

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**CASSIUIS ZANE PARADIS**

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Transcript of the Reasons for Decision delivered by The Honourable Justice S.H. Smallwood sitting in Yellowknife, in the Northwest Territories, on the 28th day of February, 2019.

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**APPEARANCES:**

Mr. M. Fane: Counsel for the Crown

Mr. B. Lotery: Counsel for the Accused

(By telephone)

(Charges under s. 354(1), 91(2), 92, 92(2), 94(2) 88(2),

117.01(3) of the *Criminal Code* and s. 5(2) of the

*Controlled Drugs and Substances Act*)

1 THE COURT: The accused, Cassiuis Paradis,  
2 is facing 12 charges: possession of cocaine for  
3 the purpose of trafficking, contrary to Section  
4 5(2) of the *Controlled Drugs and Substances Act*;  
5 possession of money obtained by crime, contrary  
6 to Section 354(1)(a) of the *Criminal Code*; and  
7 ten charges pursuant to the *Criminal Code* related  
8 to the possession of firearms, weapons, or  
9 ammunition.

10 The accused has brought an application for  
11 the exclusion of evidence: cocaine, money,  
12 weapons, and ammunition seized following a  
13 vehicle stop, which occurred in Fort Providence,  
14 Northwest Territories. The accused alleges that,  
15 in stopping the vehicle, detaining and arresting  
16 him, and searching the vehicle, the police  
17 breached his rights under Sections 8, 9, 10(a)  
18 and (b) of the *Canadian Charter of Rights and*  
19 *Freedoms* and that the evidence should be excluded  
20 under Section 24(2) of the *Charter*.

21 The Crown concedes that the accused's  
22 Section 10(a) and (b) *Charter* Rights were  
23 breached but contends that the accused was  
24 lawfully detained and arrested and that the items  
25 were located in a search that was incidental to a  
26 valid arrest. The Crown argues that the evidence  
27 should not be excluded under Section 24(2) of the

1 Charter.

2 **THE VOIR DIRE EVIDENCE**

3 The evidence on the voir dire consisted of  
4 the testimony of Constable Steve Beck and  
5 Constable Lee Bennett. There was also an Agreed  
6 Statement of Facts and photographs entered as  
7 exhibits.

8 On October 20th, 2018, Constable Beck pulled  
9 over a blue Volkswagen car in Fort Providence.  
10 There were two men in the vehicle: the accused  
11 was the driver of the vehicle, and the man in the  
12 passenger seat was Echo Delver.

13 Constable Beck detained the accused before  
14 arresting him for trafficking in cocaine.

15 The vehicle was subsequently searched  
16 incident to arrest. A rental record was found in  
17 the vehicle in the name of Cassiuis Paradis with  
18 a rental term of October 2nd to 16, 2018, from  
19 Hertz Rent-A-Car in Edmonton, Alberta.

20 Inside the glove box, \$579 in cash was  
21 located, along with six individually wrapped  
22 packages of cocaine totalling a weight of  
23 1.3 grams.

24 Inside a suitcase in the back seat was a  
25 hunting knife, a fully loaded AR-15 type  
26 semi-automatic rifle with a 40-round magazine  
27 without a trigger lock, a cartridge magazine for

1 the rifle, and additional cartridges and spare  
2 parts for the rifle. Analysis of the rifle  
3 determined that it was non-functional as there  
4 was an extra spring in the gas system. Once the  
5 spring was removed, the rifle was capable of  
6 discharging ammunition.

7 Inside the trunk of the vehicle was a locked  
8 safe which contained \$850, two Ziploc bags  
9 containing 140 small packages of cocaine weighing  
10 approximately 33.67 grams of cocaine; a blue  
11 Ziploc bag containing 93 small packages of  
12 cocaine weighing approximately 22.19 grams of  
13 cocaine, a green Ziploc bag containing 93 small  
14 packages of cocaine weighing approximately 18.28  
15 grams of cocaine and a 28-gram single piece of  
16 cocaine, as well as \$3,379.50 in cash.

17 The issues in this case surround the  
18 validity of the detention of the accused by the  
19 police and what occurred following the detention.

20 Constable Steve Beck testified that he is a  
21 member of the RCMP working in traffic services  
22 out of Hay River. He began in traffic services  
23 in September 2018; and, prior to that, he worked  
24 from April 2011 as a special constable in the  
25 Aboriginal Community Constable Program in  
26 Hay River.

27 Constable Beck has experience investigating

1 matters involving the *Controlled Drugs and*  
2 *Substances Act*. He did not say how many CDSA  
3 investigations he has been involved with, but he  
4 did testify that he is from the community of Hay  
5 River and has lived there for most of his life.  
6 He is familiar with the people, the culture, and  
7 there is a level of trust placed in him by  
8 community members. As a result, he worked with  
9 human sources and confidential informants in drug  
10 investigations while he was working in Hay River.

11 Constable Beck also testified that he was  
12 familiar with Fort Providence having travelled  
13 there regularly over the years through his  
14 employment and having employed people from the  
15 community. He testified that prior to the  
16 vehicle stop, he had been there approximately  
17 three times in the preceding weeks.

18 On October 20th, 2018, he had left Hay River  
19 to attend Fort Providence, which is approximately  
20 an hour-and-a-half drive away, to assist with a  
21 day-long check stop organized by the  
22 Fort Providence detachment and which involved  
23 multiple agencies. Constable Beck was in full  
24 uniform and was driving a black, unmarked Ford  
25 Expedition.

26 Constable Beck and his supervisor,  
27 Constable Bennett were travelling together but in

1 separate vehicles towards the check stop location  
2 when a call for service came in for the Fort  
3 Providence detachment.

4 The call came in through OCC, the  
5 Operational Command Centre, out of Yellowknife.  
6 Constable Beck listened to the call come in over  
7 the radio a couple of times without a response.  
8 Other members from Fort Providence were busy, and  
9 Constable Pardy, another member from Fort  
10 Providence, was at the check stop; so  
11 Constable Beck responded and asked what the  
12 nature of the call was.

13 Constable Beck testified that he was told  
14 that there was a report that three males were  
15 travelling around Fort Providence in a blue car  
16 trafficking cocaine. Constable Beck inquired  
17 what the time delay on the complaint was and was  
18 advised that the call had just come in.

19 There was some discussion between  
20 Constable Pardy and Constable Beck over the radio  
21 about the call. Constable Pardy told  
22 Constable Beck that he had received several  
23 reports of a blue car, a Volkswagen with Alberta  
24 plates, driving around with some Southern males  
25 and dealing cocaine.

26 Constable Pardy was able to locate the car  
27 several times, but was unable to identify any

1 occupants in it or to get a plate number because  
2 the vehicle had always been backed into trees or  
3 into a house.

4 It was decided that Constable Bennett and  
5 Constable Beck would respond to the complaint.

6 Constable Beck and Constable Bennett turned  
7 around and returned to Fort Providence and began  
8 patrolling through the community. Fort  
9 Providence has five or six streets that run  
10 parallel to each other and then other streets  
11 that cut across them. They drove through the  
12 community and down the streets several times.  
13 The officers then met up by the Youth Centre and  
14 at that point had been unable to locate the  
15 vehicle. Constable Beck decided to drive the  
16 back road, which he had not yet checked.

17 As he was driving, he noticed a blue car  
18 backed into a duplex or a quadplex.  
19 Constable Beck stopped the vehicle and put it in  
20 reverse. He observed two males. There was a  
21 larger male, who he later identified as the  
22 accused, with a black suitcase over his shoulder,  
23 standing in the open driver's door area of the  
24 blue car. There was a smaller, Aboriginal male  
25 standing in the open passenger side door area of  
26 the vehicle. Both males looked at his vehicle.  
27 The accused said something to the other man, and

1 both of them slammed the vehicle door shut and  
2 ran back into the house with the accused carrying  
3 the suitcase. Constable Beck thought this  
4 behaviour was strange.

5 Constable Beck radioed Constable Bennett and  
6 informed him that he believed that he had located  
7 a vehicle matching the description and that he  
8 had observed two males running into the house.

9 The officers decided that, since  
10 Fort Providence had only one exit to the highway,  
11 which went past the RCMP detachment, they would  
12 head back to the detachment and wait to conduct a  
13 vehicle stop. Constable Beck intended to do a  
14 traffic stop to further the investigation of the  
15 trafficking complaint. Constable Beck and  
16 Bennett waited in the parking lot at the RCMP  
17 detachment.

18 Constable Beck observed a blue car  
19 approaching and advised Constable Bennett  
20 "there's the car." They got into their vehicles.  
21 Constable Beck observed that the vehicle was a  
22 blue Volkswagen. The vehicle was travelling  
23 approximately 35 kilometres per hour and as the  
24 vehicle came closer to where the police vehicles  
25 were, the vehicle nose dipped and the vehicle  
26 decelerated quickly before continuing on at a  
27 slow speed, about 15 kilometres per hour.



1           As the vehicle passed, Constable Beck  
2           observed two people in the car, the accused, as  
3           the driver, and a smaller, Aboriginal male in the  
4           passenger seat.

5           Constable Beck believed this was the vehicle  
6           he had seen and believed it was the one, "that  
7           was possibly involved in the complaint" so he  
8           pulled in behind the vehicle and observed that it  
9           had an Alberta licence plate. He turned on his  
10          emergency equipment. Constable Beck could see  
11          that the two occupants in the vehicle began to  
12          fidget around, moving back and forth. The  
13          vehicle continued up the road for almost 150  
14          metres before pulling over.

15          Constable Beck advised OCC of the stop and  
16          ran the license plate number. He was advised  
17          that it was a Hertz car. He approached the  
18          driver's side of the vehicle, and  
19          Constable Bennett approached on the passenger  
20          side.

21          Constable Beck observed that the car was in  
22          disarray and that there was a black suitcase in  
23          the back seat in the centre on top of a pile of  
24          various things that appeared to have been thrown  
25          in there. In the back seat, there were blankets  
26          and various grocery items.

27          Constable Beck spoke with the accused and

1 described him as visibly shaking. He asked the  
2 accused to produce his documents. The accused  
3 produced an Alberta driver's license. While  
4 trying to remove the driver's license, the  
5 accused was shaking so badly that he fumbled his  
6 small wallet trying to get the item out.

7 Constable Beck also asked for the rental  
8 agreement. The passenger, Echo Delver, reached  
9 down and opened the glove box and the door fell  
10 open. The accused reached over and slammed the  
11 glove box back shut and then stared at the  
12 passenger. The accused then opened the glove box  
13 a small amount and took out a pouch the size of  
14 an owner's manual through a small slot in the top  
15 of the glove box while holding the glove box  
16 partially shut with one hand and reaching in and  
17 manoeuvring the pouch through the slot with his  
18 other hand. Once he got the item out, he closed  
19 the glove box.

20 The accused had pulled out the rental  
21 agreement and attempted to pass it to  
22 Constable Beck several times. Constable Beck  
23 testified that the accused was shaking so bad  
24 that he crumpled up the document and was having a  
25 hard time passing it to the officer. It appeared  
26 to Constable Beck that the accused would lose  
27 focus and set it back on the centre console of

1 the car and they would continue talking.

2 At some point in the conversation, the  
3 accused asked the officer what it was all about.  
4 Constable Beck told the accused that he had a  
5 complaint of a blue car with Alberta plates and a  
6 couple of males from down South dealing cocaine.  
7 He asked the accused what he thought of that.  
8 Constable Beck thought this exchange occurred  
9 just after the incident with the glove box.

10 Constable Beck also observed that the  
11 accused kept reaching into the front pouch of the  
12 pocket of his hoodie, and the officer asked him  
13 several times not to reach in there because he  
14 did not know what was in the pocket.

15 While Constable Beck was speaking with the  
16 accused, he noticed that there was a phone on the  
17 passenger side floor that continued to light up  
18 as if it was getting calls or text messages.  
19 Instead of picking it up and answering it or  
20 responding, the passenger had his foot on the  
21 phone and was trying to push it up to the front  
22 of the car. It appeared to Constable Beck that  
23 he was using his feet and sliding the phone up  
24 into where the centre console was, almost as  
25 though he was trying to hide the phone.

26 The rental agreement was never passed to  
27 Constable Beck. He would remind the accused, and

1 the accused would grab it but then set it back  
2 down again. It appeared to Constable Beck that  
3 the accused was not able to stay focused.  
4 Constable Beck asked the accused to step out of  
5 the vehicle and he did so immediately. Constable  
6 Beck escorted the accused back to the passenger  
7 side of the police vehicle. Once there, the  
8 accused again tried to reach into the front pouch  
9 of his hoodie and Constable Beck asked him again  
10 not to do that. The accused asked the officer if  
11 he was under arrest. Constable Beck responded  
12 that at that point, he was being detained for a  
13 drug-trafficking investigation. Constable Beck  
14 handcuffed the accused and then reached into the  
15 front pouch of the accused's hoodie and pulled  
16 out what turned out to be a toque. Constable  
17 Beck testified that he searched the accused for  
18 officer safety reasons primarily but also to see  
19 if he had anything pertaining to the drug  
20 investigation. Constable Beck was concerned  
21 because the accused kept reaching into the pocket  
22 of the hoodie. This occurred at approximately  
23 1:39 p.m.

24 The accused was then provided with his  
25 *Charter* Rights and the police warning verbatim  
26 from a card and placed in the back of  
27 Constable Beck's vehicle. The accused indicated

1           that he understood and that he wished to speak to  
2           counsel. He provided the name of a lawyer from  
3           Edmonton by the name of Ben.

4                       Once the accused was secured and *Chartered*,  
5           Constable Beck told Constable Bennett to detain  
6           the passenger for cocaine trafficking as well.

7                       Constable Beck testified that his grounds  
8           for detaining the accused were -- and I am going  
9           to read the evidence of Constable Beck, which,  
10          although lengthy, I think encapsulates his  
11          evidence on this point:

12                               Q   Without referring to anything that  
13                                    Mr. Paradis might have told you,  
14                                    what were your grounds for  
                                  detention?

15                               A   Well, multiple things. First of  
16                                    all, starting with the complaint  
17                                    itself. Despite the fact it  
18                                    wasn't exact, it was -- there was  
19                                    a lot of details and similarities  
20                                    that drew me to this vehicle.  
21                                    Then the vehicle being -- or,  
22                                    sorry -- Constable Pardy's  
23                                    information stating that, in fact,  
24                                    he had seen a blue Volkswagen  
25                                    around Fort Providence, the  
26                                    hamlet, with some males in it. He  
27                                    was unable to identify them.  
                                  Specifically said that the vehicle  
                                  had been backed into homes and  
                                  trees so that he couldn't see the  
                                  plate. That, in my experience, is  
                                  consistent with trying to cover an  
                                  identification of a vehicle; and,  
                                  being that you're in Fort  
                                  Providence, the majority of the  
                                  plates would be Northwest  
                                  Territories, and an Alberta plate  
                                  would stand out.  
                                  So that was strange.

1                   And then, once I did make contact,  
2                   just observation contact with  
3                   Mr. Paradis, he had a suitcase  
4                   that he appeared to be loading  
5                   into a car. They appeared to be  
6                   getting into the car. As soon as  
7                   I backed up the police vehicle, he  
8                   said something that -- I don't  
9                   know what he said, but there was  
10                  almost a moment where they slam  
11                  the doors on a car, which is --  
12                  may or may not mean anything, but  
13                  they took the very same suitcase  
14                  and ran back into the residence.

15                  And then within minutes, we're  
16                  sitting at the -- the Fort  
17                  Providence detachment, and the  
18                  vehicle is approaching, and as  
19                  soon as what I believe to be the  
20                  vehicle became visible to -- or  
21                  the police vehicle became visible  
22                  to Mr. Paradis, the speed slams  
23                  to, you know, approximately 15.

24                  He drives by. I pull in behind  
25                  him. There is a bunch of the  
26                  fidgeting that's going on. He  
27                  doesn't stop his vehicle for a  
28                  period. I get in behind him.  
29                  It's a rental vehicle from  
30                  Alberta. It's a Volkswagen, which  
31                  is (a) It's a car; and (b) It's  
32                  not a common make of vehicle.

33                  And then the nervousness, once I  
34                  approached -- or the vehicle  
35                  itself being in complete disarray,  
36                  just -- and that's -- you know,  
37                  some people they maybe -- they're  
38                  just not organized. That on its  
39                  own didn't mean anything, but it  
40                  just, combined with other things,  
41                  seemed strange.

42                  The types of items I could see,  
43                  the car almost appeared lived in,  
44                  if I could put it that way.  
45                  Blankets, toilet paper, instant  
46                  foods that can be eaten at any  
47                  time. Like, instant noodles, you  
48                  can stop and grab a cup of hot  
49                  water anywhere, and you can have  
50                  noodles on the road. Energy

1 drinks -- the car just appeared  
2 lived in.

3 Q And why is that lived-in nature  
4 and the instant nature of the  
5 food, why is that indicative of  
6 grounds for detention for  
7 trafficking, in your opinion?

8 A Yeah, fair enough. So on that --  
9 that on its own doesn't mean  
10 anything. It could mean that  
11 people are trying to save money  
12 when they're on a road trip, you  
13 know, and that may be it.

14 But what I've learned, in my  
15 experience, is that people who are  
16 engaged in that type of behaviour  
17 don't necessarily want to leave  
18 their vehicle because they have  
19 items in there that they're, (a)  
20 keeping an eye on or (b)  
21 protecting. So the -- they're  
22 worth a lot of money, and they  
23 don't want, you know, to lose the  
24 car, somebody to break in there or  
25 whatever it is.

26 Also, they don't want it to draw  
27 attention to them, so they're able  
28 to just continue down the road  
29 with stop shorts for -- stop or  
30 shortstops for fuel and continue  
31 on.

32 Following this, Constable Beck spoke with  
33 Constable Bennett and Corporal Forman, who had  
34 walked across the street from the Fort Providence  
35 detachment. They spoke, and Constable Beck asked  
36 Constable Bennett what Mr. Delver had told him.  
37 Constable Bennett told Constable Beck that  
38 Mr. Delver had said that he was visiting an aunt  
39 and had been there for several days.

1           Constable Beck had been told by the accused  
2           that he had come from Edmonton to pick up his  
3           nephew, but he could not say who the nephew was.  
4           While in the vehicle, the accused asked Mr.  
5           Delver his last name. Constable Beck  
6           subsequently realized that the accused was  
7           talking about the passenger in the vehicle being  
8           his nephew.

9           In Constable Beck's opinion, none of this  
10          was adding up. At that point, he decided that he  
11          had no reason to believe the accused any further  
12          and formed his grounds for arrest and arrested  
13          him for trafficking cocaine.

14          Constable Beck arrested the accused at  
15          1:51 p.m. and gave him his *Charter* rights and  
16          warnings verbatim from a card again. The accused  
17          indicated he understood and again that he wished  
18          to speak to a lawyer, Ben, from Edmonton.

19          The accused was then transported back to the  
20          detachment along with Mr. Delver. Constable Beck  
21          stayed with the vehicle. Constable Rondeau  
22          arrived and photographed the overall scene and  
23          the car. They then searched the vehicle.

24          Constable Bennett also testified. As he was  
25          driving to the check stop, a call for service  
26          came in over the radio. It was from a citizen in  
27          Fort Providence who said that there was a



1 vehicle, a blue Volkswagen, driving around Fort  
2 Providence, and the occupants were selling  
3 cocaine.

4 Constable Bennett heard the call over the  
5 radio, and he heard Constable Beck, who was in a  
6 different vehicle, answer the radio and ask for  
7 details. Constable Bennett testified that the  
8 call came in at 12:37 p.m., and the details that  
9 were provided were of a blue Volkswagen driving  
10 around town in Fort Providence selling cocaine.  
11 Constable Beck responded that they would take the  
12 complaint.

13 They turned their vehicles around and headed  
14 back towards Fort Providence. As they were  
15 heading back, Constable Pardy came on the radio  
16 and said that there had been other complaints  
17 throughout the week of a similar vehicle, a  
18 Volkswagen car, that it was apparently driving  
19 around Fort Providence and selling drugs out of  
20 the vehicle. Constable Pardy said that he hadn't  
21 been able to locate the vehicle moving, it had  
22 always been parked and backed into a residence in  
23 the community so he was unable to get a licence  
24 plate. In Constable Pardy's view, given the  
25 number of complaints, he felt there was probably  
26 some legitimacy to the complaints.

27 Constable Beck and Constable Bennett

1           patrolled through Fort Providence. On their  
2           first loop around the town, they were unable to  
3           locate the vehicle. Constable Beck and Bennett  
4           met at the parking lot of the Band Office to talk  
5           and discuss what they had seen.

6           They continued to patrol and Constable Beck  
7           came on the radio and said that he had located a  
8           blue Volkswagen backed into a residence on the  
9           back road. He advised Constable Bennett that he  
10          had seen two males coming out of the house, one  
11          carrying a suitcase and when they had seen the  
12          police vehicle, they stopped and turned around  
13          and went back into the house. The vehicle had  
14          been backed in, so no licence plate was obtained.

15          Constable Bennett testified they continued  
16          to patrol, but the vehicle didn't move; so they  
17          went back to the parking lot of the  
18          Fort Providence RCMP detachment. They discussed  
19          what they were going to do. The road was the  
20          only way out of town so if the male was going to  
21          leave, he would have to drive past the detachment  
22          where they were in order to leave town.

23          At approximately 1:35 p.m., they saw the  
24          vehicle approaching. It was a blue Volkswagen  
25          and was coming up the road towards the detachment  
26          heading out of town. The vehicle was not going  
27          at a high speed, but Constable Bennett noted that

1 as it went past where he and Constable Beck were  
2 located, it looked like the nose dipped a little  
3 indicating that the driver might have hit the  
4 brakes. The officers got in their vehicles and  
5 when the car went past, Constable Beck pulled out  
6 behind the vehicle and conducted a vehicle stop.  
7 Constable Bennett estimated that the vehicle  
8 travelled maybe a couple hundred metres before  
9 stopping. Constable Bennett pulled in behind  
10 Constable Beck's vehicle. The vehicle was pulled  
11 over at approximately 1:35 p.m.

12 Constable Beck approached the driver's side  
13 window and Constable Bennett approached the  
14 passenger side. As Constable Bennett approached  
15 the passenger side, there was a young male  
16 sitting there looking straight ahead, not making  
17 eye contact.

18 Constable Bennett could not hear what the  
19 driver was saying, but he could hear Constable  
20 Beck asking for information. It seemed to  
21 Constable Bennett as though Constable Beck was  
22 having trouble getting information from the  
23 driver.

24 Constable Bennett observed that  
25 Constable Beck had asked the driver for vehicle  
26 documents. He saw the passenger reach for the  
27 glove box and open it all the way. The driver

1           quickly slammed it shut and then opened it a  
2           small amount and tried to take out a thick  
3           booklet out of a small opening without opening  
4           the glove box all the way. It appeared to  
5           Constable Bennett that there was something in  
6           there that the driver did not want the officers  
7           to see.

8           After that, Constable Beck continued to talk  
9           to the driver and later got him to exit the  
10          vehicle. Constable Bennett chatted with the  
11          passenger to get some further information about  
12          why they were in town, how long they had been  
13          there, where they were going, et cetera. The  
14          passenger said that they had just got to town to  
15          visit family. When asked where they were going,  
16          he said, back to Edmonton, which Constable  
17          Bennett found strange as Edmonton is  
18          approximately 15 hours away and it was a long  
19          trip to make for a quick visit to family.

20          Constable Bennett thought that the passenger  
21          appeared nervous. He was shaking and did not  
22          really want to answer the officer's questions.  
23          Constable Bennett testified:

24                         "At that point, I believed there was  
25                         grounds to detain him for an  
26                         investigation given the -- the manner  
27                         which they were acting, the oddness  
                          of how long they were in town, the  
                          fact that the driver couldn't really  
                          give Constable Beck clear answers,

1           where I could tell -- I felt there  
2           was grounds to detain for  
3           investigation. That, plus the  
4           information we received of the  
5           trafficking, the -- the drugs out of  
6           the vehicle, given what  
7           Constable Pardy had told us over  
8           the -- the radio; so, at that point,  
9           I detained the passenger."

10          Constable Bennett testified that he detained the  
11          passenger at approximately 1:42 p.m. He provided  
12          the passenger with his *Charter* caution and police  
13          warning, and then subsequently arrested the  
14          passenger when Constable Beck was arresting the  
15          driver.

16          **ANALYSIS**

17                 The accused claims the police breached his  
18                 rights under Section, 8, 9, 10(a) and (b) of the  
19                 Canadian *Charter of Rights and Freedoms* and that  
20                 the evidence should be excluded under  
21                 Section 24(2) of the *Charter*.

22                 The Crown concedes that the police breached  
23                 the accused's Section 10(a) and (b) *Charter*  
24                 Rights, but argues that there were no breaches of  
25                 the accused's Section 9 or Section 8 *Charter*  
26                 Rights with respect to the search of the vehicle.  
27                 The Crown concedes that the search of the  
                accused's hoodie pocket following his exit from  
                the vehicle was not a valid search. The Crown  
                also argues that the evidence should not be  
                excluded under Section 24(2).

1        The Detention of the Accused

2                Section 9 of the Canadian *Charter of Rights*  
3                *and Freedoms* states that everyone has the right  
4                not to be arbitrarily detained or imprisoned.

5                The first question is whether the accused  
6                was detained. I do not think that there is any  
7                dispute about this part. The accused was the  
8                driver of a vehicle pulled over by Constable  
9                Beck. While both Constable Beck and Constable  
10                Bennett, in their evidence, referred to detaining  
11                the accused and the passenger for investigation  
12                following the vehicle stop and following their  
13                initial interactions with them, each officer  
14                acknowledged, in cross-examination, that the  
15                accused and passenger were detained, they were  
16                not free to leave when the vehicle was stopped.

17                When Constable Beck activated the emergency  
18                equipment and the accused pulled the vehicle  
19                over, the accused submitted or acquiesced to the  
20                assertion of police control, and the accused was  
21                detained pursuant to Section 9 of the *Charter*.  
22                See *R v Grant*, 2009 SCC 32; *R v Mellenthin*, [1991]  
23                3 S.C.R. 615; *R v Arabi*, 2007 ABQB 303.

24                The next question is whether the detention  
25                was arbitrary under Section 9. Whether the  
26                detention was arbitrary depends on the authority  
27                of the police to stop the vehicle. A detention

1 that is not authorized by law is arbitrary and  
2 violates Section 9. The law itself must also not  
3 be arbitrary and be constitutionally valid.

4 *Grant, supra* at paragraph 54.

5 Constable Beck testified that he pulled over  
6 the accused's vehicle to further his  
7 investigation into the trafficking complaint. He  
8 also agreed in cross-examination that he did not  
9 have any traffic concerns and there was no  
10 concern that the accused's vehicle was not  
11 complying with the rules of the road.

12 Constable Beck agreed that it was not a traffic  
13 stop and was clearly a drug investigation.

14 Police officers have the authority to stop  
15 motor vehicles to determine if the person  
16 operating the vehicle and the vehicle and its  
17 equipment comply with the *Motor Vehicle Act* and  
18 its regulations. Section 285, *Motor Vehicle Act*,  
19 R.S.N.W.T. 1988, c. M-16.

20 The police cannot, however, randomly stop  
21 vehicles for the purpose of enforcing criminal  
22 laws unrelated to driving unless there are  
23 reasonable grounds to suspect that an offence has  
24 occurred. See *R v Gonzales*, 2017 ONCA 53; *R v*  
25 *Harrison*, [2009] 2 S.C.R. 494; *R v Simpson*  
26 (1993), 79 C.C.C. (3rd) 482 (Ont. C.A.).

27 The authority of the police to detain the

1 accused for investigative purposes derives from  
2 the police duties at common-law to preserve the  
3 peace, prevent crime, and protect life and  
4 property. As stated in *R v Mann*, [2004] 3 S.C.R.  
5 59 at paragraph 45:

6 Police officers may detain an  
7 individual for investigative purposes  
8 if there are reasonable grounds to  
9 suspect in all the circumstances that  
the individual is connected to a  
particular crime and that such a  
detention is necessary.

10 In considering whether the detention is  
11 necessary, the Supreme Court of Canada stated in  
12 *Mann* at paragraph 34:

13 The detention must be viewed as  
14 reasonably necessary on an objective  
15 view of the totality of the  
16 circumstances, informing the  
17 officer's suspicion that there is a  
18 clear nexus between the individual to  
19 be detained and a recent or on-going  
20 criminal offence. Reasonable grounds  
figures at the front-end of such an  
assessment, underlying the officer's  
reasonable suspicion that the  
particular individual is implicated  
in the criminal activity under  
investigation.

21 In discussing what is meant by reasonable  
22 grounds, the Court in *Mann* endorsed the  
23 definition of articulable cause defined in *R v*  
24 *Simpson*, (cited at paragraph 27 of *Mann*) as  
25 being:

26 ... A constellation of objectively  
27 discernible facts which give the  
detaining officer reasonable cause to  
suspect that the detainee is



1 criminally implicated in the activity  
2 under investigation.

3 The threshold is lower than the threshold for an  
4 arrest, which is reasonable and probable grounds,  
5 and it is something more than an officer's hunch  
6 based on intuition gained by experience. The  
7 standard includes both objective and subjective  
8 components. *Mann, supra* at paragraphs 27 to 30.

9 In the *R v Kang Brown*, 2008 SCC 18 the  
10 Supreme Court of Canada elaborated on the meaning  
11 of reasonable suspicion at paragraph 75:

12 Suspicion is an expectation that the  
13 targeted individual is possibly  
14 engaged in some criminal activity. A  
15 reasonable suspicion means something  
16 more than a mere suspicion and  
17 something less than a belief based  
18 upon reasonable and probable grounds.

19 In considering the criminal activity under  
20 investigation, *Mann* refers to reasonable grounds  
21 to suspect that the individual is connected to a  
22 particular crime but it is also been held that it  
23 is not necessary that the police officer be able  
24 to pinpoint the crime with absolute precision.  
25 *R v Nesbeth*, 2008 ONCA 579 at paragraph 18.

26 The Crown's position is that while Constable  
27 Beck subjectively did not believe he had grounds  
28 to detain the accused for investigative purposes  
29 until after the accused had exited the vehicle,

1           several minutes after the traffic stop had begun,  
2           there were, on an objective basis, grounds to  
3           detain the accused for investigative purposes  
4           when the vehicle stop was conducted. The Crown's  
5           position is that, when viewed objectively, there  
6           was reasonable suspicion that an offence had been  
7           committed when considering all of the factors.

8           The Defence position is that this was  
9           clearly a drug investigation, where the officer  
10          lacked reasonable grounds to stop the vehicle and  
11          used the traffic stop to get around not having  
12          the requisite grounds to conduct the drug  
13          investigation. The Defence argued that the  
14          police received a tip and they did not know where  
15          it came from or the basis of it and did no  
16          investigation to attempt to confirm or  
17          corroborate the tip before stopping the vehicle  
18          to investigate the accused and see whether there  
19          was any merit to the complaint.

20          The totality of the circumstances must be  
21          examined to determine whether, on an objective  
22          basis, there were reasonable grounds to suspect  
23          that the accused was connected to a particular  
24          crime. The evaluation of the circumstances is  
25          necessarily fact specific.

26          For example, in *Mann*, the Court concluded  
27          that the police officers had reasonable grounds

1 to detain. The police officers were responding  
2 to a call of a break and enter in progress. As  
3 they approached the scene, they observed the  
4 accused. The accused closely matched the  
5 description of the suspect given by the radio  
6 dispatch and was only two or three blocks from  
7 the scene of the reported crime. As stated in  
8 *Mann* at paragraph 47:

9 "These factors led the officers to  
10 reasonably suspect that the appellant  
11 was involved in recent criminal  
12 activity, and at the very least ought  
13 to be investigated further."

14 In *Arabi, supra* the Court concluded that the  
15 police officers did not have reasonable grounds  
16 and were operating on a hunch only. In that  
17 case, the police officers were on patrol when  
18 they approached a convertible. A male was  
19 standing next to the passenger door leaning into  
20 the convertible. As the police vehicle  
21 approached, the pedestrian looked at the officers  
22 and began walking towards the police vehicle on  
23 the sidewalk. The officer observed the  
24 pedestrian place his hand to his mouth and make a  
25 swallowing motion. The convertible pulled away  
26 from the curb and the vehicle was then stopped by  
27 the police. Moreau J, as she then was, noted  
that the officers had not observed any  
hand-to-hand movements; there was nothing unusual

1 about the vehicle as it pulled away from the curb  
2 and that the vehicle was a rental car, did not:

3 "Add any objective element of  
4 significance to the officers'  
5 observations of the pedestrian such  
6 as to elevate their hunch to  
7 reasonable grounds for the subsequent  
8 detention."

9 *Arabi, supra* at paragraph 30.

10 In *R v Simpson*, the Court concluded that the  
11 detention was unlawful. The police officer had  
12 been told that a residence was a suspected crack  
13 house. The officer stopped a car that had left  
14 the house after the driver briefly went into the  
15 residence. The Court stated at paragraph 68 to  
16 69:

17 Turning to this case, I can find no  
18 articulable cause justifying the  
19 detention. Constable Wilkin had  
20 information of unknown age that  
21 another police officer had been told  
22 that the residence was believed to be  
23 a crack house. Constable Wilkin did  
24 not know the primary source of the  
25 information and he had no reason to  
26 believe that the source in general,  
27 or this particular piece of  
28 information, was reliable. It is  
29 doubtful that this information  
30 standing alone could provide a  
31 reasonable suspicion that the suspect  
32 residence was the scene of criminal  
33 activity.

34 Any glimmer of an articulable cause  
35 disappears, however, when one  
36 considers whether Constable Wilkin  
37 had reason to suspect that the  
38 appellant or the driver of the car  
39 was involved in criminal activity.  
40 He knew nothing about either person  
41 and he did not suggest that anything

1           either had done, apart from being at  
2           the house, aroused his suspicion or  
3           suggested criminal activity.  
4           Attendance at a location believed to  
5           be the site of ongoing criminal  
6           activity is a factor which may  
7           contribute to the existence of  
8           articulable cause. Where that is the  
9           sole factor, however, and the  
10          information concerning the location  
11          is itself of unknown age and  
12          reliability, no articulable cause  
13          exists.

14          As well, in the case of *R v Ha*, 2018 ABCA 233 the  
15          Alberta Court of Appeal upheld the trial judge's  
16          finding that the officer had reasonable and probable  
17          grounds for arrest. In that case, the officer had  
18          witnessed a suspected drug transaction between the  
19          driver of two vehicles. The officer then put out a  
20          call over the police radio asking if either of the  
21          names of the registered owners of the vehicles were  
22          known. He received information in reply from an  
23          experienced drug investigator that the registered  
24          owner of one of the vehicles was involved in  
25          high-level drug trafficking and would likely be a  
26          supplier in any drug transaction. The officer then  
27          subsequently pulled over the vehicle. The Court of  
28          Appeal stated at paragraph 29:

29                 In my view, the trial judge was  
30                 correct in concluding that the  
31                 information provided by [the  
32                 experienced drug investigator],  
33                 combined with [the officer's]  
34                 experience and knowledge about drug  
35                 transactions and his observation of a  
36                 suspected drug transaction between  
37                 the drivers of the two vehicles,

1                   sufficiently grounded the objective  
2                   reasonableness of the subjective  
3                   belief in the requisite reasonable  
4                   and probable grounds for arrest.

5                   There are many cases on this issue, and as has  
6                   been noted, each case turns on its own facts.

7                   In this case, the complainant provided  
8                   minimal information, the information being, as  
9                   testified to by Constable Beck, that there were  
10                  three males driving around Fort Providence in a  
11                  blue car trafficking cocaine. Constable Beck  
12                  inquired about the time delay of the complaint  
13                  and was told that the call had just come in.

14                 Constable Pardy provided further information  
15                 that he had received several reports over the  
16                 past week of a blue Volkswagen car with Alberta  
17                 plates driving around with some Southern males  
18                 dealing cocaine. Constable Pardy had been able  
19                 to locate the vehicle several times but was  
20                 unable to identify an occupant or get a licence  
21                 plate as the vehicle had always been backed into  
22                 the trees or a house.

23                 That is essentially the information that  
24                 Constable Beck had. Dealing first with the  
25                 information, Constable Beck had no information  
26                 about the source or the recency of the  
27                 complainant's knowledge. The information itself  
                  was innocuous and easily obtained by anyone who

1 was in Fort Providence: a blue Volkswagen car  
2 with Alberta plates being driven around by males  
3 unfamiliar to residents of Fort Providence.

4 Neither officer took any steps to  
5 investigate this information or to obtain further  
6 information prior to searching for the vehicle.  
7 There was no indication as to the reliability of  
8 the information provided by the complainant.  
9 This was not an anonymous tip. There was a  
10 complainant that could have been spoken to, as  
11 Constable Beck testified that, at some point, he  
12 became aware of the complainant's name. But the  
13 complainant was not spoken to prior to the  
14 vehicle stop.

15 With respect to the report of trafficking in  
16 cocaine, there was nothing to indicate how the  
17 complainant was aware of this information,  
18 whether this was from a personal observation,  
19 from purchasing cocaine themselves, information  
20 from a family member or a friend, or whether it  
21 was just a rumour in the community. As well,  
22 there was no information about when this had  
23 occurred or whether it was ongoing.

24 Constable Beck testified that the complaint had  
25 just been made when the call came in and was  
26 recent but that does not clarify when the  
27 observations might have been made by the

1 complainant, assuming the complainant had  
2 firsthand knowledge of the trafficking activity.

3 As well, there were no details provided in  
4 the complaint itself which might have been  
5 checked out or corroborated by an independent  
6 investigation. The fact that cocaine and cash  
7 were ultimately found when the accused was  
8 arrested does not constitute corroboration.  
9 Corroboration must occur prior to the detention  
10 or arrest of the accused and not after.

11 Considering the observations of  
12 Constable Beck, once he located the vehicle  
13 parked at a residence, it matched the description  
14 of what had been conveyed to him by OCC and  
15 Constable Pardy. It was a blue car, at that  
16 point he could not tell if it was a Volkswagen or  
17 had Alberta plates. It was also backed into the  
18 residence as Constable Pardy had related that he  
19 had observed the car backed in to a residence or  
20 trees when parked.

21 Constable Beck testified that the vehicle  
22 being backed into homes and trees was consistent  
23 with trying to cover the identification of a  
24 vehicle and that most people simply drive into a  
25 driveway. Added to this was Constable Beck's  
26 thought that the majority of licence plates would  
27 be from the Northwest Territories in



1 Fort Providence and that Alberta plates would  
2 stand out. This information is inconclusive,  
3 people back into driveways for various reasons,  
4 it is not always consistent with trying to  
5 prevent identification of a vehicle.

6 Constable Beck also observed two males  
7 standing outside the car and not three as  
8 reported in the complaint. There was no  
9 description of the males beyond what Constable  
10 Pardy referred to as Southern males, which could  
11 mean anything as I am uncertain on what basis  
12 someone could differentiate a Southern person  
13 from a Northern person. Fort Providence is a  
14 small community, so it could mean that the males  
15 were not from the community, but that is just a  
16 guess.

17 Constable Beck's observations of the two  
18 males and their reaction to him is significant.  
19 It appeared that, as they noticed the police  
20 vehicle, they slammed the door shut on the car  
21 and ran into the residence, the accused carrying  
22 the suitcase he had with him. Constable Beck  
23 viewed that behaviour as strange, and that is a  
24 valid observation.

25 Following this, Constable Beck determined  
26 that he would conduct a traffic stop of the  
27 vehicle to further the drug investigation if the

1 vehicle passed by the RCMP detachment as this was  
2 the main road out of town.

3 Prior to the vehicle stopping,  
4 Constable Beck made further observations. He was  
5 able to observe that it was a blue Volkswagen and  
6 had Alberta plates. He observed that the two  
7 occupants were fidgeting and moving around in the  
8 vehicle. The vehicle continued down the road for  
9 approximately 150 metres before stopping.

10 At the point that Constable Beck stopped the  
11 vehicle, he was suspicious about the vehicle and  
12 its occupants which was demonstrated in his  
13 evidence in cross-examination:

14 Q You had suspicions. You thought  
15 it was odd behaviour, correct,  
16 but --

17 A I believed it to be odd, yes.

18 And later in cross-examination:

19 Q This was a ruse to further your  
20 drug investigation?

21 A I wouldn't call it a ruse. I was  
22 identifying him, and I was looking  
23 to see whether there was some  
24 merit, and this was, in fact, the  
25 guy that -- that I had received  
26 the complaints about. I didn't  
27 know at that point. I didn't know

1           him. I didn't know the car. I  
2           had my suspicions that something  
3           wasn't right; but at that point I  
4           couldn't say for sure that this  
5           was, in fact, the guy or the car.

6           Q    Okay. So you had no idea at this  
7           point? This is -- you detained an  
8           individual with no clue who they  
9           are on the off chance they may be  
10          the person is what you're saying?

11          A    I stopped the car, yes.

12                Based on the evidence, the officer  
13                subjectively had suspicions which in his mind did  
14                not amount to grounds to detain until after his  
15                initial interactions with the accused. Viewed  
16                objectively, I find that, at the point that the  
17                accused's vehicle was pulled over, the officer  
18                was operating on bare suspicion but did not have  
19                reasonable grounds to suspect that the accused  
20                was connected to a particular crime and that  
21                detention was necessary, to use the language from  
22                *Mann*.

23                As such, the accused's Section 9 *Charter*  
24                Rights were breached and the initial stop of the  
25                vehicle was unlawful. The sole purpose of the  
26                stop was to further the drug investigation and  
27                determine if the accused might be involved.

1           Had the initial stop of the vehicle been  
2           lawful, the observations of the officer of the  
3           vehicle and the accused following the stop would  
4           have been sufficient to ground an investigative  
5           detention. However, as the stop was unlawful,  
6           the detention of the accused and subsequent  
7           arrest were unlawful.

8           Section 10(a) and (b) of the Charter

9           Section 10 of the *Charter* states:

10

11                   10. Everyone has the right on arrest  
12                   or detention  
13                   (a) to be informed promptly of the  
14                   reasons therefor;  
15                   (b) to retain and instruct counsel  
16                   without delay and to be informed of  
17                   that right;

18

19           Individuals who are detained for investigative  
20           purposes must be advised of the reasons for  
21           detention in accordance with Section 10(a) of the  
22           *Charter*. There are no particular words that need  
23           to be used by the police provided that the  
24           detainee is advised in "clear and simple  
25           language" of the reason for detention: *Mann*,  
26           *supra* at paragraph 21.

27

28           The Section 10(b) right to counsel arises  
29           immediately upon detention, whether or not the  
30           detention is solely for investigative purposes:  
31           *Grant, supra* at paragraph 58.

32

33           The Crown concedes that the vehicle was

1 stopped and Constable Beck approached the vehicle  
2 and began to speak to the accused, and that he  
3 did not advise the accused of the reasons for  
4 detention or provide him with his right to  
5 counsel, thus breaching the accused's 10(a) and  
6 (b) *Charter* Rights.

7 The evidence of Constable Beck was that he  
8 did not advise the accused of the reason for his  
9 detention or his right to counsel until the  
10 accused exited the vehicle and walked back to the  
11 police vehicle several minutes after the vehicle  
12 stop had begun. Therefore, the accused's Section  
13 10(a) and (b) *Charter* Rights were breached.

14 Section 8 of the *Charter*

15 Section 8 of the *Charter* states that  
16 everyone has the right to be secure against  
17 unreasonable search or seizure.

18 A warrantless search is *prima facie*  
19 unreasonable. When a search is conducted without  
20 a warrant, the Crown must establish, on a balance  
21 of probabilities,

22 (1) that the search was authorized by law,  
23 (2) the law itself is reasonable, and  
24 (3) the manner in which the search was carried  
25 out was reasonable. *Mann, supra* at paragraph 36.

26 On the evidence, there are two searches:  
27 The search of the pocket of the accused's hoodie

1 by Constable Beck after the accused exited the  
2 vehicle and the search of the vehicle following  
3 the arrest of the accused.

4 Where there is an investigative detention, a  
5 police officer may engage in a protective  
6 pat-down search of a detained individual where  
7 the officer has reasonable grounds to believe  
8 that his safety or the safety of others is at  
9 risk. *Mann, supra* at paragraph 45.

10 As I have concluded that the detention was  
11 unlawful, it follows that the ensuing searches  
12 incident to the detention and the later search  
13 incident to arrest were also unlawful.

14 But with respect to the search of the  
15 accused's hoodie pocket, even if the detention  
16 had been lawful in this case, the actions of the  
17 officer went beyond what is permitted in a search  
18 incident to investigative detention.

19 While the officer's concerns about the  
20 accused's actions in continually reaching into  
21 his hoodie pocket even after being repeatedly  
22 told not to would justify a pat-down search for  
23 protective purposes in an investigative  
24 detention, they did not justify him reaching into  
25 the accused's hoodie pocket.

26 Constable Beck testified that, once he  
27 handcuffed the accused, he observed that there

1 was a bulge and he reached into the pocket of the  
2 hoodie. He was concerned about safety but he  
3 also testified that he was concerned about  
4 locating evidence which would assist in the  
5 drug-trafficking investigation. Constable Beck  
6 did not first engage in a pat-down search of the  
7 area to determine if there were any items which  
8 might place officer safety at risk and which  
9 would justify putting his hand into the accused's  
10 hoodie pocket. The more intrusive search of the  
11 accused's pocket was an unreasonable violation of  
12 the accused's reasonable expectation of privacy.

13 Exclusion of Evidence under Section 24(2) of the  
14 Charter:

15 Having found breaches of the accused's  
16 *Charter* Rights, the issue becomes whether the  
17 evidence should be excluded. Section 24 of the  
18 *Canadian Charter of Rights and Freedoms* says:

19  
20 24. (1) Anyone whose rights or  
21 freedoms, as guaranteed by this  
22 *Charter*, have been infringed or  
23 denied may apply to a court of  
competent jurisdiction to obtain such  
remedy as the court considers  
appropriate and just in the  
circumstances.

24 (2) Where, in proceedings under  
25 subsection (1), a court concludes  
26 that evidence was obtained in a  
27 manner that infringed or denied any  
rights or freedoms guaranteed by this  
*Charter*, the evidence shall be  
excluded if it is established that,  
having regard to all the

1                   circumstances, the admission of it in  
2                   the proceedings would bring the  
3                   administration of justice into  
4                   disrepute.

5                   The Supreme Court in *Grant* set out what must be  
6                   considered in determining whether the evidence  
7                   obtained in breach of an accused's *Charter* Rights  
8                   should be excluded. A Court must assess and  
9                   balance the effect of admitting the evidence on  
10                  society's confidence in the justice system,  
11                  having regard to:

12                  (1) The seriousness of the *Charter* infringing  
13                  state conduct;

14                  (2) The impact of the breach on the *Charter*  
15                  protected interests of the accused; and

16                  (3) Society's interest in the adjudication of the  
17                  case on its merits.

#### 18                  The Seriousness of the Breach

19                  The Court has to assess the seriousness of  
20                  the conduct that led to the breach. There is a  
21                  difference between admission of evidence obtained  
22                  through inadvertent or minor violations of the  
23                  *Charter* and evidence obtained through a wilful or  
24                  reckless disregard of *Charter* rights. The  
25                  admission of evidence in the latter situation  
26                  will have a negative effect on public confidence  
27                  in the justice system and risk bringing the  
                    administration of justice into disrepute, *Grant*,



1           *supra* at paragraph 74.

2           Whether the police were operating in good  
3           faith is another consideration in assessing the  
4           seriousness of the police conduct. However, the  
5           Court in *Grant* also noted that ignorance of  
6           *Charter* standards must not be encouraged, and  
7           negligence or wilful blindness do not constitute  
8           good faith. As stated in *Grant*, at paragraph 75:

9                     Wilful or flagrant disregard of the  
10                    *Charter* by those very persons who are  
11                    charged with upholding the right in  
                      question may require that the court  
                      dissociate itself from such conduct.

12  
13           Considering the circumstances of this case, there  
14           are multiple breaches of the accused's *Charter*  
15           Rights. This chain of events was started when  
16           the officer stopped the vehicle without  
17           reasonable grounds to detain the accused. The  
18           officer had suspicions based on what he had heard  
19           and observed but no steps were taken to elevate  
20           those suspicions to reasonable suspicion. The  
21           approach appears to have been to conduct a  
22           traffic stop and see what happened, to see if any  
23           evidence on the drug-trafficking complaint would  
24           be found.

25           The unlawful detention was then compounded  
26           by the failure to advise the accused of his  
27           Section 10(a) and (b) rights and the search of

1 the hoodie pocket and later the search of the  
2 vehicle.

3 The actions of the police, while not in  
4 conformity with the *Charter*, were not abusive in  
5 their dealings with the accused. The officers  
6 appeared to be candid in their testimony about  
7 their observations, their actions, and the  
8 decisions they made. The officer was not  
9 deliberate in violating the accused's *Charter*  
10 Rights, the accused was provided his *Charter*  
11 Rights, Section 10(a) and 10(b), after he exited  
12 the vehicle; although, by then, his Section 9,  
13 10(a) and (b) rights had already been violated.

14 This case is different from the case of  
15 *R v Harrison*, 2009 SCC 34 where the Court found  
16 there was a blatant disregard for the accused's  
17 *Charter* Rights which was aggravated by the  
18 officer's misleading testimony at trial. The  
19 Supreme Court of Canada viewed the police conduct  
20 as serious and not to be condoned.

21 In this case, I do not find that the  
22 officers acted in bad faith which does not  
23 necessarily equate to good faith but it appears  
24 that there was a lack of recognition of the  
25 *Charter* standards.

26 The Court in *Grant* referred to the spectrum  
27 of seriousness of *Charter* violations with

1           inadvertent or minor violations at one end and  
2           wilful or reckless disregard for *Charter* Rights  
3           at the other end. There is no evidence of  
4           systemic or institutional abuse, which would  
5           aggravate the seriousness of the breaches.

6           I find that the conduct of the officer that  
7           led to the multiple *Charter* breaches in this case  
8           reflects a lack of care for the accused's *Charter*  
9           Rights which is in the mid to serious end of the  
10          spectrum. The *Charter* breaching conduct can be  
11          considered serious and tends to support the  
12          exclusion of the evidence.

#### 13          Impact on the Accused's Interests

14          The Court must also evaluate the extent to  
15          which the breach undermined the *Charter* protected  
16          interests of the accused. The impact of a  
17          *Charter* breach may range from fleeting and  
18          technical to profoundly intrusive. The more  
19          serious the impact on the accused's interests,  
20          the greater the risk that admission of the  
21          evidence will bring the administration of justice  
22          into disrepute, *Grant, supra* at paragraph 76.

23          An unreasonable search that intrudes on an  
24          area in which an individual enjoys a high  
25          expectation of privacy, or that demeans their  
26          dignity, is more serious than one that does not.  
27          *Grant, supra* at paragraph 78.

1           In considering physical evidence, the issue  
2           of privacy is the principal interest to consider.  
3           An individual has a higher expectation of privacy  
4           in a dwelling house than in a place of business  
5           or a vehicle. *Grant, supra* at paragraph 113.

6           A person in a motor vehicle has a lesser  
7           expectation of privacy than a person in a home.  
8           Drivers of vehicles are subject to being stopped  
9           in random check-stops to detect things like  
10          impaired driving offences. They may also be  
11          stopped pursuant to the *Motor Vehicle Act* to  
12          determine if they and their vehicle are in  
13          compliance with the *Act* and its regulations.  
14          This is known and drivers understand that this  
15          may occur at any time.

16          There was nothing in the stop itself to  
17          suggest that the encounter was demeaning to the  
18          dignity of the accused and there was nothing  
19          particularly unusual about the treatment of the  
20          accused by the officers. The searches were  
21          relatively non-intrusive.

22          Balanced against this is that the accused  
23          was stopped without justification and his  
24          expectation of liberty and privacy was interfered  
25          with. Following the stop, he was subjected to  
26          searches of his person and the rental vehicle.

27          I conclude that the impact of the breach on

1           the accused's *Charter*-protected interests was  
2           more than minimal but not significant.

3           Society's Interest in Adjudication on the Merits

4                     Society generally expects that criminal  
5           charges will be determined on their merits.  
6           Society has a collective interest in ensuring  
7           that those who violate the law are brought to  
8           trial and dealt with according to the law.

9                     There is a public interest in seeking the  
10          truth, which is a relevant consideration in a  
11          Section 24(2) analysis. As stated in *Grant*,  
12          *supra* at paragraph 82:

13                    The fact that the evidence obtained  
14                    in breach of the Charter may  
15                    facilitate the discovery of the truth  
16                    and the adjudication of a case on its  
17                    merits must therefore be weighed  
                    against factors pointing to  
                    exclusion, in order to balance the  
                    interests of truth with the integrity  
                    of the justice system.

18                    The reliability of the evidence is an important  
19                    factor to consider under this aspect of the test.  
20                    As stated in *Grant, supra* at paragraph 81:

21                    If a breach undermines the  
22                    reliability of the evidence, this  
23                    points in the direction of exclusion  
24                    of the evidence. The admission of  
25                    unreliable evidence serves neither  
26                    the accused's interest in a fair  
27                    trial nor the public interest in  
                    uncovering the truth. Conversely,  
                    exclusion of relevant and reliable  
                    evidence may undermine the  
                    truth-seeking function of the justice  
                    system and render the trial unfair  
                    from the public perspective, thus

1 bringing the administration of  
2 justice into disrepute.

3 As noted in *Grant, supra* at paragraph 115:

4 Reliability issues with physical  
5 evidence will not generally be  
6 related to the *Charter* breach.

7 Other factors to consider under this aspect of  
8 the test will include the importance of the  
9 evidence to the prosecution's case and the  
10 seriousness of the offence in issue.

11 The evidence obtained, in this case,  
12 consisting of drugs, money, weapons, and  
13 ammunition, is highly reliable and relevant  
14 evidence. It is critical evidence to the Crown's  
15 case and essential to a determination on the  
16 merits.

17 The charges the accused faces are serious.  
18 Weapons and drug offences are serious and society  
19 has a significant interest in having these types  
20 of charges determined on their merits.

21 Firearm crimes are treated seriously and of  
22 particular concern to Canadian society. Many  
23 people in the Northwest Territories own firearms,  
24 often to participate in traditional activities  
25 like hunting. This does not mean that people of  
26 the Northwest Territories are not concerned about  
27 the safe use and storage of firearms. The

1 potential for misuse of firearms is always a  
2 serious safety issue and the risk of serious  
3 injury or death is one that is always present.  
4 People are rightly concerned about the safe use  
5 and storage of firearms. The use and storage of  
6 firearms, and particularly this type of firearm,  
7 which is so often associated with school  
8 shootings and other mass shootings, raise serious  
9 public safety concerns.

10 Drugs offences are also serious. This Court  
11 has for many years been concerned about the  
12 trafficking in cocaine in the Northwest  
13 Territories and the offence has been treated  
14 seriously by the Courts in this jurisdiction for  
15 many years. Trafficking in cocaine has been  
16 described as a scourge on society. The movement  
17 of the activity of trafficking in cocaine and  
18 other drugs from the city of Yellowknife to  
19 smaller, more isolated communities is of serious  
20 concern to the residents of small communities and  
21 to the residents of the Northwest Territories in  
22 general.

23 Balanced against this is that the  
24 seriousness of the offence also makes it  
25 important that the accused's rights be respected.  
26 The consequences, if the accused is convicted,  
27 are high and the accused could be subjected to a

1 significant period of imprisonment. In serious  
2 cases, there is also an interest in ensuring that  
3 the justice system is beyond reproach.

4 Having considered the seriousness of the  
5 *Charter* infringing state conduct, the impact of  
6 the breach on the *Charter* protected interests of  
7 the accused, and society's interest in  
8 adjudication of the case on its merits, a judge  
9 must determine whether, on balance, the admission  
10 of the evidence obtained by the *Charter* breach  
11 would bring the administration of justice into  
12 disrepute.

13 I think this is a close case. It is also an  
14 unusual case with unique facts. While drugs are  
15 often seized by the police from motor vehicles in  
16 this jurisdiction, the presence of firearms is  
17 less usual, although it does occur and the  
18 presence of a fully loaded AR-15 type of rifle is  
19 even rarer. I hesitate to say that there has  
20 never been a similar case in the Northwest  
21 Territories because inevitably someone will find  
22 a case or a report of an instance of where it has  
23 happened. But I cannot recall one, and I think  
24 the circumstances are rare.

25 The conduct of the police was serious but  
26 not at the most serious end of the spectrum. The  
27 impact of the breach on the accused was



1 significant but again not at the most serious end  
2 of the scale. The value of the evidence is  
3 considerable and it is reliable evidence.  
4 Society has a significant interest in having  
5 serious matters like these determined on their  
6 merits while at the same time ensuring that those  
7 who are facing serious charges are treated  
8 fairly.

9 In my view, balancing these factors weighs  
10 in favour of admission and the admission of the  
11 evidence would not bring the administration of  
12 justice into disrepute. Exclusion of this  
13 evidence, in my view, would risk bringing the  
14 administration of justice into disrepute. For  
15 these reasons, I find that the evidence seized  
16 following the vehicle stop is admissible.

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18 **ADJOURNED TO MARCH 8, 2019 AT 10:00 A.M.**

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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby certify that the foregoing transcribed pages are a complete and accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 23rd day of April, 2019.

Certified Pursuant to Rule 723  
Of the Rules of Court

*Janet Belma*

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Janet Belma, CSR(A), B.Ed.  
Court Transcriber