*R v Paradis*, 2019 NWTSC 14 **S-1-CR-2018-000139**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**CASSIUIS ZANE PARADIS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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: (By telephone)

Counsel for the Accused

(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
28. *Charter*.
29. **THE *VOIR DIRE* EVIDENCE**
30. The evidence on the voir dire consisted of
31. the testimony of Constable Steve Beck and
32. Constable Lee Bennett. There was also an Agreed
33. Statement of Facts and photographs entered as
34. exhibits.
35. On October 20th, 2018, Constable Beck pulled
36. over a blue Volkswagen car in Fort Providence.
37. There were two men in the vehicle: the accused
38. was the driver of the vehicle, and the man in the
39. passenger seat was Echo Delver.
40. Constable Beck detained the accused before
41. arresting him for trafficking in cocaine.
42. The vehicle was subsequently searched
43. incident to arrest. A rental record was found in
44. the vehicle in the name of Cassiuis Paradis with
45. a rental term of October 2nd to 16, 2018, from
46. Hertz Rent-A-Car in Edmonton, Alberta.
47. Inside the glove box, $579 in cash was
48. located, along with six individually wrapped
49. packages of cocaine totalling a weight of
50. 1.3 grams.
51. Inside a suitcase in the back seat was a
52. hunting knife, a fully loaded AR-15 type
53. semi-automatic rifle with a 40-round magazine
54. without a trigger lock, a cartridge magazine for
55. the rifle, and additional cartridges and spare
56. parts for the rifle. Analysis of the rifle
57. determined that it was non-functional as there
58. was an extra spring in the gas system. Once the
59. spring was removed, the rifle was capable of
60. discharging ammunition.
61. Inside the trunk of the vehicle was a locked
62. safe which contained $850, two Ziploc bags
63. containing 140 small packages of cocaine weighing
64. approximately 33.67 grams of cocaine; a blue
65. Ziploc bag containing 93 small packages of
66. cocaine weighing approximately 22.19 grams of
67. cocaine, a green Ziploc bag containing 93 small
68. packages of cocaine weighing approximately 18.28
69. grams of cocaine and a 28-gram single piece of
70. cocaine, as well as $3,379.50 in cash.
71. The issues in this case surround the
72. validity of the detention of the accused by the
73. police and what occurred following the detention.
74. Constable Steve Beck testified that he is a
75. member of the RCMP working in traffic services
76. out of Hay River. He began in traffic services
77. in September 2018; and, prior to that, he worked
78. from April 2011 as a special constable in the
79. Aboriginal Community Constable Program in
80. Hay River.
81. 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
82. separate vehicles towards the check stop location
83. when a call for service came in for the Fort
84. Providence detachment.
85. The call came in through OCC, the
86. Operational Command Centre, out of Yellowknife.
87. Constable Beck listened to the call come in over
88. the radio a couple of times without a response.
89. Other members from Fort Providence were busy, and
90. Constable Pardy, another member from Fort
91. Providence, was at the check stop; so
92. Constable Beck responded and asked what the
93. nature of the call was.
94. Constable Beck testified that he was told
95. that there was a report that three males were
96. travelling around Fort Providence in a blue car
97. trafficking cocaine. Constable Beck inquired
98. what the time delay on the complaint was and was
99. advised that the call had just come in.
100. There was some discussion between
101. Constable Pardy and Constable Beck over the radio
102. about the call. Constable Pardy told
103. Constable Beck that he had received several
104. reports of a blue car, a Volkswagen with Alberta
105. plates, driving around with some Southern males
106. and dealing cocaine.
107. Constable Pardy was able to locate the car
108. several times, but was unable to identify any
109. occupants in it or to get a plate number because
110. the vehicle had always been backed into trees or
111. into a house.
112. It was decided that Constable Bennett and
113. Constable Beck would respond to the complaint.
114. Constable Beck and Constable Bennett turned
115. around and returned to Fort Providence and began
116. patrolling through the community. Fort
117. Providence has five or six streets that run
118. parallel to each other and then other streets
119. that cut across them. They drove through the
120. community and down the streets several times.
121. The officers then met up by the Youth Centre and
122. at that point had been unable to locate the
123. vehicle. Constable Beck decided to drive the
124. back road, which he had not yet checked.
125. As he was driving, he noticed a blue car
126. backed into a duplex or a quadplex.
127. Constable Beck stopped the vehicle and put it in
128. reverse. He observed two males. There was a
129. larger male, who he later identified as the
130. accused, with a black suitcase over his shoulder,
131. standing in the open driver's door area of the
132. blue car. There was a smaller, Aboriginal male
133. standing in the open passenger side door area of
134. the vehicle. Both males looked at his vehicle.
135. The accused said something to the other man, and
136. both of them slammed the vehicle door shut and
137. ran back into the house with the accused carrying
138. the suitcase. Constable Beck thought this
139. behaviour was strange.
140. Constable Beck radioed Constable Bennett and
141. informed him that he believed that he had located
142. a vehicle matching the description and that he
143. had observed two males running into the house.
144. The officers decided that, since
145. Fort Providence had only one exit to the highway,
146. which went past the RCMP detachment, they would
147. head back to the detachment and wait to conduct a
148. vehicle stop. Constable Beck intended to do a
149. traffic stop to further the investigation of the
150. trafficking complaint. Constable Beck and
151. Bennett waited in the parking lot at the RCMP
152. detachment.
153. Constable Beck observed a blue car
154. approaching and advised Constable Bennett
155. "there's the car." They got into their vehicles.
156. Constable Beck observed that the vehicle was a
157. blue Volkswagen. The vehicle was travelling
158. approximately 35 kilometres per hour and as the
159. vehicle came closer to where the police vehicles
160. were, the vehicle nose dipped and the vehicle
161. decelerated quickly before continuing on at a
162. 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
163. the car and they would continue talking.
164. At some point in the conversation, the
165. accused asked the officer what it was all about.
166. Constable Beck told the accused that he had a
167. complaint of a blue car with Alberta plates and a
168. couple of males from down South dealing cocaine.
169. He asked the accused what he thought of that.
170. Constable Beck thought this exchange occurred
171. just after the incident with the glove box.
172. Constable Beck also observed that the
173. accused kept reaching into the front pouch of the
174. pocket of his hoodie, and the officer asked him
175. several times not to reach in there because he
176. did not know what was in the pocket.
177. While Constable Beck was speaking with the
178. accused, he noticed that there was a phone on the
179. passenger side floor that continued to light up
180. as if it was getting calls or text messages.
181. Instead of picking it up and answering it or
182. responding, the passenger had his foot on the
183. phone and was trying to push it up to the front
184. of the car. It appeared to Constable Beck that
185. he was using his feet and sliding the phone up
186. into where the centre console was, almost as
187. though he was trying to hide the phone.
188. The rental agreement was never passed to
189. Constable Beck. He would remind the accused, and
190. the accused would grab it but then set it back
191. down again. It appeared to Constable Beck that
192. the accused was not able to stay focused.
193. Constable Beck asked the accused to step out of
194. the vehicle and he did so immediately. Constable
195. Beck escorted the accused back to the passenger
196. side of the police vehicle. Once there, the
197. accused again tried to reach into the front pouch
198. of his hoodie and Constable Beck asked him again
199. not to do that. The accused asked the officer if
200. he was under arrest. Constable Beck responded
201. that at that point, he was being detained for a
202. drug-trafficking investigation. Constable Beck
203. handcuffed the accused and then reached into the
204. front pouch of the accused's hoodie and pulled
205. out what turned out to be a toque. Constable
206. Beck testified that he searched the accused for
207. officer safety reasons primarily but also to see
208. if he had anything pertaining to the drug
209. investigation. Constable Beck was concerned
210. because the accused kept reaching into the pocket
211. of the hoodie. This occurred at approximately

23 1:39 p.m.

1. The accused was then provided with his
2. *Charter* Rights and the police warning verbatim
3. from a card and placed in the back of
4. Constable Beck's vehicle. The accused indicated
5. that he understood and that he wished to speak to
6. counsel. He provided the name of a lawyer from
7. Edmonton by the name of Ben.
8. Once the accused was secured and *Chartered*,
9. Constable Beck told Constable Bennett to detain
10. the passenger for cocaine trafficking as well.
11. Constable Beck testified that his grounds
12. for detaining the accused were -- and I am going
13. to read the evidence of Constable Beck, which,
14. although lengthy, I think encapsulates his
15. evidence on this point:

12

Q Without referring to anything that

1. Mr. Paradis might have told you, what were your grounds for
2. detention?
3. A Well, multiple things. First of all, starting with the complaint
4. itself. Despite the fact it wasn't exact, it was -- there was
5. a lot of details and similarities that drew me to this vehicle.
6. Then the vehicle being -- or, sorry -- Constable Pardy's
7. information stating that, in fact, he had seen a blue Volkswagen
8. around Fort Providence, the hamlet, with some males in it. He
9. was unable to identify them. Specifically said that the vehicle
10. had been backed into homes and trees so that he couldn't see the
11. plate. That, in my experience, is consistent with trying to cover an
12. identification of a vehicle; and, being that you're in Fort
13. Providence, the majority of the plates would be Northwest
14. Territories, and an Alberta plate would stand out.
15. So that was strange.
    1. And then, once I did make contact, just observation contact with
    2. Mr. Paradis, he had a suitcase that he appeared to be loading
    3. into a car. They appeared to be getting into the car. As soon as
    4. I backed up the police vehicle, he said something that -- I don't
    5. know what he said, but there was almost a moment where they slam
    6. the doors on a car, which is -- may or may not mean anything, but
    7. they took the very same suitcase and ran back into the residence.

8

And then within minutes, we're

1. sitting at the -- the Fort Providence detachment, and the
2. vehicle is approaching, and as soon as what I believe to be the
3. vehicle became visible to -- or the police vehicle became visible
4. to Mr. Paradis, the speed slams to, you know, approximately 15.

13

He drives by. I pull in behind

1. him. There is a bunch of the fidgeting that's going on. He
2. doesn't stop his vehicle for a period. I get in behind him.
3. It's a rental vehicle from Alberta. It's a Volkswagen, which
4. is (a) It's a car; and (b) It's not a common make of vehicle.

18

And then the nervousness, once I

1. approached -- or the vehicle itself being in complete disarray,
2. just -- and that's -- you know, some people they maybe -- they're
3. just not organized. That on its own didn't mean anything, but it
4. just, combined with other things, seemed strange.

23

The types of items I could see,

1. the car almost appeared lived in, if I could put it that way.
2. Blankets, toilet paper, instant foods that can be eaten at any
3. time. Like, instant noodles, you can stop and grab a cup of hot
4. water anywhere, and you can have noodles on the road. Energy

1 drinks -- the car just appeared lived in.

2

Q And why is that lived-in nature

1. and the instant nature of the food, why is that indicative of
2. grounds for detention for trafficking, in your opinion?

5

A Yeah, fair enough. So on that --

1. that on its own doesn't mean anything. It could mean that
2. people are trying to save money when they're on a road trip, you
3. know, and that may be it.
4. But what I've learned, in my experience, is that people who are
5. engaged in that type of behaviour don't necessarily want to leave
6. their vehicle because they have items in there that they're, (a)
7. keeping an eye on or (b) protecting. So the -- they're
8. worth a lot of money, and they don't want, you know, to lose the
9. car, somebody to break in there or whatever it is.

15

Also, they don't want it to draw

1. attention to them, so they're able to just continue down the road
2. with stop shorts for -- stop or shortstops for fuel and continue
3. on.

19

1. Following this, Constable Beck spoke with
2. Constable Bennett and Corporal Forman, who had
3. walked across the street from the Fort Providence
4. detachment. They spoke, and Constable Beck asked
5. Constable Bennett what Mr. Delver had told him.
6. Constable Bennett told Constable Beck that
7. Mr. Delver had said that he was visiting an aunt
8. 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
9. vehicle, a blue Volkswagen, driving around Fort
10. Providence, and the occupants were selling
11. cocaine.
12. Constable Bennett heard the call over the
13. radio, and he heard Constable Beck, who was in a
14. different vehicle, answer the radio and ask for
15. details. Constable Bennett testified that the
16. call came in at 12:37 p.m., and the details that
17. were provided were of a blue Volkswagen driving
18. around town in Fort Providence selling cocaine.
19. Constable Beck responded that they would take the
20. complaint.
21. They turned their vehicles around and headed
22. back towards Fort Providence. As they were
23. heading back, Constable Pardy came on the radio
24. and said that there had been other complaints
25. throughout the week of a similar vehicle, a
26. Volkswagen car, that it was apparently driving
27. around Fort Providence and selling drugs out of
28. the vehicle. Constable Pardy said that he hadn't
29. been able to locate the vehicle moving, it had
30. always been parked and backed into a residence in
31. the community so he was unable to get a licence
32. plate. In Constable Pardy's view, given the
33. number of complaints, he felt there was probably
34. some legitimacy to the complaints.
35. 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
36. as it went past where he and Constable Beck were
37. located, it looked like the nose dipped a little
38. indicating that the driver might have hit the
39. brakes. The officers got in their vehicles and
40. when the car went past, Constable Beck pulled out
41. behind the vehicle and conducted a vehicle stop.
42. Constable Bennett estimated that the vehicle
43. travelled maybe a couple hundred metres before
44. stopping. Constable Bennett pulled in behind
45. Constable Beck's vehicle. The vehicle was pulled
46. over at approximately 1:35 p.m.
47. Constable Beck approached the driver's side
48. window and Constable Bennett approached the
49. passenger side. As Constable Bennett approached
50. the passenger side, there was a young male
51. sitting there looking straight ahead, not making
52. eye contact.
53. Constable Bennett could not hear what the
54. driver was saying, but he could hear Constable
55. Beck asking for information. It seemed to
56. Constable Bennett as though Constable Beck was
57. having trouble getting information from the
58. driver.
59. Constable Bennett observed that
60. Constable Beck had asked the driver for vehicle
61. documents. He saw the passenger reach for the
62. glove box and open it all the way. The driver
63. quickly slammed it shut and then opened it a
64. small amount and tried to take out a thick
65. booklet out of a small opening without opening
66. the glove box all the way. It appeared to
67. Constable Bennett that there was something in
68. there that the driver did not want the officers
69. to see.
70. After that, Constable Beck continued to talk
71. to the driver and later got him to exit the
72. vehicle. Constable Bennett chatted with the
73. passenger to get some further information about
74. why they were in town, how long they had been
75. there, where they were going, et cetera. The
76. passenger said that they had just got to town to
77. visit family. When asked where they were going,
78. he said, back to Edmonton, which Constable
79. Bennett found strange as Edmonton is
80. approximately 15 hours away and it was a long
81. trip to make for a quick visit to family.
82. Constable Bennett thought that the passenger
83. appeared nervous. He was shaking and did not
84. really want to answer the officer's questions.
85. Constable Bennett testified:

24

"At that point, I believed there was

1. grounds to detain him for an investigation given the -- the manner
2. which they were acting, the oddness of how long they were in town, the
3. fact that the driver couldn't really give Constable Beck clear answers,
4. where I could tell -- I felt there was grounds to detain for
5. investigation. That, plus the information we received of the
6. trafficking, the -- the drugs out of the vehicle, given what
7. Constable Pardy had told us over the -- the radio; so, at that point,
8. I detained the passenger."
9. Constable Bennett testified that he detained the
10. passenger at approximately 1:42 p.m. He provided
11. the passenger with his *Charter* caution and police
12. warning, and then subsequently arrested the
13. passenger when Constable Beck was arresting the
14. driver.

# ANALYSIS

1. The accused claims the police breached his
2. rights under Section, 8, 9, 10(a) and (b) of the
3. Canadian *Charter of Rights and Freedoms* and that
4. the evidence should be excluded under
5. Section 24(2) of the *Charter*.
6. The Crown concedes that the police breached
7. the accused's Section 10(a) and (b) *Charter*
8. Rights, but argues that there were no breaches of
9. the accused's Section 9 or Section 8 *Charter*
10. Rights with respect to the search of the vehicle.
11. The Crown concedes that the search of the
12. accused's hoodie pocket following his exit from
13. the vehicle was not a valid search. The Crown
14. also argues that the evidence should not be
15. 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.

1. The next question is whether the detention
2. was arbitrary under Section 9. Whether the
3. detention was arbitrary depends on the authority
4. of the police to stop the vehicle. A detention
5. that is not authorized by law is arbitrary and
6. violates Section 9. The law itself must also not
7. be arbitrary and be constitutionally valid.
8. *Grant, supra* at paragraph 54.
9. Constable Beck testified that he pulled over
10. the accused's vehicle to further his
11. investigation into the trafficking complaint. He
12. also agreed in cross-examination that he did not
13. have any traffic concerns and there was no
14. concern that the accused's vehicle was not
15. complying with the rules of the road.
16. Constable Beck agreed that it was not a traffic
17. stop and was clearly a drug investigation.
18. Police officers have the authority to stop
19. motor vehicles to determine if the person
20. operating the vehicle and the vehicle and its
21. equipment comply with the *Motor Vehicle Act* and
22. its regulations. Section 285, *Motor Vehicle Act,*

19 R.S.N.W.T. 1988, c. M-16.

1. The police cannot, however, randomly stop
2. vehicles for the purpose of enforcing criminal
3. laws unrelated to driving unless there are
4. reasonable grounds to suspect that an offence has
5. occurred. See *R v Gonzales,* 2017 ONCA 53; *R v*
6. *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 individual for investigative purposes
7. if there are reasonable grounds to suspect in all the circumstances that
8. the individual is connected to a particular crime and that such a
9. 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 reasonably necessary on an objective
14. view of the totality of the circumstances, informing the
15. officer’s suspicion that there is a clear nexus between the individual to
16. be detained and a recent or on-going criminal offence. Reasonable grounds
17. figures at the front-end of such an assessment, underlying the officer’s
18. reasonable suspicion that the particular individual is implicated
19. in the criminal activity under investigation.

20

1. In discussing what is meant by reasonable
2. grounds, the Court in *Mann* endorsed the
3. definition of articulable cause defined in *R v*
4. *Simpson*, (cited at paragraph 27 of *Mann*) as
5. being:
6. ... A constellation of objectively discernible facts which give the
7. detaining officer reasonable cause to suspect that the detainee is

1 criminally implicated in the activity under investigation.

2

1. The threshold is lower than the threshold for an
2. arrest, which is reasonable and probable grounds,
3. and it is something more than an officer's hunch
4. based on intuition gained by experience. The
5. standard includes both objective and subjective
6. components. *Mann*, *supra* at paragraphs 27 to 30.
7. In the *R v Kang Brown*, 2008 SCC 18 the
8. Supreme Court of Canada elaborated on the meaning
9. of reasonable suspicion at paragraph 75:
10. Suspicion is an expectation that the targeted individual is possibly
11. engaged in some criminal activity. A reasonable suspicion means something
12. more than a mere suspicion and something less than a belief based
13. upon reasonable and probable grounds.

16

1. In considering the criminal activity under
2. investigation, *Mann* refers to reasonable grounds
3. to suspect that the individual is connected to a
4. particular crime but it is also been held that it
5. is not necessary that the police officer be able
6. to pinpoint the crime with absolute precision.
7. *R v Nesbeth,* 2008 ONCA 579 at paragraph 18.
8. The Crown's position is that while Constable
9. Beck subjectively did not believe he had grounds
10. to detain the accused for investigative purposes
11. until after the accused had exited the vehicle,
12. several minutes after the traffic stop had begun,
13. there were, on an objective basis, grounds to
14. detain the accused for investigative purposes
15. when the vehicle stop was conducted. The Crown's
16. position is that, when viewed objectively, there
17. was reasonable suspicion that an offence had been
18. committed when considering all of the factors.
19. The Defence position is that this was
20. clearly a drug investigation, where the officer
21. lacked reasonable grounds to stop the vehicle and
22. used the traffic stop to get around not having
23. the requisite grounds to conduct the drug
24. investigation. The Defence argued that the
25. police received a tip and they did not know where
26. it came from or the basis of it and did no
27. investigation to attempt to confirm or
28. corroborate the tip before stopping the vehicle
29. to investigate the accused and see whether there
30. was any merit to the complaint.
31. The totality of the circumstances must be
32. examined to determine whether, on an objective
33. basis, there were reasonable grounds to suspect
34. that the accused was connected to a particular
35. crime. The evaluation of the circumstances is
36. necessarily fact specific.
37. For example, in *Mann*, the Court concluded
38. that the police officers had reasonable grounds
39. to detain. The police officers were responding
40. to a call of a break and enter in progress. As
41. they approached the scene, they observed the
42. accused. The accused closely matched the
43. description of the suspect given by the radio
44. dispatch and was only two or three blocks from
45. the scene of the reported crime. As stated in
46. *Mann* at paragraph 47:
47. "These factors led the officers to reasonably suspect that the appellant
48. was involved in recent criminal activity, and at the very least ought
49. to be investigated further."
50. In *Arabi*, *supra* the Court concluded that the
51. police officers did not have reasonable grounds
52. and were operating on a hunch only. In that
53. case, the police officers were on patrol when
54. they approached a convertible. A male was
55. standing next to the passenger door leaning into
56. the convertible. As the police vehicle
57. approached, the pedestrian looked at the officers
58. and began walking towards the police vehicle on
59. the sidewalk. The officer observed the
60. pedestrian place his hand to his mouth and make a
61. swallowing motion. The convertible pulled away
62. from the curb and the vehicle was then stopped by
63. the police. Moreau J, as she then was, noted
64. that the officers had not observed any
65. hand-to-hand movements; there was nothing unusual
66. about the vehicle as it pulled away from the curb
67. and that the vehicle was a rental car, did not:
68. "Add any objective element of significance to the officers’
69. observations of the pedestrian such as to elevate their hunch to
70. reasonable grounds for the subsequent detention."

6

1. *Arabi, supra* at paragraph 30.
2. In R v *Simpson*, the Court concluded that the
3. detention was unlawful. The police officer had
4. been told that a residence was a suspected crack
5. house. The officer stopped a car that had left
6. the house after the driver briefly went into the
7. residence. The Court stated at paragraph 68 to

14 69:

1. Turning to this case, I can find no articulable cause justifying the
2. detention. Constable Wilkin had information of unknown age that
3. another police officer had been told that the residence was believed to be
4. a crack house. Constable Wilkin did not know the primary source of the
5. information and he had no reason to believe that the source in general,
6. or this particular piece of information, was reliable. It is
7. doubtful that this information standing alone could provide a
8. reasonable suspicion that the suspect residence was the scene of criminal
9. activity.
10. Any glimmer of an articulable cause disappears, however, when one
11. considers whether Constable Wilkin had reason to suspect that the
12. appellant or the driver of the car was involved in criminal activity.
13. He knew nothing about either person and he did not suggest that anything
14. either had done, apart from being at the house, aroused his suspicion or
15. suggested criminal activity. Attendance at a location believed to
16. be the site of ongoing criminal activity is a factor which may
17. contribute to the existence of articulable cause. Where that is the
18. sole factor, however, and the information concerning the location
19. is itself of unknown age and reliability, no articulable cause
20. exists.
21. As well, in the case of *R v Ha*, 2018 ABCA 233 the
22. Alberta Court of Appeal upheld the trial judge's
23. finding that the officer had reasonable and probable
24. grounds for arrest. In that case, the officer had
25. witnessed a suspected drug transaction between the
26. driver of two vehicles. The officer then put out a
27. call over the police radio asking if either of the
28. names of the registered owners of the vehicles were
29. known. He received information in reply from an
30. experienced drug investigator that the registered
31. owner of one of the vehicles was involved in
32. high-level drug trafficking and would likely be a
33. supplier in any drug transaction. The officer then
34. subsequently pulled over the vehicle. The Court of
35. Appeal stated at paragraph 29:

23

In my view, the trial judge was

1. correct in concluding that the information provided by [the
2. experienced drug investigator], combined with [the officer's]
3. experience and knowledge about drug transactions and his observation of a
4. suspected drug transaction between the drivers of the two vehicles,
5. sufficiently grounded the objective reasonableness of the subjective
6. belief in the requisite reasonable and probable grounds for arrest.

3

1. There are many cases on this issue, and as has
2. been noted, each case turns on its own facts.
3. In this case, the complainant provided
4. minimal information, the information being, as
5. testified to by Constable Beck, that there were
6. three males driving around Fort Providence in a
7. blue car trafficking cocaine. Constable Beck
8. inquired about the time delay of the complaint
9. and was told that the call had just come in.
10. Constable Pardy provided further information
11. that he had received several reports over the
12. past week of a blue Volkswagen car with Alberta
13. plates driving around with some Southern males
14. dealing cocaine. Constable Pardy had been able
15. to locate the vehicle several times but was
16. unable to identify an occupant or get a licence
17. plate as the vehicle had always been backed into
18. the trees or a house.
19. That is essentially the information that
20. Constable Beck had. Dealing first with the
21. information, Constable Beck had no information
22. about the source or the recency of the
23. complainant's knowledge. The information itself
24. was innocuous and easily obtained by anyone who
25. was in Fort Providence: a blue Volkswagen car
26. with Alberta plates being driven around by males
27. unfamiliar to residents of Fort Providence.
28. Neither officer took any steps to
29. investigate this information or to obtain further
30. information prior to searching for the vehicle.
31. There was no indication as to the reliability of
32. the information provided by the complainant.
33. This was not an anonymous tip. There was a
34. complainant that could have been spoken to, as
35. Constable Beck testified that, at some point, he
36. became aware of the complainant's name. But the
37. complainant was not spoken to prior to the
38. vehicle stop.
39. With respect to the report of trafficking in
40. cocaine, there was nothing to indicate how the
41. complainant was aware of this information,
42. whether this was from a personal observation,
43. from purchasing cocaine themselves, information
44. from a family member or a friend, or whether it
45. was just a rumour in the community. As well,
46. there was no information about when this had
47. occurred or whether it was ongoing.
48. Constable Beck testified that the complaint had
49. just been made when the call came in and was
50. recent but that does not clarify when the
51. observations might have been made by the
52. complainant, assuming the complainant had
53. firsthand knowledge of the trafficking activity.
54. As well, there were no details provided in
55. the complaint itself which might have been
56. checked out or corroborated by an independent
57. investigation. The fact that cocaine and cash
58. were ultimately found when the accused was
59. arrested does not constitute corroboration.
60. Corroboration must occur prior to the detention
61. or arrest of the accused and not after.
62. Considering the observations of
63. Constable Beck, once he located the vehicle
64. parked at a residence, it matched the description
65. of what had been conveyed to him by OCC and
66. Constable Pardy. It was a blue car, at that
67. point he could not tell if it was a Volkswagen or
68. had Alberta plates. It was also backed into the
69. residence as Constable Pardy had related that he
70. had observed the car backed in to a residence or
71. trees when parked.
72. Constable Beck testified that the vehicle
73. being backed into homes and trees was consistent
74. with trying to cover the identification of a
75. vehicle and that most people simply drive into a
76. driveway. Added to this was Constable Beck's
77. thought that the majority of licence plates would
78. be from the Northwest Territories in
79. Fort Providence and that Alberta plates would
80. stand out. This information is inconclusive,
81. people back into driveways for various reasons,
82. it is not always consistent with trying to
83. prevent identification of a vehicle.
84. Constable Beck also observed two males
85. standing outside the car and not three as
86. reported in the complaint. There was no
87. description of the males beyond what Constable
88. Pardy referred to as Southern males, which could
89. mean anything as I am uncertain on what basis
90. someone could differentiate a Southern person
91. from a Northern person. Fort Providence is a
92. small community, so it could mean that the males
93. were not from the community, but that is just a
94. guess.
95. Constable Beck's observations of the two
96. males and their reaction to him is significant.
97. It appeared that, as they noticed the police
98. vehicle, they slammed the door shut on the car
99. and ran into the residence, the accused carrying
100. the suitcase he had with him. Constable Beck
101. viewed that behaviour as strange, and that is a
102. valid observation.
103. Following this, Constable Beck determined
104. that he would conduct a traffic stop of the
105. vehicle to further the drug investigation if the
106. vehicle passed by the RCMP detachment as this was
107. the main road out of town.
108. Prior to the vehicle stopping,
109. Constable Beck made further observations. He was
110. able to observe that it was a blue Volkswagen and
111. had Alberta plates. He observed that the two
112. occupants were fidgeting and moving around in the
113. vehicle. The vehicle continued down the road for
114. approximately 150 metres before stopping.
115. At the point that Constable Beck stopped the
116. vehicle, he was suspicious about the vehicle and
117. its occupants which was demonstrated in his
118. evidence in cross-examination:
119. Q You had suspicions. You thought
120. it was odd behaviour, correct,
121. but --
122. A I believed it to be odd, yes.
123. And later in cross-examination:
124. Q This was a ruse to further your
125. drug investigation?
126. A I wouldn't call it a ruse. I was
127. identifying him, and I was looking
128. to see whether there was some
129. merit, and this was, in fact, the
130. guy that -- that I had received
131. the complaints about. I didn't
132. know at that point. I didn't know
133. him. I didn't know the car. I
134. had my suspicions that something
135. wasn't right; but at that point I
136. couldn't say for sure that this
137. was, in fact, the guy or the car.
138. Q Okay. So you had no idea at this
139. point? This is -- you detained an
140. individual with no clue who they
141. are on the off chance they may be
142. the person is what you're saying?
143. A I stopped the car, yes.
144. Based on the evidence, the officer
145. subjectively had suspicions which in his mind did
146. not amount to grounds to detain until after his
147. initial interactions with the accused. Viewed
148. objectively, I find that, at the point that the
149. accused's vehicle was pulled over, the officer
150. was operating on bare suspicion but did not have
151. reasonable grounds to suspect that the accused
152. was connected to a particular crime and that
153. detention was necessary, to use the language from
154. *Mann*.
155. As such, the accused's Section 9 *Charter*
156. Rights were breached and the initial stop of the
157. vehicle was unlawful. The sole purpose of the
158. stop was to further the drug investigation and
159. 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

10. Everyone has the right on arrest

1. or detention
   1. to be informed promptly of the
2. reasons therefor;

(b) to retain and instruct counsel

1. without delay and to be informed of that right;

14

1. Individuals who are detained for investigative
2. purposes must be advised of the reasons for
3. detention in accordance with Section 10(a) of the
4. *Charter*. There are no particular words that need
5. to be used by the police provided that the
6. detainee is advised in "clear and simple
7. language" of the reason for detention: *Mann,*
8. *supra* at paragraph 21.
9. The Section 10(b) right to counsel arises
10. immediately upon detention, whether or not the
11. detention is solely for investigative purposes:
12. *Grant, supra* at paragraph 58.
13. 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
14. by Constable Beck after the accused exited the
15. vehicle and the search of the vehicle following
16. the arrest of the accused.
17. Where there is an investigative detention, a
18. police officer may engage in a protective
19. pat-down search of a detained individual where
20. the officer has reasonable grounds to believe
21. that his safety or the safety of others is at
22. risk. *Mann*, *supra* at paragraph 45.
23. As I have concluded that the detention was
24. unlawful, it follows that the ensuing searches
25. incident to the detention and the later search
26. incident to arrest were also unlawful.
27. But with respect to the search of the
28. accused's hoodie pocket, even if the detention
29. had been lawful in this case, the actions of the
30. officer went beyond what is permitted in a search
31. incident to investigative detention.
32. While the officer's concerns about the
33. accused's actions in continually reaching into
34. his hoodie pocket even after being repeatedly
35. told not to would justify a pat-down search for
36. protective purposes in an investigative
37. detention, they did not justify him reaching into
38. the accused's hoodie pocket.
39. Constable Beck testified that, once he
40. handcuffed the accused, he observed that there
41. was a bulge and he reached into the pocket of the
42. hoodie. He was concerned about safety but he
43. also testified that he was concerned about
44. locating evidence which would assist in the
45. drug-trafficking investigation. Constable Beck
46. did not first engage in a pat-down search of the
47. area to determine if there were any items which
48. might place officer safety at risk and which
49. would justify putting his hand into the accused's
50. hoodie pocket. The more intrusive search of the
51. accused's pocket was an unreasonable violation of
52. the accused's reasonable expectation of privacy.
53. Exclusion of Evidence under Section 24(2) of the
54. *Charter*:
55. Having found breaches of the accused's
56. *Charter* Rights, the issue becomes whether the
57. evidence should be excluded. Section 24 of the
58. Canadian *Charter of Rights and Freedoms* says:

19

24. (1) Anyone whose rights or

1. freedoms, as guaranteed by this

*Charter*, have been infringed or

1. denied may apply to a court of competent jurisdiction to obtain such
2. remedy as the court considers appropriate and just in the
3. circumstances.
4. (2) Where, in proceedings under subsection (1), a court concludes
5. that evidence was obtained in a manner that infringed or denied any
6. rights or freedoms guaranteed by this Charter, the evidence shall be
7. excluded if it is established that, having regard to all the
8. circumstances, the admission of it in the proceedings would bring the
9. administration of justice into disrepute.

3

1. The Supreme Court in *Grant* set out what must be
2. considered in determining whether the evidence
3. obtained in breach of an accused's *Charter* Rights
4. should be excluded. A Court must assess and
5. balance the effect of admitting the evidence on
6. society's confidence in the justice system,
7. having regard to:
8. (1) The seriousness of the *Charter* infringing
9. state conduct;
10. (2) The impact of the breach on the *Charter*
11. protected interests of the accused; and
12. (3) Society's interest in the adjudication of the
13. case on its merits.
14. The Seriousness of the Breach
15. The Court has to assess the seriousness of
16. the conduct that led to the breach. There is a
17. difference between admission of evidence obtained
18. through inadvertent or minor violations of the
19. *Charter* and evidence obtained through a wilful or
20. reckless disregard of *Charter* rights. The
21. admission of evidence in the latter situation
22. will have a negative effect on public confidence
23. in the justice system and risk bringing the
24. administration of justice into disrepute, *Grant,*
25. *supra* at paragraph 74.
26. Whether the police were operating in good
27. faith is another consideration in assessing the
28. seriousness of the police conduct. However, the
29. Court in *Grant* also noted that ignorance of
30. *Charter* standards must not be encouraged, and
31. negligence or wilful blindness do not constitute
32. good faith. As stated in *Grant*, at paragraph 75:
33. Wilful or flagrant disregard of the

*Charter* by those very persons who are

1. charged with upholding the right in question may require that the court
2. dissociate itself from such conduct.

12

1. Considering the circumstances of this case, there
2. are multiple breaches of the accused's *Charter*
3. Rights. This chain of events was started when
4. the officer stopped the vehicle without
5. reasonable grounds to detain the accused. The
6. officer had suspicions based on what he had heard
7. and observed but no steps were taken to elevate
8. those suspicions to reasonable suspicion. The
9. approach appears to have been to conduct a
10. traffic stop and see what happened, to see if any
11. evidence on the drug-trafficking complaint would
12. be found.
13. The unlawful detention was then compounded
14. by the failure to advise the accused of his
15. Section 10(a) and (b) rights and the search of
16. the hoodie pocket and later the search of the
17. vehicle.
18. The actions of the police, while not in
19. conformity with the *Charter*, were not abusive in
20. their dealings with the accused. The officers
21. appeared to be candid in their testimony about
22. their observations, their actions, and the
23. decisions they made. The officer was not
24. deliberate in violating the accused's *Charter*
25. Rights, the accused was provided his *Charter*
26. Rights, Section 10(a) and 10(b), after he exited
27. the vehicle; although, by then, his Section 9,
28. 10(a) and (b) rights had already been violated.
29. This case is different from the case of
30. *R v Harrison*, 2009 SCC 34 where the Court found
31. there was a blatant disregard for the accused's
32. *Charter* Rights which was aggravated by the
33. officer's misleading testimony at trial. The
34. Supreme Court of Canada viewed the police conduct
35. as serious and not to be condoned.
36. In this case, I do not find that the
37. officers acted in bad faith which does not
38. necessarily equate to good faith but it appears
39. that there was a lack of recognition of the
40. *Charter* standards.
41. The Court in *Grant* referred to the spectrum
42. of seriousness of *Charter* violations with
43. inadvertent or minor violations at one end and
44. wilful or reckless disregard for *Charter* Rights
45. at the other end. There is no evidence of
46. systemic or institutional abuse, which would
47. aggravate the seriousness of the breaches.
48. I find that the conduct of the officer that
49. led to the multiple *Charter* breaches in this case
50. reflects a lack of care for the accused's *Charter*
51. Rights which is in the mid to serious end of the
52. spectrum. The *Charter* breaching conduct can be
53. considered serious and tends to support the
54. exclusion of the evidence.
55. Impact on the Accused's Interests
56. The Court must also evaluate the extent to
57. which the breach undermined the *Charter* protected
58. interests of the accused. The impact of a
59. *Charter* breach may range from fleeting and
60. technical to profoundly intrusive. The more
61. serious the impact on the accused's interests,
62. the greater the risk that admission of the
63. evidence will bring the administration of justice
64. into disrepute, *Grant*, *supra* at paragraph 76.
65. An unreasonable search that intrudes on an
66. area in which an individual enjoys a high
67. expectation of privacy, or that demeans their
68. dignity, is more serious than one that does not.
69. *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.

1. There was nothing in the stop itself to
2. suggest that the encounter was demeaning to the
3. dignity of the accused and there was nothing
4. particularly unusual about the treatment of the
5. accused by the officers. The searches were
6. relatively non-intrusive.
7. Balanced against this is that the accused
8. was stopped without justification and his
9. expectation of liberty and privacy was interfered
10. with. Following the stop, he was subjected to
11. searches of his person and the rental vehicle.
12. 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 in breach of the Charter may
    14. facilitate the discovery of the truth and the adjudication of a case on its
    15. merits must therefore be weighed against factors pointing to
    16. exclusion, in order to balance the interests of truth with the integrity
    17. 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

1. reliability of the evidence, this points in the direction of exclusion
2. of the evidence. The admission of unreliable evidence serves neither
3. the accused’s interest in a fair trial nor the public interest in
4. uncovering the truth. Conversely, exclusion of relevant and reliable
5. evidence may undermine the

truth-seeking function of the justice

1. system and render the trial unfair from the public perspective, thus

1 bringing the administration of justice into disrepute.

2

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

4

Reliability issues with physical

5 evidence will not generally be related to the *Charter* breach.

6

1. Other factors to consider under this aspect of
2. the test will include the importance of the
3. evidence to the prosecution's case and the
4. seriousness of the offence in issue.
5. The evidence obtained, in this case,
6. consisting of drugs, money, weapons, and
7. ammunition, is highly reliable and relevant
8. evidence. It is critical evidence to the Crown's
9. case and essential to a determination on the
10. merits.
11. The charges the accused faces are serious.
12. Weapons and drug offences are serious and society
13. has a significant interest in having these types
14. of charges determined on their merits.
15. Firearm crimes are treated seriously and of
16. particular concern to Canadian society. Many
17. people in the Northwest Territories own firearms,
18. often to participate in traditional activities
19. like hunting. This does not mean that people of
20. the Northwest Territories are not concerned about
21. the safe use and storage of firearms. The
22. potential for misuse of firearms is always a
23. serious safety issue and the risk of serious
24. injury or death is one that is always present.
25. People are rightly concerned about the safe use
26. and storage of firearms. The use and storage of
27. firearms, and particularly this type of firearm,
28. which is so often associated with school
29. shootings and other mass shootings, raise serious
30. public safety concerns.
31. Drugs offences are also serious. This Court
32. has for many years been concerned about the
33. trafficking in cocaine in the Northwest
34. Territories and the offence has been treated
35. seriously by the Courts in this jurisdiction for
36. many years. Trafficking in cocaine has been
37. described as a scourge on society. The movement
38. of the activity of trafficking in cocaine and
39. other drugs from the city of Yellowknife to
40. smaller, more isolated communities is of serious
41. concern to the residents of small communities and
42. to the residents of the Northwest Territories in
43. general.
44. Balanced against this is that the
45. seriousness of the offence also makes it
46. important that the accused's rights be respected.
47. The consequences, if the accused is convicted,
48. are high and the accused could be subjected to a
49. significant period of imprisonment. In serious
50. cases, there is also an interest in ensuring that
51. the justice system is beyond reproach.
52. Having considered the seriousness of the
53. *Charter* infringing state conduct, the impact of
54. the breach on the *Charter* protected interests of
55. the accused, and society's interest in
56. adjudication of the case on its merits, a judge
57. must determine whether, on balance, the admission
58. of the evidence obtained by the *Charter* breach
59. would bring the administration of justice into
60. disrepute.
61. I think this is a close case. It is also an
62. unusual case with unique facts. While drugs are
63. often seized by the police from motor vehicles in
64. this jurisdiction, the presence of firearms is
65. less usual, although it does occur and the
66. presence of a fully loaded AR-15 type of rifle is
67. even rarer. I hesitate to say that there has
68. never been a similar case in the Northwest
69. Territories because inevitably someone will find
70. a case or a report of an instance of where it has
71. happened. But I cannot recall one, and I think
72. the circumstances are rare.
73. The conduct of the police was serious but
74. not at the most serious end of the spectrum. The
75. impact of the breach on the accused was
76. significant but again not at the most serious end
77. of the scale. The value of the evidence is
78. considerable and it is reliable evidence.
79. Society has a significant interest in having
80. serious matters like these determined on their
81. merits while at the same time ensuring that those
82. who are facing serious charges are treated
83. fairly.
84. In my view, balancing these factors weighs
85. in favour of admission and the admission of the
86. evidence would not bring the administration of
87. justice into disrepute. Exclusion of this
88. evidence, in my view, would risk bringing the
89. administration of justice into disrepute. For
90. these reasons, I find that the evidence seized
91. 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

1. I, the undersigned, hereby certify that the
2. foregoing transcribed pages are a complete and
3. accurate transcript of the digitally recorded
4. proceedings taken herein to the best of my skill and
5. ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 23rd day of April, 2019.

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1. Certified Pursuant to Rule 723
2. Of the Rules of Court

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

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