

Citation: *R. v. Dick*, 2018 YKTC 24

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Docket: 17-00325
17-05113A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

CHRISTOPHER TREY DICK

Appearances:

Jean-Benoît Deschamps
Kelly McGill
Amy Steele

Counsel for the Crown
Counsel for Territorial Crown
Counsel for the Defence

RULING ON *CHARTER* APPLICATION

[1] Christopher Dick is charged with having committed an offence under s. 129(a) of the *Criminal Code* and s. 5(1) of the *Motor Vehicles Act*, RSY 2002, c.153 (the “*Act*”).

[2] A *voir dire* was conducted in order to determine whether Mr. Dick’s s. 9 *Charter* rights were violated.

[3] Cst. Booth, the arresting officer, was the only witness in the *voir dire*.

[4] He testified that on August 18, 2017, he was on patrol in downtown Whitehorse on an unrelated matter.

[5] Cst. Booth observed a blue SUV driving past him as he was exiting a back alley.

[6] He noted that both the driver and the vehicle matched the descriptions given in regard to a complaint from August 10. The complaint was about a vehicle driving erratically and doing doughnuts in Riverdale.

[7] In that complaint, the driver had been described as a Caucasian male in his 20's wearing sunglasses. The vehicle had been described as a blue SUV with licence plate HPV98.

[8] Cst. Booth testified that he responded to the complaint on August 10 and drove around the Riverdale community, but was unable to locate the vehicle. He stated that he did not follow up with further investigation into a possible infraction of the *Act* at that time, such as by contacting the registered owner, as he thought that he would likely see the vehicle around town at a future date, in which case he would pull it over and speak to the driver. He stated that he was familiar with this particular vehicle and had seen it around often.

[9] Cst. Booth agreed that he had been involved in assisting with a search of that particular vehicle on a prior occasion in connection with a drug-trafficking investigation. He stated that he believed Mr. Dick had been charged with having committed a drug offence in the course of that investigation.

[10] Cst. Booth stated that when he observed the vehicle on August 18, he intended to make a traffic stop in order to identify the driver and speak to him about the traffic complaint. He testified that he did not intend to issue any tickets for the August 10

incident, or to charge anyone in relation to the complaint. He testified that he believed his authority to stop the vehicle was pursuant to the investigation of the August 10 driving complaint, as well as to ensure that the driver was able to produce valid insurance and registration documentation and a valid driver's licence.

[11] As Cst. Booth was driving on Main Street, which was busy at the time, he intended to follow the vehicle until he found a more suitable location to pull it over. However, the vehicle turned into a parking stall. Cst. Booth then activated his police cruiser's emergency lights and parked on the street behind the vehicle, preventing it from moving.

[12] Cst. Booth testified that his reason for stopping the vehicle was that, as it was the same vehicle identified in the erratic driving complaint of August 10, and the driver matched the description of the driver in the complaint, he wanted to identify the driver and speak to him in regard to the complaint. He stated that he observed the driver as being a younger-looking, Caucasian-looking male wearing white sunglasses. Cst. Booth agreed that this was a vague description that could match a large number of people in the Yukon.

[13] He testified that there was nothing in how the vehicle was being driven on August 18 that provided him any cause to pull the vehicle over.

[14] Mr. Dick and the passenger got out of the vehicle after they parked.

[15] Cst. Booth stated that he was able to identify the driver as Mr. Dick once he got out of the vehicle, as he had dealt with him previously on several occasions. On one of

these occasions, Cst. Booth stated that he had responded to a request to remove Mr. Dick from a relative's house and, when he and other police officers attempted to do so, Mr. Dick drew a knife and threatened him. He agreed that he and the other police officers drew their firearms on that occasion.

[16] Cst. Booth testified that, at the time of the stop, he believed Mr. Dick to be unpredictable and a dangerous person. He also agreed, however, that on August 18 there was nothing in Mr. Dick's conduct that gave rise to a concern that he would become violent on this occasion.

[17] Once stopped, Cst. Booth finished running the license plate and learned that the vehicle was registered to a female with whom he was not familiar. He asked Mr. Dick who the registered owner was and he told Cst. Booth it was the mother of a friend of his. This friend was known to Cst. Booth as being an associate of Mr. Dick's who had been charged with Mr. Dick in association with alleged drug offences.

[18] Cst. Booth told Mr. Dick that the reason for the stop was in order to speak to him about the August 10 erratic driving complaint.

[19] Cst. Booth then asked Mr. Dick for the vehicle's registration and insurance documentation, which Mr. Dick produced. He then asked Mr. Dick to produce his driver's license. Cst. Booth was unable to recall Mr. Dick's response, but, as was his habit, following this response he contacted dispatch, who advised him that Mr. Dick was disqualified from driving.

[20] Cst. Booth then told Mr. Dick that he was under arrest for driving without a license. Cst. Booth testified that while it is not his normal practice to arrest someone for not having a valid driver's license, he chose to do so in this case due to his experience with Mr. Dick in his previous interactions with him and his desire to alleviate his safety concerns.

[21] Cst. Booth stated that he believed that by arresting Mr. Dick and placing him in the police cruiser, he would be able to complete his investigation and documentation safely. He testified that he was also investigating whether Mr. Dick was bound by the terms of a probation order and whether he was in breach of any of the terms.

[22] After being informed that he had been arrested, Mr. Dick attempted to run away, however Cst. Booth was able to grab him and pull him back, taking him to the ground. With the assistance of Cst. Caron, Mr. Dick was then handcuffed, searched, and placed in the rear seat of the police cruiser. He was also arrested for resisting arrest prior to being placed in the police cruiser.

[23] Cst. Booth stated that it had been his intention to release Mr. Dick at the scene and that he likely would have done so had Mr. Dick not attempted to run away from him.

[24] I note that the stop and the arrest were captured on the police cruiser's Video In Car System ("VICS").

[25] In relation to the purpose for the stop of the vehicle, Cst. Booth had the following exchanges with counsel for Mr. Dick:

Transcript pp. 33-34, ll. 36-47, 1-12

Q So on August 18th, you were aware that Christopher Dick had just gotten out of jail for a drug offence?

A I wasn't aware what happened with his charges, no.

Q I put it to you, Constable Booth, that you were actually interested in this vehicle because you knew that it had been involved in a previous drug investigation, and that's why you wanted to stop it.

A I wouldn't – would not have stopped it unless I had the – if I didn't have the previous report about the erratic driving, I wouldn't have stopped it.

Q But just to confirm, at the time that you were following this vehicle and you decided to stop it, you knew that the vehicle had been part of a previous drug investigation?

A I knew that, yes.

Q But you're saying that didn't factor into your decision to follow it and stop it?

A It was something I was aware of. I didn't know who was in the vehicle.

Q Would you agree that – so eight days passed and you had this report about a vehicle being – doing doughnuts. So at the most you thought it was a – like a traffic infraction. But eight days later you thought it was your top priority to pull this vehicle over to check whether it had been doing doughnuts eight days earlier? That was the reason? That was the primary reason why you decided to pull the vehicle over?

A My top priority is – I don't know what that is. But the vehicle presented itself to me. And in order to follow up in my investigation, I pulled it over.

Transcript, p. 35, ll. 10-16, ll. 35-39

Q I'm putting it to you, Constable Booth, that specifically you were hoping to find drugs in this vehicle, because you knew it had previously been involved in a drug traffic investigation.

A Well, when I saw the vehicle, I didn't have any grounds to search the vehicle for any drugs. So I was simply looking to have a conversation with the driver about their previous report as well as IDing. I didn't know who was in the vehicle.

...

Q At what point did you realize that the person that got out of the driver's seat was Christopher Dick?

A Basically once I'd seen him out of the vehicle.

Q So was that like right away or...

A Yes

Transcript, p. 56, ll. 28-37

Q So I just want to confirm. Even though Christopher Dick, you were aware he'd been charged with a previous drug offence and that vehicle was involved with a drug trafficking investigation, you didn't have suspicion there was drugs in the vehicle until after Mr. Dick ran?

A It was something that I was aware of, I would consider, but I – like I said, I didn't have any reason during that particular stop to suspect at the time.

Q So you were aware of it and considered it, but it didn't form any motive for you to stop the vehicle?

A Right. The stop itself was associated to the previous traffic – or driving complaint.

[26] Cst. Booth and Cst. Caron searched the vehicle incident to arrest. Cst. Booth testified that he searched the vehicle because:

- Mr. Dick was not the registered owner;
- the vehicle belonged to Lucas Rudetsky's mother and Mr. Dick was bound by a no-contact condition with Mr. Rudetsky;
- he had knowledge of the previous drug offence involving Mr. Dick and Mr. Rudetsky; and

- the main reason was that Mr. Dick ran from him after being informed that he being arrested.

[27] Cst. Booth testified that he was searching the vehicle as he was suspicious that there may be evidence within of Mr. Dick breaching the no-contact condition he was bound by and evidence that Mr. Dick was re-engaged in drug offences. He agreed in cross-examination that he searched the vehicle because he believed that there were drugs in it.

[28] Cst. Booth testified that while he was suspicious that there were drugs in the vehicle, based on his knowledge that it had previously been associated with drug offences, and that Mr. Dick had been charged with a previous drug offence, it was only after Mr. Dick tried to run that he believed that he now had the grounds to search the vehicle, as it seemed that there was more going on besides the traffic offence.

[29] Cst. Booth testified that Mr. Dick was not brought to the Arrest Processing Unit until after the vehicle search had been completed.

[30] I note that counsel for Mr. Dick has also brought applications alleging breaches of Mr. Dick's ss. 8 and 10(b) *Charter* rights. Crown counsel objected to calling evidence on the *voir dire* in relation to these alleged *Charter* breaches, in part because there was no evidence obtained as a result of the search and delay in providing Mr. Dick his right to speak to legal counsel.

[31] After submissions from counsel and a review of the case law, I acceded to Crown counsel's objection and limited the *voir dire* to a consideration of the s. 9 *Charter* issue. In doing so, I found that even if there were ss. 8 and 10 *Charter* breaches in the manner

alleged by Mr. Dick, not only would there be no evidence to exclude pursuant to s. 24(2), but that the breaches would not reach the threshold for a s. 24(1) remedy that would result in the charges being stayed.

[32] This said, I did allow for the possibility that, in the event Mr. Dick is convicted, evidence could be called in order to determine whether there were ss. 8 and 10 *Charter* breaches, as they could have an impact on the sentence to be imposed upon Mr. Dick.

[33] Certainly, on the evidence before me so far, it cannot be said that there is no merit in the allegation that both the search of the vehicle and the delay in affording Mr. Dick his right to speak to legal counsel in order to allow for the search to be completed, breached his ss. 8 and 10(b) *Charter* rights.

Issue

[34] The sole issue in this *voir dire* is whether the vehicle stop was an arbitrary detention and thus contrary to s. 9 of the *Charter*. If so, then the question is whether any of the evidence obtained after the stop should be excluded pursuant to s. 24(2) of the *Charter*.

Analysis

[35] The first question is whether Cst. Booth had the authority under the *Act* or the common law to pull over the vehicle in order to investigate the driving complaint that had been made eight days earlier on August 10. If it was lawful, then the stop and detention was not arbitrary.

[36] If the vehicle stop was unlawful, then it was arbitrary.

[37] Section 106 of the *Act* clearly authorizes police officers in the Yukon to stop vehicles and require drivers to produce the necessary documentation associated with operating the motor vehicle.

[38] As stated by Schneider J. in **R. v. Rowat**, 2018 YKTC 20, in para. 7:

It was argued that the *Motor Vehicles Act*, RSY 2002, c. 153, and in particular s.106, permits an officer to perform traffic checks and that this ability to perform 'random stops' provided a legal basis for the officer stopping Mr. Rowat's vehicle as she did. Counsel provided a variety of case law which was of assistance. It is recognized that the preventative practice of random stops to ensure motor vehicle safety and driver sobriety have been determined to be constitutionally valid.

[39] In **Rowat**, the police officer testified that she stopped the vehicle being driven by Mr. Rowat with the intent of issuing him a ticket for speeding. This was not a random stop nor was it for the purpose of continuing an ongoing investigation into an earlier observation the police officer had made of an unidentified vehicle and driver speeding. The police officer had, for all intent and purpose, concluded her investigation prior to stopping the vehicle. Schneider J. considered the purpose of the stop as follows:

8 I am of the view, however, that Cst. Jury's stop was not random. As noted by Cory J. in *R. v. Wilson*, [1990] 1 S.C.R. 1291, "...where the police offer grounds for stopping a motorist that are reasonable and can be clearly expressed... the stop should not be regarded as random".

[40] The stop of Mr. Dick by Cst. Booth was likewise not random, but a follow-up to an investigation commenced eight days earlier.

[41] Based upon Cst. Booth's testimony, the stop of the vehicle being driven by Mr. Dick constituted an investigative detention. Cst. Booth testified that he was

investigating a prior complaint of a possible motor vehicle offence, and stopping the specific vehicle identified as being connected to the complaint.

[42] Certainly, a question arises as to why, if it was important to conclude the complaint investigation from August 10, Cst. Booth had not simply contacted the registered owner after being unable to locate the vehicle that day. This would have been a simple enough thing to do. Instead, based upon his thinking that he would likely see the vehicle around town, he decided to do nothing until then.

[43] In *R. v. Vander Griendt*, 2015 ONSC 6644, Dawson J. conducted a detailed analysis of the powers of police in regard to the detention of a motorist, in the context of an impaired driving appeal.

[44] In paras. 54-60, he discussed the application of *R. v. Mann*, 2004 SCC 52, to a motor vehicle stop, contrasting it to the circumstances that existed in *Mann*, where it was a pedestrian that had been detained and questioned.

54 The importance of context to the constitutional validity of a police power to stop and detain for investigative purposes is evident in *Mann*. At para. 17 of the majority judgment, Iacobucci J. expressed the need for the court to respect the role of Parliament and to exercise caution in creating police powers by the development of the common law. He said that for that reason he did not believe it was appropriate for the court "to recognize a general power of detention for investigative purposes". He concluded the paragraph by indicating that in *Mann* the court's duty was "to lay down the common law governing police powers of investigative detention in the particular context of this case" (emphasis added). This is an important limitation on the statements of principle laid down in *Mann* that the appellant fails to recognize in his argument.

55 The context in *Mann* was very different from that in the drinking and driving cases we are concerned with here. In *Mann* the issue was whether the police had the power to conduct an investigative detention of a person

walking down a street. The appellant in that case was not engaged in the licensed and highly regulated activity of driving a motor vehicle.

56 The emphasis on the importance of context appears in the judgment in *Mann* before the court stated, at para. 20, that "an investigative detention that is carried out in accordance with the common law power recognized in this case will not infringe the detainee's rights under s. 9 of the *Charter*." In view of the previous reference at para. 17 to laying down the law of investigative detention in the particular context of the case, I do not agree with the appellant's submission that the reasonable suspicion requirement, which is undoubtedly the critical component of the power of investigative detention recognized in *Mann*, applies in the very different context of the licensed and regulated activity of driving a motor vehicle. Recent cases, such as *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 highlight the distinctive nature of that licensed and regulated activity.

57 I also observe that in developing the reasonable suspicion requirement for investigative detention in the context of the facts in *Mann*, Iacobucci J. made extensive reference to the reasons of Doherty J.A. in *Simpson*. He did so without any disapproval or adverse comment about Doherty J.A. distinguishing cases dealing with random stops of motor vehicles, such as *Dedman*. This adds further support to my conclusion.

58 These considerations flow through into the application of the *Waterfield* test. In *Mann*, as in *Dedman*, the court relied upon and applied the *Waterfield* test in developing the power of investigative detention. I note that the *Waterfield* test has two branches. Under the first branch the court enquires into whether the police are acting within the scope of a recognized police duty. Under the second branch the court considers whether the police conduct involved an unjustifiable use of police powers.

59 It is often the second branch of the test that attracts the most attention because it is where the liberty interests that are at stake in a particular case are weighed, together with a myriad of other factors, to determine whether the power being exercised is valid. However, when context is important, as *Mann* says it is, the nature of the recognized police duty under the first branch of the test is also very important. The driving cases, including *Dedman*, *Hufsky* and *Ladouceur*, demonstrate that when police officers randomly stop drivers to check for sobriety and regulatory compliance they are primarily pursuing their duty to protect the public from serious harms that are known to arise from the licensed activity of driving. They are not, as in *Mann*, investigating a specific person in relation to a known crime. While it is well recognized that police powers are not necessarily co-extensive with their duties, the nature of the duty pursuant to which a police power is exercised obviously impacts on the weighing

and balancing which occurs at stage two of the *Waterfield* test: see *Mann*, at para. 26; *Simpson*, at para. 57.

60 Contrary to the appellant's submission, I find further support for the conclusion that *Mann* did not have the effect of engrafting a reasonable suspicion requirement onto all common law police powers to stop and detain, in the decision of the Supreme Court of Canada in *Clayton*. That judgment postdates the decision of Molloy J. in *Dillon*.

[45] After considering the reasoning of Abella J. in *R. v. Clayton*, 2007 SCC 32, Dawson J. concluded:

68 For the foregoing reasons, I reject the appellant's submission that *Mann* has had the effect of engrafting an individualized reasonable suspicion requirement onto the common law police power to randomly stop motor vehicles for the purpose of checking driver sobriety.

[46] I appreciate that *Mann* is considered here in the context of assessing random stops of motor vehicles. I agree that it would be incorrect to impose the *Mann* criteria on police powers to conduct random stops of motorists, under either common law or the applicable provincial or territorial motor vehicles and/or highways legislation.

[47] I am of the opinion that there is a distinction between the application of *Mann* to pedestrian stops, as stated above, and the statutory powers of a police officer to conduct stops under s. 106 of the *Act*, for the purpose of investigating a prior motor vehicle complaint. The motor vehicle stop for a specific investigative purpose requires a nexus between the motor vehicle stop and the purpose for which the investigation is being conducted.

[48] This said, there is a significant difference between stopping a pedestrian for investigative purposes, for which there is not a statutory authority to do so, and

conducting a statutorily authorized stop of a motor vehicle, which is governed by a regulatory licensing scheme.

[49] Hence, the requirement in **Mann** for the investigative detention to be in connection to an ongoing or recent commission of an offence needs to be viewed in a different context than that which existed in **Mann**. Random stops are permissible in a traffic context, unlike in a pedestrian context, and therefore the reasonable suspicion required by **Mann** is not necessary for a random stop. In the case of an investigative detention, such as in the present case where the stop was stated to be for a purpose authorized under the *Act*, i.e. the continuing investigation into a prior complaint, the principles set out in **Mann** need to be considered in context.

[50] In my opinion, given the legislative scheme which governs the operation of a motor vehicle in the Yukon, there is a clear authority for a police officer to stop a driver in order to continue an investigation into a complaint in regard to the operation of a motor vehicle, even if the complaint was somewhat dated. Even on the application of the **Mann** criteria, I am of the opinion that the requirement that the offence being investigated be a “recent” offence, allows for a more expansive approach to what constitutes a recent offence under the *Act*.

[51] In my opinion, stopping a motor vehicle, as in this case eight days after the complaint, in order to continue the investigation and “close the file”, so to speak, is an allowable exercise of police powers under the *Act*.

[52] Further, as counsel for Mr. Dick raised this issue in her questioning of Cst. Booth, s. 112 of the *Act* authorizes a police officer to arrest without warrant an individual who

the officer believes on reasonable and probable grounds has committed an offence under s. 5 of the *Act*. Therefore the decision by Cst. Booth to arrest Mr. Dick for an offence under s. 5(1) of the *Act* was a decision he was authorized to make. The fact that an arrest was not necessary, or even something that Cst. Booth may not have usually done, is not relevant.

[53] The only question that remains, however, is whether the stop, purportedly for the purpose of investigating the prior complaint, was a ruse. If so, and if Cst. Booth was in fact using his authority under the *Act* for the underlying purpose of commencing a criminal investigation, whether into a possible breach of probation offence or a drug offence, then the stop was unlawful as it was not for an authorized purpose.

[54] I considered the jurisprudence in this area in the case of **R. v. Drummond**, 2017 YKTC 63 as follows:

46 Counsel relies on the case of **R. v. Gayle**, 2015 ONCJ 575, where a police officer detained an individual, known to the police, who was riding a bicycle without a helmet and did not stop at a stop sign. It was found that the real purpose of the stop was to investigate the individual to determine whether he was complying with his court-ordered conditions.

47 While there was a legal authority to stop the cyclist for the *Highway Traffic Act* infraction, there was no legal authority to detain him to investigate whether he was complying with conditions. Dual-purpose stops are legal, in that "...the existence of a secondary investigative purpose does not affect the legality of the stop and detention, provided that purpose is not improper" (para. 12). However, "...the use of the legal stopping authority...cannot be a mere pretext or ruse employed in order to further the other investigative purpose". (para.13)

48 The Court went on to note that **R. v. Humphrey**, 2011 ONSC 3024 found that a stop could only be a pretext if it was determined that: "... the sole purpose of the stop was to further the other criminal investigation and that there was no intention at all to investigate or pursue the HTA [*Highway Traffic Act*] offence". (para. 14)

49 In **Gayle**, Duncan J. focused on what occurred after the traffic stop in order to determine the lawfulness of the stop. In particular, he considered whether the officer's concerns in regard to the ostensible reason for the initial stop manifested themselves concurrently with the other investigation, or whether these concerns were almost immediately abandoned. His analysis considered whether the change in focus from the reason for the initial stop was triggered by information and/or observations arising after the stop.

50 In **Gayle**, the Court found that the facts established that the traffic stop was a pretext for the investigation into compliance with court-ordered conditions. As such the accused's ss. 8, 9 and 10(a) and (b) *Charter* rights were violated and the evidence was excluded.

[55] In para. 10 the Court stated:

The Supreme Court has said that these encounters require the courts to proceed **step by step** through the interaction from the initial stop onwards to determine whether the police stayed within their authority: Close and careful analysis is required because:

The vibrancy of a democracy is apparent by how wisely [the court] navigates through those critical junctures where state action intersects with, and threatens to impinge upon, individual liberties.

(**R. v. Nolet**, [2010] 1 S.C.R. 851 at para. 4; **R. v. Mann**, [2004] 3 S.C.R. 59 at para. 15)

[56] In the present case, when Cst. Booth first observed the vehicle being driven by an unidentified young male wearing sunglasses, he was aware not only that this was the same vehicle that was the subject of the prior complaint, but it was a vehicle associated with the drug trade, and the same vehicle he had previously been involved in a search of for the purpose of locating drugs.

[57] The underlying question that could be considered is whether Cst. Booth specifically decided to not contact the registered owner to speak to her after being unable to locate the vehicle on August 8, with a parallel intent to stop the vehicle at a

later date, using the complaint as authorization for doing so, in the hope that he would be able to embark on a criminal investigation and locate evidence of drugs in the vehicle.

[58] My understanding of his testimony is that Cst. Booth had a suspicion that there were drugs in the vehicle but it was only after Mr. Dick tried to run away that this suspicion became more, and provided him, in his mind, with reason to believe drugs were in the vehicle, and thus, in his opinion, gave him grounds to search the vehicle. It seems that his thinking process changed from “drugs may be in the vehicle” to “drugs were likely in the vehicle”. I note that at the time of the search Mr. Dick had not been arrested on a drug charge.

[59] After arresting Mr. Dick, Cst. Booth then proceeded to search the vehicle for drugs. None were located.

[60] He also testified that he was searching the vehicle for evidence of Mr. Dick possibly breaching the terms of his probation order that required him to have no contact with Mr. Rudetzky.

[61] I find this to be a rather odd purpose. What was he expecting to find? Perhaps Mr. Rudetzky hiding in the trunk? A letter between Mr. Rudetzky and Mr. Dick with a relevant date? A cell phone which would show communications between them? No questions were asked in regard to this purpose that would shed any light on it, and nothing was located that was evidence of such a breach.

[62] Certainly the subsequent decision by Cst. Booth to search the vehicle is a relevant consideration when looking at what Cst. Booth's motive was for pulling the vehicle over in the first place. It is evidence that could be considered supportive of Cst. Booth's true motive being to see if he could embark on a criminal investigation.

[63] If I were to find that Cst. Booth's intention all along was to try to gather evidence of a criminal offence, and that the motor vehicle stop to investigate the prior complaint was a ruse, I would have no difficulty finding that the detention was arbitrary. While dual-purpose stops are allowable in some circumstances, I would not be satisfied that these circumstances warranted a dual-purpose stop. The only basis for Cst. Booth to lawfully stop the vehicle was the prior complaint.

[64] I find Cst. Booth to be a credible witness. He was candid when asked questions about his motive for stopping the vehicle and why he decided to search the vehicle. The only question mark here is the search for evidence of a breach of the no-contact condition of a probation order. However, little in the way of questions were asked in this regard and, as such, I cannot make much of this.

[65] I find that the suspicion Cst. Booth had in regard to the possibility of drugs being in the vehicle, prior to forming the intent to stop the vehicle, was that only: suspicion. Based upon his prior experience with the vehicle, frankly, I would have found it less truthful were he to have testified that he had no such suspicion.

[66] I have found that, absent an improper motive, Cst. Booth had the authority under s. 106 of the *Act* to stop the vehicle to conclude the investigation into the prior complaint. Does he therefore lose this pre-existing authority solely because he had a

suspicion that the vehicle may have had illegal drugs in it? I find that, this suspicion alone, on its face, does not deprive him of this legal authority. This would create an illogical restriction on his statutorily authorized powers under the *Act*.

[67] I find that Cst. Booth's suspicion that there were illegal drugs in the vehicle was not the primary purpose for the vehicle stop. I accept his testimony that the purpose of the stop was to follow up on the earlier complaint and I find that the traffic stop and detention of Mr. Dick was for a legitimate and lawful purpose.

[68] Therefore, I find that there was no s. 9 *Charter* breach.

COZENS T.C.J.