Citation: *R. v. Greenwood,* 2026 YKTC 16

Date: 20260422
Docket: 25-00276
Registry: Whitehorse

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

REX

v.

MATTHEW SIMON GREENWOOD

Appearances:
Andreas Kuntz — Counsel for the Crown
Jennifer Budgell — Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] Matthew Greenwood proceeded to trial on a two-count Information alleging that on or about March 23, 2025, he committed offences contrary to ss. 320.14(1)(a) and 320.14(1)(b) of the *Criminal Code*.

[2] The trial began with a *voir dire* on application by Mr. Greenwood alleging the violation of his rights contrary to s. 9 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982* (the "*Charter*"). The parties agreed to proceed with a blended *voir dire*.

[3] The investigation involving Mr. Greenwood commenced with the RCMP responding to a call at approximately 2:15 a.m. regarding a male individual who was intoxicated and had entered a black Toyota pickup truck (the "Truck") parked on Main Street in downtown Whitehorse, Yukon, in front of a bar. Mr. Greenwood was located sleeping while seated in the driver's seat of the Truck with his seatbelt on and the engine running. The investigation proceeded and Mr. Greenwood was escorted to the Whitehorse RCMP detachment where he provided two samples of his breath pursuant to a s. 320.28 *Criminal Code* demand registering 220 and 200 milligrams of alcohol in 100 millilitres of blood respectively. Following the second sample taken at 3:34 a.m., RCMP decided to hold Mr. Greenwood for his own safety due to his level of intoxication by lodging him at the Whitehorse Correctional Centre Arrest Processing Unit (the "APU") which they did at approximately 4:00 a.m. The RCMP did not check if he was safe to release for almost six hours thereafter.

[4] The Crown called five witnesses on the *voir dire*, being:

1. The lead investigating RCMP officer, Cst. B Raymond (the "Lead Investigator");

2. A correctional officer, Jonathan Hart, who was on shift at the APU where Mr. Greenwood was held (the "CO");

3. RCMP officer, Cst. Mishra, who attended at the APU to release Mr. Greenwood (the "Releasing Officer");

4. The RCMP qualified technician, Cst. Hutton-Brown, who administered the test pursuant to the s. 320.28 *Criminal Code* demand (the "Qualified Technician"); and

5. The acting watch commander, Cst. Poltorasky, who assigned the Releasing Officer to attend the APU and address the release of Mr. Greenwood (the "Watch Commander").

[5] Mr. Greenwood did not present evidence on the *voir dire*.

[6] Mr. Greenwood's *Charter* argument can be addressed by answering the following three questions:

1. Did the RCMP decision to detain Mr. Greenwood for his own safety based on concern about his level of intoxication breach his s. 9 *Charter* rights?

2. Did the failure of the RCMP to check on Mr. Greenwood to determine if it was safe to release him from custody for almost six hours amount to a breach of his s. 9 *Charter* rights?

3. If either of the questions is answered in the positive, is there a remedy available to Mr. Greenwood under s. 24(2) of the *Charter*?

[7] Mr. Greenwood bears the burden of establishing, on a balance of probabilities, that his s. 9 *Charter* rights were breached. Section 9 of the *Charter* states: "Everyone has the right not to be arbitrarily detained or imprisoned."

[8] The issues raised here by Mr. Greenwood are not novel, as this Court has addressed concerns regarding the lack of established procedure on the part of the RCMP when holding individuals in custody after the completion of an impaired driving investigation ("Overholding"), in four reported cases since 2019 (*R. v. Davidson*, 2019 YKTC 16; *R. v. Golebeski*, 2019 YKTC 50; *R. v. Hendrie*, 2021 YKTC 11; *R. v. Bus*, 2024 YKTC 56).

[9] Pursuant to s. 497 of the *Criminal Code*, the RCMP could have released Mr. Greenwood from custody on the completion of the impaired driving investigation by issuing an appearance notice to him. The decision was made in this case to proceed with the issuance of the appearance notice.

[10] Section 498(1) of the *Criminal Code* required the RCMP to release Mr. Greenwood "as soon as practicable, if ... the peace officer issues an appearance notice to the person." The RCMP did not release Mr. Greenwood based on concern for his safety and were obligated to do so as soon as practicable in the circumstances.

[11] The RCMP proceeded under the exception to release, set out in s. 498(1.1)(a) of the *Criminal Code*, which states that "the peace officer shall not release the person if the peace officer believes, on reasonable grounds ... that it is necessary in the public interest that the person be detained in custody ..." It is the decision to detain Mr. Greenwood under this provision, and the nature of that detention, that is in question.

Did the RCMP's decision to detain Mr. Greenwood for his own safety based on concern about his level of intoxication breach his s. 9 *Charter* rights?

[12] The approach that the Court should take in answering this question was considered at length in *Hendrie*, on consideration of several cases (*R. v. Sakhuja*, 2020 ONCJ 484; *R. v. Al-Adhami*, 2020 ONSC 6421; *R. v. Kavanagh*, 2017 ONSC 637; *R. v. Brar*, 2020 ONSC 4740).

[13] Cozens C.J. summarized the approach to be taken at para. 57:

> The simple reality is that a police officer is required to turn his or her mind to all of the circumstances that are present, and in appropriate cases, high blood-alcohol readings may be sufficient. The important thing is that there is a thoughtful inquiry made by the police officer into the existing circumstances so that a careful assessment and consideration is made before further detention is decided to be necessary.

[14] The decision continues at para. 73:

> Freedom from the unnecessary intervention of the state in the liberty interests of individuals in Canadian society is a fundamental right enjoyed in our society. Therefore, the *Code* has made it clear that when a police officer is deciding whether to further detain an individual or not, the officer must turn his or her mind to the prescribed criteria. In doing so, there must be a careful and considered approach to assessing this criteria as applicable to the circumstance before the police officer.

[15] The Lead Investigator and the Qualified Technician both interacted with Mr. Greenwood and concluded that there was a risk to his safety if he was to be released and left alone given his level of intoxication.

[16] The Lead Investigator made observations of impairment at the roadside after waking Mr. Greenwood up and having him exit the Truck which included:

- The content of the 911 call referring to him as being intoxicated;

- A confused look;

- The strong odour of alcohol; and

- Poor balance.

[17] Added to these observations were the high breathalyzer readings of 220 and 200 milligrams percent. The Lead Investigator noted in his evidence that they were a concern as they were nearly three times the legal limit. He concluded that Mr. Greenwood was highly intoxicated and needed someone to care for him.

[18] The Lead Investigator made enquiries about Mr. Greenwood's circumstances to determine if a sober and responsible adult could be identified to care for him. He was prepared to drive Mr. Greenwood home or to another location if it was safe, but Mr. Greenwood was unable to identify anyone to assist.

[19] The Lead Investigator acknowledged that he received input from the Qualified Technician, a more experienced member in relation to impaired driving investigations, but confirmed that the decision to detain Mr. Greenwood was his.

[20] The Qualified Technician was at the Whitehorse detachment when Mr. Greenwood arrived. His considerations regarding Mr. Greenwood being too intoxicated to be released unsupervised included:

- He was found asleep in the Truck in the driver's seat;

- There was a strong odour of alcohol coming from him;

- He had a “1000-yard stare”;

- He was swaying in place during the breath sampling and had to be assisted to steady himself; and

- He had difficulty comprehending the documents served to him in relation to the impaired driving charges.

[21] Both the Lead Investigator and the Qualified Technician noted that Mr. Greenwood was cooperative throughout the investigation. They both acknowledged that it was the totality of their observations, including the breathalyser results, that led to the conclusion that he was unsafe to release.

[22] Video from the Lead Investigator’s body camera captured some of the interactions with Mr. Greenwood both at the roadside and at the detachment. It is difficult to gauge the level of intoxication from the video alone. The concern of the officers was that it would be unsafe for Mr. Greenwood to be left alone and they made efforts to determine if there was anyone that could assist him. It was clear that the officers were willing to drive him to a location and release him on an appearance notice as long as they knew he would be in the care of a sober adult.

[23] On the evidence before the Court on the *voir dire*, I find that Mr. Greenwood has not established that there was a breach of his s. 9 *Charter* rights by detaining him for his own safety.

Did the failure of the RCMP to check on Mr. Greenwood to determine if it was safe to release him from custody for almost six hours amount to a s. 9 *Charter* breach?

[24] The Lead Investigator escorted Mr. Greenwood to the APU once the decision was made to hold him for his own safety. There were two options available to him when dropping off Mr. Greenwood at the APU:

1. Release When Sober ("RWS"), meaning direction to the CO at the APU to exercise their discretion and release the individual when they considered it safe to do so; or

2. Hold For Investigation ("HFI"), meaning that only an RCMP member can release the individual and the CO's are to ensure their safe incarceration until that time.

[25] The Lead Investigator transferred Mr. Greenwood to the custody of the CO at the APU at approximately 4:00 a.m. on direction that he is being held on and HFI. There was no further investigation in relation to Mr. Greenwood, but this ensured that he remained in custody until an RCMP officer could attend to serve him his appearance notice.

[26] The Lead Investigator had no further contact with the APU before he finished work at the shift change at 6:00 a.m. He did send an e-mail to his watch commander to let the next shift know to address the release of Mr. Greenwood.

[27] The Watch Commander received an e-mail with the carry-over tasks from the previous shift which included the task to release Mr. Greenwood. The information

included that Mr. Greenwood was on an HFI and to attend and release him by 10:00 that morning. He, in turn, tasked the Releasing Officer, at approximately 9:00 a.m., with the responsibility to attend at the APU by 10:00 a.m. The e-mail containing the information in relation to Mr. Greenwood was received at 5:56 a.m., minutes before the start of the shift, and stated:

> Greenwood lodged at APU at approx. 04:00 following impaired investigation, Please task a member with following up with APU at 10:00 to check sobriety of Greenwood to lodge and document attempts to release as soon as possible to avoid a charter breach issue. AP on WC desk to be served to Greenwood when released by RCMP.

[28] The Watch Commander followed the direction of the previous watch regarding Mr. Greenwood and did not take independent steps to determine if the HFI hold until 10:00 a.m. was appropriate. He was familiar with the potential *Charter* issue referred to, but he did not question the clear direction of his colleagues from the previous shift. He was not aware of any policy regarding required steps to take in relation to Overholding on a HFI and was not aware of how the 10:00 a.m. time was determined as appropriate.

[29] The Releasing Officer managed to attend at the APU early, at approximately 9:20 a.m., attending at the APU immediately upon learning the time that Mr. Greenwood was lodged at the APU. He noted that Mr. Greenwood was very responsive and assessed him as hungover but sober. Due to the fact that there was no communication between the RCMP and the APU prior to his attendance, there is no information on when Mr. Greenwood first presented as sober.

[30] The Releasing Officer was familiar with the *Charter* issues relating to Overholding on an HFI and his personal practice was to call the APU every hour to

check on individuals where he is the lead investigator. Where time permits, he will attend the APU in person to check in. It is a priority balanced with frontline policing demands.

[31] The initial detention of Mr. Greenwood for the impaired driving investigation commenced at approximately 2:20 a.m. The investigation concluded and he was lodged in custody at the APU on the HFI at approximately 4:00 a.m. He was ultimately released from custody shortly before 10:00 a.m.

[32] The concern regarding Overholding is that there does not appear to be an established policy or procedure in place within M Division of the RCMP to ensure that the individual is released as soon as it is safe to do so. While there was some information before the Court regarding a presentation by the Public Prosecution Service of Canada on the issue, not all members attended the presentation and the members that did attend do not appear to have received direction on how to manage the situation.

[33] Interestingly, the Releasing Officer did not attend the presentation, yet he clearly has established his own approach which involves regular check-ins with the APU. The approach is clearly not universal and itself is subject to frontline policing demands taking priority. The fact that this responsibility is left to individual frontline policing officers is a concern, based on a lack of direction and the likely interference caused by frontline policing priorities.

[34] While not fully explained in court, the APU clearly has a procedure in place to deal with RWS detainees in their custody. The CO did testify that there is a methodical approach to checking on detainees to ensure their safety. If the APU was given

direction to hold an individual subject to Overholding on a RWS, with a call to the RCMP when they were safe to release, it would seemingly address the problem. The worst-case scenario is that the RCMP would be too busy with policing priorities to attend at the APU and the appearance notice would have to be served at a later date.

[35] This is not an attempt to give direction to the RCMP, as that is not the Court's role. It simply illustrates that some attention to this issue by the RCMP could address what has been described by this Court as a systemic issue. It is not acceptable to detain an individual for the purpose of their own safety beyond what is necessary. This is enhanced by the findings of the Court that there is a systemic issue which has been met by inaction on the part of the RCMP to put in place a procedure that ensures the least restriction possible to meet the objective.

[36] Overholding was addressed by this Court in 2019 in *Davidson*, stating at para. 42:

> It is clear on the evidence of both Cst. Caron and Mr. O'Neill that when a person is lodged at the APU on PTA status, COs do check on them regularly, but it is only the RCMP who can release. There does not seem to be any system of regular communication between the COs at the APU and the RCMP in relation to the status of a detainee which would ensure consistent monitoring of a detainee's condition to ensure that they are not held in custody any longer than necessary.

[37] The decision continues, after noting that there was no way to determine Mr. Davidson's level of intoxication at any given time over the course of his detention, at para. 46:

> In my view, the failure to actively monitor Mr. Davidson's detention, against the authority set out in s. 498(1.1), to ensure his detention was no

> longer than necessary means that what began as an authorized detention became, at a point that the evidence does not fully make clear, an arbitrary detention. Accordingly, I am satisfied that the defence has established, on a balance of probabilities, that there was a breach of s. 9 of the *Charter*.

[38] In the 2021 decision of *Hendrie*, the Court stated at paras. 87 and 88:

> There is an obligation on the State to ensure that individuals are not detained for any longer period of time than is necessary. There may be circumstances in which a longer period of detention than is necessary occurs, for perhaps exigent, unavoidable or legitimate reasons that make the detention necessary. Perfection is not a requirement of justice.
>
> This however is not one of those cases. There was no exigent, legitimate or justifiable reason for Mr. Hendrie to have been detained as long as he was. Therefore, I find that his s. 9 *Charter* right not to be arbitrarily detained was breached.

[39] As recently as 2024, this Court in the *Bus* decision addressed Overholding on an HFI at paras. 82 to 84:

> ...There was no need for further investigation. Mr. Bus had been charged with impaired and refuse. Any such investigation had been completed. This amounts to a complete lack of care and regard for the seriousness of the concept of detention.
>
> Liberty is a right. Removal of that right is only permitted in very restricted circumstances.
>
> Additionally, there were no efforts by any member of the RCMP to continue to assess Mr. Bus' state of sobriety at any time until he was released. Equally troubling is that the pass-on officer did not pick up the mantle when she came on duty at 6:00 a.m. and immediately check on his sobriety. As mentioned, it was not until after 1:00 p.m. that she decided to go down to the APU.

[40] The decision continues at para. 105:

> This, then, is the context over three decisions in the Yukon with the same governmental parties involved, and the negligence continues. No

> message appears to have been sent to change the processes whereby officers, either from the RCMP or, indeed, the correctional facility, are mandated to consider the issue of detention and whether it is in accordance with the law.

[41] Based on the inaction of the RCMP in following up on the detention of Mr. Greenwood, while holding him on an HFI when there was no further investigation to be done, I find that there has been a breach of his s. 9 *Charter* rights.

If either of the questions is answered in the positive, is there a remedy available to Mr. Greenwood under s. 24(2) of the *Charter?*

[42] In *Hendrie*, the Court recognized that "[t]here was no causal connection between the *Charter* right and obtaining the evidence. The impaired driving investigation was completed several hours before the s. 9 breach occurred." The decision continues in a review of caselaw on the available remedy for an Overholding s. 9 *Charter* breach, including *R. v. Pino*, 2016 ONCA 389, finding at para. 119:

> I agree with the approach taken in *Pino*. If there is a *Charter* right without access to a remedy in the event of a breach of that right, then the right is somewhat hollow. Therefore, a consideration of the s. 24(2) availability as a remedy should be a broad and liberal one.

[43] The decision continues with a s. 24(2) *Charter* analysis as set out by the Supreme Court of Canada in *R. v. Grant*, 2009 SCC 32, stating on the assessment of the seriousness of the breach at para. 124:

> This was not a case where the s. 9 breach occurred because of a lack of assessment by the RCMP of Mr. Hendrie's condition. This was a case of **careless or negligent action due to the lack of an appropriate mechanism on the part of the RCMP to ensure Mr. Hendrie was released in a timely fashion** at the intended time. This is the same systemic issue Ruddy J. was concerned with and opined on in *Davidson*, and which therefore should have been addressed by the RCMP.

[44] When assessing the exclusion of evidence and the care necessary to ensure it is not done to indirectly punish the officer's involved in the breach, the Court in *Hendrie* stated at para. 147 to 149:

> Were this to be a one-off overholding, the case for exclusion of the evidence of the breath samples would not serve the long-term interests of justice. Rather it would be more in the line of "punishing" the RCMP for this one particular incident, with no backdrop of trying to correct a systemic issue that was, or should have been, brought to the attention of the RCMP so that future such breaches do not occur.
>
> However, here there was an unaddressed systemic issue of overholding as a result of inadequate RCMP policies and procedures with respect to ensuring the timely release of individuals detained at the APU, who must remain in custody pending further RCMP action.
>
> This situation was noted in *Davidson*, and in my opinion, steps should have been taken to correct the situation.

[45] After conducting a thorough *Grant* analysis, the *Hendrie* decision concludes at paras. 152 to 154:

> I would think that the public perception of the administration of justice would be negatively impacted by the lack of a meaningful remedy for the s. 9 *Charter* breach in this case.
>
> I think this negative impact would be enhanced because of the prior judicial admonition in the Yukon about the systemic problems that have contributed to such overholdings of individuals in RCMP custody in the past, and what appears to be the failure of the RCMP to heed these admonitions and take any action to rectify them.
>
> In my opinion, in a balancing of the three *Grant* factors, the systematic flaws that contributed to the s. 9 *Charter* breach in Mr. Hendrie's case are sufficiently significant that the impact upon the administration of justice requires that the evidence of the breath samples be excluded. Therefore, the Certificate of a Qualified Technician and Subject Test Samples are excluded from admissibility at trial.

[46] On the evidence of the four RCMP officers in this matter, the only reasonable conclusion is that there is no evidence of steps taken by the RCMP to properly address the concern of Overholding in the Yukon. Given the facts in *Hendrie* and the similarity to those before this Court, there is no need to repeat the *Grant* analysis in this case. There remains a systemic issue of Overholding in a manner that violates s. 9 of the *Charter*.

[47] The breathalyser sample results obtained from Mr. Greenwood were integral to the decision by the Lead Investigator and the Qualified Technician to detain him for his own safety. They are directly linked to the s. 9 *Charter* breach.

[48] The evidence of the test results administered pursuant to the s. 320.28 *Criminal Code* demand, as well as all evidence obtained after Mr. Greenwood arrived at the RCMP detachment, is excluded pursuant to s. 24(2) of the *Charter*.

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PHELPS C.J.T.C.