

Citation: *R. v. Joe*, 2025 YKTC 13

Date: 20250307
Docket: 23-00340
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Cozens

REX

v.

CHRISTIANA ALLISON JOE

Appearances:
Sabrina Everet Cruz-Mendez
Amy Steele

Counsel for the Crown
Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] COZENS C.J.T.C. (Oral): Christiana Joe has been charged with having committed offences contrary ss. 270.01, 270(1)(a), 430(4) times two of the *Criminal Code*, and s. 4(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. Crown counsel had indicated during the trial and in submissions the Crown was only seeking convictions on the ss. 270.01 and 270(1)(a) charges and a stay of proceedings was entered on the remaining charge. Prior to my reasons being given, counsel had indicated that they were no longer seeking a conviction on the s. 270(1)(a) charge, and a stay of proceedings was then directed on that charge as well. Therefore, the only

charge this decision relates to and that Ms. Joe is facing is the one under s. 270.01, which is the assault of Cst. Tiffany Woodman and causing her bodily harm.

[2] The trial took place on August 14 and 15, 2024, and was continued with submissions of counsel on December 9 and 17, 2024. All of the evidence was heard in a blended *voir dire*, as counsel for Ms. Joe had filed a *Charter* application.

[3] Judgment on the *Charter* application was reserved until today's date. This is my decision on the *Charter* issues.

***Charter* Application**

[4] Counsel for Ms. Joe filed a Notice of Application alleging breaches of Ms. Joe's ss. 7, 9, and 10(b) *Charter* rights. Counsel seeks a remedy under ss. 24(1) and/or (2) of the *Charter*.

Evidence

[5] The Crown called as witnesses Cst. Woodman, Cpl. McNeil, and Cst. Beauchemin. Ms. Joe and her sister, Carla Joe, testified for the defence.

[6] Filed as exhibits were photographs of the inside of the Carmacks store, who also had two witnesses (employees) that testified, photographs of the injury to Cst. Woodman, damage to the inside of a police cruiser, mushrooms, photographs of bruises on Ms. Joe's body, (along with the USB depicting these bruises), and a USB of the Watchguard video from the police cruiser.

Summary of the Evidence

[7] On the evening of June 22, 2023, Ms. Joe entered the Carmacks store twice, on the second occasion, striking a Plexiglas COVID barrier in front of the cash register with a bottle of vodka, breaking the barrier as a result. Ms. Joe then went outside and threw the vodka bottle against a semi-trailer truck parked outside, causing the vodka bottle to break.

[8] Store staff called the RCMP and advised dispatch that a crazy woman had broken the barrier, and provided a description. Cst. Woodman and Cpl. McNeil attended the store in response.

[9] Ms. Joe, who matched the description provided, was in the parking lot area in front of the store when Cst. Woodman and Cpl. McNeil approached her. Cst. Woodman initially dealt with Ms. Joe, while Cpl. McNeil spoke with the semi-truck driver.

[10] As a result of her interaction with Ms. Joe, Cst. Woodman advised Ms. Joe that she was being detained under the *Mental Health Act*, RSY 2002, c. 150, and would be taken to a medical centre for assessment. Although Cst. Woodman had originally intended to attend at the Carmacks Health Centre, she remembered that it was closed at the time, and that Ms. Joe would need to be transported to the Whitehorse General Hospital (“WGH”). When Ms. Joe started to walk away, Cst. Woodman placed her hands on Ms. Joe. As a result, a physical altercation started between Cst. Woodman and Ms. Joe, in which Cpl. McNeil became involved.

[11] All three parties ended up on the ground, during which time Ms. Joe bit Cst. Woodman on her forearm and scratched the back of Cpl. McNeil's hands. Cpl. McNeil punched Ms. Joe three to four times in order to get Ms. Joe to stop biting Cst. Woodman. In the altercation, Cst. Woodman deployed her taser on three occasions; once in the probe mode, which was unsuccessful as the probes bounced off Ms. Joe, and twice in the contact mode.

[12] Ms. Joe was placed in the police cruiser with handcuffs on her hands in front of her. Ms. Joe was advised that she was under arrest for assaulting a police officer and advised of her *Charter* right to counsel. She was asked whether she wanted to speak to a lawyer and she responded that she did. Local EMS attended the scene and assessed the injury to Cst. Woodman, directing that she attend WGH for treatment. EMS asked Cpl. McNeil whether Ms. Joe required medical assistance and was advised by him that she did not.

[13] After leaving the Carmacks store area, Ms. Joe was first taken to the RCMP Detachment in Carmacks. She stayed in the police cruiser while the police officers dropped off the exhibits that had been seized, which took approximately 12 minutes.

[14] Ms. Joe was transported to Whitehorse in the police cruiser. A third officer, Cst. Beauchemin, attended and transported Cst. Woodman to WGH in a separate police cruiser, following behind Cpl. McNeil and Ms. Joe, who were in Cpl. McNeil's police cruiser.

[15] Cpl. McNeil stopped his police cruiser on two occasions during the transport in order to deal with issues caused by Ms. Joe with respect to Cpl. McNeil's ability to

safely drive, and also with respect to damage to the camera equipment and the police cruiser. On the second occasion, Cst. Beauchemin assisted Cpl. McNeil in restraining Ms. Joe and transferring the handcuffs, such that Ms. Joe's hands were now behind her back. Upon arrival at WGH, three other RCMP members were present to assist. Ms. Joe was placed in a gurney and strapped down due to her physical resistance. She was sedated by WGH staff right after being secured in the gurney.

[16] Ms. Joe was released from WGH the next day and a summons was prepared and served on her at a later date. Ms. Joe was never provided the opportunity to speak to legal counsel or anyone else throughout the entirety of events.

Alleged *Charter* Breaches

[17] Counsel for Ms. Joe filed a Notice of Application alleging breaches of several of Ms. Joe's *Charter* rights.

Section 7

[18] Counsel asserts that Ms. Joe's s. 7 *Charter* rights were breached by:

Being punched a few times in the head, being tasered three times, and then when police officer [Cst. Beauchemin] jumped into the back seat, put his knee on her neck, and punched her repeatedly...[and] when the RCMP actively discouraged EMS from treating [Ms. Joe] and essentially denied her medical treatment in Carmacks...

[19] While not entirely structurally clear in the Notice of Application, it appears that part of the s. 7 submission is that counsel for Ms. Joe is arguing that the RCMP officers used excessive force in dealing with Ms. Joe, both at the Carmacks store location and during the transport to WGH.

[20] Counsel also alleged in the Notice of Application that the failure to produce video of the transport of Ms. Joe between Carmacks and Whitehorse breached her s. 7 *Charter* rights. This portion of the s. 7 argument was abandoned after it was disclosed that there was no evidence due to a malfunction in the Watchguard system.

Section 9

[21] Counsel asserts that Ms. Joe's s. 9 *Charter* right was breached as follows, "at the time she was arrested, the RCMP did not have sufficient grounds to arrest her under s. 8 or any other section of the Yukon *Mental Health Act* and the arrest was therefore unlawful.

Section 10(b)

[22] Counsel asserts that Ms. Joe's implementational right to counsel was breached because she was not provided the opportunity to speak to legal counsel at any time or to speak to Annie or Lois Joe in order to have them assist her in speaking to legal counsel. Counsel asserts in the Notice of Application that the "...RCMP did not take sufficient steps to confirm whether she [Ms. Joe] wanted to speak to a lawyer. As RCMP did not confirm whether she wished to speak to a lawyer, no efforts were made to facilitate a lawyer call."

[23] Cst. Woodman, Cpl. McNeil, and Cst. Beauchemin, as well as the civilian employees of Carmacks store, testified for the Crown in the *voir dire*. The Watchguard video was tendered into evidence from the front of the police cruiser in the Carmacks parking lot and part of the travel from Carmacks to Whitehorse. Photographs of the

inside of the Carmacks store, the injury to Cst. Woodman, and the damage to the police cruiser were also tendered.

[24] Ms. Joe testified on her own behalf, as did her sister, Carla Joe. Photographs of injuries to Ms. Joe were also tendered.

[25] I reviewed the evidence of all the witnesses and the exhibits that were tendered and find as follows.

Section 9

[26] Crown counsel has conceded that if there were no grounds to detain Ms. Joe under the Yukon *Mental Health Act*, (the “Act”), the Crown will not be seeking a conviction on any charges. As such, I will deal with this issue first.

[27] The *Act* reads as follows:

8 Peace officer detaining persons for examination

(1) A peace officer may take a person into custody if at least one of the following conditions applies

(a) The peace officer believes on reasonable grounds that the person as a result of a mental disorder

(i) is threatening or attempting to cause bodily harm to themselves or has recently done so,

(ii) is behaving violently towards another person or has recently done so, or

(iii) is causing another person to fear bodily harm or has recently done so,

and the peace officer further believes on reasonable grounds that the person as a result of the mental disorder is likely to

cause serious bodily harm to themselves or to another person; or

(b) The peace officer believes on reasonable grounds that the person as a result of the mental disorder shows or has recently shown a lack of ability to care for themselves and the peace officer further believes on reasonable grounds that the person as a result of the mental disorder is likely to suffer impending serious physical impairment.

(2) A peace officer who has taken someone into custody pursuant to subsection (1), shall immediately take that person to a physician or a health facility and shall (a) provide the physician or person in charge of the health facility with a written statement setting out the circumstances that led them to take the person into custody; and

...

(b) remain at the place of examination and retain custody of the person until the examination under section 10 is completed, or the physician or health facility accepts custody of the person.

[28] Store employee Lou Anne Battour testified that she felt scared as a result of Ms. Joe's actions in the store, and feared that she could have been injured. She agreed that Ms. Joe appeared to be in emotional distress.

[29] Another employee, Colton Bigby, testified that when he came out of the office, after Ms. Joe broke the barrier, she asked him to call the police. He said her actions made him a little nervous and he felt a little in danger for his safety. He called the RCMP and described Ms. Joe's actions and appearance to them.

[30] I appreciate that Cst. Woodman did not speak directly to either of the store employees before deciding to detain Ms. Joe under the *Act*. I find no fault in her or

Cpl. McNeil in not doing so in the circumstances as they unfolded. Ms. Joe was in the parking lot outside the store and, based upon the information provided to the RCMP, approaching Ms. Joe before doing anything else was the only sensible course of action. Cpl. McNeil speaking with the driver of the semi-truck that the bottle was smashed against in the parking lot was also appropriate. There was no present risk of harm to anyone or anything in the store, and a further investigation into events could be done following the initial interaction with Ms. Joe and the truck driver, who may not be in the parking lot for long. The store and its employees were not going anywhere that could hinder further investigation.

[31] It became clear very quickly to Cst. Woodman that Ms. Joe was struggling with some form of mental disorder. Cst. Woodman noted Ms. Joe to appear disheveled, with messy hair, red around the eyes, and the smell of alcohol on her breath.

[32] The woman identified herself as Chrissy Joe. Cst. Woodman asked Ms. Joe how she was and stated that Ms. Joe responded by saying that she was “off my meds, out of my mind, crazy.” Ms. Joe told her that she had smashed a bottle of alcohol against a semi-truck in the parking lot because she was angry. Ms. Joe told her that she had consumed “shrooms” and produced a baggie, which she provided to Cst. Woodman. Cst. Woodman stated that she had concerns that Ms. Joe may be suffering from some mental health issues as a result of her observations.

[33] I am satisfied that Cst. Woodman, based upon the information she was presented with both prior to arriving at the parking area and once there, had reasonable

grounds to believe that Ms. Joe was suffering from a mental disorder and was experiencing a mental health crisis. This information included the following:

- The breaking of the plexiglas;
- The smashing of the bottle of vodka outside against the semi-truck;
- Ms. Joe’s physical appearance of being disheveled, with messy hair, red around the eyes, and the smell of alcohol on her breath;
- Ms. Joe’s admission that she had not been taking her medication for anxiety and depression;
- Ms. Joe’s admission to having consumed shrooms, the production of a baggy with these;
- Ms. Joe’s admission to being a crazy lady and “out of her mind”, and asking to be medivaced;
- Ms. Joe’s up and down mood swings, and her not making a lot of sense; and
- Her concerns that Ms. Joe could be injured by walking onto the highway and into traffic.

[34] Ms. Joe had behaved violently towards another person (the store employee behind the plexiglas). Cst. Woodman did testify that she was familiar with the COVID barrier, which she noted as being approximately one-quarter inch thick and screwed into the counter and, in her opinion, it would take considerable force to break it.

[35] It was her opinion that the young workers in the store would probably have been scared by this occurrence. She also testified that there were numerous individuals in the parking lot area of the store. Cst. Woodman stated that she was afraid that if she did not detain Ms. Joe, Ms. Joe could hurt someone. This said, it may have been somewhat speculative of Cst. Woodman to believe that anyone in the store would suffer

or would have a fear of suffering bodily harm as a result of the actions of Ms. Joe without actually speaking to them.

[36] I find that Cst. Woodman, in all these circumstances, did not have reasonable grounds to believe that, as a result of the mental disorder Ms. Joe was suffering from, she was likely to cause serious bodily harm to herself or to another person. The possibility of Ms. Joe going back into the store and doing so, or hurting someone in the parking lot, or wandering to the highway and putting herself at risk, was simply that, a possibility, not a likelihood. The requirement is also for serious bodily harm, not simply bodily harm. Concern or suspicion of such serious bodily harm could happen is insufficient. There has to be a likelihood.

[37] This said, I am satisfied that the criteria under s. 8(1)(b) of the *Mental Health Act* was present and authorized the detention of Ms. Joe. Given the erratic behaviour of Ms. Joe and her admissions to Cst. Woodman in respect of her being under the influence of drugs, off her medications, not being in her home community and on her own, in all these circumstances, in my opinion, it would have been irresponsible of Cst. Woodman not to detain Ms. Joe for her own safety.

[38] While other options for detention may have been available, such as an arrest for charges related to the breaking of the COVID barrier, options Cst. Woodman may have chosen had she remembered that the nursing station in Carmacks was not open and that transport of Ms. Joe to Whitehorse would therefore be necessary, this does not detract from the fact that Cst. Woodman had sufficient grounds under the *Act*.

[39] I therefore find that there was no s. 9 *Charter* breach.

Section 7

[40] I find that Ms. Joe's s. 7 *Charter* rights were not breached. I find that the force used by Cst. Woodman to place her hands on Ms. Joe in order to control her after advising her that she was being detained under the *Mental Health Act* was reasonable and in accord with her duties as an RCMP member.

[41] It was, in fact, Ms. Joe who escalated the situation through her resistance that caused Cst. Woodman and then, ultimately, Cst. McNeil, to have to increase their application of force in order to maintain control of Ms. Joe. The three deployments of the taser by Cst. Woodman, with the probe deployment being unsuccessful, was reasonable in the circumstances. The punches to Ms. Joe's head area by Cpl. McNeil in an attempt to get Ms. Joe to stop biting Cst. Woodman was also reasonable in the circumstances. This was an especially egregious biting assault by Ms. Joe on Cst. Woodman, clearly causing bodily harm, and justified the use of considerable force to end this assault. Cst. Woodman screamed when she was being bitten and she testified that all she could feel was pain, pain that she had never felt before.

[42] I do not accept that the act of the biting of Cst. Woodman by Ms. Joe was in the act of self defence and therefore justifiable.

[43] Following her detention, Ms. Joe made a number of comments while in the parking lot and in the police cruiser that included the following:

- The police were going to kill her and shoot her;
- The KK was coming to get her;

- One down two to go after biting Cst. Woodman;
- I am crazy;
- If I die, I die;
- Shoot me already, you have a desire to do that;
- I'll do it again;
- Are you going to kill me? [repeatedly];
- I'm going to get you white boy;
- I'm going to spit in your eye;
- I got your hand, too, buddy [in reference to the scratches to Cpl. McNeil's hands];
- You gonna shoot me like a dog;
- Doesn't a dog deserve to know why it dies?

[44] Ms. Joe's behaviour during the transport to WGH was extremely erratic and dangerous to both her safety and that of Cpl. McNeil, including as follows: kicking; yelling and screaming; spitting on Cpl. McNeil's arm through a gap soaking his sleeve with spit; grabbing his seatbelt to the point that he had to unbuckle it; destroying the camera and putting some of it in her mouth; dislodging the silent patrolman by kicking it; and reaching her arms through the gap and grabbing and clawing at Cpl. McNeil.

[45] Cpl. McNeil jammed Ms. Joe's arm in the door and stopped the police cruiser because he felt he could no longer travel safely. Cst. Beauchemin came to assist him. Cpl. McNeil opened the passenger side rear door and Cst. Beauchemin opened the driver side rear door. Ms. Joe was trying to bite Cpl. McNeil. They were able to get the handcuffs switched around on Ms. Joe's back and to get a spit hood on her before buckling her into the rear seat. Cpl. McNeil provided photographs as to the damage to

the brand new police cruiser. He said that the interior of the cruiser was covered in spit, puke, and urine. The photographs showed considerable damage.

[46] I find that it was necessary to use force to restrain Ms. Joe and switch the location of her handcuffed hands to her back from the front in order to limit Ms. Joe's ability to engage in dangerous activity, as sometimes it cannot be expected of the RCMP members that they apply force delicately or nicely. The issue is whether excessive force was applied, and I find that both RCMP members used only such force — albeit considerable — as was necessary to control Ms. Joe, and no more than was necessary.

[47] I accept the testimony of Cpl. McNeil and Cst. Beauchemin as to the use of force that was applied to Ms. Joe.

[48] I appreciate that Ms. Joe suffered considerable bruising and abrasions to her upper body as a result of her interactions with the RCMP members that day. However, given the violence of the physical confrontations with the RCMP members in the parking lot and in Cpl. McNeil's police cruiser, physical confrontations that were caused by Ms. Joe, or that directly resulted from her actions and violence, I am satisfied that the RCMP members' use of force was within the lawful execution of their duties as police officers in order to control the situation. I am not surprised at the bruising and abrasions that Ms. Joe therefore incurred. I am not satisfied that any of the injuries that Ms. Joe suffered were a result of the use of excessive force by any of the RCMP members involved.

[49] I find therefore that there is no s. 7 *Charter* breach as a result of excessive force by the RCMP.

[50] I also find there was no breach of Ms. Joe's s. 7 *Charter* right arising from a lack of medical treatment Ms. Joe received at the scene of her detention. Ms. Joe did not suffer any apparent injuries and did not indicate that she had any that required medical attention. The taser probes had not been successfully deployed. It was reasonable of Cpl. McNeil to conclude that Ms. Joe's behaviour, in the absence of any apparent injuries requiring immediate medical attention, made any attempt to have her interact with EMS workers risky given her mental health issues.

[51] In addition, as the intent was to transfer both Ms. Joe and Cst. Woodman to WGH as soon as possible, it was not unreasonable for Cpl. McNeil to provide emergency medical services ("EMS") with his opinion that Ms. Joe did not need medical attention. I find that he did not deny EMS the opportunity to examine Ms. Joe, but simply expressed his opinion that she did not need medical attention, and EMS accepted his opinion.

[52] I accept Cpl. McNeil's testimony that, had EMS nevertheless asked to speak with Ms. Joe, he would have allowed that. While it may have been prudent to allow EMS to speak with Ms. Joe while she was secured in the back of the police cruiser, I find that not having done so did not constitute a breach of Ms. Joe's s. 7 *Charter* right.

[53] I note that there is no evidence before me that Ms. Joe suffered any injury that required immediate attention, including arising from her time at WGH. With respect to the evidence of Ms. Joe, although she testified well while on the witness stand, I do not

consider her evidence to be particularly reliable. She was by her own admission — even as noted in the submissions of her counsel — in considerable emotional and mental distress at the time, and I find that her recollection of events was likely negatively impacted by the emotional and mental health distress she was in as well as her very apparent lack of trust, and fear and hostility towards the RCMP.

[54] Ms. Joe provided evidence about fear that she had as a result of the presence of the truck driver, and of having spoken to her mother on the phone, (who was on a speakerphone with her sister Carla), and just prior to the arrival of Cst. Woodman and Cpl. McNeil, about getting help, including calling the RCMP. With respect to this evidence, I find that while it may be of some assistance in understanding the context of the emotional and mental distress Ms. Joe was in at the time, it did not contribute much towards the issues I am required to resolve.

[55] Where there is a contradiction in the evidence that must be resolved, I prefer the evidence of the RCMP officers as being more reliable. The Christiana Joe that testified in Court was not, in presentation and behaviour, the same Christiana Joe who interacted with the RCMP that day. It seems to me, considering Ms. Joe's lack of prior criminal history, that the interactions of Ms. Joe with the RCMP that day were considerably out of character for her. Whether her emotional and mental health distress at the time is something that could have given rise to a defence of not criminally responsible by reason of mental disorder is not, however, an issue that is before me.

[56] I am troubled by the evidence of Ms. Joe that she spit inside the police cruiser in self defence in order to prevent the RCMP officers from coming into the rear seat and

hurting her. Also by her testimony that she wanted to leave her DNA in the police cruiser because she thought the police were going to kill her, that the police were taking her away in the police cruiser to shoot her, and that Cst. Beauchemin was going to break her neck and kill her. Clearly, in consideration of her other actions and comments, Ms. Joe was not in her right mind at the time and was not making rational decisions.

Section 10(b)

[57] I find Ms. Joe's s. 10(b) *Charter* rights were not breached. She was provided the informational component, however her behaviour made the implementational portion of the s. 10(b) *Charter* right to counsel not feasible.

[58] Cpl. McNeil agreed that the arrest of Ms. Joe occurred at 10:09 p.m.. He said that he read her the *Charter* right to counsel from memory and that Ms. Joe stated she wanted to talk to a lawyer. She gave him the name of Annie Joe and Lois Joe. He was not prepared to give her a cell phone until she calmed down, which she did not. He said that he found Ms. Joe was behaving too violently at that time to be provided the opportunity to speak to a lawyer. In his opinion, she was too emotionally distressed to be provided access to legal counsel — and I agree.

[59] He testified that Ms. Joe was then driven straight to the ambulance bay at WGH from the Detachment, where three other RCMP members were present to assist. He said the fight was on when they tried to extract Ms. Joe from the police cruiser. Ms. Joe struggled until she was finally strapped into a gurney. Ms. Joe continued to struggle until she was sedated. Cpl. McNeil stated that there was no opportunity to facilitate Ms.

Joe's right to legal counsel en route to WGH or once at WGH, either before or after she was sedated. He was told by WGH staff that Ms. Joe would likely be kept there for 10 to 72 hours.

[60] Cpl. McNeil decided to return to Carmacks and serve a summons on Ms. Joe if charges proceeded. Ms. Joe was simply released from WGH after she received medical attention. Her sister, Carla Joe, picked her up at WGH and drove her back to Pelly Crossing.

[61] The right to counsel is not absolute. The detained or arrested person has to be diligent in attempting to speak to legal counsel. Ms. Joe had an obligation to conduct herself in a manner that would allow Cpl. McNeil the opportunity to provide her the opportunity to speak to legal counsel in private. She did not. I appreciate that the major reason for this was the emotional and mental health distress Ms. Joe was suffering from at the time, and that her ability to make rational decisions and conduct herself appropriately was severely compromised as a result.

[62] However, I agree with Cpl. McNeil's position that Ms. Joe could not be safely provided the right to speak to legal counsel, either at the scene or after arriving at WGH. It was not safe, including to herself as well, to remove her from the police cruiser and give her private access to legal counsel. It was not safe to provide her a phone book and a phone and leave her alone. She may well have destroyed the phone, although that is purely speculation.

[63] With respect to the obligation to provide Ms. Joe the opportunity to speak to legal counsel after she was released from WGH, I find it somewhat difficult to understand why

the RCMP should have further detained Ms. Joe by taking her to the Detachment and keeping her in their custody until she had spoken to counsel. Certainly, the RCMP could have arranged for an officer to attend at WGH in order to be present when Ms. Joe was to be released, and asked her if she wished to speak to legal counsel, however, I question the utility in doing so. The investigative portion of the RCMP's interaction with Ms. Joe had long been over and she was free to go. There was no need to further detain Ms. Joe in order to obtain immediate legal advice in these circumstances. Legal advice was available from that moment on, should Ms. Joe have wished to obtain it.

[64] I do have some concern about the fact that little seems to have been done to contact Annie or Lois Joe when Ms. Joe asked to speak to them after arrest. I appreciate that, prior to the incident of violence in the parking area, Cst. Woodman testified that Ms. Joe told Cst. Woodman that she just wanted to go home to Pelly Crossing. Cst. Woodman said she just wanted to get Ms. Joe back home and that her original plan was to take Ms. Joe back to Pelly Crossing. Cst. Woodman stated that in the presence of Ms. Joe. She called the number that Ms. Joe gave her for Ms. Joe's mother but there was no answer. There was also not the ability to leave a message. Ms. Joe then told Cst. Woodman that she (Cst. Woodman) had not called Ms. Joe's mother. I am satisfied that Cst. Woodman had made that unsuccessful call.

[65] It does not appear that Ms. Joe was asked or that she provided the phone numbers for Annie or Lois Joe to Cpl. McNeil. I can understand why Cst. Woodman may not have attempted to call them after she had been injured; however Cpl. McNeil could have attempted to get information in order to contact these individuals. His not

doing so in the dynamic circumstances as they unfolded was understandable, however, and I find that he did not therefore breach Ms. Joe s. 10(b) *Charter* right to counsel.

[66] In the event that I am found to have erred in not finding that there was a breach of Ms. Joe's s. 10(b) *Charter* rights, I would not have granted a remedy in any event. There was no evidence flowing from and/or after the breach to exclude, and I would not have excluded the evidence of the physical altercation that occurred prior to the arrest of Ms. Joe (this is with respect to the s. 10(b) *Charter* rights). Any such s. 10(b) breach was not egregious in the circumstances of this case.

[67] I do express my concern about the failure by the RCMP to have properly recorded the events that occurred in the parking lot area and during the transport. Malfunctions that occur, while problematic, are at times unavoidable; however, it would have been of considerable assistance, in particular during the second stop en route to Whitehorse, to have the portable microphones of the RCMP officers switched on to capture events. There are circumstances where the evidence is such that a failure to record events could leave the trier of fact with uncertainty as to what occurred, or at least a reasonable doubt.

[68] In order to avoid such circumstances, RCMP members should be diligent in recording their interactions with individuals. The new policy in the Yukon with respect to body cameras being worn should alleviate that concern somewhat.

[69] I find that, while concerning, this is not such a circumstance where the failure to record events causes me sufficient concern with respect to determining the evidentiary issues. Therefore, the evidence is admitted into trial.

[DISCUSSIONS]

[70] As such, no further evidence being called and all the evidence from the *voir dire* being admitted into the evidence of the trial proper, there is a conviction on s. 270.01 of the *Criminal Code*.

COZENS C.J.T.C.