

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

GAD

Accused

P R E L I M I N A R Y I N Q U I R Y

Canmore, Alberta

October 27, 2020

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

2

3

4 October 27, 2020

Morning Session

5

6 The Honourable Judge Pepper

Provincial Court of Alberta

7

8 A. Szabo

For the Crown

9 P. Fagan, QC

For the Accused

10 T. Squires

Court Clerk

11

12

13 **Discussion**

14

15 THE COURT:

Good morning.

16

17 MS. SZABO:

Good morning, Your Honour.

18

19 THE COURT:

Please be seated.

20

21 MR. FAGAN:

Good morning, Your Honour.

22

23 THE COURT:

Good afternoon.

24

25 THE COURT CLERK:

GAD

26

27 MR. FAGAN:

For the record, Patrick Fagan, appearing as

28 counsel for the accused. He's sitting out in the parking lot --

29

30 THE COURT:

Okay.

31

32 MR. FAGAN:

-- but I can bring him in subject to your lead and

33 direction.

34

35 THE COURT:

Okay.

36

37 MR. FAGAN:

I of course appear on this matter. My friend,

38 Ms. Szabo, appears as agent --

39

40 THE COURT:

Good morning.

41

1 MS. SZABO: -- for the Crown Prosecutor Service of Canada.
2 It's scheduled for prelim.
3
4 THE COURT: All right.
5
6 MR. FAGAN: And we're both pretty much ready to go.
7
8 MS. SZABO: That's correct, we're just -- I just -- I've provided
9 Section 540(7) and (8) notice to my friend, and I have a package prepared for the Court.
10
11 THE COURT: Okay.
12
13 MS. SZABO: I will introduce through my primary
14 investigator. Mr. Fagan has indicated a desire to have me play the video of the VICS, so
15 I've asked the investigator to step out, get his laptop, and we're going to have to set it up.
16 So we'll need a few moments.
17
18 THE COURT: Okay, no problem. Just let me know when you
19 are ready to go --
20
21 MS. SZABO: Thank you.
22
23 THE COURT: -- and we will --
24
25 MR. FAGAN: I'm anticipating, Your Honour, being subject to
26 my friend's conduct of this matter, a maximum of two witnesses.
27
28 THE COURT: Okay.
29
30 MR. FAGAN: And we'll easily finish this morning.
31
32 THE COURT: Okay. That is good to know. Did you want me
33 to look at that now, or --
34
35 MS. SZABO: Might as well.
36
37 MR. FAGAN: I don't mind.
38
39 MS. SZABO: Okay, great.
40
41 THE COURT: Okay? All right. Thank you.

1
2 (ADJOURNMENT)
3
4 THE COURT: Please be seated.
5
6 THE COURT CLERK: Recalling GAD.
7
8 MR. FAGAN: For the record, Your Honour, Patrick Fagan,
9 still appearing for the accused, who is present in court, to your --
10
11 THE COURT: Okay.
12
13 MR. FAGAN: -- right, front row. Might he remain in the body
14 of the --
15
16 THE COURT: Yes, he --
17
18 MR. FAGAN: -- court?
19
20 THE COURT: -- can remain there.
21
22 MR. FAGAN: Thank you very much.
23
24 THE COURT: Thank you.
25
26 MS. SZABO: Thank you. Your Honour, the Crown's first
27 witness is Constable
28
29 THE COURT: Okay. Did you want to mark these first as
30 exhibits?
31
32 MR. FAGAN: Two preliminary applications, Your Honour,
33 before we --
34
35 THE COURT: Before you mark, oh, okay.
36
37 MR. FAGAN: Yes, please.
38
39 THE COURT: Absolutely.
40
41 MR. FAGAN: And the first would be for the usual order

1 banning publication of the evidence taken on this proceedings.

2

3 **Ban on Publication - Evidence**

4

5 THE COURT: Yes, I will make that order.

6

7 MR. FAGAN: And the second would be the usual order for the
8 exclusion of witnesses.

9

10 THE COURT: I will also make that order. Thank you. Order
11 excluding all witnesses --

12

13 MR. FAGAN: And to answer your question --

14

15 THE COURT: -- for Crown or defence.

16

17 (WITNESSES EXCLUDED)

18

19 MR. FAGAN: -- I have no objection to the 540 package being
20 marked as the first exhibit in these proceedings.

21

22 THE COURT: Okay.

23

24 MS. SZABO: Thank you. And the -- the -- although the
25 photos aren't physically in the package, they are part of the 540 package.

26

27 THE COURT: All right. And do you want them marked
28 together, or should we mark them separately? I mean, because I have two booklets, so I
29 have one booklet which is -- we could call it a case file. It has --

30

31 MS. SZABO: Yes.

32

33 THE COURT: -- notes and the expert report, and then a book
34 of photos. Shall they be --

35

36 MS. SZABO: So let's mark them separately.

37

38 THE COURT: All right. So we will mark, then, we call it case
39 file with eight tabs, that will be Exhibit 1. Exhibit 2 will be the book of photographs.

40

41 **EXHIBIT 1 - Case File With Eight Tabs**

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EXHIBIT 2 - Book of Photographs

MS. SZABO: Thank you. And I have an extra booklet of photographs for you.

THE COURT: Okay. And, madam clerk, if you want to take those.

MR. FAGAN: All right, just of the photos?

MS. SZABO: Yes. I apologize, I don't have an additional copy of the 540 application.

THE COURT: That is fine. I will give them to madam clerk to mark, and if I need to look at them, I will.

MS. SZABO: Thank you.

Crown calls to the stand Constable.

And for the record, just before we start, Mr. Fagan has kindly agreed that continuity in the (INDISCERNIBLE) substance is not at issue. It's in 540. You have everything in any event, but I appreciate --

THE COURT: I see.

MS. SZABO: -- the admissions on Mr. Fagan's behalf. And I'm assuming identity as well?

MR. FAGAN: My friend is correct.

THE COURT: Sorry, identity is also not at issue? Is that what --

MS. SZABO: Correct.

THE COURT: -- what you are saying?

MR. FAGAN: It is not.

1 THE COURT: Thank you.

2

3 MS. SZABO: Correct.

4

5 THE COURT: All right.

6

7 THE COURT CLERK: State your full name.

8

9 CONSTABLE Can I take my mask --

10

11 THE COURT: Yes, you can take --

12

13 CONSTABLE: Okay.

14

15 THE COURT: -- it off, yes.

16

17 CONSTABLE My full name,

18 .CONSTABLE **Affirmed, Examined by Ms. Szabo**

19

20

21

22 Q Good morning, Constable

23 A Hi.

24

25 Q Constable I understand that you are a member of the RCMP, you are a police
26 officer, and you are stationed in something called the RTU, Roving Traffic Unit, in
27 Cochrane, Alberta --

28 A Yeah.

29

30 Q -- is that correct?

31 A Yes.

32

33 Q Thank you.

34

35 And I understand you've been a member of that team for how many years now?

36 A Three years, 2017 till now.

37

38 Q And prior to that where were you?

39 A So prior -- so I -- I'll start my first posting. I graduated depot training in 2007, October
40 29th, actually, and was posted to Morinville, Alberta. And I was there from October
41 2017 (sic) till August 2013. And from there I transferred to the Integrated Traffic Unit

1 in Edson, and I was there from September 2017 until -- no, sorry, October -- no,
2 August 2013 till September 2017. And then I was posted to the RTU in Cochrane.

3
4 Q Just tell us a little bit about the RTU.

5 A So the Roving Traffic Unit is a traffic services unit. We're responsible for traffic
6 safety on the highway, but we also have specialized training to detect and apprehend
7 the criminal element that travels Alberta roadways.

8
9 Q Thank you.

10
11 And I understand that you were on duty and in uniform on October --

12 A Yes.

13
14 Q -- 29th, 2019; is that correct?

15 A Yes, Ma'am.

16
17 Q And as a result of something that occurred that evening, you collated a number of
18 different reports that's contained in the package that's marked as Exhibit 1; is that
19 correct?

20 A Yes, Ma'am.

21
22 Q And can you advise if those documents that are contained therein are trustworthy and
23 credible?

24 A Yes, Ma'am, they're --

25
26 Q And you've reviewed all of them, I gather?

27 A Yes.

28
29 Q Thank you.

30
31 So tell us what happened on October 29th, 2019.

32 A Certainly, Ma'am. It was October 29th, 2019, right around ten after 8 in the evening, I
33 was on patrol on Highway 1 near Canmore, Alberta. I observed a Toyota Rav 4 SUV
34 travelling eastbound in front of me. This vehicle -- I used the word "list" in one of my
35 reports -- it drifted over and -- and touched the white line. We refer to it -- refer to it,
36 sorry, as the fog line. I observed that and then conducted a traffic stop on that vehicle
37 to check the sobriety of the driver. It's ten after 8 in the evening. Between Banff and
38 Canmore people drink and drive. People drive the TransCanada Highway fatigued.
39 People are on their cell phones, so --

40
41 Q So I'm going to stop you there for a moment. I know that this investigated --

1 investigation turned into criminal charges that are before the Court this morning. Can
2 you tell me if you were travelling with anyone?

3 A Yes, I had Constable, who at that time was posted to the Cochrane
4 detachment (INDISCERNIBLE) --

5

6 Q Was he in your police vehicle?

7 A Yes, he was travelling with me as a ride-along. He wanted an exposure to the RTU.
8 That was essentially...

9

10 Q And who else became involved in the investigation?

11 A Constable and Constable and Corporal
12 and then eventually I think it's Constable -- I can't remember his first name. He's the
13 expert out of Sherwood Park. But those would be the members.

14

15 Q And can you briefly describe the -- their roles in the invest -- investigation?

16 A Certainly. So Constable Role would be as an observer with me. Constable
17 backed me up on the arrest of GAD and then proceeded to search the vehicle
18 incidental to arrest with me. And he ultimately located the indicators of the
19 aftermarket compartment in GAD'S vehicle.

20

21 I want to say Constable Iso located a couple of these (INDISCERNIBLE). There's
22 a bit of vials with trace amounts of marihuana in it. And I can't remember if he
23 found the cell phone or -- I think he found the --

24

25 Q Let's not guess --

26 A -- (INDISCERNIBLE).

27

28 Q -- constable. Either you know or you don't know. And it -- it's in the 540 --

29 A Okay, yeah --

30

31 Q -- booklet. It's --

32 A -- he -- he --

33

34 Q -- in their notes.

35 A He did find some exhibits in the front of the vehicle for me.

36

37 Q Thank you.

38 A Constable ttended and essentially took custody of GAD and read him
39 his rights, secondary caution (INDISCERNIBLE) for the purposes of speaking with
40 a lawyer. And then Corporal assisted with the search and defeated the hidden
41 compartment and located the contraband --

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Q Okay.

A -- brought these here today.

Q And how much contraband, what was located?

A So there was approximately 5 kilos of cocaine located as well as 1 kilogram of fentanyl.

Q Okay. And I take it you were the exhibit custodian on this file?

A I was, Ma'am, yes.

Q All right. So you -- we had an admission as to nature and continuity of the substance, but I gather you processed them. And your processing is contained -- you've took pictures of your processing, and --

A And --

Q -- they're contained in photo booklet Exhibit 2; is that correct?

A Yes, Ma'am.

Q And you have a supplementary report in Exhibit 1 that details how you took those samples, sent the (INDISCERNIBLE) off for analysis and received them back; is that correct?

A Correct, Ma'am.

Q And the certificates of analysis are also in that booklet, in Exhibit 1?

A Yes. I have the --

Q Copies. You have the --

A -- I have the --

Q -- originals with you.

A -- I have the originals with me, yes.

Q Right.

THE COURT:

Thank you.

MS. SZABO:

This is for prelim, so --

A Oh.

1 THE COURT: Yes, I understand. And if I do not hear any
2 objection ultimately to the manner in which the evidence is going in, then I will assume
3 that --

4
5 MS. SZABO: Thank you. So let's go back --

6
7 THE COURT: -- it is not objected to.

8
9 MS. SZABO: Sorry.

10
11 THE COURT: Go ahead.

12
13 Q MS. SZABO: So you've done a summary of the events that
14 occurred that evening. Now, can you detail your role, please?

15 A Certainly. So I conducted a traffic stop on GAD'S vehicle to check his
16 impairment -- or to check for impairment. He pulled over no problem. I conducted a
17 passenger-side approach on the vehicle. When I dealt with GAD I noticed a few
18 things. The first thing I noticed was that he greeted me and he had his documents
19 ready for me. And that, in my -- like, I've done thousands of traffic stops over my 13
20 years in the RCMP. That's very rare that that happens. That's -- that's out of the
21 ordinary. Normally I introduce myself to someone and ask for their documents.

22
23 I advised Mr., excuse me, GAD the reason for the stop, asked him for his -- or he
24 had already given it to me. But I asked him where he was coming from, and he said
25 he was coming from Vancouver, he was heading back to Calgary, and he had been out
26 to Vancouver for a couple of days to see some friends. His answers were very
27 quick (UNREPORTABLE SOUND) like, very quick. He was very nervous when
28 he dealt with me. I remember he had his wallet in his right hand, and he was tapping
29 his wallet on his right thigh, and just seemed very, very fidgety when dealing with me.

30
31 While I was standing at the side of the vehicle, I could detect an odour of raw cannabis
32 marihuana. I also observed some air fresheners. I could smell the odour of -- of air
33 freshener in the vehicle, and I could also see two different types of air freshener.
34 There was your plastic one that hangs from your rear view mirror, and then there was
35 also a vent clip there. There was some luggage in the back. There was some golf
36 clubs. And I thought -- kind of thought that was a little weird given that it's the end of
37 October, and it was really cold that night, I remember.

38
39 So I asked GAD if he had any -- consumed any alcohol. He said he hadn't, he hadn't
40 consumed any cannabis. Now that cannabis is legal, I -- I ask people if they
41 consume it. And he -- I think I asked him too what he did for a living. He said he

1 owned a Subway. So at that point I returned back to my police vehicle.

2
3 When I was at my police vehicle, I -- I remember telling Mr. -- Constable that at the
4 very least on this stop we -- I could smell the odour of cannabis from the
5 passenger side and that we would be doing a *Gaming, Liquor and Cannabis Act* search
6 to make sure that there was no cannabis within reach of him. But I conducted CPIC
7 and PIP checks on him.

8
9 Now, CPIC, Your Honour, is the Canadian Police Information Centre. It's a database
10 in which we -- like, all the police services in Canada --

11
12 MR. FAGAN: I wonder, Your Honour, if, with respect, the
13 constable might slow down just a bit.

14
15 A Oh, sure, yeah.

16
17 THE COURT: If you could. Thank you.

18
19 A Yeah. No, I'm sorry, yeah.

20
21 THE COURT: No, that is okay.

22
23 Q MS. SZABO: And -- and, constable, Her Honour is very
24 familiar with the police information systems, having been a former Crown
25 prosecutor --

26 A Okay --

27
28 Q -- so you don't --

29 A -- I can --

30
31 Q -- need to explain that to her.

32 A -- I can skip that. You know it. PIP is Police Information Portal?

33
34 THE COURT: You know what, do not skip it.

35
36 A Okay.

37
38 THE COURT: Yes, it is okay.

39
40 A Okay.

41

1 THE COURT:

I want to hear all of what we have got.

2

3 A Okay.

4

5 Q MS. SZABO: Sorry. Okay.

6 A So CPIC, the Canadian Police Information Centre, it is a central database that all the
7 police services in Canada use to -- to -- so things like warrants, criminal records, and
8 conditions and special -- special interests, like SITS is what we call them, stolen
9 vehicles, driver's license information, things like that. Every police service in Canada
10 is run by (INDISCERNIBLE) but every police service has it -- has access to it.

11

12 I conducted the queries on GAD on CPIC, and there was nothing, nothing
13 erroneous.

14

15 Then I conducted checks on the Police Information Portal. Now, the Police
16 Information Portal is a different system, which some but not all police services in
17 Canada upload their records management system. So, Your Honour, if you call a
18 noise complaint in RCMP jurisdiction tonight, there's going to be a record of that in
19 our records management system. I could use PIP to see that. So if you were in
20 Edmonton, if you lived in Edmonton, I could run your name and see that tonight -- or,
21 like, last night, we'll say, you called in a noise complaint.

22

23 So when I ran GAD on the Police Information Portal, I noticed that he had a 2012
24 file from Drumheller where he was charged out of a traffic stop, and essentially the
25 investigating officer had seized half a kilogram of cocaine out of the trunk of the
26 vehicle he was driving.

27

28 So as I'm reviewing this, I'm looking out the window, like, out my -- my wind shield
29 at GAD and I can see that GAD is still really nervous. He's fidgety. He's -- I
30 remember he had his hand kind of up by his face, and he was picking with his
31 thumbnails. He was, excuse me, self-grooming, things like that. His -- his
32 nervousness -- I think I say in the video he's freaking out. His nervousness
33 hadn't come down during the traffic stop but, in my view, had -- had increased.

34

35 Now, I've been working on -- in a traffic service role for seven years. It's not
36 abnormal for people to be nervous when you're dealing with the police. I have been
37 pulled over myself. I'm a police officer, and I have been nervous for that first few
38 seconds. But normally that nervousness abates and goes down. GAD'S did not.
39 And in my training and experience, people that have contraband or that have
40 drugs in their vehicle are extremely nervous when dealing with the police.

41

1 So at this point I'm -- I'm sitting in my car, and I am seeing these indicators and what
2 they mean to me. I have someone who has made a quick trip from Vancouver.
3 Vancouver, pursuant to my training and experience, is a source location for drugs. It
4 has a port, it has a major airport, and it has a border. Drugs are smuggled into
5 Vancouver and then (INDISCERNIBLE) down the TransCanada to cities like Calgary,
6 Edmonton, Regina and Saskatoon and further on. Excuse me. His trip was quick.
7 It's -- it's a full day of driving to get to Vancouver from Calgary. And he said he went
8 out for a couple of days. I'm not going to say that people don't go out for a couple of
9 days to see friends, but I've stopped drug traffickers and drug dealers before, and they
10 have said that they have been out for a couple of days. It's just -- I found it to be a bit
11 of a vague reason (INDISCERNIBLE).

12
13 I had an odour of air freshener, which was strong. And in my training and experience,
14 people use air freshener to mask the odours of controlled substances in the vehicle. I
15 also had the odour of cannabis marihuana.

16
17 So when I was sitting there kind of reviewing and -- and mulling over what I had in
18 front of me, I formed reasonable and probable grounds that GAD had drugs in his
19 vehicle. There are times when I have a lot of indicators and I become suspicious
20 and would go to a detention, but in this case I felt that for three reasons: Number 1, I
21 could smell raw cannabis in GAD'S vehicle; Number 2, his nervousness had gone
22 from very nervous to almost extremely nervous while I was dealing with him; and
23 Number 3, he had been caught before, granted seven years ago, but still he had
24 been caught before out of a traffic stop, and half a kilo of cocaine was seized. I felt
25 that that elevated me (INDISCERNIBLE) suspicion, I would have had two grounds for
26 arrest.

27
28 So at that point I contacted Constable -- or I actually didn't contact. I had asked
29 for another car, and Constable was the one that answered. He attended my stop. I
30 just quickly kind of ran things by him, told him I was going to arrest GAD, and then
31 got out, asked GAD to step out of his vehicle. He complied. GAD was 100 percent
32 compliant throughout the entire investigation. And I advised him that he was
33 under arrest for possession of cannabis for the purpose of distribution, because I
34 could smell cannabis. But his history also was of cocaine, so I also placed him under
35 arrest for possession for the purpose of trafficking.

36
37 I subsequently advised him of his right to a lawyer, which he under -- he told me he
38 understood. And he answered "yes, please" when he wanted -- when I asked him if he
39 wanted to speak with a lawyer. I also advised him he didn't have to say anything to
40 any police officer, but anything he would say could be used in evidence. He was
41 handcuffed and searched and placed in the back of my police car.

1
2 At that point we began to search GAD'S vehicle incidental to arrest for
3 controlled substances relating to the investigation. It was very quickly that we kind of
4 honed in on the back cargo area of GAD'S vehicle. There were several
5 anomalies that we noted that indicated to us that there could be an aftermarket
6 compartment in GAD'S vehicle.
7

8 MS. SZABO: Madam clerk, would you kindly provide the
9 witness with the Exhibit 2?

10
11 THE COURT CLERK: (INDISCERNIBLE).
12

13 A Thank you.
14

15 MS. SZABO: And I believe Your Honour has a copy?

16
17 THE COURT: I do, yes, I have a copy.
18

19 Q MS. SZABO: So while you're talking, perhaps walk us
20 through any pertinent photos.

21 A Certainly. So I do apologize to the Court that my photos are of poor quality. My
22 camera was not happy taking photos in the dark. But if you start just on page 1 on the
23 bottom right-hand corner of the photo, there's a red 1. That is the back of
24 GAD'S vehicle. Then if you flip to the next page, you can start to see what I'm
25 talking about. This is in the top picture on page 2, there's MDF framing. So MDF is
26 -- it's a particle board that you use in construction. That shouldn't be in a -- like,
27 that's not factory from a motor vehicle. You can also see in the bottom picture that
28 there's differences in the plastic and the carpet. If you flip to page 3, you can see on
29 the top of page 3 there's actually Sharpie marker that have -- that has coloured in
30 around the MDF framing. And that again is not factory. It indicates to us that --
31 that there was work done on the vehicle afterwards, aftermarket, and
32 suggested there was (INDISCERNIBLE) compartment. And ultimately it was
33 Corporal that was able to defeat the compartment and get it -- get it open.
34

35 MR. FAGAN: Well, if it's of assistance to my friend, defence is
36 prepared to concede, this should save our friend a lot of time, that the police conducted a
37 search of the vehicle, a warrantless search of the vehicle, a search purportedly incidental
38 to arrest, and as a result of that search, they found what they believed to be a "secret"
39 compartment containing 5 kilograms, approximately, of a controlled substance, cocaine,
40 and another kilogram, approximately, of another controlled substance, i.e., fentanyl.
41

1 THE COURT: Okay.
2

3 MR. FAGAN: There you go.
4

5 THE COURT: If you want to just either make -- we can make
6 that admission, or you can lead that evidence through the evidence. It is up --
7

8 MS. SZABO: I -- I'm happy --
9

10 THE COURT: -- to you.
11

12 MS. SZABO: -- I'm happy to take that admission and --
13

14 THE COURT: Okay.
15

16 MS. SZABO: -- and expedite proceedings. This is just a
17 preliminary inquiry, so --
18

19 THE COURT: No, okay.
20

21 MR. FAGAN: No, we don't need to hear how they lifted the
22 carpet or moved this around or what he thought or what -- this is a prelim.
23

24 THE COURT: Okay.
25

26 MS. SZABO: And that -- that's fine.
27

28 THE COURT: Okay. Well --
29

30 Q MS. SZABO: Okay. We're going to jump straight to your
31 video.
32 A Okay.
33

34 Q I understand you have a police camera in the car.
35 A I did, yes.
36

37 Q And we have that video here to show you today.
38

39 Can you -- just before we start with the video, can you explain how that works, how
40 the video -- what -- what -- when -- when we take a look at the video, what are we
41 seeing, and how far back in time does it go? When does it actually happen?

1 A So I'm not actually sure how far back it goes, but what happens is, is I turn my lights
2 on, and the camera starts recording. And it records so far back. I actually don't know
3 if it's 30 -- I think the old system was 30 seconds. I want to say this is a bit less than
4 that.

5

6 Q And how long after watching the accused cross the fog line did you turn on your
7 camera, like, your car?

8 A Oh, I think I turned them on right away. I think I...

9

10 Q Okay. That was my question. All right. We're going to watch the VICS.

11

12 Madam clerk, do I just start?

13

14 THE COURT CLERK: Yes.

15

16 Q MS. SZABO: Okay. Oops. Sorry, I have a Mac, so I'm not
17 familiar.

18

19 A No, that should work.

20

21 Q Have I got it going?

22 A No --

23

24 Q No, okay, let me try --

25 A -- hit the play button over there.

26

27 Q Maybe hitting play would be better, yes.

28 A And -- and maybe you want to put that microphone -- so right above the indicator dial
29 there's "wireless" and "cabin." Wireless is my lapel mic, and that's where you -- you'll
30 hear me speak. So just move that slider all the way over. I can come do this
31 (INDISCERNIBLE).

32

33 Q I don't know what you're talking about, sorry. But let's see if I need to do anything.
34 And if I do need to do anything, I'll pause it, and perhaps I'll seek permission from the
35 Court for you to do it?

36 A The -- the way --

37

38 MS. SZABO: For the interim I might be seated, Your Honour?

39

40 THE COURT: Yes, of course.

41

1 (VIDEO PLAYED)

2

3 A The way it is right now, you're only going to hear what happened in the car. You're
4 not going to hear what happened.

5

6 MS. SZABO: Sorry, I'm just pausing it for a moment.

7

8 THE COURT: Yes.

9

10 Q MS. SZABO: Constable, is this where you want me to
11 move something, the wireless or --

12 A Yes, so --

13

14 Q -- (INDISCERNIBLE)?

15 A -- move that indicator where it's on "cabin" --

16

17 Q Yeah.

18 A -- over to "wireless," and that will be my lapel mic.

19

20 Q So just move the cabin indicator over to the left?

21 A Yeah.

22

23 Q Okay. Thank you.

24

25 (VIDEO PLAYED)

26

27 MS. SZABO: Your Honour, that's all (INDISCERNIBLE).

28

29 THE COURT: Okay.

30

31 MS. SZABO: And just the usual, I'll ask two Crown questions,
32 even though I'm sure they're admitted, and I'm sure there's going to be evidence that
33 (INDISCERNIBLE) abundance of caution.

34

35 Q MS. SZABO: Do you see the individual you arrested that night
36 today here in court?

37 A Yes. He's seated right -- he's the only person on this side of there.

38

39 Q Identifying the accused for the record.

40

41 THE COURT: Noted.

1
2 Q MS. SZABO: And this all took place where?

3 A At or near Canmore, in the province of Alberta.

4
5 Q Thank you.

6
7 Those are all my questions. Please answer any questions Mr. Fagan may have --

8
9 THE COURT: Thank you.

10
11 Q MS. SZABO: -- or the Court.

12
13 THE COURT: Did you want to mark the video before we start?

14
15 MS. SZABO: Yes, please and thank you.

16
17 THE COURT: All right. Exhibit 3, then, will be a portion of
18 the video that has been played. I do not know if it has a end date -- or end time that you
19 want to note for the record? I cannot see it on my screen. Or do you just want the whole
20 thing to go in?

21
22 MS. SZABO: I'd like the whole thing to go in --

23
24 THE COURT: Okay.

25
26 MS. SZABO: -- if there's no objection?

27
28 MR. FAGAN: No objection.

29
30 THE COURT: All right. Exhibit 3, and the video recording of
31 the arrest.

32
33 **EXHIBIT 3 - Video Recording of the Arrest**

34
35 MS. SZABO: And in case Mr. Fagan wants to replay anything,
36 I'll leave it in (INDISCERNIBLE).

37
38 THE COURT: Okay.

39
40 MR. FAGAN: Thank you very much.

41

1 THE COURT: Okay. Go ahead.

2

3 MR. FAGAN: Thank you.

4

5 THE COURT: Thank you, Mr. Fagan.

6

7 **The Witness Cross-examined by Mr. Fagan**

8

9 Q What shift were you working that day, constable?

10 A I was working till midnight. I'd have to refer to my notes to make sure.

11

12 Q And when would those notes have been made?

13 A At the time, that day.

14

15 Q At the time of what? Starting your shift, the middle of your shift, the end of your shift,
16 the next day?

17 A At the start.

18

19 Q Okay. And they're in your own handwriting?

20 A Yes.

21

22 Q No changes made, alterations --

23 A No.

24

25 Q -- since then? Okay.

26

27 Your Honour, might he be allowed to refer to his notes to refresh his memory with
28 respect to answering the question of what shift he was working?

29

30 THE COURT: Yes, you may.

31

32 A Okay, thank you.

33

34 THE COURT: Thank you.

35

36 A It was 3 PM till 1 AM.

37

38 Q MR. FAGAN: Okay. So October 29th, 2019, your shift started
39 at 3 PM and was at least scheduled to conclude at 1 AM on the 30th, right?

40 A Correct, Sir, yes.

41

- 1 Q Okay. And tell the Court, at what time did you set up at the entrance gate to the Banff
2 National Park?
- 3 A After supper. I remember that night we went and had supper right away, so I would
4 have to -- if I do, it would be a guess to say 6:00.
5
- 6 Q Okay. Take a look at your notes and see if you've got a time entry around 18:00 plus.
7 A Oh, yeah, I do. I have a -- a entry that I tested (INDISCERNIBLE) 6:28.
8
- 9 Q So at 6:28 PM, is that approximately when you set up at the entrance to Banff
10 National Park?
- 11 A Yes.
12
- 13 Q And by entrance to Banff National Park, correct me if I'm wrong, we're talking about
14 the entrance to Banff National Park that is on the west end of Canmore?
- 15 A Yes, yeah.
16
- 17 Q Okay. And you're set up, correct me if I'm wrong, to monitor traffic travelling
18 eastbound on Highway number 1?
- 19 A That evening, correct, yes.
20
- 21 Q Okay. So approximately 6:30 on October 29th, 2019 , you are in a stationary position
22 at the Banff entry gate?
- 23 A Yeah.
24
- 25 Q And there you and some other officers are monitoring eastbound traffic on Highway
26 number 1, i.e., the TransCanada Highway?
- 27 A Yes.
28
- 29 Q All right. So who else is set up there with you at 6:30 PM?
- 30 A I don't know who is there exactly at 6:30, but the -- we were all working at that point,
31 at that spot. So --
32
- 33 Q Okay. Well, that -- say 6:30 to -- and -- and when do you see the Rav 4 go by?
- 34 A Just before ten after 8, probably 8:08, yeah.
35
- 36 Q So around 8:08 you see the Rav 4 go by?
- 37 A M-hm.
38
- 39 Q Okay. And at that time, approximately, who else is set up there in a stationary
40 position with you at the Banff gate?
- 41 A I don't think anyone was. I think they were all out on stops. I don't recall anyone

1 being there.

2

3 Q Okay. So you're sitting there in a -- a marked vehicle, right?

4 A Okay, technically it's -- it's (INDISCERNIBLE) so it's -- it has a light bar on top of it.
5 The classification is unconventional. It has decals, but they're the same colour as the
6 car. They just reflect it. So yes and -- and no. It looks like a marked vehicle, but it
7 doesn't have, like, the red and blue, the colourful decals on it.

8

9 Q Okay. You -- you got a red light on the top, right?

10 A Yeah.

11

12 Q And the only vehicles that are supposed to have a red light on the top are police
13 vehicles, right?

14 A Yes.

15

16 Q All right. So you have got a red light on the top. You have got the big buffalo on the
17 side, the RCMP buffalo, right, the insignia --

18 A Yes.

19

20 Q -- right? On both sides --

21 A Yes.

22

23 Q -- right?

24

25 And what else is on the exterior vehicle to indicate to members of the public that it's a
26 police vehicle?

27 A RCMP GMC on either side of, excuse me, the buffalo. I want to say at the front
28 there's police in the -- kind of just down from (INDISCERNIBLE). There's a little
29 Mountie on a horse at the back. And I can't say for sure if there's (INDISCERNIBLE)
30 on the back. I think there is, but the decals are -- are different (INDISCERNIBLE) put
31 on, so...

32

33 Q Okay. And these are decals that can be seen by members of the public as they're
34 driving by your vehicle?

35 A Yes, Sir.

36

37 Q Okay. So it's clear to anyone driving by, that is, eastbound on Highway number 1 that
38 cares to take a look in your direction, that you and Constable are sitting in a police
39 vehicle?

40 A Yes.

41

1 Q Okay. So you're sitting there, and are you parked perpendicular, that is, at a right
2 angle to Highway number 1 as you're monitoring?

3 A Yes, Sir, yeah.

4

5 Q So you're not facing traffic?

6 A I'm facing it as they go by. If this was Highway 1, I'm parked like this.

7

8 Q Okay. Perpendicular?

9 A Perpendicular.

10

11 Q Yeah. Not in the opposite direction of their traffic?

12 A That's right, yes.

13

14 Q Okay. So you're looking -- your line of vision, if you're looking straight ahead through
15 the wind shield of your police vehicle is across those two lanes of eastbound traffic?

16 A It's actually three lanes there --

17

18 Q Okay. Across those --

19 A -- (INDISCERNIBLE).

20

21 Q -- three lanes of --

22 A Yeah.

23

24 Q -- eastbound traffic?

25 A Yes, Sir.

26

27 Q Okay. But you're also looking at the highway to your right to see the eastbound traffic
28 as it's approaching your position?

29 A Yes.

30

31 Q And are you running radar at about 8:08 PM on October the 29th, 2019?

32 A I was running radar on that night. I don't know if I was running radar at that exact
33 moment.

34

35 Q Okay. And tell the Court when did you first lay eyes on the Rav 4?

36 A When he would have got to about this part of my vision, like, he was at the Banff gate,
37 he comes, exits the national park, and I see him at about that (INDISCERNIBLE) in
38 my vision.

39

40 Q Okay. I'll try to make it easier on you. So you're sitting there, you're perpendicular to
41 the eastbound lanes of Highway number 1, and do you see the Rav 4 approaching your

1 position from the west?

2 A Yes.

3

4 Q Okay. And how far from your position is the Rav 4 as it's approaching through the
5 west, like, a kilometre, a half a kilometre, hundred yards? Approximately.

6 A When he goes by me, like, might be 50 yards before I noticed him. I don't recall if --
7 so I understand when I'm sitting in there --

8

9 Q M-hm.

10 A -- I'll look, and I'll look to my right kind of where the accused is, that exit sign. You
11 see what's coming, there's a (INDISCERNIBLE) coming, something catches my eye.
12 When I saw his vehicle, it would have been about kind of when he was -- he was
13 straight in front of me to maybe, we'll say, 15 yards off. And he would have been --
14 I'm trying to think how far back I was sitting from. Typically I like to stay further
15 back from traffic so I can get a better kind of field of view. So maybe 50 metres,
16 maybe? That's --

17

18 Q Okay.

19 A -- that's a guess, so...

20

21 Q Okay. So just to back up. Is it that you didn't see the Rav 4 until it was directly in
22 front of you, or did you see the Rav 4 off to your right as it was approaching your
23 perpendicular position?

24 A Well, I don't recall seeing him off to my right. I just recall seeing him kind of almost
25 to my left, all -- he's almost past me as he comes by.

26

27 Q Okay. And was the Rav 4 travelling amongst other vehicles when you first observed
28 it?

29 A I think he was at the tail end of some vehicles, I -- if I recall.

30

31 Q Okay. And the vehicle as it went by you was being driven in a -- a perfectly lawful
32 manner?

33 A At that point I had no reason to stop him.

34

35 Q And you had no reason to pull out and follow him either, did you?

36 A I just noticed that there was a lone man in the vehicle. It looked like he had a bit of a
37 stress reaction to the police on the highway, so I -- that's why I pulled out to follow
38 him. He hadn't committed a *Traffic Safety Act* offence at that point, so --

39

40 Q Okay. Back up a bit.

41

1 When you first see the vehicle, he's pretty much in a straight-ahead position from you?

2 A M-hm.

3
4 Q And the vehicle's being driven in a perfectly normal, lawful manner?

5 A Yes, Sir.

6
7 Q And there's nothing wrong with the vehicle itself in terms of equipment or mud flaps
8 or tinted windows, nothing like that of concern to you at that time?

9 A At that time, no. Like, at night it's hard to see if it actually has mud flaps, so...

10
11 Q But it was of no concern -- the equipment, the operational nature of that vehicle in
12 compliance with all *Highway Traffic Act* laws and regulations, that was of no concern
13 to you at that time as you observed the vehicle driving by, right?

14 A Yeah. As far as I could tell, it's lawful. There wasn't anything --

15
16 Q Right.

17 A -- that was -- it was fine.

18
19 Q It was a lawful vehicle being driven in a lawful manner?

20 A Yes.

21
22 Q And tell the Court again, please, why did you pull out and follow that vehicle?

23 A So I look -- when I'm sitting, monitoring traffic, I'm looking for obviously traffic --

24
25 Q Listen, I don't -- listen, I don't want to know your general protocol. I want to know
26 why you pulled out and followed that vehicle.

27 A Cause it looked like he had a stress reaction to the police being on the highway.

28
29 Q A stress reaction. Explain.

30 A So when I'm sitting on the highway, watching traffic, I'm looking for traffic safety
31 offences, obviously, tinted windows, mud flaps, and --

32
33 Q But you didn't see any --

34 A Not -- no, no.

35
36 Q -- you already told us that, so move on, okay?

37 A No, I didn't. But I'm also looking for people that might be uncomfortable that the
38 police are on the highway. Now, in my experience, most people when they see a
39 police (INDISCERNIBLE), they look down at their speedometer. But some people
40 be -- push themselves way back in their seats, they put their hand up next to them,
41 they -- or they look uncomfortable with the police on the highway. I generally go run

1 their license plate, make sure that the vehicle's not stolen and it has registration, and
2 things like that, because they look uncomfortable with me sitting there. Some people
3 stare at me. Some people look (INDISCERNIBLE) some people look uncomfortable
4 and (INDISCERNIBLE) this gentleman looked uncomfortable with the police there.
5

6 Q You used the term stress -- what was it, stress -- "stress reaction"?

7 A Yeah, he had, like, a -- a stress reaction. Like, he -- he looked uncomfortable, like, he
8 was stressed that the police...
9

10 Q And what was it that he did or did -- or didn't do that led you to draw the conclusion
11 that there was a stress reaction of concern?

12 A To my recollection, he sat to the back of his seat, he was kind of pressed back in the
13 seat.
14

15 Q And did his seat remain in the same position when you pulled him over?

16 A Oh, I couldn't tell. I -- I couldn't tell where his physical seat was.
17

18 Q Well, you looked right through the passenger window, didn't you?

19 A Oh, when I pulled him over, sorry. I -- I don't know if he moved it when he
20 (INDISCERNIBLE).
21

22 Q Did it look like he moved it?

23 A No.
24

25 Q No, it didn't. It looked like it was in the same position when you were at the
26 passenger's window as when the vehicle drove by, right?

27 A Yes, as far as I could tell.
28

29 Q Okay. So tell us again exactly why you pulled out and followed that vehicle.
30

31 MS. SZABO: Your Honour, I think he's asked that about three
32 times now and has had the same --
33

34 MR. FAGAN: Four --

35 MS. SZABO: -- answer.
36

37 MR. FAGAN: -- times, actually, but I still haven't got a straight
38 answer. And that's what I'd like.
39

40 MS. SZABO: Your Honour, I respectfully submit he's given
41

1 his answer.

2

3 THE COURT: I do not think we are at that line yet. He can
4 answer. Go ahead and --

5

6 A (INDISCERNIBLE)

7

8 THE COURT: -- answer your question.

9

10 A Sorry, could you repeat one more time, please?

11

12 Q MR. FAGAN: Yes. Why did you pull out and pursue that Rav
13 4, that vehicle?

14 A Because it looked like he was uncomfortable with me being on the highway.

15

16 Q And you draw that conclusion based upon what observation?

17 A That he was kind of -- how do I -- how do I articulate this? Just in comparison to the
18 general public that have passed me that evening, in my career, he looked like he had
19 an adverse reaction to me being on the side of the highway. Sometimes there are
20 things that I see that I just cannot articulate. At this point -- or in this situation he
21 looked like he was uncomfortable that I was (INDISCERNIBLE).

22

23 Q And what was it that you observe that led you to conclude that he was uncomfortable
24 with you being there?

25 A He -- he looked -- the -- the best answer I can give you, Sir, is he looked rigid and --
26 and pushed back in his seat. Like, he was -- like -- how do I try to explain this? That
27 he -- if I was standing up here being cross-examined by you and I was standing here
28 with my hands -- like, I was a little aggressive, uncomfortable with -- with what was
29 going on and I was very tense, like, this is what it would look like. That's kind of the
30 way I felt, like, he was tense when he went by. He looked like he had a -- he had a
31 reaction that looked tense to the presence of my police car on the highway. And -- and
32 that's why I -- that -- I don't think I can articulate that in -- better to you, Sir. I'm sorry.
33 I don't recall a hundred percent. I just had a -- a visual of him in my mind from when
34 he went by. I actually said to Constable like, Let's go pull out after this guy and see
35 -- run his plate, and things like that, so...

36

37 Q And you're not in a position to share with this Court what your visual was?

38 A I'm trying -- I'm trying to recall, I'm trying to explain it, but --

39

40 Q Well, what about your notes? You made lots of notes, lots of handwritten notes. You
41 did up general reports, supplementary reports. Would referring to your notes or your

1 reports assist you relative to this visual of yours that caused you to go out and chase
2 this vehicle?

3 A I didn't put anything.

4

5 Q Not a single thing?

6 A Not a -- not a single thing, no.

7

8 Q And there was nothing about the vehicle itself, correct me if I'm wrong, that caused
9 you to go out and chase the vehicle?

10 A The vehicle -- from what I could see at that point, the vehicle was legal.

11

12 Q And you had no prior information on a vehicle matching that description that might be
13 involved in criminal activity?

14 A Nothing. I knew nothing of GAD or his vehicle prior to pulling him over.

15

16 Q It -- let me ask you this: There's a group of you peace officers doing your job at the
17 Banff entrance gate on this date, early -- early-evening hours of October 29th, 2019,
18 right?

19 A Yes, Sir.

20

21 Q And was there a police service dog there as well by chance?

22 A No, we only have one, and the constable was off that night.

23

24 Q So there was no police service dog?

25 A No, Sir.

26

27 Q Huh . Is that why you jumped right to reasonable grounds instead --

28

29 (PORTION OF PROCEEDINGS NOT RECORDED)

30

31 THE COURT CLERK: It's working now. Thank you.

32

33 THE COURT: Thank you.

34

35 MR. FAGAN: Thank you, madam clerk.

36

37 Q MR. FAGAN: So as you're chasing the RV (sic), as you're
38 closing the distance between your vehicle and the RV, you're speeding.

39 A (NO AUDIBLE RESPONSE)

40

41 Q Okay. And you're coming up on the RV in the lane that is, what, just adjacent, just to

- 1 the left of the RV?
- 2 A I'm in the passing lane.
- 3
- 4 Q Okay. And then as you get close to the RV, you initially remain in that passing lane,
- 5 right?
- 6 A Yes, Sir.
- 7
- 8 Q But you slow down, and you -- you -- your -- your speed reduces to approximately that
- 9 of the RV for a while?
- 10 A Yes, Sir.
- 11
- 12 Q And you -- for lack of a better word, you -- you -- you track the -- the RV's
- 13 (INDISCERNIBLE)?
- 14 A I -- I followed him for a while, yeah.
- 15
- 16 Q Yeah. And you're kind of sitting in his blind spot, aren't you?
- 17 A I don't know if I'm in his blind spot. I'm off to his left. I -- I can't say for sure I was in
- 18 his blind spot. I try to stay out of his blind spot so that --
- 19
- 20 Q Well, we've got the video. You're to his left and slightly behind him, right?
- 21 A Approximately.
- 22
- 23 Q And that would put you in what most people would refer to as the blind spot .
- 24 A I would be close to his blind spot. I don't know if he could see me or not, so...
- 25
- 26 Q And it was wasn't until you were sitting in what may have been his blind spot that you
- 27 observed the vehicle pull over and slightly touch the white line to the right of his
- 28 vehicle, correct?
- 29 A Correct, yes.
- 30
- 31 Q No problem with the driving before then, right?
- 32 A No, nothing.
- 33
- 34 Q All right. And then having observed the vehicle touch or proximate this towards the
- 35 white line to its right, you pull in behind the Rav 4, right?
- 36 A Yes, Sir.
- 37
- 38 Q And when you pull in behind the Rav 4, you activated your emergency lights?
- 39 A Correct.
- 40
- 41 Q The red lights on the top of the --

- 1 A Red and blue, yes.
2
- 3 Q And correct me if I'm wrong, the Rav 4 then pulled properly and promptly to the side
4 of the road?
5 A Yes.
6
- 7 Q And that's not always the case, is it, when you activate your lights?
8 A Sometimes it's not. Sometimes they slam on the brakes. Sometimes they pull in.
9 That's correct.
10
- 11 Q But nothing like that happened here.
12 A He does nothing (INDISCERNIBLE).
13
- 14 Q Sometimes when you activate the lights, there will be a lot of suspicious movement by
15 the occupant of the vehicle.
16 A Correct, that's happened.
17
- 18 Q Moving around or looks like they're moving things around, right?
19 A Yes, Sir.
20
- 21 Q Nothing like that in this situation?
22 A Not in this situation, no.
23
- 24 Q And sometimes when you go to pull a vehicle over, sometimes items will fly out of a
25 window or two?
26 A So I don't ever recall having that happen to me, but I have some friends that that's
27 happened to --
28
- 29 Q Yeah.
30 A -- so I know it happens.
31
- 32 Q Right.
33 A It's never happened to me.
34
- 35 Q Nothing like that happened here?
36 A No, no.
37
- 38 Q Okay. So no suspicious movement on the part of the vehicle, right?
39 A Right.
40
- 41 Q No suspicious movement on the part of the occupant, right?

- 1 A Oh, when -- clarify, when they're pulling over, yes, nothing suspicious.
2
- 3 Q Hmm. Or when you're approaching the vehicle, no suspicious movement on the part
4 of the occupant?
5 A Not that I could see, no.
6
- 7 Q And GAD he remained properly seated in the vehicle as you approached?
8 A As far as I can recall.
9
- 10 Q Okay. Because sometimes you'll pull over, and lo and behold, the driver jumps right
11 out and starts walking back towards the patrol car --
12 A Yes --
13
- 14 Q -- right?
15 A -- it's not a very comfortable feeling.
16
- 17 Q All right. Nothing like that happened here?
18 A (INDISCERNIBLE)
19
- 20 Q And, as far as you recall, his seat belt was properly affixed?
21 A I can't recall if he had his seat belt on or not, Sir. There was nothing to suggest that he
22 wasn't wearing it.
23
- 24 Q Okay. And when you approached, he readily produced his registration and insurance?
25 A Yeah.
26
- 27 Q Okay. And did you say that that is a rare occurrence?
28 A Yeah, it doesn't -- I don't find it happens very often. Normally I have to ask for them.
29 Normally people don't have it ready for me.
30
- 31 Q Well, you correct me if I'm wrong --
32 A Yeah.
33
- 34 Q -- but you -- you've pulled over thousands of vehicles, right?
35 A Yes, Sir.
36
- 37 Q And in those thousands of instances, again, correct me if I'm wrong, one of the first
38 things to you when you walk up is ask for a registration and insurance?
39 A That's normally the first thing, yeah.
40
- 41 Q Right? 999 times out of 1,000, unless you know the person, right?

1 A Or unless they could be doing something that I need to take control of. But that wasn't
2 the case in this instance. Normally the first words out of my mouth are, Hey, I need
3 your driver's license, registration (INDISCERNIBLE).

4

5 Q Yeah. But in the thousands of occasions when you pull vehicles over, you ask for
6 registration and insurance, so a motorist -- and that's the practice of most peace
7 officers, right?

8 A Yes, Sir.

9

10 Q Sure.

11

12 So correct me if I'm wrong, is -- is a motorist simply not being polite and efficient by
13 having the registration and insurance there for you?

14 A It could be the case, Sir, yes. And there have been times that I'm sure that has
15 happened. But all -- in my experience, with the majority of vehicles I've stopped,
16 most people wait till I ask for it. Because a lot of people don't want to sift through --
17 through their car because they don't want me to think I'm (INDISCERNIBLE). That's
18 just been my experience --

19

20 Q Just a --

21 A -- with people.

22

23 Q -- sec. Are you telling the Court that when you approach a motor vehicle in uniform
24 with a patrol car, with the lights flashing in behind, that you find it suspicious if
25 somebody's waiting there for you with their registration and insurance? Is that what
26 you're telling this Court?

27 A I find it odd, yes. But I find it odd combined with everything else. It --

28

29 Q Forget about everything else. Are you telling this Court that you find it suspicious that
30 a motorist is sitting there with the registration and insurance, waiting for you to look at
31 it?

32 A I'm -- I'm -- Sir, I'm telling the Court that normally isn't the case, that normally that
33 doesn't happen, that that's -- that's an (INDISCERNIBLE) that people have their
34 documents in hand ready -- ready.

35

36 Q And then the next thing you do, one of the things that you always do, 990 times out of
37 1,000, is you ask for his license --

38 A Yes.

39

40 Q -- right?

41 A Yeah.

1
2 Q And he had absolutely no difficulty understanding your request?

3 A No.

4
5 Q And immediately retrieved and provided -- located, retrieved, and provided you with
6 his driver's license?

7 A Yes, Sir.

8

9 Q Where did he get it from?

10 A I don't recall. I don't recall where he got his license.

11

12 Q And he displayed absolutely no indicia of impairment by alcohol or drug, right?

13 A Nothing that I could pick up on, Sir.

14

15 Q No.

16

17 And is it your testimony that you pulled the vehicle over to check on his sobriety?

18 A Yes, Sir.

19

20 Q Okay. When's the last time you charged somebody with impaired driving?

21 A I want to say it was October 2019. Now, I know that's been a while. COVID-19 -- so
22 in January, Your Honour --

23

24 Q Well, nobody's drinking and driving with the COVID situation, right?

25 A No, people surprisingly still are --

26

27 Q Hmm.

28 A -- quite a bit. In January of 2020 I was -- seconded my role on the Roving Traffic Unit
29 to be in the (INDISCERNIBLE) enforcement team and (INDISCERNIBLE) in
30 Calgary for three months. I wasn't pulling vehicles over. And then that abruptly
31 ended when COVID-19 started, so whenever they shut down, was mid March. Then I
32 came back to my regular duties. But our instructions were to only stop high-risk --
33 high-risk driving offences, so someone flying down the highway or driving curiously.
34 And we were -- essentially our instructions were to stay well in case members start
35 going down and I have to cover off on detachment.

36

37 So business as usual in stopping vehicles and looking for impaireds really didn't pick
38 up until mid summer, so...

39

40 Q Okay.

41 A There's -- there's a -- essentially I kind of felt like I was on a shelf for

1 (INDISCERNIBLE).
2

3 Q Okay. Let's get back to my question. So the last time that you charged somebody
4 with a DUI, impaired, or .08 was when?

5 A October 2019.
6

7 Q 2019.

8 A Yeah.
9

10 Q Okay. And before that how long had it been, how many months has it been today?

11 A That, I can't recall, Sir. I'd actually have to go look in the -- I'd pull PROS and -- and
12 on the files. I can't tell you just off the top of my head.
13

14 Q Okay.

15 A Apparently (INDISCERNIBLE) October 2019, cause that matter is still set for trial,
16 so...
17

18 Q Okay. Well, you don't do that many, do you?

19 A So I have done quite a few in my day. In 2016 --
20

21 Q Not talking about -- I'm talking about since you decided to be a drug cop.

22 A So I am not a -- a drug cop.
23

24 Q Pardon me?

25 A I'm not a drug cop.
26

27 Q Well, haven't you been involved in about 350 investigations -- drug investigations on
28 this roving drug unit?

29 A So I -- I've been involved through my career in --
30

31 Q No, no, I'm talking about when you're on the roving drug unit, haven't you been
32 involved in about 350 drug investigations?

33 A So while I've been on the Roving Traffic Unit, I --
34

35 Q Yes.

36 A -- don't know if it's been 300 and -- if I've been involved in 350 exclusively on the
37 Roving Traffic Unit, but I would say at least 350 because I'm taking into traffic
38 services in 2013.
39

40 Q Okay. Now, let's get back to just before you activated your emergency lights and
41 pulled the vehicle over. So you're tracking the vehicle, right?

1 A M-hm.

2

3 Q You can see a license plate on the R -- on the Rav 4, right?

4 A Yes, Sir.

5

6 Q And as a matter of officer safety, you run that plate through the system before you
7 approach that vehicle?

8 A Yes, Sir, yeah.

9

10 Q You run that vehicle in the system before you activate your lights?

11 A So I can't recall if I did that that time. I have ran them before I've -- I -- I turned on my
12 lights. I've ran them after I've turned on my lights. I cannot remember what I did in
13 this instance, whether I ran it while I was following behind him or whether I ran it
14 when I pulled him over.

15

16 Q Well, that's why you were tracking the vehicle in the left-hand lane, so you could get
17 the license number and so you -- and so you could run the plate, right?

18 A It would -- yeah, it would make sense that I would do that. I just can't remember when
19 I ran his license plate.

20

21 Q Okay. It would have been sometime before you activated the emergency lights?

22 A It -- it could have been, yes.

23

24 Q Yes.

25

26 And when you ran the plate, you received information on the vehicle and the
27 registered owner?

28 A Right, yes.

29

30 Q And the registered owner was GAD?

31 A Yes, Sir.

32

33 Q Okay. And before you activated the emergency lights you knew about that 2012
34 cocaine incident in Drumheller?

35 A So, no, I didn't. I did not know about that cocaine incident, so I ran him on PIP. I
36 remember kind of being surprised when I saw it. And in the video there's actually a
37 point where I'm -- I'm kind of mid sentence, and then I go "whoa."

38

39 Q You know, we're not talking about yourself --

40 A Yeah.

41

1 Q -- serving soliloquy, okay? We're talking about what actually happened.

2 A Well, no, that -- that's when I ran him on PIP --

3

4 Q Hmm.

5 A -- that's when I found this, Sir. I -- I did not know when I ran his license plate, when I
6 approached him, that he had that 2012 file. I didn't know about that 2012 file until I
7 was back in my police car and ran him on (INDISCERNIBLE).

8

9 Q Okay. Well, you know you ran the plate on CPIC or the system before you activated
10 your emergency lights.

11 A I can't recall if I did it before the emergency lights or after, Sir.

12

13 Q It will be your general practice to do it before so you know what you're going to be
14 dealing with, right --

15 A Yes.

16

17 Q -- right? You want to know that in case you're dealing with a police hater or a stolen
18 vehicle, right, that type of --

19 A Yes, yeah --

20

21 Q -- thing?

22 A -- a hundred -- no, a hundred percent, yes --

23

24 Q Absolutely.

25 A -- but...

26

27 Q And that night you had another younger officer with you, so you were responsible not
28 just for your own safety but for his safety?

29 A Yes, Sir.

30

31 Q And he was with you that night for the specific purpose not only writing traffic tickets
32 and picking up impaired drivers but to learn about criminal interdiction, right?

33 A That's right.

34

35 Q That's why he was with you?

36 A Yeah, he wanted to be exposed to criminal interdiction, yeah.

37

38 Q So he wasn't there with you to learn about impaired driving and traffic infractions,
39 right?

40 A No. Constable actually a fairly (INDISCERNIBLE) member, and he --

41

- 1 Q I'm sure he is.
2 A -- he's got a lot of impaireds and a lot of --
3
4 Q Uh-huh.
5 A -- (INDISCERNIBLE).
6
7 Q So why was he with you?
8 A To learn about criminal interdiction and get exposed to what my unit does.
9
10 Q Okay. Primarily drug investigations, right --
11 A So we --
12
13 Q -- primarily?
14 A -- so we do do a lot of drug investigations, but that's not what criminal interdiction is
15 (INDISCERNIBLE).
16
17 Q No, I don't need a definition of criminal interdiction. The bulk of what you do on that
18 driving unit is drug work, right?
19 A There is -- we do (INDISCERNIBLE) Sir, yes.
20
21 Q I know you do. The bulk of what you do is drug work?
22 A I ran my files for (INDISCERNIBLE) being before the trial, yes, before the prelim
23 yesterday, and I had 128 files from January 1st, 2019, until the date of this offence. Of
24 the 128 only 3 were drug investigations. So we -- we do -- our unit does seize a lot of
25 drugs. So we -- we do -- our unit does seize a lot of drugs, but it's not our primary
26 focus. We just -- there's a lot of drugs that (INDISCERNIBLE) and we intercept
27 them, so...
28
29 Q The registration, insurance, and driver's license that was produced immediately upon
30 request, all of those documents were in good order?
31 A I think so, yes.
32
33 Q Well -- well, you know so --
34 A Yeah.
35
36 Q -- right?
37 A I didn't write him a ticket for that, so...
38
39 Q And one of the -- you -- you've had pipeline training, right?
40 A Yes.
41

1 Q What is pipeline training?

2 A So I took my pipeline training November 2010, and it's a course that's the operation
3 pipeline convoy course, and it essentially teaches you to have a sense of heightened
4 awareness while you're at a traffic stop to recognize that there might be something
5 going on past the reason for (INDISCERNIBLE) stop. So if I stop you for speeding, it
6 teaches you to look out for any indicators of criminal activity that might be present
7 while I'm writing the speeding ticket.

8

9 Q Okay. So one of the things that you did in keeping with your pipeline training or
10 criminal interdiction training is you engage GAD in a Q and A, don't you?

11 A I do engage GAD in some questions and answers, but that I do for
12 (INDISCERNIBLE) I have to -- to be able to ascertain some sobriety. And I do that
13 by asking questions relevant to travel, Where are you coming from, right, and to what
14 took you there, things like that. We are taught that we be -- they answer those
15 questions in a certain way, that there could be something else going on underneath.
16 But I -- I ask those questions for -- for years, and -- and it's to assess sobriety of the
17 driver.

18

19 Q It is to assist you in formulating grounds to arrest or detain; am I right, or am I wrong?

20 A Sometimes -- sometimes they -- they do, but my primary goal in asking them is to
21 ascertain sobriety of the driver.

22

23 Q You asked specific questions on this occasion in keeping with your criminal
24 interdiction training, correct?

25 A Oh, yes, okay, yes.

26

27 Q Sure.

28 A Yes.

29

30 Q Where are you coming from, right? Where are you headed?

31 A Yeah.

32

33 Q How long were you down there? Right?

34 A Yeah.

35

36 Q And the reason you ask those questions is you want to know if this motorist has been
37 involved in a quick turnaround.

38 A I -- I -- yeah, I do want to know if the motorist has been involved in a quick
39 turnaround.

40

41 Q And why do you want to know if the motorist has been involved in a quick

1 turnaround?

2 A Because if the -- sometimes motorists that are involved in a -- that do a quick
3 turnaround (INDISCERNIBLE) if they want to be.

4

5 Q Sure.

6

7 And if they're involved in the quick turnaround, then that assists you in the
8 formulations of grounds to detain or arrest, correct?

9 A Sometimes, yeah. Not all the time, but sometimes it does.

10

11 Q Well, it depends on the answer you get, right? We're not talking about the answers
12 you get right now. We're talking about why you ask questions --

13 A Yeah.

14

15 Q -- right? And you asked the questions to assist you in formulation of grounds to detain
16 or arrest, right?

17 A Yes.

18

19 Q And sometimes the story they give you just doesn't make sense.

20 A Some of it doesn't, no.

21

22 Q Right?

23

24 And if the story doesn't make sense, it's just internally inconsistent or externally
25 inconsistent, well, that gives you cause for concern, right?

26 A Yes, Sir.

27

28 Q They're lying to you, right?

29 A Sometimes, yeah.

30

31 Q Right? Sometimes if there's inconsistencies, the story doesn't make sense, the obvious
32 inference to be drawn is that they're lying to you, right?

33 A (NO AUDIBLE RESPONSE)

34

35 Q Nothing like that occurred with GAD, correct?

36 A GAD'S answers on their own weren't suspect, but in con -- like, when I look at
37 everything I had and --

38

39 Q Just talking about the Q and A right now. That's all we're talking about. There's
40 nothing internally consistent or externally consistent about the answers to the
41 questions provided?

- 1 A Could -- could I ask you about --
2
- 3 Q By GAD
4 A So, Mr. Fagan, could I get you to clarify what you mean by --
5
- 6 Q No problem.
7 A -- internal consistent and external consistent?
8
- 9 Q He didn't get mixed up. He didn't tell you -- in answer to the question, How long were
10 you down there, he didn't give you two or three different stories. He just gave you
11 one -- one --
12 A He --
13
- 14 Q -- answer?
15 A Correct, yes.
16
- 17 Q And same with, you know, Where are you headed, where are you coming from? He
18 just gave you one answer --
19 A Yes, yeah.
20
- 21 Q -- right? And sometimes they'll give you more than one answer, and the answers don't
22 jive?
23 A That is correct.
24
- 25 Q Nothing like that here?
26 A Correct.
27
- 28 Q Okay. So the answers that he gave you to the questions, you had no reason to doubt
29 their honesty or veracity?
30 A Individually, no, I did not, no.
31
- 32 Q Okay. And taken together, the answers given to your questions didn't suggest that he
33 was being dishonest with you?
34 A I can't say that he was being dishonest with me, no, but taken together, I found them to
35 be suspect --
36
- 37 Q Well, you mean --
38 A -- (INDISCERNIBLE).
39
- 40 Q -- taken together?
41 A So taken, like, in conjunction with the other (INDISCERNIBLE) --

- 1
2 Q Yeah we're just talking about the Q and A right now.
3 A Okay.
4
5 Q Okay.
6 A Later.
7
8 Q So nothing suspicious about the answers that he gave to the questions you posed?
9 A Yes.
10
11 Q But you did use the answers to the questions posed in formulating your grounds for
12 arrest?
13 A Yes, Sir.
14
15 Q From the questions that you asked, you determined that he was coming to what you
16 referred to as a source destination?
17 A Source location, yes.
18
19 Q Source location, Vancouver?
20 A Vancouver.
21
22 Q Okay. And to state the abundantly obvious, probably half of the vehicles going by you
23 when you're sitting at the Banff gate are coming from Vancouver?
24 A A lot of them are, yes.
25
26 Q Now, you're -- you're standing at the passenger's window of the Rav 4, and as you're
27 there, you're casting your eye around the interior of the vehicle?
28 A Yes, Sir.
29
30 Q Right? And you don't see anything of a drug-related nature, right?
31 A That is right, yes. Excuse me.
32
33 Q And just so the record's perfectly clear, he didn't appear to be under the influence of
34 alcohol or drugs?
35 A That is correct, Sir, yes.
36
37 Q And have you had training with respect to the detection of cannabis usage?
38 A Yes, Sir.
39
40 Q Tell us about that.
41 A That was a long time ago. April 2010 I took the drug recognition course in Edmonton,

1 and then the (INDISCERNIBLE) of 2010 I certified as a -- a drug recognition expert
2 in Phoenix, Arizona. But then this is before marihuana was legal. Like, the skill set
3 was never really kept up (INDISCERNIBLE) I want to say I lapsed in 20
4 (INDISCERNIBLE) my certification.
5

6 Q Okay. Well, your certification lapsed, but you've had training in identifying symptoms
7 exhibited by persons that may be under the influence of cannabis marihuana?

8 A Yes, Sir
9

10 Q And you saw no such indicia when you looked at GAD?

11 A Correct, Sir, yes.
12

13 Q Now, you made reference to CPIC. That's the Canadian Police Information Centre.
14 You did that check?

15 A Yes.
16

17 Q And if a person's got a criminal record, that is, any convictions, charges, stays of
18 proceedings, that will show up on CPIC?

19 A Yeah, it will show up on his CNI, and then I'll have to take his criminal -- so it's
20 criminal name index. So ever -- every time you're charging, fingerprinted, you're
21 given a number. It's called an FPS number. And then I would have to take that
22 number and run his criminal record on (INDISCERNIBLE) --
23

24 Q Okay --

25 A -- so --
26

27 Q -- did he have a -- did he have an FPS number?

28 A Yes, he did.
29

30 Q Okay. And was there any indication that he had a criminal record on CPIC?

31 A Yes, he had a -- I think he had an impaired driving conviction from '08, I think.
32

33 Q Okay. Anything drug-related?

34 A Nothing.
35

36 Q Okay. And to get an FPS number, all you need to do was be charged with any
37 criminal offence, right?

38 A Correct, yeah.
39

40 Q Right? You're charged with -- with stealing a stick of gum. If the police want to, they
41 can fingerprint you, right?

1 A Yeah.

2

3 Q And lo and behold, you're now on FPS, Sir?

4 A Yes.

5

6 Q And then you check -- so you didn't find anything that was of investigative interest on
7 CPIC; am I right, or am I wrong?

8 A Correct, nothing of investigative interest.

9

10 Q Okay. And then you went to what was it, PIMS or PIPS (sic)?

11 A PIP, Police Information Portal.

12

13 Q PIPS, okay.

14 A PIP -- just PIP.

15

16 Q And on PIP that's where you discover that something had happened way back in 2012
17 at or near Drumheller, Alberta?

18 A Yes, Sir.

19

20 Q Okay. And this showed up on your screen?

21 A Yeah -- yes, Sir.

22

23 Q In the car, or is this something you just received by way of transmission?

24 A No, I ran it on my computer in the car, so then when I ran his name, I saw that he was
25 charged in 2012 (INDISCERNIBLE) I took that cause it's easier to obtain the RCMP
26 file number out of PIP and then put it into our mobile version of PROS. So I put it in
27 the (INDISCERNIBLE).

28

29 Q Okay. And did you print off for your file what you viewed in your car?

30 A I don't think I did, no.

31

32 Q Okay. That --

33 A I don't --

34

35 Q -- information is still available?

36 A Oh, yeah, if you want, I can (INDISCERNIBLE).

37

38 Q Please do. My friend can consider that as a formal request for the disclosure in that
39 regard.

40

41 But tell the Court this: Reference was made to a seizure of half a kilogram could

1 take -- of a substance believed to be cocaine back in 2012. Did you know before
2 you placed GAD under arrest if that substance had analyzed as cocaine?

3 A Hmm, I don't think I did, no. I don't have access to my -- a hard copy file, and the
4 certificates don't normally -- I don't recall seeing the certificates on the
5 (INDISCERNIBLE) file, so I don't know if it's analyzed or not.

6

7 Q Okay. And this PIPS, you're telling the Court that it -- it actually stated that he had
8 been charged?

9 A Yes (INDISCERNIBLE).

10

11 Q This was way back in 2012?

12 A Yes, Sir.

13

14 Q So obviously you're curious as to what happened to that charge?

15 A Yes, Sir.

16

17 Q And did you satisfy your curiosity?

18 A Yeah, it was stayed. The -- the charges were stayed.

19

20 Q It was stayed?

21 A Yes, Sir.

22

23 Q So it was your understanding before you ever arrested GAD that the charges
24 arising from the 2012 seizure were resolved by way of the entry of the stay on
25 proceedings?

26 A I believe I knew that at the time, yes, Sir.

27

28 MR. FAGAN: I'm winding down, constable, Your Honour.

29

30 THE COURT: Okay.

31

32 MS. SZABO: It's okay, you still have half hour --

33

34 MR. FAGAN: Well --

35

36 MS. SZABO: -- until noon, so...

37

38 MR. FAGAN: -- don't encourage me.

39

40 Q MR. FAGAN: Again, correct me if I'm wrong, that in all these
41 computer checks that you did, CPIC and PIPS, there was nothing in there to suggest

1 that GAD had ever had anything to do with the drug marihuana?

2 A Correct, yes.

3

4 Q And you've testified that when you approached the Rav 4 passenger side in the first
5 instance, you detected a scent of what?

6 A Raw marihuana.

7

8 Q And when you say "raw marihuana," what do you mean?

9 A It's a -- it's a skunky, vegetative smell as opposed to a -- like, a burned smell when
10 someone's (INDISCERNIBLE) --

11

12 Q So unburned as opposed to burned?

13 A Yes.

14

15 Q Okay. Now, obviously as of October the 29th, 2019, you were aware of the passage of
16 Bill C-45 and the concomitant *Cannabis Act*, right?

17 A Yes, Sir.

18

19 Q So you knew that as of the date October 29th, 2019, that a person could be in lawful
20 possession of up to 30 grams of cannabis marihuana?

21 A Yes, Sir, correct.

22

23 Q You didn't ask GAD if he had cannabis in the vehicle, did you?

24 A No, I did not.

25

26 Q Didn't you want to know if what you smelled was coming from a baggy containing 30
27 grams of cannabis or less?

28 A I -- I'm not sure I can ask him that, Sir. I -- like -- like, he's under no obligation to tell
29 me that, and -- and if he's over and he's, like, Oh, I have more, well, then he's
30 incriminating himself. So I don't --

31

32 Q Hmm.

33 A -- I don't know that I can ask him that. But I normally -- what I started doing recently
34 is asking them -- or asking the person if you smell it, Is there any cannabis in reach of
35 the -- of -- of an occupant? Cause it's the same as alcohol, under the *Gaming, Liquor
36 and Cannabis Act*. But I don't know that I can ask it straight up, like, How much weed
37 do you have or --

38

39 Q That's fair. And -- and so what's the question that you ask now?

40 A I ask, Is there any cannabis within reach of an occupant?

41

1 Q Okay. So --

2 A That -- that's (INDISCERNIBLE).

3

4 Q Okay. So now if you detect the scent of cannabis -- cannabis marihuana, you ask the
5 driver of the motor vehicle if there's any cannabis within reach --

6 A Yes.

7

8 Q -- of him.

9 A Excuse me, yes.

10

11 Q Okay. But you did not do that with GAD, did you?

12 A No, I wasn't in the practice at the time.

13

14 Q Okay. But you knew as a result of Bill C-45, correct me if I'm wrong, that the -- the
15 mere scent of cannabis marihuana emanating through the vehicle doesn't give you the
16 authority to arrest the driver of that vehicle --

17 A Correct --

18

19 Q -- is --

20 A -- yes, Sir, yeah.

21

22 Q Why didn't you ask that question of GAD, Do you have any cannabis products,
23 marihuana, with you in reach? Why -- why didn't you ask that question?

24 A I don't know. I -- I wasn't in a habit -- the legalization of marihuana changed the way
25 a lot of things are done when you're dealing with people on the side of the highway.
26 When you could -- you could smell it in the old days, you just arrest based on odour,
27 and I -- I guess up until that point when I was (INDISCERNIBLE) I wasn't
28 comfortable asking that -- that question. Excuse me.

29

30 Q Because marihuana had been legal for, what, approximately one year?

31 A Yeah, just over a year, yeah.

32

33 Q Yeah. And just a sec, you found the presence of golf clubs in a vehicle to be unusual?

34 A Yes, given the time of year, yeah.

35

36 Q Have you ever -- have you ever been to Vancouver?

37 A I've driven through it. I've never -- it's only in the summertime.

38

39 Q Different climate down there, isn't it?

40 A Hundred percent, yes.

41

1 Q Yeah. You can golf there in February. Did you know that?

2 A No.

3

4 Q No.

5 A I grew up --

6

7 Q That's warmer climate?

8 A -- I grew up on the east coast of Canada, and it gets -- so it's cold in that time of year.

9

10 Q And, again, at the risk of asking the abundantly obvious question, not unusual to pull a
11 vehicle over that's got an air freshener or two hanging in somewhere in the interior,
12 right?

13 A No, it can be unusual it had two different kinds of air fresheners. Normally I can see,
14 like, the (INDISCERNIBLE) like, on either side or have two of the same hanging.
15 Two air fresheners aren't abnormal. But I find two different air fresheners a little --
16 little suspect.

17

18 Q What's a real concern is a -- an investigator, when he pulls someone over, if you see a
19 dozen air fresheners hanging from the rear view mirror or placed elsewhere, right?

20 A That would definitely be suspect.

21

22 Q But here we only had two?

23 A Yes.

24

25 Q And nothing unusual?

26 A No, nothing -- nothing too egregious, no.

27

28 Q Okay. And there was luggage to the Rav 4 at the time of your attendance upon it that
29 would be consistent with the trip that involved a couple of days in Vancouver?

30 A Can I refer to my notes on that?

31

32 Q Go ahead.

33

34 I believe you said there was a duffel bag, or something like that.

35 A I don't even really have a mention of -- yeah, I don't have a mention of the luggage in
36 my handwritten notes, so it wasn't really that abnormal. Excuse me.

37

38 Q Because sometimes a person will tell you they've been down there for -- I guess lower
39 mainland Vancouver for a week or so, and you don't see any luggage at all --

40 A Right, definitely.

41

1 Q -- right? And that can give rise to a degree of suspicion, right?

2 A Yes, Sir.

3

4 Q But nothing like that, no suspicion arising as a result of the nature of the luggage in the
5 vehicle?

6 A Correct, yes.

7

8 Q Thanks for your patience, constable.

9 A Thank you.

10

11 MR. FAGAN: Those are my questions, Your Honour. Thank
12 you.

13

14 THE COURT: Thank you.

15

16 Anything in redirect?

17

18 MS. SZABO: I only have one minor one arising, and I'm just
19 going to ask it --

20

21 THE COURT: Okay.

22

23 MS. SZABO: -- the Calgary Crown (INDISCERNIBLE) may
24 not know this particular fact.

25

26 **The Witness Re-examined by Ms. Szabo**

27

28 Q My friend asked you a question about the dog handler, and you responded about
29 Constable not being on duty that night?

30 A Correct, yes.

31

32 Q There are other dog handlers other than --

33

34 MR. FAGAN: My friend is asking a leading question on an
35 extremely important area.

36

37 MS. SZABO: I'll rephrase.

38

39 MR. FAGAN: The evidence before the Court is there's no
40 dogs, period.

41

- 1 THE COURT: Okay.
2
- 3 MR. FAGAN: My friend is trying to alter that -- alter that
4 evidentiary reality to a leading question, and I object.
5
- 6 MS. SZABO: I'll rephrase.
7
- 8 THE COURT: All right (INDISCERNIBLE).
9
- 10 Q MS. SZABO: Do you have any knowledge of the existence of
11 other drug dog handlers in the area?
12 A I do, yeah. There's two dog handlers with the RCMP in Calgary: One actually is in
13 Cochrane, the other one's in Airdrie.
14
- 15 Q Okay.
16 A But they're full-profile dogs. They're trained in criminal apprehension and drugs.
17
- 18 Q Do you have any knowledge of any other dog handlers in the Bow Valley?
19 A There used to be the Parks Canada dog, but he retired when marihuana became legal.
20
- 21 Q Okay. Thank you.
22
- 23 THE COURT: Thank you.
24
- 25 MS. SZABO: Those are all my questions.
26
- 27 MR. FAGAN: Nothing arising.
28
- 29 THE COURT: Thank you.
30
- 31 Thank you, that's everything for today --
32
- 33 A Thank you, Your Honour.
34
- 35 THE COURT: -- you are --
36
- 37 MS. SZABO: And I'll just --
38
- 39 A Oh, yes, yes, this, right.
40
- 41 MS. SZABO: -- get the DVD for you.

1
2 THE COURT: Okay.
3
4 MS. SZABO: Actually, I'm going to ask that Constable
5 if he could come and extract the --A M-
6
7 hm.
8
9 MS. SZABO: -- the VICS.
10
11 I don't want to interfere with that space. You don't have to shut it down first?
12
13 A No.
14
15 MS. SZABO: Okay. Just going to see if I have a case I can
16 put it in.
17
18 THE COURT: Okay. That is fine. If you need a quick break,
19 that is also fine, if it is easier to --
20
21 A We're good.
22
23 THE COURT: Yes.
24
25 A Just --
26
27 MS. SZABO: Yeah, I think we're -- we're ready.
28
29 THE COURT: Okay.
30
31 (WITNESS STANDS DOWN)
32
33 MS. SZABO: And it's already an exhibit, so basically the
34 Crown can provide it to madam clerk. And seek a committal.
35
36 THE COURT: Okay. There is no other witnesses?
37
38 MS. SZABO: Unless you wish to cross-examine --
39
40 MR. FAGAN: No, I appreciate the invitation, but, no, I take it
41 that's the case for the Crown on the --

1
2 MS. SZABO: That is the case for the Crown on --
3
4 MR. FAGAN: Inquiry?
5
6 MS. SZABO: Yes.
7
8 MR. FAGAN: In answer to your anticipated question --
9
10 THE COURT: Yes.
11
12 MR. FAGAN: -- is the defence calling evidence -- we're call --
13 calling evidence in prelim in the last 35 years, I'm not about to start now. So the --
14
15 THE COURT: Okay.
16
17 MR. FAGAN: -- short answer to that question is "no."
18
19 THE COURT: All right.
20
21 MR. FAGAN: I expect my friend will have submissions to
22 make relative to committal. She can make them if she wants. But I can advise the Court
23 that although I'm not consenting, I'll have no position to take relative to my friend's
24 application for a committal.
25
26 THE COURT: All right.
27
28 **Submissions by Ms. Szabo**
29
30 MS. SZABO: And I won't be lengthy, Your Honour. I believe
31 with the combined 540 package and the constable's evidence, there is more than enough
32 evidence to commit the accused.
33
34 **Order to Stand Trial**
35
36 THE COURT: Yes, and I agree. Having heard the evidence
37 and also had a chance to go through Exhibit 1 and Exhibit 2, I do find that the Crown has
38 introduced direct evidence on all of the elements of the offences to which GAD is
39 charged, and if believed, a reasonable jury properly instructed could render a verdict of
40 guilty. And, as such, I therefore commit GAD to stand trial on the two charges laid out
41 on the Information.

1
2 THE COURT CLERK: The next arraignment date, Ma'am, is November
3 27th, Calgary Court of Queen's Bench.
4
5 THE COURT: Okay. So the matter will go to November 27th
6 of the Court of Queen's Bench in Calgary?
7
8 THE COURT CLERK: Yeah.
9
10 THE COURT: Yes. All right. Thank you, counsel.
11
12 MR. FAGAN: Your Honour, it was --
13
14 THE COURT: Thank you.
15
16 MR. FAGAN: -- an honour and a privilege appearing in --
17 before you here this morning. I think it was my first opportunity since your appointment.
18
19 THE COURT: I think it is. It is nice as well to see you, and see
20 you as well. Thank you.
21
22 MS. SZABO: The same.
23
24 THE COURT CLERK: That is your list for the day, Ma'am.
25
26 THE COURT: Thank you.
27
28 MR. FAGAN: Thank you.
29

30
31
32 PROCEEDINGS CONCLUDED
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1 **Certificate of Transcript**

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I, Jill Williams, certify that

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

(b) the Certificate of Record for these proceedings was not included orally on the record.

Jill Williams, Transcriber
Order Number: AL3973
Dated: November 12, 2020