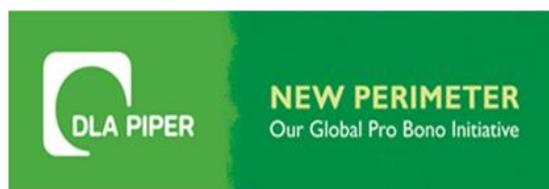




HERBERT
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2019 Asia Access to Justice Week CLE Mock Trial Event **Packet**

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ZALTANU PUBLIC PROSECUTIONS

V

ELTRA PARKER

1.0 Scenario

1.1 Statement of Facts

Eltra Parker is a 28-year-old transgendered person, who was born in the State of Zaltanu. For the past year, Eltra has been working part-time as a delivery driver for PDP, a courier company, whilst studying Chemical Engineering full-time. Eltra comes from a wealthy background and is very private about his/her sexuality, even to the point of keeping it a secret from his/her family.

He/she has been in a relationship with Daine Carriér for the past two years. Daine is 23 years old, unemployed and loves to party. Daine has one prior conviction for possession of a dangerous drug.

As a delivery driver, Eltra is responsible for collecting and delivering various packages. For some deliveries, payment is required upon delivery. Eltra uses his/her own car for the deliveries, but he/she is required to wear a company uniform with PDP's logo.

PDP has been under police surveillance for suspected connections to the drug trade in Zaltanu.

On the 1st of July 2019, Eltra was on a delivery run. Eltra had plans to go to a party after work with Daine, and as such was eager to complete his/her deliveries as promptly as possible. In order to save time, Daine was helping out with the deliveries. On his/her way to his/her third delivery of the day, Eltra was directed, by Senior Officer Strait, to stop at a police checkpoint on Pacific Avenue at the crossroad of Aster Road.

Upon approaching the vehicle, Senior Officer Strait immediately recognised Daine in the passenger seat from a previous arrest. From the outside of the vehicle, Senior Officer Strait saw a packet of cigarettes on the dashboard, two packets of rolling

papers on the back seat, an open envelope containing cash in the centre console, and an assortment of clip-seal bags and empty envelopes on the back seat. Senior Officer Strait then asked Eltra if he/she could search the car. Eltra then responded: "Why? I have nothing to hide."

Senior Officer Strait then asked Eltra and Daine to step out of the vehicle. Eltra and Daine then stepped out of the vehicle and stood on the sidewalk. Senior Officer Strait then called over Officer Narrow, who was waiting in their police car, to assist with searching the vehicle. The two officers then began to search the vehicle.

As a result of the search, the police found various packages held in a crate marked clearly with PDP's branding in the trunk of the car. One of the packages contained an address, but no name. Upon opening the package, the officers found a large bag containing white powder. This was later confirmed to be 1kg of pure cocaine. The officers also found a black bag with a large amount of money placed next to the crate in the trunk. The officers also found two mobile phones in the glove compartment of the vehicle. One phone was unlocked, and a search of it found nothing of value. The other phone was locked by a passcode. Senior Officer Strait approached Eltra and asked for the passcode; however, Eltra refused, stating that the phone belonged to his/her employer. Senior Officer Strait insisted that Eltra should unlock the phone if he/she had nothing to hide. Eltra then provided the passcode. A list of names and corresponding amounts of money was found on the phone.

Senior Officer Strait then conducted a frisk search of both Eltra and Daine. The search found nothing of interest.

Senior Officer Strait then placed Eltra under arrest, handcuffed him/her, and directed him/her to a police car. All the while, Eltra was saying: "What are you talking about? I don't do drugs!"

Eltra was later charged with possession of a dangerous drug with intent to sell.

Eltra was subsequently represented by a Defense Advocate. The Defense Advocate filed a Motion to Suppress Evidence arguing that the roadside checkpoint was conducted illegally and that the officers conducted an improper search of Eltra's vehicle.

1.2 The Prosecution (Zaltanu Public Prosecutions)

1.2.1 Witnesses for the Prosecution

1. Senior Officer Strait
2. Officer Narrow
3. Ziggy Baggmann

1.2.2 The Role of the Prosecutors

In order to proceed to trial, the Prosecution must establish:

1. The police officer had reasonable suspicion to set up the roadside checkpoint;
2. There was reasonable suspicion to search the vehicle, its contents, and conduct a frisk search; and
3. Drugs were found in the Defendant's possession.

See the Zaltanu law in section 2.0.

1.3 The Defense

1.3.1 Witnesses for the Defense

1. Eltra Parker (the Defendant)
2. Daine Carriér
3. Bancha Kale

1.3.2 The Role of the Defense Advocates

In order to successfully exclude evidence on admissibility grounds, the Defense Lawyer must establish:

1. The roadside checkpoint was conducted illegally (e.g., there was no reasonable suspicion that justified setting up the roadside checkpoint);
2. There was no reasonable suspicion to search the vehicle and its contents or to conduct a frisk search; and
3. The value of the evidence is outweighed by the risk that it would unfairly prejudice the Defendant.

See the Zaltanu law and rules of evidence in section 2.0.

2.0 Applicable Law

2.1 Charge Against Eltra Parker

“Eltra Parker is charged with possession of a controlled substance with the intent to sell, in that on 1 July 2019, Parker was in possession of pure cocaine in an amount of one (1) kilogram in violation of Section 881.12 of the Zaltanu Criminal Code.”

2.1.1 State of Zaltanu Legal Provisions

Section 881.12 of the Zaltanu Criminal Code states:

Except as authorized by law, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

Article IV of the Zaltanu Constitution states:

All persons in Zaltanu have a right to be secure against unreasonable searches and seizures. Evidence seized in violation of this rule shall be subject to suppression and exclusion.

Article V of the Zaltanu Constitution states:

All persons in Zaltanu have a right from being forced to incriminate themselves. Evidence seized in violation of this rule shall be subject to suppression and exclusion.

Section 590AA – Zaltanu Criminal Code states:

If the Prosecution has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial or any pre-trial hearing.

...

(e) deciding questions of law including the admissibility of evidence and any step that must be taken if any evidence is not to be admitted...

Section 56 of the Zaltanu Police Powers and Responsibilities Act states:

A police officer may establish a roadside checkpoint if the police officer reasonably suspects a roadside checkpoint may be effective to locate persons committing an offence.

Section 57 of the Zaltanu Police Powers and Responsibilities Act states:

The police officer present at the roadside checkpoint must ensure a record of the relevant details of the roadside checkpoint is made, including:

- (a) the reasons for establishing a roadside checkpoint;*
- (b) when and where it was established;*
- (c) for how long the roadside checkpoint is established; and*
- (d) relevant signage to warn road users of roadside checkpoint ahead.*

Section 58 of the Zaltanu Police Powers and Responsibilities Act states:

(1) Where a roadside checkpoint has been established:

- (a) Police officers have the power to ask the driver and/or occupants for their name, address and registration details; and*
- (b) Where it would not be reasonably practicable for a search warrant to be obtained beforehand, a police officer may conduct a search without a warrant if there are reasonable grounds to suspect the commission of an offence.*

...

(4) For the avoidance of doubt, if Consent is given by the driver or occupant/s of a vehicle, police can conduct a search in the absence of a reasonable belief as stated in (1)(b) above and without a warrant.

Section 29 of the Zaltanu Police Powers and Responsibilities Act states:

(1) A police officer who reasonably suspects the commission of an offence may, without a warrant, do any of the following:

(a) stop and detain a suspected person;

(b) search the person and anything in the person's possession for anything relevant to the reason for which the person is detained.

(2) For the avoidance of doubt, a police officer can search a person and anything in the person's possession with:

(a) consent given by the suspect; or

(b) a search warrant obtained.

...

(6) If the police officer/s find a mobile phone or some other device in a person's possession, provided they continue to have a reasonable suspicion that commission of an offence exists, the device can also be searched pursuant to the Zaltanu Police Powers and Responsibilities Act. If, however, the device is password protected, the police officer/s do not have the power to gain access to the password without:

(a) Consent, or

(b) A search warrant obtained.

Schedule 6 of the Zaltanu Police Powers and Responsibilities Act states:

Consent means permission for something to happen or agreement to do something in which the permission or agreement was freely and voluntarily given. Consent does not include silence, submission or compliance.

Example of consent not freely and voluntarily given:

OFFICER: Do you mind if I enter your home?

OCCUPANT: Actually, I do mind.

OFFICER: May I remind you of the penalties associated with obstructing police.

OCCUPANT: Fine, you can come in.

Compliance means acting in accordance with a command, rule or official instruction.

Commission of an Offence means committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

Reasonable suspicion means a suspicion that something exists more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a slight opinion; it also includes reasonable belief of the existence of facts which are sufficient to induce that state of mind in a person.

Suspect means a person reasonably suspected of having committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

2.2 Zaltanu Pre-Trial Hearing Procedure & Rules of Evidences

2.2.1 Steps and Time in the Pre-Trial Hearing

The pre-trial hearing is an application brought by the defense for the purposes of having evidence of the prosecution excluded.

Note the roles of the counsel for the prosecution and defense must be equally divided. That is, time must be evenly distributed between examination-in-chief and cross-examination.

Process:

Several Judges will preside over the proceedings. However, one Judge will be selected as the Presiding Judge to control the proceedings.

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges enter the courtroom.

PRESIDING JUDGE: Asks both sides "are you ready?"

CLERK: Calls the case number.

PROSECUTOR: Reads the case number and charge.

JUDGE: Asks if the prosecution is ready to proceed with the hearing to establish its burden that the evidence obtained during the roadside checkpoint was lawfully obtained.

PROSECUTOR: Answers "We are ready to proceed, your honor".

PROSECUTOR: Gives opening statement. **(no more than 5 minutes)**

DEFENSE LAWYER: Gives opening statement. **(no more than 5 minutes)**

PROSECUTOR: Calls first witness (Senior Officer Strait).

JUDGE: Administers oath.

PROSECUTOR: Examination-in-chief of Senior Officer Strait. **(no more than 7 minutes)**

DEFENSE LAWYER: Cross-examination of Senior Officer Strait. **(no more than 7 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**

PROSECUTOR: Calls second witness (Officer Narrow).

JUDGE: Administers oath.

PROSECUTOR: Examination-in-chief of Officer Narrow. **(no more than 7 minutes)**

DEFENSE LAWYER: Cross-examination of Officer Narrow. **(no more than 7 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**

PROSECUTOR: Calls third witness (Ziggy Baggmann).

JUDGE: Administers oath.

PROSECUTOR: Examination-in-chief of Ziggy Baggmann. **(no more than 7 minutes)**

DEFENSE LAWYER: Cross-examination of Ziggy Baggmann. **(no more than 7 minutes)**

PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**

DEFENSE LAWYER: Calls first witness (Defendant - Eltra Parker).

JUDGE: Administers oath.

DEFENSE LAWYER: Examination-in-chief of Eltra Parker. **(no more than 7 minutes)**

PROSECUTION: Cross-examination of Eltra Parker. **(no more than 7 minutes)**

DEFENSE LAWYER: Opportunity for re-examination. **(no more than 3 minutes)**

DEFENSE LAWYER: Calls second witness (Daine Carrier).

JUDGE: Administers oath.

DEFENSE LAWYER: Examination-in-chief of Daine Carrier. **(no more than 7 minutes)**

PROSECUTION: Cross-examination of Daine Carrier. **(no more than 7 minutes)**

DEFENSE LAWYER: Opportunity for re-examination. **(no more than 3 minutes)**

DEFENSE LAWYER: Calls third witness (Banacha Kale).

JUDGE: Administers oath.

DEFENSE LAWYER: Examination-in-chief of Banacha Kale. **(no more than 7 minutes)**

PROSECUTION: Cross-examination of Bancha Kale. **(no more than 7 minutes)**

DEFENSE LAWYER: Opportunity for re-examination. **(no more than 3 minutes)**

PROSECUTION: Closing argument. **(no more than 10 minutes)**

DEFENSE: Closing argument. **(no more than 10 minutes)**

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges leave the room to make a decision on which team was the strongest according to the points evaluation.

JUDGE'S CLERK: "Everybody stand-up."

JUDGES: Judges return to the room and give their decisions on which team was the strongest according to the points evaluation. Judges provide constructive feedback to each participant.

2.2.2 Burdens and Standards of Proof

The trial judge determines the admissibility of any evidence according to the rules of evidence. In determining whether evidence will be excluded at a subsequent trial, the party must prove its case on the balance of probabilities.

2.2.3 Relevance of Evidence

Before a party can introduce an item of evidence at trial, it must be relevant. Where the relevance of evidence is not obvious, a party introducing it must explain how it is relevant. Irrelevant evidence is inadmissible.

Evidence can be directly relevant, or indirectly relevant:

- **Directly Relevant:** if it makes a fact of the case MORE or LESS likely.
- **Indirectly Relevant:** if it affects the probative value of the *direct evidence* and thus the accuracy of the other facts/evidence.

Test: Does the evidence carry you forward in proving or disproving the occasion in issue? Where the effect of the evidence is so ambiguous that it could not rationally affect the judging of the fact in issue, the evidence is irrelevant.

In order to be relevant, evidence must:

1. Directly or indirectly relate to the existence or non-existence of a fact in issue in the trial; or
2. Be relevant to a party's disposition in the alleged crime.

Note: evidence may become more or less relevant depending on circumstances and surrounding information.

Example:

QUESTION: What did you eat for lunch on the morning of the accident?

OBJECTION: I object, your honor. What the witness ate for lunch is not relevant to circumstances surrounding the accident.

POSSIBLE RESPONSE: Your honor, there is evidence that the witness attended a business meeting at which alcohol was served before the accident. This evidence goes to whether the witness was affected by alcohol at the time of the accident.

2.2.4 Probative Value of Evidence

The Court must refuse to admit evidence if its probative value is substantially outweighed by the risk that the evidence might:

1. Be unfairly prejudicial to the accused;
2. Be misleading or confusing; or
3. Result in an undue waste of time.

Probative value refers to the weight that should be placed on the particular piece of evidence.

Where there are **inconsistencies in evidence**, the fact finder must compare and weight up the probative value of each piece of evidence and decide which set of facts are more likely to be accurate.

2.2.5 Right to Silence

The accused has a right to silence. This right exists before and during the trial. The right of the accused to raise this defense exists regardless of whether they choose to remain silent upon arrest.

No adverse inferences can be drawn from the accused's choice to exercise their right to silence.

Where the accused was not cautioned as to their right to silence and was subsequently manipulated, coerced or elicited into making an admission to their detriment, the Court must determine the admissibility of the evidence in accordance with the illegality provisions in 2.2.6.

2.2.6 Illegally Obtained Evidence

The Court must, on application from the defendant, exclude evidence where it has been illegally or improperly obtained. In establishing any illegality in the collection of evidence, the party asserting illegality must raise it on the balance of probabilities. In determining whether the evidence has been illegally or improperly obtained, the Court must weigh up the competing public interests in convicting those who commit criminal offences and in protecting the individual from unlawful and unfair treatment. The Court must consider:

1. Whether there was a deliberate or reckless disregard for the law;
2. Whether the illegality was a result of a mistake;

3. Whether the illegality impacts the reliability and probative value of the evidence;
4. How easy it would have been to comply with the law; and
5. The nature of the offence.

The abovementioned indicia should not be considered in isolation. For example, the fact that the charged offence is serious will not automatically result in the admissibility of illegally obtained evidence. All indicia must be considered to assist the Court in determining whether the aid of an unlawful or improper act to obtain the evidence was at too high of a price.

2.2.7 Hearsay Evidence

Hearsay is defined as an out-of-court statement, made in court, to prove the truth of the matter asserted. The out-of-court statement may be spoken, written, or made through other forms of communication (e.g., hand gestures).

The **rationale** for finding hearsay inadmissible is because:

- it is unreliable;
- it is not made under oath;
- it does not involve reporting a direct observation;
- it cannot be cross-examined;
- it is impossible to determine the statement maker's demeanour and body language;
- it is impossible for the factfinder to determine whether the evidence is believable.

However, there are many **exceptions** to the hearsay rule. If an exception is established, the out-of-court statement is admissible.

Exceptions to hearsay include:

- Where the out-of-court statement does not go towards proving the truth of the matter asserted, rather **proving some other fact**.
- Where the out-of-court statement was made by a person who had **personal knowledge** of the asserted fact and it is the best evidence available (first-hand hearsay).

- Where the out-of-court statement is used as **original evidence** to prove the person's state of mind, intention, motive or plans.

For example, an out-of-court statement saying 'I want ice-cream' is acceptable as evidence of the intention to go buy ice-cream. It is not, however, used as evidence to prove that the person was at the ice-cream shop.

- Where the out-of-court statement was an **admission** (something that can be used to incriminate the defendant) or a confession (admitting to having committed the crime). The rationale behind this exception is that a reasonable person would not admit to a fact hurting his or her interest unless it were true.

Note, however, that an out-of-court admission:

- Must be free and voluntary. Here the Court must consider whether the defendant's will was overborne by external pressure. For example:
 - Any inducements, threats, trickery, violence; or oppressive, inhuman or degrading conduct;
 - Persistent questioning;
 - The defendant's capacity to resist improper pressure; and
 - The defendant's age, intelligence, maturity, self-sufficiency, psychological health and physical health.
- Must not be unfair on the defendant (e.g., they were cautioned and understood their right to silence prior to making the admission); and
- Must not be illegally obtained (see the above indicia in 2.2.6).

2.2.8 Character Evidence

Generally, evidence of the defendant's character cannot be brought out in trial, unless the defendant first raises evidence of their good character.

Example:

DEFENDANT: "I am not the sort of person who goes around stealing other people's wallets."

As the defendant has raised his/her good character, the Prosecution may cross-examine the defendant on his/her bad character.

PROSECUTOR: "You gave evidence that you were not the sort of person who stole people's wallets, but it's true that you have previous convictions for theft, isn't it?"

If the defendant had not previously raised his/her good character, the defense could object to this question on the basis of improper character evidence. However, since the defense raised good character as an issue, the Prosecutor's question is proper and should be allowed.

2.2.9 Prior Inconsistent Statements

An advocate in cross-examination may test the reliability of a witness's evidence by highlighting contradictions with a prior inconsistent statement. Note: in some circumstances, a witness may be honest but mistaken.

2.2.10 Tendency Evidence & Previous Convictions

Generally, evidence must not be led to prove that a person has a tendency to act in a particular way or has a particular state of mind. The rationale behind the tendency rule is that the Court must consider evidence in relation to the case before it. Tendency evidence is highly prejudicial to the defendant and may result, for example in him/her being punished again for prior convictions.

The Court nonetheless may allow the tendency/propensity evidence if the risk of the evidence being "highly prejudicial" is outweighed by the probative value of the evidence.

2.2.11 Opinion Evidence

A witness is not usually allowed to give their opinion in evidence. An opinion is a conclusion or view formed by a witness based on something that they have observed or experienced. It is not for the witness, but rather the fact finder, to form these conclusions. The rule against opinion evidence assists the Court to objectively assess all of the facts and draw its own objective conclusions. If a witness testifies about their opinion, then it may confuse or mislead the Court.

Example:

A witness cannot give evidence that the defendant was angry. Rather, the witness must describe what s/he saw (e.g., the defendant spoke loudly, was red in the face and was shaking his/her fist.)

Exceptions:

Opinion evidence may nonetheless be led if:

- The topic is something that ordinary people are knowledgeable about (e.g., the age someone appears to be);
- The opinion of a witness is relevant to a fact in issue (e.g., self-defense); or
- The opinion of a qualified expert with training, study or experience in the area is required to explain and give meaning to the evidence.

2.2.12 Contested Evidence must be Put to the Witness

An advocate must cross-examine a witness on all aspects of the witness's evidence that the advocate disputes.

In particular, the advocate must ask the witness to comment on the alternative version of events that the advocate's case relies on.

2.2.13 Questions in Examination-in-Chief v Cross-Examination:

At trial, both the prosecution and defense counsel have an opportunity to call witnesses. The advocate calling a witness must only ask open-ended questions which require the witness to explain in their own words what happened. This process is called "examination-in-chief." During the examination-in-chief, the advocate may ask closed or leading questions for preliminary matters only. If the matter is not preliminary and the advocate calling the witness asks leading questions, , the other advocate should object. The purpose of this rule is to ensure that the witness gives an accurate account of events and is not misled.

After the advocate concludes the examination-in-chief, the other party's advocate will have the opportunity to cross-examine the witness. During cross-examination, the advocate should only ask leading or closed questions that can generally be answered with yes, no or I don't know. If the advocate asks open-ended questions, then s/he gives the witness an opportunity to say too much.

Examples:

OPEN-ENDED: "What did you do on Saturday the 13th of July?" This question is open-ended because it invites the witness to explain in his/her own words what s/he did on the 13th of July.

LEADING: "Is it true that you went to Zoe in Yellow on Saturday the 13th of July?" This question is leading because it generally forces the witness to answer yes or no.

2.2.14 Direct speech

Conversation must be recited as it occurred in direct speech and not summarized by the witness.

Where an objection is based on indirect speech, the witness must convert the evidence to direct speech.

Example:

CORRECT: Brian said to me: "Could you please drive?"

INCORRECT: Brian asked me to drive.

2.2.15 Double Questions/Compound Questions

A double (or compound question) is one in which two questions are contained in one question. Advocates should object to double questions being asked of the witness. This is to ensure clarity as to which question the witness is answering.

Example:

DOUBLE QUESTION: Is it true that the weather was warm and sunny on Friday?

This is considered a double question because the advocate is really asking two questions – "Was it warm on Friday?" and "Was it sunny on Friday?" The witness may not be able to answer this question with a simple "yes" or "no." For example, if it were sunny and overcast, the answer to the first part of the question would be "yes", while the answer to the second part of the question would be "no."

2.2.16 Harassment of the Witness

While advocates in cross-examination are permitted to ask questions to test the witness's reliability, the Court must forbid any question which appears intended to insult, offend or annoy a witness. Indecent and scandalous questions are also forbidden. Where an advocate appears to harass a witness, the other advocate should object.

2.2.17 Admission of Exhibits into Evidence

During the trial the advocates may want to admit certain types of evidence, such as documents, police reports, photographs, and other things for the court to review.

Doing this requires a step by step procedure which includes the following:

1. Pre-mark the exhibit

2. Show it to opposing counsel
3. Show it to the witness
4. Ask the right foundational questions (see below the foundational questions)
5. Ask the court to admit the exhibit (see below for magic terminology)
6. Let the clerk mark the exhibit into evidence

Foundational Questions:

Business Record Documents:

You should ask the following questions in order to establish the foundation for documents to be admitted into evidence:

- I am showing you what has been marked as Exhibit "C" for identification. Do you recognize this business record document?
- Was this business record kept in the normal course of business?
- Was the business record was made at or near the time of the event it records?
- Was the business record made by, or from information given by, a person with knowledge acting in the regular course of business?

Move the business record into evidence.

Photographs:

You should ask the following questions in order to establish the foundation for photographs to be admitted into evidence:

- I am showing you what has been marked as Exhibit "C" for identification. Do you recognize what is shown in this photograph?
- Are you familiar with the scene (person, product, etc.) portrayed in this photograph?
- How are you familiar with the scene portrayed in the photograph?
- Does the scene portrayed in the photograph fairly and accurately represent the scene as you remember it on (date in question)?

Move the photograph into evidence.

Diagrams:

You should ask the following questions in order to establish the foundation for diagrams to be admitted into evidence:

- I am showing you what has been marked as Exhibit "E" for identification. Are you familiar with the area located at 16th Street and 12th Avenue in Dade County, Florida?
- How are you familiar with this area?
- Based on your familiarity with the area, can you tell us whether the scene depicted in this diagram fairly and accurately represents the area as you recall it on the date in question?

Move the diagram into evidence.

Tangible Objects:

- I am showing you what has been marked as Exhibit "E" for identification. Do you recognize what I'm showing you?
- Do you know what the exhibit looked like on the relevant date?
- Does the exhibit appear in the same or substantially same condition as when you saw it on the relevant date?

3.0 Materials

3.1 Prosecution Witness Statement: Senior Officer Strait

My name is Senior Officer Strait. I am 38 years old and I have been a member of the Zaltanu Police Force for the past 5 years. I have worked as part of the Traffic Control Unit for the past 3 years. I have conducted numerous traffic checkpoints prior to 2019.

On the 1st of July 2019, I was in charge of operating a traffic checkpoint on the corner of Pacific Avenue and Aster Road. I set up the checkpoint at 10:00 in the morning. I set this up because we had received reports of drugs being moved along Pacific Avenue. Pacific Avenue is about 8 kilometers long. At 11:00 AM, I directed an older model black BMW into the checkpoint. I approached the vehicle and saw two people in the front seats of the vehicle. As I approached the vehicle, I immediately recognised the passenger as Daine Carrier from a previous arrest. I introduced myself to the driver, and then said: "This is a routine police checkpoint stop. Where are you two heading today?" The driver, who introduced himself as Eltra Parker, responded by saying that he/she was out on a delivery run. I then asked for his/her name and identification. As I inspected Mr./Ms. Parker's driver's licence, I noticed a packet of cigarettes on the dashboard, an open envelope containing cash in the centre console, rolling papers, clip-seal bags, and empty envelopes on the back seat. Mr./Ms. Parker appeared anxious, his/her eyes were bloodshot, and he/she was constantly fidgeting and looking at his/her watch. Mr./Ms. Parker avoided direct eye contact with me. I informed Mr./Ms. Parker that I would need to do a search of the vehicle. Mr./Ms. Parker responded in an aggressive tone: "Why? I have nothing to hide." I replied, saying: "Would you both please step out of the vehicle." Both Mr Parker and Mr./Ms. Daine Carrier got out of the vehicle. Mr./Ms. Carrier then walked around to stand beside Mr./Ms. Parker on the sidewalk.

I then asked Officer Narrow, who was sitting in our police car about 10 meters away, to assist me with the search. Officer Narrow and I conducted a search of the vehicle. In the trunk, we observed a crate labelled with PDP's branding, holding various packages. PDP is the delivery company that Mr./Ms. Parker works for. Officer Narrow and I observed one package that appeared different to all the other packages, as it was marked with an address but no name. Officer Narrow and I decided to open the package and found a large bag of white powder. Drug analysis later confirmed the

white powder to be pure cocaine, weighing one kilogram. We also found a black bag containing large amounts of cash in the trunk.

Officer Narrow and I then went around to the passenger side of the vehicle and opened the glove compartment. We found two mobile phones. I passed one of mobile phones to Officer Narrow to be checked; however, his/her search of the phone revealed nothing. I opened the other mobile phone and learned that it required a passcode. I walked over to Mr./Ms. Parker and asked if he/she could provide the passcode to the phone. Mr./Ms. Parker replied: "No, that belongs to PDP." I then told Mr./Ms. Parker that he/she should open the phone if he/she had nothing to hide. Mr./Ms. Parker then put in the passcode. My search of the phone revealed a list of names with corresponding amounts of money listed.

I then walked over to Mr./Ms. Parker and Mr./Ms. Carriér and told them that I needed to do a frisk search. I asked them both if they had any dangerous weapons on their persons that I should be aware of. Both replied: "No." I proceeded to conduct a frisk search: first on Mr./Ms. Parker, then on Mr./Ms. Carriér. The search revealed nothing of interest. I asked Mr./Ms. Parker if the car belonged to him/her. Mr./Ms. Parker stated: "Yes." I then advised Mr./Ms. Parker that he/she was under arrest for possession of a dangerous drug with intent to sell.

3.2 Prosecution Witness Statement: Officer Narrow

My name is Officer Narrow. I am 28 years old. I graduated from the Zaltanu Police Academy one year ago and was assigned to traffic duty with Senior Officer Strait. The 1st of July 2019 was my third day on the job. On that day, we had set up a random traffic checkpoint. I think that Senior Officer Strait had placed the proper signage required for the checkpoint to be legal. Senior Officer Strait was responsible for directing cars into the checkpoint and conducting further inspection. I was there to assist, as necessary.

Senior Officer Strait directed a black BMW into the bay (which I now know to be Mr./Ms. Eltra Parker's car). Senior Officer Strait approached the vehicle and appeared to speak to the driver. Senior Officer Strait then directed me to come over and assist with a search of the vehicle. As I was walking over towards Senior Officer Strait, I noticed that the driver and passenger were getting out of the car.

Senior Officer Strait and I then began searching the car and when we opened the trunk, we observed a crate marked with PDP's branding that contained many packages. I understand that Mr./Ms. Parker is employed by PDP. I was familiar with the PDP logo, as the company had been under police investigation for potential links to the drug trade. Senior Officer Strait and I observed a package that appeared different than the other packages, as it had an address but no name. Senior Officer Strait said that this was unusual and proceeded to open the package. Inside the package, there was what appeared to be a white powder. Senior Officer Strait then took a small sample of the white powder and tested it using a drug analysis kit. The test returned a positive sample for cocaine.

Senior Officer Strait continued searching the car. In the trunk, he came across a black bag containing a large sum of money. Senior Officer Strait then found two mobile phones in the glove compartment. Senior Officer Strait handed one of the phones to me and told me to look through it. However, that phone revealed nothing. Senior Officer Strait tried to look through the other phone, but it was locked with a passcode. Senior Officer Strait then walked over to where Eltra Parker and Daine Carrier were standing and spoke to Mr./Ms. Parker, whilst I continued to search the car. Senior Officer Strait then came back to the vehicle and told me: "We have enough evidence to charge him/her for possession of a dangerous drug with the intention to sell." I responded with "Okay."

Senior Officer Strait then walked over to Mr./Ms. Parker and Mr./Ms. Carriér and conducted a frisk search of both of them. The search revealed nothing of value. Senior Officer Strait then arrested Mr./Ms. Parker. While I was walking towards the police car, I heard Mr./Ms. Parker say: "What are you talking about? I don't do drugs!" I put the evidence in the police car and drove Mr./Ms. Parker to the station.

3.3 Prosecution Witness Statement: Ziggy Baggmann

My name is Ziggy Baggmann. I am 63 years old. I am unemployed. I have been living on the streets of Zaltanu for the past 30 years. Prior to that, I owned a motor garage.

On the 1st of July 2019, I was sitting on my usual spot on the side of Pacific Avenue, when the police came by and set up what I later realised was a traffic checkpoint. I do not recall any signage being placed by the officers. There were two officers at the checkpoint, who I now know to be Senior Officer Strait and Officer Narrow. Later that day, I noticed a black BMW approach the checkpoint. It immediately captured my interest as it looked like a car owned by one of my previous clients at the garage.

I immediately got up and approached the car to inspect it closer, but before I could take a good look, Senior Officer Strait approached the car as well and told me to move away. I took a couple steps back but stayed quite close as I still wanted to find out who was driving. There were two persons in the car. Senior Officer Strait introduced him/herself to the driver, then asked for the driver's name and identification. Senior Officer Strait then asked the driver, who I now know to be Eltra Parker, if he/she could conduct a search of the car. Mr./Ms. Parker responded by saying: "Yes, I have nothing to hide."

Senior Officer Strait then asked Mr./Ms. Parker and his/her passenger to step out of the vehicle. Both of them then stepped out of the vehicle. I noticed that Mr./Ms. Parker appeared to be agitated as he/she was unable to stand still. Senior Officer Strait then directed Officer Narrow to come over and assist with the search. Both Senior Officer Strait and Officer Narrow began searching through the car and engine bay. Senior Officer Strait and Officer Narrow then approached the rear of the car and opened the trunk. I then took the opportunity to inspect the now-open engine bay of the car. When I was done, I noticed that Senior Officer Strait had approached Mr./Ms. Parker with one mobile phone in his/her hand. Senior Officer Strait then handed the phone to Mr./Ms. Parker, who unlocked it, and handed it back to Senior Officer Strait. After looking through the phone for a while, Senior Officer Strait conducted a pat down of both Mr./Ms. Parker and his/her passenger. Senior Officer Strait appeared not to find anything of interest from the pat down.

Senior Officer Strait then advised Mr./Ms. Parker that he/she was under arrest, reminding him/her of his/her right to remain silent. He/she placed handcuffs on Mr./Ms.

Parker and escorted him/her into a police car. As he/she was escorted to the police car, Mr./Ms. Parker kept yelling out: "What are you talking about? I don't do drugs!"

3.4 Defense Witness Statement: Eltra Parker

My name is Eltra Parker and I am 28 years old. I have lived in the State of Zaltanu since birth. I am not married, but I live with my partner Daine Carrier. I work part-time as a delivery driver for PDP (a package delivery service) and study Chemical Engineering. I have worked at PDP for 1 year. As a delivery driver, I collect and deliver various packages. I also collect payments for the deliveries. I am required to wear a uniform when working, and I use my own car to make deliveries.

On the 1st of July 2019, I drove my black BMW to work with Daine. We arrived at PDP's warehouse and Daine remained in the car. As usual, I collected the crate containing packages, and I looked through the manifest. The manifest contains the serial number of each package and a corresponding address. I then placed the crate in the trunk of the car, and as usual, I did not inspect the contents of the crate.

I was on the third delivery run driving along Pacific Avenue when I was directed by a police officer to pull over at a traffic checkpoint. I did not see any sign indicating the existence of a checkpoint. I now know this police officer to be Senior Officer Strait. As I slowed down and passed Senior Officer Strait at the entry of the checkpoint, I noticed that he/she was looking inside my vehicle. The passenger side windows were down. Senior Officer Strait introduced him/herself and said: "This is a routine police checkpoint stop. Where are you two heading today?" I then responded: "I am on a delivery run." All the meanwhile, Senior Officer Strait was crouching up and down to look throughout the car. Senior Officer Strait then asked for my identification and I handed him/her my driver's licence.

As Senior Officer Strait inspected my licence, he/she leaned over and stuck his/her head through the window whilst looking throughout the car. He/she then asked if he/she could conduct a search of the car. I responded: "Why? I have nothing to hide." Senior Officer Strait then stepped back and (in a serious tone) asked Daine and me to step out of the car. Senior Officer Strait then called over Officer Narrow to assist with conducting the search. As Daine and I stood waiting on the sidewalk, Senior Officer Strait and Officer Narrow searched my car. After looking through the car, they opened the trunk and searched that. I could not see exactly what they were doing as Daine and I were standing near the front of the car. However, they seemed to take particular interest in what they found. I saw Senior Officer Strait hand one of the packages, as well as my black bag, to Officer Narrow.

The two officers then headed over to the front passenger door and looked through the glove compartment. Senior Officer Strait pulled out two mobile phones. One of them was my old phone, which I keep in my car as a spare. The other is a phone provided to me by PDP. I was given the pin by PDP but instructed to only use the phone to answer calls from the company. So far, I have never received a call on that phone; in fact, it has never rung. Senior Officer Strait handed my old phone to Officer Narrow and walked over to me with the company phone. Senior Officer Strait demanded the pin to open the phone. I was reluctant to open the phone as I did not have permission from my employer to do so. I told this to Senior Officer Strait, but he/she insisted that I should open the phone since I had nothing to hide. I reluctantly complied with his/her demand and unlocked the phone. After looking through the company phone, Senior Officer Strait conducted a frisk search on me. Then, he frisk searched Daine. Prior to the search, he/she asked if either of us had any weapons on me. Nothing was found. I was then taken to the police station.

3.5 Defense Witness Statement: Daine Carriér

My name is Daine Carriér. I am 23 years old. I am currently unemployed, although I am trying to seek employment. I like to go to parties and occasionally help Eltra Parker with his/her deliveries. I have been in a relationship with Eltra for the past 2 years.

On the 1st of July 2019, I was with Eltra giving him/her a hand with deliveries. Once completed, we had plans to go to a party. On the way to the third delivery, a police officer directed us into a checkpoint. There was no sign before the checkpoint. We were both a bit nervous as neither of us get stopped by police often. I soon recognised the officer to be Senior Officer Strait who arrested me on a previous occasion. It was during this occasion where I remember Senior Officer Strait being somewhat discriminatory because of my relationship with another person of my same gender, and my joyful character.

Coming back to the day of the 1st July 2019, once the car was stationary, he/she introduced him/herself as Senior Officer Strait. He/she proceeded to say: "This is a routine police checkpoint stop. Where are you two heading today?" I recall Eltra responding: "I am on a delivery run." Senior Officer Strait then asked if he/she could search the car, to which Eltra responded: "Why? I have nothing to hide."

Despite Eltra's comment, Senior Officer Strait asked Eltra and me to step out of the car and called Officer Narrow to assist with conducting the search. Eltra and I were directed to stand on the sidewalk whilst they undertook the search. I recall Senior Officer Strait and Officer Narrow beginning the search in the back seat of the car, then moving to the trunk of the car. Both officers seemed to spend quite a lot of time searching the trunk of Eltra's car. From where Eltra and I were standing, it was difficult to see exactly what the officers were doing.

A short time later, I was shocked to see Officer Narrow receive a package and a black bag from Senior Officer Strait. Senior Officer Strait then proceeded to search the front of the car, including the glove compartment. Senior Officer Strait then passed Officer Narrow a mobile phone that he/she said was from the glove compartment. Senior Officer Strait then approached Eltra and asked him/her for the pin code for another phone that he/she said was from the glove compartment. Eltra refused, saying that the phone did not belong to him/her, and that he/she did not have permission to open the phone. Senior Officer Strait insisted, suggesting that Eltra should have no issue

unlocking the phone, as he/she had nothing to hide. Eltra finally complied and unlocked the phone.

After inspecting the phone for some time, Senior Officer Strait advised both Eltra and me that he/she would be conducting a frisk search of each of us. The frisk search revealed nothing of interest. However, after the frisk search, Senior Officer Strait advised Eltra that he/she was under arrest and proceeded to place handcuffs on him/her. He/she then escorted Eltra to their police car. All the meanwhile, Eltra was yelling out: "What are you talking about? I don't do drugs!"

3.6 Defense Witness Statement: Bancha Kale

My name is Bancha Kale. I am 42 years old and I have worked as a waitress at Zed Burgers for two years. Zed Burger is located on Pacific Avenue. I work five days a week. I do not recall the exact date, but one day in June or July, I saw two police officers set up a checkpoint on the opposite side of the road. They were setting up the checkpoint as I arrived at 8:00 that morning. The restaurant is located directly opposite from where the checkpoint was placed. Between the checkpoint and the restaurant is a two-lane road with one lane heading in each direction.

On that morning, I had a direct view of the checkpoint and observed the police pull over an old black BMW. At the time, I was cleaning the tables outside the restaurant. It was about 11:00 in that the morning.

It was the first car that was stopped so I continued to watch. I observed a police officer approaching the BMW who I now know to be Senior Officer Strait. I could see two male persons in the BMW. I saw Senior Officer Strait speaking with the two individuals for a short time and crouching as he/she looked around the vehicle.

Then, Senior Officer Strait stepped back and signalled with his/her right arm, finger pointing the driver to get out of the vehicle. I could see the driver shaking his/her head with his/her arms raised at the same time. The driver and his/her passenger stepped out of the vehicle onto the sidewalk. At that point, Senior Officer Strait signalled another officer, who I now know to be Officer Narrow, to come over. The two officers then conducted a search of the vehicle, beginning with the backseat and then proceeding to the trunk.

The two officers seemed to spend a longer amount of time inspecting the trunk of the car. After a while, I saw Senior Officer Strait hand a small package and a black bag to Officer Narrow. The two officers then proceeded to the front passenger door, and appeared to search through the glove compartment although I am not positive of that since I was observing from across the street. I then saw Senior Officer Strait pick up two small objects, which I believe to be mobile phones, and handed one to Officer Narrow. Senior Officer Strait then approached the driver and handed the other object to him/her. The driver soon handed it back. After inspecting the object, Senior Officer Strait conducted a frisk search of both the driver and his/her passenger. Senior Officer Strait then placed the driver in handcuffs and escorted him/her over to a police car.

Throughout this entire ordeal, I noticed Ziggy standing near the car. Ziggy is a homeless person that we regularly give leftovers to.

3.7 MOTION TO SUPPRESS

COUNTRY OF ZALTANU
PUBLIC PROSECUTIONS

IN THE PROVINCIAL COURT
CAUSE NO. 2019-67983

vs.

ELTRA PARKER

Defendant.

MOTION TO SUPPRESS EVIDENCE

Comes now the Defendant and respectfully requests that this Court suppress all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant, and in support thereof says:

1. That the Defendant is charged with Possession of cocaine with Intent to Sell or Distribute.
2. That on 1st of July 2019, police officers, without lawful authority, stopped the Defendant's vehicle and detained the Defendant.
3. That any information from the stop of the Defendant's vehicle, was unlawfully obtained because:
 - a. At the time the police officer stopped the Defendant's vehicle, the police officer conducted a road-side checkpoint stop that failed to follow the legal requirements and procedures under the law of Zaltanu. Therefore, the road-side checkpoint was improperly established and any evidence resulting from vehicles or persons stopped by this check-point should be suppressed, and not allowed to be used as evidence in court.

- b. At the time the police officer stopped the Defendant's vehicle, the police officer lacked reasonable suspicion that the Defendant was committing a crime and the Defendant was not committing a traffic violation.
- c. The police officer exceeded the scope of the stop by detaining the Defendant for an unnecessary length of time, thus, violating the law of Zaltanu and invalidating any consent to search obtained during the unlawful detention.
- d. Considering the totality of the circumstances, the police officer's warrantless stop of the Defendant's vehicle was unreasonable.
- e. Considering the totality of the circumstances, the length of the police officer's detention of the Defendant was unreasonable.
- f. The police officer's seizure of evidence and observations of the Defendant was a direct result of the unlawful stop and detention, and thus, must be suppressed from evidence.
- g. The Zaltanus laws relied upon in this motion are:
 - i. Article IV and V of the Zaltanus Constitution
 - ii. Section 590AA – Zaltanu Criminal Code
 - iii. Section 56 of the Zaltanu Police Powers and Responsibilities Act
 - iv. Section 57 of the Zaltanu Police Powers and Responsibilities Act
 - v. Section 58 of the Zaltanu Police Powers and Responsibilities Act
 - vi. Section 29 of the Zaltanu Police Powers and Responsibilities Act
 - vii. Schedule 6 of the Zaltanu Police Powers and Responsibilities Act

WHEREFORE, the Defendant prays the Court:

- (a) Suppress and bar from use as evidence in the trial of this cause any seized items observations, which resulted from the illegal stop and detention.
- (b) Suppress and bar from use in the trial of this cause all testimony relating to any seized items and observations, which resulted from the illegal stop and detention.

Respectfully submitted,

Liberty for All



Attorney

Zaltanu Bar Number-908933434

Submitted: July 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been provided to all parties herein by first class mail, postage prepaid.

Liberty for All



3.9 Business Record of Roadside Checkpoint (1st July, 2019)

(a) The reasons for establishing roadside checkpoint:

Repeated information being received during April-May, 2019 from reliable confidential informants of excessive drug trafficking occurring along Pacific Avenue in the area of Aster Road. The information was that the trafficking usually occurs during the evening to night-time hours.

(b) the roadside checkpoint was established at:

Roadside checkpoint was established on 1st July, 2019 at the intersection of Pacific Avenue and Aster Road

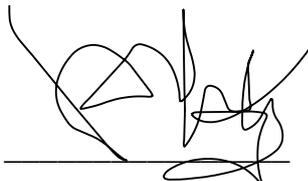
(c) the roadside checkpoint was established for the following length of time:

Roadside checkpoint was established from 5am-11pm

(d) relevant signage to warn road users of roadside checkpoint ahead was placed at the following areas:

Pacific Avenue

Senior Officer Strait



Officer Submitting Report

Date of Report 5th, July 2019