

Action No.: 160988697P1
E-File No.: CCP17 [REDACTED]
Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

[REDACTED]

Accused

PRELIMINARY INQUIRY

Canmore, Alberta
February 17, 2017

Transcript Management Services, Calgary
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Canmore, Alberta

2

3 February 17, 2017

Morning Session

4

5 The Honourable Judge Shriar

Provincial Court of Alberta

6

7 A. Simic

For the Crown

8 P.C. Fagan, QC

For the Accused

9 L. Hoang

Court Clerk

10

11

12 THE COURT CLERK:

Appearing on page 1, last name [REDACTED] first

13 name [REDACTED]. Here for preliminary hearing.

14

15 THE COURT:

Good morning.

16

17 MS. SIMIC:

Yes. Good morning, Your Honour. Aleksandra

18 Simic for the record, on behalf of the Crown. My friend Mr. Fagan appears on behalf of
19 the defence. We're here for the preliminary inquiry with respect to this matter.

20

21 I can advise and -- that while we do have a little bit of a later start this morning, and we
22 thank the Court for the indulgence, it has been very productive. And we do apologize, but
23 it has been productive in the sense that we've been able to narrow down the scope even
24 further with respect to the previous admissions that were -- that we had with respect to
25 this matter. It has cut down -- this preliminary inquiry down to one witness as opposed to
26 three witnesses and we expect to move along even faster than we anticipated earlier.

27

28 THE COURT:

All right. Are you ready to begin?

29

30 MS. SIMIC:

We are. I am. And I anticipate that my

31 colleague will be making an application with respect to the accused being seated in the
32 gallery, and I take no issue with that.

33

34 MR. FAGAN:

That is my application.

35

36 THE COURT:

All right. Anything further?

37

38 MR. FAGAN:

The usual application for -- and I realize my

39 friend has advised the Court that it's calling only one witness, but the usual order
40 excluding witnesses until such time as they're called to testify, or any other witnesses who
41 may be called.

1
2 THE COURT: All right. So, anybody who is or may be a
3 witness in the matter of the preliminary inquiry of the Crown versus [REDACTED] [REDACTED]
4 [REDACTED] and anybody who -- is directed to leave the room until their evidence is required.
5

6 (WITNESSES EXCLUDED)
7

8 **Ban on Publication**
9

10 THE COURT: And of course Mr. [REDACTED] or the client of
11 Mr. Fagan is at liberty to sit in the gallery and, in addition, usual non-publication ban for
12 preliminary inquiry matters.
13

14 MR. FAGAN: You've anticipated my third application.
15

16 THE COURT: Right.
17

18 MR. FAGAN: And I yield the floor to my friend.
19

20 THE COURT: Okay. So, just given the limited scope, I take it
21 that committal for trial is not in issue? We'll see what happens.
22

23 MR. FAGAN: I -- I -- I never concede it --
24

25 THE COURT: All right.
26

27 MR. FAGAN: -- but, you know, assuming my friend dots what
28 few I's there are and few -- what few T's there are to cross --
29

30 THE COURT: All right. Good enough. Thank you.
31

32 MR. FAGAN: -- it shouldn't be a great hurdle.
33

34 THE COURT: All right.
35

36 MR. FAGAN: It's a pipeline, Your Honour, straightforward, in
37 terms of the facts anyway.
38

39 MS. SIMIC: There are some items where my -- my
40 colleague has provided some admissions that -- those are with respect to continuity of
41 exhibits and identity of the accused, so when -- the Court may see that I may have some

1 directed examinations with respect to those admissions, so the Court is aware of that.

2

3 THE COURT: That's all true --

4

5 MR. FAGAN: Agreed.

6

7 THE COURT: -- for the purposes of prelim anyway.

8

9 MS. SIMIC: Yes.

10

11 THE COURT: All right. Good enough.

12

13 MS. SIMIC: Good morning, Constable MacPhail.

14

15 THE WITNESS: Good morning.

16

17 **TYLER MacPHAIL, Sworn, Examined by Ms. Simic**

18

19 THE COURT: Whenever you're ready, Ms. Simic.

20

21 Q MS. SIMIC: Yes. Good morning.

22 A Good morning.

23

24 Q I see from your attire and from your introduction that you're a member of the Royal
25 Canadian Mounted Police?

26 A That's correct.

27

28 Q And how long have you been so employed?

29 A On February 6th of this year was my 11th year with the RCMP.

30

31 Q Are you able to provide me with a snapshot of your postings with the Royal Canadian
32 Mounted Police and your experience in brief at those postings?

33 A Yes. On February the 6th of 2006 I graduated from Depot Division at the RCMP
34 Training Academy, where I was immediately transferred and posted to the Hinton
35 RCMP Detachment. I was posted to the general duty position at the office and my
36 general duty commencement started on February the 19th of 2006. That position is
37 taking calls for service, self-generated work, community events, as well as writing and
38 executing search warrants, running sources, confidential informants.

39

40 In the fall of October of 2009, I took a transfer to the Redcliffe Detachment outside
41 Medicine Hat. I was transferred to 'K' Division Traffic Services. I worked with the

1 Roving Traffic Unit for approximately 5 1/2 years. 'K' Division Roving Traffic Unit is
2 a specialized section of the Traffic Services Branch within the division which has
3 specialized members who are trained in the interception and detection of travelling
4 criminals, as well as enforcing the *Alberta Traffic Safety Act*, self-generated work
5 assisting with impaired and self-generated impaired investigations, assisting with
6 collisions, stolen vehicles, assisting with executing warrants, et cetera.

7
8 In March of 2014, I took a transfer within the division to the Cochrane RCMP
9 Detachment. I was posted still within the 'K' Division Traffic Services section with
10 the Roving Traffic Unit. My mandate did not change, just my posting did. And that is
11 where I'm currently posted.

12
13 Q Now, you indicated that with respect to the Roving Traffic Unit that every -- that there
14 is specialized training. Are you able to comment what type of training have you
15 received?

16 A Absolutely. In the fall of October 2007, I attended the Grande Prairie RCMP
17 Detachment where I took the National Pipeline Jetway course. That course is a
18 nationally recognized course that the RCMP manages and handles. The course teaches
19 RCMP members to have a specialized sensitivity and enhancement training to
20 individuals who could potentially be committing criminal acts in a vehicle and it
21 teaches officers to look beyond the stop in the sense that persons committing criminal
22 activity, a person can display certain indicia or behaviours, whether it falls under
23 nervousness or actions, and it teaches that officer or those officers to look for that type
24 of behaviour. It also teaches to look for certain observable stuff, items within the
25 vehicle which could potentially tie it into somebody committing a criminal offence,
26 either transporting contraband or engaging in criminal activity, as well as the -- the
27 program teaches officers on how to look for sophisticated or after-market style
28 compartments inside vehicles and how to search vehicles properly.

29
30 From there, I -- in April of 2010, I flew down to the United States and I rode with one
31 of the Arizona state troopers who works along the Mexican border and deals their
32 Department of Public Safety Unit, intercepts contraband on the highways in the State
33 of Arizona. The type of contraband is usually drugs and guns that are being
34 transported through the Southern United States up into the northern portion of the
35 States and into Canada. A lot of the contraband is related to the inter-border drug
36 trafficking from the cartels down in Mexico.

37
38 From there, May of 2010, I attended the National Interdiction Conference in Toronto,
39 Ontario. It's a nationally recognized conference where officers from the United States
40 and Canada get together to discuss the different trends, what we're seeing in the
41 United States and Canada for persons transporting contraband, different types of

1 techniques for searching vehicles, as well as presentations from the Drug Enforcement
2 Agency. There was presentations by the commercial vehicle mandate or I guess
3 commercial vehicle officers in Ontario on transport truck contraband concealment, as
4 well as officers that have intercepted large amounts of contraband inside commercial
5 vehicles.

6
7 From there, on -- in April of two -- or sorry, May of 2010, I attended the Desert Snow
8 training course in Oklahoma in the United States for a week long course on advanced
9 criminal interdiction. It's put on the United States Troopers on teaching police officers
10 to look beyond the stop, as well as training on hidden compartments, again trends that
11 are being observed in the United States, proper search handling, safety techniques for
12 items which could potentially harm officers, terrorist stuff, i.e. al-Qaeda, anything with
13 respect to that type of activity which could be utilized or observed in a vehicle.

14
15 From there I had training -- I went to the -- I've attended some workshops within the
16 division with relation to our unit, with the Roving Traffic Unit. In -- I'm just trying to
17 remember my months here. In June of two thousand and -- or sorry, in March of 2013,
18 I attended the -- or sorry, in June of 2013 I attended the Western Canada Guns and
19 Gangs Symposium in Edmonton. Again, it's a week long course. There was a
20 presentation put on by a national instructor in United States and Canada for
21 compartments, from CBSA, which is the Canadian Border Service. I attended the -- in
22 the fall of -- November of 2014, I went to Depot Division, where I became a national
23 pipeline instructor. I'm able to teach in Canada and the United States on training new
24 members on how to intercept and detect travelling criminals, as well as what to look
25 for with after-market hidden compartments, as well as different types of contraband
26 that are being seized.

27
28 In March of 2015, I attended a National Interdiction Conference in Virginia in the
29 United States put on by the Virginia state troopers. That conference was very similar
30 to the other ones, just techniques that we're utilizing, common trends that we're
31 seeing, roadside interviews, proper court preparation for testimony, and we had an
32 opportunity to have a presentation put on by a convicted felon in the United States
33 who was a confidential informant for the Virginia State Police and he was a known
34 and a convicted drug trafficker and courier who has been serving time in the United
35 States as a felon, and he told us basically all the tips and tricks, I guess you could say,
36 that drug traffickers or persons committing offences in vehicles will do to try and
37 deceit -- or my apologies, defeat police officers during the course of our duties.

38
39 In the fall of 2016, I attended the National Interdiction Conference for the Canadian
40 Association of Chiefs of Police in Kananaskis here in Alberta. We had present --
41 presenters from the United States again and Canada on similar types of work that --

1 that we're doing right now.

2
3 Those are -- that's where my training is sitting at currently, and then there's my
4 extensive investigational side from major investigation of files that I've had during the
5 course of my service.

6
7 Q Now, in the course of your service in the Traffic Division, are you able to estimate
8 how many traffic stops you have been involved in?

9 A Conservatively I would estimate over 10,000.

10
11 Q And now, I understand that you were involved in a stop concerning an individual
12 named [REDACTED] [REDACTED]?

13 A That's correct.

14
15 Q Could you please detail for the Court the nature of your involvement on that stop?

16 A On the 24th of August of last year, I was conducting stationary speed enforcement on
17 the Trans Canada Highway at the Canmore gates. I was monitoring eastbound traffic.
18 My patrol car was set up facing south, so I was looking at the traffic coming towards
19 me. So, I had my police car facing the side of traffic as it was going past. I observed a
20 vehicle approach me. Posted -- the posted speed limit, at the time it was a marked
21 construction zone marked at 50 kilometres an hour. I observed a vehicle travel towards
22 me at 64 kilometres an hour. I pulled out after the vehicle and subsequently followed
23 it for a period of time where I observed the vehicle travelling in the furthest most right
24 lane. I guess that would be lane number three. I observed the vehicle to be travelling
25 at approximately 90 kilometres now and it was continuing in an easterly direction.

26
27 At the time I was driving a fully marked RCMP police vehicle with police lights on
28 the roof, so it was -- it was clearly defined that I was an RCMP member.

29
30 I observed the vehicle travel towards the Harvey Heights exit at approximately 90
31 kilometres an hour. The posted speed limit at that time is 110. So, I have a vehicle
32 travelling at 20 kilometres under the posted speed limit now. The time is 1:30 in the
33 morning. I observed the vehicle indicate right to exit over to the Harvey Heights
34 overpass. Upon it activating its turn signal, I had obviously made note that the vehicle
35 is now exiting off the highway into a residential area off the highway, and at the time
36 I had completed a licence plate check of the vehicle and the licence plate was Bravo,
37 Victor, Papa, 1994 - BVP 1994, an Alberta plate. Checks on that plate indicated it
38 came back to a male out of Red Deer. Obviously I made note of the fact that I have a
39 vehicle now abruptly exiting off the highway after I've pulled out after it. And so, I
40 decided to conduct a traffic stop to address the two infractions, as well as to check for
41 the driver's sobriety due to the fact that it's at 1:30 in the morning. We've had

1 individuals who will travel from the Banff area while consuming and travel eastward
2 on the highway. And "consuming", I'm referring to alcohol.

3
4 I activated the police lights on my vehicle and the vehicle pulls over. I can observe
5 that there was one male seated in the vehicle at the time. I complete my checks and I
6 exit my vehicle and I advise the driver the reason for the stop. Completed a passenger
7 side approach and I make some observations. And the observations that I made were
8 of an individual who I observed seated in the driver's seat. I can clearly see in the
9 window. There's no tint or anything that prevented me from seeing in the back seat
10 and I could see him when I walked up as there was no back glass tinted glazing.

11
12 I tell the driver the reason for the stop and he had told me that he thought it was 60
13 kilometres an hour in the posted 50 zone. I told him that I wasn't going to take any
14 enforcement action. Obviously part of our job is to educate the public, plus I wanted to
15 make sure that he wasn't impaired. I didn't smell any impairment and he wasn't
16 displaying any signs of impairment at the time, so that was eliminated. I also
17 addressed the fact that he was driving 90 in the 110, and I -- I don't know why that
18 was, but it was definitely out of sort.

19
20 While speaking with him, I noted that he was extremely nervous and I always like to
21 touch on and -- and go into detail on the nervousness level. His nervousness -- and
22 you have to keep in mind I've stopped a lot of vehicles and dealt with a lot of the
23 motoring public and after a while, especially with my experience, you start to notice
24 when somebody's nervousness is a normalcy and then you have the overly, extreme
25 nervous, and this gentleman's nervousness really stood out to me based on the fact that
26 his hands were trembling when he went to pass me his documents and there was a
27 noticeable influx in his voice and you could hear the shake to it. He was pushing
28 himself back into his seat and blading himself towards me in a pure panic. And it's
29 very difficult for me to describe, unless you are able to see it, because I'm at the
30 window interacting with the individual at the time, and that's based on -- on my
31 observations.

32
33 He told me that he was in the central interior in B.C. and he was there visiting friends
34 for a couple of days. I immediately noted a radar detector up on the windshield and it
35 was on. Radar detectors are used obviously to locate police officers and see where law
36 enforcement is as they're travelling down the highway. Some people use it for
37 obviously not to get a speeding ticket, others can still travel the speed limit and
38 activate the radar or have it on and still maintain the speed, but the minute we turn on
39 our radar, obviously a tone will go off on the radar detector and it will let them know
40 that we're down the highway.

41

1 About -- I saw some water bottles on the floor in behind the driver's side, which led
2 me to believe that obviously, you know, the individual may have been driving for
3 extended periods and was drinking to stay hydrated. There was a small piece of
4 luggage on the back seat and it was in behind the driver.

5
6 From there, I returned to my police vehicle and conducted some checks on the police
7 computer. I read on the police computer that this individual had numerous entries
8 relating to being a subject of complaint for being involved with drug trafficking,
9 numerous entries relating to marijuana trafficking, as well as a recent file from one
10 month prior where the Red Deer GIS, the General Investigation -- Investigation
11 Section had an active file on him where they had confidential informant information
12 advising that this individual was actively trafficking in a controlled substance,
13 specifically it was marijuana.

14
15 In order to corroborate and to confirm that, I contacted Constable Tim Yaworski via
16 phone roadside to ask Constable Yaworski what the current status of that investigation
17 was.

18
19 I woke Constable Yaworski up, because he was sleeping. Constable Yaworski told me
20 that he had -- what he was aware, there had -- they had an active file on this
21 individual and that he was known to be involved with drug trafficking. At that point I
22 contacted Constable Jantz, because obviously I'm making note and going over all of
23 my observations and taking into consideration the totality of everything that I'm seeing
24 here.

25
26 It should be noted that upon stop, the individual told me that he needed -- the reason
27 he was exiting - and this is important - the reason he was exiting the highway was
28 because he needed to urinate. Keeping in mind that Canmore is a, basically what I
29 would refer as a truck stop and a fairly major point where individuals will stop to
30 utilize facilities -- there's a Tim Hortons, there's the McDonald's, there's Petro
31 Canada, there is actually a rest stop which is open 24 hours on the west side of town.
32 And I found it very interesting that this individual makes an abrupt exit off the
33 highway after I immediately pull out and says that he needs to urinate, considering the
34 fact that if he had driven another minute he would have been -- there is a McDonald's,
35 there's gas stations, as well as a 24-hour rest centre. So, I found that -- that to be what
36 I would consider a nonsensical answer. It was almost like it was a blurted-out, when
37 I've had lots of stops in the past where individuals will provide me with a very similar
38 style answer. You know, I'm -- I'm speeding because I need to pee, or I need to use
39 the washroom, that's why I'm doing it - just giving the officer an answer.

40
41 From there, I considered the totality of everything that I had and I -- obviously I --

1 you know, I'm at a crossroad of, you know, do I feel that I have reasonable suspicion
2 threshold or, based on my extensive training and service, do I have a crossroad of am I
3 at reasonable and probable grounds to arrest this individual?
4

5 At that point I felt and I formed grounds to believe that this individual was in
6 possession of drugs, and I could have contacted a narcotics dog if I wasn't at that level
7 of threshold, if I was only at reasonable suspicion. And obviously, I felt that I was at
8 reasonable and probable grounds, no different than the roadside screening device, for
9 example. If you have an individual who is grossly intoxicated or exhibiting signs of
10 impairment and there's other indicia present, we are obviously taught not to put them
11 on a roadside screening device because your grounds are there to immediately arrest.
12 You're past reasonable suspicion. From this stop - and keeping in mind I've -- I've
13 formulated reasonable suspicion in the past lots and contacted narcotics dogs lots - I
14 was past the point of reasonable suspicion in my mind because I'm at reasonable and
15 probable grounds. If I had contacted a narcotics canine, it would have delayed this
16 gentleman's rights and it would have become, I felt, problematic.
17

18 So, for me, based on the totality of everything that I observed and from my extensive
19 training and experience, I was at reasonable and probable grounds to arrest and the
20 narcotics canine is merely a tool like an ASD or a roadside screen device. If I'm not at
21 reasonable and probable grounds and I've only met the threshold of mere suspicion for
22 drugs, then that's when the narcotics canine would be utilized to push us over to arrest
23 for a controlled substance.
24

25 At that point I contacted Constable Jantz from the Canmore -- Canmore Detachment.
26 Constable Jantz attends my location. I tell him my observations and I approach the
27 vehicle and subsequently Mr. [REDACTED] exits on his own accord and I advise him that
28 he's under arrest for possession of a controlled substance. Obviously he was placed in
29 the back seat of my police vehicle where he was read the 10(a), 10(b) and the police
30 caution from a prepared text. He said that he understood why he was being arrested
31 at -- after it was explained to him. At first he was confused. I did my best to explain it
32 to him. And he advised that he wanted to contact a lawyer.
33

34 A search of the vehicle incidental to his arrest led me - and I went to the trunk of the
35 vehicle - led me to locate 24 1/2 pounds of prepackaged cannabis marijuana in the --
36 in the trunk of the vehicle. At that point I returned to the vehicle and rearrested him
37 for the offence of possession of marijuana for the purpose of trafficking. Again he was
38 re-chartered and re-cautioned, obviously provided from a prepared text. He wanted to
39 call a lawyer.
40

41 The contents of the vehicle were photographed and seized, and he was subsequently

1 released roadside on his own recognizance and the drugs were placed in my police
2 vehicle and eventually processed.

3
4 The final weight of the drugs was 11,084.7 grams of cannabis. It was processed at the
5 detachment on the next day by myself, taking into consideration I factored in the
6 weight of the exhibit bags because they were packaged in vacuum sealed packaging,
7 which is fairly common -- vacuum sealing obviously prevents the smell from getting
8 out. And the final weight is with the plastic being removed. 0.7 grams was located in a
9 golf bag in the trunk with some rolling papers, and rolling papers are commonly used
10 to roll and smoke marijuana, and a cellular phone was seized. And I believe it was an
11 Alcatel cell phone. At the time of arrest the phone had been disassembled in the
12 armrest of the motor vehicle. I did not send that cell phone away for analysis to be
13 downloaded.

14
15 And I did take samples of the drug and sent them off to Health Canada that day, and
16 subsequently the samples returned and they were positive for marijuana.

17
18 MR. FAGAN:

And if it's of assistance to my friend, no issue
19 with respect to the nature of the impugned substance, to wit: cannabis marijuana, for the
20 purpose of the preliminary inquiry.

21
22 MS. SIMIC:

Thank you for that.

23
24 Q MS. SIMIC:

Now, Constable MacPhail, you indicated that
25 there were two arrests with respect to Mr. [REDACTED]. After the first arrest you indicated
26 that he had asserted that he wanted to speak to counsel.

27 A Yes, Your Honour, that's correct.

28
29 Q What, if any, steps did you take with respect to facilitating his right to counsel?

30 A Well, the entire incident transpired over a period of 40 -- I believe 46 minutes from
31 the initial point of contact, to stop, to release. He was cooperative. He had no fail to
32 appears. He had nothing on his record to lead me to believe he wasn't going to show
33 up for court and we knew who he was, so I felt that it was in his best interests and
34 ours to release him roadside on a \$500 no cash recognizance, got him out of there. He
35 can expedite -- or sorry, he can exercise that right upon release. If I had transported
36 him to the detachment, it would have held him in custody longer when my intentions
37 were to release him. I believe he and I talked about that. The faster I can get them out
38 of police custody, I -- I feel it's better. And I can't let him use the cell phone in the
39 back seat of the police car for obviously officer safety reasons because we've had --
40 and I -- I personally have had files where I'm the lead investigator where we will have
41 mules and lookout vehicles. So, you'll have a mule and I use that -- they're the ones

1 trafficking the substance and they will be the -- the vehicle with the -- the substance
2 and then you'll have them -- the lookout vehicle that will travel down the highway
3 and -- and keep watch. So, they could potentially call that -- that person they're
4 travelling with, and we don't know, you know, drugs, they're can potentially be
5 weapons. And I should say there were no weapons seized or noted in this -- this one,
6 but weapons are a potential possibility, and so officer safety, we don't facilitate that.

7
8 And number two, it's a recorded vehicle and I can't afford him that expectation of
9 privacy which he is entitled to. So, me allowing him to utilize the phone to contact
10 legal counsel in the back seat of a police vehicle would be entirely inappropriate.

11
12 So, that's the reason why he did not utilize a phone call or make a phone call for
13 counsel at that time and at no point was he questioned or any sort of information
14 attempted to be gleaned from that incident.

15
16 Q Now, you indicated that with respect to providing rights to Mr. ██████ that you had
17 read from a prepared text. Do you have a copy of that text with you today?

18 A Yes.

19
20 MR. FAGAN: No issue for the purpose of the preliminary
21 inquiry if it's of assistance to my friend.

22
23 MS. SIMIC: Okay, thank you.

24
25 Q MS. SIMIC: Now, you indicated that you took some
26 photographs at the time of this investigation. Now, I realize that you have -- I see that
27 you have a booklet before you that's marked first with a set of photographs that are
28 entitled "Scene Photos" that have 25 photos and then exhibit photos that have 17 --
29 sorry, 18 photos. Do you recognize this booklet?

30 A Yes, ma'am.

31
32 Q And how do you recognize this booklet?

33 A I prepared them for the purpose of this preliminary inquiry.

34
35 Q And what do these photographs relate to?

36 A They relate to the investigation that we're here for today.

37
38 Q Okay. Constable MacPhail, could you please lead us through the --

39
40 THE COURT: I take it you have it, Mr. Fagan?

41

1 MR. FAGAN:

I certainly do.

2

3 Q MS. SIMIC:

4 Could you lead us through this booklet and
5 briefly describe what we're looking at as we pass through, and please refer to the
6 photo number at the bottom of the right-hand page and just let us know so that we can
7 follow along what you're referring to.

7

8 MR. FAGAN:

9 And if it's of assistance to my friend and the
10 officer's rendition in that regard, he doesn't need to tell us that it's a grey vehicle, that it's
11 a 300 Chrysler, et cetera, et cetera. If there's something probative relative to these
12 proceedings that the officer wishes to point out and my friend wants to lead him with
13 respect to, no problem from the defence perspective.

13

14 THE COURT:

Thank you, Mr. Fagan. I'll leave that up to

15 Ms. Simic to --

16

17 MR. FAGAN:

As will I. I'm just trying to assist.

18

19 THE COURT:

Thank you, sir.

20

21 MR. FAGAN:

You're welcome.

22

23 A So, that's just the back of the plate on the vehicle is on page 2. The front of the
24 vehicle is on page 3. The flash isn't very great in this. This is just the driver's side.
25 It's just for me. I just take pictures whenever I have an investigation. I just do an
26 overview and then a picture of all sides of the vehicle. Page 5 is the driver's side door.
27 Six -- so, 6 depicts the radar detector that I saw up by the -- the mirror and page 7
28 shows that it's on and active and it's in highway mode. Page 8's the passenger side, so
29 that's what I would have observed when I first approached on the passenger side. Page
30 9 shows the passenger seat with a water bottle. Ten just shows the console. Eleven
31 shows the armrest. Twelve shows the wallet. So, there was some currency - and page
32 13 - inside the wallet. We did not seize it. Fourteen shows the cell phone, the Alcatel
33 or -- I believe it's Alcatel cell phone, which was disassembled. There was an iPhone,
34 as well. I believe that was not seized and I believe he still has it. The back in the
35 phone was disassembled. Page 16 is an empty glove box. Page 17 is the back seat with
36 the suitcase and the water bottle. Eighteen are the water bottles. Nineteen is again the
37 back seat. Twenty is the hockey bag, as well as the suitcase. Twenty-one shows the
38 pre-packaged marijuana. Twenty-two are the golf clubs. Twenty-three is the open
39 suitcase with the marijuana. Twenty-four shows Constable Jantz and I with the -- the
40 golf clubs with the Zigzag rolling papers and the 0.7 grams of marijuana which was
41 inside the golf bag. And that concludes the scene photos.

1
2 And continuing on to the exhibit photos, that's the overview of the exhibits removed.
3 Two is again the exhibits in the suitcase. Three again is the overview of the exhibits,
4 purple cushion -- or purple -- I believe it's candy, sorry, is page 4, is what was written on
5 one of the vacuum sealed bags. Same with page 5 and page 6. 70.1 grams was located
6 with the larger quantity of marijuana, so that was weighed in a 12 gram plastic bag.
7 Page 8 is the empty tub which I used to weigh the half pound exhibit -- or half pound
8 marijuana bags. I would have zeroed the scale off. This is the marijuana in the scale
9 on page 9, more marijuana on page 10. Page 11 the weights are also there. I took a
10 random sample of the marijuana in a Ziploc bag to show that it's common for it to be
11 at about 232, 234 grams. That's with the plastic bag factored in. So, when you get rid
12 of that and you factor it out, it takes the weight back down to 228 grams, in around
13 that area, for a half pound weight, because that's the standard weight that it's sold at.

14
15 Overview of 13 shows the bags in which the samples were taken from, Your Honour,
16 and they went onto coffee filters, which would then be put into a Ziploc bags -- or
17 small exhibit bags and mailed to Health Canada. Same with page 14. On page 15 is
18 another weight of bulk cannabis being weighed, further pictures of the samples and
19 then an overview on page 17 of the cell phone, the way it was taken apart, the Zigzags
20 and the 0.7 grams of marijuana, and that's the weight of the marijuana at 0.7 grams in
21 a coffee filter.

22
23 And those are the photos that I took, and I was the one that took them, and they
24 haven't been altered or changed at all.

25
26 MS. SIMIC: And, Your Honour, I would ask that the photos
27 be marked as Exhibit 1.

28
29 MR. FAGAN: No objection, Your Honour.

30
31 THE COURT: All right. Voir dire -- sorry, preliminary inquiry
32 Exhibit 1.

33
34 **EXHIBIT P-1 - Photographs**

35
36 Q MS. SIMIC: And I know, Constable MacPhail, that you have
37 provided us different locations on the highway, but this highway occurred where?

38 A At or near Lake -- at or near Canmore in the Province of Alberta.

39
40 MS. SIMIC: Thank you. Could you please remain on the
41 stand and answer any questions that my friend may have or the Court may have of you?

1
2 A For sure.
3
4 THE COURT: Whenever you're ready, Mr. Fagan.
5
6 MR. FAGAN: With your leave, Your Honour, I'll be ready in
7 ten minutes. If we might have a brief adjournment. If that.
8
9 THE COURT: All right. That's fine. You're under oath,
10 Officer MacPhail, so you're not to discuss your testimony with anyone, in particular
11 Ms. Simic.
12
13 A Yes, Ma'am.
14
15 THE COURT: Thank you.
16
17 THE COURT CLERK: All rise. Court is briefly adjourned.
18
19 (ADJOURNMENT)
20
21 THE COURT CLERK: Order in court. All rise.
22
23 THE COURT: Thank you. Good morning. Please be seated.
24
25 THE COURT CLERK: Recalling the matter of ██████████ ██████████.
26
27 MR. FAGAN: For the record, the accused is present, Your
28 Honour.
29
30 THE COURT: Thank you.
31
32 MR. FAGAN: And it looks like Constable MacPhail is still
33 with us and --
34
35 THE COURT: Very good.
36
37 MR. FAGAN: -- he of course is abundantly aware of the fact
38 that he's still under oath and about to undergo something called cross-examination.
39
40 A Yes, sir.
41

1 MR. FAGAN:

May I proceed, Your Honour?

2

3 THE COURT:

Whenever you're ready, sir.

4

5 **Mr. Fagan Cross-examines the Witness**

6

7 Q Now, at one point in time during the course of your testimony in your direct,
8 Constable, you said that you could have called out a police service dog. Remember
9 that?

10 A Yes.

11

12 Q Okay. Was there a police service dog on duty that night?

13 A No.

14

15 Q Where was the dog?

16 A Constable Ling (phonetic) wasn't working, and at that point Corporal Metkey
17 (phonetic) was that posted to our unit yet, or if he was he had just started and was still
18 in the process of moving. I believe there was Parks Canada Warden Henderson as
19 well, but he's not assigned to our unit.

20

21 Q Okay. So, there was no police service dog, that is a drug dog, on shift that night?

22 A Correct.

23

24 Q So, there was no, to state the abundantly obvious, police service dog service available
25 to you to assist you with this investigation relative to Mr. [REDACTED]?

26 A That's correct, Your Honour.

27

28 Q So, in terms of Mr. [REDACTED] and his vehicle, you either had to let him go or arrest him
29 if your investigation was going to continue, right?

30 A Yes. Well, no, I could have called out a dog.

31

32 Q From where?

33 A I've called out Parks Warden Henderson in the past and I've called out Constable Ling
34 if I need him.

35

36 Q Where was Constable Ling that night?

37 A I think he was on holidays. I believe it was August. Or he was on days off. I'm not
38 sure where he was.

39

40 Q Okay. So, you couldn't have called him in, could you?

41 A I could have tried.

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Q Yeah. If he was in the province, right?

A Yes.

Q And as far as you knew, he was on holidays.

A He could have been, yes.

Q It was your understanding that he was unavailable relative to making his police service dog available to you at that time.

A That's correct, Your Honour.

Q And old Constable Metkey, he hadn't even arrived on your unit yet, right?

A That's correct.

Q And there was a Parks dog?

A Yeah, Mike Henderson.

Q Mike Henderson. And when prior to this date -- date of your dealings with Mr. [REDACTED] had you last had dealings with that Park dog?

A Geez, that's a good question.

Q That's why I asked it.

A I believe that I called Henderson out for a deployment in June of 2016, which resulted in the seizure of 24 kilograms of MDMA and a small amount of cannabis.

Q Okay. And on this occasion, August the 24th, 2016 relative to your dealings with Mr. [REDACTED], you don't know if that Parks dog was available or not?

A No, I don't.

Q Okay. So, you're sitting there and you're running radar, right?

A Yes.

Q And I believe your testimony was that you were running stationary radar --

A Yes.

Q -- as opposed to moving radar.

A Correct.

Q And your marked patrol car is positioned so that your grille is facing and you're facing southbound.

A Yes.

- 1
2 Q So, as eastbound traffic is going by, you're looking right at the driver's door of the
3 passing eastbound vehicle.
4 A Correct.
5
6 Q And tell the Court about this radar unit that you were using. What's the manufacturer?
7 A Stalker.
8
9 THE COURT: What's it called?
10
11 Q MR. FAGAN: And is it a hand --
12 A Stalker, S-T-A-L-K-E-R.
13
14 THE COURT: Sorry.
15
16 Q MR. FAGAN: Yeah, the Courts have heard lots about Stalkers.
17 A Oh, I guess that's true, yeah.
18
19 Q In one form or another. Is it a hand-held device or is it a device that's attached to your
20 vehicle somewhere?
21 A Handheld.
22
23 Q Okay. And so, what do you do when you -- are you holding this device in your -- in
24 your hand and -- and pointing it in a particular direction?
25 A Yes.
26
27 Q And tell the Court relative to the -- it's a Chrysler 300 that we're dealing with here, is
28 it?
29 A Yes.
30
31 Q So, we'll call it the Chrysler 300. Are there any other vehicles in the vicinity of the
32 Chrysler 300 as you see it coming eastbound on Highway Number 1? Or do you
33 remember?
34 A I don't remember.
35
36 Q Because if there's a vehicle in front of the Chrysler 300, well, that's the vehicle that's
37 going to be picked up in your beam, right?
38 A You're right.
39
40 Q So, if you don't recall if there was another vehicle between you and the Chrysler 300,
41 then you don't know if the speed you were picking up was the speed of the Chrysler

1 300 or not, right?

2 A Well, I would not tell him that he was doing 64 if I wasn't 100 percent sure, right?
3 Because you -- our training is that if we're going to pull somebody over, they teach
4 you to be 100 percent sure that the individual you're pulling over is the vehicle that
5 you observed committing the infraction. That being said, I also had the other
6 observation of doing 90 in the 110.

7
8 Q Yeah, we'll get to that.

9 A Okay.

10
11 Q We're talking about the 64 in a 50 right now.

12 A For sure.

13
14 Q Okay. So, on the 64 in the 50, you don't know if there was a vehicle between you and
15 the Chrysler 300 when you got the 64 reading or not, do you?

16 A Well, I know it was definitely the vehicle that I pulled over.

17
18 Q Well, you -- you know what vehicle you pulled over, yeah. I'm not asking you about
19 that. My question is easier than that.

20 A Right.

21
22 Q You can't tell us here today with absolute certainty as to whether there was a vehicle
23 between you and the 300, the Chrysler 300, when you got the 64 kilometre reading or
24 not, can you?

25 A No.

26
27 Q So, how far from your stationary position was the Chrysler 300 when you first laid
28 eyes on it? Like a half kilometre, a kilometre?

29 A It would probably be about 800 metres, somewhere in that area, and then would
30 obviously would have approached me, travelled towards me.

31
32 Q Yeah.

33 A That -- that's just an estimated guess.

34
35 Q Okay. So, somewhere between 800 and 1200 metres?

36 A No, not 1200. Somewhere -- it was -- it's in the -- there's the crossover portion, Your
37 Honour, of the Parks Canada gate where you can loop around to go back eastbound
38 right before you hit the gates. The members will sit there. We'll conduct stationary
39 enforcement. It's as far as you can see up the hill where it rounds the bend until they
40 approach right in front of me. So, I -- I don't know if that's a kilometre. I'd maybe
41 say it's about 800 metres to a kilometre. I -- I'm not sure --

1

2 Q Okay.

3 A -- Counsel.

4

5 Q Okay.

6 A It would just be merely speculation.

7

8 Q That's all right. It's -- you're approximating it and that's fine.

9 A Yeah.

10

11 Q Somewhere between a half a kilometre and a kilometre.

12 A Sure.

13

14 Q When -- when you first lay eyes on it.

15 A Yeah.

16

17 Q In fairness to you, of course, the vehicle closed that distance as it approached your
18 stationary position.

19 A Yes.

20

21 Q And this vehicle, this 300, as it's approaching your stationary vehicle you're watching
22 it.

23 A Yes.

24

25 Q What lane is it in?

26 A I believe it was in --

27

28 Q You say "I believe". Do you remember what lane it was in?

29 A I believe that it -- I -- it was on the Trans Canada in one of the lanes.

30

31 Q Okay.

32 A Sorry, I can't remember.

33

34 Q That's okay.

35 A It's one of those lanes.

36

37 Q Fair enough. You've answered my question. You've answered my question. Because
38 there's two lanes there eastbound.

39 A For sure, yes.

40

41 Q Right? And he's in one of those lanes. That's all you can tell the Court.

1 A Yeah.

2
3 Q Okay. And you're watching this Chrysler 300 as it's approaching you.

4 A Yes, Your Honour.

5
6 Q Okay. And the vehicle is -- whatever lane it's in, it remains in that lane as it
7 approaches you and passes you and carries on, correct?

8 A Yes.

9
10 Q And as you're watching the vehicle as it's approaching you and passing you and
11 carrying on, it is positioned properly within its lane.

12 A Yes.

13
14 Q There is no erratic movement on the part of the vehicle.

15 A No.

16
17 Q And by that I mean no erratic braking or acceleration or movement within the lane,
18 crossing over fog lines and things like that.

19 A That's correct, Your Honour.

20
21 Q Okay. So, it's being driven, as far as you can tell, other than the speed, in a perfectly
22 normal manner.

23 A Right.

24
25 Q Okay. This radar that you're using, do you know when it was last calibrated relative to
26 August the 24th, 2016?

27 A I'd have to look. I don't --

28
29 Q It needs to be --

30 A I don't remember.

31
32 Q -- calibrated to ensure its accuracy relative to its ability to measure the speed of the
33 motor vehicle, right?

34 A The tuning forks do.

35
36 Q We'll get to that.

37 A Yeah.

38
39 Q My question is easier than that.

40 A I don't remember.

41

1 Q The instrument that you were using needs to be calibrated from time to time to
2 determine whether it's accurately measuring the speed of vehicles, right?

3 A Yes. And I am -- I don't remember when it was calibrated.
4

5 Q Or if it was, right?

6 A Well, it would have been calibrated at one point. As to when, I don't -- I'd have to get
7 the certificates and check.
8

9 Q Well, was it --

10 A I -- I --
11

12 Q -- calibrated in the year 2000 or sometime after that?

13 A Like I said, I don't know.
14

15 Q Okay. You mentioned -- in fairness to you, you mentioned tuning forks.

16 A Yes.
17

18 Q So, are tuning forks assigned to this particular radar unit?

19 A The handheld one, yes, as well as the one that was in -- I was running a -- a Raptor as
20 well. In this one there were two new forks I believe that were assigned to it. Were
21 they in the vehicle that day? I don't remember.
22

23 Q Okay. So, you were using the Stalker.

24 A Yes.
25

26 Q Right? And it's the Stalker that you say that you got the 64 kilometre an hour reading
27 in.

28 A Yes.
29

30 Q And the Stalker has tuning forks assigned to it.

31 A Yes.
32

33 Q And you're not sure if the tuning forks were in the vehicle on this particular day or
34 not.

35 A That's correct.
36

37 Q Okay. So, correct me if I'm wrong, but ordinarily what happens is when a highway
38 patrolman like yourself is about to go out on the highway on shift to run radar, you
39 will test the accuracy of the radar device by using the tuning forks.

40 A That's correct.
41

1 Q And you don't recall if you did that or not on this particular occasion.

2 A That device is assigned to me, so that device doesn't leave my police vehicle. It was
3 tested at one point and it was in working order. And from there it has always worked
4 and maintained good working order, and no one else has access to that handheld
5 device but me. So, it doesn't get put back into a locker, it doesn't get put back into a
6 desk, it stays with me the whole time. So, at one point it was tested, working in fine
7 order, and it still to this day is working the same way as it has been ever since.

8
9 Q Well, you don't know if it's accurately recording speeds or not unless you're testing
10 the instrument with a tuning fork, do you?

11 A That's correct.

12
13 Q And you don't know if it was accurately recording speed on August the 24th, 2016,
14 right?

15 A It was.

16
17 Q How do you know?

18 A Because I tested --

19
20 Q Without testing it with the --

21 A Because I --

22
23 Q -- tuning forks, how do you know that?

24 A Because I did test it.

25
26 Q When?

27 A I'd have to look at the date, but that -- like I said, that device stays with me in my
28 patrol car and has been tested.

29
30 Q Well, you've told us that. We're talking --

31 A Yeah.

32
33 Q -- about testing that device that is --

34 A Right.

35
36 Q -- stays with you.

37 A Right.

38
39 Q You don't know when it was tested prior to August the 24th, 2016, do you?

40 A Yeah, I'd have to look.

41

1 Q Look at what?

2 A I'd have to go back and check my -- the original time that it was tested, because like I
3 said - and you're going to say that, yeah, you already said that - but it was tested once
4 by me. It's assigned to me. It's in good working order and it maintains -- it's -- it's
5 always in my patrol car and it works.

6
7 Q When was it assigned to you? That is the device.

8 A I'd have to look.

9
10 Q Well --

11 A I've had it for --

12
13 Q -- use your memory.

14 A -- a couple of years.

15
16 Q Use your memory. What -- what year? What -- start with the decade, if you want.

17 A It was assigned to me I believe in 2015.

18
19 Q Okay. So, the instrument would have been assigned to you, this here Stalker, and the
20 corresponding tuning forks.

21 A Yes.

22
23 Q Okay. And the tuning forks just aren't for show, are they?

24 A No.

25
26 Q Right? They serve a purpose, right?

27 A M-hm, they do.

28
29 Q Every day before you go out on shift you're trained when you take that old radar
30 course to activate those tuning forks and to test it against the machine to make sure
31 that that machine, the radar device, is measuring speed properly, right?

32 A If you have a device which is being shared amongst other members, but it's already
33 been tested and it gets assigned to one and it's in good working order. Obviously if
34 another officer is using it and there could be something out of the norm, then yes, that
35 would be the case, but with this one, this device is assigned to me, it stays with me,
36 it's been tested in the past, it's been in good working order and I use it every single
37 day.

38
39 Q Okay.

40 A So . . .

41

- 1 Q So, you're telling the Court that once you check a radar device say in 2015 with a
2 tuning fork to ensure its accuracy that you can write tickets in 2017 based on that test?
- 3 A If the fork is working, yes, and when the -- the certification comes back. The forks are
4 reading at 60 and -- or 40 and 64 and they're working fine, and that's the test and it's
5 reading fine, then the device is working. If it's sending out a signal and it's
6 exhibiting -- and we're getting a signal back under the test phase, absolutely.
- 7
- 8 Q Okay. But that's in 2015. What about on August the 24th, 2016? How -- how do you
9 know the machine's working properly then?
- 10 A Like I said, I'll have to look at the records because I don't know when our support
11 staff sent it away. I'll have to look.
- 12
- 13 Q Okay. You're talking about two different things. Number one --
- 14 A The device --
- 15
- 16 Q -- the machine has to be calibrated.
- 17 A Right.
- 18
- 19 Q The radar unit has to be calibrated by a professional every now and again.
- 20 A Yes, once a year.
- 21
- 22 Q Right? And that's to -- so a determination can be made that it's working properly and
23 measuring the speed of motor vehicles properly, right?
- 24 A Right.
- 25
- 26 Q Okay. So, you're not pulling people over for speeding when in fact they're not
27 speeding, right?
- 28 A Right.
- 29
- 30 Q Right.
- 31 A Of course.
- 32
- 33 Q And you don't know when that calibration was done or if it was done prior to August
34 the 24th, 2016.
- 35 A Correct.
- 36
- 37 Q Okay. Now, the other thing is the tuning forks. That's something different, isn't it?
- 38 A Right.
- 39
- 40 Q The tuning forks allows you right there on the highway to -- to take that tuning fork
41 and to -- and to test the accuracy at that moment, that day, that shift of -- of the radar

1 device, right?

2 A Correct.

3

4 Q But you didn't do that.

5 A It's my device assigned to me in good working order.

6

7 Q The question is easier than that. You didn't do it on August the 24th.

8 A No.

9

10 Q And you may not have done it since 2015 when you were first assigned a radar unit,
11 right?

12 A That's correct.

13

14 Q Okay. And you're saying that's okay.

15 A That's what I've been told, yes.

16

17 Q Okay. Where were you -- who told you that?

18 A One of the training instructors for -- who teaches the Stalker. I believe that Ryan --
19 Corporal Frost and I have discussed it. So, other officers, we've talked about it.

20

21 Q Okay. When did you take --

22 A So . . .

23

24 Q You did take the radar course, did you?

25 A Yes.

26

27 Q When did you take that?

28 A Oh, I knew you were going to ask me that and I cannot remember. I believe it was the
29 Edson Firehall in two thousand -- I'm going to say 2007, in June of 2007.

30

31 Q And that's where you learned to use the Stalker, as well?

32 A Yes.

33

34 Q Okay. The one --

35 A And --

36

37 Q -- that you were using on August the 24th, 2016?

38 A Yes, and the laser and -- and whatnot --

39

40 Q Okay.

41 A -- moving (INDISCERNIBLE).

- 1
2 Q And are you telling the Court that when you took this course back in Edson and
3 learned how to operate the Stalker and other devices -- are you telling the Court that
4 they said it's okay just to use those tuning forks once and you can write speeding
5 tickets for months or years after that?
6 A I'm not going to comment on -- speculate on what they told me back in 2007, because
7 I honestly don't remember. I can't remember if that was taught or not.
8
9 Q Okay. What they taught you is every time you go out on shift you activate the tuning
10 forks and you test the accuracy of that radar device every shift. That's what you're
11 taught, isn't it?
12 A That I said I can't remember.
13
14 Q That's a pretty important part of the course. You can't remember that?
15 A Like I said, I don't remember. From what I've been told, I'm very certain that it is
16 what you're saying but like what I said is from what I was told and in good faith I
17 thought that the -- once the device has been tested and the forks have been tested and
18 it's in good working order and that device is assigned to me, and there's no difference
19 and no change in the device and it stays with me at all point in time, that it is
20 acceptable and I'm aware of it being accepted -- an accepted practice.
21
22 Q Okay. But you don't -- you don't write speeding tickets that often anyway, do you?
23 A Yeah, I do. Yeah.
24
25 Q Actual violation tickets?
26 A I'm part of the Traffic Unit.
27
28 Q Right. Yeah, I know. We heard that. When's the last time you wrote a traffic violation,
29 a speeding ticket?
30 A In Jasper last week when we worked I wrote a speeding ticket.
31
32 Q Okay. How many people have you pulled over since that day, including that day in
33 Jasper, to now on the highway? How many people have you pulled over?
34 Approximately.
35 A Gee, that's -- maybe 50.
36
37 Q Okay. And of the 50 people you pulled over, how many people did you pull over for
38 speeding?
39 A I can't remember. I'm going to estimate maybe -- maybe 20.
40
41 Q Okay. And of those 20 people you pulled over for speeding - just as an approximation

1 - what you do know is that you only issued one violation ticket for speeding.

2 A You asked me the last one that I pulled over.

3

4 Q M-hm, that's fair.

5 A And maybe that was the last one that I wrote a speeding ticket to.

6

7 Q Okay. So, of those 50 people you pulled over, 20 for speeding, you only issued one
8 speeding ticket?

9 A No, there would have been more in there, but you asked me which was the last one I
10 wrote a ticket to and I believe that was the speeding ticket.

11

12 Q In Jasper?

13 A Yes.

14

15 Q A week ago?

16 A Yes.

17

18 Q Okay.

19 A Then I was on days off and I was in court and then I was sick.

20

21 Q All right. Well, you're attached to a traffic unit, but you're a drug investigator, right?
22 That's what you do?

23 A No.

24

25 Q You're not a drug investigator?

26 A No.

27

28 Q Well, you spent 20 minutes telling the Court about all the courses that you've taken
29 relative to identifying travelling criminals.

30 A Right.

31

32 Q Right?

33 A Right.

34

35 Q And you've taken drug courses, right?

36 A Right.

37

38 Q Okay. But you didn't mention anything about a radar course, right?

39 A No, because --

40

41 Q You didn't mention anything about an accident course.

1 A If I went through all those courses, I -- which I can do if you wish for me to list them
2 off, there -- we're going to be here for a further time period. I can go over my taser
3 training, the carbine training, my taser re-certification, we can go through my collision
4 level two, we can go through -- if that's what you're -- you're wishing. I've never --
5

6 Q Collision level two, that's a collision analyst course?

7 A Yes.

8
9 Q Okay. When's the last time that you've acted as a collision analyst and done up
10 diagrams and everything relative to a motor vehicle accident? When's the last time you
11 did that?

12 A That's for the collision analyst.

13
14 Q Well, yeah, you said a collision --

15 A I'm not -- you're asking if I've been at major wrecks. If I go to a major wreck, I don't
16 carry that file. Will assist.

17
18 Q Well, you've had the collision analyst course, haven't you?

19 A Right.

20
21 Q And you're -- you're trained to do that type of thing, aren't you?

22 A Yeah.

23
24 Q To analyze -- when's the last time you did it?

25 A I -- it's been a while.

26
27 Q Years, right?

28 A Yeah, years.

29
30 Q Because mostly what you've been doing --

31 A And -- no, just to further that --
32

33 Q Yes.

34 A -- traffic services in the division, our mandate is, believe it or not, not to go to
35 collisions and take -- and carry the primary file. We will go to the collision and assist
36 the detachment members, but traffic services members do not carry the collision file.
37 For example, if you have a fatal crash on the highway, the reconstructionist will come,
38 they'll add their reconstructionist report and the detachment member will carry that
39 file. So, I guess the last time I had done and utilized the level two course would have
40 been I was the detachment member going to a very simple collision scene, since the
41 level two course is a very simplified course, compared to like a level three or a level

1 four, wherein they're writing basically almost court expert reports to crashes. So, yeah,
2 I understand that I'm a traffic section, but I'm not going to crashes and drawing
3 diagrams and carrying that file.

4
5 Q Okay. The last ten times that you've testified in court, how many of those have been
6 drug cases? Ten by chance?

7 A Yeah.

8
9 Q How about the last 20, all drug cases?

10 A Probably, yeah.

11
12 Q How about the last 50, all drug cases?

13 A I don't -- like I don't know if I've ever testified 50 times in court, but a lot of them
14 are.

15
16 Q Okay. When's the last time that you testified in a speeding trial?

17 A I think it was last year.

18
19 Q A year ago?

20 A Yeah. But --

21
22 Q Because mostly, most of what you do as an investigator on the highway is drug
23 related, right?

24 A Right. Or weapons or currency.

25
26 Q For every drug seizure that you make on the highway, how many weapon seizures
27 would you make?

28 A A ratio of probably one to ten.

29
30 Q Ten drugs, one weapon?

31 A Yes.

32
33 Q Okay.

34 A And currency would be probably similar to that nature --

35
36 Q Okay.

37 A -- one to ten.

38
39 Q So, you're sitting there stationary, you're running radar with the Stalker.

40 A Right.

41

1 Q And the Chrysler 300 goes by.

2 A Right.

3

4 Q And one of the things that you're trained on these pipeline courses, these travelling
5 criminal awareness courses, et cetera, is to take a look at the driver of that vehicle as
6 it's -- as you -- as it's going by to see if the driver does something or doesn't do
7 something that gives you cause for concern, right?

8 A Yes.

9

10 Q Tell the Court about that. What sort of things are you trained to look for as that
11 vehicle is going by?

12 A If an individual will blade themselves away from you, not look at you, put their hand
13 up like their -- it'd be their left hand against their side of their face to try and cover
14 their face, reclined in their seat, blading themselves behind the pillar, stuff like that.

15

16 Q Okay. And as this Chrysler 300 went by driven by Mr. ██████████, he just looked
17 normal to you. Would that be fair to say?

18 A Yes. I would have made notations if it were the other.

19

20 Q Okay. Whatever he was doing, it didn't coincide or match any of these --

21 A Indicators.

22

23 Q -- indicators.

24 A Yeah.

25

26 Q Indicators of concern --

27 A Yes, sir.

28

29 Q -- to heighten your suspicion relative to whether this person was a travelling criminal.

30 A Yes, sir.

31

32 Q Okay. And so, as -- as he's going by, to you he just looked like your average,
33 everyday speeder.

34 A Yes, sir.

35

36 Q Now, in terms of the speeding, you say it was a construction zone?

37 A Yes.

38

39 Q So, what would there have been then, a temporary speed limit posted?

40 A Yes.

41

1 Q Okay. What's the ordinary speed limit through there?

2 A 90, Your Honour.

3
4 Q 90. So, you're running stationary radar where the speed limit is usually 90, but it's
5 been reduced to what?

6 A 50.

7
8 Q And these -- these signs, you sometimes see them at construction zones, they're --
9 they're not cemented into the ground or affixed like most speed limit signs, right?

10 A Right.

11
12 Q They can be moved around.

13 A Right.

14
15 Q Okay. Was that speed limit sign that you say was what, 50?

16 A Yes, sir.

17
18 Q Was it up?

19 A Yes.

20
21 Q Do you have any -- you took lots of photographs. Did you bother taking a photograph
22 of that sign?

23 A No, I did not.

24
25 Q You say it was up. Where was it up?

26 A On the highway.

27
28 Q Where on the highway?

29 A In the Banff side of the park on the Trans Canada.

30
31 Q Where on the Banff side of the park? It's a big park.

32 A On the -- in the construction zone affixed to the signs on the side of the road, maybe
33 about 2 kilometres in. I remember driving back and looping through and coming
34 through and chasing vehicles and seeing the signage and obviously I know that I'm
35 going to get asked in the future from -- in the court -- court proceedings if I went to
36 look at the signs, and so, obviously the 50 sign is posted. Where exactly it was, I -- I
37 don't remember.

38
39 Q So, just a second. Are you telling the Court that after all your dealings with ██████
40 ██████ and after you went back to the detachment and did all the things that you did
41 that you went back to the highway and -- and checked this temporary sign?

1 A No, I never said that at all.

2

3 Q Okay. So, after --

4 A You're --

5

6 Q -- your dealings with Mr. [REDACTED] --

7 A No, no, no, no. Let me -- if I can correct --

8

9 Q Let me -- I'm asking the questions.

10 A Sorry, okay.

11
12 Q After your dealings with Mr. [REDACTED], did you go back and check this temporary speed
13 sign?

14 A No, Your Honour. The speed signs were already posted and I went through them
15 earlier.

16
17 Q And of course you would have made a note of that in your notebook or in one of your
18 general reports.

19 A No.

20

21 Q Nowhere in your report?

22 A No, because it was documented on the dash camera, which is a form of our notation.

23

24 Q What -- what do you mean documented on your dash camera?

25 A Well, the camera that we have inside the police vehicle --

26

27 Q VICS? Yeah.

28 A The VICS.

29

30 Q Yeah.

31 A It has a mike.

32

33 Q Okay.

34 A And the mike records and -- which allows us to record stuff, which is a form of
35 documentation. So, during my interaction with the violator, Your Honour, it was
36 captured that I made notation that it was a 50 zone.

37

38 Q Well, you've already told us that you thought it was a 50 zone. My questioning's gone
39 beyond that. Did you look at the sign? When did you look at the sign? Did you go
40 back and look at the sign after your dealings with [REDACTED] [REDACTED]? And you don't know,
41 right?

- 1
2 THE COURT: No, he didn't -- he clearly said he didn't check
3 after his dealings with Mr. [REDACTED].
4
5 MR. FAGAN: Thank you.
6
7 Q MR. FAGAN: So, you didn't go back after your dealings with
8 Mr. [REDACTED] so you don't know if the sign was up or not when Mr. [REDACTED] entered
9 your radar beam.
10 A That's correct.
11
12 Q Okay. And then you follow the vehicle -- once it goes by you, you follow the vehicle
13 for about 8.3 kilometres before pulling it over.
14 A How long?
15
16 Q Approximately 8.3 kilometres.
17 A I don't know what you're talking about, I'm sorry.
18
19 Q After the vehicle went by you, the Chrysler 300 --
20 A Right.
21
22 Q -- the one we've been talking about, right? After it goes by you, you pull out and you
23 follow it for about 8.3 kilometres before you pull it over.
24 A No, not at all.
25
26 Q Oh.
27 A It's -- you pull out right at the exit at the Harvey Heights. It's like about maybe about
28 700 metres, if that. Maybe even a kilometre. There's no way that I'm going 8
29 kilometres. That would take me well towards -- like past Canmore.
30
31 Q Well, you followed the vehicle for a period of time close --
32 A Right.
33
34 Q -- or closely before you activated your lights, right?
35 A Okay. So, in order to get this -- because I'm confused where this 8.3 kilometres --
36
37 Q Well, forget about the --
38 A I didn't --
39
40 Q -- 8.3 kilometres.
41 A I'm -- I didn't know if I gave it in evidence. That's why I'm not sure where it came

1 from.

2

3 Q No, you -- no, you didn't. I gave it --

4 A Okay.

5

6 Q -- in a question, so don't --

7 A Okay.

8

9 Q -- worry about that.

10 A Okay.

11

12 Q So, what you do is you close the distance between your vehicle and the Chrysler 300,
13 right?

14 A Right.

15

16 Q Okay. And then once you had closed the distance you followed the vehicle for a
17 period of time.

18 A Yes, but not 8.3 kilometres.

19

20 Q Forget about the 8.3 kilometres.

21 A Okay. So, I followed it for -- from the Banff gates to the Harvey Heights exit.

22

23 Q And when you're following it, you're -- you're following it in the -- in the -- in the
24 passing lane.

25 A I believe so, yes.

26

27 Q So, was it your intention to pull the vehicle over for speeding?

28 A Like for the 50 zone? I -- it was -- I (INDISCERNIBLE).

29

30 Q Well, at all. I mean, you're -- you're -- you've gone by the Banff gates. You're
31 following the vehicle but you're in the passing lane --

32 A Right.

33

34 Q -- and he's not in the passing lane, right?

35 A That's correct.

36

37 Q He's in the slow lane, right?

38 A Correct.

39

40 Q So, my question is, were -- were you planning on pulling him over for speeding?

41 A Yes. As --

1

2 Q Then what are you doing in the passing lane?

3 A I'm following him. I'm not -- not sure -- sorry, I'm not sure I'm understanding your
4 question. I'm in the passing lane. I'm allowed to be in the passing lane, am I not?

5

6 Q You're --

7 A Like that's why I'm not sure of your question, Counsel, sorry.

8

9 Q You've closed the distance --

10 A Yes.

11

12 Q -- between your vehicle and the Chrysler 300.

13 A Right.

14

15 Q And then you follow him for a period of time once you've closed that distance.

16 A Yes.

17

18 Q And as you're following him you are in the passing lane.

19 A Right.

20

21 Q So, my question is, were you planning on pulling him over for speeding, or did
22 something happen --

23 A Well --

24

25 Q -- or did you hear something or see something that caused you to pull him over?

26 A No, I followed him and I made the observations, the driving in the 90 -- or 90 in the
27 110 zone.

28

29 Q Okay. You thought that was unusual that he was doing 90 in 110?

30 A Yes, Your Honour.

31

32 Q Well, you're right behind him in a marked car.

33 A Right.

34

35 Q Right? That's going to slow people down, isn't it?

36 A No, there's a marked change in people's behaviour when they see a police vehicle, I
37 recognize that, but --

38

39 Q They tend to slow down, right?

40 A Well, 20 kilometres under is abnormal, my opinion. I've followed lots of people
41 where -- I've had half the time individuals -- a truck will drive past me like where I've

1 had to pull people over because they'll go -- they'll speed past a marked police
2 vehicle. People don't necessarily drop to such inordinately low speeds, right? Like 20
3 under, especially at 1:30 at night. I've got a guy that is going 14 over and now I've
4 got a speed of 20 under. It's 1:30. I address both infractions. Me being in the passing
5 lane, I'm still watching his driving from the position that I was in.

6
7 Q And his driving is perfect, right?

8 A I -- I disagree.

9
10 Q What's wrong with it? As you're watching him, what's wrong with it?

11 A It's doing 20 under and it was 14 over in a construction zone.

12
13 Q We're -- we've gone beyond that. We're just talking about when you're following him.

14 A Right. There was -- there was no -- Your Honour, there was no erratic driving, there
15 was no hard braking. There was nothing to that nature.

16
17 Q Nothing to suggest that the operator of the motor vehicle was impaired by alcohol,
18 correct?

19 A I've had files in the past where individuals will drive --

20
21 Q Did I ask you about files in the past? Was there anything about the operation of this
22 motor vehicle that suggested that the driver's ability --

23
24 THE COURT: Well, let him answer the question the way he --

25
26 MR. FAGAN: I will. We're going to be here for a while.

27 Thank you, Your Honour.

28
29 A The -- an individual -- I've had files in the past -- just because an individual is driving
30 in a straight line doesn't mean that they're not impaired. We've had seasoned
31 alcoholics where they'll drive and they function at a high tolerance and they can be
32 delayed due to that reason. It could be they were high on drugs. I don't know. All I
33 have is an individual at the time, Counsel, that was driving 20 kilometres under the
34 posted speed limit and was speeding in a construction zone and I conducted a traffic
35 stop.

36
37 Q MR. FAGAN: Okay. That's very helpful. Thank you. The only
38 time - correct me I'm wrong - that this vehicle was travelling at approximately 20
39 kilometres under the speed limit is you were -- when you were right on his tail, when
40 you were right behind him. Am I right or am I wrong?

41 A When I was following him, yes, that's correct.

- 1
2 Q So, there you are, you're -- you're following him, and you say 20 kilometres below
3 the limit. That's an estimate on your part, isn't it?
4 A Well, I was doing -- as we can see from the dash camera, which obviously it wasn't
5 played, but there is -- the dash camera depicts me travelling at 90 and the vehicle
6 beside me, just a little bit in front of me, and we're maintaining a constant speed and
7 the speed limit is 110.
8
9 Q Okay. Do you base traffic violations, the issuance of traffic violations, on the speed
10 reading given off the -- the video?
11 A There is no speed reading on the video, Counsel.
12
13 Q Oh, I'm sorry. So, you're talking about the speedometer in your vehicle?
14 A Yes, sir.
15
16 Q Okay. Is it a calibrated speedometer?
17 A I would have to get it calibrated.
18
19 Q So, it wasn't calibrated at the time?
20 A No, sir.
21
22 Q Okay. Because the only way to ensure the accuracy of your speedometer --
23 A Is a --
24
25 Q -- is to have it calibrated, right?
26 A That's correct, Your Honour.
27
28 Q Okay. Okay. So, there you are and you're following a vehicle and you're in the
29 passing lane and you're running the plate of the vehicle, the licence plate, on CPIC.
30 A Yes.
31
32 Q Okay. And you get information back as a result of running that plate.
33 A That's correct.
34
35 Q And that information comes in before you ever hit your lights.
36 A Yes, sir.
37
38 Q And part of the information that you received from the CPIC inquiry is that this [REDACTED]
39 [REDACTED] had drug-related hits.
40 A No, sir.
41

1 Q Just a second. So, you're rolling along and you run the plate of the vehicle.

2 A Yes.

3

4 Q Right? And you run it on CPIC.

5 A Correct.

6

7 Q And you're telling this Court that when you ran the plate on CPIC that the name
8 ██████ Brown come up, eh?

9 A Yes, Ma'am.

10

11 Q And you're saying that nothing of a drug-related nature come up on that CPIC hit?

12 A No.

13

14 Q What did come up?

15 A His name and where he was from, the vehicle's registration information, Your Honour,
16 and where the registered owner is out of, and I believe that there was a driving-related
17 offence. I can't remember if it was an impaired or what it was.

18

19 Q Well, didn't you tell us - and correct me if I'm wrong - that through CPIC you got
20 information that there was drug-related information in relation to ██████ ██████?

21 A No, Your Honour.

22

23 Q Where did that come from?

24 A The PROS database.

25

26 Q You didn't get it from CPIC.

27 A No, Your Honour.

28

29 Q Nothing come up on CPIC relative to drugs.

30 A No.

31

32 Q Nothing at all.

33 A Not that I remember. There was nothing there. There was only stuff on the PROS
34 database. There --

35

36 Q Okay.

37 A There was nothing in his criminal record that I saw, and he had no SIP entries, the
38 Subject Interest Police. He was not under surveillance category and not wanted on any
39 form of drug warrant.

40

41 Q Okay. But you did see by way of the CPIC check before you activated your

1 emergency lights that he had a criminal record?

2 A I believe it was for a driving offence, Counsel.

3

4 Q Criminal driving offence, Constable?

5 A Something that got him an FPS driving-related.

6

7 Q What's FPS?

8 A The fingerprint number.

9

10 Q Right. So, at some point in time he'd been fingerprinted.

11 A Yes.

12

13 Q Fingerprinted by the police.

14 A I believe so.

15

16 Q Yes. And you were fixed with that information before you activated the lights on your
17 patrol car.

18 A Yes, Your Honour.

19

20 Q Okay. Okay. So, you pull the vehicle over and you approach the passenger side.

21 A Yes.

22

23 Q And you engage Mr. ██████ in a conversation.

24 A Right.

25

26 Q And the conversation that you engage him in is also part of your pipeline training, the
27 "Q & A", if you will?

28 A Well, I would equate it more to driver violator interaction. It allows us to gauge their
29 behaviour, any sort of observations that we made. I think it's any police officer should
30 be doing that, are taught that in training. As for my training though, I'm obviously
31 trained to look beyond the stop.

32

33 Q Well, we're talking about the "Q & A" right now, the questions that you're posing.
34 Because you are asking him questions, right?

35 A Yes.

36

37 Q You're asking him questions like, "Where have you been? Where you coming from?"

38 A Right.

39

40 Q Right? You know, "When did you leave?" Right? You want to know the duration of
41 the travel - when did he leave, when's he coming back, is this a quick turnaround,

1 right?

2 A Correct.

3

4 Q And those questions are designed to assist you in the formulation of either a
5 reasonable suspicion or perhaps grounds to arrest, right?

6 A Perhaps, yes.

7

8 Q And as a result of this "Q & A", this question and answer period between you and --
9 and Mr. ██████ on your first attendance at the vehicle, did that heighten your suspicion
10 that he may be a, what you called a travelling criminal?

11 A From which question, sorry?

12
13 Q Any of the questions, any of the answers on your first attendance at the -- at the
14 Chrysler 300. Take your time.

15 A I will.

16

17 Q Okay.

18 A I just don't want to -- yeah, I think -- yeah, it was. He -- because I'm just going over
19 all the indicators that I made, or I observed during the course of first officer contact,
20 and I had made some observations that had heightened my suspicion at that point.

21
22 Q Yeah, you've told us that in spades. I'm asking you about the "Q & A", the questions
23 and answers, or anything about the questions that you answered -- asked and the
24 answers that were given by Mr. ██████ during the course of the first attendance that
25 heightened your suspicion.

26

27 THE COURT: So, you're -- oral interaction, not observations?

28

29 MR. FAGAN: Precisely.

30

31 A Thank you. Yes, that is correct, Your Honour.

32

33 Q MR. FAGAN: Okay.

34 A Yes.

35

36 Q What were they?

37 A What were the questions that I asked?

38

39 Q No. You -- you engaged him in a "Q & A", right?

40 A Yes.

41

1 Q And my question is, as a result of that "Q & A" in just this oral exchange between
2 you, was there anything in that "Q & A" that heightened your suspicion?

3 A Yes.

4
5 Q What?

6 A The fact that he had been to British Columbia, the interior --

7
8 Q Just a sec. Just slow it down. The fact that he'd been to British Columbia?

9 A Yes.

10
11 Q Is that it?

12 A He had been to Vernon, or the central interior I believe. I can't remember exactly what
13 community it was.

14
15 Q Uh-huh.

16 A He had been there for a couple of days.

17
18 Q Okay.

19 A He was on his way back to the community he resides in, I believe Red Deer.

20
21 Q So, he's on his way home, right?

22 A Yes.

23
24 Q Okay. There's four things. Yeah?

25 A He's -- are you wanting me now to list off the other indicia, or we're still on just the
26 "Q & A"?

27
28 Q We're still on the "Q & A" --

29 A Okay.

30
31 Q -- the oral exchange.

32 A Right. He makes an admission that he saw the construction zone and it's captured on
33 the dash camera that he thought that it was 60.

34
35 Q How does that heighten your suspicion?

36 A I thought you were wanting my oral "Q & A's".

37
38 Q No. Let me make the question clear to you. There was a "Q & A".

39 A Yes.

40
41 Q Right? And as a result of that "Q & A", the oral exchange, your suspicion was

1 heightened.

2 A Right.

3

4 Q What was there about the "Q & A" that heightened your suspicion?

5 A The fact that he told me that -- as you already wrote down, was the location that he
6 was travelling from.

7

8 Q Yeah, B.C., Vernon, couple of days, on his way home.

9 A Yes.

10

11 Q One, two, three, four. Do we have a five?

12 A I believe that that was it for the "Q & A" questions.

13

14 Q Okay. So, dealing with those, he told you that he'd been to British Columbia, right?

15 A Yes.

16

17 Q And he gave you a location. It may have been Vernon, but it was somewhere --

18 A I can't remember.

19

20 Q -- in the interior.

21 A Yes.

22

23 Q Okay. Now, you correct me if I'm wrong, but 90 percent of the vehicles that are
24 eastbound on that highway are coming from B.C., right?

25 A No.

26

27 Q What -- I know it's not a science. Most of the vehicles are coming from British
28 Columbia, aren't they?

29 A I don't know. I think there's a bunch that do go to Banff. Lots will come down
30 Highway 93 through Jasper. So, there very well could be, but I think 90 is a bit much.

31

32 Q What -- what's -- what's the main highway linking the Province of British Columbia
33 with the Province of Alberta?

34 A Highway 1, Your Honour.

35

36 Q And what's the highway that you're on and where you stopped Mr. [REDACTED]?

37 A Highway 1, Your Honour.

38

39 Q Right. So, many, many -- we won't use a number. Many, many of the eastbound
40 vehicles are going to be from British Columbia, right?

41 A Yes, Your Honour.

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41

Q Probably most of them, right?

A That's speculative. I don't know.

Q We wouldn't want you to speculate. All right.

THE COURT: Won't give you "most" but he'll agree on
"many many".

Q MR. FAGAN: So, he's coming from B.C. Nothing unusual
about that, right?

A It's a source province, Your Honour, where drugs are sold and produced and
manufactured.

Q Yeah, you've already told us that. Nothing unusual about a vehicle coming from B.C.
at that location, right?

A It's part of my observations.

Q Do you understand my question?

A No.

Q There's nothing unusual about a vehicle coming from B.C. at that location, right?

A Right.

Q Thank you. Including the interior of B.C., right?

A That's correct, Your Honour.

Q And he told you he'd been out there for a couple of days.

A Yes.

Q Okay. And did you inquire of him as to what he meant by a couple of days, two or
three or four?

A No.

Q Okay.

A A couple means two.

Q Okay. Nothing unusual for a person going out to B.C. from Alberta for a couple of
days, right?

A That's correct.

1 Q And the fourth thing was he was on his way home, right?

2 A Right.

3

4 Q Nothing unusual about somebody going home in Alberta from B.C., right?

5 A That's correct, Your Honour.

6

7 Q Okay. So, there's the "Q & A". What else was there relative to your first attendance
8 on the vehicle that raised your suspicions?

9

10 THE COURT: So, now you're not talking necessarily about
11 words that were exchanged, now you're inviting the officer to share some of his
12 non-verbal observations?

13

14 MR. FAGAN: Yes, Your Honour. Thank you.

15

16 THE COURT: Hopefully that will be of some assistance.

17

18 A Thank you, Your Honour. I walked up on the passenger side, Your Honour. Affixed to
19 the window, as we saw in the photographs, was the radar detector which was active.
20 There was a small piece of luggage on the back seat. There was --

21

22 Q MR. FAGAN: Just let me stop you for a second.

23 A Sorry.

24

25 Q Same thing. You don't need to give us everything that you saw. We actually have
26 photographs and we have your testimony in direct in detail. Tell the Court what you
27 saw that raised your suspicion. I'm assuming that this luggage in the back seat didn't
28 raise your suspicions. Correct me if I'm wrong.

29 A The occupant's extreme nervousness, Your Honour. The way --

30

31 Q Okay. So, one we've got extreme nervousness or what you think is extreme
32 nervousness. Yeah?

33 A The way he was behaving and his nonsensical story.

34

35 Q Nonsensical story.

36 A Yes, for the reason he exited the highway.

37

38 Q Just a second so I don't lose this thought. I know you won't, but I might.

39 A I might as well.

40

41 Q He told you he was pulling over to take a pee, didn't he?

1 A Yes, Your Honour.

2

3 Q People do that all the time on the highway, right?

4 A Yes, but I've had individuals in the past where they will make a quick exit on purpose
5 when they see the police. It's that mental fight or flight and they panic because there
6 is a police car behind them, and I've had stops where they've led to contraband being
7 located and they tell me that they had to get off the highway quickly because they
8 have to pee.

9

10 Q Oh, okay.

11 A I know.

12

13 Q You asked him for an explanation as to why he pulled over, right?

14 A Yes. Yes.

15

16 Q And did he hesitate to give you an explanation?

17 A No, Your Honour.

18

19 Q Okay. He gave you one. He said he -- he pulled over because he had to take a pee.

20 A Yes, Your Honour.

21

22 Q Right? And there's nothing nonsensical about that because you know that people do
23 that every day, right?

24 A But I -- I testified earlier that there was gas stations and a rest stop where somebody
25 can pee and in Harvey Heights on that side of the highway there are no gas stations,
26 there are no rest stops. There's nowhere in that sense, so he would effectively be
27 urinating on the side of the highway or in public --

28

29 Q Oh, no.

30 A -- when he could pull over to a gas station or a restaurant or one of the truck stop
31 pullouts which have the ability to have an actual flush toilet.

32

33 Q You see people peeing on the side of the road every day, don't you?

34 A Yes, I have, Your -- well, not every day.

35

36 Q But it's common.

37 A We're getting into numbers again.

38

39 Q But it's common, right?

40 A I have seen it in the past, but it is not normal to pee at 1:30 in the morning when
41 you're approaching a major centre where there's 24-hour gas stations and basically the

1 Bow Valley's version of gasoline alley.

2

3 Q Did -- did you ask him if he was aware of Bow Valley's version of gasoline alley?

4 Did -- did you ask him that?

5 A I didn't need to.

6

7 Q Why didn't you need to?

8 A Because he was not asking me where there was a place to go pee.

9

10 Q Did you ever ask him if he'd been in Canmore before?

11 A No, I don't think I did.

12

13 Q So, you're up at the passenger side of the vehicle, you're asking him questions, you're
14 looking around. Actually, I interrupted your looking around thing.

15 A That's okay.

16

17 Q Okay. And we've covered off you're looking at him and he's nervous, extremely
18 nervous, and you say that his explanation of pulling off the highway to take a pee is
19 what you call nonsensical. What else?

20 A The radar detector, Counsel, I mean that I saw that was on and active, the fact that it
21 was active and I testified earlier it can be used to avoid police detection.

22

23 Q Yeah, you told us all that. He's got a radar detector, right?

24 A Right.

25

26 Q There's lots of people with radar detectors that aren't travelling criminals, right?

27 A Yes.

28

29 Q Okay. What else?

30 A At that point I don't note anything else further.

31

32 Q Okay.

33 A Then I --

34

35 Q But you're looking for other things though.

36 A Yes.

37

38 Q Right? You're looking for lots of other things. You're looking for any -- anything to
39 suggest that there's criminal activity occurring in that vehicle.

40 A Yes. And I should -- I want to testify to the extreme nervousness --

41

1 Q You already did --

2 A Well, I --

3

4 Q -- in direct and in cross. Did you want to say some more about that?

5 A Well, I -- I just want to make sure that I cover the extreme nervousness for the Court
6 so that they're aware of what I observed, because it's very difficult to put it into words
7 unless you're seeing it firsthand.

8

9 Q You've -- you've told us that, as well. Is there something you haven't told us about
10 the extreme nervousness that you want to get off your chest now?

11 A No, I felt -- I guess then that's sufficient. If you're aware and the Court is aware, then
12 I will leave it at that.

13

14 Q Yeah, I think we're all abundantly aware.

15 A Okay.

16

17 Q So, not only do you approach the driver's -- sorry, the passenger's - and we're still
18 dealing with the first attendance here - the passenger's door of the -- of the 300, you
19 stick your head right in that vehicle, don't you?

20 A Like I'm crawling in?

21

22 Q You -- your head. I didn't say you were crawling in. Your head breaks the threshold?

23 A No, because we don't --

24

25 Q No.

26 A -- do that because it's not allowed because it constitutes as a search if you break that
27 plane and I've been on the receiving end of cross in the past and I don't put my head
28 inside the window.

29

30 Q Have you looked at the video?

31 A I watched it twice.

32

33 Q Do you see your head break the threshold of the driver's -- or the passenger's window
34 on the front door?

35 A Maybe if we're able to establish what your version of me putting my head in is before,
36 if you -- can you describe to me --

37

38 Q Sure. Do you know what I am referring to when I refer to the threshold?

39 A Yes. Like putting my -- crossing over and in and looking around like this, and I'm --
40 for the Court, I'm leaning over the box.

41

1 Q Okay. And that's not what I mean. I'll help you out here. Let's assume for a minute
2 that the window of the Chrysler 300 on the passenger's door is up. Okay?

3 A Right.

4
5 Q We're ad idem on that. And I want you to imagine that the window is now down, but
6 there's a force field there exactly where the window was.

7 A Right.

8

9 Q Did your head pierce that force field?

10 A Did it pierce the force field?

11

12 Q Yes, did it pierce the force field?

13 A Maybe my nose touched the force field.

14

15 Q I'm not asking if you touched it. Did you go through it with your head?

16 A Maybe my face was against it like this. Like I --

17

18 Q Put your hand up and show the Court where this imaginary window is and where your
19 face would have gone.

20 A I -- well, if this is the window, I'm not sticking my head in past it.

21

22 Q Okay. So, what you're saying is your face didn't intrude upon the -- the force field.

23 A Oh, this is getting very -- it's -- I'm trying to describe it. It's like I'm not putting my
24 head inside somebody's window of the vehicle. I've never done that.

25

26 (VIDEO PLAYED)

27

28 MS. SIMIC: Madam Clerk, could we have the video up?

29

30 Q MR. FAGAN: So, there was VICS audiovisual recording of
31 what transpired that night?

32

33 THE COURT: Do we need to be a little bit clearer -- yes, we
34 might as well be clear about what it is we're putting on the screen, so what the officer is
35 looking at --

36

37 MR. FAGAN: That's what I'm doing.

38

39 THE COURT: -- and everybody in open court.

40

41 Q MR. FAGAN: Yeah. So, there was an audiovisual taken of

1 your stop of the Chrysler here on August 24th, 2016.

2 A Right.

3

4 Q And what we're seeing right here is what?

5 A That's me on the left, Your Honour -- or on the right, and that's the vehicle that was
6 stopped.

7

8 Q Right. You're the only Mountie in the screen, right?

9 A Yeah.

10

11 Q That's you?

12 A I just said that.

13

14 Q Yeah, okay. And you're approaching the passenger side of the Chrysler 300?

15 A Yes.

16

17 Q And this is the first approach?

18 A Yes.

19

20 MR. FAGAN:

Okay. And if you'd just hit play, please.

21

22 (VIDEO PLAYED)

23

24 Q MR. FAGAN:

Now, your head -- where does your head go?

25

26 THE COURT:

Let's go back about a -- (INDISCERNIBLE) --

27

28 A Oh, my --

29

30 THE COURT:

-- fraction of a second. I want to see whether --

31 I want to see -- honestly, I didn't catch it. I don't have to say "honestly" because --

32

33 (VIDEO PLAYED)

34

35 MR. FAGAN:

Stop it.

36

37 Q MR. FAGAN:

Where does your head go?

38 A Not in the window.

39

40 Q Do you pierce that force field that we talked of?

41 A No.

1

2 Q No?

3 A No.

4

5 MR. FAGAN: Push play, please.

6

7 (VIDEO PLAYED)

8

9 MR. FAGAN: Push pause.

10

11 Q MR. FAGAN: You've got your head right in the window now,
12 don't you?

13 A No.

14

15 Q Time? What is that?

16 A I will go to my --

17

18 Q 01:31:37. This is just for the record.

19 A Right.

20

21 Q So, you're saying under oath, and we're looking at the same screen here, 01:31:37,
22 that your head is not in the passenger's window.

23 A Under oath I will categorically say I did not put my head in that window.

24

25 Q Okay. And your face hasn't pierced that force field that you and I discussed?

26 A That's correct.

27

28 MR. FAGAN: Okay. Thank you for your assistance. I
29 appreciate it.

30

31 Q All right. Well, where your head is positioned at the open window of the passenger's
32 door, you're in a position to - how can I put it - sniff, right?

33 A That's correct, Your Honour.

34

35 Q And you have detected the scent of cannabis marijuana, both burnt cannabis marijuana
36 and fresh cannabis marijuana, non-burnt, on hundreds if not thousands of occasions,
37 right?

38 A That's correct, Your Honour.

39

40 Q Your nose is finely tuned in that regard, right?

41 A Yes, sir.

- 1
2 Q Okay. And as you're standing at that open window, that's one of the things that you're
3 watching for, for lack of a better --
4 A Yes.
5
6 Q -- word. Okay. And you don't smell any cannabis marijuana at all.
7 A No.
8
9 Q Not at all.
10 A Nothing, or else I would have arrested.
11
12 Q Okay. And as you're looking around the interior of the 300, you don't see anything of
13 a drug-related nature, let alone related to the use or transportation of -- or packaging of
14 cannabis marijuana, right?
15 A That's correct, Your Honour.
16
17 Q You know, you're looking for things like, you know, papers or baggies or, you know,
18 a scale if you're lucky enough.
19 A Right.
20
21 Q You don't see anything like that, right?
22 A That's correct.
23
24 Q And sometimes you just see remnants. Sometimes you just see some, you know, some
25 crushed-up green plant-like material that you can barely measure, but boy, you can see
26 it. Right?
27 A Right.
28
29 Q Nothing like that.
30 A Right.
31
32 Q Okay. And you've already indicated that by this time you've also come to the
33 conclusion that the operator -- the driver of the -- Mr. ██████, that he doesn't appear to
34 be under the influence of alcohol.
35 A That's correct.
36
37 Q Or drug?
38 A That's correct.
39
40 Q Now, you've mentioned before as one of the things that you observed -- you didn't
41 say that it was, you know, something that aroused your suspicion and maybe it did,

1 maybe it didn't, we'll get to that in a moment, but the luggage in the back seat, right?

2 A Right.

3

4 Q Tell us about the luggage. Tell us about what you observed.

5 A It was on the back seat.

6

7 Q Okay. And what kind of luggage was it?

8 A Black plastic and I think that there were wheels on it.

9

10 Q Okay. And that just looked normal to you, right?

11 A It was on the back seat, yeah.

12

13 Q Normal? Nothing unusual?

14 A Nothing unusual.

15

16 Q Nothing about that that aroused your suspicion?

17 A I believe I may have verbally made note that it was on the back seat, but he -- it was
18 nothing that was part of my totality as an indicator, so correct.

19

20 Q Okay. And one of the things that you'll often factor into your analysis, if you will, the
21 suspicion equation, is something called a third party vehicle.

22 A Right.

23

24 Q Right? You're trained in that regard?

25 A That's correct, Your Honour.

26

27 Q And -- and tell the Court about that. What -- what -- what is this third party vehicle
28 factor?

29 A A third party vehicle, Your Honour, is utilized when an individual who is moving
30 contraband in some way, shape or form will borrow a friend's vehicle who may not
31 have a criminal record or rent a vehicle because there's no name associated to it, or
32 there may no -- there may not be a possibility that that vehicle has been entered on the
33 system as a pointer vehicle, and I mean that in relation to an individual if they're
34 suspended on warrants or under surveillance. And the -- the significance of that is, is
35 individuals, if they're using a rental vehicle, will use it so that if they do get stopped
36 by the police and arrested and their contraband seized, then they don't lose their own
37 vehicle, as well as they can utilize a rental vehicle to put contraband in the door panels
38 or compartments. That way they're not damaging their own. So, if they have a
39 Mercedes Benz or a brandnew truck, they're not ripping the door panels off their own
40 vehicle. That's one of the reasons why they use it and as well it allows them the
41 condition of anonymity because if you run them -- let's say they're involved in the

1 drug trade and they're worried about us running the plate, when we run the plate it
2 won't come back to them.

3

4 Q Okay. And that would apply to either a rental vehicle or a vehicle that they may have
5 borrowed from a relative or a friend.

6 A Right.

7

8 Q Right? That's not registered to them.

9 A Correct.

10

11 Q Okay. And we weren't -- we're not dealing with a so-called third party vehicle in this
12 situation.

13 A Correct.

14

15 Q Now, the other thing that you look for - correct me if I'm wrong - is evidence of a
16 real quick turnaround relative to a trip, that the vehicle has a lived-in look, you know,
17 food wrappers all over the place.

18 A Right.

19

20 Q Right?

21 A Right.

22

23 Q Am I correct?

24 A That's correct, yeah.

25

26 Q Okay. And you didn't see anything like that here.

27 A No, just the water bottles on the floor and --

28

29 Q All right. And that's normal nowadays, right?

30 A Right. All the water bottles would signify to me at the time, Your Honour, is that the
31 person would be able to drive for an extended period and they're able to consume
32 water to stay hydrated. And so, that's what I would make a note of in that situation.

33

34 Q But again, the manifestation of one water bottle or multiple water bottles in a vehicle
35 nowadays, that's pretty normal.

36 A Right.

37

38 Q I've seen you reach for that water bottle up there on the stand about 18 times now,
39 right?

40 A Yes, and I'm going to have to utilize the facilities here shortly due to it.

41

1 MR. FAGAN: Might we take a quick break, Your Honour?
2
3 THE COURT: Very good, thank you.
4
5 MR. FAGAN: Thank you.
6
7 THE COURT CLERK: All rise.
8
9 THE COURT: You're under oath, sir.
10
11 A Thank you.
12
13 THE COURT CLERK: Court is briefly adjourned.
14
15 (ADJOURNMENT)
16
17 THE COURT CLERK: Order in court. All rise.
18
19 THE COURT: Thank you. Please be seated.
20
21 THE COURT CLERK: Recalling the matter of ██████████.
22
23 MR. FAGAN: For the record, the accused is present, so is the
24 constable.
25
26 THE COURT: Thank you. You're still under oath.
27
28 A Yes, Your Honour.
29
30 THE COURT: Thank you.
31
32 MR. FAGAN: Thanks for the break and the constable thanks
33 you, Your Honour.
34
35 Just to let the Court know, as I've let my friend know - and I know you've heard this
36 before - you can take it with a grain of salt - but I'm just about through.
37
38 THE COURT: We'll see.
39
40 MR. FAGAN: Very good.
41

- 1 THE COURT: I have big red letters of the time right in front
2 of me.
- 3
- 4 MR. FAGAN: He's just about through.
- 5
- 6 Q MR. FAGAN: Okay. Constable, you testified that you went
7 back to the patrol car after the first attendance on the Chrysler 300 and you had no
8 intention of writing a -- a traffic ticket, right?
- 9 A Yes.
- 10
- 11 Q As a matter of fact, during the course of your initial conversation with Mr. [REDACTED]
12 you'd made up your mind that you weren't going to issue a ticket.
- 13 A Correct.
- 14
- 15 Q Right? So -- so, the traffic stop was over.
- 16 A No, Your Honour.
- 17
- 18 Q Well, if you weren't going to issue a traffic ticket, you'd satisfied yourself that his
19 ability to operate a motor vehicle wasn't impaired by alcohol or drug, then why didn't
20 you just send him on his way?
- 21 A Because I still like to conduct checks on the police computer.
- 22
- 23 Q Okay.
- 24 A Ensure for officer safety. There's been stuff on the system in the past relating to -- oh,
25 drugs --
- 26
- 27 Q I'm sorry, you mentioned officer safety?
- 28 A Yeah.
- 29
- 30 Q Well, the best thing for officer safety would have been to send him on his way and
31 you to go back to your patrol car, wouldn't it?
- 32 A Well, if he had a handgun - and I'm not suggesting that he did - or he had a weapon,
33 the public interest wouldn't be satisfied if I wasn't doing my job and completing
34 checks because he could have stuff on the system where he was relating to be involved
35 in weapons trafficking. I'm sure our communities wouldn't want assault rifles or
36 weapons being brought in. So, I think as a police officer I have due diligence to go
37 back to my patrol car and conduct checks on the police computer.
- 38
- 39 Q Well, if he had a record for being in possession of weapons, that certainly wouldn't
40 give you the authority to detain or arrest him for that, would it?
- 41 A If he had -- sorry, if he had a weapons --

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41

Q Yeah.

A -- conviction?

Q Yeah. If he had convictions for weapons offences, that wouldn't give you the authority to detain or arrest the fellow, would it?

A No.

Q Okay. So, you went back and you did some checks and there -- there were some drug-related entries.

A That's correct.

Q But you also ascertained by way of your check of a number of different police computer databases that this man had absolutely no drug-related convictions. Am I right or am I wrong?

A You are right.

Q I am right. Not even simple possession, right?

A That is correct, Your Honour.

Q As a matter of fact, you determined from checking these computer databases, these multiple police computer databases, that he'd never even been charged with a drug offence.

A That's correct.

Q But what you did ascertain -- well, tell us, what -- what did you ascertain about Mr. [REDACTED] from your database that was drug related?

A What I ascertained, Your Honour, is -- is I completed checks in the PROS database, and that's the Police Records Occurrence System, which is our national database which houses all the RCMP occurrence records.

Q Okay. And where does the information on those databases come from?

A On the -- on the police server out of Ottawa.

Q Well, who's putting it on there though?

A The RCMP.

Q Like civilians or peace officers or drug investigators? Like -- like who?

A Members of the RCMP or civilians or public servants or municipal employees.

Q And the list goes on.

1 A No, because that's pretty much it.

2

3 Q All right. Okay. So, you checked PROS, is it?

4 A That's correct, Your Honour.

5

6 Q Is that an acronym for something?

7 A Yes.

8

9 Q What is it?

10

11 THE COURT: You said it, but you can say it again, Officer.

12

13 Q MR. FAGAN: Please. I missed it. Thanks.

14 A The Police Records Occurrence System.

15

16 Q Okay, thanks. Okay. So, you checked that and what did you learn?

17 A I learned that the accused had entries relating to drug trafficking and drug possession.

18

19 Q Okay. Tell us --

20 A He had a --

21

22 Q Tell the Court about the entries --

23 A He had --

24

25 Q -- for drug trafficking.

26 A He had an entry from -- the most recent is 2016 July, where a file had been created
27 out of Red Deer GIS, Your Honour, where he was the subject to complaint on that
28 particular file where he was involved and they had a confidential informant who had
29 advised the officers that the individual was selling marijuana.

30

31 Q Okay. So --

32 A That's -- there was other entries as well, but that's --

33

34 Q Okay. Well, let's talk about --

35 A -- the most specific -- the recent one that I had at that time.

36

37 Q Okay. Let's talk about that one. So, you say that a file was created, and this is a file
38 was created by the police, right?

39 A Yes.

40

41 Q On -- on [REDACTED].

1 A Yes, Your Honour.

2

3 Q Right? Did you know if it was the same [REDACTED] [REDACTED]?

4 A The dates of birth, the middle name and everything matched up.

5

6 Q Okay. And he was the subject of a complaint.

7 A Yes.

8

9 Q A drug-related complaint in essence that he was, what, selling marijuana?

10 A Yes.

11

12 Q Okay. And --

13 A And involved with the drug trade.

14

15 Q Well, well, well, that can mean just about anything, can't it?

16 A Perhaps.

17

18 Q Involved in the drug trade?

19 A Yes.

20

21 Q That's it?

22 A That's what you are doing when you're selling drugs is you're involved in the drug
23 trade.

24

25 Q Okay. So, which was it? Did it say he was involved in the drug trade or did it say that
26 he was selling drugs?

27 A The confident -- confidential informant had said that it was a file relating to him
28 selling drugs.

29

30 Q Okay. And the drug in particular was cannabis marijuana?

31 A That's correct, Counsel.

32

33 Q Okay. And you talked to an officer about this in Red Deer.

34 A That's correct, Your Honour.

35

36 Q Okay. And what did he tell you about the investigation arising from a complaint that
37 you've told us about? I mean, did they do surveillance, did they target Mr. [REDACTED] with
38 another confidential informant, with an undercover operator, seizures? What did the
39 police do to follow up on this complaint?

40 A Constable Yaworski was the officer out of Red Deer, Y-O-W-S-K-R-I, I believe -- I'm
41 not sure if that's the accurate spelling. He was the officer who was the lead assigned

1 to it, Your Honour, and from talking to him via phone they had just started working
2 the file and -- but they were aware that the accused was involved with selling drugs.
3 As for an undercover operation or selling to an undercover operator, nothing of that
4 sort was relayed to me, Your Honour.
5

6 Q Okay. But the question is easier than that. The police had a complaint. Complaints
7 come in every day to the police, right?

8 A That's correct.
9

10 Q Right. And sometimes they're substantiated, sometimes they're not. Right?

11 A Correct.
12

13 Q Okay. And in this particular situation they -- they received information from a source?

14 A Yes.
15

16 Q Okay. So, my question is real easy. What did the police do to substantiate the
17 complaint?

18 A You would have to ask Constable Yaworski, as he is the lead investigator for that
19 particular file.
20

21 Q You didn't ask him?

22 A What I was -- have just testified to is what I was told by the phone.
23

24 Q Did you ask him?

25 A I don't remember.
26

27 Q So, as far as you knew before you went and searched the Chrysler 300 the police had
28 done absolutely nothing to substantiate this complaint. Am I right or am I wrong?

29 A From the information that I have, was the confidential informant stuff. So, they had
30 created a file, opened a file. I didn't have any information stating that they had done
31 an undercover operation or done anything else other than that they're aware that he
32 was involved in the drug community and they had a confidential informant who said
33 that he was selling drugs. But other than that, that's all I had.
34

35 Q Okay. But that -- that's the complaint. My question goes beyond that. They have a
36 complaint, they have information from a source --

37 A Right.
38

39 Q -- that he may be involved in selling marijuana, but what, if anything, did the police
40 do to substantiate that complaint?

41 A That was not told to me, Counsel.

- 1
2 Q Okay. So, that's the Red Deer complaint. What other drug-related information, if any,
3 did you glean by way of your --
4 A Police computer?
5
6 Q -- police -- police computer database searches?
7 A There were other entries in the PROS database where he was the subject of complaint
8 for drug trafficking, marijuana trafficking and being in possession of cocaine, and I
9 believe that there were three or four files. I do not remember what dates they fall
10 under. I do not remember what specific detachments they are under. They are read off,
11 Your Honour, on the police computer on the audio recording and narrated from that
12 point. But at that point I just had the numerous files and the most recent entry. But I
13 do not have the specifics of those investigations.
14
15 Q Okay. And at that time they all came up as complaints. There was no indication that
16 drugs had ever been seized from Mr. Brown, right?
17 A I did not see anything relating to that other than the entries for the status which he was
18 scored at, meaning what they had put him as being subject to complaint.
19
20 Q Subject to complaint?
21 A Yes. But nothing that I saw, Your Honour, relating to a specific type of drug which
22 was seized.
23
24 Q Yeah, not specific type of drug. There was no indication on there that drugs of any
25 nature had ever been seized from Mr. ██████████. Am I right or am I wrong?
26 A That's correct. That from the scoring of the files, at the point of the investigation I had
27 not opened up each individual file and gone through and read every general report to
28 ascertain whether or not a substance has been seized. The PROS database does allow
29 an officer access to that information, but it would be very time consuming, so I'm only
30 testifying on what the status of the scoring was on the PROS entries. As to what was
31 seized, from what I can see from the computer at that time, nothing said that there was
32 any drugs seized on that particular line. But that being said, if I had gone into each
33 general report and read them, there could have been drugs seized, but that would have
34 been -- I never saw it at the time. Does that --
35
36 Q Okay.
37 A -- kind of answer it?
38
39 Q No, it -- it -- it does.
40 A Okay.
41

1 Q So, anything else before you placed -- any other information relative to drug entries on
2 the police computer databases that led to your arrest of Mr. [REDACTED]?

3 A Nothing else that I saw, Your Honour.
4

5 Q So, you testified - and this is as close to verbatim as I could get your testimony - that
6 you, quote, "felt he was in possession of drugs", end quote. Do you remember
7 testifying to that effect?

8 A In chief or what you asked?
9

10 Q In chief.

11 A In chief? I believe so, yes, I do remember.
12

13 Q All right. Okay. What drug?

14 A What do you mean what drug? Like what specific drug?
15

16 Q Yeah, what drug. You felt he was in possession of -- of drugs. What -- what drug did
17 you feel that he was in possession of?

18 A I didn't know, I just felt that he was in possession of a controlled substance. I don't
19 know what's in the vehicle. People can possess any type of drug that would be
20 controlled.
21

22 Q And you arrested him for possession of a controlled substance, right?

23 A Yes, Your Honour.
24

25 Q You -- you didn't arrest him for trafficking or possession for the purpose of
26 trafficking, correct?

27 A That's correct.
28

29 Q You testified - this is during the course of direct testimony - that Mr. [REDACTED] exited the
30 vehicle, quote, "on his own accord", end quote.

31 A Correct.
32

33 Q You remember testifying to that effect?

34 A Yes, Your Honour, I do.
35

36 Q It's a small point, but correct me if I'm wrong. He exited the vehicle because you told
37 him to get out of the vehicle, right?

38 A I believe I asked him to get out. I can't remember exactly what verbiage I used, but I
39 did ask him to exit the vehicle. I don't remember -- I don't remember ordering or
40 demanding or --
41

- 1 Q No, no. I -- I don't want to put too fine a point in it.
2 A For sure.
3
4 Q It's -- it's just that when you say --
5 A He -- he got out because I had asked him to exit.
6
7 Q Fair enough. And that's because you were going to arrest him.
8 A Yes, Ma'am. Not you, sorry.
9
10 Q That's for the judge, not for me.
11 A To Her Honour, yes.
12
13 Q All right. And he told you once you advised him of his right to counsel that he wanted
14 to call a lawyer.
15 A That's correct.
16
17 Q And -- and you told him when you advised him of his right to counsel that not only
18 did he have a right to consult with a lawyer, but he had an immediate right to contact
19 a lawyer.
20 A That's correct.
21
22 Q Okay. Now, on the one hand you tell him he's got an immediate right, constitutional
23 right to contact a lawyer, but on the other hand you don't do anything once he tells
24 you that he wants to contact a lawyer to facilitate his access to counsel, do you?
25 A I was in an investigation searching the vehicle.
26
27 Q I didn't ask you that. Do you do anything to facilitate his access to counsel?
28 A No.
29
30 Q What you do do is you hold him for approximately 45, 50 minutes --
31 A I believe --
32
33 Q -- in the back of your patrol car while you conduct your investigation.
34 A That's correct.
35
36 Q And he's locked back there. He can't get out, right?
37 A That's correct. And I believe that the timing, since we're on numbers here, would be
38 approximately 35 minutes, in that area. I think 50 is excessive as the patrol camera --
39 I -- I -- just --
40
41 Q No, that was an approximation.

- 1 A Just for numbers.
- 2
- 3 Q It's on the video.
- 4 A Right.
- 5
- 6 Q Right?
- 7 A It's just it is -- it is just suggesting for his time -- I just want the Court to be able to
- 8 know that he wasn't imprisoned for an extended period.
- 9
- 10 Q Well, I don't know, sitting in the back of a locked patrol car for half an hour can be a
- 11 long time for some people. Their liberty is deprived, right?
- 12 A Yes.
- 13
- 14 Q You're in control of their movements.
- 15 A That's correct.
- 16
- 17 Q He was your prisoner.
- 18 A He was my client, yes.
- 19
- 20 Q Your client? He's my client, he was your prisoner, right?
- 21 A He was under arrest, yes.
- 22
- 23 Q And you say one of the reasons that you didn't allow him to use his cell phone to call
- 24 a lawyer in the back of the car, patrol car, is because there was a -- a VICS operating.
- 25 There was an audiovisual recording taking place.
- 26 A That's correct, Your Honour.
- 27
- 28 Q Okay. Well, you could have simply said, look, I'm going to pause the -- the audio
- 29 here. So we can't hear your privileged conversation with your lawyer, I'm going to
- 30 mute the audio. Is that okay with you? You could have done that, right?
- 31 A No, it's against our policy and it would not look -- it would not look good because
- 32 then we would be asked why we're muting our mikes and everything is to be audio
- 33 and video recorded. So, no.
- 34
- 35 Q So, are you telling the Court that's just not something you would do? You wouldn't --
- 36 to facilitate a person's constitutional right to a lawyer, you wouldn't suggest to him
- 37 that perhaps you could mute his privileged communication? You wouldn't do that?
- 38 A Yes, that's correct.
- 39
- 40 Q Okay.
- 41 A And the officer safety side of it, I believe I testified in chief.

- 1
2 Q Well, you could have grabbed the phone and you could have called a lawyer for him.
3 You could have assisted this prisoner of yours by calling a lawyer, couldn't you?
4 A No.
5
6 Q Why not?
7 A Because that's his responsibility to do and I was about to release him as well anyways.
8 He can facilitate all the lawyer calls he wants upon release.
9
10 Q Okay. So, as far as you were concerned, this prisoner of yours, he didn't need to talk
11 to a lawyer roadside, did he?
12 A He could have called one upon release. I'll leave it at that. Because I wouldn't -- like I
13 testified earlier, for the officer safety side of it and I need to afford him the
14 expectation of privacy. So, you're right in the sense that, yeah, I'm not going to let
15 him facilitate his right at that immediate point.
16
17 Q Then what do you bother telling him for? What -- what are you -- why do you tell him
18 that he's got a constitutional right to immediate contact with a lawyer when you have
19 no intention of facilitating, of allowing him to have immediate contact with a lawyer?
20 Why do you do that?
21 A It's their *Charter* rights. They're entitled to know that they don't have to say anything
22 to the police and it's their right to not participate in any proceedings and that they can
23 contact a lawyer. They can contact a lawyer upon release, because that was my
24 intention at the time. If I took him back to the detachment, I have a feeling that I may
25 be in a situation where I may be crossed on why I was unlawfully detaining the
26 individual when they expect me to release him as I was at a release level. So, that's
27 why I -- I chose to do it.
28
29 Q No, my question is easier than that, Constable.
30 A I understand that, sorry.
31
32 Q Yes. (a) you -- you -- you tell him that he's got a constitutional right to contact a
33 lawyer immediately, right?
34 A Right.
35
36 Q But at the same time you have no intention of facilitating that immediate right to
37 consultation with a lawyer, right?
38 A If I answer yes, it's just a simple yes, but I want it on record that it's due to the other
39 two reasons. So, yes, but there's the reasoning behind it.
40
41 Q But why bother to tell him if -- if you're not going to give him access? Why -- I

- 1 mean, why do it at all?
2
- 3 THE COURT: I -- I think you've already asked the question
4 about four times.
5
- 6 MR. FAGAN: Five I think actually.
7
- 8 THE COURT: I think --
9
- 10 MR. FAGAN: So, I'll move on.
11
- 12 THE COURT: Thank you for that.
13
- 14 MR. FAGAN: Thank you.
15
- 16 Q MR. FAGAN: Did you observe during the course of your
17 search of the vehicle indicia to suggest personal use of cannabis marijuana?
18 A Yes.
19
- 20 Q What was that?
21 A It was the 0.7 grams of cannabis and the rolling papers in the golf bag, Your Honour.
22
- 23 Q Have you seen any of those federal government licences where people are allowed to
24 grow cannabis marijuana and to possess certain quantities of cannabis marijuana for
25 personal use?
26 A Yes, I have.
27
- 28 Q And people are allowed to possess by way of federal licence sometimes in excess of
29 10 kilograms of cannabis marijuana?
30 A There's -- I've even heard in excess of that, Your Honour. But not outside their
31 residence.
32
- 33 Q Unless authorized.
34 A I've yet to see that, but unless I guess of authorization of course.
35
- 36 MR. FAGAN: Okay. I'm just about through. Actually, I'm not
37 just about through, I -- I am through. Those are my questions. Thank you, Constable.
38
- 39 A (INDISCERNIBLE).
40
- 41 THE COURT: Thank you, Mr. Fagan. Anything --

1
2 MR. FAGAN: Thank you.
3
4 THE COURT: -- arising from that, Ms. Simic?
5
6 MS. SIMIC: No, Your Honour.
7
8 THE COURT: All right. Thank you, Officer MacPhail. You're
9 free to stand down.
10
11 A Thanks, Your Honour.
12
13 (WITNESS STANDS DOWN)
14
15 MS. SIMIC: And, as indicated -- and, as indicated earlier,
16 Your Honour, there were some discussions between counsel with respect to
17 admissions. The admissions that were anticipated are that of identity, as well as for the
18 purposes of the preliminary inquiry there are some admissions that the -- that the
19 marijuana seized and the nature of that and the amount is consistent for the possession for
20 the purposes of trafficking and not inconsistent with that of personal possession, and for
21 the purposes of preliminary inquiry only, and --
22
23 THE COURT: So, that it's -- the amount seized -- the
24 substance was marijuana and it's -- with everything else, it tends to --
25
26 MR. FAGAN: It's inconsistent with personal use.
27
28 THE COURT: That's what I'm getting at. I thought you said
29 not inconsistent with personal use.
30
31 MR. FAGAN: I know what she meant.
32
33 THE COURT: Okay.
34
35 MR. FAGAN: And that's what she meant and you caught
36 it. Yeah, agreed.
37
38 THE COURT: Okay. So, it's consistent with PPT, possession
39 for the purpose of trafficking, the amount seized?
40
41 MR. FAGAN: Consistent with trafficking.

1
2 THE COURT: Was it charged, trafficking, or possession for
3 the purpose? Yeah. Okay. So, those are -- that's all admitted?
4
5 MR. FAGAN: Yes.
6
7 MS. SIMIC: Yes.
8
9 THE COURT: All right. Anything else?
10
11 MS. SIMIC: No.
12
13 THE COURT: Your client doesn't want to take the stand,
14 nothing to say?
15
16 MR. FAGAN: Defence is not calling evidence, no
17 submissions.
18
19 THE COURT: All right. So, on that basis I take it Crown is
20 moving for committal for trial?
21
22 MS. SIMIC: Yes.
23
24 MR. FAGAN: Please stand.
25
26 **Order to Stand Trial**
27
28 THE COURT: All right. Mr. [REDACTED], based on the evidence
29 that was heard today and based on the admissions made by your lawyer on your -- on
30 your behalf, and given the threshold in order to -- what the Crown has to show, the level
31 of evidence the Crown has to show in order to achieve a committal for trial, I'm satisfied
32 there is sufficient evidence for that purpose. Not hearing any strong argument to the
33 contrary, I'll commit you to stand trial and appear at the next -- or through counsel or
34 personally at the next arraignment date in Calgary.
35
36 THE COURT CLERK: That date is April 21st, 2017.
37
38 THE COURT: All right. So, the matter is remanded to that
39 date for that purpose.
40
41 MS. SIMIC: Thank you.

1
2 THE COURT: And then of course transcripts will be ordered
3 in the ordinary course, preliminary inquiry transcripts for the parties.
4

5 All right. Have a good long weekend, all. Thank you.
6

7 MR. FAGAN: Afternoon, Your Honour.
8

9 THE COURT CLERK: All rise. Court is closed.
10

11 _____
12 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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3 I, Laura Hoang, certify this recording is the record made of the evidence in the
4 proceedings in Provincial Court, held in courtroom 001 at Canmore, Alberta on the 17th
5 day of February, 2017, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

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1 **Certificate of Transcript**

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3 I, Carolyn Cruickshank, certify that

4

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

8

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

11

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Carolyn Cruickshank, Transcriber

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Order No. 50399-17-1

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