



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

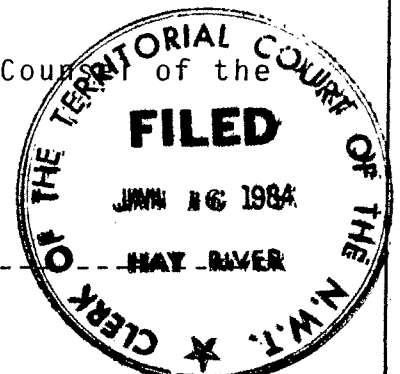
JOSEPH CLILLIE

-----  
Transcript of Proceedings of an Oral Judgment given  
by His Honour Judge R. W. HALIFAX, sitting at Fort  
Simpson in the Northwest Territories on Monday,  
December 12, A.D. 1983.  
-----

APPEARANCES:

MR. N. SHARKEY Counsel for the Crown

MR. N. SIBBESTON Agent for Counsel of the  
Defence





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

THE COURT: This is a matter that has been adjourned for judgment regarding an application under the provisions of Section 10 of the Canadian Constitution Act 1982, which was set over after a trial originally in Wrigley on the 19th of July after which there was an argument filed regarding the timing of the application. It was found, and this Court ordered, that the accused was entitled to make the application at the time he did. After the argument regarding when the application was heard, the matter stood adjourned to this date for the judgment on that application.

Basically, the application is under Section 10 of the Constitution Act 1982 on the basis that the accused was not informed promptly of the reasons for his arrest or detention; and he was not advised of his rights to obtain and instruct Counsel forthwith without delay.

The evidence is basically that of Constable Mabee as to what occurred. There is no evidence from the Defence. Evidence is that the Constable received a complaint regarding an impaired driver of a snowmobile, that he attended at the accused's residence; the accused was not there; but as he was leaving, the accused pulled up on the snowmobile. He was identified by the Constable. There was some discussion as to the accused's condition. There was at least the one physical test: the heel-to-toe test performed which the accused did not perform very well to say the least. After that, there were the two Coffee-mate jars obtained from the accused's residence with the assistance of an unknown female,



1 the view of the Police Officer being to obtain urine samples.  
2 He advised the accused that he thought he was drunk. The  
3 accused said he was not. Basically, it came down to provid-  
4 ing the samples to find out whether he was drunk or not and  
5 so that a urinalysis could be performed to ascertain the  
6 quantity of alcohol in the accused's system.

7 It is common ground, and I so find, that at  
8 no time was the accused arrested; and in fact, the accused  
9 was advised by the Peace Officer that he did not want to  
10 arrest him. The only issue becomes whether or not the accused  
11 was detained.

12 I have reviewed various cases with regard to  
13 detention: There is the case of R. v. Therens from the  
14 Saskatchewan Court of Appeal; there is the case of  
15 R. v. Haight and R. v. Anderson, both judgments of this Court.  
16 I have also reviewed R. v. Trask from Newfoundland,  
17 R. v. Currie from Nova Scotia, and the cases following that  
18 line, whether or when an accused is detained.

19 Each case must be looked at in its own  
20 circumstances. Trask, Therens, Haight, and Anderson cases  
21 deal with 236 charges where there has been a demand made for  
22 the accused who is then required to accompany the police  
23 officer to provide samples of his breath. Of course, failure  
24 to do so after a demand may result in a conviction under  
25 Section 235 for failing to provide the samples. At least the  
26 accused is put in the position of the possibility of being  
27 charged with an alternate offence.





1 made by the accused. The onus is, of course, on the applicant  
2 on the balance of probabilities to satisfy the Court that  
3 there has been an infringement of his Charter rights.

4 As I said, I have no Defence evidence. The  
5 only evidence I have is that of Constable Mabee. I am not  
6 satisfied that the applicant has, in this particular case and  
7 only in this particular case, fulfilled the onus of satisfying  
8 me on the balance of probabilities that his Charter of Rights  
9 were infringed. I so find on the evidence before me in this  
10 case only that his Charter of Rights were not infringed.

11 However, if I am wrong, and his Charter of  
12 Rights were infringed, it seems to me in the circumstances  
13 of this case, which are, at least in this jurisdiction in  
14 this Court, somewhat peculiar, it is not such that the evi-  
15 dence should be excluded under Section 24(2). It seems to  
16 me that the administration of justice would not be brought  
17 into disrepute if this evidence with regard to the urine  
18 samples and the results of the urinalysis is admitted. It  
19 seems to me that a large miscarriage of justice would be  
20 done in these circumstances to exclude it.

21 As well, under Section 24(1), it seems to  
22 me appropriate and just and reasonable in the circumstances  
23 of this case that the evidence should be admitted.

24 Therefore, the application under Section  
25 24 is denied to exclude the evidence of the urine samples  
26 and the resulting urinalysis testing that was done. I  
27 therefore rule it admissible, firstly, on the grounds that I



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

am not satisfied the applicant has fulfilled the onus under Section 24 which should be clear as on the balance of probabilities and not beyond a reasonable doubt; secondly, that if that onus was fulfilled and there had been a breach of the Charter of Rights under Section 10, in my view, it is not such that the evidence should be excluded in this case.

Certified Correct:

Margaret Andruniak  
Court Reporter