

Action No.: 110584125Q1
E-File No.: ECQ13 [REDACTED]
Appeal No.: _____

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

HER MAJESTY THE QUEEN

v.

[REDACTED]

Accused

T R I A L

Edmonton, Alberta
October 7, 2013
October 8, 2013
October 9, 2013

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 October 7, 2013

Morning Session

4

5 The Honourable

Court of Queen's Bench

6 Mr. Justice [REDACTED]

of Alberta

7

8 S. [REDACTED]

For the Crown

9 T. [REDACTED]

For the Accused

10 C. [REDACTED]

Court Clerk

11 [REDACTED], CSR(A)

Court Reporter

12

13

14 THE COURT CLERK:

Order in court.

15

16 THE COURT:

Good morning.

17

18 MS. [REDACTED]:

Good morning.

19

20 MS. [REDACTED]:

Good morning, My Lord.

21

22 THE COURT:

Please make yourselves comfortable. I assume

23 this is Mr. [REDACTED]

24

25 THE ACCUSED:

Yes, sir.

26

27 THE COURT:

Good morning.

28

29 THE ACCUSED:

Good morning.

30

31 THE COURT:

Have a seat, Mr. [REDACTED].

32

33 MS. [REDACTED]:

Good morning, My Lord. [REDACTED], first initial

34 S, appearing for the Crown today.

35

36 THE COURT:

Yes.

37

38 MS. [REDACTED]:

I understand that it would have been an

39 expectation that Mr. [REDACTED] [phonetic] would have been here, or at least until last week,

40 but due to some changes it's me prosecuting for the Crown today, and I hope to not have

41 to say it's only on short notice that I got this. I hope to only have to say that once in

1 the course of this, sir.

2

3 THE COURT: All right.

4

5 MS. [REDACTED]: Sir, [REDACTED], initial T, for the record. Counsel for
6 Mr. [REDACTED].

7

8 THE COURT: Thank you. So my understanding is that we
9 are entering today into a voir dire and the jury is -- will be appearing on -- in the morning
10 tomorrow?

11

12 MS. [REDACTED]: Yes.

13

14 THE COURT: That's what I gather is going on here?

15

16 MS. [REDACTED]: Yes, sir.

17

18 MS. [REDACTED]: Sir, the only thing that may be different than
19 had been previously discussed by way of e-mail is our initial intention to do the voir dire
20 in respect to voluntariness as well as a charter application today and then followed in late
21 afternoon by the court application with respect to the -- the court application, sir.
22 However, I've had some discussions with my friend, and in light of where I intend to go
23 in terms of my cross-examination of the complainant, it's my view that that's perhaps best
24 suited until that's been done to avoid perhaps having to revisit any ruling made on that
25 point.

26

27 So I think my friend and I are in agreement that that can be done at the close of the
28 Crown's case.

29

30 THE COURT: You mean the Corbett application?

31

32 MS. [REDACTED]: Yes.

33

34 THE COURT: Yes. And I thought I saw that in the pretrial
35 memo, but I wasn't quite sure what your preferences were with respect to the Corbett, and
36 so we won't -- you won't be asking me to make any determination today or early
37 tomorrow morning with respect to that.

38

39 MS. [REDACTED]: That's correct, sir.

40

41 THE COURT: Okay. So just in terms of how the

1 decision-making process might unfold -- and of course I don't know how long it's going
2 to take to hear the evidence -- I've read the cases. I haven't memorized them -- I may
3 or may not be able to give you a decision before the end of the day. If not, I'll
4 certainly give you a decision early tomorrow morning, and I'm thinking 9 o'clock, just so
5 you can plan your mornings so that we don't inconvenience the jury, and it will obviously
6 be an oral decision.

7
8 I shouldn't say "obviously", but I predict it will be an oral decision, and then you'll know
9 where you stand in that regard, and we can move on and deal with what flows from that.
10 Okay.

11
12 I should mention one thing. I don't intend to have a discussion with you this morning
13 about jury matters. I'm proposing that we deal with those sorts of things, anything at
14 all, again, tomorrow morning before the jury is brought.

15
16 But I'll say one thing. I had a call from the clerk's office on Friday. One individual
17 who was selected on last Thursday by you contacted the clerk's office. I don't know
18 who that individual is. I don't know except it's a male individual. I don't know what
19 his jury number is, nor do I know his name.

20
21 He called the clerk's office to express, I gather -- my information is coming from the
22 clerk -- some misgivings about his participation as a juror. What we've asked -- what I
23 asked the clerk to do was to be in touch with that individual to ask that person, of course,
24 to attend tomorrow, but to attend at the clerk's office and not to join the balance of the
25 jury with the jury officer.

26
27 Then I also asked the clerk to ask that individual to draft a brief note that I might look at,
28 or we all might look at, and I'll, of course, hear your thoughts and all of that, so we have
29 an understanding of what it is that's on his mind. And then we'll have a discussion about
30 how to deal with that individual, whether to excuse him or not as the case may be. Of
31 course, while we hope that all 14 jurors will show up tomorrow, but no guarantees, and so
32 obviously nothing's been done with respect to that individual except to keep him separate
33 from the realms of the jury so there's no contamination.

34
35 So in the interest of full disclosure, of course, you need to know that that happened on
36 Friday, but no decision's obviously been made, and that's just the process. Any
37 comments about any of that?

38
39 MS. [REDACTED]: Nothing, My Lord.

40
41 MS. [REDACTED]: No. Thank you, My Lord.

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THE COURT: Okay. Good. So we are -- obviously we're entitled to have a voir dire at the beginning of this trial in the absence of the jury. In terms of the arraignment of Mr. [REDACTED], I'm not familiar whether there's been one yet or how you propose to proceed in that regard.

MS. [REDACTED]: My understanding was that it took place at the jury selection, although I've been advised by madam clerk this morning that it is not reflected on the endorsement, so certainly there's no issue with having him arraigned on a second occasion, sir.

THE COURT: Okay. Any comments?

MS. [REDACTED]: No. Thank you.

THE COURT: Let's do that just to make sure we can say we did.

MS. [REDACTED]: Certainly.

THE COURT CLERK: [REDACTED], you stand charged that on or about the 21st day of May, 2011, at or near [REDACTED], in the Province of Alberta, did commit an assault on [REDACTED] contrary to section 266 of the Criminal Code. How say you to this charge, [REDACTED]. Do you plead guilty or not guilty?

THE ACCUSED: Not guilty.

THE COURT CLERK: Harken to your plea as the Court doth record it, [REDACTED], not guilty.

You further stand charged that on or about the 21st day of May, 2011, at or near [REDACTED], in the Province of Alberta, did commit a sexual assault on [REDACTED] contrary to section 271 of the Criminal Code. How say you to this charge, [REDACTED]. Do you please guilty or not guilty?

THE ACCUSED: Not guilty.

MS. [REDACTED]: Harken to your plea as the Court doth record it, [REDACTED], not guilty.

You further stand charged that on or about the 21st day of May, 2011, at or near

1 [REDACTED], in the Province of Alberta, did for a sexual purpose touch [REDACTED], a
2 person under the age of 16 years, directly with a part of your body, to wit, your mouth,
3 contrary to section 151 of the Criminal Code. How say you to this charge, [REDACTED]
4 [REDACTED]. Do you plead guilty or not guilty?

5
6 THE ACCUSED: Not guilty.

7
8 MS. JOYCE: Harken to your plea as the Court doth record it,
9 [REDACTED], not guilty.

10
11 You further stand charged that on or about the 21st day of May, 2011, at or near
12 [REDACTED], in the Province of Alberta, did for a sexual purpose touch [REDACTED], a
13 person under the age of 16 years, directly with a part your body, to wit, your hand,
14 contrary to section 151 of the Criminal Code. How say you to this charge, [REDACTED]
15 [REDACTED]. Do you plead guilty or not guilty?

16
17 THE ACCUSED: Excuse me. Not guilty.

18
19 THE COURT CLERK: Harken to your plea as the Court doth record it,
20 [REDACTED], not guilty.

21
22 You further stand charged that on or about the 21st day of May, 2011, at or near
23 [REDACTED], in the Province of Alberta, did knowingly utter a threat to [REDACTED] to
24 cause death to [REDACTED] contrary to section 261.1(1) of the Criminal Code. How
25 say you to this charge, [REDACTED]. Do you please guilty or not guilty?

26
27 THE ACCUSED: Not guilty.

28
29 THE COURT CLERK: Harken to your plea as the Court doth record it,
30 [REDACTED], not guilty.

31
32 You further stand charged that on or about the 21st day of May, 2011, at or near
33 [REDACTED], in the Province of Alberta, did, being a person with whom [REDACTED], a
34 young person, was in a relationship or dependency, did, for a sexual purpose touch
35 directly the body of [REDACTED], a young person, with a part of your body, to wit, your
36 mouth, contrary to section 153(a) of the Criminal Code. How say you to this charge,
37 [REDACTED]. Do you plead guilty or not guilty?

38
39 THE ACCUSED: Not guilty.

40
41 THE COURT CLERK: Harken to your plea as the Court doth record it,

1 [REDACTED], not guilty.

2

3 You further stand charged that on or about the 21st day of May, 2011, at or near
4 [REDACTED], in the Province of Alberta, did, being a person with whom [REDACTED], a
5 young person, was in a relationship of dependency, did, for a sexual purpose, touch
6 directly the body of [REDACTED], a young person, with a part of your body, to wit, your
7 hand contrary to section 153(a) of the Criminal Code. How say you to this charge,
8 [REDACTED] -- or [REDACTED], sorry. Do you plead guilty or not guilty?

9

10 THE ACCUSED: Not guilty.

11

12 THE COURT CLERK: Harken to your plea as the Court doth record it,
13 [REDACTED], not guilty.

14

15 THE COURT: Thank you, madam clerk. Thank you. You
16 can be seated, Mr. [REDACTED], if you wish. All right.

17

18 MS. [REDACTED]: I will advise the Court, and having received the
19 e-mail earlier that showed some concerns about the attendance of Ms. [REDACTED], she is
20 present today. I don't expect her to give any evidence today, but she is present and has
21 made arrangements to stay through the course of the trial, so she will be available.

22

23 THE COURT: Thank you.

24

25 MS. [REDACTED]: Prior to beginning the voir dire, I guess the
26 issue is whether it is to be the voir dire or two voir dires, voluntariness and 10(b) being
27 two separate issues. They can be held as a blended voir dire, and I certainly don't mind as
28 the Crown doing that if my friend has any issues. For instance, if Mr. [REDACTED] wishes
29 to testify on one and not on the other, I'm not aware of that right now.

30

31 MS. [REDACTED]: No, I'm content with a blended voir dire, sir.

32

33 THE COURT: It makes sense. Thank you very much.

34

35 MS. [REDACTED]: At this point, sir, I'll just excuse myself. I will
36 call the first officer who is Constable [REDACTED]. And I'm also going to allow -- or I'm going
37 to tell Ms. [REDACTED] that she can leave and attend again tomorrow if that's all right with
38 the Court.

39

40 MS. [REDACTED]: And perhaps before my friends steps out we
41 can just, out of an abundance of caution, although I note no one's in here right now, seek

1 an order excluding all witnesses.

2

3 MS. [REDACTED]:

Yes.

4

5 THE COURT:

Yes. Yes.

6

7 MS. [REDACTED]:

And I'll advise any other witnesses that are

8 present that order's been made.

9

10 THE COURT:

Of course. Thank you. That order will go

11 in and I'm grateful for your advice.

12

13 (WITNESSES EXCLUDED)

14

15 MS. [REDACTED]:

And I've just been advised by other members

16 of the courtroom that there should be a publication ban due to the nature of the charges,

17 and I do make that request, sir, that there be a publication ban.

18

19 THE COURT:

Yes. Thank you. By consent.

20

21 MS. [REDACTED]:

No objection, sir.

22

23 THE COURT:

And I assume we're talking about publication

24 ban, not simply in the context of the blended voir dices, but also the trial itself.

25

26 MS. [REDACTED]:

That's correct, sir.

27

28 MS. [REDACTED]:

Yes, please.

29

30 THE COURT:

Yes, that's appropriate. Thank you very

31 much. Those orders will go.

32

33 MS. [REDACTED]:

Thank you.

34

35 **BAN ON PUBLICATION**

36

37 MS. [REDACTED]:

And I believe you have to attend on that side or

38 that side. Thank you.

39

40 THE COURT CLERK:

Are you comfortable taking an oath on the

41 Bible.

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THE WITNESS:

I am.

THE COURT CLERK:

Please take the Bible in your hand, please, and
state your full name for the Court spelling all your names.

THE WITNESS:

██████████. First name is ██████████.
Middle name is ██████████.

THE COURT CLERK:

Sorry ██████████?

THE WITNESS:

Yeah. Last name is ██████████.

██████████, Sworn, Examined by Ms. ██████████ (Voir Dire)

Q MS. ██████████: I'll say "constable", but you can correct me if I'm wrong,
Constable ██████████?

A Yes.

Q You are a member of the RCMP?

A I am, yes.

Q How long have you been a member of the RCMP?

A Six and a half years.

Q And I notice that today as you are testifying you are not in an RCMP uniform. Is
there a reason for that?

A I'm in isolated posts right now, so I have to fly out, so I don't fly out with all my
gear.

Q Okay. In May of 2011 where were you stationed?

A Athabasca, Alberta.

Q And what was your capacity there in terms of your rank and what were your general
duties there?

A I was a general duty constable there.

Q And on your average day that you're working what kind of a uniform would you
wear?

A The uniform duty shirt, uniform duty pants with the yellow stripe, and my duty belt.

1 Q Is there anything that you would wear on the top half or your body other than a shirt?

2 A A bulletproof vest.

3
4 Q And what items are on the duty belt that you're talking about?

5 A I have my side arm, handcuffs, radio, baton, and OC spray.

6
7 Q What is the OC stray?

8 A It's the pepper spray.

9
10 Q I understand May 21st of 2011 you became involved in an investigation with a
11 Mr. [REDACTED]; is that correct?

12 A I did, yes.

13
14 Q What was your first involvement or your first knowledge that an investigation was to
15 begin?

16 A I received a call from our telecoms operator in Edmonton that there had been a 911
17 call from a residence in [REDACTED] of a female crying hysterically, stated she was
18 molested, and hung up the phone.

19
20 Q So just to give details, this telecoms operator, that is not the complainant, that is not
21 the person who's making the complaint; is that right?

22 A No, it's not.

23
24 Q And so when you're talking about information that you gained, that would then go
25 through a party as opposed to directly from a complainant?

26 A Yes.

27
28 Q What did you do when you found out this complaint had come through?

29 A I attended the residence. Went to the front door. Knocked on the door. The
30 door -- the inside door was open; the screen door was closed.

31
32 Q How long does it take you to get from wherever the call comes to get to this
33 residence?

34 A I was in town when the call came in. I think I was about four or five blocks away,
35 so a matter of maybe less than five minutes.

36
37 Q Did anyone else from the RCMP attend with you to this residence?

38 A Later on there was another member who attended, yes.

39
40 Q Describe the residence as you first approach it?

41 A It's a house. The front door, you go up a set of stairs. The main door to the

1 house faced south. You go inside the house, there's an open area, a foyer area there,
2 and then from there you go into the living room area of the house.

3
4 Q Did you have any information or any, I guess, suspicion of who you would find within
5 that house?

6 A Yeah, I believe the house to be -- [REDACTED] resides there.

7
8 Q And what did you know about her involvement in this investigation when you first
9 attended?

10 A Regarding this investigation?

11
12 Q Yes.

13 A Nothing.

14
15 Q Continue on with what happens when you arrive at the door?

16 A I got to the door. I knocked on the door. There was no answer on the door. I
17 could hear a female inside crying. I walked into the residence, saw her, [REDACTED]
18 [REDACTED], crying hysterically on the couch. Went in to talk to her to find out what
19 was going on.

20
21 Q Was there anyone else with her at the time?

22 A No, it was just her.

23
24 Q And did you know her or recognize her when you saw her at this point?

25 A I did, yeah. I know who she is.

26
27 Q What happens from there?

28 A I went and talked to her. At first she wasn't too forthcoming with any information.
29 She was pretty upset and crying. I talked to her for probably a minute to two
30 minutes, and then she advised me that her stepdad, Mr. [REDACTED], had -- had molested
31 her.

32
33 Q Did -- what words did she use?

34 A I have to check with my notebook.

35
36 Q Do you have that notebook with you today?

37 A I do, yes.

38
39 Q And are there -- have there been any additions or deletions to those notes since you
40 made them?

41 A No.

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Q They're in your own handwriting?

A Yes.

Q And did you make them at or near the time of this investigation?

A I did, yes.

THE COURT:

I'm going to ask if you can allow -- be allowed

to refer to --

MS. [REDACTED]:

No objection, sir.

THE COURT:

Thank you. Please do, yes.

A [REDACTED] stated that her dad had got mad, grabbed her by the face, threw her on the bed, and put his hands down her pants.

Q MS. [REDACTED]: What happens after you get that information?

A As I'm talking to [REDACTED] about this, her mother, [REDACTED], came home and walked through the door. [REDACTED] asked what was going on. [REDACTED] was still very hysterical and crying, so I explained to [REDACTED] what [REDACTED] had told me happened, and then asked [REDACTED] and [REDACTED] where Mr. [REDACTED] was. And again, it was really hard to get any information other than what I said that [REDACTED] had told me she was very hysterical, crying, very upset. [REDACTED] went downstairs and came up and told me that Mr. [REDACTED] was downstairs in the basement.

Q What did you do after getting that information?

A I went downstairs to talk to Mr. [REDACTED].

Q So if you can describe the setup of how, in this residence, you get downstairs to the basement?

A There's the living room area, and then you go through the living room area into the kitchen area. At the back of the kitchen area there's -- to your right there's a set of three or four stairs that go down and then it turns into the basement and goes down, I'm guessing another ten steps to the basement.

Q What was going through your mind after you hear the information from Angel of an allegation and then find -- or hear the information from [REDACTED] of where the accused is?

A I didn't -- I didn't know why Mr. [REDACTED] was downstairs. I thought I had to go down and talk to him.

1
2 Q So what happens after -- after you come to that determination?

3 A I started down the stairs. I went down the initial three or four steps, looked around
4 the corner, and I observed Mr. [REDACTED] sitting on a couch kind of in the middle of the
5 basement. He was hunched forward, sitting in the middle of the couch in his --
6

7 THE COURT: I'm sorry. I didn't understand --
8

9 MS. [REDACTED]: Sorry, officer, I don't mean to interrupt here. I
10 just wanted to interrupt because I note that the officer is reading from his notes, and I'm
11 quite content to have him rely on his notes to refresh his memory. I'd just like it to be
12 clear on the record when he's in fact speaking from memory and when he's relying on his
13 notes to refresh his memory.
14

15 THE COURT: That makes sense to me as well.
16

17 MS. [REDACTED]: Yes.
18

19 THE COURT: Do you understand the point, Constable?
20

21 A I do, yes.
22

23 THE COURT: So thank you. The reason I interrupted was
24 I -- you said something I didn't catch, I didn't understand, about a phrase back in your
25 evidence. Something about hunch board or -- that's what I heard, but that doesn't
26 make any --
27

28 A Slouched forward.
29

30 THE COURT: Slouched forward?
31

32 A Yeah.
33

34 THE COURT: That's what I heard. All right. Thank you.
35 So to the extent you can testify from your memory, and if your memory doesn't help you,
36 then refresh your memory with your notes. All right?
37

38 A Certainly.
39

40 THE COURT: Thank you.
41

1 A I looked around the corner and saw Mr. [REDACTED] sitting on a couch slouched forward.
2 I observed a can of beer in his left hand and a black handgun in his right hand.

3
4 Q MS. JOYCE: What did you do after you saw that?

5 A I instructed Mr. [REDACTED] to drop the firearm. I'm just referring to my notes.

6
7 Q Yes.

8 A I instructed Mr. [REDACTED] to drop the firearm. He replied to me, don't come down
9 here. I stated again to Mr. [REDACTED] to drop the gun and he replied that it was a BB
10 gun and placed it at his feet. I asked him to throw it further away from him, and he
11 picked it up or actually -- I'm sorry. I asked him to kick it away from him. He
12 picked it up again and threw it into the corner of the basement.

13
14 Q When you first go down the initial couple -- three steps or so, so not the full set of
15 steps into the basement, had you done anything with any of the items on your utility
16 belt?

17 A Yeah, I had -- I had drawn my side arm.

18
19 Q So at what point did you make the decision to do that?

20 A As soon as I observed Mr. [REDACTED] had a firearm in his hand.

21
22 Q And, sorry, that -- I might have been unclear in my question. I was talking about
23 before you get to that point where you can see Mr. [REDACTED], where you're just coming
24 down the first couple of steps, had you done anything at that point with your --
25 anything on your utility belt?

26 A I had not, no.

27
28 Q When you draw your side arm, how did you hold it?

29 A I held it in my right hand.

30
31 Q And where would you have been pointing it or aiming it?

32 A The entire time I had it pointed at the ground. The location of where I was, it was
33 a very thick, solid concrete wall that I was looking around. I wasn't in a really good
34 position to -- at that time to be pointing my side arm at Mr. [REDACTED]. I felt from
35 where I was that I was in a safe position to instruct him to drop the firearm.

36
37 Q How was he holding the firearm when he first -- sorry. And I'll say Mr. [REDACTED].
38 How was Mr. [REDACTED] holding the firearm when you first saw him?

39 A When I first came around the corner, Mr. [REDACTED] had it in his right hand and he had it
40 just draped over his leg in front of him.

41

1 Q Okay. Did that change at any point?

2 A Yes. When I asked him to drop it, he began waving it around and then he said,
3 don't come down here.

4

5 MS. [REDACTED]: Sorry. I missed the last part of your answer.

6

7 A He was waving the gun around and said, don't come down here.

8

9 Q MS. JOYCE: What kind of, I guess, tone of voice or behaviour was
10 Mr. [REDACTED] showing when he says, don't come down here?

11 A I could tell Mr. [REDACTED] was extremely agitated and upset.

12

13 Q What happens after Mr. [REDACTED] throws the gun -- or sorry. You called it a firearm
14 and I'll call it a firearm, and I think the Court will hear eventually that it is a BB gun,
15 but what happens after Mr. [REDACTED] throws the firearm?

16 A Well, Mr. [REDACTED] actually stated to me that it was a BB gun at that time when he
17 threw it. So I holstered my side arm and came down the rest of the way down the
18 stairs and positioned myself between Mr. [REDACTED] and the -- and the firearm.

19

20 Q So then about how far away from you are Mr. [REDACTED] -- yes. How far away are
21 you from each other?

22 A Originally Mr. [REDACTED] was sitting on the couch and I positioned myself on the couch
23 as well to the right of Mr. [REDACTED] about 2 and a half, 3 feet.

24

25 Q How long in time does it take from the point where you begin to come down the stairs
26 and you have not drawn your own firearm until you get to the couch?

27 A Maybe 30 seconds.

28

29 MS. [REDACTED]: 30 seconds?

30

31 A Sorry?

32

33 MS. [REDACTED]: I just missed how many seconds you said.

34

35 A 30.

36

37 MS. HAYES: 30.

38

39 A 30 to 45 seconds, that's. . .

40

41 Q [REDACTED]: When you gave direction to Mr. Harms to throw his firearm,

1 what was your own tone of voice?

2 A I was very stern and I was -- I had a raised voice.

3
4 Q Continue on with what happens after you arrive at the couch?

5 A I have to refer to my notes for this. I -- so I should back up a little bit. At the time
6 when I came down the stairs and observed him with his -- with the firearm, I
7 immediately called another member for assistance.

8
9 Q Were you calling a specific member or just a general call for help?

10 A I was actually. There was only two of us on that day.

11
12 Q Who was that other person?

13 A It was Corporal [REDACTED].

14
15 THE COURT: I'm sorry. I didn't get the name.

16
17 A Corporal [REDACTED].

18
19 THE COURT: [REDACTED]?

20
21 A Yeah, it's [REDACTED].

22
23 THE COURT: Thank you.

24
25 Q MS. [REDACTED]: Did you at that time have any information or an indication
26 of whether or not Corporal [REDACTED] was going to attend?

27 A Yes, he stated he was on his way.

28
29 Q Continue on with what happens at the couch.

30 A I began further in my investigation with talking with Mr. [REDACTED], asked him what
31 was -- what was going on. And Mr. [REDACTED] was, to me, appeared to be
32 intoxicated. And he did state to me that he stripped her naked to teach her a lesson
33 because she was a whore.

34
35 Q When that comment is made to you by Mr. [REDACTED], where are the two of you?

36 A We're both on the couch in the basement.

37
38 Q Was there anyone else present by that point?

39 A There wasn't, no.

40
41 MS. [REDACTED]: Sorry. There was not?

1
2 A No.

3
4 Q MS. [REDACTED]: And you said that you asked what was going on? Do you
5 know if those are the very words that you used with Mr. [REDACTED]?

6 A I don't. I'm sorry.
7

8 Q In terms of, and I'll say, the kind of sequence of conversation that might have
9 happened, you say what was going on, or whatever the actual words are, and when in
10 time does he reply that he stripped her naked to teach her a lesson?

11 A Directly after I asked that.
12

13 Q You said he seemed intoxicated. Could you tell by what?

14 A I did observe Mr. [REDACTED] to have very glossy eyes and slurred speech when he was
15 talking to me.
16

17 Q What did that indicate to you?

18 A That there had been some level of alcohol consumption. Mr. [REDACTED] was also drinking
19 a beer when I came downstairs.
20

21 Q Was there any conversation before you say what was going on?

22 A Other than me asking him to throw the gun, no.
23

24 Q What tone of voice are you speaking in now that you're saying, what's going on, or
25 what was going on?

26 A I was trying to calm Mr. [REDACTED] down. He was very agitated. So I was speaking to
27 him not unlike I'm speaking right now.
28

29 Q And what was going through your mind when you asked the question, what was going
30 on?

31 A Well, at this point I've entered into an investigation obviously of a sexual assault, and
32 I was trying to -- I didn't get a whole lot of information from -- from [REDACTED].
33 She was very hysterical, crying. I was trying to figure out what had happened there.
34

35 Q Did you know or have any idea of what involvement Mr. [REDACTED] had in that
36 investigation when you asked the question, what was going on?

37 A Yeah. Well, the original statement from -- from [REDACTED] was that Mr. [REDACTED]
38 was involved with throwing her on the bed and stripping her clothes off.
39

40 Q And so then what was your purpose in asking the question?

41 A Like I said, [REDACTED] was extremely upset and I didn't get a whole lot of information

1 from her, other than the fact that he had stripped her clothes off. I was trying to
2 figure out why I was there, what was going on.

3
4 Q What did you do after -- or what happened after you received the response that he
5 stripped her naked to teach her a lesson?

6 A At that point I realized that I had grounds to arrest Mr. [REDACTED] and that obviously
7 something had happened there that day.

8
9 Q So then what did you do after making that determination?

10 A I talked to -- I made basically small talk with Mr. [REDACTED] until my backup got there,
11 and then I was able to place Mr. [REDACTED] under arrest.

12
13 Q In that small talk did you talk about the investigation?

14 A No, I recall talking to Mr. [REDACTED] about the problems that he was having with [REDACTED] in
15 the past. But after the original statement from Mr. [REDACTED], we talked about past
16 problems with -- with [REDACTED], not what had happened that day.

17
18 Q Okay. And then what happens after your backup arrives?

19 A I advised Corporal [REDACTED] of the situation when he came downstairs, and I advised
20 Mr. [REDACTED] he was under arrest. I handcuffed Mr. [REDACTED], took him out to my
21 patrol vehicle, and read Mr. [REDACTED] his rights verbatim.

22
23 Q Did you advise Mr. [REDACTED] what he was under arrest for?

24 A I did, yes.

25
26 Q And what did you say?

27 A Sexual assault.

28
29 Q What time did that arrest take place? So this is the arrest, I believe, when you're
30 still in the house, if that's --

31 A Yes, you bet. I'm just referring to my notes here. The verbatim arrest was at 1818
32 hours.

33
34 Q And so the verbatim arrest, then, is -- where does that take place?

35 A That's in my police vehicle in front of the house. So it would have been
36 approximately two minutes before that when I advised Mr. [REDACTED] originally he was
37 under arrest for sexual assault. Handcuffed Mr. [REDACTED], escorted him out of the
38 house to my patrol vehicle, and then was able to do the rights and caution verbatim.

39
40 Q So if you can indicate what exactly did you say when you were in the vehicle, the
41 rights and caution that you gave?

1 A Yeah. I advised Mr. [REDACTED] that I was arresting him for sexual assault. I told -- I
2 read 10(b) verbatim to Mr. [REDACTED].
3

4 Q You're pointing to something that's in your hand right now.

5 A It's my rights and charter card.
6

7 Q Okay. Is that the same card that you used at this investigation?

8 A It is.
9

10 Q If you can please read what you read to the accused:

11 A :

12
13 "You have the right to retain and instruct a lawyer without delay.
14 This means that before we proceed in an investigation you may
15 call any lawyer you wish or a lawyer from a free legal advice
16 service immediately. If you want to call a lawyer from a free
17 legal advice service, we will provide you with a telephone and you
18 can call a toll-free number for immediate legal advice. If you
19 wish to contact any other lawyer, a telephone and telephone book
20 will be provided to you. If you are charged an offence, you may
21 apply to legal aid for assistance. Do you understand."
22

23 Q Did you receive a response when you said that?

24 A I did, yes. Mr. [REDACTED] stated, nope, I don't understand any of this shit. You're an
25 asshole.
26

27 Q What did you do from there?

28 A I asked Mr. [REDACTED] if he would like to call a free lawyer or any other lawyer.
29

30 Q Did you receive a response to that?

31 A I did, yeah. Mr. [REDACTED]' response was, fuck, yeah, I want to call a lawyer.
32

33 Q Continue on with what happened from there.

34 A At 1824 hours, still in my police motor vehicle, I read the police caution to
35 Mr. [REDACTED].
36

37 Q And what is that, if you can read it to us.

38 A Sure:
39

40 "You will be charged with sexual assault. Do you wish to say
41 anything? You are not obliged to say anything unless you wish

1 to do so, but whatever you say may be given in evidence."

2
3 Q Did you receive a response to that?

4 A I did not, no.

5
6 Q Continue on with what happened.

7 A I then transported Mr. [REDACTED] back to the Athabasca RCMP detachment.

8
9 Q In this period of time in your police vehicle, when you are reading the rights and
10 caution, what is Mr. [REDACTED]' attitude or demeanour when he is speaking with you?

11 A Very upset with me. I do recall Mr. [REDACTED] was yelling at me and extremely mad
12 that during me escorting him out of the house his cat had gotten outside and he
13 seemed much more concerned that the cat was outside than anything else at the time.

14
15 Q And you've indicated that at least at one point Mr. [REDACTED] says to you that he does not
16 understand. You asked him if he understood, I believe, what the arrest was about
17 and he says he does not understand?

18 A Yes.

19
20 Q Did that raise any concerns with you?

21 A I believed at the time, given Mr. [REDACTED] demeanour, that he was being difficult with
22 me. He was very upset, yelling at me, calling me names.

23
24 Q Did it raise any concerns about his understanding of what was happening?

25 A I believe Mr. [REDACTED] was understanding what was happening. I just think he was
26 upset with me and being difficult with me. When I asked Mr. [REDACTED] if he wanted to
27 call a lawyer, he had no issue understanding that.

28
29 Q And what is your own tone of voice and demeanour when you are reading the rights
30 and charter and caution?

31 A Like I am right now, calm.

32
33 Q Continue on with what happened.

34 A I'm just referring to my notes for this. I say we transported -- I transported
35 Mr. [REDACTED] back to the detachment. Took him inside the detachment. Mr. [REDACTED] --
36 at the time I was instructed by Corporal [REDACTED] that Mr. [REDACTED] should stay in
37 handcuffs during this time as we were going to try to get DNA evidence from his
38 fingers at the time in order to preserve the evidence. So he was left in handcuffs.

39
40 Mr. [REDACTED] did make a statement to me at the detachment at 1905, while he was in the
41 interview room just waiting for another member to come and take the fingernail

1 clippings. Mr. [REDACTED] stated to me, I don't give a fuck. I'll plead guilty to this. I
2 don't know what else to do. Yeah, I ripped off her pants to teach her a lesson.
3

4 Q Prior to that statement being made, was there any other interaction or any interaction
5 by any other officers with Mr. [REDACTED]?

6 A No. We were still waiting for the other two members that came in. This just
7 happened to be a shift changeover, so two more members were coming in at that time.
8 And those two members were the ones that assisted in taking the finger clippings, but
9 up until this point, to the best of my recollection, there was no other.
10

11 Q Had Corporal [REDACTED] had any direct interaction with Mr. [REDACTED] in your presence?

12 A Yes, Corporal [REDACTED] was there, and I'm sorry I can't recall if he was there while the
13 statement was made by Mr. [REDACTED], but I do know that he was in the detachment
14 assisting as the supervisor with the investigation.
15

16 Q Even in the time leading up to going to the detachment, had Corporal [REDACTED] had any
17 direct interaction with the accused in your presence?

18 A Yes. He attended the residence, came downstairs, and assisted me with the arrest of
19 Mr. [REDACTED].
20

21 Q What assistance did he provide? What did he specifically do or say?

22 A I quickly explained to Corporal [REDACTED] what had happened when he got there. I
23 wasn't able to provide any updates as he was en route to back me up. Obviously I
24 was dealing with Mr. [REDACTED] and an insecure firearm. So he was -- he didn't know
25 why -- what was going on or why he was there, so I quickly explained to him what
26 had happened. And he advised that we would be arresting Mr. [REDACTED] for sex
27 assault. And I did that at that time. I escorted Mr. [REDACTED] out to my patrol
28 vehicle and that was the last of the dealings between Corporal [REDACTED] and Mr. [REDACTED]
29 until we got back to the office.
30

31 Q How did Corporal [REDACTED] appear to be demeanour-wise when interacting with
32 Mr. [REDACTED]?

33 A Like I said, the interaction was very brief between the two and it was calm.
34

35 Q What happens after 1905 when he again says that he ripped her pants off to teach her
36 a lesson?

37 A After that Constable [REDACTED] and Constable [REDACTED] attended and were instructed by
38 Corporal [REDACTED] to take the nail clippings from Mr. Harms.
39

40 Q Were you present when they were instructed to do that or is that just something that
41 you are inferring happened?

1 A I was there when they were instructed to do that, yes.

2

3 Q And where did that instruction take place?

4 A In the back, I guess, secure area of the detachment, outside of the interview room
5 where that actually happened.

6

7 Q So then what happens after the two other officers arrive?

8 A They went into the interview room with Mr. [REDACTED] to -- and began taking the
9 fingernail clippings from Mr. [REDACTED].

10

11 Q Were you present at that time?

12 A I was outside the door, the door was open, and, yes, I was present.

13

14 Q What did you observe to happen?

15 A They were -- the two members were taking the fingernail clippings, and at 1910 hours
16 I heard Mr. [REDACTED] say, [REDACTED], you should have said, I'll kick the child molester's ass.

17

18 Q Did you hear any response from -- or was [REDACTED] there?

19 A [REDACTED], I referred to [REDACTED] as Constable [REDACTED], so, yes, he was there. And
20 Constable [REDACTED] stated to Mr. [REDACTED], I don't do that.

21

22 Q What was Constable [REDACTED] demeanour when he said that?

23 A Calm.

24

25 Q And how about the accused when he said, [REDACTED] should have said, I'll kick the child
26 molester's ass?

27 A During that whole entire time Mr. [REDACTED] was up and down. He became angry at
28 times. Other times he was semi-cooperative, calm. He was kind of up and down
29 during the whole process.

30

31 Q What happens from there?

32 A The fingernail clippings were received by the two members and packaged as exhibits.
33 I'm referring to my notes. [REDACTED] stated to me before I -- when I went in there to
34 take the handcuffs off as we had seized the fingernail clippings, that he was at his
35 wit's end and on medication and not thinking properly.

36

37 Q How did -- to your knowledge and observation, how did that comment come about?

38 A I don't recall what was -- what was said. I just recall Mr. [REDACTED] saying that. And
39 that was actually while the -- while Constable [REDACTED] and Constable [REDACTED] were
40 doing the fingernail clippings, to the best of my recollection.

41

1 Q Did you have any indication of what that medication Mr. [REDACTED] referred to may have
2 been?

3 A I don't recall, no.
4

5 Q Continue on with what happened.

6 A Once the fingernail clippings were seized I was able to take Mr. [REDACTED] out of his
7 handcuffs and give him the opportunity to use the telephone.
8

9 Q So what time did that happen that you gave him that opportunity?

10 A Just referring to my notes here, the first time I allowed Mr. [REDACTED] to use the phone
11 was at 1950 hours.
12

13 THE COURT: 1950, 5-0.
14

15 A Yes, sir.
16

17 THE COURT: Thank you.
18

19 Q MS. [REDACTED]: From the time you first indicated to Mr. [REDACTED] he had a right
20 to call a lawyer and get advice until 1950, was there any conversation between the two
21 of you about contacting a lawyer?

22 A No. He initially said to me, when I read him his rights and caution, that he indicated
23 he didn't want to talk to a lawyer, and I just advised Mr. [REDACTED] when we got back to
24 the detachment that he would have the right to contact a lawyer. He would be able to
25 do that as soon as we were able to take the fingernail clippings as he was -- we were
26 trying to preserve potential evidence.
27

28 Q What did that mean to you where Mr. [REDACTED] says that he wants to contact a lawyer
29 after being given his right or his information to do -- he has a right to do so, where
30 you have this kind of extended period of time where he is not permitted to do so.
31 What did that mean to you about your own obligations?

32 A I knew that it was mandatory to give Mr. [REDACTED] the opportunity to contact a lawyer as
33 soon as possible, and I feel that we did do that. In order to preserve potential
34 evidence Mr. [REDACTED] wasn't able to use the phone while handcuffed behind his back.
35 So until we got his fingernail clippings Mr. [REDACTED] wasn't allowed to use the phone
36 obviously. He was handcuffed behind his back.
37

38 As soon as those fingernail clippings were taken, Mr. [REDACTED] was immediately escorted
39 to the phone.
40

41 Q Did that extended period of time have any meaning to you about what you were

1 allowed to do to elicit evidence from Mr. [REDACTED]?

2 A No. We were instructed by the supervisor that were on scene, Corporal [REDACTED], to
3 leave Mr. Harms in handcuffs until we were able to get these.

4
5 Q What happens after 1950 when you allow him the opportunity to contact counsel?

6 A At 1951 Mr. [REDACTED] knocked on the door and asked me how to use the phone. I
7 explained to Mr. [REDACTED] how to use the phone, to dial 9 first and close the door, and
8 put him back in the phone room -- I should say left him in the phone room.

9

10 Q And what happened from there?

11 A Just referring to my notes here. At 1958 Mr. [REDACTED] came out of the phone room
12 and stated he did not want to call a lawyer. I then read Mr. [REDACTED] a waiver to rights,
13 and he replied, no, that he did not want to waive his rights.

14

15 Q What -- what do you call a waiver to rights? What did you read?

16 A I read Mr. [REDACTED]:

17

18 "You have the right to a reasonable opportunity to contact a
19 lawyer. I'm obliged not to take a statement from you or ask you
20 to participate in any process that might provide evidence against
21 you until you are certain about whether you want to exercise this
22 right. Do you understand? Do you want to waive your right to
23 contact a lawyer."

24

25 Mr. [REDACTED] replied that he did not want to waive his right to contact a lawyer. At
26 that point in time I put Mr. [REDACTED] back in the phone room to again attempt to contact
27 a lawyer.

28

29 Q And then what happened?

30 A Approximately one minute later Mr. [REDACTED] came out of the phone room and stated to
31 me, just put me in a fucking cell. I then placed Mr. [REDACTED] in the cell.

32

33 Q Did you have any interaction with Mr. [REDACTED] after you placed him in the cell?

34 A Yeah. I attempted to take a statement from Mr. [REDACTED] regarding --

35

36 Q When did that occur?

37 A It was the same day. It was sometime later. I'm sorry. I don't have -- I don't
38 have my -- in my notes what time the statement, sorry.

39

40 Q Were you on the same shift that you had been?

41 A I was, yes.

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Q And what were the hours of that shift?

A During that day my shift was 3:00 p.m. to midnight.

Q So at some point, then, on that shift you attempt to talk to Mr. [REDACTED]?

A Yes.

Q So what happens?

A I brought Mr. [REDACTED] into the secure interview room and began reading the caution sheet that we have to take caution statements. Mr. [REDACTED] refused to answer any of the questions on the caution sheet, and the statement wasn't taken of Mr. [REDACTED]. I escorted him back to his cell.

Q What was his manner or demeanour during that period of time?

A Mr. [REDACTED] was still very up and down. He was calm at some points; other points he would be enraged, start yelling, screaming at me to put him back in his cell, that he wasn't going to talk to me.

Q What time did the call through telecoms come in to you, this initial complaint?

A Just referring to my notes. Approximately 1724 hours.

Q And what time do you arrive at the residence?

A Like I said, it took me less than five minutes to attend, so I would say somewhere approximately 1729 hours.

Q And then I think you've already indicated you spend about one to two minutes with [REDACTED]?

A Yes.

Q And then about how long from that period of time until you begin going down the stairs to look for Mr. [REDACTED]?

A I spent approximately one minute talking to [REDACTED] before her mother, [REDACTED], came home, and then I spent some more time talking to [REDACTED] trying to gather more knowledge about what was going on. [REDACTED] had just returned home from work and she didn't know what was going on either.

[REDACTED] was trying to ask [REDACTED] what had happened, and, like I said, [REDACTED] was very upset, crying hysterically. Neither one of us could get much information out of her at that time. I probably spent another maybe close to ten minutes talking to [REDACTED] trying to figure out what was going on before I went downstairs.

1 Q Are you able to give a time of when -- while downstairs you ask Mr. [REDACTED] what
2 happened? Do you have that -- are you able to give a time that that occurred?

3 A I'm sorry. I don't understand.
4

5 Q Probably because I asked it very awkwardly. So at some point in time you ask
6 Mr. [REDACTED] what happened when you were both downstairs on the couch. Are you
7 able to tell the court what time that question happened?

8 A I don't have exactly what time that statement was made. The arrest was made at --
9 the charter and caution, I'm sorry, were read at 1818 hours and that's when we were
10 already out of the residence. So it would have been basically sometime between
11 1735 and 1810.
12

13 Q That is about half an hour or a little longer; does that sound right?

14 A Yes.
15

16 Q What is happening during that half an hour?

17 A I was downstairs with Mr. [REDACTED] talking to him about, like I said, the trouble that he's
18 been having in the past with -- with [REDACTED]. And I'm just waiting for my backup to
19 attend.
20

21 Q Other than asking what happened, did you have any other specific questions that you
22 made to Mr. [REDACTED]?

23 A Not that I recall, no.
24

25 Q And I guess, to be clear, from my own asking of the question, I'm referring to at any
26 point in time when you are speaking to Mr. [REDACTED]. Did you have any other specific
27 questions of him?

28 A No, I didn't -- not that I recall did I ask any specific questions of Mr. [REDACTED].
29

30 Q Was there any reason why you did not -- when I say "arrest", I'm at this point
31 referring to the kind of more informal words of arrest that occurred down in the
32 basement -- why you did not do that sooner?

33 A Yes, I felt that it was an officer safety issue. I was downstairs by myself with
34 Mr. [REDACTED]. He was very agitated, very upset. There was an insecure at the time.
35 I was told by Mr. [REDACTED] that it was a BB gun; I was not able, obviously, to verify
36 that. I -- other than being told it was a BB gun I had no reason to believe it was.
37

38 The firearm was laying probably approximately 10 to 15 feet away from us. I just
39 thought it was an officer safety issue to try to initiate an arrest at that time. Had
40 Mr. [REDACTED] become aggressive with me in any form we would have had a bigger
41 situation than we had. I thought it was best, say for Mr. [REDACTED] and myself, to wait

1 until my backup attended.

2
3 Q Throughout any of your interactions with Mr. [REDACTED] did he make any requests of you?

4 A I do recall he made quite a few requests while we were in the vehicle parked in front
5 of the house -- I was reading him the 10(a), 10(b) -- for me to go put the cat back
6 inside the house.

7
8 Q Did that happen?

9 A No.

10
11 Q Were there any other instances when Mr. [REDACTED] made a request of you to do
12 something or give him something?

13 A Not that I recall, no. He did ask me -- when he came out of the phone room, he
14 demanded that I put him in a cell.

15
16 Q Through your interactions with Mr. [REDACTED], at any point did you offer him anything?

17 A No.

18
19 Q And at any point other than what you've already mentioned of removing your side arm
20 and having pointed it down at the ground, at any point did you do anything with any
21 of the other items on your utility belt?

22 A My handcuffs. I used them to detain Mr. [REDACTED].

23
24 Q Was there at any point anything said by you or said in your presence to Mr. [REDACTED]
25 about any threats --

26 A No.

27
28 Q -- of what would happen if he did not -- did or did not speak to you?

29 A No, not at all.

30
31 Q You've given some, I'll say, verbatim indications of things that Mr. [REDACTED] said to
32 you.

33 A Yes.

34
35 Q If you can, though, provide detail about how those comments come to be made,
36 because we're talking about a large span of time here.

37 A Yes.

38
39 Q And if you can tell how it led up to -- we'll talk first about the indication -- sorry --
40 not while you were downstairs that he took the pants off [REDACTED], but when you
41 are later in time speaking again and he says again that he removed her pants. What

1 was the lead-up to that comment?

2 A Just referring to my notes here. I'm sorry. You're asking for what Mr. [REDACTED]
3 had -- what led up to the statements by Mr. [REDACTED]?
4

5 Q Yes. So I'm referring to the statement made at 1905, I don't give a fuck. I'll plead
6 guilty to this. I don't know -- didn't know what else to do. Yeah, I ripped her pants
7 to teach her a lesson -- I ripped off her pants to teach her a lesson. What was the
8 lead-up in terms of conversation, if any, between the two of you to that comment
9 being made?

10 A I don't recall exactly what the conversation entailed. I do remember that Mr. [REDACTED]
11 on a couple of these incidents where he said, for example, that he doesn't give a fuck
12 and that he would plead guilty, Mr. [REDACTED] at different times made just random
13 statements to us.
14

15 Q When you say "us", who are you talking about?

16 A I believe at that time there was Constable [REDACTED], Constable [REDACTED], and myself.
17

18 Q What do you mean by "random"?

19 A Unprovoked statements to us. I recall at 1910 hours when Mr. [REDACTED] said, [REDACTED],
20 you should have said, I'll kick the child molester's ass, at that time Constable
21 [REDACTED] was just taking the fingernail clippings from Mr. [REDACTED] and that was just a
22 statement that Mr. [REDACTED] said.
23

24 Q Did you observe any other officer to question Mr. [REDACTED] about the incident during any
25 of the period of time from the moment, I guess, Corporal [REDACTED] arrives as the second
26 officer until the time when you do not get a statement from the accused, do not get a
27 formal statement?

28 A No.
29

30 Q You've indicated that the accused was intoxicated, and I think you said by alcohol.
31 With that in mind and also the comment that had been made to you that he was under
32 medication, did you have any concerns about Mr. [REDACTED]' understanding of what was
33 happening?

34 A No, I didn't feel Mr. [REDACTED] was grossly intoxicated to the point where he didn't
35 understand what was happening. It was obvious there was some kind of alcohol
36 consumption by Mr. [REDACTED]. I don't think it was to a point where he didn't know
37 what was happening.
38

39 Q In your capacity as an RCMP officer how often do you deal with people who are
40 under the influence of alcohol.

41 A I would say probably 80 per cent of my time I'm dealing with people that are impaired

1 in one way or another.

2
3 Q So in terms of, say, the course of two weeks of shifts, how often would you see
4 someone under the influence of alcohol?

5 A I'd say, on average, if we got ten calls in that two weeks, eight of them would involve
6 alcohol.

7
8 Q I understand you're actually in a remote posting at this point in Fort [REDACTED]?

9 A I am, yes.

10
11 Q And your experience with dealing with that frequency of people under the influence of
12 alcohol, is that different in your posting now than it was at the time in [REDACTED]?

13 A No.

14
15 Q Do you know what happened to the firearm that the accused first had with him?

16 A From the best of my recollection I don't think we seized that firearm. I'm sorry.
17 We did -- we did seize that firearm at the time. We seized it, brought it back to the
18 detachment. We determined that it was a BB gun, not an actual firearm, and as it had
19 no -- no charges were laid, I believe, against Mr. [REDACTED] for the firearm offences.
20 But it was disposed of at the detachment.

21
22 MS. [REDACTED]: Those are all the questions that I'm going to
23 ask you, but my friend may have some questions. Please answer those.

24
25 THE COURT: Ms. [REDACTED], I'm going to suggest that we have
26 the morning break --

27
28 MS. [REDACTED]: Oh, sure.

29
30 THE COURT: -- at this stage. It's 11:15, and then you'll
31 have a clear path to do cross without any unnecessary breaks.

32
33 MS. [REDACTED]: Yes.

34
35 THE COURT: At least until the lunch hour. Obviously,
36 Constable, don't speak with anyone about your evidence during the break. Thank
37 you. 11:30.

38
39 THE COURT CLERK: Order in court.

40
41 (ADJOURNMENT)

1
2 THE COURT CLERK: Order in court.

3
4 THE COURT: Thank you. Please be seated. Come on
5 forward.

6
7 THE COURT CLERK: Mr. ■■■■, do you acknowledge that you are still
8 under oath?

9
10 A Yes.

11
12 THE COURT CLERK: Thank you.

13
14 Ms. ■■■■ Cross-examines the Witness (Voir Dire)

15
16 Q MS. ■■■■: So I want to take you back to the time when you are now
17 down in the basement with Mr. ■■■■. You would agree with me that when you
18 walked in, you walked down the stairs and you were satisfied that the gun was out of
19 the way. You holstered your own weapon. You -- yes?

20 A Yes.

21
22 Q You were no longer concerned that you were going to need your side arm at this
23 point?

24 A At the time, yes.

25
26 Q Now, when you stood in between Mr. ■■■■ and the weapon, how long would you
27 say you stood there?

28 A Five minutes.

29
30 Q So you were standing for about five minutes' time?

31 A Yes.

32
33 Q And you don't have a recollection, correct, of what you said to him or what he said to
34 you during that time?

35 A I'm just going to refer to my notes. I asked -- I asked Mr. ■■■■ what was going
36 on and that's when Mr. ■■■■ stated to me that he stripped her naked to teach her a
37 lesson because she's a whore.

38
39 Q Now, perhaps I misunderstood your examination in chief. I thought it was that
40 you had asked that of her when -- or asked that of him when you were already sitting
41 on the couch. This is something that you discussed on the couch.

1 A Yeah, it was when I came downstairs to the basement and I was standing between him
2 and the gun, that's when he said that and after that I had sat on the edge of the couch.
3

4 Q So before you were dispatched at 17- -- well, when you're initially dispatched at 1724
5 hours, you initially tell Constable -- and I'm going to say his name wrong. Can you
6 say it for me one more time?

7 A Corporal [REDACTED].
8

9 Q Corporal [REDACTED]. So you tell Corporal [REDACTED] that he does not need to attend with
10 you. You know this family and you're fine going on your own; correct?

11 A Yes.
12

13 Q And you knew this family because there had been problems with [REDACTED], the
14 complainant?

15 A I had been to the residence a couple times, yes.
16

17 Q Because there had been some problems with [REDACTED]?
18

18 A There were some problems at the residence, yeah.
19

20 Q And you were aware at the time you were dispatched that this was an allegation of
21 sexual assault?

22 A I was -- it was a 911 hang-up call from a residence of a female saying she was
23 molested, yes.
24

25 Q And that's something that you would normally take pretty seriously?
26

26 A Yes.
27

28 Q In this case, because of the house it was coming from, you were not really satisfied
29 that this was something that would require two officers?

30 A I had no indication that the subject of complaint was at the residence or that it was
31 happening at the time I was dispatched.
32

33 Q So there was a lot of stuff you didn't know going in?
34

34 A Yes.
35

36 Q What you did know, though, was that the reporter -- or you suspected that the reporter
37 was [REDACTED]?
38

38 A I suspected.
39

40 Q And in light of that you were confident that you could handle this on your own?
41

41 A At the time, yes.

1
2 Q Now, when you came around the corner and observed Mr. [REDACTED] with the gun, at that
3 point you know -- knew that this was pretty serious?

4 A Yes.

5
6 Q And you knew at that point that charges were likely going to be laid?

7 A At that point I still -- like I said, the information I got from Angel was she was very
8 hysterical, crying, upset. At that point I knew, yes, likely there would be some
9 charges laid.

10
11 Q Particularly in light of the fact that there's now someone waving a firearm around an
12 officer.

13 A Yeah.

14
15 Q At the very least there was going to be firearm offences laid in your mind?

16 A Absolutely.

17
18 Q So you intended at that point, at some point to arrest Mr. [REDACTED], whether it be for
19 sexual assault or firearms offences. You knew you were going to arrest him?

20 A Yes, obviously there were some infractions there, yes.

21
22 Q So then you moved down the stairs, firearm is tossed aside. Yours is put away, and
23 you had indicated you're standing about how many feet from him?

24 A At the time I would say 5 to 7 feet from him.

25
26 Q And at this point, knowing that you intended to arrest him, you didn't see it prudent to
27 provide him with his section 10(b) rights?

28 A Mr. [REDACTED] was extremely upset, in my mind, unpredictable at the time. I just came
29 upon a situation where somebody had a gun and he was waving it around telling me
30 not come downstairs. At that point I thought officer safety was -- was more
31 important than making an arrest at that time. We were in a basement with one
32 way out and still an insecure firearm laying on the floor that I wasn't able to turn my
33 back to Mr. [REDACTED] to go secure that firearm properly. At that time I thought for
34 my own safety as well as Mr. [REDACTED] it was best for me to try to diffuse the situation
35 until my backup got there.

36
37 Q Well, let's be fair here. You weren't so concerned about the gun that you left your
38 side arm out; right?

39 A No. Obviously the gun is still a concern; however, I felt that if now that Mr. [REDACTED]
40 had thrown the gun to the corner, if for some reason Mr. [REDACTED] had become violent or
41 went towards the gun again, I would have to restrain Mr. [REDACTED], and I did not want to

1 do that with my gun in my hand.

2
3 Q But certainly the situation had deescalated to the point where you felt comfortable
4 putting your gun away?

5 A I wouldn't say comfortable, but I felt it necessary to put my gun away, yes.

6
7 Q Do you generally find when you confront people with sexual assault allegations that
8 deescalates a situation?

9 A I'm sorry. I'm not sure what you're asking me.

10
11 Q Well, certainly you have experience interacting with accused people?

12 A Yes.

13
14 Q When you tell someone they're accused of molesting a child, does that usually
15 deescalate the situation? Do people get calmer when that happens?

16 A No.

17
18 Q So if your focus was truly to deescalate the situation, it would probably be best to talk
19 about something else entirely; correct?

20 A Yes.

21
22 Q So if your focus is really on calming Mr. [REDACTED] down, getting him to talk about the
23 incident, in hindsight, probably wasn't a very good idea?

24 A Once I realized that there had been an incident and Mr. [REDACTED] stated what he stated to
25 me, we didn't continue to talk about that incident.

26
27 Q Now, before you talked to him, though, you had a pretty good idea that there was a
28 serious sexual assault that had taken place?

29 A I wouldn't say I had a good idea there was a serious sexual assault. I had what
30 [REDACTED] had told me, and at best, that was -- not a whole lot of information was
31 obtained from her.

32
33 Q Well, you had a young lady tell you that her dad put his hands down her pants.
34 That's pretty serious; no?

35 A Yeah.

36
37 Q So you knew that going downstairs?

38 A (No audible response).

39
40 THE COURT: I'm sorry. I'm not sure it recorded an
41 answer.

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41

MS. [REDACTED]:

Sorry.

A Yes.

THE COURT:

Yes. All right. Thank you.

Q MS. [REDACTED]: And one of the first things you did when you went down the stairs, before you even spoke to Mr. [REDACTED], was that you called for backup. You called the corporal as well; right?

A No, not before I went downstairs, no. Once I put my head around the corner and saw Mr. [REDACTED] had a firearm, I radioed immediately for backup.

Q And again, that was because you had intended to arrest and you wanted backup for the purpose of an arrest?

A I mean, whether I'm going to arrest or not, if I walk into a basement and somebody's got a firearm, I'm going to call for backup. That's pretty standard.

Q You've mentioned today some indicia of impairment that you noted on Mr. [REDACTED]. Specifically I think you indicated glossy eyes and slurred speech while talking?

A Yes.

Q You would agree with me that this is not something that you ever made reference to in your notes?

A Yes.

Q You made -- you made reference to it in your notes or you --

A No, I didn't. I'm agreeing with you.

Q Okay.

A Yeah.

Q So this is just something that you remember today. Looking back those are things that you can sort of remember?

A Right. I did make notes that Mr. [REDACTED] was consuming a beer as I came downstairs.

Q Certainly once Mr. [REDACTED] had made this statement to you about the tearing off of the clothes, you weren't particularly concerned about officer safety at that point; correct?

A While I was in the basement? Absolutely I was, yes.

Q In your line of work there's lots of training with respect to, like, tactical stances and

1 things to that effect; right? And one of the things they do is probably teach you
2 things like wider stances are better in case there's an aggressor, stuff like that?

3 A Yeah.

4
5 Q Yes? You would agree with me that if you were worried about someone being
6 aggressive or coming at you, you're not going to sit next to them on the couch?

7 A Well, like I said, I was trying to kind of diffuse the situation and keep him calm until
8 my backup got there, and I felt at that time bringing myself down to where he was
9 was the best practice.

10
11 Q So he was pretty calm by this point. It was just you didn't want to escalate it any
12 further?

13 A It was up and down. He was calm and then he would get very upset and then calm
14 again and upset.

15
16 Q I just want to clarify the timeline with respect to sort of when you arrive at the police
17 station. You read the police caution at 1824 hours; correct?

18 A I'm just going to refer to my notes.

19
20 Q Sure.

21 A Yes, 1824, yeah.

22
23 Q And it was immediately after that that you headed back to the police station?

24 A Yeah, it was -- we -- it wasn't immediately after. We were still at the residence.
25 Corporal [REDACTED] was making arrangements to have [REDACTED] and her mom attend
26 the detachment.

27
28 Q Okay.

29 A And so we were parked in front of the residence for maybe five to ten minutes. I
30 was also making some notes, and then -- and then once I was told by Corporal [REDACTED]
31 that he had made the arrangements I took Mr. [REDACTED] back to the detachment.

32
33 Q Now, you and Corporal [REDACTED] took two separate vehicles; correct?

34 A Sorry. Yeah, we were there in two separate vehicles.

35
36 Q So why would you have been required to remain at the scene while he's making
37 arrangements to have --

38 A I was the lead investigator on the file, and I -- like I said, Corporal [REDACTED] didn't --
39 wasn't aware of everything that was going on, so I was touching base with Corporal
40 [REDACTED] and letting him know at the time what we needed to have done.

41

1 Q This was something you were talking to him over the radio or was he coming back
2 and forth?

3 A He was coming back and forth in the police vehicle.
4

5 Q So this is around -- by the time you leave it's about 1835 at the latest, sort of.
6 We're looking somewhere 1840, 18-- or, sorry 1830, 1835?

7 A Yeah. I don't know exactly what time I left the residence.
8

9 Q And I appreciate that we're sort of estimating here based on our timelines, but that
10 would be roughly when --

11 A Approximately, yeah.
12

13 Q Yes. And then from there it's about a -- I think probably fair to say about a
14 five-minute drive from their residence, where you were at, to the station?

15 A Yes.
16

17 Q Perhaps a little bit less?

18 A Perhaps more depending on traffic, right.
19

20 Q Is there much traffic at this time of day?

21 A Yeah. I mean --
22

23 Q Saturdays.

24 A -- it's Athabasca so it's not real traffic jam all the time, but. . .
25

26 Q Okay. Usually pretty busy on a Saturday?

27 A It can be, yeah.
28

29 Q You don't have a recollection of what the traffic was like that day?

30 A I don't.
31

32 Q In any event, we'll assume, for the sake of argument, probably another five minutes?

33 A Sure.
34

35 Q That puts you back at the station around, on the most lengthy estimate of time,
36 probably around 1840. Yes?

37 A Approximately, yes.
38

39 Q Now, you've indicated today that at some point Corporal [REDACTED] indicates to you that
40 you should keep him handcuffed?

41 A Yes.

1
2 Q And "him" being Mr. [REDACTED]?

3 A Yes.
4

5 Q Do you remember exactly what time that was?

6 A Just referring to my notes. I made a note that at 1920 Mr. [REDACTED] was still in
7 handcuffs as directed by Corporal [REDACTED]. However, this is not -- to the best of my
8 recollection -- not the time that I was instructed to do it. I was instructed as soon as
9 we got back to the detachment.
10

11 Q So you're not sure when Constable -- sorry -- Corporal [REDACTED] actually told you to
12 keep him in cuffs?

13 A It would have been when we got back to the detachment.
14

15 Q Was it immediately upon getting back to the detachment?

16 A Yes.
17

18 Q So on your evidence, at 1840 you were already advised to keep him in cuffs?

19 A If we're saying I got back to the detachment at 1840, it would be shortly after that,
20 yeah.
21

22 Q I'm just looking for something in my notes.
23

24 If I suggested to you that you in fact were advised by Corporal [REDACTED] at 1907 that
25 you were directed to keep him -- keep Mr. [REDACTED] in cuffs, would that sound like a
26 more realistic time? And perhaps you might refresh your memory with your notes.

27 A That would be approximately the time.
28

29 Q So it appears around 1907 Corporal [REDACTED] told you to keep him in cuffs because now
30 there's some information that makes them think that there's a reason that there would
31 be evidence on his hands?

32 A Right.
33

34 Q What was going on at the police station prior to that time period, prior to hearing from
35 Corporal [REDACTED], so about -- we're looking at seven after 7:00?

36 A I'm sorry. What was going on?
37

38 Q Like, what's going on at the police station in terms of your interactions with
39 Mr. [REDACTED]? Where everyone is. Like, what are you guys doing for -- on our
40 numbers that's probably around almost 30 minutes.

41 A Mr. [REDACTED] was -- I believe it was less than 30 minutes. I believe I was at the

1 residence for longer than I got back to the detachment. My best recollection would
2 be probably about 1900 hours.

3
4 Q So you're changing your evidence today that you in fact were at the residence until
5 close to 7 o'clock?

6 A I believe it was closer to probably ten to 7:00, yes.

7
8 Q So if other officers observed you at 7 o'clock already in the detachment interacting
9 with Mr. [REDACTED], that would surprise you?

10 A No. I would have -- like I said, I would have got back there around 7 o'clock, just
11 before maybe.

12
13 Q So your initial estimate of probably five to ten minutes interacting with Corporal
14 [REDACTED] at the house is incorrect; it's in fact --

15 A Yeah.

16
17 Q Let's do that math -- effectively 40 minutes. You were there for 40 minutes-ish?

18 A No, I'm sorry, it wouldn't be 40 minutes. I originally got Mr. [REDACTED] in the vehicle
19 and read him his rights and caution at 1824. I'm assuming, to the best of my
20 recollection, probably another 15 to 20 minutes in front of that residence. And then the
21 five-minute ride to the detachment, so maybe ten to 7:00 I got back to the detachment.

22
23 Q One of the interactions you previously had with Mr. [REDACTED] is in some discussions
24 related to a [REDACTED] [phonetic]; that's correct?

25 A I'm sorry. This is two and a half years ago. I don't recall that.

26
27 Q Okay. One of the previous problems they had had with [REDACTED] was that Mr. [REDACTED]
28 felt she was dating a boy who was inappropriate for her; correct? Too old for her?

29 A I do recall, yes.

30
31 Q And so that's something she had drawn -- he had drawn to your attention in the past?

32 A Yes.

33
34 Q And so, in his view, this was a -- whether rightly or wrongly -- in his view this was a
35 sexual predator who was around his daughter. This was one of the concerns he's
36 raised with you?

37 A I recall he raised a concern that [REDACTED] was dating this gentleman, yes.

38
39 Q Because he was significantly older than her?

40 A I'm sorry. I don't recall the age difference at this point.

41

1 Q When you were at the police station, you had indicated that Mr. [REDACTED] was making
2 random comments, just saying lots of things. You didn't write them all down,
3 though?

4 A No.

5
6 Q You only wrote down the ones that you thought were important to your investigation?

7 A Yes.

8
9 Q I'm going to suggest to you one of the things he said to you was, I didn't do this, or, I
10 didn't do it, something to that effect. Does that ring any bells?

11 A I don't recall that, no.

12
13 Q It's certainly not something you wrote down?

14 A No.

15
16 Q Not something you thought was important?

17 A I don't recall it happening.

18
19 Q One of the other things you don't recall is how these statements came to be, like what
20 interactions had gone on with the officers leading up to them. Like, you can't
21 remember what you said, what he said, what you said or he said; you can't remember
22 the back and forth?

23 A No, I don't recall there being back and forth other than the original statement from
24 Mr. [REDACTED] when I came downstairs.

25
26 Q So at the police station no one said anything to Mr. [REDACTED]?

27 A I can't say that, no. I'm sorry.

28
29 Q Well, you'd appreciate that that sounds ridiculous; right? That obviously at some point
30 at the police station someone has said something to him. They didn't leave him
31 sitting there for an hour or however long with no one saying anything to him; right?

32 A Two other constables were in there at that time talking his nail clippings.

33
34 Q Well, you're the primary investigator?

35 A Yes.

36
37 Q So you were around the area?

38 A Yes.

39
40 Q You certainly were around to hear specific comments?

41 A Yes.

1
2 Q But you can't remember anything that any of the other officers said?

3 A I don't recall, no.
4

5 Q And certainly someone would have had to have been taking about the investigation,
6 why they were leaving him handcuffed, things like that?

7 A I explained to Mr. [REDACTED] why he was left in handcuffs, yes.
8

9 Q But for that comment, effectively, as far as we can tell, he's sitting there talking to no
10 one?

11 A There was comments made by Mr. [REDACTED]. I don't recall who they were directed to.
12

13 Q Do you have a recollection of Mr. [REDACTED] complaining about the handcuffs?

14 A I'll just check in my notes. I do have a recollection of him complaining about his
15 handcuffs. I did make note that the handcuffs were on the first notch and Mr. [REDACTED]
16 had very large wrists.
17

18 Q So they were on there pretty tightly?

19 A Well, first notch would mean that they were on there as loose as they could possibly
20 be.
21

22 Q But on his wrists, that's pretty tight; no?

23 A I do have here he has large wrists and there's no other option than to be on the first
24 notch.
25

26 Q And you were aware -- and perhaps I'll -- you were aware that he had had a back
27 injury shortly before that?

28 A Mr. [REDACTED] did -- I do recall him telling me, not on the day of this incident but in
29 previous dealings with him, that he did have a back injury, yes.
30

31 Q And certainly he told you he was on medication?

32 A Yes, he did.
33

34 Q And certainly he's in handcuffs behind his back?

35 A Yes.
36

37 Q For someone that size that's probably not particularly comfortable?

38 A No.
39

40 Q If I suggested to you he said something to the effect of, if you take off the cuffs, I will
41 plead guilty. I'll do whatever you want. Does that ring any bells?

1 A No, it does not.

2

3 Q Now, when he makes a comment, "he" being Mr. [REDACTED], to Constable [REDACTED], I
4 believe you said something to the effect of, [REDACTED], why didn't you just say you would
5 kick that child molester -- or kick the child molester's ass, did it occur to you that he
6 could be referring to someone else?

7 A He may have, yeah.

8

9 Q He may have been referring to someone else? Because certainly it would be odd to
10 refer to yourself in third person?

11 A Yes.

12

13 Q And he didn't do that at any other point in the investigation?

14 A I don't know how. . .

15

16 Q I apologize. Normally in the admissions, I did this, I did that, not speaking about
17 himself as if he's another person. That's fair; right?

18 A Yes, yeah.

19

20 Q So on this one incident you'd agree, as you have already, that it's possible he's
21 speaking about someone else?

22 A He's labelling somebody in his statement a child molester, yes.

23

24 Q And this is one of those ones that it's just difficult to tell because we don't have any
25 context for it; right? Because you remember the statement, but you don't remember
26 what was said around it?

27 A Right.

28

29 Q Right. When Mr. [REDACTED] came out of the phone room on the second occasion, he
30 said, just take me back to my cell, or, take me to the fucking cell, something to that
31 effect; right?

32 A Yes.

33

34 Q At that point did you read him the prosper waiver again? Like, did you say --

35 A No.

36

37 Q -- hey, do you want to talk to a lawyer?

38 A No, I did not. Mr. [REDACTED] at that time was extremely upset, yelling, demanding to
39 be put in a cell.

40

41 Q And so when you were endeavouring to take the warned statement from Mr. [REDACTED], if

1 I told you the time was about 2320, would that sound about right to you?

2 A I don't recall exactly what time it was. It sounds like it would be accurate, yes.

3

4 Q When you're taking a warned statement, there's generally paperwork that accompanies
5 that; is that correct?

6 A There would be --

7

8 Q Like a form?

9 A A form that's filled out, yes.

10

11 Q Perhaps if my friend has no objection, I'll just pass up this form to. . . I'll give you
12 that.

13 A Yeah.

14

15 Q Now, does this form look like the one you would have used on that occasion?

16 A Absolutely, yes.

17

18 Q And so the signature at the bottom of the form, that's yours?

19 A It is, yeah.

20

21 Q And so does this refresh your memory with respect to what time you would have
22 taken -- been endeavouring to take that statement?

23 A Yes, 2320 hours.

24

25 Q Now, having this in hand, when you are endeavouring to take that statement, does
26 Mr. [REDACTED] reassert his right to talk to a lawyer?

27 A Mr. [REDACTED] stated that he did understand what I told him and that he did want to talk
28 to a lawyer.

29

30 Q So despite having been in the phone room before, he -- again he wants to speak to a
31 lawyer?

32 A I recall after this, Mr. [REDACTED] wanting to talk to a lawyer, he became very angry again,
33 started screaming and yelling at me and he was put back in his cell.

34

35 Q And he didn't want to participate in the investigation?

36 A He didn't want at that time to provide a statement.

37

38 Q Sorry. We're almost done, Officer. I'm just double checking I've asked you
39 everything I need to.

40

41 I just want to be clear here, in your examination-in-chief you indicated that Constable

1 [REDACTED] and Constable [REDACTED] had taken the fingernail clippings before Mr. [REDACTED]
2 made the statements at -- with respect to the child molester, that comment. That
3 happened before then?

4 A It was during.

5
6 Q Oh, during. It was at the same time?

7 A As far as I can recall it was during, yes.

8
9 Q And how long did that process take, the nail clipping?

10 A Best of my recollection about ten minutes.

11
12 Q Ten minutes, so like a minute per finger?

13 A Yeah, I mean, they're seizing them and writing on the bags which finger, and there's
14 more to it than just clipping the nails obviously.

15
16 Q So what was happening with Mr. [REDACTED], then, between that time, so around 1910, we
17 have -- it's going on. We don't know what point, unless you can tell us, what point
18 in that process they are at. What happens between then and 1950 when he gets put
19 in the phone room?

20 A The fingernail clippings were taken, obviously by the team members, and seized.
21 There was also -- I do recall that we had to send one of the members to the local
22 drugstore to get a new set of fingernail clippers, obviously for DNA reasons. We
23 didn't have one on hand. And then they -- I remember the guys, the two members
24 getting everything they needed to go in and take the fingernail clippings.

25
26 Q But certainly that would have all happened before they are actually taking the --

27 A Absolutely.

28
29 Q -- samples and he's making this statement. So my question is, from around that
30 time, 1910, when they're at some point taking these -- like, they're already at the point
31 where they have the clippers, they're snipping his nails, what happens between then
32 and 1950 when he first gets put in the phone room?

33 A Mr. [REDACTED] was sitting in the secure interview room.

34
35 Q Sorry?

36 A He was sitting in the secure interview room while we were waiting for the members to
37 prepare to get the fingernail clippings.

38
39 Q Waiting with members to do what?

40 A To get what they needed to do the fingernail clippings.

41

1 Q I think we have a bit of a disconnect here. So on your evidence at 1910, when that
2 statement is made to Mr. [REDACTED] about the child molester -- right?

3 A Yes.

4
5 Q -- they're already in the process of snipping those nails; right?

6 A Yes, I believe so.

7
8 Q During the process?

9 A I believe so, yeah.

10
11 Q Yes. So in order to do that the officers --

12 A I'm sorry. I'm sorry. No, at that point I don't believe -- no, I'm sorry, they
13 wouldn't have been because we got back to the detachment, we're saying, just before
14 7:00 p.m., 1900 hours, and I know that the members had to get the stuff ready to clip
15 the fingernails. I think this is while Constable [REDACTED] was in the back area and
16 Mr. [REDACTED] had the door open to the secure interview room. That would have been
17 before the nail clippings were taken.

18
19 Q Now, in 2009 you were the subject of some disciplinary proceedings with the police;
20 that's correct? There was an investigation into your conduct?

21 A I'm sorry, regarding?

22
23 Q My recollection is that it may have had something to do with a tasing incident?

24 A Yes, I believe in 2009.

25
26 Q And so as a result of that was there any findings made by the disciplinary board?

27 A I'm sorry. Just so that we're clear, can you shed more light on the incident?

28
29 Q Pardon me?

30 A Which incident was this that I was --

31
32 Q I guess I should clarify. Has there been more than one incident where you've been
33 involved in disciplinary proceedings?

34 A I have been the subject of complaint on two different incidents, yes.

35
36 Q Can you advise us as to what those two occasions are.

37 A One of the incidents was an incident that happened at the multiplex in [REDACTED]
38 where I deployed pepper spray on a crowd of people. That was one. It went to the
39 review board and a use of force -- an RCMP use of force, they investigated that and
40 found that I was more than justified in that. And then I was -- I'm sorry. I don't
41 recall the tasing incident you speak of.

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Q Okay. Well, then what -- when you said there's a second one, sorry. If it's not the tasing one, then what's the second one?

A There was one where I was involved in taking an individual down to the ground as a result of a police chase that ensued and he made a complaint that I used excessive force, and that also was clear to the board that it was acceptable force.

Q Just give me one second. I might be able to give you some details that will refresh your memory.

I will leave my questions at that, Officer. Thank you for your time today.

A Thank you.

THE COURT: Anything arising?

MS. [REDACTED]: No. Thank you, My Lord.

THE COURT: Thank you very much, Officer. You are free to leave.

(WITNESS STANDS DOWN)

THE COURT: I'm assuming that we're content to have the officer leave us?

MS. [REDACTED]: I am, sir. Thank you.

MS. [REDACTED]: Yes.

THE COURT: Thank you.

MS. [REDACTED]: Until tomorrow. I'll attend to get the next officer, sir.

THE COURT: Thank you so much.

THE COURT CLERK: Are you comfortable taking an oath on the Bible.

THE WITNESS: I am.

1 THE COURT CLERK: Please take the Bible in your hand and state
2 your full name to the Court, spelling all your names.

3
4 THE WITNESS: My first name is Richard. Given to is
5 [REDACTED]. Surname is [REDACTED] spelled [REDACTED].
6

7 THE COURT CLERK: And if you could spell your names just for the
8 record. Sorry.
9

10 THE WITNESS: [REDACTED], [REDACTED]; [REDACTED], [REDACTED];
11 and, [REDACTED], again, [REDACTED].
12

13 THE COURT CLERK: Thank you.
14

15 [REDACTED], Sworn, Examined by Ms. [REDACTED] (Voir Dire)
16

17 Q MS. [REDACTED]: Corporal [REDACTED] -- and I apologize, I'm probably going to
18 butcher your name several times -- but how long have you been a member of the
19 RCMP?

20 A About 14 and a half years.
21

22 Q Where have you been stationed during that period of time?

23 A Eight and a half years in [REDACTED] and the remainder of the time, 4 and a half years,
24 in [REDACTED].
25

26 Q So in 2011, May 21st, you were in [REDACTED]?

27 A Yes, that's correct.
28

29 Q And as the corporal there or at a different rank?

30 A There's two corporals there and I'm one of them.
31

32 Q Okay.

33 A Yes.
34

35 Q And so you had under your, I guess, supervision Constable [REDACTED]; is that right?

36 A That's correct.
37

38 Q Do you remember May 21st of 2011 entering into an investigation with Constable [REDACTED]
39 and a person by the name of [REDACTED]?

40 A Yes.
41

1 Q If you can tell us what is the first knowledge you had of that investigation.

2 A The radio call that dispatched a complaint to an address in [REDACTED].

3

4 Q And that was from a telecoms type --

5 A Yes, it was.

6

7 Q So what did you know or what information did you have about this complaint when
8 that came?

9 A The -- the dispatch was to a residence in [REDACTED]. It involved a sex-related
10 offence or a sex-related call, which is a 1069, was the dispatch.

11

12 Q What did you do after hearing that dispatch call?

13 A Constable [REDACTED] was assigned the call and I was advised by him that he would attend
14 the residence himself as he was familiar with that residence, and I continued with a
15 patrol of the Athabasca area.

16

17 Q So where were you then when you received the initial complaint?

18 A I was at or near [REDACTED].

19

20 Q And where is that in comparison to the town of [REDACTED]?

21 A It's about a 20 -- approximately a 20-minute drive to the town of [REDACTED].

22

23 Q Had you told any of the other members of your location at [REDACTED]? Would
24 they have -- or, pardon me. Would you have given information that that's where you
25 were?

26 A Constable [REDACTED] knew that I was either headed to that direction or I was actually there.

27

28 Q And was that in relation to a complaint or something else that was going on at the
29 time?

30 A No. I was not scheduled for duty that particular evening. I was scheduled for an
31 enhanced shift which is a shift -- an overtime shift to assist with the county in
32 patrolling campgrounds. And at that time we had a large number of people within
33 the town of [REDACTED] due to the [REDACTED] fires, so I was brought in on overtime on
34 that day in question.

35

36 Q After the initial complaint comes in and you find that Constable [REDACTED] is going to
37 attend, what happens from there?

38 A Constable [REDACTED] radioed me and provided me with -- I'm not going to say a standard --
39 it appeared with what came over the radio that he required my assistance to the
40 residence that he went to.

41

1 Q What time does this communication from Constable [REDACTED] come?

2 A The original call from telecoms came approximately 1722 hours on that date, and I
3 arrived at the house at 1815 hours. I'm going to say that it was probably around
4 5:00 to 6:00, 6:00 when I got word from Constable [REDACTED] that he needed my
5 attendance.
6

7 Q We've established where you were when the initial complaint came in. Where were
8 you when the call for assistance comes in?

9 A I was en route to [REDACTED] at that time.
10

11 Q When you arrive, you said on the scene, but what location are you describing where
12 you arrive at 8:15?

13 A It was a resident's house on the west side of [REDACTED].
14

15 Q What happens when you arrive there?

16 A I was greeted at the door by Ms. [REDACTED]. I was invited into the residence.
17 I didn't see Constable [REDACTED] anywhere. I saw Ms. [REDACTED] and her daughter on the
18 main floor, and I was advised that Constable [REDACTED] was in the basement.
19

20 Q Who advised you of that?

21 A I don't recall. I believe it was [REDACTED], but I'm not a hundred per cent sure.
22

23 Q Do you know the name of the daughter, [REDACTED] daughter?

24 A Yes, it's [REDACTED].
25

26 Q What were you wearing when you attended this location?

27 A I was in full uniform.
28

29 Q So describe that, please.

30 A Standard RCMP issue, yellow striped pants, uniform shirt, vest, and side arm. Full --
31 full duty belt.
32

33 Q What did you have in your mind after receiving a call from -- for assistance from
34 Constable [REDACTED], or what information did you have when you received that call for
35 assistance from Constable [REDACTED]? I mean about what you were stepping into at this
36 residence.

37 A I didn't know.
38

39 Q Did you do anything with any of the items on your duty belt when you attended into
40 this residence?

41 A I don't specifically recall.

1
2 Q After being advised that Constable [REDACTED] is downstairs what did you do?

3 A I went downstairs.
4

5 Q And what did you observe downstairs?

6 A In the basement I observed two people, Constable [REDACTED] and Mr. [REDACTED], and the both
7 were in conversation when I came downstairs.
8

9 Q Where were each of these people located?

10 A They were seated on the couch in the basement.
11

12 Q Could you hear what was being said in that conversation?

13 A I don't recall specifics of what was said in the conversation.
14

15 Q What happened after you see these two people on the couch?

16 A I -- I approached both of them and I allowed Mr. [REDACTED] to speak to Constable [REDACTED].
17 And while I was down there, Constable [REDACTED] was looking at me and he was averting
18 his eyes to a corner of the room several times during our conversation, and I looked,
19 but I couldn't see what he was actually trying to get my attention for.
20

21 The conversation continued. I listened attentively to what Mr. [REDACTED] said, and he --
22 he made a disclosure in the basement that I overheard that prompted me to advise him
23 that he was under arrest.
24

25 Q Can you tell or did you hear anything that led up to that disclosure that you are talking
26 of?

27 A I'm sorry. Did I hear anything that led up to that disclosure?
28

29 Q Yes. Or can you just advise of the conversation that led up to that disclosure?

30 A Not specifics of the conversation that I can recall.
31

32 Q And what words are you talking about when you say a disclosure was made?

33 A When I entered the residence originally, I observed that both [REDACTED] and [REDACTED]
34 [REDACTED] were visibly upset. And when I went down into the basement, as soon as
35 Mr. [REDACTED] advised or stated that he tore off [REDACTED]'s clothes, I asked him to stand and
36 I said, you know, for him to turn around and put his hands behind his back, that he
37 was under arrest for sexual assault.
38

39 Q What was Mr. [REDACTED]'s demeanour like when he was speaking, saying that he tore off
40 [REDACTED]'s clothes off?

41 A He was agitated. He was angry. He was agitated and angry.

1
2 Q What words did you say when you advised him of arrest?

3 A I said he was under arrest for sexual assault and, put your hands behind your back, and
4 Constable [REDACTED] placed the handcuffs on him at that time.
5

6 Q What happened from there?

7 A Constable [REDACTED] escorted Mr. [REDACTED] up the stairs and I went to the area that Constable
8 [REDACTED] was trying to get my attention. In the corner of the basement was a black firearm.
9

10 Q Did you do anything with that firearm?

11 A Yes, I did. I picked it up. I examined it. I immediately thought that it was real.
12 It took me a couple seconds to prove the firearm's safe, and at that time during the
13 process of examining it and making sure that it wasn't loaded that I realized that the
14 firearm was not -- not real.
15

16 Q A firearm, I think, can have many different types. What type of firearm did this
17 item look like?

18 A It was a replica semi-automatic firearm.
19

20 Q Do you have any indication or recollection of what time you located that replica
21 firearm?

22 A I don't have a time when the firearm was seized, but it would have been
23 approximately ten minutes after my arrival there, 6:25 -- or 1825, 1830 approximately.
24

25 Q And what did you do after you determined that the item was a replica?

26 A I secured the firearm on my person. And at this time Constable [REDACTED] had escorted
27 Mr. [REDACTED] out to his patrol vehicle, which was a truck, and I went upstairs and I
28 spoke to Ms. [REDACTED] and -- or [REDACTED] and [REDACTED].
29

30 Q Prior to going downstairs yourself, did you have any information about any specific
31 allegation made by Ms. [REDACTED], by [REDACTED]? What I mean by that, did you
32 have any knowledge of the type or nature of the complaint that she was making?

33 A No.
34

35 Q Did you at any point come to know the type or nature of the complaint that she made?

36 A After Mr. [REDACTED] was secured in the patrol truck and while I talked to [REDACTED] and [REDACTED]
37 [REDACTED], that's when I learned the specifics of what -- what was alleged.
38

39 Q And what were the specifics that were alleged to you?

40 A I was advised by [REDACTED] that she was called several times by Mr. [REDACTED] to
41 come home. She arrived home, and there was a rude comment that she had made.

1 She was approached by Mr. [REDACTED]. He had grabbed her face and took off her
2 clothes, or demanded that her clothes be removed. And she showed me where it
3 happened, in the bedroom. She showed me the clothes that she was wearing that
4 were still on the floor.

5
6 And then I spoke to [REDACTED] about the incident. She advised me what occurred
7 when she arrived home, what she saw, and then I asked them to attend the detachment
8 to provide statements to me.

9
10 Q What happened after you received, I guess, kind of the context or the nature of the
11 assault allegation from [REDACTED], what did you do after that?

12 A I went out and I spoke to Constable [REDACTED] and advised him what information I was able
13 to quickly obtain from Ms. [REDACTED] and Ms. [REDACTED], and he -- and
14 Mr. [REDACTED] dealt with that portion from that point on.

15
16 Q Do you know what time this occurred that you go out from, I believe, from the
17 residence to speak to Constable [REDACTED]? Do you have an idea of what time that
18 happened?

19 A I would have spoke to Ms. [REDACTED] and Ms. [REDACTED]. It would have taken
20 no more than five -- five or so minutes to quickly gather the information of the
21 allegations and then go brief Constable [REDACTED] on -- on what I learned.

22
23 Q Did you give any advice to Constable [REDACTED] about anything specific that he should do?

24 A I advised him that he should charter caution Mr. [REDACTED] on -- and arrest him formally
25 and go through his charter caution card for sexual assault.

26
27 Q Did you advise him about anything regarding further investigation?

28 A I can't recall.

29
30 Q What did you do after talking to Constable [REDACTED]?

31 A I contacted Constable [REDACTED] to attend with a camera. I made a call to our on-call
32 forensic identification section to consult with them regarding the collection of DNA
33 evidence and to get some advice as the situation was such that I learned from [REDACTED]
34 [REDACTED] that Mr. [REDACTED] had digitally penetrated her, and I was concerned about
35 evidence on Mr. [REDACTED]' hands or fingernails, that we would need to secure or collect
36 in the course of our duties.

37
38 With talking to our forensic identification section member he advised me to get a
39 sterile pair of nail cutters and to obtain clippings of his nails at that point or after that.

40
41 Q What did you do after receiving that advice?

1 A I -- I contacted Constable [REDACTED] and asked that he attend the local drugstore to
2 purchase a new pair of nail clippers, and I explained to him what we were going to
3 attempt to do with the nail clippers.

4
5 Q Where were you when you had that conversation with Constable [REDACTED]?

6 A I believe I was still at the residence.

7
8 Q Do you know where Constable [REDACTED], and the accused as well, do you know where they
9 were at the time you were having that conversation with Constable [REDACTED]?

10 A They may have been parked outside in the truck for a period, but I do recall that
11 Constable [REDACTED] took Mr. [REDACTED] back to the detachment.

12
13 Q Continue on with what happened after you -- after you, I guess, gave the advice to
14 Constable [REDACTED] to go get the nail clippers?

15 A I went back to the detachment and I met with [REDACTED] and [REDACTED], and I
16 conducted an interview with [REDACTED] first, and she advised me -- sorry.

17
18 Q I won't have you go into what she might have advised you.

19 A Okay.

20
21 Q It's part of her statement. Did you do anything as a result of getting information
22 from [REDACTED]?

23 A I obtained a statement from [REDACTED] at the detachment.

24
25 Q And then what happened after that?

26 A After [REDACTED]'s statement, I took the statement from [REDACTED].

27
28 Q And what happened after you took that statement?

29 A I don't recall.

30
31 Q Do you know if there were any other investigative techniques used other than to
32 collect the fingernail clippings?

33 A I know that Constable [REDACTED] attempted to obtain a caution warned statement from
34 Mr. [REDACTED], but I don't recall when exactly that was.

35
36 Q Okay.

37 A I did monitor that statement, though, or a portion thereof.

38
39 Q The technique of clipping fingernails from an accused, was that something that you
40 had experience with before this occasion?

41 A No, it was not.

1
2 Q And did you have any information on any requirements in order for that to happen, in
3 order for the nail clippings to happen?

4 A I was concerned from the onset of taking nail clippings from Mr. [REDACTED] without a
5 warrant. I was concerned that it would be -- or could be problematic if we did that.
6 But based on the information that I had at the time, was that the matter was exigent.
7 Mr. [REDACTED] is a wide shouldered person. He was in handcuffs. He's complained of
8 a back injury. In order to obtain a warrant to collect his fingernails, it was reasonable
9 to leave him handcuffed behind the back so that he won't have access to washing or
10 destroying evidence. And it was my decision to obtain the fingernail clippings
11 without judicial authorization to do so.

12
13 Q How did you come to know of the complaint of a back injury by Mr. [REDACTED]?

14 A I don't know the specifics of that.
15

16 Q What was your understanding -- and I'll say -- if I can phrase this correctly -- you've
17 talked about Mr. [REDACTED] being in handcuffs and that was a concern to you in terms of
18 clipping his fingernails; is that correct?

19 A Yes.
20

21 Q What was your understanding of the reason he would be in handcuffs for this period of
22 time or for, I guess, for keeping him in handcuffs until the clippings could be made?

23 A To secure evidence.
24

25 Q Did you give any information to your officers, to the constables about keeping
26 Mr. [REDACTED] in handcuffs?

27 A There was a discussion. Specifics of that discussion I can't recall. But all the --
28 well, Constable [REDACTED] and Constable [REDACTED] were made aware that he needed to
29 have his hands secured behind his back to prevent him from washing his hands.
30

31 Q Other than the interaction you had with Mr. [REDACTED] in the basement of the residence,
32 did you have any other direct interaction with him?

33 A No.
34

35 Q And what was the -- I guess your own manner or behaviour when you were interacting
36 with Mr. [REDACTED]?

37 A I'm sorry. I missed that.
38

39 Q How were you behaving when you were interacting with Mr. [REDACTED]?

40 A How was I behaving?
41

1 Q Yes.

2 A Professionally.

3

4 Q And in terms of tone of voice and manner of speaking, how were you conducting
5 yourself with Mr. [REDACTED]?

6 A In a professional fashion.

7

8 Q You had occasion to observe Constable [REDACTED] with Mr. [REDACTED] as well. You've
9 indicated that. How did you observe Constable [REDACTED] to be behaving with Mr. [REDACTED]?

10 A Professional.

11

12 Q Did Mr. [REDACTED] at any time make any requests of you?

13 A I don't recall, no.

14

15 Q And other than what you've already talked about, which is that you said words of
16 arrest to Mr. [REDACTED], did you say anything else to him?

17 A Not that I can recall, no.

18

19 Q Beyond giving instructions to Constable -- or to the other constables about what to do
20 with the fingernails, et cetera, did you have any other -- and I'm not saying verbal
21 contact with Constable [REDACTED] [sic], but were you present around Constable [REDACTED]
22 [sic] for any other -- or any other time?

23 A You mean Mr. [REDACTED]?

24

25 Q Yes.

26 A Upon observing the warned statement between Mr. [REDACTED] and Constable [REDACTED], it was
27 evident that the situation in the interview room was getting out of hand, and I recall
28 going to the cell block area to assist Constable [REDACTED] should there be a violent
29 interaction within the room. And I waited outside the interview room door, but I
30 don't recall ever having any conversation at that time with Mr. [REDACTED].

31

32 Q How was Mr. [REDACTED] acting at that point where you were worried that things are
33 getting out of hand?

34 A He was slamming his fist on the desk. He was standing up, sitting down. I was
35 very concerned that there was going to be an altercation in the interview room.

36

37 MS. [REDACTED]: Those are all the questions that I have to ask
38 you. Please answer the questions of my friend.

39

40 A Yes.

41

1 THE COURT: Ms. [REDACTED], I'm just wondering, with regard to
2 the time, how long you expect to be in cross. Do you think you're going to go past 1
3 o'clock?
4
5 MS. [REDACTED]: I don't know.
6
7 THE COURT: Okay. I'm going to suggest we take the lunch
8 break.
9
10 MS. [REDACTED]: Sure.
11
12 THE COURT: Out of the -- if only for the benefit of madam
13 clerk and the court reporter. Is 2 o'clock all right, or would you want to come back
14 a tiny bit early? How are we doing with respect to the evidence in the voir dire?
15
16 MS. [REDACTED]: I don't mind coming back a little earlier than
17 that, sir, but I'll leave it to your convenience.
18
19 MS. [REDACTED]: I don't mind -- I don't mind coming back
20 earlier if everyone wants to. I anticipate the subsequent two witnesses will be
21 briefer.
22
23 MS. [REDACTED]: Yes.
24
25 MS. [REDACTED]: But certainly if we want to make sure we stay
26 on time, I'm certainly happy to come back early, sir. I'm in the Court's hands.
27
28 THE COURT: I want to make sure we don't run into a
29 situation where we're unduly inconveniencing the jury tomorrow morning.
30
31 MS. JOYCE: Yes.
32
33 THE COURT: Well, let's gain a little bit of time. Let's come
34 back at quarter to.
35
36 MS. [REDACTED]: Okay.
37
38 MS. [REDACTED]: Yes, sir.
39
40 THE COURT: Is that all right?
41

1 Madam clerk, is that all right?

2

3 THE COURT CLERK: Yes.

4

5 THE COURT: Okay. So 1:45. We'll be adjourned until
6 that time. Thank you.

7

8 A Thank you, Your Honour.

9

10 THE COURT: Constable -- Corporal, I apologize. Obviously
11 please don't speak with anyone about your evidence.

12

13 A Of course not.

14

15 THE COURT: Thank you.

16

17 THE COURT CLERK: Order in court.

18

19 (ADJOURNMENT)

20

21 _____
22 PROCEEDINGS ADJOURNED UNTIL 1:45 P.M., October 7, 2013

23 _____

24

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41

1 Certificate of Transcript

2
3 I, [REDACTED], certify that the foregoing pages are a complete and accurate
4 transcript of the proceedings, taken down by me in shorthand and recorded by a
5 sound-recording machine and transcribed from my shorthand notes to the best of my skill
6 and ability.
7

8
9 Digitally Certified: 2014-01-12 20:20:54

10 [REDACTED], CSR(A)

11 Order No. 43196-13-1
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35 Pages: 58
36 Lines: 2429
37 Characters: 80720

38
39 File Locator: ef349d147c0011e3aa730017a4770810
40 Digital Fingerprint: 3e1e2a0ea54c2bfabf43323d7f662593a3c9e337906a83d5ac31795fcabe6955

1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton,
2 Alberta.

3
4 October 7, 2013 Afternoon Session

5
6 The Honourable Court of Queen's Bench
7 Mr. Justice [REDACTED] of Alberta

8
9 S. [REDACTED] For the Crown
10 T. [REDACTED] For the Accused
11 C. [REDACTED] Court Clerk
12 M. [REDACTED], CSR(A) Court Reporter

13
14
15 THE COURT CLERK: Order in court.

16
17 THE COURT: Thank you very much. Please be seated. Go
18 ahead.

19
20 THE COURT CLERK: Do you acknowledge you are still under oath?

21
22 A I do, thanks.

23
24 THE COURT: Thank you, madam clerk.

25
26 **Ms. [REDACTED] Cross-examines the Witness (Voir Dire)**

27
28 Q MS. [REDACTED]: When you were requested by Constable [REDACTED] to attend at the
29 residence, it certainly wasn't like an emergency call; correct? It wasn't like an officer
30 in distress type call?

31 A No.

32
33 Q In your mind what did you think your role was going to be upon arrival?

34 A I wasn't sure.

35
36 Q Did you have knowledge that he had a suspect in custody?

37 A No.

38
39 Q So you were essentially walking in blind into the residence?

40 A Yes.

41

1 Q So when you went in and were directed downstairs, I know you've indicated you were
2 acting in a professional manner, so certainly upon seeing two people talking I suspect
3 you just hung back a little?

4 A No. When I went downstairs, I was within a few feet. I walked right up to where
5 they were.
6

7 Q I apologize. That's probably awkward on my part in terms of questioning. I guess I
8 meant you didn't go and immediately insert yourself into their conversation?

9 A No.
10

11 Q You let them continue their dialogue that they had going on back and forth?

12 A Yes.
13

14 Q And your evidence today is that you simply don't remember what they were talking
15 about?

16 A That's correct.
17

18 Q Would it be safe to say that they were talking about something related to the
19 investigation?

20 A Yes.
21

22 Q Or did you -- okay.

23 A Yes.
24

25 Q So would it be fair to say you don't remember specifics, but it was clear to you upon
26 arrival that they were talking about this incident?

27 A Yes.
28

29 Q And it was a back and forth, both of them were stating things, asking questions. It
30 was an exchange between two parties?

31 A It was.
32

33 Q When you referred to hearing the admission made about the clothing being removed,
34 was that something you elicited or something that was said in between the two of them
35 that you overheard?

36 A That's what I overheard.
37

38 Q At that point is when you chose to insert yourself into the investigation?

39 A Yes.
40

41 Q That's fair?

1 A Yes.

2

3 Q So the best we can say is they're clearly having a discussion about the investigation,
4 that disclosure is made, and then at that point you arrest him?

5 A Yes.

6

7 Q Now, when they are having the discussion on the couch, certainly no one's in a good
8 mood; that would be fair to say?

9 A That's correct.

10

11 Q But at the same time there's no physical contact between the parties?

12 A No, there's not.

13

14 Q There's not a sense that either on the part of Mr. [REDACTED] or on the part of the officer
15 that either one of them is about to lunge at another or anything like that?

16 A My senses were heightened in the basement as a result of being summoned to the
17 residence by Constable [REDACTED] in the fashion that he summoned me. When I got to the
18 basement, his eyes were averting to the corner, so I knew that there was something
19 that he wanted to get my attention about. I couldn't see. The basement was dimly
20 lit, and Constable [REDACTED]'s demeanour was not normal to me.

21

22 Mr. [REDACTED] was agitated, and maybe nothing specifically said at the moment that
23 would indicate that a violent interaction was going to take place, but I was very
24 focused on my being in the basement and to assist Constable [REDACTED] with Mr. [REDACTED].

25

26 Q And I guess the fair way to say it, you're alive to the possibility that something could
27 happen, but at present there was no immediate need to intervene. Is that a fair way
28 of describing it?

29 A Yes.

30

31 Q Is there a reason that you did not personally charter and caution Mr. [REDACTED] upon
32 arresting him?

33 A Constable [REDACTED] entered into the investigation at the residence and was dealing with
34 Mr. [REDACTED]. My role was to assist Constable [REDACTED] in a backup scenario, and
35 Constable [REDACTED], who was on duty that night, and the first arriving on the scene, and
36 myself being called back for an overtime shift, it wouldn't necessarily be normal for
37 me, as a supervisor, to take over the arrest charter and caution. That's not saying it
38 can't be done.

39

40 Q Now, one of the things that you had mentioned was a concern for Mr. [REDACTED] in light
41 of the fact that while he was at the station he was going to be handcuffed while he

1 was awaiting the further investigation, I guess, the forensic investigation. Is that
2 correct?

3 A Yes.

4
5 Q And one of the reasons is because -- and I'm going to put this to you -- that he was in
6 excruciating pain while he was cuffed given his size?

7 A He was in pain, yeah.

8
9 Q If I suggested to you that in your notes you used the term "excruciating pain", would
10 that assist you at all?

11 A It would.

12
13 Q So you would agree with me that at the time of the events, in your view, this situation
14 was such that Mr. [REDACTED] was in an incredible amount of pain which is why you
15 wanted to expedite the process as much as possible?

16 A Yes.

17
18 Q And to your knowledge, this stemmed from not only the fact that he was a large man
19 in handcuffs, but because he had a back injury?

20 A Yes, that's correct.

21
22 Q Now, in terms of Mr. [REDACTED] and Mr. [REDACTED] remaining at the scene of the investigation,
23 once he was chartered and cautioned outside at the car, was there any attempt either
24 by way of a cell phone or perhaps letting him use a house phone or anything of that
25 nature to allow him to speak to a lawyer in that regard?

26 A No. Mr. [REDACTED] was not afforded the opportunity to immediately contact counsel
27 because his hands were secured behind his back. So at the residence, nor
28 immediately upon return, until the fingernail clippings were taken he wasn't provided
29 that opportunity.

30
31 Q But you would agree with me that when he was initially in the car, that wasn't
32 something that was known to you yet. That was something -- in terms of the
33 possibility of DNA evidence on his hands, that wasn't something that was immediately
34 known?

35 A After Mr. [REDACTED] was escorted to the police truck by Constable [REDACTED], I immediately
36 went upstairs from the basement and I spoke [REDACTED] and [REDACTED], and
37 it was at that time that I was made aware of the digital penetration on the victim.

38
39 Q So this was something that you advised Constable [REDACTED] of at the scene?

40 A Yes.

1 Q So before he left with Mr. [REDACTED] in the vehicle this is knowledge he was equipped
2 with?

3 A Yes, I believe so. I'm not exactly aware when the truck actually departed because I
4 was involved with speaking with the [REDACTED], as well as examining the bedroom,
5 talking with the other officer, Constable [REDACTED], at the location, so I wasn't aware of
6 the fact or when the truck actually departed.

7

8 Q But certainly at the last time, on your evidence, the last time that you were at the
9 vehicle speaking to Constable [REDACTED] you advised him of the need to keep him
10 handcuffed this entire time?

11 A I don't recall exactly what time that I spoke to him about that.

12

13 Q So it may be something that you phoned into him later?

14 A It could have been over the radio. It could have been by the phone.

15

16 Q Now, you made mention of Constable [REDACTED] attending with a camera. Were any
17 photos taken?

18 A I believe there was.

19

20 Q Were these disclosed to the Crown?

21 A I'm not aware of the disclosure to the Crown.

22

23 MS. [REDACTED]: Thank you very much, Mr. -- oh, I'm going to
24 say it wrong.

25

26 A [REDACTED].

27

28 MS. [REDACTED]: -- [REDACTED]. Thank you very much, Corporal.

29

30 A Thank you.

31

32 MS. [REDACTED]: Nothing arising. Thank you, My Lord.

33

34 THE COURT: Thank you very much, Corporal.

35

36 A Thanks.

37

38 (WITNESS STANDS DOWN)

39

40 MS. [REDACTED]: Stand next to His Honour. My Lord.

41

1 THE COURT CLERK: Are you comfortable taking an oath on the
2 Bible?

3
4 THE WITNESS: Yes, I am.

5
6 THE COURT CLERK: Please take the Bible in your hand and state
7 your full name to the Court spelling all your names.

8
9 THE WITNESS: [REDACTED];
10 [REDACTED].

11
12 [REDACTED], Sworn, Examined by Ms. [REDACTED] (Voir Dire)

13
14 Q MS. [REDACTED]: Officer, in 2011, in May, you were a constable. Are you
15 still at that rank?

16 A Yes.

17
18 Q And you were in the Athabasca detachment; is that right?

19 A Correct.

20
21 Q I understand on May 21st of that year you became involved in an investigation with
22 Mr. [REDACTED]; is that right?

23 A Yes.

24
25 Q Did you know Mr. [REDACTED] before that date?

26 A No.

27
28 Q And what was your first, I'll say, dealing with Mr. [REDACTED] on that day?

29 A I was coming on shift at 1900 hours and I came in -- actually the back door is usually
30 the way I come in. I'm usually dressed for work, but I don't have my gear on.
31 So I don't have my vest or my patrol belt. And then I came in the back door and
32 there was arguing -- you could hear arguing in the cell block area, so I just came and
33 checked to see what was going on there. There was Mr. [REDACTED] with Mr. [REDACTED]--
34 Constable [REDACTED].

35
36 Q And so -- sorry. When you say you were dressed but you didn't have your --

37 A I didn't have my belt on. My gun and everything's stored in my locker at the office.
38 It's secure there.

39
40 Q But otherwise you would be dressed similar to how you're dressed today?

41 A Yes, I would be wearing my uniform. Other than -- short sleeved shirt I think at

1 that time of the year.

2
3 Q Was the -- 1900 hours, was that your expected time to arrive on shift?

4 A Yes.

5
6 Q Did you have any information prior to arrival that there was an ongoing investigation
7 on that day?

8 A No.

9
10 Q So describe what you observed with Mr. [REDACTED] and Constable [REDACTED]?

11 A They were in the cell block area by the front counter where we book in our prisoners
12 basically. Mr. [REDACTED] was there. He had a black shirt on, sleeveless, shorts,
13 sandals. And I can't remember -- I have it in my notes what he was wearing that
14 day, but I think that's -- so as he was -- I could smell alcohol on his breath. He was
15 arguing back with a member, but I can't remember exactly what was said.

16
17 Q How far apart were you from Mr. [REDACTED] when you could smell alcohol on his breath?

18 A I came up close to the counter just to make sure everything was okay, asked my
19 partner if -- Constable [REDACTED] if everything was okay, and he said he was doing an
20 investigation, and I could smell alcohol on Mr. [REDACTED]' breath.

21
22 Q And close can mean different things to different people. So if you can estimate
23 on a distance, how far apart where you?

24 A From here to this next table. It was close, distance wise. Because I think the counter
25 comes in this way, and I would be -- come up to the counter just -- and they were
26 there.

27
28 Q So you're -- suppose for --

29 A 3, 4 feet.

30
31 Q -- some indication you're pointing out to the desk that madam court reporter is at in
32 front of you?

33 A Correct.

34
35 Q So what happens after you go up to make sure Constable [REDACTED] is all right?

36 A He's fine. Then I go back to the main area, get my gear on. Come back and get my
37 radio, then I get instructions from Corporal [REDACTED]. And --

38
39 Q What -- what instructions did you get from the corporal?

40 A To leave the accused in handcuffs. And -- for now because they're waiting for -- to
41 collect some evidence from him as well. So at this time a warrant wasn't feasible

1 because the evidence could be lost.

2
3 Q How did you receive that information from the corporal?

4 A I can't remember if it was over the radio or if he came in and that's -- I can't
5 remember if he came in the office. Because he was away from the office, so I
6 think it came over the radio. Because then I went -- he asked me to go to the front
7 door to let the victim in and then he was coming back into the detachment. So I
8 think it was over the radio that he left the information.

9
10 Q When you first arrive and hear Constable [REDACTED] and Mr. [REDACTED], they are interacting
11 with each other. Could you hear anything that was being said?

12 A Yes, but I don't -- I didn't make any notes and I can't remember what was being said
13 at that time. I know he was kind of argumentive with him, and I remember putting
14 that in my notes, but I didn't write down what he exactly had said.

15
16 Q So what was then, I'll say, the physical demeanour of Mr. [REDACTED] when he's being
17 argumentive with Constable [REDACTED]?

18 A I would say kind of standoff-ish. He was still in his handcuffs, but standoff-ish,
19 kind of argumentive with him. And I don't remember exact words is my -- the
20 dilemma that I'm having right now is that I don't remember what was said.

21
22 Q What was Constable [REDACTED]'s physical demeanour towards Mr. [REDACTED]?

23 A He was fine. Like, he was just standing back. I think what they were -- because it
24 kind of has a counter and it kind of goes around so they're not in each other's face.
25 They're -- they're just away -- they're separated from each other. So there is some
26 distance between each other.

27
28 Q And what was the tone of voice of Constable [REDACTED] when he's dealing with Mr. [REDACTED]
29 at that time?

30 A Pretty calm, so. . . And I don't make any notes on that, but I don't think he was
31 yelling or screaming or anything that I remember.

32
33 Q Did you speak directly to Mr. [REDACTED] on this occasion?

34 A I don't remember if I did or not. From that point there's about -- when I got into
35 the thing, I went there, checked everything was okay. Then I went and let the victim
36 in, so that was about a ten-minute interaction. So -- and in the meantime I would
37 have went and got my gear on as well for shift, so I would have had my duty belt and
38 my vest on. And I have a portable so I can communicate as well.

39
40 Q So what then do you do after getting your gear and letting the victim in?

41 A Corporal [REDACTED] arrives, kind of let's us -- briefs us as to what's going on, and said

1 that we're going to get some fingernail clippings from him. So at that time he tells
2 me what we're going to do, then we go take Mr. [REDACTED] and we put him into the
3 interview room, and that's now at 1935 hours. And that's when we start taking
4 fingernail clippings from him.

5
6 And I remember -- one thing I remember is that his nails were really short so they
7 were well groomed, so it was hard to get the nail clippings. And Constable [REDACTED],
8 Constable [REDACTED], and myself were there, and I would do the cutting and Constable
9 Parker would try and catch the fingernail clippings.

10
11 Q How long did that process take to do both hands?

12 A That was from 1935, so 7:35 p.m., to 1948, I believe, and from that time, once that
13 was done, Mr. [REDACTED] had an opportunity into the private phone room to make his call
14 for legal advice.

15
16 Q Had you ever been involved in that kind of -- that specific forensic, I'll call it, a
17 process before of taking fingernail clippings?

18 A No, I haven't, no.

19
20 Q How did you know what you were meant to do? I understand you received some
21 instruction from your corporal.

22 A Yeah.

23
24 Q But how did you know how exactly to do it?

25 A I think he contacted the forensic identification section and may have asked them how
26 he was going to do things. All I did was go in there and get the nail and cut the
27 nail with the finger clip, so just I get the -- the clip in there for the DNA purposes.

28
29 Q Do you recall or can you tell us anything about Mr. [REDACTED] and the handcuffs that he
30 was wearing. I'm talking specifically in terms of the size of Mr. [REDACTED]' wrists and
31 the handcuffs he was wearing?

32 A He has very large wrists. He's a -- he was big. So I think they were only, like, one
33 click. Like, they were -- the cuffs looked like they were on the best they could be
34 to have them secured without -- I guess it would be the first notch, basically, I would
35 put it as, because he has big wrists. And some handcuffs are tiny. Like, I don't
36 know what the cuffs were that day.

37
38 Q Okay.

39 A Pretty general, general size, I guess. The force issued ones. I don't know what the
40 size would be of them, so. . .

1 Q How long were you directly in the presence of Mr. [REDACTED]?

2 A From the time the nail clippings in the interview room to him going into the phone
3 room, then he knocked on the door and then he went back into the phone room and he
4 exited the phone room, and I think that was about seven minutes later. I think
5 1956, I think. He exited the phone room and said he didn't want to talk a lawyer.
6

7 Constable [REDACTED] advised him at the same time of the waiver off the -- our charge card,
8 and he said he didn't want to talk to a lawyer, and he went into the cell.
9

10 Q During the period of time when you were in the presence of Mr. [REDACTED], and this
11 includes the time when you were taking his -- taking the samples from his fingernails,
12 did you speak to Mr. [REDACTED]?

13 A I did, and I think it was just a small conversation. I didn't write it down because I
14 was trying to concentrate on getting the fingernail clipping and then I wouldn't have
15 time to make notes, and I made my notes just shortly thereafter and I don't remember
16 anything standing out.
17

18 Q In this period of time that you were -- that you at least say some things to Mr. [REDACTED],
19 did he respond back to you?

20 A I would say yes, but I can't remember what he said.
21

22 Q And how was Mr. [REDACTED] behaving? What was his demeanour and behaviour like
23 during this period of time when his fingernails were being clipped?

24 A I think he was okay. He wasn't -- I think he just let us do our work there at that
25 time. Like, you could smell the alcohol on his breath. He had red eyes. Like, I
26 knew he had been drinking. But at that time I remember -- I don't remember having
27 any problems that I can remember with dealing with him at that time.
28

29 Q During that period of time did Mr. [REDACTED] request anything of you or the other
30 officers?

31 A I'm just trying to think back to that day. We went into the interview room there. . .
32 Not that I remember. Not that I can recall.
33

34 Q I realize that you can't indicate specifics of your conversation with Mr. [REDACTED].
35 You've indicated that. Are you able to give any -- either general topics or general
36 kinds of conversation that you had with him?

37 A I probably mentioned that his nails were probably pretty short because I remember
38 that. I remember that specifically that it was hard to get the nail clippers on there, so
39 I may have said that his hands were groomed -- or were just recently groomed because
40 there was very -- there was not much nail there, or else I'd be digging into the nail
41 bed basically, so. . .

1
2 Q How did -- or did Mr. [REDACTED] respond when you approached him to cut the nails?
3 And by that, if I can be more specific, was there -- what was his attitude towards you
4 specifically for getting his nails clipped?

5 A I think he was upset. He wanted to know why he needed his fingernails clipped, and
6 I said we're just trying to collect it for DNA evidence at this time. Like I said in
7 my notes, he was argumentative, but I didn't write down why he was argumentative,
8 what he had said specifically, so. . .
9

10 Q Was there at any point any discussion from you or the other officers in your presence
11 of what might happen if he didn't comply with you in allowing you to cut his
12 fingernails?

13 A I'm sure we probably did discuss and explain why that we did it because it was for the
14 DNA purposes, and then after that he would have his chance to talk to a lawyer.
15 But I don't remember what he had said to us specifically. I know there was three
16 of us in the room and that's kind of unusual. You would think that it would only
17 take one person to do it, but there was a concern for the members as well. So he
18 was displaying his signs of aggressiveness towards the members, but I can't -- I
19 can't -- I know we wouldn't -- like, one person probably could go -- just go in there
20 and do it, right, if he was cooperative. And he was cooperative, but there was a
21 reason why there was three of us in there. [REDACTED] was using the bag to hold it so we
22 could catch the clippings and Constable [REDACTED] was there too, and that's what I
23 remember, so. . .
24

25 Q Was there ever any discussion either during that period of time when the nails were
26 clipped or the other point in time when you were around Mr. [REDACTED], was there ever
27 any discussion about anything that would happen to him should he choose not to
28 comply with anything that the police were doing?

29 A Can I refer to my notes?
30

31 Q Are these notes made by yourself at the time of the investigation?

32 A Yes, I think everyone has a copy of them as well.
33

34 Q And you -- have you made any deletions or addition to those notes?

35 A No. If you want to look at them, you're more than welcome to, if you want to
36 verify.
37

38 MS. [REDACTED]: I have no objection with him refreshing his
39 memory with his notes, sir.
40

41 THE COURT: Thank you very much.

1
2 Please go ahead, Constable.

3
4 A I know we were busy that night. Constable [REDACTED] and myself and Corporal
5 [REDACTED] was on -- working an extra shift:

6
7 "When I went in the cell block, subject intoxicated. Slurred
8 speech. Upset. Yelling, screaming, swearing. Bloodshot eyes.
9 Argumentative."

10
11 THE COURT: I don't think you have to read them verbatim,
12 Constable.

13
14 A Okay.

15
16 THE COURT: Perhaps if you want to reframe the question,
17 madam Crown, and then he would find --

18
19 MS. [REDACTED]: I'll have to -- I'll have to find it again in my
20 mind.

21
22 Q MS. [REDACTED]: Generally I was asking, when you were present, was there
23 any -- was there anything told to Mr. [REDACTED] about what would happen if he chose not
24 to comply with what the police were doing?

25 A I don't have any notation. I have the subject was angry and argumentive, but I don't
26 have any notes specifically saying that -- the consequences for not complying.

27
28 Q And so leaving that question, but going to a similar one, was there ever any
29 conversation in your presence about what would happen to the accused if he did
30 comply with the requests that were being made by police?

31 A Other than we would get the nail clippings and he was -- we could let him get a
32 lawyer right away to get legal advice.

33
34 Q What can you tell us, if anything, about the demeanour of Constable [REDACTED] when he
35 was present with the accused?

36 A I think Constable [REDACTED] was fine. I think he was trying to just catch the nail
37 clippings and make notations on the bags after each finger clip was cut. Because
38 there's ten fingers, ten nails, and I remember that he had to hold the bag open and I'd
39 try and cut the nail and get it to fall into the bag, and then we'd seal it up and then
40 he'd put his initials on it. That's what we do right away.

41

1 Q Did you observe if Constable [REDACTED] had any direct verbal interaction with Mr. [REDACTED]?

2 A I'm sure it was small talk if we did talk. I don't remember -- I remember going
3 into the interview room there to get the nail clippings with Mr. [REDACTED], and I don't
4 know if Constable [REDACTED] did speak to him at all. I don't -- I think we were just
5 trying to get those -- the nail clippings. Like, it's -- make sure that they got into
6 the bag so that they weren't contaminated.

8 Q Now, the last thing that you have talked about with Mr. [REDACTED] is that he was put into
9 a cell after a waiver was read to him; is that right?

10 A Yes.

12 Q Did you have any interaction with him after that point in time?

13 A No, because the next thing I did was I went to a domestic assault complaint in town.
14 Me and [REDACTED] left right away. Like, we were gone for the rest of the night. I don't
15 remember if I dealt with him at the end of the night. I'll just go through my notes
16 here again. I know I was up in [REDACTED], which is 75 kilometres from
17 [REDACTED], and I was up dealing with a bunch of things up north as well where I was
18 supposed to be, so. . . Right away, after that, we went to a domestic. Then I was
19 up at -- up north in [REDACTED].

21 I spoke to Corporal [REDACTED] [phonetic] that's in forensics. I don't think I had any
22 other dealings with him afterwards. I was in the cell block. I did bring a prisoner
23 back. At 2:08 I arrested someone for breach of peace, and I was in the cell block at
24 2:48 in the morning. And then I had some more names after that so I was dealing
25 with other people after that.

27 Q Was Mr. [REDACTED] present in the cell block when you brought those other people in?

28 A I don't know.

30 MS. [REDACTED]: Those are all the questions I have. Thank you.
31 Answer any questions of my friend, please.

33 A Thank you.

35 **Ms. [REDACTED] Cross-examines the Witness (Voir Dire)**

37 Q MS. [REDACTED]: Constable [REDACTED], in addition to writing handwritten
38 notes, quite often one of the things you prepare is a --

39 A General report?

41 Q -- a general report?

1 A I have that here with me.

2

3 Q And do you have that with you?

4 A I do. I think -- I have it right here.

5

6 Q And you prepared this around the same time as your handwritten notes; correct?

7 A Yeah.

8

9 Q Sir, what I want to turn your attention to, you had noted in your examination-in-chief
10 that you don't recall anything that Mr. [REDACTED] said, but you recalled him being
11 argumentative?

12 A Yeah.

13

14 Q If you want to look at the third line of your report and perhaps see if that refreshes
15 your memory.

16 A The third line, sorry?

17

18 Q The third line of the first paragraph.

19 A Yeah, he advised that he did nothing.

20

21 Q Yes. So there was a statement made by Mr. [REDACTED] that he did nothing?

22 A Yeah.

23

24 Q Okay.

25 A Sorry. Yes. And I know there's an error in my report here. The 1335 hours. It
26 was 1935 hours. When we do the spell check, it won't do a time change for us.

27

28 Q Okay. And you don't recall anything else in terms of the context of that statement,
29 but for to say he said he didn't do anything?

30 A Yes. And that's not unusual, though.

31

32 Q Now, you've indicated today that Mr. [REDACTED] was in handcuffs and you've commented
33 that some of the cuffs are quite small. Did you -- do you have any recollection of him
34 stating that he was in some pain because of the handcuffs?

35 A No, but I'll -- this is the general handcuffs that were initiated, and I think that's -- he
36 has big wrists. You can see his hands right now, when he had his hands up right
37 there. So unfortunately we've got to secure them too, I mean. . .

38

39 Q So it would be a snug fit for sure?

40 A Yeah, but I think they were in front.

41

1 Q Now, you've indicated that he was cooperative in terms of getting his fingernails
2 clipped. He let you clip his fingernails?

3 A Yes.

4
5 Q Now, in noting that you were cutting quite close to the skin, is this something that
6 appeared to be painful for him?

7 A He wasn't wincing or anything like that that I remember. If he was, I would have
8 made a note of it or whatever.

9
10 Q Okay.

11 A I know it was close. Like, my nails are close now and I can still cut my nail, but
12 it's just a small portion of nail that you're cutting, right. You're not going to get a
13 big long nail out of it, right.

14
15 Q So it was difficult in terms of execution, but not necessarily painful?

16 A Yeah. Not that I'm aware of, so. . .

17
18 Q So one of the things that was told to Mr. [REDACTED], and I just want to make sure I
19 understand this correctly, one of the things that was told to him was that if he let you
20 cut his fingertips -- or not fingertips, fingernails, if you could cut his fingernails that
21 he could be put in the phone room --

22 A Well, once we're done with collecting the evidence, because at this time right now
23 we're trying to collect the DNA evidence because we don't have a chance to write a
24 warrant because that time -- things will dissipate and disappear and become lost. So
25 we're cutting the fingernails -- and he would have a chance to talk to his lawyer right
26 away after that.

27
28 Q So it was made clear to him if he was cooperative, he would be able to talk to a
29 lawyer?

30 A It wasn't necessarily cooperative. It was just that we need to get these samples and
31 then he'll have a chance to talk to a lawyer, so. . .

32
33 Q So it has nothing to do with being cooperative; it's simply, follow our direction and
34 then --

35 A We'll give you a chance -- yeah. It's not like if you cooperate, we're going to give
36 this -- make any promises to him. We weren't that -- it wasn't that. The way I'm
37 trying to say it is that we are collecting the evidence. After that you'll have a
38 chance to talk to a lawyer. You'll have your chance to speak to someone. I guess
39 it's just the way I've worded it.

40
41 Q Now, you have indicated that if he was wincing or something, you would have written

1 that down?

2 A I should have written that down, yes.

3

4 Q And that would be something that you would write down because it's important?

5 A Yes.

6

7 Q So if there was something important that happened during the course of your
8 investigation, you would have written it down?

9 A I should have. I know that we were very busy that night and we had calls coming
10 in, and we had a domestic that was kind of holding while we were getting this done.
11 So unfortunately we were trying to get him dealt with right away so that we could
12 move on to the next thing.

13

14 Q But certainly if there was something -- even being busy, sir, if there was something
15 like he was hurt or something very material to your investigation happening, you
16 would have made a note of it?

17 A I should have. And sometimes it just slips your mind as well. When you're making
18 notes right after, you're trying to get everything down and trying to get on to the next
19 thing, so it does happen where I do miss stuff as well. I am a human being, so. . .

20

21 MS. [REDACTED]: Thank you very much, sir.

22

23 A Thank you.

24

25 MS. [REDACTED]: Nothing further.

26

27 THE COURT: Thank you very much, Constable [REDACTED].

28

29 A Thank you, sir, Your Lord.

30

31 (WITNESS STANDS DOWN)

32

33 MS. [REDACTED]: There's one further witness on the voir dire, sir.

34

35 THE COURT: Yes.

36

37 MS. [REDACTED]: And I expect him to be a similar length of time
38 to the most recent one.

39

40 THE COURT: Okay. Thank you.

41

1 THE COURT CLERK: Are you comfortable taking an oath on the
2 Bible.

3
4 THE WITNESS: Yes.

5
6 THE COURT CLERK: Take the Bible in your hand and state your full
7 name for the Court spelling all your names, please.

8
9 THE WITNESS: It's [REDACTED]

10 [REDACTED].

11

12 [REDACTED], Sworn, Examined by Ms. [REDACTED] (Voir Dire)

13

14 Q MS. [REDACTED]: Constable [REDACTED], how long have you been a member of the
15 RCMP?

16 A Nearly five years.

17

18 Q Where have you been stationed during that period of time?

19 A The majority of my time in [REDACTED] and I'm currently stationed in [REDACTED], Alberta.

20

21 Q In Athabasca, 2011, May 21st, you became involved in an investigation dealing with
22 Mr. [REDACTED]; is that right?

23 A That's correct.

24

25 Q And other officers involved were Corporal [REDACTED], Constable [REDACTED], and Constable
26 [REDACTED]; is that right?

27 A Yes.

28

29 Q What was your role in that investigation?

30 A Well, initially coming on at my start time shift -- start time was 7 o'clock -- I was
31 requested to attend to the residence to deal with the exhibits.

32

33 Q Attend to what residence?

34 A The residence of Mr. [REDACTED] and his family.

35

36 Q And so where were you when you received that request?

37 A At the detachment.

38

39 Q Did you go to that residence?

40 A I did.

41

1 Q How long did it take you to get from the detachment to that residence?

2 A Less than five minutes.

3

4 Q What did you do when you arrived there?

5 A I was briefed by Corporal [REDACTED] of the incident. He gave me a quick tour of
6 the residence and showed me to the bedroom where the incident supposedly had
7 happened and requested that I seize any exhibits that -- sorry -- I felt necessary.

8

9 Q So how long after you arrived for the start of your shift at 7 o'clock before you get
10 this call to go help at the residence?

11 A Almost immediately.

12

13 Q Do you know what time you arrived at the residence?

14 A Shortly after 7:00. I know I began seizing exhibits at 13 after 7:00, I believe, was
15 my first exhibit I seized.

16

17 Q How long were you at the residence?

18 A Less than half an hour.

19

20 Q And was Corporal [REDACTED] there when you arrived?

21 A Yes.

22

23 Q Do you know if he remained at the residence during the period of time that you were
24 there?

25 A No, he did not.

26

27 Q When you left the residence, where did you go?

28 A I believe I was heading back to the detachment, and I was requested to attend to a
29 store to pick up nail clippers.

30

31 Q And continue on with what happened from there.

32 A I believe after that I -- after being requested to attend to a store to pick up nail
33 clippers, I did so. Returned to the detachment after purchasing the clippers, and then
34 assisted Constable [REDACTED] in seizing the fingernail clippings from Mr. [REDACTED].

35

36 Q How long did it take you from the time you left the residence and then did this errand
37 of picking up the clippers and then get to the detachment?

38 A I couldn't be exact.

39

40 Q By this point in time, and you've just said you can't be exact, but by the time you
41 leave the residence that you've described, had you had any interaction with Mr. [REDACTED]

1 on that date?

2 A I had initially had interaction with him when I arrived on duty. I hadn't -- from when
3 I went to the house to getting back to the office, no, I did not have any.

4
5 Q Talk about your initial interaction with Mr. [REDACTED] when you came on duty.

6 A Well, when I arrived around 7 o'clock for shift, Constable [REDACTED] was returning to the
7 office with Mr. [REDACTED] as a prisoner. And I know at that time Mr. [REDACTED] was very
8 agitated. He was yelling and swearing at Constable [REDACTED], so for officer safety reasons
9 I stood around and assisted Constable [REDACTED] in the booking-in process until I was
10 informed I was no longer needed.

11
12 Q What are you describing when you say assist Constable [REDACTED]? What did you do?

13 A As a backup member?

14
15 Q Yes.

16 A I would have just observed and assisted in whatever way he needed me to in booking
17 the prisoner in, filling out the form, so that at least one person has eyes on him while
18 somebody else is writing, so. . .

19
20 Q And, sorry, when you say "eyes on him", who are you talking about?

21 A Mr. [REDACTED].

22
23 Q What was the demeanour of Constable [REDACTED] in this period of time?

24 A He was calm at the time.

25
26 Q Did you have any direct physical contact with Mr. [REDACTED] during that point when you
27 assist Constable [REDACTED]?

28 A Not that I believe so, no.

29
30 Q And did you have any direct verbal interaction with him yourself at that period of
31 time?

32 A Not that I can recall.

33
34 Q So when is the next time that you have direct interaction with Mr. [REDACTED]?

35 A Upon returning to the detachment with the nail clippers.

36
37 Q And what did you do there?

38 A I believe Constable [REDACTED] was clipping the nails as I was holding the exhibit bag
39 trying to catch the clippings.

40
41 Q Was that a process or technique that you had been involved with before?

1 A No. No. Collecting exhibits, yes, but I've never personally clipped somebody's
2 nails before.

3
4 Q About how long did it take for Corporal -- pardon me -- Constable [REDACTED] to clip
5 the nails and for you to catch them?

6 A It took quite a lot longer than we had expected. Obviously his fingernails were quite
7 short already and it was a process in clipping his nails further. I imagine probably
8 ten minutes, collecting each individual finger in each individual bag so they were
9 separated and whatnot.

10
11 Q What was the demeanour of Mr. [REDACTED] during this period of time when you are
12 collecting the fingernails?

13 A At that time he was -- from what I can recall -- calm and quiet. I don't. . .

14
15 Q What was your own demeanour when you were interacting with him, or when you
16 were collecting the fingernails?

17 A We were calm. Yeah.

18
19 Q Continue on with what happened.

20 A We seized the remaining finger clippings, one for each finger. I assisted Constable
21 [REDACTED] in sealing every bag, initialling, filling out the form on the front of the
22 bags, and then I secured everything in an exhibit locker. I believe that was the end
23 of my involvement at that point.

24
25 Q What was then your last involvement directly with Mr. [REDACTED]?

26 A Finger clippings would be the last.

27
28 Q During any of the time that you spent directly in contact with Mr. [REDACTED], did you hear
29 him make any requests of you or any of the other officers?

30 A Not that I can recall.

31
32 Q Did you or any of the other officers talk to Mr. [REDACTED] about what would happen if he
33 complied with your investigation?

34 A Did we talk to him -- sorry. Could you repeat that.

35
36 Q Did you talk to him or the other officers talk to him about what would happen if he
37 complied with the investigation?

38 A Not that I recall, no.

39
40 Q Was there any conversation again from yourself or the other officers about what would
41 happen if he did not comply with the investigation?

1 A No, not that I can recall.

2

3 MS. [REDACTED]: Those are the questions that I have for you.

4 Thank you, sir. Please answer the questions of my friend.

5

6 Ms. [REDACTED] **Cross-examines the Witness (Voir Dire)**

7

8 Q MS. [REDACTED]: I will be very brief. My understanding is you took some
9 photos when you were at the residence?

10 A Yes.

11

12 Q In the bedroom?

13 A Yes.

14

15 Q And seized some exhibits?

16 A Yes.

17

18 Q Did those photos get disclosed to the Crown?

19 A I'm not sure. I would have provided them to the investigator, I believe.

20

21 Q So who would you have provided them to? Who was the investigator?

22 A Constable [REDACTED] would have been the lead investigator.

23

24 MS. [REDACTED]: Thank you very much, Constable [REDACTED].

25

26 MS. [REDACTED]: Nothing further. Thank you.

27

28 THE COURT: Thank you, sir.

29

30 A Thank you.

31

32 (WITNESS STANDS DOWN)

33

34 MS. [REDACTED]: That's the evidence for the Crown on the voir
35 dire, sir.

36

37 THE COURT: Thank you.

38

39 Calling any evidence?

40

41 MS. [REDACTED]: There will be no evidence called on behalf of

1 Mr. [REDACTED].

2

3 THE COURT: All right. Are you prepared to argue now or
4 do you want a short break to gather your thoughts? I'm in your hands. We have
5 time.

6

7 MS. [REDACTED]: Might we have a short break, sir, just to even
8 five to or 3 o'clock, sir.

9

10 THE COURT: Sure. Let's make it 3 o'clock just for the
11 sake of an even number.

12

13 MS. [REDACTED]: Thank you.

14

15 THE COURT: Thank you. If you need any more time than
16 that, just let madam clerk know.

17

18 MS. [REDACTED]: Thank you.

19

20 THE COURT: Thank you.

21

22 THE COURT CLERK: Order in court.

23

24 (ADJOURNMENT)

25

26 THE COURT CLERK: Order in court.

27

28 THE COURT: Thank you very much. Please be seated.

29

30 **Submissions By Ms. [REDACTED] (Voir Dire)**

31

32 MS. [REDACTED]: Thank you for that time, My Lord.

33

34 I'll advise at the beginning of my argument that there is one statement that I did mention
35 in an e-mail that was elicited -- or that was not provided as part of the evidence today, so
36 clearly that will have no bearing on any argument. That was an indication that I expected
37 as part of the evidence that there would be an indication that the accused had taken T3s,
38 or Tylenol 3s. That did not come out today so if you have my e-mail, that can be
39 disregarded. There was also an indication --

40

41 THE COURT: That's news to me. So I --

1
2 MS. [REDACTED]: Oh, I thought --

3
4 THE COURT: As I hope you know -- as I hope you know I
5 don't have nothing other than the pretrial conference memo, of course, so I have no --
6 nothing before me that would tell me there was an e-mail or wasn't one, anything of that
7 nature.

8
9 MS. [REDACTED]: Oh, I apologize. I apologize.

10
11 THE COURT: Unless it -- well, unless it was part of the
12 charter notice, but I don't remember it.

13
14 MS. [REDACTED]: Okay.

15
16 THE COURT: Anyway, I'm just going to be governed by the
17 evidence, of course.

18
19 MS. [REDACTED]: Yes, sir.

20
21 THE COURT: And your submissions.

22
23 MS. [REDACTED]: So what we have, then, is one admission or
24 comment that is made after a direct question of Constable [REDACTED] that is made in the
25 basement, and then other comments that I would submit were not made in the context of
26 direct questioning, including the statement that, [REDACTED] should just have kicked the child
27 molester's ass, or said he should have kicked the child molester's ass. In that
28 particular comment, we don't really know the context of it, and I don't expect to elicit
29 that comment as part of the Crown's case for that reason. We don't have the context of
30 it.

31
32 I would, however, be looking for an indication that it was voluntary and it was made in
33 compliance with the charter. For the reason, if the accused testifies, I'd like to be
34 able to cross-examine him on that statement, if he does choose to testify. But that won't
35 have too much bearing in the argument here except for the Court doesn't have to worry
36 that there will be this statement out there with no context to it. The Crown won't be
37 eliciting that as part of the case.

38
39 THE COURT: Okay.

40
41 MS. [REDACTED]: So --

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41

THE COURT: Just before you get going -- or any further -- just as I was pondering things out back during the break, it occurred to me, at least, to ask this question of photographs and the apparent existence of photographs of the alleged crime scene. Is there an issue with respect to disclosure that needs to be dealt with before the jury is actually sworn in tomorrow?

MS. [REDACTED]: I think my friend and I will have a discussion. I don't think much turns on it, sir, though I think we can perhaps try to track them down this evening.

MS. [REDACTED]: I can certainly do that. I can tell the Court that I don't have a copy of them.

THE COURT: No, no, of course.

MS. [REDACTED]: Yes.

THE COURT: I wouldn't have thought so. I say it -- I put it this way, if the photographs can be produced before the jury is sworn in tomorrow, and if you conclude that they are important and that you might need an adjournment somehow to deal with them -- I don't know -- but I'm just sort of trying to take into account all the different possibilities, if on that hypothetical, we all might want to consider, A, the length of any adjournment that you might need and whether that in the context of a four-day jury trial would make it difficult to complete the trial with this jury.

Making that decision before they are sworn in is a much easier decision to make --

MS. [REDACTED]: Yes.

THE COURT: -- than afterwards. So if the jury is sworn in and we start the trial, the defence position becomes that you're prejudiced, you need an adjournment to deal with this previously undisclosed evidence, then we're in a pickle, because what do you do with a jury that -- we can't then just -- well, it's a mistrial, essentially, for all intents and purposes. Or at least that would be someone's argument. I don't want to give you the impression that I've made my mind up about anything.

Whereas if you come to the conclusion that you do need an adjournment and it's more than a day, then one option would be to adjourn the trial and bring it back in front of a different jury. We can do that if this jury is not sworn in --

1 MS. [REDACTED]:

Yes.

2

3 MS. [REDACTED]:

I don't anticipate that being an issue, sir.

4

5 THE COURT:

Okay.

6

7 MS. [REDACTED]:

I don't think many of the photos were material,
8 but I was more or less making inquiries while I had them here.

9

10 THE COURT:

Okay. No. Fair enough. I just wanted to --
11 I didn't want to leave that stone unturned. I don't know anything about your
12 respective cases.

13

14 MS. [REDACTED]:

Yes.

15

16 THE COURT:

Except of course what I've heard so far in the
17 voir dire. I just want to make sure that we don't run into an unforeseen problem. If
18 it was a judge alone trial, it wouldn't really be as big an issue.

19

20 MS. [REDACTED]:

Right.

21

22 THE COURT:

Okay. So I apologize for interrupting.

23

24 MS. [REDACTED]:

Not at all. Thank you, sir.

25

26 THE COURT:

I won't guarantee that I won't interrupt again.

27

28 MS. [REDACTED]:

For my argument here, sir, the Crown -- I will
29 concede a 10(b) breach regarding the first statement made by Mr. Harms. That is --

30

31 THE COURT:

Thank you. That's appropriate.

32

33 MS. [REDACTED]:

And I will still make some argument as to why
34 this Court should let that statement in and the following statements.

35

36 I'd like to make my comments towards voluntariness first and then go into the 10(b), and
37 I don't intend to be too long regarding voluntariness. I would submit that the evidence
38 from each of the officers, some more detailed than others, shows that the actions of the
39 officers while they were dealing with the accused were generally professional and
40 appropriate, that their demeanour when speaking with him, even when he is being
41 aggressive and agitated, was more in terms of the calming him down and trying to

1 deescalate the situation than anything else.

2
3 That there were -- I think this Court can conclude on all of the evidence that there were
4 no threats or promises made in relation to his providing any statements or in relation to
5 his complying with any other investigation -- any other investigatory techniques that were
6 imposed on him by the officers.

7
8 It's clear, I would submit, that the officers for their long period of interaction with him
9 when there's more than one present is part -- their executing another investigatory
10 technique, and I think -- I would submit, it was one that was appropriate in the
11 circumstances given the information they had about what happened. It was a technique
12 that was done in a reasonable manner, and they were not attempting to otherwise elicit
13 evidence from him while they were performing that technique.

14
15 So while he is in their custody at that point, I would submit anything that he says there is
16 still voluntary. We see that he is -- he is, in some measure, in control of the way the
17 interactions between himself and the officers is going. From the very beginning, from the
18 first time Constable [REDACTED] interacts with him and all the way through, that he is exhibiting
19 a measure of control of how the interaction occurs and his responses to anything the
20 officers are saying to him.

21
22 I think -- I would submit that the general issues regarding voluntariness or concerns about
23 police tactics, of police interaction that overbears the will of the accused are simply not
24 here, that the Crown can prove beyond a reasonable doubt that the statement was taken
25 voluntarily.

26
27 I think that -- or I would submit that the evidence that Constable [REDACTED] drew his firearm is
28 almost a red herring here in terms of voluntariness. What we did hear is that the officer
29 draws his firearm when he determines that what he believes to be another firearm present
30 with the accused, that he draws it when he is behind a concrete wall, and that he is
31 aiming it at the ground.

32
33 There was no way to prove on the Crown's case whether or not the accused ever saw the
34 gun and the person who could have said that or could have provided that evidence to this
35 Court did not provide that evidence to the Court. And he certainly doesn't have to.
36 But there's nothing for this Court to determine that he even saw the gun on those facts.

37
38 And then when Constable [REDACTED] goes on to actually deal more face to face and in closer
39 proximity to the accused he certainly already holstered his weapon and is speaking to him
40 in a manner that he is hoping to deescalate the agitation of the accused, while at the same
41 time keeping his own safety a priority. And so we can't even look at the drawing of the

1 weapon as a kind of inherent imposition of police force and control on the accused here.

2
3 And so what we do have is the actual interaction that they have, and Constable [REDACTED], even
4 in his evidence is fairly soft spoken in his manner of speaking, and indicates that that's
5 the general tenor that he was speaking to the accused with. I don't think that there's
6 anything based on his mannerisms or on the mannerisms of the other officers that this
7 Court has heard about that the Court can conclude he would have been faced with an
8 overbearing personality or some kind of threats in these circumstances. I ask the Court
9 to find that the statements are voluntary.

10
11 In terms of section 10(b), which is related, but distinct here, I concede the breach because
12 even though the officer right after or very close after hearing the statement of the accused,
13 he has not yet given him his 10(b) rights at the point when he asks the question, what
14 happened up there?

15
16 I do think it is important what the officer asked. He didn't ask a specific question. He
17 didn't say, why did you do this to your daughter? Or anything like that. He says, what
18 happened up there? And I would submit that it's also important that the officer,
19 although he had in his mind that there may be charges for the accused, he also indicates
20 that he did not know what had happened, that he had a very difficult time getting
21 information out of the complaint, and he was asking the question because he was trying to
22 figure out where this investigation was going.

23
24 THE COURT: But he said in cross clearly, I thought, that he
25 needed to be cross-examined on the point --

26
27 MS. [REDACTED]: Yes.

28
29 THE COURT: -- because his evidence in chief was quite
30 different about what he thought he had in terms of grounds. But I took it from his
31 evidence in cross that he knew when he went downstairs that he had -- and I'll go -- I'll
32 be more careful when I give you my reasons, but what I remember from his evidence was
33 that he knew, not only on a gun offence when he saw what turned out to be a BB gun or
34 some sort of replica, but also with respect to the alleged sexual assault, that he had -- and
35 I think his evidence was -- to the effect he had enough -- he had grounds to make an
36 arrest. But that's what I took from his evidence in cross.

37
38 MS. [REDACTED]: Yes.

39
40 THE COURT: And frankly I have to say that I found he was
41 reluctant when I -- because I've gone back and read through my notes over the noon

1 hour. I found he was reluctant to give you that evidence, and I think probably
2 because he knew what the import of it was. And so I'm just letting you know where
3 my thoughts are with respect to fact findings.
4

5 MS. [REDACTED]: Yes, sir. And I don't think I could have
6 argued that he had no idea going down there that charges were a possibility or that even
7 sexual offence charges were a possibility.
8

9 And I'll just -- I think I'll leave my comments there as they are.
10

11 THE COURT: Some of these things go to the breach. Some of
12 them go to the admissibility, of course.
13

14 MS. [REDACTED]: That's right.
15

16 THE COURT: And so I don't want to cut you off, Ms. [REDACTED].
17

18 MS. [REDACTED]: And that I think is where my argument for
19 that -- for this was going to lie. That it does not appear to be a willful and flagrant
20 violation that occurs here. It appears to be an officer who is coming into a situation,
21 which partly he expected because he received a call saying that a sexual offence
22 complaint had happened, but this part where the gun or what he sees to be a gun and later
23 finds out is not, that part was unexpected, or it appeared to be unexpected to the officer,
24 so he's in a bit of a different situation here.
25

26 And it does not appear to be a willful desire to force the accused into either a version of
27 events or an incriminatory statement here. It seems to be more of a general question as
28 the officer is trying to wait for backup and trying to determine how he's going to proceed
29 with the rest of the investigation, and it clearly is a direct question to the accused. But I
30 think that this Court can find that there was no malice on the part of the officer to attempt
31 to again get a version of the events from the accused without having given him the
32 opportunity to contact counsel. It appears to be something that just happens as part of
33 this situation that's unfolding. And I think that goes towards the seriousness of the
34 conduct, the good faith of the officer that's there.
35

36 And then where it takes us from there, whether or not this Court decides to allow that
37 first statement in, then it still has to consider, even though there's a concession as to the
38 breach, it still has to consider whether the other statements can go in as well.
39

40 THE COURT: Right.
41

1 MS. [REDACTED]: Even if it chooses not to -- or if it determines
2 that the first statement is not admissible because of the 10(b) breach, I would submit that
3 that doesn't automatically make the other statements inadmissible in this --
4

5 THE COURT: No, not automatically. No.
6

7 MS. [REDACTED]: Yes. Not automatically, no.
8

9 THE COURT: A little more thinking has to go into that --
10

11 MS. [REDACTED]: Yes.
12

13 THE COURT: -- based on the cases that you've both given to
14 me.
15

16 Just before you move off the concession that you've made with respect to a breach, it's
17 that early dealing.
18

19 MS. [REDACTED]: Yes.
20

21 THE COURT: You're not conceding at any other point around
22 the section 10(b) informational, implementational stages that there's any other breach, I
23 assume?
24

25 MS. [REDACTED]: I'm not, sir.
26

27 THE COURT: Okay.
28

29 MS. [REDACTED]: I think that --
30

31 THE COURT: I don't know if any -- if your friend is making
32 that argument. I'll wait to hear from Ms. [REDACTED], but I just want to make sure I know
33 what you're conceding and what you're not.
34

35 MS. [REDACTED]: Yes.
36

37 THE COURT: Okay.
38

39 MS. [REDACTED]: And I took from the charter notice that it's the
40 initial breach that's being alleged and that the rest of the statements should be excluded
41 because they follow, so I'm not really -- or I didn't really turn my mind to any other kind

1 of context for the 10(b) breach, but I think if there was to be argument on it, it would
2 likely be in relation to the delay in time before he's actually given the -- he's actually
3 given the opportunity to contact counsel. And my argument there would be that there
4 is other investigation that is going on. It's reasonable investigation in relation to the
5 nature of the offence that occurred, the allegations, specific allegations of digital
6 penetration, and the investigatory technique that the officers were using there, and the
7 requirement that they do this before he contacts counsel and either uses his hands to dial
8 the phone or uses his hands to -- washes his hands. So those steps were reasonable.
9 The delay was something that was required here.

10
11 THE COURT: Mm-hmm.

12
13 MS. [REDACTED]: And --

14
15 THE COURT: Why don't I tell you what's on my mind.

16
17 MS. [REDACTED]: Yes, sir.

18
19 THE COURT: It's -- I've tried to understand the times
20 involved, and officers gave different times for similar events.

21
22 MS. [REDACTED]: Yes.

23
24 THE COURT: And I haven't gone through and tried to square
25 up all their evidence. I'll spend some time doing that. But it seems like the
26 evidence is that Corporal [REDACTED], the corporal -- thankfully there's only one of them in
27 evidence, even his evidence was that he was unsure just when he told Constable [REDACTED]
28 when to keep the handcuffs on and not just when, but why, because of the potential for
29 gaining DNA evidence.

30
31 He was asked if he told [REDACTED] that when they were still out on the curb at or in the patrol
32 vehicle. And he, I think, and quite fairly, said he couldn't remember if he said it then
33 or if he said it over a phone call or over a radio call.

34
35 Then there's Constable [REDACTED]'s evidence -- I think it was Constable [REDACTED] who referred to, I
36 think, a 1907 time. I may have the wrong time, but he referred to a time in his notes
37 when he received instructions from the corporal to keep the handcuffs on. The only
38 uncertainty in my mind is that was to keep the handcuffs on had Constable [REDACTED] at any
39 time before that been told there was going to be a DNA investigation, and maybe he came
40 to his own conclusions about the need to keep the handcuffs on. And I'm not absolutely
41 crystal clear what I think about the evidence on that really narrow point.

1
2 In any event, there's at least arguably a period of delay between the time the charter is
3 given, the formal charter is given, in or at the car on the curb, the truck, and then arrival
4 of the detachment. And we have that time in evidence. I can't remember from my
5 memory what it is.
6

7 And then there's a period of time that goes by until this communication transpires
8 between the corporal and Constable [REDACTED]. And that's a -- and arguably the evidence
9 shows that there is an unexplained period of time during which an opportunity to call a
10 lawyer might have existed and no real explanation in the evidence for why it didn't
11 happen until much later.
12

13 And then the fingerprint business starts up and there's evidence around how long that
14 took. Generally in agreement, around ten minutes. So again, I've made no -- I just
15 want to be fair to you, I'm letting you know how I see the evidence and haven't made
16 those findings concretely yet. But there's evidence out there that might lead me to make
17 a finding that there was a half hour or something in that neighborhood, an arguable delay,
18 before the fingerprint investigation really got going.
19

20 And the question is, if the lead investigator didn't know there was going to be such a
21 fingerprint investigation, what reason, then, is there for not facilitating a telephone for the
22 accused who had very clearly asserted his wish to speak with a lawyer. So that's
23 what -- that's on my mind.
24

25 MS. [REDACTED]: Yes, sir. In terms of that, there is certainly
26 some time to get to the detachment and Constable [REDACTED] says they arrived probably
27 somewhere between ten to 7:00 and 7:00.
28

29 THE COURT: Well, that was one version of his evidence.
30

31 MS. [REDACTED]: Yes. And then when we look at what
32 Constable [REDACTED] and Constable [REDACTED] say is that they arrive at 7 o'clock.
33 Constable [REDACTED] in particular says that Constable [REDACTED] is booking in Mr. Harms and that
34 this is -- sorry. He's booking him in and that Constable [REDACTED] has to go and assist
35 because the manner where Mr. [REDACTED] is speaking -- where Mr. [REDACTED] is dealing with the
36 officer hits the point that he feels necessary to have another officer there, one who can
37 write things down and one who can keep an eye on the accused.
38

39 So that's happening at 7 o'clock very -- in and around the time that they're arriving at the
40 detachment. And then it is from there it appears to be only some minutes before
41 Constable [REDACTED] receives information that the handcuffs are to be kept on and that's

1 also, I think, when looking at the evidence of Constable [REDACTED], in around the time that he
 2 learns that the handcuffs are to be kept on. So what's happened prior to that is
 3 transportation from the residence to the detachment, and then the booking and process,
 4 which appears to have been contentious to the point that a second officer has to come in
 5 and assist, so where he's not been taken out of handcuffs at that point on the evidence I
 6 think the court has that that's reasonable. And then they find not very long after that --

7
 8 THE COURT: What was Constable [REDACTED]'s evidence about
 9 difficulties, if any, with the booking-in process? I don't --

10
 11 MS. [REDACTED]: I don't think he said anything specific about it.

12
 13 THE COURT: I didn't think so either.

14
 15 MS. [REDACTED]: I can't --

16
 17 THE COURT: I'm just looking for my -- Constable [REDACTED] was
 18 very, at least initially in his evidence, very concrete about his times. Oh, there we are.
 19 And he spent a fair amount of time reading from his notebook, or at the very least,
 20 refreshing his memory --

21
 22 MS. [REDACTED]: Yes.

23
 24 THE COURT: -- from his notebook, that in contrast with the
 25 other witnesses who seemed to either have prepared themselves better or remembered
 26 times. And people do things differently, so I'm not trying to be unnecessarily harsh.
 27 But he's -- he testified, and this is even in cross, 1824, police caution. A few minutes
 28 before that the charter. 1818, I think, was the time.

29
 30 MS. [REDACTED]: Yes.

31
 32 THE COURT: Five-, ten-minute wait is what he said originally
 33 before he changed his evidence when he thought about it. Five-, ten-minute wait and he
 34 explained why. And then arrived at the detachment about five minutes later.
 35 And so that takes him to around 1830 to 1835, 6:30, 6:35. And it's -- and I
 36 apologize, I'm thinking out loud. So if that's -- if I were to accept that evidence,
 37 which was the first version of the timing that he gave, the other evidence from the
 38 other -- the two other constables, [REDACTED] and -- help me.

39
 40 MS. [REDACTED]: [REDACTED]. Constable [REDACTED].

41

1 THE COURT: -- [REDACTED] -- thank you -- is that by the time they
 2 arrive, apparently -- apparently, if he was still being booked in, and I assume that -- I
 3 don't know this -- that he would be booked in before he would be then taken to an
 4 interview -- or to a, you know, a private room with a telephone. I don't know if that's
 5 how it works. I just don't have any evidence on that point.

6
 7 So again, I'm thinking out loud. I don't frankly know if it's the defence's position that
 8 period of time is significant. I'm not trying to make their case -- your case for you, and
 9 I don't want to decide things I don't have to decide. I'm just letting you know what's
 10 sort of running around in my head on some of these things.

11
 12 MS. [REDACTED]: Yes, sir. And again --

13
 14 THE COURT: But I appreciate that the focus of the case is
 15 that once there is the breach, the initial breach, in the basement, that statement, then the
 16 other statements that you do wish to have admitted over the defence's charter objections
 17 aren't -- they don't have the kind of connectedness that the cases talk about --

18
 19 MS. [REDACTED]: Yes.

20
 21 THE COURT: -- to the original statement that was taken in
 22 breach and so that I should admit them essentially.

23
 24 MS. [REDACTED]: That's -- yes, that is generally it, sir. There
 25 was the intervening act of the actual reading of the charter and the caution, and in the
 26 circumstances where the evidence that we have from the officers is that this is an accused
 27 who, while intoxicated, appears to be understanding what's going on and appears to be
 28 actively responding to the officers as things go along, that he appears to be, as I say,
 29 understanding things, and he -- in particular, that he had a right to contact counsel and
 30 that he didn't have to say anything. That what he does say after that, I would submit,
 31 sir, really is a choice to say those things after he's been told that he had the opportunity
 32 or he will have the opportunity to contact counsel.

33
 34 I would relate it to the case that I provided of Harper where the accused has what seems
 35 like an irresistible compulsion to speak, and that's what it appears to be here. He's saying
 36 random statements without, I think, the officer -- Constable [REDACTED] termed it as provocation,
 37 but it seems to be without anything leading up to it. Statements about what had
 38 happened and appears to be a desire to explain himself to these officers, and he's entitled
 39 to do so, even after he's been told that he has right to contact counsel.

40
 41 It is -- it's his right not to say anything. It's his right to contact counsel, but if he wishes

1 to speak, the officers aren't required to stop listening and they're not required to tell him
2 to be quiet either. I think that what the officers did after the breach and then after he
3 was told he had the right to contact counsel -- sorry. What they didn't do is they
4 didn't elicit evidence from him. They accepted what he said, but they did not ask him
5 questions about what happened, and so what he's saying appears to be a choice and it
6 appears to be a desire to explain himself and that's not what I think this Court should be
7 protecting him from.

8
9 The courts protect an accused from the actions of the state, not from his own decisions
10 and his own choices in how to act. And the actions of the state here are not actions
11 because they're not eliciting information out of him. And I think that that was the
12 appropriate way for these officers to go when there's this extended period of time when
13 they're unable to put him in front of -- or put him in the phone room and give him the
14 opportunity to contact counsel. But again, it doesn't mean that they have to pretend
15 that what he said was not said.

16
17 THE COURT:

Well, though, some of the cases, and I'm not
18 sure if they all have this fact -- well, there's the one and I can't -- you'll know it better
19 than me. I've only read them once, where there are a series of statements, two, three,
20 maybe four statements in one of these cases. I can't remember if it's one of your
21 cases, Ms. [REDACTED], or yours -- your cases, Ms. [REDACTED], but the officers are very aware that
22 they've taken statements that wouldn't meet charter compliance, and they'd actually
23 seemed to take steps to tell the accused that he should be aware that whatever he's
24 already told them, none of that can be used against him, and I'm paraphrasing.

25
26 MS. [REDACTED]:

Right.

27
28 THE COURT:

They're trying to sanitize their previous conduct
29 to try to -- to try to -- I'm trying to carry the metaphor over, but it's not working. To
30 try to make admissible any further statements they get.

31
32 MS. [REDACTED]:

Right.

33
34 THE COURT:

Recognizing that that whole -- all the law
35 around the connectedness -- and these aren't -- you know, this whole area of law around
36 the connectedness of inadmissible statements versus, arguably, admissible statements, this
37 is nothing new here. The cases go back a long, long ways, Morin [phonetic], for
38 example.

39
40 So -- but there's nothing like that here. Perhaps even go so far as to suggest that while
41 you're conceding a breach. Nothing in evidence that would tell me that Constable [REDACTED]

1 was conceding a breach and made any effort there to disconnect that information that he
2 had as a result of a breach for many other opportunities the accused might have, whether
3 they were of his own making or otherwise.
4

5 You know, I appreciate the accused hasn't testified on a the voir dire and that's a factor I
6 have to take into account, but arguably he's aware that he has essentially confessed to
7 something in the basement, and he knows that that's out there. He doesn't know it won't
8 be used against him, and so he keeps making a couple, maybe two, maybe three. If
9 you can give any meaning to that one statement about [REDACTED], then maybe at least a couple
10 of somewhat similar statements to the one he made that is inadmissible. So that's the
11 defence's argument, or may be part of it, that's it's all, of course, related.
12

13 And this case is different from some of the other cases where there's an effort at least by
14 the investigators to distance the inadmissible statement from the arguably admissible
15 statements. Anything else you can tell me about that line of thought?
16

17 MS. [REDACTED]: I think in the cases, or at least some of them
18 where they are trying to distance themselves and rehabilitate, I guess, what's to happen in
19 the future, to ensure that those could potentially be admissible. It seems to be in the
20 course of, again, of eliciting further information from the accused that they know they are
21 going to be eliciting something and they want to --
22

23 THE COURT: I agree.
24

25 MS. [REDACTED]: -- sanitize the evidence, as you've said.
26

27 THE COURT: I agree with that.
28

29 MS. [REDACTED]: And I think that it is an important distinction in
30 this case here that they are not doing that. That they don't attempt -- as far as we can tell
31 even until the attempt of the warned caution statement, somewhat later they don't even
32 attempt to actually elicit anything further in terms of verbal statements from the accused
33 and then that statement doesn't even happen. The accused of his own choice shuts it
34 down, does not permit it to happen. And I think that that is also important here that
35 he was able to do that.
36

37 So I think that's really where the distinction is that these officers are more -- they are
38 present and they have to be present because they are doing this other technique, but it's
39 the accused who keeps talking without prompting from the officers.
40

41 THE COURT: Thank you.

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MS. [REDACTED]: And then if the Court still finds that they are connected to the breach, I think the same comments can go towards the fact that they should still be found to be admissible under section 24(2) in terms of good faith of the officers of not attempting to elicit further information, but rather being present when that information is given by the accused.

And the other considerations that -- I'm not going to go too far into Grant. I don't think we're far enough to say that Grant is trite law, but I think it's well recognized law in the factors that the Court has to consider.

THE COURT: I'm familiar with it.

MS. [REDACTED]: So it really is just the facts then applied to that situation, and so if the Court finds that it is still a breach because there's the temporal connection and that that is enough, then I think I would submit they should still be admissible under section 24(2), that the balancing of the factors weighs for inclusion as opposed to exclusion of this evidence.

I would submit that this is not the kind of conduct that the Court -- conduct by the officers that the Court should wish to distance itself from and the other factors that have generally been found to be important here. That again, it's not action by the officers that is flagrant; it's particularly after the breach happens and they are just accepting information as opposed to eliciting it. And I think that the truth-seeking function of the -- of this process here also weighs in favour of accepting the information and allowing it to be admissible before the jury.

Society's interests in adjudication on the merits, again, I would submit, weigh in favour of admission of the evidence, and I think I will leave those as my comments. Thank you for the opportunity.

THE COURT: That's perfect. Thank you.

Submissions by Ms. [REDACTED] (Voir Dire)

MS. [REDACTED]: So with respect to voluntariness, first, I think my friend has been quite fair in her submission with respect to voluntariness, and I would have to say on my view of the evidence it would appear that the Crown has met her burden with respect to voluntariness of the statements noting, though, that I share the same concerns she has with respect to the comment about the child molester statement, the one made to Constable [REDACTED].

1
2 And, sir, my concern in that lies largely because there's simply no context for it. We
3 have absolutely no idea who he is talking about, what is going on. The officer couldn't
4 provide us any further details, and I'm mindful of the fact that it's the Crown's burden in
5 this respect.
6

7 I would go a step farther than my friend, though, with respect to these statements, and
8 note that in my view none of these statements have context, the ones that happen at the
9 station.
10

11 On Constable [REDACTED]'s evidence, and I would suggest that's the best evidence we have with
12 respect to what's happening at the station, he said -- he conceded in cross-examination
13 that, you know, it wasn't just that he's necessarily randomly shouting out things, that
14 there's stuff going on. There's exchanges happening. He can't remember, like,
15 what everything that was said. But I think what's particularly important is he notes that
16 he only wrote some of them down, and it would appear, sir, that he only writes things
17 down that are favourable to his investigation.
18

19 And I think this particularly shines through when we have the evidence of Constable
20 [REDACTED] who conceded that he heard the accused say, I didn't do anything. So if
21 we're missing that -- statements like that, like, I didn't do anything, how can we possibly
22 say that we can put these statements in context of what was really going on at that time?
23 And I think in these circumstances to admit statements like that that entirely lack context,
24 while voluntary perhaps in terms of the strict sense of what voluntary means, I think it's
25 highly prejudicial and has very little probative value when we can't put them in any sort
26 of context, when they just appear to be utterances, but when we know that other things
27 were being said at the same time that were simply not written down because the officer
28 didn't find them to be important. And I think the Court needs to be concerned about
29 conduct like that.
30

31 THE COURT: Well, let's just explore that. I certainly heard
32 Constable [REDACTED] testify about the one remark, I didn't do it, or words to that effect.
33 That was the -- so that's the sum of evidence that Constable [REDACTED] didn't write down.
34 Everyone else couldn't particularly recall anything about going to context. And that's
35 all the evidence I have. So I have evidence of one comment that was made that wasn't
36 written down by the lead investigator.
37

38 MS. [REDACTED]: I think -- oh, sorry, sir. I didn't mean to
39 interrupt you.
40

41 THE COURT: No, that's fine. So there's that. Shoot. I had

1 something else on my mind. Carry on. It will come back to me.

2

3 MS. [REDACTED]: I think what the thrust of the evidence was, sir,
4 in the exchange between Constable [REDACTED] and myself was that this was not a two-minute
5 period of time. He's not -- Mr. [REDACTED] isn't sitting around silent during this. This is
6 a somewhat lengthy period of time --

7

8 THE COURT: Yes.

9

10 MS. [REDACTED]: -- at the station while he's in handcuffs. And I
11 think that was my suggestion to him that it would -- it sort of seemed ridiculous that he
12 would just be standing there by himself randomly shouting out nonsensical sentences to
13 which Constable [REDACTED] conceded that there was things going on. There was people
14 talking. There were exchanges happening. He just doesn't remember what they are.
15 And I think when the Crown bears the burden of establishing that it's voluntary, I think
16 that also encompasses, and I'm mindful of the Court's comments in Regina v. Ferris and
17 then Regina v. Hunter, and that line of authority, that we need to have context for these.
18 We don't simply admit statements that don't have any context to them. Because
19 certainly when there's various interpretations or intonations or anything like that that
20 could have been part of a larger conversation, the jury is left wondering and then there
21 can be highly prejudicial comments made that have very little probative value.

22

23 THE COURT: Okay. So that's what I actually wanted to ask
24 you a little bit more about. This context, argument, have you given me authorities
25 that will help inform me under the heading of voluntariness how I deal with statements
26 that don't arguably have much context? Or are you going to give them to me right
27 now?

28

29 MS. [REDACTED]: I can provide one -- I have one for both the
30 Court and my friend as this sort of arose. And I'll provide it to madam clerk.

31

32 And, sir, this is Regina v. Hunter. It's the 2001 decision of the Ontario Court of
33 Appeal, and it references a decision of the Alberta Court of Appeal that was affirmed in
34 the Supreme Court of Canada that Ms. Duckett was counsel on. And I believe this case
35 sort of grapples with the issue of admitting statements where there's simply no context to
36 them and the danger that can arise in those circumstances.

37

38 That having been said, sir, those would be my comments with respect to the statements
39 and the voluntariness of the same.

40

41 Moving to the charter argument. I think my friend has quite fairly conceded the breach;

1 however, I think where my friend and I disagree is with respect to how serious the initial
2 breach is and then certainly the effect that that would have on the subsequent breach.

3
4 I, like the Court, noticed that Mr. -- or Constable [REDACTED] was certainly at times reluctant.
5 I would go farther and say at certain times he was disingenuous. I note at times when
6 he changed his evidence. In my respectful submission it was times when he could see
7 where I was working from. When he noticed that I was drawing on gaps in his
8 evidence, that's when his evidence changed, and I think the Court should have some
9 concerns about that.

10
11 I also note that while Constable [REDACTED] was quite, as I've said, reluctant in his evidence, we
12 had a fairly candid description of events from Constable [REDACTED]. And Constable
13 [REDACTED] comes downstairs and indicates while he can't remember exactly what they're
14 talking about, it was clear to him when he attended downstairs, Constable [REDACTED] was
15 having a discussion about the investigation with Mr. Harms, that during the course of this
16 there's an exchange back and forth. They're communicating between each other, and
17 ultimately the admission gets made.

18
19 That's a very different picture than the one that Constable [REDACTED] provides, and I think that
20 should raise some concerns with respect to Constable [REDACTED] evidence that, oh, I got the
21 one admission, but then we sat down and talked about something else. And I think that
22 is a problem for the Court. The fact that he is before the Court being, in my respectful
23 submission, disingenuous with the Court.

24
25 And certainly if Constable [REDACTED] evidence is correct and the Court accepts it, and quite
26 frankly it was on my view quite candid, there's a significant amount of time that
27 Constable [REDACTED] is eliciting information from Mr. [REDACTED]. I mean, when we think about
28 that, he's not with either the complainant or her mother for very long upstairs. On his
29 evidence he's up there very briefly, comes downstairs, and then, you know, certainly
30 indicates to Constable [REDACTED] that he would like backup, but then he's downstairs for a
31 considerable amount of time until Constable [REDACTED] gets there. And if this interrogation --
32 and I should be careful using the word interrogation, but if statements like this are being
33 elicited throughout that time, certainly this, in my respectful submission, exacerbates the
34 breach significantly. This isn't, I accidentally came across one statement; this becomes, at
35 the very best, negligent or willfully blind with respect to his obligations.

36
37 In support of the fact, sir, that I think Constable [REDACTED] is in fact in some respects unaware
38 of his obligations, when my friend was trying to endeavour to elicit information from him
39 on the stand with respect to, well, he exercised his right to counsel, he's saying he wants
40 to speak to a lawyer, what does that mean to you? And despite asking the question in a
41 couple of different ways, the best we got was, well, it means I have to get him to talk to a

1 lawyer as soon as possible. Nowhere, despite the prompting from my friend -- and I
 2 appreciate she can't lead him, but despite the prompting from my friend, does he say, I
 3 know I can't ask him a question. And that came out nowhere in his evidence that he sort
 4 of appreciates that once that he says, I want to speak to a lawyer, I get to speak to lawyer.

5
 6 Sir, with respect to the second set of statements, I disagree with my friend that these are
 7 not the kind that we can say are sufficiently linked. While these follow Mr. [REDACTED]
 8 being given his right to counsel, it's also prior to him being given the opportunity to
 9 contact counsel. Certainly the authority, sir -- and I have provided you with Wittwer.
 10 Certainly the authorities support the position that even when you've been provided with
 11 your right to counsel, we don't consider the statements in isolation. We consider
 12 whether or not they're part of the same transaction or course of conduct, and we know
 13 from these cases, and I can suggest, sir, that -- I can refer you, sir, to Wittwer or the
 14 Plaha case, and Wittwer was in my materials and Plaha was by my friend -- I would
 15 suggest that, you know, these can be temporal, causal, or contextual. And when we
 16 look at the statements that are made afterwards, I think we have a temporal connection,
 17 because certainly these were made, I would say, probably within an hour or so of the
 18 initial statement, and contextual, sir, particularly with respect to the statement that it's
 19 effectively a repeat of the first statement. How he can say that's not contextual, he's
 20 effectively saying something again. I feel like the ties are very strong with respect to
 21 that statement in particular, sir.

22
 23 THE COURT: Your friend's best argument is probably that he
 24 simply blurted these things out. I appreciate that you may wish me to draw an inference
 25 that there was more to it than that, but the evidence is what it is.

26
 27 MS. [REDACTED]: No.

28
 29 THE COURT: So context or not, all I know is that these
 30 statements -- the second set of them, as we say, were made, and I have no evidence about
 31 what, if any, questions were put to Mr. [REDACTED] before he uttered what he uttered.

32
 33 Are there cases -- can you remind me, in any of the cases that either of you have given
 34 me, are there cases like that, or are they all dealing with subsequent questionings or
 35 interrogations?

36
 37 MS. [REDACTED]: I don't think they necessarily deal with that and
 38 I think in the decision I provided this morning via e-mail, the decision of Free.

39
 40 THE COURT: Yes.

41

1 MS. [REDACTED]: At the end of that decision --

2

3 THE COURT: That's one I actually haven't had a chance to
4 read carefully.

5

6 MS. [REDACTED]: Let me just -- that's okay. I'll -- one of the
7 comments made by the Honourable Judge Creagh is that she makes reference to assessing
8 one of the statements that the statement was not elicited from the accused.

9

10 THE COURT: Where are you?

11

12 MS. [REDACTED]: Paragraph 66.

13

14 THE COURT: Thank you.

15

16 MS. [REDACTED]: And this is with respect to a further
17 down-the-road statement, but notes that: (As read)

18

19 Although the fact that it was elicited and the fact that it -- or not
20 elicited and the fact that it was volunteered may be said to be
21 considered in -- sorry -- properly considered in an analysis of
22 either 24(2) of the charter or a voluntariness argument, in my
23 opinion this is powerful evidence. . .

24

25 And on the facts before her she decided that it establishes that the breach was rectified.

26

27 However, this relates, I would suggest, to the Harper decision that was provided by my
28 friend, because certainly in Harper they were dealing with volunteered evidence, but
29 nonetheless it became part of the 24(2) analysis. And so on the facts of Harper, the
30 specific facts that were before the Court, they addressed it in the 24(2) analysis, but were
31 satisfied that based on those factors it was admissible.

32

33 So I don't think that deals with the breach issue. It simply deals with, well, what do we
34 do with this, and what effect does this breach have?

35

36 And while I'm on the topic of Harper, I'll perhaps distinguish that case because certainly
37 my friend has made some parallels.

38

39 It is an incredibly different scenario in my respectful submission. In Harper there was
40 no taint from a previous breach. This is not a situation where there's a previous
41 statement and then a subsequent statement. Because the initial statement in Harper was

1 also a spontaneous utterance, so it was sort of spontaneous utterance after spontaneous
2 utterance after spontaneous utterance, whereas in this case we have a very elicited
3 commented -- or elicited comment followed by a spontaneous utterance.
4

5 And certainly the Court needs to be mindful of the fact that in Harper the Court does say
6 courts are not to speculate about the effect that the accused may have made the statement,
7 even if he had the opportunity to counsel. But on the facts before the Court they were
8 satisfied that the Crown had established beyond a reasonable -- or on the balance of
9 probabilities that he would have made the statement, regardless, even if he had had the
10 opportunity to contact counsel, and they considered a variety of factors in coming to that
11 conclusion.
12

13 And in my respectful submission, we cannot say that same irresistible desire exists in the
14 present case, and when I say that, I say that because this is someone who is endeavouring
15 to assert the right to counsel. In Harper he's not trying to assert his right to counsel.
16 They can't keep him quiet. In this case we have Mr. [REDACTED] saying, I want to speak to
17 a lawyer. He gets put in the phone room. He asks to have the phone work in the
18 phone room. He comes out of the phone room. He's given a waiver. Do you want to
19 waive your right to counsel? No. He goes back into the phone room. When he
20 comes out, he just wants to go back to his cells.
21

22 Then when they try to take another statement from him, he refuses to participate in the
23 investigation. And in my respectful submission -- well, and I would also add, not only
24 does he refuse to participate in the investigation; he again says, I want to talk to a lawyer.
25 So this puts it in a very different position than Harper where there's not a irresistible
26 desire to confess to everything under the sun; this is a case where he's clearly stating, I
27 want to exercise my right to counsel.
28

29 And certainly, as I have indicated, Harper was effectively confessing from the moment he
30 opened the door, and this certainly played into the Court's conclusion that the appellant
31 had almost this irresistible desire, whereas in our present case this is -- we begin from the
32 point where it's an elicited statement.
33

34 I also note that when we're dealing with the breach in Harper, the Court characterized it
35 at paragraph 17 as a "minor breach". Because the breach in Harper, sir, was simply
36 they said, yes, you have the right to have legal aid, but they didn't specifically advise of
37 the Brydges Line, so while they made it known that there was free counsel available, it
38 was just not clear when that was available, so certainly they found the breach to be on the
39 lower end.
40

41 Where, in my respectful submission, in the case before you, sir, we have the section 10

1 rights entirely frustrated from the beginning of the investigation. When the police
2 show up, he's not given his right to counsel. This then leads into what I would
3 suggest is a transaction where his rights are breached on a number of occasions. I
4 would say the Court has picked up on my concern that's arisen based on the evidence
5 today with respect to this delay. I think there's a second breach that arises when he's
6 given his arrest charter caution and is placed in the vehicle, and then the officer's
7 continuing his investigation at the scene and that's his reason for delaying the right to
8 counsel.

10 This isn't a situation, in my view, that warrants him hanging around at the scene. They
11 came in two separate cars. There was ways for all of the officers to get where they
12 needed to go. This isn't a situation where they need to arrange, for example, like in a
13 roadside example, sir, when there's a vehicle that would just be sitting on the road and
14 they need to arrange for that before they move him. This is something where there's
15 an officer on the scene who can handle dealing with the complainant and her mother.
16 And on Constable [REDACTED] evidence he was waiting because he thought that the corporal
17 had indicated that they may need to move the victim. Well, certainly the victim wasn't
18 coming in the same car as Mr. [REDACTED]. So, in my respectful submission, the delay that
19 happens at the scene is simply them choosing to prioritize the investigation and continuing
20 the investigation over doing what the charter demands they do which is give him an
21 immediate right to counsel and an opportunity to contact counsel.

23 And on all of the evidence I would suggest, but for perhaps the corporal's evidence,
24 Constable [REDACTED] says, by the end, that around 1907 is when he gets the call from the
25 corporal to say, this is -- you need to keep him cuffed. There's some evidence here.
26 Let's do that. And on the other evidence of the other two officers who arrived after 7
27 o'clock, they learn about it after 7 o'clock. So certainly if this is a situation where this
28 is something that comes to everybody's attention, even shortly before 7:00, 7:00, after
29 7:00, if they had left the scene promptly as one would have expected, that is a roughly
30 35-minute window that goes unexplained. Well, it's explained but, in my respectful
31 submission, is not an appropriate explanation for what is going on in that time. They're
32 continuing the investigation, as I said, prioritizing that.

34 What I found helpful, sir, when assessing -- when we're dealing with the second set of
35 breaches, in looking at the decision of Regina v. Free, and again this is Judge Creagh's
36 decision, is I found it very useful how she assessed whether or not these statements,
37 whether the breach can be rectified and whether or not these are sufficiently connected.
38 And I note she makes some helpful comments beginning at paragraph 50. And what
39 was useful, sir, was the five points where she says, based on the authorities I've sort of
40 found these five things that helped me assess whether or not these are part of a continuous
41 transaction.

1
2 And the first one she considers is: (As read)

3
4 Was there was a break in the time between the two statements?

5
6 And notes that where there is a clear temporal break, the Court can safely conclude that
7 these breaches are not sufficiently tied to each other.

8
9 However, in our case we note that there's a close temporal connection roughly around an
10 hour between the statement is made in the basement -- if we assume it's made when the
11 corporal is there. He arrives around 6:15, so sometime after that -- and in the time
12 he's back at the station making a statement on Constable [REDACTED] evidence, 9:05, were less
13 than an hour later. So certainly the temporal connection is there. It's not broken.

14
15 Judge Creagh then goes on to say, were the same officers involved? And the only
16 officer who seems to remember anything really, but for a couple statements, is really
17 Constable [REDACTED], and he's the one who's continuous throughout the entire transaction.
18 And I would submit that the fact that there's no switch in officers, no secondary caution
19 read, no saying, well, regardless of what you've said to Constable [REDACTED], I'm here to take
20 your statement if you want to make one, there's no way of distinguishing the first breach
21 with the second -- or the first statement with the second.

22
23 It's also considered whether or not the accused was able to contact counsel and certainly
24 that's been addressed, sir. What I would say about the opportunity to contact counsel, and
25 this is something again that Judge Creagh picks up on, and she picks up on this at
26 paragraph 47 of her decision. She's relying on the decision of Boudreau v. The King
27 when she is addressing whether or not it counts as an intervening event where you're
28 given your right to counsel, and she considers the warning that -- or the comment that:
29 (As read)

30
31 A warning under such circumstances, where he's already given
32 information in reply to questions and when immediately after the
33 warning he is further questioned by the same parties in a manner
34 that directed his mind to the information already given, is quite
35 different --

36
37 Sorry.

38
39 THE COURT: Yes, I can read it. I got it -- I got the point.

40
41 MS. HAYES: Yes. And then does the subsequent

1 statement -- the next point she considers is whether the subsequent statement refers to
2 earlier statements. In my respectful submission, that's less relevant here because we
3 are dealing with statements that are not necessarily elicited, but I would say in terms of
4 dealing with reference, again I'm going to draw on the fact that one of the statements is
5 effectively a repeat of the first statement.
6

7 And then with respect to the nature of the statement, I would echo that it would be very
8 hard, in my respectful submission, to submit -- or to separate the "I tore off her clothes"
9 to "I tore off her pants".
10

11 When we're assessing 24(2), obviously the position my friend and I take puts us in very
12 different positions with respect to the seriousness of the breach. If she's of the view
13 it's a good faith breach, then certainly that's a very different position. But, in my
14 respectful submission, where you're dealing with an officer who has been disingenuous, in
15 my view, this is more of a, while perhaps not willful and flagrant, it certainly would be
16 negligent and willfully blind, and it's still the sort of conduct that the Court needs to be
17 concerned with.
18

19 And with respect to the impact on the charter protected interests of Mr. [REDACTED], I note that
20 this goes far beyond the fact that -- and I'm not going to repeat for the Court that the
21 cases goes on and on and say that this is one of those fundamental rights and we need to
22 protect it in that line of authority. I also note that what this statement led to, the elicited
23 statement led to him being held in incredibly uncomfortable conditions for a significant
24 period of time, where he is then detained in handcuffs, and as one officer said, in
25 excruciating pain. All this largely because there's a statement made. And I think that
26 the Court needs to be mindful of that when assessing the impact on his interests.
27

28 And when we deal with society's interests and the adjudication on the merits, largely why
29 evidence gets admitted under this point is we consider the reliability and we say, well,
30 why would we exclude reliable evidence? The same point, sir, comes up, in my view,
31 with respect to, well, how reliable was it? Do we even know what it means?
32

33 We have snippets of statements. They're not in any real form. We don't know what
34 came before, what came after. And in light of that I don't think they tell us that
35 much. So when we assess the adjudication on the merits, this isn't a case where
36 simply having these statements excluded means that the Crown can't proceed with their
37 case, that the complainant can't come and testify. Obviously the case will still be
38 adjudicated in that respect, but simply we are keeping out what could be potentially very
39 unreliable evidence. And that would be my position with respect to the adjudications
40 on the merit.
41

1 I think subject to any questions from the Court I am finished.

2

3 THE COURT: Thank you. No, I don't have any further
4 questions.

5

6 Ms. [REDACTED], anything arising from that?

7

8 MS. [REDACTED]: Just, when the Court asked earlier if there was
9 anything in our case law that speaks to these kind of spontaneous utterances, I think the
10 only -- I think the most helpful one that was provided by the Crown would be R
11 v. H.(B.J.) or sometimes referred Regina v. Hollohan where at least it does go into the
12 fact of spontaneous utterances, in that particular context were found not to be a breach at
13 all. I, of course, have conceded the breach already, but the spontaneous utterances there
14 were found to not be of concern to the Court of Appeal.

15

16 THE COURT: Okay. I'll be careful to read that with that in
17 mind. With regard to the voluntariness, on that head of the argument and the need for
18 context and the Hunter case that I haven't had a chance to read, any submissions with
19 respect to this? Have you had a chance to look at it before now?

20

21 MS. [REDACTED]: Not specifically in the context of this fact
22 scenario, sir, so I have seen it before, but I don't -- I'm not going to make any comments
23 towards it. I think that my friend's assessment of it was quite fair, and I don't need to
24 make any further comments.

25

26 THE COURT: Okay. Well, I'll read it carefully, then. All
27 right. So as I predicted this morning I'm not going to give you a decision by 4:30, that's
28 for sure. So I'm thinking 9 o'clock. We can start a little bit earlier, if you wish,
29 but not much earlier than 8:45. As you know I like round numbers. So let's say 9
30 o'clock, if that works from you.

31

32 MS. [REDACTED]: Yes, sir, it does.

33

34 THE COURT: I expect it will take me half an hour to -- if I'm
35 not perhaps -- I hope not more than that just to give you a decision on these points.

36

37 We haven't obviously had a chance to talk about things like my opening, which I have
38 not completed, or for that matter any of the other usual things that we would be talking
39 about getting ready for the jury in a relatively short trial.

40

41 My opening will be fairly standard. One thing did occur to me, and I haven't looked at

1 it, it's the question of the screen, and what, if anything, needs to be said to the jury right
2 up front, not in a closing, but right up front with regard to the consent that the
3 complainant may testify behind the screen.

4
5 Any thoughts on that? Whether there needs to be anything special said at the outset
6 about that.

7
8 MS. [REDACTED]: I think that there does need to be something
9 said, sir, and I can't remember offhand if there's a particular kind of suggested wording in
10 either Watt's or the Canadian Criminal Jury Instructions about it, but I would submit that
11 there should be some kind of an instruction that the fact that she's behind the screen is
12 not be taken into account in term of assessing her credibility. But beyond that --
13 because it will -- I think that it will be something that the jury would find unusual just in
14 terms of what reference they may have, especially on TV, to what happens or to how
15 things unfold, that having her come and not be directly in front of the accused would
16 probably be significant and require just confirmation.

17
18 THE COURT: They're going to see her testifying on these
19 monitors, are they?

20
21 MS. [REDACTED]: That --

22
23 THE COURT: Is that how we -- that's what I thought.

24
25 MS. [REDACTED]: That's the --

26
27 THE COURT: So they don't have their own -- they don't have
28 their own screens at their chairs. All right.

29
30 THE COURT CLERK: No. Just that one.

31
32 THE COURT: Right. I don't see any. It's not like an
33 airplane. All right.

34
35 MS. [REDACTED]: And certainly as part of that, there of course
36 has to be the indication that it shouldn't affect credibility one way or the other. She
37 should not be found more credible either because she's testifying behind a screen or
38 because she's a vulnerable -- or that's been found to be a vulnerable person in terms of
39 testifying. But I think that there can be something that's worded in a fair and
40 balanced way to the jury.

41

1 THE COURT: If I have any doubts about what I'm going say,
2 I'll make sure that I run it by you before I say it. I don't doubt there's something in the
3 Watt or one of the other standard jury instruction resources that I have available to me
4 that will deal with this aspect of evidence.

5
6 Any other thoughts, Ms. [REDACTED], about that?

7
8 MS. [REDACTED]: No, sir. If anything comes up over my
9 research tonight, I will let you know in the morning.

10
11 THE COURT: Yes, we'll all be working tonight. So if it
12 can be said that I have a practice with respect to these matters, and that may be putting it
13 a little bit strong, in my experience I haven't run the opening by counsel. I don't
14 think that's normally done. Certainly we'll need to talk, maybe tomorrow or
15 Wednesday, about the final charge and what you'll want to contribute to it in terms of
16 your theories, and anything else you think needs to be go in. Again, there are a
17 million charges around on these sorts of cases, and I've begun working on it a little bit,
18 but it's not in a form that I can give it to you, even for a first look.

19
20 But I would like, if it's at all possible, again the timing is a little bit -- it's not short, but
21 it's not a long trial either, if I'm able to give you a draft charge before, you know,
22 evening before, I'll do so, or I'll e-mail it to you or something like that. But I'm not
23 sure in all of the circumstances that it's going to be possible. So I think we're just
24 going to have to play it by ear.

25
26 MS. [REDACTED]: Yes, sir.

27
28 THE COURT: And then your challenge will be to, if you have
29 any objections -- if that's the way it plays out, then the challenge for you, of course,
30 would be to state any objections you have on the fly, as it were, after I've given it, but
31 that's the nature of the business.

32
33 MS. [REDACTED]: Yes, sir.

34
35 THE COURT: Okay. And of course we meet then tomorrow
36 morning after I've given you my decision on the voir dire. If nothing else, we'll need to
37 talk about the juror who I mentioned this morning.

38
39 MS. [REDACTED]: Yes, sir.

40
41 THE COURT: Anything else?

1
2 MS. [REDACTED]: I don't think so.

3
4 MS. [REDACTED]: Nothing, sir.

5
6 THE COURT: If anything comes up, you are absolutely free to
7 get a hold of me, as you have already, by e-mail. Don't hesitate to do so if there's
8 something that you need me to know or the clerk of the court to know.

9
10 MS. [REDACTED]: Thank you.

11
12 THE COURT: All right. Thank you very much. We're
13 adjourned until 9 o'clock tomorrow.

14
15 THE COURT CLERK: Order in court.

16
17 _____
18 PROCEEDINGS ADJOURNED UNTIL 9:00 A.M., October 8, 2013

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1 Certificate of Transcript

2
3 I, [REDACTED], certify that the foregoing pages are a complete and accurate
4 transcript of the proceedings, taken down by me in shorthand and recorded by a
5 sound-recording machine and transcribed from my shorthand notes to the best of my skill
6 and ability.
7

8
9 Digitally Certified: 2014-01-13 15:53:57

10 [REDACTED], CSR(A)

11 Order No. 43196-13-2
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40 Digital Fingerprint: 54136dab12a03d45e809705b3a22201918c48b128f9c1a2a3462849c1b374179

1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 October 8, 2013

Morning Session

4

5 The Honourable

Court of Queen's Bench

6 Mr. Justice [REDACTED]

of Alberta

7

8 S.L. [REDACTED]

For the Crown

9 T.E. [REDACTED]

For the Accused

10 C. [REDACTED]

Court Clerk

11 N. [REDACTED]

Court Clerk

12 C. [REDACTED], CSR(A), RPR

Official Court Reporter

13

14

15 **Ruling (Voir Dire)**

16

17 THE COURT:

Good morning. Please be seated.

18

19 I apologize for keeping you waiting, and I apologize in advance for what are likely overly
20 long reasons. As they say, if I had more time, I would make it shorter.

21

22 So here are my reasons on the voir dire, which, of course, was held at the outset of this
23 five-day jury trial and calls on me to decide if certain statements are admissible, either on
24 the basis of voluntariness or alternatively on the basis they do or don't comply with the
25 Charter right to counsel, or alternatively to that, if they don't, whether they should
26 nevertheless be admitted under Section 24(2) of the Charter. On the evidence that I heard
27 yesterday, I find the following facts.

28

29 Of course the events regarding these statements occurred on May 21, 2011, in the town of
30 [REDACTED]. Constable [REDACTED] responded to what I gather was the [REDACTED] residence
31 in [REDACTED] after he became aware of a 911 call relayed to him via the telecom service,
32 that call being from a hysterical female person stating she had been molested and
33 thereafter the phone being hung up. That call came in around 1724. I'm going to refer to
34 the 24-hour clock as I go through my reasons.

35

36 Constable [REDACTED] responded accordingly. He was already on the road, and he managed to
37 get to the, what I'll call the [REDACTED] residence, about five minutes after the call came to
38 his attention. He initially dealt with [REDACTED]. He had had previous dealings with
39 [REDACTED] as well as with Mr. [REDACTED]. Though she was still hysterical, within a couple of
40 minutes Constable [REDACTED] was able to glean from her that she alleged her stepfather,
41 Mr. [REDACTED], had threw her down on a bed and molested her by putting his hands down her

1 pants.

2
3 Constable [REDACTED] testified, and I accepted, he made some effort to try to understand more
4 fully what she alleged, but didn't get very far. He, therefore -- I'm sorry. Before he had
5 any contact with Mr. [REDACTED], [REDACTED] came into the residence. All that she
6 added to the voir dire evidence is that she located Mr. [REDACTED] in the basement, told
7 Constable [REDACTED] that's where he was, and that led then Constable [REDACTED] to having an
8 encounter with him.

9
10 Constable [REDACTED] decided he -- or concluded he needed to go downstairs to talk to
11 Mr. [REDACTED]. As he descended into the basement, he noted Mr. [REDACTED] sitting on a couch
12 with a handgun in his right hand, or what he believed to be a handgun. Constable [REDACTED]
13 ordered [REDACTED] to drop the gun. He testified, and I accept, that rather than do so, [REDACTED]
14 began waving the gun around, stating, Don't come down here, or words to that effect. He
15 described [REDACTED] as being extremely agitated and upset. In answer to [REDACTED]' response of,
16 Don't come down here, Constable [REDACTED] repeated his demand that the weapon be put
17 down, or words to that effect. This time [REDACTED] did comply and noted that -- said, again,
18 words to the effect that, in fact, the gun was a BB gun. I accept on the evidence -- I
19 haven't seen this gun, but I certainly accept Constable [REDACTED] evidence that the gun looked
20 real, that he had an apprehension that it was real. There was no way that he would know
21 during any of his dealings in the basement with Mr. [REDACTED] that, in fact, it wasn't a real
22 gun, that it was only a BB gun, or perhaps even some other kind of replica gun.

23
24 In any event, [REDACTED] did put the gun down at his feet, and then later, momentarily later,
25 on a, I gather, further demand from Constable [REDACTED], he threw it or kicked it further away.
26 In any event, it was described as being several feet -- ten, 15 feet or so -- away from
27 where [REDACTED] remained sitting. [REDACTED] then approached [REDACTED]

28
29 As I mentioned in argument, or during argument yesterday, I found that while Constable
30 [REDACTED] appeared to hesitate in examination-in-chief to say what he knew -- or what he knew
31 at least subjectively when he went into the basement after speaking with [REDACTED], I find that
32 in cross-examination he admitted that at least at that point in time as he's entering the
33 basement and particularly when he sees what he believed to be a gun in Mr. [REDACTED]
34 possession, at least at that point in time he knew that he had reasonable and probable
35 grounds to arrest Mr. [REDACTED] at least for a gun offence, if not for a sexual assault on the
36 basis of what he had taken from [REDACTED] in his brief dealings with her upstairs.

37
38 I also agree with the Crown's position that nothing turns on Constable [REDACTED] drawing of
39 his side arm as there was no evidence Mr. [REDACTED] even saw it nor is there any evidence in
40 the voir dire really that Constable [REDACTED] or any of the other investigating officers did
41 anything to threaten Mr. [REDACTED] or make any promises or inducements or anything of that

1 nature that goes to that aspect of the issue of voluntariness, and in argument very little
2 moment -- there was very little on the, what I'll call the usual aspect of voluntariness
3 objected to by the defence.
4

5 Notwithstanding he had grounds for an arrest for something, Constable [REDACTED] decided not
6 to arrest [REDACTED] at the moment he entered the basement, or even at the moment the gun
7 had been kicked off into the corner or somewhere else in the room. And [REDACTED] -- rather,
8 Constable [REDACTED] is standing, either he's sitting down on the couch with Mr. [REDACTED] or he's
9 standing a few feet away from Mr. [REDACTED] -- his evidence was a little bit, I found,
10 confusing in that regard. He gave two different, if I can put it this way, stories at
11 different points in his evidence about whether he had further dealings with Mr. [REDACTED]
12 while sitting on the couch next to him or standing next to him or close to him.
13

14 In any event, whether he's standing or sitting, at least by then Constable [REDACTED], it was clear
15 in his own evidence, he had grounds to arrest -- certainly he had detained Mr. [REDACTED]. He
16 had grounds to arrest him at least for a gun offence, if not a sexual offence. He did not,
17 of course, provide him with any Charter warnings or the right to silence, right against
18 self-incrimination warnings at that time. He gave as his excuse or reason officer safety.
19 He indicated in his evidence that he did -- he wished not to inflame an already volatile
20 situation. He was in a basement with only one exit. He was alone. He was apprehensive
21 about the existence of a gun. Even though it was off out of reach, I take it that he was
22 concerned that it was still in -- and I don't intend this to be a pun -- it was still in [REDACTED]
23 way. And I give Constable [REDACTED] every benefit of the doubt on those points.
24

25 He also described Mr. [REDACTED] as being intoxicated, although not to the extent Mr. [REDACTED],
26 in Constable [REDACTED] estimation, didn't know what was going on. And I find on all of the
27 evidence, for what it's worth, while there was some evidence going to the consumption of
28 alcohol, little evidence, little acceptable, credible evidence going to the extent of how that
29 consumption resulted in actual impairment or intoxication. The evidence, particularly from
30 Constable [REDACTED] at that point in time was of red, glassy eyes, slurred speech, and the
31 presence of a beer can, little else. The only other evidence was that of Constable
32 [REDACTED] as I recall, where he walked into the room and smelled alcohol on Mr. [REDACTED]
33 breath. That evidence didn't come from Constable [REDACTED]. In any event, there was
34 obviously evidence of consumption, not much detailed evidence to go to whether, in fact,
35 Mr. [REDACTED] was intoxicated. Lots of evidence, though, that Mr. [REDACTED] was, as Constable
36 [REDACTED] put it, up and down in terms of his behaviour, demeanour, and that was something
37 he took into account as well in terms of the volatility -- what he understood to be the
38 volatility of the situation.
39

40 Having decided not to make an arrest at that point in time, there is no doubt on the
41 evidence, that Constable [REDACTED] had decided to detain Mr. Harms pending the arrival of

1 backup in the form of Constable [REDACTED] for assistance. In these circumstances then,
2 Constable [REDACTED] decided -- at some point, I'm not absolutely sure, he decided to reholster
3 his weapon. I'm inferring from all of these circumstances that took place after he was
4 convinced -- or unless I've missed this aspect of the evidence -- after he became
5 convinced that the gun had, in fact -- the handgun that Mr. [REDACTED] had been in possession
6 of had been kicked off or thrown off somewhere else into the room, at some point
7 Constable [REDACTED] then reholstered his weapon. And he said he did so because he felt that
8 would actually assist him in being able to deal with any unforeseen circumstance. He
9 didn't want to be tied up with a gun in one hand if he needed to do something to deal
10 with the situation that Mr. [REDACTED] presented.

11
12 In any event, having reholstered his weapon, having either moved into the room to stand
13 next to Mr. [REDACTED] or, indeed, perhaps having sat down next to him on the couch, and
14 having made a conscious decision not to inform him that he was under arrest, or for that
15 matter that he was detained, and for sure not having informed him of any of his
16 constitutional rights or rights against self-incrimination, fatally Constable [REDACTED] then
17 decided to question the accused. There is no officer safety basis for his action in deciding
18 to question the accused.

19
20 In cross-examination defence counsel elicited from Constable [REDACTED] the common sense --
21 or asked him the common sense question: If you were trying to diffuse an otherwise
22 volatile situation, why would you then start asking an accused about the thing which
23 presumably had created the volatile situation in the first place, in other words, why would
24 you start questioning him about the alleged sexual offence. I appreciate the question that
25 he asked was a very general one, what's going on or words to that effect, but I conclude
26 that the question was meant to elicit information, potentially at least incriminating, going
27 to the investigation which Constable [REDACTED] had initiated upstairs before he entered the
28 basement. It was clearly an inappropriate police response without any justification. The
29 proper police response would have been to continue in good faith to attempt to maintain
30 or diffuse a potentially volatile situation pending backup from Constable [REDACTED], but to
31 then go on and begin questioning, even in a brief general matter, in the circumstances
32 here is conduct which, as will become more apparent, I find to be objectionable.

33
34 Of course, the evidence is that immediately upon being asked the question, What's going
35 on, [REDACTED] responded by stating words to the effect that he stripped her naked, referring
36 presumably to [REDACTED] to teach her a lesson because she's a whore. That statement, of
37 course, it's conceded in argument, was in breach of [REDACTED]' Section 10(b) Charter rights.
38 The voluntariness of the statement is not much in issue, but that doesn't matter in my
39 view because as a matter of concession the statement is clearly inadmissible.

40
41 While I found on Constable [REDACTED] own evidence that even before the statement he

1 believed he likely had grounds to make an arrest, either for sexual assault, but clearly for
2 the gun offence, he had those grounds at least subjectively in his mind when he elicited --
3 when he asked the question and elicited the statement.

4
5 I'm just editing on the go here, Counsel. I don't want to be unnecessarily repetitive.

6
7 I'm referring to -- or I was struck, frankly, by Constable [REDACTED] evidence that when he
8 entered the basement at around some point before 1825 -- Constable [REDACTED] talked -- used
9 the timing of 1825 as when he, I believe, seized the gun in the basement. That's what I
10 took from his evidence. He was, therefore, in the basement at some moments before that,
11 entered the basement, saw the two individuals sitting on the couch, concluded they were,
12 in fact, talking about the investigation. I'm not sure I can give a whole lot of credence to
13 that because even on Constable [REDACTED] evidence they were talking about some prior
14 difficulties in the relationship Mr. [REDACTED] had with [REDACTED]. That wasn't given with any --
15 in any detail in the voir dire, so I can understand why Constable [REDACTED] might have
16 misunderstood just exactly what was going on at that moment. But what struck me was
17 his evidence, [REDACTED]' evidence, that he then heard Mr. Harms make an admission with
18 regard to the more immediate or the more -- that day's alleged offence, and it was then
19 Constable [REDACTED] who immediately intervened to arrest Mr. Harms. That is not really
20 even close to what Constable [REDACTED] testified to. [REDACTED], of course, testified that it was only
21 in answer to his general question that elicited the remark about stripping her naked, and
22 after that there was nothing else said that -- in the conversation between he and
23 Mr. [REDACTED] that went to the day's events, rather, they were speaking about prior -- a prior
24 context. And, of course, it was Constable [REDACTED]'s evidence that while Constable [REDACTED]
25 was present when Constable [REDACTED] arrested Mr. [REDACTED] that he was only there to assist.
26 Constable [REDACTED] was clear that he arrested -- he being [REDACTED] -- arrested [REDACTED], handcuffed
27 him, and took him upstairs.

28
29 I am unable to reconcile the evidence. I found, frankly, Corporal [REDACTED] to be a generally
30 credible officer. I found Constable [REDACTED] to have some difficult -- I had difficulties with
31 his credibility, at least in this case.

32
33 Constable [REDACTED], again to expand on the evidence that he gave in combination with the
34 evidence of Constable [REDACTED] -- Corporal [REDACTED], [REDACTED] testified that he Chartered and
35 cautioned Mr. [REDACTED] outside of the residence, either near the vehicle, his police vehicle,
36 or in it, not later than 1824. There is mention of 1818 and a caution -- a Charter and
37 caution. It wasn't absolutely clear to me when those two warnings were given, but I
38 conclude on the evidence that they had been given to Mr. [REDACTED] not later than 1824.

39
40 Constable [REDACTED] said nothing about Corporal [REDACTED] coming outside and instructing him to
41 Charter and caution Mr. [REDACTED]. I find on the evidence that at every turn Mr. [REDACTED]

1 indicated he did wish to speak to a lawyer. I appreciate that when finally given the
2 chance to use a phone in a phone room at the detachment, he was perhaps less than
3 diligent in exercising the right. The evidence wasn't fully explored in that regard because
4 it wasn't particularly relevant. That wasn't the basis of the alleged Charter breach.

5
6 I find that on the evidence that Mr. [REDACTED] did refuse to waive his right when he was
7 asked if that was his preference, and even much later he refused -- in the context of
8 refusing to provide a warned statement, he again asserted that he wished to speak with a
9 lawyer.

10
11 Going back to what occurred at the scene, Constable [REDACTED] handcuffed [REDACTED] and escorted
12 him to the vehicle where, as I say, Charter rights and a caution was read. I do not accept
13 the implication in Constable [REDACTED] initial evidence-in-chief that at or near this early point
14 in time he was following Corporal [REDACTED] instruction to keep Harms handcuffed owing to
15 the need to preserve DNA evidence, nor do I accept that immediately after arriving at the
16 detachment, Constable [REDACTED] knew or was informed he needed then to keep the handcuffs
17 on, again, to preserve DNA evidence. I find on all of the evidence that [REDACTED] only learned
18 of the need to preserve this DNA evidence when he was instructed to do so by Corporal
19 [REDACTED] at around 1907.

20
21 It's worth noting that Corporal [REDACTED] initially testified that he told Constable [REDACTED] at the
22 scene he needed to preserve DNA evidence, but when he was pressed on that point in
23 cross-examination, [REDACTED] agreed he could not recall just when he provided these
24 instructions, and that in due course he agreed that those instructions may well have been
25 provided by phone or by radio.

26
27 The best evidence that I have then is, perhaps ironically, from Constable [REDACTED] who, I take
28 it, was referring to a time noted in his notebook when he agreed in cross-examination that
29 he received instructions at 1907 to keep the handcuffs on on account of the need to
30 preserve DNA evidence.

31
32 There was a lot of confusing evidence given by Constable [REDACTED] about when he left the
33 scene and when he arrived at the detachment. His initial evidence, or early -- earliest
34 evidence in the voir dire had him leaving the scene at around 1830 or 1835. He had
35 around five or ten minutes earlier completed his Chartering and cautioning of Mr. [REDACTED]
36 He initially testified he hung around the scene for five or ten minutes, apparently to have
37 some further dealings with Corporal [REDACTED] and apparently to make some notes in his
38 notebook. He said it would have taken him about five minutes to travel from the [REDACTED]
39 residence to the RCMP detachment where he would have arrived at around 1835 to 1840.
40 I appreciate that later in his evidence he attempted to change his evidence arriving at the
41 detachment closer to 1850 or 10 to 7, reasoning that he had stayed at the scene for a

1 longer period of time. I don't consider Constable [REDACTED]'s later evidence on these times to
2 be particularly credible. I'm not sure it matters, though, because whether he delayed at
3 the scene or whether he delayed at the detachment up until 1907 when he received the
4 instructions from Corporal [REDACTED] or whether he delayed a bit at both ends of the
5 spectrum that I have just laid out, the bottom line is that for no valid reason or
6 explanation that's before me in the voir dire, there was a period of delay of around 35 to
7 40 minutes after Mr. [REDACTED] had unequivocally asserted he wished to speak with a lawyer,
8 which, as I say, had occurred by 1824 hours at the latest.

9
10 I have taken into account Constable [REDACTED] evidence that he decided to wait outside the
11 residence because Corporal [REDACTED] was inside still dealing with the complainant and her
12 mother. That evidence, even taken together with the evidence of Corporal [REDACTED], makes
13 no sense to me. There is no suggestion that [REDACTED] was being brought in to assist [REDACTED] in
14 his dealings with the complainant and her mother. No suggestion that at the scene anyone
15 needed to wait at the scene to secure it. Constable [REDACTED] was already on his way for that
16 purpose, having been called in apparently by Corporal [REDACTED]. Constable [REDACTED] was
17 clearly the lead investigating officer here, and although he took direction from Corporal
18 [REDACTED] with regard to the -- eventually with regard to the need to preserve the DNA
19 evidence, I don't accept, frankly, that Corporal [REDACTED] needed to come out onto the
20 curbside to instruct Constable [REDACTED] to administer the Charter and cautioning. [REDACTED] was
21 unequivocal in his initial evidence that he did that outside in or near the vehicle, and that
22 makes sense to me, that's what one would expect in an investigation, rather than waiting
23 to be instructed to give those very basic information rights to an accused who was clearly
24 under arrest, handcuffed, and obviously in police custody.

25
26 In spite of the conflicting evidence, which as I say I find hard to reconcile, the bottom
27 line here for me is that Constable [REDACTED] was obliged immediately to take steps to facilitate
28 Mr. [REDACTED]' request to speak to the lawyer. There was no officer safety reason for staying
29 at the scene. Staying at the scene, whether he did or didn't, I find doesn't matter to me. I
30 suspect he didn't, but there is this irreconcilable evidence. Staying at the scene to make
31 notes in the circumstances of this case, in my view, would not be a valid reason to delay
32 the exercise of Mr. [REDACTED]' rights. There was nothing else in the evidence -- nothing in
33 the evidence that Corporal [REDACTED] was aware that Mr. [REDACTED] had asserted his right to
34 counsel, his right to speak with a lawyer. I should have thought that had Corporal [REDACTED]
35 been aware of that, he would have -- as a professional, he would have been concerned for
36 Mr. [REDACTED] immediately-arising rights to be put in a phone room with all of the usual
37 safeguards around the exercise of the right to counsel. In any event, didn't have any
38 evidence from him that he was aware that Mr. [REDACTED] had asserted that right from the
39 get-go.

40
41 So in terms of delay, I understand that Constable [REDACTED] was obliged to leave the scene --

1 whether he did or didn't, he was obliged to leave the scene as soon as he could have, in
2 other words, immediately upon Mr. [REDACTED] assertion of right around 1824. The evidence
3 is clear that it should have taken him no more than five minutes to reach the detachment.
4 I rely also on Constable [REDACTED] evidence that that's how long it took him to get to the
5 [REDACTED] residence when he left the detachment to attend there to take photos and secure
6 exhibits. It's reasonable to have expected that by 1830, therefore, [REDACTED] would have
7 been given his opportunity to call a lawyer. The imperative of keeping him handcuffed,
8 at least in Constable [REDACTED] mind, did not arise on the evidence until, as I've said, 1907,
9 almost 40 minutes after Mr. [REDACTED] had asserted his interest in speaking with the lawyer.

10
11 Moving on. According to Constable [REDACTED] evidence -- and I have noted already that he
12 was very much aided in his evidence in the voir dire by referring to his notebook. He
13 seemed to have a difficulty remembering a lot of what occurred here simply by memory
14 and referred back to his notebook on many occasions, and that's fine, but it's something
15 that has to be noted. He was, of course, the lead investigator. He, therefore, should have
16 been expected -- I would have expected him to be of all of the members involved in this
17 investigation, Constable [REDACTED] notebook would have been the most comprehensive, the
18 most thorough. His notebook, then next -- I shouldn't say next. I haven't seen the notes.
19 I am informed by the evidence that at 1905 he did make a note of a statement that
20 Mr. [REDACTED] made, and it's verbatim. "I don't give a fuck. I'll plead guilty to this. I
21 don't know what else to do. Yeah, I ripped off her pants to teach her a lesson."

22
23 Notwithstanding his role as lead investigator, inexplicably, I find Constable [REDACTED] was
24 unable to give any evidence about the context of the statement, although he agreed there
25 had been some what he called innocuous conversation with [REDACTED] before and after the
26 statement was blurted out. And when I refer to conversation, it could be clearer in the
27 evidence, but there is at least the suggestion that Constable [REDACTED] was around. I'm
28 not sure that Constable [REDACTED] was around at all this time because he was out gathering
29 evidence and taking photographs and buying nail clippers. He eventually did respond.
30 But at this period of at 1905, it appears that [REDACTED] was probably around. There -- and
31 I'm -- I find on the evidence that even though there was no evidence of the context, there
32 had been some discussion between Harms, [REDACTED], and/or [REDACTED]. I also note that at
33 19 -- this is a comment made at 1905, which is two minutes before Constable [REDACTED] says
34 he was advised in some manner by Corporal [REDACTED] that the handcuffs had to stay on.

35
36 In his own evidence Constable [REDACTED] didn't identify any particular problem with [REDACTED]
37 around the time Constable [REDACTED] first became involved. Constable [REDACTED] talked about
38 Mr. [REDACTED] being up and down throughout his dealings with him. Constable [REDACTED],
39 and later on Constable [REDACTED], in the context of taking fingerprints -- fingernails said
40 Mr. Harms wasn't acting in any particularly remarkable fashion. They did say that when
41 they came on shift around seven, they noted some fracas or some dealings, some noise,

1 some argument in a cell area. The suggestion that that was occurring while Mr. [REDACTED]
2 was being booked in is something that I was unable to find in the evidence.

3
4 In any event, going forward from the 1905 statement or blurting out, some five minutes
5 later at 1910 Constable [REDACTED] made a further note in his notebook that Mr. [REDACTED] stated,
6 [REDACTED] and I quote verbatim from the evidence yesterday, "[REDACTED], you should have said
7 I'll kick the child molester's ass," closed quote, to which [REDACTED], who was apparently
8 Constable [REDACTED], replied, "I don't do that," closed quote. Again, aside from recording
9 what [REDACTED] replied, there was no other context given from Constable [REDACTED] notes or for
10 that matter from his memory except that there was likely some conversation before and
11 after the blurting out in question, and that it was of an innocuous nature.

12
13 There was at least one further specific note in Constable [REDACTED] notebook that's of some
14 relevance here. It's that at some point Mr. [REDACTED] said words to the effect he was at his
15 wit's end, on medication, and not thinking properly. Constable [REDACTED] at first testified this
16 occurred around the time he was removing Mr. [REDACTED]'s handcuffs. He then changed that
17 evidence and said that those comments were made around the time or during the ten or so
18 minute period that Mr. [REDACTED]'s fingernails were being collected. Just relying on Constable
19 [REDACTED] evidence for a moment, it couldn't -- it's not at all clear, if that's all the evidence I
20 have, just when the fingernails were being taken. It's doubtful it was as early as 1910, if
21 only because Constable [REDACTED] had yet had an opportunity to stop and pick up clippers.
22 He had only left the detachment shortly after coming on shift at 1900. He went to the
23 scene of the alleged offence, took pictures, gathered exhibits, then went shopping for
24 clippers, and then finally returned to the detachment.

25
26 Constable [REDACTED] helped clear up timing issues, though, putting the collection of the
27 fingernails at between 1935 and 1948, a period of about, well, 13 minutes, close enough
28 to the ten-minute estimates that the other witnesses gave. This evidence, taken together
29 with what I have found was the likely time of arrival at the detachment at about 1830,
30 leads to the conclusion Mr. [REDACTED] was at the detachment, handcuffed, for it appears was
31 an hour and a quarter before finally being afforded his right to counsel. Part of that
32 period of time is the fingernail collection process, and I appreciate that in this voir dire no
33 particular objection was taken by the defence that that process wasn't appropriate or
34 somehow it violated Mr. [REDACTED]'s rights. Take away the fingernail collection period, and
35 again, and at the risk of being unnecessarily repetitive, I'm dealing with a situation that
36 either there was an arrival at the detachment at 1830 or a delay at the scene of the
37 investigation right up until 1907 when a reason then came into existence for Mr. [REDACTED] to
38 remain handcuffed, and once that reason came into existence, it became reasonable for
39 him not to have access to a telephone because to do so might well jeopardize the
40 collection of relevant evidence on the investigation.

1 There is some evidence that Mr. [REDACTED] was experiencing significant discomfort, if not
2 excruciating pain, while handcuffed with his hands behind his back, some evidence that he
3 had a back condition that was known to the police, and that he was on medication. I'll
4 come back to that presently. The evidence is clear that he was provided access to a
5 telephone only by the time of 1950 hours or 10 to 8. Constable [REDACTED] testified that he told
6 Mr. [REDACTED] he could use the telephone only after DNA evidence was collected. That may
7 well have happened, that may well have been said, but I have no reliable evidence as to
8 when it was said, and I would not conclude that it was said at any point earlier than 1907.

9
10 As was pointed out in argument by defence counsel, it is hard, I find, not to fault
11 Constable [REDACTED], or at least to question his credibility as to what was said and wasn't said
12 around the impugned statements at 1905 and 1910, when, in the circumstances, Constable
13 [REDACTED] not only failed to record the context of these statements, but he also failed to record
14 at least one statement Mr. [REDACTED] made which was exculpatory. Constable [REDACTED], who
15 I found was a straightforward witness and of course only really peripherally involved in
16 this investigation, he was good enough to record in his notes that an exculpatory statement
17 was made, although he had some difficulty remembering that in examination-in-chief and
18 only did remember it when he was taken to his notes during cross-examination.

19
20 At the end of the day, on the evidence it's hard not to conclude that nearly from the
21 get-go in this investigation Constable [REDACTED] could have cared less about Mr. [REDACTED] right
22 to counsel or his right to silence. That was obvious as early as the encounter in the
23 basement, the unconstitutionality of which is conceded by the Crown, although not for
24 Section 24(2) purposes. That what I find to be Constable [REDACTED] cavalier attitude with
25 regard to Mr. [REDACTED] rights continued at the detachment by virtue of the unexplained
26 delays in facilitating the right to counsel and by taking selective notes of statements the
27 Crown now wants to adduce in evidence against the accused.

28
29 Turning to the legal issues and to deal first with the aspect of voluntariness, as noted in
30 argument, there is no serious challenge to the voluntariness of the two statements that
31 remain in issue, taking away, of course, the statement that was made in the basement.

32
33 I am persuaded in this case by Ms. [REDACTED] reliance on the case of *R. v. Hunter* which, of
34 course, follows *R. v. Ferris*. In argument Ms. [REDACTED] doesn't take issue with the state of
35 the law set out in those cases, and I had little argument that that law doesn't or shouldn't
36 apply quite closely to the facts of this case and to the 1905 and 1910 statements
37 respectively. I don't intend to quote chapter and verse from *Hunter*, but what I find is
38 important is to observe that on the facts of this case we're dealing with utterances. We're
39 also dealing with a situation where there is some evidence of a context around those
40 utterances but no detailed or concrete evidence of what that context in fact was. That is
41 very much similar to what's observed at paragraph 6 in *Hunter* where the witness

DiCecco overheard a gun remark, but said, I quote from paragraph 6 in the *Hunter* case, quote, "There might have been conversation between the accused and his lawyer both before and after the utterance, which he was unable to detail in his evidence." The Court in *Hunter* then discussed in some quite detail Madam Justice Conrad's reasons in the Alberta Court of Appeal version of *Ferris* and her approach of posing examples of possible surrounding context which would make the utterances arguably innocuous and thus not probative but still significantly prejudicial. And without trying very hard, I can easily use such examples on the statements here.

The 1905 statement, again, "I don't give a fuck. I'll plead guilty to this." Well, at question, what is he saying he'll plead guilty to? He may well, for example, have been talking about the firearms offence. Although at least on the indictment before the Court, there is no such offence being pursued.

I also note that an intention to plead guilty is something that is not an admission of fact so much as arguably only consciousness of guilt, which would be right up there with a statement such as I'm sorry, but -- and it's very often the case that accused individuals say, I'm sorry, forgive me, but for what. It's entirely speculative and is not, in my view, probative of anything.

He then said, "I don't know what else to do. Yeah, I ripped off her pants to teach her a lesson." I'm not persuaded in the absence of context that that comment, particularly the last phrase, isn't or couldn't be read as being a sarcastic remark. For example, yeah, right, I ripped off her pants to teach her a lesson. I don't know. I should note that the utterance made at 1905 cannot be informed by the earlier inadmissible statement made in the basement. They are, of course, similar, but in terms of allowing the jury to have the 1905 statement, obviously they would not have the inadmissible -- subject to 24(2), they would not have the inadmissible basement statement to help put the 1905 statement into some context.

I also find that the comment "I don't know what else to do" does help inform the entire utterance and leaves me concluding that it's impossible in the absence of context to give any meaning to the entire statement made at 1905 hours.

With respect to the 1910 hour statement, [REDACTED], you should have said I'll kick the child molester's ass," I find without gilding the lily that there is very little, if anything, that jumps out as being meaningful about that statement. Little, if anything, that is probative of anything in the case against the accused, as I understand it, coming out of the voir dire, and that in spades that statement does not meet the test set out in the *Hunter* and *Ferris* cases.

1 With regard then to these two statements, to paraphrase from paragraphs 19 to 21 in
2 *Hunter*, I find their meaning is speculative and the probative value of them is therefore
3 tenuous yet the prejudicial effect is still substantial. They should, therefore, be excluded
4 on the basis it would be impossible for a jury properly instructed to conclude that these
5 overheard utterances or either of them was an admission.
6

7 Turning to the Charter breaches, the first breach, of course, is admitted. I'll come back to
8 Section 24(2). I have been very tempted to find the second breach on account of the
9 unexplained delay of almost 40 minutes that I've spent considerable time dealing with in
10 my reasons so far in enabling Mr. [REDACTED] the right to contact a lawyer. I have some
11 concern that I have been unable to -- I have not been provided with any authorities that
12 tell me that 40 minutes, even in the context of a constitutional right to be immediately
13 provided with the ability to contact a lawyer even in the face of the -- what's clear is that
14 the right without delay means immediate, that as much is apparent as recently from the
15 *Suberu* decision, which of course is the companion to *Grant*, but in the absence of
16 authority in a situation like this, not an impaired driving investigation, but a situation
17 where an individual is being investigated for sexual assault and other offences, I have
18 some hesitation to conclude that even a delay of up to around 37 to 40 minutes in the
19 circumstances is a clear violation of Section 10(b) breach. I'm very tempted to find that
20 is the case, but in the circumstances I'm going to stop short of making that finding if only
21 because -- and I have spent some time attempting to put my finger on authorities that
22 assist me in that regard, but I simply haven't been able to find any. I have not been
23 provided with any. That wasn't the basis for the Charter notice filed by the defence. In
24 all those circumstances, while I continue to have significant difficulties with the
25 unexplained delay, it is not -- it doesn't get me, doesn't quite get me, to the point where I
26 would conclude that there was a clear Section 10(b) breach. As will become apparent
27 momentarily, I do take into account Constable [REDACTED] behaviour in connection with that
28 delay when I assess the admissibility of the basement statement under Section 24(2) of the
29 Charter.
30

31 Turning then to the Section 10(b) basis that was pleaded, so to speak, in the Charter
32 notice, my conclusion is that there is no Section 10(b) breach based on the cases such as
33 *Caputo*, *Plaha*, *Wittwer*, *Morin* and the like. These are all cases in which there was ample
34 evidence police conscripted statements from the various accuseds after taking otherwise
35 inadmissible statements. None of them take out -- take away the *Harper* case, which is
36 extremely unusual and not a case such as what we're dealing with here, in my view.
37 Take that case away, and there -- when I went back to read all the cases that were
38 provided to me, none of them dealt with a situation such as we have here where we have
39 utterances which on the evidence were not clearly conscripted from Mr. [REDACTED]. I have
40 commented on my dissatisfaction with the state of the evidence coming from Constable
41 [REDACTED] in particular around the context of the statements that were made, the utterances that

1 were made -- I wouldn't call them statements. I would simply refer to them as utterances.
2 My reasons on this aspect of the Charter application aren't meant to detract from my
3 earlier findings and the application of the *Hunter* line of cases on voluntariness and
4 reliability and prejudicial probative considerations, but I am unable to make the jump to
5 conclude by some kind of inference that, in fact, the utterances at 1905 and 1910 were
6 somehow conscripted by the authorities in a manner that violated Mr. [REDACTED] Section
7 10(b) rights. That may have been the case. In the absence of admissions from the police
8 witnesses in the voir dire, the only other person who could have given evidence in that
9 regard was Mr. [REDACTED] himself, and of course he's not obliged to provide that evidence.
10 But on the other hand, it is his Charter application to establish a breach under Section
11 10(b), and in all of the circumstances here I can't get to the point where I find, based on
12 the *Caputo* and other lines of cases -- line of cases -- that there is a breach.

13
14 And so while I have excluded the 1905 and 1910 statements based on the *Hunter* line of
15 cases, I would not exclude them based on a Section 10(b) infringement.

16
17 Finally, then, I need to deal with whether I would exclude the basement statement, which
18 is conceded to be unconstitutional but -- well, no, that's not quite right. It's conceded to
19 be in breach, but is not unconstitutional in the sense that it should still be admitted under
20 Section 24(2) of the Charter.

21
22 I'm not going to spend a lot of time articulating the *Grant* test. We all know what it is.
23 If this was a written decision to be published, I would be much more categorical, but in
24 the interests of time, I will simply note that I -- if I haven't already done so in my
25 reasons, I will affirm or confirm that I find the basement breach was serious, not minor,
26 not inadvertent in any sense of the words. I find that Constable [REDACTED] knew or ought to
27 have known -- and I'm dealing now with the first part of the *Grant* test, which is the
28 seriousness of the state conduct in question -- I find Constable [REDACTED] knew or ought to
29 have known he had no right to be asking Mr. [REDACTED] a single thing from the moment he
30 formed reasonable and probable grounds, and I have been, I hope, categorical about when
31 he did so, whether or not for a weapons offence or a sexual offence or both. As I have
32 said, I don't argue with the need for officer safety, but officer safety has nothing to do
33 with the fact that Constable [REDACTED] posed even the general question that he did pose, which
34 led to, from Mr. [REDACTED] perspective, a seriously damaging utterance or statement. I
35 shouldn't call it an utterance. It was a statement in response to a question. In my view
36 it's hard to imagine a more bright line constitutionally protected right that should be well
37 understood by anyone engaged in the administration of justice, particularly in the criminal
38 sphere, that upon arrest or detention an individual's rights must be read to him, and upon
39 an affirmative response, an immediate and reasonable opportunity must be provided to
40 facilitate the right. That comes right out of *Luong* and all of the other cases which ad
41 nauseam have instructed participants in the administration of criminal justice how rights

1 are to be exercised.

2
3 Here the evidence is of an officer who simply moved forward with his investigation,
4 either in ignorance of or with willful disregard for well-established Charter standards.
5 The deliberate nature of Constable [REDACTED] actions, in my view, negate considerations of
6 good faith, and it is conduct which the Court should and does wish to distance itself from.
7 This conduct weighs heavily then in favour of exclusion. I should note that I have
8 informed myself, aside from *Grant* of course, spent some time reviewing a couple of
9 cases that were not in argument but I'll mention for the record. A very recent decision,
10 an excellent decision, of my colleague Justice Ouellette in a case called *R. v. MacLean*
11 which is at 2013 ABQB 60, I think, or 65. I'm going from memory. And in *MacLean*
12 there is a reference to the Court of Appeal's earlier, much earlier, decision in the *R. v.*
13 *Small* 1998 ABCA 85, which was a case also involving a sexual assault investigation,
14 statements taken in breach of Section 10(b) rights. And even in that case, or I should say
15 in that case, there was not any finding of anything approaching bad faith. The Court
16 concluded that even in the absence of a violation that was not -- I'm sorry. Too many
17 negatives. Even where a violation was not deliberate or was simply based on an
18 admission or perhaps negligence, the fact is that taking a statement in violation of Section
19 10(b) was seen as being a serious violation that on the exclusion test, as it then existed in
20 1998, resulted in the exclusion of the statement.

21
22 *Grant* also stands for the proposition that it is most often, if not more often than not, that
23 statements taken in violation of Section 10(b) rights will be excluded, all else being equal.
24 With respect to the seriousness of the impact of the violation of the breach on the
25 accused's interests, typically this is a factor that weighs in favour of exclusion, and that is
26 my finding here. The reasons for that in the cases are legion. The impact on the interests
27 of the accused include the fact that there is a reasonable expectation that having exercised
28 his right to counsel, Mr. [REDACTED] may well have decided that he wished to remain silent.
29 The point of the right of counsel is to inform him of that, to affirm what he's been told,
30 of course he wasn't told anything here at the outset, and so all the more -- this breach is
31 even more egregious because he didn't have an opportunity even to hear from Constable
32 [REDACTED] that he had a right to remain silent, and of course I'm only talking about the
33 basement statement now.

34
35 So cases, for example, like *MacLean*, like the *Berger* case from 2012 in our Court of
36 Appeal, older cases, *Sinclair* from the Supreme Court of Canada, and they go on and on,
37 the cases commenting about the need for a person detained or under arrest facing legal
38 jeopardy must be immediately advised of his rights under Section 10(b) and of course his
39 right to silence at common-law, and to be provided with an opportunity, if he wishes, to
40 exercise those rights. That is the serious impact on the interests of the accused in this
41 case, and clearly they weigh in favour of exclusion.

1
2 Finally, society's interest. Clearly in many cases that weighs in favour of inclusion.
3 Here, and I'm then going back to some discussion also in *MacLean*, which is a similar
4 case on its facts, there was concern in *MacLean*, and I think also here, for the reliability
5 of the statement made in the basement, what the statement was, it's -- again, there is --
6 we know the context. It's in answer -- a statement made in answer to a general question,
7 What's going on here. It's fair to say, even without hearing from the accused on the voir
8 dire, that a Court or a trier of fact, in this case, may have a misconceived idea about why
9 that statement was given, particularly in the absence of a warning around Section 10(b) of
10 the Charter around the right to silence and the right against self-incrimination. Was that
11 statement made, for example, by an accused who in his own misconceived way of
12 thinking about things may have thought making that statement was in his best interests in
13 terms of getting himself out of a predicament? It is -- the cases have said, and *MacLean*
14 says, for example, that in circumstances like that -- and, again, they're even worse
15 because in *MacLean* the rights had been read to the individual and then questioning
16 continued. Here, it's worse because there were no rights read. Can it be said with any
17 confidence that the statement given was, in fact, reliable, and is it in society's interests to
18 have such statements that go forward to a trier of fact, whether a judge alone or a jury,
19 for consideration when the statements have been taken in what I find to be a clear
20 violation of the accused's rights?

21
22 While typically this part of the *Grant* test then does weigh in favour of inclusion, here, if
23 it does, which I have some doubts about, it does only very weakly.

24
25 The fourth aspect of the test is to balance the factors I have just discussed. In my view,
26 the strength of the case made or the case that exists under the first two factors, and the
27 weakness of the case in the third factor, all militates in favour of the conclusion that the
28 administration of justice would be brought into disrepute if the statement made in the
29 basement was admitted into evidence and, therefore, it should be excluded. I say that
30 recognizing that exclusion is not automatic, but it has to be only -- it only follows once
31 there has been a balancing of the first three factors of the *Grant* test, which I have tried to
32 do. There is little, if anything, here on the facts as I apprehend them and the application
33 of the law to them that would militate in favour including the basement statement into
34 evidence.

35
36 So I apologize for taking so long. That is my ruling on the voir dire. For different
37 reasons, all of the statements are inadmissible.

38
39 MS. [REDACTED]:

Yes, Sir.

40
41 **Discussion**

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THE COURT:

Now, we have a jury. I have had a brief conversation with the jury officer, but he had yet to meet with the jury. He was going to do so between 9:15 and now. We have the issue with respect to the one individual I mentioned yesterday. I don't have anything further for you yet with regard to that issue, that individual.

What I -- sort of to your thoughts, Counsel, I would intend to adjourn briefly, inform myself of the situation, then come back, inform you of the situation, and hear your submissions with respect to that. My understanding is that we have all of the other members of jury who are impanelled, including the alternates, and so that there wouldn't -- unless someone tells me something has changed in the last hour or so, if we -- if I decide after hearing from you that it is appropriate to excuse this one juror that will not jeopardize the availability of 12 individuals to hear this case.

Anything else you can think of before we adjourn briefly?

MS. [REDACTED]

No. Thank you, Sir.

THE COURT:

I can tell you that I did -- with respect to the use of a screen, I found in one of the many sources a final instruction with regard to a screen, not a preliminary one, but I do propose to make a brief comment about -- in my preliminary remarks about the screen. And essentially words to the effect, I shouldn't be too -- I should be more precise. I can tell you exactly what I intend to say.

Ms. [REDACTED] will call the complainant, [REDACTED] -- I assume I can tell them that -- to testify before you at this trial. Ms. [REDACTED] will testify behind a screen, the screen that you see across the courtroom to my left. I have ordered that this procedure be followed in this case. It is not unusual. You must not draw any adverse inference against the accused, or for that matter against the witness because this procedure has been used or will be used. That was what I proposed to say in my opening. Any -- you can think about it if you want. If you have any comments before I start my opening, I'll certainly hear from you.

MS. [REDACTED]:

I have no problem with that wording, My Lord.

THE COURT:

Okay.

MS. [REDACTED]:

Sir, I can advise the wording I found is very similar to that which you have used, so I'm content with that.

1 THE COURT:

The only difference from -- and I forget right now which version I used, we have about three, the only difference is the precedent says you may not -- you must not draw any adverse inference against the accused. Full stop. What I have added parenthetically is, Or for that matter against the witness. That seems appropriate to me. Recognizing the rights of the accused are paramount. I'm not, frankly, concerned about the rights of the witness, but I don't want the jury to feel that the witness's credibility should be affected any -- any more or less than -- well, than the accused. And I don't know if the accused will be giving evidence, but in all the circumstances, no adverse inference one way or the other. And this is the point you made yesterday in argument, Ms. [REDACTED]. No adverse inference one way or the other should be drawn from the use of a -- of the screen.

12

I have also wanted to make sure that I didn't say that this was something that was consented to by the defence. That's not appropriate. I don't want to make it look like you're giving anything away, which is why I have indicated that I have ordered this procedure. And I have done so, and I'll -- I simply won't say anything about the fact that I'd ordered it on the consent of the parties. Okay?

18

19 MS. [REDACTED]

Yes.

20

21 THE COURT:

So I'm going to go out back, see what's going on, and then I'll come back in and take a measure of how things are shaping up.

23

24 MS. [REDACTED]

Yes, Sir.

25

26 THE COURT:

Thank you.

27

28 (ADJOURNMENT)

29

30 THE COURT:

Thank you. Please be seated.

31

32 Sir, you can be seated if you wish.

33

Counsel, I have a note -- I haven't read it yet. This is the juror of whom we spoke. I don't know his name. I think his number is Number 6. What I propose to do is read the note. And unless either of you object, I would propose then to show it to each of you. I only have one copy.

38

39 MS. [REDACTED]

Yes, Sir.

40

41 THE COURT:

We can then -- depending on what we all take

1 from it, we can have a discussion, if need be, about where this leaves us. My
2 understanding from speaking to the jury officer is that there are, indeed, at this time 11
3 original jurors and the two alternates.

4
5 THE JURY OFFICER: That's correct. We have 11 that were selected
6 on Thursday plus two alternates.

7
8 THE COURT: All right. Thank you. So if you'll just give me
9 a moment.

10
11 All right. Madam Clerk, would you -- we only have one. We didn't make copies. So if
12 counsel could both have an opportunity to review the note.

13
14 MS. JOYCE: Thank you.

15
16 MS. [REDACTED]: Sir, am I allowed to show it to Mr. [REDACTED] or?

17
18 THE COURT: I'm not sure that's necessary. Before I come
19 down firmly on one side or other of that question, it occurs to me -- having read the note,
20 I would be interested in your views. It occurs to me that in the circumstances that it
21 would be appropriate to discharge this individual from serving on this jury in -- given the
22 content of the note. Any thoughts either to the contrary or in the affirmative?

23
24 MS. [REDACTED]: I would agree with you, Sir.

25
26 MS. [REDACTED]: I don't have an objection to it, Sir. I'll just
27 leave it at that.

28
29 THE COURT: All right. I think in the circumstances I don't
30 see the point in having Mr. [REDACTED] read it. I appreciate his fair trial interests, but given
31 that this individual won't be serving in any capacity as a trier of fact, I'm not convinced
32 it's necessary to -- there is some privacy interests here that -- that imbalance, militate
33 against Mr. [REDACTED] having a look at the note. I don't see that he's prejudiced by not
34 having a look at it in the circumstances. And so the note should perhaps be marked as
35 some sort of exhibit, Madam Clerk.

36
37 THE COURT CLERK: Certainly, Sir.

38
39 THE COURT: Perhaps only for identification.

40
41 THE COURT CLERK: A, Sir?

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THE COURT: A? Thank you very much.

EXHIBIT A - FOR IDENTIFICATION - Note from Selected Juror Number 6 Wishing to be Excused, Sealed

THE COURT: Sir, in the circumstances and noting no objection from counsel for the parties, I am concluding that based on the information that you have kindly provided you -- it is appropriate to discharge you from your duties as a juror in this case. Thank you very much for coming forward with your explanation, and you are -- you are discharged.

So are we ready to call the jury in, or do you need any more time? Madam Clerk, anything else we need to do before we call them?

THE COURT CLERK: No, Sir. Certainly.

THE COURT: No?

MS. [REDACTED] Sir -- and I'll just ask for just not even two minutes. I don't even think that the Court has to leave the bench. I just want to make sure that my witnesses are now present. They were not present at 9:00 having been told to be here for 10:00.

THE COURT: Of course.

MS. [REDACTED] I just wish to be --

THE COURT: Sure. Why don't --

MS. [REDACTED] -- sure they are here.

THE COURT: -- we just stay here for a moment.

THE JURY OFFICER: My Lord?

THE COURT: Yes.

THE JURY OFFICER: I need some direction. Alternate Number 1 now becomes Juror Number 6?

1 THE COURT: Makes sense to me.
2

3 THE JURY OFFICER: Very good. I'll make that arrangement if I
4 may. When I do bring the jury in, would you like me to bring in Alternate Number 2
5 with them?
6

7 THE COURT: I think that's appropriate. Once the jury is
8 sworn and all is well with the 12 who are sworn in.
9

10 THE JURY OFFICER: Yes.
11

12 THE COURT: Then it seems to me we then can excuse the
13 alternate.
14

15 THE JURY OFFICER: Very good. Thank you, My Lord.
16

17 THE COURT: Thank you.
18

19 Makes sense, Ms. [REDACTED]?
20

21 MS. [REDACTED] It does, Sir.
22

23 THE COURT: Thank you.
24

25 MS. [REDACTED] Thank you, Sir. Everyone is present.
26

27 THE COURT: Terrific. Thank you.
28

29 There was -- while we are awaiting, there seemed to be some uncertainty yesterday before
30 we arraigned Mr. [REDACTED] whether he, in fact, had been arraigned in the presence of the
31 jury at jury selection last Thursday.
32

33 THE COURT CLERK: They generally read them the charges --
34

35 THE COURT: Right.
36

37 THE COURT CLERK: -- before the selection so they can. . .
38

39 THE COURT: So the one question is whether we, for the
40 benefit of the jury if nothing else, re-arraign Mr. [REDACTED] this morning, or if counsel are
41 satisfied that the jury heard the charges when they were initially selected on Thursday.

1
2 THE COURT CLERK: Sir, I have two cards -- I'm sorry for
3 interrupting. I have two cards. One is if the jury was not present during the arraignment,
4 during them, at which case the clerk reads the whole indictment to the jury, and the other
5 one is the charge card that says if the jury was present it's a charge, right?
6
7 THE COURT: Right.
8
9 THE COURT CLERK: So I don't think there is a need for a second
10 arraignment.
11
12 THE COURT: Okay.
13
14 THE COURT CLERK: We will just read the indictment and advise the
15 jury that he has been arraigned.
16
17 THE COURT: Okay.
18
19 THE COURT CLERK: Yes.
20
21 THE COURT: But we do read the indictment at the outset of
22 the trial?
23
24 THE COURT CLERK: Yes. Yes, yes, yes, absolutely.
25
26 THE COURT: Any thoughts?
27
28 MS. [REDACTED] I'm satisfied if the indictment is to be read in
29 any event that that's fine.
30
31 THE COURT: Right.
32
33 MS. [REDACTED] I'm content in adopting whatever procedure my
34 friend and the Court wish.
35
36 THE COURT: It's a long indictment and so if it's one count --
37 it's got to be read in any event, but it's still a long indictment.
38
39 THE COURT CLERK: Yes.
40
41 THE COURT: The other issue is -- not issue, but it seems to

1 me it's common that an indictment is -- a copy of the indictment is provided to the jury
2 with any penalty sections taken out, and I'm not -- I have not make -- taken any steps to
3 see that that is available for them. We haven't had a chance to discuss that. Do you have
4 views about whether that's appropriate in this case? Any reason why we shouldn't give
5 the jury a clean indictment without any reference to penalty?
6

7 THE COURT CLERK: Sir, I'm told when I was training is that the
8 clean copy of indictment, of course free of any, you know, possible sentences and
9 names --
10

11 THE COURT: Yes?
12

13 THE COURT CLERK: -- is given to the jury when they start
14 deliberating.
15

16 THE COURT: Oh, when they start deliberating.
17

18 THE COURT CLERK: Yes.
19

20 THE COURT: Okay.
21

22 THE COURT CLERK: We make a plain copy, the clerk does.
23

24 THE COURT: Okay. But not at this stage?
25

26 THE COURT CLERK: No.
27

28 THE COURT: Okay. Makes sense?
29

30 MS. [REDACTED]: Yes, it does, Sir.
31

32 THE COURT: All right. So we can make sure that that's
33 ready. All right. That's all I -- I'm sorry, Mr. Jury Officer. We had a couple of things
34 we were chatting about at my initiative. Those were two things that had come up in my
35 mind that we hadn't -- I hadn't had a chance to ask you about. Are we ready to go?
36

37 MS. [REDACTED]: I think so, Sir.
38

39 THE COURT: Thanks. Sorry for the delay.
40

41 THE JURY OFFICER: My Lord, might I have a word with Madam

1 Clerk for just a second, please?

2

3 THE COURT: Yes.

4

5 THE COURT CLERK: Out?

6

7 THE JURY OFFICER: Yes. Thank you.

8

9 THE COURT CLERK: Thank you, Sir. We just needed to confirm
10 with the jurors who wants to be affirmed, who wants to be sworn.

11

12 THE COURT: Oh, of course.

13

14 THE COURT CLERK: That's all.

15

16 THE COURT: Thank you very much.

17

18 THE COURT CLERK: So at this point if everybody is ready, the jury
19 is ready.

20

21 THE COURT: I think we're ready.

22

23 MS. [REDACTED] Yes.

24

25 THE COURT CLERK: Okay. Will you address them first, Sir, or do
26 we need to do the polling first and then swearing in?

27

28 THE COURT: Yeah.

29

30 THE COURT CLERK: Thank you. Okay.

31

32 (JURY ENTERS)

33

34 THE COURT CLERK: Good morning.

35

36 (JURY POLLED)

37

38 THE COURT: Thank you very much, Madam Clerk.

39

40 Counsel, may I have your acknowledgement that all 12 members of this jury are present?

41

1 MS. [REDACTED] Yes, Sir.

2
3 MS. [REDACTED] Yes, Sir.

4
5 THE COURT: Thank you.

6
7 Ladies and gentlemen, please be seated. Before we go forward, Madam Clerk, Counsel,
8 as the trial unfolds, can we agree that it is unnecessary on each and every occasion the
9 jury comes back to join us that it's unnecessary to formally poll the jury on each and
10 every occasion?

11
12 MS. [REDACTED] I agree with that, My Lord.

13
14 MS. [REDACTED] I do as well, Sir. Thank you.

15
16 THE COURT: Thank you. All right. I'll ask you -- I'll ask
17 you to acknowledge that all 12 members of the jury are present, but we won't poll them
18 each and every time as a matter of at least convenience for the jury. Thank you very
19 much.

20
21 Madam Clerk, we need to deal with swearing the jury.

22
23 THE COURT CLERK: Certainly, Sir.

24
25 **Swearing in of the Jury**

26
27 (JURY SWORN)

28
29 THE COURT CLERK: Thank you.

30
31 THE COURT: Thank you, Madam Clerk.

32
33 Counsel, we still have that one alternate present in the courtroom. Given that the jury is
34 now sworn, is there any reason we can't excuse the alternate member of the jury?

35
36 MS. [REDACTED] No, Sir.

37
38 MS. [REDACTED] No. Thank you, Sir.

39
40 THE COURT: Sir, the jury having been sworn in, we are not
41 in need of your assistance today and for the balance of this week. I'm grateful for your

1 attendance. You are free to leave or stay as you wish.

2

3 UNIDENTIFIED SPEAKER: Thank you.

4

5 THE JURY OFFICER: Just out the back here, sir. Go this way, sir.

6

7 UNIDENTIFIED SPEAKER: Oh.

8

9 THE JURY OFFICER: Through the door here .

10

11 UNIDENTIFIED SPEAKER: Oh.

12

13 THE JURY OFFICER: Thank you very much.

14

15 THE COURT: Madam Clerk, when it's convenient could the
16 charges be read to the jury, please.

17

18 **Arraignment/Plea**

19

20 THE COURT CLERK: Certainly, Sir.

21

22 Members of the jury, the accused, [REDACTED], stands charged before you that
23 he:

24

25 On or about the 21st day of May, 2011, at or near [REDACTED], in
26 the province of Alberta, did commit an assault on [REDACTED]
27 contrary to Section 266 of the *Criminal Code*.

28

29 On or about the 21st day of May, 2011, at or near [REDACTED], in
30 the province of Alberta, did commit a sexual assault on [REDACTED]
31 [REDACTED], contrary to Section 271 of the *Criminal Code*.

32

33 On or about the 21st day of May, 2011, at or near [REDACTED], in
34 the province of Alberta, did for a sexual purpose, touch [REDACTED]
35 [REDACTED], a person under the age of sixteen years, directly with a
36 part of his body, to wit: his mouth, contrary to Section 151 of the
37 *Criminal Code*.

38

39 On or about the 21st day of May, 2011, at or near [REDACTED], in
40 the province of Alberta, did for a sexual purpose touch [REDACTED]
41 [REDACTED], a person under the age of sixteen years, directly with a

1 part of his body, to wit: his hand, contrary to Section 151 of the
2 *Criminal Code*.

3
4 On or about the 21st day of May, 2011, at or near [REDACTED], in
5 the province of Alberta, did knowingly utter a threat to [REDACTED]
6 [REDACTED] to cause death to [REDACTED], contrary to Section
7 264.1(1) of the *Criminal Code*.

8
9 On or about the 21st day of May, 2011, at or near [REDACTED] in
10 the province of Alberta, being a person with whom [REDACTED],
11 a young person, was in a relationship of dependency -- I'm
12 sorry -- dependency, did for a sexual purpose touch directly the
13 body of [REDACTED], a young person, with a part of his body, to
14 wit: his mouth, contrary to Section 153(a) of the *Criminal Code*.

15
16 On or about the 21st day of May, 2011, at or near [REDACTED], in
17 the province of Alberta, being a person with whom [REDACTED]
18 a young person, was in a relationship of dependency, did for a
19 sexual purpose touch directly the body of [REDACTED] a young
20 person, with a part of his body, to wit: his hand, contrary to
21 Section 153(a) of the *Criminal Code*.

22
23 Upon these charges he has been arraigned. Upon his arraignment, a plea of not guilty has
24 been recorded. Your duty, therefore, is to inquire whether he be guilty or not guilty of
25 the offences charged and harken to the evidence.

26
27 THE COURT: Thank you, Madam Clerk.

28
29 Counsel, at this point are there any applications with regard to the exclusion of witnesses?

30
31 MS. [REDACTED] Yes, My Lord. My application is to exclude all
32 witnesses.

33
34 MS. [REDACTED] I would echo my friend's application.

35
36 THE COURT: Thank you. Are there any further applications?

37
38 MS. [REDACTED] Not at this time, Sir. The publication ban is in
39 effect and that was the only other application to confirm for the Crown.

40
41 THE COURT: All right.

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Ban on Publication - Identity of Complainant

THE COURT: And, Ms. [REDACTED]?

MS. [REDACTED] Nothing further, Sir. Thank you.

THE COURT: Thank you.

(WITNESSES EXCLUDED)

Opening by the Court

THE COURT: I will then address the jury briefly.

Ladies and gentlemen, welcome to this case. On Thursday of last week you were chosen by the Crown and defence counsel to decide this case. I am now going to take some time to describe your duties as jurors and the procedure that we will follow during this trial. I appreciate you may have heard some of these remarks from the justice who presided over jury selection, but it's important for me to emphasize certain things now that you are sitting in these chairs in this courtroom during this week of trial. I will also explain to you some of the rules of law that apply in this case.

If there is one central or fundamental message that I can leave you with, it's that the oath that you have each taken today requires you to listen closely to the evidence and to decide this case solely on the evidence that you hear in this trial and on the instructions with respect to the law that I will give you in due course.

As the jury, you are the sole judges of the facts. You must decide this case only on the evidence presented to you in the courtroom. Please keep an open mind as the evidence is being presented. Don't be influenced by any sympathy that you may have or prejudice that you may have for or against anyone.

When we talk about evidence, we're speaking about the testimony of witnesses and things that may be entered as exhibits. Evidence includes what each witness says in response to questions that are asked of him or her. Questions themselves are not evidence unless the witness agrees that something he or she is being asked as a question is correct. Only the answers then are the evidence.

The Crown and defence in this case may agree to certain facts. Those are called admissions. When an admission is made, no further evidence is required to establish it as

1 a fact.

2
3 As the sole judges of the facts, you will have the responsibility to decide on the
4 credibility of witnesses and the weight you will give to the evidence of each witness. It
5 will be your job to decide if you believe everything a witness says or part of what a
6 witness says or none of what a witness says. It's because of the importance of your role
7 as judges of the facts that I must reiterate that you listen to the evidence carefully, only to
8 the evidence which is presented, and do all of that with great care and diligence.

9
10 There are some things that you need to know are not evidence. You mustn't rely on such
11 things as you consider and decide this case. If I instruct you, for example, that something
12 that has come out in court should be disregarded as evidence, that will be because as a
13 question of law certain evidence should not be considered by you. It will then be your
14 duty to follow the instruction that I give you with respect to what the state of the law is
15 as it pertains to certain evidence.

16
17 The charges that you have heard read out as this case has begun this morning are not
18 evidence. What the lawyers and I say when we speak to you during the trial is not
19 evidence. What you may hear outside this courtroom about this case or about any of the
20 persons involved in it, that's not evidence. What you may hear on the radio or see on
21 television or see in the newspaper or the internet or what you may have heard from other
22 persons about this case, if any of that, none of that is evidence. You must ignore any of
23 these sorts of things completely. There is a publication ban in effect in this trial and so
24 there is no good reason why there should have been any media coverage of this case, and
25 I'm not suggesting to you that there has been any, but if for any reason there is, you must
26 avoid it. You mustn't do your own research. You must consider only the evidence
27 presented to you in the courtroom.

28
29 While you're the sole judges of the facts, it's important for you to know that I am the
30 sole judge of the law. It's your duty to accept the law as I explain it to you. You
31 mustn't use your own ideas about what the law is or should be. And you mustn't rely on
32 information about the law from any source outside the courtroom.

33
34 I want to speak to you for a moment about the conduct of a jury. It's important that all
35 persons concerned with this trial be convinced that this has been a fair and impartial
36 proceeding. Your conduct in and outside the courtroom is important to achieving that
37 goal. Because of that, you mustn't discuss this case with anyone or let anyone tell you
38 anything about this case outside the courtroom. Some of your family or friends or fellow
39 workers, or others perhaps, may ask about your jury duty. Don't talk to them about the
40 case. If necessary, tell them the judge ordered you not to talk to them about the case. If
41 anyone persists in trying to discuss the case with you or tries to communicate with you

1 about this case in some fashion, in any fashion whatsoever, you should inform me about
2 that, and I'll deal with it. There are severe penalties for anyone who attempts to interfere
3 with the duties of a juror.

4
5 If you need to inform me of something or if you're concerned about something, you
6 should begin by speaking with the jury officer. That person will then advise me of the
7 problem, and I'll deal with it.

8
9 You shouldn't discuss this case with anyone involved in it, including the accused
10 Mr. [REDACTED], his friends or family members, or any witnesses, investigating officers, or
11 indeed lawyers. You may, of course, give a polite greeting to someone you may happen
12 to see in the courthouse, but don't talk about the case with anyone except your fellow
13 jurors. And with regard to discussions with your fellow jurors, I would rather you didn't
14 discuss the evidence amongst yourselves until you start your deliberations at the end of
15 the trial. You will probably develop impressions about the facts of the credibility of
16 witnesses as you hear the evidence, that's natural, but it's also natural for your
17 impressions to change as the trial progresses. If you have told another juror of your
18 impression before you have heard all of the evidence, there is danger that that juror will
19 be influenced by what you're saying. That may impact the way another juror views the
20 evidence which may come out later. It may also make it more difficult for you to change
21 your first impression once you have heard all of the evidence.

22
23 Now, I know it's difficult for you not to talk amongst yourselves, and I know you'll be
24 forming impressions and tentative conclusions as the case unfolds; however, the bottom
25 line is that you must keep an open mind until the whole case has been given to you and
26 you then start your deliberations. You know from your own experience that a thing may
27 not always be what it seems, and it's unsafe and unfair to form any firm conclusion when
28 you haven't heard all of the relevant evidence.

29
30 When you arrive at the courthouse each morning and return to it after lunch each
31 afternoon, please go straight to the jury room as you have been instructed by the jury
32 officer. When you leave at lunchtime or at the end of your duties for the day, please leave
33 directly from the jury room. Please don't linger around the halls or other places in the
34 courthouse building after -- before, I should say, or after our sittings. These directions are
35 meant to assist you from accidentally overhearing something about the case or
36 accidentally running into someone else who is involved in it when you're outside the
37 courtroom.

38
39 Each day during the trial you will be permitted to separate and return to your homes each
40 day. However, once you have started to deliberate at the end of the trial, or at the end of
41 the evidence, and after hearing from counsel and from myself about the law, you will

1 remain together until you have reached your verdict.

2
3 Briefly with regard to trial procedure, there are two counsel before you. Crown counsel is
4 Ms. [REDACTED]. The Crown prosecutes the case. Defence counsel is Ms. [REDACTED]. She
5 represents the accused, [REDACTED], who is, of course, on trial here.

6
7 In a few minutes I'll invite Ms. [REDACTED] to outline to you the evidence she intends to
8 present. This is done in an effort to assist you in understanding the case, but what
9 Ms. [REDACTED] says is not evidence or proof of anything, as I have already mentioned. It's
10 simply a statement of what she intends to prove.

11
12 Once Ms. [REDACTED] is done, she will call a witness or witnesses as part of her case. She'll
13 ask questions of the witnesses she calls. Once Ms. [REDACTED] completes her questioning,
14 Ms. [REDACTED] will then have an opportunity to cross-examine that witness. After
15 cross-examination is completed, I may allow Ms. [REDACTED] to ask the witness some additional
16 questions to clarify any matters that have been raised for the first time in
17 cross-examination. That same process will be followed for every witness called by the
18 Crown. And if the defence calls any witnesses, the same process will play out in reverse.

19
20 Ms. [REDACTED] will call the complainant, [REDACTED], to testify before you at this trial.
21 Ms. [REDACTED] will testify behind a screen. It's the screen you see across the courtroom to
22 my left. I have ordered that this procedure be followed in this case. It is not unusual.
23 You must not draw any adverse inference against the accused, or for that matter, against
24 the witness, because this procedure has been used.

25
26 After the Crown closes its case, Ms. [REDACTED] decides whether or not she intends to call
27 evidence. If -- I'm sorry -- if Ms. [REDACTED] decides to call evidence, she will then have an
28 opportunity to make an opening statement to you just as Ms. [REDACTED] will. Again, if she
29 chooses to do so, remember that any statement made by Ms. [REDACTED] as an opening is not
30 evidence, but it's only a summary of what she expects the evidence to be.

31
32 I have said or have used the expression if Ms. [REDACTED] decides -- if, I'm sorry, Ms. [REDACTED]
33 decides to call evidence. I'm emphasizing that because it's fundamentally important, as
34 I'll remind you in a moment, that you understand that all persons charged with criminal
35 offences in our legal system are presumed to be innocent. This means they don't have to
36 prove their innocence. While they may choose to do so, they do not have to testify or
37 present evidence.

38
39 It's the duty of lawyers involved in this case to bring out the evidence and to question
40 witnesses as they see fit. That's not your function nor is it my function, subject to the
41 requirements of the law. You and I have no role in the calling or questioning of

1 witnesses. You and I will sit and listen carefully to what the witnesses and counsel say.

2
3 As the case proceeds, I may from time to time have to make rulings on some legal
4 matters, including evidence. We have, in Canada, a well-developed body of law which
5 guides us on these subjects. If such issues arise, it will probably be necessary for you to
6 leave the courtroom while such questions are being discussed. If you're asked to leave
7 the courtroom, please don't speculate about what's going on in your absence. We are not
8 trying to hide anything from you. Sometimes, however, the law may not allow a
9 particular question to be answered or a particular fact to become evidence before you. If
10 the answer is not permitted or the fact not entered in evidence before you, don't try to
11 guess about what it might have been. I assure you that you will hear all of the evidence
12 which according to law may be placed before you.

13
14 Once you have heard all of the evidence that the Crown has presented and any evidence
15 that the defence may present, I will call upon each of the lawyers to address you to tell
16 you what they want you to do with this case and why. I will then follow their addresses
17 to you with my instructions on the law. My instructions will be designed to give you the
18 legal boundaries for your decision on the facts which are entirely your purview.

19
20 When they address you, the lawyers may summarize the evidence they intend to present
21 or have presented and they may refer to some principles of law. What they say about the
22 evidence is not, of course, evidence itself. And what they say about the law is only
23 meant to help you understand the issues to which the evidence may relate. It is for me as
24 the trial judge to instruct you on what rules of law apply and what they mean. Again,
25 you must follow my instructions on the law. If there is a difference between what I say
26 and what counsel say about the law, you must follow my instructions.

27
28 In my final instructions to you, I will review or include a review of some of the evidence
29 that you have heard during trial. You should always remember, however, that it is your
30 memory and understanding of the evidence that counts in this case, not mine and not that
31 of counsel.

32
33 If you wish to make notes during the trial to help you remember what a witness said, you,
34 of course, may do so. You may find it difficult, however, to take detailed, accurate notes
35 and at the same time pay close attention to what witnesses are saying and how they are
36 saying it. And so if you do take notes, please don't be distracted from your duty to
37 observe the witness. You may always ask to have a witness's testimony read back to you,
38 but you only have one chance to observe the appearance and the behaviour of the witness
39 when he or she testifies. To protect the confidentiality of your work, you mustn't take
40 your notes away with you at the end of the sittings each day. We will make arrangements
41 to keep your notes in a secure place and return them to you when we resume sitting the

1 following day.

2
3 I want to pause for a moment to talk about a couple of fundamental matters of
4 importance, which I have already alluded to. The first is the presumption of innocence.
5 It is the first and most important principle of law applicable to every criminal case.
6 Mr. [REDACTED] enters these proceedings presumed to be innocent, and the presumption of
7 innocence remains throughout the case unless the Crown, on the evidence put before you,
8 satisfies you beyond a reasonable doubt that he's guilty.

9
10 Two rules flow from the presumption of innocence. One is that the Crown bears the
11 burden of proving guilt; the other is that guilt must be proved, as I say, beyond a
12 reasonable doubt. These rules are inextricably linked with the presumption of innocence
13 to ensure that no innocent person is wrongly convicted.

14
15 As you have heard, Mr. [REDACTED] is charged with a series of alleged offences. The burden
16 of proving the charges rests, as I say, with the Crown. There is no burden on Mr. [REDACTED]
17 to prove that he's innocent. He doesn't have to prove anything. I will in due course
18 explain the elements of the offences in detail at the end of the trial. For now you must
19 remember that if the Crown fails to prove its case beyond a reasonable doubt on any or
20 all of the counts before the Court, Mr. [REDACTED] is entitled to be acquitted of any or all of
21 those unproven counts.

22
23 With respect to the expression beyond a reasonable doubt, what does it mean? A
24 reasonable doubt is not an imaginary or frivolous doubt. It's not a doubt that's based on
25 sympathy for or prejudice against anyone involved in these proceedings. Rather, it's based
26 on reason and common sense. It's a doubt that arises logically from the evidence or from
27 an absence of evidence. It's virtually impossible to prove anything to an absolute
28 certainty, and the Crown is not required to do so. Such a standard would be impossibly
29 high. However, the standard of proof beyond a reasonable doubt falls much closer to
30 absolute certainty than it does to probable guilt.

31
32 You must not find Mr. [REDACTED] guilty unless you are sure he's guilty. Even if you believe
33 that Mr. [REDACTED] is probably guilty or likely guilty, that isn't sufficient. In those
34 circumstances you must give the benefit of the doubt to Mr. [REDACTED] and find him not
35 guilty, because in those circumstances the Crown would have failed to satisfy you of his
36 guilt beyond a reasonable doubt.

37
38 In conclusion, I want to convey a few further details regarding the trial that you are about
39 to hear.

40
41 At this point there is no need for you to appoint anyone to chair your discussions until

1 you retire to begin to consider your verdict. Your deliberations are secret. Except for
2 telling me about any problems that you may be having through the jury officer, you must
3 not tell anyone anything about your deliberations, to do so would be a criminal offence.
4 You should feel confident that what happens in the jury room will always be private.
5 This is to encourage full and frank discussion with your fellow jurors. In other words,
6 you need not worry that something you say in the jury room will be repeated anywhere
7 else.

8
9 If something happens during the course of the trial that may affect your ability to do your
10 duty as a juror, please write it down, make a note of it, put in it in a sealed envelope and
11 deliver it to the jury officer, who will then give it to me.

12
13 If at any time you have trouble seeing or hearing any part of these proceedings, please let
14 me know. Just put your hand up and tell me.

15
16 We will start the case each day at 10:00 a.m., subject to any difficulties we may have
17 with witness schedules, and continue until 4:30 p.m. with typically a 15-minute break at
18 mid-morning and in mid-afternoon. The precise time of these things may vary from
19 day-to-day by a few minutes. We will try to break at around 12:30 each day for a lunch
20 break. It may be that on some days we'll finish somewhat earlier or later than these
21 scheduled times. It's difficult sometimes to predict precisely how long a witness will take
22 to give his or her evidence. The lawyers do their best, as does the Court, to ensure that
23 each day is filled up, but it doesn't always work out that way.

24
25 And so in final conclusion to this point, I thank you very much for your attention. I will
26 now call on Ms. [REDACTED] for her opening statement.

27
28 **Opening by Ms. [REDACTED]**

29
30 MS. [REDACTED] Thank you, My Lord. And good morning to
31 the ladies and gentlemen of the jury.

32
33 As I have been introduced, I am Crown counsel in this matter, and this is my opportunity
34 to provide to you a summary of the case that the Crown intends to present. And the
35 purpose of this is to provide kind of a roadmap for you as you listen to the evidence and
36 a direction of where we intend to go.

37
38 Even though you don't have what we might consider a very lengthy trial in front of you,
39 you certainly have witnesses to hear from, and having this idea and indication of what the
40 Crown intends to present to you may be helpful to you because I can't promise you that
41 this will be like a courtroom drama that's concluded in an hour or even two hours, and I

1 can't promise you that it's going to be like the highlights on the news of any courtroom
2 things you might see. You're going to hear from three witnesses for the Crown. Some
3 may be longer than others, and it's good to have an idea of where the Crown is intending
4 to go.

5
6 I said I can't promise you some things, and I'm actually going to be asking things of you.
7 You heard Madam Clerk say to you "harken unto the evidence." I'm not going to use
8 that word harken. I'm just going to ask you to listen. And I'm going to ask you to listen
9 to [REDACTED] as she testifies to you. That while she's 18 years old now, in May of
10 2011 she was 15 years old and the stepdaughter of the accused.

11
12 Listen and you will hear how she went home on May 21st of 2011 and went into her
13 bedroom. That the accused came into her bedroom, and he had been drinking. That an
14 argument began, and that that was not necessarily unusual. But on this day, the argument
15 did not end until Ms. [REDACTED] was without her shirt, without her bra, and without her
16 pants, crying on her bed.

17
18 Listen to [REDACTED], and you will hear how the accused grabbed her face and pushed
19 her into a wall. How he ordered her to take off her clothes, her shirt, and her bra. And
20 when she refused to take off her pants, he pulled them off himself. You will hear what he
21 said to her if she did -- of what would happen if she did not comply with him. You will
22 hear how he went on to touch her breasts, how he went on to kiss her, and he went on to
23 touch her even further than that.

24
25 I ask you to listen to [REDACTED], who is the mother of [REDACTED], as she tells
26 you about coming home on that day and finding her daughter in her bedroom, sobbing.

27
28 And I'll ask you to listen to Constable [REDACTED] of the RCMP who will tell you about going
29 to the same residence on that day, finding [REDACTED] very upset, and then going on to
30 find the accused, and Constable [REDACTED] will tell you about the state that he found the
31 accused in.

32
33 I will ask you to listen carefully to all of the testimony of each of those witnesses, and I
34 submit that you will be satisfied after hearing those witnesses that the accused committed
35 the offences that you have already heard about today -- that being assault, sexual assault,
36 sexual touching of a person under the age of 15, and sexual touching of a person -- of a
37 young person in a relation of dependency. That when you hear what the accused did in
38 that bedroom, when you hear his relationship to [REDACTED], a 15-year-old girl, that you will be
39 satisfied on all of the evidence that those offences are made out.

40
41 I'll leave those as my comments, not very lengthy, but again this is just a roadmap for

1 you of what the Crown intends to provide to you. And, of course, as My Lord has said,
2 the evidence is only what comes from the witness stand.

3
4 And we will -- are prepared to proceed to call evidence now, Sir.

5
6 THE COURT: Thank you, Ms. [REDACTED] If you'll arrange to call
7 your first witness.

8
9 MS. [REDACTED] And I'll just -- I am not certain how that is to
10 occur with the screen that you had mentioned.

11
12 THE COURT: With the -- yes. Madam Clerk, I'm sure, can
13 assist us.

14
15 THE COURT CLERK: Certainly, Sir.

16
17 MS. [REDACTED] Thank you, Sir. She is currently just outside
18 the -- outside the courtroom.

19
20 THE COURT: I think the idea, Ms. [REDACTED] is that the witness
21 will come in from the back.

22
23 MS. [REDACTED] Oh, thank you. I wasn't sure about that.

24
25 THE COURT: That's where Madam Clerk went.

26
27 MS. [REDACTED] Thank you. I believe that that's what
28 happened.

29
30 THE COURT: Terrific.

31
32 Ladies and gentlemen, I'll -- if you haven't noticed, let me explain, I might have said this
33 earlier, the witness will be testifying behind the screen. Technology allows us to all see
34 her as she gives her evidence, so please pay attention to the monitor.

35
36 [REDACTED], Sworn, Examined by Ms. [REDACTED]

37
38 THE COURT CLERK: Thank you, Sir.

39
40 THE COURT: Thank you, Madam Clerk.

41

1 Ms. [REDACTED]

2
3 MS. [REDACTED] Thank you, Sir.

4
5 Q MS. [REDACTED] Ms. [REDACTED], how old are you?

6 A I'm 18.

7
8 Q And what is your birthday?

9 A August 22nd, 1995.

10
11 Q In May of 2011, how old were you?

12 A I was 15.

13
14 Q Where were you living when you were 15 years old?

15 A In [REDACTED] on [REDACTED] Street.

16
17 Q And [REDACTED] is in the province of Alberta?

18 A Yes.

19
20 Q What kind of a place did you live in?

21
22 THE JURY OFFICER: Excuse me, My Lord. Some of the jurors are
23 having difficulty hearing the witness.

24
25 THE COURT: Thank you, Mr. Officer.

26
27 Can we. . .

28
29 Let's see if that helps.

30
31 Q MS. [REDACTED] Ms. [REDACTED], what kind of a place were you
32 living in in that -- when you were 15 years old?

33 A I don't understand the question.

34
35 Q Was it a house, an apartment?

36 A It was a house.

37
38 Q Did anyone live with you?

39 A Yes. I mean, no, at the time, no, just my mother and [REDACTED].

40
41 Q What is [REDACTED] last name?

1 A [REDACTED].

2

3 Q What relationship did [REDACTED] have to you?

4 A He was my stepfather.

5

6 Q And by the time you were 15 years old, how long had you known [REDACTED]?

7 A Since I was nine years old.

8

9 Q How long had he lived with you and your mother?

10 A He was living with my mother longer, I was living with my grandmother, but I think
11 nine years.

12

13 Q What kind of a relationship did you see yourself having with Mr. [REDACTED]? How did
14 you -- how would you categorize the relationship?

15 A It was kind of like a person with a bipolar disorder. It was good the one minute, and
16 then the next minute it went downhill.

17

18 Q And in terms of -- I'll be more specific. If you were to have introduced Mr. [REDACTED] to
19 someone in that period of time, how would you have described him? This is
20 Mr. [REDACTED], and he is my -- how would you have described him?

21 A This is [REDACTED]. He's my stepfather. To people who didn't know about what
22 was going on behind closed doors, I said -- would say he's a nice, hardworking
23 person.

24

25 Q When you were 15 years old -- and this may be the same now, but it may have been
26 different when you were 15 -- how tall were you?

27 A I don't know.

28

29 Q Can you give an idea of your weight or body size when you were 15 years old?

30 A No, I can't.

31

32 Q Just thinking in your own mind of yourself and compare yourself to Mr. [REDACTED], what
33 was his body size compared to yours?

34 A He -- he was bigger, wider bones. Overall a bigger, taller person.

35

36 Q Do you know the age of Mr. [REDACTED]?

37 A Forty, I believe.

38

39 Q I understand that in May of 2011 something occurred that's called you to testify in
40 court today, and I would like you to begin with what you first remember from that
41 incident.

1 A Waking up.

2

3 Q Where did you wake up?

4 A In my own bed.

5

6 Q And do you recall what time of the day that would have been?

7 A 9:00'ish. I can't remember.

8

9 Q And what happened after you woke up, Ms. [REDACTED]?

10 A I -- I don't feel like answering this question.

11

12 Q Can you explain why you don't feel like answering that question, Ms. [REDACTED]?

13 A Because I can't remember.

14

15 Q Ms. [REDACTED], do you remember speaking to a police officer in May of 2011?

16 A Yes.

17

18 Q Do you remember providing a statement to that police officer?

19 A Yes.

20

21 Q If you had an opportunity to look at that statement, might it refresh your memory as to
22 what happened?

23 A Yes, it would.

24

25 MS. [REDACTED]
26 that opportunity, Sir.

I'm going to ask for -- make an application for

27

28 MS. [REDACTED] To review her statement?

29

30 MS. [REDACTED] Yes.

31

32 MS. [REDACTED] Certainly, Sir. If she wants to review her
33 statement, the defence doesn't object.

34

35 THE COURT: Thank you. Please proceed.

36

37 MS. [REDACTED] Thank you.

38

39 A I'm -- I'm tired.

40

41 THE COURT: Pardon me?

1
2 A I'm tired.

3
4 MS. [REDACTED] Sir, perhaps if she's going to review her
5 statement, I don't think my friend is going to propose to lead her through line by line
6 through her statement or anything to that effect, so perhaps the appropriate thing to do
7 here is take a brief break to actually allow Ms. [REDACTED] to read the statement.

8
9 THE COURT: Any thoughts on that?

10
11 MS. [REDACTED] I would --

12
13 THE COURT: I don't know how long it is. I can't tell.

14
15 MS. [REDACTED] It's not very long, Sir, and I would appreciate
16 that opportunity for her to look at her -- at it right now without, I guess, the pressure of
17 the Court and the jury.

18
19 THE COURT: Well, we have only been here for a relatively
20 short time, but I think it does make sense at this juncture to adjourn briefly. If you'll go
21 with the jury officer, we'll invite you back in presently. Thank you.

22
23 (JURY RETIRES)

24
25 THE COURT: Thank you. So shall we adjourn briefly?

26
27 MS. [REDACTED] Yes, please, Sir.

28
29 THE COURT: I will await Madam Clerk's call to let me know
30 that we're ready to go back -- get back into things. All right?

31
32 MS. [REDACTED] Thank you, Sir. I appreciate that.

33
34 (ADJOURNMENT)

35
36 THE COURT: Thank you. Please be seated.

37
38 So we are, of course, without the jury. I understand you -- Counsel, that you have some
39 notion of what I understand to be a difficulty. I'll tell you what I know about it, and
40 we're on the record of course.

41

1 Since Ms. [REDACTED] left us to review her statement, and I don't have note of the exact time,
2 but the record will show, she has been given a room to sit in, and -- with the statement.
3 She has indicated some reluctance to read the entire statement. She's indicated, more
4 fundamentally, a reluctance to come back into the courtroom, saying she's tired, hungry,
5 words to that effect. I'm relying on the information I have been provided by Madam
6 Clerk on these points. Of course, I have had nothing to do with her personally. The --
7 and so the question is how we proceed in the face of this measure of reluctance.

8
9 MS. [REDACTED] Yes.

10
11 THE COURT: It seems to me, Ms. [REDACTED] that while the
12 witness is in the midst of chief, and of course I'll hear from Ms. [REDACTED] on this point as
13 well, but it seems to me that you may well have an opportunity -- it may be appropriate
14 in these circumstances to give you an opportunity, if you wish to exercise it, to have a
15 conversation with your witness.

16
17 THE COURT CLERK: I'm sorry for interrupting, Sir. I see the witness
18 outside of the door. That's her, I believe.

19
20 THE COURT: Unless it's her mother. Do they look alike?

21
22 MS. [REDACTED] Yes, I believe that is her.

23
24 THE COURT: That's the witness?

25
26 MS. [REDACTED] Yes.

27
28 THE COURT: Okay.

29
30 THE COURT CLERK: Should I bring her this way, or maybe she
31 wants to tell me something. I don't know.

32
33 THE COURT: I think she should come around, Madam Clerk.

34
35 THE COURT CLERK: Sure.

36
37 THE COURT: I'm going to -- let me just finish my train of
38 thought. It seems to me that there is at least a possibility that you could speak with the
39 witness -- not of course about her evidence, not about her -- the merits, but about her
40 apparent reluctance and what is it that's -- that's the problem. And then depending on
41 what you're told, you could then consider your position. Now, I don't know if that's --

1 that's my understanding based on not a lot of research or consideration, but it seems to
2 me that there is at least the possibility of that. There may be other --

3

4 All right. So for the record the witness has joined us in the courtroom absent the jury.

5

6 MS. [REDACTED] Yes, Sir.

7

8 THE COURT CLERK: Do you want me to go call them?

9

10 THE COURT: No, not just yet. Thanks.

11

12 THE COURT CLERK: Hold on a second.

13

14 THE COURT: I'm sorry. I think we need to -- Counsel, what I
15 intend to do is simply ask the witness if she is in a position to proceed from where we
16 left off, which was to give her an opportunity to review her statement. Is that
17 appropriate?

18

19 MS. [REDACTED] I think it is, Sir.

20

21 THE COURT: All right. Take it one step at a time.

22

23 MS. [REDACTED] Yes.

24

25 THE COURT: All right. Ms. [REDACTED], it's Justice [REDACTED]
26 speaking. All right?

27

28 A Yeah.

29

30 THE COURT: Are you in a position now to proceed with your
31 evidence?

32

33 A Yes, I am.

34

35 THE COURT: All right. Then I propose to have the jury
36 come back and join us.

37

38 MS. [REDACTED] Thank you.

39

40 THE COURT: Thank you, Madam Clerk.

41

1 (JURY ENTERS)

2

3 THE COURT:

Ladies and gentlemen of the jury, please be

4 seated.

5

6 Counsel acknowledge the jury is present?

7

8 MS. [REDACTED]

I do, Sir.

9

10 MS. [REDACTED]

I do, Sir.

11

12 THE COURT:

Thank you very much.

13

14 Ms. [REDACTED], do you acknowledge that you remain under oath?

15

16 A Yes.

17

18 THE COURT:

Thank you.

19

20 Ms. [REDACTED]

21

22 MS. [REDACTED]

Thank you, My Lord.

23

24 Q MS. [REDACTED]

Ms. [REDACTED], just before we broke to allow you

25 to review your statement, I asked you what happened after you woke up. What did
26 happen after you woke up?

27 A [REDACTED] was fighting with my mother about me wanting to go to my mother's work,
28 and I basically ended up going with her and -- yeah.

29

30 Q What's your --

31

32 MS. [REDACTED]

Sorry, I don't mean to interrupt my friend.

33

34 THE COURT:

Ms. [REDACTED], I apologize, but I didn't get all of

35 that.

36

37 MS. [REDACTED]

I can't -- I'm having a very difficult time

38 hearing her so perhaps if she could speak up. I -- I don't mean to be --

39

40 THE COURT:

Yes. Ms. [REDACTED], I'm -- if you could speak

41 just a little bit louder, please, that would be -- help all of us. Thank you.

1
2 Can you go back to that question, please.

3
4 Q MS. [REDACTED] I'll repeat the question, Ms. [REDACTED] and if you
5 could indicate your answer again. What happened after you woke up?

6 A [REDACTED] was fighting with my mother about me wanting to go to her work, and I ended
7 up going with her.

8
9 Q What is your mother's name?

10 A [REDACTED]

11
12 Q And does she have the same last name as you?

13 A Yes.

14
15 Q Where does your mother work -- or, pardon me, where did she work in May of 2011?

16 A Home Hardware.

17
18 Q Is that in the same town that you were living, in [REDACTED]?

19 A Yes, it was.

20
21 Q So what happened after you ended up going with your mother?

22 A Well, when [REDACTED] woke up, he started calling my mother's work requesting me to go
23 home and do some chores.

24
25 Q Did you get those requests yourself, or did they come from your mother?

26 A They came from my mother.

27
28 Q And what did you do after you got those requests?

29 A I didn't want to go home.

30
31 Q What did you do?

32 A I was asking my mother and -- asking her if I could stay at her work.

33
34 Q Were you able to stay at her work?

35 A No, I wasn't because [REDACTED] was calling constantly, and the manager was getting very
36 mad. And my mother had told me that if I didn't go home, she would get fired from
37 her job.

38
39 Q When your mother said that, what did you do?

40 A I didn't want to go home.

41

1 Q Can you tell the jury what you did do?

2 A Well, I think it was finally that [REDACTED] had came to my mother's work to come and
3 get me, and all I remember seeing was a gray bag, and I recognized what it was, it
4 was alcohol, and he was buying plants and soil, and he was buying patio blocks and
5 he wanted to buy patio furniture for the weekend. That was the plan because it was
6 May long weekend. He wanted to try and do something as a family.

7
8 Q Where did you see the gray bag with the alcohol?

9 A It was -- he was clearly trying to hide it from my mother because it was in a Home
10 Hardware bag.

11
12 Q What happened -- and, I'm sorry. You said he, but who were you talking about --

13 A [REDACTED]

14
15 Q -- when you said he? What happened after [REDACTED] came to the workplace?

16 A Basically told me I had to go home. And I went home, left. We had to take a taxi
17 because we had a lot of -- we had a lot of stuff that he had bought from Home
18 Hardware and -- yeah.

19
20 Q What happened after you took the taxi?

21 A We took a taxi, and we went home. And at that point he had requested me to do the
22 dishes, clean and mop -- I mean, sorry, sweep and mop the floors and clean the
23 bathroom and make my bed. Once all that was done, I -- I didn't want to be home
24 anymore, and [REDACTED] basically told me to leave, so I left.

25
26 Q Where did you go?

27 A I went back to my mother's work, sat downstairs. And he was -- at that point started
28 drinking and the calls didn't stop. My mother was getting mad at me because she
29 didn't want to lose her job. I remember it was raining, and I remember I had to go
30 back home. And my mom -- my mother was telling me and requesting me, [REDACTED]
31 just do your chores, do your homework, and just, please, try and get along with
32 [REDACTED]

33
34 So I can't remember if [REDACTED] came and got me or I had to walk home, but I
35 remember I was at home, I opened the door -- I didn't even have to open it. I seen it
36 open, not all the way, and I thought that was very odd because [REDACTED] is the kind of
37 person, too, who OCDs about locking the door at night, during the day, got mad at me
38 if I didn't lock it at night or if I didn't lock it after coming home. He was obsessed
39 with locking the doors, and I found it slightly open.

40
41 I walked in. I heard loud music. [REDACTED] is the kind of person who if my mother

1 didn't have the energy, if she would be home before I got home from school, or if she
2 was sitting on the couch, laying down napping, he was the kind of stepfather to always
3 greet me, but that day was just -- it felt odd. The energy in the room just didn't feel
4 right.

5
6 I seen -- I seen a two-six bottle completely done, and [REDACTED] wasn't at home. And
7 [REDACTED] was the kind of person who'd always tell me or something or tell someone to
8 tell me not to come home if he wasn't home. But he wasn't home. And I walked in,
9 I closed the door. I myself locked it. I got in complete shit for locking the door.

10
11 Q What happened after you locked the door?

12 A He -- [REDACTED] came home, got mad, told me why did I lock the door.

13
14 Q Where did that happen?

15 A It happened in the kitchen. Our door was located in the kitchen. And he had the
16 keys, so he unlocked the door, but he came home and got mad. And the next thing
17 you know he's calmed down, and he's not yelling anymore. I didn't see him. I was in
18 my bedroom trying to make my bed. Then I walked back out into the living room,
19 and I seen him laying on the couch. I told him that I had swept the floors, did the
20 dishes. I even made myself something to eat, and I did my -- I washed my bowl so
21 that there wasn't a bowl or a fork in the sink. He laid on the couch, and I went back
22 to my room. I -- I forget what he was telling me. He was just so drunk. But he had
23 told me something along the lines of he was next door at the [REDACTED] (phonetic)
24 house. I was, like, why are you at the neighbour's house? You don't like the
25 neighbours because they're alcoholics. And it was ironically funny that he hated
26 alcoholics, but he himself was an alcoholic. And so his answer was, well, I wanted to
27 go and talk to them, so I did. And then I asked him, well, why do you smell like
28 alcohol? He was, like, oh, I had a drink with them. And I didn't say much of it. I
29 wasn't mad. I was confused of why he was next door. Then I went back to my
30 bedroom, continued to make my bed. And at this point I had the base sheet on my
31 bed, and it was a white sheet with, like, a plaid pattern on it.

32
33 Q What did the rest of your room look like?

34 A They were a hot pink, very -- my walls, I think, were originally hot pink, and I can't
35 remember, but I think it was, like, an off-gray colour at this point that they were
36 painted, my walls.

37
38 Q What kind of furniture was in your room?

39 A A queen-size mattress.

40
41 Q Did it have a bed frame with it?

1 A No, it didn't. It had a box spring and mattress. And so once I was done making my
2 bed, [REDACTED] came in the room, and he got mad at me.

3
4 Q Do you know why?

5 A I can't remember why. But I -- I remember the look in his eyes he -- he gets when
6 he's really angry at me.

7
8 Q What happened after he got angry?

9 A He came towards me and he was angry about something, and I was asking him why
10 he was angry, but he wasn't saying anything. And I remember him grabbing me by the
11 neck, and he had a fist to my temple.

12
13 Q Where in your room were you when that happened?

14 A I was above my window -- below my window, sorry. My window is oddly higher
15 than it was supposed to be because it was an older house. And I kind of --

16
17 Q And what --

18 A When he came towards me, I kind of sunk down in a fetal position. I had my legs -- I
19 was trying to shield myself because he was just -- he was mad, and I was -- didn't
20 know why. Then he forced his hand on my neck and my temple and. . .

21
22 Q And then what happened Ms. [REDACTED]?

23 A He was choking my neck really hard, and just like that his mood changed, and he
24 started apologizing and apologizing.

25
26 Q Did he say what he was apologizing for?

27 A He was just saying sorry, and he hugged me. And it was the same bullshit like that
28 whenever [REDACTED] got mad about me about not doing my homework and he was
29 drinking and took things out of proportion versus -- all I could wonder is why drink
30 and hit someone and then apologize about it the next day and then just to relive it
31 again, just to go through the same -- same thing. At this point, he was hugging me,
32 and I trusted him.

33
34 Q And what happened after he hugged you?

35 A He pulled me on my bed, telling me to lay down. And I didn't want to lay down. I
36 told him I had to make my bed. I kept telling him that -- you told me to make my
37 bed; can I please make my bed. Get off my bed. He didn't move. Instead he
38 grabbed my wrist and pulled me on my bed, started hugging me and cuddling me.
39 And I didn't think anything of it because I have known him since I was nine years --
40 nine years old. I thought of him at that point in my life, This is my father. This is my
41 dad. And when I addressed him to family and friends, I called him Dad. I didn't say

1 this is my stepfather. I called him Dad.

2
3 And so I was being cuddled on my bed, and then [REDACTED] again changes his mood and
4 starts rubbing my back in a very sexual manner, my lower back. And I can't
5 remember where else -- what happened after that, but I remember being requested to
6 take off my shirt. [REDACTED] told me to take off your shirt. I said no. Why. Just fucking
7 take off your shirt is what he said. Getting mad. I was still saying no. And then
8 finally he just got all crazy and just angry and yelled at me, so I took off my shirt.

9
10 And at this point I was now being requested to take off my bra. I continued to say no.
11 And as I was saying no, I said, You're my dad. Why are you doing this to me? And
12 I was, like, You love my mother. Why are you going to do this to me? You're
13 supposed to be my dad. I'm supposed to be able to trust you. And at that point he
14 starts telling me just sexual, perverse things.

15
16 Q Can you repeat what he said?

17 A I can't repeat. I can't remember what he said. But in the past before this happened to
18 me, I'll bring this up, [REDACTED] had said something along the lines of -- we were holding
19 hands as father and daughter walking down the street, and he said to me, he's like, I
20 wish I was young again. And I said why. He -- when I said why, he said because I
21 would have dated you. And all the sexual, perverse things, I can't -- I can't remember.
22 And I remember I was scared, and my whole body was shaking. I -- I didn't know
23 how to take off my bra. I wasn't standing up. I was laying on my bed. I stood up to
24 take off my shirt, and I felt so hurt. And then I remember I was laying on my bed,
25 and [REDACTED] was yelling at me take off your bra. I didn't -- I didn't move my hands.
26 So at this point I remember him undoing my bra, and he didn't take it off fast either.

27
28 Q Where did that bra -- where was the clasp on that bra?

29 A It was undone. And I remember I was trying to cover up my chest, telling him -- still
30 fighting with him, telling him to stop, that this isn't right, that my mother loves him,
31 and that he's my -- he's my dad. And then I remember him screaming, I'm not your
32 dad. I'm not going to be your dad anymore so why should it matter. Why should it
33 matter what I do to you. And I said because I don't want you to. I remember telling
34 him, please, if you love me, please, please stop.

35
36 And then he started licking my -- my boob. He was licking both my boobs, and I was
37 struggling to make him stop. In the back of my mind I was wondering how am I
38 going to get out of this situation before it escalates. That's all I could think. I was in
39 shock. Fear of what might happen to me because when it came to me taking off my
40 pants I didn't want to, and he threatened to kill me.

41

1 Q Can you tell what words he said to you?

2 A I'm going to kill you if you don't do this, if you don't take off your pants.

3

4 Q What happened after he said that?

5 A I didn't move my hands. He pulled them off. He ripped them off, along with my
6 underwear. And at that point I was fully naked, scared. And I remember I reminded
7 him that my mom -- Mom is going to be home soon. This isn't -- this isn't right. I
8 want you to stop. And I was screaming and screaming. But when it came to him
9 threatening to kill me, I shut up. And in the back of my mind, I was thinking how
10 I'm going to get out of this situation. I was thinking of biting him, something, but he
11 was just so fucking big. I couldn't -- each and every situation and scenario I was
12 thinking about in my head of fending him off me, it's just -- it won't end well.

13

14 Q So what did you do?

15 A And I remember the grip on my neck. And I thought there won't be anything I could
16 do to try and defend myself. He was playing with my nipples. Then he stopped.
17 And when I was naked, that's when my mom came home. [REDACTED] ran out of my
18 bedroom. And I was crying. The whole entire time I was telling him to stop and he
19 was licking my nipples, I was crying. And at one point I was crying so loud he had to
20 have his hand over my mouth.

21

22 Q And what did you think when he did that?

23 A My window was wide open because while I was making my bed, I had my window
24 open, and I was trying to be as loud as possible to see if one of my neighbours would
25 be able to hear. I was loud enough to the point where [REDACTED] had to threaten to kill
26 me, and that's what made me stop.

27

28 And then my mom got home. He flew out of my bedroom, don't know what they
29 were talking about. My mom came in the bedroom, but I remember hearing her, Why
30 the -- where is [REDACTED]? And she heard me crying. And she yelled at [REDACTED] and said,
31 Why the fuck is she crying? What the fuck did you do to her? What did you do to
32 my daughter? I don't know what he said, and I remember my mom saying, Fuck that.
33 Why is she crying?

34

35 She came in my bedroom. She seen me crying. I was hugging my legs to my chest,
36 naked, rocking myself back and forth on my bed, crying. I couldn't -- I couldn't stop
37 crying because the man I have known since I was nine just sexually touched my body,
38 my parts, and he's not supposed to. And. . .

39

40 Q When you say parts, what body parts of yours are you talking about?

41 A My boobs and my nipples. And so my mother was requesting me to put on clothes. I

1 was in complete shock and hurt. Completely fucking heartbroken. And she kept
2 telling me, [REDACTED], put on some clothes, put on some clothes. And I just only know it
3 was hard to breathe, and I was crying. My mother finally had to grab me some
4 clothes to put on and told me, [REDACTED], please put on some clothes. At this point [REDACTED]
5 comes back in the room, and I couldn't stop crying. He had the fucking balls to come
6 in my bedroom.

7
8 Q What happened after he came in?

9 A My mom said, Get the fuck out of her bedroom. She's, like, Why the fuck is she
10 naked? She's, like, So get the fuck out of the bedroom. She had to push him out.
11 My mom is, like -- I heard her on the outside of the door. What -- what the fuck do
12 you think you were trying to accomplish? What were you trying to do? He was, like,
13 I was trying to teach her a lesson. My mother is, like, Oh, really, taking off her
14 clothes, her being naked and crying like that.

15
16 Q And what did you do after you heard this conversation?

17 A I heard them fighting. And I had clothes on because my mother helped me, and I
18 remembered I had the phone in my closet because I was -- I called my mom at her
19 work, [REDACTED] answered, and I said it's just me, her daughter, and I was talking to my
20 mother, but I had the phone in there, and they were fighting.

21
22 Q And what did you do?

23 A I called the cops.

24
25 Q What number did you call?

26 A 911.

27
28 Q And what did you say when you were on the phone?

29 A I couldn't -- I couldn't talk. I didn't -- it's not that I didn't want to. I just found it
30 hard to talk. I was crying a lot to a point where I couldn't breathe, and I was gasping
31 for air, and she -- she asked me, Do you need police, fire, or ambulance.

32
33 Q Were you able to say anything?

34 A It took me a while and I was gasping for air and I was still crying and I said police.

35
36 Q And then what happened?

37 A Then -- well, I remember just before I was getting dressed, I had my shirt on, and I
38 was clinging -- clinging it to my body, but when [REDACTED] was in the room that's when I
39 had called the cops. I already had them on phone, and Joseph came back in the
40 bedroom, and my mom asked -- I gave her the phone, and she says, like -- I hung up.
41 And she is, like, who was that? I lied because [REDACTED] was there, and I said it's [REDACTED]

1 (phonetic). She -- she wants you to call her back.

2
3 And so my mother left. She was still yelling at [REDACTED]. I don't know what he was
4 saying to her because my mother was telling him to get the fuck out of my face. Go
5 away. I don't want you around me right now. And she was, like, stay out of [REDACTED]
6 fucking bedroom and leave me alone.

7
8 Q And then what happened?

9 A I was still in my bedroom, so I don't know what happened. And then when the cops
10 showed up, my mom let -- she let them in. And. . .

11
12 Q Did you talk to a police officer?

13 A Yes.

14
15 Q Do you know who that police officer is?

16 A Constable [REDACTED]

17
18 Q Where did you talk to him?

19 A I came out of my bedroom and my mother came and got me and told me to come sit
20 on the couch, so I sat on the couch and [REDACTED] was downstairs. And before I had to
21 give my statement, I think they arrested [REDACTED]. And when I had to give him a
22 statement of what happened, I was sitting in the living room, and my mom was telling
23 me, [REDACTED], just try and talk. She's, like, the police are here to help you. They're not
24 here to hurt you. You have to tell them.

25
26 Q Were you still talking to that same police officer, or were you still with that same
27 police officer?

28 A Yes. He was in front of me, and he was trying -- he was telling me the same thing,
29 too. He was, like, just try and calm down and relax, breathe, and tell me what
30 happened, please. I need to know, he's like, so that we can -- so that we know what
31 we can do to help you. And I was crying and it took some time, and I was shaking on
32 the couch.

33
34 Q Ms. [REDACTED] I'm not going to ask you what you said to a police officer, but what
35 happened after you talked to a police officer?

36 A Then he left, and I had to go -- I don't know what happened -- oh, yeah. They had
37 [REDACTED] in the back of the cruiser, and then they took him to -- back to the
38 dispatchment (sic), and I don't know what happened. And then I had to go to the
39 dispatchment, too, and give a statement. First, I had to go to the hospital, and I tried
40 telling him that there might be some evidence on [REDACTED] nails because he had his
41 fingers inside me.

1

2 Q What do you mean by he had his fingers inside you?

3 A He had them in my -- my vagina.

4

5 Q You have described some of the other events. When did he have his fingers in your
6 vagina?7 A At the same time he was playing with my breasts with his tongue and licking them
8 and. . .

9

10 Q Do you still consider [REDACTED] your dad?

11 A That's a very funny question. It makes me want to laugh. No, he is not.

12

13 Q Ms. [REDACTED], those are all the questions that I am going to ask you, but there is
14 another lawyer here who is going to ask you some questions. Please answer those.

15 A I will.

16

17 THE COURT:

Ms. [REDACTED]

18

19 MS. [REDACTED] Sir, I'm looking at the hour, and I don't
20 anticipate being particularly brief with this witness. In light of that, perhaps we should
21 take the lunch break.

22

23 THE COURT:

I think that's appropriate.

24

25 MS. [REDACTED]

Thank you, Sir.

26

27 THE COURT:

28 So, ladies and gentlemen, we'll break now for
29 lunch and intend to resume the trial at 2:00 in the afternoon. Thank you.

30

30 (JURY RETIRES)

31

32 THE COURT:

All right. Ms. [REDACTED], we're going to adjourn

33 until 2:00 this afternoon.

34

35 A Okay.

36

37 THE COURT:

You need to come back.

38

39 A I will.

40

41 THE COURT:

Come back at at least a quarter to two.

1
2 A Quarter to two. Okay.
3
4 THE COURT: Madam Clerk, where does Ms. [REDACTED] check
5 in?
6
7 THE COURT CLERK: That's --
8
9 THE COURT: Just here?
10
11 THE COURT CLERK: Yes.
12
13 THE COURT: Does she just check in in the courtroom or
14 where?
15
16 THE COURT CLERK: No. No, she can stay in the hallway. I'll -- I'll
17 go and get her.
18
19 THE COURT: Okay. So please --
20
21 THE COURT CLERK: Stay here, please.
22
23 THE COURT: So please make sure you're back here by a
24 quarter to two.
25
26 A Yes.
27
28 THE COURT: All right. Don't speak with anyone about your
29 evidence. All right?
30
31 A No, I won't.
32
33 THE COURT: All right. Thank you.
34
35 Counsel, anything other -- anything else?
36
37 MS. [REDACTED] No. Thank you, sir.
38
39 MS. [REDACTED] Nothing, Sir.
40
41 THE COURT: All right. We're adjourned until 2:00. Thank

1 you.

2

3

4 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

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1 Certificate of Transcript

2
3 I, [REDACTED], certify that the foregoing pages are a complete and accurate transcript of
4 the proceedings, taken down by me in shorthand and recorded by a sound-recording
5 machine and transcribed from my shorthand notes to the best of my skill and ability.
6

7
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9 Cindy Teruya, CSR(A)

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 October 8, 2013

Afternoon Session

4

5 The Honourable

Court of Queen's Bench

6 Mr. Justice [REDACTED]

of Alberta

7

8 S.L. [REDACTED]

For the Crown

9 T.E. [REDACTED]

For the Accused

10 C. [REDACTED]

Court Clerk

11 N. [REDACTED]

Court Clerk

12 C. [REDACTED] CSR(A), RPR

Official Court Reporter

13

14

15 **Discussion**

16

17 THE COURT:

Thank you. Please be seated.

18

19 THE COURT CLERK:

Would you like me to bring the witness in, sir?

20

21 THE COURT:

Yes, please.

22

23 Ready to go?

24

25 MS. [REDACTED]

We are, Sir. I do just wish to advise, and I

26 haven't spoken to my friend about this, Ms. [REDACTED] was in the same cafeteria as I was at

27 lunch. She did approach me while I was in line and did say something to me. I did not

28 respond to her and did not engage with her. And I -- I don't feel that it was an

29 inappropriate -- inappropriate interaction, but I did wish to advise it to the Court and

30 advise to my friend that it did occur.

31

32 THE COURT:

Okay. Any -- at this moment anything rising

33 from that, Ms. [REDACTED]?

34

35 MS. [REDACTED]:

I suspect that if my friend thought something

36 was material in terms of what was said to her, she would disclose that to me, so in light

37 of the fact she's not said anything, I'm satisfied that it's okay.

38

39 THE COURT:

I have no doubt. Something just occurred to

40 me, though, that I do wish to address with counsel, and I wish to do so in the absence of

41 the witness. And so, Madam Clerk, thank you very much.

1
2 THE COURT CLERK: We'll wait in the back, Sir.

3
4 THE COURT: Thank you. I don't think it will take very long.

5
6 I might have said something earlier. We know that apropos my earlier remarks before the
7 witness appeared in the foyer, I think of Courtroom 411, which is where we are, I was
8 surprised by that because I had the impression that she was in the back in a room, and I
9 frankly had thought it was a locked room, but apparently not. In any event, and I'm not
10 sure how she got out from the secure area into the public area, and what that made me
11 think or worry about is whether she spoke with anyone, and in particular, any other
12 witnesses who -- and in particular perhaps her mother, who may have been outside the
13 courtroom waiting to be called to give evidence. So that's on my mind. It may have
14 already occurred to either one or both of you. What I don't know is how to deal with it,
15 and it's perhaps something that could come up in cross. That's your call, Ms. [REDACTED]. Or
16 it's perhaps something that I could deal with directly with the witness. I'm just not sure,
17 frankly, but I wanted to make sure that you know what's on my mind in terms of -- in my
18 role as trying to ensure trial fairness.

19
20 So whether or not you've thought about that, any thoughts now about how we might
21 ensure -- if you think it's a concern at all, how we might ensure that this complainant
22 didn't or wasn't influenced in the evidence she is now giving by having any interaction
23 with anyone in the public while she was in the midst of examination-in-chief?

24
25 MS. [REDACTED] I think the Court should canvass it with her,
26 and then Ms. [REDACTED]'s cross-examination may be informed by anything the Court -- that she
27 says to the Court when you canvass it with her, just whether or not she saw anyone in
28 that period -- intervening period of time. I think it would be fair to Ms. [REDACTED] for her to
29 have that answer before she begins her cross-examination of the accused (sic).

30
31 THE COURT: What do you say?

32
33 MS. [REDACTED] I'm in agreement with my friend on that point.

34
35 THE COURT: Okay. It make sense to me, too. Do you
36 happen to know, Ms. [REDACTED], if [REDACTED] is in the courthouse waiting?

37
38 MS. [REDACTED] I believe she's in the courthouse right now,
39 Sir. I can advise that when I went to first get [REDACTED] was not
40 there. That was actually mentioned to me by [REDACTED] was her mother was not
41 there, and I indicated we had to begin in any event. So she wasn't there when [REDACTED] first

1 came into the courtroom to testify. I don't have information if she re-attended before --
2 before Ms. [REDACTED] went outside herself.

3
4 THE COURT: All right. Fair enough. So in keeping with
5 what you have suggested to me, I would propose then before the jury presents itself --

6
7 MS. [REDACTED]: Yes.

8
9 THE COURT: -- if you agree -- or should I do this with the
10 jury present?

11
12 MS. [REDACTED] Perhaps in the absence of the jury, and then we
13 can go from there, Sir. The one thing, and perhaps my friend can advise, is I did notice
14 seeing Ms. [REDACTED] in the hallways and whatnot over the lunch break. She was with
15 another woman. I don't know what her mom looks like, and I don't know if she was
16 with her mom in the cafeteria, and perhaps that's something that my friend can --

17
18 MS. [REDACTED]: That --

19
20 MS. [REDACTED] -- speak to.

21
22 MS. [REDACTED] Yes. That was [REDACTED] that she was
23 with in the cafeteria and maybe the other time that you did see her. It was after the
24 caution by Your Honour --

25
26 THE COURT: Right.

27
28 MS. [REDACTED] -- My Lord not to talk about your evidence.

29
30 THE COURT: There is only so much a person can do. And of
31 course it would be -- you would be perfectly at liberty to examine her whether during the
32 lunch hour she acted in violation of my warning that she not speak with anyone about her
33 evidence. My concern is more before I had a chance to give her a caution that she not
34 leave the courtroom and then talk to anyone, there is this lingering possibility that that
35 might happen that we want to put -- want to deal with.

36
37 So I propose to ask her before the jury comes back if when -- while she moved from the
38 secure area to the public area and then back again did she have any dealings with any --
39 either her mother -- well, her mother. I have less concern about Constable [REDACTED] in
40 having -- him having any dealings with her, but certainly I want to at least give her a
41 chance to respond to the question about whether she had anything to do with her mom.

1 Fair enough?

2

3 MS. [REDACTED] Yes.

4

5 THE COURT: Okay. Thanks. Madam Clerk, if you could
6 invite your colleague in and the witness.

7

8 Thank you, Madam Clerk.

9

10 THE COURT CLERK: She's ready, Sir.

11

12 [REDACTED], Previously Sworn, Questioned by the Court

13

14 THE COURT: I just need a moment.

15

16 Q THE COURT: Ms. [REDACTED]?

17 A Yes.

18

19 Q One question for you --

20 A Yeah.

21

22 Q -- before we bring the jury back. Before you came back into the courtroom this
23 morning to continue giving your evidence, I note that you moved from a room in the
24 secure area of the courthouse, in other words, the room that you have been coming in
25 from -- the hallway you have been coming in from, you managed to get from there out
26 back into the public area of the courthouse.

27 A What do you mean?

28

29 Q So my understanding is that you moved from the room that you -- where you had been
30 reviewing your statement? You recall being placed in a room and reviewing your
31 statement during a break?

32 A I didn't leave the room. I asked for someone to bring me my purse.

33

34 THE COURT CLERK: But then the second time --

35

36 THE COURT: Yes.

37

38 THE COURT CLERK: -- Ms. [REDACTED], you came out here before I
39 came to get you.

40

41 A Yeah, because I was done reading my statement.

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Q THE COURT: Okay. So just bear with me for a moment. So you did leave the room and you went back to the outside part of the courthouse in a -- what I'm calling the public area just outside this courtroom, correct?

A Yes.

Q Okay. Now, when you did that, and before Madam Clerk came to get you again, did you have any dealings at all with your mother, [REDACTED]?

A No.

Q Okay. Did you see her in the public area of the courthouse at that time?

A No.

THE COURT: All right. Anything further, Counsel?

MS. [REDACTED] Nothing, Sir.

MS. [REDACTED] No, thank you.

THE COURT: Thank you. Those are my only questions.
Thank you very much.

Madam Clerk, at your convenience.

THE COURT CLERK: Certainly, Sir.

(JURY ENTERS)

THE COURT: Thank you, ladies and gentlemen. Please be seated.

Do counsel acknowledge the jury is present?

MS. [REDACTED] Yes.

MS. [REDACTED] Yes, Sir.

MS. [REDACTED] Yes, My Lord.

THE COURT: Thank you.

1 Ms. [REDACTED] Cross-examines the Witness

2

3 Q MS. [REDACTED] Ms. [REDACTED] before in your
4 examination-in-chief, you had indicated that you had -- or, sorry, that Mr. [REDACTED] had
5 sort of an up-and-down personality, correct?

6 A Yes.

7

8 Q That's probably a good way to describe the relationship in general that you had with
9 Mr. [REDACTED], right? It was sort of up and down?

10 A Yes, it was.

11

12 Q Because you two, particularly in perhaps, say, the last two years leading up to the
13 event that brings you to court, in those two years you had been fighting an awful lot,
14 hey?

15 A Yes, we have been.

16

17 Q And you had been fighting about a variety of things?

18 A Yes.

19

20 Q You were fighting --

21 A I'll give you some examples. School, not doing chores, and those were the two I
22 can -- those are the two main ones that we mainly fought about. I was okay with
23 dealing with it when he was sober, but when he would get drunk, he took things to a
24 different level and --

25

26 Q So you have given us --

27 A -- punched me --

28

29 Q So you have given us some examples. School?

30 A Yeah.

31

32 Q And the problem with school is that you weren't going, right? You were cutting class
33 and missing classes, and that was a problem?

34 A Yes, it was because --

35

36 Q Because he wanted you to go to class?

37 A Yes, he did.

38

39 Q And then you --

40 A But I was skipping school because I was finding it difficult dealing with a stepfather
41 who wouldn't admit to nobody that he was an alcoholic, so I tried telling my teachers,

1 and many people looked at me like I was screwed in the head.

2
3 Q So there was some issues at school, not going to school. There was issues at home not
4 doing chores, correct?

5 A Yes.

6
7 Q Okay. The other thing that you would have fights about is some of the people you
8 hung around, hey?

9 A Yes, but that does not necessarily mean that they're going to rub off on me, for
10 instance.

11
12 Q One of the things --

13 A I have made mistakes just like everybody else. Everyone is human, so. . .

14
15 Q One of the things that Mr. [REDACTED] didn't like is that you were hanging out with people
16 what that were older than you, correct?

17 A Yes.

18
19 Q And so there was a couple of those people, there was [REDACTED] (phonetic) --

20 A Yes.

21
22 Q -- a friend of your mom's?

23 A Yes.

24
25 Q Yeah. And so he thought she was too old for you and would be frustrated when you
26 would hang out with her?

27 A Yes.

28
29 Q And then there was another boy, [REDACTED], correct?

30 A Yes.

31
32 Q Okay. And Jason was 21 when you were 15, right?

33 A Correct.

34
35 Q And he lived next door to you?

36 A Correct.

37
38 Q And your -- or, sorry, and Mr. [REDACTED] didn't like you hanging around with
39 Mr. [REDACTED]?

40 A No.

41

1 Q He thought it was an inappropriate relationship?

2 A Yeah, but I was able to relate with him because he is living in the same situation that
3 I'm living in, very similar, but, you know, except his family publicly shows that
4 they're drinking alcohol, that they are drunk; whereas, [REDACTED], to the regular person --
5 regular people would not say I'm drinking. I'm an alcoholic. But, no, would rather lie
6 about it, sweet-talk people.

7
8 Q But you would agree with me that was something that you guys fought about
9 sometimes?

10 A Yes.

11
12 Q Okay.

13 A I was living in an abusive household like [REDACTED] [REDACTED] parents were alcoholics, too.
14 [REDACTED] is an alcoholic.

15
16 Q So when you testified at the preliminary inquiry and said that you did not fight about
17 friends or boyfriends --

18 A He wasn't my boyfriend.

19
20 Q -- you were mistaken. Okay. So when you said that you did not fight about friends,
21 you were mistaken in your testimony at the preliminary inquiry?

22 A Can you explain that again, please?

23
24 Q Okay. So you have testified before today, right, in other hearings about these matters?

25 A Yes, but I wasn't dating him.

26
27 Q Okay.

28 A He just didn't like the fact that I wanted to date.

29
30 Q No, and that's fair --

31 A And I'm not necessarily meaning an older person. I was -- for a fact, [REDACTED] knows
32 this, too, that I was wanting to date someone by the name of [REDACTED], not [REDACTED]
33 [REDACTED]. And [REDACTED] went to school with me. He was a nice boy -- is a nice boy.

34
35 Q Okay. Well, why don't -- why don't we just focus on the question I'm asking you.
36 Okay? Let's start with you have testified before at previous hearings about these
37 matters, correct?

38 A Yes.

39
40 Q Okay. And --

41 A But I was not dating [REDACTED].

1
2 Q Okay. But that was my question, so I -- I listen when you were asking a question, so
3 when I ask you a question, you listen to me, too. Okay?

4 A Okay.

5
6 Q Okay. So you have testified on two previous occasions about these instances?

7 A M-hm.

8
9 Q And one of those occasions was in June of 2012? Does that sound about right in
10 terms of dates?

11 A June?

12
13 Q When you first testified at the preliminary inquiry when you were appearing in
14 Athabasca, that was in June of 2012?

15 A Yes.

16
17 Q Okay. And then the second time when you came back for another day of testimony,
18 that was in December of 2012; does that sound about right?

19 A I don't remember.

20
21 Q Okay. Was there snow on the ground the last time you testified?

22 A Yes, there was.

23
24 Q Okay. So you would agree with me it was sometime in the winter?

25 A Yes.

26
27 Q Okay. So when you were at those hearings, you were cross-examined by another
28 lawyer; that's correct?

29 A Correct.

30
31 Q And one of the questions she asked you was whether or not you had disagreements
32 with Mr. [REDACTED] about friends or boyfriends, correct?

33 A Correct.

34
35 Q And you answered to her, no, that wasn't something you fought about?

36 A Well, he didn't regularly bring it up. It wasn't on a regular basis day-to-day thing, so
37 I thought we were -- we were talking about day-to-day things that I went through,
38 so. . .

39
40 Q But certainly today you're prepared to concede that that was something that you used
41 to fight about is friends, who you hung around with?

1 A Yes.

2

3 Q And you were having a lot of issues at the time. There was problems at school.
4 Mr. [REDACTED] would have to go to school quite regularly to talk to your principal or to
5 talk to teachers because you were having a pretty hard time there?

6 A Well, if I'm not raised in a proper environment and there is alcohol available all the
7 time, then how am I supposed to act, like a fucking perfect kid?

8

9 Q Okay. So --

10 A It wasn't easy --

11

12 Q -- to answer my --

13 A -- living with him.

14

15 Q To answer my question --

16 A Yes, we did.

17

18 Q -- you were having problems at school?

19 A We did.

20

21 Q Okay. Now, when you were at Home Hardware with Mr. [REDACTED] and your mom at the
22 first part of the day when you were picking up some supplies, I think you had said --

23 A My mother was working, so. . .

24

25 Q Okay. So when you were picking up some supplies, I think you had said it was for
26 some lawn -- like, a lawn patio and some patio furniture and stuff like that?

27 A And planting, yes.

28

29 Q Yeah. So when you guys were there the first time, you had some interactions, I
30 suppose, with [REDACTED]?

31 A Yes, I did.

32

33 Q Okay. And you were sitting in her car and -- and when your dad -- or, sorry, when
34 Mr. [REDACTED] observed you in the car?

35 A Yes, he did. That was the same day.

36

37 Q And this started a little bit of a disagreement between you and him at the store?

38 A Yes.

39

40 Q Okay. So that sort of set the tone for the day?

41 A M-hm.

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Q And then from there you guys took a cab back to your place with some of the supplies?

A Correct.

Q Okay. And when you got there, one of the things that Mr. [REDACTED] wanted you to do was help him with some yard work. That's fair?

A Yes, correct.

Q Okay. And one of the things he asked you to do was lift a bag of seed for him and put it into a particular machine he was working with?

A That wasn't the same day.

Q Okay. Do you have some recollection of having to help him with things like that?

A No, actually I don't.

Q Okay. So to your knowledge you were aware that Mr. [REDACTED] had a back injury, correct?

A How does this relate to what happened to me?

Q I'm just going to ask you some questions. Okay? And then you're going to answer the questions. So to your knowledge he had a back injury, correct?

A Why do I have to answer this question?

Q Because I'm asking you the question, and unfortunately while some of these things are not fun to talk about --

A Yeah --

Q -- you have to answer them.

A -- I guess, correct. And his name is actually Dr. [REDACTED] --

Q Pardon me?

A -- to be correct.

Q Okay.

A Dr. [REDACTED] is his name, I'm just saying.

Q So because of his back injury, sometimes Mr. [REDACTED] couldn't do things around the house, correct?

A No, that's not correct. [REDACTED] was the type of person to lift things, heavy, whether or not he's hurt. So he's that kind of a person who even if he was hurt, he still did --

1 still went to work. He was that kind of a person.

2
3 Q So he never imposed upon you to ask you to do some stuff for him and bother you --

4 A No.

5
6 Q -- with things like lifting?

7 A Not at all.

8
9 Q So ultimately when you get into a fight with [REDACTED] back at the residence, you decide
10 you're going to go back to see your mom at work, correct?

11 A Yes.

12
13 Q Now, one of the reasons that you were staying either at work or at home is that your
14 mom and Mr. [REDACTED] didn't like you out on your own for big -- or for long periods of
15 time, correct?

16 A Yes.

17
18 Q Because you got into trouble when you were out on your own?

19 A Yes, I did.

20
21 Q So that was essentially why you had the two options -- you're either at home or you're
22 at her work?

23 A Yes, correct.

24
25 Q And one of the things that became a problem was --

26 A What became a problem for me, to be honest, is staying around someone who is
27 drinking and getting mad at me and frustrated; whereas my mom dealt with things in
28 a -- not in a delicate way at all, she did raise her voice, and she went about things in a
29 proper manner; whereas [REDACTED] had no mannerism at all --

30
31 Q All right. And --

32 A -- in dealing with me.

33
34 Q And certainly I'm not disagreeing with you. It sounds like it was tense at your house?

35 A It was.

36
37 Q Okay. No one is disagreeing about that. So that's why you end up leaving, going to
38 work with your mom, and [REDACTED] wants you to come home, correct?

39 A Yes.

40
41 Q And one of the things he wants you to do is chores and stuff around the house?

1 A M-hm.

2
3 Q He wanted you doing something productive with your time?

4 A Yes.

5
6 Q Because when you were at work with your mom, you would usually just sit in the
7 break room and read the newspaper?

8 A Correct.

9
10 Q So ultimately when you get called back to the residence, you indicate that this time
11 instead of taking a cab you walk when you --

12 A Correct.

13
14 Q -- return home after leaving a second time?

15 A Yes.

16
17 Q And you had indicated it was raining?

18 A Correct.

19
20 Q And it was raining pretty hard, correct?

21 A M-hm.

22
23 Q And at preliminary inquiry you testified that it actually rained so hard that you were
24 soaked through to all of your clothes when you were walking home.

25 A Correct.

26
27 Q Right. Is this something you have a memory of of how hard it rained?

28 A Kind of, yeah.

29
30 Q Yeah?

31 A Yeah.

32
33 Q Certainly you testified to it raining under oath at preliminary inquiry?

34 A M-hm.

35
36 Q And you have testified to that today?

37 A M-hm.

38
39 Q Are you aware that people can keep track of things like what the weather is like on
40 any given day?

41 A Yeah.

1
2 Q And so people get paid to do that as a living, they keep track of what the weather
3 looks like and they record it places?

4 A Correct.

5
6 Q And some of the places they record it are places like on the internet so everyone can
7 see what the weather was like on a particular day?

8 A Correct.

9
10 Q And so what I'm going to do, Ms. [REDACTED], is I'm going to provide something to
11 Madam Clerk that I'm going to get her to hand to you.

12 A Okay.

13
14 Q I have brought another copy for my friend as well. So just so that we're sure we're
15 working off the same document here, at the top of this document that I gave you it
16 says, Daily data report for May 2011?

17 A M-hm.

18
19 Q M-hm. And then on the left -- far left-hand side, you can see things like what day of
20 the week it was?

21 A Correct.

22
23 Q And then eight columns in, you can see one that says total precipitation --

24 A Correct.

25
26 Q -- across the top.

27 A Yes.

28
29 Q Okay. And so on May 21st, can you tell me how much precipitation there was?

30 A It wasn't raining.

31
32 Q Pardon me?

33 A It wasn't raining.

34
35 Q There wasn't any?

36 A No.

37
38 Q Does that change your memory with respect to whether or not it was raining that day?

39 A Yes.

40
41 Q So now you're changing -- are you going to change your testimony and say it wasn't

1 raining?

2 A Nope.

3

4 Q You maintain that it was raining?

5 A M-hm.

6

7 Q Okay.

8

9 THE COURT: Ms. [REDACTED], I apologize for interrupting, but
10 some of the answers you're getting are m-hm. Could I ask that you make sure that you
11 elicit --

12

13 MS. [REDACTED] Certainly.

14

15 THE COURT: -- a yes or a no or a maybe from the witness.

16

17 MS. [REDACTED] Okay.

18

19 THE COURT: Just for the record.

20

21 Q MS. [REDACTED] And so -- so we can be clear on that, I think
22 the last question I had asked you was that you're maintaining that it was raining, and
23 you said m-hm, and I took that to mean yes, but I stand to be corrected.

24 A Correct.

25

26 Q Okay. So you're saying, yes, it rained?

27 A No, it wasn't raining.

28

29 Q No --

30 A But it was a difference -- it was a different day that we also had a fight. Sorry if I
31 was flashing back to when I had horrible incidents with [REDACTED].

32

33 Q So you are saying it wasn't raining?

34 A Correct.

35

36 Q Okay. So when you had testified to that before, you must have been mistaken?

37 A Yes.

38

39 Q Okay. Now, when you arrived home at the residence, the door was unlocked, which
40 you said was unusual?

41 A Yes.

1
2 Q Yeah. Because you have said that Mr. [REDACTED] was -- you used the term OCD, and I
3 took that to mean you were referring to obsessive-compulsive about locking the door?
4 A Yes.
5
6 THE COURT: Perhaps, Madam Clerk --
7
8 MS. [REDACTED] Perhaps we can --
9
10 THE COURT: Madam Clerk, the mike came off.
11
12 A I have it.
13
14 THE COURT: Thank you.
15
16 Q MS. [REDACTED] And today you have testified that upon going
17 into the house you had a concern about the door being unlocked. You locked the
18 door, correct?
19 A Correct.
20
21 Q And this ultimately started a fight between you and [REDACTED], or Mr. [REDACTED], when he
22 got home, correct?
23 A Yes.
24
25 Q And you said this fight took place in the kitchen, correct?
26 A Kitchen, living room.
27
28 Q Kitchen, living room area?
29 A M-hm.
30
31 Q And this was just a lot of yelling?
32 A Yes.
33
34 Q Okay. You would agree with me that this is the first time you have ever testified
35 about that fight in the kitchen?
36 A Correct.
37
38 Q Okay. Because before that, you testified that when you got home in the house you
39 didn't see [REDACTED] at all. Fair?
40 A He wasn't there at all, but when he got home.
41

1 Q You would agree with me that the first fight that you have ever testified about happens
2 in your bedroom?

3 A Correct.
4

5 Q Okay. So prior to today, the only fight you ever talked about was something that goes
6 on in your bedroom after he arrives home?

7 A It didn't happen in the bedroom.
8

9 Q Okay. I appreciate that's what you're saying today, but what I'm saying is before
10 today --

11 A Yes. Correct.
12

13 Q -- the only incidence you described is in your bedroom?

14 A Correct.
15

16 Q Okay. And that incidence, according to your previous testimony, was essentially
17 unexplained to you; you had no idea why he was coming into your room?

18 A I did know why. I didn't feel like answering the past lawyer's questions. So, yeah, I
19 started lying.
20

21 Q You were lying under oath last time?

22 A Yes.
23

24 Q Okay. So you understood in the last hearing it was important to tell the truth?

25 A Yes. I was tired, and I was hungry. What was I supposed to do.
26

27 Q Okay. So when you were frustrated, you're prepared to lie under oath?

28 A Yes.
29

30 Q You mentioned today that when you're in your bedroom, [REDACTED] came in and grabbed
31 you by the neck?

32 A M-hm.
33

34 Q I'm going to suggest to you that he never grabbed you by the neck. Is that true?

35 A No.
36

37 Q When -- let's see. So when you were testifying at the preliminary inquiry that took
38 place on June 4th, you were asked some similar questions to the one I'm asking you
39 right now. That's fair?

40 A Correct.
41

1 Q And one of the questions was they had asked you to describe to the best of what you
2 can -- the best of your ability, okay, and you responded, He had my hand -- his hand
3 on my throat, no, kind of -- not on my throat, but gripping really hard on my chin, my
4 jaw, and gripping me really hard, and it hurt a hell of a lot. Do you remember making
5 that statement?

6 A Correct.

7
8 Q So you would agree with me you very specifically said he didn't have your throat --
9 his hand on your throat?

10 A He did also have -- he had his hand on my throat and then he had it on my neck and
11 then my chin.

12
13 Q So when the prosecutor was asking you this question, and you said -- because this
14 was -- do you remember Mr. [REDACTED] who asked you the questions at the preliminary
15 inquiry?

16 A No, I don't.

17
18 Q Okay. I can give you a copy of the transcript if you want to have a copy of it in your
19 hand. Would that assist you?

20 A No.

21
22 Q Okay. So you recall making that statement, though, to Mr. [REDACTED]?

23 A Yes.

24
25 Q Yeah. So, again, this is a situation where your evidence today is different than it was
26 previously.

27 A Nope.

28
29 Q You would agree with me that memories generally don't get better with time?

30 A I disagree.

31
32 Q You think memories get better over time?

33 A M-hm.

34
35 THE COURT: Is that a yes or a no?

36
37 A Yes.

38
39 Q MS. [REDACTED] It appears she said -- you said yes?

40 A Yes.

41

1 Q Okay. So you don't think that when something is fresher in your mind when it's
2 closer to the incident that your memory would be better?

3 A No.

4
5 Q Now, you have also described an incident where when he has you by the neck he also
6 has the fist to your temple?

7 A Correct.

8
9 Q And you would agree with me that based on what I have read you from your
10 testimony at the preliminary inquiry that wasn't something you said to Mr. [REDACTED]
11 when he asked you?

12 A I'm fully remembering what happened to me, and he also did that.

13
14 Q But these are memories that you have had since that time?

15 A Correct.

16
17 Q Okay. So they're things that you have recalled later?

18 A Yes.

19
20 Q Okay. Now, you have described being on the fetal position on the floor under your
21 window?

22 A Correct.

23
24 Q And at some point you indicated that -- well, actually I just want to clarify. How do
25 you end up from the floor onto the bed?

26 A Because [REDACTED] was that kind of a person where -- where when he got mad at me --
27 there is many situations that I can recall where we got into a fight and an hour later I
28 hear I'm -- I'm sorry, and I'm getting hugged. So, yeah, I ended up on the bed, and
29 he was -- he grabbed me. He was squeezing me at first, and then he loosened his
30 hands and --

31
32 Q Okay. I want to take you back a little bit.

33 A -- I was on my bed.

34
35 Q You got a little farther ahead of me than I was. So I'm just asking how you get from
36 the floor to the bed?

37 A Because he picked me up.

38
39 Q Okay. And so how does he pick you up?

40 A I was holding my -- behind my legs, and he -- like this, and I was holding it tightly,
41 and then he grabbed right there and he grabbed my back and then picked me up. And

1 I was on my bed, and he was holding me and hugging me and saying I'm sorry.

2

3 Q So you have -- I just want to make sure that the record demonstrates what you have
4 just shown us. You had your hands under the backs of your knees?

5 A Yes.

6

7 Q Okay. And so to describe that, it was more like a scooping motion? That's what he
8 did? He picked you up in, like, sort of a scoop?

9 A Yes.

10

11 Q And then placed you on the bed?

12 A Not placed me on the bed. He was --

13

14 Q He, sorry?

15 A After that, he was, like -- when he scooped me up --

16

17 Q Okay.

18 A -- it was kind of like a hug at the same time.

19

20 Q Okay. And it's once you're on the bed that things become uncomfortable for you?

21 A Correct.

22

23 Q Okay. And so as part of this he made you take off your shirt, correct?

24 A Correct.

25

26 Q And the other thing that you have indicated is that -- today, is that he took off your
27 bra?

28 A Correct.

29

30 Q And you made a comment I wanted you to explain to me. You said, And he didn't
31 take it off fast either. What does that mean?

32 A It means he took off my bra slow.

33

34 Q Sorry?

35 A It means he took off my bra slow.

36

37 Q Okay.

38 A Once it was unclasped, he slowly took -- pulled the straps down.

39

40 Q And you would agree with me this is another one of those things that you're just
41 remembering today, right?

1 A Correct.

2

3 Q Because before that your evidence was that you had taken off your bra yourself. Fair?

4 A Fair.

5

6 Q Yeah. So this is another one of those things that has just come to your memory
7 today?

8 A Correct.

9

10 Q Do you remember what type of pants you were wearing that day?

11 A No, I don't.

12

13 Q So you can't say when they were taken off how many zippers or buttons or --

14 A No.

15

16 Q -- belts or anything he had to undo?

17 A No.

18

19 Q All of that is just a blur in your mind?

20 A Yes.

21

22 Q No details at all?

23 A No.

24

25 Q And you also can't remember how -- whether or not your underwear and pants came
26 off at the same time?

27 A No.

28

29 Q Also a bit of a blur?

30 A Yes.

31

32 Q Yeah. Now, one of the things you have indicated is that you were screaming when
33 this was going on?

34 A I wasn't screaming. I was crying very loud.

35

36 Q You don't remember in your examination-in-chief this morning saying I was screaming
37 and screaming?

38 A I cried and screamed at the same time.

39

40 Q So you're -- the purpose of you making these sounds, though, is you wanted to attract
41 the attention of your neighbours; that is correct?

1 A So that they would call the cops.

2

3 Q Yeah. So you were trying to be as loud as you possibly could?

4 A Yes.

5

6 Q And you've indicated today --

7 A I was screaming stop, if anything, and crying at the same frickin' time.

8

9 Q I'm sorry, I had a hard time hearing what you just said there.

10 A I was -- I was screaming stop, and I was crying at the same time.

11

12 Q And you indicated you were screaming so much that at some point he had to put his
13 hand over your mouth?

14 A Correct.

15

16 Q Now, you would agree with me that's another one of the things on the list that just
17 came out today?

18 A Correct.

19

20 Q Okay. And I just want to make sure we're clear here. So there has been the two
21 times that you have testified at preliminary inquiry, but there was also a statement you
22 made to the police, correct?

23 A Correct.

24

25 Q Okay. So when we talk about these details that are just coming out today, you have
26 had not one, but two -- not two, but three times to -- three opportunities to tell these
27 things, right?

28 A Correct.

29

30 Q And they were not mentioned before?

31 A Correct.

32

33 Q And in all of those incidences you understood how important it was to be truthful?

34 A M-hm.

35

36 Q And in all of those incidences -- sorry. That was a m-hm. So yes?

37 A Yes.

38

39 Q Yes. And in all of those instances you understood how important it was to give as
40 much detail as possible so that you could assist the investigators and the prosecutors
41 with their job, correct?

1 A Correct.

2

3 Q And these were details that were just missed?

4 A Yes.

5

6 Q Now, would it be fair to say you don't recall what time your mother was supposed to
7 be off work that day?

8 A I didn't remember at the time.

9

10 Q Now, Ms. [REDACTED], you knew -- or you expected your mom to be arriving home
11 shortly when you were in your bedroom with Mr. [REDACTED]. That's fair?

12 A Yes.

13

14 Q And you thought she could be home at any minute?

15 A Yes.

16

17 Q And while you don't remember what time she was supposed to be home today, you
18 can't say this was the hour she was supposed to be off --

19 A No.

20

21 Q -- you knew that she was coming home straight after work?

22 A Yes.

23

24 Q Yeah. So this morning you had some difficulty remembering some of these events,
25 correct?

26 A Yes.

27

28 Q Yeah. You told the jurors that you didn't feel like answering the questions because
29 you didn't remember?

30 A Correct.

31

32 Q That was a lie, wasn't it?

33 A No, it wasn't. I didn't --

34

35 Q Well, you --

36 A -- I don't feel like talking about this.

37

38 Q Well, that's okay. So -- but when you said to the jurors that you didn't remember,
39 that was a lie?

40 A Yes, it was.

41

1 Q Because you did remember?

2 A Yes.

3

4 Q And I'm going to suggest to you -- I'm going to suggest to you that the reason you
5 said you didn't remember was because you didn't want to have to testify here today.
6 That's correct?

7 A Yes, that is because I didn't want to fucking see [REDACTED].

8

9 MS. [REDACTED] Perhaps we should take a break, Sir.

10

11 THE COURT: That would be appropriate.

12

13 Thank you, ladies and gentlemen. We'll take the afternoon break at this time.

14

15 (JURY RETIRES)

16

17 THE COURT: Fifteen minutes or as you see fit.

18

19 MS. [REDACTED] Okay.

20

21 THE COURT: I'll wait for Madam Clerk to give me a call.

22 Thank you.

23

24 (ADJOURNMENT)

25

26 THE COURT: Thank you. Please be seated.

27

28 I believe we are in a position to proceed. Madam Clerk? At your convenience. Thank
29 you.

30

31 (JURY ENTERS)

32

33 THE COURT: All present?

34

35 MS. [REDACTED] They are, Sir.

36

37 THE COURT: Thank you.

38

39 Ms. [REDACTED], do you acknowledge you are still under oath?

40

41 A Yes.

1
2 THE COURT: Thank you very much.

3
4 Ms. [REDACTED]
5
6 I apologize. We were going to make you stand all afternoon.

7
8 Q MS. [REDACTED] Thank you, Ms. [REDACTED]. I'm almost finished
9 here. What we were talking about prior to taking a break was the fact that you were a
10 little reluctant to testify, and I'm going to suggest to you that this has been ongoing
11 throughout the proceedings, correct?

12 A Correct.

13
14 Q Yes?

15 A Correct.

16
17 Q Okay. You knew that you were required because you were subpoenaed to attend at
18 preliminary inquiry, correct?

19 A Correct.

20
21 Q And you knew you were supposed to be there. You were supposed to appear in St.
22 Albert?

23 A Yes.

24
25 Q And on that day the Crown was there, the defence lawyer was there, Mr. [REDACTED] was
26 there, but you weren't there, right?

27 A Correct.

28
29 Q And you have given various reasons as to why you weren't there. Fair?

30 A Correct.

31
32 Q You told the prosecutor that the reason you didn't come -- well, let me rephrase that.
33 So you initially called the RCMP complaint line and say you have an appointment so
34 you can't be there, correct?

35 A Correct.

36
37 Q Yeah. And when that doesn't work, you have simply just didn't come to court, right?

38 A Correct.

39
40 Q And then when you came to court at the preliminary inquiry, you gave some evidence
41 as to why you weren't there, right?

1 A Correct.

2

3 Q You talked about being at a party out of town?

4 A I was.

5

6 Q Yeah. And drinking with some friends?

7 A Yes.

8

9 Q And ultimately everyone being too hung-over to drive you to court?

10 A Yes.

11

12 Q You would agree with me that you left town simply so you didn't have to testify?

13 A No. I didn't know court was the next day.

14

15 Q You didn't know court was the next day?

16 A No, I didn't.

17

18 Q You would agree with me you were in -- you were in court on June 4th before Judge
19 Myers. Fair?

20 A Yes.

21

22 Q And --

23 A I forgot the date. I didn't realize that it was yes -- that it was -- the night I was
24 drinking, it was the next day. I didn't realize that.

25

26 Q Okay. I -- well, it wasn't the next day. Judge [REDACTED] told you on the record that you
27 were to be there--

28 A No, the day I was drinking at a party, I didn't realize it was the next day. I even
29 called my mother and asked her, and she said court was today. Like, when I called
30 her when I was --

31

32 Q So it --

33 A -- drinking.

34

35 Q -- would be a surprise to you if I told you that your mother had no idea where you
36 were or why you weren't at court that day?

37 A Yes, because when I got home I called her.

38

39 Q Okay. I'm going to show you a document -- and I have a copy for my friend as well.
40 Actually, I might only have --

41

1 MS. [REDACTED] Will you share mine? It's just a copy of the
2 transcript.

3

4 Q MS. [REDACTED] My friend has kindly pointed out to me that
5 perhaps you and I just have had a bit of a miscommunication here in terms of what
6 her evidence is -- or what your evidence is. What I'm suggesting to you is that before
7 you took off to the lake, you didn't tell your mom where you were.

8 A No, because I was 17.

9

10 Q So you didn't tell her where you were?

11 A No.

12

13 Q Okay.

14 A But then I called her -- once I got home, I called her from our land line and I asked
15 her where she was. And she said she was in court, and I said, oh, court was today.
16 And I didn't know. I was uncertain which day court was.

17

18 Q Okay. And I just want to make sure that we're all clear about the timeline. On June
19 4th you were in [REDACTED] court in front of Judge [REDACTED] when he ordered you to
20 come to the continuation date. Yes?

21 A Correct.

22

23 Q And the continuation date was June 7th?

24 A I guess.

25

26 Q So three days later?

27 A Yes.

28

29 Q So despite how significant this event was to you, you forgot that you had a court date
30 three days later?

31 A Yes, I did.

32

33 Q Okay. I just want to make sure we were on the same page. I'm going to suggest to
34 you that the reason that you have not come to court when you have been required to
35 do so and why you have been reluctant when you were in court is because you want --
36 you didn't want to have to testify, correct?

37 A Nope.

38

39 Q That's not why?

40 A No.

41

1 Q You wanted to testify?

2 A M-hm.

3

4 Q Okay.

5 A But now I don't want to anymore. I totally don't care where -- which way this goes.
6 I really don't.

7

8 Q Well, if you --

9 A As long as he's gone and I don't have to see his frickin' face, I'm peachy. My day --
10 my life has been going real great up until today. So now that I have to see that
11 fucking cocksucker's face, yeah, no. He can rot in hell.

12

13 MS. [REDACTED] I will end my cross-examination with that, Sir.

14 Thank you.

15

16 THE COURT: Thank you.

17

18 Ms. [REDACTED]?

19

20 Ms. [REDACTED] Re-examines the Witness

21

22 Q MS. [REDACTED] Ms. [REDACTED], I do have a couple of questions
23 based on what you have said to the other lawyer, Ms. [REDACTED]. Ms. [REDACTED], you talked
24 today about Mr. [REDACTED] holding you by the neck and holding a fist to your head. Do
25 you remember talking about that today?

26 A Correct.

27

28 Q And Ms. [REDACTED] asked you some questions, and you indicated that you had not talked
29 about that before, so you hadn't talked before about the accused having his hand on
30 your neck and a fist against your head. Is that fair? And it probably sounded
31 convoluted, but you agreed with Ms. [REDACTED] that you had not said that to anyone
32 before?

33 A Correct.

34

35 Q Okay. You also agreed with Ms. [REDACTED] that you talked --

36 A May I state a confession?

37

38 Q If I could just finish --

39 A I'm going to state --

40

41 Q -- some questions.

1 A -- my confession first. When court started, I didn't want to put [REDACTED] in jail because
2 I didn't feel like deeming somebody for doing wrong. I just was hoping he would just
3 stay away from me and my mother. Because I have known him since I was nine years
4 old, and him and I never got along a lot, but when we did -- I never had a
5 father-figure in my life, and I didn't want to put him in jail because -- because he
6 cared about me a lot.

7

8 THE COURT: Do you want to carry on with your question,
9 Ms. [REDACTED]

10

11 Q MS. [REDACTED] Ms. [REDACTED], I'm going to continue with the
12 question I started before your confession. And you agreed with Ms. [REDACTED] that you
13 spoke at a preliminary inquiry in December 3rd of 2012 -- or December of 2012; is
14 that right?

15 A Correct.

16

17 Q Okay. I'm going to read to you from a transcript questions and answers, and I would
18 like you to listen to them. The questions are from Ms. [REDACTED], and the answers are
19 from you.

20

21 MS. [REDACTED] I -- I just want to be careful, and I -- and I have
22 an objection to register. I just want to be careful that my friend is not leading an answer
23 out of the complainant. Certainly she is entitled to ask broad open-ended questions, but if
24 she's endeavouring to elicit a particular response or get her to adopt something she is
25 saying, I think that amounts to a leading question and is prohibited, even in redirect, Sir.

26

27 THE COURT: Are you -- let's have this discussion in the
28 absence of the jury.

29

30 MS. [REDACTED] Certainly.

31

32 THE COURT: Thank you.

33

34 MS. [REDACTED] And the witness.

35

36 THE COURT: And the witness, yes. Thank you.

37

38 (JURY RETIRES)

39

40 THE ACCUSED: May I ask is it possible I step out for a wee
41 bit? Yeah, is it okay if I step out for a bit?

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THE COURT: Thank you, Madam Clerk. If we can have the witness step out for a moment. Thank you.

(WITNESS STANDS DOWN)

THE COURT: Thank you.

Submissions by Ms. [REDACTED] (Re: Potential Re-examination)

MS. [REDACTED] And I'll just say -- I'll indicate right out where I'm going with this. My friend cross-examined Ms. [REDACTED] extensively about mentioning things for the first time today, including saying that she mentioned for the first time that she was held by the neck and that the accused put his fist to her head, and eventually Ms. [REDACTED] conceded that this is the first time she's told anyone about this. My reference will be to a preliminary inquiry transcript with questions from Ms. [REDACTED]. This is at page 71 of that transcript. It's a transcript that includes several dates of proceeding, but this particularly concerns December 3rd of 2012. Questions from Ms. [REDACTED], who was counsel for Mr. [REDACTED] at the time.

Q Face-to-face. Okay. Can you please describe how he was holding his arm against your neck or his hand? I'm not sure what you mean by chokehold.

A Like that.

Q So he's got two hands crossed over each other --

A No.

Q -- your neck?

A No. He had one, and it's completely covered neck, and he had a fist to my temple, and I thought he was going to kill me.

My reason for asking these questions is that the -- the sworn testimony of her does show that she did tell someone before. Realizing that she has conceded that she didn't, I think that it's proper to raise this in re-exam -- or, pardon me, in my reply. It has just been brought up in the cross-examination of Ms. [REDACTED]. I don't think that presenting to her her questions and answers from the preliminary inquiry is improper in this instance. I am directing her to particular testimony that she has had in the past, but I'm not going to be asking her isn't that right or anything like that. I just want to have her indicate that she has said those passages before.

1 **Submissions by Ms. [REDACTED] (Re: Potential Re-examination)**

2

3 MS. [REDACTED] Sir, in light of that, if that's all that is
4 happening with it, I am content to have -- in terms of procedure, I think it would probably
5 be fair to have her read it and then say this is what I said, but I -- I think I have gone
6 where I need to go with this witness so I'm content to have my friend do it.

7

8 **Ruling (Re: Potential Re-examination)**

9

10 THE COURT: Yeah, I -- we may all have views of --
11 preliminary views of the -- this witness, but can't guess what the jury is thinking. It
12 seems to me it would be a little unusual -- without giving the witness a chance to at least
13 review the transcript in the sense of refreshing her memory, it would be a little unusual to
14 read to her her questions and answers and then ask her effectively to adopt them, which
15 sounds -- sounds like cross-examination. Whether or not you ask her the next question,
16 which is isn't that what you said, it -- I'm not trying to do your job for you, but I'm
17 trying to be as fair as possible. Clearly, there is some suggestion in that, what you have
18 just read to me, read to us, that her answer to Ms. [REDACTED] may have been inaccurate in
19 terms of what she may have said previously. I'm sure this witness has not memorized the
20 preliminary inquiry transcript. She should then be given an opportunity to look at her
21 own evidence and then be asked the question.

22

23 MS. [REDACTED] Yes.

24

25 THE COURT: Something along the lines of -- in a very
26 general non-leading question -- something to the effect that she said to Ms. [REDACTED] that she
27 agreed with Ms. [REDACTED] that this was the first time she had ever said anything about a
28 hand being held to her -- a fist being held to her temple and did she give that evidence
29 previously, or some -- something to that effect. Does that make sense?

30

31 MS. [REDACTED] Yeah.

32

33 MS. [REDACTED] I think the comment might -- and I apologize. I
34 can't remember exactly what question I asked. I knew there was a comment made about
35 the neck. And I know I had followed a line of inquiry involving her saying -- putting
36 towards a previous statement with her indicating, no, his hands were never on my neck,
37 but I don't know exactly what the question I put to her was. And I'm not disputing it
38 went down this line of inquiry, and I suspect my friend was in a better position to be
39 taking notes than I was at the time.

40

41 THE COURT: Well, and so should I have been. Let me just --

1 I -- my memory is that -- just give me a moment.

2
3 Yeah, my note is that with respect to the aspect of Mr. [REDACTED] putting his fist to her
4 temple, she agreed that was only a more recent memory. That may not have been
5 everything she said about it, but in the context of all the cross-examination the jury might
6 be left with the impression that that aspect of her evidence is a lot like other aspects of
7 her evidence where she clearly did say in answer to cross that she was only remembering
8 certain things today. So I think you should certainly be given the opportunity to let the
9 witness have a look at what she said at that -- on that date of preliminary inquiry and then
10 in a -- in a manner consistent with evidence-in-chief ask her if she agrees she said that or
11 something to that effect, and the jury will then be informed of what she says about the --
12 and I'm assuming she'll agree that she did say that or she'll say she doesn't remember.
13 Who knows what she'll say. So that would be my direction, but I'm going to stop short
14 of telling you what the question ought to be. Not my job.

15
16 MS. [REDACTED] Darn.

17
18 THE COURT: Sorry, I'm going to put you on the spot.

19
20 MS. [REDACTED] That's all right.

21
22 THE COURT: Now, was there any other part of the
23 preliminary inquiry transcript, Ms. [REDACTED], you wanted --

24
25 MS. [REDACTED] No.

26
27 THE COURT: -- to refer to?

28
29 MS. [REDACTED] It's specifically that, and then I will have a
30 follow-up question to her after whatever her answer may be, but I -- that will be the
31 extent of my --

32
33 THE COURT: Okay.

34
35 MS. [REDACTED] -- re-examination as well.

36
37 THE COURT: Okay. Thank you very much. Then we can
38 ask the jury to come back in. Thank you, Madam Clerk.

39
40 Do you have another witness this afternoon, Ms. [REDACTED]?
41

1 MS. [REDACTED] There is an officer who I anticipate to be a
2 shorter witness, and he would appreciate the ability to testify today, given that he has to
3 fly out tomorrow on the RCMP plane. But I think I will wait until we see what time we
4 are actually done with Ms. [REDACTED]

5
6 THE COURT: Sure --

7
8 MS. [REDACTED] -- or, pardon me, with Ms. [REDACTED]-

9
10 THE COURT: Yes.

11
12 MS. [REDACTED] -- before I do that.

13
14 THE COURT: Yes. Okay.

15
16 (JURY ENTERS)

17
18 THE COURT: All members of the jury are present?

19
20 MS. [REDACTED] Yes, they are.

21
22 MS. [REDACTED] Yes, Your Honour -- My Lord.

23
24 THE COURT: Thank you. Please be seated.

25
26 [REDACTED], Previously Sworn, Re-examined by Ms. [REDACTED]

27
28 Q MS. [REDACTED] Ms. [REDACTED], just before we took a break, I
29 began talking to you about a preliminary inquiry transcript, and I'm going to provide it
30 to Madam Clerk to provide to you. Oh. Thank you. Ms. [REDACTED] actually has another
31 copy of it, and I'm just going to locate the portion that I wish you to look at.

32
33 THE COURT: Thank you.

34
35 THE COURT CLERK: Page 71, Sir.

36
37 THE COURT: Thank you.

38
39 Q MS. [REDACTED] Ms. [REDACTED] (sic), if you can start looking just
40 about halfway down that page and read the questions and answers that are there,
41 please -- not out loud, but to yourself.

1
2 Ms. [REDACTED] (sic), did you read those questions and answers? Oh, sorry. Ms. [REDACTED] -- I
3 keep saying Ms. [REDACTED]. Ms. [REDACTED], did you read those questions and answers?

4 A Yes, I did.

5
6 Q Okay. So that was on page 71 and the bottom half of that page?

7 A Correct.

8
9 Q Does it refresh your memory as to what you may have talked about at the preliminary
10 inquiry?

11 A Yeah. Yes, it does.

12
13 Q Okay. And in the context of the questions you were asked about mentioning a fist to
14 the head and a hand on your neck?

15 A Correct.

16
17 Q What can you tell the Court then about whether or not you have said that before,
18 whether or not you have said that the accused had his hand on your neck and a fist to
19 your head?

20 A Can you restate your question?

21
22 Q Sure. Perhaps if you could put page 71 in front of you and look at the portion that I
23 asked you to look at.

24 A What would you like me to tell you?

25
26 Q Those are all my questions. Thank you.

27
28 THE COURT: Thank you very much. May this witness be
29 excused?

30
31 MS. [REDACTED] Yes, she may.

32
33 THE COURT: All right. Thank you very much, ma'am.
34 You're excused.

35
36 (WITNESS STANDS DOWN)

37
38 MS. [REDACTED] And I am going to basically be giving the jury
39 their exercise. I'm going to be asking them if they -- the Court if they could ask -- if you
40 could ask the jury to be absent for a moment, please.

1 THE COURT:

Yes. Thank you very much.

2

3 (JURY RETIRES)

4

5 **Submissions by Ms. [REDACTED] (Directed Verdict Options)**

6

7 MS. [REDACTED] It's a situation where unfortunately one can
8 only take as much -- or can offer as much assistance as I can to a person and only as
9 much as they will take, but in this instance, My Lord, I am not going to be asking you to
10 put to the jury that they convict upon the evidence of [REDACTED]. I'm not sure of the
11 exact procedure to go through with that, but I can indicate that the other evidence that
12 was to be called by the Crown, now that the statements are excluded, I don't think would
13 rehabilitate what has happened here, and I don't propose to have the matter of conviction
14 put to the jury.

15

16 **Discussion (Directed Verdict Options)**

17

18 THE COURT:

I understand. In terms of procedure, I have had
19 some -- and I don't know if this is a case for a directed verdict or not. If it were, it
20 would be essentially -- and I -- and I'm not sure if it's on a consent basis or not. I have
21 had some occasion to direct a verdict. That's the only reason I mention it. There may be
22 another way of dealing with this.

23

24 Ms. [REDACTED], do you have any thoughts about what the next step is if the Crown is
25 essentially closing its case and not seeking a finding of guilt on any of the counts?

26

27 MS. [REDACTED]

I actually am not familiar with what the
28 appropriate procedure would be. I am open to the Court's suggestion. Then perhaps if
29 the Court has had experience with it and can advise us what has been done in the past, we
30 can perhaps discuss it and see if there is something we agree on.

31

32 MS. [REDACTED]

I think even though there has been evidence on
33 each of the specific counts, I think that by agreement we could say that it is not
34 evidence -- is not reliable evidence that the jury would be able to convict upon, and I
35 think that it might be, I guess, a close call, but I think that if by consent we could still
36 agree that it was a directed verdict that that could be the way to do this.

37

38 THE COURT:

Okay. That may well be the way to go. My
39 memory on the law around directed verdict is that it's an extraordinary finding and
40 direction to a jury. They are, after all, entitled to make the factual determinations, but
41 there are some cases where the evidence put to a -- the evidence is of such of a nature, if

1 I can euphemise a little bit, that to put it to a jury reasonably instructed one could have no
2 confidence the jury could properly convict on that evidence. It's essentially the test -- I'm
3 sure I've used some wrong words there, but I'll come back to it and clean it up if I need
4 to. What I would like to do, though, is take a brief adjournment to inform myself that
5 that is the appropriate procedure or -- and to make sure there isn't some other procedure
6 that is more compelling than that.

7
8 MS. [REDACTED] Yes.

9
10 THE COURT: I suppose the only other thing that comes to
11 mind, Ms. [REDACTED], is -- is the Crown -- have you considered a stay or simply -- it's not a
12 situation where you're calling -- I guess you are calling no further evidence and inviting
13 the Court, but -- it would be an easy thing to do if it was a judge alone trial, but it's not,
14 so we still -- it's either directed verdict or something else. A stay may not be what you
15 think is appropriate in all of the circumstances. I don't know.

16
17 MS. [REDACTED] And -- and that is where I'm coming from. I
18 have considered a stay, but I think where the evidence has been heard, I think in this
19 instance that this accused -- that he has a right to an acquittal rather than a stay of the
20 proceedings in this instance.

21
22 THE COURT: And I was thinking of that, too. I don't want to
23 put anyone on edge. It wasn't as though I was inviting you to stay the charges rather
24 than invite an acquittal because --

25
26 MS. [REDACTED] Yes.

27
28 THE COURT: -- that doesn't necessarily leave Mr. [REDACTED]
29 where he wants to be or, for that matter, where he's entitled to be. Let's take a few
30 minutes. I don't expect it will be very long. We'll find a way to deal with this in the
31 most appropriate fashion.

32
33 MS. [REDACTED] Yes.

34
35 THE COURT: And I don't think in the end result the jury will
36 be ultimately inconvenienced by it. I'll let Madam -- I'll let Madam Clerk know
37 somehow when I am ready to come back.

38
39 MS. [REDACTED] Yes, Sir.

40
41 THE COURT: Thank you very much.

1
2 (ADJOURNMENT)

3
4 THE COURT: Thank you. Please be seated.

5
6 So I hope you're not looking at me for an answer. We have to have a further discussion.
7 When I had mentioned I had had some experience directing verdicts, it was in the context
8 of a case in which I concluded the Crown had failed to prove an essential element of the
9 offence. It had nothing to do with weight or credibility. In this case, it's all about
10 credibility, it seems to me.

11
12 MS. [REDACTED] Yes.

13
14 THE COURT: Not whether or not there is absent evidence on
15 some essential element of each of the essential elements of the various offences that have
16 been charged. And so when I look at the law, and there are a number of cases from the
17 Supreme Court of Canada which have been applied in the trial courts, Court of Appeals,
18 on this point, the law appears to be that it's inappropriate for a judge sitting with a jury to
19 direct a verdict when there is some evidence, which a jury properly instructed -- on which
20 a jury properly instructed could in their own good judgment put weight on and therefore
21 convict.

22
23 The -- what I couldn't find in any of the cases in my ten minutes of research was what --
24 whether it makes any difference that the Crown is essentially consenting to that type of
25 directed verdict procedure. And the apprehension that we all have is whether if the -- if
26 this jury is directed by me to -- or if I take the case away on the basis of a directed
27 verdict and then direct for an acquittal, will that result in further proceedings. I doubt that
28 very much given the Crown's position, but that's only one consideration, what's also
29 relevant is whether we're doing the right thing here in accordance with the law.

30
31 Now, there are -- something I considered but haven't had a chance to get to the bottom of
32 at all is whether it's possible to permit a re-election to occur at this time, which would
33 then -- if it's possible, and I don't know under the *Code*, haven't looked, if it's possible
34 once the jury has been sworn to -- the parties agree to re-elect, then the case is before a
35 judge alone and that straightens things out considerably.

36
37 The -- another option that I'm informed has been -- has occurred is that where there is
38 good reason to declare a mistrial, the jury is excused, and the parties agree to carry the
39 trial on before a judge alone, and then the result can unfold. I'm just not sure whether
40 there is any reason why a mistrial would be granted, even on a consent basis. I'm not
41 sure if I have jurisdiction to grant a mistrial on a consent basis. I haven't looked at that.

1
2 Another option exists, and I'll -- I'll outline it for you, but it's not without, in my view, at
3 least a hypothetical risk, and it's this. We bring the jury back. We tell the jury -- I --
4 we -- I tell the jury that the Crown intends to call no further evidence, and that it is the
5 Crown's position that based upon the evidence they have heard a verdict of not guilty
6 should be entered on account of the Crown's position that the jury could not find on this
7 evidence that there is proof beyond a reasonable doubt on each and every one of the
8 offences on the indictment. I would also have to indicate, however, to the jury that the
9 defence at this stage of the trial intended to call no evidence, but, of course, that the
10 defence joined the Crown's submission with respect to the outcome. I would also then
11 instruct the jury that while the case remains for the jury to decide on the facts, in my
12 view once they have taken into account the evidence they have heard, that I would also --
13 I can't -- I would tell them I can't tell them what to do, because I can't, but I can instruct
14 them in no uncertain terms about the -- the difficulty of proof beyond a reasonable doubt
15 having been achieved when the evidence -- this evidence is of such a tenuous nature. I
16 haven't drafted that. The difficulty, the hypothetical difficulty, and perhaps we all think
17 the jury will then go away and come back with a verdict of acquittal or a finding of not
18 guilty, but if they do convict on one or more of the offences, the question then is what
19 does one do. Some think that that would amount to -- in the circumstances would amount
20 to a perverse verdict, which would then enable me not to enter the verdict and direct an
21 acquittal. I'm not so sure about that. There is law in the *Morgentaler* case, for example,
22 which recognizes that while a jury has to be instructed to follow the law and to accept the
23 trial judge's instructions on the law, the jury can ignore the law when they're back in the
24 room deliberating, and they can come back with a perverse verdict that is inconsistent
25 with the law, and their fact findings are also obviously entirely within their domain. So
26 the notion that after all is said and done and a jury comes back with a verdict that no one
27 here perhaps thinks is appropriate, if they do that anyway in their own good judgment,
28 I'm not convinced that a -- that a -- that not entering that verdict would be appropriate, at
29 least Mr. [REDACTED] is in some way harm's way potentially.

30
31 Those are the options that I have been able to explore in my own mind with the aid of a
32 handful of research assistants in red robes upstairs and a little bit of research on the
33 appropriateness of directing verdicts. So your thoughts?

34
35 One thing occurred to me, and I apologize, I should stop talking at some point, my
36 thoughts -- one thought I had is that counsel may wish to inform themselves about the --
37 in their -- as they see fit to do so about the appropriate way of proceeding, and that would
38 take us over to the morning, I expect, realistically.

39
40 I'm not overly concerned about letting the jury go and bringing them back tomorrow
41 morning. That's frankly part of what the jury signed on for. But it's just that this is a --

1 I'd say a unique, not inappropriate, but a unique situation, and I think I don't -- to the
2 extent possible, I would like to handle it in a manner that is in keeping with good law and
3 procedure. So I am going to stop talking now and would welcome your thoughts.

4
5 MS. [REDACTED] I don't mind at all either if things are to be set
6 over. The only thing that comes to my mind, and I think I should say it before I forget it,
7 as you were speaking and your worry was that if we were to put it to the jury even with
8 an instruction that it's dangerous to convict and that -- and with the expectation that they
9 would likely come back with a not guilty verdict, you indicate that the concern there is
10 that the jury would go against your instruction and would -- or might go against your
11 instruction. So but what we're talking about with a directed verdict is that it is a jury
12 who's -- a jury who was acting judiciously, and so I think we can still -- could still come
13 back to the directed verdict because -- and as you have said, for the worry that if we put
14 it to the jury is that the possibility of conviction would happen if they were acting outside
15 of your instructions. Where we have directed -- or the test for the directed verdict is a
16 jury could not reasonably convict if they were acting judicially with the proper instruction
17 on -- or judiciously with the proper instructions on the law. So I do think it can still
18 come back that they can do a directed verdict, and it wouldn't necessarily have to be
19 based on consent of the Crown, but rather that the Crown will close its case, and the
20 argument and the instructions that you would have had to provide to the jury based on the
21 Crown closing its case on this point would have to essentially lead them to an acquittal.
22 And if it did not lead them to an acquittal, then they would not be acting judiciously. So
23 I think --

24
25 THE COURT: Okay.

26
27 MS. [REDACTED] -- I'm just circling around and around and
28 around and. . .

29
30 THE COURT: No, and I understand -- I understand the thread
31 of your argument. I can tell you that from what I have read, the cases -- and I can
32 provide you with cites presently -- *Monteleone* is the core case, and there have been a
33 number of cases in the Supreme Court of Canada, at least two since that case was
34 decided, very clearly state and set aside directed verdicts. Now, there is a dissent in one
35 of the cases, but it's a dissent. Whether I prefer that dissent or not is not -- is of no
36 moment. The case law is quite clear as far as I have been able to unearth it on short
37 notice that if there is any evidence that the jury is entitled to weigh, it's their job to do so.
38 As I say, none of the cases deal with a consent situation. And -- and, Ms. Joyce, if I'm
39 unable to tell the jury that essentially the Crown is consenting to a directed verdict or the
40 Crown is consenting to my instruction to them --

1 MS. [REDACTED] Yes.

2

3 THE COURT: -- that they acquit, for all intents and purposes,
4 I would have even more concern that they may -- they may bring back a verdict which is
5 inconsistent with the -- what we're discussing here. Part of the problem with the scenario
6 that I set out where we do actually let the jury go back and deliberate is that they would
7 be doing so on the basis of a final outcome, so the defence would have no final
8 opportunity at that point to call a defence.

9

10 MS. [REDACTED] Yes.

11

12 THE COURT: I don't know if at this point you've already
13 made your mind up, Ms. [REDACTED]s, about whether you intend to call any evidence. That may
14 be an non-issue; I don't know. But with -- to go back to directed verdict, I'm at this point
15 not persuaded that I -- that it is proper procedure to direct a verdict based on evidence
16 that has to be weighed. I may be argued out of that position, but right now I'm just
17 telling you what I have read in the case law --

18

19 MS. [REDACTED] Yes.

20

21 THE COURT: -- on very high -- a very high authority and
22 quite recent, two thousand -- you know, late '90s, 2000s cases. We're not talking about
23 1950s. Nothing wrong with the 1950s.

24

25 Ms. [REDACTED]

26

27 MS. [REDACTED] Sir, I can advise that I would be extremely
28 uncomfortable with a third of the options that you have given, largely because in this
29 circumstance I think all of the parties here are of the view the -- an inappropriate
30 conviction, if that did come back, and in light of that I can't possibly agree to that on --
31 even if it is only a hypothetical possibility that the jury may come back with that -- with
32 that verdict, so I can't advise my client to accept that option. That being said, I don't -- I
33 don't have another solution at present.

34

35 What I would suggest we do, Sir, it sounds like all of us are trying to come up with a
36 way to get to the same end result, so perhaps what would be most productive, Sir, is to
37 adjourn for the day, allow the jury to leave, and then we can all continue our research this
38 evening and see if we can not come up with something that's productive -- or another
39 possibility for the morning.

40

41 THE COURT: Okay. I welcome that suggestion. I think it's

1 the right way to go. Have a look, if you will, at the possibility of a re-election under the
2 *Code*.

3
4 MS. [REDACTED] Yes.

5
6 THE COURT: These election/re-election provisions are highly
7 technical. You'll know that better than me. There may be a way to deal with this on the
8 basis of a consent re-election. And consider the other options that I have -- I have
9 mooted with you. I'm going to -- I'll keep looking at it, too, but I'll rely on hearing from
10 you in the morning. And perhaps we can come back at 9:30 --

11
12 MS. [REDACTED] Yes.

13
14 THE COURT: -- and ask the jury to come back at 10. 9, 9:30,
15 whatever suits you. So that whatever we're doing -- I take it, Ms. [REDACTED], it's fair to say
16 that whatever else happens here, you're calling no further evidence.

17
18 MS. [REDACTED] Oh, absolutely.

19
20 THE COURT: Okay. And so then it's really only a matter of
21 whether the defendant intends -- defence intends to call any evidence.

22
23 If worse comes to worse, we're addressing the jury in the morning. Your addresses may
24 be very, very short. And then I need to address, again since we're speaking about
25 hypotheticals here, then I charge the jury. And depending on what you say, I would
26 rather not spend a lot of time working on a charge, but I would like you to have some
27 opportunity to see it before I deliver it. Just by virtue of the number of counts on the
28 indictment, it's going to be a little bit complicated, but it doesn't need to be very long.
29 So at the end of the day if we need this jury to deliberate in the ordinary fashion, I expect
30 they could be addressed and charged before noon, and then they go to work. That's the --
31 sort of the -- that's perhaps not what anyone wants to see happen here, but you know, as I
32 say, my intention would be to deal with this in a correct legal fashion.

33
34 I'll give some further thought with regard to whether I can direct a verdict without -- and
35 here is the last thing I want to say, Ms. [REDACTED]. I had the impression, and I'm not trying
36 to put you on the spot, but I had the impression this was essentially a consent matter, and
37 I have some trep -- I have some concern that if I'm unable -- if all I can tell the jury is
38 that the Crown intends to call no further evidence and the Crown would be inviting you
39 in your opening -- in your closing address to acquit or to make a finding that there is
40 insufficient proof beyond a reasonable doubt, that's not quite the same thing as consent,
41 but at least I would need to have comfort that I could tell the jury on a directed verdict

1 kind of basis that that is the position of the Crown. Is that -- can I go that far?

2

3 MS. [REDACTED] When I -- when I said earlier that you wouldn't
4 have to rest your decision on whether or not the Crown was consenting, we would
5 absolutely consent that this should be a directed verdict. I just meant to say that if the
6 authorities don't give you specific guidance where the Crown has consented, that doesn't
7 necessarily have to be a factor in your consideration of whether or not you can find a
8 directed verdict.

9

10 THE COURT: Okay.

11

12 MS. [REDACTED] But we are certainly consenting. I -- I do not
13 think that this matter should -- I think it would be dangerous to convict on the evidence
14 of Ms. [REDACTED], and I don't wish to see this jury, by either mistake or not, or going
15 around any kind of instructions coming back with a verdict of guilty.

16

17 THE COURT: Okay. All right. That helps me. That still
18 be -- may be the way to go. I just need to satisfy myself. And you can have a look at
19 some of the cases, too. They're easily found.

20

21 MS. [REDACTED] Yes.

22

23 THE COURT: That with consent, given the Crown's position,
24 however it is -- however it's styled, that perhaps all of the cases that say I can't do this
25 are distinguishable.

26

27 MS. [REDACTED] Yes.

28

29 THE COURT: So I -- but I need to look at that a little bit
30 more, and I see no -- there is no good in keeping the jury waiting any -- any longer this
31 afternoon for that to unfold. So my proposal, finally, would be to have them come back
32 in.

33

34 MS. [REDACTED] Yes.

35

36 THE COURT: Thank them for their efforts today and ask them
37 to come back at 10:00 tomorrow morning.

38

39 MS. [REDACTED] Yes.

40

41 THE COURT: Thank you.

1

2 MS. [REDACTED] I'm just going to step outside, Sir. The mother
3 of [REDACTED] indicated she wished to be in here when an acquittal was read, but I just
4 wish to let her know that that won't be happening today.

5

6 THE COURT: All right. Oh, I'm sorry. Yeah, please bring
7 them back.

8

9 MS. [REDACTED] It appears that the elder Ms. [REDACTED] also
10 changes her mind. She is no longer present, so. . .

11

12 (JURY ENTERS)

13

14 THE COURT: Thank you. I find the jury is present.

15

16 MS. [REDACTED] Yes, My Lord.

17

18 THE COURT: Please be seated.

19

20 Ladies and gentlemen, I can inform you of a couple of things. One is that your having
21 heard the evidence of the complainant, [REDACTED], the Crown has advised -- and I'll
22 ask you, Ms. [REDACTED], to confirm -- that that is case for the Crown.

23

24 MS. [REDACTED] Yes. I am calling no further evidence beyond
25 the evidence of [REDACTED].

26

27 THE COURT: Thank you very much.

28

29 In the circumstances, and having had a discussion with counsel in terms of moving
30 forward with this case, there are matters that we need to discuss or to consider between
31 now and tomorrow morning, which will then lead us, me and/or counsel, in a certain
32 direction or otherwise. We're unable to come to a conclusion this afternoon. I expect we
33 will be able to come to a conclusion at some point tomorrow, one way or the other in this
34 case. Just how that unfolds, however, is something that we need to give some further
35 consideration to. And so in those circumstances, I'm going to adjourn the trial over until
36 tomorrow morning at 10:00, and I thank you for your efforts so far today and look
37 forward to seeing you tomorrow at 10:00.

38

39 THE JURY OFFICER: Thank you, My Lord.

40

41 THE COURT: Thank you very much.

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(JURY RETIRES)

THE COURT:

All right. 9:30?

MS. [REDACTED]

Yes.

THE COURT:

That works? Okay.

THE COURT CLERK:

be sealed?

Sir, can I just ask if you wish this Exhibit A to

THE COURT:

That was the. . .

THE COURT CLERK:

Usually jurors --

The letter from the juror that was excused.

THE COURT:

I would think so.

THE COURT CLERK:

Thank you, Sir.

THE COURT:

Yes. Anyone have a difficulty with sealing it?

MS. [REDACTED]

No, not at all.

THE COURT:

Thank you. Have a nice evening.

MS. [REDACTED]

Thank you, My Lord.

PROCEEDINGS ADJOURNED UNTIL 9:30 AM, OCTOBER 9, 2013

1 Certificate of Transcript

2
3 I, [REDACTED], certify that the foregoing pages are a complete and accurate transcript of
4 the proceedings, taken down by me in shorthand and recorded by a sound-recording
5 machine and transcribed from my shorthand notes to the best of my skill and ability.
6

7
8 Digitally Certified: 2014-01-10 10:49:22

9 [REDACTED], CSR(A)

10 Order No. 43196-13-4
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35 Pages: 47
36 Lines: 1961
37 Characters: 59795

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39 File Locator: d91e78807a1e11e3aafd0017a4770810
40 Digital Fingerprint: 64963becce33ffb482c7558503437f40b3e59ee6726497ca03ca34178272c554
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 October 9, 2013

Morning Session

4

5 The Honourable

Court of Queen's Bench
of Alberta

6 Mr. Justice [REDACTED]

7

8 S.L. [REDACTED]

For the Crown

9 T.E. [REDACTED]

For the Accused

10 C. [REDACTED]

Court Clerk

11 N. [REDACTED]

Court Clerk

12 C. [REDACTED] CSR(A), RPR

Official Court Reporter

13

14

15 **Discussion (Directed Verdict Options)**

16

17 THE COURT:

Good morning.

18

19 MS. [REDACTED]

Good morning, Sir.

20

21 THE COURT:

Please be seated.

22

23 Let me tell you with what's on my mind before I hear from you -- although I'm happy to
24 hear from you, of course. My research overnight and this morning has led me to at least
25 a tentative conclusion that a re-election is possible on a consent basis and would be the --
26 from a legal point of view, would be the most appropriate way to deal with this, the issue
27 of resolving this matter. Any thoughts about that?

28

29 MS. [REDACTED]

That's -- that's actually the procedure that

30 Ms. [REDACTED]

and I were just talking about this morning to -- not that we couldn't -- or I
31 don't think that we definitely couldn't go the other way, but I think the re-election is the
32 appropriate way to go.

33

34 THE COURT:

Yeah. Fair enough.

35

36 Ms. [REDACTED]

37

38 MS. [REDACTED]

That's fair. And my friend and I did have
39 some discussion this morning, and while neither of us think this is an actual concern, we
40 want to make it abundantly clear on the record, and particularly I wanted to make it clear
41 on the record, that the purpose of the re-election is totally to allow this Court to impose

1 an acquittal. Certainly neither my friend nor I intend to make argument about it, and
 2 certainly it's -- was our perception that the Court is prepared to enter acquittal, but we
 3 wanted that on -- on the record so that it was clear that we're not --

4
 5 THE COURT: Yes, I -- and I appreciate your apprehension
 6 and, quite rightly, you want to have some certainty that I won't then entertain a finding of
 7 guilt on any of the counts before the Court. I think that's -- that is a fair conclusion, that
 8 I will not.

9
 10 Okay. So it seems to me in terms of procedure that I need to inform the jury that there, I
 11 think, has been or will be, it's just a matter of timing, a consent re-election to a Queen's
 12 Bench judge alone, which will then enable me to thank them for their service and
 13 discharge them. I think the re-election probably has to take place first. And we are on
 14 the record, of course. So are you, Ms. [REDACTED] in a position now to confirm that you are
 15 consenting to a re-election and that the accused is wishing now to re-elect to judge alone?

16
 17 MS. [REDACTED] I'm in a position to confirm that, Sir. Under
 18 Section 561 I think normally there would be required written notice as to the application
 19 to re-elect by the accused, and I am prepared to waive any requirement of that by the
 20 Crown. And so then we're now kind of in an informal hearing as to the re-election. I'm
 21 prepared to give my consent on the record, and I have an informal handwritten consent
 22 that I can actually file at this point as well just so that there is a document on the record.

23
 24 THE COURT: Okay. Terrific.

25
 26 MS. [REDACTED] I think that requires a written -- my written
 27 consent, and I do give that.

28
 29 THE COURT: All right. And it is -- you have instructions, of
 30 course, that your client wishes to re-elect to Queen's Bench judge alone?

31
 32 MS. [REDACTED] That's correct, Sir.

33
 34 THE COURT: All right. So that's done.

35
 36 **Re-election**

37
 38 THE COURT: So all we need to do at this stage then, I think I
 39 need to discharge the jury, and then I will -- subject to any further submissions, I will
 40 conclude the case.

41

1 **Discussion**

2

3 MS. [REDACTED] Just in my reading on what happens when there
4 is a re-election, I think that there will have to be a formal application that the evidence
5 that was heard before the jury in what will now be a prior proceeding will be put before
6 this Court. But other than that, I think -- I think that's the only additional step that's
7 required.

8

9 THE COURT: Okay. And we can deal -- deal with that
10 formality once we have discharged the jury.

11

12 MS. [REDACTED] Yes.

13

14 THE COURT: Make sure I do that before I proceed to make
15 any other findings. Okay. So now I don't -- I don't know if the jury has yet attended.
16 They're probably here, but I don't know for sure.

17

18 THE COURT CLERK: 9:45, Sir, I'm advised.

19

20 THE COURT: 9:45?

21

22 THE COURT CLERK: Yeah.

23

24 THE COURT: Okay.

25

26 THE COURT CLERK: They're meeting on the other side of the
27 building.

28

29 THE COURT: Okay. So let's take a quick adjournment. And,
30 Madam Clerk, if you can let me know when the jury is ready --

31

32 THE COURT CLERK: Certainly, Sir.

33

34 THE COURT: -- when we're ready to bring them back in.

35 Thank you very much.

36

37 (ADJOURNMENT)

38

39 THE COURT: Thank you. Good morning again. Please be
40 seated.

41

1 I think we can bring the jury in. Thank you, Madam Clerk.

2

3 (JURY ENTERS)

4

5 THE COURT: The jury is present and accounted for, Counsel?

6

7 MS. [REDACTED] Yes.

8

9 MS. [REDACTED] Yes.

10

11 THE COURT: Thank you very much. Ladies and gentlemen,
12 please be seated.

13

14 Ladies and gentlemen, this -- in some ways this has been a brief and somewhat unusual
15 case and so far as your involvement is concerned it's about to get even briefer. The
16 reason for that is that, as the parties are entitled under the *Criminal Code*, a decision has
17 been made with the consent of the Crown that the accused wishes to re-elect to have this
18 case continue in the absence of a jury but in the presence of a Queen's Bench judge
19 alone. And that is a procedure which is open to the defence upon the consent of the
20 Crown even at this stage of the trial. It is my duty, therefore, to thank you very much for
21 your attendance starting yesterday. The trial, of course, started Monday, but certain
22 matters had to be dealt with in your absence on Monday. I want to -- I'm grateful, and
23 the parties are grateful, for your attendance yesterday, and of course as well this morning,
24 and for your serving this important public function as jurors.

25

26 I hope you're not too disappointed that you won't have an opportunity to deliberate and
27 make a final decision on the evidence in this case, but as I say, this is an unusual, but not
28 unprecedented, development in jury trials. The case will, therefore, continue briefly this
29 morning before me, and I will make a decision as to the outcome.

30

31 And my last task, aside from once again thanking you for your attendance, is to formally
32 discharge you as the jury in this case. Thank you very much. You're free to go.

33

34 (JURY EXCUSED)

35

36 THE COURT: All right. So as we discussed, someone needs
37 to make an application. I presume the Crown.

38

39 MS. [REDACTED] Yes.

40

41 THE COURT: All right.

1

2 MS. [REDACTED] I make the application that the evidence that
3 this Court has heard while it was sitting with the jury, and that's the entirety of the
4 evidence from the voir dire and then through to the evidence heard yesterday with the jury
5 present, be applied to this trial. I think there is authority that even where there has been
6 no transcript that it can be -- the evidence given can be deemed to be read in as you heard
7 it yourself over the past two days, My Lord.

8

9 THE COURT: Yes. And I'm sure you don't have any problem
10 with that application, Ms. [REDACTED]?

11

12 MS. [REDACTED] I -- I don't have any problem with that.
13 Though, just for clarity of the record, I don't think the evidence from the voir dire would
14 form part of the trial proper before you, particularly given your findings in the voir dire.
15 I know you have heard it all, but in terms of what would be considered, and it's just
16 simply technical, but certainly the evidence from yesterday would be properly before you,
17 and I certainly consent to that application.

18

19 THE COURT: I think -- I thought briefly about whether -- you
20 know, what status the voir dire evidence would be, without getting too uptight about that,
21 of course, the findings are that the statements from the voir dire are inadmissible for the
22 reasons given.

23

24 MS. [REDACTED] Yes.

25

26 THE COURT: The other evidence that came out in the voir
27 dire may or may not be properly before me. I'll assume it is, but I can tell you that it
28 makes no difference in terms of the findings that I will make momentarily with regard to
29 whether the Crown has proved its case against Mr. [REDACTED] beyond a reasonable doubt.

30

31 MS. [REDACTED] Yes.

32

33 THE COURT: On that, before going to that final point, are
34 there any further submissions or issues that need to be dealt with?

35

36 MS. [REDACTED] I think, Sir, where we left off yesterday was I
37 had closed my case, and I'll -- I think I will re-close now that the evidence has been
38 accepted. And I think that it should be put to the accused whether or not he wishes to
39 call evidence and then to continue from there.

40

41 THE COURT: Yes. Thank you.

1
2 MS. [REDACTED] There will be no evidence called on behalf of
3 Mr. [REDACTED] Sir.
4

5 THE COURT: Thank you very much, Ms. [REDACTED]
6
7 Submissions?
8

9 MS. [REDACTED] And I'll formally indicate I'm not seeking
10 conviction on any of the counts that are before you on the indictment, Sir.
11

12 THE COURT: Thank you.
13

14 I don't think I need to hear from you, Ms. [REDACTED]
15

16 MS. [REDACTED] I don't think you do either, Sir. Thank you.
17

18 **Reasons for Judgment**
19

20 THE COURT: So my first observation is to express my -- on
21 my behalf, you can have your own conversation, Counsel, but the conduct of the Crown
22 in this case is admirable. I think it's the right decision, but I'm not convinced that every
23 Crown would have taken what I think is an admirable approach to the case. There is
24 another scenario where the case is simply allowed to unfold, either before a jury or before
25 a judge, and a decision -- you know, other evidence is called and the matter is prolonged.
26 In my view, Ms. [REDACTED], you made the right decision. And I'm grateful for that, and I
27 admire your principled approach to the case.
28

29 With regard to the case itself, of course I made my findings with respect to certain
30 statements that were inadmissible for the reasons given. We heard the evidence of
31 Ms. [REDACTED] which lacked credibility, certainly as a result of cross-examination.
32 And while I'm convinced that no jury reasonably instructed could convict on the basis of
33 that evidence on any of the counts, I'm certainly convinced that sitting on this matter now
34 in a judge alone context, I'm certainly convinced that the case, which hinges entirely on
35 Ms. [REDACTED]' testimony, has not been proved against Mr. [REDACTED] on any of the counts on
36 the indictment on a standard of proof beyond a reasonable doubt. That, of course, results
37 in a finding of not guilty. I am -- and an acquittal, Mr. [REDACTED]. That does not lead me to
38 the conclusion, nor should it lead anyone to the conclusion, that something didn't happen
39 on May 21st, 2011. It simply leads to the conclusion that from my point of view sitting
40 on this matter without a jury, I don't know what happened on May 21st, 2011. All it
41 means is that on the basis of the evidence that was called and was admitted, the Crown

1 hasn't proven its case against you, Mr. [REDACTED], and you are, therefore, acquitted. You are
2 free to go your own way.

3
4 Are there any other orders which are necessary? There is the one exhibit marked A,
5 which is sealed and presumably will stay in the court file.

6
7 THE COURT CLERK: Stays with the file. Thank you, Sir.

8
9 THE COURT: Any other orders?

10
11 MS. [REDACTED] I don't think so, Sir. There were -- I don't
12 believe they were any items seized that could be returned or any kind of forfeiture that
13 I'm required -- or required to ask for.

14
15 THE COURT: Okay.

16
17 MS. [REDACTED] Nothing further from the Crown.

18
19 THE COURT: All right. Ms. [REDACTED], anything else I need to
20 do here?

21
22 MS. [REDACTED]: I don't think so, Sir. I'm just going to double
23 check with Mr. [REDACTED]. No, my understanding is that there was no items seized that need
24 to be returned to Mr. [REDACTED].

25
26 THE COURT: Okay. Very well then. Thank you very much,
27 Counsel, for your efforts. We are adjourned.

28
29 MS. [REDACTED] Thank you, Sir.

30
31 THE COURT: Thank you Madam Clerk -- Madam Clerks and
32 Madam Reporter. Thanks, Officer.

33
34 _____
35 PROCEEDINGS CONCLUDED
36 _____
37
38
39
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41

1 Certificate of Transcript

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3 I, [REDACTED], certify that the foregoing pages are a complete and accurate transcript of
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Pages: 10

Lines: 364

Characters: 10992

File Locator: d91e78807a1e11e3aafd0017a4770810

Digital Fingerprint: 7dea3b8511ab50879360df04cbaa64668dda1c89606875ceadde3c1779e074a0

Detailed Transcript Statistics	
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Page Statistics	
Title Pages:	1
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Total Pages:	216
Line Statistics	
Title Page Lines:	55
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Title Page Characters:	518
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