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Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF CALGARY

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OCT 22 2019

HER MAJESTY THE QUEEN

- v. -

[REDACTED]

Accused

PRELIMINARY INQUIRY

Canmore, Alberta
June 7, 2019

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

2
3 June 7, 2019

Morning Session

4
5 The Honourable Judge
6 Keelaghan

Provincial Court
of Alberta

7
8 A.B. Szabo, QC
9 P.C. Fagan, QC
10 W. Ogle

For the Crown
For the Accused
Court Clerk

11
12
13 **Discussion**

14
15 MS. SZABO:
16 for the federal Crown.

Good morning, Your Honour. Szabo, initial 'A'

17
18 THE COURT:

Good morning.

19
20 Mr. Fagan, good morning.

21
22 MR. FAGAN:

Good morning, Judge Keelaghan.

23
24 THE COURT:

Nice to see you.

25
26 MR. FAGAN:

Good to see you.

27
28 MS. SZABO:
29 docket this morning. One is a prelim on [REDACTED] which Mr. Fagan is counsel.

Your Honour, we have two matters on the

30
31 (OTHER MATTERS SPOKEN TO)

32
33 MS. SZABO:
34 going to be a one witness prelim, essentially consent committal.

At this point in time, it looks like this prelim is

35
36 THE COURT:

Thank you.

37
38 MS. SZABO:
39 witnesses and we are only going to call the one.

Mr. Fagan has excused a number of the

40
41 MR. FAGAN:

My friend says essentially consent committal. I

1 don't have instructions to consent, but --

2
3 THE COURT: We will see how it goes.

4
5 MR. FAGAN: Yes. Very good.

6
7 THE COURT: I won't ask for any undertaking at this point.

8
9 MR. FAGAN: Very good. Thank you.

10
11 (OTHER MATTERS SPOKEN TO)

12
13 MS. SZABO: And my first witness on the prelim is present in
14 court, and it is Constable MacPhail, but before we get there though, the witnesses that my
15 learned friend has excused are the experts, so in essence -- not in essence, there is an
16 admission that the quantity of drugs in question are for the purpose of trafficking. He has
17 also excused Officer Dumont-LaFontaine, who was scheduled by CCTV at 11 this
18 morning. He simply escorted the prisoner back to the detachment.

19
20 THE COURT: Okay.

21
22 MS. SZABO: So, he had very minimal involvement. And then
23 the dog expert Mike Henderson was with Parks Canada at the time and will not also be
24 called. He brought the dog on the scene. So, the evidence -- and the dog indicated a sit
25 and consequently the officer arrested for PPT. So, that evidence, I understand, is also in
26 essence being admitted this morning.

27
28 MR. FAGAN: In essence.

29
30 MS. SZABO: Thank you. So, based on that, the Crown calls it
31 first witness, Constable Tyler MacPhail.

32
33 MR. FAGAN: Two preliminary applications, Your Honour, as
34 I am sure the court anticipates. One's a ban on publication of the evidence taken on these
35 proceedings.

36
37 THE COURT: Yes. Pursuant to section 537, there will be a ban
38 of publication of the evidence on the proceedings.

39
40 **Ban of Publication - Evidence**

41

1 MR. FAGAN: Thank you. And the other would be for an
2 order, just out of an abundance of caution, excluding witnesses.
3

4 THE COURT: Yes. I will make that order as well.
5

6 (WITNESSES EXCLUDED)
7

8 MR. FAGAN: And in terms of the defence submissions
9 germane to the so-called drug expert, the admission is specifically this, the amount seized
10 by the police, and in particular Constable MacPhail, as we will hear from him, is such as
11 to be inconsistent with personal use --
12

13 THE COURT: Okay.
14

15 MR. FAGAN: -- and consistent with trafficking.
16

17 THE COURT: So, that is an admission made after the purpose
18 of the preliminary inquiry.
19

20 MR. FAGAN: Yes. There was a Corporal Larson (phonetic), I
21 believe it was, who was subpoenaed to give expert opinion evidence in that regard, and I
22 had advised my friend previously of my -- of my intentions so that saved him a trip.
23

24 THE COURT: All right. Thank you very much, Mr. Fagan.
25

26 MR. FAGAN: You're welcome.
27

28 THE COURT: That ban was 539, not 537, so that is done. Oh,
29 I didn't sign it.
30

31 **TYLER MACPHAIL, Sworn, Examined by Ms. Szabo**
32

33 Q Good morning, Constable MacPhail. Thank you for travelling from Airdrie this
34 morning to Canmore in this lovely weather.
35

36 A Yes.
37

38 Q Constable MacPhail, I understand that you are a peace officer and you are currently
39 employed with the crime reduction unit in Airdrie, Alberta; is that correct?
40

41 A That is correct, ma'am.

Q And I understand that you've been there now almost a year?

1 A That is correct. It will be a year in September.

2
3 Q And previous -- previous to that you were and at the time of the offence you were a
4 member of something called the RTU. Could you tell us a little bit about that and your
5 experience and your length of time there?

6 A Absolutely. It's the -- the RTU stands for the roving traffic unit. It's a branch of the 'K'
7 Division roving -- 'K' Division Traffic Services Section of the RCMP. We were a
8 group of officers -- well, we are a group of officers, that are assigned to work on the
9 main corridors in the Province of Alberta on our highways enforcing the *Alberta*
10 *Traffic Safety Act*, conducting high volume vehicle stops, executing warrants, looking
11 for persons committing criminal offences in vehicles, prolific offenders, stolen
12 property, stolen vehicles, impaired drivers. Effectively anything to that nature relating
13 to criminality behind the vehicle while also enforcing the *Traffic Safety Act* in the
14 province.

15
16 Q And how long were you a member of the RTU?

17 A I was with the roving traffic unit from October 2009 until August of 2018.

18
19 Q And prior to 2009, I understand that you were in Redcliff; is that correct?

20 A No. I was posted to the Hinton RCMP detachment as a general duty officer from
21 February 6th, 2006, until October of 2009.

22
23 Q Sorry. And then you moved to Redcliff?

24 A That is correct.

25
26 Q Thank you. So, while in Redcliff you became a member of the RTU?

27 A Correct.

28
29 Q And back then I understand the RTU was scattered throughout the province while
30 now it is centralized one office in the south and one in the north; is that correct?

31 A That is correct.

32
33 Q And I understand that as a result of your involvement with the RTU, you have
34 attended a number of different training courses?

35 A That is correct.

36
37 Q And I don't want you to go through them all, but I take it you have done some that has
38 to do with the interdiction of drugs?

39 A That is correct.

40
41 Q Can you tell us a little bit about those?

1 A Yeah, absolutely. The courses and training that I've received, I will touch on three
2 which are of significance, and I won't go into the extensive details but I've taken the
3 National Pipeline course in the fall of 2008, or my apologies, the fall of 2007 in
4 Grande Prairie, Alberta. The National Pipeline course is effectively a course which
5 teaches police officers to have a heightened sense of awareness training while dealing
6 with persons inside motor vehicles. Teaches the police officer what to look for with
7 respect to persons who may be moving illicit contraband up and down the highways
8 and indicia that may be present relating to the person operating the motor vehicle as
9 well as the contents or any sort of hidden compartment. It is a two-day course which
10 the officers are -- are taught. I had travelled to Thackerville, Oklahoma, in the United
11 States for a week long course on advanced passenger interdiction. It was taught by
12 senior troopers and police officers in and around the United States who have had
13 considerable success in intercepting contraband inside vehicles throughout the United
14 States.

15
16 Again, the course touches on hidden compartments, what to look for, judicial
17 authorizations, judicial proceedings, how to present evidence in court as well as how
18 to defeat hidden compartments. I've attended numerous conferences throughout the
19 United States on this similar type of work as well as I'm a national pipeline instructor.
20 In 2015, I attended a week-long course and became a certified RCMP national
21 instructor. I teach other police officers throughout the country, specifically though in
22 Alberta, on what to look for in when it comes to intercepting and detecting travel --
23 travelling criminals while enforcing the *Traffic Safety Act*.
24

25 Q And I understand that you have had a considerable amount of experience in dealing
26 with marijuana specifically; is that correct?

27 A Yes, ma'am.

28
29 Q I understand you've had some significant seizures where you have been the lead
30 investigator?

31 A That is correct.

32
33 Q How many --

34 A I would say in excess of 2,000 investigations where I have been a part of either a
35 marijuana investigation as the lead officer or marijuana derivatives.
36

37 Q And I understand that you have actually been the lead investigator on a file where
38 there was 300 pounds of marijuana?

39 A Yes. That is correct. There's -- I would estimate that I have seized in excess of 2,000
40 pounds of marijuana over the course of my service.
41

- 1 Q So, you're familiar with the smell of fresh marijuana as opposed to burnt marijuana?
2 A Yes, ma'am.
3
- 4 Q And I won't ask you to describe it now.
5 A Okay.
6
- 7 Q So, on June 1st, 2018, you were a member of the RTU, and you were on duty. In fact,
8 you were on an enforcement operation; is that correct?
9 A Yes, ma'am. I was on regular duties.
10
- 11 Q Right. So, can you tell us what happened that day?
12 A I was travelling in an easterly direction on the TransCanada Highway. I had passed
13 the townsite of Banff when I was approaching a construction zone and a vehicle had
14 caught my attention. Was travelling in the number 1 lane. I was travelling in the
15 number 2 lane approaching seven-mile hill which is where the Banff water tower is.
16 The vehicle that I had observed was a red Dodge Ram pick-up truck with
17 Saskatchewan licence plates and the vehicle was travelling under the speed limit of a
18 posted 90. The posted speed limit signs were clearly visible on both sides of the
19 highway.
20
- 21 Q Let me just stop you for a second. What is the average rate of speed that people travel
22 there?
23 A I would comfortably say in excess of 110 kilometres an hour. I would say it is almost
24 uncommon that people drive 90 kilometres an hour the whole valley. You have to
25 pick and choose which one you are going to go after because every -- I wouldn't say
26 everyone but a very high number of motorists do not adhere to the posted 90. As I
27 continued along the highway I was maintaining the speed of approximately 90
28 kilometres an hour. Obviously I'm monitoring traffic as well as drivers' observations
29 of my presence. You will get motorists who will pay extra attention to police officers
30 in order to defeat or attempt to stay away from us. If they are moving sort of illicit
31 contraband or if they are impaired or if they're just believe they might have a
32 suspended licence. So, I noted this red Dodge Ram pick-up travelling in the number 1
33 lane and I was travelling at 90 and this vehicle started to back off and pull -- pull, I
34 guess -- put distance between my police vehicle and their vehicle. Should --
35
- 36 Q And did she remain in that passing lane?
37 A Yes. So, the vehicle remained in the number 1 lane and would not move over and I
38 started to note that there was vehicles piling up behind it -- piling up and I'm using the
39 description of backing up traffic for not moving over when it should be prudent to
40 move to the number 2 lane to allow vehicles that wished to proceed in the passing
41 lane to pass because that drives many motorists crazy when people do not move over

1 and they occupy the passing lane.
2

3 Q And then, I guess, there would have been two ways for her to do it.

4 A Absolutely, yeah. So, could have moved over. Either accelerated to go in front of me
5 or backed off to move over behind me.
6

7 Q Thank you.

8 A Recognizing that my presence has now created some sort of -- some sort of alteration
9 of the motorists' driving habit, I wanted to obviously address the traffic infraction, the
10 fact that they are now occupying the number 1 lane, allow that other traffic which was
11 behind it to pass, and to see why this person now suddenly is driving at approximately
12 80 kilometres an hour in a 90-zone when this is now abnormal of the motoring public.
13

14 Q Just let me stop you there for a second. So, we are going to watch the VICS or the
15 DVD, but this is the start of it, correct, that we are looking at?

16 A Correct.
17

18 Q With the beautiful mountains that we cannot see today?

19 A Correct.
20

21 Q And so the person you're talking about, the accused that was travelling in the other
22 lane, where was she in this picture?

23 A So, I'm situated on the number 1 lane -- or sorry, my apologies, the number 2 lane.
24 The accused would be in the number 1 lane.
25

26 Q So, beside you? Behind you?

27 A Staggered behind me. So, in a different -- the lane to the driver's left.
28

29 Q So, you can't see her?

30 A No. That is correct. And the camera --
31

32 Q And how long approximately would she have been there without attempting to move
33 forward to pass you or to drop behind you?

34 A I can't remember the -- the exact time but it was enough that it caught my attention.
35

36 Q And you said that you were travelling 90, so at some point in time she must have been
37 travelling 90?

38 A At some point in time, yeah.
39

40 Q And then she reduced her speed. Did you reduce your speed as well?

41 A I would have probably reduced my speed. That would be normally my practice to see

1 why this motorist is now clearly like noticed me and reduced their speed to get behind
 2 me. It's -- it's interesting as a police officer when you in an uniformed capacity and
 3 you're in uniform and you're driving a marked police car. Obviously when the
 4 motoring public recognizes -- we've all been in a situation where you see the police --
 5 I know that I have and you effectively change your driving pattern. That's
 6 understandable but when the driving pattern becomes changed due to such lengths
 7 that it is now is affecting other users of the highway as well as it has caught my
 8 attention, as a police officer as well as traffic officer I want to know why, right, and
 9 that's I think what the public expects of us as well as what the motorists on the
 10 highway expect of us because if the individual's driving pattern is now effectively
 11 changed based on my presence, is that because they've -- there's open liquor in the
 12 vehicle, is there an abducted child, is there because they're fatigued, is it because they
 13 are impaired. Why is this person doing what they are doing to try and give themselves
 14 distance between myself and so recognizing based on my previous stops and keeping
 15 in mind I have in excess of 10,000 traffic stops during the course of my service, this is
 16 not normal of the motorist public. So, I activated my emergency equipment on the
 17 police vehicle and conducted a traffic stop to -- to address the traffic infraction and to
 18 see why the motoring -- the motorist was driving the way they are.
 19

20 Q And then what happens?

21 A Noted that the vehicle had a licence plate query associated to it out of Manitoba from
 22 May the 29th, which again is -- for me something that I make note of. It was a RCMP
 23 query log. Noted the vehicle was registered to a female by the name of [REDACTED]
 24 [REDACTED]. At that point I exited my police vehicle; didn't note anything relating to
 25 any sort of surveillance hit. There was nothing about warrants. Nothing relating to
 26 expired licence and when she pulled over, her pulling over was normal. There was
 27 nothing abnormal about it. There was nothing nefarious in any capacity with respect
 28 to her driving habits when pulling over. I completed a passenger side approach which
 29 is my standard side that I always go to in my career and I noted that there was a
 30 female inside the vehicle and she was the only one. She was subsequently identified
 31 as from her Saskatchewan driver's licence as [REDACTED]
 32

33 Q Do you see her here today?

34 A Yes. She is seated beside Mr. Fagan at the defence table. So, --
 35

36 MS. SZABO:

Identifying the accused for the record.

37
 38 A I advised [REDACTED] the reason for the stop. We had a conversation about my
 39 concerns. I started to recognize her from a previous stop that I had pulled her over
 40 months prior and --
 41

1 Q Was that the first time that you realized you had pulled her over before?

2 A Yes. Yes. That was the first time. I remembered I had pulled her a while ago and the
3 reason it stood out to me was that particular stop I had had conversations with her as
4 well, but that neither here or -- that's not what we are here for today. Ended up making
5 observations inside the vehicle relating to there being a lack of luggage. [REDACTED]
6 [REDACTED] told me that she was coming from Radium Hot Springs. She had been
7 visiting her son and she was on her way to Calgary apparently at 10:30 at night to go
8 gamble and play poker. I obviously took that into consideration as being an odd
9 answer or, I guess odd in the sense comparing it to what other motorists are out
10 driving for. Leaving Radium Hot Springs to travel late in the evening.
11

12 If you've driven out to visit your son by yourself, now you're going to Calgary to go
13 gamble at the casino. By the time you get to the casino, we're out by Banff. I was
14 factoring the drive time, where she was going, by the time you get to the tables, I was
15 gamble. I know what the table hours are and took that into consideration. While I was
16 talking with her, I had a fleeting odour of marijuana in the air I could smell, keeping
17 in mind it was insufficient for to me to make an arrest on, recognizing my experience.
18 It wasn't ditch-weed. There was no skunk odour due to the fact that there was an
19 animal in the area. I know marijuana smells like. However, I also recognizing taking
20 into consideration her rights, I didn't feel that I was enough for reasonable and
21 probable grounds; definitely enough for reasonable suspicion in a very objective
22 manner.
23

24 Her pick-up truck had a tonneau cover on it which is a bed-liner which goes across the
25 box of the pick-up not allowing me to see in it. I've had a large amount of files where
26 individuals will travel into British Columbia. They will load up the box in the pick-up
27 truck and then return to the eastern provinces. There were fresh smear of fingerprints
28 on the tailgate where the dust was disturbed. It was recent in nature which I noticed
29 when I walked up to the vehicle. Again, things that I look for when -- what I teach
30 other officers. While standing there at the passenger side window she was nervous in
31 nature. Her answers were delayed and belaboured for no apparent reason.
32

33 I was also assessing her level of sobriety, how long she had been driving, and I could
34 smell a fresh air freshener smell which is a masking agent. There was an air freshener
35 tree hanging from the rearview mirror. These devices or these things are used to mask
36 odours to protect people who try to defeat sniffer dogs or prevent officers from
37 smelling any sort of contraband inside the vehicle. Had in excess of numerous,
38 numerous, numerous files I've had or stops where people will do that. I have had
39 people light air fresheners on fire, spray stuff, spray ax body spray, so I recognize that
40 that can be used to try to defeat police officers from smelling anything.
41

1 I didn't note any sort of luggage to show that she was travelling and I returned to my
2 police vehicles and -- my police vehicle, I conducted checks. Noted that there was a
3 dated file from 2012 where [REDACTED] had a Crimestoppers' tip relating to where
4 she was the subject of a marijuana production grow operation. Where the
5 Crimestoppers' tip said that she sells and produces marijuana. Yes, it is a dated entry.
6 I recognize that it was from 2012, however, it was an entry that I still took into
7 consideration when it came to assisting with me forming reasonable suspicion.
8

9 At that point I noted that she had been stopped by -- I remembered the file, what it
10 was relating to in VICs computer where she had been stopped by myself months
11 prior. I read that file. I also read the file from the traffic ticket that she had received on
12 May the 29th, and why this becomes of significance for myself for the subjective --
13 strong subjective, I guess -- oh, sorry, objective indicator was the fact that she was
14 linked as the individual who received a violation ticket for a speeding offence -- I
15 believe it was speed -- yeah, a speeding offence in Manitoba which puts her behind
16 the wheel in Manitoba on the 29th of May. So, I have a person where the drive time --
17 I was factoring in, if you drove of Manitoba to Radium Hot Springs, I used to live in
18 Winnipeg, I know how long it takes to drive from Manitoba to Alberta. It is a good
19 twelve hours and then you have to drive to the interior of British Columbia which
20 from Calgary to Radium Hot Springs which I have done as well is another three
21 hours.
22

23 So, we have a full solid day of travel, getting out to Radium Hot Springs on the say
24 the 3rd -- late in the evening on the 30th. She would have been there for all of one day
25 to see her son for the 31st and now I have her returning out of Province of British
26 Columbia which is a source location where drugs are sold and produced into Alberta.
27 So, at this point I am -- I'm taking into consideration my extensive experience and
28 training, I had formed reasonable suspicion where I feel that I'm at reasonable
29 suspicion. What I feel that -- that a junior officer or another officer could reach this
30 level of conclusion? Probably -- probably not but me with my training, absolutely.
31 Recognizing now the traffic stop had shifted from a *Traffic Safety Act* investigation, I
32 had to advise the accused of her 10(b) rights, that the investigation was now
33 proceeding into a drug investigation.
34

35 At that point, I detained her for a drug investigation. Had her exit the vehicle. She was
36 very cooperative. No sort of officer safety concerns. Provided her 10(b) rights from
37 memory and effectively from text. She said that she understood why she was being
38 detained and she did not feel that she needed to call a lawyer. I called Parks Canada
39 dog handler Mike Henderson to the stop. Warden Henderson arrived. He deployed his
40 narcotics canine outside of the vehicle where subsequently he told me that I could
41 arrest [REDACTED] for possession of a controlled substance as his police canine had

1 provided a positive sit confirmation to an odour of a controlled substance inside the
2

12 I arrested her for possession for the purpose of trafficking over
13 3,000 grams. I had also located some small cannabis gummies inside the vehicle. I
14 think there were 18 of them inside the actual cab. [REDACTED] said she understood
15 why she was being arrested and that she wanted to call a lawyer. She was
16 subsequently transported to the Banff detachment where her legals were conducted by
17 Constable Dumont-Fontaine. I finished the photographing and search, the seizure of
18 the exhibits, and processed the exhibits back at the Cochrane detachment.

19 Q We will get there in a moment. Let's take a look at the photos. You've got a copy in
20 front of you. My friend has a copy and I'm passing one to master clerk for the court.
21 So, I'm just opening the first page of the photo booklet that the Crown will be seeking
22 to tender as the first exhibit. You took these photographs yourself?

23 A Yes, ma'am.

24
25 Q On the night in question?

26 A Yes.

27
28 Q And they accurately depict the time and scene and place of the events?
29 A That is correct.

30
31 Q So, what are we looking at? Page 1 is the truck that you pulled over?

32 A Correct. The licence plate of Saskatchewan 681Kilo-Quebec-Uniform, KQU.

33
34 Q Page 2?

35 A It's the tailgate. Unfortunately the camera didn't capture the fingerprint smears as
36 much as I wanted them to. You can kind of make them out in picture number -- or
37 page 2, top photo. It was night time.

38
39 Q Mm-mm. Page 3, just the same?

40 A Is the truck, the tailgate. Page 4 would be the truck and then the side contents would
41 be at the bottom page depicting the air freshener before I started to search. Again page

1 5 is the tree hanging from the rearview mirror. Bottom picture is the contents of the
2 vehicle.
3

4 Q So, just one air freshener?

5 A Yes, ma'am.
6

7 Q Okay. Next page?

8 A We have a small bag, a box, another bag in the back pictures.
9

10 Q And this was located in the truck itself in the back?

11 A That is correct.
12

13 Q So, there is like a backpack and a bag? Is that what I'm looking at?

14 A Yes, that is right.
15

16 Q And a box?

17 A And a box.
18

19 Q The box looks like there's some kind of --

20 A A food bag, I guess, and like -- you know, the food bags for shopping.
21

22 Q And then we've got on page 8?

23 A I believe the picture is a RCMP hat which was located inside the vehicle. Not from
24 mine -- not my hat. I don't know. It was just in there. Not quite sure of it.
25

26 Q Where do you see that?

27 A It's like the top picture. You can see it -- it is like a hat or something.
28

29 Q I see a bag of chips.

30 A Well, I'm looking at page 7.
31

32 Q Oh, I was looking at page 8.

33 A Okay.
34

35 Q Oh, yes, I see what you see to be a RCMP hat. Interesting. So, page 8?

36 A Page 8 just some chips, pictures from the other side.
37

38 Q And page 9 there's energy drink or something.

39 A Energy drinks. Page 10 is the boxes of cannabis. The bottom of page 10 is the bag --
40 or the box opened. Eleven is just more bags of weed -- or boxes that have weed in
41 them. And page 12 is just me once I've opened up the boxes.

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41

Q What's the key in page -- page 13?

A Keys showing the key for the tailgate.

Q Right. The vehicle keys.

A Yeah. Showing that that key was on her key ring which she was in possession of for knowledge.

Q And better pictures of it on 14?

A Correct.

Q Fifteen?

A Fifteen is a backpack with the marijuana gummies or the THC gummies and that's that for the seized pictures.

Q And then we get to the exhibit photos.

A Correct.

Q Which is the next batch of photos. I'm just going to ask Mr. Fagan if he wants me to walk you through that process or not.

MR. FAGAN:

No.

MS. SZABO:

Thank you.

Q MS. SZABO:

comment by Mr. Fagan.

So, I'm just going to summarize given that

MS. SZABO:

Exhibit 1.

If this could be marked as the exhibit -- as

MR. FAGAN:

No objection, Your Honour.

MS. SZABO:

Thank you.

THE COURT:

Exhibit 1 on the preliminary inquiry.

So, this book of photographs will be marked as

EXHIBIT P-1 - Photographs of Seized Exhibits from Traffic Stop

Q MS. SZABO:

So, as a result of Mr. Fagan's kind allowance,

1 Constable, I understand that you took samples from the marijuana bags?
2 A I did.

3
4 Q How many?

5 A I--

6
7 Q I probably don't even need to do this, but --
8

9 MR. FAGAN: You can lead him.

10
11 MS. SZABO: I can lead him.

12
13 Q MS. SZABO: Okay. How many -- I'm sorry. I don't know how
14 many samples you took.

15 A Can I count the samples?

16
17 Q Sure.

18
19 MR. FAGAN: If it of assistance to my friend and the court for
20 the purposes --

21
22 A Five.

23
24 MR. FAGAN: -- of the preliminary inquiry, the defence is
25 prepared to concede that this officer took a number of samples of the green plant-like
26 material that was seized from the rear of the Dodge Ram. That he sent those samples off
27 for analysis. That they came back with corresponding certificates of analysis and the
28 result of that analysis per the crime detention laboratory was in each and every case
29 cannabis marijuana.
30

31 MS. SZABO: That is right. Thank you, Mr. Fagan. That is
32 very helpful.

33
34 THE COURT: Thank you.

35
36 MS. SZABO: And we have I think it is six certificates of
37 analysis that we would be asking be marked the next exhibit. One, two, three, four, five,
38 six.

39
40 MR. FAGAN: No objection.
41

1 MS. SZABO:

Yes.

2
3 THE COURT:

Do you want them marked collectively?

4
5 MS. SZABO:

Yes, please. Collectively is fine.

6
7 THE COURT:

8 So, those certificates of analysis will be marked
9 collectively as Exhibit 2 on the preliminary inquiry.

10 **EXHIBIT P-2 - Six Certificates of Analysis**

11
12 MS. SZABO:

Thank you.

13
14 Q MS. SZABO:

And how was the accused released?

15 A By way of recognizance.

16
17 Q Okay. And I understand that the vehicle was actually seized in this case?

18 A It was not.

19
20 Q Oh, it was not seized. So, she was allowed to leave with her vehicle?

21 A Yes. She was very cooperative.

22
23 Q Okay. Thank you. And this all took place near Banff, Alberta, Canada?

24 A Yes, ma'am.

25
26 MS. SZABO:

27 Please answer any questions my friend may
28 have. Oh, wait a minute. I want to show the video. Sorry. I'm ahead of myself. We are
29 going to watch the VICS now.

30 Q Do you need to come off the stand to start it?

31 A You're ready. Just hit play unless there is a password that is prompted.

32
33 Q The screen is blank down here.

34 A If I may step down?

35
36 THE COURT:

37 Yes, of course. Go ahead, Constable. Just read
38 the password into the record. I'm just kidding.

39 MS. SZABO:

40 You still have to put the password in. Oh, you
41 have to get it. Sorry.

1 (VIDEO PLAYED)
2

3 Q MS. SZABO:

4 A The video.

Tell us what we are watching right now?

6 Q Which is in yours?

7 A The police vehicle.
8

9 Q Thank you. Just for the record. It needs to be clear.

10 A Oh, madam counsel, can you please move the slider that says cabin over to wireless.
11 No. You might have to hit pause because it needs to be plugged into the audio jack.
12

13 Q Was there a need to hit audio?

14 A May I step down?
15

16 THE COURT:

Yes, of course. Go ahead.

17
18 MR. FAGAN:

We might want to rewind it --

19
20 A Yes.
21

22 MR. FAGAN:

-- too so we can get --

23
24 MS. SZABO:

Yes. We will want to rewind it.

25
26 A Yes.
27

28 MR. FAGAN:

-- all of the audio.
29

30 (VIDEO PLAYED)
31

32 Q MS. SZABO:

33 front of your vehicle as you're driving in the lane number 2 as you've described
34 previously?

35 A That is correct.
36

37 Q And given that your VICS is on where if the accused's vehicle?
38 A Behind me.
39

40 Q Out of sight.

41 A So, the -- yeah. So, the reason that there is no sound is the video records 30 seconds.

1
2 Q And then you seem to be driving in the very side lane there and you're letting her pass.
3 A Correct.
4

5 Q And while we are watching just watch the vehicles go by here.
6 A It's got to catch up -- the disk. Just give it a second.
7

8 (VIDEO PLAYED)
9

10 Q Constable MacPhail, does anything happen from now until when the dog handler
11 arrives?

12 A No. I'm narrating to myself for documentation and court purposes but you can just see
13 the narcotics canine deployment which I can't obviously speak to other than what I
14 would be observing -- we are all observing.
15

16 Q How far into the video is it?

17 A Approximately 25 minutes, 20 minutes out.
18

19 (VIDEO PLAYED)
20

21 MS. SZABO:
22 it a little bit to the point of detention?

I'm thinking, Mr. Fagan, that I can fast-forward

24 MR. FAGAN:

Oh, the arrival of the next member.

26 MS. SZABO:

Okay. Fair enough. So, with your permission?

28 THE COURT:

Sure.

30 MS. SZABO:

Thank you.

32 Just for the record I am forwarding.
33

34 (VIDEO PLAYED)
35

36 Q MS. SZABO:

37 A (NO AUDIBLE RESPONSE)
38

Constable MacPhail, are we close to his arrival?

39 Q Thank you. I thought I heard you say that.
40 A Yes.
41

1 (VIDEO PLAYED)
2

3 MS. SZABO:
4 enough of the VICS for him.
5

Your Honour, Mr. Fagan has told me that that is

6 THE COURT:
7

Okay.

8 MR. FAGAN:
9

With your leave, Your Honour?

10 THE COURT:
11

Yes. No. That's fine, Mr. Fagan.

12 MS. SZABO:
13

Yes. With your leave, of course.

14 THE COURT:
15

Yes.

16 Q MS. SZABO:
17

So, consequently, Warden Henderson arrives
18 and the dog goes around and indicates -- gives the information to Constable MacPhail
19 -- -- I can let -- you've already testified to that in evidence.

20 THE COURT:
21

I think he testified to that.

22 MS. SZABO:
23 evidence of the Crown.
24

So, he has testified to that. So, that is the

25 THE COURT:
26

Okay.

27 Mr. Fagan.
28

29 MR. FAGAN:
30

Yes, Your Honour. Thank you.

31 MS. SZABO:
32

Do you want me to rewind it all or --

33 MR. FAGAN:
34

No. I'm good.

35 **Mr. Fagan Cross-examines the Witness**
36

37 Q So, the video starts with you in the police vehicle and the [REDACTED] Dodge Ram
38 behind you?

39 A Correct. And I'm just -- for the record, good to see you, Mr. Fagan.
40

41 Q And it is good to see you, Constable MacPhail. So, correct me if I'm wrong, but for a

1 period of time you were behind the Dodge Ram?
2 A Yes.

3
4 Q Okay. And for a period of time, say ten minutes before this video starts, give or take,
5 you were actually stationary at the side of the highway?

6 A I can't remember where I was, but I do remember pulling off -- I think it was out by
7 Mount Norquay or something. Correct.
8

9 Q Around the Norquay rest area?

10 A Yeah. Around -- yeah, somewhere around there, yeah.
11

12 Q Okay.

13 A Monitoring traffic.
14

15 Q Okay. So, you were stationary in your police vehicle at the Norquay rest area?
16 A Correct.
17

18 Q And --

19 A Somewhere -- somewhere in that area. I don't remember exactly where but it was --
20

21 Q In the proximity to the Norquay rest area?

22 A Yes.
23

24 Q And -- and would you please advise the court where is this Norquay rest area?
25 A It's just to the west of Banff Nation -- or Banff town-site.
26

27 Q Okay. Just west of the first turnoff to --

28 A Yes. I believe the Mount Norquay exit.
29

30 Q -- to Banff?

31 A When you're going in an eastbound direction on the TransCanada it would be the first
32 town-site exit.
33

34 Q Okay.

35 A I think it is the one where you can look out across the Bow Valley and you can see the
36 Town of Banff itself.
37

38 Q Okay. And this -- this area where you were stationary, is it on the east side of the
39 highway or on the west side of the highway -- or I should say the north side of the
40 highway or the south side of the highway.

41 A It would be the south side.

1
2 Q So, the south side of the highway, so it would be just adjacent to -- correct me if I'm
3 wrong, the two eastbound lanes?

4 A Yes.

5
6 Q Okay. So, you're sitting there, you're stationary, and in what direction is your vehicle
7 pointed?

8 A I don't remember.

9
10 Q Do you have a standard practice in that regard when you're monitoring say eastbound
11 traffic on Highway number 1?

12 A It would be the nose of the police vehicle be in whatever direction the highway is. So,
13 if I was on the south side I would point my vehicle's nose towards the highway. If I
14 was on the north side of the highway it would be positioned so that it would be facing
15 eastbound if that is what you're referring to.

16
17 Q Okay.

18 A Where I was situated that day I don't remember if I pulled over, if I was facing
19 eastbound to pull back out into traffic. I can't remember.

20
21 Q Do you recall for what period of time you were stationary at that rest area?

22 A No. I do not.

23
24 Q So, it would have been your standard practice to have your vehicle positioned
25 perpendicular to the -- in this case, the eastbound lanes of Highway number 1?

26 A Yes. That's my standard practice.

27
28 Q Right.

29 A I don't remember if I did it this time but that is my standard practice.

30
31 Q And it is your standard practice because if you see a vehicle that is of interest to you
32 then you are in a position to pull that vehicle out right away and to follow that vehicle.

33 A Correct.

34
35 Q And as you're sitting there you see the Dodge Ram go by?

36 A Correct.

37
38 Q And --

39 A I would -- I would have seen a vehicle like the -- like you're referring to this one
40 obviously.
41

1 Q Yes.

2 A Yeah. Okay. I would have seen [REDACTED] vehicle travel past, yes.

3
4 Q Okay. And you had stopped that vehicle previously on or about November the 29th,
5 2017.

6 A On or about that date, yeah, because I remember I said it was a couple of months
7 before and I don't remember what the exact date was.
8

9 Q Okay. Well, you would have recorded that somewhere.

10 A Yeah. It would have been documented either in PROS or in my notebook notes unless
11 it was violation ticket which I don't believe I gave her a ticket that day. I can't
12 remember though.
13

14 Q Okay. So, you're sitting there, you're stationary in this rest area, and you're probably
15 perpendicular to the eastbound lanes of Highway number 1, you see the red Ram go
16 by and you pull out.

17 A I can't -- I can't speak to that because I don't remember if that is how it happened.
18

19 Q Well, you pull out and lo and behold you're following the red Ram; right?

20 A There were multiple vehicles on the highway that day. I don't remember if I pulled
21 out specifically to go run a licence plate of [REDACTED] or I had pulled out after
22 another vehicle and during the course of going after that vehicle I encountered [REDACTED]
23 [REDACTED]. That's where I don't remember.
24

25 Q Well, --

26 A But something -- something caused me to pull out to go after it.
27

28 Q Well, that something was you recognized the vehicle from the previous stop?

29 A No. That's -- that would be like saying -- that would be quite frankly an absolute gift
30 if could do that. If I could just point at a vehicle and say, you, sir, I'm going after you
31 because I remember you from five or six months before. That would be something
32 and I admit it -- yeah, I will just leave it at that. That's not what happened.
33

34 Q Yes. I would just leave it at that. So, ultimately you are following the vehicle --
35 A Correct.
36

37 Q -- the red Ram.

38 A Correct.
39

40 Q And as you're following it, you run the plate.
41 A Yes.

1
2 Q Okay. By that I mean long before you pull around in front of the red Ram you are
3 running the plate?

4 A Absolutely.
5

6 Q Okay. So, --

7 A Run all -- like, just so it is clear for the court, I would be running -- I run plates like all
8 of the time.
9

10 Q I don't care about all of the time. I care about now.

11 A I understand that.
12

13 Q So, just answer my questions.

14 A Yes.
15

16 Q So, you're stationary, the red Ram goes by, you pull out, and how long after you pull
17 out from your stationary position are you running the plate on the red Ram?

18 A Until I would have been able to read the licence plate.
19

20 Q Okay. So, you pull out, you close the distance between your vehicle and the red Ram,
21 so you're in a position to actually see and read the licence plate?

22 A Yes.
23

24 Q So, 30 seconds, 45 seconds?

25 A I can't remember. Enough -- enough time that allowed me to close the distance. So,
26 whatever the driving speed would be, the road conditions, the traffic volume, enough
27 time that I got up to catch up to run the plate.
28

29 Q Okay. So, --

30 A I don't know. I don't -- I hate to guess, right. Like, let's estimate then if that's --
31

32 Q Approximately --

33 A Sure. Approximately 45, maybe a minute.
34

35 Q Okay. So, within 45 seconds of leaving your stationary position to a minute --

36 A Right.
37

38 Q -- approximately, --

39 A Yeah.
40

41 Q -- you're running the plate on that vehicle.

1 A Correct.
2

3 Q And when you run the plate on the vehicle, you get the name of the registered owner
4 of the vehicle?

5 A Absolutely.
6

7 Q And at that point in time, you recognized the name of the registered owner as
8 someone that you had stopped previously?

9 A No. It does come between the course of the actual traffic stop but when --
10

11 Q I'm not there yet. We're talking about when you --

12 A No.
13

14 Q -- ran the plate.

15 A Then, no, I did not.
16

17 Q Okay. So, you're behind the vehicle, you're running the plate, and you get the
18 registered owner's name; right?

19 A Yes.
20

21 Q And that's while you are still behind the red Ram?

22 A Correct.
23

24 Q Okay. And still behind the red Ram in the first instance?

25 A Yes, Sir.
26

27 Q Okay. And the name comes back as, well, the accused [REDACTED], right?

28 A Yes.
29

30 Q And you're telling the court that that name didn't ring a bell with you?

31 A That it did not.
32

33 Q Okay. And -- and you didn't register the vehicle as a vehicle that you had stopped
34 previously?

35 A Not at that point, no.
36

37 Q So, you're behind the vehicle, tell the court about the checks, the computer checks that
38 you're running on the vehicle as you're following the vehicle.

39 A Okay. So, I would have run the licence plate which comes back on the CPIC database.
40 CPIC -- do you require me to spell out what CPIC means or --
41

1 Q Canadian Police --

2
3 THE COURT:

I think we all know what means.

4
5 A Okay. I just -- okay.

6
7 Q MR. FAGAN:

Yes, yes. That's okay.

8 A So, for the CPIC database and the CPIC query log would have returned the registered
9 owner's information and subsequently any sort of hits relating to it, which I do that on
10 -- the Crown -- nothing of that nature regarding surveillance, warrants, et cetera.

11
12 Q But --

13 A But --

14
15 Q -- there was information relative to drugs; right?

16 A No. And let me -- and if you let me finish.

17
18 Q No.

19 A No. Let me finish. I ran the plate and then there was the query log hit from 'D'
20 division in Manitoba which is what caught my attention.

21
22 Q Okay. And that is as you are following the vehicle?

23 A Yes.

24
25 Q And what does that query hit tell you? What does it --

26 A So, that query hit shows that that vehicle was queried in Manitoba on the 31st of May,
27 so what triggered my interest in the vehicle for the query log hit was the fact that it
28 had been run on 31st of May. So, that was something I took note of. There was
29 nothing regarding drugs on -- because this CPIC database does not talk to the PROS
30 database. So, in order for me to find out anything -- anything drug related I have to
31 manually enter that information gleaned from the CPIC query log into the PROS
32 database which would give me the return of the files.

33
34 Q Did you do that?

35 A Yes.

36
37 Q Okay.

38 A So, I do that upon the stop.

39
40 Q No, no. We are not to the stop yet. We are still following the red Ram.

41 A So, no, I did not get to that point. So, I get the query log hits back on the CPIC

1 database. From there follow the vehicle, the thing that caught my --
2

3 Q You're getting ahead of us a little bit here. So, you're still following the vehicle.
4 A Correct.
5

6 Q And in addition to the registered owner information what specifically do you receive?
7 A The CPIC database query log hit from Manitoba.
8

9 Q Okay. And it says what?

10 A That the vehicle was stopped for some reason in Manitoba on the 31st, at
11 approximately 10 PM, on the -- in 2018, for the date to be -- for the record.
12

13 Q Okay. And as you're following the red Ram what then do you do with that
14 information?

15 A Well, I ended up conducting a traffic stop. So, I've taken now the information that I
16 have from the CPIC query as well as registered owner, the fact that they're from B.C.,
17 the infraction, and I conduct the traffic stop. From the traffic stop I then get out, make
18 contact --
19

20 Q No. We are not there yet. So, we are still following the red Ram. So, you have got
21 registered owner information, you're got CPIC information, but you're telling the
22 court that while you're following the vehicle running the plate you don't have any
23 information with respect to drugs?

24 A No.
25

26 Q You're telling the court that you don't have any information as you're following the
27 vehicle in the first instance of any indicia of criminal activity at all?

28 A That is correct. So, in the --
29

30 Q Just a -- just a second, please.

31 A Okay.
32

33 Q Just answer the question. I thank you for that. So, you're following the vehicle and
34 then what do you do? How long do you follow the vehicle, a minute, two minutes?

35 A Until we get to Seven-Mile Hill from --
36

37 Q Okay. Approximately what period of time do you follow the vehicle?

38 A Well, I'm not going -- again I'm estimate. So, let's -- so let's think at 90 kilometres an
39 hour from the Mount Norquay exit to the area with the construction zone, I think that
40 would probably be about three minutes.
41

1 Q Okay. And --

2 A Just what -- would allow me to clarify following versus being in the same vicinity as
3 the vehicle. So, I want -- so I'm not following the vehicle in behind it. I'm travelling in
4 the pack of the vehicles with the red Dodge Ram.
5

6 Q Okay. I'm --

7 A Just to clarify.
8

9 Q No. I understand. So, from the point that you close the distance and are close enough
10 to run the plate to when you decide to pull out and pass the red Ram, how much time
11 goes by?

12 A I honestly don't remember. Again I'd be estimating. I don't know. Let's say a minute
13 approximately.
14

15 Q Okay.

16 A And referring to when I had pulled out initially. There was the 45 seconds to a minute,
17 run the plate, follow it, make my observations, then go past it, and then we're into that
18 minute, two-minute mark.
19

20 Q And we will get to that. Thank you.

21 A Yeah.
22

23 Q So, you've run the plate, you have the information that you've told us about and you
24 still have the results of those query?

25 A What results are you --
26

27 Q -- on your file? The CPIC hit --

28 A No.
29

30 Q -- the registered owner information?

31 A Oh, that stuff would all be like -- unless she's gone and changed the information like
32 the registered owner information on the truck, it would all be the same. Nothing like
33 that was printed off that day.
34

35 Q Okay. So, all of that information, the registered owner information, that you accessed
36 and acquired and the CPIC information that you accessed and acquired, it would still
37 be available by way of a search of those databases?

38 A Correct.
39

40 Q Okay. So, because of that information you decide to pull out and pass the red Ram?
41 A Correct.

1
2 Q And why did you decide to pull and pass the red Ram?

3 A Because at that point I had -- there was no visible sign of traffic infraction or anything
4 which gave me a reason which I felt it would be -- like a justified reason to conduct a
5 lawful traffic stop.
6

7 Q Okay. Now, you had received information by way of a CPIC about a stop on the 29th;
8 right?

9 A Correct.
10

11 Q And that was of concern to you?

12 A It was something I had taken note of.
13

14 Q And why did you take note of it?

15 A Because part of our training, and this is what is taught, as well as what I was taught is
16 when you have an individual who has been pulled over, and their licence plate has
17 been queried in another province or another area, and now you have them in very
18 different area of the country travelling back towards that same area that -- that is of
19 significance. Something that you would take note. That they have travelled to a source
20 location and now you have them leaving that source location and they were just
21 stopped a mere two days before then.
22

23 Q Source location, source of what?

24 A Drugs.
25

26 Q All right.

27 A Being the Province of British Columbia.
28

29 Q Okay. So, the information that you received by way of CPIC as you were still
30 following the red Ram gave rise to investigative concerns from a drug perspective?

31 A No. Don't -- that's not -- that's not the way I relate it. What I'm saying is that part of
32 our training is that when I see a vehicle that was effectively in the Province of
33 Manitoba two days before then and now it is coming -- well, way over on the west
34 side of Province of Alberta -- let's say I'm assuming -- I'm making a presumptuous
35 assumption that that vehicle even went into the Province of British Columbia. Let's
36 say it went all of the way to the border of the Province of Alberta and never even went
37 in -- I've had files where individuals will travel from those destinations in an eastern
38 portion of the country, make a meet with somebody else, and this is from being told
39 from individuals as well as other officers, they will make meets, they will pick up
40 contraband and will take it back. At the end of the day what I saw on police database
41 was an individual where their licence plate had been queried in the Province of

1 Manitoba on May 31st, and now I have them in the Province of Alberta out by Banff
2 National Park travelling in an easterly direction back towards the Province of
3 Manitoba or a source city Calgary. So, it is something that I take note of.
4

5 Q Okay.

6 A If that clarifies it.
7

8 Q So, at that point --

9 A The nexus -- just let me --
10

11 Q Yeah.

12 A -- the nexus of the drug side of it was not -- there was no drug nexus or connection
13 between just seeing a licence plate query and the fact that it was in this area of the
14 province.
15

16 Q Okay. But you were concerned before you pulled out to pass the vehicle that the
17 vehicle may be involved in the transportation of contraband.

18 A I don't know where I said that in my evidence.
19

20 Q I didn't say you said it, but that's what you thought, isn't it?

21 A No.
22

23 Q You pulled out to pass the vehicle and as you're going by the red Ram you take a
24 good look at the driver of the red Ram; right?

25 A I do?
26

27 Q Don't you? Well, that is what you would have done. You're just checking a vehicle,
28 you made note of something of some investigative concern. You're pulling out, you're
29 passing the red Ram and are you telling the court that you don't bother to take a look
30 at the driver?

31 A I looked at the driver --
32

33 Q Sure you did.

34 A -- but not a nice long look as suggested.
35

36 Q You took a look at the driver and lo and behold it is the same person that you pulled
37 over about -- you know, back in November 2017.

38 A I don't remember that.
39

40 Q But that's -- that's what happened. You looked at her and you recognize her. Same
41 woman driving the same vehicle with the same plate that you stopped in late

1 November.
2

3 MS. SZABO:

Your Honour, I realize that is still latitude of
4 cross-examination, but the officer has now answered that question twice and not only in
5 direct examination that he didn't recognize her until he saw her in the window and started
6 speaking to her, but he has also answered that question to counsel several times now.
7

8 MR. FAGAN:

It is not unusual for witnesses to say one thing
9 in direct examination and say something totally different in cross. It happens often.
10

11 THE COURT:

I don't recall him saying that he recognized her
12 right at the point when he's at the window of the vehicle. You've asked it once or twice.
13 You've already asked it, Mr. Fagan, so let's get an answer and then move on.
14

15 A Okay.
16

17 MR. FAGAN:

Okay.

18 THE COURT:

So, were you done with the question?

19 MR. FAGAN:

I will tighten it up.

20 THE COURT:

I think you've got -- you've got the question.

21 MR. FAGAN:

I've got the question.

22 THE COURT:

So, go ahead and answer the question.

23 Q MR. FAGAN:

Do you understand the question?

24 A Please rephrase it or please --
25

26 Q I thought you might want me to do that.
27

28 A -- re-say it again.
29

30 Q Thank you very much. So, as you're going by, as you're passing the red Ram, you
31 look at the driver?
32

33 A Yes.
34

35 Q Okay. So, and again ultimately this is the same vehicle with the same plate with the
36 same driver that you had pulled over previously?
37

38 A Yes.
39
40
41

1
2 Q Not only is it the -- just a routine stop on this previous occasion, you pulled her over
3 for a drug search, did you?

4 A No.

5
6 Q You didn't conduct a drug search on the previous occasion?

7 A Well, the phrasing that you just phrased your question needs to be clarified because
8 you're suggesting that I pulled the vehicle solely on a reason --
9

10 Q Oh, no.

11 A Well, I just want to clarify for the court.
12

13 Q Oh, no. Did you do a drug search on her vehicle on a prior occasion?
14 A I did not.
15

16 Q Did someone else in your presence?

17 A Yes, yes.
18

19 Q Well, look at that.

20 A Constable Lang (phonetic) did.
21

22 Q Okay.

23 A I believe Constable Lang ran his narcotics canine around the outside of the vehicle.
24

25 Q Okay. Let's -- let's get down to it then. Tell us about this prior occasion.
26 A I can't.
27

28 Q What do you mean you can't?

29 A I can't -- I haven't had a chance to refresh my memory from reading the notes of that
30 investigation or going over my notebook notes. I can give you a general answer as to
31 a traffic stop was conducted in and around the area of Lake Louise, Alberta, in some
32 time in 2017, and a -- we entered into a drug investigation. What the indicia was that
33 led us to get to that, I don't remember. The dog did not indicate on the vehicle and she
34 was sent on her way. That I do remember.
35

36 Q Okay. And the person that you pulled over, just so we're clear, is the accused in these
37 proceedings, [REDACTED]

38 A Right.
39

40 Q The same red Ram?

41 A Same red Ram.

1
2 Q Same Saskatchewan licence plate.

3 A Correct.

4
5 Q And how much time did you spend at roadside in proximity of [REDACTED] on that
6 occasion? Half of hour?

7 A Don't remember.

8
9 Q And what was your function? What was your duty or responsibility as discharged on
10 that prior occasion vis-à-vis [REDACTED]?

11 A I was the police officer that conducted the traffic stop.

12
13 Q And you don't remember why you pulled the vehicle over?

14 A No. I do not. I would love to refresh my memory by going through that file and those
15 notebook notes but I don't remember why the stop occurred.

16
17 Q Okay. So, you did make notes relative to that occasion?

18 A I would have, yes.

19
20 Q Okay. And those notes still exist?

21 A They do.

22
23 Q And you would have prepared a report, a general occurrence report or something of
24 that nature germane to that occurrence?

25 A That is correct. And I would love to be able to disclose them to you.

26
27 Q You can consider this as a formal request for disclosure in that regard.

28
29 MS. SZABO:

(INDISCERNIBLE)

30
31 THE COURT:

And given that he would love to do it.

32
33 MR. FAGAN:

Yes.

34
35 Q MR. FAGAN: And I take it that you conducted computer
36 searches at that time; that is on this prior stop?

37 A That is correct.

38
39 Q Okay. And do you remember the results of those computer searches?

40 A No. I do not.

41

1 Q And do you recall if there was any communication generated or engaged in by you to
2 other agencies or other locales of the Royal Canadian Mounted Police germane to
3 your stop of this vehicle?

4 A I do not. No. And I'm sorry, just to clarify you're referring to the very first stop.
5

6 Q Mm-mm. The earlier stop, yeah.

7 A The original. Okay. Yeah. Nothing that I can remember.
8

9 Q Okay. And if you did it -- it will be on the file.

10 A Yeah. And I would be happy to disclose them.
11

12 Q All right. So, back to June the 1st, you pass the vehicle, the red Ram?
13 A Yes.
14

15 Q As you're passing the vehicle you look at the driver, you complete the pass, and then
16 you pull in front of the -- of the red Ram.
17 A No.
18

19 Q Did you continue on in the number 2 lane?
20 A Correct.
21

22 Q I thought you told us that is something a vehicle shouldn't do is stay in the number 2
23 lane.
24 A I moved over to the number 2, correct. Maybe I'm not understanding --
25

26 Q So, just a second. When you're -- when you're -- the passing lane is that what you call
27 the number 2 lane?
28 A Yes.
29

30 Q Okay. So, you pull out and you pass in the number 2 lane.
31 A Well, no, because I don't remember exactly if the vehicle was still occupying the
32 number 2 which would have prevented me from passing it. So, I could have slid up
33 past the vehicle in the number 1, remaining in the number 1, or holding the number 1
34 while the vehicle occupied the number 2, and did not pass. If that makes sense.
35

36 Q It doesn't make any sense. So, you don't remember if you passed -- oh, as you're
37 following the vehicle, you don't remember which lane it is travelling in?
38 A I literally do not remember what lane it was travelling in at all prior to me passing it. I
39 do remember however it occupying -- at some point transitioning over to the number
40 2, and occupying that passing lane.
41

1 Q Okay. But you don't recall it occupying that number 2 passing lane as you're
2 following it and running the plate?

3 A I do not remember that, no.
4

5 Q Okay. What you do recall is pulling out and passing the vehicle?

6 A At some point whatever lane I choose or picked at the time would have been the lane
7 of obviously least resistance where they were obviously occupying that lane which
8 would have prevented me from passing.
9

10 Q Okay. And so you pull in front of the vehicle; right?

11 A Yes.
12

13 Q And then -- before we get there. As you're following the vehicle, you have no
14 concerns with respect to the speed that the vehicle is travelling at -- that is the red
15 Ram.

16 A Yes.
17

18 Q You're agreeing with me?

19 A No.
20

21 Q You do have concerns as you're following it?

22 A Yes.
23

24 Q What -- what's the concern?

25 A The reason why I stopped it. I just gave evidence -- all of -- I've been giving evidence
26 on the speed all morning.
27

28 Q Well, you've only told us about what is on the video here pretty much. I mean in your
29 notes, correct me if I'm wrong, your observations are all made in your rearview
30 mirror.

31 A Yes.
32

33 Q Do you say anything in your notes, do you say anything in your general report about -
34 -

35 A But --
36

37 Q Let me finish.

38 A Okay.
39

40 Q About making any observations as you're following the vehicle anywhere.

41 A I -- I must be -- I must be confused. Her speed was the reason that I conducted the

1 stop in correlation with the fact that the vehicle speed was travelling under. I narrate it
2 on the dash camera footage as well as the fact that the vehicle was driving under the
3 speed limit enough that it was causing and impeding some traffic flow.
4

5 Q And all of those observations were made while the vehicle was behind you.
6 A Yes.

7
8 Q Yes.

9 A But that's -- I'm not -- I'm really confused.
10

11 Q No, no. I'm talking about when you were following the vehicle.
12 A Oh, okay. So, when I was --

13
14 Q When you ran the plate.

15 A -- directly behind it --
16

17 Q Yes.

18 A Ah, okay. I was inferring what you were suggesting was I was -- while I was
19 following it, like in front, and there were speed concerns.
20

21 Q No. I'm not concerned about you following in front.

22 A Sorry. I was -- that was a confusion.
23

24 Q As you -- as you're following the vehicle, running the plate, --
25 A No, no.
26

27 Q -- considering --

28 A For the record, no concerns of speed.
29

30 Q No concern with the driving whatever.
31 A No.
32

33 Q No concern with the vehicle itself.
34 A No.
35

36 Q You know, mud flaps or tinted windows, nothing like that.
37 A No. Nothing like that.
38

39 Q No weaving outside the lane or inside the lane?
40 A Nothing like that.
41

1 Q No concern from an impairment perspective, et cetera, et cetera.
2 A No, sir.

3
4 Q Okay. It was only after you passed the red Ram and pulled in in front of it that you
5 started to make observations and developed concerns with respect to the manner in
6 which the vehicle was being driven.

7 A That is correct.
8

9 Q Okay. When you pulled in front of the red Ram, after -- you slowed down; right?
10 A I don't believe that I did. I was driving the highway speed.

11
12 Q So, you -- you pulled in front of the red Ram and then what did you expect it to do --
13 did you expect once you passed the red Ram, for the red Ram to then pass you?
14 A Or to actually move over in behind me into the actual number 1 lane.

15
16 Q No. One thing at a time. Did you expect after passed the red Ram for the red Ram to
17 then pass you? Is that what you expected?
18 A No, no.

19
20 Q Because you're driving a marked patrol car; right?
21 A Correct.

22
23 Q And correct me if I'm wrong, people on the highway based on your experience, tend
24 to be disinclined to pass a patrol car.

25 A Oh, I wish that was the truth, counsel, but they still pass us, believe it or not, and will
26 speed pass use even in marked cars.
27

28 Q That is the exception rather than the general rule though, isn't it.
29 A That is correct. But it does happen.

30
31 Q Sure. Because you see any marked patrol car rolling down the highway, there is
32 usually a line of cars behind it; right?
33 A Correct. Yeah.

34
35 Q Usually in both lanes?

36 A Correct.
37

38 Q In the number 1 lane and the number 2 lane.
39 A I would agree with you.

40
41 Q So, you pass the red Ram, and your testimony is that the red Ram was in the number 2

1 lane behind you?

2 A Correct.

3
4 Q Okay. And the observations that you made after you pass the red Ram were all made
5 in your side or rearview mirror?

6 A Yes.

7
8 Q Side view mirror?

9 A Driver's side mirror.

10
11 Q Okay. And as -- right after you pass the vehicle, you're approaching a construction
12 zone?

13 A Correct.

14
15 Q Okay. And before you hit that construction zone, what is the posted speed?
16 A Ninety.

17
18 Q Okay. And when you were following the red Ram, it was doing about 90, the speed
19 limit?

20 A Correct.

21
22 Q Okay. And then you passed it, and as you're approaching the construction zone, it
23 becomes -- correct me if I'm wrong, a 70-kilometre an hour zone.

24 A I believe that there was -- the signage is 70 for approaching the base of Sven-Mile Hill
25 but when I initially had seen the vehicle way back which we don't capture on the
26 camera because there was minute, two minutes before then, there was no signage to
27 slow down.

28
29 Q But you're approaching a construction zone.

30 A Yes, yes, absolutely.

31
32 Q That is obvious; right.

33 A Yes.

34
35 Q And correct me if I'm wrong, just a matter of commonsense and safety would suggest
36 to one motorist if you are approaching a construction zone, regardless of the posted
37 speed limit, you had better slow down.

38 A Correct, yes.

39
40 Q Okay. And that is what the red Ram did. As you're approaching the construction zone
41 it slowed down; right?

1 A No.

2

3 Q It didn't?

4 A I -- I just gave evidence that before then, even before we were in the area of the
5 construction zone, the vehicle was travelling under the posted speed limit. Well before
6 the signage. So, unless they are aware or had a premonition the vehicle had slowed
7 down and was still occupying that number 1 lane well before where we had the
8 construction zone.
9

10 Q It had slowed down to what about 80 kilometres an hour?

11 A Yes. And the vehicles behind it which I gave evidence to backing up.
12

13 Q Okay. But you were only doing 80 kilometres an hour in a marked patrol car.
14 A I said I was doing 90.
15

16 Q Well, I'm looking at your general report -- do you have that up there with you?
17 A No. Can I look at it?
18

19 Q That's why I asked you. Do you have it up there with you?

20 A Yeah, no, it's not. I've got to dig through it if you're good with that.
21

22 Q It's the -- yeah. It's the general report, three pages.

23 A Which page is it, counsel?
24

25 Q Page 1.

26 A Yeah.
27

28 Q And it's the first -- this is a document that was prepared by you?
29 A Yes.
30

31 Q While the events were fairly, well, fresh in your memory?
32 A Correct.
33

34 Q And you need this to refresh your memory?
35 A Yes.
36

37 MR. FAGAN:

Okay. Might he have permission?

38 THE COURT:

Sure. I don't even know if you --

39 MR. FAGAN:

Thanks.

1
2 THE COURT:

No. That's fine.

3
4 MR. FAGAN:

I'm not sure, but I thought I would ask.

5
6 THE COURT:

Thanks.

7
8 Q MR. FAGAN:

First full paragraph, last sentence where it says,

9 "My speed was approximately 80 kilometres an hour". Do you see that?
10 A No. Where is it?

11
12 Q First paragraph under first observations where it says --
13

14 MR. FAGAN:
15 help him.

May I approach the witness. I might be able to

16
17 THE COURT:
18 at the same document.

Yes. Just make sure the two of you are looking

19
20 MR. FAGAN:

Yes.

21
22 A Oh, there it is, yes.
23

24 Q MR. FAGAN:

Okay.

25 A Yeah. Oh, yes, okay. That makes sense, yeah.
26

27 Q Yes.

28 A So, in my report I wrote: (as read)
29

30 I recognize that we were indeed approaching a construction zone
31 but the signage was not posted and vehicles were starting to tailgate
32 the truck as they were occupying the passing lane. My
33 speed was approximately 80 kilometres an hour.
34

35 So, in this zone where I'm slowing down, but again that is written in relation --
36 correlation to slowing down to when I'm recognizing the infraction due to the vehicle
37 prior to that -- prior to approaching the construction zone's reduced speed occupying
38 that lane if that make sense.
39

40 Q So, initially when you follow the vehicle it was going at the appropriate speed, posted
41 speed, approximately 90 kilometres an hour.

1 A Correct.

2
3 Q You pass the vehicle?

4 A Correct.

5
6 Q And then you slowed to approximately 80 kilometres an hour.

7 A I wish -- you know what, counsel, I wish that I was able to have recorded it further
8 because that is the only as much as the camera captures. What I am trying to explain
9 to the court is that prior to that time --let's say on the east side of the Banff secondary
10 exit, the vehicle had slowed down and was occupying the number 1 lane which
11 continued in an eastbound direction well before the construction zone, and what I am
12 talking about in my report is in direct correlation to the offence which I was watching
13 happen as we were approaching the construction zone occupying the number 1 lane.
14 Does that clarify it?

15
16 Q Not really. So, you slow down to approximately 80 kilometres an hour, and correct
17 me if I'm wrong, lo and behold, the vehicles behind you, including the red Ram, they
18 slow down to approximately 80 kilometres an hour; right?

19 A I honestly don't know what other way I can explain this. I don't -- sorry.

20
21 Q No, no. Just answer the question.

22 A I don't --

23
24 Q You don't need to explain it. Just answer the question.

25 A That is not what happened.

26
27 Q Did you slow to 80 kilometres an hour?

28 A Yes.

29
30 Q When you slowed to 80 kilometres an hour did the vehicles behind you slow down?

31 A I had just started to slow on the video when we approached the construction zone. So,
32 yes, I would -- they -- I'm assuming they would have slowed down.

33
34 Q Thank you. So, even though you slowed to 80 there were no vehicles passing you?

35 A No.

36
37 Q So, then what you do is you kind of pull your police vehicle to the curb while still
38 mobile.

39 A Yes.

40
41 Q And that was in essence a sign by you that it was okay for the red Ram to pass you.

1 A No. It was me moving over so that I could ready to conduct a traffic stop so it would
2 move her into the number 2 lane be there were cars -- if you noticed on the video
3 there were cars piling up behind me, so I wanted to let -- I do that a lot of where I will
4 activate my rear deck of my lights to get people aware that I'm about to conduct a
5 traffic stop and then once the vehicle had gone passed me then I activated a full set of
6 my lights.
7

8 Q Okay. But when you pulled over on the shoulder of the road, still mobile, that red
9 Ram it went right by you?

10 A Correct.
11

12 Q And then after it went by you, and before you hit your lights, it signaled a lane change
13 back into the number 1 lane; right?

14 A I'd have to watch the video again if it indicated.
15

16 Q Yes. It's on the video. Is that your recollection?

17 A Yeah. That it moved over to the number 1, yes.
18

19 Q Yeah. It moved back into what you would consider to be the proper lane?
20 A Yes, sir.
21

22 Q So, even though it moved back over into the proper lane, you still saw fit to pull the
23 vehicle over?

24 A Correct.
25

26 Q So, did you run anymore computer queries or get any more information from the
27 computer or anywhere else once you pull the vehicle over and before you approached
28 the passenger side?

29 A No.
30

31 Q Okay. So, you approach the passenger side and, well, we have the dialogue recorded
32 by way of the way of the audio/visual and you start asking [REDACTED] questions
33 about her travel. Where she'd been, where she was going, so on and so forth.
34 A Yes.
35

36 Q And as you recorded in your monologue later on, you had concerns with respect to her
37 story.

38 A Correct.
39

40 Q Now, these questions that you asked her about her travels and the timing of her
41 travels, this 'Q' and 'A' I will call it, that is part of your pipeline training, isn't it?

1 A To engage the violator, yes.
2

3 Q Well, not just to engage the violator. Obviously you need to communicate with them
4 at roadside but it is part of your pipeline training to ask them questions about where
5 they've been, when they left. You want to know for example if it is a quick
6 turnaround.

7 A Correct.
8

9 Q And that is why you were asking these questions?

10 A Correct.
11

12 Q Right?

13 A Yes.
14

15 Q Because these answers that you get to the questions that are asked at roadside assist in
16 formulating your reasonable suspicion to detain.

17 A They can assist, yes, or they can deny. They also help us assess their level of sobriety,
18 make --
19

20 Q I don't need a pipeline course. In this situation, you asked questions concerning her
21 travel?

22 A Yes.
23

24 Q And those -- the answers that she gave to your questions at roadside you factored
25 those into your analysis as to whether or not you had reasonable suspicion.

26 A Correct.
27

28 Q They formed a part of it.

29 A They do, yes.
30

31 Q And without the answers to your questions in that regard, would you have detained
32 her?

33 A Without -- no, I wouldn't. I would have insufficient grounds to detain her.
34

35 Q So, without the 'Q' and 'A' you would have had insufficient grounds?

36 A Correct.
37

38 Q And did you tell her when you were questioning at roadside that you were conducting
39 a drug investigation?

40 A But I wasn't.
41

1 Q Did you tell her you were conducting a criminal investigation?
2 A But I wasn't.

3
4 Q Did you tell her you were following up with respect to the concerns that you had
5 relative to the information you received about the recent stop in British Columbia?
6 A There was -- she was never stopped in British Columbia.
7

8 Q Where was the stop?
9 A In Manitoba.

10
11 Q In -- sorry. In Manitoba. Did you tell her about that?
12 A No.
13

14 Q Okay. Why not?
15 A Sorry. Why didn't I tell her about this Manitoba stop or all three?
16

17 Q Yeah. Why didn't you tell her about the Manitoba stop?
18 A I didn't feel that I needed to address -- she had already been ticketed for it or stopped
19 for something.
20

21 Q So, you're telling the court when you were engaging her in this 'Q' and 'A', part of
22 your pipeline training, that you weren't engaged in a criminal investigation?
23 A I hadn't -- my nexus had not moved to a criminal event in that nature at that point
24 until I started making my observations of the vehicle as well as the reason for the
25 stop, as well as her answers, as well as the stuff that I'd gleaned from the police
26 computer, and at that point I had not made the connection until I walked up and got a
27 close look at her that she was the person that I had stopped in fall of 20, I guess, 17.
28 So, did not provide her or tell her or provide her any information that I was
29 conducting a criminal investigation or a police investigation -- traffic infraction.
30

31 Q You never ever told her she didn't need to answer any of your questions; correct?
32 A Well, I'm in -- I'm also like I said assessing her level of sobriety, whether or not she
33 has the faculty to be operating a motor vehicle.
34

35 Q Just a second. Did you have any concerns at all during the entirety of your observation
36 of the operation of the vehicle with her ability to operate a motor vehicle from an
37 impairment perspective or otherwise? Any concerns at all based on your
38 observations?

39 A At that point, I had no concerns from strictly, solely on the driving of the motor
40 vehicle.
41

1 Q Mm-mm.

2 A However, I've had numerous impaired investigations where seasoned alcoholics will
3 display no indicia of driving and they blow 200 milligrams.
4

5 Q Well, just a second. So, are you telling this court that you're engaging her in this 'Q'
6 and 'A' to determine whether or not her ability to operate a motor vehicle is impaired
7 by alcohol?

8 A I never said that.
9

10 Q Then what are you saying? What -- why are you engaging her in the 'Q' and 'A'?

11 A I said it earlier, level of the assessment of sobriety, her faculties to operate a motor
12 vehicle. There is also I think the expectation of the public that have some semblance
13 of professional like conversation with them, not just be cryptic robots that write
14 violation tickets; to be somewhat pleasant as well as during the course of the
15 investigation to make observations regarding the interaction of the violator. I didn't
16 ask her very specific detailed right -- questions relating to contents in the vehicle,
17 anything relating to personal stuff. Merely -- I do it with thousands and thousands of
18 motorists. Hey, where are you coming from today. Where are you off to. It builds a
19 better rapport. It doesn't treat them in any sort of inappropriate manner.
20

21 Q I'm sorry.

22 A I know --
23

24 Q Just a second. You've been involved in thousands of drug stops; right?

25 A Correct.
26

27 Q And are you telling this court that you're engaging this woman in a roadside 'Q' and
28 'A' just to be friendly?

29 A I -- you're -- you're honing in on only solely the one thing that I took out of that whole
30 piece of evidence. I'm saying it is the whole premise of during the course of a stop.
31

32 Q You're seeking to acquire evidence to assist you in the formulation of a reasonable
33 suspicion; correct?

34 A Yes.
35

36 Q Now, you had testified I think that one of your concerns, one of the variables that
37 factored into your ultimate conclusion that you had a reasonable suspicion that the
38 answers she gave with respect to travel and the absence of luggage.

39 A Yes, sir.
40

41 Q Okay. But there was backpack in -- right -- right there in the back seat.

1 A Yeah. I didn't see that.
2

3 Q Okay. Did you -- did you bother to ask her, hey, where's your luggage?
4 A That would be overstepping the bounds of what we are allowed to ask.
5

6 Q So, instead of asking her where her luggage was, you factored into the overall
7 reasonable suspicion equation that you didn't see any luggage; is that it? Is that how
8 it works?

9 A Correct. Yeah. There was no duffle bags, no toiletry bags, nothing that I saw which
10 would suggest to me that they had been travelling for an extended period or on a road
11 trip like motorists carry.
12

13 Q Okay. And you had mentioned as well the presence of an air freshener.
14 A Yes.
15

16 Q But we are only talking about one air freshener here.
17 A Correct.
18

19 Q Right. And nothing unusual about the presence of a single air freshener in a vehicle?
20 A No. I agree with you.
21

22 Q Sometimes you will pull a vehicle over and they will have 30 of those things --
23 A Correct.
24

25 Q -- hanging; right?
26 A Yes.
27

28 Q And you're hit right in the face with that scent as soon as you walk up to the vehicle.
29 A Totally agree with you.
30

31 Q But nothing like that here?
32 A No.
33

34 Q Okay. And again you didn't see anything of a drug related nature? Any packaging
35 materials, any paraphernalia associated with drug usage, remnants of any drug.
36 Nothing of that nature at all?
37 A Nothing.
38

39 Q Multiple cell phones? Nothing like that?
40 A Nothing, no.
41

1 Q Just about through. Do you have water up there?
2 A I'm good.
3
4 Q Okay.
5 A We're just about done.
6
7 THE COURT: You had a couple of glasses. I've been
8 watching. Do you want some more?
9
10 Q MR. FAGAN: Okay.
11
12 THE COURT: Do you want some more?
13
14 A I will have one more --
15
16 THE COURT: All right.
17
18 A -- for -- yeah. If you wouldn't mind?
19
20 THE COURT: Thank you, mister clerk.
21
22 Do you need a break?
23
24 MR. FAGAN: Me? No. Do you?
25
26 THE COURT: Well, if you are almost done --
27
28 MR. FAGAN: I am almost done.
29
30 THE COURT: Then I won't take one until we are done.
31
32 MR. FAGAN: I've been there. Okay. I promise. You've heard
33 that before.
34
35 THE COURT: I've heard promise before, too.
36
37 MR. FAGAN: Those are my questions.
38
39 Thank you, counsel.
40
41 Thank you, Your Honour.

1
2 THE COURT: Thank you, Mr. Fagan.
3
4 A Thank you, Mr. Fagan.
5
6 MS. SZABO: Thank you. Your Honour, the Crown would be
7 seeking a committal.
8
9 THE COURT: All right. And you have no issue, I take it, Mr.
10 Fagan?
11
12 MR. FAGAN: No statement, no evidence, no issue.
13
14 THE COURT: Thank you. All right. And so --
15
16 A May I step down, Your Honour?
17
18 THE COURT: Yes. Thank you very much --
19
20 A Thank you.
21
22 THE COURT: -- for coming to give your evidence, Constable.
23
24 (WITNESS STANDS DOWN)
25
26 **Order to Stand Trial**
27
28 THE COURT: And, [REDACTED] I then commit you to stand
29 trial at the next sitting -- I commit you to stand trial on the Information that is before me
30 and I order you to attend at the next sitting subject to any designation that are filed.
31
32 MR. FAGAN: Your Honour, I think it is a two-count
33 Information before you. I think there is a 5(2) and 4(1), and I don't want to speak for my
34 friend, but it is my understanding that the Crown is seeking the committal on the -- I wish
35 it was the 4(1) but it is --
36
37 MS. SZABO: It's not on the 4(1).
38
39 MR. FAGAN: --it's the 5(2). I don't believe my friend is
40 seeking a committal on the 4(1).
41

1 THE COURT:

Are you just seeking the first count?

2
3 MS. SZABO:

Yes.

4
5 THE COURT:

6 then, [REDACTED], on count 1 on the Information before me, and I will discharge you
7 on count 2.

All right. So, I am committing you to stand trial

8
9 MR. FAGAN:

Thank you, Your Honour.

10
11 I thank my friend.

12
13
14 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**
2

3 I, William Ogle, certify that this recording is a record made of the evidence in the
4 proceedings in Provincial Court, held in courtroom 1, at Canmore, Alberta, on the 7th day of
5 June, 2019, and that I was the court official in charge of the sound-recording machine during
6 the proceedings.
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1 **Certificate of Transcript**
2

3 I, Janet Miller, certify that
4

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

12 Janet Miller, Transcriber
13 Order Number: AL-JO-1003-5317
14 Dated: July 23, 2019
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