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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 103

JOSEPH DUMAY,

Appellant.

20 Eagle Street
Albany, New York 12207
May 1, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

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1 CHIEF JUDGE LIPPMAN: 103, People v. Dumay.
2 Counsel, would you like any rebuttal time?

3 MS. DONNER: Yes, Your Honor, I would like
4 to reserve two minutes for rebuttal, please.

5 CHIEF JUDGE LIPPMAN: Two minutes, sure, go
6 ahead, counsel.

7 MS. DONNER: Thank you. May it please the
8 court, my name is Amy Donner and I represent
9 appellant Joseph Dumay.

10 Regardless of whether it was an information
11 or complaint and which standard is used, regardless
12 of all that - - -

13 CHIEF JUDGE LIPPMAN: Doesn't it - - -
14 doesn't it matter?

15 MS. DONNER: Not if we - - - we win either
16 way, Your Honor - - - I mean, we contend that you're
17 correct - - -

18 CHIEF JUDGE LIPPMAN: Okay, go ahead.

19 MS. DONNER: - - - that it's
20 jurisdictionally defective.

21 CHIEF JUDGE LIPPMAN: Go ahead.

22 MS. DONNER: Not if we win.

23 CHIEF JUDGE LIPPMAN: Go ahead.

24 MS. DONNER: But that it's, you know,
25 either way.

1 CHIEF JUDGE LIPPMAN: Okay. Regardless,
2 because it was completely conclusory. First there's
3 a - - - first there's a complete absence of
4 allegation of the intent element that appellant had
5 any - - - I'm sorry; I thought somebody said
6 something to me - - - that appellant had any way - -
7 - there's no allegation that appellant had any way to
8 know that the officers wanted to move the car.

9 JUDGE SMITH: Oh, well, they - - - the
10 allegation is that he prevented them from moving. He
11 stood - - - he prevented them by moving by standing
12 behind the car. Isn't it a fair inference from that
13 that the car so situated, they could only back up?

14 MS. DONNER: No, Your Honor. That because
15 it's - - - that's conclusory. The term "prevent" is
16 conclusory. And this is - - - and they wanted to
17 infer that.

18 JUDGE SMITH: Well, well - - -

19 MS. DONNER: Oh, I'm sorry.

20 JUDGE SMITH: But you - - - I mean, aren't
21 you - - - how do you tell - - - I suppose it's just
22 the difference between the words "conclusion" and
23 "inference". But if I say, you stood behind my car
24 and prevented me from moving, wouldn't you infer from
25 that that my car was in a position where it could

1 only back up, and that I was in the car trying to
2 move it?

3 MS. DONNER: No, Your Honor, but that is
4 precisely what the People would like us to think, but
5 the point is, is that the only detail they're giving
6 us is that what - - - is that he's standing from
7 behind. That he's stand - - -

8 JUDGE RIVERA: So - - - so - - -

9 MS. DONNER: I'm - - -

10 JUDGE RIVERA: I'm sorry.

11 MS. DONNER: I'm sorry.

12 JUDGE RIVERA: So, is what you're saying
13 that they have to do, that they have to eliminate
14 every other possible way that that car could move as
15 a fact - - - and set that out as a factual assertion?

16 MS. DONNER: Well, I'm saying that that
17 appellant can't - - - I mean, that it has to be - - -
18 that it has to be clear that - - -

19 JUDGE GRAFFEO: What - - - what are you
20 suggesting the accusatory instrument should have
21 said?

22 MS. DONNER: There are a lot - - - I mean,
23 there are a lot of things that could have said, but
24 they had needed to make it clear - - - they needed to
25 give the allegation - - -

1 CHIEF JUDGE LIPPMAN: Don't they need to
2 just put you on notice, is it?

3 MS. DONNER: Exactly, they needed - - -

4 CHIEF JUDGE LIPPMAN: So, why aren't you on
5 notice in the - - - in the - - - from a common sense
6 perspective, without being overly technical, along
7 the lines that Judge Smith is saying, why - - - why
8 isn't this obvious and apparent and puts you on
9 notice?

10 MS. DONNER: Because - - -

11 CHIEF JUDGE LIPPMAN: What else - - -
12 answer Judge Graffeo's question. What else do they
13 need to say?

14 MS. DONNER: They needed - - - they needed
15 to make clear that they needed to make an evidentiary
16 allegation showing that appellant had some way to
17 know - - -

18 JUDGE SMITH: Give - - - give us an
19 example. Make - - - make up a sufficient accusatory
20 instrument for this case.

21 MS. DONNER: Well, that they needed to give
22 some indication that they wanted to move, so
23 appellant didn't need to be a mindreader.

24 JUDGE SMITH: Go ahead. Do it. Give us
25 the indication.

1 MS. DONNER: Such as - - -

2 JUDGE SMITH: Write it for us.

3 MS. DONNER: They put on the lights. They
4 started moving. They start - - - they say with
5 megaphones, get away. They put on their lights.
6 They said something that indicated they weren't just
7 standing still, you know, doing other police
8 activities in the car - - - or whatever, in the car.
9 Anything in the car.

10 JUDGE GRAFFEO: So it has to say, we turned
11 on the ignition, and we put on the lights - - -

12 MS. DONNER: Perfect.

13 JUDGE GRAFFEO: - - - and he was standing
14 behind the car?

15 MS. DONNER: Yes.

16 JUDGE GRAFFEO: Isn't that kind of - - -
17 you don't think that can be inferred? If I - - - if
18 it said he was standing in front of the car, would
19 that also be a problem? I mean, generally if
20 somebody's standing in front of the car, you can't
21 move.

22 MS. DONNER: Unless there was a lot of
23 space behind the car. Here there wasn't, but we have
24 no idea about the front of the car. And we have no
25 idea that the police - - - that there wasn't - - -

1 didn't look like the police car was just standing
2 there doing - - -

3 JUDGE RIVERA: But, actually - - -

4 MS. DONNER: - - - other things.

5 JUDGE RIVERA: - - - I think your point
6 about the lights and - - - I get where you're going
7 with that, but it strikes me that you're still
8 arguing that they have to eliminate through factual
9 assertions, every other possible way they could move,
10 because they could put on the lights; they could turn
11 on the engine. But if they could move ahead, I
12 assume you would be here arguing that they - - - that
13 he did not, but standing behind the car, in anyway -
14 - - because you're arguing it, right - - - in anyway
15 prevent them from patrolling.

16 So I'd still think, unless - - - I - - -
17 otherwise I don't understand your argument. I still
18 think you're arguing that they have to make many,
19 many factual assertions, setting out that there's no
20 other possible way that they could move this car.

21 MS. DONNER: I - - - it would - - - it
22 really would not take a lot. They'd only have to
23 throw in a few more words, just so that appellant
24 doesn't have to be a mindreader. How do you know
25 when a police car is there that it's not planning to

1 stay there?

2 JUDGE RIVERA: But what are the few words?

3 I - - - I couldn't - - -

4 MS. DONNER: It would - - -

5 JUDGE ABDUS-SALAAM: Couldn't they have
6 said - - -

7 JUDGE RIVERA: They can't pull out in front
8 - - - I can't pull out to the side?

9 JUDGE ABDUS-SALAAM: Couldn't they have
10 said, would you move out of the way?

11 MS. DONNER: Yeah, exactly, Your Honor.

12 JUDGE ABDUS-SALAAM: They could've just - -
13 - and we asked him to move, and he refused.

14 MS. DONNER: Exactly, Your Honor.

15 JUDGE ABDUS-SALAAM: Because that would be
16 - - -

17 MS. DONNER: That would have been easy.
18 Yes, that's something - - - again - - -

19 JUDGE GRAFFEO: What about the fact that he
20 banged the back of the - - - back of the car? Didn't
21 that kind of indicate he wanted to them to know he
22 was standing there?

23 MS. DONNER: All it ind - - - all it
24 indicates is - - - I mean, all - - - that that's the
25 only fact that we do - - - that we do have. It was -

1 - - I mean it was disres - - - it could - - - it was
2 disrespectful, unless he was trying not to get hit.
3 It was just - - - it was disrespectful. But, I mean,
4 so maybe it's disorderly conduct, if there is, like,
5 a public harm element, but it - - - there's no
6 indication that he knew they wanted him to move - - -

7 JUDGE RIVERA: But you know what? But even
8 telling him "move" doesn't mean that they could not
9 move. It's just saying I don't want you behind the
10 car. So I still don't see, again, unless - - -
11 unless you're saying they have to make factual
12 assertions that there's no other possible way that
13 they can move.

14 MS. DONNER: They - - -

15 JUDGE RIVERA: So the cop says "move", but
16 - - - but can clearly drive out from the front.
17 Wouldn't you be arguing that he didn't prevent them
18 from moving?

19 MS. DONNER: It's hard for me to know
20 exactly what I would be arguing. So I'm sorry, what
21 - - - so the hypo - - - okay, because I'm not - - -
22 what is - - - the hypothetical is? Is - - - I'm
23 sorry - - - it's that - - -

24 JUDGE RIVERA: The copy says "move from
25 behind my car", but the cop can pull out straight in

1 front. Obviously from standing behind him, he's not
2 preventing the vehicle from moving, provided - - -

3 MS. DONNER: So then appellant would not
4 have been preventing the vehicle from moving, and
5 then - - -

6 JUDGE RIVERA: Correct. That's why I'm
7 saying, simply saying "move", or even on turning on
8 the lights or turning on the engine, it strikes me
9 that it doesn't still address what you claim is the
10 lack of notice or the - - - the sufficiency of the
11 fact - - - of the factual allegations.

12 MS. DONNER: I'm sorry; I think I must not
13 be fully understanding.

14 JUDGE SMITH: Well, the hypothetical is - -
15 -

16 MS. DONNER: I'm sorry.

17 JUDGE SMITH: Suppose you add to this
18 complaint, we - - - I was sitting - - - an officer
19 was sitting in the driver's seat, stuck his head out
20 the window and yelled "move". Judge Rivera's
21 suggesting, well, you - - - then you - - - that still
22 wouldn't do it, because you - - - you'd say, how do
23 we know he couldn't - - - how do you know he couldn't
24 have moved forward, or didn't want to move forward?

25 MS. DONNER: Well, that would have been so

1 much more than we would have had here. All we have
2 is that one little - - - is that one little fact that
3 he's behind, you know, it's clear - - -

4 JUDGE SMITH: Yeah, but I - - - but I guess
5 the point is, however - - - however many details you
6 put in, there's always going to be some lawyer like
7 you saying, no, you need one more; it's not clear.
8 How do we draw the line?

9 CHIEF JUDGE LIPPMAN: What's the rule?
10 What do you - - -

11 MS. DONNER: He has to be - - -

12 CHIEF JUDGE LIPPMAN: What - - - what's the
13 rule?

14 MS. DONNER: Okay.

15 CHIEF JUDGE LIPPMAN: What do you have to
16 say?

17 MS. DONNER: That it has - - - that is has
18 - - - there have to be enough facts so that it's
19 clear that appellant knew that they wanted to move.
20 Had the officer just said - - - had they said "move"
21 that would have - - - that might have - - - that
22 would have been something - - - that would have been
23 good. Had they been - - - had it been clear that he
24 was blocked in front of the back, that would have
25 been good. Had he started moving - - - had he - - -

1 all those things.

2 But he has to have had - - - he can't just
3 have the word "prevent" and "standing behind",
4 because prevent is a conclusory term, and it - - -
5 and there's just no in - - - there's just no
6 indication that appellant had any way - - -

7 CHIEF JUDGE LIPPMAN: Okay, coun - - -

8 MS. DONNER: - - - of knowing here.

9 CHIEF JUDGE LIPPMAN: Okay. Let's hear
10 from your adversary.

11 MR. KOELSCH: May it please the court, good
12 afternoon, Your Honors, Adam Koelsch on behalf of the
13 respondent.

14 The defense attorney here expressly and
15 validly waived the defendant's right to prosecution
16 by information on his behalf, so - - -

17 JUDGE SMITH: She - - - she says it doesn't
18 make a difference.

19 MR. KOELSCH: Well, I - - - I would - - -

20 JUDGE SMITH: Not that there's no
21 difference in the standards, but she wins either way.

22 MR. KOELSCH: And - - - and - - -

23 JUDGE SMITH: Do you agree with her the
24 case doesn't turn on that? In other words, you say
25 you win either way?

1 MR. KOELSCH: Well, I - - - I would say
2 that we do win either way, but there is a difference,
3 obviously between the two standards, so what we would
4 have to show for sufficiency purposes would - - -
5 would - - -

6 JUDGE SMITH: Can you ar - - - can - - - I
7 mean, I see the point that there's - - - can you
8 explain what the difference is? Can you give you
9 give me an example of something that's sufficient
10 under one but not the other, apart from the hearsay
11 difference, of course?

12 MR. KOELSCH: Well, for instance - - - and
13 I think this is one of the - - - the more common
14 examples is, you may have reasonable cause to believe
15 in a weapons case, somebody observes a defendant
16 holding a gun. We would still, in order to need - -
17 - to establish each and every element of the offense,
18 under the prima facie case requirement, you would
19 still need a - - - an operability report there.

20 So if - - - so - - -

21 JUDGE SMITH: So - - - so you're saying
22 that if you see a guy with a gun, that's reasonable
23 cause to believe that it's operable - - -

24 MR. KOELSCH: Correct.

25 JUDGE SMITH: - - - but it's not evidence

1 that would, if true, establish that it's operable.

2 MR. KOELSCH: Correct, because we'd still
3 need to prove the additional element of operable - -
4 -

5 JUDGE PIGOTT: If you - - - if you take - -
6 - as I understand Ms. Donner's argument - - - if - -
7 - if Mr. Dumay went home, and about a half hour
8 later, a cop knocks on his door and says, I'm giving
9 you this ticket for obstructing governmental
10 administration, and it reads what this one reads.

11 I mean, he'd be saying, so, I did that.
12 What - - - what - - - at what point is that
13 obstructing governmental administration? I think is
14 her point. There's not enough there for him to say,
15 gee, I got to prepare a defense, or I've got to
16 defend against it. They say I stood behind a police
17 car.

18 MR. KOELSCH: Well, I - - - I think if
19 you're asking whether or not it satisfies the
20 jurisdictional prerequisites of notice of the crime
21 that he's committing and sufficient to prevent the
22 double jeopardy problem, I - - - I think it is. It
23 demonstrates a time and place, exactly the result of
24 his actions, and what his actions were. He knows
25 what - - - he would be - - - reading these facts, he

1 would be able to - - -

2 JUDGE PIGOTT: He'd be reading that he
3 prevented a vehicle from moving by standing behind
4 it.

5 MR. KOELSCH: Correct.

6 JUDGE PIGOTT: I did that. In fact, I did
7 it about six times, because there's all these cars
8 along the - - - along the road, and I was standing
9 there for who knows how long, but that's a crime?
10 That I stood - - - that I stood by the road?

11 MR. KOELSCH: Well, I think what needs to
12 be added to that analysis is - - - is - - - and I
13 know, this is the defense attorney's position, is
14 that there has to be an element of intent there.

15 And it's not just - - - there may be
16 innocent inferences that can be drawn from the
17 allegation that a defendant is standing behind a car
18 and preventing it from moving, but when you add the
19 additional allegation of this emphatic and defiant
20 hand gesture of slamming his hand on the back of the
21 police vehicle, I - - - I think that shows that the
22 defendant, reading the totality of the allegations,
23 it makes it reasonably likely that he intended to
24 commit the crime here. Now - - -

25 JUDGE GRAFFEO: Is that what - - -

1 JUDGE READ: What - - -

2 JUDGE GRAFFEO: - - - is that what
3 precipitated this - - - the police writing up this
4 accusatory instrument? Was it the slamming of the
5 trunk or did something happen before that that caused
6 these officers to decide to arrest this person?

7 MR. KOELSCH: Well, I - - - I think it's -
8 - - it's the defendant's actions that are set forth
9 in the accusatory instrument in preventing the
10 officers from - - - from moving, but without getting
11 too much into it, because we're confined by the
12 record - - -

13 JUDGE GRAFFEO: Well, a lot of people walk
14 behind police cars and they don't get arrested, so
15 there had to be something more here than just the
16 fact you're behind a police car.

17 MR. KOELSCH: Right. And - - - and again,
18 I would say that the - - - what makes the intent
19 easiest to infer from the allegations here is - - -
20 is the allegation that the defendant slammed his - -
21 - his hands on the back of the police vehicle as he's
22 doing this.

23 JUDGE PIGOTT: The hard thing to believe -
24 - -

25 JUDGE ABDUS-SALAAM: Well, what - - -

1 JUDGE PIGOTT: I'm sorry, Judge. Go ahead.
2 I insist.

3 JUDGE ABDUS-SALAAM: What if the defendant
4 had stood of the driver - - - not the driver side,
5 the passenger side by the - - - and there was another
6 policeman or police officer sitting on the passenger
7 side, and he just stood there, or hit the window, or
8 something like that. Would that be the same thing,
9 preventing the police car from moving or doing some
10 kind of governmental administration or governmental
11 function, just by preventing a police officer from
12 getting out of the car by standing there? Would you
13 say the same thing?

14 MR. KOELSCH: I - - - I don't think we'd
15 necessarily be saying the same thing there, and I
16 think what's lacking in those particular allegations
17 there is something to infer that the - - - I'm sorry
18 - - - that the police officer is actually trying to
19 engage in something to - - - I'm sorry - - - engaging
20 in some sort of official government function.

21 Here, what we're saying is that there was
22 definitely something that the officer would have - -
23 -

24 JUDGE ABDUS-SALAAM: Well, what if they
25 were - - -

1 MR. KOELSCH: - - - liked to have done
2 here.

3 JUDGE ABDUS-SALAAM: What if they were
4 about to go on a lunch break or something, instead of
5 going on a - - - a police run and that's why they
6 wanted to move the car. Would that be an official
7 governmental function that they were performing?

8 MR. KOELSCH: I don't think that that would
9 necessarily be an official governmental function, but
10 the question here is what's the inference that we can
11 draw here? We have police officers in a patrol
12 vehicle that are prevented from moving and the
13 inference, if we're talking about intent, I think
14 it's rational to infer that the defendant is
15 intending that he keep the officers from - - -

16 CHIEF JUDGE LIPPMAN: It's the physical
17 obstruction, is that - - - is that what you're saying
18 that makes the inference?

19 MR. KOELSCH: I'm saying - - - well, it's -
20 - - it's that we've - - - we've actually alleged that
21 as a result of the defendant's actions, that it, in
22 fact, prevented the car from moving - - -

23 CHIEF JUDGE LIPPMAN: Yeah.

24 MR. KOELSCH: - - - and - - -

25 JUDGE SMITH: It says - - - it says - - -

1 well, actually, it says preventing - - - preventing
2 deponent from patrolling the neighborhood.

3 MR. KOELSCH: Well, it - - - I believe it
4 says prevented the car from moving by standing behind
5 it and preventing the officer from patrolling the
6 neighborhood.

7 JUDGE PIGOTT: Right.

8 MR. KOELSCH: And so it's - - - it's - - -

9 CHIEF JUDGE LIPPMAN: They're obstructing
10 its movement.

11 MR. KOELSCH: It's obstructing the movement
12 of the car - - -

13 JUDGE PIGOTT: But that's a - - - that's a
14 pretty serious charge, you're saying that this - - -
15 this police - - - this police car couldn't move and -
16 - - and the neighborhood was therefore put in peril.

17 Judge Abdus-Salaam, if I understand what
18 she's saying, is you got an officer who wants to get
19 out of the car, so he can go to an address or
20 whatever. And you're standing in the way of the
21 door, so he can't get it open. And you say exactly
22 the same thing, that - - - that pedestrian, that
23 whoever, has obstructed governmental administration,
24 because he couldn't, at that moment in time, open the
25 passenger door.

1 MR. KOELSCH: Well, I mean, that - - - that
2 would depend on what the officer's there to do.

3 JUDGE PIGOTT: Seriously? Seriously?

4 MR. KOELSCH: Well, I - - - I - - -

5 JUDGE PIGOTT: Don't you think - - -

6 JUDGE RIVERA: You're saying he can't
7 assert as he says here, and prevented me from
8 patrolling, because that's not what he's doing.

9 MR. KOELSCH: I - - -

10 JUDGE RIVERA: Right? That's not what's
11 being prevented. Is that what your position is? If
12 he's going out to get lunch - - -

13 MR. KOELSCH: Right. Correct.

14 JUDGE RIVERA: - - - and he's being stopped
15 from getting lunch, not stopped from patrolling. Is
16 that your argument?

17 MR. KOELSCH: No, I - - - what I'm saying
18 is that if - - - if you would be able to infer that
19 he's stopped from getting lunch, I mean, that is an
20 innocent inference that can be drawn from these
21 facts, because it's not necessarily - - -

22 JUDGE PIGOTT: Does that - - - does that
23 trouble you at all that - - - that any law
24 enforcement person can - - - can charge somebody with
25 obstructing governmental administration because he

1 egress, but I think - - -

2 JUDGE ABDUS-SALAAM: You've never seen a
3 police car go up on the sidewalk - - -

4 MR. KOELSCH: Well, I - - -

5 JUDGE ABDUS-SALAAM: - - - to get out of
6 the spot?

7 MR. KOELSCH: Well, again, I would say it's
8 - - - it's about rational inferences to be drawn
9 here, and I think the Jackson case provides a useful
10 analogy here.

11 In Jackson, the People had to prove that
12 the defendant had possessed marijuana in open - - -
13 in a public place. And the allegation there was that
14 the - - - the police officer approached the car and
15 saw marijuana in the defendant's hand open to the
16 public.

17 And this court said, well, there's no
18 allegation about what the position of the hand is.
19 We don't - - - we don't know where the hand is, and
20 really it's just the fact that the officer could
21 observe it from outside of the car, to see that - - -
22 to establish that this is actually open to public
23 view. And - - -

24 JUDGE PIGOTT: The gravamen of this one,
25 though, it seems to me is that the neighborhood was -

1 - - was in - - - was in peril. Or the neighborhood
2 did not get the - - - the law enforcement protection
3 that - - - that it deserved, and they were trying to
4 give.

5 MR. KOELSCH: I don't think we necessarily
6 have to - - - have to go that far with the
7 allegation. It's - - - there's a defined government
8 duty that - - -

9 JUDGE PIGOTT: But isn't that the
10 government administration that he was charged with
11 obstructing?

12 MR. KOELSCH: That's correct. That's
13 correct.

14 JUDGE PIGOTT: But you do have to go there.

15 MR. KOELSCH: I'm sorry?

16 JUDGE PIGOTT: You do have to go there.

17 MR. KOELSCH: Yes, but I - - - I mean, I
18 don't think we need to say that the neighborhood is -
19 - - is put in some sort of peril as a result of this.
20 There's a specified government function - - -

21 JUDGE SMITH: If - - - if he was two
22 minutes late getting on patrol, that would be enough
23 according to you?

24 MR. KOELSCH: That's correct, and - - -

25 JUDGE SMITH: It's still an obstruction.

1 MR. KOELSCH: That's correct, and this
2 court has said that the entire purpose of the - - -
3 the obstructing statute is to penalize even minimal
4 interference with an official government function.
5 So, yes is the answer to your question.

6 CHIEF JUDGE LIPPMAN: Okay, counsel,
7 thanks, counsel.

8 MR. KOELSCH: Thank you, Your Honor.

9 CHIEF JUDGE LIPPMAN: Counsel, rebuttal?

10 MS. DONNER: Yes. Dreyden said - - - under
11 Dreyden, notice means nonconclusory notice. Prevent
12 from patrolling the neighborhood, block - - - that's
13 all - - - and block wasn't said, but let's say
14 prevent, whatever - - - those are conclusory terms.
15 I mean, in Dreyden that's like the gravity knife in
16 Dreyden. Defendant knew he was charged with a
17 gravity knife, but he was entitled to the allegations
18 to know how you could tell it was a gravity knife and
19 not a different kind of knife.

20 Now even if - - - I mean, especially the
21 charge is a class A misdemeanor, obstructing
22 government administration, when, I mean, it's
23 striking the trunk, okay, disorderly conduct, if it's
24 creating some disturbance to the public. But - - -

25 JUDGE RIVERA: What - - - what doesn't the

1 defendant know?

2 MS. DONNER: The defendant doesn't know
3 that the police - - -

4 JUDGE RIVERA: When they read this?

5 MS. DONNER: The defendant doesn't know - -
6 - when the defendant - - - when he's there, when he's
7 behind, he doesn't know that the police want to move.

8 JUDGE RIVERA: No, no, no, what doesn't he
9 - - - I'm sorry.

10 MS. DONNER: I'm sorry.

11 JUDGE RIVERA: When you read this, and
12 since it's supposed to give you notice, what is it
13 that he doesn't know? What - - -

14 MS. DONNER: How - - -

15 JUDGE RIVERA: What notification is
16 lacking?

17 MS. DONNER: That he doesn't know how he's
18 preventing them from getting - - - from moving,
19 because he doesn't - - - because they're just saying
20 block/prevent. There's no discussion about what's
21 going on in front of the car.

22 JUDGE PIGOTT: Well, he - - - he knows what
23 they're charging him with. He's just saying I don't
24 - - -

25 MS. DONNER: He knows what he's charged

1 with.

2 JUDGE PIGOTT: - - - I don't know enough
3 facts about any - - - and won't that come out at
4 trial, assuming it - - -

5 MS. DONNER: Well, Dreyden knew that he was
6 being charged with possession of a gravity knife. He
7 was clear when he read that - - -

8 JUDGE RIVERA: But - - -

9 MS. DONNER: - - - when he read that
10 complaint.

11 JUDGE RIVERA: But - - -

12 MS. DONNER: But he didn't - - -

13 JUDGE RIVERA: But here, doesn't he - - -
14 we read this; doesn't he say, yeah, but you could
15 have pulled out in front, you could have le - - -
16 gone to the left, gone to the right. I didn't block
17 you from moving. What is it that he doesn't know
18 from this?

19 MS. DONNER: Well, he doesn't know how he
20 prevented them from moving.

21 JUDGE SMITH: Well, he know - - - doesn't -
22 - - doesn't he know that they're - - -

23 MS. DONNER: I'm sorry, I didn't mean that
24 - - -

25 JUDGE SMITH: - - - doesn't he know that

1 they're saying - - - doesn't anyone with common sense
2 who reads this know that they're saying they wanted
3 to back up and they couldn't back up because he was
4 there?

5 MS. DONNER: That is what the People want -
6 - - want them to think that he's preventing them from
7 move - - -

8 CHIEF JUDGE LIPPMAN: Yeah, but he - - -
9 but there's a physic - - -

10 MS. DONNER: - - - because that's doing it
11 - - - they don't want him behind - - -

12 CHIEF JUDGE LIPPMAN: But he is a physical
13 obstruction to the car moving. Isn't that just - - -
14 I don't need expert knowledge by someone to tell you
15 that that the car can't move if there's someone, you
16 know, hanging on the back and - - - and isn't that
17 obvious? Can't there be an inference here?

18 MS. DONNER: It's inference upon inference,
19 because we don't know that he knew they wanted to
20 move. They didn't say move. Had they at least said,
21 move, I would have been mu - - - that would have been
22 - - - that might - - - maybe that would be enough.
23 It certainly would be a much better case.

24 But here, it's inference on inference. We
25 don't know that they wanted to move. He doesn't know

1 they wanted to move. He doesn't know that he was
2 standing behind. If they had said and he was - - -
3 there was no other way to get out. He was blocked in
4 all other ways - - -

5 CHIEF JUDGE LIPPMAN: Okay - - -

6 MS. DONNER: - - - no other way of egress.

7 CHIEF JUDGE LIPPMAN: Okay, counsel.

8 Thanks.

9 MS. DONNER: Thank you.

10 CHIEF JUDGE LIPPMAN: Thank you both.

11 MS. DONNER: Thank you.

12 CHIEF JUDGE LIPPMAN: Appreciate it.

13 MS. DONNER: Thank you.

14 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of People v Joseph Dumay, No. 103, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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