

THURSDAY, OCTOBER 22, 2015

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MR. HARDIEJOWSKI: Your Honour as we indicated earlier this morning to go to Part 2 of a Charter motion to Section 8, I call Officer Poperechny. And it's spelled, P-O-P-E-R-E-C-H-N-Y. Officer would you come forward please?

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MR. FAGAN: And My Lady since viva voce evidence is being called, out of an abundance of caution I think my friend only plans to call one witness, I want to seek the usual order excluding witnesses until such time as their called to testify.

THE COURT: Do you believe there are other witnesses in the....

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MR. FAGAN: You never know.

MR. HARDIEJOWSKI: I have nobody else to call. And Officer Royale is not, it would seem.... The only one here is Officer Poperechny.

MR. FAGAN: Okay. Well if my friend...

20

MR. HARDIEJOWSKI: Yeah.

MR. FAGAN: ...says he's calling one witness...

MR. HARDIEJOWSKI: Yes.

MR. FAGAN: ...then there's no need to exclude anybody.

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THE COURT: There's no one to exclude.

MR. FAGAN: Very good.

THE COURT: Officer, you have to teach us how to say your name because I have the sense we'd mangle it all.

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MR. POPERECHNY: Sure. It's Poperechny.

THE COURT: Okay.

MR. HARDIEJOWSKI: I did practice with the officer's assistance to pronounce it correctly.

J. Poperechny - in-ch.

Voir Dire

THE COURT: Thank you. Go ahead please.

JEFF POPERECHNY: SWORN

5 EXAMINATION IN-CHIEF BY MR. HARDIEJOWSKI:

Q. So Officer Poperechny I'm just going to go quickly through this part. It's not an issue. You're with the Ontario Provincial Police?

A. That's correct.

10 Q. And how long have you been a peace officer?

A. For approximately 13 years.

Q. And you were on duty on May 2, 2013?

A. I was so.

15 Q. And on that date you stopped Mr. Fagan's client who's sitting in the box here, Mr. Zhu?

A. That's correct.

Q. And that was a traffic stop for the purpose of speeding?

A. It was.

20 Q. And were you using an instrument to record the speed or how did you calculate that Mr. Zhu was speeding?

A. Yes I was using a radar unit.

Q. I see. And on the radar the speed was what?

A. One hundred and eighteen.

25 Q. And the posted state speed limit in that area of highway is what?

A. Ninety.

Q. Ninety. And did you give Mr. Zhu a ticket for speeding?

30 A. I did so.

Q. And what was the speed on which you gave him the ticket?

J. Poperechny - in-ch.

Voir Dire

5 A. It was a reduce ticket for a hundred and five.

Q. Okay. So we'll go slowly now. So you stopped Mr. Zhu for speeding?

5 A. That's correct.

Q. Correct? And you approached the vehicle?

A. That's correct.

Q. Okay. Before we go into specifics, you told the Court you have been an OPP officer for 13 years.

10 A. That's correct.

Q. In your 13 years, Officer Poperechny, did you have any training in drug recognition and interdiction of specifically marijuana?

15 A. I do have a drug background, yes. I completed our drug course at the Ontario Police College and specifically in the area of highway criminal interdiction. I was qualified and trained as, for a period of time I was one of six instructors in the Province of Ontario that would teach on a regular basis at our academy in Orillia, and specifically in the field of criminal interdiction.

20 Q. And so on May 2 of 2013 were you one of six officers who was qualified in recognition and drug interdiction, Province of Ontario?

25 A. I was, yes.

Q. And did you teach at the police college?

A. I would on occasion, yes teach at the college, yes.

30 Q. And when you indicated that you also had trained in drug recognition, particularly dealing with conduct of those who are suspected of trafficking, were you taught to look for any indicia?

A. I'm just going to try to clarify what you're

asking. The criminal interdiction course, now highway enforcement techniques, specifically deals with anomalies and commonalities in persons involved in criminal activity. And it's not specific to drugs.

5 Q. I see. So the course is not specific to drugs itself?

A. That is correct.

Q. But it deals with the global picture of criminal activity?

10 A. That's correct.

Q. So these factors that you look at the driver, they focus on the general criminality of the situation?

A. The course itself deals with, and it's based largely on officer experience too, you have to take into account obviously time in the field and time that you've had exposure to such investigations. And these techniques are simply looking at things that are common in persons involved in illegal activity and common things that officers may have seen in the course of their investigations. Generally in the course we'll go through different case examples and exhibit examples of what commonly do people see, what do officers see on the highway in these stops that lead to arrest.

Q. So officer can you take us through what you're taught? What commonality were you taught to look?

25 A. Well it's not specifically one thing we're looking for. It's.... To name one thing would be an unfair representation.

Q. No I....

A. It's always a totality of things we see that lead us into an investigation.

30 Q. Okay. So officer then lead us into the totality of a situation. Help us along.

J. Poperechny - in-ch.

Voir Dire

A. I could lead you into this situation.

Q. Yes well....

A. But generically that wouldn't be accurate to do that.

5 Q. Okay. That's fair to say. So just lead us through in the stop of Mr. Zhu. What observation did you make?

A. There was multiple observations. And would it be okay with Your Honour to refer to my notes?

Q. Are you the author of those notes?

10 A. Yes I am.

Q. And those notes were made contemporaneously with the situation that you were investigating?

A. Yes.

15 Q. Any additions, corrections, alterations to those notes?

A. No.

Q. You need those notes to refresh your memory?

A. Yes.

20 MR. HARDIEJOWSKI: With leave of the Court may the officer refer to the notes?

THE COURT: Mr. Fagan any questions?

25 MR. FAGAN: If he needs notes to refresh his memory I have no objection. As long as he's referring to his note to refresh his memory from a question asked and I would ask the record reflect when he's referring to his notes to refresh his memory.

30 THE COURT: The officer will be permitted to refer to his notes for the purpose of refreshing his memory.

A. Okay.

MR. FAGAN: Thank you.

J. Poperechny - in-ch.

Voir Dire

THE COURT: Thank you.

MR. HARDIEJOWSKI: Q. So Officer Poperechny, the question was, what observations did you make in the situation involving Mr. Zhu, who's the accused here?

5 A. I'm just going to refer to my notes on that. Like I said there are multiple indications in this specific incident that I think are worth noting and we've obviously been through this. It has been some time so I'm going to momentarily just review and....

10 MR. HARDIEJOWSKI: Yeah just take your time and tell me when you're ready.

A. One of the first.... And again it's very important to speak in a little bit of detail with each one of these indications. To simply say one of these in itself may seem like not much. But once I've gone through it all and explained a little bit it may make a little bit more sense. One of the first things I noticed in speaking with the driver, there was a new GPS box in the backseat.

15 Q. A what?

20 A. A GPS box, Global Positioning System box.

MR. HARDIEJOWSKI: Yes.

A. And I noticed a new GPS on the dashboard. A very small luggage bag sitting in the front passenger seat of this vehicle, there was an A&W bag, multiple water bottles, a strong smell of cologne. And now all these things, the reason they were important to me these days, I have seen in past traffic stops and experienced these things before. Again, I'm not going to go into any opinion as to why these things are used. But I can say in my training and experience up to this point I've seen these things, and that would be I guess you can class as a physical behaviour. Some behavioural things I noticed specifically in the driver, I noticed his hands to be

J. Poperechny - in-ch.

Voir Dire

shaking, and not shaking at the point where I've seen people nervous just stopped for speeding. And people get nervous when they're stopped for speeding, when they're stopped by the police at ride checks. You know, if I had been stopped by the police automatically sometimes you're a little bit nervous. Well this traffic stop his hands were shaking to the point where I specifically noted it. They were shaking when he was handling his documents and I noticed his breathing was very heavy, which was also an indicator to me. Again the odour of cologne was extremely overwhelming inside of the vehicle. And those would be the main behavioural and physical indicators that started to shift me beyond the realm of a traffic stop at this point.

Q. Okay. So officer that leads into my next question is, with these indicators that you characterized as physical and behavioural, did you make an inference or deduction from those observations?

A. I made a.... Definitely this led me to believe that there was something going on rather than just an offence of speeding and a person traveling from point A to point B for a legitimate reason.

Q. So when you say something was going on, you want to elaborate on that?

A. I began to develop suspicions at this point that there was some sort of criminal activity if you will at play at this point. And at this point of view I felt I would have been neglectful in completing the traffic stop and letting it go. I needed to continue to investigate based on also some utterances and some conversation from...

Q. No we're not...

A. ...the accused.

Q. ...interested in utterances or conversation.

J. Poperechny - in-ch.

Voir Dire

So you told the Court observations that you made both behavioural and physical. Anything else that you detected in the vehicle?

A. To the best of my recollection there was also what I noted and believed to be a faint odour of vegetative marijuana.

Q. Okay. Now you indicate a faint vegetative odour of marijuana. Prior to May 2, 2013, have you had any investigation involving the smell of marijuana?

A. Yes.

Q. And prior to May 2, 2013 can you tell the court how many instances, if you can, where you had investigation involving marijuana?

A. It would be very difficult to give you an exact number of specific investigations or exposures, if you can say exposures to marijuana. I'd say it would be conservatively around a thousand.

Q. A thousand. And when you indicated that you detected a faint odour of vegetative marijuana, could you tell the court what certainty you had regarding that detection?

MR. FAGAN: He may not have had any certainty at all. I haven't objected to that, but...

MR. HARDIEJOWSKI: No. Okay. I'll...

MR. FAGAN: ...it's kind of leading.

MR. HARDIEJOWSKI: ...rephrase it this way.

Q. Officer, could you assist us and tell us if you could give an opinion as to your certainty of a smell of faint raw vegetative marijuana?

A. What I can say is I think I'd like to take that into two portions just for the benefit of the Court here. I one hundred percent absolutely know what the smell of marijuana is. In this situation it was a very faint odour that

J. Poperechny - in-ch.

Voir Dire

I was finding a little bit difficult to get around due to the strong masking agents in the vehicle and I suspected that this is what I smelled. And again I know what marijuana smells like.

5 Q. And so you know because you told the Court you had about a thousand prior incidents involving marijuana to this date?

A. Approximately.

10 Q. All right. So you told the Court then the physical factors, the behavioural, and a smell of marijuana. Correct?

A. That's correct.

15 Q. Okay. With all those factors did you... Okay. With all of those factors did you form any opinion regarding all those factors?

A. There was other parts again in this investigation I think that are very crucial as far as...

MR. HARDIEJOWSKI: Okay.

A. ...the story from the accused again as to....

20 Q. No, no, no. Don't please. We're not going to be dealing with conversations from Mr. Zhu. We're just focusing on observations and nothing to do with any conversation.

25 A. Based on the evidence that I've already given the Court and my observations, along with a few other observations, I suspected and had suspicion that the accused was in possession of marijuana and may be involved in some other kind of criminal activity. And at this point, based on those observations on top of the suspected odour, he was placed
30 into investigative detention so I could continue my investigation.

Q. And can you define to the Court, what is an

investigative detention?

A. An investigative detention, at this point I had a strong suspicion again that he was involved in such behaviour and I felt that I needed to continue to investigate the matter as I'm obligated to do as, like I said he was suspected to be involved in criminal activity and I felt I would have been neglectful at this point of just giving him a ticket and sending him on his way.

Q. All right. So then did you advise Mr. Zhu that he was detained?

A. Yes I did.

Q. Okay. And what words did you use to indicate to Mr. Zhu that he was detained?

A. He was provided rights to counsel and caution.

Q. Okay. So were you still outside the vehicle? Like you yourself.

A. Yes.

Q. All right. And Mr. Zhu was inside the vehicle?

A. I believe he was advised of his rights to counsel and caution in the police vehicle. I'd have to refer to my notes again, but also advised behind the vehicle that he was going to be detained for this purpose.

Q. Okay. So just to help us with this on the temporal, that is passage of time, you gave Mr. Zhu a ticket for speeding, reduced speed.

A. That is correct.

Q. Now could you help us please, how much time elapsed between giving the ticket for speeding, making your observations, and then advising Mr. Zhu that he was detained? When you told him, how much time would you say elapsed?

J. Poperechny - in-ch.

Voir Dire

A. I'm going to say no more than 10 minutes.

Q. No more than 10 minutes.

A. That would be an estimate.

5 Q. Okay. And then after lapse of 10 minutes you advise Mr. Zhu that he was detained?

A. Give or take, yeah.

Q. And what words did you use to advise Mr. Zhu that he was detained?

10 A. I'm going to just refer to my notes again to see if I made an exact entry as to what was said. I simply have an entry for rights to counsel and caution.

Q. So when you indicate "rights to counsel", are you reading from a card or did you tell him from memory?

15 A. That is my common practice to read from a card.

Q. And so you read from a card?

A. To the best of my recollection, I read from a card.

Q. And do you have the card here with you?

20 A. No I do not.

Q. So you read verbatim on that. That's OPP standard issue?

A. To the best of my recollection, yes.

25 Q. And that is the right to counsel and what else?

A. Rights to counsel and caution.

Q. And by "caution", what do you mean by caution?

A. Here are your rights to counsel and caution.

30 Q. No I understand. But we understand rights to counsel. That's self-explanatory. But what is a caution?

A. What is, he's being investigated for, he's

not obligated to say anything that.... His caution.

MR. HARDIEJOWSKI: Okay.

A. He doesn't have to....

Q. And that you read from a card?

A. That's correct.

Q. Okay. So having done that up to that point,
what was the next step in this investigation?

A. Once he was cautioned I, again a series of
questions that I wanted to further investigate his story at
this point....

Q. No, no. We're not interested in that. Okay.
So you told the Court you spoke with Mr. Zhu. Question and
answers were they?

A. Yeah.

Q. And then what happened?

A. I requested during this time while I was
continually actively investigating this, I requested two other
officers to attend the scene.

Q. Now why did you request two other officers to
attend the scene?

A. First just to aide in assisting me, and
secondly, I had some instructions for them once they arrived.

Q. All right. So then two officers did arrive?

A. That's correct.

Q. And what are their names please?

A. Constable Royale and Constable Clark.

Q. Okay. And when they arrived, how much time
elapsed from the time that you asked them to arrive until they
actually physically arrived?

A. I don't recall.

Q. Okay. So when they arrived did you give them
any instructions?

J. Poperechny - in-ch.

Voir Dire

A. Yes I did.

Q. What instructions did you give?

A. I can say the time wasn't that long. It was a short time after they did arrive when I requested them. I asked them.... The window I recall in the subject vehicle, passenger side was still open. I give them instructions to approach that vehicle, not enter the vehicle, but tell me if they detected the same odour that I was detecting.

Q. And why did you give those instructions to the police officers?

A. Just to further confirm my suspicions of the odour that I smelled and I really, at the end of the day, I wanted to be sure. I didn't want to be going out on a limb, jumping the gun. I wanted to be 100 percent positive I suspected this is what I smelled and I wanted these officers to confirm these observations.

Q. All right. So you gave the officers those instructions and what happened as a result of giving those instructions?

A. Both of them indicated, I recall, that they also detected this odour.

Q. All right. Odour of what?

A. Raw marijuana.

Q. All right. So what happened next?

A. From this point he was placed under arrest for possession of marijuana.

Q. Yeah. And that is Mr. Zhu sitting here?

A. That's correct.

Q. And was Mr. Zhu still in the vehicle when you placed him under arrest?

A. No he was in my police vehicle at this point.

Q. Oh I see. And how did you tell Mr. Zhu that

he was under arrest?

A. Again, rights to counsel and caution provided for the said offence.

Q. And again, you read from a card?

5 A. To the best of my recollection that's what I did. It's my common practice to do so.

Q. And did Mr. Zhu indicate anything in regard to his right to counsel?

10 A. I'm just going to check if there's any response here. The first time he responded for his rights to counsel and caution. Would the Court like me to say what his reply was or.....

Q. No. This is the first time where he was placed under...

15 A. Investigative detention.

Q. ...investigative detention?

A. Yes. Would you like his...

Q. No just....

A. ...reply to that?

20 Q. Yes.

A. He said the only reason I stopped him is because he was Asian. And the second time.... The second time he did not reply and.... And I also have an entry for a third time that he was read and his reply was he didn't have a
25 lawyer.

Q. All right. So after you gave Mr. Zhu, again, the rights to counsel and the caution, what happened next?

A. The vehicle was subsequently searched incident to that arrest.

30 Q. Okay. And why were you searching the vehicle? What were you looking for? I'm sorry. I'll withdraw that, poor grammar, and ask you this. What was the purpose of

the search?

A. Purpose of the search was incident to arrest and to search for evidence of possession of marijuana.

Q. Okay. And did you conduct the search?

5

A. I did conduct a search.

Q. And where in the vehicle did you conduct the search?

A. The entire vehicle; the interior of the vehicle, including the trunk of the vehicle.

10

Q. Now in the conducting the search officer, did you find any marijuana?

A. Yes I did.

Q. Where did you find the marijuana?

A. There was a large quantity in the trunk.

15

Q. Okay. And how was the marijuana contained?

A. It was contained in large hockey style bags with individual plastic bags inside which were lined with, on top of the bags, lined with a material containing, what appeared to be like a cloth soaked in cologne.

20

Q. Yes. And was the marijuana weighed?

A. It was weighed.

Q. And as a result of the weighing what was the weight of the marijuana?

25

A. We'll have to refer to the proper report there. I'm going to say it was approximately 40 pounds. But right down to the gram will be in your....

Q. Oh no we're not.... At this stage we're not concerned. So you indicated that about 40.... Is it 40 pounds?

30

A. That's correct.

Q. Forty pound marijuana was found in the trunk. Anywhere else, any place else the marijuana.... Did you find

any other marijuana?

A. I don't recall there being anything else other than what was in the trunk.

5

MR. HARDIEJOWKSI: Okay officer. I have no further questions to ask. Learned counsel now will ask you questions.

THE COURT: Go ahead. Thank you.

MR. FAGAN: My Lady, I'm going to need a few minutes.

10

THE COURT: Pardon me?

MR. FAGAN: I'm going to need a few minutes.

THE COURT: How long is a few minutes?

MR. FAGAN: Fifteen minutes.

THE COURT: Officer, you may step down.

15

MR. FAGAN: It could make the difference between a day and a half cross-examination and no cross-examination.

THE COURT: I'll give you 15 minutes.

MR. FAGAN: Thank you very much.

20

THE COURT: We'll rise for 15 minutes.

R E C E S S

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

25

THE COURT: Officer.

MR. FAGAN: For the record, My Lady, the accused is present.

THE COURT: Thank you. Will you return to the witness stand please.

30

MR. FAGAN: A couple of questions My Lady.

THE COURT: Go ahead.

J. Poperechny - cr-ex.

Voir Dire

CROSS-EXAMINATION BY MR. FAGAN:

Q. Constable, is it?

A. Yes.

Q. Very good. So at what time precisely do you
5 pull the vehicle over?

A. I'll just take a look here. I got an entry
for a traffic stop on that vehicle at 0410 hours.

Q. Okay. So that's four-ten in the morning?

A. Yeah.

Q. 4:10 a.m.?
10

A. Yeah.

Q. Okay. And I take it that you followed the
vehicle for a period of time before activating your emergency
lights?

A. No the strip of highway I was working on
15 it's, I'm not sure if you're familiar, on the 17A bypass
there's a little MTO snow turn around and a set of traffic
lights. So I'd say from that MTO turn around to the traffic
lights we wouldn't be more than 500 metres. So it was
20 somewhere in there.

Q. Okay. I'm not sure if this was brought out
during the course of direct examination or not, but when you
were running radar, was it, as opposed to...

A. Yeah.

Q. ...laser?
25

A. Yeah, radar.

Q. Radar. Was it moving radar or stationary?

A. It was stationary.

Q. So stationary?
30

A. Yeah.

Q. And were you pointed in the same direction as
the target vehicle or were you pointed in the opposite

direction?

A. I don't really recall if I was....

MR. FAGAN: Let me change the question.

A. Just give a quick sec. I'll try...

5

MR. FAGAN: Okay.

A. ...to answer that one for you first.

Q. I just want to know if the vehicle was coming towards you, if it was coming behind you?

A. Well it would have been coming from the west so I don't recall if I was.... If I guess if the highway runs this way if I was facing at you, the vehicle would be coming from the west, or if I was facing the vehicle. I, I'd be guessing.

Q. Okay. In any event you were running radar stationary.

15

A. Stationary.

Q. And the vehicle went by you before you started to move your vehicle?

A. I don't know if I put my vehicle in motion prior to the vehicle passing or after it passed. I imagine with a speed of 118 I probably would have put the vehicle in gear already and started began moving.

Q. Okay. But only marginally? You waited until the vehicle went by you until you pulled out onto the highway.

25 Right?

A. I can't say for sure.

MR. FAGAN: Now I'm not trying to trick you.

A. Yeah, no honestly I can't say for sure.

Q. Well you didn't pull out in front of the vehicle?

30

A. Obviously not.

MR. FAGAN: Right.

J. Poperechny - cr-ex.

Voir Dire

A. Yeah.

MR. FAGAN: That's what I was trying to get at.

A. I pulled out behind it.

MR. FAGAN: Right.

A. Yeah.

5 Q. Pulled in behind it and you followed it for about 500 yards?

A. No like I said from, I stopped it before the traffic lights, from the snow plow turnaround to the traffic
10 lights. That total distance is about 500 metres.

MR. FAGAN: Okay.

A. So it would have been somewhere in between there. We weren't close to the traffic lights. We weren't close to the turnaround still. It was somewhere in that
15 halfway point.

Q. Okay. So you followed the vehicle for approximately, don't need to be exact here, but approximately, I don't know, 300 metres?

A. I'd say probably less than that. And that
20 being said, at a speed of 118, that might answer your question there, that I probably would have had the vehicle in motion already for it to stop in that amount of time.

Q. Okay. Okay. So you had occasion to observe the vehicle as you're driving behind it down the highway?

25 A. Yeah. Sure. Yeah.

Q. You're looking at the vehicle.

A. Yeah I'm looking at the car. Yeah.

Q. Right. He's right ahead of you.

A. Yeah.

30 Q. Right? You can see the tail lamps etcetera, etcetera. Right?

A. Yeah.

J. Poperechny - cr-ex.

Voir Dire

Q. And other than the fact that you apparently caught this vehicle speeding in your radar, the vehicle appeared to be driven in a normal manner?

A. It was exceeding the speed limit...

5

Q. You already covered that part.

A. ...by quite a bit, but....

Q. Other than that...

A. I don't recall seeing or making any notations of anything other than the fact that the vehicle was speeding. Correct.

10

Q. Okay. 'Cause sometimes when you activate your emergency lights, because you want to pull a vehicle over, sometimes it'll take a half a kilometre to pull over. Right?

A. Yeah, every vehicle's different.

15

Q. Right. And as you're behind a vehicle and you're about to pull it over, you're always watching for something unusual or weird on the part of the occupant or occupants of the vehicle. Right?

A. Sure we're always trying to.... Yeah, well being at night obviously your visibility is a lot restricted. But, yeah, you're continuously watching that vehicle and for your safety and the safety of the public, your eyes are on the vehicle and everything around you.

20

Q. Right. And you didn't see anything unusual or suspicious on the part of the movement of the vehicle or the sole occupant of the vehicle as you were following it?

25

A. Not that I noted.

Q. Okay. And the vehicle pulled promptly and properly to a halt at the side of the road?

30

A. I don't recall anything out of the norm up to that point where the vehicle was stopped.

Q. Okay. And you approached the passenger

side...

A. As I always do, yeah.

Q. ...of the vehicle? Okay. And as you approached the passenger side of the vehicle, did you communicate with the driver through the passenger's window of the vehicle, or the back window, or through the pane of glass? What did you do?

A. No it would have been through, I recall in that stop, being through the passenger, yeah passenger, front passenger side.

Q. Okay. Front passenger side window?

A. Window. Yes.

Q. Okay. And you had a conversation with the driver?

A. Yeah.

Q. And you would have informed him that he was stopped for speeding?

A. That's correct.

Q. And ultimately you issued a traffic ticket?

A. Yeah.

Q. And was it at the time of your first attendance at the vehicle that you detected what you suspected may, may, may be marijuana?

A. I believe I detected that odour on my second approach when I was speaking with him the second time; explaining the option of the ticket, giving him his stuff. I think it was at that point that I actually had detected what I thought was that odour.

Q. Okay. But you weren't sure if what you smelled was the faint of marijuana or something else. Right? You weren't sure?

A. I suspected that's what it was, but was

unsure.

Q. Okay. Because if you were sure, you would have detained him...

A. Yeah.

5

Q. ...right then and there.

A. Yeah.

Q. Right?

A. That's correct.

10

Q. So you detect this smell, but in fairness you're not sure what it is. Right?

A. That's correct.

Q. So what you do is you give him his traffic notice. Right? Provincial offences notice. Is that....

A. Yes.

15

Q. ...what they call it? Traffic ticket.

A. Yeah.

Q. Right? And, well you tell him that he is free to go.

A. Yes.

20

Q. Okay. And you meant it. He was free to go. Right?

A. Yeah. Yes. Yeah.

MR. FAGAN: Okay. Sorry it doesn't catch a nod.

A. Sure.

25

Q. So he was free to put that vehicle in drive, hit the accelerator and continue on his way. Right?

A. Yes.

30

Q. And the reason that you told him that he was free to go was you didn't feel at that time that you had the lawful authority to detain him. Right?

A. That's correct.

Q. And then how long after that was it that you

detained him? That you told him to get out of the car and
detained him?

A. We entered into, in my opinion, was a...

Q. You had a....

5

A. ...voluntary conversation...

Q. You had a conversation?

A. ...with him in the vehicle. He voluntarily
offered to answer some questions that I had.

Q. Okay. So...

10

A. Just...

Q. ...there was a Q....

A. ...going a little...

Q. There was a Q....

15

A. ...bit beyond into where he was traveling and
such.

Q. All right. Well like my friend said, we're
not going to get into that.

A. Okay.

20

Q. Okay? So there was a Q and A, question and
answer?

A. Yes.

Q. Okay. You asked the questions and he
answered?

A. Yes.

25

Q. Okay. And in fairness to you it was as a
result of the answers that you received to this Q and A, the
answer you received to these questions that heightened your
suspicion?

30

A. Yeah. I had a suspicion up to this point,
but...

Q. Well you've told us....

A. ...so....

J. Poperechny - cr-ex.

Voir Dire

MR. FAGAN: Just a sec.

A. I'd like to answer your question please.

MR. FAGAN: Well I'd like you to...

A. Just to put...

MR. FAGAN: ...answer my question.

A. ...the icing on the cake....

MR. FAGAN: My Lady.

THE COURT: Just listen to counsel please. Go ahead...

MR. FAGAN: Okay.

THE COURT: ...Mr. Fagan.

MR. FAGAN: Q. So you've already told us that the reason that you told him that he was free to go was you didn't feel at the time that you had the lawful authority to detain him further. Am I right?

A. Yes.

Q. Okay. So then what you did is you engaged him in a series of questions.

A. Voluntary questions, yes.

Q. You asked him a series of questions. Right?

A. Yes.

Q. And as a result of the answers that you received to those questions, in conjunction with other observations that you've told us about, your suspicion was heightened to the extent where you detained him?

A. I'll agree to that, yes.

MR. FAGAN: Okay. Those are my questions.

THE COURT: Any re-examination?

MR. HARDIEJOWSKI: No thank you.

THE COURT: Thank you. You may step down.

MR. HARDIEJOWSKI: Your Honour I have no further witnesses to offer on this voir dire.

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THE COURT: Thank you. Any evidence for the defence on the voir dire?

MR. FAGAN: No My Lady.

MR. HARDIEJOWSKI: So Your Honour since, as I stated earlier, on a Charter application the burden is on the applicant. I'll wait until my friend makes his admissions and I'll answer.

THE COURT: Mr. Fagan.

MR. FAGAN: I didn't expect it to be this fast My Lady. The bottom line is....

THE COURT: Are you going to refer to some of your filings?

MR. FAGAN: The only case that this Court needs to have handy, and it's actually one that the defence provided. I don't think the cases that my friend provided the Court, with all due respect, are going to be of much assistance. MacKenzie is the case.

THE COURT: May I see the applicant's authorities.

MR. FAGAN: It's in the applicant's book of authorities.

THE COURT: Thank you.

MR. FAGAN: The applicant's book of authorities. Two thousand and thirteen decision of our Supreme Court. The majority judgment delivered by Mr. Justice Moldaver. Now it dealt with a sniff case, but it is the leading decision in this country, then and now, on what constitutes and what doesn't constitute a reasonable suspicion when one is dealing with one of these roadside, so called pipe-blind, interdiction stops. So I

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commend R. v. MacKenzie to you because the evidence that we've heard here today does not come close to constituting a reasonable suspicion such as to justify the detention of Mr. Zhu at roadside. If his detention is unlawful, his arrest is equally unlawful and any search incidental to that arrest is also unlawful. So the essence of my position is we've heard him testify with respect to his observations about A&W bag and a new GPS box in the backseat... - This will save my friend having to go through it - ...and a small luggage bag in the front passenger seat and water bottles and a strong smell of cologne. Colloquially speaking, so what? And hands shaking to the point "where I noted it". And he suspected that there may, there may be the faint odour of what may be marijuana. But the officer, in fairness, testified that that faint smell coming and going wasn't such as to give him the authority to detain Mr. Zhu so he told him he was free to go. It was only subsequent to that, and this is the crux of the matter, that he engaged him in a Q and A and it was as a result of the answers received to the questions posed, whether voluntary or whether lawful or not, it was only as a result of the answers received to the questions posed that his suspicions were heightened to the point of reasonableness, where he felt that he could lawfully detain him and he did detain him. The problem here is those grounds aren't before this Court. Maybe my

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friend can convince the Court as to the significance of the A&W bags and the water bottles and the GPS, but the officer didn't. Those are my submissions.

THE COURT: Thank you. Mr. Hardiejowski.

MR. HARDIEJOWSKI: Your Honour the grounds on which the Crown is relying is Section 450 of the Code, that's reasonable and probable grounds to make an arrest, and also investigative detention. Your Honour to go on the Section 450 I have to canvass with the Court the significance in Ontario, I know that other provinces it varies, the significance of a smell of marijuana. That is a first point. And I know that in other provinces they.... Because even in Ontario prior to 2013 it was not settled. And Your Honour I refer, I have to go through this step Your Honour in order for the Court to understand my next ground. To refer to Tab 1 in the respondent's book of authorities, in Section 8.

THE COURT: May I see that please Ms. Registrar? Thank you. Morris?

MR. HARDIEJOWSKI: And Your Honour that is Tab 1, paragraph 6. So dealing with the issue here, we have to start with what the trial judge accepted. "The trial judge accepted that evidence." That is a smell of marijuana. "She concluded the officers had a valid Highway Traffic Act related reason for stopping the car, that their intention was to check the driver's license, ownership, and insurance documentation. And that at that time they stopped the car they did not intend to

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5 search it or do anything beyond what is permitted
by the Highway Traffic Act. The trial judge
further found that this remained their intention
until the point at which they detected the odour
of fresh marijuana emanating from the car. That
she found was sufficient to give rise to
reasonable and probable grounds to arrest the
appellant and search him and the vehicle as an
incident of the arrest." So then we go to
10 paragraph 8. Paragraph 6: "We do not accept the
submission that it was not open to trial judge to
find reasonable and probable grounds for arrest
on the basis of the officers' evidence that they
detected a smell of marijuana. While previous
cases have cautioned against placing under
15 reliance upon smell evidence, there is no legal
barrier to the use of such evidence and as we are
not persuaded that on this record the trial
judge's finding is susceptible to appellant
review." Then we go to Tab 3 - I'm sorry -
20 Tab 2. It's the Queen v. Hoang, H-O-A-N-G. Your
Honour this is an endorsement. Now endorsement
on an appellate file is important because it
indicates the law is settled and the Court of
25 Appeal for Ontario did not wish to go into
further. And this is found at paragraph 5. So
the argument was Your Honour that there was no
reasonable and probable grounds on the basis of
smelling marijuana. Paragraph 4: "We do not
30 accept these submissions. It was open to trial
judge to find reasonable and probable grounds for
arrest on the basis of Constable

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(indiscernible)'s observations of the appellant, and his evidence that he, an officer experienced with investigating offences that relate to possession of marijuana, to detect the smell of raw marijuana emanating from the appellant's car". Paragraph 5. "This Court's recent decision in Morris..." - citation - "...makes it clear that while caution must be used in reliant on smell evidence there's no legal barrier to its use. The record in this case provided an evidentiary basis for trial judge's findings. As a result we see no error in the trial judge's conclusion that the officer had sufficient grounds for the arrest." Now, Your Honour, so in the Province of Ontario the law is clear that an officer smelling marijuana inside a vehicle has reasonable and probable grounds. I went the list of Officer Poperechny's experience in this field in order to indicate to the Court that even though on the evidence he said, I suspected the smell of raw marijuana, that based on his experience in drug interdiction, and that he said prior to this stop had 1000 cases involving the smell of marijuana, that the Court place reliability on his observation that he suspected the smell of raw marijuana. Because in this case if the Court finds as a fact that the officer on a totality of circumstance with his training accept that evidence that he smelled marijuana, that in the Province of Ontario it gives him reasonable and probable grounds. So this leads me now....

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THE COURT: Don't you have a problem though with his evidence?

MR. HARDIEJOWSKI: Well....

THE COURT: I mean in theory that might be the state...

MR. HARDIEJOWSKI: Yeah....

THE COURT: ...of the law. But don't you have a problem with his statement, I would have detained him if...

MR. HARDIEJOWSKI: Yeah that's....

THE COURT: ...I thought it was marijuana?

MR. HARDIEJOWSKI: See that's....

THE COURT: Doesn't....

MR. HARDIEJOWSKI: Yeah that's....

THE COURT: Isn't this an issue that it doesn't rise...

MR. HARDIEJOWSKI: That's....

THE COURT: ...to the certainty that may be available in certain cases?

MR. HARDIEJOWSKI: See Your Honour that's the problem the Crown faces. But in response to the learned counsel's questions, that's the answer that he gave.

THE COURT: He also said he didn't feel he had lawful authority...

MR. HARDIEJOWSKI: Yeah.

THE COURT: ...to detain him. How can that ground reasonable and probable grounds?

MR. HARDIEJOWSKI: No, no. We're dealing with a factual situation, smell of marijuana. So if the Court makes a finding that he did smell marijuana, my next argument in Section 450 is

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5 under the Storrey, S-T-O-R-R, test it has to be both, for lawful arrest, both subjective and objective reasons. If the Court finds that with his training, with 1000 cases that he said, in all the evidence, if the Court finds that he did detect a smell of marijuana, what is the legal consequence? So if we go from...

THE COURT: But don't we...

MR. HARDIEJOWSKI: ...a factual....

10 THE COURT: ...have to change the evidence he gave in order to arrive at that conclusion? He said he didn't feel he had the lawful authority to detain Mr. Zhu.

15 MR. HARDIEJOWSKI: No Your Honour I understand. That leads me to the next... It's the concept of a smell of marijuana. If the Court finds that he in fact did smell marijuana. That is a factual consideration. And we'd go next to the legal consequence of that smell. So from the factual, 20 if the Court finds as a fact that he did smell marijuana, what is the legal? So I pointed out Morris in this other case in the Province of Ontario, if the Court has a factual foundation to make a finding that he had the smell of 25 marijuana, then in law, apart from what the officer indicated, that in law that is reasonable and probable grounds. Now this goes to the next one, how we apply this. This is applied in the Queen v. Storrey, S-T-O-R-R-E-Y, where the Court indicates that in.... Oh here I'll.... One 30 moment please? Your Honour, and then while I'm still on my feet I'll give this other.... In

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5 these Charter applications Your Honour, they go on for hundreds of paragraphs. To save trees on this other one which was referred to by the Supreme Court I've just, I have two pages photocopied, so the Queen v. Storrey.

THE COURT: Thank you.

10 MR. HARDIEJOWSKI: And then two pages of The Queen v. (indiscernible). So Your Honour if I could develop the argument.... One moment. So if counsel....

MR. FAGAN: Thank you.

15 MR. HARDIEJOWSKI: So Your Honour if I may develop the argument where we're heading. So other than.... Your Honour there's a two prong test for reasonable and probable grounds and this is articulated in paragraph 16. Paragraph 16 of Storrey. Paragraph 16.

THE COURT: Thank you.

20 MR. HARDIEJOWSKI: Okay. And it goes, "There is an additional safeguard against arbitrary arrest. It is not sufficient for the police officer to personally believe that he or she had reasonable and probable grounds to make an arrest. Rather it must be objectively established that those
25 reasonable and probable ground did in fact exist. That is to say a reasonable person standing in the shoes of the police officer would have believed that reasonable and probable grounds exist to make the arrest." Citing Brown. So
30 then I photocopied, I've indicated in the Brown case, the relevant portion. And it's on the first page where it begins in the middle, "I turn

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now to consideration of the (indiscernible) arrest of Mrs. Brown." And it cites 450. It gives A, B, C. And then it deals with Section 450. So that's on the first page in the middle of the page it deals with A, B and C. But then there's a paragraph beginning, "The requirement in Section 450...." If I may read that. "The requirement in Section 450 of reasonable and probable ground imports an objective standard for evaluating the conduct of the person making the arrest. It is insufficient that the police officer honestly believed that he or she had grounds to make an arrest. The circumstances of it must be such that a reasonable person in the place of the peace officer would have also believed that he or she had grounds to make an arrest. It is because there is no prior additional authorization in a warrantless arrest that after the fact analysis of what a reasonable person ought to have done in the circumstances forms the basis upon which the trier of fact must consider the propriety of actions an arresting officer generally on the police power to arrest without warrant." Now I say this, it is almost 99 percent of the time when we deal with reasonable and probable grounds for making the arrest the police officer indicates that he subjectively believed that he had reasonable and probable grounds. Now this case is novel because in this particular case Officer Poperechny indicated that, in his view the smell, the suspected raw marijuana did not give him

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5 reasonable and probable grounds. So as I indicated in the normal almost, it's routine, that when cases come before the Court looks at objective, whether in fact the officer had reasonable and probable grounds. The Crown's position is that the Court is a gatekeeper under the objective test. The question is if the Court finds as a fact that with Officer Poperechny's experience that he detected raw marijuana - that's a fact - what is the legal consequences of that? As I indicated, in Ontario....

10 THE COURT: The problem with that argument respectfully Mr. Hardiejowski is that that wasn't the officer's evidence.

15 MR. HARDIEJOWSKI: Well Your Honour his evidence was that he suspected the raw marijuana. He suspected it was raw marijuana.

20 THE COURT: Well he said this; he said, he didn't believe that he had grounds to detain Mr. Zhu. He told Mr. Zhu he was free to go and he called in other officers to confirm because he said he wasn't certain about the smell, and further he would have detained Mr. Zhu if he thought it was marijuana. How am I to get beyond that evidence to find that the officer had even a subjective belief that there was marijuana in the car when he stopped Mr. Zhu?

25 MR. HARDIEJOWSKI: Well Your Honour as I indicate with his training of....

30 THE COURT: He doesn't say I relied on my training. He says quite the contrary, and perhaps to his credit for his candor, that I

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would have detained him if I thought it was marijuana.

MR. HARDIEJOWSKI: Well so Your....

THE COURT: He didn't....

MR. HARDIEJOWSKI: So Your Honour....

THE COURT: He wasn't certain.

MR. HARDIEJOWSKI: So Your Honour again, I'm bound what came from the witness box.

THE COURT: Yes.

MR. HARDIEJOWSKI: I'm bound. So....

THE COURT: I think that's the difficulty you...

MR. HARDIEJOWSKI: Yeah that's....

THE COURT: ...have with this argument.

MR. HARDIEJOWSKI: So if the Court makes a ruling contrary that not to place reliance, then my argument fails on the legal consequences. 'Cause the legal consequence is only dependent that he detected raw marijuana. In that Court of Appeal for Ontario that gives reasonable and probable ground. But if the Court finds there's no factual foundation for that smell, then I cannot leap to legal grounds.

THE COURT: No that's the very difficulty...

MR. HARDIEJOWSKI: Yeah that's....

THE COURT: ...you have.

MR. HARDIEJOWSKI: I can't leap. 'Cause my argument was based that if the Court were to find that as a fact, factually the Court then goes next step that in law, apart from what Officer Poperechny has indicated, that in law that gives reasonable and probable grounds. But it's only based on the premise there was a factual

foundation made.

5 THE COURT: If this officer had taken the witness stand and said I've smelled marijuana on a thousand occasions, or whatever it was. I am quite clear on its distinct and pungent odour and that's what I smelled as soon as the car window opened that night and I detained on the basis that I was certain of the smell. Then we would have a very different case here. But that isn't the evidence out of the officer's mouth.

10 MR. HARDIEJOWSKI: Well I.... 'Cause of my next argument was going to be based on that the search occurred first and then the arrest. Again the law is, and it was stated by Supreme Court of Canada in the Queen v. Debow(ph) and repeated in the Court of Appeal for Ontario in Polashek, P-O-L-A-S-H-E-K, but again everything is based on a factual foundation here that.... Okay. It begins at paragraph 21, Court of Appeal, they repeat the Supreme Court of Canada, that Martin, J. in the Court of Appeal for Ontario, which was confirmed by the Supreme Court, held that "When an officer has grounds for lawful arrest, that was premised in my argument, where the arrest quickly follows...." I'm sorry. I'll start again. "The fact Martin J. held that where an officer has grounds for lawful arrest, the fact that the search preceded the arrest does not preclude it from being a search incident to valid arrest where the arrest quickly follows on the search." So the principle is this, Officer Poperechny indicated that that faint smell did

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not give him reasonable and probable grounds.

But, if the Court found, as a factual foundation, that there was, it goes, my next argument was that the fact that the search preceded the arrest does not present a legal bar. However,....

THE COURT: We don't even get that far.

MR. HARDIEJOWSKI: Yeah. See.... So Your Honour under the circumstances here, again, that was my argument coming here was that if the Court made a certain factual finding then legally there would have been reasonable and probable grounds. But I see where we're going. I have a difficulty in advancing that argument for the Court to make that finding.

THE COURT: Well do you challenge my understanding of the evidence at all?

MR. HARDIEJOWSKI: No Your Honour. I'm bound the same way you are by what officer said. I can't elaborate....

THE COURT: Perhaps he didn't say what you expected him to say, but the Court is surely bound...

MR. HARDIEJOWSKI: No I understand that. No....

THE COURT: ...by the evidence....

MR. HARDIEJOWSKI: Oh no, I can't....

THE COURT: ...before it.

MR. HARDIEJOWSKI: No I can't argue with what was said. We're bound what he said. Okay. Thank you.

THE COURT: Any reply Mr. Fagan?

MR. FAGAN: No My Lady.

THE COURT: All right. We're going to take about

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a half an hour.

MR. HARDIEJOWSKI: Thank you.

THE COURT: And then I anticipate maybe a little more than that. I anticipate making a ruling on this application.

MR. HARDIEJOWSKI: Okay. Thank you.

THE COURT: May I see the application record please.

R E C E S S

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

THE COURT: Counsel the following are my reasons on the application to exclude evidence as a result of the traffic stop.

R E A S O N S F O R J U D G M E N T
O N V O I R D I R E

PIERCE, J. (Orally)

Mr. Zhu stands charged with one count of trafficking in marijuana over three kilograms contrary to Section 5.2 of the *Controlled Drugs and Substances Act*.

He was stopped in the area of Kenora, Ontario on May 2nd, 2013 for speeding. The evidence of the officer was that the vehicle was clocked at 4:10 a.m. going 118 kilometres per hour in a 90 kilometre zone. Apart from speeding there was no erratic driving or other suspicious behaviour noted by the officer. The driver pulled over

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immediately when signalled to do so.

5 The officer approached the passenger side of the vehicle and spoke to the driver. He noted fast food and beverage containers and a new GPS in the car, luggage in the front seat and a strong smell of cologne. The officer also noted Mr. Zhu's hands were shaking and that he was breathing heavily.

10 The officer was candid in his evidence that there was a faint smell of marijuana, but it was masked by the cologne that pervaded the car. The officer's uncertainty about the odour was such that he believed he did not have the legal authority to detain Mr. Zhu and told him he was free to go. I accept that the officer recognized that he did not have the grounds to make an arrest, even on a subjective basis as set out in R. v. Storrey.

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25 As the officer admitted in cross-examination, he did not have the lawful authority to detain Mr. Zhu. Nevertheless, the officer did detain Mr. Zhu and engaged him in conversation in order to bootstrap his grounds for the stop. He also called in two more officers to see if they smelled marijuana despite not having grounds to detain the accused.

30 Calling in other officers to ascertain grounds underscores the uncertainty of the officer who

Reasons for Judgment - Pierce, J.

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stopped Mr. Zhu originally.

5 Collectively the officers concluded they smelled marijuana and arrested Mr. Zhu for possession of marijuana. A search of the car incident to arrest revealed marijuana in the trunk.

10 The law regarding arrest as set out in R. v. Storrey, paragraph 16, requires the officer to have subjective reasonable and probable grounds, which grounds must also objectively exist. On the evidence presented on this voir dire neither exist. The detention of Mr. Zhu after he was issued a speeding ticket was therefore unreasonable and his subsequent detention and arrest were unlawful. It follows that the search of the vehicle was also not lawful.

20 Accordingly, the appropriate remedy is to exclude evidence of the search pursuant to Section 24.2 of the Charter. All evidence acquired by the police during the course of their investigation, giving rise to the prosecution, including any and all items seized in search of Mr. Zhu's vehicle and its contents, and any and all statements made by Mr. Zhu are ordered excluded at trial.

25 MR. HARDIEJOWSKI: Thank you.

30 THE COURT: The application has been endorsed. "For reasons given orally, the application for exclusion of evidence and statements as set out at paragraph 2 of the application is granted".

Is there anything I have overlooked with respect to this application counsel?

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MR. HARDIEJOWSKI: No Your Honour. I indicated to learned counsel during the break that the trial is set for February 1. At this stage we won't tamper with that lest there be further delay. What I told learned counsel, I'll advise Mr. Poirier what happened and give my advice and the Court and counsel will be notified of the status for February 1. But....

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THE COURT: Do counsel wish me then to make a ruling on the 11(b) application?

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MR. HARDIEJOWSKI: No Your Honour because this is exactly what I predicted the Court would do and my friend agrees, we deal with this, that the key here is the physical evidence. So regardless what the ruling is on Section 11(b), this is a determinative factor that deals with the merits of the case. So in my view, I know the Court is busy and I know that as I indicated before Section 11(b) they're very, very difficult. So rather than have the Court engage in an exercise where the question is moot that I'll give my opinion and we'll notify the Court and counsel before.

THE COURT: Do you wish a timeframe by which to do that? If, indeed, counsel wish a ruling on 11(b) I'm prepared to give it. But if it is in fact moot, I would prefer not to engage in the exercise for...

MR. HARDIEJOWSKI: Well Your Honour...

THE COURT: ...the good of my health.

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MR. HARDIEJOWSKI: ...here's our dilemma. I spent a lot of time on a Section 11(b) and as I indicate it's very labour intensive and I'm sure counsel had. So from the point of view of.... How can I word it? Of a personal nature, how are arguments stood up, that would be one of the reasons. But I indicated that could be a selfish reason. Just indicate whose view was....

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THE COURT: Well I can tell you this is the second 11(b) application I've heard this week.

MR. HARDIEJOWSKI: Oh.

THE COURT: And I have that one under reserve.

MR. HARDIEJOWSKI: Uh-huh.

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THE COURT: So I would be just as happy not to have to write a second decision on the point.

20
MR. HARDIEJOWSKI: And I know, as I told my friend during the break today, Section 11(b) they're very difficult to deal with because, as in this point we were just focused on one issue, reasonable and probable grounds. But in 11(b) it's the whole gamut of appearances. So as I said from a selfish point of view that could be. But I'll leave it to my friend whether he indicates he wants. But I don't want to put the Court to any extra work knowing that the Court's calendar is very busy. I'll leave it to my friend to decide.

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THE COURT: Mr. Fagan what's your position?

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MR. FAGAN: I do not require a ruling on the Section 11(b) application.

THE COURT: Do you want me to mark it as moot, or would you prefer to wait 30 days and advise the

Court if you still require the ruling?

MR. FAGAN: The latter.

THE COURT: So I'll set it aside for 30 days then and counsel can advise me if they wish a ruling. You'll advise me one way or another?

MR. HARDIEJOWSKI: Oh yes Your Honour, you'll be advised. Like I indicated, I hate to put the Court through an exercise where the point is moot just to satisfy a personal need.

THE COURT: All right. Then I will set it aside for 30 days and not work on it. And in that time counsel can...

MR. HARDIEJOWSKI: Oh yes.

THE COURT: ...consider their positions and advise me if you require the ruling.

MR. HARDIEJOWSKI: Yes.

MR. FAGAN: Should we set a date certain relative to the 30 days to make sure it's juridical?

THE COURT: I don't have a calendar here Mr. Registrar. What's a good suggestion.

No counsel will write I presume to me in chambers. Do you have a calendar Mr. Registrar? So today is the 22nd. We'll go to November 23rd? Is that agreeable?

MR. HARDIEJOWSKI: Oh yes.

MR. FAGAN: Very good My Lady.

THE COURT: If it's not required I will dismiss it as moot?

MR. HARDIEJOWSKI: Well that's how I would characterize it, as moot. Maybe the Court could canvass learned counsel how he would characterize it, but from my view that's a moot question

having arrived at this conclusion on Section 8.

MR. FAGAN: All we need to hear from is the Crown
in terms of its...

MR. HARDIEJOWSKI: Yeah.

MR. FAGAN: ...position relative to the balance
of the trial.

THE COURT: Thank you counsel.

MR. HARDIEJOWSKI: Thank you.

THE COURT: Safe journey home both of you.

MR. FAGAN: Thank you My Lady.

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SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

YU BO ZHU

E X C E R P T O F P R O C E E D I N G S

- a n d -

R E A S O N S F O R J U D G M E N T

V O I R D I R E

BEFORE THE HONOURABLE MADAME JUSTICE H. PIERCE
Thursday, October 22, 2015, at KENORA, Ontario

APPEARANCES:

A. Hardiejowski

Counsel for the Federal Crown

P. Fagan

Counsel for Mr. Zhu

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

*I, Lori Summers, certify that this document is a true
and accurate transcript of the recording of*

R. v. Y. Zhu

*in the OCJ COURT held at KENORA, Ontario taken from
Recording No. 1511-CR1-20151022-083054-10-PIERCEH.*

which has been certified on Form 1.

December 7, 2015

.....
Lori Summers