NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cox*, 2024 NSCA 67

Date: 20240711
Docket: CAC 509805
Registry: Halifax

Between:

Kaz H. Cox

Appellant

v.

His Majesty the King

Respondent

Judge:	The Honourable Justice Elizabeth Van den Eynden
Appeal Heard:	January 26, 2024, in Halifax, Nova Scotia
Subject:	*Charter* ss. 8 and 9; unreasonable search; arbitrary detention
Summary:	Mr. Cox seeks to overturn convictions for trafficking drugs (2 counts), weapon related offences (9 counts), and breach of probation (3 counts). Police observed Mr. Cox driving erratically and pulled him over. Police detected further indicia of impairment during their interactions with Mr. Cox. He was also driving without a license and was on probation for other offences. Mr. Cox was arrested and his vehicle was searched incident to arrest. Items retrieved from the search included alcohol, a loaded gun, additional ammunition, digital scales with white residue, a notebook with notations consistent with a drug debt score sheet, a small baggie and cash. While in police custody, Mr. Cox was suspected of concealing drugs in his body. After being remanded to a correctional facility, Mr. Cox entered a monitored "dry cell" and correctional staff found a cellophane wrapped "prison pack" containing cocaine and hydromorphone in his cell.

Mr. Cox said this warrantless search of his vehicle violated his *Charter* rights and he sought to have all the inculpatory evidence excluded during a *voir dire* hearing. The judge rejected his motion; finding the evidence had been obtained by the police in a *Charter* compliant manner and admitted it into evidence at trial. After considering the evidence and submissions, the judge was satisfied the Crown had proven Mr. Cox's guilt beyond a reasonable doubt.

Mr. Cox said the judge erred by finding no breach of his *Charter* rights. On appeal, he advances the same view he held at trial—he was a private citizen going about his business, "breaking no law" the night police stopped him and the *Charter* should shield him from police detention, arrest, and a warrantless search.

Issues: (1) Did the judge err in finding Mr. Cox had not been arbitrarily detained?
(2) Did the judge err in finding there had not been an unreasonable search of Mr. Cox?

Result: Appeal dismissed. The judge did not err in her *Charter* determinations. The judge properly concluded police did not arbitrarily detain and arrest Mr. Cox nor did they conduct an unreasonable search. Mr. Cox was lawfully arrested; the roadside search incidental to the arrest was for a valid purpose connected to the arrest, and the search was conducted reasonably.

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cox*, 2024 NSCA 67

Date: 20240711
Docket: CAC 509805
Registry: Halifax

Between:

Kaz H. Cox

Appellant

v.

His Majesty the King

Respondent

Judges:	Wood, C.J.N.S., Farrar, Van den Eynden, JJ.A
Appeal Heard:	January 26, 2024, in Halifax, Nova Scotia
Held:	Appeal dismissed, per reasons for judgment of Van den Eynden, J.A.; Wood, C.J.N.S and Farrar, J.A., concurring
Counsel:	Kaz H. Cox, appellant in person Timothy O'Leary, for the respondent

Reasons for judgment:

Overview

[1] Mr. Cox appeals against convictions entered by Justice Diane Rowe of the Nova Scotia Supreme Court. The judge found Mr. Cox guilty of trafficking drugs (2 counts), weapon related offences (9 counts), and breach of probation (3 counts).

[2] Mr. Cox was also charged with operating a vehicle while impaired by drugs or alcohol. However, the judge entered an acquittal on the basis of the Crown's concession there was insufficient evidence for a conviction.

[3] The charges against Mr. Cox arose following a traffic stop. Police observed Mr. Cox driving erratically and were concerned he was driving while impaired. Once his vehicle was pulled over, police detected further indicators of possible impairment. Police noted Mr. Cox smelled of alcohol, had red watery eyes and a beer box was visible in the back seat of his vehicle. Mr. Cox was also driving without a license, and at the time was on probation for prior offences.

[4] Mr. Cox was detained and took a roadside alcohol screening test, blowing a "warn". Although he blew a "warn", police were concerned Mr. Cox might be impaired by something other than alcohol because he was also observed to have poor fine motor skills and slurred speech. Mr. Cox was read a drug recognition evaluation (DRE) demand and was transported to a police station to be examined by a drug recognition expert. While at the scene, Mr. Cox received the requisite police caution and was advised of his *Charter*[1] rights.

[5] As to the grounds of arrest, Mr. Cox was initially advised he was under arrest for breach of probation. Mr. Cox was not specifically informed he was also under arrest for impaired driving, but the Crown argued and the judge appears to have accepted, it was obvious from his interactions with police at the scene that he was also under arrest for impaired driving.

[6] Mr. Cox's vehicle was searched incident to arrest. Also, police called a tow truck to remove his vehicle from the side of the road and impound it. Thus, an inventory of vehicle contents would have been done in any event before towing.

---

[1] *Canadian Charter of Rights and Freedoms*, s. 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c. 11.

[7] Items retrieved from the search included alcohol, a loaded gun, additional ammunition, digital scales with white residue, a notebook with notations consistent with a drug debt score sheet, a small baggie and cash. Both the scale and small baggie found in the vehicle tested positive for cocaine.

[8] While in police custody Mr. Cox was suspected of concealing drugs in his body. After being remanded to a correctional facility, Mr. Cox entered a "dry cell" so he could be closely monitored. Among other "dry cell" security measures, Mr. Cox's access to toilet facilities were monitored. After Mr. Cox had a bowel movement correctional staff found a cellophane wrapped package of drugs containing cocaine and hydromorphone in his cell.

[9] Mr. Cox pled not guilty to the charges. He contended police unfairly targeted him and violated his *Charter* rights. He sought exclusion of inculpatory evidence gathered by police. The judge found the evidence had been obtained by the police in a *Charter* compliant manner and admitted it into evidence at trial. After considering the evidence and hearing the parties' closing submissions, the judge was satisfied the Crown had proven Mr. Cox's guilt beyond a reasonable doubt.

[10] On appeal, Mr. Cox's submissions focused on his perceived *Charter* violations and the arguments that had been advanced unsuccessfully at trial.

[11] The respondent contends the judge's determination that (1) Mr. Cox's *Charter* rights were not violated, and (2) her reasons for conviction reveal no error and are well supported by the record. For the following reasons, I agree with the respondent's submissions and would dismiss the appeal

[12] The respondent also advanced the alternative argument that even if Mr. Cox's *Charter* rights were violated, the evidence should not be excluded under section 24 (2) of the *Charter*—because exclusion would bring the administration of justice into disrepute. In light of my finding the judge did not err as alleged, there is no need to address this submission.

[13] Prior to setting out my analysis, I will frame the issues on appeal, set out the standard of review and relevant background.

Framing of the issues

[14] Mr. Cox was self represented in the court below and on appeal. In his written submissions to this Court he says:

> …I was targeted and [the police] was making sure I was arrested and charged with a criminal offence. … I respectfully submit these officers had an agenda ... they were willing to do whatever it took to achieve their goal. They created criminal code offences, they lied to support those offences. Their conduct is abhorrent. ... Justice Diane Rowe willingly participated in these officers deception of the justice system by creating facts in her decision.
>
> This … is the most extreme case of the justice system being brought into disrepute ... I didn't think in Canada, a private citizen breaking no law could be treated in such a way, I believed the Canadian Charter of Rights and Freedoms protected me from this type of state conduct.
>
> I ask you, the Nova Scotia Court of Appeal to correct this injustice by granting my appeal.

[15] Based on his Notice of Appeal and submissions to this Court, it is apparent Mr. Cox's arguments focus on s. 8 (the right to be secure against unreasonable search or seizure) and s. 9 (the right not to be arbitrarily detained) of the *Charter*.

[16] Thus, the issues to be determined on appeal are as follows:

1. Did the judge err in finding Mr. Cox had not been arbitrarily detained?

2. Did the judge err in finding there had not been an unreasonable search of Mr. Cox ?

Standard of review

[17] The standard of review the above issues attract is well established. As set out in *R. v. Campbell*, 2018 NSCA 42:

> [17] The standard of review with respect to alleged *Charter* breaches was discussed by this Court in *R. v. West*, 2012 NSCA 112. The Court endorsed the standard as articulated by the Manitoba Court of Appeal in *R. v. Farrah (D.)*, 2011 MBCA 49 where Chartier, J.A. (as he then was) wrote:
>
> > **7** By which standard is this court to review the issue of whether there is a *Charter* breach? There are several components to this question. They are as follows:

> a) When examining a judge's decision on whether a *Charter* breach occurred, the appellate court will review the decision to ensure that the correct legal principles were stated and that there was no misdirection in their application. This raises questions of law and the standard of review is correctness.
>
> b) The appellate court will then review the evidentiary foundation which forms the basis for the judge's decision to see whether there was an error. On this part of the review, the judge's decision is entitled to more deference and, absent palpable and overriding error, the facts as found by the judge should not be disturbed (see *Grant*[2] at para. 129).
>
> c) The appellate court will also examine the application of the legal principles to the facts of the case to see if the facts, as found by the judge, satisfy the correct legal test. In the criminal law context, this is a question of law and the standard of review is correctness (see *R. v. Shepherd*, 2009 SCC 35 at para. 20, [2009] 2 S.C.R. 527).
>
> d) The decision on whether to exclude under s. 24(2) of the *Charter* is an admissibility of evidence issue which is a question of law. However, because this determination requires the judge to exercise some discretion, "considerable deference" is owed to the judge's s. 24(2) assessment when the appropriate factors have been considered (see *Grant* at para. 86, and *R. v. Beaulieu*, 2010 SCC 7 at para. 5, [2010] 1 S.C.R. 248).

Background

[18] The following background contextualizes the issues Mr. Cox raises on appeal.

[19] At trial, Mr. Cox was convicted of the following offences:

Controlled Drugs and Substances Act S.C. 1996, c. 19.

1. Possession of cocaine for the purpose of trafficking - s. 5(2).
2. Possession of hydromorphone for the purpose of trafficking - s. 5(2).

Criminal Code R.S.C., 1985, c. C-46

3. Possession of a prohibited weapon (Remington sawed off pump action shot gun) without holding a license - s. 91(3).
4. Possession of a weapon for a dangerous purpose - s. 88(2).

---

[2] *R. v. Grant*, 2009 SCC 32.

5. Transporting of a loaded prohibited firearm contrary to Firearm Regulations - s. 86(2).
6. Being an occupant of a motor vehicle in which he knew there was a firearm - s. 94(2).
7. Careless transporting of a firearm - s. 86(1).
8. Possession of a prohibited firearm with readily accessible ammunition - s. 95(2).
9. Possession of a firearm while knowingly unlicensed - s. 92(3)(a).
10. Possession of a firearm while prohibited by a s. 109 Order - s. 117.01(3).
11. Possession of ammunition while prohibited by a s. 109 Order - s. 117.01(3).
12. Failure to comply with condition of Probation Order – to keep the peace and to be of good behaviour - s. 733.1(1).
13. Failure to comply with condition of Probation Order – to not possess a firearm - s. 733.1(1).
14. Failure to comply with condition of Probation Order – to not possess ammunition - s. 733.1(1).

[20] Mr. Cox was also charged with operating a vehicle while impaired by a combination of alcohol and drug, contrary to s. 320.14 (1) (a) of the *Criminal Code*. As noted, an acquittal was entered on this charge as the Crown conceded there was insufficient evidence to convict Mr. Cox of impaired driving.

[21] The above charges stemmed from the evening of August 21, 2019 when police stopped Mr. Cox. Mr. Cox was driving near Bridgewater when a police officer (Corporal Munro), observed Mr. Cox's vehicle[3] being driven in an erratic manner.

[22] Corporal (Cpl.) Munro testified he saw Mr. Cox swerve across both the centre line and fog line and drive on to the shoulder of the road. Based on his experience as a police officer, Cpl. Munro viewed this manner of driving as being consistent with impairment and was concerned about public safety.

[23] Cpl. Munro was familiar with Mr. Cox from prior unrelated investigations and court proceedings. He was also aware what vehicle Mr. Cox was operating, that he was a prohibited driver, and that he was the subject of an active homicide

[3] Mr. Cox was not the registered owner of the vehicle. The reasons for this are not relevant to the appeal and for ease of reference I refer to the vehicle as Mr. Cox's vehicle.

investigation by another police agency. Cpl. Munro indicated his concern for public safety posed by impaired drivers overshadowed any interests in not wanting to jeopardize another more serious investigation. He testified:

> Q. So what, … if anything, were you thinking when you watched this vehicle at least two times kind of go back and forth over the centre line and the fog line?
>
> A. Well, … that was my judgement at that time, was that he was impaired. And … I knew at the time that he was a prohibited driver. There was lots of things that I was willing to overlook as an investigator because of the other file that he was involved in, but impaired driving and the risk to the public was just something I wasn't willing to just let him continue driving. And that's why … because of the nature of the driving, I was worried he was going to go head on with a family or somebody else.

[24] As Cpl. Munro had been conducting unrelated surveillance on a home in the area and was in plain clothes and an unmarked cruiser, his colleague, Constable (Cst.) Giffin, who was in uniform and in a marked police vehicle, was dispatched to follow up on the impaired driving concerns.

[25] There were some difficulties locating Mr. Cox's vehicle. To assist, police obtained vehicle tracking information from the other police agency investigating Mr. Cox. That agency had authorization to place a tracking device on Mr. Cox's vehicle. The public safety concern prompted by Mr. Cox's erratic driving was the expressed motivation to obtain the tracking information which was being gathered by police for a different purpose.

[26] After some period of time, Cst. Giffin located and followed Mr. Cox's vehicle. Cst. Giffin also observed erratic driving which he described as the vehicle going back and forth between the center and outside line in a jerking motion. He engaged his emergency equipment and pulled Mr. Cox over to the side of the road. Cst. Giffin testified to these initial interactions with Mr. Cox:

> I approach the vehicle. I go up to the driver's side. I ask for license, registration and insurance. … Mr. Cox advises me that he does not have a driver's license. I'm talking to him, I can smell the smell of liquor emanating from his breath while I'm talking to him and at the same time looking in the backseat and there's a beer box, Budweiser, in the backseat. He's got red, watery eyes, the smell of liquor on his breath, the driving that I've just observed. I explain these observations to Mr. Cox. I ask him to step out of the vehicle. He has a small wallet, I would describe, purse, around his neck. I ask that he leave it in the vehicle. I explain to him he's being detained and that I want him to come back to the car with me.

> …
>
> The whole time I'm doing this, … I'm also observing Mr. Cox for his sobriety. As time went on, I read him the approved screen device demand, for which Mr. Cox blew a warn. That's a seven-day suspension. I advise Mr. Cox that he's under arrest for breach of his probation.[4] I *Charter* and caution Mr. Cox.

[27] Cst. Giffin assisted Mr. Cox in retrieving and charging his cell phone so Mr. Cox could call his spouse. Mr. Cox did not elect to call counsel. Mr. Cox was advised that he could change his mind at any time and contact with counsel would be arranged. During these exchanges, Cst. Giffin continued to observe Mr. Cox. He testified:

> I continued to monitor Mr. Cox. I noted that his fine motor skills were poor. I noted that Mr. Cox had slurred speech, slow and deliberate. And … Mr. Cox had advised me that he had drank five beer through the day. The fact that he had consumed alcohol through the day, the fact that he had blown a warn and my observations, I explained to Mr. Cox that I was concerned that he was possibly impaired by something other than alcohol and I read him the drug recognition expert demand. Mr. Cox understood.

[28] There were two other officers present during the roadside stop. Sergeant (Sgt.) Allison parked in front of Mr. Cox's vehicle after he was pulled over by Cst. Giffin. Some minutes later, Cpl. Munro also arrived at the scene.

[29] After providing the DRE demand, which Mr. Cox agreed to undergo, Cst. Giffin left the scene to transport Mr. Cox to the Bridgewater police station for the DRE. Before departing, a tow truck was called to remove Mr. Cox's vehicle from the side of the road and impound it. Cst. Giffin also asked Cpl. Munro and Sgt. Allison to search Mr. Cox's vehicle. Cst. Giffin said:

> Q. … Why did you want the vehicle searched?
>
> A. Several reasons. Incidental to the arrest, I always want to search a vehicle. I'm investigating Mr. Cox for possible impairment by drug and/or alcohol. For me, had I been alone, my normal dealing would be to search the vehicle for supporting evidence of that possible impairment, as well as conducting a cursory inventory of the vehicle to ensure that what's in the vehicle I can speak to if Mr. Cox were to suggest that something had been removed by someone else.

[4] As Mr. Cox was known to police, the officer was aware Mr. Cox was on probation for other offences.

[30] The search of Mr. Cox's vehicle revealed:

- An opened case of Budweiser beer on the back seat.
- Also, on the back seat, a loaded sawed off shotgun and additional ammunition was found in a piece of clothing on the floor.
- A "man purse" was found in the front seat. Its contents included: approximately $6000 in cash, a digital scale with white residue[5] on it, a small baggie, and a notebook with names and dollar amounts noted consistent with a drug debt "scoresheet".

[31] Cst. Giffin was informed of the search results while in transit with Mr. Cox to the police station. On arrival at the station, Cst. Giffin informed Mr. Cox that he was being arrested for a further breach of his probation terms, possession of a firearm and possession of a prohibited weapon. Mr. Cox was again advised of his *Charter* rights and right to retain counsel but once more elected not to do so.

[32] Mr. Cox was then administered a DRE examination.[6]

[33] Mr. Cox was placed in a cell overnight and was interviewed by police the following morning. The interview was videotaped.[7] During the course of the interview Mr. Cox:

- Did not deny there was a shotgun in his vehicle. Rather, he quibbled over whether one could equate two shells in the gun but not in the chamber, cocked and set for discharge, with the gun being loaded.
- Stated he uses cocaine but only for personal use. Further, he uses scales to ensure he is not shorted when making a personal cocaine purchase and that is why his scales would test positive for cocaine.
- He said he was not impaired (by drugs or alcohol) when driving, rather, he had been partying too hard over the prior days and was exhausted.

[34] Mr. Cox was alone in the interview room at times and the video recording remained on. He was observed, after the officer left the interview room, to have

---

[5] These items and their locations in the vehicle were photographed by police. The photos were entered as evidence at trial. Swabs of the digital scale and the baggie tested positive for cocaine.

[6] No direct evidence from the DRE examiner was presented at trial. The judge only had the indirect evidence of Cst. Giffin, who testified that he understood the DRE results were positive for impairment. However, the trial judge attributed no weight to this statement.

[7] During the trial, the Crown sought to rely upon Mr. Cox's video statement. A *voir dire* was held to determine whether his statement to police was given voluntarily. The judge concluded it was and the video statement formed part of the trial evidence. That determination is not challenged on appeal.

shoved something between a table in the interview room and the wall. The "something" was a baggie which police retrieved and had analyzed.[8]

[35] Mr. Cox was remanded to the Central Nova Scotia Correctional Facility in Burnside (Burnside). Police alerted the correctional facility of their suspicion Mr. Cox might have concealed drugs in his body. Burnside placed Mr. Cox in a dry cell and he was monitored as per Burnside's dry cell protocol. After Mr. Cox had a bowel movement his cell was searched. Burnside correctional staff found a cellophane wrapped package of drugs (commonly referred to as a "prison pack") in Mr. Cox's cell. It contained 8.4 grams of cocaine and 2.5 grams of hydromorphone.

[36] Prior to his trial commencing, Mr. Cox asserted police breached several of his *Charter* rights and sought to have inculpatory evidence obtained by the police excluded from his trial. Accordingly, a *voir dire* was held. It was blended, meaning the parties agreed the *voir dire* evidence would form part of the trial evidence.

[37] In her *voir dire* decision[9] the judge summarized Mr. Cox's complaints:

> [7] Mr. Cox asserts that the police were actively seeking him in the area and were intent on detaining him without justification. He also maintains that from the time he was detained by police seeking a blood alcohol test for impaired driving, that he was not read a *Charter* warning, told of the reasons for his detention, or afforded the opportunity to contact counsel. He submits that the warrantless search and seizure of the vehicle, its contents, and the seizure of any materials taken from his person upon his later arrest were unlawful. …

[38] The judge concluded there had been no breach of Mr. Cox's *Charter* rights. She found the inculpatory evidence obtained by law enforcement during its investigation was obtained in a manner that was in keeping with the law and *Charter* compliant. The evidence was entered by the Crown at trial.

[39] In particular, as to Mr. Cox's allegation of arbitrary detention, the judge determined:

> **Section 9 Breach**
>
> [40] Mr. Cox advances an argument that he was psychologically and physically detained without explanation or cause from his detention by Constable Giffin.

[8] The Certificate of Analyst tendered at trial indicated cocaine on the baggie.
[9] The *Charter voir dire* decision is unreported and was delivered orally by the judge on March 4, 2021.

> [41] Corporal Munro was mandated to patrol and to investigate further to enforcing provincial law, criminal law or to uphold public peace, so long as he is not interfering unlawfully with a person's rights in the course of his policing.
>
> [42] I am satisfied that Corporal Munro's contact with his supervisor Corporal Allison, to seek further information and to request Constable Giffin' s assistance to investigate further his concerns about Mr. Cox's driving that evening was not motivated by an intent to "target" Mr. Cox in a general sense. They were based on observations by an officer with experience in impaired driving, that led him to connect with others to assist in the investigation.
>
> [43] Constable Giffin's own subsequent observations led him to have concern for Mr. Cox's level of impairment. He then detained Mr. Cox.
>
> [44] I do not find that the actions of Corporal Munro, or Constable Giffin and then Corporal Allison, were done in furtherance of a contravention of s. 9 and the right to not be arbitrarily detained.
>
> [45] Mr. Cox was advised from the time of his initial detention concerning possible impairment of the nature of the investigation. Mr. Cox did comply with the request and blew a "Warn", which resulted in a statutory penalty under provincial legislation.[10] He was also advised, at that point upon the initial arrest, that he was being arrested for breach of the terms of his probation order. In the course of that arrest, in which Mr. Cox was again compliant with the DRE, he was informed of his Rights. This sequence was repeated for the subsequent arrest upon the charges contained in the Indictment, of police informing Mr. Cox of the basis of arrest upon the gathering of the scales, the score sheet, the firearm, and the ammunition that was located within the vehicle.
>
> [46] I do not find that Mr. Cox was detained without explanation or cause.

[40] In rejecting Mr. Cox's allegation of being subject to an unreasonable search and seizure the judge reasoned:

> **Section 8 - Unreasonable Search and Seizure**
>
> [55] The first step is to consider whether Mr. Cox's arrest was lawful. As I noted above, I accept the evidence that the officers involved formed a subjective view of Mr. Cox's level of impairment that evening, that is objectively reasonable (in keeping with *R. v. Storrey* [1990] l SCR 241). That burden was satisfied by the Crown.

[10] The reference to a "statutory penalty" is presumably the 7 day suspension of a driver's license or driving privilege pursuant to s. 279 (c) of *the Motor Vehicle Act of Nova Scotia*, R.S.N.S. 1989, c. 293. This penalty is automatically imposed when a driver blows a "warn". However, that was of no real consequence here as Mr. Cox had no valid drivers license at the time. Nothing turned on this point. I simply note it as Mr. Cox took issue with the judge's reference to the penalty.

> [56] With that satisfied, the burden then shifts upon Mr. Cox to establish, on the balance of probabilities, a section 9 *Charter* breach or section 8 breach regarding the search incident to arrest. I have already addressed the section 9 *Charter* breach and found there was no breach in this regard.
>
> [57] I note the comments of Justice Calsavara in *R. v. Grant* 2021 ONCJ 90, a decision of the Ontario Court of Justice. In *Grant*, the Court considered a very similar set of facts and applied the law concerning whether the accused's *Charter* rights had been breached, and whether evidence gathered at a traffic stop that was the basis for later criminal charges was admissible on trial. In that case, the two accused were detained at a traffic stop by provincial police for an expired validation tag under the *Highway Traffic Act*. The investigation transitioned into a sobriety check as the officer noted the smell of cannabis. In order to investigate the potential impairment of the driver, a search of the vehicle and the persons took place. This also included a search further to an investigation for contravention of the *Cannabis Control Act*. In searching the vehicle, the officer located a firearm on an accused and the accused was charged with unlawful possession of a firearm. The accused sought exclusion of the evidence from the time of the stop and onward, based on similar *Charter* arguments advanced by Mr. Cox in this matter.
>
> [58] The Court, in *Grant*, held that the search was conducted lawfully, on the basis of reasonable and probable grounds. The presence of cannabis, in conjunction with the public welfare legislation prohibiting impaired driving, was sufficient to ground the search as lawful and not in contravention of section 8.
>
> [59] It should be noted that Justice Calsavera also referenced within the decision, another similar case, that of *R. v. Humphrey*, 2011 ONSC 3024, in which a highway traffic act investigation for a similar statutory infraction transitioned upon the initial stop and then resulted in the seizure of a loaded firearm. This was held to be lawful, and within the principles set out by the courts in regard to a lawful search and then seizure.
>
> …
>
> [64] For the foregoing reasons, I did conclude that the detention and arrest of Mr. Cox on the Indictment was lawful. I do not find that the evidence gathered by the police and before me for consideration in the blended *voir dires* should be excluded pursuant to section 24(2) of the *Charter*.
>
> [65] The applicant, Mr. Cox, bore the burden of persuading the Court that on a balance of probabilities that the admission of the proposed evidence could bring the administration of justice into disrepute. I am not satisfied that this burden has been met.

[41] The judge also rejected Mr. Cox's s. 11(b) complaint – that he was not being tried within a reasonable time. There is no need to address the judge's reasons in this regard as they are not relevant to Mr. Cox's appeal. However, I will set out the judge's reasons for rejecting Mr. Cox's s. 10 (a) and 10 (b) complaints as they

provide additional relevant context to the interactions between police and Mr. Cox on the evening he was arrested.

[42] These *Charter* provisions provide:

> Arrest or detention
>
> 10 Everyone has the right on arrest or detention
>
> (a) to be informed promptly of the reasons therefor;
>
> (b) to retain and instruct counsel without delay and to be informed of that right; …

[43] The judge was not satisfied there was a breach of these rights and explained why:

> [48] Mr. Cox has submitted in argument that he was not told in a timely way of the reason for his arrest, until over an hour from his traffic stop. The delay then, is unreasonable in Mr. Cox's view, since there was no prompt information given to him for the detention and arrest.
>
> [49] There is some discrepancy in Mr. Cox's calculation of when he was first detained, and then informed, about the reasons for arrest. I find that Corporal Munro, Constable Giffin, and Corporal Allison's accounts are credible, and Mr. Cox was informed of the reasons for his detention and arrest in a manner that was timely and reasonable in the circumstances.
>
> [50] It should be noted, as submitted by the Crown in its Brief, that there is extensive case law establishing the principle that an accused does not need to be told of the specific offence for an arrest, but that the accused understand in general terms why he is detained and is sufficiently informed to be able to decide whether to submit to arrest and whether to contact counsel. In support of this, I cite *R. v. Smith*, [1991] 1 SCR 714, *R. v. Latimer* [1997] 1 SCR 217 and *R. v. Eakin* 2000 CanLII 2052 (ONCA).
>
> [51] The evidence by Constable Giffin is that Mr. Cox was read his *Charter* rights and asked whether he wished to contact counsel on at least two points in the evening, upon his initial arrest for breaching a term of his probation, and then again when arrested for firearm offences. A third warning was made subsequently on the evidence of Corporal Allison, the next morning.
>
> [52] The offer of access to legal counsel was not pursued by Mr. Cox. It was noted in evidence that Mr. Cox had made contact with the mother of his child by cell phone, the evening of August 19th and again the following morning. It was confirmed that Mr. Cox had ready access to a phone, for a private call, but did not use it to contact counsel.

[44] The evidentiary record sets out the precise wording of the police demands, cautions and *Charter* protections read to Mr. Cox. There is no issue raised with them or any challenge to the judge's s. 10 *Charter* ruling on appeal, thus, there is no need to set them out. That said, I note and will address further in my analysis, that the warrantless search of Mr. Cox's vehicle was done incident to his arrest for impaired driving. However, the police did not expressly inform Mr. Cox he was under arrest for impaired driving.

[45] The Crown argued that mattered not, because the law does not require Mr. Cox to be advised of the *specific* offence for which he is being arrested. Rather, it is sufficient that he understand, in general terms, why he is being detained, and has sufficient information to decide whether to submit to the arrest and/or whether to contact counsel. And given the circumstances of this case, it would have been clear to Mr. Cox he was arrested for driving while impaired by drug or alcohol. In other words, *de facto*, Mr. Cox was arrested for impaired driving and the search of his vehicle was incident to such arrest and a search warrant was not required.

[46] At the trial proper, which was held over five days in September 2021, the Crown presented evidence from a number of witnesses including: police officers who interacted with Mr. Cox during the evening he was detained and arrested; correctional officials regarding the presence of drugs Mr. Cox brought into the correctional facility while remanded; a drug expert; and a ballistics expert. Mr. Cox cross-examined all of the Crown witnesses. As was his right, Mr. Cox did not testify during the *voir dires* or his trial.

[47] At trial, identity of the accused, that the accused was driving the vehicle, the time, dates, places, and jurisdiction were uncontested and established by the Crown.

[48] The judge delivered her decision on conviction orally on October 21, 2021[11]. She set out a detailed summary and assessment of the evidence at paras. 12 - 68.

[49] Following her review/assessment of the evidence, the judge set out the relevant law that guided her analysis of whether the Crown had met its burden of proof in establishing all the requisite elements of the offences. After setting out the correct legal principles and having considered the parties' submissions, the judge's reasoning path (set out in paras. 76 - 103) led her to conclude the Crown had

[11] The judge's decision was subsequently reported as 2021 NSSC 369.

proven, beyond a reasonable doubt, all the elements of the 14 offences noted in para. 19 above.

[50] I will supplement any necessary additional background in my analysis.

Analysis

1. Did the judge err in finding Mr. Cox had not been arbitrarily detained (s. 9 of Charter)?

[51] For convenience, I restate s. 9 of the *Charter*:

> Detention or imprisonment
>
> 9 Everyone has the right not to be arbitrarily detained or imprisoned.

In this case, the focus is on being "arbitrarily detained".

[52] The applicable legal principles respecting the right to be protected against arbitrary detention or arrest were reviewed by the Supreme Court of Canada in *R. v. Tim*[12], 2022 SCC 12. As to the purpose of s. 9 the Court said:

> [21] … This Court has adopted a generous and purposive approach to the interpretation of s. 9, one that seeks to balance society's interest in effective policing with robust protection for constitutional rights (see *R. v. Suberu*, 2009 SCC 33, [2009] 2 S.C.R. 460, at para. 24; *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, at paras. 15-18 and 23). The purpose of s. 9, broadly stated, "is to protect individual liberty from unjustified state interference" (*Grant*, at para. 20; see also *R. v. Le*, 2019 SCC 34, [2019] 2 S.C.R. 692, at para. 25).
>
> [22] Consistent with this purpose, a lawful arrest or detention is not arbitrary, and does not infringe s. 9 of the *Charter*, unless the law authorizing the arrest or detention is itself arbitrary (see *Grant*, at para.54; *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59, at para. 20). Conversely, an unlawful arrest or detention is necessarily arbitrary and infringes s. 9 of the *Charter* (see *Grant*, para. 54; *R. v. Loewen*, 2011 SCC 21, [2011] 2 S.C.R. 167, at para. 3).

[53] Mr. Cox was arrested by police without a warrant. Section 495 (1) (a) and (b) of the *Criminal Code* sets out their power to arrest without warrant:

> Arrest without warrant by peace officer

[12] In *R. v. Tim*, there was a dissenting judgment but not on the articulation of the applicable legal principles. Rather, Brown, J., disagreed with the majority's application of them to the facts.

> 495 (1) A peace officer may arrest without warrant
>
> (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
>
> (b) a person whom he finds committing a criminal offence; …

[54] In *R. v. Tim*, the Court reviewed the s. 495 (1) framework, explaining:

> [24] The applicable framework for a warrantless arrest was set out in *R. v. Storrey*, [1990] 1 S.C.R. 241, at pp. 250-51. A warrantless arrest requires both subjective and objective grounds. The arresting officer must subjectively have reasonable and probable grounds for the arrest, and those grounds must be justifiable from an objective viewpoint. The objective assessment is based on the totality of the circumstances known to the officer at the time of the arrest, including the dynamics of the situation, as seen from the perspective of a reasonable person with comparable knowledge, training, and experience as the arresting officer. The police are not required to have a *prima facie* case for conviction before making the arrest (see also *R. v. Feeney*, [1997] 2 S.C.R. 13, at para. 24; *R. v. Stillman*, [1997] 1 S.C.R. 607, at para. 28; *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, at paras. 45-47; *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, at para. 73).

[55] Section 495 (2) places some limitations on the authority granted under s. 495(1). Only the following excerpt is relevant to this appeal:

> Limitation
>
> (2) A peace officer shall not arrest a person without warrant for
>
> (a) an indictable offence mentioned in section 553, …
>
> in any case where ……
>
> (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to …
>
> (ii) secure or preserve evidence of or relating to the offence, or
>
> (iii) prevent the continuation or repetition of the offence or the commission of another offence,
>
> may be satisfied without so arresting the person, …

[56] The respondent observes[13] the obvious:

> 92. However, a police officer shall not arrest a person without a warrant for an indictable offence that is mentioned in s. 553 of the *Criminal Code*. Section

[13] Respondent's appeal factum.

> 553(c)(ix) does mention the offence of failing to comply with a probation order under s. 733.1. As a result, Cst. Giffin could only lawfully arrest the Appellant for a breach of probation to secure evidence of the offence or prevent continuation of the offence. [s. 495(2)(d)].

[57] The respondent went on to note:

> 93. It was necessary to arrest the Appellant for breaching his probation in this case. The Appellant had an elevated blood alcohol level. If he was simply released at the scene, he would be a risk to drive again. It was in the public interest to arrest the Appellant and not risk his eventually driving to where he had been going.

[58] In the court below (and on appeal) Mr. Cox unpersuasively suggested he was unclear as to the scope of his detention by police and his resulting arrest.

[59] Mr. Cox was aware he was in jeopardy for breach of probation during the traffic stop. Further, based on the record, I am satisfied he was also cognizant that he was detained and subsequently (*de facto*) arrested for impaired driving.

[60] To illustrate, the following respondent submissions[14] accurately summarize the record:

> 77. The Appellant was lawfully detained to investigate suspected impaired driving. He was then lawfully arrested for breaching a condition of his probation. In addition, after being arrested for the breach of probation, Cst. Giffin formed reasonable grounds to demand an evaluation and arrest the Appellant for driving while impaired by a combination of alcohol and a drug.
>
> …
>
> 79. The initial stop or detention of the Appellant was because Cst. Giffin suspected him [of] impaired driving. Cst. Giffin stated:
>
> > A. My rec -- recollection is we were going -- a normal car in front of me, on a normal day, a normal person, will travel a relatively straight line and maintain an equal spacing between the white and yellow line. Even most people, My Lady, when they notice a police car behind, they will stop if there's any movement at all and they'll generally straighten their path of travel. When I pulled up behind the suspect vehicle, the vehicle is clearly going from the white to the yellow and back, and going back and forth. Clearly, to me, that is not a normal travel. This road that we're on is fairly straight in that portion, Highway 208, and on top of that is to see the

[14] Respondent's appeal factum.

> jerking motion, the irregular turning back and forth. And those are all signs, to me, of an individual that may possibly be impaired.
>
> Q. How long did you follow that vehicle for, approx ...
>
> A. Approximately two -- two to three kilometres.
>
> 80. As a result, Cst. Giffin initiated a traffic stop. Upon approaching the Appellant's vehicle he noted the smell of alcohol on the Appellant's breath, an open case of beer in the backseat of the vehicle and that the Appellant had red and watery eyes.
>
> 81. In other words, upon approaching the Appellant's vehicle, Cst. Giffin noted indicia consistent with impairment in addition to the Appellant's erratic driving.

[61] Based on the evidentiary record before her, the judge properly concluded Cst. Giffin had reasonable grounds to suspect Mr. Cox was driving while being impaired by alcohol.

[62] Next, Cst. Giffin requested Mr. Cox come to his patrol car and provide a breath sample into an approved screening device. Given the facts and circumstances, this was a form of lawful detention under s. 320.27(1)(b) of the *Criminal Code*. As mentioned, Mr. Cox blew a "warn", following which Cst. Giffin arrested Mr. Cox for breaching a condition of his probation order—the obligation to keep the peace and be of good behaviour[15].

[63] Cst. Giffin's testimony (about his interactions with Mr. Cox in his patrol car) speaks to the formulation of his reasonable and probable grounds to believe Mr. Cox had been driving while being impaired by a combination of alcohol and a drug(s). For convenience, I restate the evidence of Cst. Giffin:

> I continued to monitor Mr. Cox. I noted that his fine motor skills were poor. I noted that Mr. Cox had slurred speech, slow and deliberate. And I advised -- Mr. Cox had advised me that he had drank five beer through the day. The fact that he had consumed alcohol through the day, the fact that he had blown a warn and my observations, I explained to Mr. Cox that I was concerned that he was possibly impaired by something other than alcohol and I read him the drug recognition expert demand. Mr. Cox understood.

---

[15] Mr. Cox unequivocally told Cst. Giffin that he did not have a driver's license. Operating a vehicle without a valid driver's license and receiving a "warn" from the approved screening device, is not compliant with the provisions of the *Motor Vehicle Act*. Accordingly, Cst. Giffin had reasonable and probable grounds to arrest Mr. Cox for breaching his probation order.

[64] The Crown made these submissions, which were solidly anchored in the evidentiary record, to the judge during the *Charter voir dire*:

> There were obvious grounds to detain Mr. Cox for an impaired driving investigation, so we' re suggesting there's nothing really -- there's no evidence whatsoever that there's a section 9 issue at that point.
>
> …
>
> Constable Giffin described how his interaction with Mr. Cox included continued explanations for the ongoing detention and arrest. First, when he initially dealt with Mr. Cox, Constable Giffin noted the smell of liquor on his breath; red, watery eyes; and a case of beer in the back seat. He actually explained these observations to Mr. Cox and told him he was being detained, so it would be obvious at that point what the detention was about.
>
> Constable Giffin then brought Mr. Cox to the police vehicle and read the ASD demand. Once again, it's perfectly clear what's being done and why he's being detained and why Mr. Cox was being prevented from leaving at that point.
>
> After Mr. Cox blew a warn on the approved screening device, he was arrested by Constable Giffin for breach of probation due to the drinking and driving. He was *Chartered* and cautioned by Constable Giffin, …
>
> Constable Giffin planned to take Mr. Cox back to the police office but continued to make observations of impairment that didn't quite fit the warn reading from the ASD, and these included at that time poor fine motor skills; slurred speech; slow, deliberate speech; and the admission of drinking five beers. Constable Giffin told Mr. Cox he was still concerned about impairment and possibly by drug and read him the drug recognition evaluation or DRE demand. So again it's very clear why Mr. Cox is continuing to be detained. …
>
> Mr. Cox was essentially arrested for driving while impaired by drug or alcohol. It's a bit … complicated in the sense that he's technically arrested for a breach but it's clear from the evidence of …Constable Giffin that the breach was really the drinking and driving, and he made that clear to Mr. Cox at the time. …
>
> So Constable Giffin clearly had the subjective and objective grounds to arrest Mr. Cox. … His grounds as he elaborated on at the end of his evidence: weaving back and forth in between and over the lines; driving with no license; the smell of liquor on his breath; red, watery eyes; an open box of beer in the back seat; a warn result on the approved screening device, which indicates a blood alcohol content of 50 -- between 50 and 100 milligrams per cent; slurred speech; slow and deliberate speech; and impaired fine motor skills. The Crown would simply submit this is an abundance of grounds, objectively and subjectively, for Constable Giffin to arrest Mr. Cox for impaired driving, or at least for drinking and driving.

> Once Mr. Cox is arrested, the Crown submits, no further authority is needed to search the vehicle. The police have authority to search the vehicle for any evidence that might relate to the arrest, so it has to be related to the impaired driving. This would include looking everywhere in the vehicle one might reasonably find any evidence of alcohol or drugs or paraphernalia related to the use of same.

[65] The judge's reasons make clear she considered the lawfulness of Mr. Cox's arrest for impaired driving. She said[16]:

> [55] The first step is to consider whether Mr. Cox's arrest was lawful. As I noted above, I accept the evidence that the officers involved formed a subjective view of Mr. Cox's level of impairment that evening, that is objectively reasonable (in keeping with *R. v. Storrey* [1990] l SCR 241). That burden was satisfied by the Crown.

[66] On appeal, there is no appreciable contest by Mr. Cox as to whether the police had satisfied the basis for formulating reasonable and probable grounds to believe his ability to drive was impaired (either by the consumption of alcohol and/or drugs). Hence there is no need to set out the well established law that guides a trial judge's assessment of such grounds nor the law appellate courts apply when called upon to review such conclusions.

[67] Rather, at its core, Mr. Cox simply maintains the same view he held at trial—he was a private citizen going about his business, "breaking no law" the night he was subject to a traffic stop—thus the *Charter* should shield him from police detention, arrest, and a warrantless search.

[68] I see no basis upon which to disturb the judge's finding that the detention and arrest of Mr. Cox was lawful (not arbitrary). Cst. Giffin had the requisite grounds to believe Mr. Cox had been driving while impaired and was well within the scope of his right to make a DRE demand. The fact that the impaired charge ultimately resulted in an acquittal is of no consequence.

[69] For the above reasons, I would dismiss this ground of appeal.

---

[16] *Charter voir dire* decision.

2. Did the judge err in finding there had not been an unreasonable search of Mr. Cox (s. 8 of Charter)?

[70] I would also reject Mr. Cox's assertion that the judge erred by concluding the police did not breach his s. 8 *Charter* rights.

[71] To repeat, s. 8 of the *Charter* provides:

> Search or seizure
>
> 8 Everyone has the right to be secure against unreasonable search or seizure.

[72] In *R. v. Fearon*, 2014 SCC 77, the Supreme Court explained the purpose of the power to search incident to arrest:

> [16] Although the common law power to search incident to arrest is deeply rooted in our law, it is an extraordinary power in two respects. The power to search incident to arrest not only permits searches without a warrant, but does so in circumstances in which the grounds to obtain a warrant do not exist**. The cases teach us that the power to search incident to arrest is a focussed power given to the police so that they can pursue their investigations promptly upon making an arrest.** The power must be exercised in the pursuit of a valid purpose related to the proper administration of justice. The central guiding principle is that the search must be, as the case law puts it, truly incidental to the arrest.
>
> [17] The Court affirmed the common law power of the police to search incident to arrest in *R. v. Beare*, [1988] 2 S.C.R. 387. La Forest J., for the Court, noted that **the search incident to arrest power exists because of the need "to arm the police with adequate and reasonable powers for the investigation of crime" and that "[p]romptitude and facility in the identification and the discovery of indicia of guilt or innocence are of great importance in criminal investigations**": p. 404; see also *R. v. Debot*, [1989] 2 S.C.R. 1140, at p. 1146. Thus, the need for the police to be able to promptly pursue their investigation upon making a lawful arrest is an important consideration underlying the power to search incident to arrest.
>
> [Emphasis added]

[73] Further, returning to *R . v. Tim*, the Supreme Court addressed the general principles to be applied when assessing a s. 8 *Charter* violation:

> [45] A warrantless search is *prima facie* unreasonable, and thus contrary to s. 8 of the *Charter*. The Crown bears the onus of demonstrating on a balance of probabilities that a warrantless search was reasonable (see *R. v. Caslake*, [1998] 1

> S.C.R. 51, at para 11; *R. v. Nolet*, 2010 SCC 24, [2010] 1 S.C.R. 851, at para. 21; *R. v. Buhay*, 2003 SCC 30, [2003] 1 S.C.R. 631, at para. 32).
>
> [46] A search is reasonable, and thus complies with s. 8 of the *Charter*, if: (1) the search is authorized by law; (2) the law authorizing the search is reasonable; and (3) the search is conducted in a reasonable manner (see *R. v. Collins*, [1987] 1. S.C.R. 265, at p. 278; *Caslake*, at para. 10; *R. v. Saeed*, 2016 SCC 24, [2016] 1 S.C.R. 518, at para. 36).
>
> …
>
> [49] To be valid, a search incident to arrest must meet three conditions: (1) the person searched is lawfully arrested; (2) the search is "truly incidental" to the arrest, i.e., for a valid law enforcement purpose related to the reasons for the arrest; and (3) the search is conducted reasonably (see *Saeed*, at para. 37; *R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621, at paras. 21 and 27; *R. v. Stairs*, 2022 SCC 11, at paras. 6 and 35).

[74] In *R v. Stairs*[17] (referenced above) the Supreme Court said this about the authority of police to search incident to arrest:

> [34] The common law standard for search incident to arrest permits the police to search a lawfully arrested person and to seize anything in their possession or the surrounding area of the arrest to guarantee the safety of the police and the arrested person, prevent the person's escape, or provide evidence against them (*Cloutier v. Langlois*, [1990] 1 S.C.R. 158, at pp. 180-81). This search power is "extraordinary" because, unlike other police powers, it requires neither a warrant nor reasonable and probable grounds (*Fearon*, at paras. 16 and 45).
>
> [35] The common law standard for search incident to arrest is well established. As explained in *Fearon*, at paras. 21 and 27, it requires that (1) the individual searched has been lawfully arrested; (2) the search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose connected to the arrest; and (3) the search is conducted reasonably.
>
> [36] Under the second step, valid law enforcement purposes for search incident to arrest include (a) police and public safety; (b) preventing the destruction of evidence; and (c) discovering evidence that may be used at trial (*Fearon*, at para. 75).
>
> [37] The police's law enforcement purpose must be subjectively connected to the arrest, and the officer's belief that the purpose will be served by the search must be objectively reasonable (*R. v. Caslake*, [1998] 1 S.C.R. 51, at para. 19). To meet this standard, the police do not need reasonable and probable grounds for the search. Instead, they only require "some reasonable basis" to do what they did

[17] The dissenting judgment in *R. v. Stairs* pertained to the application of these general principles to the facts.

(*Caslake,* at para 20). This is a much lower standard than reasonable and probable grounds.

[38] This Court explained the distinction between the "some reasonable basis" standard and the higher "reasonable and probable grounds" standard in *Caslake,* at para. 20:

> To give an example, a reasonable and probable grounds standard would require a police officer to demonstrate a reasonable belief that an arrested person was armed with a particular weapon before searching the person. By contrast, under the standard that applies here, the police would be entitled to search an arrested person for a weapon if under the circumstances it seemed reasonable to check whether the person might be armed.

[75] In its factum, the respondent submits:

115. In reviewing whether a search incident to arrest was lawful, courts have to ask whether an accused was arrested lawfully, was the roadside search for a valid purpose connected to the arrest, and was the search conducted reasonably.

116. The Respondent says the answer was yes for these three questions. As a result, the Trial Judge did not err in finding the search incident to arrest was lawful in this case.

117. The Appellant was lawfully arrested for breaching the good behaviour condition of his probation order. As well, it is clear the officers, in particular Cst. Giffin, had reasonable grounds to arrest the Appellant for impaired driving. This was demonstrated by Cst. Giffin giving the DRE demand.

…

119. Cpl. Munro and Sgt. Allison gave evidence they started to search the vehicle after Cst. Giffin had given the Appellant a DRE demand and was leaving to take the Appellant for the evaluation….

…

125. In addition to the Appellant's arrest being lawful, the search of the vehicle was for a valid law enforcement purpose connected to the arrest.

126. Cpl. Munro and Sgt. Allison understood Cst. Giffin had made a DRE demand. As a result, they were searching the vehicle for drugs or alcohol. They were searching for evidence that would prove whether the Appellant was impaired and if he was, by what. In other words, they were searching for evidence that would be relevant at trial. …

127. As well, the search was conducted reasonably. There was an open case of beer in plain view in the backseat of the vehicle. Upon seeing the open case, it

> was reasonable to continue searching the vehicle for other evidence such as pills, drugs and other alcohol.

[76] During the course of the trial proceedings the Crown presented similar submissions to the judge.

[77] A review of the judge's reasons make clear she was satisfied that: (1) Mr. Cox was lawfully arrested: (2) the roadside search incidental to the arrest was for a valid purpose connected to the arrest, and (3) the search was conducted reasonably.

[78] Having reviewed the record, I am satisfied the judge made no error in concluding "the evidence obtained by law enforcement upon its investigation of the vehicle that Mr. Cox was driving and also gathered in the course of his subsequent detention, were obtained in a manner that was in keeping with the law and *Charter* compliant".[18] Mr. Cox advanced no argument before this Court that established otherwise.

[79] That said, I return to Mr. Cox's suggestion that he was unclear as to the scope of his detention by police and resulting arrest. Although it is preferable for police officers to be clear on the terms of detention and arrest, the judge correctly observed in her *Charter voir dire* decision:

> [50] It should be noted, … there is extensive case law establishing the principle that an accused does not need to be told of the specific offence for an arrest, but that the accused understand in general terms why he is detained and is sufficiently informed to be able to decide whether to submit to arrest and whether to contact counsel. In support of this, I cite *R. v. Smith*, [1991] I SCR 714, *R. v. Latimer* [1997] I SCR 217 and *R. v. Eakin* 2000 CanLII 2052 (ONCA).

[80] In *R. v. Latimer* noted above, the Supreme Court explained:

> 24 … As this Court has held with respect to s. 10 (a) of the *Charter* (*R. v. Evans*, [1991] 1 S.C.R. 869, at p. 888), what counts is
>
> > the substance of what the accused can reasonably be supposed to have understood, rather than the formalism of the precise words used. . . . The question is . . . what the accused was told, viewed reasonably in all the circumstances of the case. . . .

[81] I am mindful that Mr. Cox was initially placed under arrest for one reason (breach of probation); however, as explained earlier, given the circumstances of

---

[18] 2021 NSSC 369 at para. 11 (wherein the judge summarized her ruling in the *Charte*r *voir dire* decision).

this case he also would have understood he was also placed under arrest (*de facto*) for impaired driving by drug or alcohol. To suggest otherwise does not accord with the record.

[82] For completeness, I note that in his written appeal submissions, Mr. Cox claims "[Justice Rowe's] decision is deliberately misleading. In at least four sections there are serious [discrepancies] from what was testified to". And further, "When the testimony of these officers is put under scrutiny [their stories] have serious issues. There is, I submit, just too many issues with this case to think anything was done in good faith. The goal was [incarcerate] Mr. Cox by any means".

[83] It is sufficient to say that the record does not support these complaints and there is no need to address them further.

[84] For these reasons I would also dismiss this ground of appeal.

Disposition

[85] For the foregoing reasons, I would dismiss Mr. Cox's appeal against his convictions.

Van den Eynden, J.A.

Concurred in:

Wood, C.J.N.S.

Farrar, J.A.