

Citation: *R. v. Wells*, 2017 YKTC 34

Date: 20170705  
Docket: 16-00165  
Registry: Whitehorse

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

REGINA

v.

DANIEL WINSTON WELLS

Appearances:  
Eric Marcoux for Leo Lane  
Joni Ellerton

Counsel for the Crown  
Counsel for the Defence

**RULING ON *CHARTER* APPLICAITON**

[1] Daniel Wells has been charged with having committed offences contrary to ss. 253(1)(a) and (b) of the *Criminal Code*.

[2] Counsel for Mr. Wells has filed a *Charter* application alleging breaches of Mr. Wells' ss. 8 and 9 *Charter* rights. Counsel seeks that the evidence of the breath sample readings be excluded as a remedy for the *Charter* breaches.

[3] Cst. Harding was the arresting officer. He testified that, at 19:11 hours on June 3, 2016, he was informed that an anonymous caller had reported that an individual who had been drinking in the 202 Motor Lounge (the "202") had left in a vehicle with British

Columbia license plates. A description of the vehicle was provided, as well as the licence plate number.

[4] Cst. Harding suspected, as he typically did when he received such information, that the caller had safety concerns connected with the possible impairment of the driver.

[5] At that time Cst. Harding had been the lead investigator in approximately 35-40 impaired driving investigations that had led to charges.

[6] He was also a qualified breath technician at the time.

[7] Approximately 18 or 19 minutes later, at 19:29, Cst. Harding located a truck that matched the description provided heading west on Main Street. He followed the truck for several blocks until he was able to confirm the plate. The truck had travelled west on Main Street, turned left to head south on 6<sup>th</sup> Ave, turned east on Lambert Street and then turned right onto 4<sup>th</sup> Ave. When the vehicle turned right onto 4<sup>th</sup> Ave, it failed to come to a complete stop at the stop sign.

[8] Cst. Harding then activated his lights and siren and the truck pulled over at the corner of 4<sup>th</sup> and Lowe Street, with Cst. Harding pulling in behind.

[9] I note that a video/audio recording of the stop and the subsequent arrest of Mr. Wells was filed. The quality of the video/audio recording was good.

[10] I will say at the outset that the video/audio recording of the events was very helpful.

[11] I note from the video recording that the failure to come to a complete stop was what I would consider as being minimal, in that the stop fell just short of being complete.

[12] Cst. Harding approached the driver side window and informed the driver, Mr. Wells, that he had received a complaint from the 202 that he, Mr. Wells, might have been drinking. This, I note, was based upon Mr. Wells being the driver of the vehicle that had been described at the time of the stop, as I have no evidence before me that a description had been provided of the driver of the vehicle.

[13] Cst Harding testified that at this time he had not formed the opinion that he was dealing with an impaired driver, only a possibly impaired driver.

[14] He also informed Mr. Wells that he had failed to come to a complete stop at the stop sign.

[15] Cst. Harding then asked for Mr. Wells' license and registration. When Mr. Wells attempted to light a cigarette, Cst. Harding told him to wait until they were done.

[16] He then asked Mr. Wells where he was coming from. He asked if Mr. Wells had been at the 202 earlier. From the audio recording Mr. Wells can be heard responding by saying "I don't recall".

[17] Cst. Harding then asked Mr. Wells whether he had consumed any alcohol. The answer cannot be heard on the recording, however Cst. Harding testified that it was equivocal in that he did not consider the answer to be either a "Yes" or a "No". In Cst. Harding's opinion, Mr. Wells did not appear to want to talk to him. He testified that Mr. Wells did not actually admit to having consumed any alcohol.

[18] Cst. Harding called in Mr. Wells' registration and driver's license number and again told him not to light up a cigarette as he was probably going to be performing a breath test as soon as he checked that everything was in order.

[19] Shortly afterwards, the vehicle registration and driver's licence checks revealed that the paperwork was in order.

[20] Cst. Harding did not detect any odour of liquor at this time, either inside the truck or coming from Mr. Wells. Cst. Harding stated that it was windy at the time. Certainly some wind can be heard in the recording and trees in the background can be seen being blown by the wind.

[21] Cst. Harding did not note any other symptoms, at that time, consistent with Mr. Wells having consumed alcohol or being impaired by alcohol.

[22] Cst. Harding asked Mr. Wells to step out of his truck and accompany him to the front of the police cruiser to provide a breath sample. At that time Cst. Harding again stated to Mr. Wells that he had a report of Mr. Wells leaving a bar. He did not say anything else.

[23] Cst. Harding testified that his grounds for asking Mr. Wells to step out of the vehicle and provide a breath sample were as follows:

- the nature of the complaint;
- Mr. Wells was the sole occupant of the vehicle;
- Mr. Wells was evasive in his answers. Cst Harding stated that this was the single biggest factor;
- The minor traffic infraction of the rolling stop; and

- The lack of a clear answer as to whether Mr. Wells had been consuming alcohol. In Cst. Harding's opinion, people tend not to be completely honest when asked about their alcohol consumption. He thought that Mr. Wells was deliberately not being honest.

[24] Cst. Harding then read Mr. Wells the breath demand, while he was standing at the front of the police cruiser. He asked Mr. Wells when his last alcoholic drink was. Mr. Wells stated that he did not remember and, when asked whether it may have been in the last 15 minutes, he stated that he may have had one "shortly a while ago". He stated that he was not sure whether he had had any alcohol before leaving the bar.

[25] Cst. Harding asked another officer who had attended to see if there was any alcohol, in plain view, in Mr. Wells' vehicle. None was observed, other than a sealed bottle of wine.

[26] Mr. Wells stated that he had consumed two quick drinks after he left the bar. He stated that he had consumed these two drinks "moments ago".

[27] As a result Cst. Harding decided to wait 15 minutes, from the time of the stop, in order to make sure that there was no residual mouth alcohol that could affect the breath test. Cst. Harding, using 19:30 as the time of the pullover, decided to wait a further seven minutes, until 19:45, to conduct the breath test.

[28] At this time, Cst. Harding asked Mr. Wells if he wished to speak to a lawyer. Mr. Wells stated that he wished to do so. Cst. Harding read Mr. Wells his *Charter* right to counsel from the card he carried and offered Mr. Wells the opportunity to contact counsel from roadside. Cst. Harding testified that this was due to the delay that resulted from the additional seven minutes of waiting.

[29] Cst. Harding testified that he believed at the time that he had a legal obligation to provide Mr. Wells an opportunity to consult counsel, and only learned later that the obligation did not arise for the purposes of providing a breath sample into an approved screening device.

[30] Mr. Wells was able to speak with Legal Aid counsel in private, as Cst. Harding provided him a cell phone and moved out of hearing distance.

[31] After the 15 minute waiting period was over, Mr. Wells provided a breath sample into the approved screening device and a “fail” reading was registered. The time of the “fail” reading was 19:47.

[32] Mr. Wells was then arrested for impaired driving, and *Chartered* and warned, commencing at 19:48. Cst. Harding testified that he relied on the “fail” reading as grounds for his arrest of Mr. Wells for impaired driving.

[33] Mr. Wells was read the breath demand at 19:51 and transported to the RCMP Detachment at 19:54.

[34] Mr. Wells requested the opportunity to speak to legal counsel and he was able to do so between 20:02 and 20:05.

[35] After an observation period, Mr. Wells provided a breath sample at 20:28 that registered an “insufficient sample”. He then provided a breath sample at 20:30 that registered at 120 mg%, and again at 20:54 that registered at 130 mg%.

Submissions of Counsel

[36] Counsel for Mr. Wells submits that in order to make a valid demand for Mr. Wells to provide a breath sample into an approved screening device, Cst. Harding needed to have a subjective belief that Mr. Wells had been consuming alcohol, and that alcohol was present in his body, and further, that this subjective belief must be objectively reasonable.

[37] In the present case, while counsel concedes that Cst. Harding had the requisite subjective belief, she submits that his belief was not objectively reasonable in the circumstances.

[38] At the time that he made the traffic stop, all Cst. Harding had was information that the driver of the described vehicle might be impaired, and his observation of the rolling stop. There was no description provided of the driver and no continuous observation of the truck, so Cst. Harding could not even be certain that the driver of the truck when he first observed it was the person who left the 202.

[39] The additional grounds that Cst. Harding relied on are insufficient to amount to a reasonable suspicion.

[40] Crown counsel submits that the anonymous tip of a possible impaired driver leaving the 202, the location approximately 18 minutes later of the truck described in the tip in the downtown area, along with Cst. Harding's concerns about how Mr. Wells answered the questions he was asked, provided Cst. Harding with the requisite

reasonable suspicion that Mr. Wells had consumed alcohol, sufficient to justify the breath demand.

[41] Section 254(2) reads, in part:

(3) If a peace officer has reasonable grounds to suspect that a person has alcohol or drug in their body and that the person has, within the preceding three hours, operated a motor vehicle..., the peace officer may, by demand, require the person to comply with...either of paragraphs (a) and (b) in the case of alcohol:

...

(b) to provide forthwith a sample of breath that, in the officer's opinion, will enable a proper analysis to be made by means of an approved screening device and, if necessary, to accompany the peace officer for that purpose.

[42] As stated by Lilles J. in **R. v. Loewen**, 2009 YKTC 116, in para. 6:

The test, obviously, is not a demanding or high level one. There must only be a reasonable suspicion that there is alcohol in the accused's body. A mere suspicion without a reasonable evidentiary basis or a hunch that the driver has had something to drink is insufficient to justify a demand to provide a screening sample. (See also **R. v. Chipchar**, 2009 ABQB 562)

[43] In **Loewen**, the officer relied on Mr. Loewen having backed his car out of a parking lot in front of the police cruiser, accelerating away quickly, and failing to notice the fact that the police cruiser's lights were on, stopping only when the siren was activated. He also noted Mr. Loewen to have "glossy" eyes (as compared to "glassy") and a blank stare.

[44] Mr. Loewen had denied drinking any alcohol and no odour of liquor was observed from the vehicle or from Mr. Loewen. There were also no other observable symptoms consistent with alcohol consumption.



[45] Lilles J. stated that the requirement for suspicion based on reasonable grounds was both a statutory and constitutional requirement. As Lilles J. was satisfied that the officer lacked a reasonable suspicion, he found that Mr. Loewen was arbitrarily detained contrary to his s. 9 *Charter* rights. In considering whether the evidence should be excluded under s. 24(2) of the *Charter*, in applying the **Grant** analysis, Lilles J. excluded the evidence of the breath samples.

[46] In **Schroeder v. British Columbia (Superintendent of Motor Vehicles)**, 2016 BCSC 2366, the Court considered what constituted reasonable suspicion in reviewing a decision of an adjudicator to uphold a 90-day suspension imposed under provincial legislation.

[47] Punnett J. noted in para. 14 that:

It is the consumption of alcohol alone that provides grounds for the demand, not its amount or behavioural consequence...All that the officer requires is a reasonable suspicion that the person operating the vehicle had alcohol in his body. The officer does not have to believe that the accused has committed any offence. (citing **R. v. Gilroy**, 1987 ABCA 185, leave to appeal to SCC refused, [1988] S.C.C.A. No. 12, and **R. v. Lindsay** (1999), 134 C.C.C. (3d) 159 (Ont. C.A.))

[48] A mere suspicion on the part of a police officer that a driver has consumed alcohol does not equate to a reasonable suspicion. (**R. v. Paton**, 2006 SKPC 7 at para. 17; see also **R. v. Kang-Brown**, 2008 SCC 18 at para. 75; **R. v. Bernshaw**, [1995] 1 S.C.R. 254 para. 62).

[49] As stated in **Kang-Brown**:

75 ...A "reasonable" suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds. As observed by P. Sankoff and S. Perrault, "Suspicious Searches: What's so Reasonable About Them?" (1999), 24 C.R. (5th) 123:

[T]he fundamental distinction between mere suspicion and reasonable suspicion lies in the fact that in the latter case, a sincerely held subjective belief is insufficient. Instead, to justify such a search, the suspicion must be supported by factual elements which can be adduced in evidence and permit an independent judicial assessment.

[50] It is clear that the presence of an odour of liquor is not required in order for an officer to form the requisite reasonable suspicion to make an approved screening device breath sample demand. (**R. v. Otchere**, 2013 ONCJ 14, at paras. 55 and 59; see also para. 49 for a summary of what constitutes reasonable suspicion).

[51] (See also **R. v. Buffalo**, 2010 ABQB 325 and **R. v. Marsden**, 2011 ONCJ 211 where erratic driving, an odour of liquor in the vehicle driven by the accused, but not emanating from the accused, glassy eyes and a stumble walking back to the police cruiser, and an individual staggering out of a pub at a late hour allowed for a reasonable suspicion that alcohol was in the body).

[52] There may be other indicia observed by the officer that can allow for a reasonable suspicion to exist. These observations need to be clearly stated and the officer is required to consider other reasonably possible explanations for any of these observations that may not involve the consumption of alcohol on the part of the driver.

[53] As stated in paras. 36 and 37 of **Schroeder**, citing from **R. v. Geraghty** 2008 BCPC 63 at para. 24:

36 In *Geraghty*, the court noted the uniqueness of an ASD demand being made in the absence of an odour of alcohol as follows:

[24] Somewhat uniquely, Constable Carrie's list of observations did not contain any reference to the odour of alcohol. ... Certainly, while I would not say that a collection of other factors could never form the basis for a reasonable inference that there is alcohol in the body it seems indisputable that it will be an unusual case where an observation of the odour of alcohol does not form part of the matrix.

37 Further, at para. 26 the court notes the "importance [for] ... the officer in such circumstances [to turn] ... his mind to alternative explanations for what he observes if he seeks to justify his suspicion as being reasonable". In *Hoodicoff*, the court noted at para. 27 that "[t]he question, in my view, is whether that was a reasonable suspicion or just a guess, an outright guess, because there really wasn't anything present to place alcohol at the forefront" and that "[i]n all of these circumstances, that suspicion could be nothing more than a hunch".

[54] Once the demand has been made, the officer is not entitled to use observations made after the demand in order to support the grounds that existed at the time that the demand had been made (**R. v. Snape**, 2016 ABPC 198 at paras. 46, 47).

## **Analysis**

[55] It is clear to me that Cst. Harding's conduct throughout his interactions with Mr. Wells, as seen and heard in the video, showed a very serious commitment on his part to conduct his duties in a highly professional manner. He was courteous throughout in his handling of Mr. Wells and his contemporaneous and accurate note-taking was an example of his professionalism. Another example was his statement to Mr. Wells after his arrest that he was not going to handcuff him as he had been perfectly fine to that

point. Cst. Harding conducted himself in the same manner while providing his testimony. I accept his testimony and have no doubts about what he states that he saw and believed as a result of his observations.

[56] The question in this case is whether Cst. Harding's subjective belief that he had a reasonable suspicion Mr. Wells had alcohol in his body at the time he was driving is objectively reasonable.

[57] The only grounds I can rely on are those that existed at the time that Cst. Harding formed the suspicion and made the breath demand.

[58] I cannot consider observations made subsequent to the demand as contributing to, or detracting from, either the subjective or objective reasonableness of Cst. Harding's suspicion.

[59] There is no question that the stop of Mr. Wells' vehicle was a proper one. Both the anonymous tip and the rolling stop provided grounds to pull over Mr. Wells' vehicle.

[60] Cst. Harding was certainly within his lawful authority to conduct an impaired driving investigation. This said, it was fairly apparent from the evidence that at the time Cst. Harding approached Mr. Wells in the driver's seat of the vehicle he already had a suspicion that Mr. Wells had alcohol in his body and that he would quite possibly be making a demand that Mr. Wells provide a sample of his breath into an approved screening device.

[61] The fact that Mr. Wells was alone in the vehicle contributed to the drawing of an inference that Mr. Wells had been driving the vehicle at the time it left the 202, although

it did not eliminate the possibility that someone else had been driving when the vehicle left the 202. Mr. Wells was not asked whether anyone else had been driving but, I note, Mr. Wells also did not indicate that he had in fact been at the 202 when asked whether he had been there, simply stating that he did not recall.

[62] This evasiveness, coupled with the ambiguity with which Mr. Wells answered the question as to whether he had consumed any alcohol, contributed, according to his testimony, to Cst. Harding forming his suspicion, based upon his experience. It was, so to speak, the last straw or crowning touch to the suspicion that had been forming in Cst. Harding's mind and the suspicion that I find he approached the vehicle already possessing in his own mind.

[63] Was this suspicion enough, given the lack of other indicia of impairment?

[64] Certainly Cst. Harding could have taken further investigative steps in order to substantiate his suspicion. He could have asked Mr. Wells to step out of the vehicle and blow in his face in order to see whether he could ascertain an odour of alcohol on Mr. Wells' breath. (*R. v. Smarzewski*, 2008 ABPC 220). Without a doubt, an odour of liquor on Mr. Wells' breath would have removed any doubt as to the reasonableness of Cst. Harding's suspicion. In my opinion, this additional minimally invasive step would have been prudent. Prudence, however, does not necessarily equate to necessary. A police officer does not have to explore every option for confirming a suspicion, so long as the observations of the officer and information in his or her possession is sufficient.

[65] This said, in this case, I find that it the subjective belief held by Cst. Harding that Mr. Wells had alcohol in his body was not objectively reasonable.

[66] The anonymous tip, the location of the vehicle 18 minutes later in the downtown Whitehorse area, the rolling stop, and the questionable responses of Mr. Wells to the few questions he was asked by Cst. Harding in regard to where he was coming from, whether he had been at the 202 and whether he had consumed alcohol recently, were insufficient to provide an objectively reasonable suspicion that Mr. Wells had alcohol in his body. Cst. Harding, in my opinion, should have, based upon this limited information, taken further investigative steps, particularly in the absence of any other indicia of impairment. Such additional steps would not have needed to be time-consuming or difficult.

[67] Therefore, I find that Mr. Wells' s. 9 *Charter* right not to be arbitrarily detained was breached.

### **Exclusion of the Evidence**

[68] In deciding whether the evidence of the breath samples should be excluded under s. 24(2) of the *Charter*, I am required to apply the three-part test from *R. v. Grant*, 2009 SCC 32, as follows:

- the seriousness of the breach;
- the impact of the breach on the Charter-protected interests of Mr. Wells;  
and
- society's interest on an adjudication of the case on its merits.

[69] With respect to the first line of inquiry, this is not a case where Cst. Harding was reckless or showed a disregard for Mr. Wells' *Charter* right not to be arbitrarily detained. On the contrary, as stated earlier, Cst. Harding was very professional in his dealings

with Mr. Wells. The *Charter* breach was a question of degree in a grey area as to what constituted a reasonable suspicion.

[70] My concern in this regard is that Cst. Harding does not appear to have turned his attention to the absence of any of the commonly observed indicia often accompanying the recent consumption of alcohol, and of impairment by alcohol, focusing instead on the anonymous tip and the questionably responsive and evasive answers to the three questions he asked Mr. Wells.

[71] Cst. Harding was certainly not acting with any “bad faith”; to the contrary he was making every effort to act conscientiously in accord with his legal obligations as he understood them.

[72] In my opinion, however, I question whether he understood the distinction between suspicion, and a reasonable suspicion on both a subjective and objective standard.

[73] A failure by a police officer to comply with *Charter* standards should be discouraged by the Courts. To the extent that Cst. Harding may have been acting in “good faith” insofar as he was complying with his legal requirements as he understood them, this does not equate to “good faith” in law. See paras. 34 - 36 of **Loewen**:

34 The BC Court of Appeal in *R. v. Washington*, 2007 BCCA 540, notes at para. 78, that the concept of good faith is not fully defined in the jurisprudence. However, the court mentions the Supreme Court of Canada decision *R. v. Kokesch*, [1990] 3 S.C.R. 3, where Justice Sopinka discusses good faith. *Washington* held that Justice Sopinka,

seemed to accept that "good faith" is a state of mind, an honestly held belief, but he also found that to constitute good

faith the belief must be reasonably based. The evidence in *Kokesch* established that the police officers were mistaken about their authority to trespass on a homeowner's property. Either the police knew they were trespassing or they ought to have known. In either case, they cannot be said to have proceeded in good faith.

35 The Court in *Washington* summarized good faith as “an honest and reasonably held belief”. If the belief is honest, but not reasonable held, it cannot be said to constitute good faith. But it does not follow that it is therefore bad faith. To constitute bad faith the actions must be knowingly or intentionally wrong” (para. 79).

36 Additionally, Rowles J., in a dissenting opinion, provides at para. 117:

When engaging in an analysis of “good faith”, it is also important to clarify its meaning within the context of s. 24(2). It is a term of art that has been used to describe whether the authorities knew or ought to have known that their conduct was not in compliance with the law (see *Sopinka* at s. 9.116; *R. v. Silveira*, [1995] 2 S.C.R. 297, 23 O.R. (3d) 256 at para. 65; *R. v. Wise*, [1992] 1 S.C.R. 527, 133 N.R. 161 at para. 97; *R. v. Kokesch*, [1990] 3 S.C.R. 3, 121 N.R. 161 at para. 52). Therefore, an inquiry into good faith examines not only an officer’s subjective belief that he or she was acting within the scope of his or her authority, but it also questions whether this belief was objectively reasonable.

[74] Failing to comply with a statutorily required threshold for delaying an individual in order to obtain a breath sample cannot be said to be simply a technical or minor error. Regardless of the good intentions of Cst. Harding, this does not amount to an insignificant breach. The need for police officers to comply with *Charter* obligations, in light of the powers provided to police officers, is important in order for confidence in the justice system to be maintained.

[75] The second line of inquiry focuses on the impact of the *Charter* breach on the rights of Mr. Wells. The more serious the impact, the greater the breach would tend



towards exclusion of the evidence, the less serious, the less it would tend towards exclusion of the evidence.

[76] While an investigative detention of a motorist for the purpose of conducting an impaired driving investigation is clearly lawful, the protection against arbitrary detention requires that the detention be conducted in accord with lawful authority, and be for only such time as is required for the police officer to complete the investigation.

[77] In this case Cst. Harding was lawfully entitled to detain Mr. Wells in order to determine whether the information he had been provided through the anonymous tip was accurate. This information was certainly sufficient to allow him to consider the possibility that Mr. Wells could be driving while impaired.

[78] However, the question is whether this anonymous tip allowed Cst. Harding to therefore have a reasonable suspicion, viewed both subjectively and objectively, when combined with any other observations he made, to allow for him to make the approved screening device demand of Mr. Wells.

[79] When a motorist is required to provide a roadside breath sample, the detention of the individual is extended. There is a statutory threshold imposed of reasonable suspicion that is required in order to extend the detention of the motorist. Compliance with this statutory threshold is not an insignificant matter.

[80] Certainly, it is well-established that the taking of roadside breath samples is generally a fairly minimally intrusive process, although it cannot be said that it is not

necessarily without any impact on the privacy, bodily integrity and human dignity of an individual.

[81] In this case Mr. Wells was standing in broad daylight on a fairly busy road in downtown Whitehorse, in plain view of anyone who drove by. Had he been in the back seat of the police vehicle he would not have been so exposed. Cst. Harding was not asked why he decided to take the breath samples in the manner that he did, so we do not have an explanation. In my view, based upon the whole of his conduct, Cst. Harding was not in any way attempting to embarrass Mr. Wells. In fact, he may well have been attempting to minimize the nature of the detention by not placing Mr. Wells in the police cruiser.

[82] This does not, however, change the fact that Mr. Wells was required to provide a breath sample in plain view of any passers-by and stand outside of the police cruiser for a considerable amount of time in order to do so. I cannot say that there was no related impact on Mr. Wells.

[83] With respect to the third line of inquiry, there is no doubt that society's interest in having cases involving allegations of impaired driving resolved on their merits is high. There is a significant interest, given the harm that impaired driving causes to so many people, in removing impaired drivers from Canadian roadways, through the successful prosecution of them. Exclusion of the breath samples, the reliability of which is not challenged in this case, would have the impact of undermining a successful prosecution of Mr. Wells, thus standing at odds with society's interests in having this matter adjudicated on its merits.

[84] The evidence sought to be excluded is reliable and critical to the Crown's case. Impaired driving is a serious offence, although in this case it is impaired driving *simpliciter*, without any indication of erratic or dangerous driving, or accident, and not impaired driving causing bodily harm or death.

[85] All of these factors need to be balanced with each other. In my view, the first line of inquiry favours exclusion of the evidence, the second is somewhat neutral, although in my opinion leaning towards exclusion of the evidence, and the third line of inquiry favours not excluding the evidence of the breath samples.

[86] I conclude that the balancing of these lines of inquiry, in the circumstances of this case, notwithstanding my findings in regard to the generally very positive way that Cst. Harding conducted the investigation, favours exclusion of the evidence.

[87] In my view, careful and thoughtful compliance with statutory requirements that govern police investigations must be encouraged, and, absent any contextual circumstances that take the investigation out of the ordinary or otherwise differentially impact the Grant lines of inquiry, breaches of these investigative statutory requirements will tend towards the evidence being excluded, in order to maintain confidence in the administration of justice.

[88] Therefore the evidence of the breath samples is excluded from the trial.

### **Delay Argument**

[89] With respect to the argument regarding delay in conducting the approved screening device, I find that this argument must fail. I find that there was no

unreasonable delay. Once Mr. Wells stated that he had consumed some alcohol “moments ago” it would have been an error for Cst. Harding to have administered the breath test without waiting, as the test could have been compromised by residual mouth alcohol.

[90] The fact that there was no visible open liquor or empty liquor containers in Mr. Wells’ vehicle does not change anything in this regard. Quite properly, there was no search conducted of the inside of Mr. Wells’ vehicle that could have located a container hidden from plain view.

[91] Cst. Harding went the additional step of facilitating Mr. Wells’ desire to speak with legal counsel during the delay, minimizing the impact of the delay.

[92] I find that there was no unreasonable delay in the circumstances.

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COZENS T.C.J.