

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

COLTON DENNIS PARKER

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Transcript of the Oral Decision delivered by The Honourable  
Justice A. M. Mahar, sitting in Yellowknife, in the  
Northwest Territories, on the 10th day of December, 2015.

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APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown

Ms. S. Prithipaul: Counsel for the Accused

(Charges under s. 253(1) (a), 253(1) (b) and 249.1(1) of  
the Criminal Code of Canada)

1 THE COURT: Good morning, everybody.

2 MR. LECORRE: Good morning. Your Honour.

3 THE COURT: Ms. Prithipaul, you're on the  
4 phone?

5 MS. PRITHIPAUL: I am, My Lord.

6 THE COURT: All right. Mr. Lecorre, this  
7 is the Colton Dennis Parker matter.

8 BACKGROUND

9 At trial on a charge under Section 253(1) (b)  
10 of the Criminal Code of Canada, a voir dire was  
11 held under Section 8 and 10 of the Charter to  
12 determine the admissibility of the breathalyzer  
13 readings. Several issues were raised and dealt  
14 with, but the trial judge raised a separate issue  
15 under Section 8 of the Charter; that the  
16 reasonable and probable grounds on which the  
17 police officer based the demand for a breath  
18 sample relied on the use of a roadside screening  
19 device that was not approved by Parliament.

20 One of the devices listed as approved is the  
21 "Alcotest 7410 GLC". At trial, the officer  
22 identified the device as a "Drager  
23 Alcotest 7410 GLC". The trial judge made the  
24 following findings as a result, at page 217:

25 I find it interesting that the case  
26 law, as I understand it, is that the  
27 peace officer can say an approved  
screening device, and that is the  
end of it unless there is a  
challenge, and then it is proved it



1                   was an approved screening device.  
2                   In this case the peace officer  
3                   describes the device he used as a  
4                   Drager Alcotest GLC and effectively  
5                   proved that it was not an approved  
6                   screening device.

7  
8  
9                   And, in conclusion at page 236:

10                   ... how reliable can the officer's  
11                   evidence be if I cannot rely on him  
12                   to describe and use the regulated  
13                   approved screening device. It seems  
14                   to me and I find that it could bring  
15                   the administration of justice into  
16                   disrepute if Parker in particular  
17                   was convicted based on a peace  
18                   officer running around with an  
19                   instrument that the Crown has not  
20                   proven is an approved screening  
21                   device. So it is an issue of  
22                   reliability, not credibility, and I  
23                   am going to exclude the certificate.

24                   Defence counsel at trial adopted the judge's  
25                   reasoning for obvious reasons. Crown counsel  
26                   argued, at page 192 of the transcript, that:

27                   ... in describing the device as a  
28                   Drager Alcotest 7410 GLC the officer  
29                   is just providing additional  
30                   information. It would be no  
31                   different than saying the Alcotest  
32                   7410 GLC made by Drager. It's a  
33                   descriptor.

34                   ANALYSIS

35                   The law dealing with drinking and driving  
36                   offences has become highly technical and complex.  
37                   We have not reached the point, however, where the  
38                   ordinary meaning of words and the commonly  
39                   understood rules of semantic construction no  
40                   longer apply. A Drager Alcotest 7410 GLC is an



1 Alcotest 7410 GLC. The words used by Parliament  
2 in the order - "Alcotest 7410 GLC" - are  
3 sufficient and the addition of a modifier before  
4 or after the specific required words does not  
5 make them any less sufficient. In finding that  
6 the addition of the word Drager turned the device  
7 described into one that was not approved, the  
8 learned trial judge was drawing a legal  
9 conclusion and made a clear error of law.

10 I disagree, respectfully, with the position  
11 of the respondent that the trial judge's findings  
12 are findings of credibility with respect to the  
13 police witness. Any such findings flow from the  
14 error of law and are not in any true sense  
15 findings of credibility.

16 I cannot state the principles in this appeal  
17 more clearly than was stated by Justice Durno in  
18 R. v. Neziol [2001] O.J. No. 4372, at paragraph  
19 27.

20 It is not necessary to resolve the  
21 conflicting decisions in the Supreme  
22 Court where something is missing  
23 from the "approved" designation. In  
24 this case, there is a word before.  
25 Parliament has approved the Alcotest  
26 7410 GLC. It was not unreasonable  
27 for the trial judge to conclude the  
name, Drager, was a manufacturer,  
judicial notice aside. By approving  
the Alcotest 7410 GLC without a  
manufacturer's name, it is an  
approved instrument regardless of  
the manufacturer's name.



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DECISION

The error in this case was not trivial or insignificant. It formed the basis for the trial judge's decision to exclude the certificate. The appeal is allowed.

The appellant asks that I substitute a finding of guilt in this case. While there does not appear to be much dispute about the basic facts and the defence did not call evidence at trial, the parties do not agree about the legal conclusions to be drawn from these facts. I would only move to substitute a verdict in the clearest of cases and this case is not quite at that threshold. A new trial is ordered.

Thank you both for your attendance here this morning. We will close court.

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Certified Pursuant to Rule 723  
of the Rules of Court

Jane Romanowich, CSR(A)  
Court Reporter



