


Action No.: 14139069001  
E-File No.: CCQ17   
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.



Accused

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P R O C E E D I N G S

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Calgary, Alberta  
January 6, 2017

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre, Calgary,  
2 Alberta

3

4 January 6, 2017

Morning Session

5

6 The Honourable

Court of Queen's Bench  
of Alberta

7 Madam Justice Strekaf

8

9 L. M. Proulx

For the Crown

10 P. C. Fagan, Q.C.

For the Accused

11 C. Senetza

Court Clerk

12

13

14 (PORTION OF PROCEEDINGS OMITTED BY REQUEST)

15

16 **Reasons for Judgment (Voir Dire)**

17

18 THE COURT:

We're here then today for delivery of my

19 decision on the voir dire that I heard some time ago in this matter. [REDACTED]

20 [REDACTED] is charged with possession of cannabis for the purpose of trafficking contrary to  
21 section 5(2) of the *CDSA*.

22

23 A voir dire was conducted to deal with an application by the defence for a stay of  
24 proceedings pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*,  
25 and/or to exclude all evidence and derivative evidence acquired during the course of the  
26 police investigation pursuant to section 24(2) on the *Charter*, and the application is  
27 brought on the basis that it is asserted that Mr. Peterson's rights under section 7 and 9 had  
28 been violated.

29

30 The Crown called two witnesses on the voir dire, Constable Jesse Brideau and Constable  
31 Gordon Hardy. An agreement statement of facts was entered as an exhibit and no  
32 evidence was called by the defence.

33

34 The evidence established that Constable Brideau had been a member of the RCMP for  
35 four years in November of 2014, and had completed the pipeline training course and had  
36 participated in over a hundred drug investigations. He was on duty on November 19th,  
37 2014, as a member of the roving traffic unit near Lake Louise, Alberta. His patrol car was  
38 equipped with an operational in-car digital video system (the ICDVS system), which  
39 captured video footage from the camera in his patrol car and recorded audio through  
40 microphones in the patrol car and a lapel microphone worn by Constable Brideau.

41



Footage was entered at the trial from the video, the ICDVS system, that began with Constable Brideau following a blue minivan driven by Mr. [REDACTED] as it was travelling eastbound in the right-hand lane on Highway 1, approximately five kilometres east of Lake Louise, Alberta. The left eastbound lane was icy and snow-covered and the right eastbound lane was largely bare with intermittent patches of snow.

Constable Brideau followed directly behind the [REDACTED] vehicle for at least 3 1/2 minutes without observing a traffic violation. Constable Brideau then switched into the left-hand lane and closed the distance between his vehicle and the [REDACTED] vehicle as if it was approaching to pass the [REDACTED] vehicle. At about the time when the Brideau vehicle appears that it would have entered the [REDACTED] vehicle's blind spot, the [REDACTED] vehicle transitioned briefly outside the right lane. That is, the passenger side tires rode just over the white line between the right lane and the shoulder. Constable Brideau withdrew back into the right lane and activated the emergency lights on his patrol car.

The [REDACTED] and Brideau vehicles both stopped on the shoulder. Constable Brideau approached the passenger side of the [REDACTED] vehicle and advised Mr. [REDACTED] that he was pulling him over for crossing the fog line. He then asked Mr. [REDACTED] for documentation and where he was coming from. Constable Brideau smelled the odour of fresh marijuana emanating from the vehicle. He returned to his patrol car where he advised over the radio that he would be arresting Mr. [REDACTED] for possession of a controlled substance. Constable Brideau returned to the [REDACTED] vehicle and arrested Mr. [REDACTED] for possession of a controlled substance and advised him about his right to counsel.

Constable DeBow attended at the traffic stop, assisted in the search of the vehicle, and located 3 1/2 kilograms of marijuana in the rear of the vehicle. Mr. [REDACTED] was re-arrested, *Chartered*, and cautioned.

At 1400 hours and 50 seconds of the video, Constable Brideau muted the audio with the result that 40 minutes of the 55 minutes and 30 second video was inaudible. Constable Brideau explained that he turned the audio off after the arrest so as not to record discussions of investigative techniques.

The issues that were raised by the defence on the voir dire was, first, whether the initial detention of Mr. [REDACTED] contravened section 9 of the *Charter* on the basis that it was arbitrary. The second issue was whether Constable Brideau's muting of the audio of the ICDVS system constituted a destruction of evidence and a violation of section 7 of the *Charter*. The third issue was if either or both *Charter* violations were established, what is the appropriate remedy.

1 Turning first to whether there was a breach of Mr. [REDACTED] rights under section 9 of the  
2 *Charter*. Section 9 of the *Charter* guarantees that everyone has a right not to be arbitrarily  
3 detained or imprisoned. The Supreme Court of Canada stated in *R. v. Grant*, [2009] 2  
4 SCR 353 at paragraph 54 and I quote,

5  
6 The section 9 guarantee against arbitrary detention is a  
7 manifestation of the general principle, enunciated in section 7, that  
8 a person's liberty is not to be curtailed except in accordance with  
9 the principles of fundamental justice. As this Court has stated:  
10 This guarantee expresses one of the most fundamental norms of  
11 the rule of law. The state may not detain arbitrarily, but only in  
12 accordance with the law.  
13

14 And then there's a reference to the *Charkaoui v. Canada (Citizenship and Immigration)*  
15 decision of the Supreme Court of Canada in 2007. The Court goes on to state,  
16

17 Section 9 serves to protect individual liberty against unlawful state  
18 interference. A lawful detention is not arbitrary within the meaning  
19 of section 9 --  
20

21 And reference to the *Mann* decision.  
22

23 -- unless the law authorizing the detention is itself arbitrary.  
24 Conversely, a detention not authorized by law is arbitrary and  
25 violates section 9.  
26

27 The Supreme Court of Canada then later went on to state in *R. v. Nolet*, at 2010 SCC 24  
28 at paragraph 21 and, again, I quote,  
29

30 The appeal also engages section 9 of the *Charter* ("the right not to  
31 be arbitrarily detained or imprisoned"). A random vehicle stop on  
32 the highway is, by definition, an arbitrary detention.  
33

34 And reference to the *Dedman v. The Queen*, a 1985 decision of the Supreme Court of  
35 Canada; *R. v. Hufsky*, a 1988 decision of the Supreme Court of Canada; *R. v. Ladouceur*,  
36 a 1990 decision of the Supreme Court of Canada; and *R. v. Harris*, a 2007 decision of the  
37 Ontario Court of Appeal. The Court goes on to state,  
38

39 The detention will only be justified under section 1 of the  
40 *Charter* --  
41



1 And a reference to *Hufsky*.

2  
3 -- if the police act within the limited highway-related purposes for  
4 which the powers were conferred.  
5

6 Now then the Supreme Court then goes on at paragraph 37 to state and, again, I quote,  
7

8 It is expected that RCMP officers travelling the Trans-Canada  
9 Highway are interested in any number of potential infractions  
10 including criminal offences as well as provincial matters. It could  
11 hardly be otherwise. However, as pointed out by Martin J.A., --  
12

13 In a quote,  
14

15 -- "the lawful search was not converted into an unlawful or an  
16 unreasonable search because the officers, in addition, had the  
17 expectation that the search might also in cover -- uncover drugs."  
18  
19

20 And then a reference to the *R. v. Annett* decision of the Ontario Court of Appeal in 1984,  
21 where leave to appeal was refused by the Supreme Court of Canada in 1985.  
22

23 Justice Nason of this court recently considered the law with respect to arbitrary vehicle  
24 stops in the *R. v. Fleury* decision at 2014 ABQB 199, and at paragraphs 13 and 14 she  
25 states as follows and, again, I quote,  
26

27 The starting proposition is that both arbitrary detention and  
28 warrantless searches violate an accused's *Charter* rights.  
29 Nevertheless, the courts have accepted that random or arbitrary  
30 vehicle stops can be justified under section 1 of the *Charter*  
31 provided that the stop is for a purpose related to driving a car,  
32 such as checking the driver's licence and insurance, the sobriety of  
33 the driver and the mechanical fitness of the vehicle.  
34

35 And then there's reference to a series of decisions. In paragraph 14 she goes on to state,  
36

37 This, however, does not give the police an unrestricted right to  
38 stop vehicles. The Court of Appeal in *Dhuna* said at para 18:  
39

40 And quoting from that decision,  
41

1 In *Houben*, the Saskatchewan Court of Appeal held that if a  
2 police officer suspects that a driver is involved in criminal  
3 activity unrelated to traffic enforcement, the officer cannot  
4 rely on traffic safety legislation to stop the vehicle. Rather,  
5 his suspicion must meet the test in *Mann*.  
6

7 Now, in *Fleury*, Justice Nason concluded that the accused in that case had been arbitrarily  
8 detained in violation of his section 9 *Charter* rights and she ultimately excluded the  
9 cocaine that had been found as a result of the search.  
10

11 The Court of Appeal in *R. v. Ali*, 2016 AB (sic) 261, also considered this issue stating at  
12 paragraph 7 and, again, I quote,  
13

14 Secondly, the appellant argues that the trial judge erred in  
15 concluding that an officer can stop a vehicle so long as the stop  
16 engages an objective of the *Traffic Safety Act*, without the need for  
17 any further analysis. Section 166(1) of the *Act* allows a police  
18 officer to stop a vehicle and check documents for the purposes of  
19 administering and enforcing the *Act*, without any further  
20 requirement of suspicion about illegal activity.  
21

22 And a reference to *R. v. Dhuna*, 2009 ABCA 103 at paragraphs 16 to 19.  
23

24 The most the law requires is that the grounds for stopping a  
25 motorist are rooted in the statute and are reasonable and can be  
26 clearly expressed.  
27

28 And a reference to *R. v. Wilton -- Wilson*, [1990] 1 SCR 1291.  
29

30 Therefore, stopping a vehicle to check ownership documents meets  
31 the first part of the test in *Nolet*, namely that the search was  
32 authorized by law. It is not argued that this law is unreasonable, or  
33 that the search was carried out in an unreasonable manner. *Nolet*  
34 confirms at paragraph 25 that police officers can randomly stop  
35 persons for traffic safety reasons where that is authorized by  
36 statute, citing the earlier case of *R. v. Ladouceur*,  
37

38 1990 Supreme Court of Canada decision at 1287 to 88.  
39

40 There is nothing in the binding case authority to suggest that there  
41 is a further requirement, such as a reasonable suspicion of



1 unlawful activity. *Nolet* also confirms at paragraph 43 that once  
2 the stop and search are authorized, it is not objectionable that  
3 unrelated criminal activity is discovered.  
4

5 In this case, the Crown relies on the provisions of section 15(5) of the Use of Highway  
6 and Rules of the Road Regulation, A.R. 3004//2202 of the *Traffic Safety Act*, to justify the  
7 stop. It states,  
8

9 When a highway has been divided into traffic lanes by clearly  
10 visible lines marked on the road surface, a person driving a vehicle  
11 other than a cycle shall drive the vehicle as closely as practical in  
12 the centre of the traffic lane so marked.  
13

14 Section 15(4)(b) states and, again, I quote,  
15

16 Notwithstanding anything in this section, when the movement  
17 cannot be made in safety, a person driving a vehicle shall not do  
18 the following:  
19

20 And then,  
21

22 (b) drive the vehicle so as to cross a solid or broken line;  
23

24 The Crown submits that Mr. [REDACTED] detention was not arbitrary because Constable  
25 Brideau made a valid traffic stop and pulled Mr. [REDACTED] over because of a traffic  
26 violation for driving over the fog line. However, the Crown has not established that it was  
27 an offence for Mr. [REDACTED] to drive over the fog line in the circumstances of this case.  
28 Section 15(5), on which they rely, makes no express mention of crossing the fog line or  
29 shoulder line. It simply requires a driver to drive as closely as practical to the centre of  
30 the traffic lane.  
31

32 I accept the position advanced by the defence that Mr. [REDACTED] was driving appropriately  
33 when he veered slightly to the right when he was about to be passed on the left by a  
34 vehicle where the left lane contained icy patches. Mr. [REDACTED] points to section 21(2) of  
35 the same regulation that states and I quote,  
36

37 Except when overtaking and passing on the right is permitted, a  
38 person driving a vehicle that is being overtaken by another vehicle  
39  
40

41 (a) shall give way to the right in favour of the overtaking



1 vehicle, and

2  
3 (b) shall not increase the speed of the overtaken vehicle  
4 until the overtaken vehicle is completely passed by the  
5 overtaking vehicle.  
6

7 Section 15(4)(b) does not assist the Crown as it simply prohibits crossing a solid line  
8 when it is unsafe to do so. There is no evidence that Mr. [REDACTED] actions of veering  
9 slightly to the right when the Brideau vehicle was approaching it on the left side on an icy  
10 lane of the highway was unsafe.  
11

12 In my view, Constable Brideau had no reasonable basis to pull over Mr. [REDACTED] as no  
13 traffic violation was committed. I find that his real motivation was based upon a hunch  
14 that the rented vehicle driving in the corridor between Lake Louise and Banff may have  
15 been involved in illegal activity. However, as Justice Nation noted in *Fleury* at paragraph  
16 29 and I quote,  
17

18 In conclusion, Constable Frost had a suspicion, but when a traffic  
19 infraction was not committed, he pulled the car over and detained  
20 the accused on the pretext of checking his license and rental  
21 agreement. Really, he was furthering his investigation, acting on a  
22 hunch, that the accused was involved in illegal activity. If a police  
23 officer wishes to stop a vehicle simply on suspicion of criminal  
24 activity, he or she must meet the test for investigative detention set  
25 out in *R v Mann*, 2004 SCC 52, which is not met in the facts of  
26 this case.  
27

28 So in this case, I find that Mr. [REDACTED] section 9 *Charter* right not to be arbitrarily  
29 detained was violated.  
30

31 So turning now to considering, given that I have found that his section 9 *Charter* right  
32 was violated, what is the appropriate remedy?  
33

34 If a *Charter* violation is established, then the three-part test outlined in *R. v. Grant*, 2009  
35 SCC 32 at paragraph 71 is used to determine whether the evidence should be excluded  
36 pursuant to section 24(2) of the *Charter*, and I quote,  
37

38 A review of the authorities suggests that whether the admission of  
39 evidence obtained in breach of the *Charter* would bring the  
40 administration of justice into disrepute engages three avenues of  
41 inquiry, each rooted in the public interests engaged by section

24(2), viewed in a long-term, forward-looking and societal perspective. When faced with an application for exclusion under section 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the judicial -- justice system having regard to: (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and (3) society's interest in the adjudication of the case on its merits. The court's role on a section 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute. These concerns, while not precisely tracking the categories of considerations set out in *Collins*, capture the factors relevant to the section 24(2) determination as enunciated in *Collins* and subsequent jurisprudence whether the evidence should be excluded.

So the first factor then to consider is the seriousness of the breach. The seriousness of the breach depends upon the extent and reasons for the contravention of the *Charter*. Some of the following factors have been viewed by the courts as increasing the gravity of the misconduct: severe or deliberate police misconduct contravening established *Charter* standards or a major departure from *Charter* standards; systemic or institutional abuse; willful, flagrant, or reckless disregard of *Charter* rights; ignorance, negligence or willful blindness to *Charter* standards; a pattern of abuse; and misleading testimony of the police. The following factors have been found to mitigate against the seriousness of a *Charter* breach: a *Charter* violation that is inadvertent, minor, or merely technical; good faith by the police or a breach resulting from an understandable mistake; or extenuating circumstances such as the need to prevent the destruction of evidence.

In this case, Constable Brideau was a trained pipeline drug investigator who was closely following the [REDACTED] vehicle for 3 1/2 minutes. His act of stopping the [REDACTED] vehicle when it veered slightly to give way to him when he was passing on the icier passing lane, which was not an infraction, was essentially a random stop based upon a hunch to check for drugs. As the Supreme Court of Canada noted in *R. v. MacKenzie*, [2013] SCJ No 50, and I quote from paragraph 44,

Manifestly, if the officers were in fact engaged in random traffic stops to check for drugs, their actions would be unconstitutional



1 and amount to a serious abuse of the powers society has entrusted  
2 to them.  
3

4 Now, in this case, while Constable Brideau's conduct was certainly not egregious, I find  
5 that it was an unauthorized stop for an alleged traffic violation that resulted from  
6 Mr. [REDACTED] reasonable actions of giving way to the Brideau vehicle when it  
7 approached to pass him on an icy highway. Constable Brideau's conduct represented an  
8 intentional disregard of Mr. [REDACTED] *Charter* right in response to his legitimate traffic  
9 behaviour on an icy road, which I consider to be moderately serious.  
10

11 Moreover, I found that some of Constable Brideau's explanation about the traffic stop in  
12 his testimony overly defensive and less than candid. In particular, I refer to page 141 of  
13 his -- the transcript from his evidence lines 1 to 28 where the following is stated: (as read)  
14

15 Q Sure. So you pull out and you enter upon an icy surface; right?  
16

17 A Yes.  
18

19 Q And you say you're about to pass the van on this icy surface;  
20 right?  
21

22 A Yes.  
23

24 Q Okay. And right about when we are right now in the video at  
25 13:47:53 hours, you'd be about in the blind spot of the driver  
26 of the van, would you?  
27

28 A Can't say for sure but, yes, it's possible. Yes.  
29

30 Q Yeah. That's about the right location to be in -- physically to  
31 be in the driver's blind spot; right?  
32

33 A Yes.  
34

35 A Okay.  
36

37 Or sorry, (as read)  
38

39 Q Okay. Now you correct me if I'm wrong, but any cautious  
40 driver of that van, any prudent driver of that van, having you  
41 in the blind spot on an icy road surface attempting to pass, is  
going to move over to the right to give you some room. Am I  
right or am I wrong?

A I think any safe driver would stay in the lane.

1 Q So in your opinion, a prudent driver wouldn't move over to the  
2 right to make sure you got lots of space to go by on that icy  
3 surface?

4 A In my opinion, yes.

5  
6 Q I'm sorry?

7 A In my opinion, I don't think so. I don't think so.  
8

9 And then at page 148 lines 4 to 40, (as read)  
10

11 Q Okay. So you follow this vehicle for 4 or 5 minutes, you  
12 record it, and you don't see any infractions at all when you're  
13 following the vehicle; right?

14 A Well, I did. That's the reason I stopped him.  
15

16 Q Oh, up to that point you -- you say it's -- but now that's --  
17 correct me if I'm wrong, but that was an infraction as you call  
18 it and we'll see if it's an infraction or not, but that was  
19 something that happened as a result of you passing on an icy  
20 surface; right?

21 A I don't believe that, no.  
22

23 Q You don't think you were the cause of Mr. Peterson giving  
24 way and moving to the right?

25 A No.  
26

27 Q And we can see in the video, when the vehicle moved over that  
28 fog line on the right side of the van, there was no jerky  
29 movement on the part of the van, no erratic braking or  
30 acceleration or swerving, nothing like that; right?

31 A Well, he swerved across the line and came back.  
32

33 Q He went across the line and then came back, right, in a smooth  
34 fashion; right?

35 A A smooth fashion.  
36

37 Q Yeah. Did -- I mean, did the driver appear to lose control or  
38 anything?

39 A No.  
40

41 Q No. So the vehicle, when it did go over the fog line appeared



1 to do in a safe manner?

2 A I don't believe it -- it's safe to go over the shoulder on a  
3 highway, no.

4  
5 Q Well, it may not be safe to pass on an icy surface either, but  
6 what is it? You tell the Court. What is it about his movement  
7 to the right over the fog line that was any way, shape, or form  
8 unsafe? What was it?

9 A Well, you're driving on the shoulder of a highway. It's unsafe  
10 to me.

11  
12 Q The shoulder, when you cross the fog line, you're entering the  
13 shoulder -- you're entering the shoulder of the highway.

14  
15 And then he goes on at page 150, lines 14 to 35, (as read)

16  
17 Q And again, you would agree with me, just having watched it  
18 again, that there was nothing unsafe in him negotiating that  
19 particular manoeuver?

20 A Sir, again, I don't agree that it's -- you're saying that it's safe  
21 to drive on the shoulder of the highway. What if someone was  
22 walking at this time?

23  
24 Q Okay. Well, let's clarify then. Is there anybody walking on the  
25 shoulder of the highway where he, the right wheels of the  
26 vehicle went just over the fog line? Anybody walking there?

27 A No.

28  
29 Q Has anyone been walking on the highway the whole time  
30 we've been watching this video from the time that you  
31 activated it?

32 A I don't believe so.

33  
34 Q Do we ever see anybody walking on the side of the highway  
35 during the hour that the video plays?

36 A Sorry, if I -- if we see anybody walking?

37  
38 Q Anybody, yes.

39 A No. I'm not saying there was anybody walking, I'm saying it's  
40 not safe to drive on the shoulder of the highway.

41

1 So, in my view, it was not reasonable for Constable Brideau to refuse to acknowledge that  
2 his actions in approaching to pass the [REDACTED] vehicle while in its blind spot on an icy  
3 highway caused Mr. [REDACTED] to move slightly to the right nor was it reasonable for him  
4 to characterize the right wheels of Mr. [REDACTED] vehicle going just over the fog line  
5 when being passed on an icy highway when no one was walking on the shoulder as  
6 unsafe driving on the shoulder.

7  
8 The second factor to consider is the seriousness of the impact of the breach on the  
9 *Charter*-protected interests of the accused. Here, Mr. [REDACTED] was not just briefly  
10 detained at the side of the road, but was arrested and taken to the Lake Louise  
11 detachment. Now, having regard to the considerations in *Harrison*, the deprivation of  
12 liberty and privacy represented by the unconstitutional detention and search in this case  
13 would neither qualify as egregious nor insignificant.

14  
15 The third factor to consider is society's interest in the adjudication of a case on its merits.  
16 Here, the truth seeking function of the criminal trial process would be better served by the  
17 inclusion of the evidence as it is evidence that is essential to the Crown's case. This factor  
18 strongly favours inclusion of the evidence.

19  
20 So balancing the factors in this case, I'm of the view that the marijuana discovery as a  
21 result of the unjustified traffic stop triggered by the actions of Constable Brideau passing  
22 the [REDACTED] vehicle on an icy highway should be excluded as its admission in the  
23 circumstances of this case would bring the administration of justice into disrepute.

24  
25 Having reached this conclusion, it is not necessary for me to consider whether there was a  
26 breach of Mr. [REDACTED] section 7 rights in the circumstances.

27  
28 So that then concludes my decision on the voir dire. So and I apologize, I didn't get  
29 counsel to identify themselves at the beginning and I apologize for that.

30  
31 MS. PROULX:

32 Thank you, My Lady. My name is Louise  
33 Proulx. I'm just here on behalf of the -- I guess the Crown that had replaced the Crown  
34 that did this application. I can indicate if that's the Court's decision, then I think the only  
35 yet to deal with is -- is a order of forfeiture.

36 THE COURT:

37 Well, I -- I take it then, given the result on the  
38 voir dire, then the Crown's position is. . .

39 MS. PROULX:

40 Oh, sorry. The --

41 THE COURT:

Sorry. We need to --



1  
2 MS. PROULX: -- we -- we agree --  
3  
4 THE COURT: -- still deal with the --  
5  
6 **Submissions by Ms. Proulx**  
7  
8 MS. PROULX: Yes. That there's no evidence so we're inviting  
9 the Court to -- to acquit.  
10  
11 THE COURT: Okay. Any submissions on that Mr. Fagan?  
12  
13 MR. FAGAN: No, My Lady. Thank you.  
14  
15 **Decision**  
16  
17 THE COURT: Okay. Okay. So on the basis then that there is  
18 no evidence before the Court that would justify a conviction, I find Mr. [REDACTED] --  
19  
20 MR. FAGAN: Stand.  
21  
22 THE COURT: I find you, Mr. [REDACTED] not guilty of the  
23 offence with which you've been charged.  
24  
25 Okay. So the next issue then. You can have a seat.  
26  
27 **Submissions by Ms. Proulx (Forfeiture)**  
28  
29 MS. PROULX: We need a -- a order for the forfeiture of the  
30 items that were seized.  
31  
32 THE COURT: Okay. Okay. Mr. Fagan?  
33  
34 MS. PROULX: Since they were unlawful to possess in any  
35 event.  
36  
37 **Submissions by Mr. Fagan (Forfeiture)**  
38  
39 MR. FAGAN: If I might just have a moment?  
40  
41 THE COURT: Okay.

1  
2 MR. FAGAN: There's only one item that Mr. [REDACTED] has an  
3 interest in and that would be a cell phone that was -- that was seized. Other than that,  
4 order of forfeiture by consent.  
5

6 MS. PROULX: Thank you. I can prepare an order, My Lady. I  
7 see that there were -- there is a Blackberry, if that's correct. Yes.  
8

9 MR. FAGAN: Yes.  
10

11 MS. PROULX: So if the Blackberry can be returned and all  
12 other items which are basically the controlled substances or --  
13

14 THE COURT: M-hm.  
15

16 MS. PROULX: -- or items - packaging related to it - can be  
17 forfeited, then I can have a draft order done up to sign at a later date.  
18

19 MR. FAGAN: At your convenience.  
20

21 MS. PROULX: Okay.  
22

23 MR. FAGAN: Again, forfeiture of all other items by consent.  
24

25 THE COURT: Okay.  
26

27 MS. PROULX: Thank you.  
28

29 **Decision (Forfeiture)**  
30

31 THE COURT: Okay. Well, that order is then granted. So thank  
32 you for your taking over this matter. It's been a lengthy matter and there certainly has  
33 been a number of -- it's taken us a long way to get here, Mr. [REDACTED]. So hopefully  
34 things will proceed on and this was, as they say, a close call. Hopefully, we won't see  
35 you back in the courts.  
36

37 MR. FAGAN: My Lady, and I thank --  
38

39 THE ACCUSED: Thank you.  
40

41 MR. FAGAN: -- the Court for addressing the issue of the



1 mis-scheduling error at the onset of this matter. I can tell the Court that the Court's  
2 understandable ire was about one-fifth of that of counsel when I discovered that the  
3 mistake had been made but it's my responsibility.  
4

5 THE COURT:

Well, I recognize that you're the appropriate

6 person to take that --  
7

8 MR. FAGAN:

The only one.  
9

10 THE COURT:

-- responsibility and, unfortunately, I think  
11 particularly given the accommodations that the Crown had made and the scheduling --  
12

13 MR. FAGAN:

And the Court.  
14

15 THE COURT:

-- that was some reason for the evident  
16 displeasure that was expressed, but these things happen and so it's recognized.  
17

18 MS. PROULX:

Thank you, My Lady.  
19

20 MR. FAGAN:

Thank you, My Lady.  
21

22 THE COURT:

Okay. Thank you.  
23

24  
25 PROCEEDINGS CONCLUDED  
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**1 Certificate of Record**

2  
3 I, Cheryl Senetza, certify that this recording is the record made of the evidence in  
4 proceedings in the Court of Queen's Bench held in courtroom 1501 at Calgary, Alberta on  
5 the 6th day of January 2017, and that I was the court official in charge of the  
6 sound-recording machine during proceedings.  
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**1 Certificate of Transcript**

2  
3 I, Marcey Lepka, certify that  
4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the  
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript  
7 of the contents of the record, and  
8

9 (b) the Certificate of Record for these proceedings was included orally on the record  
10 and is transcribed in this transcript.  
11  
12

13 Digitally Certified: 2017-03-12 23:32:13  
14 Marcey Lepka, Transcriber  
15 Order No. 20356-17-1  
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35 Pages: 19  
36 Lines: 759  
37 Characters: 24589  
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40 Digital Fingerprint: 60027b8f75e76d6884920ef40d05d869f51efc11a7751076dff9074adaccfcd0  
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Detailed Transcript Statistics	
Order No. 20356-17-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	17
Total Pages:	19
Line Statistics	
Title Page Lines:	50
ToC Lines:	9
Transcript Lines:	700
Total Lines:	759
Visible Character Count Statistics	
Title Page Characters:	501
ToC Characters:	217
Transcript Characters:	23871
Total Billable Characters:	24589
Multi-Take Adjustment: (-) Duplicated Title Page Characters	24088