

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Hokansson, 2024 NSPC 21

Date: 20240126

Registry: Dartmouth

Between:

His Majesty the King

v.

Connor Hokansson

Judge: The Honourable Judge J. Hartlen

Heard: January 5, 2024, in Dartmouth, Nova Scotia

Oral Decision: January 26, 2024

Charge: 320.14(1)(a) and (b) *Criminal Code*

Counsel: Gregory Morris, for the Crown
Sheena O’Rielly, for the Defence

By the Court:

[1] On November 10th, 2022 at 10:54 p.m., Cst. Redden pulled over the Nissan that Connor Hokansson was driving and formed suspicion that Connor Hokansson was operating the vehicle with alcohol in his body.

[2] Cst. Redden made an ASD demand at 10:56 p.m. and at 10:57 p.m. Connor Hokansson's breath sample registered a fail, and he was arrested and taken to the police cruiser.

[3] After a pat down search for officer safety, Connor Hokansson was placed in the rear of the police cruiser, and at 10:59 p.m. he was advised of his right to counsel and given the police caution. Connor Hokansson said he wanted to speak to counsel.

[4] At 11:01 p.m., Cst. Redden made a breath demand of Connor Hokansson and shortly after this, Cst. Redden called for a tow truck. When the tow truck did not show up in the expected period of time, Cst. Redden moved the Nissan off the roadway into a nearby parking lot and transported Connor Hokansson to the police station, arriving at 11:41 p.m.

[5] After a pat down search of Connor Hokansson, Cst. Redden placed a call to duty counsel. At 11:48, duty counsel called back and Connor Hokansson spoke with duty counsel for approximately five minutes.

[6] At 12:17 a.m. and 12:37 a.m. on November 11th, 2022, Connor Hokansson provided his first and second breath samples, each registering a blood alcohol concentration of 80 milligrams of alcohol in 100 millilitres of blood.

[7] As a result of the events of the evening, Mr. Hokansson was charged with Section 320.14(1)(a) and (b). However, at the conclusion of the evidence, the Crown invited an acquittal on the 320.14(1)(a) charge and an acquittal was entered.

[8] The evidence in this matter came from a single Crown witness, Cst. Troy Redden, and several exhibits that included the certificate of qualified technician, two certificates of analysts, and, video footage from the Sackville RCMP detachment, which captured multiple areas both inside and outside the detachment.

[9] Connor Hokansson's position is as follows. He takes no issue with the grounds for the ASD and acknowledges the device was present and that the test was administered immediately. He takes no issue with the grounds for the arrest and the grounds for the demand.

[10] Mr. Hokansson acknowledged that the arrest and the right to counsel were provided immediately upon Cst. Redden forming grounds for arrest/grounds to make the demand. Mr. Hokansson takes no issue with the legal sufficiency of the wording of the informational component of the right to counsel, the police caution, or the breath demand.

[11] Connor Hokansson takes issue with the delays that occurred after the arrest and right to counsel were provided, and says that the delays led to several Charter violations as follows:

1. A Section 10(b) breach of the implementational portion of his right to counsel.
2. A Section 9 breach for being arbitrarily detained because his detention was unjustifiable during certain portions of time; and
3. A Section 8 breach for unreasonable search and seizure of the breath samples in the face of both the Section 9 and 10 breaches. Mr. Hokansson says the remedy for the breach of one or more of his Charter rights should be the exclusion of his BAC readings.

[12] All the alleged breaches flow from the same impugned police conduct, that is, the alleged delays. So, the real issue here is whether the Crown has

demonstrated that the periods of time it took Cst. Redden to conduct and conclude this investigation were reasonable in the circumstances, such that Connor Hokansson's right to counsel and right not to be arbitrarily detained were respected.

[13] The Section 8 claim would flow from the establishment of one or both of the Section 10 and Section 9 claims.

[14] There are three periods of delay complained about by Mr. Hokansson. The first was from the time he was arrested at 10:57 p.m. until he was able to talk to counsel, that being 51 minutes.

[15] The evidence demonstrates that this 51 minutes unfolded as follows: After Connor Hokansson was arrested, it took two minutes for Cst. Redden to pat him down and bring him to the cruiser and read his right to counsel.

[16] It took two more minutes for Cst. Redden to provide the police cautions and make the breath demand and call the tow truck. Cst. Redden waited for the tow truck for approximately 27 or 28 minutes, at which point he removed Connor Hokansson's Nissan from the roadway, with permission. This took two minutes.

[17] The pair proceeded to the Sackville detachment by direct route, and that took ten minutes. At 11:41 p.m. the two arrived at the detachment and walked in. At 11:42 p.m., Cst. Redden did a further, more thorough pat down of Mr. Hokansson

and made inquiries of Mr. Hokansson about which lawyer he would like to speak with.

[18] Cst. Redden then placed a call to duty counsel. At 11:48 p.m., duty counsel called in to the phone room and spoke with Connor Hokansson for five minutes, after which Connor Hokansson did not express any dissatisfaction with the consultation.

[19] Mr. Hokansson does not allege that Cst. Redden attempted to, or did, elicit any evidence from him during this 51 minutes. The real complaint is with the time it took waiting for the tow truck, which I have found was 28 minutes.

[20] I arrived at 28 minutes the following way: I accept the evidence demonstrates that Cst. Redden read Connor Hokansson the police caution and breath demand at 11:01 p.m. He then called CPIC and asked them to put in a call for a tow truck, so the call for the tow truck occurred at 11:01 p.m. or later.

[21] At 11:29, Cst. Redden moved Connor Hokansson's Nissan into a nearby parking lot, after having been told just before this that there was a holdup with the tow truck. That is 28 minutes spent roadside because of Cst. Redden's decision to call and wait for a tow truck.

[22] The pair left Windmill Road for the Sackville RCMP station at 11:31 p.m., but for reasons I will expand upon later, I accept that Connor Hokansson's vehicle needed to be moved out of the bus lane either by a tow truck or by a police officer, and these two minutes were unavoidable. Whether that two minutes was from 11:01 to 11:03 or from 11:29 to 11:31, it would have still taken two minutes for the Nissan to be moved.

[23] For the remainder of the analysis, 28 minutes is the time I will associate with the decision to call and wait for the tow truck.

[24] The second time-period complained of is the time from the breath demand at 11:01 to the time Connor Hokansson gave his breath samples at 12:17 a.m. and 12:37 a.m., that being 1 hour and 16 minutes and 1 hour and 36 minutes respectively.

[25] Connor Hokansson argues that Section 320.28(1) should be interpreted such that the police are required to take the breath samples as soon as practicable and that 1 hour and 16 minutes is not a period of time which can be considered as soon as practicable in the circumstances. Again, the real complaint here is with the time Cst. Redden waited for the tow truck.

[26] It is a little unclear exactly what is the third impugned time period. It is either the entire time in police custody - 2 hours and 24 minutes - or the 42 minutes

between when the last breath sample was obtained, at 12:37 a.m., and the time Connor Hokansson and Cst. Redden left the police station bound for Connor Hokansson's home at the conclusion of the investigation, which was 1:19 a.m.

[27] It does not make much of a difference which of these two alternative time periods I use for the third time period, considering that my analysis under time period number 1 and time period number 2 covers off the reasonableness of the detention up until the last breath sample.

[28] Therefore, I will analyze the time period after the second sample until Connor Hokansson was released from custody, that being 42 minutes. Connor Hokansson says that his detention for these 42 minutes was unjustified, and therefore arbitrary, thus breaching of Section 9 rights.

[29] As a result of one or more of these Charter violations, Connor Hokansson argues that the results of his breath sample should be excluded. Connor Hokansson admits that if I find his Charter rights were not violated, or that the breath sample should not be excluded, the Crown has proven all the essential elements of the remaining charge.

[30] The Crown says that the evidence demonstrates that there is a reasonable explanation for Cst. Redden's decisions and that it has met its burden to show that

there was not an unreasonable delay in the implementation of Connor Hokansson's right to counsel. The Crown argues that each period of Connor Hokansson's detention was justified and not arbitrary.

[31] The Crown disagrees with the assertion that breath samples must be taken by police as soon as practicable and says that Courts have not adopted such a stance. If one or more Charter violations is found, the Crown argues that the balancing exercise required by Section 24(2) should not result in the exclusion of crucial evidence of a serious offence.

[32] This matter turns on the reasonableness of the time that elapsed between key events in this investigation. Because the bulk of the two first overlapping impugned time periods occurred while Connor Hokansson and Cst. Redden sat roadside waiting for a tow truck, the nub of the matter is the events surrounding Cst. Redden's decision to call and then wait for the tow truck.

[33] The key determination regarding the third period of time is whether Connor Hokansson's detention after the second breath sample was obtained was justified.

[34] Turning to the first time period and Connor Hokansson's claim that he was not provided an opportunity to retain and instruct counsel without delay.

[35] Section 10(b) of the Charter guarantees that upon arrest or detention, a person has the right to retain and instruct counsel without delay, and to be informed of that right.

[36] This imposes two duties on the police. The police must inform the detainee of the right to speak to counsel. Courts have said this right must be provided immediately.

[37] If the detainee wishes to speak with counsel, the police must provide the detainee with an opportunity to exercise that right without delay. Again, interpreted as immediately.

[38] These are referred to as the informational and implementational components of Section 10(b). Until a detainee who wishes to consult with counsel has been given that reasonable opportunity, the police must not attempt to elicit evidence from the detainee.

[39] This case is not about the informational component of Section 10(b). Everyone agrees that Connor Hokansson immediately received the necessary information to exercise his right to counsel.

[40] His complaint is that there was an unreasonable delay in the implementation portion of his 10(b) rights. While the onus is on the person asserting a violation of

his Charter rights to establish that the rights have been violated, where there is a delay in implementation, the burden is on the Crown to show that the delay was reasonable in the circumstances.

[41] This is a fact specific determination, and case law has recognized that there are more logistics associated with providing the actual consultation with legal counsel versus providing a person with the knowledge that they have the right to have the consultation.

[42] As soon as everyone is safe and circumstances reasonably permit, a detainee should be told immediately of his right to counsel. On the other hand, there are many factors that must be considered before the consultation can meaningfully occur.

[43] Calls have to be made in circumstances where everyone is safe and also where it can be guaranteed that only a lawyer and no one else is called. Lawyers have to be available and, most importantly, complete privacy must be afforded, one of the most hallowed principles of our criminal legal system.

[44] The evidence shows that Cst. Redden was confronted with these logistical concerns as he made his decisions at roadside. He was also confronted with

balancing the safety of motorists using Windmill Road against ensuring that Connor Hokansson's rights were honoured and his vehicle not damaged.

[45] It is clear that Connor Hokansson's only real issue with respect to the delay is with the 28 minutes spent roadside. Connor Hokansson says that there are several things Cst. Redden could have and should have done that would have led to less delay before his call with a lawyer.

[46] Mr. Hokansson argues Cst. Redden could have left the Nissan where it was stopped, or he could have moved the Nissan earlier. He argues that Cst. Redden should have called for a backup unit to either wait for the tow truck or transport Mr. Hokansson to the station while Cst. Redden waited for the tow truck.

[47] He argues Cst. Redden could have let him use his own cell phone to call a lawyer in the back of the cruiser, or that Cst. Redden could have given him Cst. Redden's personal cell phone to call a lawyer in the back of the cruiser.

[48] I was presented with a number of cases from the Crown and Mr. Hokansson with what I call "waiting for a tow truck" scenario. These cases make it abundantly clear that there is not a bright line amount of time under which the wait will be reasonable and over which the wait will be unreasonable.

[49] Each situation presents a factual matrix that determines the reasonableness of the length of time, including whether the tow truck even needed to be called in the first place.

[50] I am satisfied that the length of delay here, which was 51 minutes from arrest to the implementational portion of the right to counsel, or 47 minutes from the informational to the implementational portions of right to counsel, cannot be considered "immediately" and does trigger the requirement for the Crown to demonstrate the delay was reasonable.

[51] In determining whether the delay was reasonable in these circumstances, I have determined the following questions need to be answered:

1. Whether it was reasonable to call for the tow truck;
2. Whether it was reasonable for Cst. Redden to wait as long as he did before calling to check about the status of the tow truck;
3. Should Cst. Redden have called for a backup unit; and
4. Should Cst. Redden have facilitated a counsel consultation at roadside.

[52] When I answer these four questions in light of the evidence I accept here, I am persuaded that Cst. Redden's roadside decisions were reasonable in the circumstances.

[53] I am satisfied that facilitating Connor Hokansson's right to counsel was in his mind and that, practically speaking, Connor Hokansson's consultation with counsel occurred without delay, that is, at the first reasonable opportunity considering the circumstances. Let me explain.

[54] Question number 1, whether it was reasonable to call a tow truck. Cst. Redden testified that Connor Hokansson's Nissan was stopped near the end of a bus stop indentation immediately adjacent to the two lanes of travel heading towards Sackville on Windmill Road.

[55] It was illegal to park in this location and there is no street parking on Windmill Road. Apart from being illegal, Cst. Redden's opinion was that it was also an unsafe area for the Nissan to stay stopped. Cst. Redden believed the Nissan had to be removed from this location as it posed a hazard to the motoring public.

[56] Cst. Redden also had concerns about the Nissan being damaged. He said this area was notorious for impaired drivers and that he was liable for the Nissan if it

sustained damage. I accept this evidence and I accept that this position is reasonable.

[57] In fact, it would be entirely unreasonable for a police officer to make a decision to leave a car in a bus stop on Windmill Road on a Thursday night. It would create a hazard for buses and other motorists throughout the night and into the next morning for commuters.

[58] The potential for the Nissan to be damaged is also great. I am satisfied the Nissan had to be moved. Cst. Redden was working alone, so this left Cst. Redden with two choices: call for a tow or move it himself.

[59] Cst. Redden explained that he is reluctant to assume the liability risks associated with driving another person's vehicle, and I accept that this is a reasonable position, especially considering Cst. Redden believed there was a reliable mechanism in place to get a tow truck on scene within 20 to 25 minutes.

[60] Cst. Redden testified that he has called for tow trucks from that general location in the past and that in his experience, it took roughly 20 to 25 minutes for a tow truck to arrive.

[61] He has no ability to contact the tow truck company directly, and all such requests filter through dispatch. He figured on this night it would be a typical tow,

and he testified that CPIC would normally put notes on his screen alerting the roadside officer about any issues.

[62] He was not alerted to any issues until, after waiting roughly 27 minutes and still no tow truck, he called to inquire why. That is when he first learned there was some sort of holdup.

[63] After learning there would be this holdup, he was faced with a decision: continue to wait for the tow truck or revisit his earlier reluctance to move the Nissan himself. The evidence shows he chose to move the Nissan himself, and he asked Connor Hokansson's permission.

[64] At 11:29 p.m., 28 minutes after calling for a tow truck, he moved Connor Hokansson's Nissan into a nearby parking lot. They then immediately left for the Sackville RCMP detachment.

[65] This decision to assume personal liability in the face of reluctance and his normal practice demonstrates that he was attempting to balance the various interests at play and make decisions that honoured Connor Hokansson's Charter rights.

[66] To answer question number 1, I conclude that it was a reasonable decision for Cst. Redden to call a tow truck in the circumstances.

[67] Questions #2 and #3 are intertwined, so I will deal with them together. Was it reasonable for Cst. Redden to wait as long as he did before calling to check up about the holdup, and should Cst. Redden have called for backup units?

[68] There was no delay at all in Cst. Redden calling for a tow truck, a task which he did immediately after giving Connor Hokansson his rights, cautions, and the breath demand.

[69] As stated, Cst. Redden testified that a tow truck to this general location typically took between 20 to 25 minutes, sometimes a little longer. There is nothing Cst. Redden can do to speed up that time, and he has no ability to liaise with the tow company or driver directly while waiting.

[70] I find that it was reasonable, based on his experience and the presenting situation, for Cst. Redden to decide to wait the anticipated usual 20 to 25 minutes for a tow truck.

[71] He testified he was unaware that there was any sort of problem until he called CPIC back to inquire about the time it was taking, roughly 27 minutes after the initial call.

[72] Considering he was not alerted to any issues or holdups and was expectantly waiting for the tow truck to arrive, I'm also satisfied it was reasonable for Cst.

Redden to wait the extra two minutes past the usual outside timeframe before he called to see what was going on.

[73] The fact that Cst. Redden called only two minutes after the outside time he expected the tow to arrive shows that he was mindful of, and concerned about, the time that was passing.

[74] Cst. Redden testified that on this night he did not radio for other assistance while waiting for the tow truck. He said that the standard practice in this area is that if an officer is involved in an impaired investigation at roadside and if there is another member or unit available, that available member will come check on the roadside investigating officer.

[75] Because no units responded, he assumed there was no one available to respond. He further testified that he did not specifically request any assistance because he did not believe he needed any assistance.

[76] I accept that it was reasonable for Cst. Redden not to call for assistance. It was reasonable for him to call and wait what he believed would be 20 to 25 minutes for the tow truck, and to assume, based on his experience with standard practice, that if no other unit came during that time, there was none available.

[77] As he was waiting for the tow truck initially, he had no need of assistance, and no belief there were any free units nearby, so I find his decision not to make a specific call for assistance was reasonable.

[78] As soon as he realized the tow truck was taking an abnormal amount of time, he decided to move the Nissan himself. Again, this was the decision that undoubtedly moved things along faster than had he, at that point, made a decision to call for another unit to attend and assist.

[79] The evidence established that the decision in this regard made by Cst. Redden was reasonable and there is no evidence to suggest that a decision to call for backup would have expediated Connor Hokansson's right to counsel in any way.

[80] Question #4: should Cst. Redden have facilitated a counsel consultation roadside? Although this was argued in his pre-trial brief, at the conclusion of the evidence Connor Hokansson abandoned his argument that Cst. Redden should have provide him with a consultation in the back of the police cruiser. I will deal very briefly with this potential avenue Cst. Redden could have taken to mitigate delay.

[81] The evidence shows that Cst. Redden turned his mind to the possibility of a backseat cruiser consult, but that in his considerable experience in this exact situation, there are unacceptable risks and pitfalls associated with approaching right to counsel this way.

[82] Firstly, Cst. Redden said he would not permit a detainee to use Cst. Redden's personal cell phone. This is a reasonable position, and it was endorsed by the Supreme Court of Canada in *R. v. Taylor*, [2014] S.C.J. No. 50.

[83] But even if Cst. Redden had been prepared to let Connor Hokansson use his personal phone, it does not eliminate the very real problems associated with back seat cruiser consults. Cst. Redden testified that there were two problems with this approach.

[84] For one, Cst. Redden says the approach would not permit Cst. Redden to ensure that Connor Hokansson was only consulting a lawyer. This can be problematic in Cst. Redden's experience, because he has had experiences where detainees called their friends to show up and he said this can cause chaos at the scene.

[85] The second problem according to Cst. Redden's testimony is that this approach to right to counsel would necessitate Cst. Redden being outside of his

police cruiser and far enough away that he could not hear the conversation within, creating an unacceptable risk to Cst. Redden on a major street in an area he says is notorious for impaired drivers.

[86] It also assumes a willingness on Cst. Redden's part to be outside of his cruiser for some undetermined amount of time in the dark in November. He would also be in the unenviable situation of having to walk back to the cruiser at discretionary periods of time, running the risk that he might overhear snippets of a conversation with a lawyer while he was checking to see if the lawyer call was concluded.

[87] Further, he testified that if the police cruiser's in-car audio video was activated, this would not afford the privacy required for solicitor-client communications. He said he would be reluctant to turn any such in-car camera/audio off for policy reasons and because of a risk he would not in fact properly turn it off. Although the evidence in this case shows that it was very unlikely the police cruiser that Cst. Redden was operating this night had any in car video or audio operating at the relevant times.

[88] If right to counsel is not provided immediately, as here, the Crown must justify the delay. Based on the evidence I accept as it relates to the circumstances

confronting Cst. Redden in the night in question, I find the following decisions made by Cst. Redden were reasonable:

1. The decision not to move the Nissan himself in the first instance;
2. The decision to call a tow truck;
3. The decision not to permit Connor Hokansson to use either available cell phone to make a call in the back seat of the cruiser;
4. The decision not to call for backup;
5. The decision to wait until two minutes after the outside timeframe of when he anticipated the tow truck's arrival to call and make further inquiries;
6. The decision to ask permission to and move the Nissan when told about the holdup with the tow truck; and,
7. The decision to go to the Sackville RCMP detachment located ten minutes away.

[89] The evidence demonstrates that Cst. Redden turned his mind to the specifics of the circumstances and concluded that these decisions were reasonably necessary and the attendant delay was justified. The delay was not a product of an officer making decisions in disregard of a detainee's right to counsel.

[90] I am satisfied that Cst. Redden's decisions were objectively reasonable in the circumstances and that he satisfactorily explained why the delay occurred and why he believed the circumstances justified some delay in Connor Hokansson's right to counsel.

[91] I am satisfied that during this time period while they waited for the tow truck, there is nothing that Cst. Redden could have reasonably done to mitigate the delay.

[92] I am satisfied that at a specific point in time, Cst. Redden concluded the delay was no longer justified, i.e. when the tow truck did not arrive in the expected time, and he thereafter immediately took steps to minimize any further delay.

[93] 51 minutes from the time of arrest to a telephone call with a lawyer is less than ideal. Yet when one looks at the circumstances giving rise to that delay in this instance, I believe the Crown has demonstrated that the delay that occurred as a result of Cst. Redden's decisions was reasonable and that Connor Hokansson's consultation with counsel was provided at the first reasonable opportunity in the circumstances.

[94] For all those reasons, I am not satisfied on balance of probabilities that a breach of Connor Hokansson's Section 10(b) Charter rights has been established on the evidence.

[95] Turning to the second impugned period of time. Connor Hokansson argues that largely because of the decision to call and wait for the tow truck, Cst. Redden did not obtain his breath samples as soon as practicable, thus violating his Section 8 rights.

[96] His position is premised on his argument that there is an obligation on police to obtain the breath samples as soon as practicable, and follows the line of case law that holds that in order for the Crown to benefit from the presumption that had been set out in the former Section 258(1)(3) of the Criminal Code, the Crown must demonstrate that the breath samples were taken as soon as practicable.

[97] There have been significant changes to the wording of the presumption sections after the 2018 amendments to the Criminal Code. The current presumption sections contain no such obligation.

[98] I agree with the Crown that such a statutory obligation underpinning the presumption has been eliminated by the 2018 amendments. I agree with and adopt

the rationale in *R. v. Muthuraman*, [2022] O.J. No. 3020 and *R. v. Ridley*, [2023] O.J. No. 4796 both cases provided by the Crown.

[99] I have not been provided with any contrary judicial findings, with the exception of the *Brine* case, [2022] N.S.J. No. 213, which was provided by Mr. Hokansson. The *Brine* case assumes that the police are required to take breath samples as soon as practicable without deciding the issue in light of the amendments.

[100] The case does not reference the wording of the current provisions of the Criminal Code and only references cases decided pre-2018 amendments.

[101] I should also point out that Connor Hokansson relies heavily on the *Goodman* case, [2021] S.J. No. 235, which involved charges under the predecessor provisions Section 255(1) and Section 253(1)(b) and an analysis of whether the police complied with Section 258(1)(3) such that they could rely on the presumption therein.

[102] For this reason, I do not find the analysis in the *Goodman* case related to the "as soon as practicable" argument to be applicable here. I am not persuaded by the plain reading of the relevant provisions of the Criminal Code that there was any obligation on Cst. Redden to obtain Connor Hokansson's breath samples as soon as

practicable in order for the Crown to rely on the presumption. This was presented as a Section 8 breach, and I find there was no breach of Connor Hokansson's Section 8 rights.

[103] Alternatively, if this is viewed as a Section 9 argument that this was an arbitrary detention, I am also satisfied that this period of time waiting for the tow truck did not amount to an arbitrary detention.

[104] For all the reasons already stated regarding the Section 10(b) delay analysis, I find Cst. Redden's decision to call and wait for the tow truck was reasonable, and the time period that Connor Hokansson spent detained at roadside as a result was justified, not arbitrary, and I find no Section 9 Charter breach associated with this time period.

[105] Turning now to Connor Hokansson's Section 9 argument associated with the third impugned period of time. Since I've already concluded that the decision to call and wait for the tow truck was reasonable in the circumstances, and it did not amount to an arbitrary detention or an unreasonable delay in Connor Hokansson's right to counsel, I will assess whether the 42 minutes that elapsed after Connor Hokansson gave his second breath sample to the time when he was released amounted to an arbitrary detention.

[106] Cst. Redden says it typically takes approximately half an hour after the second breath sample to take fingerprints and prepare and serve the paperwork associated with an investigation of this nature.

[107] In this case, it took 42 minutes. The evidence supports the contention that the extra time here was likely because the downstairs fingerprint machine was not working properly.

[108] The evidence of Cst. Redden, combined with the video footage in Exhibit Number 3, establishes that after the second breath sample was provided, Cst. Redden steadily processed this matter to conclusion.

[109] He took Connor Hokansson's fingerprints and photographs, he prepared the necessary paperwork, and then he served and explained the paperwork to Connor Hokansson. At 1:19 a.m., Connor Hokansson exited the station to leave and is clearly no longer detained.

[110] I can see nothing unreasonable at all about the timeliness with which Cst. Redden conducted the wrap up tasks of the investigation after the second breath sample. Care must be taken. The paperwork cannot be rushed. Mistakes in the paperwork or in its service could undermine the entire investigation.

[111] The case of *R. v. Campbell*, [2019] N.S.J. No. 427 was presented in support of Connor Hokansson's argument. In *R. v. Campbell*, [2019] N.S.J. No. 427 the Defendant was detained for almost seven hours in cells after he refused to provide a breath sample, a period of time that Judge McGrath found was unjustifiable and therefore arbitrary.

[112] In the present case, the evidence demonstrates that Cst. Redden worked steadily on advancing the investigation in an orderly fashion to its conclusion.

[113] Connor Hokansson was engaged with Cst. Redden throughout this 42 minutes and he could readily see that Cst. Redden was moving steadily towards concluding the investigation. It did not appear as if Cst. Redden attended to anything else but Connor Hokansson's matter.

[114] This is readily distinguishable from *Campbell*, where Mr. Campbell was simply lodged in cells with no way out and for no apparent reason or justification for the rest of the night and well into the next morning.

[115] If I approach it more holistically, I also see nothing unreasonable about it taking two hours and 24 minutes to start and conclude an investigation into a Section 320.14(1).

[116] Mr. Hokansson was not detained in police custody for any unjustifiable and therefore arbitrary periods of time during this investigation. I find Connor Hokansson's Section 9 Charter rights were not violated.

[117] In summary, contrary to Connor Hokansson's assertion that Cst. Redden had a callous disregard for his rights, the evidence demonstrates that Connor Hokansson's rights were forefront in Cst. Redden's mind.

[118] Cst. Redden is an officer with over 22 years of experience and with a vast amount of experience with impaired driving investigations. It is clear from the evidence that Cst. Redden understands the Charter rights of detainees.

[119] He had an ASD device at the ready, which he administered immediately. He made the breath demand as soon as practicable. He read all the standard rights and cautions off standard cards in a timely manner. He made the determination that Connor Hokansson did not need to be handcuffed.

[120] All of these things show a seasoned officer who knows and honours the rights of a detainee in the context of an impaired operation investigation.

[121] It is clear from the evidence that Cst. Redden was clearly watching the clock, and when the tow truck did not arrive after an amount of time that was typical, he called again to inquire about the issue.

[122] He then made a decision that assumed personal risk entirely because he was concerned with how long the tow truck was taking, and what impact that was having on Connor Hokansson's rights.

[123] As soon as they arrived at the station and the further pat down search was concluded, Cst. Redden turned immediately to the issue of choice of lawyer and then made the call to duty counsel.

[124] All of this demonstrates that he was cognizant of and attempting to safeguard Mr. Hokansson's rights, not that he was in callous disregard of them.

[125] In light of my finding that there are no Charter violations, I do not need to consider the exclusion of the breath samples under Section 24(2) of the Charter. And also having found no Charter breaches, Connor Hokansson concedes the Crown has proven its case beyond a reasonable doubt, and I agree that it has.

[126] So, a conviction will enter for the 320.14(1)(b) charge with the finding that the reading was 80 milligrams percent.

Hartlen, JPC