

HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

MICHAEL JACK

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES AND
OPERATING AS THE ONTARIO PROVINCIAL POLICE**

Respondent

**RESPONDENTS' BOOK OF ARGUABLY RELEVANT
DOCUMENTS**

VOLUME 5 OF 7

January 12, 2012

Ministry of Community Safety and
Correctional Services
Legal Services Branch
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Suite 501
Toronto, Ontario M7A 0A8

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Applicant

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 2. December 15, 2009 - email from J. Payne to G. Smith, M. Reynolds, R. Flindall, Re: Mike Jack's issued equipment
 3. August 15, 2009 - email from R. Flindall to R. Campbell, Re: HTA Charge against Mike Jack while operating force vehicle today
 4. August 15, 2009 - email from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating vehicle today
 5. August 15, 2009 - General Information Form, Re: Police Vehicle Operation, PC Jack
 6. August 11, 2001 - email from PC Wager to R. Flindall
 7. OPP Briefing Note, Issue: Dangerous police vehicle operation by PC Michael Jack (Probationary)
 8. August 2, 2009 - email from R. Flindall to M. Johnston, Re: Jeff Sandaert
 9. August 15, 2009 - email from J. Payne to R. Flindall Re Jack's last evaluation
 10. January 9, 2009 - email from PC Jack to R. Campbell and N. Lawlor, Re: Block Training Joining Instructions January 12-15, 2009
 11. August 20, 2009 - email from R. Flindall to B. Lafreniere Re: Constable Michael Jack
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 14. November 20, 2009 - email correspondence between R. Campbell and S. Gozzard-Gilbert, Re: Michael Jack WIN#393080
 15. November 10, 2009 - email from R. Campbell to numerous parties Re: Prob Jack (with teleconference codes)
 16. November 10, 2009 - email from R. Campbell to C. Kohen, R. Nie, etc., Re: Prob Jack
 17. November 10, 2009 - email from R. Campbell to C. Kohen and R. Nie, Re: Prob Jack – Follow up
 18. October 27, 2009 - email from R. Campbell to G. Smith and R. Flindall, Re: FW: Remedial driver training for PC Michael Jack
 19. September 28, 2009 - email from R. Campbell to R. Flindall and M. Johnston, Re: Additional Remarks by Cst Jack regarding his Evaluation

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20. September 14, 2009 - email from R. Campbell to C. Kohen and R. Flindall, Re: Jack WIP masterc.doc
21. September 14, 2009 - email from R. Campbell to M. Johnston, Re: Jack WIB Masterc.doc
22. September 11, 2009 - email from R. Campbell to R. Flindall, Re: Jack
23. September 10, 2009 - email from R. Campbell to J. Payne, Re: Notes Tracking Cst Jack's duties on A Platoon
24. September 9, 2009 - email from R. Campbell to C. Koehn and R. Flindall, re: PCS66_JACK8.doc
25. September 3, 2009 - email from R. Campbell to S. Gizzards-Gilbert and R. Flindall; Re: Michael Jack's PCS4
26. August 27, 2009 - email from R. Campbell to R. Flindall, S. Filman, J. Postma and R. Nie, Re: PCS066 for Mike Jack
27. August 24, 2009 - email from R. Campbell to R. Flindall, Re: Stnadaert-Anderson Complaint
28. August 20, 2009 - email from R. Campbell to R. Flindall
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30. August 20, 2009 - email from R. Campbell to M. Jack, R. Flindall, J. Postma, R. Nie, Re: Michael Jack Platoon D
31. August 19, 2009 - email from R. Campbell to J. Conway, M. Johnston, R. Flindall, S. Filman, Re: Possible charges against Douglas Anderson
32. August 17, 2009 - email from R. Campbell to T. Banbury, M. Johnston, Re: PC Jack – deceit
33. August 16, 2009 - email from R. Campbell to R. Flindall, S. Filman, Re: Mike Jack Driving
34. August 15, 2009 - email from R. Campbell to M. Johnston, R. Flindall, Re: HTA Charge against Mike Jack while operating force vehicle today
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36. July 17, 2009 - email from R. Campbell to S. Filman, M. Jack, R. Flindall, Re: Overdue Month 5 27 Jun 09
37. July 7, 2009 - email from R. Campbell to M. Jack, M. Gravelle, Re: Doug Anderson and Jeff Standaert
38. June 24, 2009 - email from R. Campbell to R. Flindall, Re: er1303845 – Michael Jack
39. May 11, 2009 - email from R. Campbell to R. Flindall, D. Lee, Re: Jack's next evaluation

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| 40. | March 23, 2009 - email from R. Campbell to R. Flindall, Re: Jack Evaluation |
| 41. | September 24, 2008 - email from R. Campbell to R. Flindall, Re: Shift Changes |
| 42. | October 29, 2009 - email from R. Flindall to J. Payne, Re: Block Training Joining Instructions January 11-14, 2010 |
| 43. | October 6, 2009 - email from R. Flindall to P. Butorac Re: R. v. Vollick sp09178964 |
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| 45. | September 23, 2009 - email correspondence from R. Flindall to M. Johnston, Re: P/C Jack **Urgent** |
| 46. | September 22, 2009 - email from R. Flindall to M. Johnston, Re: Old occurrence involving PC Jack; General Occurrence Report SP05112642 |
| 47. | September 13, 2009 - follow up email from R. Flindall to S. Filman, Re: Jack WIP masterc.doc |
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| 50. | September 11, 2009 - email from R. Flindall to R. Campbell, Re: Jack |
| 51. | September 11, 2009 - email from R. Flindall to R. Powers, Re: Tape request from PC Jack; Tape Request form, Background Unit History, Playlist |
| 52. | September 11, 2009 - reply email from R. Flindall to C. Kohen, Re: PCS66_Jack8 |
| 53. | September 11, 2009 - reply email from R. Flindall to C. Kohen, Re: PCS66_Jack8 |
| 54. | September 11, 2009 - email from R. Flindall to C. Kohen, Re: PCS66_Jack8 |
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| 56. | August 28, 2009 - email from R. Flindall to R. Campbell, Re: PCS066 for Mike Jack |
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| 58. | August 26, 2009 - email from R. Flindall to R. Campbell and J. Conway, Re: Jeff Staedert |
| 59. | August 24, 2009 - email from R. Flindall to S. Filman, Re: Constable Michael Jack |
| 60. | August 20, 2009 - reply email from R. Flindall to B. Lafreniere, Re: Thank you. |
| 61. | August 20, 2009 - email from R. Flindall to B. Lafreniere, Re: Thank you. |

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62. August 20, 2009 - email from R. Flindall to B. Lafreniere, Re: Constable Michael Jack
63. August 16, 2009 - email from R. Flindall to R. Campbell, Re: Mike Jack Driving
64. August 16, 2009 - email from R. Flindall to R. Campbell, Re: Ride Havelock Area
65. August 15, 2009 – email (#4) from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
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67. August 15, 2009 - email (#2) from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
68. August 15, 2009 - email from R. Flindall to M. Johnston, Re: HTA Charge against Mike Jack while operating force vehicle today
69. August 15, 2009 - email from R. Flindall to B. Rathbun, J. Postma, T. Banbury, Re: PC Jack
70. August 15, 2009 - email from R. Flindall to M. Moran, Re: Untitled
71. August 15, 2009 - email from R. Flindall to S. Filman, Re: Stephen Tait
72. August 14, 2009 - email from R. Flindall to M. Johnston, Re: PC Jack
73. August 11, 2009 - email from R. Flindall to R. Campbell, Re: At Scenes Collision Investigation Course - PPA - October 19th through 23rd, 2009
74. August 10, 2009 - email from R. Flindall to R. Campbell, Re: Provincial Communication Centre Notification
75. August 6, 2009 - email from R. Flindall to M. Johnston, Re: P/C Michael Jack
76. August 2, 2009 - email from R. Flindall to M. Johnston, Re: Jeff Standaert
77. July 22, 2009 - email from R. Flindall to S. Schroter, Re: Can you look into something for me?
78. June 24, 2009 - email from R. Flindall to R. Campbell, Re: Driving Presentation Class List
79. June 7, 2009 - email from R. Flindall to M. Jack, Re: Occurrence addresses in Niche
80. June 1, 2009 - email from R. Flindall to M. Jack, Re: DAR's – Paid Duty
81. May 14, 2009 - reply email from R. Flindall to R. Campbell, Re: Jack's next evaluation
82. May 11, 2009 - email from R. Flindall to R. Campbell, Re: Jack's next evaluation
83. March 23, 2009 - reply email from R. Flindall to S. Filman, Re: Jack evaluation

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84. March 23, 2009 - email from R. Flindall to M. Johnston, Re: Jack evaluation
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86. March 19, 2009 - email from R. Flindall to R. Campbell, Re: Unit 01-152
87. March 9, 2009 - email from R. Flindall to M. Jack, Re: Sumilas, Shawn
88. February 13, 2009 - email from R. Flindall to M. Jack, Re: Talk Lock
89. February 10, 2009 – follow up email from R. Flindall to R. Campbell, Re: Domestic we spoke about earlier
90. February 10, 2009 - email from R. Flindall to S. Filman, Re: INC00000216708 Priority 4 – Minimal has been assigned to JUS MSG OPP RMS ADMIN
91. February 10, 2009 - email from R. Flindall to R. Campbell, Re: Domestic we spoke about earlier
92. January 30, 2009 - email from R. Flindall to R. Campbell, Re: Enr to a cruise MVC
93. September 23, 2009 - email from P. Butorac to M. Johnston, A. Crawford, Re: 254009-0173 Internal Complaint – PC Jack
94. December 24, 2008 - email from K. Chapman to S. Filman, R. Flindall, Re: Gun locker for Michael Jack
95. December 24, 2008 - email from K. Chapman to M. Jack, Re: Welcome to Peterborough w/ attached Welcome Jack document
96. July 31, 2009 - email from M. D'Amico to M. Johnston, Re: Jeff Standaert
97. May 11, 2009 - email from S. Filman to M. Jack and R. Flindall, Re: Jack 4 document
98. April 21, 2009 – email from S. Filman to R. Flindall, Re: Jack 1 document
99. March 13, 2009 - email from S. Filman to R. Flindall, Re: Ken Rusaw reviews
100. September 3, 2009 – email from S. Gozzard-Gilbert to R. Flindall, Re: Michael Jack's PCS4
101. July 6, 2009 - email from S. Gozzard-Gilbert to J. Pollock, M. Jack, Re: Michael Jack working for John Pollock
102. January 16, 2009 - email from R. Flindall to M. Jack, R. Campbell, Re: Attendance for block training date RE: emergency dental appointment
103. January 14, 2009 - email from S. Gozzard-Gilbert to K. Raymond, R. Flindall, T. Banbury, B. Rathbun, P. Butorac, Re: Stats for New Recruits 2008
104. September 24, 2008 - email from S. Gozzard-Gilbert to R. Flindall, R. Campbell, M. Johnston, G. Smith, Re: New recruits
105. September 9, 2009 - email from M. Gravelle to R. Flindall, B. Rathbun, Re: Jack

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106. August 10, 2009 - email from M. Jack to M. Moran, C. Laperle, S. Filman, M. D'Amico, Re: SP09178964 B&E 06-Aug-09
107. August 3, 2009 - email from M. Jack to OPP DL Peterborough County Detachment, Re: Found fishing boat on Stoke Lake at Young's point
108. July 31, 2009 - email from M. Jack to R. Flindall, Re: Overtime SP09164458
109. July 31, 2009 - email from M. Jack to M. Johnston, Re: Jeff Standaert
110. July 29, 2009 - email from M. Jack to jsmith@kpf.ca, Cc'd R. Flindall, Re: Statement from Raoul Rochard Sahip Mohammed
111. July 24, 2009 - email from M. Jack to OPP DL Peterborough County Detachment, Re: RPG for arrest of John Derek Williamson
112. March 9, 2009 - email from M. Jack to C. Laperle, Cc'd R. Flindall, Re: Sumilas, Shawn
113. February 10, 2009 - email from M. Jack to R. Flindall, Re: INC000002167808 Priority 8 – Minimal has been assigned to JUS MSG OPP RMS ADMIN
114. August 15, 2009 - email from J. Payne to R. Flindall, Re: Jack's last evaluation
115. September 22, 2009 - email from J. Payne to R. Flindall, Re: Read this occurrence tonite
116. September 25, 2009 - Cover Memo w/ M. Jack's evaluation response

J OPP General Information Form Re: Michael Jack, Date: August 2-15, 2009

K OPP General Information Form Re: Michael Jack, Date: August 15, 2009

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Peter Butorac

- L 1. September 20, 2009 - email from R. Nie to P. Butorac, Re: PC Jack's 8mth evaluation
2. September 25, 2009 - email from R. Nie to R. Flindall and P. Butorac, Re: Jack
3. October 25, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, J. Postma and D. Lee, Re: Jack evaluation draft with attached Evaluation Report and Work Improvement Plans
4. September 14, 2009 - email from M. Johnston to R. Campbell, R. Flindall, R. Nie, C. Kohen, J. Postma, P. Butorac Re: Jack WIP masterc with attached Work Improvement Plan
5. September 18, 2009 - email from M. Johnston to R. Nie, Ccd P. Butorac, J. Postma, K. Chapman, Re: P/C Jack

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| | 6. September 20, 2009 - email from M. Johnston to P. Butorac, R. Nie, R. Campbell, Re: P/C Jack **URGENT** |
| | 7. September 14, 2009 - email from R. Campbell to M. Johnston, Cc C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP (with attached Work Improvement Plan) |
| | 8. September 15, 2011 - email from R. Flindall to M. Johnston (forwarded to R. Campbell), Re: Clarification re PC Jack |
| | 9. September 1, 2009 email from M. Johnston to R. Flindall, R. Campbell, Re: PC Michael Jack |
| | 10. Undated - email from Ron (R. Campbell) to M. Johnston, D. Borton, Re: Moving of Cst. Mike Jack |
| | 11. Undated - OPP Briefing Note, Re: Cst. Jack |
| | 12. August 24, 2009 - email from J. Postma to R. Campbell, Re: Probationary Constable Michael Jack |
| | 13. General Information Form, R. Flindall Re. Cst. Jack |
| | 14. Undated – Confidential Duty Report, Submitted by J. Brockley |

Richard Nie

- | | |
|---|---|
| M | Cst. Richard Nie Notes, September 2009 |
| N | 1. August 18, 2009 - email from R. Campbell to R. Nie, Re: Moving of Cst. Mike Jack |
| | 2. August 20, 2009 - email from R. Campbell to B. Lafrenier, R. Flindall, Cc: R. Nie, J. Postma, Re: Constable Mike Jack |
| | 3. August 26, 2009 - email from J. Postma to R. Nie, Re: Probationary Constable Michael Jack |
| | 4. August 27, 2009 - email from J. Postma to R. Campbell, Cc: R. Nie, Re: PC Jack |
| | 5. August 27, 2009 - email from R. Campbell to R. Flindall, S. Filman, J. Postma, R. Nie, C. Kohen, M. Johnston, Re: PCS066 for Mike Jack |
| | 6. August 28, 2009 - email from R. Campbell to J. Postma, Cc: R. Nie; Re: PC Jack |
| | 7. September 8, 2009 - email from R. Campbell to D. McNeely, Cc: M. Jack, J. Postma, R. Nie, P. Butorac, D. Lee, C. Kohen, Re: Driving Assessment, Thursday 10 Sept 2009 – Kingston |
| | 8. September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66_Jack (with attached Performance Evaluation Report) |
| | 9. September 9, 2009 - email from R. Campbell to C. Kohen, R. Flindall, Cc: M. Johnston, D. Lee, R. Nie, Re: PCS66_Jack |

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10. September 11, 2009 - email from R. Campbell to R. Flindall, Cc: J. Postma, R. Nie, P. Butorac, M. Johnston, Re: Jack
11. September 11, 2009 - email from R. Campbell to M. Johnston, C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: PCS66_Jack8 (with attached Performance Evaluation Report-Report Month 7, Work Improvement Plan)
12. September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIB masterc.doc
13. September 16, 2009 - email from R. Campbell to D. McNeely, Cc: J. Postma, P. Butorac, R. Nie, M. Johnston, Re: Ron-can you advise if everything is a go for Friday Driving assessment with Michael
14. September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
15. September 20, 2009 - email from P. Butorac to M. Johnston, R. Nie, Re: P/C Jack **URGENT**
16. September 20, 2009- email from M. Johnston to P. Butorac, R. Nie, R. Campbell, Re: P/C Jack **URGENT**
17. September 24, 2009 - email from R. Flindall's personal email to R. Nie, Re: PC Jack WIP
18. September 29, 2009 - email from R. Campbell to P. Butorac, R. Nie, J. Postma, Re: FW: Driving assessment – Michael Jack – requires remedial driving
19. September 29, 2009 - email from R. Campbell to J. Postma, P. Butorac, R. Nie Re: FW: Driving assessment – Michael Jack – requires remedial driving
20. October 5, 2009 - email from K. Taylor to C. Kohen, Cc: R. Campbell, D. McNeely, R. Nie, Re: PC Michael Jack – Driving Remediation
21. October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached Memo dated October 2, 2009 and Driver Competency Assessment)
22. October 5, 2009 - email from C. Kohen to R. Campbell, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack
23. October 5, 2009 - email from D. Lee to C. Kohen, R. Campbell, R. Nie, P. Butorac, J. Postma, P. Salter, Re: Driving Memo – Michael Jack
24. October 5, 2009 - email from R. Campbell to D. Lee, C. Kohen, R. Nie, P. Butorac, J. Postma, P. Salter, Re: Driving Memo – Michael Jack
25. October 5, 2009- email from R. Campbell to C. Kohen, R. Nie, P. Butorac, Re: Driving Memo – Michael Jack
26. October 8, 2009 - email from R. Campbell to C. Kohen, P. Butorac, R. Nie, J. Postma, D. Lee, P. Salter, RE: PC Jack evaluation draft (with attached Performance Evaluation Report-Month 9 and Work Improvement Plan)

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27. October 14, 2009 - email from K. Taylor to M. Jack, Cc: P. Butorac, R. Nie, C. Kohen, Re: Driver Training
28. October 27, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, P. Butorac, C. Kohen, M. Jack, Re: Remedial driver training for PC Michael Jack
29. November 10, 2009 - email from R. Campbell to C. Kohen, R. Nie; Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, Re: Prob Jack (with attached Performance Evaluation Report-Month 10 and Work Improvement Plan)
30. November 10, 2009 - email from C. Kohen to R. Campbell, R. Nie, Cc: D. Lee, D. Borton, P. Butorac, R. Flindall, K. Taylor, Re: Prob Jack
31. November 10, 2009 - email from K. Taylor to R. Nie, Cc: R. Campbell, C. Kohen, P. Butorac, M. Vanlanduyt, RE: PC Jack – PCS66P – Police Vehicle Operation
32. November 10, 2009 - email from R. Campbell to R. Nie, P. Butorac, Re: Updated comments. FW: Prob Jack
33. November 15, 2009 - email from P. Butorac to R. Nie, Re: Michael Jack remedial driver training
34. November 18, 2009 - email from J. Postma to R. Campbell, C. Kohen, Cc: P. Butorac, R. Nie, Re: Prob Jack
35. December 1, 2009 email from K. Taylor to D. Beckett, R. Nie, C. Kohen, P. Butorac, M. Jack, Re: Probationary Constable Michael Jack – Remedial driver training completion
36. December 14, 2009 email from C. Kohen to M. Reynolds, D. Lee, Cc: R. Nie, Re: PC Jack (with attached Release from Employment letter dated December 15, 2009)
37. December 16, 2009 email from R. Campbell to R. Nie, Re: Chronology

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- O Detective Constable Shaun Filman Notes, March 2009 and June 2009
- P Probationary Constable Work Improvement Plans, Re: M. Jack

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- Q S/Sgt. Reynolds Notes, December 2009
- R Memo to Cst. Jack, Re: Notice of Proposed Release from Employment, dated December 9, 2009

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| S | Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable, dated August 28, 2008 |
| T | Undated - email from M. Reynolds to C. Kohen, D. Lee, Cc: H. Stevenson, Re: Prob Jack Notice Release |

Jamie Brockley

- | | |
|---|--|
| U | <ol style="list-style-type: none">1. Confidential Duty Report, Submitted on October 24, 20092. Will Say, Detective Constable Jamie Brockley |
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Deputy Chief Firearms Officers, M.P. (Mike) Johnston

- | | |
|---|--|
| V | <ol style="list-style-type: none">1. September 15, 2009 - email from R. Flindall to M. Johnston, Re: Clarification re PC Jack2. October 2, 2009 - D. McNeely M. Jack Driving Memo to R. Campbell, text format3. September 23, 2009 - email from M. Johnston to H. Stevenson Re: Com Centre4. September 29, 2009 - email from R. Campbell to M. Johnston, D. Lee, Re: Driving assessment – Michael Jack – requires remedial driving5. October 5, 2009 - email from R. Campbell to K. Taylor, C. Kohen, D. Lee, R. Nie, P. Butorac, J. Postma, Re: Driving Memo – Michael Jack (with attached D. McNeely M. Jack Driving Memo, dated October 2, 2009 and Driver Competency Assessment)6. September 10, 2009 - email from C. Cox to R. Campbell, M. Johnston, Re: I have a question about one of our officers intercepting communications7. September 23, 2009 - email from H. Stevenson to M. Graham, Cc: K. Smith, M. Armstrong, M. Johnston, RE: Old occurrence involving PC Jack8. August 27, 2009 - email from R. Campbell to C. Kohen, M. Johnston, Re: PC Jack9. September 11, 2009 - email from M. Johnston to H. Stevenson, Re: PC Michael Jack10. September 9, 2009 - email from R. Campbell to R. Flindall, R. Nie, Re: PCS66_Jack811. September 11, 2009 - email from M. Graham to K. Smith, P. Beesley, P. Powers, M. Armstrong, H. Stevenson, C. Cox, M. Johnston, Re: PC Michael Jack12. September 22, 2009 email from R. Flindall to T. Thompson, Cc: M. Johnston, Re: Com Centre13. September 17, 2009 email from R. Flindall to T. Thompson, Cc: M. Johnston, Re: Com Centre14. September 10, 2009 email from C. Cox to R. Campbell, M. Johnston, Re: Confidential Inquiry |
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15. August 20, 2009 email from R. Campbell to B. Lafrenier, R. Flindall, Re: Constable Michael Jack
16. August 18, 2009 email from R. Campbell to K. Taylor, Re: HTA Charge against Mike Jack while operating force vehicle today
17. August 18, 2009 email from K. Taylor to R. Campbell, Re: HTA Charge against Mike Jack while operating force vehicle today
18. September 11, 2009 email from R. Campbell to Vi Grimmett, Re: Mussington
19. August 6, 2009 email from R. Flindall to M. Johnston Re: P/C Michael Jack
20. August 21, 2009 email from R. Campbell to M. Johnston, Re: Michael Jack Platoon D

Ron Campbell

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1. August 19, 2009 email from R. Campbell to J. Conway, M. Johnston, R. Flindall, S. Filman, Re: Possible charges against Douglas Anderson
2. September 10, 2009 email from R. Campbell to M. Johnston Re Rob Flindall
3. August 18, 2009 email from R. Campbell to M. Johnston, Re Moving of Cst. Mike Jack
4. January 29, 2009 email from H. Stevenson to M. Johnston, R. Campbell, Re: New Recruits – Special Attention to Prob Period – Jack and Kovacs
5. OPP Briefing Note Re: PC Jack
6. September 14, 2009 - email from R. Campbell to M. Johnston, Cc: C. Kohen, R. Flindall, R. Nie, J. Postma, P. Butorac, Re: Jack WIP masterpc (with attached Work Improvement Plant (Jack))
7. September 20, 2009 - email from M. Johnston to P. Butorac, R. Nie, R. Campbell, K. Chapman, R. Flindall, Re: P/C Jack **URGENT**
8. September 20, 2009 - reply email from M. Johnston to P. Butorac, R. Nie, R. Campbell, K. Chapman, R. Flindall, Re: P/C Jack **URGENT**
9. September 18, 2009 - email from M. Johnston to R. Nie, Cc: P. Butorac, J. Postma, K. Chapman, Re: P/C Jack
10. September 14, 2009 - email from M. Johnston to R. Campbell, R. Flindall, R. Nie, C. Kohen, J. Postma, P. Butorac, Re: Jack WIP masterdc (with attached Work Improvement Plant (Jack))
11. November 19, 2009 - email from R. Nie to C. Kohen, R. Flindall, Cc: P. Butorac, Re: Jack Chronology 09
12. October 7, 2009 - email from R. Nie to R. Campbell, C. Kohen, P. Salter, P. Butorac, J. Postma, D. Lee, Re: PC Jack evaluation (with attached Jack Evaluation Report and WIP)
13. September 25, 2009 - email from R. Nie to R. Flindall, Cc: P. Butorac, Re: Jack

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14. September 20, 2009 - email from R. Nie to P. Butorac, Re: PC Jack's 8mth evaluation

X S/Sgt. Campbell Notes, August - November 2009

PC Jennifer Payne

Y 1. September 10, 2009 - email from R. Campbell to J. Payne, Cc: R. Flindall, M. Johnston, Re: Notes Tracking Cst Jack's duties on A Platoon

2. September 22, 2009 - email from J. Payne to R. Flindall, Re: Read this occurrence tonite (with attached Occurrence Summary (SP05112642))

Z PC Payne Notes, June - August 2009

Chronology Re: PC Michael Jack's performance

AA Chronology #1

BB Chronology #2

ONTARIO PROVINCIAL POLICE ACADEMY (OPPA) DOCUMENTS

VOLUME 4:

1. Ten Code Test, dated December 9, 2008
2. Post Recruit Orientation - Class #411, undated
3. Recruit Orientation Course, Cruiser Familiarization Check List, dated November 31, 2008
4. Provincial Statutes Assignment #1, Answer Sheet, dated December 8, 2008
5. Crime Scene Scenario Handout - Death Scene - Adult
6. Performance Behavior Simulation, dated December 1, 2008
7. Recruit Scenario Evaluation, dated December 18, 2008
8. Ten Code Test, dated January 5, 2009
9. Ten code Test, dated December 29, 2008

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10. Recruit Scenario Evaluation, dated December 11, 2008
11. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Awarded)
12. Basic Constable Training Program Student Evaluation, September 3 – November 27, 2008 (Diploma Not Awarded)
13. Ontario Police College Diploma, Basic Constable Training Program
14. Recruit Leadership Assessment Tool
15. December 15, 2008 - Jack Memo to Sgt. Tozser, Re: Failing to sign the 23:00 sign-in sheet on Sunday 14-Dec-08
16. Use of Force Instructor Evaluation Report, dated December 12, 2008 (with attached Gun Safety Rules, signed by PC Jack)
17. C8 Conversion Test
18. Absence Reports:
 - A) Absence Report, August 2008
 - B) Absence Report, September 2008
 - C) Absence Report, October 2008
 - D) Absence Report, November 2008
19. Recruit Progress/Interview Reports:
 - A) Recruit Progress/Interview Report – Week 1, dated September 12, 2008
 - B) Recruit Progress/Interview Report – Week 2, dated September 12, 2008
 - C) Recruit Progress/Interview Report – Week 3, dated September 20, 2008
 - D) Recruit Progress/Interview Report – Week 4, dated September 26, 2008
 - E) Recruit Progress/Interview Report – Week 5, undated
 - F) Recruit Progress/Interview Report – Week 6, dated October 11, 2008
 - G) Recruit Progress/Interview Report – Week 7, dated October 18, 2008
 - H) Recruit Progress/Interview Report – Week 8, dated October 26, 2008
 - I) Recruit Progress/Interview Report – Week 9, dated October 30, 2008
 - J) Recruit Progress/Interview Report – Week 10, dated November 7, 2008
 - K) Recruit Progress/Interview Report – Week 11, dated November 16, 2008 (2 copies – 1 dated, 1 undated)
 - L) Recruit Progress/Interview Report – Week 12, dated November 19, 2008
 - M) Recruit Progress/Interview Report – Week 13, undated

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20. Defensive Tactics Workshop Notification Form, dated November 11, 2008
21. Defensive Tactics Workshop Notification Form, dated October 8, 2008
22. Physical Feedback Profile
23. Documentation, Re: Swipe Card, dated received, September 30, 2008
24. S/Sgt. Colleen Kohen Notebook Notes and Description of Responsibilities

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1. *Provincial Offences Act* Court Transcript, R. v. Jack, April 1, 2010 and May 27, 2010

CAREER DEVELOPMENT BUREAU DOCUMENTS

VOLUME 6:

1. OPP letter to M. Jack, dated July 18, 2008 (date stamped July 30, 2008)
2. OPP, CDB Memo to Michael Jack, Re: Performance and Conduct Requirements of a Recruit Constable, dated August 25, 2008
3. OPP letter to M. Jack, dated July 18, 2008
4. Uniform Recruitment Applicant Processing Disposition, M. Jack, dated July 4, 2008
5. OPC, Basic Constable Training Program, Student Evaluation, Re: M. Jack, September 3 to November 27, 2008
6. Basic Constable Training Program completion certificate, M. Jack, dated November 27, 2008
7. OPPA Recruit Leadership Assessment Tool, Re: M. Jack
8. MCSCS Absence Reports: September, October and November, 2008
9. M. Jack Memo to Sgt. Tozser, Re: Failing to sign the 23:00 sign-in sheet on Sunday 14-Dec-08, dated December 15, 2008
10. OSMH Memo to Class 411, dated Christmas 2008

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11. Probationary Constable Performance Evaluation Report – 2nd month, Re: M. Jack, dated May 11, 2009
12. Probationary Constable Performance Evaluation Report – 3rd month, Re: M. Jack, dated April 27, 2009
13. Probationary Constable Work Improvement Plans, Re: M. Jack, dated May 11, 2009
 - Radio Communications
 - Flexibility
 - Police Vehicle Operation
14. Probationary Constable Performance Evaluation Report, dated June 11, 2009
15. J. Fantino, OPP letter to C. Condon, University of Liverpool, dated May 26, 2009
16. C. Condon, University of Liverpool to J. Fantino, Re: Research Participation, undated
17. Probationary Constable Performance Evaluation Report, Re: M. Jack – 5th month evaluation, dated August 31, 2009
18. Probationary Constable Performance Evaluation Report, Re: M. Jack – 7th month evaluation, dated August 31, 2009
19. Probationary Constable Performance Evaluation Report, Re: M. Jack – 8th month evaluation, dated October 5, 2009
20. Memo to S/Sgt Campbell, Re: P/C Jack 6 month evaluation (with attached Probationary Constable Performance Evaluation Report)
21. Probationary Constable Performance Work Improvement Plan, Re: P/C Jack, dated October 5, 2009
22. Sgt. D. McNeely Memo to R. Campbell, Re: M. Jack Driver Competency Assessment, dated October 2, 2009 (with attached Driver Competency Assessment)
23. Probationary Constable Performance Evaluation Report, Re: M. Jack – 9th month evaluation, dated October 23, 2009
24. Probationary Constable Work Improvement Plan, Re: M. Jack, dated October 8, 2009
25. Probationary Constable Performance Evaluation Report, Re: M. Jack – 10th month evaluation, dated November 18, 2009
26. Probationary Constable Work Improvement Plan, Re: M. Jack, dated December 14, 2009
27. M. Jack Memo Re: Federal Statutes, Rating: Does Not Meet Requirements, dated November 19, 2009
28. Probationary Constable Performance Evaluation Report, Re: M. Jack – 11th month evaluation, dated December 14, 2009

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29. Probationary Constable Work Improvement Plan, Re: M. Jack, dated December 31, 2009
30. OPP, Career Development Bureau Memorandum to P/C Jack and Peterborough County Detachment, Re: Notice of Proposed Release from Employment, dated December 9, 2009
31. M. Jack Memorandum to Chief Superintendent M. Armstrong, Re: Resignation from the Ontario Provincial Police, dated December 15, 2009
32. August 19, 2008 - email from B. Rathbun to S. Haennel, Re: Mike JACK
33. August 8, 2008 - email from J. Whitney to B. Rathbun, Cc: S. Haennel, Re: JACK, Michael
34. August 15, 2008 - email from S. Haennel to B. Rathbun, Re: Mike JACK
35. September 4, 2008 – email from S. Haenne to B. Rathbun, Re: Michael Jack
36. J. Whitney Memorandum Re: JACK, Michael 080558, dated August 6, 2008
37. August 13, 2008 – email from S. Haennel to D. Traviss, D. Lapalme, Re: Candidate Michael Jack
38. August 5, 2008 – email correspondence between M. Johnston and B. Rathbun, R. Campbell, Cc: S. Thomas, Re: Upcoming recruit
39. August 6, 2008 – email from S. Thomas to S. Haennel, Cc: A. McCollum
40. August 5, 2008 email from S. Thomas to G. Trivett, Cc: S. Haennel, Re: Upcoming Recruit
41. Michael Jack Application, Position of Constable/Cadet, dated April 2, 2008
42. Michael Jack, Police Constable Selection, Confidential Candidate Personal History Form, dated April 28, 2008
43. Jack, Ontario Constable Selection System, Consent and Release of Liability Form, dated March 30, 2008
44. Jack, Checklist of Mandatory Information
45. OPP, Recruitment, Driving Questionnaire, dated May 29, 2008
46. Constable Assessment, Pre-Background Questionnaire, Re: M. Jack, dated May 29, 2008
47. OPP, Career Development Bureau - letter to M. Jack Re: Ontario Association of Chiefs of Police (OACP), Constable Selection System (CSS) Testing Results, dated May 23, 2008 (with attached OACP Certificated of Results)

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48. Police Constable Selection, Applicant Survey Form – M. Jack
49. Michael Jack – Application for Constable/Cadet position, Cover Letter, Resume and References, dated March 31, 2008
50. June 2, 2008 email from M. Jack to S. Haennel, Re: Hello from Michael Jack
51. OPP, Career Development Bureau letter to M. Jack Re: Progression of the Recruitment Process, dated May 30, 2008
52. OPP, Career Development Bureau letter to M. Jack Re: Acknowledgement of Employment Application Receipt and Recruitment Process, dated April 11, 2008
53. OACP, Constable Selection System, Performance Declaration, Re: M. jack, dated may 29, 2008
54. OACP, Constable Selection System, Authorization From, Re: Research Use of Psychological Tests/Interviews/Evaluations – M. Jack, dated May 30, 2008
55. OPP, Corporate Services Confidential Internal Briefing Report, Re: Jack's gun collection, undated
56. Internal Complaint, Re: Jack association with known criminals – Received dated: November 9, 2009
57. Complaint Intake Form, dated September 11, 2009
58. September 23, 2009 - email from P. Butorac to M. Johnston, A. Crawford, Cc: R. Flindall, R. Campbell, Re: 254009-0173 Internal Complaint-PC Jack
59. Memorandum to PC Jack, Re: Notice of Internal Complaint, dated September 23, 2009
60. Professional Standards Bureau Investigation Report 2545009-0173
61. Memorandum to PC Jack, Re: Internal Complaint 2545009-0173, dated November 25, 2009

ONTARIO PROVINCIAL POLICE ORDERS

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1. Chapter 2: Law Enforcement, 2.51: Supervision – Member
 - January - December 2008 Policy
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2. Chapter 6: Administration & Infrastructure, 6.4: Human Resources
 - January - December 2008 Policy
 - September 2008 - December 2009 Police Orders Excerpt

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3. Introduction, 0.1: Introduction to Police Orders
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4. Chapter 2: Law Enforcement, 2.51: Supervision – Member
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5. Probationary Constable Evaluation Report Guidelines, dated November 2008
6. Chapter 6: Administration & Infrastructure, 6.16: OPP Vehicles, September 2008
7. Chapter 2: Law Enforcement, 2.2: Communications/Dispatch, September 2008
8. Chapter 6: Administration & Infrastructure, 6.4: Human Resources
9. Chapter 6: Administration & Infrastructure, 6.10: Professionalism in the OPP, September 2008
10. Introduction, 0.1: Introduction to Police Orders, September 2008
11. Chapter 2: Law Enforcement, 2.51: Supervision – Member, September 2008
12. Chapter 6: Administration & Infrastructure, 6.4: Human Resources, 6.4.8: Probationary Constable, September 2008-December 2009 Police Orders Excerpt
13. Chapter 2: Law Enforcement, 2.51: Supervision – Member, December 2009
14. Introduction, 0.1 Introduction to Police Orders, December 2009

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POA Court transcript
R vs M. JACK

01Apr10

27May10

5
ONTARIO COURT OF JUSTICE

10
HER MAJESTY THE QUEEN

v.

15
MICHAEL JACK

20
P R O C E E D I N G S A T T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE C. YOUNG
on APRIL 1, 2010
at PETERBOROUGH, Ontario.

25
CHARGE: s. 136(1) (a) HTA - Fail to Yield to Traffic

A P P E A R A N C E S:

30
N. HENRY, Ms.,

Prosecutor for the Crown

P. SUTTON

Agent for the accused

ONTARIO COURT OF JUSTICE

WITNESS:	Exam. In-Ch.	Cr- Exam.	Re- Exam.
FLINDALL, Robert	4	15	-
PAYNE, Jennifer	22	29	-

Transcript Ordered. April 8, 2010.
Transcript Completed. May 9, 2010.
Ordering Party Notified. May 12, 2010.

April 1, 2010.

MS. HENRY: Thank you, Your Worship. If we could please go to the 1:30 tier, line 1, Michael Jack?

MR. SUTTON: Thank you, Your Worship. For the record, surname Sutton, S-U-T-T-O-N, first initial "T" appearing on behalf of the defendant who is also present. Come forward, please, Mr. Jack.

Thank you. Could you just state your name for the record, please, sir?

MR. JACK: Michael Jack.

MR. SUTTON: Thank you.

MS. HENRY: I understand you wish to enter a plea of not guilty; is that correct?

MR. JACK: That's correct.

THE COURT: Okay. First things first. You're an out-of-town prosecutor?

MS. HENRY: Yes.

THE COURT: Why are you here?

MS. HENRY: I'm here because there was a conflict between the current prosecutor for the municipality.

THE COURT: Okay. Was there an attempt made to procure an out-of-town justice?

MS. HENRY: It's my understanding that there was an attempt, but I'm not sure as to who would have been administratively responsible for that. It's my understanding that whoever was was on holidays at this time so we cannot find out what efforts were made.

THE COURT: All right. I don't know what time or

what -- when this event took place, alleged event. I'd like to hear from both of you as to whether or not you feel I should carry on and hear it.

5 MS. HENRY: Well, with respect to my position, Your Worship, it's my understanding that the gentleman is no longer employed in this jurisdiction.

THE COURT: Does that in any way alleviate the past?

10 MS. HENRY: Well, no, but I believe that it -- it kind of does alleviate the conflict if he's no longer employed by the municipality or the OPP.

THE COURT: Not in my mind.

15 MS. HENRY: On your part, I'm not -- I have no conflict -- or no -- no problem with you....

THE COURT: It doesn't alleviate it. Logic says that it doesn't alleviate it. Just because you are no longer what you were or whatever, it doesn't affect the totality of something. Your comments, sir?

20 MR. SUTTON: First and foremost, I have no -- no concerns with you hearing the trial. I respect your decisions in the past and that has never been an issue. My concern very candidly is the fact, that, yes, the officer -- my client was employed as an officer in this jurisdiction at the time of the incident. At that point in time you were presiding on the bench. You might have had occasion to actually be involved in some of the officer's --
25 former officer's matters, so I do have concerns on that end of the spectrum. On the other end of the
30

spectrum, of course, as I indicated, I've run many a trial in front of you and never had a concern with respect to your fairness and impartiality.

THE COURT: Any other comment?

MS. HENRY: No.

THE COURT: One of my own considerations as I come into the room is do I recognize the officer? I don't, and to my knowledge, I never saw him before in my life, nothing against you, sir. So, has -- as for my knowledge of the individual, I have none. I guess in a perfect world, I suppose -- I can't answer as to why no justice was provided. There appears to be no record of a request that I'm aware of, or have been able to determine. We are in a relatively small community, and that means from time-to-time judicial officers are required to preside at trials or sentencings of individuals whom they have some knowledge of because that's just part of the job. I'm going to -- if neither of you have any objections, then I'm going to proceed with the trial. If you do, then we will adjourn it and we'll get another justice.

MS. HENRY: I have no objections, Your Worship.

MR. SUTTON: None whatsoever.

THE COURT: Carry on. Arraignment, please.

COURTROOM CLERK: Michael Jack, on or about the 15th day of August, 2009 on County Road 23 at 14th Line of Smith, Smith, Ennismore, Lakefield Township, did commit the offence of fail to yield to traffic on a through highway contrary to the *Highway Traffic Act*

R. v. Jack
R. Flindall - In-Ch. by Ms. Henry

s. 136(1)(b). How do you wish to plead, guilty or not guilty?

MR. SUTTON: Not guilty.

MR. JACK: Not guilty.

MR. SUTTON: Prior to proceeding, Your Worship, it's my understanding there's two prosecution witnesses. There is also two defence witnesses. At this time I'd seek an order of exclusion, please.

THE COURT: Thank you. That's granted.

MR. SUTTON: Thank you.

MS. HENRY: I'd like to call Sergeant Flindall, please.

15 ROBERT FLINDALL, sworn:

EXAMINATION IN-CHIEF BY MS. HENRY:

Q. I understand, Officer, that you have a problem with your sciatic nerve; is that correct?

A. I do.

Q. I understand that....

MS. HENRY: Your Worship, the officer is asking that perhaps he may be able to be seated during his evidence?

THE COURT: Certainly.

MS. HENRY: Thank you.

THE COURT: Certainly.

A. Thank you.

MS. HENRY: Q. Officer, are you, in fact, employed by the Ontario Provincial Police?

A. I am.

Q. And how long have you been employed as such?

A. I've been an officer for 11 and a half years.

Q. And can you tell me, since that time, August the 15th -- excuse me, yes, August the 15th of 2009, you were acting in a capacity as an officer that day?

A. I was.

Q. And what were your duties?

A. I was a Shift Sergeant at the Peterborough County OPP detachment supervising a platoon of officers.

Q. During the course of your investigation do you routinely take notes?

A. I do.

Q. Did you take notes with respect to this incident?

A. I did.

Q. And have those notes been in your possession since the date of the occurrence?

A. They have.

Q. And when were those notes made?

A. On the day of immediately following the occurrence when I arrived back at the detachment.

Q. And were those notes made in pen?

A. They were.

Q. And has there been any additions, deletions or alterations to those notes?

A. No, there have not.

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

A. I do.

Q. Do you wish to use your notes?

A. To refresh my memory, yes.

MS. HENRY: Your Worship, I would ask that the officer be allowed to use his notes in order to help refresh his memory.

5 THE COURT: Granted. Oh, do you have any comment, sir?

MR. SUTTON: Please. If I just may view the notes that the officer intends to rely upon to ensure they have been enclosed?

10 THE COURT: Thank you. Certainly.

MR. SUTTON: Thank you. Okay. Tell me where you are, the last page?

A. It would right to there.

15 MR. SUTTON: Okay. And is there a page 49 that you have as well, eventually?

A. Yes. From there onward.

MR. SUTTON: Okay. That's it?

A. That's it.

20 MR. SUTTON: Thank you. Officer, where did you make these notes?

A. Back at the OPP station.

MR. SUTTON: And were these notes made by yourself?

A. They were.

25 MR. SUTTON: Were you by yourself when you made those notes?

A. I was.

MR. SUTTON: All right. I take it you were in your office at the time?

30 A. Yes.

MR. SUTTON: Okay. Did anybody else have any

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involvement into these notes whatsoever?

A. None.

MR. SUTTON: None? Thank you.

MS. HENRY: Q. Thank you. Officer, starting with
5 the date and time, can you please -- I'm sorry.

MR. SUTTON: Any comments, Your Worship?

THE COURT: No.

MR. SUTTON: Thank you.

MS. HENRY: Q. Starting with the date and time,
10 could you please outline your involvement with respect to these
matters?

A. Sure. It was the 15th of August, 2009....

THE COURT: Now, speak slowly, because I can't
15 write as fast as you can speak.

A. Certainly. It was the 15th of August, 2009.
I was working a dayshift at that point in time
supervising a platoon of officers. We had attended
the 14th Line of Smith in Smith-Ennismore-Lakefield
on another unrelated matter. At that time I was
20 present at that call for service as was Constable
Jennifer Payne as was Constable Michael Jack on
that date. We....

THE COURT: One moment, please. Thank you.

A. We concluded our matter on the 14th Line of
Smith and I left the property and proceeded
westbound on the 14th Line of Smith. I was followed
by Constable Jennifer Payne in her cruiser and I
was also -- and the third officer in line after
that was Constable Jack. He was in his own
30 cruiser. So the three of us left the property and

5
10
proceeded westbound on the 14th Line of Smith. It was at approximately 10:56 in the morning when the three of us approached -- I approached the intersection of the 14th Line of Smith and County Road 23. County Road 23 is a north-south through highway, and County Road -- or, sorry, 14th Line of Smith intersects with that highway with a stop sign for traffic on the 14th Line of Smith. So I came to the stop sign and came to a stop. I looked north. The other officers had come to a stop behind me as well.

THE COURT: One moment. Yes?

15
20
A. So at the intersection at the stop sign was myself in my cruiser; Constable Payne in her own cruiser behind me, and behind her was Constable Jack in his car. I looked north and -- to see if anybody -- there was any oncoming traffic. It was safe for me to do so. There was traffic to the north. There's a crest of a hill or a knoll I would call it, not a hill....

MR. SUTTON: Objection. Can I ask where that was indicated in your notes, Officer?

25
A. It's not in my notes. The notes are from -- my recollection, but I have an independent recollection of the day in question.

THE COURT: It's up to me what weight I give it. Carry on.

MR. SUTTON: Thank you.

30
A. So, there was traffic coming southbound. There was a knoll in the road. It was safe for me

to proceed, so I entered the intersection and proceeded southbound on County Road 23.

THE COURT: Which way did you turn?

A. I turned southbound, sir.

THE COURT: Right or left?

A. That would be a left. And proceeded southbound on County Road 23. I -- at that time, when I was southbound I looked in my rear view mirror and I saw that Constable Payne had also turned southbound.

THE COURT: One moment. Thank you.

A. Constable Payne had turned southbound as well. I observed that myself in my rear view mirror, and the traffic was approaching the intersection, but it was safe for her to do so, to pull out. I then also....

THE COURT: One moment, please. Thank you.

A. I also looked in my rear view mirror and at this point in time Constable Jack started to enter into the intersection. Unfortunately at this point in time the southbound traffic had approached that intersection. It was unsafe for Constable Jack to have done so, to have pulled out. When he pulled out into the intersection the southbound traffic....

THE COURT: One moment. One moment, please. I apologize.

A. My apologies. I should slow down.

THE COURT: Thank you.

A. Okay. There were three motor vehicles that

5
were southbound at this time, and when Constable Jack turned left to follow myself and Constable Payne southbound, they were too close to the intersection and it constituted a hazard for him to pull out. What ended up happened and I witnessed in my rear view mirror was....

THE COURT: Okay. You make the statement that there were three vehicles southbound.

A. Correct.

10
THE COURT: What vehicles?

A. There were three motor vehicles that -- the ones that I initially witnessed coming southbound when I pulled out.

THE COURT: Okay. Not yours and Officer Payne's?

15
A. That's correct. There were three other southbound civilian....

THE COURT: So there were five southbound?

20
A. Correct. Between myself -- there were four to my north coming southbound. Constable Payne and three civilian motor vehicles coming southbound, and those were the motor vehicles that I had seen further up the highway coming southbound when I initially pulled out.

25
THE COURT: One moment, please. So then, Officer, you've said, as far as my notes are concerned, that you looked in your mirror and you saw four southbound vehicles?

A. Correct.

30
THE COURT: One of which was Payne's and three others.

A. Correct.

THE COURT: Thank you.

A. Constable Payne was south of the intersection. The other three were still to the north of that intersection.

THE COURT: Okay.

A. Constable Jack turned left into the intersection, but in doing so, the -- I observed that lead motor vehicle, which would have been the lead civilian motor vehicle, its nose dove into the -- dove forward indicating that there was braking action on the part of the driver. I also at that same time witnessed Michael Jack had to turn hard back into the -- he didn't proceed into the southbound lanes. If he had done so he would have collided with the other motor vehicle. He had to turn hard into the northbound lane, and he continued travelling southbound in the northbound lane.

THE COURT: One moment, please.

A. Sure.

THE COURT: Thank you.

A. So at this point the -- the three motor vehicles that -- the one that I saw its nose dove (sic), they didn't make any drastic manoeuvres left or right. They remained in their lane continuing southbound, so they didn't have to take the shoulder, they didn't have to take the ditch. Constable Jack was the one that turned to the left and avoided the collision and travelled southbound

in the northbound lane.

MS. HENRY: Q. For approximately what distance did he do so?

A. He accelerated -- from that point he had to accelerate southbound in the northbound lanes...

Q. M'hm (affirmative).

A. ...in order to get out around those southbound lanes (sic) and pull back in front of them. I would probably say maybe 200 to 300 metres.

Q. Thank you. Okay.

THE COURT: One moment, please. Thank you.

MS. HENRY: Q. Can you tell me, when you first approached the stop sign before you took your left-hand turn, can you explain approximately how far away the southbound traffic was from your position at that time?

A. To the north?

Q. Yes.

A. The -- it was approximately -- just about a half a kilometre or just slightly less than half a kilometre. About 450 to 500 metres to the north.

THE COURT: When you were at the intersection or when you pulled out?

A. When I was at the intersection, those vehicles travelling southbound, the three civilian vehicles, were approximately 450 to 500 metres to the north.

MS. HENRY: Q. Okay. Can you please continue on from when Officer Jack was in the northbound lane?

A. Well, as I had said, Constable Jack travelled southbound in the northbound lanes and was able to successfully

pull back into the southbound lanes and proceeded southbound behind Constable Payne.

Q. Okay. And what action did you take at that time?

A. At that point in time we proceeded back to the OPP station and I had some other issues that I had to deal with at that point in time, and for the record, Constable Jack was travelling -- operating a force OPP cruiser. It was a fully-marked cruiser. It was a black and white. OPP Number 01-168, licence plate BBBS393. We proceeded back to the station. I dealt with some other matters. It was -- I spoke with Constable Jack about the matter at 12:13, and I also served -- subsequently served him a Provincial Offences Notice number 2476854A for that s. 136(1)(b) of the *Highway Traffic Act*.

Q. Could you explain that section?

A. That section is for failing to yield to traffic on a through highway.

Q. And can you tell me specifically about the Certificate of Offence?

A. The Certificate of Offence was served directly on Constable Jack. It's a Part I Provincial Offences Notice. It was served by myself and signed afterwards as to the service.

Q. And can you tell me how you made identification of Officer Jack? Like, did you ask him to produce his driver's licence?

A. No. I knew Constable Jack. Constable Jack was actually one of my probationary constables that came to the detachment and I was under direct supervision of Constable Jack.

Q. Okay. And can you tell me what type of road

County Road 23 is?

5 A. It's a county road. It's a paved highway, two lanes; one northbound, one southbound. There are -- it's a double solid line to the south of the intersection, and a pass line to the north for northbound traffic.

Q. And what jurisdiction is that?

A. It's in Peterborough County.

10 Q. And can you tell me the driver's licence of the individual that you served the PON to?

A. Constable Jack's driver's licence is J00525440721216, a valid Ontario driver's licence, photo driver's licence. Constable Jack's birthday is the 16th of December, 1972.

15 Q. Thank you, Officer. You indicated to the court that you observed all of this through your rear view mirror; is that correct?

A. That is correct.

20 Q. And who was the -- who was directly behind you at the time of the incident?

A. Constable Payne was behind me, the first officer travelling southbound behind me. She wasn't immediately behind me. She was a distance behind.

25 Q. A great enough distance that you had a clear view?

A. I had a clear view of the intersection when Constable Jack pulled out and of the events that transpired, yes.

30 Q. Okay. And you indicated that you saw Officer Jack when he pulled out. Did you see him at the stop sign?

A. Yeah, he was behind -- I saw him behind

Constable Payne at the stop sign.

Q. Okay. Did you see him pull up and stop at the stop sign?

A. I didn't see him pull up. I recall seeing him stop behind Constable Payne.

THE COURT: One moment, please. Thank you.

MS. HENRY: Q. And you indicated to the court that he was driving a cruiser; is that correct?

A. That is correct.

Q. And can you tell me what type of vehicle that is?

A. It's a Ford Crown Vic.

Q. And....

A. Victoria, I should say, sorry. Ford Crown Victoria.

Q. And is it a motor vehicle?

A. It is a motor vehicle.

MR. SUTTON: Objection. Leading.

MS. HENRY: Thank you.

THE COURT: For sure.

MS. HENRY: I have no further questions. Thank you.

THE COURT: Sir?

MR. SUTTON: Thank you, Your Worship.

CROSS-EXAMINATION BY MR. SUTTON:

Q. Sergeant Flindall, thank you for your attendance today. You indicated you approached County Road 23 with Officer Payne and Officer Jack behind; is that correct?

A. Correct.

5 Q. I believe you indicated as well that the vehicles that were heading -- and correct me if I'm wrong, you were travelling southbound; is that correct? Were you travelling....

A. On which highway, sir?

Q. 23.

A. Yes.

10 Q. Okay. I believe you indicated in your previous evidence that the vehicles that were travelling -- the civilian vehicles...

A. Correct.

15 Q. ...that were travelling southbound were approximately 450 to 500 metres away from the intersection when you pulled out?

A. Approximately, yes.

Q. Approximately. And then you indicated, if I can just clarify this, Officer Payne also pulled out behind you?

A. That's correct.

20 Q. Okay. And what were you driving on that date?

A. I was driving a Ford Crown Victoria as well, black and white OPP cruiser.

25 Q. Did this vehicle have roof lights; did it have....

A. It was a fully-marked cruiser, yes.

Q. Is there a cage in this vehicle?

A. Mine, yes.

Q. Is there rear deck lights as well?

30 A. I believe so, yes, in the back.

Q. Would it be fair to say that this -- these

items would also interfere with your view?

A. No. I had a clear view to my rear.

Q. But then Officer Payne pulled out, correct?

A. Correct.

Q. How could you see through her vehicle?

A. I was far enough south on County Road 23.

There was distance between myself and Constable Payne that it was fairly easy actually for me to look at the intersection.

THE COURT: One moment, please. Thank you.

MR. SUTTON: Q. Let's just go back to pulling up from the 14th Line of Smith to the stop sign, if I may.

A. Okay.

Q. You hit the stop sign, correct?

A. Pardon me?

Q. You stop at that stop sign?

A. Yes. Yeah.

Q. Okay. You look to your right. You see traffic oncoming, correct?

A. Yes.

Q. Okay. And you make your turn?

A. Correct.

Q. Roughly how long was it before Officer Payne made her turn?

A. It wasn't very long. It wasn't very -- she had sufficient time to pull up to the stop sign, stop and proceed southbound, so....

Q. A few seconds behind you, four seconds?

A. No, I wouldn't say it was that long. It would be I'd say ten seconds. By the time she -- because she was stopped behind me. She'd have to roll forward to the stop

sign, come to a stop and then proceed into the intersection, so you're probably ten to fifteen seconds, give or take.

5 Q. So ten to fifteen seconds. That would also -- I would respectfully submit, wouldn't that get the southbound traffic in the civilian vehicles a much closer distance to the intersection?

A. Sure, it would have.

10 Q. Okay. For example, if the southbound vehicles were travelling at the posted speed limit...

A. M'hm (affirmative).

15 Q. ...how close would they have been to the intersection when Officer Payne pulled out?

A. They were probably -- I would -- about half a distance between myself and -- or sorry, half the distance between when I first observed them and the intersection itself.

20 Q. And were you able to determine how long it was between when Officer Payne made her turn to when Officer Jack made his turn? How long would that have been?

A. It would have been about the same. There was a -- he had to have enough time to roll to the intersection, come to a -- start from a stop, roll to the intersection, stop and then proceed southbound as well, so I would say that's likely in and around the same -- same time frame.

25 Q. When an average civilian driving on the highway, when they see a police vehicle pull out of another side road or a driveway or something like that, what's their general first reaction?

A. You'd have to talk to those individuals.

30 Q. You don't have any history or any recollection of anything like that before?

A. People -- when I pull out in front of them?

Q. No. For example, as I indicated, if the average civilian sees you pull out on a highway in a police cruiser....

5 MS. HENRY: Objection. He can't answer for what the civilian would be thinking.

THE COURT: He can answer what he thinks he might think. You're right. He can't answer, but he can answer from his own recollection of what he has seen. To say otherwise is to defy logic.

10 MR. SUTTON: Q. Would it be fair to say, Officer, that most civilians would react and slow down upon seeing a police cruiser?

15 A. If they were travelling faster than the posted speed limit.

Q. Okay. Do you have -- Officer, if I can ask, did you have any communication with Officer Payne during this alleged incident?

20 A. Yes, I did.

Q. How did that communication take place?

A. Constable Payne contacted me on my cell phone to inquire if I had seen what had just transpired behind her and I indicated to her that I had.

25 Q. Okay. Why did Constable Payne use her cell phone?

MS. HENRY: I'm going to object.

THE COURT: On what basis?

MS. HENRY: How is he to answer why the constable....

30 THE COURT: Maybe he knows. If that's the case, he

may say "I don't know why."

A. I have no idea.

THE COURT: There's the answer.

MS. HENRY: Thank you.

THE COURT: Nothing mysterious about it at all.

MR. SUTTON: Q. Was the police radio working that day?

A. It was.

Q. You didn't have any problems with it?

A. No.

Q. Okay. I just want to clarify. You're travelling southbound on County Road 23, correct?

A. Correct.

Q. You're watching this transpire in the rear view mirror, correct?

A. Correct.

Q. How were you watching cars in front of you? How are you watching for oncoming traffic?

A. Quite easily.

Q. Quite easily. So you're looking in your rear view mirror and watching what's transpiring behind you and answering your cell phone and talking to Officer Payne and still observing the traffic oncoming?

A. Yes.

Q. Okay. You indicated in your testimony....

THE COURT: One moment, please.

MR. SUTTON: Certainly.

THE COURT: Thank you.

MR. SUTTON: Q. You indicated you were driving a force vehicle, correct?

A. Yes.

Q. Okay. Now, did you make these observations out of your rear view mirror attached to your windshield, or did you make them out of the side rear view mirrors?

A. They would have been made out of both.

Q. Is there any markings on the rear view mirrors or the side view mirrors on the police force vehicle you were driving?

A. Not to my recollection. I use the left one, and not to my recollection.

Q. Have you ever looked at the right rear view mirror on the force vehicle you were driving that day?

A. Not in this specific instance, no.

Q. Now, you indicated that you went -- returned back to the detachment; is that correct?

A. Yes.

Q. What time roughly did you arrive?

A. It was about -- in and around 11:30, give or take.

Q. Where did Officer Payne go, do you know?

A. My recollection is she came -- she was back to the detachment as well. I don't know the timeframe, how long after. I don't have a recollection on that.

Q. What occurred from the time the incident allegedly took place to seven hours later when you served the defendant? Why did you choose to wait seven hours to serve him?

A. Well, I'm supervising a platoon of officers. Constable Jack had also responsibilities on the day. I was also involved with other affairs during the day, and it was a matter of -- more of a matter of timing. Constable Jack had to be

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called back to the detachment. He was busy with calls for service, so, when he was -- I actually had to call him back to the detachment because of the calls for service level, and it was at that point in time, prior to the end of my call of duty that I served him with the paperwork. I spoke with Constable Jack in and around -- shortly after noon on that date, but -- he was served at 6:38 that evening.

10
MR. SUTTON: Thank you, Sergeant, I have nothing further.

10
MS. HENRY: I have no further questions. Thank you.

15
THE COURT: Officer, nothing turns on it, but did you say you were Officer Jack's supervisory officer?

15
A. Constable Jack has -- Constable Jack's was a probationary officer at that point in time. He had what's called a coach officer, but I was his sergeant. He was on my platoon.

20
THE COURT: Okay. Thank you. You may step down, sir.

A. Thank you.

20
MS. HENRY: If I could please call Constable Payne?

25
JENNIFER PAYNE, sworn:

EXAMINATION IN-CHIEF BY MS. HENRY:

25
Q. Constable Payne, are you, in fact, employed by the Ontario Provincial Police?

A. I am.

30
Q. And how long have you been employed as such?

A. Approximately 11 years, since 1998.

5 Q. Thank you. And can you tell me if, in fact, on the date of August the 15th of 2009 you were acting in your capacity as an officer on that day?

A. Yes, I was.

Q. Do you routinely take notes with respect to investigations?

A. I do.

10 Q. Did you take notes with respect to the matter before the court today?

A. Yes, I did.

Q. And did you -- when did you take those notes?

A. Shortly after the offence.

15 Q. And can you tell me if the notes have been in your possession since that time?

A. Yes, they have.

Q. Has there been any alterations, deletions or additions to those note?

A. No, there has not.

20 Q. Were the notes made in ink?

A. Yes.

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

A. Yes, I do.

25 Q. Do you wish to use your notes?

A. Yes, I would like to, please.

Q. For what purpose?

A. To refresh my memory.

30 MS. HENRY: Your Worship, I would ask that the officer be allowed to use her notes in order to help refresh her memory?

THE COURT: Sure.

MR. SUTTON: If I just may review the notes to ensure that they were disclosed to the defence? Officer, just if I can ask, where did you make these notes?

A. At the detachment.

MR. SUTTON: What time did you make them?

A. Approximately 20 minutes after the incident, the driving time back to the office.

MR. SUTTON: And where at the detachment, if I can ask? Where were they made?

A. In the constable's office.

MR. SUTTON: Was there any other involvement from any other officers?

A. No, there was not.

MR. SUTTON: Thank you.

THE COURT: Thank you.

MS. HENRY: Q. Starting with the date and location, can you please outline your involvement with respect to this matter?

A. Yeah. On the 15th of August, 2009 I had just responded to a call on the 14th Line of Smith and I was leaving the 14th Line, the residence at the 14th Line of Smith, and at approximately -- that was at 10:54 a.m. that we left the residence. I proceeded westbound on the 14th Line of Smith headed towards County Road 23. At that time I was following Sergeant Flindall and I was followed by Michael Jack. We were all operating fully-marked police cruisers. We approached the stop sign.

THE COURT: One moment, please. Thank you.

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A. We approached the stop sign at the intersection of County Road 23 and the 14th Line of Smith. Sergeant Flindall, I observed him stop in front of me and proceed to make a left-hand turn southbound onto County Road 23. At that time I proceeded to the stop sign. I made my stop and I checked for traffic and I proceeded -- there was traffic that was southbound. I was able to make my turn safely. I proceeded to make a left-hand turn into the southbound lane.

MS. HENRY: Q. Okay. If I can stop you there.

Can you tell me what distance approximately the southbound traffic was from your location at the stop sign?

15 A. I estimate it to be approximately 210, 220.

Q. Okay. And you felt that you could make that turn in safety?

A. Yes.

Q. And you, in fact, did make that turn?

A. I did.

20 Q. Okay.

THE COURT: One moment, please. Thank you.

MS. HENRY: Q. Okay. Could you tell me, the southbound traffic that you indicated was there, can you tell me how many vehicles you would have observed?

25 A. Approximately three vehicles were southbound. There were no northbound vehicles at the time.

Q. Thank you. Please continue, Officer.

30 A. Yeah. I proceeded to make my left-hand turn and when I was making my turn in my head I remember thinking that there was no way that Michael Jack was going to be able to

5
make -- approach the stop sign, stop, make his judgment to make his turn left and proceed the three of us in a row down County Road 23. As I -- when I made my turn I was in the southbound lane. I looked in my rear view mirror and that's when I observed Constable Jack in the northbound lane travelling southbound. There were -- the southbound....

THE COURT: One moment, please. Thank you.

10
A. The southbound traffic had -- was at the intersection at the time and they were -- they were very close to Constable Jack. They were pretty near beside him or right behind him at the time in the southbound lane. I observed Constable Jack travelling southbound in the northbound lane and I observed that the traffic had to slow in order to let him into the southbound lane.

15
Q. You indicated that he was travelling beside the vehicles that were in the southbound lane, correct?

A. Yes.

20
Q. So in your opinion was he then trying to overtake any vehicle?

A. No. I think he was -- I don't think he was trying to overtake -- overtake them per se. When he pulled out they were just -- they happened to be right beside him.

25
Q. Can you tell me how you....

THE COURT: One moment, please. Thank you.

MS. HENRY: Q. Can you tell me how you were able to -- to view the occurrences?

A. Through my rear view mirror.

30
Q. Was there any obstructions in your view between your rear view mirror and the incident behind you?

A. No, there was not.

5 Q. And when you seen him enter back into the southbound lane, can you explain when he did that?

A. In a distance or....

Q. Yeah.

A. I'm going to estimate maybe 30 metres from the intersection.

Q. That's when he....

10 A. He was able to merge into the north -- or the southbound lane, sorry.

Q. Did you visually observe him leave the stop sign?

A. No, I did not.

15 Q. So your first observation of him was when he was in the southbound -- or excuse me, northbound lane travelling southbound?

A. That's correct.

Q. And were there any cars coming in that northbound lane?

20 A. No, there were not.

Q. In your opinion, did his manoeuvre constitute a hazard?

A. Yes, it did.

25 Q. And you indicated that you had -- you remember thinking that there was no way that he was going to make that, so can you explain to the court why your -- what your concern was, that all three of you may be in a row?

30 A. We didn't have our emergency equipment activated. We weren't responding to a call at the time. We had just responded to kind of a high priority call, so we were 1-- it was like a cool down period. My concern to the public was

5 that three marked cruisers had pulled out in a row and the appearance was that this third car had to make it out to be with the other group. I believe when I -- when I was coming to the intersection I knew that they were close. I knew that I had enough time to make the turn in safety without affecting the flow of traffic...

Q. M'hm (affirmative).

10 A. ...but I just knew in my head that there was no way by the time he proceeded to the stop sign, made his stop, made his judgment and looked for traffic, that he wouldn't have been able to turn out properly into the southbound lane without there being a collision.

15 Q. And can you tell me, after your observations and what you seen, can you tell me what you did?

A. I contacted the supervisor?

Q. How did you do that?

A. I did that on the phone.

Q. And can you explain why you did that?

20 A. I did that to ask him to validate what I had seen. I wasn't -- I was kind of in shock and disbelief that that had kind of happened, and -- because I didn't honestly think that he would turn, and so I called the supervisor to see if he had seen what had happened.

25 Q. You indicate that you were in disbelief, that you couldn't believe that he had done this, but would you rely upon your independent recollection as being very accurate?

A. Oh, yes. Yes.

30 Q. And you're steadfast in your position that, in fact, it was an unsafe and hazardous manoeuvre?

A. Yes.

MS. HENRY: Thank you. I have no further questions.

THE COURT: Sir?

5 CROSS-EXAMINATION BY MR. SUTTON:

Q. Just to clarify, so Sergeant Flindall pulls up to the stop sign, correct?

A. Yes.

Q. And makes his left-hand turn, correct?

10 A. Correct.

Q. How far away from the intersection was the traffic at that point?

15 A. I'm not sure, because there's -- as a second car in line, there isn't good visibility until you approach the stop sign.

Q. Okay. So Sergeant Flindall stops at the stop sign, correct?

A. M'hm (affirmative). Yeah.

Q. Makes his left-hand turn?

20 A. Yes.

Q. How much time transpired between the time Sergeant Flindall makes his turn to the time you make your turn?

A. Probably ten or fifteen seconds.

25 THE COURT: One moment, please.

MR. SUTTON: Q. So you make your turn?

A. M'hm (affirmative).

Q. Okay. You indicated you estimated the vehicles were approximately 210 to 220 metres away from the intersection when you make your turn, correct?

30 A. That's correct.

Q. Did you estimate how fast those vehicles were travelling?

A. The posted speed limit is 80 and I estimated them to be travelling at at least 80 kilometres per hour.

Q. Okay. So if a vehicle was travelling at 80 kilometres per hour, how long would it take them to travel 210 metres?

A. I don't know that calculation off the top of my head.

Q. How long have you been an officer for?

A. Eleven years.

Q. Would it be fair to say it would be probably about a couple of seconds?

A. I don't know. I'd have to figure it out.

Q. So again, you indicated that you make your turn, correct?

A. Yeah.

Q. You're travelling southbound down County Road 23, correct?

A. Yes.

Q. And you're observing Officer Jack make a turn, correct?

A. No. I don't observe him make the turn.

Q. So you observe him when he actually is on the highway?

A. Yes.

Q. And you make this observation how?

A. Through my rear view mirror.

Q. And that's the one on the windshield?

A. Yes.

Q. How long did you observe this behaviour?

A. Seconds.

Q. And what were you driving that day?

A. I was driving a fully-marked Ford Crown

5 Victoria.

Q. Did it have roof lights? Do you recall?

A. Yes, it did.

Q. Okay. Did it have deck lights?

A. No, it would not.

10 Q. Did it have a cage?

A. Yes, it would have.

Q. Would that cage not have interfered or
potentially interfered with your view?

A. No, it would not have.

15 Q. Okay. So you indicated there were three
vehicles travelling southbound, correct?

A. Yes.

Q. Okay. And both you and Sergeant Flindall had
already made the turn, correct?

20 A. Yes. M'hm (affirmative).

Q. You indicated in your earlier testimony that
you -- excuse me, I might be paraphrasing, but you were
extremely concerned about the motoring public; is that correct?

25 A. I didn't say that.

Q. No, I said I might be paraphrasing. I'm not
sure exactly what you said. What was your initial concern with
Officer Jack pulling out?

A. That he wasn't able to do so in safety.

30 Q. You indicated -- sorry, if I may, you
indicated there was no way P.C. Jack would be able to make his

turn; is that correct?

A. In safety, yes.

5 Q. So you see these three vehicles and you had such a serious concern about making this turn not in safety, what did you do with those three vehicles?

A. I didn't do anything with them.

Q. Did you not think it might be appropriate to collect further evidence?

10 A. I advised the Sergeant of the incident and he's the one that can direct us as to what to do.

Q. So essentially, the best evidence that was out there on the date of this alleged incident, you let drive by?

15 THE COURT: One moment, please. Go ahead and answer the question.

A. Yeah. No. We're also the best evidence. We're police officers and we witnessed the incident.

20 THE COURT: One moment, please. Thank you.

MR. SUTTON: Q. Do you recall what these three vehicles were, Officer?

A. No I do not.

25 Q. You indicate you've been an officer for 11 years, correct?

A. That's correct.

Q. And yet the best witnesses that were there you let drive by? You indicated that the vehicles again that were travelling southbound....

30 THE COURT: Is that a question or a statement?

MR. SUTTON: I'm asking a question.

THE COURT: I was waiting to hear the answer.

MR. SUTTON: Q. Just to confirm, the vehicles that were heading southbound, you indicated they were approximately 200 metres away from the intersection when you made your turn; is that correct?

A. That's correct.

Q. Do you think 200 metres was an appropriate distance for you to make your turn?

A. Yes, I do.

Q. With vehicles travelling at at least 80 kilometres per hour?

A. I determined -- I believed I was able to make the turn in safety, and I did.

Q. Officer, if I can just refer you to your notes that were provided in disclosure, at approximately 10:56 I believe it is?

A. Yeah.

Q. You make a comment, "Southbound traffic had to brake and slow." Is that correct?

A. Yes.

Q. How did you determine that?

A. It would have had to have braked and slow because he had pulled out.

Q. But how did you determine that?

A. I witnessed them slowing.

Q. You saw their brake lights?

A. No, I couldn't see their brake lights.

THE COURT: One moment. Carry on.

MR. SUTTON: Q. Did you see Officer Jack make his turn to the south?

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A. No, I did not.

Q. Did you see him physically turn into the southbound lane?

5 A. Yeah, he -- yes, he merged into the lane. I looked in my rear view mirror quite a few times.

Q. You indicated that this was "a cool down period." What did you mean by that?

10 A. We had been at an incident, a family dispute, and we weren't rushing to get anywhere. We weren't rushing to be anywhere, and we didn't have our lights activated or our emergency equipment activated, no sirens were on, so in essence, it was a non-emergency situation.

15 Q. Now, you also indicated you contacted Sergeant Flindall by telephone; is that correct?

A. That's correct.

Q. Why did you not use the police radio?

A. I can't give you an answer to that. I don't know.

20 Q. Was it functioning that day?

A. Yes, it was.

Q. Does the OPP not have a policy with respect to the use of cell phones?

A. No.

25 Q. What about the new law in the Province of Ontario; wasn't that being discussed at this point in time?

A. But it wasn't in effect, and a police officer is exempt from the law. Police officers in the execution of their duties are allowed to use their cell phones.

30 MR. SUTTON: Thank you, Officer. I have nothing further.

MS. HENRY: I have no further questions, thank you.

THE COURT: Nor do I.

MS. HENRY: That completes the case for the prosecution, Your Worship.

THE COURT: All set. Defence?

MR. SUTTON: Your Worship, prior to calling a defence, which I'd like to reserve the right to call that defence, I'd like to enter into a motion for non-suit at this time, directed verdict. In my respectful submission....

THE COURT: One moment. Yes, sir?

MR. SUTTON: It's my respectful submission that the essential elements of the offence, a prima facie case as not been put forth before the court. The evidence, first and foremost, of Sergeant Flindall dealing specifically with identification is very clear. He did not obtain any driver's licence from the defendant. How did he verify, in fact, identification? How did he obtain this information? There was none of that before the court. He did not verify a photo identification.

THE COURT: One moment, please.

MS. HENRY: Certainly.

THE COURT: Thank you. Carry on.

MR. SUTTON: Secondly, Your Worship, with the greatest of respect, there was no evidence that the defendant before the court was, in fact, operating a motor vehicle as defined by the *Highway Traffic Act*. One could certainly surmise that, but there's no direct evidence that, in fact, he was. I

respectfully submit that third and foremost, there was no evidence....

THE COURT: One moment.

MR. SUTTON: Certainly. Thank you.

THE COURT: Carry on.

MR. SUTTON: Thirdly, very candidly I'd like to respectfully submit, Your Worship, that there's no evidence before this court other than the subjective evidence of the officers, that, in fact, the defendant failed to yield to traffic on a highway. The best evidence was let go. It doesn't exist, nor can we challenge it.

In my respectful submission, sir, the Crown has not made out a prima facie case. I'd ask you to dismiss the charge at this time.

THE COURT: Ma'am?

MS. HENRY: With respect to the identification of the officer, the -- Sergeant Flindall indicated to the court that he had personal knowledge of the individual. He was the supervising Sergeant of the individual, and that I believe that he indicated to the court that he made a -- he believed it to be Michael Jack, and that it was consistent with his driver's licence number that was provided to the court, and that he was confident with his identification of the individual.

With respect to his motor vehicle as defined by the Highway Traffic Act, I was under the impression

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that he had given that evidence earlier in his evidence, but I had not checked it off on my checklist and that's why I went back over that, so I would say that it would be subject to a listening of the tape to indicate whether the officer did make that indication, that it was a motor vehicle.

10
And with respect to the subjective evidence, these are both officers that are highly trained. Both of them have been on the force for 11 plus years. I believe it was longer for Sergeant Flindall, and they both have a professional opinion, which they gave, that they both observed him make that turn not in safety. And there's evidence of Officer Payne -- or was specifically that she believed it to be a hazardous move, and I think that that is -- that is more than enough evidence that the incident occurred and that they gave eye-witness statements that the incident occurred.

15
20
THE COURT: All right.

25
30
MR. SUTTON: Opinion, subjective opinion. That's all. More importantly, again, it goes back to the driver's licence. How did the officer, how did Sergeant Flindall obtain that? There's no indication before the court that that licence was obtained directly from the defendant. There's no indication that he verified identification. There's no indication that the driver's licence even matches that of Michael Jack, the defendant before the court. None whatsoever. Where did the

officer obtain it? He didn't obtain it from the defendant. How did he verify it? He didn't obtain it and verify it with the defendant. It's an essential element. It must be there, and it's not.

5 THE COURT: Well, there we go. The beauty of it all is, we get to go early. Madam Clerk, I'll want a transcript as soon as we possibly can so we can all re-convene. I was writing feverishly, but I want to be precise, and so what's an appropriate time for us all to come together again?

10 MR. SUTTON: I will work it into my schedule.

MS. HENRY: As I will as well. Whenever you're available, Your Worship.

15 THE COURT: I apologize. Do you know what I want you to do?

MS. HENRY: I am returnable to this court on April the 29th. I don't know that that's....

20 THE COURT: Madam Clerk has to get my calendars. I just want to see my -- I'm not in this court in the month of April at all. Sit down everybody and relax.

MR. SUTTON: Thank you.

25 THE COURT: Thank you, ma'am. Okay. In the month of -- first of all, Madam Clerk, how long will it take to get a transcript, approximately? A week, ten days, something like that? Excuse me. I am not here in the month of April. What are the court days during May?

30 COURTROOM CLERK: You're seized on May 6th.

THE COURT: Which is fine if I have the transcript