

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

BRANDON JOHN PIERRE BEAULIEU

Respondent

MEMORANDUM OF JUDGMENT

INTRODUCTION

[1] This is an appeal from acquittal following a trial held in Territorial Court. The Respondent Brandon Beaulieu was charged with a driving offence contrary to s. 320.14(b) of the *Criminal Code*. He plead not guilty and a trial was held. The Trial Judge excluded the evidence of breath samples obtained during the investigation on the basis that the police officer did not have grounds to detain the Respondent, finding a breach of s. 9 of the *Charter*. As a result, the Respondent was found not guilty.

[2] The Crown appeals the acquittal of the Respondent on the basis that the Trial Judge erred by misdirecting herself and misapplied the legal test with respect to roadside detention of a motor vehicle.

[3] For the reasons that follow, I conclude that the appeal should be allowed and the matter remitted to the Territorial Court for a new trial.

## TRIAL

[4] The Respondent Brandon Beaulieu was charged with two driving offences; operating a conveyance while impaired and operating a conveyance with a blood alcohol concentration in excess of the legal limit, contrary to sections 320.14(1)(a) and 320.14(1)(b) of the *Criminal Code*. He plead not guilty and the matters were set for trial.

[5] The trial proceeded over three days on February 17, March 18 and June 16, 2021. At trial, the Crown called Constable Edward Gavel, a member of the Royal Canadian Mounted Police (RCMP). Cst. Gavel was the officer who conducted the traffic stop that resulted in the arrest of the Respondent on April 19, 2019.

[6] Cst. Gavel testified that he received two calls regarding the Respondent on April 19, 2019. The first call was from the RCMP dispatch advising him that a local nurse had called because the Respondent and his brother were at the health centre and she was concerned for her safety. Cst. Gavel went to the health centre, arriving at approximately 11:40 p.m. and found that the Respondent had already left.

[7] The second call came in while Cst. Gavel was at the health centre speaking to the nurse. The second call was also from RCMP dispatch advising that there had been a report that the Respondent “had left his parents’ house driving his van while drunk.”

[8] Cst. Gavel had just left the health centre to look for the Respondent’s vehicle when he saw the van turning onto Main Street. Cst. Gavel initiated a traffic stop. He observed the Respondent driving the vehicle and spoke with the Respondent. During his conversation with the Respondent, Cst. Gavel detecting the smell of liquor on his breath.

[9] Cst. Gavel inquired if the Respondent had anything to drink that night and he denied consuming alcohol. Cst. Gavel determined he had reasonable suspicion that the Respondent had alcohol in his body and made a demand that the Respondent provide breath samples into an Approved Screening Device (ASD).

[10] The Respondent provided a sample and the result was a fail. At that point, Cst. Gavel determined that he had reasonable and probable grounds to believe that the Respondent's ability to operate a motor vehicle was impaired by alcohol.

[11] Cst. Gavel then placed the Respondent under arrest for impaired driving. He provided the Respondent with his *Charter* rights and the police warning. Cst. Gavel also read the breath demand to the Respondent. The Respondent was transported to the RCMP detachment in Fort Resolution where he provided two breath samples, one of 150 mg of alcohol in 100 ml of blood and one of 130 mg of alcohol in 100 ml of blood.

[12] The Crown's case was complete on February 17, 2021. Following the Crown's evidence, the Crown invited the Trial Judge to dismiss count one, impaired driving contrary to s. 320.14(1)(a) on the basis that there was no reasonable prospect of conviction and the Trial Judge did so. The trial proceeded on count two, the Respondent testified and submissions were made on the issue of arbitrary detention pursuant to s. 9 of the *Charter of Rights and Freedoms*.

[13] The Trial Judge ruled that the police officer did not have grounds to detain the Respondent for the purposes of confirming his sobriety. She found a breach of s. 9 of the *Charter* that was not saved by s. 1. As a result, she excluded the results of breath samples obtained during the investigation pursuant to s. 24(2) of the *Charter*. The Crown called no further evidence and the Trial Judge found the Respondent not guilty of count two.

## ISSUES ON APPEAL

[14] The Appellant claims that the Trial Judge erred in law by applying principles applicable to investigative detention and arrests generally rather than the principles applicable to traffic stops intended to check the sobriety of drivers.

[15] The Respondent argues that the Trial Judge did not err in concluding that the vehicle stop was an arbitrary detention which breached the Respondent's s. 9 *Charter* rights and that the Crown did not meet its onus under s. 1.

[16] The issue is whether the Trial Judge applied the correct legal test to the question of whether the vehicle stop of the Respondent breached the Respondent's right to not be arbitrarily detained contrary to s. 9 of the *Charter*.

## STANDARD OF REVIEW

[17] The standards of review in an appeal are well established. For questions of law, the standard of review is one of correctness. For questions of fact, the standard of review is one of palpable and overriding error. For questions of mixed fact and law where the legal standard is not readily extricable, the standard of review is that of palpable and overriding error. The application of a legal standard to the facts of a case is a question of law which is subject to the correctness standard. *Housen v Nikolaisen*, 2002 SCC 33; *R v Shepherd*, 2009 SCC 35 at para 20.

[18] The standard of review that is applicable in this case is one of correctness as the issue is whether the correct legal test was applied.

## ANALYSIS

[19] The issue at the trial was whether the Respondent had been arbitrarily detained, contrary to section 9 of the *Charter* which states that “everyone has the right not to be arbitrarily detained or imprisoned.”

[20] The Respondent was self-represented at trial and many of the issues considered by the Trial Judge were raised by her and not the Respondent. He had few, if any, submissions on the applicable legal principles.

[21] Following the testimony of Cst. Gavel, the Trial Judge considered the admissibility of the Certificate of Qualified Technician and requested that the Crown make submissions on several issues. One of the issues she raised was whether the traffic stop of the Respondent’s vehicle was “authorized by the *Charter*.” The Trial Judge indicated that the issue was whether there was an arbitrary detention of the Respondent when the traffic stop occurred.

[22] The Trial Judge stated her concern as follows:

So [Cst. Gavel] makes a decision to intercept the vehicle not because of how the vehicle is driven but based upon information that was given to him that has not been verified by other sources or by independent sources. So it is – to me it is like a search warrant where there is an informant that gives information, but it is – there has been no independent investigation.

The only outside information that the peace officer gathered is that this van is being driven on the street. But what is the objective information that gives reasonable grounds before he stops the vehicle that the driver's ability to drive is impaired by alcohol. So that is.... The determination must be made prior to the decision to intercept the vehicle, so what is there aside from the two reports?<sup>1</sup>

[23] After a brief adjournment, the Crown made submissions and referred the Trial Judge to several cases. The Crown's position was that police officers have the authority to check the sobriety of drivers as part of the lawful execution of their duties.

[24] Following submissions which included hearing from the Respondent, the Trial Judge concluded that there was a breach of the Respondent's section 9 rights against arbitrary detention. In her decision, the Trial Judge stated:

So at the point of the interception it seems to me that the offence for which Constable Gavel would have – should have had reasonable grounds has to be driving or operating the conveyance while the ability to do so is impaired by alcohol.<sup>2</sup>

[25] In her ruling, the Trial Judge went on several times to refer to the requirement for reasonable grounds and that the police officer needed to form reasonable grounds to believe that the Respondent was committing an offence before he stopped the vehicle. The Trial Judge also referred to the need for the police officer to have articulable cause to intercept the vehicle.

[26] The Trial Judge appears to have begun her analysis of the issue on the basis that because Cst. Gavel had some information about the Respondent (he was driving a vehicle and about his state of sobriety), that he was then required to have reasonable grounds to believe that the Respondent was committing an offence while driving the vehicle in order to initiate a traffic stop of the vehicle.

[27] The Trial Judge referred to *R v Mann*, 2004 SCC 52 in which the Supreme Court of Canada established the principles involved in an analysis of an investigative detention. The circumstances of that case are not entirely similar as it did not involve a traffic stop but an individual walking on the street who was detained by the police.

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<sup>1</sup> Transcript of the Trial, February 17, 2021, Page 34, Lines 3-20.

<sup>2</sup> Transcript of the Trial, February 17, 2021, Page 47, Lines 8-12.

[28] The Trial Judge also referred to *R v Clayton*, 2007 SCC 32 and an Ontario Superior Court decision, *R v Dillon*, 2006 CanLII 10745. *Dillon* involved the detention of a driver who was in a private lot and not on a public highway and as such, the court found that the applicable motor vehicle legislation did not authorize the police to detain a driver who was not on a public highway.

[29] From these cases, the Trial Judge concluded that the investigative detention of a driver required a police officer to have reasonable grounds to believe that the driver had committed an offence. With respect, I do not believe that to be the state of the law with respect to the traffic stops of a motor vehicle on a highway to check the sobriety of the driver.

[30] The Supreme Court of Canada has held that the police may conduct random vehicle stops pursuant to general statutory vehicle powers. It is also settled law that the police have the authority to check the sobriety of drivers. As stated in *R v Orbanski*, 2005 SCC 37 at para 41:

It is also settled law that the police have the authority to check the sobriety of drivers. This authority was found to exist at common law in *Dedman*. More pertinently, it was also found in statute in *Ladouceur*, where this Court held that checking the sobriety of drivers was one of the purposes underlying the general statutory vehicle stop powers. It is the same kind of general statutory power that is in question on these appeals. As the court stated in *Ladouceur*, police officers can stop persons under such statutory power only for legal reasons – in the circumstances of that case as here, for reasons related to driving a car such as checking the driver’s license and insurance, the sobriety of the driver and the mechanical fitness of the vehicle.

[31] In *R v Nolet*, 2010 SCC 24 at para 25, the Supreme Court of Canada again confirmed that the police have the authority, pursuant to statute, to conduct random vehicle stops for reasons related to driving a car, including checking the sobriety of the driver.

[32] The police have the right to stop a driver pursuant to the general vehicle stop powers under the *Motor Vehicle Act*, RSNWT 1988, c. M-16. Section 285 gives a police officer the authority to conduct traffic stops to ensure that motor vehicle drivers on a highway are complying with the *Act* and its regulations.

[33] This statutory authority conferred on the police was referred to by the Supreme Court of Canada in *Orbanski* at para 44, as a general power and a duty to check the sobriety of drivers.

[34] It is clear that the police have the authority to randomly stop a driver on a highway to determine if that person is complying with the provisions of the *Act* and this authority includes the power to check the sobriety of a driver.

[35] The Trial Judge referred to *Orbanski*, and some of the principles contained in that case, such as “effective screening at the roadside is necessary to ensure the safety of the drivers themselves, their passengers and other users of the highway.”<sup>3</sup> However, in order to complete the effective roadside screening, the Trial Judge required Cst. Gavel to demonstrate that he had reasonable grounds to suspect that the Respondent had committed an offence. If that was the case, the effect would be that a police officer would have to practically be in a position to arrest a driver for a driving offence before the officer could engage in roadside screening for it.

[36] The *Act* gives the police broad powers to stop motor vehicles for highway regulation and safety purposes even if the officer lacks reasonable and probable grounds or reasonable suspicion. The existence of these powers does not automatically make traffic stops lawful because the police are not free to use these powers for other purposes. The *Act* grants these powers for the purpose of ensuring road safety. If the police do not have road safety purposes in mind, they cannot rely on the powers granted under the *Act*. If the police cannot point to another legal authority for the stop, the stop will not be authorized by law. A court must determine whether the police officer actually formed the intention to make the traffic stop for road safety purposes. *R v Mayor*, 2019 ONCA 578 at paras 6-8.

[37] While not explicitly stated by Cst. Gavel, from a review of his evidence it appears that the traffic stop was initiated to investigate the sobriety of the driver. Cst. Gavel had received two calls about the Respondent, the second one indicating that the Respondent was driving his van while drunk. When Cst. Gavel saw the Respondent’s van shortly thereafter, he initiated a traffic stop and asked the Respondent if he had anything to drink that night, a standard and permissible question used in screening for the sobriety of a driver. On that basis, it is implicit

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<sup>3</sup> Transcript of the Trial, February 17, 2021, Page 47, Lines 21-24.

that Cst. Gavel was conducting a traffic stop to check the sobriety of the driver within the scope of what was permissible pursuant to the *Act*.

[38] The Trial Judge does not appear to have considered whether Cst. Gavel's actions were within the scope of what was permissible pursuant to the framework established in *Orbanski*, *Nolet* and other Supreme Court of Canada jurisprudence on traffic stops conducted to check the sobriety of the driver. Her focus was instead on whether Cst. Gavel had reasonable grounds to suspect the Respondent had committed an offence, a different standard that would be applicable in a different situation.

[39] Given that I have concluded that the Trial Judge erred by applying the incorrect legal test to determine whether the Respondent was arbitrarily detained and this matter will be remitted to the Territorial Court for a new trial, I do not think it is necessary to address the Appellant's or Respondent's arguments with respect to the other issues raised in their oral and written submissions.

## CONCLUSION

[40] In conclusion, the Trial Judge erred in applying the incorrect legal test to her assessment of whether the Respondent was arbitrarily detained. For these reasons, the appeal is granted and the matter is remitted to Territorial Court for a new trial.

S.H. Smallwood  
J.S.C.

Dated at Yellowknife, NT, this  
23<sup>rd</sup> day of August, 2022

Counsel for the Crown: Matthew Scott

Counsel for the Respondent: Charles Davison



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