

DEFENCE

*DISCHARGE
M.J. (blaw)*

Canada

PROVINCE OF BRITISH COLUMBIA

In the Provincial Court of British Columbia

(BEFORE THE HONOURABLE JUDGE R. G. FABBRO)

No. 3189 C

Nakusp, B.C.
31 May 2000

REGINA

- v -

WILFRIED HINRICH KRUSE

and

JOCELYN RUTH KRUSE

PROCEEDINGS AT

SENTENCING

APPEARANCES:

Robert G. P. Brown,
Stanley J. Tessmer,

for the Federal Crown
for the Defence

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PART II - EVIDENCE

(Nil)

PART III - EXHIBITSNo. Description

- 1 Blue duo tang with table of contents 1-56 and 56 coloured photographs - formerly Exhibit B on the Voir Dire

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PART IV - JUDGMENTS

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FORM/FORMLAIRE 2
PCR 004 0
REV./REV. 12/89

INFORMATION/DÉNONCIATION

3189C

COURT FILE NUMBER
NUMÉRO DE DOSSIER DE LA COUR

POLICE FILE NUMBER
NUMÉRO DE PROCÈS-VERBAL

98NAK-717-5

PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

The information of/Les présentes constituent la dénonciation de

Simon McDERMOTT
Peace Officer
(Occupation)

of/de (the "informant"/le "dénoncateur")
Nakusp, British Columbia

informant says that he has reasonable and probable grounds to believe and does believe that/Le dénonciateur déclare qu'il a des
les raisonnables et probables de croire et croit effectivement que

COUNT 1

Wilfried Hinrich KRUSE and Jocelyn Ruth KRUSE, on or about the 12th day of April, 1999, at or near Edgewood, in the Province of British Columbia, did UNLAWFULLY produce a controlled substance, to wit: Cannabis (Marihuana)

CONTRARY TO SECTION 7(1) OF THE CONTROLLED DRUGS AND SUBSTANCES ACT.

COUNT 2

Wilfried Hinrich KRUSE and Jocelyn Ruth KRUSE, on or about the 12th day of April, 1999, at or near Edgewood, in the Province of British Columbia, did UNLAWFULLY have in his possession a prohibited weapon, to wit: a P. 38 Handgun, Serial # 8412,

CONTRARY TO SECTION 90(1) OF THE CRIMINAL CODE.

COUNT 3

Wilfried Hinrich KRUSE and Jocelyn Ruth KRUSE, on or about the 12th day of April, 1999, at or near Edgewood, in the Province of British Columbia, did without lawful excuse store, or display a firearm, to wit: a P. 38 Handgun, Serial # 8412, in an unsecured manner,

CONTRARY TO SECTION 86(3) OF THE CRIMINAL CODE AND SECTION 4(1) OF THE STORAGE, DISPLAY, HANDLING, AND TRANSPORTATION OF CERTAIN FIREARMS REGULATIONS, P.C. 1992-1659.

BEFORE ME/ASSERMENTÉ DEVANT MOI

May 3rd 19 99

Nakusp
British Columbia/Colombie-Britannique

Simon McDermott
(Signature of informant/Signature du dénonciateur)
PROCESS/ ACTE DE PROCÉDURE CONFIRMED/ CONFIRMÉ

Panda Scott
Justice of the Peace in and for the Province of British Columbia
Juge de paix dans et pour la province de la Colombie-Britannique

A Justice of the Peace in and for the Province of British Columbia
Juge de paix dans et pour la province de la Colombie-Britannique

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Circumstances

- 1 THE COURT: Yes, Mr. Tessmer.
2 MR. TESSMER: Yes, Your Honour, we are here on the Kruse
3 matter. As a result of lengthy discussions with my
4 learned colleague and my clients, Mr. Wilfried
5 Kruse is now wishing to change his plea to the
6 charge of production of cannabis from a plea of not
7 guilty to a plea of guilty, and I have instructions
8 to do that. That is correct, Mr. Kruse?
9 THE ACCUSED: That's correct.
10 MR. TESSMER: All right.
11 THE COURT: That's Count --
12 MR. TESSMER: Count 1.
13 THE COURT: -- Count 1 of the Information. Mr. Brown?
14 MR. BROWN: Yes, the facts are that --
15 MR. TESSMER: Are you going to stay something?
16 MR. BROWN: Yes, I am going to -- if that plea of guilty
17 is accepted, I'll be directing a stay of
18 proceedings against the female accused, and the
19 other charges against both; that is Counts 2 and 3,
20 and that's assuming you accept the plea.
21 THE COURT: Go ahead with the circumstances.
22 MR. BROWN: Yes, on April 12th of last year, Nakusp
23 R.C.M.P., a team, did execute on a search warrant,
24 and they did find a hydroponic grow operation at
25 the residence of Mr. Kruse. The grow was located
26 in a detached shed, one part of the grow; and a
27 second part annexed to the residence itself. There
28 are just over five hundred plants, of which -- five
29 hundred plants --
30 MR. TESSMER: Three hundred were at one to seven inches.
31 MR. BROWN: Three hundred of those plants were what
32 height?
33 MR. TESSMER: One to seven inches tall.
34 MR. BROWN: One to seven inches tall. This is a fully
35 hydroponic grow operation with a two tank -- tanks,
36 approximately thirteen one thousand watt grow amp
37 lamps, blowers and timers -- a fully hydroponic
38 grow operation. Those are the key facts the Crown
39 is relying on.
40 THE COURT: Any quarrel with those circumstances, Mr.
41 Tessmer?
42 MR. TESSMER: None, except for the use of the word,
43 "Hydroponic." Hydroponic denotes a grow that --
44 where the plants are grown without soil, and that
45 the nutrients are provided through -- in a water
46 tube situation to the roots, but other than that,
47 it was an indoor marijuana grow, but not a

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Submissions by Mr. Tessmer

1 hydroponic grow. Other than that, no quarrel.
2 THE COURT: Okay.
3 MR. BROWN: On sentencing, I simply invite the court to
4 mark the photo booklet, which was marked in the
5 voir dire, but in terms of the grow operation --
6 THE COURT: Yes.
7 MR. BROWN: -- as qualified by my friend, the bottom
8 line is that the photos speak for themselves in
9 terms of the level of sophistication. I believe
10 they do speak for themselves.
11 THE COURT: I will direct that Exhibit B, then, in the
12 voir dire, will become Exhibit 1 in this sentencing
13 proceeding.
14 THE CLERK: I'm sorry, Your Honour, is (indiscernible)?
15 THE COURT: I've got it here.
16 THE CLERK: B?
17 THE COURT: B.
18 THE CLERK: Okay.
19 THE COURT: I'll need it, yes.
20 THE CLERK: Okay.
21 THE COURT: I've got it. Okay.
22 THE CLERK: Thank you.

23
24 EXHIBIT 1 - BLUE DUO TANG WITH TABLE OF CONTENTS
25 1-56 AND 56 COLOURED PHOTOGRAPHS -
26 FORMERLY EXHIBIT B ON THE VOIR DIRE
27

28 MR. TESSMER: Can I go first?
29 MR. BROWN: Yes, just one other matter. The Crown is
30 not alleging a record.
31 MR. TESSMER: No, Mr. Kruse has no record whatsoever,
32 Your Honour. He is forty-eight years old. Now,
33 just by way of a background, and I see the officers
34 are sitting here in court, and so I want to take
35 this opportunity to let them know why Mr. Kruse
36 pled not guilty to this, and that is not because of
37 a lack of remorse or regret for his actions, but
38 because we thought there were some serious issues
39 that would be litigated here, pursuant to the
40 Charter of Rights, and ordinarily when police
41 officers conduct a search under the Controlled
42 Drugs and Substance Act, or any other act that
43 allows for a search, there is -- property is not to
44 be damaged, unnecessarily, but only to the extent
45 to allow the search to be conducted, and things are
46 not to be (indiscernible), and if they are not
47 taken, they are not to be damaged, and ordinarily

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Submissions by Mr. Tessmer

1 if a search warrant authorizes the seizure of score
2 sheets, and we all know what those are, then you
3 are not to seize wallets and other documents that
4 are not authorized.

5 And in this case, as well, there were some
6 serious concerns because the major incident
7 flowchart does not indicate anywhere in it who
8 located what, or where, or when, and that is a huge
9 problem when it comes to finding out who searched
10 what, and who seized what. In this case, for
11 instance, the photos that the defence put in showed
12 that there was a search conducted of the kitchen,
13 and yet no officer has admitted conducting a search
14 of the kitchen.

15 As well, a number of pots were dumped out and
16 seized, and they don't appear -- only some of them
17 appear beyond the flowchart, so I appreciate that
18 Mr. Kruse is pleading guilty, at this point, but I
19 make these comments because in the defence's
20 submission there was a number of serious issues
21 with respect to the manner in which the search was
22 conducted in this case.

23 Mr. Kruse is forty-eight years old. He is a
24 landed immigrant who came from Germany in 1991,
25 after vacationing in the Nelson area in 1988 and
26 meeting his future wife, Jocelyn. After meeting
27 her, when he was travelling here they went back and
28 lived together in Germany for a year and a half,
29 and the steps were taken so that Wilfried could
30 immigrate to Canada. They came here, both
31 together, then, and resided in the Nelson area for
32 a number of months and then moved to Edgewood,
33 where they have resided ever since.

34 Now, Mr. Kruse works for the Ministry of
35 Transportation and Highways in the Marine Branch,
36 and he is -- in that capacity he is a -- he
37 operates the ferries that go across -- the Needles-
38 Fauquier ferry -- Fauquier, I suppose it's
39 pronounced -- Arrow Park, the Galena, and the
40 Shelter Bay ferries.

41 In the summertime, he is what's called a long-
42 term auxiliary. In the summertime he is very,
43 very, busy. In the wintertime, it's part-time
44 hours. He is a graduate of the Ship's College in
45 North Vancouver and also the Ship's College in
46 Hamburg, in Germany. He has -- is what is called a
47 Canadian Master-Minor Water Ticket, the Home Trade

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Submissions by Mr. Tessmer

1 Master Ticket, and the Foreign Going Mate's Ticket,
2 so he is a seaman plain and simple.

3 Now, through his wife, and illnesses close to
4 home, his father suffered from Parkinson's disease
5 and his wife's sister suffered from cancer, the
6 Kruses became aware of the therapeutic value and
7 the medicinal value of cannabis, and they were
8 ahead of the politicians, it seems, and started to
9 help people who needed cannabis, medically.

10 I note that Section 56 of the Controlled Drugs
11 and Substance Act recognizes that people may be
12 exempted from that act, if they need one of the
13 Schedule II substances for medical purposes, but
14 although that exception was there, there was no
15 process available for somebody who needed a
16 Schedule II substance to obtain that. There was no
17 source, and nor was there any way to get a license.
18 My client advises that he tried -- they tried to
19 obtain a license for this, but there was no process
20 available to obtain such a license. My client is
21 now going through the process of applying -- part
22 of a group that's applying, along with the ex-mayor
23 of Grand Forks, to be licensed as a supplier of
24 marijuana to Health Canada.

25 Now, having said that, my client recognizes
26 that his compassion for others ought to have been
27 tempered by patience in the -- patience for the law
28 and the politicians to catch up with what medical
29 science is now understanding, and he ought to have
30 waited and not attempted to do this without having
31 a license to do it.

32 My clients applied to the Universal Compassion
33 Club, and that -- rather, that was the purpose of
34 this crop that was growing, to supply to the
35 Universal Compassion Club in Calgary, a sister club
36 to the Vancouver Compassion Club, and of course
37 that marijuana was seized and never did make it to
38 its goal.

39 The plan was to have this product analyzed by
40 a professor, a scientist from the University of
41 Calgary, to determine the THC level, so that that
42 could be monitored, and so that people dying of
43 cancer, people with MS, Parkinson's disease,
44 glaucoma and the like, who need the product could
45 have a steady and consistent uncontaminated source,
46 because that's a great concern of people, is
47 getting a source that's not been contaminated with

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Submissions by Mr. Brown

1 fertilizers and the like, so they -- my client, as
2 I say, is completely remorseful.

3 He recognizes that he ought to have taken
4 steps differently. Now, he's had this over his
5 head now for some fourteen -- I guess it's about
6 fourteen, fifteen months, and has discontinued that
7 activity, of course. He is remorseful and regrets
8 the breach of the law. All the items were seized
9 and, as well, boxes of items were seized that were
10 in fact not being used. My client consents to the
11 forfeiture of the paraphernalia associated with the
12 growing of marijuana.

13 This was not -- although the size of it makes
14 it clear it was not for personal use, this was not
15 an operation that was motivated by greed, but was
16 motivated by altruism to help fellow man and women
17 who faced dire medical situations.

18 In these unusual circumstances, it's my
19 respectful submission that the appropriate
20 discharge is a conditional discharge. My client,
21 aside from his love of his fellow man, also has a
22 love of animals, and if Your Honour sees fit to
23 order community work service to be done, he would
24 ask that he be permitted to perform that work
25 service at the S.P.C.A., locally, and in Edgewood,
26 and that he be permitted to do those hours in the
27 off-season when he has some free time to do some
28 community. Those are my respectful submissions.

29 THE COURT: Thank you. Mr. Brown.

30 MR. BROWN: Given that it's clearly a commercial grow in
31 nature -- you know, these plants can yield easily
32 three ounces in a controlled environment -- three
33 ounces of plant, clearly it's commercial in nature,
34 and because of that, I can't agree to the
35 suggestion for a discharge. It's certainly
36 therefore Your Honour's consideration, but I can't
37 agree in this type of grow operation.

38 I do acknowledge that there were two issues
39 evolving in the trial that you can consider,
40 certainly. There was an issue with respect to
41 Section 10(b) that the Crown had to address, and I
42 was confident we could address it to the court's
43 satisfaction, but I can see there certainly was an
44 issue my friend was developing.

45 There was an issue on this Section 8 matter
46 that I think is significant, I concede, but again I
47 was confident that the court could consider the

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Reasons for Sentence

1 Crown's case with respect to that. The pictures
2 that my friend had marked, indicate the magnitude
3 of the Section 8 issue, and in particular the
4 manner of search, and certainly that was there, and
5 certainly there's -- it is for Your Honour to say
6 that they could raise the issue.

7 In the end, I didn't find the particular
8 complaints of -- certainly individually taken, as
9 being an open and shut application for exclusion.
10 The bottom line is, though, that there were issues
11 that the guilty plea does foreclose and end, and
12 that should be recognized, I concede. So, to go
13 back to my original point, there is no criminal
14 record, but the nature of the grow, the pictures
15 that depict -- that are before you, I have
16 indicated my position because of the nature of the
17 grow.

18 THE COURT: Anything more, Mr. Tessmer?

19 MR. TESSMER: No, Your Honour.

20 THE COURT: Thank you. Would your client please come --

21 MR. TESSMER: Stand up, please, Wilfried.

22 THE COURT: -- and stand before the court?

23 William (sic) Hinrich Kruse, you have pled
24 guilty today, through your counsel, to a charge of
25 production of cannabis marijuana on Information
26 3189C. Yesterday, and partly today, and on a
27 previous day, we were conducting a voir dire with
28 regard to a Charter application to exclude evidence
29 in respect to alleged breaches, pursuant to Section
30 8, 10, and 24(2) of the Charter. There may have
31 been other sections that the defence may have been
32 advancing.

33 In any event, there is no further need now to
34 proceed on that voir dire. You have directed your
35 counsel, today, to enter a guilty plea to the
36 charge that I have just mentioned. You are forty-
37 eight years of age. You have no criminal record.

38 I have heard the background of your coming to
39 Canada, your employment in this community, and your
40 counsel has explained to the court that this
41 activity, illegal as it is, had a medical purpose,
42 and it was the Universal Compassion Centre in
43 Calgary that would have been the recipient of the
44 drugs in question.

45 There is a decision of our court called
46 Regina v. Marcus Richardson, a decision of the
47 Honourable Judge Paradis, who has dealt with this

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Reasons for Sentence

1 issue, and has referred to a number of other cases.
2 In that decision, he made a number of findings that
3 I am satisfied I can make in this case before me.

4 He was satisfied that the accused in that case
5 was in possession of the drug for the purpose of
6 providing the Compassion Club Society of British
7 Columbia with a quantity of marijuana. He found
8 that the marijuana would have been beneficial and
9 would have addressed a number of medical concerns.
10 He referred to a number of other cases, two cases
11 in Ontario where the courts have acknowledged that.

12 While governments have responded to this area
13 in providing exemption under Section 56, and seem
14 to be embarking on legislation and in arrangements
15 which would give effect to the ability of these
16 clubs to find a source of marijuana for medical
17 purposes, they did not and have not, yet, it
18 appears, address the fact that there has to be a
19 source of the drug available to these clubs. I
20 understand that they are now proceeding in that
21 area, and so these clubs cannot secure a source
22 without the involvement of other people.

23 Additionally, in this case, there is no
24 evidence to suggest that you were involved in the
25 production of this drug for any other purpose. The
26 Crown is opposed to the granting of a discharge and
27 says that this was a large commercial operation.
28 It was commercial in the sense it was large. There
29 is no indication, here, that there was any
30 financial benefit accruing back to you, there is no
31 evidence of that, so what we have here is a
32 sophisticated indoor grow operation.

33 I am satisfied that it was conducted for the
34 purposes of providing a source of marijuana for a
35 purpose that even government accepts. Now, your
36 mistake, sir, was that you went ahead before
37 ensuring that the government permitted this conduct
38 to take place. I won't argue that you acted out of
39 compassion, nevertheless, you have to respect the
40 law.

41 The police are obligated to enforce the law
42 and undertake the procedures that are necessary to
43 this enforcement. This area, as you know, is an
44 area of particular difficulty with regard to grow
45 operations. The police are under a lot of pressure
46 to deal with this problem, and did so, in this
47 case.

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Reasons for Sentence

1 From what I have heard about your personal
2 circumstances, you came from Germany and settled
3 here. You have employment here. I am satisfied it
4 would be in your interest to grant a discharge.
5 The act provides, though, that the discharge can
6 only be granted if it's not against the public
7 interest.

8 . Clearly, this kind of offence, but for the
9 purpose for which you were producing the drug,
10 would bring a very strong deterrent sentence, and
11 that is the question that I have to address. I am
12 satisfied in this case, because of the underlying
13 medical reason for the production of the drug, that
14 a discharge is open to me for consideration.

15 It's not a small moment here that in this case
16 there were a number of constitutional issues with
17 regard to the manner in which the search warrant
18 was obtained, and the manner in which it was
19 executed. Those issues need not be considered
20 further.

21 The Crown were not prepared to concede for a
22 moment that the police had acted improperly, or
23 that they had done anything wrong in the manner
24 that they proceeded, but your guilty plea today has
25 brought an end to that further deliberation.

26 Mr. Justice Ferris (phonetic) in Regina v.
27 Fallofield, when they first dealt with discharges
28 in our Court of Appeal, said that even for offences
29 that require a deterrent sentence -- a general
30 deterrent sentence -- it is open to the court to
31 judicially impose a discharge.

32 I am satisfied here that because of your
33 personal background, because of the findings that I
34 have made with regard for the purpose for which
35 this operation was conducted, that it is in your
36 interest, and not against the public interest, that
37 you be granted a conditional charge, and I grant
38 such a discharge upon your entering into a
39 probation order for a period of one year.

40 The conditions of the probation will be that
41 you keep the peace and be of good behaviour, and
42 that you report to the court when required to do
43 so, by the court.

44 I am going to order that you perform fifty
45 hours of community work service. That work will be
46 donated to the S.P.C.A., locally, and in Edgewood,
47 and it will be performed during the off-season, and

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Reasons for Sentence

1 I suggest that that be done between say September
2 15th and March 15th of -- September 15, 2000, and
3 March of 2001.

4 Furthermore, quite contrary to the issue that
5 arose in the Richardson decision, in this case you
6 take no issue with regard to the drug paraphernalia
7 in question, and accordingly the drug paraphernalia
8 that the Crown has seized, will forfeit to the
9 Crown.

10 I understand that a weapon was seized and
11 found by one of the officers conducting the
12 investigation. That will forfeit to the Crown for
13 ultimate destruction.

14 I am obliged to impose on you, because of the
15 plea that you have entered today, a prohibition of
16 your right to possess any firearms, ammunition, or
17 explosive substance, including other items named
18 under -- I think it's Section 109, is not?

19 MR. BROWN: It is.

20 THE COURT: Section 109 of the Criminal Code, and that
21 will be for a period of ten years. I will give you
22 sixty days to lawfully dispose of any of those
23 items named in that section to a bona fide
24 purchaser for value, and if not, then to be turned
25 over to the R.C.M.P. for their possession and
26 destruction as they see fit.

27 I should say that this sentence is imposed
28 because of the very unique circumstances that
29 underlie the production of this illegal drug, and
30 that it is for that reason, primarily, although I
31 have mentioned other reasons in my decision, for
32 the granting of the discharge in this case. It can
33 be said that the continuation of this trial would
34 have gone on for some time, and the issues are now
35 resolved. Is there anything more you are seeking,
36 Mr. Brown, in regard to the terms of the probation?

37 MR. BROWN: No, Your Honour. All the forfeiture orders
38 I would be seeking, you have made, and the
39 mandatory prohibition has been made.

40 MR. TESSMER: That doesn't need to be supervised, does
41 it, or -- or can we -- or I don't know if they need
42 to be supervised?

43 THE COURT: I think you will have to report to a
44 probation officer in Nakusp, here, within seven
45 days and report thereafter as directed. For the
46 purposes of completing the community work service
47 that will have to be supervised.

10

Reasons for Sentence


- 1 MR. TESSMER: Okay. And then any reporting comes to an
2 end once the fifty hours is --
- 3 THE COURT: Yes. And I guess I will also have to
4 consider a victim fine surcharge, which in this
5 case I believe would be fifty -- is it fifty
6 dollars?
- 7 MR. BROWN: Yes.
- 8 THE COURT: Any position on that?
- 9 MR. TESSMER: How much is it?
- 10 THE COURT: Fifty.
- 11 MR. TESSMER: Fifty?
- 12 MR. BROWN: Yes, because it's not a monetary
13 (indiscernible) therefore it's (indiscernible).
- 14 MR. TESSMER: Is it fifty dollars if there's no monitor?
- 15 MR. BROWN: Yes, or he can dispense if there's --
- 16 MR. TESSMER: Well, I'd ask you to dispense with that,
17 Your Honour. My clients have been through a great
18 deal of expense in bringing the issues that we
19 thought were important to be brought to the court's
20 attention.
- 21 THE COURT: That's really a financial consideration, and
22 I have not heard any -- anything more you want to
23 say about that? It's a question of hardship.
- 24 MR. TESSMER: Well, they have divested themselves of all
25 their disposal income in retaining me to be here
26 for them.
- 27 THE COURT: In light of that, I will direct that there
28 be no fine surcharge in the circumstances and, Mr.
29 Brown, you are going to deal with the other matters
30 or have you -- the other counts?
- 31 MR. BROWN: Yes. The other counts I am directing a stay
32 of proceedings. In particular, I am directing a
33 stay -- against both accused, Count 2, I am
34 directing a stay; Count 3, both accused; and I am
35 directing a stay of proceedings, Count 1, against
36 Jocelyn Kruse, the production charge against the --
37 against her.
- 38 MR. TESSMER: How about all those books I gave
39 everybody? Can I have those back, because no doubt
40 those cases will come in handy another time. Do
41 you need yours?
- 42 THE COURT: Were they filed --
- 43 MR. TESSMER: No, we didn't file them as exhibits.
- 44 THE COURT: Well, they can be returned to counsel, then.
- 45 MR. BROWN: Oh, sure.
- 46 THE COURT: Thank you, both.
- 47 MR. TESSMER: Thank you, Your Honour.

11
Proceedings Concluded

1 THE COURT: Thank you.
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3 (PROCEEDINGS CONCLUDED)
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5 12 June 2000/gel
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I hereby certify the foregoing to be
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