videoing...



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Q. Yes?

A. ...what happened to it?

Q. Yes? In other words, did you stay there that day, or did you go home, or did you go somewhere else?

A. Oh, no, I went home.

Q. And when you went home what did you do?

A. I took the tape out of, out of the camera, 'cause obviously I, I taped them in sequence - there were two tapes, so I had tape two in the camera. I wanted to capture tape one first, so I would've taken tape two out and put tape one back in. You don't run the VCR aspect of the camera, which is the video playback part of the camera on the battery because it's not gonna last; so I plug it in, I usually hook it up to the electrical power. And then I hooked up the fire wire to the computer, and transferred the video, tape one and then tape two, to my computer; because obviously with the web site, you want to prepare the video to be able to put it on the web site.

Q. And in terms of preparing the video, did you do any additions or deletions or modifications to the, the actual images on the video?

A. No; the only change I made on the video was to capture both tapes into the files on, on the computer; bring those files into a product called movie edit pro 12, which is the product I use to do the editing. There contiguous; one tape and then the second tape as part of the editing environment. I added our banner to the bottom of the tape, that's the only editing that I did to the, to the master tape, okay?

Q. The banner just runs along the bottom of the screen...

A. Yes.

Q. ...when you're watching it, and it says what your web site is.

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5 A. It's www - it says property of www.numbers-watchdog.com.

Q. All right. Did anybody else operate the video camera during the time that the video was running, except yourself?

A. No.

10 Q. And most importantly, have you had a chance to see that video since the time you, you filmed it?

A. Well, back in, in, back in 2007 I did, because I did put some segments up on our web site, and I put the full video up on our web site as well. Since then, I haven't.

15 Q. Since then, have you had the opportunity - sorry, at the time, did you have the opportunity to watch it from beginning to end?

A. Oh yes, of course; because as you're capturing it, you have to watch it.

Q. Sure; and - but I'm talking about after you actually filmed it...

20 A. Mm-hmm.

Q. ...later when you got home, did you ever see it from beginning to end?

A. Yeah, that's what I'm saying; when you capture it into the editing software...

Q. Oh, I see.

25 A. ...it captures it real time.

Q. Okay.

A. So you, if you've got two hours worth of video, you've got two hours worth of video.

Q. And did you stay and watch it during that time?

A. Of course.

30 Q. And were you satisfied that it accurately depicted what you had seen through the lens when you were doing

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this taping on the 1st of December, '07?

A. Well, it's what I saw through the lens, yes.

Q. All right. And before we move to play the video, which I think we might do after lunch, I want to explore that area a little bit: that is, what you see through the lens. When you are in, in your capacity as a videographer...

A. Mm-hmm.

Q. ...and particularly on this day, December 1st, 2007, what could you tell the court about your ability or inability to see what's going on around you, other than what you capture in the lens of your camera?

A. You're, You're focused on what you're trying to videotape. So obviously, I don't - when I videotape - because to preserve batteries you, you use the view finder. If you use the screen that comes on a camera, they tend to chew up battery pretty rapidly. So, if you want to capture an event, you want to try to preserve your batteries as long, as long as possible.

Q. That means looking through the little hole?

A. Looking through the little hole.

Q. Got it.

A. And when, when you're focusing on that little hole, you tend not to be looking at a lot of other things, okay? You're, You're, You're looking at what's in, in the viewfinder. Now, at the same time, an event like that is - there's a lot of stuff going on in an event like that, and a lot of activity around you - lots of noise and, and things happening. So, if you're trying to ensure that you, you know, capture the essence of the day - which is what a videographer tries to do - you, you will start videotaping something, you might ask a question of somebody, and you may very well hear something and be trying to see what's going on somewhere else, so that you can go and catch a different scene, right? So, while you're videotaping or, or looking, your

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5 eye's going to be in the lens pretty much constantly, other than if you're - if you hear another activity, 'cause it's, it's quite noisy when you're at an event like that.

Q. Is there anybody who's in court now who you captured on video from December 1, '07? If you recognize them; and if not, that's fine.

10 A. Yeah, there's several people that I see in the room now that would've been in the video at that, on December 1st.

Q. All right; can you just point them out?

A. This gentleman here.

Q. Okay; let's just - "this gentleman", you're referring to who?

15 A. Gary, Gary McHale, I guess.

Q. Okay. And did you know his name even before December 1st, '07?

A. Well, of course.

Q. Okay. He'll be happy to hear that.

20 A. Well, no, there's been a lot of events over the last couple of years, so you get to know who people are.

Q. All right. And then there may be assorted other people in the audience...

A. Yeah.

Q. ...that you also saw?

25 A. Christine McHale is here, and obviously at the very beginning of my videotape, Mark Vandermaas (ph) was sitting there - was....

Q. Mr. Vandermaas is the...

A. Right.

30 Q. ...one of the two gentlemen in the front with, with hair?

A. Yeah, the one with hair, yeah.

Q. Okay.

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A. And glasses.

Q. All right.

A. I'm trying to see if there's anybody else I recognize. I don't see anybody else in the courtroom that I - actually, the fellow behind - no, I don't see anybody else.

Q. Okay; fair enough.

A. Yeah.

Q. This video, if I told you it was approximately one hour thirty-five minutes, would that sound about right?

A. Well, my tape was one hour and thirty-four minutes and thirty-four seconds.

MR. HOFFMAN: All right; I won't try to round it off anymore. And I think this is a good time for lunch.

THE COURT: Are you ready to play the tape then?

MR. HOFFMAN: Yes.

THE COURT: What we are going to do, in light of the time, so as not to interrupt the playing of the video, we're going to take the luncheon recess now until two o'clock; and when we resume at two o'clock, we'll be sitting right through until four without a break, and then we'll be finished for the day.

MR. HOFFMAN: Till four o'clock; thank you very much.

THE COURT: Thank you.

THE WITNESS: All right.

THE COURT: Thank you, witness.

COURTROOM CLERK: Order; all rise.

R E C E S S

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

5  
COURTROOM CLERK: Court is resumed; please be seated.

MR. HOFFMAN: Your Honour, before we begin, I've two, the next two civilian witnesses who I may be calling to come into court, and they're here. One of them is Mr. Fleming, the gentleman who we called this morning...

10  
THE COURT: Yes.

MR. HOFFMAN: ...who simply got the dates mixed up. And he explained that to me; he's here now.

THE COURT: Good.

MR. HOFFMAN: At some point in the future, if it becomes an issue, I may be seeking to recall Ms. Brant with respect to identity; but I'll leave that, I don't think that'll happen.

15  
THE COURT: Yes.

MR. HOFFMAN: The other witness who is here is Duane Rollins, D-U-A-N-E R-O-L-L-I-N-S. And what I'm going to ask is, that both - if the court finds it appropriate, that both of those witnesses be remanded till tomorrow morning at ten o'clock, since it's likely we're gonna take the rest of the day with an hour and thirty-five...

20  
THE COURT: Yes.

MR. HOFFMAN: ...thirty-four minute video.

THE COURT: Yes; both witnesses, you'll have to return to this courtroom tomorrow, do you understand that? Yes; you're both free to go; thank you.

30  
MR. HOFFMAN: Thank you very much. And Detective Ecker could tell that to the police officers who

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5  
are here to return. Is that all right, Mr. McHale, if he says that to the police officers who are here under subpoena for you also?

MR. MCHALE: Yes.

MR. HOFFMAN: All right; so all police officers, whoever they're subpoenaed by, can return tomorrow morning at ten. Thank you very much; I'm prepared to resume.

10  
THE COURT: Now, if the witness is more comfortable, she can stay down there...

THE WITNESS: No, I'll come back up.

THE COURT: ...whatever is more comfortable for you.

15  
LISA PARENT: Previously sworn, re-enters witness box

MR. HOFFMAN: Thank you very much, Your Honour.

20  
EXAMINATION IN-CHIEF BY MR. HOFFMAN: Continued

Q. I want to show you what appears to be a computer disk, and ask you if you recognize any of the markings on it as your own?

A. Yes, the words at the top, "Protest 2007-12-01 Caledonia" is my writing.

25  
Q. And so, at least from appearances - and we'll tell in an hour and thirty-four minutes when I get to ask you questions about this - but from appearances, this appears to be the video that you provided to the Ontario Provincial Police about the events, the events that you've just been describing on the stand?

30  
A. That's correct.

MR. HOFFMAN: So, I'm gonna ask - I'll officially

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ask, I guess, that it be marked after we have received it.

5

THE COURT: Yes.

MR. HOFFMAN: But this potentially would be the next exhibit; and I'll provide the disk - we'll get it ready. And I'll just have one more question for you when I get to my microphone.

10

THE WITNESS: Mm-hmm.

MR. HOFFMAN: What I'm going to ask you to do, is to watch the video, and not to say anything, because the reporter won't be able to record what you say while the video is going on. If for some reason you need a break, if you just address His Honour, then he will deal with that.

15

But after the video is played, I'm going to ask you if that in fact accurately represents what you saw through your camera on the 1st of December, '07, as you've described. Do you understand that?

20

THE WITNESS: Yes.

MR. HOFFMAN: Thank you very much. If it can be played now.

...DVD PLAYED

THE WITNESS: I'd like to make one correction, it's actually 1:34:44.

25

THE COURT: Yes, thank you; I made a note of that. That will be Exhibit Four then, the DVD that was just played.

MR. HOFFMAN: Thank you very much.

COURTROOM CLERK: DVD by Lisa Parent, Protest dated December 1st, 2007, Exhibit Four.

30

THE COURT: Thank you.

EXHIBIT NUMBER 4 - DVD by Lisa Parent, Protest



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dated December 1st, 2007 - produced and marked

5  
MR. HOFFMAN: Q. And what we just saw, was that an accurate depiction, or accurate showing of what you saw through the lens on the 1st of December, 2007, for the events you've described?

A. Yes.

10  
MR. HOFFMAN: I'm sorry, I'm actually, madam clerk, I'm just gonna need that disk back for one moment.

MR. HOFFMAN: Q. There's just one portion that I wanted to ask you about.

A. Mm-hmm.

15  
Q. And that's a portion at 35:43, there's someone talking, I'm gonna play that for you. I'm gonna ask you if you recognize anybody in the portion at 35:43 until 36:00. And I apologize for taking that out, Your Honour.

THE COURT: So, 35:43 to 36:00?

MR. HOFFMAN: Yes.

THE COURT: Thank you.

20  
MR. SADLER: I think I got the wrong point there.

THE COURT: Yes.

25  
MR. HOFFMAN: If we could just go back, sorry, one more time, 35:43. And, Ms. Parent, I just want you to listen for someone saying, "Doug you have to force them to arrest you." And I'm gonna ask you if you if you recognize that voice.

...DVD PLAYED

30  
MR. HOFFMAN: Q. Just a short time after 35:43 when we started that portion, there was someone saying "Doug you have to force them to arrest you."; and then the person goes on. Do you recognize that voice?

A. There were several voices; that voice, yeah, I think I would recognize that voice, sure.

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5 Q. And, to the best of your ability, who did that voice sound like to you?

A. That sounds like Mr. McHale.

Q. We see during that passage also someone in a truck; and we can see that on the screen now at 36:01. Do you recognize that person?

10 A. Well, I interviewed him earlier in the video; so, yes.

Q. And who is that person?

A. That's Doug Fleming.

Q. And where that truck is in the roadway - where is that truck in the roadway, at this point?

A. It, it's kind of on an angle across the road.

15 Q. Is it faced in the same direction as a car or truck would be travelling on the, on the roadway in the proper direction?

A. No.

Q. It's at what, what angle?

A. Well, it seems to be across the road.

20 MR. HOFFMAN: Thank you very much; those are my questions.

THE COURT: Cross-examination, Mr. McHale. Just so you know, Mr. McHale, we're going to sit till about four o'clock; so whatever you don't finish today, you can continue tomorrow.

25 MR. MCHALE: Okay.

MR. HOFFMAN: Mr. McHale, should we keep the videotape in, in case you want to refer to it, or return it?

MR. MCHALE: Yeah, you better keep it in.

MR. HOFFMAN: All right.

30 MR. MCHALE: Thank you.

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MR. HOFFMAN: We'll do that.

5 CROSS-EXAMINATION BY MR. MCHALE:

Q. Ms. Parent, we just watched an hour and thirty-four minute video. During this video, you weren't purposely trying to avoid videotaping me or focusing on me?

A. No, I wasn't.

10 Q. When I watched the video - and you can correct me - I didn't see too much where I was actually involved in the various things that you were videotaping, is that correct?

A. That's correct.

15 Q. I didn't really see any examples of where I was yelling and screaming or swearing at people, did you notice any of those?

A. No, I didn't, didn't, no.

20 Q. Okay. There was a moment at 19:20 in the video where the arrest was taking place. Do you recall hearing someone saying "Peacefully let them arrest him"?

A. In all honesty, I'd have to see the video again.

MR. MCHALE: Okay; well maybe we can go to 19:20 then; and we'll play about 25 seconds.

...DVD PLAYED

25 MR. MCHALE: Q. Someone says "Peacefully let them arrest him"?

A. Yes, I heard that.

Q. Can you identify who you believe that is?

A. Well, it sounded like you.

Q. Okay.

A. Or it sounded like Mr. McHale, sorry.

30 Q. The protest, according to when you interviewed Mr. Fleming, was - first of all, was it clear in your mind that it

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was Mr. Fleming's protest?

5 A. Well, there was something in the, in the newspaper earlier about it, and I believe it was Mr. Fleming that had put that in the newspaper, so....

Q. So, as far as you're aware, Mr. Fleming ran a newspaper ad declaring it his protest, and the reasons for the protest?

10 A. There was something in the newspaper; to call it an ad, I'm not sure.

Q. Okay.

A. I wouldn't necessarily call it an ad, but there was something in the newspaper, yes.

15 Q. And when you interviewed him, was it clear in your mind what the purpose of the protest was?

A. I believe so, yeah.

Q. And what would you say that was?

A. It was protesting the smoke shop.

20 Q. Could we say that Mr. Fleming's view of the protest was protesting an illegal smoke shop?

A. Yes, I'd say that's fair.

Q. And that was a business that was located right at the protest?

A. Well, down, just slightly down the street from the protest, yes.

25 Q. How far would you say?

A. Oh, 50 to a hundred yards.

Q. Okay. Do you have any knowledge, outside of this protest, whether or not the smoke shop is illegal?

30 A. Well, I, I can't make a judgment. I mean, there's been a lot of conversation about the smoke shop; and the fact is, that taxes, and so on, are not being paid. So, I presume it's illegal, yes.

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5 Q. Have you read anything produced from Haldimand County, or spoke to the mayor, that would give you information that the County believes it's illegal?

...OBJECTION BY MR. HOFFMAN

THE COURT: Yes; you are getting a bit far afield with this witness, Mr. McHale.

MR. MCHALE: Okay.

10 THE COURT: You can ask her, if you wish, about her personal knowledge, but - if she knows.

MR. MCHALE: Q. Okay; regarding your personal knowledge, have you, have you heard anything from Haldimand County - either in a press release or conversations with the, the mayor, that would lead you to believe that they believe it's illegal?

15 A. I'd say "yes" to that.

Q. Have you seen anything from Six Nations Band Council - either in a press release that they've done or in a news story or some kind of notice that they've given to the community - that these smoke shops are to be shut down?

A. I have seen articles about that, yes.

20 Q. Announcing from Six Nations Band Council?

A. Right.

Q. Okay. There's a few spots in the video where the - do you know who the Turtle Island reporter is?

25 A. I, I know a couple of Turtle Island reporters, who they are, yes.

Q. Okay. The gentleman that was present at the protest, who was doing the videotaping for Turtle Island, could you identify him if you saw him?

A. Do you have the spot in the video where he was on camera so I can say "yes" or "no", because....

30 Q. Yes, 32:25.

...DVD PLAYED

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MR. MCHALE: Q. Does that gentleman that just went  
off-screen...

A. Yes, that's...

Q. ...that's the Turtle Island reporter?

A. ...yes.

Q. And you witness him that day doing the video-  
taping of what was going on?

A. He was, He was doing - yeah, I guess he did  
have a camera, yes.

Q. Okay.

A. I'm trying to remember whether he had a camera  
or not, but certainly as a news media person he probably did, yes.

Q. When Mr. Fleming was speaking to the two  
officers trying to, they were trying to get him to move his  
vehicle, do you recall that Mr. Fleming really wanted just to  
speak to an officer about the issues?

A. He did say that, yes.

Q. And the purpose of putting his vehicle across  
the road was to force the OPP to have dialogue?

A. He did say that.

Q. Do you recall whether or not the officers at  
the scene promised that he would be able to speak to somebody? We  
can turn to the clip if you....

A. Can you?

Q. Okay; 47:40.

...DVD PLAYED

THE WITNESS: Yes, he did.

MR. MCHALE: Q. Is he speaking to the officer  
right now?

A. Yes, he is.

Q. So, do you recall that - or did you hear in  
there that the officer says, "I'll give you my personal guaran-

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tee"....

A. He did say that, yes.

5 Q. Okay. And that was a - from your point of view in taping and interviewing Doug, the sole purpose of putting the, the vehicle across, was 'cause Doug wanted to speak to an officer?

A. Well, I, you're asking me to make a judgment decision, I'm not sure I can do that.

10 Q. Okay. Is this the first protest that Doug has had...

A. No.

Q. ...regarding the smoke shops?

A. No.

15 Q. How many protests prior to this one had he had? An estimate?

A. Five or six, I would say.

Q. Okay. Did he actually have one about a month earlier actually at the police station?

A. Yes, he did.

20 Q. And did - at that moment of time did he also....

A. Actually, it'd be more than, a little bit more than a month earlier, I think it would've been in October.

Q. Okay.

A. Yes.

25 Q. And at that particular protest, did he also want to speak to an officer?

A. Yes.

Q. Did he get a chance to speak to an officer at that particular protest?

30 A. Well, an officer did speak to him; but I'm not sure it was the officer he wanted to speak to.

Q. Okay.

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5  
THE COURT: I'm going to stop you at this time, Mr. McHale.

MR. MCHALE: Okay.

THE COURT: Witness, you'll have to return to this courtroom tomorrow morning at ten a.m....

THE WITNESS: Okay.

THE COURT: ...to continue.

10  
THE WITNESS: Yeah.

THE COURT: And we'll see you tomorrow morning. You're free to go; thank you.

THE WITNESS: Thank you.

THE COURT: Anything else before we remand the matter?

15  
...SUBMISSION BY MR. HOFFMAN

THE COURT: Mr. McHale, you're remanded then, to appear before me tomorrow morning back in this courtroom at ten a.m.; for the continuation of your trial.

20  
Thank you, everyone.

COURTROOM CLERK: Order; all rise.

25  
...WHEREUPON THIS MATTER WAS



Lisa Parent - Cr-ex.

MONDAY, NOVEMBER 24, 2008

5 COURTROOM CLERK: Ms. Parent, if you would please re-take the witness stand.

LISA PARENT: Previously sworn, re-enters witness box

10 COURTROOM CLERK: I remind you that you are still under oath.

MR. MCHALE: Okay; maybe we can play the video from one hour and 28 minutes and 30 seconds to one hour and 29 minutes and 30 seconds.

MR. SADLER: What was that first time, Mr. McHale?

MR. MCHALE: One hour 28 minutes and 30 seconds.

15 MR. HOFFMAN: That's the start?

MR. MCHALE: That's the start.

MR. HOFFMAN: And the end?

MR. MCHALE: One hour and 29 minutes and 30 seconds.

...DVD PLAYED

20 MR. HOFFMAN: Just so it's clear, Your Honour, this is in fact Exhibit Number Four that we took back from the court this morning.

THE COURT: Yes.

25 CROSS-EXAMINATION BY MR. MCHALE: Continued

Q. Are you aware that part of this section of this video, yours, there's a slow motion copy of this on the Internet?

A. I have seen something somewhere, I can't remember where.

30 MR. HOFFMAN: Okay. Could I have this, this played? And as you review this, can you look at it and see whether or not it's a copy of what we just

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seen, but done in slow motion.

...DVD PLAYED

5 MR. MCHALE: Q. Does that appear like it's your video slowed down?

A. That's, That's a copy of my video, yes.

MR. MCHALE: Okay. Can you do a still frame at the five second mark, please.

...DVD PLAYED

10 MR. MCHALE: Q. Okay; this person coming in from the screen on the right-hand side, do you know who that is?

A. No.

MR. MCHALE: Can you play it for another two seconds.

...DVD PLAYED

15 MR. MCHALE: Q. You aren't able to identify who that person is?

A. Are you talking about the one with the glasses on?

Q. With the toque and the glasses, yes.

A. No, I don't know who that is.

MR. MCHALE: Can you go to the 47 second mark.

...DVD PLAYED

MR. MCHALE: Okay; that's good.

20 MR. MCHALE: Q. Does it appear that the person with the toque and glasses is in this frame as well?

A. It looks like the same person, yes.

25 Q. Okay. Does it look like my, my hand is on her arm?

A. It looks like she's got her hand on your arm.

30 Q. Okay; there's a portion just above the "www", a white glove, just to point out on the picture, does that look like my hand on her arm?

Lisa Parent - Cr-ex.

A. Can you point at it for me, please?

Q. Sure.

5  
A. Like where exactly are you asking me is it your hand?

Q. This part here.

A. It could be anything.

10  
Q. Okay. Can you see the gentleman who's got his hand on my neck?

A. Yes.

Q. Do you know who that is?

A. Yes.

Q. Can you identify him?

A. It's Clyde Powless.

15  
Q. What do you think he's doing at that moment in time?

A. Well, it looks like he's chasing, chasing you and grabbing you.

Q. And you, would you classify that as a "tickle"?

A. I don't think so.

20  
Q. At the end of this event, was I bloodied?

A. At the end of the event you were bloodied, yes.

Q. Okay; so at the end of this, this 30 second moment, from what you remember, you saw me walk away bloodied?

A. Yes.

25  
MR. MCHALE: Okay; that's all the questions I have. Actually, sorry, one more, sorry. If we can go to, back on Lisa's video. Can we enter this slow motion video into evidence as...

THE COURT: Yes; that will be the next exhibit.

MR. MCHALE: ...number five.

30  
COURTROOM CLERK: Exhibit Number Five.

THE COURT: Yes, it's Five; yes, thank you.

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EXHIBIT NUMBER 5 - Slow motion DVD - produced and marked

5  
MR. SADLER: Do you want to go back to the original tape?

MR. MCHALE: Yes, please.

MR. HOFFMAN: You don't have a jewel case for this?

MR. MCHALE: No, just a sleeve.

10  
MR. HOFFMAN: Okay, here.

MR. MCHALE: Okay; so we're back on Lisa's video - be one minute - I mean, sorry, one hour 31 minutes 25 seconds; and ended at one minute - one hour and 32 minutes even.

MR. SADLER: So, 1:31:25 to....

15  
MR. MCHALE: One thirty-two zero zero.

...DVD PLAYED

MR. MCHALE: That actually wasn't the part I was looking for. I'm sorry, it was one hour thirty minutes and 25 seconds. And we'll do about 30 seconds of that.

20  
...DVD PLAYED

MR. MCHALE: Q. So, the gentleman saying "Get the Whites out of here" and "get the cops out of here", can you identify that man?

A. Clyde Powless.

25  
Q. Clyde Powless. And he's the gentleman that you just testified was grabbing me?

A. Yes.

Q. And did he seem quite angry and upset at this point in time?

A. Yes.

30  
MR. MCHALE: No more questions, Your Honour.

THE COURT: Crown?

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MR. HOFFMAN: If I could just have one moment?

THE COURT: Yes.

MR. HOFFMAN: No; no questions.

THE COURT: Thank you, witness; you're free to go.

THE WITNESS: Thank you.

MR. HOFFMAN: Sergeant Ben Gutenberg, G-U-T-E-N-B-E-R-G.

COURTROOM CLERK: Sergeant Gutenberg?

MR. HOFFMAN: Sergeant Gutenberg.

...SERGEANT GUTENBERG PAGED

MR. HOFFMAN: If you could get this witness a glass when you have a chance.

COURTROOM CLERK: Mm-hmm. Sergeant, will you swear an oath on the Bible?

BEN GUTENBERG: I will.

COURTROOM CLERK: I see you've taken the Bible in your right hand.

BEN GUTENBERG: SWORN

COURTROOM CLERK: Thank you; you may be seated.

THE COURT: Yes.

EXAMINATION IN-CHIEF BY MR. HOFFMAN:

Q. I understand that you are a police sergeant with the Haldimand County Ontario Provincial Police, is that correct?

A. That is correct.

Q. And that you were working on December 1st, 2007, in Haldimand County?

A. That is correct.

Q. I also understand, in giving your evidence here today, you may be making reference to some notes or reports that

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5 were prepared by yourself for the purpose of refreshing your memory as to some specific details, but you have an independent recollection of the events of this day as it relates to a protest in Caledonia, is all that correct?

A. That is correct, sir.

MR. HOFFMAN: Your Honour, at the appropriate time, I'm gonna ask that the Officer - I'm asking now...

10 THE COURT: Yes.

MR. HOFFMAN: ...that at the appropriate time he be allowed to refer to any notes that he's made.

MR. HOFFMAN: Q. Since you've made those notes, officer, I take it they were made at the time of the events or shortly thereafter when the events were fresh in your mind?

15 A. Yes, sir, that is correct.

Q. And have you made any additions or deletions or alterations to those notes at all?

A. None whatsoever.

MR. HOFFMAN: So, I'm making that request now.

20 THE COURT: Mr. McHale, have you had disclosure of this witness' notes?

MR. MCHALE: Yes, Your Honour.

THE COURT: Do you have any objection as required to him referring to the notes to refresh his memory?

25 MR. MCHALE: No, Your Honour.

THE COURT: Yes, in light of that, the witness can refer to his notes as required to refresh his memory.

MR. HOFFMAN: All right.

THE WITNESS: Thank you, Your Honour.

30 MR. HOFFMAN: Q. What was your general assignment on the 1st of December, 2007, before any events occurred in

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Caledonia?

5 A. I was the team leader performing routine patrol for the six a.m. to six p.m. shift on that date.

Q. Any other sergeants on duty on that shift?

A. That is correct; Sergeant Steve Sloan was on duty as well.

10 Q. All right. At some point in the morning, did you hear some - receive some information about something happening in Caledonia?

A. Yes, sir, I did.

Q. And about what time was that?

15 A. It was approximately 8:33 in the morning, where I attended a briefing in regards to a protest that was gonna be happening in the Village of Caledonia, Haldimand County.

Q. And did you go to the area of that protest right after that briefing, or did you go somewhere else?

A. Not immediately after, sir, I attended there within a couple hours.

20 Q. Did you receive information that caused you to attend there?

A. Yes, sir, that's correct.

Q. At what time did you receive that information? Approximately?

A. It was approximately 10:08 a.m.

25 Q. And that was from the dispatch or communication centre of the Ontario Provincial Police?

A. Yes, sir, I had overheard a radio conversation Sergeant Sloan was making to the communication centre.

30 Q. And as a result of overhearing that conversation, you went to a certain area in Caledonia?

A. That is correct.

Q. About what time - first of all, where did you

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go?

5 A. It was on Argyle Street South, in the area of the Canadian Tire.

Q. And about what time did you arrive?

A. I arrived there at 10:24 a.m.

Q. Did you stay in your vehicle or did you exit your vehicle?

10 A. Initially I stayed in my vehicle just for a few moments, and then I exited and proceeded to the area where other uniformed officers were congregating.

Q. What were your initial observations when you got there?

15 A. I noticed that a protest was currently underway. There was a large gathering of people on Argyle Street South, and there was a vehicle that was blocking Argyle Street South as well; it was positioned in such a manner that it prevented the easy flow of traffic for north-bound and south-bound traffic.

Q. Did you recognize that vehicle?

20 A. I - the vehicle in question, yes, sir, it was a - court's indulgence here - it was a white Ford pickup truck. However, I did not recognize it as being the property of anyone specifically at that time.

Q. Did you later learn it to be the property of someone?

25 A. Yes, sir, that is correct.

Q. Later that day you learned that?

A. Within a short period of time, that's correct.

Q. And whose vehicle did you come to believe it was?

30 A. A Douglas Fleming.

Q. And was that based on information you received



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from him or others or your computer system, how did you come to that conclusion, if you recall?

5 A. It was based on information I received from other police officers, and later on from Mr. Fleming himself.

Q. Is there a hydro station in that area?

A. There is.

10 Q. And where was the vehicle in relation to the hydro station?

A. If memory is correct, sir, it was north of that location.

Q. All right. So, about how far away was this vehicle from the Canadian Tire, how far away from the hydro station, to the best of your memory?

15 A. It was, again, estimations, approximately 300 metres south, about 300 metres south of the Canadian Tire, and maybe about 150 metres north of the hydro sub-station.

20 Q. The hydro, if you take the hydro station on one side of Argyle Street and Canadian Tire on the other side of the street, we've heard talk of a piece of land called Douglas Creek Estates - or it was called Douglas Creek Estates - where is - Douglas Creek Estates, is that on Argyle Street also...

A. It...

Q. ...at least....

A. ...accesses off Argyle Street.

25 Q. All right. Where Douglas Creek accesses off of Argyle Street, where is that in relation to the hydro station and Canadian Tire?

30 A. Be closer to the Canadian Tire end. From, From the hydro station proceeding north, you would come across 6th Line, Oneida 6th Line. And then you would immediately come to the land known as Douglas Creek Estates; following that the Canadian Tire; and then you're into the main part of Caledonia.

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5 Q. All right. And if you go the other way on Argyle Street, past Canadian Tire, past Douglas Creek, past the hydro station, what intersection do you come to?

A. Highway 6.

Q. All right. Were there any other supervisors on the scene when you were arrived?

A. Uniformed supervisors, no, sir.

10 Q. And any other supervisors of any kind, any other sergeants?

A. Sergeant Sloan was just leaving the area as I proceeded there on foot.

Q. So, you parked; you went there on foot.

A. That's correct.

15 Q. Sergeant Sloan was just leaving.

A. That's correct.

Q. Did you have a brief conversation with him?

A. Just over the radio, sir.

20 Q. And since Sergeant Sloan was leaving and there was no other supervisors there, what did your role become as you approached the scene and got to the scene?

A. I was the main team leader for the events that were occurring at the time.

25 Q. Are you able to give an estimate as to about how many civilians were there and how many police were there when you first got there? Or at any time during the events, if you're able to do that? If you are able to?

A. The area of approximately a hundred would be, I feel would be accurate. Again, those....

Q. A hundred civilians or police?

A. That would be a combination.

30 Q. All right.

A. Police numbers, I would guess to be - I can

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tell you that momentarily.

Q. Please.

5 A. Immediately present at the time when I approached the, the gathering, it was seven uniform members; I'm aware that other uniform members were dispatched to come up to the area. However, I would say the police presence number would've been no greater than 12 to 15.

10 Q. Throughout the time you were there?

A. Throughout the time that I was there.

Q. And you got there shortly after ten a.m.; and you left approximately what time?

15 A. Approximately 2:25 p.m. Again, you must remember I was - after the events escalated I was in and out of that area frequently, within minutes attending one location, coming back, just checking on the well-being of officers and....

Q. When you say "in and out of the area", do you mean you left that area completely...

A. Not...

20 Q. ...or just in and out of areas around this protest?

A. ...I'd say my border at that time - referring to in and out - would be no farther than the, the intersection where the Canadian Tire was, down to Highway 6.

25 Q. All right. And always on or in the vicinity of Argyle Street?

A. That is correct.

Q. Are you able to say if there were Six Nations protesters there, non-Six Nations people, some combination, what can you tell us about that when you first got there, and as things unfolded?

30 A. There was a, a combination of members from the Aboriginal community and non-Aboriginal parties as well.

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5 Q. How would you describe what was happening generally as you first arrived, and then as things progressed in the next few minutes?

10 A. It was a large gathering. I wouldn't call it unruly, I wouldn't call it disruptive, it was just a large gathering; people were in, were gathered in the middle of the road. The congregation of the activity appeared to be stemming around the pickup truck that was blocking the Highway.

15 Q. That's the one you later learned to be Mr. Fleming's?

A. That is correct.

20 Q. Is there anybody who's in court right now who you saw at that area when you first arrived, or shortly after you first arrived?

A. That is correct.

25 Q. Who is that?

A. That'd be Mr. Gary McHale.

30 Q. Is Mr. McHale someone who was known to you before December 1st, 2007?

A. That is correct.

35 Q. You've been in Haldimand County for a number of years now, at least since 2006?

A. That is correct; I've been there for 15 years.

40 Q. And had you actually seen Mr. McHale before December 1st, 2007 face-to-face?

A. That's correct.

45 Q. Had you ever talked to him before?

A. Yes, sir, I have.

50 Q. Would that have been once or a number of times?

55 A. It'd have been on more than one occasion; I can't say for sure it was that day, several days after, repetitive dates.

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5 Q. But before December 1st, 2007, you had spoken to him?

A. That is correct.

Q. And when you came to the scene on December 1st, 2007, when you saw Mr. McHale, did you have any difficulty recognizing him?

A. No, sir, none whatsoever.

10 Q. Did anybody have to point him out to you, or did you recognize him yourself?

A. I recognized him myself.

Q. And the person you referred to as Mr. McHale, if you can just point to him here in court.

A. He's immediately to your left, sir.

15 MR. HOFFMAN: That's the accused being identified, for the record, Your Honour.

THE COURT: Yes.

MR. HOFFMAN: Q. Had you seen Mr. McHale anytime since this case started last week until today, or is this the first time you're noticing him here in court?

20 A. No, I noticed Mr. McHale before today's date; he was at our detachment just recently as well.

Q. All right. And, And were you here last week?

A. Yes, sir, I was.

Q. Waiting to testify?

25 A. Yes, sir, he was present in the courthouse on those dates as well.

Q. Did you notice Mr. McHale before he came into the courthouse on those dates?

A. I may have.

30 Q. In any event, you recognized him without anyone pointing him out to you?

A. That is correct.

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5 Q. Okay; let's get back to December 1st, 2007. If you could describe in a summary way what Mr. McHale was doing different from anyone else - if, if he was doing anything different from anyone else - for the judge, when you first got there and as the time progressed, how would you describe Mr. McHale's behaviour and conduct in - sorry, sorry - so, go ahead and tell us about that if you can.

10 A. Mr. McHale was present, he was congregating with other members of the community. As I was engaged in conversation with other members of the community, Mr. McHale would disrupt those conversations; he would start to interject and interrupt as I was speaking with certain members of the community. As that happened, again, my chain of thought would be distracted at that point. As I re-attempted to return to the conversation at hand again, Mr. McHale would continuously attempt to disrupt and change the topic of conversation to something other than what I had intended.

15 Q. Did you have that difficulty with any of the other hundred or so people who were there, or any of the people who came over the time you were there?

20 A. Yes, sir.

Q. All right. And how would you describe Mr. McHale's role compared to other people you might've had that trouble with?

25 A. Mr. McHale would be probably the person that was disruptive the most.

Q. And besides interrupting you, did you get to hear or see anything else Mr. McHale was doing, any general comments he might've been making?

30 A. Yes, sir, that's correct.

Q. And generally, what kind of things would he have been saying, besides interrupting and trying to change the

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5 topic when you were talking to people? When he wasn't dealing with you, what kind of things was he talking about?

A. He was talking about the actions that the Ontario Provincial Police had taken, not only on the date in question, but in, in the past.

10 Q. This is a preliminary hearing and I'm not gonna ask you for the details of those; and I'm gonna leave it there, and move on to asking you whether you ever dealt with a, with the owner of the pickup truck, Doug Fleming?

A. This was the first opportunity I've had to deal with Mr. Fleming.

Q. And have you seen him here at all?

A. Yes, sir, I have.

15 Q. Did you recognize him sometime before today?

A. Yes, sir.

Q. When was the first time you would've seen Mr. Fleming since this case started?

20 A. It would've been through information I'd received during course of briefings prior to the events leading up to the date in question.

Q. So, you had - had you seen photographs of Mr. Fleming before December 1st, '07?

A. That is correct.

25 Q. And then you saw him in person on December 1st, '07?

A. That is correct.

Q. Have you seen him in person since then, up until this case started?

A. Yes, sir, just during his appearances in the courthouse on this event.

30 Q. Have you ever had any difficulty recognizing him yourself?

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A. No, sir.

5 Q. Have you ever had to have someone else point him out, or forget what he looked like?

A. No, sir.

Q. And did you notice him at all last week since this case started?

10 A. I believe he was here the latter part of the week, sir.

Q. And again, you recognized him without anyone pointing him out to you?

A. That is correct.

15 MR. HOFFMAN: I wonder if we could - I don't think there'll be any issue for this preliminary hearing, but I'm gonna ask if we could just have Mr. Fleming come into court, so we can determine for sure we're talking about the same person.

THE COURT: Yes.

MR. HOFFMAN: If we could call Mr. Fleming in.

...MR. FLEMING PAGED

20 MR. HOFFMAN: Q. Do you recognize this gentleman coming into court, Sergeant?

A. Yes, sir, that's Mr. Douglas Fleming.

25 MR. HOFFMAN: Your Honour, I can tell you, for the record, that this is the person who answered to the name Mr. Fleming when we dealt with the subpoena.

THE COURT: Yes.

MR. HOFFMAN: Thank you, Mr. Fleming; you can go back outside.

30 MR. HOFFMAN: Q. Briefly, could you give His Honour an idea of what kind of contact you had with Mr. Fleming, and what the result of that contact was?

A. Yes, sir. Mr. Fleming had been identified the



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5 owner of the white Ford pickup motor vehicle that was blocking the flow of traffic on Argyle Street South, in Caledonia, Haldimand County. My conversation with Mr. Fleming was in regards to, first of all, the ability for that motor vehicle to be moved, whether it was disabled or not; whether Mr. Fleming was willing to move the vehicle; and the reason as to why his vehicle was blocking traffic at that time.

10 Q. And were you successful in your conversation - trying to get Mr. Fleming to move the vehicle?

A. Yes, sir, I was.

Q. How long did that take, describe that process.

15 A. Mr. Fleming had initially asked to speak with myself in order to present some concerns he had regarding a situation or an investigation that was ongoing in Haldimand County at the time. My initial conversation with him lasted approximately 20 minutes; after which such time I requested that Mr. Fleming please move his motor vehicle. I determined that it was, it was mechanically sound enough that he could move it off, off the roadway. There was a further delay when some other parties  
20 attended inside the vehicle and prevented the movement. The vehicle was finally - court's indulgence - I don't have the exact time the motor vehicle was moved from the roadway, but I would say it was in excess of half an hour from my initial time of arrival.

25 Q. And that was in the roadway - just describe how exactly it was in the road and how it was blocking it.

A. It was parked, it would be parked facing an east-west direction, so that the, the front of the motor vehicle would be in the north-bound lane and the tailgate, or the bed of the pickup truck would be in the south-bound lane.

30 Q. Argyle Street, in that location, is one lane in either direction paved, separated by a centre line, and gravel shoulders on either side?

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A. That is correct.

5 Q. Besides the Fleming vehicle that was blocking the roadway, what could you tell us about whether there were or were not people blocking the roadway?

A. Oh, yes, there was numerous parties blocking the roadway.

10 Q. What can you tell us about what involvement, if any, Mr. McHale had in that?

A. I can tell you that I had observed Mr. McHale having conversations with parties located, not only on the highway, but along the gravel portions. I did not overhear any of those conversations.

15 Q. Did you actually see Mr. Fleming move his truck?

A. Yes, sir, I did.

Q. Before Mr. Fleming saw his truck, did you notice if there was any conversation he had with anybody?

20 A. Yes, sir, he had a conversation with Mr. McHale and several other parties.

Q. Where did that conversation take place, from your observation?

A. Right in the vicinity of the pickup truck to - close to where I was standing on several occasions.

MR. HOFFMAN: If I can just have a moment?

25 THE COURT: Yes.

MR. HOFFMAN: One more moment. Can I get Exhibit Number Four. And I'm gonna ask that we, ask that we put it to just before....

THE COURT: Just a minute; in light of the time, we're going to break for lunch, counsel.

30 MR. HOFFMAN: Oh, thank you very much.

THE COURT: And we will continue with this at two.

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You're free to go till two o'clock, witness.

THE WITNESS: Thank you, Your Honour.

...THERE WAS DISCUSSION RE SCHEDULING

THE COURT: Two o'clock, then.

COURTROOM CLERK: Order; all rise.

R E C E S S

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

MR. HOFFMAN: Good afternoon.

COURTROOM CLERK: Court is resumed; please be seated.

...THERE WAS DISCUSSION RE SCHEDULING

MR. HOFFMAN: Thank you very much. If we could call in a moment, if His Honour says it's all right...

THE COURT: Yes.

MR. HOFFMAN: ...call Mr. Fleming into court, I intend now to call him after Mr. Rollins.

THE COURT: Yes.

MR. HOFFMAN: So, that means not until April 22nd. So, if we could excuse him till April 22nd.

THE COURT: Well, let's do that right now, so the gentleman can leave.

MR. HOFFMAN: Thank you. Oh, that's right, the 21st. Do we know which court - maybe the same court?

THE COURT: It's in 200, yes.

MR. HOFFMAN: In 200?

THE COURT: Yes.

MR. HOFFMAN: Because we have, I think we had courtroom 2-0-8 for the 22nd to the 24th.

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...MR. FLEMING PAGED

COURTROOM CLERK: Your Honour, the trial coordinator confirms it will always be 200.

THE COURT: Yes.

MR. HOFFMAN: For all days?

COURTROOM CLERK: Yes.

MR. HOFFMAN: Okay, thank you very much; sorry about that.

So, Your Honour, as just discussed, Mr. Fleming will not be reached, for reasons already on the record, in these next three days; and I'd ask that he return the next day which - or to be bound over till April 21st, 2009, ten o'clock, in courtroom number 200, in this court building.

THE COURT: You're free to go until then, sir.

COURTROOM CLERK: And Mr. Fleming's first name, please?

MR. HOFFMAN: Douglas.

THE COURT: We'll see you in April, sir.

DOUGLAS FLEMING: Okay; thank you.

COURTROOM CLERK: Is that Fleming with one "M" or two?

MR. HOFFMAN: One.

COURTROOM CLERK: Thank you very much.

MR. HOFFMAN: And if I could ask the Officer to re-take the stand now?

THE COURT: Yes.

MR. HOFFMAN: Thank you very much.

BEN GUTENBERG: Previously sworn, re-enters witness box

COURTROOM CLERK: Sergeant Gutenberg, you are still

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under oath.

5 EXAMINATION IN-CHIEF BY MR. HOFFMAN: Continued

Q. My last series of questions, Sergeant, are going to relate to a portion of a video that's been marked Exhibit Four in this case, and identified as numberswatchdog.com video taken by Lisa Parent. And I'm going to play a portion for you between 35:00 and 36:00. I'm not sure if you can see the time stamp on that - are you able to see it, it's on the bottom right-hand side. Or is that too small?

A. Just due to the angle, sir, it's a little small and a little blurred.

Q. All right. In any event, perhaps what I'll do, if Your Honour has no difficulty, is at 35, about 35:40, I'll just stand up to let the officer know when 35:40 is - I won't say anything - but, Officer, what I'm going to ask you is, to watch this video, which has been identified as having been taken on the 1st of December, 2007, in the area of the dispute that you've testified about. And there's gonna be a portion at about 35:43 where we hear somebody say words to the effect, "Doug you have to force them to arrest you because they will not arrest the Natives when they block the road, you have to force them." Just before that comes on, I'll stand up to let you know to pay particular attention. And my question for you is going to be, if you're able to recognize that voice that says, "Doug you have to force them arrest you", and so on, all right?

A. Yes.

...DVD PLAYED

MR. HOFFMAN: Q. Did you hear a portion closer to the end where words to the effect of "Doug you have to force them to arrest you because they will not arrest the Natives when they block the road, you have to force them", did you hear words to

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that effect?

A. Yes, sir, I did.

Q. Were you able to recognize that voice?

A. Yes, sir, I was.

Q. Whose voice is it?

A. Mr. Gary McHale.

Q. Before December 1st, 2007, had you heard Mr. McHale's voice?

A. Yes, sir, I had.

Q. On one occasion, many occasions?

A. Many occasions.

Q. Did you have any difficulty recognizing it just now on video?

A. No, sir.

Q. Have you ever heard his, his voice on any other tapes, besides hearing it in person?

A. Over the Internet, sir.

Q. All right. And you've heard him in person a number of times?

A. Yes, sir.

MR. HOFFMAN: Thank you very much; those are my questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION BY MR. MCHALE:

Q. Do you record those words in your notebook?

A. No, sir.

Q. So, you have no recollection - you didn't recognize that statement from the day's events?

A. I wasn't in the area at the time that statement was made, sir.

Q. Okay. Do you make any notes in your notebooks

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about statements that I made that day?

A. Yes, sir, I did.

Q. Can you give us some examples?

A. Sure; court's indulgence. You have a copy of my notes, Mr. McHale?

Q. Yes, I do.

A. You'll refer to page 85.

Q. I don't have them numbered that way.

A. Okay.

Q. Unless it's in a different...

A. The bottom right-hand...

Q. ...oh, sorry, yes, I have it.

A. ...you see the number 85 in the bottom right-hand corner?

Q. Yes.

MR. HOFFMAN: Your Honour, since this is a preliminary hearing and not a trial...

THE COURT: Yes.

MR. HOFFMAN: ...I have a copy of the Officer's notes; if you wanted them for the purpose of note-taking, I can provide those to you.

THE COURT: That's fine for now; thank you.

MR. HOFFMAN: Thank you very much.

THE WITNESS: If you go to the - starting at the very top.

MR. MCHALE: Q. Can you tell us exactly what you believe I said.

A. Mr. McHale was yelling "2 tiered policing"; that's in the top half of the, that page of notes. If you go to the top of page 86, again at the top, the page is folded in half, so the upper portion.

Q. Yes.

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5 A. Very near the top, telling me I had the nerve to state this, in reference to a statement I had regarding the lawful enjoyment and use of property. I believe that was the only ones I've made comment on in my notebook, sir.

Q. Did you make a video statement back at the OPP station?

A. Yes, sir, I did.

10 Q. Is there anything that you can recall in your statement that you would disagree at this, at this point in time?

A. I haven't had the opportunity to review that video statement, sir, it would be premature for me to indicate such at this time.

15 Q. If I suggest to you that in a statement you also claim that I was yelling "one law for all", would you, would that refresh your memory?

A. That's refreshing my memory, sir.

Q. So, do you believe I was shouting that as well?

A. I believe you did state that at that - some point during that day, sir.

20 MR. MCHALE: Okay; if we can have the, his interview statement from the disclosure.

MR. MCHALE: Q. While we're waiting for that, you testified that you had a meeting at approximately eight thirty in the morning on a briefing of the protest, correct?

25 A. Yes, sir, that's correct.

Q. In that briefing, was the protest labelled a "Doug Fleming Protest"?

A. I can't recall, sir.

Q. Okay.

30 COURTROOM CLERK: If I can just have a moment, please?

THE COURT: Yes.



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COURTROOM CLERK: Thank you.

5 MR. MCHALE: Then maybe we can start at one minute and 10 seconds into the video, and go to one minute and 50 seconds.

...DVD PLAYED

MR. MCHALE: Thank you.

10 MR. MCHALE: Q. So, you recall that you've identified the protest as a "Doug Fleming Protest"?

A. Yes, sir, that does recall my memory now.

Q. And the purpose of the protest was regarding a smoke shop that was located right there?

A. In that area, yes, sir.

15 MR. MCHALE: Okay. Can we go to three minutes and 50 seconds. And I'll have to tell you when to stop, I'm not sure when.

...DVD PLAYED

MR. MCHALE: Okay; you may stop that.

20 MR. MCHALE: Q. So, you recall that you gave Doug Fleming 15 to 20 minutes to block the road?

A. Yes, sir.

Q. And that was because a Native protester had blocked it for roughly the same time?

A. Yes, sir.

25 Q. And in your statement here, you said that he moved his vehicle, the Native protester moved his vehicle without the police taking any action.

A. That I was aware of, that is correct.

30 Q. So, as far as you're aware of, when he blocked the highway, the Native person blocked the highway, and you're the site commander on the scene, as far as you're aware of, the OPP made no attempt to approach him to get him to move his vehicle.

A. I am not aware of any enforcement efforts that

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were taken upon that individual, sir.

Q. Well, you personally didn't go to him, correct?

A. That is correct.

Q. And you were the senior officer on the scene.

A. That is correct.

Q. And would it be normally your task to approach the person?

A. Not necessarily.

Q. Would there have been a different process, based on the fact he was Aboriginal?

A. No, sir.

Q. So, it could've been you approached him on that particular day?

A. It would've been a possibility it may have been me.

Q. Okay. Is there any reason why you, or any other officer that you know of, didn't approach him?

A. I can't comment for the other supervisor who was on the scene. I'm aware that when I was on the scene, the only vehicle I observed blocking the roadway in question was that of Doug Fleming.

Q. You have already testified that you were the only supervisor on the scene.

A. At that time, that's correct; I relieved Sergeant Sloan.

Q. Okay. So, at your time of being there, you're the only supervisor there.

A. Correct.

Q. So, if this kind of a task had to be done, it would - would it not have fallen on you to speak to the person?

A. Normally, yes, sir.

Q. Okay. And you didn't do that?

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A. I didn't, I didn't see that person, sir.

MR. MCHALE: Okay. Can we go to the six minute mark, please, to six thirty.

...DVD PLAYED

MR. MCHALE: You can pause now.

MR. MCHALE: Q. So, there was other people that day that were instructing people to, to stop traffic.

A. That is correct.

Q. And they were telling other people to do this...

A. Yes.

Q. ...like they were instructing the crowd to do this?

A. Yes, sir.

Q. Have they been charged with counselling mischief?

A. Not that I, not that I can recall, sir.

Q. Have they been - as far as you know, have they even been investigated?

A. Yes, sir, I believe an investigation was undertaken...

Q. Into those particular people? Do you know for a fact that those particular people have been investigated for a potential of counselling mischief?

A. I can tell you that parties have been investigated; I can't tell you the status in the investigation or if charges have been laid.

Q. Okay. You - and Doug Fleming agreed to move his vehicle. Was he able to move his vehicle right away?

A. Not right away.

Q. And why was that?

A. There was a female party that had locked

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herself inside of it.

5 Q. So, at that moment of time, she was blocking  
the highway.

A. She was preventing the removal of the vehicle.

Q. And has she been charged?

A. Not that I can recall, sir.

10 Q. Do you know how long she blocked the vehicle  
for?

A. It would've been just a matter of minutes.

Q. Is that minutes from when Doug decided to move?  
How long was she in the truck already with the door locked?

A. I can't give you an accurate estimation as to  
how long she was actually in the vehicle for.

15 Q. But you - do you have any notes on the fact of  
who, who she is? Her name, any way to identify her?

A. Just the court's indulgence. No, sir, I just  
have her identified as an elderly female.

20 Q. So, at this moment of time, wouldn't it be  
logical that she is potentially committing mischief?

A. That is a possibility.

Q. And do you not, you don't take any steps to  
identify her for future investigations?

A. Sure we do, sir.

Q. Buy you didn't.

25 A. I didn't at that time.

Q. Okay. Later on in the day, was there not  
another vehicle that was blocked by an, an older woman?

A. Yes, sir, that's correct.

Q. And an older gentleman too, right?

A. Yes, sir, that is correct.

30 Q. How long was that vehicle blocked for?

A. With accuracy, sir, I couldn't tell you.

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Q. Five minutes, half hour?

A. No, there was one instance that I was directly involved with that was, wasn't more than 10 seconds.

Q. Okay. And you were there the whole time, from the moment you arrived to you left approximately at two o'clock or....

A. Yes, sir, that's correct. And when I say I was there, I was within, again, the distances that bordered from Argyle Street and Highway 6 to the Canadian Tire.

Q. The court has heard, or watched a video that's approximately an hour and 34 minutes long from Lisa Parent. Have you watched that video?

A. Some portions I have.

Q. Not the whole thing? Can you estimate how much you, you've watched of it?

A. I couldn't tell you, sir; I, I've watched portions of it.

Q. Okay. If I said that the, that car that I was just referring to that was blocked by the elderly woman and a man was blocked for approximately 35 minutes, according to that video, would that make sense to you?

A. I couldn't tell you, sir, I, I have no way to measure that.

MR. MCHALE: Okay; then let me turn to - can we go to 8:45 in his statement, to about 9:40.

...DVD PLAYED

MR. MCHALE: Okay; you can stop it.

MR. MCHALE: Q. Do you recall that particular event?

A. Yes, sir, I do.

Q. Can you recall now how long that particular vehicle was blocked?

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5 A. No, sir, I can't recall; but I do recall the event that you're mentioning.

Q. And you recall that the driver was laughing and joking with the people?

A. He was very cordial, that's correct.

Q. But particularly, he was laughing and joking with the people.

A. Yes, sir.

10 MR. MCHALE: Okay. If I can turn to Lisa Parent's video, I think it's - I'm not sure of the exhibit number.

MR. HOFFMAN: First, perhaps we can mark this as the next exhibit.

15 THE COURT: Yes.

MR. MCHALE: Exhibit Six.

COURTROOM CLERK: It will be marked then as Exhibit Number Six.

EXHIBIT NUMBER 6 - DVD of Officer Ben Gutenberg's interview - produced and marked

20 MR. MCHALE: And I will be referring to that still.

MR. HOFFMAN: I will give you this new exhibit; and I will take Exhibit Four.

MR. MCHALE: If we can go to one hour and 21 minutes and 20 seconds. And we'll play that for one minute.

25 ...DVD PLAYED

MR. MCHALE: Okay; you can stop it there.

MR. MCHALE: Q. Is that the gentleman that you're referring to that was laughing and joking?

A. I'd have to review it one more time, sir, and get a better look at the vehicle.

30 Q. Okay.

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...DVD PLAYED

MR. MCHALE: We can play another portion that will let you see the vehicle more at one minute - I'm sorry, one hour two minutes and 30 seconds. We'll play that for about 30 seconds.

MR. SADLER: That was one hour two minutes and 30 seconds?

MR. MCHALE: Yes.

...DVD PLAYED

MR. MCHALE: Q. Is that the event - is that the driver you were saying that was laughing and joking with the group?

A. That appears to be the driver, sir.

Q. Okay. And it does appear that he had been blocked for quite a while?

A. I, sir, I can't tell you - I haven't had a chance to review the full amount of time, I can't give you an accurate estimation how long he was blocked for.

Q. But you were there?

A. I was present, sir...

Q. Okay.

A. ...that's correct.

Q. Have you made any attempts to identify the people who blocked that vehicle?

A. I'm aware that an investigation was conducted, sir, but it wasn't done by myself.

Q. So, on that particular day, you didn't make any notes to identify the female or the male that were blocking that particular car?

A. Not that I can recall, sir.

Q. Is it in your notebook?

A. No, sir, it's not.

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5 Q. Okay. So, you made no notes on the identity of those, those people?

A. That is correct.

Q. And you've made no inquiries into who they were? You personally?

A. Myself, no, sir.

10 Q. Okay. Earlier you were asked by the Crown to - did you see anybody in the courtroom that you recognized from the day of the protest, do you remember that question?

A. Yes, sir, I do.

Q. And what was your answer?

15 A. I believe it was just - I indicated yourself, sir.

Q. Is there any reason why you were not able to identify anybody else in the courtroom from that day?

A. No, sir.

20 Q. Can you identify anybody else that was present that day?

A. Not that I can see here, sir, not that I recall; other than yourself.

25 Q. Okay. And would it be surprising that my wife was there the whole time?

A. I did not see her or notice her there, sir, I'm sorry.

Q. And you have met my wife in the past?

A. Yes, sir, I have.

Q. As early as in 2006 as well?

30 A. Yeah, I had a conversation with her at our detachment.

Q. Okay. And Lisa Parent was in the courtroom at the time. Do you know what she looks like?

A. I do as of just the other day, sir.



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5 Q. Okay. But you didn't identify her as someone who was present.

A. That's correct, sir.

Q. But obviously you were watching an hour and 35 - 34 minutes of her video, so she was there.

A. I can't tell you who made the video, sir.

10 Q. So, is it fair to say, that when you identify someone in the courtroom, you focus solely on me?

A. No, it's people that I recognize.

Q. Okay. And so, for the hour and 34 minutes she videotaped this while you're at the protest, you actually don't notice her?

A. Can you refer to who I'm not noticing?

15 Q. Lisa Parent.

A. Sir, I don't recall Lisa Parent being there.

Q. Okay.

A. I've just met her just recently. I can't recall her being at that protest.

20 Q. Okay. So, is it possible that the reason you cannot identify people that were there, is because part of your focus is on me?

A. No, sir.

25 Q. Are you aware that on December the 1st - before you made your video statement - Commissioner Fantino instructed the investigation to be focused on me?

A. No, sir, I'm not aware of that.

Q. When was the first time you became aware that I was to be arrested?

A. On that date in question? Court's indulgence again. At 5:15 p.m.

30 Q. On which day, please?

A. Be the 1st of December, 2007.

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5 Q. So, at 5:15 in the afternoon, roughly five hours after this protest, you become aware that I, I am to be arrested.

A. I was aware there was reasonable and probable grounds indicating you committed an offence and that you were to be arrested.

Q. And what was that offence?

10 A. Assault.

Q. On who?

A. I can't tell you, sir.

Q. Were you, Were you personally instructed to arrest me at that time?

A. Yes, sir.

15 Q. So, at 5:15 on December the 1st, you were given orders to arrest me for assault.

A. That's correct.

Q. And you were told that the reason for that, was there was reasonable and probable grounds that I had committed an assault.

20 A. That is correct.

Q. Are you aware how long that investigation lasted?

A. No, sir, I am not.

Q. Was the assault from this particular event?

25 A. I couldn't tell you, sir, no idea.

Q. Okay. Since that time, have you become aware of what the assault could be?

A. Yes, sir.

Q. And what's the assault related to?

30 A. One of the possibilities was in regards to an assault that you may have committed against a person by the name of Clyde Powless.

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Q. Okay. Any other assaults?

A. Not that I can recall.

5 Q. Okay. So, what happened to that order for you to arrest me? Because obviously you didn't arrest me on that particular day.

10 A. Yes, sir; as we attempted to locate you, I was advised that crime unit members were taking care of the situation, and to disregard it at this point.

Q. Okay. And you were - where were you located at the time you received this order to arrest me?

A. I was at the detachment, the Haldimand County detachment located in Cayuga.

15 Q. If I'm reading your notebook correctly, it says that you and Officer Sloan were instructed to go out into the parking lot and arrest me, is that correct, under your 5:15 note?

A. Yes, sir, I believe - just a moment, please. No, that is correct, we were in Caledonia, not, not Cayuga; that is my error.

20 Q. So, where were you located at this particular time?

A. I was inside the command post, which is located on Unity Road in Caledonia.

Q. Okay. And you did go out into the parking lot for the purpose of arresting me?

25 A. That is correct.

Q. And so did Officer Sloan.

A. Sergeant Sloan accompanied me.

MR. MCHALE: Okay. Okay; if we can go back to the Officer's interview statement on the other CD.

COURTROOM CLERK: Exhibit Six.

30 MR. HOFFMAN: So, I'm returning Exhibit Four, and I'm taking Exhibit Six.

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5  
MR. MCHALE: We can go to 10 minutes and 40 seconds; and we'll play that to 12 minutes and 20 seconds.

...DVD PLAYED

MR. MCHALE: Can you pause it for a moment.

MR. MCHALE: Q. Can I get you to describe an event in which you make the statement that somebody hit a car with a flagpole?

10  
A. Are you referring to that date in question, December 1st?

Q. Yes.

15  
A. Yes, sir; it was brought to my attention, that as the vehicle was travelling along a gravel portion of the shoulder of Argyle Street South, it was proceeding in a southerly direction, that several protesters had, were walking in the area; one of them had brought a flagpole down. And my information was that the, the flagpole come into contact with the front bumper of that motor vehicle.

20  
Q. Okay. So, this information was, was given to you, or told to you, that this is what took place.

A. That's correct.

MR. MCHALE: Okay. Can you play the 10:40 to 12:20, please.

...DVD PLAYED

25  
MR. MCHALE: Okay, you can stop it now.

MR. MCHALE: Q. You just testified that it was brought to your attention that you had no direct knowledge, the information was given to you. Yet on the interview, you claim you were the closest officer and that you personally witnessed it. Which statement are we to accept as, as the correct statement?

30  
A. I'm sorry, sir, I'm confused with the beginning of your question; could you please rephrase.

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5 Q. You testified that it was brought to your attention - that was your phrase - and then I asked you whether this information had been given to, given to you, and you said yes. On the interview, you said that you were an eyewitness, you were the closest officer, and you provide all the details of exactly what takes place. So my question is, which of the two statements are we to accept as the truthful statement of that event?

10 A. The event that's described, sir, I was right there, I witnessed it. Before I could even do anything more, the person turned to me and said, "This vehicle just hit me, what are you gonna do about it?" So, as far as I'm concerned, my statement's accurate and the information I gave you is considered accurate.

15 Q. Well then I'm misunderstanding, because you said it was brought to your attention.

A. Okay.

20 Q. And when I asked you, was this information given to you, your answer was "Yes."

A. Can you clarify what, in regards to what I said....

Q. I'm not sure, are we allowed to play back the....

25 A. I just need clarification on what was brought to my attention portion of your question, sir.

Q. I asked you, I asked you about, please describe the event of a flag that, flagpole that hit a car. And the very first words out of your mouth was, "It was brought to my attention", and then you continued on.

30 A. Right; I'd like to know what the continued on part was.

Q. I would like to know what it means being

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brought to your attention. You're claiming in the video you're an eyewitness.

A. It was brought to my attention - it could be the vehicle was travelling down the shoulder, it could be brought to my attention about the person being struck; as I just indicated, the person turned to me and said, "What are you gonna do?" That event, I did witness the flagpole coming down; I did witness that person's legs buckle backwards. To, to myself, I believe the person had been struck by the motor vehicle.

Q. Okay. To be, To be more clear on the video - we'll go with that statement for the moment. In the video you claim that you witnessed the flagpole come down and hit the front of the car, and then go down to the ground, is that still your statement?

A. That is correct, sir, I did witness that event.

Q. So, it's not the car hitting the flagpole, but the flagpole hitting the car.

A. I witnessed the flagpole hitting the car.

Q. Okay. And you weren't sure whether or not the car then hit the person.

A. That's correct, I saw his legs buckle.

Q. Okay. And you took the time, at that moment, to get information about the event.

A. I assigned an officer to investigate the event.

Q. And the person who you claim hit the car with the flagpole, he was then take away; so you got his ID....

A. I didn't get his identification, sir, Constable Michael took it.

Q. But you assigned somebody.

A. That's correct.

Q. Okay. But you didn't assign anyone to get the identity of the other people who were blocking vehicles, who, who

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5 possibly were committing offences. Why is there a distinction between - if we have different events where possibility of crimes, you take no effort to assign an officer to get the ID; but in this particular one you do.

10 A. I can't give you a reason why I did, sir. That particular event was witnessed by myself - the events at the time were reasonable enough that I could assign someone to immediately do it. It is possible the events at the time regarding the, the parties blocking the road, I didn't have the resources present to adequately conduct an immediate investigation.

15 Q. The person who, that you claim struck the flagpole with his, struck the car with the flagpole, do you know who that is?

A. I would only be guessing, sir, if I were to give you a name. I couldn't say with sheer certainty.

20 Q. Well, I'll allow your guesswork then; what do you think it is?

A. I could - I believe it might be Mr. Vandermaas.

25 Q. And who is Mr. Vandermaas, in your mind?

A. Mr. Vandermaas is a person I've seen involved in similar protests and venues related to the events of Douglas Creek Estates.

30 Q. Would it be fair to say that you know that he is my partner?

A. No, sir.

Q. Okay. Is it fair for you to say that at the events he is the one that's with me all the time doing the events?

A. I've seen you associate with him in the past, that is correct.

35 Q. Were you not involved in an arrest or custody back in 2006 where both Mark Vandermaas and myself were arrested on December 16th, 2006?

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5 A. I was involved in an event where you were arrested, sir. The date, without referring to some notes which I don't have with me for that time I couldn't refer to, but I was involved with an event where you were held in our custody.

Q. And are you aware that Mark Vandermaas was the only other person held at the same time?

10 A. I know there was another person involved, I can't say with sheer certainty who that person was.

Q. So, is it possible, because you see Mark Vandermaas involved in the various protests, that you take the time to identify him, you assign an officer, is that a possibility, because he's a key figure?

15 A. No, sir, I assigned another officer to - another matter that happened right in the area of the, this matter.

Q. Did you identify the driver of the vehicle?

A. I didn't.

Q. Did you assign an officer?

20 A. Yes, Constable Michael was assigned to that investigation.

Q. Okay. Has any charges been laid against Mark Vandermaas?

A. I can't tell you that, sir.

25 Q. Have you had any discussions about that particular event in the meetings that followed over the course of the, of the following week?

A. I believe I did.

Q. With other officers in the meeting?

A. Yes, sir, with other officers.

30 Q. Were you made aware that other officers witnessed the same event?

A. I believe so.



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5 Q. Are you aware that their statements contradict your statements?

A. No, sir, I haven't seen their statements.

MR. MCHALE: Okay; fine. Let's move to 14:10 of the video. And I'm not sure how much to play, I'll just....

...DVD PLAYED

10 MR. MCHALE: You can stop it now.

MR. MCHALE: Q. So, you remember witnessing Clyde Powless drive down in a rapid speed.

A. That's correct.

Q. Towards a crowd of people who are sprung across the - or spread across the highway, correct?

15 A. Correct.

Q. And your statement is he immediately gets out of the truck and is immediately confrontational.

A. That is correct.

Q. What happens immediately after the - your observation of him being confrontational?

20 A. I describe it as a melee; a disturbance breaks out in the middle of the crowd, right in the middle of Argyle Street.

Q. And now you know what took place in that particular event. Can you tell us what actually occurs?

25 A. You were assaulted, sir.

Q. Okay. So, Clyde Powless drives down rapidly towards a crowd of people on a, on a highway; he gets out confrontationally; walks towards this crowd. At what point in time did you make the decision not to arrest him to prevent a breach of the peace?

30 A. I didn't make any decision to arrest - the events happened so rapidly, that I couldn't take any immediate

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action.

Q. Did you make any motion towards him?

A. I tried to get towards Mr. Powless, sir.

Q. To prevent him from doing anything, or just to move towards Mr. Powless?

A. No, I moved towards Mr. Powless in an event to conduct an investigation of some matter.

Q. Have you, Have you heard the phrase "the Framework"?

A. Yes, sir.

Q. Can you tell the court what it stands for.

A. The Aboriginal Framework of the OPP, is that what you're referring to?

Q. Yes.

A. Okay; it's a, it's a policy, it's a Framework that's been designed to help officers deal with matters in regards to Aboriginal issues and disputes.

Q. Do you know the full title of the report?

A. I couldn't tell you the full title of the report, sir.

Q. Have you read the report?

A. I've read the report.

Q. Are you trained on the report?

A. I've read the report, sir. I have not received official training on that report.

Q. Can you tell us how that policy or that report affects your performance at a, at a protest like this?

A. Yeah, the policy is designed to allow for a peaceful discussion and conflict resolution in order to, the hopes of resolving any matter in, in a matter that will prevent the - not prevent, but will allow for the minimal amount of use of force, if necessary.

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Q. Against who?

A. Against anyone.

5 Q. You're testifying to the Framework. The Framework is referring to one particular group of people, is that, is that not true?

A. The Framework refers to dealing with Aboriginal issues.

10 Q. Thank you. So, in the Framework it refers to using minimum use of force, correct?

A. Correct.

Q. That is in context towards Native people, correct?

A. Not the way I've interpreted it, sir.

15 Q. Does the Framework quote any laws or Charter rights as part of the basis of the Framework?

A. Yes, sir, it does.

Q. Can you tell the court what that basis would be.

20 A. There's, I believe, a full page devoted to different laws on it. And without referring to the, that Framework myself, I can't actually tell you what they all involve and what they all are.

25 Q. Does the Framework require you at these protests to identify the race of the person before you perform your duty?

A. Not that I recall.

Q. Okay. So, as far as you're concerned, the entire Framework isn't focused on Aboriginal people?

A. It refers to Aboriginal issues.

30 Q. But does it not tell you, instruct you on how to deal with Aboriginal protests at land claims?

A. Yes, sir, it does.

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5 Q. Is there anything in the Framework that says, "Here's how to deal with non-Aboriginals at a protest"? In the Framework?

A. It's not referred to like that, that's correct.

Q. Is there anything in the Framework that deals with anything to do with non-Aboriginals?

10 A. Without, again, sir, without having the actual Framework in front of me to refer, I can't accurately answer that question.

Q. From your, From your memory....

...OBJECTION BY MR. HOFFMAN

THE COURT: Mr. McHale?

...SUBMISSION BY MR. MCHALE

15 ...SUBMISSION BY MR. HOFFMAN

THE COURT: Let's see if we can find it.

MR. HOFFMAN: I have a second copy for the witness.

Does the court wish a copy?

THE COURT: Yes, please.

20 COURTROOM CLERK: Is this for reference at this....

THE COURT: Yes; thank you.

MR. MCHALE: Q. Have you seen this document before?

A. Court's indulgence for a moment.

THE COURT: Yes; of course.

25 A. Yes, sir, I have seen this document before.

MR. MCHALE: Q. And that is, this is the document that we have been talking about so far?

A. Yes, sir, I would say that is correct.

30 Q. Then I'll refer you to page 8, where it lists out the various Charter rights. Is it correct that the document is referring to Section 25 and Section 35 of the Charter?

A. Yes, sir, it does refer to those two sections.

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5 Q. And are those two sections solely the rights of Native people in Canada?

A. Just a moment while I review it.

Q. Sure.

A. With exception to the very last section, Section 4, I would have to say, sir, it does refer to Aboriginal parties.

10 Q. Okay. And the last section is referring to equal rights of both male and female.

A. That's correct.

15 Q. Okay. So, you don't see anywhere in this document - and I'll give you time to look through it - that talks about Section 15, discrimination based on race; or Section 27, which says that the Charter is to be interpreted within a multi-cultural society?

A. Sections 15 and 27 of what Act, sir?

Q. Of the Charter of Rights. Are either one of those two referred to in that write-up?

A. You are correct, sir.

20 Q. Okay. And starting back on page 2, the central focus appears to be, if I was to summarize it, that the OPP recognizes the conflicts that arise in Native communities, and therefore the following procedures are to be followed, correct?

...OBJECTION BY MR. HOFFMAN

25 THE COURT: Yes.

MR. MCHALE: Okay; let's go back to the video statement that - can we enter this in as evidence - I guess Number Seven.

THE COURT: Yes.

30 EXHIBIT NUMBER 7 - A Framework For Police Preparedness For Aboriginal Critical Incidents - produced and marked

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MR. MCHALE: At 20 minutes and 10 seconds.

...DVD PLAYED

MR. MCHALE: You can stop it there.

MR. MCHALE: Q. You mention there's a roadblock at the Argyle South point. In relationship to the protest, where was that roadblock?

A. Argyle South point? There were, I believe we're referring to the one at Highway 6 and Argyle Street South.

Q. Which would be how far from the protest?

A. Several hundred metres.

Q. Okay. And at that moment of time, who was blocking the road?

A. For that event, if memory serves me correctly, I was advised that a citizen was blocking the roadway.

Q. Now, let's be more clear; citizens aren't allowed to block the road. So, who, who was blocking the road at that moment of time?

A. Court's indulgence while I refer to my notes. I just remember citizens blocking the road, sir, I can't....

Q. Were they Aboriginal or non-Aboriginal?

A. I couldn't tell you, sir, I didn't attend their location.

Q. So, the road's being blocked at another location; and according to the interview, you're assigning officers to take over the road being blocked.

A. That's correct.

Q. So, am I to understand that the OPP are working in cooperation with the citizens to block the road?

A. No, sir.

Q. Then what does the phrase "take over" mean?

A. To go down there and to relieve - find out what's going on and relieve them.

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5 Q. Well "relieve" again, just by my view, implies working together. When you send someone to relieve somebody, there, there seems to be a cooperation going on, would that be how you see it?

10 A. No, sir, that's, you're interpreting the words like that. To take over was to go down there, find out who was there. And basically, if anybody is gonna be doing any traffic patrol in that location, the only person lawfully allowed to would be a police officer. So, I assigned two officers to go down there - to the, to the, to that roadblock - which was not set up by the Ontario Provincial Police - and to basically take it over, find out who was there and to deal with it.

15 Q. And who was there?

A. Constable Nichols and Constable McDonald were assigned to...

Q. To...

A. ...to that location.

20 Q. ...okay. But you said they were, they were to find out who was blocking the road, so...

A. That's....

Q. ...so were they identified or not identified?

A. The people at that checkpoint? The civilians?

Q. The people who were doing the blockade.

A. I couldn't tell you, sir.

25 Q. You called it a "checkpoint". What's the difference between a checkpoint and a blockade?

30 A. You've got to understand, for the - ever since the events happened at Douglas Creek Estates, the Ontario Provincial Police have been involved in checkpoints. Checkpoints are known, whether it be a stationary spot where we're manning it to observe for activity, whether we're providing traffic control. For myself to use the term "checkpoint", I'm referring to any one

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of three different, four different things. I call it...

Q. But a...

A. I call it...

Q. ...sorry.

A. ...a checkpoint; it's a traffic control point at that location.

Q. That's only when the OPP take over. Prior to the OPP taking over, what is it called?

A. The road was blocked.

Q. Okay. So, it's, it's a mischief, it's blocking the road.

A. It could be a mischief.

Q. And how long was the road blocked?

A. I couldn't tell you, sir.

Q. How were - how did you know the road was blocked to send officers to replace them?

A. It was brought to my attention.

Q. When? In your notes, when did it come to your attention?

A. Shortly after EMS arrived; and that was at 12:09. That was to deal with an injured party located on Argyle Street South.

Q. So, you only find out personally that the road's blocked when the emergency vehicle tries to make it through.

A. It may have been then, it may have been after they were preparing to transport the patient. It was right in that area.

Q. Okay. And again, the OPP takes no effort to identify who's blocking the highway.

A. I can't tell you, sir, what....

Q. You didn't, on your watch.



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A. I didn't, no, sir.

5 Q. Okay, so another example where there's a roadblock; but you assign no officers to identify them, or you take no steps to get the ID of the people blocking the road.

A. I assigned two officers to that location.

Q. Okay.

10 A. Part of their duties would've been to identify that party.

Q. Did those officers report back to you?

A. No, sir, they didn't.

Q. Are you aware of any incidents that happened at that location when those officers arrived?

A. Yes, sir.

15 Q. Can you describe it, please.

A. Yeah, I believe one of the events was Constable McDonald was being, was almost struck by a motor vehicle.

Q. Almost struck?

A. I, sorry, I wasn't there at the time.

20 Q. Okay.

A. He may have been tapped lightly, nothing that I, that I would've had to fill out any injury report, or anything like that on.

Q. Are you aware that he threatened to pull his gun?

25 A. Yes, sir, I am.

Q. So, it couldn't have been just a minor little possible, correct? An officer doesn't threaten to pull his gun with a minor event going on, correct?

...OBJECTION BY MR. HOFFMAN

30 THE COURT: You can ask this officer; he can't speak generally about other officers.

MR. HOFFMAN: That's right.

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MR. MCHALE: Can we go to 28:30 on the video. And we'll go to 29:40.

...DVD PLAYED

MR. MCHALE: Okay, you can stop it.

MR. MCHALE: Q. You make a statement - well, let's get the time line. Did you hear Clyde Powless say, "Get the Whites out, OPP should leave"?

A. I, I could hear Clyde Powless' voice in that; I can't say with, with honesty what he said, it was too distorted for me.

Q. Okay. On the, On the day of December the 1st you were there. Did Clyde Powless give orders for the OPP to leave?

A. He was - yes, sir, he did.

Q. And was he very angry and agitated?

A. He was very agitated.

Q. Okay. And you say in the video that you had no concern for officer safety after this point.

A. After I - when I refer to that statement, it's in regards to after the, the Aboriginal members were helping, not only with removal of some of the roadblocks, but regarding Mr. Parkinson, who was injured lying on the ground.

Q. But the roadblock didn't open up until five hours later, correct?

A. Which roadblock....

Q. The hydro tower. The hydro tower was there until what time of day?

A. I honestly couldn't tell you the exact time it was moved, sir, it was....

Q. So, it's possible it was after your shift, because it's not in your notes.

A. It's, It's possible, that's correct.

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Q. And you left the scene at what time?

5 A. I left the general area of Argyle Street South at - I arrived at the - I was at the Notre Dame School, which is right around the corner - I was there at 2:25 p.m.; I arrived to our Unity Road location at 2:37 p.m.

Q. Okay; 2:37 you arrived at Unity Road.

A. That's correct.

10 Q. Did you drive north-bound Argyle Street, or was it blocked?

A. I couldn't tell you what road, route I took, sir, I more than likely did proceed north-bound; but I can't say with all - honesty.

15 Q. Now, when the officer who took over the, the blockade or checkpoint, when you heard that he had been almost hit, is that after you make this statement, or after you believe this event takes place?

A. I wasn't made aware of that event until well after these events happened.

20 Q. Okay. Are you aware that Native protesters have, have been charged with attempted murder on an OPP officer?

A. That's correct, I am aware of that.

Q. Are you aware that there's been charges against Native protesters for assaulting US border guards and ATF agents?

25 A. I know further assault charges have been laid. In regards to - specifically against US federal law enforcement officers, they wouldn't be - in Canada they wouldn't be peace officers, so there'd be no assault police charges, or anything like that. Therefore, I'm only aware of further assault charges that were laid.

30 Q. Are you aware that the OPP have done a press release stating that Native protesters have attacked them with baseball bats and axes?

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A. Could you repeat that, please?

5 Q. Are you aware that the OPP has done a press release stating that Native protesters have attacked them with axes and baseball bats?

...OBJECTION BY MR. HOFFMAN

THE COURT: Yes; I agree with that. Could you restate that, please, Mr. McHale.

10 MR. MCHALE: Okay.

MR. MCHALE: Q. My series of questions that I'm gonna ask you is all related to what you knew at December the 1st, 2007. At that time, were you aware that the OPP had done a press release that Native protesters had attacked officers with axes and baseball bats?

15 A. I can't say with all honesty regarding axes and baseball bats. I'm aware that there's been reference made to some sort of weaponry in regards to press releases.

Q. To refresh your memory, if I said that that is in response to the April 20th, 2006 raid on DCE, would that refresh your memory as to what occurred at that point?

20 A. It may have, sir; without actually referring to the press release I can't say with accuracy. But there was reference in a press release relating to some sort of weaponry.

Q. As of December 1st, 2007, were you aware that the Commissioner had said several times throughout 2007 that numerous officers had been injured?

25 A. Yes, sir, I'm aware of that.

Q. And are you aware that Native protesters have injured officers?

A. I'm aware that Native protesters have injured officers.

30 Q. So, when you make this statement, you have Clyde Powless who had just assaulted me, who's angry, agitating,

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ordering the Whites out, ordering officers out of the way. How do you say you have no concern?

5 A. The area was calm. People were dispersing; Aboriginal protesters and protesters from the local community were working in order to assist Mr. Parkinson, ensuring that he could get proper medical treatment, and that there was nothing to obstruct any movement of the ambulance whatsoever. It was calm; I had no officer safety concerns.

10 Q. Was Clyde Powless arrested at the scene?

A. I couldn't tell you, sir.

Q. You were there...

A. That was....

15 Q. ...on December the 1st, 2007, was Clyde Powless arrested at the scene while he's assaulting me?

A. I was dealing with Mr. Parkinson, sir, I couldn't tell you if he was arrested immediately that day.

Q. Okay. Were any people arrested on December the 1st...

20 A. Yes...

Q. ...at the scene?

A. ...yes, sir.

Q. Can you describe that event?

A. No, sir, that would be Sergeant Sloan; he made the only arrest that I am aware of that day.

25 Q. Do you know whether it was against an Aboriginal or non-Aboriginal person?

A. No, sir, I do not recall who he arrested. That person was released by the time I returned to our detachment in Cayuga.

30 Q. Is this the first time you were involved in a, in a situation where I was arrested?

A. I would say no, sir; the events that you were

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held in custody at our detachment I was technically involved with.

Q. And the date of that event, do you recall?

A. I don't have my notes relating to that, sir, I couldn't tell you, it was several months before these events happened. I'd almost be guessing, almost a year.

Q. Can you recall what I was in jail for?

A. Yes, sir, it was in regards to, holding you in custody in regards to a peace bond violation, I believe, for a potential breach of the peace.

Q. Did I have a peace bond against me?

A. I can't recall, sir.

Q. Okay. Do you recall whether or not you had problems with me being in jail?

A. Can you define what you mean by "problems", physical problems....

Q. Whether or not you questioned the authority to keep me in jail?

A. I'd have to refer to my notes for that date, sir, which I don't have with me.

MR. MCHALE: Okay. If I could have a moment, Your Honour?

THE COURT: Yes.

MR. MCHALE: We're just trying to track down a piece of evidence, Your Honour.

THE COURT: Yes, fine; I'll wait.

MR. HOFFMAN: I'm just going to give to Mr. McHale a list of documents that he had given to the Crown as part of the Charter motion.

THE COURT: Yes.

MR. HOFFMAN: We've taken them apart and put them into an OPP volume, but they are repeated exactly what Mr. McHale had given us.

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5  
And Mr. McHale will explain - I believe they're from a professional standards complaint, but Mr. McHale can explain that.

MR. MCHALE: Yes.

MR. HOFFMAN: And we'll just - well if it's not an exhibit, we'll need that back.

MR. MCHALE: If I can just have a little more time, Your Honour.

10  
THE COURT: Yes, of course, that's fine; don't rush.

MR. HOFFMAN: And we also have a second copy of that same thing that Mr. McHale gave us; so if you want to keep one for yourself.

15  
MR. MCHALE: Yes, please.

MR. HOFFMAN: And one for the witness. I'll give you both copies, but we'll need them back after.

MR. MCHALE: I'm providing the witness with a copy of a police service complaint report. It's dated November 1st, 2007, and records the events of my arrest back on December 16th, 2006. On page 20 of this report....

20  
MR. HOFFMAN: Sorry, Mr. McHale, Your Honour, we have a third copy, if it would assist the court.

THE COURT: Yes, I'll receive that; thank you.

25  
MR. HOFFMAN: Thank you.

MR. MCHALE: It should be tab 3, I think.

THE COURT: Sorry, we're at which tab now?

MR. MCHALE: Tab 3.

THE COURT: Thank you.

MR. MCHALE: We're gonna be going to page 20.

30  
THE COURT: Yes.

MR. MCHALE: Q. Can you please - a quick review of

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5 witness number 3, which states that it's Ben Gutenberg. Can you quickly review that and see whether or not - whether that represents your views, as stated in the report?

MR. HOFFMAN: Mr. McHale won't mind me reading with him, since I've given up all of my copies.

THE COURT: Yes.

10 MR. HOFFMAN: Just so it's clear, Your Honour - and I'm not objecting to the question - but that doesn't purport to be a statement from the witness, it's a summary prepared by someone else.

THE COURT: Yes.

15 MR. MCHALE: Q. Does that seem to represent your views from that time period?

A. It's fairly accurate, sir; but again, without being able to refer directly to the professional standards statement that they took from me, I can only count this as a summary.

20 Q. So, if I'm looking at one of the particular points - it would be the fifth one down on page 20 - is it true that you've never heard that this was, had been done before, that somebody had been arrested, held in jail?

A. Are you referring to the sentence where it says, "Gutenberg admits he has never heard of anyone being held for bail on a breach of peace"?

Q. Yes.

25 A. Yeah, that's correct, sir, I'd never heard of that before.

Q. And have you heard of it since?

A. No, sir.

30 Q. So, in your experience, you've never seen a time where the police, police can arrest somebody, without a charge, and hold them in jail overnight and force them before a bail hearing?



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A. Not for bail; everything else but bail.

Q. Okay.

...OBJECTION BY MR. HOFFMAN

THE COURT: Thank you for that.

MR. HOFFMAN: Thank you.

MR. MCHALE: Q. Can you tell the court what you believe your duties is - are under the Police Service Act of Ontario?

A. As a police officer?

Q. Yes.

A. Investigate criminal offences; arrest persons that are, that have outstanding warrants for their arrest; to liaise and assist victims of crime; to conduct traffic-related offences in regard to provincial statutes. Should I keep going?

Q. Sure.

A. Okay. Again, I stated to investigate any criminal offences; to assist victims of crime; to investigate any provincial statutes that are imposed under law; to abide by all of the Police Services Act of Ontario in regards to performance, professionalism, integrity. Probably several others that I just can't, without referring to the actual document, be able to articulate.

Q. Okay. One of the responsibilities is to make yourself available for court, correct?

A. Yes, correct.

Q. Is one of the responsibilities to prevent offences?

A. That's correct.

Q. And isn't part of the OPP oath of office include the fact that you are to prevent offences?

A. That's correct.

Q. So, would it not be true to say that, if you

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5 are witnessing a crime about to take place, that an OPP officer is duty-bound by both the Act and their oath to take steps to prevent that offence?

A. If it can, If it can be done with, while maintaining officer safety, that's correct.

Q. Okay. And if officer safety cannot be maintained, but the public safety is at risk, what is the duty?

10 A. It's to, to further preserve life and prevent offences from occurring. If officer safety can't be maintained, and public safety is still in jeopardy, the officer cannot do his job then; an injured or dead officer is no good to the public at all.

15 Q. So, on the day where the event that Clyde Powless attacked me, came out of the truck - drove down rapidly, got out of the truck confrontationally, were there officers near me at the time?

A. I believe there were, sir; but I wasn't near you, I can't state how many, or who.

20 Q. Okay. So, back to the Framework for a moment, it is your statement that the Framework does not require you to determine the race of the person in the performance of your duty. Is that correct?

A. That is correct.

25 Q. So, you're completely free, if you witness a Native person assaulting someone, to arrest them on the spot?

A. That is one option that I can pursue, that's correct.

30 Q. Well, your oath of office says you have to prevent an offence. So, would it not be true that you should be - if you're witnessing an assault, you should stop the assault?

A. You should make every effort, that's correct.

Q. And would there be any reason why the person

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doing the assault would just be released?

5 A. It would depend on a variety of things: it could depend on the investigation; what the evidence determined; it could be based on an officer safety issue; it could be based on orders from superiors. I can't honestly state, sir, until I'm put into that position.

Q. Orders from superiors.

10 A. That's correct.

Q. What could that mean?

A. That could be as a fact that you're making an arrest on somebody, and that the crowd starts to overwhelm you, becomes a threat not only to your safety but to the safety of the person that you have in custody at the time.

15 Q. So, is it possible in your mind, that on a particular day where there's an assault taking place, there could be orders from a superior not to do an arrest. Is that a possibility?

A. It is a possibility.

20 Q. And how would that, in your mind, your experience, how would that order come about?

A. It'd be, would have to be given by the superior officer directly to the subordinate.

25 Q. Well, to get - trying to get the time line - I mean, events happen so quickly, so quickly you can't walk over to Clyde Powless and stop him, how does, how do you get that order to say don't arrest him?

...OBJECTION BY MR. HOFFMAN

THE COURT: Yes.

30 MR. MCHALE: Q. In a situation where things happen so rapidly, how could an order come down from a superior not to arrest someone during an assault?

A. By some form of communication: such as over the

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radio, directly by word of mouth, from person to person. Through the communication centre.

5 Q. Were you, Were you given any orders from above, either on December the 1st or afterwards during the investigation, that told you that superiors wanted the investigation focused on Gary McHale?

10 MR. HOFFMAN: Sorry, I just need to ask if we could clarify the time frame. Are we talking about from December 1st until December 7th, is that the investigation we're referring to?

MR. MCHALE: Yes, I am.

MR. HOFFMAN: Okay.

THE COURT: Yes.

15 MR. MCHALE: Q. From December the 1st to December the 7th, were you made aware that superior officers in the OPP wanted the investigation focused on Gary McHale?

A. No, sir, I was not.

20 Q. Were you involved - would that mean that you were never in a meeting in which there was a discussion by superiors to focus an investigation on me?

A. No, sir, I was never made aware that the investigation was to focus directly on you.

MR. MCHALE: If you could give me a moment for a moment?

25 THE COURT: Yes.

MR. MCHALE: Let me re-word that then.

MR. MCHALE: Q. Were you ever in a meeting - or been made known that I was one of the ones that the investigation was to focus on?

30 A. I was aware that you were subject of an investigation, that is correct.

Q. And as you've already stated, within five hours

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of this protest, you had personally been order to arrest me?

A. That's correct.

MR. MCHALE: Okay, Your Honour; I have no more questions.

THE COURT: Anything arising out of that from the Crown?

MR. HOFFMAN: Yes; very briefly.

RE-EXAMINATION BY MR. HOFFMAN:

Q. Mr. McHale's last question about within five hours of the event you had been ordered to arrest him. I believe you already testified that that had to do with an arrest for an assault.

A. That is correct.

Q. That, as far as you know, never ended up happening? The arrest never ended up happening, or the charge never ended up happening?

A. I'm not aware of any arrest or charge being laid as a result of that.

Q. Okay. My only other area is this: Mr. McHale asked you a number of questions about whether certain people were arrested in the following days, or whether certain follow-up was done to find the identity of various people. Do you remember those general questions throughout the questioning?

A. Yes, sir, I am.

Q. What I'm gonna ask you to do, is just to explain - you were on that day a uniform officer, correct?

A. That's correct.

Q. And a uniform sergeant and a uniform supervisor.

A. Correct.

Q. Are there also Ontario Provincial Police

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officers in that detachment - and most detachments or bigger detachments - who work in plain clothes, not in uniform?

5

A. Yes, sir, that's routine across the province.

Q. And the uniform officers, they're generally operations; and the plain clothes officers are, among other things, doing criminal investigations?

A. Yeah, you can consider that as follow-up.

10

Q. All right. So, who did the follow-up, the uniform division that you were part of, or the plain clothes investigative division?

A. No, sir, that, those events were initially investigated by uniform members and...

Q. On that day?

15

A. ...all that information was then forwarded to members of the Haldimand County Crime Unit.

Q. So, after December 1st, 2007, who did the investigation relating to events from December 1st, 2007?

A. Detectives assigned to the Haldimand County Crime Unit.

20

Q. Plain clothes?

A. Plain clothes officers.

Q. Not uniform, which is your division?

A. That's correct, sir.

MR. HOFFMAN: Thank you very much, Your Honour.

25

THE COURT: Thank you, witness; you can go now.

MR. MCHALE: I'm sorry, can I ask a question based on that?

THE COURT: Yes; go ahead.

MR. MCHALE: Okay.

30

RE-EXAMINATION BY MR. MCHALE:

Q. On events that I spoke of, where I asked you

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5 about an investigation where he's asked you about, do you have any direct knowledge that any investigation was taken on those events?

A. Are you referring to December 1st, sir?

Q. Yes.

A. I'm aware that plain clothes officers, detectives out of our office, were assigned to follow-up on the investigations. What the outcome was, I can't tell you.

10 Q. But you don't know whether or not the information you passed on - for example, the barricade that was south - whether or not anyone followed up on and identified who was there?

A. I couldn't....

Q. All you know is, the information was passed on.

15 A. All I can tell you, sir, is the information was passed on to members of the crime unit.

Q. So, you have no knowledge in whether or not any further investigation was done on any of these events?

A. No direct knowledge, sir.

MR. MCHALE: Thank you.

20 THE COURT: You're now free to go.

THE WITNESS: Thank you, Your Honour.

...WHEREUPON THERE WAS DISCUSSION RE SCHEDULING  
AND THIS MATTER WAS ADJOURNED

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133.  
Certification

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Form 2  
Certificate of Transcript  
Evidence Act, Subsection 5(2)

I, Laurie Lougheed, certify that this document is a true and accurate transcript of the recording of R. v. McHale in the Ontario Court of Justice held at 45 Main Street East, Hamilton, Ontario, taken from Recordings Nos. 200-156-2008; 200-157/2008; 200-158/2008; 200-159/2008; which have been certified in Form 1.

... *Apr 21/09* ... .. *Laurie Lougheed* .....

(Date)

(Signature of Authorized Person)