

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

SHAWN CASSISTA

\*\*\*\*\*

PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE JUSTICE J.W. BOVARD  
on December 11, 2013 at BRAMPTON, Ontario

\*\*\*\*\*

APPEARANCES:

M. Morris

T. Hicks

Counsel for the Crown

Counsel for Shawn Cassista

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Legend

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

[ph] - Indicates preceding word has been spelled phonetically.

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1.  
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Arraignment

WEDNESDAY, DECEMBER 11<sup>TH</sup>, 2013

THE COURT: Good morning.

COURTROOM CLERK: Court will now resume, please,  
be seated.

MR. MORRIS: Good morning, again, Your Honour.  
We....

THE COURT: The students aren't coming.

MR. MORRIS: All right. Thank you. We do have a  
matter, and my apologies for being a little later  
than, than you might have expected, but there were  
a number of statements to review. Shawn Cassista,  
is this Mr. Cassista?

MR. HICKS: Cassista.

MR. MORRIS: Cassista.

MR. HICKS: And Good morning, Your Honour. Tom  
Hicks, I appear as counsel.

THE COURT: Good morning.

MR. HICKS: Shawn Cassista stands to my right, and  
we are ready to proceed.

THE COURT: Very well. Okay. Any objection to  
Mr. Cassista sitting with Mr. Hicks?

MR. MORRIS: None at all, Your Honour. Thank you.

THE COURT: Very well. You may sit with Mr. Hicks  
then. And so it's one charge of assault with an  
intent to resist arrest, okay. Please, arraign  
Mr. Cassista.

COURTROOM CLERK: Yes, Your Honour.

THE COURT: Okay.

A R R A I G N M E N T

COURTROOM CLERK: Mr. Shawn Cassista, you are

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5  
charged on or about the 29<sup>th</sup> day of November in  
the year 2012 at the City of Mississauga did  
unlawfully assault Jeffrey Bowen with intent to  
resist the lawful arrest of himself, contrary to  
the **Criminal Code of Canada**, Section 270(1)(b).

Crown elect to proceed, Mr. Morris, summarily?  
MR. MORRIS: Summarily, please.

10  
COURTROOM CLERK: Summarily. How do you plead,  
sir, guilty or not guilty?

SHAWN CASSISTA: Not guilty.

COURTROOM CLERK: Thank you, sir, please, have a  
seat.

15  
MR. HICKS: I'm going to ask for an order  
excluding witnesses.

THE COURT: All witnesses in this case, please,  
wait outside until you are called. Are there any  
admissions?

20  
MR. HICKS: There are, Your Honour, the date,  
being November 29<sup>th</sup>, 2012. The time of the  
occurrence is not in issue, Your Honour, and I  
dare say, even if there is some variance, it won't  
be a matter of significance.

THE COURT: Jurisdiction, identity?

25  
MR. HICKS: Jurisdiction is - and I should say the  
time is in around the 11:30 p.m. hour, a little  
before that. Jurisdiction is not in issue. The  
identity of my client both before you today and as  
the person that the police officers dealt with on  
that evening, that's not an issue.

30  
THE COURT: Okay. Thank you very much, Mr. Hicks.

MR. MORRIS: Yes, Your Honour, thank you. The  
Crown would call Constable Bowen, please.

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JEFF BOWEN: SWORN

THE COURT: Any objection to the officer using his notes to refresh his memory?

MR. HICKS: There is no issue, Your Honour. If I can just confirm that I received them in disclosure. Officer Bowen, as I look at your notes they are made on a preprinted called, "driving offence notes and evidence," is that correct?

A. That's correct.

MR. HICKS: And there are a total of six pages?

A. Yes.

MR. HICKS: I know there are other documents that may have been involved in the investigation, but is there anyone, anywhere you made these sort of free form notes?

A. No.

MR. HICKS: All right. Thank you. No issue.

THE COURT: You can use them to refresh your memory if you need to, officer.

A. Thank you, Your Honour.

MR. MORRIS: Thank you, Your Honour.

EXAMINATION IN-CHIEF BY MR. MORRIS:

Q. Sir, I understand that you are a member of the Peel Regional Police Service?

A. I am.

Q. And am I correct, sir, that you were on duty on November 29, 2012?

A. I was, yes.

Q. And in what, what shift were you working, first of all, on that date?

A. On that date I was part of the seasonal RIDE

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program, and my shift started at 6:00 p.m. and finished at 6:00 a.m.

Q. 6:00 p.m. to 6:00 a.m.?

A. Yes.

Q. And as part of the seasonal RIDE, as your particular task on that date, what, what were you doing generally, before we get to any specifics, what was your task at that time?

A. My task is to find impaired drivers or excess drivers and take them off the streets.

Q. Were you in a cruiser?

A. Was in a fully-marked cruiser.

Q. Were you stationary or moving? Were you at a location or were you just driving on a highway?

A. No. I was sitting at a - sorry, sitting on Lakeshore watching people leaving the Old Stable.

Q. Okay. Lakeshore and what, sir?

A. Um....

Q. Or what, what's the address, if you know it?

A. It's in Port Credit. Sorry, Port Credit.

Q. In Port Credit?

A. Yes. At Stavebank and Lakeshore is where I stopped the motor vehicle.

Q. Okay. Stay that - say that again, please.

A. Stavebank at Lakeshore.

Q. But that's not where you are stationed at this point, right?

A. No. I don't know the exact address. I was sitting across the street from the Old Stable.

Q. What's the Old Stable?

A. It's a, it's a liquor licenced establishment.

Q. All right. Were you on your own in your

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cruiser?

A. I was.

5 shift?

Q. And how were you dressed on this particular

uniform.

A. As I am today in a fully-marked police

MR. HICKS: My friend will forgive the  
interruption.

10 THE COURT: Is that Lakeshore Boulevard?

A. It is, sir, yes.

THE COURT: And what's the other street, can you  
spell that?

A. Stavebank. S-T-A-V-E-B-A-N-K.

15 THE COURT: Stavebank Street?

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

THE COURT: Okay. Thank you.

MR. MORRIS: Q. So you are stationary, for the  
purpose of a RIDE program, and you were looking at, what did  
you call, what was the name of it, Stable?

20 A. So at 11:22 p.m....

Q. What was the name of the place that you  
were....

A. Old Stable.

Q. Old Stable. And what is that establishment?

A. It's a liquor licenced establishment.

25 Q. Okay. And about - just take it from there  
then - about what time and what did you observe?

30 A. Okay. At approximately 11:22 p.m., I  
observed a motor vehicle leaving the Old Stable, which I know  
is liquor licenced establishment. As the motor vehicle turns  
eastbound onto Lakeshore Blvd, and then speeds up, and when he  
sees me, makes a hard right turn onto Stavebank.



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Q. Are you in motion or are you still at a standstill in your cruiser?

A. I'm in motion.

Q. All right. So just, can we just go, sorry, step-by-step, 11:22, you observed a motor vehicle leaving this liquor licenced location.

A. Yes. To paint a better picture, I'm parked in a marina where all the docks [sic] go in and, or sorry, all the boats go in...

Q. Yeah.

A. ...and it's behind a, so it's beside like a Starbucks, and so I'm pretty far back, but I can see motor vehicles when they leave this liquor licenced establishment.

Q. All right.

A. Once they start leaving the liquor licenced establishment, I drive up the street.

Q. Yes.

A. And then follow them, and then, and then pull them over.

Q. All right. And so that's, that's what indicated you, you would do, what happened in this particular case?

A. So I observed the motor vehicle leaving the Old Stable.

Q. Right.

A. It's making a left...

Q. Yes.

A. ...onto Lakeshore, which is eastbound. I'm pulling out of the marina and now I am facing Lakeshore, and at this time, the motor vehicle travels at a high rate of speed, speeds up eastbound on Lakeshore.

Q. Was the - what was the traffic like at this

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particular time?

A. Very light. I don't think there is any cars on the, on the road at that time.

5 Q. Did you lose sight of this vehicle?

A. Never.

Q. All right. So he is speeding up. Is it a posted speed limit at that roadway?

A. Yeah, it's 50 kilometres an hour in that, in that section.

10 Q. What's your estimate of the time he drives and then speeds up, do you have some idea.

A. Oh, I never had the chance to pace him because it was such a, a short distance.

Q. All right.

15 A. But if I had to estimate between 80 kilometres to a hundred kilometres an hour.

Q. And so, then let's take it from there, then he is speeding up, where are you, are you behind him at that point?

20 A. I'm behind him. I've got my, my lights on.

Q. How far are you from him?

A. Um...

Q. Approximately.

A. ...maybe four to five car lengths.

25 Q. All right. So he put a, what kind of indicators did you put on your cruisers, light?

A. I activated my, my lights.

Q. Anything else?

A. I mostly likely would have done my, my siren as well, but I, I don't recall.

30 Q. All right.

A. I don't have it written down.

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Q. Okay. All right, sir. So are, are you directly behind him or is there anything between his vehicle and your vehicle?

A. Just, just me.

Q. All right. What happens?

A. The male makes a, a hard right on Stavebank, which is south and slams on his brakes, and then jumps out of the motor vehicle, and runs about ten to fifteen feet.

Q. All right.

A. At this point....

Q. When he made a right onto which street?

A. Stavebank.

Q. Stavey [sic]?

A. Sorry, Stavebank.

Q. When he hit the brakes on Stavebank, had you turned onto Stavebank at that point or not?

A. I did.

Q. All right. And so, how, how far were you to observe what you say, "he slams on his brakes," how far were you to observe that?

A. Just right behind him.

Q. All right. Okay. So when he slammed on his brakes, what did you do with your cruiser?

A. I slammed on my brakes as well.

Q. So you came to a stop?

A. I did.

Q. When you stopped, how far are you from his vehicle that slammed on the brakes?

A. Maybe approximately ten feet.

Q. Okay. What happens then, sir?

A. The male jumped out of the driver seat.

Q. Yes.

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A. And runs about 10 to 15 feet. I run out of my car and go after the male.

5 Q. Can you give us, give His Honour an idea where this fellow is running, what's the lay of the land, is he on the road, or running into where?

A. Sorry. So he was running on, on the road. He had crossed the street, he was running eastbound.

Q. All right. And you caught him then?

10 A. Yeah, I get out of my car, go after the male, and then the male starts yelling.

Q. Well, when you went after him, first of all, what was your purpose in putting your emergency lights on, on the vehicle?

15 A. The reason I stopped him, and the reason I was going to pull him over was to check sobriety...

Q. All right.

20 A. ...on all the people leaving the liquor licence - because it's a liquor licenced establishment, the sole purpose of me pulling him over is to check sobriety and see if they have had anything to drink.

Q. All right. And so the vehicle stops in front of you about ten feet, and you indicate if this person got out of the driver seat?

A. He did.

25 Q. Driver's door. What type of vehicle is it?

A. It's 2001 Pontiac Montana van, and it's blue in colour.

30 Q. Now, that van, is there anything on the sides, in terms of doors that you can recall or how certain you are that the door, that the person that exit it was exiting from the driver of the vehicle, driver side of the vehicle?

A. I saw him open the....

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MR. HICKS: There is no question my client was the driver.

MR. MORRIS: All right. Thank you. I thank my friend. All right. So he is running, we don't need to go into that detail then, thank you. Officer, just take it from the point where you are running from the point where you are running after him, and what happened?

A. Okay. So I started going after the male. The male is yelling at me saying that I have no right to stop him, that he is above our law.

Q. Slow it down now, please, okay.

A. I apologize.

Q. So these are comments from, from this driver, this defendant?

A. It is.

Q. All right. And when you - when he is yelling this, who is he yelling it to?

A. To me.

Q. Anyone else in the area?

A. No.

Q. All right. So just take it, as, as you noted it down, what did this defendant say to you?

A. Okay. That he is above our law, that he is above the courts....

Q. Hang on. All right, yes.

A. Says that **The Highway Traffic Act** and the **Criminal Code** does not affect him.

Q. Yes.

A. Saying he's got sovereignty over all laws.

Q. Yes, sir.

A. And while he was yelling this at me, I,

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observed that he is swaying from side-to-side.

Q. Okay.

A. That he is very angry at me.

5 Q. Now, you said that he was running, have I got you right, across the street?

A. Well, he started running across the street, yeah. And....

Q. Where was it on the - that you caught him?

10 A. Well, when he started doing all this, we were - I think we were just on the roadway or just maybe...

Q. All right.

A. ...to the, the side of the street by the sidewalk.

15 Q. And what is the lighting like when you are with him at that time, when he is yelling?

A. Well, it is dark outside. The lighting, I don't recall. I'm, I'm sure there must have been a lamps, but I, I don't recall.

20 Q. How close were you when you made the observations about him swaying?

A. Were within two feet, three feet of each other.

Q. All right.

A. Approximately.

25 Q. What happened next when you saw - you said he was swaying from side-to-side?

A. I also observed that his eyes were watery and red.

Q. Yes.

30 A. And there is a strong smell of alcohol, sorry, alcohol coming from his breath.

Q. How close to him when you when you detected

that odour of alcohol from his breath?

A. Like in about two to three feet.

Q. Yes, sir. What happened?

A. And like I say, like I smell the alcohol coming from his breath, it's not like we're having a, a quiet conversation, like the male is yelling at me, right.

Q. Okay. Thank you.

A. I can smell it coming right, right from his breath and he is yelling at me.

Q. All right. Thank you. That's helpful to understand, thank you.

A. I asked the male if he's had anything to, to drink.

Q. Yes.

A. And he said he had a few beers and that there is nothing - sorry, nothing wrong with that.

A. Yes, sir.

Q. And at this point, I form an opinion that the male's ability to operate a motor vehicle is impaired by alcohol.

Q. All right. Now, do you have a time on that when you formed your opinion, roughly, as best you can?

A. Probably would have been - want to make sure I write them down - shortly after I, I pulled him over, maybe four to five minutes after I pulled him over.

Q. All right. Now, as a result of forming that opinion, you've indicated to His Honour what that opinion, what did you do, sir? What did you tell him?

A. I told him that he is under arrest for impaired operation of a motor vehicle?

Q. What happened after that?

A. I grabbed the male by the arm...

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Q. Why?

A. ...and started taking him to the rear of the cruiser.

Q. Okay. Why did you grab the male by the arm?

A. I take physical control, sorry, physical control of the male as he is now under arrest.

Q. Prior to your grabbing the arm, was there any physical contact between you and the defendant?

A. No.

Q. What happened then?

A. I bring him to the rear of the cruiser, and at this point, he starts yelling at his friends to get out of the motor vehicle.

Q. Yes.

A. And at approx, sorry, approximately five people came out of this Montana minivan.

Q. Now, you have been on the RIDE program or as an officer for how long, sir?

A. I've been an officer since December 20<sup>th</sup>, 2004.

Q. An individual is under arrest and calls for other people to come out of the vehicle, did that happen to cause any concern for you?

MR. HICKS: Your Honour, I'm going to object to this leading question.

MR. MORRIS: Oh.

MR. HICKS: He can simply ask the officer how he felt about it.

THE COURT: Yes.

MR. MORRIS: I'm not sure I was leading, but, I, I defer to Your Honour.

MR. HICKS: For the record, Your Honour, I am sure



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it was leading.

THE COURT: Okay.

MR. MORRIS: Q. What, if any....

THE COURT: I think it was leading because he suggested the answer to him.

MR. MORRIS: Q. What if any concern?

THE COURT: But go ahead, just ask him how did that made him feel.

MR. MORRIS: Okay.

Q. How did you feel when an arrested individual calls for other individuals to come out of the vehicle?

A. It's scary, right, you don't know who these individuals are. You don't know what, what they're going to do. Obviously, I was outnumbered with the accused and with the other people that were inside the car, there is approximately five to six people that were surrounded just by me. When I looked to my right, I observed approximately five people standing behind me, and with him yelling at them, didn't know....

THE COURT: I'm sorry, did what?

A. With him, him yelling these people to get out the car, I didn't know what their intentions were.

MR. MORRIS: Q. Was the defendant handcuffed at this point or not?

A. No.

Q. Were you still the only officer at the scene?

A. I was.

Q. What happened next, please?

A. At this time, I tried to place the cuffs behind the male, and the male pushes me twice, and then the male has got his hands up in a fist-like manner, a fist.

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5 Q. All right. I, I want to do just - can I confirm the location where this happened? We've got the two vehicles, defendant's vehicle, and your cruiser on the side of the road, whereabouts was this on the roadway that he resisted the, the handcuff?

A. In the rear of the cruiser, the back of my cruiser on Stavebank in the City of Mississauga.

10 Q. All right. And so can you just show His Honour. I think you showed him once, I will need to describe what you've showed on the record. What happened then when you tried to put cuffs on him?

A. The male pushed me twice. And then he had....

15 Q. Well, how did he push you, how?

A. How? With his two arms on my chest.

Q. What part? With his two arms, you're pushing - you're showing on the record your two open hands, pushing, and that would be against you, yes?

A. Yes. That's correct.

20 Q. What part of your body did those two hands contact?

A. With my chest.

Q. Your chest. And so, what happened as a result of that push, in terms of how hard was it or what, what kind of effect did it have?

25 A. He just, just push me back.

Q. All right. And so what happened then, sir?

A. He had his hands, both his hands and fists like this. And....

30 Q. All right. You're a closed fist in front of your chest.

A. That's correct.

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Q. In a fighting stance.

A. Yes.

Q. All right. What happened then?

A. He is yelling at me saying he doesn't have to comply as he is not a part of a part of a **Criminal Code** or a, or **Highway Traffic**, and he is above all law.

Q. Could you say that again. I'm sorry, I didn't catch that answer from you.

A. Okay. He said that he did not have to comply.

Q. Yes.

A. With any part of the **Criminal Code**.

Q. Okay.

A. Or the **Highway Traffic Act** and he is above all laws.

Q. What happened next?

A. And at this point with him being in an assaultive manner, and....

THE COURT: Sorry, at this point, what?

A. At this point he was in an assaultive manner towards me and then with the other people that came out the motor vehicle, to try and obtain physical control of the male, I used my OC spray or pepper spray.

MR. MORRIS: Q. All right.

THE COURT: Sorry, he is in an assaultive manner towards you, and, and then what?

A. And including there is guys all around me, they came out of the motor vehicle, I used my pepper spray to gain physical control of the male and I pepper sprayed him in the, in his face.

THE COURT: Okay. Thank you.

MR. MORRIS: Q. Now, with respect to use of, of

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the pepper spray or OC spray, are there, what if any thresholds would you have to consider as an officer before you determined that that was the appropriate response for an officer?

5 A. His behaviour, and he was acting in assaultive, assaultive behaviour towards me, so I used one of my use of force options...

Q. All right.

A. ...to gain physical control of the male.

10 Q. All right.

A. Or to try to gain physical control of the male.

Q. What, what happened when you use your OC spray?

15 A. Nothing. It didn't, didn't affect him 'til later on.

Q. All right. Well, let's, let's go back just a step, you used your OC spray, where did you spray the defendant, as far as you know?

A. In his, in his face.

20 Q. How far were you when you used the spray?

A. Five feet, 'cause he had pushed me away.

Q. I take it you....

A. Five, six, feet.

Q. Okay. And, and, so I take it you've used OC spray before in training and things of that nature?

25 A. I have.

Q. Was that a fair distance for the spray to reach the target, that is the face of this defendant?

A. Yes.

30 Q. Are you satisfied that the spray impacted on the defendant or sprayed his face?

A. I was, yes.

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Q. But there was no response?

A. No. He just wiped his face like this, saying, what did I, what I hit him with.

Q. Yeah.

A. But, yeah, there was no, no reaction to....

Q. Did he say....

THE COURT: He wiped his face and said what?

A. He's like, it's something of the sort like what did you hit me with, what did you spray on me? And there was no, there was no immediate effect with the pepper spray on.

MR. MORRIS: All right.

A. On the male.

Q. Physically, what did he do, once you sprayed him?

A. Just kept on yelling, wanted to fight still.

Q. He still wanted to fight, how, how do you know? What did he say or do?

A. Just kept on yelling at me and he had his fists up, still had his fists up.

Q. All right. What if any - how does that concern you, if at all, when you use pepper spray as an option you've indicated, and, and nothing is happening in this circumstance with the defendant and other individuals around?

A. How concerning is it?

Q. Yeah.

A. Well, the main concerns is just to making sure that he gets arrested, there is physical control of him.

Q. Right.

A. And that there is no injuries for him or, or myself.

Q. Right.

A. So I just stood by and kept on yelling at

the male, telling him he is under arrest, to get in the back of the cruiser, and I just waited 'til other officers arrive.

5 Q. When you yelled at the defendant, did you do that once or more than once?

A. Numerous times.

Q. What's the response from the defendant when you are yelling that to him?

10 A. Just yelling back saying that he doesn't have to obey by our rules, obey by our laws. And just adding too, like, there are options of me going there and physically trying to get hold, physically trying to get control of the male, but there is four, five other guys that are behind me, right, it's not worth it for me...

Q. Right.

15 A. ...to go after him physically and then be jumped behind by these, by these other individuals.

Q. You mentioned other officers, but you said, you were on your own, so what, what did you do to, to try to effect other officers coming?

20 A. I just called for backup, saying that male resisting arresting. Sorry, that I, I called for backup saying the male was resisting arrest.

Q. All right. And did you get a response?

A. I did, yeah.

Q. All right.

25 A. And once the other officers arrived.

Q. Yes.

A. The male went peacefully, thankfully, in the rear of the cruiser.

30 Q. All right. So can you just describe from the time that, how, how did that happen, just lead up to that, because we have - you told His Honour, you sprayed him, there

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is effect, you're yelling at him, there is no response or not a  
at, not a compliant response, how did it come to an end, what  
happened?

5 THE COURT: Maybe I'll stop here, we should take  
the morning break.

MR. MORRIS: All right. Thank you.

THE COURT: So we'll come back in about 20 minutes  
then.

10 COURTROOM CLERK: All rise.

R E C E S S

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

15 COURTROOM CLERK: Good afternoon, Your Honour.  
Court will now resume, please, be seated.

MR. MORRIS: Good afternoon, Your Honour.

20 Q. Sir, just before the morning break was  
called, my last question or the question before the break was  
called, was how did this situation come to an end? You said  
you called backup, what happened then?

A. It came to an end, once, once Mr. Cassista,  
and once I heard the sirens of other officers attending, he  
peacefully just went in the rear of the cruiser, sat down.

25 Q. What about the handcuffing, was that  
accomplished at that point or not?

A. Yes.

Q. By whom?

A. Myself.

30 Q. So how - you, you explained to His Honour  
how - what the difficulty was with handcuffing, what, how did  
it change?

A. It was like night and day. Once, the, once

he heard the other police cruisers coming, he just - and I could hear them coming too, we could hear the, the sirens, he just sat in the back of the cruiser, and I handcuffed him.

5 Q. Was there any interaction with other officers and this defendant?

A. There was the RBU officer at the....

Q. Okay. That's the breath room.

A. Yeah.

Q. Right. But at the scene?

10 A. At the scene, I don't recall.

Q. All right. Well, just tell, explain what you recall then with the defendant and the, and the other officers arriving?

A. Well....

15 Q. I'm talking physical interaction, that was my question.

A. They may have assisted with, with the search because he did go in the back of the cruiser.

Q. I see.

A. And he was handcuffed.

20 Q. I see.

A. So once the other officers did arrive, we may have got him back out the car just...

Q. All right.

A. ...just to search him.

25 Q. Okay. So in terms of the physical skirmish that you described to His Honour, was anything like that repeated when the other officers arrived?

A. No.

30 Q. Okay. How many times were you pushed? You mentioned, showed His Honour pushing of the hands, and how many times?



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A. Twice.

Q. Twice. And now, as a result of your arresting the defendant originally for impaired operation of a motor vehicle, what happened with the defendant when he is in your cruiser, what, where did you go?

A. He was also arrested too for assault with intent to resist arrest.

Q. Yes. All right.

A. And at that point, once he was, once there was physical control was gained...

Q. Yeah.

A. ...the rights to counsel...

Q. Yes.

A. ...was started and read by myself.

Q. Right.

A. And I also read the, the breath sample demand.

Q. All right.

A. And the caution as well.

Q. Okay. And - sorry go ahead.

A. Oh, sorry. I was going to - just to add two more things that I, I was going to - I asked him who he was.

Q. Yes.

A. And he advised me that his name was C.Y., C-Y, and that he is a free man of the land.

Q. When, when was that?

A. Ah....

Q. In this scenario, I'm just wondering whereabouts did this happen?

A. Just right around the time when I was reading him his rights to counsel, either right before or shortly thereafter.

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Q. All right. Did you later get any documentation or proof of who this defendant is?

A. Yes, we had two forms of documentation. He had a, a "free man of the land" documentation.

Q. Can you describe what that is, please.

MR. HICKS: No issue as to identification, Your Honour.

MR. MORRIS: Well, I, I, just, Your Honour, "free man of the land" documentation might be something my friend has experience with. I have to confess, I do not.

Q. What is a freedom [sic] of....

MR. HICKS: There is no issue as to identification, Your Honour.

THE COURT: What's the relevance?

MR. MORRIS: Well, "a free man of the land" by definition would be a person that might utter these comments to the officer and take a, a umbrage at laws that control his or her actions. And so, if he is saying that this defendant is claiming to be a free man of the land, which was a comment attributed to this defendant, and has identification, I think it might be relevant as to this defendant's predisposition for, for thoughts against authority and thoughts against laws, and things of that nature.

THE COURT: But I have to assume that's what a "free man of the land," means, and I have no way of knowing that.

MR. MORRIS: Well, that's why I am asking what the document is and whether he has it.

THE COURT: But you can't go on sort of into areas

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5 where you know, the relevancy isn't established, just to find out what we might find out. You know, if we do that, the trial would never end. Unless there is something to indicate that this would be relevant, I mean....

MR. MORRIS: All right. I've made my submissions. Thank you, Your Honour. I'll move on.

THE COURT: Thank you.

MR. MORRIS: All right.

10 Q. Now, you gave him a demand, what is that, a demand for a breath sample?

A. I gave him a breath sample demand.

Q. All right. And pursuant to that demand, did you, what, what did you do?

15 A. I'd asked for a tow as well for the motor vehicle. I'm, I'm not sure if I said the marker earlier, but the, the marker of the plate was BNDJ 373. And then we have - went to - or sorry, he understood the demand, and then we also went to 11 Division for the samples of the tests to be taken.

20 Q. And was that in a breath room?

A. It was.

Q. With a qualified breathalyzer technician?

A. It was.

Q. Were you in that room as well?

A. I was.

25 Q. Did the defendant blow samples of his breath?

A. He did.

Q. Were you given any documents from that?

A. Yes.

30 Q. Going to show you a document that at the document it says Certificate of qualified technician, and about

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four-fifths of the way down, it says, "Notice in accordance with Section 258(7)." Can you look at that and identify it? Does that look familiar to you?

A. It does.

Q. Well, how many of those documents did you receive originally?

A. There would have been three of them.

Q. What if anything did you do with those documents?

A. I believe they were or the male was shown these documents, and Constable Bryant had signed the document.

Q. Did you serve it at all?

MR. HICKS: They can go in on consent, Your Honour.

THE COURT: Okay. Thank you.

MR. MORRIS: All right. Thank you.

THE COURT: Exhibit 1.

MR. MORRIS: Thank you.

THE COURT: Okay.

MR. HICKS: Just for the record, they show truncated blow results of 50 and 60, both under 80, Your Honour.

THE COURT: Thank you.

EXHIBIT NUMBER 1 - Certificate of qualified breath technician and Notice - produced and marked.

MR. MORRIS: Q. Now, you indicated that you arrested him for an impaired, was he ever charged with impaired operation?

A. No, he wasn't.

Q. Was that your decision or a decision of another person?

A. That decision is going to be the staff

sergeant or the officer in charge of the division at the time.

MR. MORRIS: All right. All right. Thank you, sir, those are my questions.

A. Thank you.

CROSS-EXAMINATION BY MR. WICKS:

Q. Officer, that last part, the decision not to charge my client with impaired, even though he was arrested for impaired, were you part of that decision-making process, did you have any input into it, did you have any discussions with the person who recommended that?

A. Yes, I would have had discussions. I, I don't recall what officer was in charge that evening.

Q. I take it that you - it was your position that the impaired charge should proceed, correct? You believed in the impaired charge proceeding, didn't you?

A. Well, he was arrested for impaired because at the time, it was my opinion...

Q. Yeah.

A. ...his ability to operate a motor vehicle was impaired by alcohol.

Q. And in essence, you were overruled by a staff sergeant or some superior officer, correct?

A. Based on the results of the, of his readings.

Q. All right. So the charge that he was originally arrested for, which is the basis of his resisting arrest, and being charged with that was later determined by a superior officer to not be a charge that should go forward, all of that is correct?

A. Based on his results of the readings, that's correct.

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Q. Well, based on the results of the reading, and everything else that you told to the officer in charge, correct, or sorry, to the officer making the....

5 MR. HICKS: Your Honour, he opened the door by saying, "based on the readings," I'm allowed to canvas that.

10 MR. MORRIS: I haven't said anything yet. I, I'm just suggesting my friend is going a little too far afield in terms of hearsay. The decision, the witness said, it's not his decision, it was the decision of someone else. So to pull from this witness what that other person was thinking or what factors that other person determined are at play is really not fair on a hearsay basis.

15 MR. HICKS: Your Honour, I didn't pull it. The officer stated it. He said, "based on," and gave his opinion of what the other person based it on. I'm canvassing that.

20 THE COURT: Well, I guess the question is whether or not the officer told him all of his other grounds, is that what....

MR. HICKS: That's where I am going.

25 MR. MORRIS: I don't even know if that's, with respect, the whole issue. Because this is in somebody else's mind that we hear from my friend in cross-examination, and, and I think in chief as well, had the overruling determination of whether a charge goes through or not. So, you know, I don't know, and, and the court really doesn't know what's in that person's mind and what the, the factors that person considered. It maybe all, it maybe some, or none, don't know, of what this

30

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witness said. That's the hearsay issue, and that's the problem.

5 THE COURT: Oh, I don't think it's being introduced for the truth of its - what, what this other person thought, because who knows what he thought, but, you know, this officer said, he, based on the readings, the staff sergeant said, not to charge him, and....

10 MR. HICKS: Perhaps I can do this, Your Honour, I'll move to a different area.

Q. Officer, could you, please, articulate for the court what your grounds were for believing that my client was impaired and effecting an arrest?

15 A. I can, yes.

MR. MORRIS: Just for the record, he's done that already, but, you know, I appreciate it's cross-examination, but it's been canvassed, clearly.

THE COURT: Okay. Go ahead.

20 MR. HICKS: For, for the record, I am asking the officer to state very clearly what he subjectively believe were the grounds for the arrest.

25 A. I did, I had a few grounds. The first was that I saw him leaving a, a liquor licenced establishment. Then I see him, on his driving, driving on a high rate of speed, make a hard right turn onto Stavebank and he slam on his brake. See him running out his motor vehicle.

THE COURT: He what?

30 A. Sorry, then he ran out of his motor vehicle and started acting in a bizarre manner by yelling at me stating he is above our laws, the courts, the **Highway Traffic Act**, and the **Criminal Code**, and while speaking with him, I observed that the male is swaying from side-to-side. Again, he is acting in

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5 a different manner, he is very angry, the eyes are watery and red, and I can smell a strong smell of alcohol coming from his breath, and I asked him if he has been drinking, and he told me he had a few beers. After looking at all of that, that's when I form my opinion his ability to operate a motor vehicle was impaired by alcohol and he was arrested.

10 Q. I am going to talk to you about some of those officer, first of all, I put in front of you two pieces of paper, they are both prints that I did this morning from my computer from Google maps. The first one is a map type bird's eye view of the area that I am going to suggest to you is where this occurrence took place. So the, the Credit River, Lakeshore, and you can see Stavebank, you agree that's there?

15 A. I agree. And the street, Front Street, that's where the, that little harbour and the boat launch is off.

20 Q. And then the second view is a bird's eye view a little closer in, and this is a satellite view, as opposed to a map view, showing where the buildings are, etcetera of the Stavebank and Lakeshore intersection, you agree? You, you can see Lakeshore Avenue, Stavebank Avenue.

A. I don't work in 12 Division. It looks like it is, and....

25 MR. HICKS: Okay. Going to ask if my friend has any objection to these being marked as exhibits?

THE COURT: Mr. Morris, do you have any objection?

MR. MORRIS: So far, no, but only subject that Your Honour can accord to it, given the evidence you've heard so far.

MR. HICKS: So what I have, Your Honour....

30 THE COURT: The Google map will be Exhibit 2, and the satellite picture will be 3.



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EXHIBIT NUMBER 2 - Google map - produced and marked.

EXHIBIT NUMBER 3 - Satellite picture - produced and marked.

MR. HICKS: And just so it's clear, Your Honour, they're both from Google maps. I've provided identical copies to the court to be marked as exhibits, and the officer still has his two copies so that we can all follow along.

THE COURT: Thank you.

MR. HICKS: And my friend, of course, has copies as well.

Q. So let's talk about the driving behaviour, first, officer, I am going to suggest to you that you say the driving is a left turn from Front Street to go east on Lakeshore, and then a right turn on Stavebank, correct?

A. From my driving?

Q. No. His driving, my client's driving, he turns left out of Front Street onto Lakeshore, is that right?

A. No, no. Because, sorry, the bar is on Lakeshore, the bar is not on, on Front Street.

Q. All right.

A. No.

Q. So where did he start? I thought you said he made a left onto Lakeshore?

A. He did, yeah.

Q. All right. From where?

A. I don't know exactly where the bar is on this map, but it's going to be west of Front Street, and it may also - it maybe between Front Street and John Street, but it might just be right beside John.

Q. I am going to suggest to you that the bar is

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actually on the Lakeshore.

A. It is on Lakeshore, yes.

5 Q. But it's on the - sorry, it's on the riverbank. Do you know that to be the case? What's it called again?

A. The Old Stable. I believe it's just right before John.

10 Q. So whether it's Front or John Street, officer, it's then a left onto Lakeshore and then across the Credit River to Stavebank which is the first street on the other side, correct?

A. That's correct, yes.

15 Q. Officer, I'll be a little cheeky and tell you that I've driven that route, paced, it and based on that, I am going to suggest to you that that distance is no more a 170 metres from where you say he turned onto Lakeshore to where he turned off Lakeshore at Stavebank, would you agree with that estimate?

20 A. It's not a far drive. But I, I don't, I don't know how long it is.

Q. I put it to you that there is absolutely no way that that distance that he travelled on Lakeshore is anything more than 200 metres, do you agree with that?

A. I'd say that's around fair.

25 Q. All right. He is a 2001 Montana minivan, correct?

A. That's right.

Q. Did you see any modifications to that van, such as, such as a suped-up [ph] engine?

30 A. I didn't look at the engine, no. I didn't, I don't think there is any modifications, no.

Q. Any exhaust that look like this thing is

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really trumped-up and ready to go?

A. Not that I remember, no.

5 Q. Okay. He had, I will suggest to you, officer, himself and four passengers in this 2001 minivan, do you agree?

A. Yes.

10 Q. And you are saying that this vehicle in a distance of 200 metres accelerated to upwards of 80 to 100 kilometres an hour and then decelerated back down in time to make a right turn on Stavebank?

A. Yeah, he was driving at a high rate of speed, and I could also just hear the engine just revving as he was accelerating.

15 Q. Okay. In your notes, you say - and I am reading from what would be the second to last page in your notes, "travelling eastbound on Lakeshore, speeds up when it sees me, make a hard right on Stavebank," that's what you wrote, right?

A. Yes.

20 Q. And so, you are estimating that this speed was as high as 80 kilometres per hour?

A. Yes, I'd say so.

Q. Okay.

A. But again, I, I wasn't pacing the motor vehicle, and I didn't have a radar on.

25 Q. What's the speed limit on the Lakeshore?

A. I believe in that area, it's 50 kilometres and hour.

30 Q. Officer, I suggest to you that my client's vehicle never exceeded the speed limit while it was on Lakeshore, you agree?

A. No.

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5 Q. Okay. The four witnesses who are here for the Crown, civilian witnesses, who you've seen outside, you know them to be the four other people who were in the car that night, the, the minivan that night with my client, correct?

A. That's right.

Q. All right. And you are saying, "a hard right onto Stavebank," did that involve squealing tires?

A. Yeah.

10 Q. You're saying, you heard squealing tires?

A. Yeah. The car was travelling at a high rate of speed. You could hear it accelerating and a sharp right. If it wasn't making a sharp right or a hard right, I would write that in my notes. But it wasn't he's signalling, he's slowly making a right-hand turn, it was a hard right. And to me, observing him driving, he was trying to get away from me.

15 Q. All right. There is a, a bank at the corner of Stavebank and Lakeshore, is there not, officer?

A. Again, I apologize, I don't - that division, the other side of the, the Credit River is 12 Division. I don't, I don't patrol 12 Division, but I believe there maybe a bank, but I, again, I apologize, I don't patrol that area regularly, at all.

25 Q. Going to show you a third view. And this isn't determinative of this, whether there is a bank issue, whether there is a bank there issue, but this is a third view from Google maps, even closer into the Stavebank and, and Lakeshore intersection, would you agree, officer, that that's still the same intersection?

A. Yes.

30 Q. And you notice on this one, and again, this isn't determinative, but the, the printout seems to label that there is a, a CIBC bank on the southeast corner of Stavebank

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and Lakeshore, you see that that's indicated on this document, correct?

A. I do.

Q. Does that, first of all, assist in refreshing your memory about whether there is a bank and a bank machine there? You notice one of the things says, "CIBC branch and ATM."

A. I see that, yes. And again, I apologize, I don't patrol that area, that's a different division. So I can't precisely say that there is one or there is not one there.

MR. HICKS: All right. Once again, Your Honour, I have an identical copy of this. I am going to ask that this be marked as the next exhibit. If my friend....

THE COURT: Any objection from the Crown?

MR. MORRIS: Same, same submission, Your Honour.

THE COURT: Thank you. Exhibit 4.

EXHIBIT NUMBER 4 - Google map - produced and marked.

MR. HICKS: And, and to be clear, I am not asking it be marked for the, the truth of proving that there is a CIBC branch there. So even though it's marked there, I am not asking my friend to adopt as a point of fact that there is a CIBC branch there. That's to be discussed.

MR. MORRIS: That's, that's helpful, because it also seems to have a CIBC branch right in the middle of the intersection, unless I am misreading it.

MR. HICKS: All right.

Q. So, officer, my client then gets out of his

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vehicle, correct?

A. He does.

Q. And I am going to suggest to that what he does is he gets out the driver side, and he starts moving across the street towards where that CIBC branch is indicated on the last exhibit.

A. When you say, "moving," if you mean, "running," then I would agree with you.

Q. Fine. And you're sure he ran?

A. Yes. I am hundred percent sure that he ran.

Q. Okay. And if I suggest to you, officer, that's not what he did, and I will just tell you that I am going to be reading from some of the reference, the some of the witness statements as I ask you this question.

MR. MORRIS: Your Honour, how is that? I thank my friend for the, for the heads-up on that, but how is that any form of appropriate questioning?

THE COURT: What is it you want to do?

MR. HICKS: I'm, I'm just warning the officer that I am, I'm making reference to other witness statements in asking this question.

THE COURT: Any objection, Mr. Morris?

MR. MORRIS: Yes, absolutely. I don't, I don't know whether my friend is calling these witnesses or not.

MR. HICKS: Well, they're Crown witnesses, Your Honour.

MR. MORRIS: Well, that doesn't mean - I, my, my friend said that the first time, I let it slide because I don't understand it. First of all, they're subpoenaed, and at this stage of the process, reading a, a comment from a, a part of a

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statement to an officer is not appropriate, Your Honour, it's not.

5 THE COURT: What's the purpose of telling this officer what another witness said about the event?

MR. HICKS: I, I take that back then, Your Honour. That's fine.

THE COURT: Okay.

MR. HICKS: All right.

10 Q. I'm going to suggest that my client got out of the vehicle, officer, and walked back to your police car where a conversation took place for about two minutes before there was any yelling, do you agree?

A. No.

15 Q. You're sure that he got out, ran, you had to chase him, and then he started yelling immediately?

20 A. That's correct. And I recall that I pull over, that I take a guess, like thousands of vehicles for sobriety check, guys leaving the bar, or during the RIDE program, and I think I've arrested and charged nearly 200 people for impaired, excess, or refuse.

Q. Just out of....

A. I recall this guy taking off from me and running away from his car.

25 Q. And just out of interest, on those previous arrests, how many of those charges have not gone forward as a result of the staff sergeant reviewing it and basically overruling you?

A. There has been three that I recall that blew under, one was charged, one wasn't, and he wasn't charged either.

30 Q. So there have been cases in the past where somebody you've charged with impaired has blown under and that

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impaired charge still went forward before the court?

A. That's right.

Q. All right. Going....

5 A. And there has also been one before where it hasn't, and he was the third one that had.

10 Q. All right. And going back to what you said earlier, based on the readings, that's why you indicate - sorry, that's what you have said the staff sergeant indicated to you is the reason. Did you tell the staff sergeant all the other things that you had observed?

A. No, obviously, I tell him the grounds of the arrest, and again, it's, it's up to the officer in charge if what the charges are going to be.

15 Q. Now, officer, I put it to you that my client did not raise his voice to you for at least two minutes when the two of you were outside the vehicle dealing with each other, do you agree?

A. No.

20 Q. I also put it to you that at least one of the occupants of the Montana minivan, other than my client, so one of the four others got out of the van within 10 to 20 seconds of when my client first exited and was standing watching the whole thing, do you recall that happening?

25 A. I'm dealing with your client, and I, I don't know what the other guys were doing until he started yelling for people to get out the car, and there, there may have been. I, I didn't observe him at that time.

30 Q. Officer, I suggest to you that my client never yelled for anybody to get out of the car, but it was the occupant who had gotten out of the car who told the other occupants to get out, saying something to the effect of, "get out, you better see what's happening here." Do you recall that



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happening?

A. No. He'd, he had yelled, the accused had yelled for the guys to get out the car.

5 Q. I put it to you that when my client yelled, what the accused yelled to one of the people was, "here, take my phone," and that the context of that was that my client had gotten his phone out because he wanted to record the conversation and you tried to grab the phone away from him, do you remember that?

10 A. I can remember him - something about a phone. Yeah, if someone does try to pull out a phone, obviously, because he is under arrest, I'm trying to take physical control of the male, by having the male grab a phone, I don't know who he is going to call.

15 Q. All right.

A. What is if his tries to call more people to try and back him up in interfere with me doing my job and arresting him, that's where I formed my opinion, there is huge officer safety concerns.

20 Q. So I, I put it to you, officer, that what my client yelled, was not, "hey, everybody get out of the car," or words to that effect, but he yelled to a specific person, I'm suggesting that that person is named, Jack, that he said a name, and words to the effect of, "catch my phone," and then threw it to him. Do you recall him throwing the phone to someone and saying....

25 A. I don't know, sorry, I don't.

Q. Officer, I suggest that you were yelling at my client before my client was yelling at you?

30 A. I may have asked him to stop, right, but that would have been the gist of the yelling from me.

Q. Okay. Now, you've described that my client

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was swaying, can you give us more detail of when you saw that and what you observed?

5 A. Yes. I saw it when he was telling me that he is above the law, above the courts, and so on, and he was swaying from side-to-side.

Q. All right. So is he standing with his feet in one place or the feet moving around during this swaying?

10 A. I just recall him swaying just slightly from side-to-side.

Q. You've made a body motion showing your shoulders going from left to right, I am going to suggest if we measure from centre, about two to three inches each way, correct?

A. Possibly, yes.

15 Q. And you two were involved in what, I think you would agree was an animated conversation by this point, correct?

A. I'd say so, yes.

20 Q. You'd agree that there would be an explanation available for whatever swaying you're seeing that has nothing to do with possible effects of alcohol, agreed?

A. Agreed, but when you look at the full picture together, right, that helps me form the opinion for my grounds for the arrest.

25 Q. And that is that my client got out, was yelling, ran away, or ran a distance, the hard right, the accelerating up to 80 to 100 kilometres an hour and decelerating, all of that stuff?

30 A. As well as the red watery eyes, smell of alcohol coming from his breath, the strong smell of alcohol coming from his breath, and the admittance of drinking a few beers.

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5 Q. So, officer, I'll tell you, it's my habit to suggest to officers that there are observations that suggest alcohol consumption, and then there are observations that suggest not only alcohol consumption, but an actual impact from the alcohol consumption, and I'll ask you if you agree. So in the first group, alcohol consumption, there is the smell of alcohol, a bloodshot or watery eyes, and possibly a flushed face. And what I am suggesting is those are indications of recent consumption, but they're not behavioural effects of alcohol, would you agree with that?

A. Yeah.

10 Q. All right. Then there is a group that I would call, "behavioural effects," and that is trouble driving, swaying from side-to-side, and balance issues, manual dexterity issues, such as trouble getting your identification out of your wallet or car, obviously if there is slurred speech, would you agree that there are some things that you observe that show that this alcohol was really affecting the person, agreed?

15 A. Yeah, those could some, also odd behaviour would another, and....

20 Q. All right. And what you have described, as I understand are the ones that I would refer to as behavioural, is the driving behaviour, the swaying, and this odd behaviour. Is there anything else that you saw?

25 A. Well from running away, running away from the vehicle, again, like the yelling and screaming, the red watery eyes, and that was it, as well as the smell of alcohol coming from his breath, and the admittance of drinking alcohol, beers.

30 Q. Put it to you, officer, you, you can't know necessarily what's in the mind of my client, but so it's covered, I suggest to you that my client got out of the vehicle

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and walked towards the bank a couple of steps before you yelled and got his attention, and then he turned and walked towards you.

5 A. No.

Q. Officer, do you have anywhere in your notes that my client was charged with assault resist police?

A. Think it's on page, page three.

Q. All right.

10 A. It's under the breath technician, the fourth line from the bottom.

Q. And that is an entry made at 12:55 a.m., some period - that's at the police station, correct?

15 A. I don't know when the, that entry was made, the 12:55 a.m., that's the time he was returned to me from the breath tech.

20 Q. And what you've clicked - you've checked off there is in a, a box with, it's called, "The offence," and there are a bunch of choices: impaired driving, driving over 80, refuse, impaired care and control, etcetera, or other. You've checked off the box, "other," and written in, "assault with intent to resist arrest," correct?

A. That's right.

25 Q. And may I take it that the fact that you haven't checked off, "impaired driving," means that you are dealing with this part of the, your, your form after the staff sergeant has told you that the impaired driving charge isn't proceeding, correct?

A. That's right.

30 Q. Okay. Now, what about the notes you made at the roadside? I'm going to suggest to you that in there you mentioned that my client is arrested for impaired driving, but there is no mention of an arrest for assault resist police, do

you agree with my characterization of your notes?

5 A. Yeah, that I hadn't written it down under the, the caution section or on page two for other, that's right.

Q. All right. I'm sorry, officer?

A. That's right, it's on page two.

Q. Yes.

10 A. Similar to page three at the bottom where you were just looking at.

Q. Yes.

15 A. And page two I got checked off, "impaired operation of a motor vehicle," and there is also the, the check mark I could have done for "other," and I could have written, "assault with intent to resist arrest," but I didn't.

20 Q. Well, let, well, let's talk about that. This is the, the - these are the notes that you're making at the roadside as you fill in the times with 2329, he understands his rights to counsel, 2329, he doesn't want to talk to a lawyer, you're putting time stamp entries, correct?

A. That's right.

Q. And at 2327, this is at the roadside, you've checked off the boxes in the details of arrest, correct?

A. That's right.

25 Q. And you checked off, "impaired operation of a motor vehicle," correct?

A. I did.

Q. And you did not check off "other," and write in, "assault resist police," correct?

A. That's right.

30 Q. And when you were making your notes, in a free form manner elsewhere in this document, and you're talking about your lights are on and he slams on the brake, the, the

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5 car speeding on Lakeshore, speeds up on Lakeshore, you mention in there that he is arrested for impaired, but you do not mention in there that he is arrested for assault resist police, correct?

A. That's right.

10 Q. The first documentation of an entry from you that he is arrested with, for assault police is something that occurs after you've talked to the staff sergeant and the decision has been made that the impaired charge isn't proceeding, correct?

A. That's correct. But at the time when he was arrested, he was also advised that he is arrested for that as well.

15 Q. Wouldn't that be a pretty important thing to document in your notes that when you are giving him his rights to counsel, for instance, it's not just for an impaired arrest, that it's for the charge of assault, resisting police?

20 A. Yeah. But he understood why he is being arrested, and he is being arrested for both, and he was advised he is being arrested for both.

Q. Okay. But it is you, officer, that the reason that the assault resist police is mentioned nowhere in your notes until much later is because you didn't tell my client he was under arrest for assault resist police?

25 A. No, I did.

Q. You did not tell him until later at the police station.

A. No.

30 Q. But you do agree that that section that you filled out at 2327 at the roadside talking about details of the arrest, you checked off "impaired driving," correct?

A. That's correct.

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5 Q. You did not check off "other," or give any indication that there was an additional charge before, besides the impaired driving, correct?

A. No. I did tell him. I....

Q. You did not check it off on the form, officer, is the question I am asking, am I correct?

A. That's correct, yes.

10 Q. Would there be any reason for leaving that out of the mix of what you are documenting to have occurred at the roadside?

A. I'd say, just human error, and forgot to check it off or write it down.

15 Q. I put it to you that my client never pushed you twice, but he did pull away from you when you attempted to get him into your police vehicle, at the side of the car, the police cruiser, agreed?

A. No.

20 Q. All right. So let's talk about these two pushes that you say my client gave you in the chest, firstly, as I understood the physical demonstration that you did earlier in court when my friend was asking you about it, you held out your two hands, palms facing forward and open at about shoulder height and demonstrated a pushing motion, correct?

A. That's correct.

25 Q. And you're saying that it made contact - my client's hands made contact with you where on your body?

A. On my chest area, happened twice.

30 Q. Was this not at a time that you were attempting to gain control of my client and put handcuffs on him and/or secure him in the back of the police car?

A. Yes, I walked him back to the rear of the police cruiser, had the door open, going to put the handcuffs

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on him, and as I am doing that, he turns around, and push me twice.

5 Q. And what direction did you go in, as a result of these, these pushes?

A. I went backward.

Q. And how far did you go?

A. Just a few feet. He had pushed me twice, just a few feet.

10 Q. All right. Is it the first push or the second push that sent you a few feet back?

A. The first push or second push, I don't, I don't recall, probably the second push.

Q. Okay. So was the first push light and the second push harder?

15 A. I don't recall. Both pushes were about the same.

Q. So did you travel back three feet, then come back towards him, and get pushed again back three feet?

20 A. No. No. Once the second push happens, I was pushed back, but I got a, get a safe distance between me and him, right, to effect the, get a, get an arrest. He is being aggressive towards me, assaultive towards me, I got these other people that are standing behind me, right, again, as I was saying earlier, to get into a physical combat with them isn't the best option for me because I don't know what these  
25 other four people are going to do, so that's when I also stepped back, and used the pepper spray to help gain physical control of him, just on his assaultive behaviour.

30 Q. You are sure that as a result of one or both of these pushes, your body travelled backwards away from my client a distance of perhaps three feet?

A. A distance three feet, can't precisely say,



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but, yeah, he did push me back.

5 Q. And when you say, "pushing back," what direction are you travelling in relation to the police cruiser? Are you travelling alongside it...

A. West [sic].

Q. ...away from it?

A. Away from it.

10 Q. All right. So my client has his back to the police cruiser, this is the passenger side of the police cruiser, and he is pushing you sort of onto the sidewalk?

A. Yeah, the passenger rear. And that'd be right, yes, so I'd be going west.

15 Q. And I, I, as I understood your evidence, officer, everybody is in agreement, but that at this point, the four other occupants of the Montana, the four people who are here as under subpoena from the Crown, they were out of the vehicle at that point, and watching, that's your recollection?

A. Yeah. Yes.

20 Q. Okay. And they would have been watching from a distance of about 15 feet away, is that correct?

A. I wouldn't say that far.

Q. How far?

A. Maybe about ten feet away or so.

25 Q. And you'd agree with me that these four people who are three men and a woman, agreed?

A. They are, yeah.

30 Q. None of them ever took any part in what was occurring. And by that, I mean, they never took a step toward you? They never said anything to the two of you, they never involved themselves in the process before my client was detained in the back of the police cruiser, is that agreed?

A. Not at me, no, but I remember some people

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5 yelling, like, "Shawn, get in the back of the car, Shawn, what are you doing?" But, yeah, not at, not at me. But again, I, I, I had never met these people before in my life. I, I don't what they're, what they could do or what they may do.

Q. And just so it's clear, officer, we certainly understand, the defence certainly concedes that there would be officer safety issues in that situation. I just want to make clear, none of them involved themselves or in any way behaved in assaultive...

10 A. Towards me, no.

Q. ...manner?

A. No. Sorry, sorry to interrupt, sorry.

Q. None of them said anything aggressive towards you and suggesting that they had a, a problem with you personally at the moment, is that fair?

15 A. That's fair, yes.

MR. HICKS: I'm almost done, Your Honour.

Q. I am going to suggest to you that my client's discussion with you about whether the **HTA** or **Criminal Code** applies to him occurred later at the station and that his comments at the roadside were limited to comments not identifying specific statutes or saying he is not subject to the law, but rather saying things like, "I'm not getting in the car, you have no right to treat me that way. So he did talk about his rights at the roadside, but he wasn't saying he is not subject to **Highway Traffic Act** or **Criminal Code**, do you agree with that?

25 A. No.

Q. And you're saying that when he was saying, my client was saying these things, he was yelling?

30 A. He was, yes.

Q. It wasn't conversation volume, it was

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yelling volume?

A. Yes.

MR. HICKS: I just have a moment, Your Honour.

5 Q. Officer, I'm, I'm going to suggest to you that what you were trying to do was not arrest my client initially, but get him in the back of the police car for purposes of getting a roadside breath sample from him, is that correct?

10 A. No. If I had the suspicion, then, yeah, but it was my opinion at that time he was impaired by alcohol.

Q. And I am going to suggest the physical interaction between you was not one of, for instance, trying to turn my client around, get his arms behind his back and get handcuffs on him, but rather one of trying to get him into the back of the police cruiser, do you agree?

15 A. No.

MR. HICKS: If I could just have a moment.

20 Q. Officer, just going back to the form that you were filling out and the issue of check marks or lack thereof, the section on page two details of arrest, and you have a time entry of 2327 at the top, and that's when you are checking off boxes concerning details of arrest?

A. Yeah.

25 Q. Is that the time that you are filling it out 2327, or is that a time you note, and then later you go back and fill in that time?

A. I probably would've started doing it at 27, sorry, 2329.

30 Q. All right.

A. Once I'm in the back, and say like...

Q. All right. So....

A. ...once he is in the back and I'm, I'm at

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the front reading the....

5 Q. So when you are filling out the section about details of arrests and checking the box, "impaired operation," and noting the time as 2327, that's something you are doing in the police cruiser approximately two minutes later?

A. Yes.

10 MR. HICKS: All right. Thank you, officer, those are my questions.

THE COURT: Do you have any re-examination, Mr. Morris?

MR. MORRIS: No. I don't believe so, thank you, Your Honour.

15 THE COURT: I just have one question about the questions that Mr. Hicks asked with regard to regard throwing the phone at one of the occupants. I think Mr. Hicks suggested that he threw his phone to someone called Jack, and yelled to him to catch his phone, and I didn't get whether you observe that or not.

20 A. I didn't, no, Your Honour, I apologize, I, I didn't observe that.

THE COURT: Okay. All right. Any questions arising out of that one?

MR. HICKS: No, thank you

25 MR. MORRIS: Nothing, thank you.

THE COURT: Thank you, officer, you may step down.

A. Thank you, Your Honour.

THE COURT: Let's break for lunch, come back at 2:20. Now, you have four witnesses?

30 MR. MORRIS: No. I, I - that was my friend's summation, but, no. There are witnesses that were

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in the van, you heard that, they are here. Your Honour, as far as I am concerned, that's the case for the Crown.

THE COURT: Oh, okay.

MR. HICKS: I would ask that my friend not indicate to the witnesses who were subpoenaed by the Crown that they're released. I would like to have them testify.

MR. MORRIS: That's fine.

THE COURT: Okay. So you are going to call four witnesses?

MR. HICKS: I am going to call at least two of them, in addition to my client, Your Honour.

THE COURT: Okay. Okay, then 2:20.

MR. HICKS: Thank you.

R E C E S S

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

20  
COURTROOM CLERK: Good afternoon, Your Honour.

THE COURT: Good afternoon.

COURTROOM CLERK: Court will now resume, please, be seated.

MR. MORRIS: Your Honour.

MR. HICKS: Good afternoon, Your Honour.

25  
THE COURT: Mr. Hicks.

MR. HICKS: I can advise that I intend to call three witnesses, my client and two of the four...

THE COURT: Right.

30  
MR. HICKS: ...civilians that were subpoenaed. So my first witness is Mr. Shawn Cassista.

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SHAWN CASSISTA: AFFIRMED

EXAMINATION IN-CHIEF BY MR. HICKS:

5 Q. Mr. Cassista, I'll start with some information that's not in issue, and then I'll ask you to fill in the blanks as best you can. So everybody agrees that on November 29<sup>th</sup> of 2012, at around 11:30 at night, it maybe a little earlier than that, you were driving a motor vehicle eastbound on Lakeshore Avenue in Mississauga, is that correct?

10 A. That's correct.

Q. You had consumed some alcohol that night, you were coming from a drinking establishment, is that right?

15 A. That's right. I arrived at the bar around nine o'clock and spent a couple hours there, and consumed two, two pints.

Q. Okay. And then you eventually pulled over, were, were pulled over and you dealt with Officer Bowen and ultimately you were arrested, is that right?

20 A. Yes.

Q. Okay. So let's start with the evening, what time did you go out?

25 A. I was going to meet Jack, a friend of mine was out there, and he had a, one of his friends, I'm acquainted with her, at the Old Stable and we met there around nine o'clock.

Q. Prior to getting there, had you consumed any alcohol?

30 A. No.

Q. And obviously, we know that you left around 11:20, 11:30, just before you met the officer, is that right?

A. That's right.

Q. Jack, his last name?

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A. [REDACTED]

Q. And, the, the female friend, do you know her name?

A. Kathy Williams.

Q. All right. And are either of those people here today?

A. Kathy, yeah.

Q. And what about Jack? Is he here?

A. Jack, Jack is here.

Q. Okay. All right. So were they there when you got there or did you get there first?

A. Um, I think they were there before me.

Q. How much alcohol did you have to drink while you were there?

A. I consumes two pints of beer over a span of about two hours.

Q. Anything else?

A. Anything else as far as drinking?

Q. Yes.

A. No.

Q. Okay. When you were leaving the bar, where were you going, what was the plan?

A. The plan was, I actually, just as we were getting up to leave, actually, it was two other people showed up, just actually, Jay showed up, and he didn't actually consume any alcohol. Gene showed up about 15 minutes later, and he had one beer, and from there, we were all kinda making plans to go down to the street, I guess, a mile or two down the street to Caven's Alley, another bar, to, to play darts. And just before we....

Q. Sorry, stop you, that other establishment, what's it called, can you spell that?

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A. Caven's Alley.

Q. Caven?

A. Yeah, C-A-V-E-N.

5 Q. And when you say, Jay and Gene, do you know their, their names?

A. I know Jay Adams is his last name, I can't remember what Eugene's or, Gene's name, last name is.

Q. Okay.

A. At the moment.

10 Q. All right. So you formulated this plan to go play darts, please, continue.

A. Yes. And just before we left the bar, I mentioned to everybody, I had to make a quick stop at the bank just down the street, and we'll be on our way, and from there, we all got in my vehicle, and I proceeded to get out onto Lakeshore.

15 Q. Okay. What - when you say, "Get out onto the Lakeshore," where were you?

A. We were in the parking lot at the Old Stable Pub, it's a very small parking lot. Like maybe about six cars can get in there.

20 Q. What's across the street with Lakeshore?

A. It's not actually on a corner. I believe it's between John, just, just west of John, I think, or just east. I'm not - can't remember the exact location, but it's not very far.

25 Q. So obviously make a left turn onto Lakeshore, is that right?

A. That's right.

30 Q. And then where do you travel to before coming to a stop?

A. I'd got onto Lakeshore and headed east and,



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5 you know, sped up fairly quick just to get to speed of traffic, and, um, just got up onto the bridge, and actually, just before the bridge, I noticed the police car that was in the boat launch parking area and it was proceeding towards Lakeshore, and didn't pay much attention to it, kept driving, and I looked in the mirror when I was on the bridge, and, um, just to see where the, where the officer was.

10 Q. So where did you turn - where did you come to a stop?

A. Came to a stop right at Stavebank, pull a hard - not a hard right, pull a right-hand turn onto Stavebank.

15 Q. How far along did you go onto Stavebank?

A. Actually, maybe 15 feet. There is parking spots like right there, and there was a vacant one that I took.

20 Q. What was the purpose of your stop on Stavebank?

A. I had to go to the bank, which was right there on the corner on the opposite side of the street.

25 Q. Do you know what brand of bank it is?

A. Well, it's a CIBC, but my actual bank account is President's Choice, it's no fee, works through the same.

30 Q. While you were on Lakeshore, what was your speed?

A. Approximately the speed limit. There was a short travel from the bar to the, to Stavebank.

35 Q. What is the speed limit?

A. I think it's around 50 kilometres.

40 Q. And from the point you came onto Lakeshore to the - from the parking lot to the point you turn right on Stavebank, what is that distance?

A. I'd say it's just a couple hundred metres,

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if that.

Q. And what was your maximum speed along Lakeshore?

A. I'd say around 50 to 60 kilometres.

Q. Were you feeling effects from the alcohol you had consumed?

A. No.

Q. Once you came to a stop on Stavebank, tell us what happened.

A. What happened there was I basically exited my vehicle and noticed the flashing lights and a police officer right over to my left, the bank was actually right in front of me and I was about to cross the road, but I heard the officer start yelling at me immediately, and his first words were, "hold it right there, you're getting in my vehicle to blow into a breathalyzer test." And actually....

Q. I'm interested in the where if anywhere you went when you got out of the vehicle, so....

A. Where I went, well, I didn't go anywhere, I just stopped, and I took one step out of the vehicle and stop, saw him there, and as soon as he spoke those words to me, he, like, I said, he was yelling at me, and I basically said to him, "hold on, hold on," and I started to walk in his direction.

Q. And in relation to your vehicle, what, where are you walking?

A. In....

Q. Away from your vehicle, to the side?

A. I was walking alongside my vehicle towards him. His vehicle was out in the middle of the road, blocking any kind of incoming traffic, and he was standing right beside it.

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Q. So you're walking towards the front or the back of the vehicle?

A. I'm walking towards the back of my vehicle.

Q. How far did you walk, and did the two of you come together, give us an idea of what happened?

A. Um, I walked probably about 20 feet and the, the officer took a few steps towards me, and that was, he was probably standing fairly close to his car, like the, the driver side headlight.

Q. Tell us about the conversation that happens.

A. Well, basically, he was raising his voice to me, and ordering me to do this and that, basically, to get in the vehicle, and I said, you know, "you can't talk to me like that, that's, you know, that's just inappropriate behaviour, and unprofessional," is pretty much what I said to him, and he continued to order me to get into his vehicle. And with his demeanor, the way he was talking to me, I basically asked him or told him that this isn't proper police protocol, and I asked him if he was a rookie, because it just seemed like he was behaving like one. And from there, he said a few things, such as, he said, "what's your problem?" He said that two or three times to me, "what's your problem," he repeated it. And I think at that time he was getting rather aggressive and he was rather intimidating, and I basically said, that, "you're my problem right now."

Q. Now, at this point in conversation, give us an idea of the officer's volume when he is speaking and your volume when you're speaking?

A. Oh, right at the beginning, he was, he was yelling. He was fairly high-pitched in his, with his vocal cords. And I was, when I came out of the car and I said, "hold on, hold on," it was pretty much like that, it was like, you

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know, enough so that he can hear me from a distance outside.

Q. When you say, "like that," what are you referring to?

5 A. I mean, the whole, the way that I am saying, "hold on" right now, "hold on, hold on," like, you know, I wasn't yelling at him.

Q. So the volume you're using now?

10 A. Yeah. And I, I walked up to him, and because the confrontation was like instant, I started raising my voice, and I wasn't screaming or anything, but I was, you know, just keeping up to pace with him, and a few words were exchanged in regards to what he wanted me to do, and he accused me of, of - we were actually standing about four or five feet, feet apart, and he, he accused me of being drunk and, you know, I believe he said that I - he did say, that, "I can smell alcohol on you."

15 Q. Continue.

20 A. And I didn't really respond to that so much that I can remember anyways. I can't remember what I said about that. But basically say, like, you know, you, you just don't have right, have the right to continue to talk to me like this and make accusations. So I'm speaking somewhere along those lines. And he went on and said that he does have the right to do what he was doing because he is acting in his capacity to exercise the RIDE program or somewhere along those lines.

25 Q. Now, do you have any idea at this point of what's going on with the four people who were in your minivan, as you were initially talking to this officer?

30 A. No, I had my, I had my back to them at that point, so I didn't see what was going on.

Q. All right. So please, continue. What

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happens between you and the officer?

5 A. He actually ordered me a few times to get into the back of his vehicle and I think the last time, one of the last times that he said something to me while we were out on the street in regards to getting into the vehicle, I said, "No, I'm not getting into the vehicle because of the way you are talking to me." And he basically said that I'm, you know, I'm placing you under arrest. And I think he said....

10 Q. Did he tell you what for?

A. I think he said for impaired and, yes, he did say, for impaired. And at that time that he said that, he moved forward towards me and he had his hand out like this to grab this arm.

15 Q. Okay. Now, just if you can describe in words the gesture you just made showing what the officer did with his hands. We need it in words for the record because we're not videotaping.

20 A. Oh, okay, okay, right, okay. He raised his right hand and made a grabbing, my guess, grabbing, you know....

Q. Motion.

A. Well, yeah, grabbing motion with the way his hands was laid out, yeah, he went to grab me.

Q. Where?

25 A. My right arm. And he moved forwards towards me and I basically moved backwards, and I think I told him not to touch me.

Q. Continue.

30 A. From there we exchanged a few more words, you know, might have been some unpleasantries there, and at some point, sometimes it actually toned down a little bit and we started talking, and we kinda gradually move over to the

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5 sidewalk. I, actually, I think it was myself that started walking slowly over to the sidewalk and he was following me along. And from there, I think he might've - I don't know how we wound up getting to the back of the police car - he might've grabbed me and held me there or we just walked and continued to talk. And we got to the back of his police car, and he opened up - and this is on the sidewalk because there was no, no parking area there - it was because I had the first parking spot, so his, his vehicle was still on the road, and the sidewalk is there, and we came up to the back of his vehicle, and he opened the door of his vehicle, and he basically grabbed my arm or this, my right arm with his right, right hand and was trying to push me into the, to the vehicle. And I, I was just not cooperating because, you know, it, it was just an inappropriate behaviour as far as I was, I was concerned, he was grabbing me.

Q. Continue.

20 A. From there, I believe I few more words were exchanged, and it was getting a little bit heated again, and he continued to grab me a little bit, and I said, "Hang on, hold on, hold on a second here." I went to grab my phone and I said, I pulled it out, and I said, "Listen, I want to record this conversation," and I said specifically that, "let's, let's start this conversation over here, okay, let's, let's start this conversation over and let's record it." And as soon as I said that, he goes, "No, no." And he tries to grab my phone out of my hands, and I just basically brought it over to my left because my right shoulder, my right side was facing him and he was grabbing, trying to grab my phone, and I was keeping it over to the left away from him. And....

30 Q. Was there physical contact between you with this phone?

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A. Yes. He was grabbing at my hand and I was pulling away from it.

Q. Continue.

A. And from there, kinda backed up a little bit and, you know, he seemed to, seemed, seemed to be a little bit more still adamant about getting my phone, so I kinda chucked it towards my friends. I saw them over there, and just didn't want the officer to get my phone, 'cause it's like a personal computer with private information on it, so that's why I, I tossed it over there. And from there, a few more words were exchanged, and then out of the blue, and this is just probably about ten seconds after I tossed my phone, out of the blue, he pulls out pepper spray or whatever it was he was using, and he sprayed me in the face, and it just caught me off guard, and I could not believe what he did, and I said that. Like, I, I even swore at him, I just could not believe what the fuck he just did. And I just started getting fumed. And I looked over at my friends and I said out loud, "Are you guys fucking seeing this?" And I, I, I was just fuming at that time. And a, a few second, not more than a minute, maybe 30 seconds later another police officer shows up, and we were still kinda, you know, in each other's faces as far as communication goes, talking back and forth. And when the other officer showed up, and after being pepper sprayed, I just said, "Okay, enough, I'm just this is, it's coming to an end," and I just basically gave up.

Q. All right. You've told us about - I'm interested in physical contact between you and the officer in asking this question - you've told us about him, the officer, possibly touching your shoulder or, or grabbing you to lead you to the back of the car, you've also told us about him holding your arm during the, the time that the cell phone was an issue, any other physical contact between the two of you before the

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arrest that you can tell us about?

5 A. No. He tried to grab me out on the street. He, he did grab me by the arm for sure when we were by the police car, and was pushing me into the car, trying to get me in the car, and I wasn't ducking to go into the car, I was just standing straight up and not moving, just holding my ground.

Q. Did you ever touch the officer with your hands?

10 A. Never did.

Q. Did you ever push him?

A. I did not push him.

Q. Did you assault him?

15 A. I did not push him, I did not assault him. I'm guessing the pushing would be assault, I did not assault him in any way whatsoever.

Q. Now, is there anything else you remember saying to the officer about your rights, things like that, at the roadside that you haven't told us about?

20 A. I believe I did make comments in regard to, you know, just the way he was acting, and, and, you know, just being so inappropriate towards me that I said, you know, it's like you, you know, "you're, you're infringing on my rights here," somewhere along those lines.

Q. All right. Anything else on that front, sort of legally...

25 A. Hmm....

Q. ...or legal reference comments from you?

A. No. I just felt that my rights were being violated at that, that time, that's pretty much the only comment that I said at that time.

30 Q. Jumping forward to the police station, you were taken into a room to provide breath samples, correct?



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A. That's right.

Q. And you were introduced to an officer that we know to be Officer Bryant?

A. That's right.

Q. Okay. Tell us about the conversation you had with Officer Bryant.

A. Well, basically, he gave me all the details on how the whole breathalyzer process would unfold. And I was still actually kinda really pissed off at the time because my eyes were still burning, they were actually burning. I was placed in handcuffs in at the, in, when I was at the car, when he, just before he got me into the car when the other officer showed up, and my eyes were burning with my, with the handcuffs on there, and I was not able to address the pain in my eyes at all myself with the handcuffs on there, so I was really still ticked off about what had happened at that point and through the whole time that I had to spend in the vehicle with eyes burning and being handcuffed, and when we finally got to the police station, I was still rather in discomfort and was able to finally able to wash my eyes out which made things worse. And getting back to the where we were with the, the officer that was going to take the breathalyzer test, I basically said to him, I wanted to know where is the law written that I have to blow into the breathalyzer? Because again, I felt my rights were being infringed upon that I had to do something like that. And he mentioned that that it was in the **Highway Traffic Act**. And that is when I said that I just wanted to note for the record that the **Highway Traffic Act** does not apply to me. And I base that assumption on some legal research that I made in the past, and I stand by that research. It is legal, it's case law, and literally dozens of principles that support that argument. And I, I just made that comment that I, you know, it

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was something that I believe in wholeheartedly, that information. And then, I did blow into the breathalyzer, and I believe that I did so under protest.

5 Q. So you indicated your feelings about it, but you complied with the demand?

A. Yes.

Q. Did you mention your beliefs about the **Highway Traffic Act** and its applicability to anyone other than Constable Bryant that night?

10 A. No.

Q. Did you mention it to Constable Bowen at the roadside?

15 A. I said nothing of the sort at that at the roadside. I mean, the whole topic of that discussion was about the way he was just treating me.

Q. Do you know where Constable Bowen was when you were speaking to Constable Bryant at the police station?

A. I believe he was in that room, in the same room.

20 Q. Were you impaired that night?

A. No, I was not.

Q. All right. When - you've, you've mentioned that at the roadside Constable Bowen told you you were under arrest for impaired driving...

A. Uh-huh.

25 Q. ...that he was arresting you for impaired driving.

A. Yeah.

Q. Okay. When was it that you found out you were being arrested or charged with assault resisting police?

30 A. I found out that - well, they actually put me in a cell for a while while they - I think it was about two

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5 or three hours, and Officer Bowen actually came down while I was in the cell and talked to me through the bars, and said that, that we will - we, we're not charging with you impaired, charging you with impaired, but we are, I'm charging you with assault with resisting arrest, that was at that time.

Q. Do you know how long that is after you were stopped at the roadside?

A. I'd say, I'd say about three hours.

10 Q. And at any time between the stop at the roadside and, and this moment, the conversation with Constable Bowen through the bars in the cells, at any moment prior to that, did Constable Bowen or any other police officer indicate to you that you were either under arrest or being charged with assault resist arrest?

15 A. No.

MR. HICKS: Just one moment, please.

A. Would you actually mind if I actually grab my water there, is that possible? I just get a little dry mouth.

20 Q. Do you want water?

A. Yeah, if you don't mind, I had a cup there.

COURTROOM CLERK: I'll get it.

MR. HICKS: He has a glass already, thank you.

A. Thank you.

COURTROOM CLERK: You're welcome.

25 MR. HICKS: Q. When you were initially talking to Constable Bowen at the roadside, can you give us some idea of your physical demeanor, your balance, things like that?

30 A. Just standing right in front of him talking to him, you know, I might have been moving my arms around, speaking, you know, how a lot of people speak and move their hands around, but that was about it.

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Q. Were you swaying?

A. No, I was not. I was standing fairly straight.

Q. Thank you. Those are my questions.

MR. MORRIS: Thank you, Your Honour.

CROSS-EXAMINATION BY MR. MORRIS:

Q. Your belief that the **Highway Traffic Act** does not apply to you, you said that that came from your research, is that right?

A. That's right.

Q. And so, that believe that the **Highway Traffic Act** doesn't apply to you was not a new thing as of the date of this incident which was November 29<sup>th</sup>, right?

A. I'm sorry? Sorry, can you repeat that.

Q. Your belief that the **Highway Traffic Act** did not apply to you was not a new idea was not a new idea as of November 29<sup>th</sup>, the day of this incident?

A. No. I, I did the research a couple years ago.

Q. So you had believed for at least a couple of years that the **Highway Traffic Act** did not apply to you, is that right?

A. That's right.

Q. Is there a reason why it doesn't apply to you?

A. Is there a reason? I wouldn't say that there is a reason. I'm just using the law, I feel that my rights were being infringed upon and I'm just using the law to present an argument in the courts.

Q. Well, the law is the **Highway Traffic Act** as well, and it's....

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5 A. Well, no, not. From my perspective, the law is the **Canadian Charter of Rights and Freedoms** and the **Canadian Bill of Rights**, how the Nation of Canada was founded upon principles that recognize the supremacy of God and the rule of law, and I have prepared an argument that has got two dozen principles in it.

10 Q. The, with the thought that the **Highway Traffic Act** does not apply to you - and this had gone on - this has been a position for at least a couple of years now, is that right, for you?

A. Yes.

15 Q. Right. So that I take it a police officer stopping pursuant to the **Highway Traffic Act** would also not apply to you?

A. No. You know, I would hope, you know, if he's, if somebody, a police officer is going to pull me over, I'm not going to make an argument with the police officer, I will make an argument in the courts.

20 Q. Well, you heard the officer give evidence that he pulled you over originally to try to stop you, stop your vehicle for a sobriety check.

A. Right.

25 Q. Right. And he has that right, I am going to suggest, and you know that because you've done research, under the **Highway Traffic Act**, right?

A. From his perspective he has that right.

30 Q. And you know the **Highway Traffic Act**, a law that doesn't apply to you, allows that officer to stop you, I'm going to suggest, you would object to that process, that only makes sense, doesn't it, sir?

A. That I would object to that process, not necessarily.

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Q. All right. Well, which parts of the **Highway Traffic Act** do you accept and which do you reject?

A. Well, if I, if I'm - sorry, finish, go ahead. Are you finished?

Q. I asked my question.

A. Yeah, no, I didn't hear you, 'cause I spoke a little quick.

Q. I'm sorry, what?

A. I didn't hear you because I spoke out a little quick there.

Q. Oh. Do you reject all of the **Highway Traffic Act** or just some parts of it that just that you disagree with?

A. I, not, it's not a matter of me rejecting it. It's a matter of does it apply to me? Does it take away my natural rights? I'm, I have a complete argument based on that. I mean, I can't really get it into here. I didn't bring the argument with me, but the whole fact that I would not actually - well, let's put it this way, in regards to the situation, I would've, you know, if the officer would have approached me in a manner where he would have said, listen, excuse, sir, would you mind stepping over to the side of the road here so we can have a conversation, none of this would have happened. Now, as far as the other matters with the **Highway Traffic Act**, those are, you know, issues that I would take up on a much lower scale.

Q. All right. Are you what is termed as a, "freeman of the land," are you associated with that philosophy?

A. No, I'm not, no.

Q. And but the **Highway Traffic Act** does not apply to you. Do any other laws apply to you?

A. Well, I haven't done all my research on all

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the other laws, but I, like, I said, I believed that my rights were being infringed upon, and I have done the research.

Q. All right.

5 A. And that research isn't before the court today.

Q. Now when you stopped the car, your van, I am going to suggest, you ran from the van. I take it your - what's your position on that?

10 A. I did not run anywhere. I had nowhere to run, no reason to run. I wasn't doing anything wrong. I had a couple of beers over a span of a couple hours, it was, I wasn't doing anything wrong.

15 Q. You knew that was a concern, though, wasn't it, that you chose to drink alcohol and then chose to drive a van?

A. I guess, yeah.

Q. And I'm going to suggest to you that stopping the car or the van all of a sudden to run to the bank is pure nonsense, fabrication on your part, right?

20 A. No, it is not.

Q. Because you certainly didn't need to go to a bank, what did you need to go to a bank for?

25 A. It was the end of the month, and I put some money in there for rent. It's I have a, a, on a bank account where I use a checking account that takes up takes up to \$200 a day if I deposit it and over a span of four, or five or six days leading up to the end of the month, I usually go and, you know, deposit, \$200.

Q. This is about 11:30 at night, is that right?

A. That's right.

30 Q. And....

A. Before midnight.

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5 Q. And so, I am going to suggest that that you  
- that did not occur to you at that time to stop the van all of  
a sudden and go to the bank to make a deposit.

A. Well, that's the wrong suggestion, 'cause  
that's what I was doing, and....

Q. Because it's after you see the cruiser and  
the lights on that you stop the van and get out, isn't it?

A. I didn't see the lights on...

Q. Well, you said you saw it in the....

10 A. ...until after....

Q. Sorry, go ahead.

A. After - uh-huh - until I stepped out of my  
vehicle, that's when I first saw the lights on.

15 Q. All right. Well, you said before that that  
you saw the cruiser in your rearview mirror, right?

A. Yes, it was.

Q. All right. And you agree that choosing to  
drink alcohol and choosing to drive a car or a motor vehicle,  
or a van is of concern, right?

20 A. That's right.

Q. So you were looking the mirror, with that  
concern, you see a police car, and it didn't bother you at all,  
you didn't look a second time?

25 A. No. I was going to the bank, and when I  
took - I got out of the - out onto Lakeshore and was heading  
eastbound, I was in the left lane, I proceeded into the right  
lane, I did look into the rearview mirror and I saw the police  
officer getting onto the street, and he was coming up behind  
me, but in the opposite lane with no lights on as if to pass,  
and I just proceeded to the bank.

30 Q. I'm going to suggest you saw the lights on,  
you were really worried at that point, 'cause you knew you



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drank alcohol, you hit the brakes, you got out, and you ran away.

A. No.

Q. Jack even talked to you about taking a taxi, didn't he?

A. I, I believe he might've mentioned it.

Q. Yeah. And it's your van, right?

A. Right.

Q. You're the driver, right?

A. Yeah.

Q. And that's why Jack was talking to you, saying, "Listen, take a taxi," you know, "don't take the chance," right, and you said, "No, I'm okay, I'm going to drive," right, sir?

A. That's right.

Q. Right. And so, after, I'm going to suggest, you saw the lights, you got out of the van, you ran away, the officer ran after you.

A. I did not run anywhere.

Q. And the officer made the observations about you when you were talking to him, and you brought up the very same, you brought up the very same issue that you're bringing up now, that the **Highway Traffic Act** doesn't apply to you, that's what you told the officer, didn't you?

A. I didn't say no such thing. The topic of that discussion was the way he was talking to me, and he immediately started talking down to me in a yelling voice and making orders.

Q. And this officer, you're saying immediately - and he had no contact with you before this, right, we're agreed with that?

A. Have I ever seen him before, is that what

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you're saying?

Q. Any time this night or any time in the past, sure.

A. No, I've never seen him.

Q. All right. So this officer who is a stranger to you, you are a stranger to him, you're saying, immediately ran up and immediately told you, what, you're going to be arrested for impaired?

A. Didn't immediately do that, no. I, as I stated earlier, that I exited my police [sic], exited my vehicle, and that's when I noticed the police officer, and I walked over to him after he told me, ordered me, and yelling at me to do so, to hold it right there, you're getting in the back of my police car.

Q. Uh-huh.

A. And I said, "Well, hold on a sec, hold on." And I said that because he was very abrupt with me.

Q. Yeah. And, and you said that - so this is, this is without any contact with you, without any talking to you at all, this is just, "get into my cruiser," is that what you're saying he told you?

A. Yeah, right off the bat, that was his first words, yes.

Q. Okay. And then I am going to suggest that you, once there was a discussion with you, once the officer was closeup, he observed, he detected there was alcohol coming from your breath. That pretty, sounds pretty accurate, given what you say, right, sir, is there alcohol coming from your breath?

A. I'd say there is a couple of, I had a couple of beers and, yes, there was probably....

Q. Sorry?

A. I had a couple of beers over a period of two

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hours, and there probably was an odour coming from me, yes.

Q. Uh-huh.

A. But I find it hard to believe that he would have detected it when he was four, five feet away from me out in the middle of the street.

Q. And I am going to suggest that he, after talking with you, he put you under, placed you under arrest for impaired operation, right, told you you're under arrest.

A. At some point during that conversation, in the street, he finally said, yes, that, he said that he was placing me under arrest...

Q. And....

A. ...for impaired driving.

Q. "For impaired driving." And your reaction to that was one of pushing him, right, you didn't want to be handcuffed?

A. I, I did not push him. He went to grab me, and I walked backwards to avoid it because he was being aggressive.

Q. I'm going to suggest you were aggressive, you were yelling, you were yelling all the things about the **Highway Traffic Act, Criminal Code**, not, no laws apply to you, you were the aggressive one, right?

A. You are making the wrong suggestion, I did not do any of that.

Q. When he told you you were under arrest, what was your - what did he try to do, he tried to handcuff you at that point, right, sir?

A. When we were out on the street?

Q. Yeah.

A. No.

Q. When he told you you were under arrest for

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impaired operation.

A. Did he try and handcuff me when he told me that?

Q. Yeah.

A. No.

Q. All right. What's your evidence when he told you that you were under arrest for impaired operation?

A. What's my evident, evidence? My - don't really have any evidence, I'm just giving my testimony here.

Q. That's what I mean, what's your testimony, when he said you're under impair - under arrest for impaired driving, that's what he told you essentially, right, sir?

A. That's right.

Q. And did you agree with that arrest or did you not agree with it?

A. I did not agree with his entire approach. And like I said earlier, I asked him or I told him that this was just not proper police protocol.

Q. All right. My question was geared towards the arrest. This is an officer that told you, and you knew he was an officer, he was in uniform, right, sir, police officer?

A. That's right.

Q. Right. So he told you, "you're under arrest for impaired driving," and I'm asking you what's your, what your position was in terms of that arrest, did you accept that or did you not accept?

A. I did not accept it and I walked backwards when he tried to grab me.

Q. And you can understand, I am going to suggest, you should understand, that as a police officer places someone under arrest, they have to have them touched and under control, right, sir?

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A. I suppose so.

Q. All right. You reacted against that, didn't you?

A. I reacted against being arrested because the officer was treating me like shit.

Q. And the way you reacted against it is by physically making it difficult for him to handcuff you, right?

A. Like two steps backwards, making it difficult, yes.

Q. And making it difficult included pushing him?

A. I did not push him.

Q. Well, how else could you make it difficult for him to handcuff you?

A. I just walked backwards. Whatever transpired there, it wasn't like he was tackling me or anything.

Q. He grabbed your arm to bring it around to your back to handcuff you, right, sir?

A. He tried to grab my arm and I took two steps backward.

Q. And you resisted that.

A. That's right.

Q. Right. And he continued to try to grab your arm, right?

A. Yes.

Q. All right. And you continued to resist it, didn't you?

A. Well, he just did it once, and then we both stopped, and then we slowly moved over to the side of the road to the sidewalk gradually, both side-by-side, he did not try to grab me then, and then we slowly made our way back to the

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5 police car where he opened up the door and then he grabbed me again, and then he tried to push me into the vehicle. And all I was trying to do while I was talking to him was reason with him.

Q. I'm going to suggest you were so outraged at this, at an officer trying to make an, a **Highway Traffic Act** and the laws of this country apply to you, you were so outraged when you were pepper sprayed, it didn't even stop you from your aggression, right?

10 A. No.

Q. You didn't stop, you didn't go in the cruiser, you didn't anything, did you?

15 A. No. I am what I am saying here, when I say, "no," I don't agree with you what you're saying. I'm saying to you that, no, that's not the case. The officer was very abusive with me and all I was trying to do was, you know, calm the situation down to a certain point and talk to him.

Q. And it wasn't until....

A. And by me...

20 Q. Sorry, go ahead.

A. ...pulling out my phone was my way in protecting myself in what was being said there to avoid the he said, she said.

Q. It wasn't until the other officers came that you finally settled down and did as you were asked, right, sir?

25 A. Well, I wouldn't - I was never out of my mind angry until I got pepper sprayed, and it was soon after that that the other officer did show up. And I just was so, so disgusted with being pepper sprayed when it was completely unwarranted and, yeah, I just had enough and gave in.

30 Q. And you were taken into the breathalyzer room, and your evidence is that's the first time that you said

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the **Highway Traffic Act** does not apply to you, is that your evidence?

A. That's the only thing I said in regards to any kind of - yes...

Q. But...

A. ...that's the only time.

Q. ...but we've agreed this is something that, that's been on your mind for at least a couple of years, an opinion of yours for at least a couple years from your research, right?

A. Yeah.

Q. So I'm going to suggest to you that would not - doesn't make sense to be the first time that you would say it in the breath room, make sense the first time you would say it is when a uniform police officer tries to exercise his duty and, and investigate a matter, that's when you fire off at this officer, isn't it?

A. No. I've never said anything like any of these things to any other police officer in the past.

Q. So your evidence is that you said it in the breath room, this officer was in the breath room and that's where he picked it up, is what you're trying to say?

A. The only time I spoke of the **Highway Traffic Act** not applying to me was at the police station, and I was just note, making a note on the record, and as I said, I blew into the breathalyzer under protest...

Q. Right.

A. ...will deal with...

Q. Sure.

A. ...you know, whatever.

Q. No. My question, though, was that you told His Honour it's the officer was in the breath room, he must've

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heard it in the breath room and then he fabricated his notes, I guess, is what you're saying, is that....

5  
MR. HICKS: To be clear, he did not tell that to His Honour. I asked him where Officer Bowen was, and he said he believes that - and my client said, he believes he was in the room. He did not draw any conclusions that he expressed on the record about that, just to be clear.

10  
THE COURT: Yeah, that's the question, that's, that's what he is putting to him.

15  
MR. HICKS: But he, he - that - sorry, my friend put to my client that he had told Your Honour that Officer Bowen heard it and, and only heard it in the breath room, and, and not anywhere else. I just - what my client testified to, if it's being put to him, was not to that extent. He, he simply - all my client said, all I - I, I know where this is going, Your Honour, and I don't have any particular objection - my client's testimony in-  
20  
chief was, number one, he said it to Constable Bryant, number two, that's the only time he said, it, number three, Constable Bowen was present. He didn't say anything beyond that, and I think my, my friend's question suggested to my client that he said or, or claims that my client said much  
25  
more, and he didn't.

THE COURT: I didn't take the question like that.

MR. HICKS: All right.

30  
THE COURT: I just thought that Mr. Morris was putting to him that this is what he is basically arguing is that Officer Bryant [sic] heard this in the breath room and then made up that he said it



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at the roadside, I thought that was the question.

MR. HICKS: All right.

MR. MORRIS: That's, that's pretty much what I, I was saying to the witness, yes.

Q. Yes, that your suggestion is that the officer heard you say that in the breath room, is that right? Or not, tell me, I don't know.

A. I - he was there, he was present, so, yes, he did hear me.

Q. Okay. Well, I'm going to suggest to you he wasn't there, he wasn't in the breath room.

A. Well, that's not true.

Q. All right. Well, maybe we can play it and you can point him out, 'cause it was video recorded, right?

A. That's right.

THE COURT: Well, is there a video?

MR. MORRIS: Yeah.

MR. HICKS: Your Honour, this is the defence case now. If my friend wants to reopen his case, or put in evidence in reply, I leave it to him. But we're not tendering any statement.

A. And I, I said, I believed he was in the room, and....

MR. MORRIS: Well, I can play the video. I'm not seeking to enter a statement. We'll do it in reply, if that's the way Your Honour wishes it to be done. I'm just....

A. He was in the vicinity.

MR. MORRIS: Sorry, sir.

THE COURT: Wait, just wait.

A. I'm sorry.

MR. MORRIS: I, I'm just putting it to the witness

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10  
that his evidence that Bowen is in the breath room is inaccurate and I am giving him a chance to respond, and I, I would play that video without the audio. I'm not seeking split a case or put a statement in. I can do it so this witness has an opportunity to respond or I could do it by way of reply evidence.

MR. HICKS: That, that is my objection initially, Your Honour. My friend put to my - to the witness, my client, that he said Constable Bowen was in the room. My client didn't say that. His words were "he was there."

A. I believe.

MR. HICKS: That's my objection.

A. Sorry.

MR. HICKS: If it's being put to him in cross, then there is, there is wide ambit, but if you are going to repeat what my client's evidence was, then it has to be repeated to him accurately. He didn't say he was in the room. He said, "he was there." I took - I, I'd ask for a review of the record.

THE COURT: There where?

MR. HICKS: There is the question, where is there?

THE COURT: I don't know.

MR. HICKS: I, my, my friend is putting it to him, "you said he was in the room," he didn't say that, he said, it was there. And there should be an opportunity for my client to explain that. He hasn't yet said he was in the room.

THE COURT: Well, he just said, he wasn't in the room.

30

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MR. HICKS: "He was there."

MR. MORRIS: Exactly.

MR. HICKS: So, I'm, I'm objecting to my, my friend putting to my client that he said, "he was in the room." He didn't say that.

THE COURT: He just said it now. Your Honour, he just said it now. I, I, you know what, I - in Your Honour's hands. My suggestion to the witness is the officer was not in the room. My suggestion now and in submissions will be he just said he was in the room. I, I don't know what more to say about it and I have no further questions of this witness. Subject to Your Honour in terms of that last issue, whether I make an application in reply to show the video, whether my friend, who I'm sure seen the video, whether we can put that on consent evidence before Your Honour that he was not in the room, that might be another issue.

THE COURT: All right. Well we can always look at the transcripts to see what was the evidence in regard to where Officer Bryant [sic] was during the breath test. I'm just looking for my notes, with regard to Officer Bryant. I remember him saying he didn't remember whether he was there or not in the breath room. But I just wanted to find my note on that. Do you recall?

MR. HICKS: My recollection is the answer was he was there, can't remember whether he was actually in the room or not, but he was there, that being the, the gist of it, as opposed to saying, yes, he was in the room, which is what my friend put to my client as, as he said. But I have obvious

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question in reexamination, if I can, Your Honour?  
THE COURT: Well, I want to make sure this issue  
has been resolved.

MR. HICKS: Yeah.

THE COURT: Is there still an issue?

MR. HICKS: I, I'm anticipating that my, my friend  
is going to stand up and say that there are some  
reliability or credibility issues on the, on this  
point, and I'd like an opportunity to in, in  
reexamination to discuss it with my client.

THE COURT: Mr. Morris, anything?

MR. MORRIS: Nothing, sir.

THE COURT: Okay then.

MR. HICKS: All right.

SHAWN CASSISTA:

RE-EXAMINATION BY MR. HICKS:

Q. So when you were talking to Constable  
Bryant, the two of you were in the breath room, correct?

A. That's right.

Q. Where was Constable Bowen?

A. You're always focussed on the officer, but I  
know Constable Bryan [sic], I do believe that the other officer  
was always in the vicinity. There was actually a desk out  
there in the hallway, like, you know, about 20 feet, not even  
20 feet from the door of the breathalyzer room, and he was  
there. Here was always in that room, or he was in that, you  
know, like, I, I don't know if he walked in, I can't remember  
if he walked into the actual breathalyzer room or not, but he  
was definitely in the vicinity.

MR. HICKS: All right. Nothing further, thank

you, Your Honour. I have two other witnesses I intend to call.

THE COURT: Okay. Thank you, sir.

MR. HICKS: First is Jason ██████. He is just outside, I can collect him.

...INTERRUPTION RE UNRELATED MATTER.

MR. MORRIS: Oh, counsel is here, if I could just interrupt?

...INTERRUPTION RE UNRELATED MATTER.

THE COURT: Okay.

MR. HICKS: This is Jason ██████.

THE COURT: Please, step into the box.

JASON ██████ SWORN

EXAMINATION IN-CHIEF BY MR. HICKS:

Q. Mr. ██████, how old are you?

A. Thirty-one years-old.

Q. What do you do for a living?

A. I now work at a factor. I used to work at a restaurant.

Q. You are here today as a result of receiving a summons to witness or we often refer to as a subpoena, is that correct?

A. That is correct.

Q. How did that come to be in your hands, who did you get it from?

A. I, a officer of the court brought it to my apartment.

Q. And on the night of November 29<sup>th</sup>, 2012, you know that my client, Shawn Cassista, was charged with criminal offence?

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A. I do.

Q. Did you see him that night?

A. I did.

Q. And were you present when he were arrested?

A. I was.

Q. Were you interviewed by the police and, if so, did you provide a written statement?

A. Yes, I did.

Q. Have you had an opportunity to review that statement today?

A. Yes, I have.

Q. All right. Where did you first see Mr. Cassista on the night of November 29<sup>th</sup>, 2012?

A. We first met at the Old Stable Pub in Port Credit.

Q. And how did the two of you come to be in each other's company?

A. I called him up when I finished work, asked him what he was doing, we decided to go play darts for the evening, something we did regularly on Thursday nights after I finished work. So just asked him for some time to get prepared, went over.

Q. What time did you get there?

A. About ten after 11:00.

Q. And was Mr. Cassista by himself or keeping company with other people?

A. There was a couple others.

Q. Did, did you know those people as of that night?

A. I did.

Q. Who were they?

A. Eugene [REDACTED] Kathy and Jack [REDACTED].

Q. All right. Did you see Mr. Cassista drink any alcohol at that first establishment?

A. I only witnessed him drink a quart of a beer.

Q. Did you consider the issue of whether he was feeling any effects from the alcohol? Did he appear impaired or drunk?

A. Not at all, sir.

Q. So what happens once you get there?

A. I showed up. We were talking about going over to another establishment where we play darts. We were - I was at the bar maybe 15, 20 minutes - I didn't have a watch - but after that we got into Shawn's van and proceeded to go to the other bar, Caven Alley.

Q. All right. And when you say, "we got into the van," is that the people you've spoken of along with Shawn?

A. Yes, all of us.

Q. Five in total?

A. Yes, sir.

Q. All right. So what route do you take to get there?

A. Soon as we get into the van, we made a left onto Lakeshore, so we were heading east, Shawn advised us that he needed to stop off at the bank so he can deposit money to pay his rent, so we stopped off at the CIBC on Stavebank and Lakeshore.

Q. While on - sorry, what's the distance from where you first get on Lakeshore to Stavebank?

A. It's not even one traffic light, so maybe a hundred metres.

Q. Okay. And do you recall what Shawn's speed was while he was on Lakeshore, say his maximum speed?

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A. Fifty kilometres per hour.

Q. The right turn he made on Stavebank, describe that turn?

5 A. A normal right turn. Turn as if you would slow, slow down, make a turn as if you are doing a normal drive.

Q. Was it a hard turn?

A. No. Just a normal steady right turn.

Q. Any tire noise?

10 A. No, sir.

Q. Okay. What happened, once he made the turn onto Stavebank?

15 A. He parked in the first available parking spot. He got out of his van and proceeded to walk towards the bank.

Q. Where was the bank from his car?

A. Right across the street about 35 feet away.

Q. Driver side across or passenger?

A. Driver side across.

20 Q. Okay. What happened next?

A. As soon as he got out of the vehicle, at that point, that is when I turn back and witnessed that the police, there was a police officer behind with his lights turned on.

25 Q. What is it that drew your attention to the police officer being present?

A. I just saw the lights start flashing.

Q. Okay. Continue, what happened?

30 A. At that point, I saw the officer get out of the vehicle, approached Mr. Cassista. He didn't - I couldn't hear what was being said, but it appeared to be very hostile - Shawn was just trying to calm down the situation, just talk to



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him standing right there.

5 Q. Okay. When the police officer and Shawn Cassista are standing talking, where are they in relation to the vehicle you're in, Shawn's vehicle?

A. Shawn was standing right beside his vehicle, the officer was in front of the police cruiser.

10 Q. All right. Now, did Shawn proceed to the bank?

A. No.

10 Q. Did he....

A. Once the officer, once the officer came out of the vehicle, Shawn stop to talk to the officer.

15 Q. How far away from the vehicle, Shawn's vehicle was he standing, Shawn standing?

A. Maybe not even five feet.

15 Q. Okay. Did Shawn run?

A. No, sir.

20 Q. So continue, what happens?

A. At that point, that's when I got out of the - Jack ██████ first got out of the vehicle, I proceeded to get out of the vehicle, hear what was going on. Shawn continued trying to talk to the officer about what was happening. The officer was approaching him trying to put Shawn under arrest for, for - say - accusing him of being impaired.

25 Q. Okay. How did Shawn react to that?

A. Just tried talking to him.

30 Q. Okay. Did you see any physical contact between the officer and Mr. Cassista?

A. No, sir.

30 Q. Continue, what happens?

A. At that point, I know Shawn tried to speak to the officer, he wanted to record the conversation they were

having, didn't get the ability to. At one point, Shawn ended up dropping his phone, I had picked it up for him.

5 Q. Where were the officer and Shawn when this occurred?

A. They were in the street. I was on the sidewalk about 15 feet away.

10 Q. And during this conversation, can you give us some idea of the volume of Shawn's voice and the volume of the officer's voice?

A. The officer was yelling at Shawn. Shawn was just trying talk to him in a rational - as if you and I are speaking right now.

15 Q. All right. And so Shawn dropped his phone, you observe that, anything else you recall between the officer and Shawn?

20 A. As after Shawn had dropped his phone, when I went and picked it up, I had noticed at that point, the officer had went to go get Shawn again. I, I know, I witnessed the officer actually pull out something and spray Shawn, and that's when Shawn ended up just kinda giving in, allowing the officer to place him in the handcuffs.

25 Q. All right. Was your attention ever distracted? Were you ever looking away from the officer and Shawn from the time that you got out of the, the vehicle?

A. The only time I was not in line of sight with the officer and Shawn is at the time I went to pick up Shawn's phone for him.

30 Q. Did you ever hear Shawn saying anything to the officer, any of the utterances that might have been said by Shawn?

A. The only thing I, I recall is Shawn talking about proper police procedures.

Q. And did you see Shawn push the police officer?

A. No, sir.

Q. How was Shawn's driving? We've talked about the speed, but how would you describe his driving?

A. He was fine, wasn't swaying through lanes. He was driving at the normal rate of speed. Eyes were always on the road, as if he was just going to work or any normal day-to-day travelling.

MR. HICKS: All right. Thank you, sir, those are my questions.

CROSS-EXAMINATION BY MR. MORRIS:

Q. You have known Shawn for how long, sir?

A. Approximately three years.

Q. And he is a good friend of yours?

A. We hang out quite a bit.

Q. And you at least play darts together, right?

A. Yes, sir.

Q. All right. So you are not strangers, right?

A. Not at all.

Q. Okay. And I am going to suggest to you that you made a statement is that correct? You remember doing that?

A. Yes.

Q. And you've read over your statement?

A. I did.

Q. Let me, I'll put the statement to you, I'll give it to you if you want to see it, but here is what I understand two lines say - on page one, for my friend - "They started scuffling. Shawn was trying to pull away." Is that accurate?

A. What I saw, when I went to pick up the

phone, I could hear them arguing.

Q. Right.

A. As I saw, what I saw when Shawn pulled away was the officer making the attempt to arrest him, because the whole, I could hear the officer trying to place him under arrest, but I did not see any physical contact.

Q. Well, "they started scuffling," that indicates that you saw some physical contact, doesn't it?

A. I saw, like I said, Shawn was pulling away, I could see that part. That's how I explain to the officer.

Q. You couldn't hear while you were in the van...

A. No.

Q. ...what was being said, but you are sure that Shawn was trying to calm the situation, is that right?

A. When I got out of the vehicle, that's...

Q. Right.

A. ...Shawn was talking in a rational voice. He was not yelling, he was not anything like that.

Q. Well, you're putting it in two separate places now, in a vehicle and out of the vehicle. I'm suggesting when you were answering Shawn's lawyer, you said you could not hear what was said, but "Shawn was...trying to calm down the situation."

A. As I was inside the, I could tell - well, as I was inside the vehicle, I could not hear what was being said at all, that is correct. When I got out of the vehicle, that's where I could hear, once I was on the street.

Q. But you didn't say that to the lawyer, you....

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MR. HICKS: I disagree, once again, Your Honour, what being put to in cross-examination what he said, and it's been put to him inaccurately. He did not say that he could hear what was being said when he was inside the vehicle.

MR. MORRIS: I agree with that. And, you know, if my friend had just let me finish my question, that was my whole question.

THE COURT: That's what the Crown said, he, he said to him, "you couldn't hear him while you were in the vehicle." And he, and the witness said, right.

MR. MORRIS: Right.

MR. HICKS: But what, what my friend just started out saying to the, the witness, I disagree that the witness said that.

THE COURT: What's the question again?

MR. HICKS: If my friend wants to say it again.

MR. MORRIS: Q. The point is this, you said to His Honour, I am going to suggest, that you could not hear what was said, but "Shawn was...trying to calm down the situation." You said it to Shawn's lawyer in one sentence and you said it as if you saw it and, and from, from inside the van.

MR. HICKS: I disagree.

MR. MORRIS: Well, that's fine. He is not the witness. Your Honour, with respect, I mean, I ought to be able to at least ask a question without an interruption.

MR. HICKS: But if he, he, Your Honour....

THE COURT: There is a dispute about whether or not you are putting his evidence to him correctly.

MR. HICKS: Yes.

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5  
THE COURT: We have to resolve it.

MR. HICKS: He never said as in one sentence that he couldn't hear from inside the car, but he knows Shawn was trying to calm it down. I disagree that he said that. The witness was very clear, "I couldn't hear what was said while I was in the car, once I got out, Shawn was being calm and trying to calm it down." My friend is suggesting to him that he has testified that these two things were at the same time, and I, I submit it's an unfair question improperly characterizing his testimony.

10  
THE COURT: Well, I can't see anything in my notes that would help.

15  
MR. MORRIS: That's fine.

THE COURT: So we have to, I guess, listen to the tape.

MR. HICKS: I, I, if it's an issue, I'd, I'd ask for that, please.

20  
THE COURT: All right. Well, this might take some time.

MADAM REPORTER: Oh, it shouldn't terribly, Your Honour.

MR. HICKS: I'm wondering if the witness should be excused for the - or, or?

25  
THE COURT: Yes. Well, I'm trying to - I mean, we're going to have to listen to a lot of this....

MR. MORRIS: On my notes, if it helps at all, for Madam Reporter, it was after the witness said he saw lights flashing.

30  
THE COURT: Was this in chief or in cross-exam?

MR. MORRIS: In chief.

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MR. HICKS: In chief.

MADAM REPORTER: One moment, while I am looking for it.

THE COURT: Okay. Could you step outside until we call you back, sir.

A. Yes, sir.

THE COURT: Thank you. Please, don't discuss the case with anyone while you are out there.

...WITNESS EXITS COURTROOM.

...PLAYBACK PROVIDED AS REQUESTED BY THE COURT.

[A.] ...believe there is a police officer behind with his lights turned on.

Q. What is it that drew your attention to the police officer being present?

A. I just saw the lights start flashing.

Q. Okay. Continue, what happened?

A. At that point, I saw the officer get out of the vehicle, approached Mr. Cassista. He didn't - I couldn't hear what was being said, but it appeared to be very hostile - Shawn was just trying to calm down the situation, just talk to him...

MR. MORRIS: Right there, Your Honour.

...PLAYBACK PROVIDED:

[A.] ...standing right there.

Q. Okay. When the police officer and Shawn Cassista are standing talking, where are they....

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MR. MORRIS: That's, that's the, that's the phrase.

THE COURT: Is that it?

MR. MORRIS: Yes.

MR. HICKS: But, but, if we could hear the rest of it.

...PLAYBACK PROVIDED:

[A.] ...approached Mr. Cassista. He didn't - I couldn't hear what was being said, but it appeared to be very hostile - Shawn was just trying to calm down the situation, just talk to him standing right there.

Q. When the police officer and Shawn Cassista are standing talking, where are they in relation to the vehicle you're in, Shawn's vehicle?

A. Shawn was standing right beside his vehicle, the officer was in front of the police cruiser.

Q. All right. Now, did Shawn proceed to the bank?

A. No.

Q. Did he....

A. Once the officer, once the officer came out of the vehicle, Shawn stop to talk to the officer.

Q. How far away from the vehicle, Shawn's vehicle was he standing, Shawn standing?

A. Maybe not even five feet.



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Q. Okay. Did Shawn run?

A. No, sir.

Q. So continue, what happens?

A. At that point, that's when I got out of the - Jack [REDACTED] first got out of the vehicle, I proceeded to get out of the vehicle, hear what was going on. Shawn continued trying to talk to the officer about what was happening. The officer was approaching him trying to put Shawn under arrest for, for - say - accusing him of being impaired.

MR. HICKS: Okay.

MR. MORRIS: Okay.

...PLAYBACK PROVIDED:

Q. How did Shawn react to that?

A. Just tried talking to him.

Q. Okay. Did you see any physical contact between the officer and Mr. Cassista?

A. No.

MR. HICKS: That's good for me.

MADAM REPORTER: You have to tell me stop.

THE COURT: Is that it? Sorry?

MR. MORRIS: Yeah. So in my respectful submission - are we back on the record?

MADAM REPORTER: Yes, Your Honour, we are.

MR. MORRIS: Thank you. In my respectful submission, the witness said, he could not hear, but what it, that what was said, but he - the

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officer appeared to be hostile, but the defendant was trying to calm him down. And the next question from my friend was, when you were in the vehicle, where were these individuals? And he says, well, the defendant was by the van. And, and then later on, he says, he got out. So he certainly got out, there is no question. My suggestion, and to the witness is, and my submission is, before he got out, he told counsel and told Your Honour that he was in the van, could not hear what was said, but was trying to, but this defendant was trying to calm things down. And my whole question would be, why are you saying that if you can't hear what was being said? And my respectful submission would be because you're biassed as a witness. But that's where I was going, so no question he got out. But when he said that piece of evidence, he was in the van. Even in answer to my friend's question, "where were you in the van?" Or, "where were they when you were in the van?"

25  
THE COURT: Okay. So the question is "if you were in the van, you couldn't hear what was going on, how do you know that he was trying to calm things down?"

MR. MORRIS: Sure, yeah.

MR. HICKS: No objection to that question, Your Honour.

THE COURT: Okay. Thank you. Thank you, Madam Reporter. Okay, please, call Mr. [REDACTED] in.

30  
COURTROOM CLERK: What's his name, [REDACTED]?

MR. HICKS: I've got him.

COURTROOM CLERK: Okay.

JASON [REDACTED]: RECALLED

CROSS-EXAMINATION BY MR. MORRIS:

Q. So I am going to suggest to you, sir, that when you said to Shawn's lawyer and her - and His Honour that the officer who you said appeared to be hostile, but Shawn was trying to calm it down, you couldn't hear what was going on at that point...

A. Not inside....

Q. ...'cause you were in the van, right?

A. Correct, not inside the van.

Q. And, and so - and there is five other, four other people in the van?

A. Yes.

Q. All right. And so, you really have no way, nothing to suggest why you were saying that Shawn is trying to calm it down because you don't, can't hear what's going on, right, sir?

A. Not while I was inside the van, no.

Q. All right. And my suggestion is that you said that because you're a friend of Shawn, okay, consciously or subconsciously, you're a friend of Shawn and biased towards and trying to help your friend, right, you agree with that?

A. If that's how I said it, yeah, I guess you could say that.

Q. All right.

A. I didn't mean to, but....

Q. No, no, that's very fair, that's why I said, "consciously or subconsciously," yeah. And you heard the officer tell Shawn that he was under arrest for impaired,

right?

A. Once I was outside of the vehicle.

Q. Right. Once you got outside.

A. Got out, yes.

Q. And you heard Shawn - want of a better description - rejecting that, saying, "no," right?

A. I heard them - that when Shawn was talking about proper police procedures and stuff.

Q. Yeah. All right. Thank you, sir, those are my questions.

THE COURT: Thank you. Any re-examination?

MR. HICKS: Yeah, just on one point.

RE-EXAMINATION BY MR. HICKS:

Q. When you were still in the vehicle, before you got out...

A. Uh-huh.

Q. ...could you hear any of the words that were being said by either Shawn or the officer?

A. No, sir.

Q. Could you hear either their voices at all?

A. I could hear things, but I couldn't make out what was being said.

Q. Could you hear Shawn's voice?

A. Not really.

Q. Could you hear the officer's voice?

A. Vaguely.

Q. And this is while you were still in the, the vehicle?

A. This is while still in the vehicle, that's when I started getting out.

Q. Shawn was right beside the car still?

A. Yes, sir.

Q. All right. Thank you.

THE COURT: Thank you very much, sir.

A. Thank you, sir.

MR. HICKS: Your Honour, one other witness who I won't be long with, but I see the time, and the staff hasn't had a break.

THE COURT: Yes. Do you think we're going to need another day then for submissions or something?

MR. HICKS: I don't think submissions will take very long. Maybe we if we need maybe one hour on another day. My submissions should be 10 minutes, 15 or 20 with questions.

MR. MORRIS: Same for me, Your Honour.

MR. HICKS: And I do have some questions and maybe this will give me an opportunity to provide the cases to the court in advance.

THE COURT: Okay. So well you have to, if we have to get another date then, why don't you go do that now.

MR. HICKS: All right.

MR. MORRIS: Five minutes then, I'll get my calender.

THE COURT: It takes a while.

MR. MORRIS: Thank you.

MR. HICKS: Thank you.

MR. MORRIS: And we - so, I, I understand my friend to say we expect to get back here soon and get that other witness finished?

MR. HICKS: Yes. It's just a....

MR. MORRIS: So the case is in before Your Honour and then it will be for submissions on the next

day.

THE COURT: Well, why don't we get the witness finished first and then you can go set the date.

MR. MORRIS: All right, sure.

MR. HICKS: All right. Thank you.

MR. MORRIS: Want to do it that way, yes.

MR. HICKS: So that's Jack [REDACTED], again, he's just outside, Your Honour.

JACK [REDACTED] SWORN

EXAMINATION IN-CHIEF BY MR. HICKS:

Q. Mr. [REDACTED], how old are you?

A. I'm 48-years-old.

Q. Sir, what do you do for a living?

A. I'm a bartender.

Q. Do you know that on November 29, 2012, Mr. Shawn Cassista was charged with criminal offence?

A. Yes. Well, we had a - I heard something like that, but I'm not sure.

Q. Were you with him that night?

A. I was with him, yes.

Q. You are here today as a result of receiving a summons to witness or what we often call a subpoena?

A. Yes.

Q. Who did you receive it from?

A. From an officer.

Q. Okay. On the night this happened, you were present at the time that Mr. Cassista was arrested by a police officer?

A. I was present, yes.

Q. And the police interviewed you, and you gave

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a witness statement in writing, correct?

A. She wrote it, yes.

Q. And but you reviewed it and signed it?

A. I did, yeah.

Q. And I'm just going to ask you, sir, if you can, the microphone doesn't amplify, sir, keep your voice up, and talk to me as if I am at the back of the courtroom, okay.

A. Okay.

Q. Thank you. So you, have you had a chance to review that statement today?

A. I didn't really wanna look at it, 'cause I know already what I, I know exactly what happened pretty much to my best knowledge. I know I have it in my head, it's been in my head for a while.

Q. All right. So on that night, when do you first meet up with Mr. Cassista?

A. The first night there, I met him up with, um, we're at the Old Stable, and....

Q. What time is that?

A. I'm not quite sure of the time. Could've been 7:00 or 8:00 maybe.

Q. Okay. And did the two of you were you alone or was there anyone else there when you first met him?

A. No. I had some of my friends there. There was my friend Katherine, Jason, Eugene, and....

Q. And were you all together right from the start or....

A. No. We came in certain parts, but we all supposed to meet over there, and I go further down the street, and, and play some darts at a, at a different bar.

Q. While you were at this first place, did you consume alcohol?

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A. I had, yes, I had two beers.

Q. And did you observe Mr. Cassista to consume alcohol?

A. Yes, I have.

Q. And do you know what he had to drink?

A. Well, when I go there - he, he normally doesn't drink very much, but when, when he, when I got there, he was just finishing off one, and he ordered one more, that was it.

Q. One what?

A. Beer.

Q. And do you recall if it was in a bottle or a glass?

A. Is in a glass.

Q. Okay. So at some point, the four of - sorry, the five of you are together, that you mentioned.

A. Yeah.

Q. And as we know, Mr. Cassista around 11:30 at night is pulled over by the police officer, that's not in issue. I take it the five of you left?

A. Yes. We, we, we all left.

Q. Okay. And what did you do as you were leaving? What's the plan, how are you going to get to where the plan is?

A. Well, Shawn was going to get in his car and go down there and drive down. First he had to stop over at the bank to pick up some money.

Q. So he is in his car, where are the rest of you?

A. We're, we're in the car also.

Q. What route did he take?

A. Lakeshore.



Q. And how was his speed on Lakeshore?

A. It was normal.

Q. Was he exceeding the speed limit?

A. He was doing, doing the speed limit, yes.

Q. Where were you seated in the vehicle?

A. I was seated in the front.

Q. Passenger side?

A. Passenger side, yeah.

Q. Okay. He, at some point comes to a stop,  
where does he do that?

A. Then he, he pulls over, parks his car, and  
walk, and walks toward the, the bank, the CIBC bank.

Q. Did he get to the bank?

A. No. The officer stopped him. Parked, and  
stopped right in the middle of the intersection and kinda ran  
after him kinda thing and he is kinda startled Shawn a bit.

Q. Was Shawn running?

A. No, he was actually walking towards the, the  
bank.

Q. Okay.

A. He parked his car and walking over towards  
the bank.

Q. How far did Shawn get?

A. Not very far. The cop called him over and  
he came on over.

Q. Can you say in steps or distance how far  
Shawn got from the car towards the bank before stopping?

A. Well, I don't know, I don't know how far he  
was. Well, from the car, from his car over the bank you mean?

Q. How far along did Shawn go before?

A. Well, it was, I don't know, maybe ten,  
fifteen feet or so.

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5 Q. Okay. So the officer is there, when did you first become aware of the officer?

A. Well, when he, he stopped right in the middle of the intersection, start chasing Shawn, and then Shawn just looks at him, says, hey, what, what's going, kinda thing so.

Q. Are you still in the car?

10 A. I'm still at the car, but I just looked over, so I, I wanted to come out, and I, I asked everybody else to come out to see what's going on here, 'cause as being a witness or whatever.

Q. So how long after Shawn gets out of the car do you get out of the car?

A. About maybe, maybe 30 seconds.

15 Q. Okay. And tell us what you see?

A. I seen a, I seen the cop was talking, being a little bit aggressive, trying to - sorry, yeah, the officer was I can say, like, the officer was coming towards him, talking to him, asking him, about the, a, a, he say to him, oh, um - yes, give me second, please.

20 Q. All right.

A. Um, so he talk....

THE COURT: You okay, sir?

A. Ah, I just feel a little bit light, lightheaded, yeah.

25 THE COURT: Do you want some water or something?

A. Yeah, if you have some, please.

COURTROOM CLERK: It's okay, I'll....

MR. HICKS: I already got it.

A. Thank you.

30 MR. HICKS: And I can just note for the record that for perhaps about 30 seconds Mr. ██████ was

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just sitting quietly, and then Your Honour asked him if he was okay.

THE COURT: Are you okay to proceed?

A. I think so.

THE COURT: If you're not feeling well, we can come back another day.

A. No, no, no, no.

THE COURT: You all right?

A. Yeah, I'm fine.

THE COURT: Okay.

A. So there was a bit of a, a scuffle. The officer tried to talk to him as in he wanted to know if he was drinking or whatever, where he coming from, and stuff like that. And then there was - the, the officer was getting into Shawn's pockets and stuff, and there was certain things that looked kinda wrong what he was doing, so Shawn just says, "hold on a second, I have to get this on tape, let me get my phone, I have to record what's going here, because it appears that you're not, you, you, you're not, you're not doing your duty as, as, you know, this is not the proper procedure as officer" kinda thing.

MR. HICKS: Q. You talked about the officer's demeanor, now is Shawn's demeanor during this time?

A. How was Shawn's, what, what....

Q. Demeanor. So you talked about the officer, seeing, I think you used the word, "aggressive."

A. A little bit, he was a bit aggressive, yes.

Q. All right. What about Shawn, how was he acting?

A. Shawn was just saying, "hold on a second, what are you doing?" Just what Shawn was trying to do was he was, he was trying to record on his, on his, on his phone what

5 the officer was doing, and then as he was doing that, the, the officer sprayed him with something. I don't know what. It was burning his eyes, anyway. I don't know whatever, whatever it is they use, I don't know, mace or whatever it was. But and then Shawn just threw the phone over to us kinda thing to keep whatever evidence was on it. I don't know if, if he captured anything or not.

10 Q. Before the spraying, did you see Shawn make physical contact with the officer or the officer make physical contact with Shawn?

A. Shawn, Shawn never touched the officer, no.

Q. What about the officer touching Shawn?

15 A. Well, he kinda, well, he was patting his pockets and stuff and checking him out and coming towards him, yes.

Q. Okay. Any other things that recall hearing the officer or Shawn say to each other?

20 A. No. No. Not that I can recall. I just, I just remember seeing nine cruisers a short time after. It was nine cruisers all over the roads came on down, that's - sorry.

Q. Were you feeling any effects from the alcohol you had consumed that night?

A. No.

25 Q. And did you have any impression of Shawn and whether he was affected by the alcohol he had consumed?

A. No.

Q. All right. Did he appear to be affected by alcohol?

A. No.

30 Q. You've mentioned that the speed of his driving, how would you describe his driving?

A. Speed limit, doing the speed limit.

Q. The, the, the stop he made, what street did he stop on?

A. On Stavebank.

Q. And had he turned left or right onto Stavebank from Lakeshore?

A. Right.

Q. Right?

A. Yes.

Q. Can you describe that right turn?

A. It was he put his signal on and he just turn smoothly, like normal.

Q. Was it a hard turn or an aggressive turn?

A. No. No, it wasn't, no.

MR. HICKS: Thank you. Those are my questions.

CROSS-EXAMINATION BY MR. MORRIS:

Q. How long have you known Shawn, sir?

A. For about five years.

Q. And you were going in his van, is that right?

A. That's right.

Q. And you were, you were drinking alcohol at, at the...

A. Old Stable.

Q. ...Old Stable as well, right, sir?

A. That's right.

Q. Yeah. Do you have a, do you have great memory of what, what was going on really, in terms of the details on this issue, in this matter?

A. Fairly, fairly good detail, yes.

Q. Is it? Okay. So what was the - you said he turned right, he is on Lakeshore?

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A. Uh-huh.

Q. And then he turned right onto which road?

A. It was on, onto Stavebank.

5 Q. Stavebank. And how long did he drive on Stavebank before he stopped?

A. He just went like a few, a few cars over, maybe like two, two or three parking lots over.

Q. Is that, is that...

A. Parking, parking spots.

10 Q. ...is that where he was going the speed limit?

A. No. He was going the speed limit on Lakeshore. He was doing the speed limit all around since he was in the car.

15 Q. What's the speed limit on Lakeshore?

A. I guess it's like 30, 35, or, I'm, I'm not sure exactly what it is, sir.

Q. Oh, all right. What's the, what's the speed limit on....

20 A. I don't drive, I don't, don't really drive, sir, so I don't, I don't know.

Q. Oh, all right, okay. And, and then the other road is Staven [sic]?

A. Stavebank.

25 Q. Stavebank. You wouldn't know the speed limit there, either, I guess?

A. That's a small street.

Q. Yeah. What does that mean?

A. Well....

Q. Do you know the speed limit not?

30 A. I - no, I'm not aware, sir.

Q. Oh, all right, okay. But you said that he

was going the speed limit, but you don't know the speed limit.

A. He was driving normal. He was going with the flow of the traffic.

Q. All right. He was going normal, but if you say that he was going the speed limit, and then you tell His Honour you don't know the speed limit, are, are you just saying that because you, you're trying to help your friend, Shawn?

A. No, I'm not, sir.

Q. Why would you say, "he is going the speed limit," if you don't know the speed limit on either of the roads?

A. He is going with the flow of the traffic. I said, he pulled in, pulled out.

Q. You remember whether there was traffic there?

A. There was some cars.

Q. Yeah. It's 11:30 at night, sir, right?

A. Uh-huh. It wasn't 11:30 at night. Well, maybe it was 11:30. I'm not sure what time it was, but....

Q. You don't know what time it was?

A. I'm not sure, sir.

Q. All right. Do you remember talking to Shawn about taking a taxi instead of driving his own car, vehicle?

A. I mentioned that to him.

Q. Yeah. And....

THE COURT: Sorry?

A. I've, I've mentioned it to him.

THE COURT: Thank you.

MR. MORRIS: Q. Because you are a bartender, I guess, right, is that some of the reason?

A. Well, little bit. No, but I'm thinking that this way we could we all could fit in the, in there, and in the

cab and just go down the street and for how, however long we're staying for.

5 MR. HICKS: Your Honour, I object to the, the way my friend is, is behaving right now. He is looking at the witness, smiling, what I would call a, a mocking smile and shaking his head, "no," as the witness answers the question.

10 MR. MORRIS: Well, just let me complete the question.

Q. Are you saying that....

MR. HICKS: Well, the....

15 THE COURT: Or no, is that a technique of cross-examination, or it's a....

MR. HICKS: It, it's, is mocking the witness as he answers the question. It's a form of intimidation. Your Honour, I vehemently object to my friend's behaviour.

20 THE COURT: Well, I didn't see anything, so, Mr. Morris what do you say?

MR. MORRIS: I, I, I don't know that I was doing anything, but I certainly never been accused of being intimidating, but....

25 THE COURT: Okay, well, okay, I did, I didn't see anything. Please, don't do anything that would mock the witness or...

MR. HICKS: Big smile on his face.

THE COURT: ...or intimidate him, other than with your questions.

MR. HICKS: Perhaps we could ask the witness if he saw the, that's what Mr. Crown Attorney was doing.

30 THE COURT: Well, I mean, cross-examination is designed to be intimidating. I mean, you know,



there are limits, of course, but....

MR. HICKS: This - the....

MR. MORRIS: I, I don't know, with the greatest of respect to my friend, if I am going to be permitted to complete cross. I mean, I don't know how many times he's up and found any, any suggestion to use as an objection to my cross-examination, and maybe he is objecting or, or finding it offensive, I'm, I'm quite frankly finding it over the line as well. I....

MR. HICKS: Mocking the witness, Your Honour, I offside, standing here, as I will demonstrate to the court, as best as I can remember what my friend was doing, smiling and shaking his head, no, as the witness is answering question is offside, respectfully.

THE COURT: Okay. Like, I said, I didn't see anything, so I can't comment on, on what Mr. Morris said, but, please, proceed with your cross-examination in, in normal fashion.

MR. MORRIS: Yeah. I have to ask your indulgence to find out where I was before we went on this tangent, Your Honour.

THE COURT: You were asking him about taking a taxi.

MR. MORRIS: Ah. Thank you.

Q. The reason you suggested a taxi was because you were concerned about his drinking and driving, right, sir?

A. I was concerned about, well, it was just a thought that popped up that, you know....

Q. Sure. And that's why you saw the police officer right away behind the van, you said that in your

statement, right, sir?

A. I did.

Q. Did you tell that to Shawn?

A. I mentioned that to him.

Q. And so, when he stopped, he already knew, on your evidence and what you're saying to the judge, you already told him there is a police officer behind the van when he stopped his, when he stopped his van, right, sir?

A. That's right.

THE COURT: You said, "that was right?"

A. I said, I said, "yes," yes.

MR. MORRIS: Q. And you mentioned the word, "scuffle," there is a scuffle between the two?

A. Yes.

Q. And were you outside of the van at that time?

A. I was, I was getting out of the van. I, I kind of, I looked over and I seen the cop, kind of chasing after him after he was going towards the bank.

Q. Yeah. And so, but when he was chasing after him, you were still in the van, were you or were you not?

A. I was just getting out of the van?

Q. All right. And then you heard the officer tell Shawn that he was under arrest for impaired, right, impaired driving?

A. Well, this, this was a little bit afterwards he was saying that.

Q. Right. Yeah. And Shawn didn't take kindly to that, did he?

A. Well, how can you know if somebody is drunk if - how can you tell - like, there is no evidence there. Don't you got to blow into something or something like that in

order to?

Q. Right.

A. Right.

Q. All right. No, but my question was about Shawn's reaction when the officer told him he was under arrest for impaired driving...

A. Uh-huh.

Q. ...he didn't take kindly to that, did he?

A. Think this is - it, it....

Q. Sorry?

A. It was um, hmm, I can't remember what happened at that point in time there, but....

Q. All right. Your recollection overall of that incident is not that clear then, right?

A. Well, it did happen a year ago, sir, but I just...

Q. Sure.

A. ...I'm just going what the, what, what I, what I...

Q. All right. Thanks so much.

A. ...I remember here.

MR. MORRIS: Thank you.

THE COURT: Any reexamination?

MR. HICKS: Yes.

RE-EXAMINATION BY MR. HICKS:

Q. Did Mr. Cassista appear drunk to you?

A. No.

MR. MORRIS: That question was asked in chief.

THE COURT: Sorry?

A. No, he didn't.

MR. MORRIS: My friend asked question, I - and,

and....

THE COURT: Yeah, he said, he was fine.

MR. HICKS: All right.

Q. Why did you suggest the cab?

A. I suggest the cab because I thought it would be in our best interest that if we're going to go somewhere else that we can just do the cab thing, it would be a lot easier, a lot simpler, less risk if there was to be a risk.

Q. What kind of risk?

A. Well, just in case, see if we wanted to stay a bit longer, this way the car is safe, and we just we can take a cab somewhere.

MR. HICKS: All right. Thank you.

THE COURT: Thank you very much, sir.

A. You're welcome.

THE COURT: You can step down.

A. Yeah.

THE COURT: Okay. Is that the defence case?

MR. HICKS: It is, thank you.

THE COURT: The Crown calling any reply?

MR. MORRIS: No, Your Honour. Thank you.

THE COURT: Okay. So you have cases and you'll just...

MR. HICKS: I, I do.

THE COURT: ...another day....

MR. HICKS: Yes.

MR. MORRIS: I've got a copy of cases from my friend. I received this from another court, as Your Honour is well aware, that's an assisting court, my submission, if I was making it now, would be basically **Storey, R. v. Storey**. I know his submissions will be on the next the next day,

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5  
but that's where I am going. It's a proper  
arrest, and subjectively and objectively and this  
defendant ought to have obeyed the officer and not  
resisted.

THE COURT: Okay. Well, I'll read your cases  
then, and you I guess get another date.

MR. MORRIS: Thank you, yes.

MR. HICKS: I think an hour is more than enough,  
Your Honour.

10  
THE COURT: Okay. Did, did I get all the cases?

MR. HICKS: I, I provided six cases to you and to  
my friend.

THE COURT: I only have five.

MR. HICKS: Oh.

15  
MR. MORRIS: Does Your Honour want me to give you  
**Storey** from, I believe it's....

THE COURT: I have it.

MR. MORRIS: That's the - thank you - that's the  
seminal case. Thank you.

20  
THE COURT: Oh, wait, here it is. I have six,  
yes. Okay then.

MR. HICKS: Small panic averted, Your Honour.

THE COURT: Yes.

MR. HICKS: Thank you.

25  
THE COURT: All right. So I'll just await 'til  
you get the new date.

MR. HICKS: Thank you.

MR. MORRIS: Thank you, Your Honour.

R E C E S S

30  
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COURTROOM CLERK: Good afternoon again, Your Honour.

THE COURT: Okay.

COURTROOM CLERK: Court will now resume, please, be seated.

MR. HICKS: Your Honour, huge props to Madam Clerk who caught that our return date is shown on the form as December 20<sup>th</sup>, 2014.

THE COURT: Yes.

MR. HICKS: And she called down to the trial coordinator and confirmed that it's, in fact, next week, 2013.

THE COURT: Oh, good.

MR. HICKS: So thank you very much, Madam Clerk.

THE COURT: Yes, Madam Clerk, thank you...

COURTROOM CLERK: Thank you.

THE COURT: ...for being so sharp, especially at 25 to 3:00.

MR. HICKS: I've been trying to get stuff by her fo 20 years, Your Honour, it hasn't worked yet.

COURTROOM CLERK: We have one more matter.

MR. HICKS: Yeah, so, yeah, Mr. Cassista.

THE COURT: Okay then, so 303 court 10:00 a.m., hour and a half, December 20<sup>th</sup> for submissions.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED.

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Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, Rosemarie Hall certify that this document  
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April 4, 2015

(Date)



Signature of Authorized Person  
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