

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Laidlaw*, 2025 NSPC 26

Date: 20250925

Docket: 8817087

Registry: Bridgewater

Between:

His Majesty the King

v.

Katrina Laidlaw

Trial Decision

Judge: Associate Chief Judge Ronda van der Hoek

Heard: March 6, May 2, June 19 and July 11, 2025, in Bridgewater,
Nova Scotia

Decision: September 25, 2025

Charge: Sections 320.14(1)(a) and 320.14(1)(b) *Criminal Code*

Counsel: Stephen Scott, for the Crown
Matthew Fancey, for the Defence

By the Court:

Introduction

[1] Ms. Laidlaw was walking on the side of a secondary highway in the rain after midnight. A police cruiser came along at a high rate of speed with its lights flashing. The cruiser stopped in the middle of the lane and Ms. Laidlaw walked into the middle of the road to speak to the officer. Another police cruiser quickly arrived, came alongside Ms. Laidlaw stopping in the lane facing oncoming traffic and parallel to the other cruiser.

[2] While standing between the cruisers in the middle of the road, Cst. Rosignol asked Ms. Laidlaw whether she had been driving. Ms. Laidlaw said she was coming from Lunenburg and initially denied driving. Ms. Laidlaw says she was physically and psychologically detained and felt compelled by the circumstances to link herself to a car parked on the roadside one km back.

[3] With respect to the car, Cst. Rosignol earlier came upon another officer, Cst. Lynch, inspecting a driverless car “in the ditch”. She carried on toward an unrelated car accident and stopped Ms. Laidlaw when she saw her walking on the opposite side of the road. Cst. Rosignol noted a smell of alcohol on Ms. Laidlaw’s breath as soon as she exited her police cruiser and also saw mud on her pants. The officer

concluded, based on the smell, that Ms. Laidlaw was “over 80” and arrested her for impaired operation of a motor vehicle after connecting her to the car “in the ditch”.

Ms. Laidlaw was taken from the scene and provided a breathalyser demand.

[4] Ms. Laidlaw says her sections 8, 9, 10(a) and (b) *Charter* rights were breached, and her statement was involuntary. The trial proceeded as a blended *voir dire*.

Decision

[5] Setting aside the voluntariness of the statement that connected Ms. Laidlaw to the parked car, I find the officer did not have reasonable grounds to arrest her for impaired operation. At best the available information supported a reasonable suspicion that Ms. Laidlaw had consumed alcohol and driven the parked car. The officer’s conclusion she was “over 80” is unsupportable. Her subjective belief was not objectively reasonable. There was no evidence of Ms. Laidlaw’s driving, her car was parked on the roadside out of the path of traffic on a dark windy secondary highway, it was not “in the ditch”, nor was it in an accident. The breathalyzer results flowed from an unlawful arrest and led to the resulting breaches of Ms. Laidlaw’s s. 8 and 9 *Charter* rights. The readings are ordered excluded pursuant to s. 24.

The Law

[6] As a starting point, any person charged with a criminal offence benefits from the presumption of innocence. The Crown bears the burden to establish guilt beyond a reasonable doubt. Only after considering all of the evidence in the context of the evidence as a whole does the Court reach a determination as to whether the Crown has met its burden. Reasonable doubt lies much closer to absolute certainty than it does to the civil standard of proof on a balance of probabilities.

[7] When assessing the reliability and credibility of witness testimony, the Court considers whether the testimony was intrinsically consistent, were things said differently at different times, was the account plausible, balanced, or affected by a possible interest. The Court asked whether the witness was able to recall and communicate what was observed, memory, perception, language used, the ability to communicate, and demeanor. I considered whether that ability was impacted by such things as the passage of time, a lack of notes, or other factors. I also considered whether a witness was being sincere, candid, biased, reticent, and/or evasive while they testified.

[8] While I will offer my evaluation of the evidence as I proceed through this decision, I made no findings or reached any conclusions until after I considered all

of the evidence, reviewed my notes, listened to the submissions of counsel, and considered the case law.

[9] Ms. Laidlaw bears the burden to prove the breach of a *Charter* protected right on a balance of probabilities. The Crown must prove beyond a reasonable doubt that her utterances to police at the roadside were voluntarily made.

[10] Not unlike *R v Golebeski*, 2019 YKTC 50, at para. 5, the Crown’s case rests on the evidence of a fairly new police officer, and while an, “earnest and well-intentioned young police officer, ...[her] lack of experience was manifest in the profound deficits in [her] understanding of and ability to articulate the scope of [her] authority under the [Criminal Code](#) and the law as it relates to impaired driving investigations.”

[11] The court in *Golebeski*, also succinctly addressed the difference between suspicion and grounds to believe for delivering an ASD demand v. a breathalyser demand and the connection to the arrest power.

[22] The two sections are entirely different demands requiring the application of different tests. The belief formed by the peace officer dictates which of the two demands can be made. The distinction between the two is also important to the question of arrest. Section 495 allows for arrest where a peace officer has reasonable grounds to believe that a person has committed an indictable offence. The reasonable suspicion required to make the demand under s. 320.27 would fall short of the test for arrest, while the reasonable grounds in s. 320.28, if founded on the evidence, would support the existence of grounds to arrest.

[12] So, the question is: what grounds existed in this case? The relevant evidence on that point comes from the testimony of the arresting officer, Cst. Rosignol, and Cst. Lynch who was present when Cst. Rosignol interacted with Ms. Laidlaw.

The Evidence and Findings

[13] I do not propose to repeat all of the evidence of all of the many police witnesses, except where it is necessary to understand my factual findings.

[14] As with any criminal trial, I am entitled to accept some, none, or all of what a witness says. No witness comes before the court presumed to be reliable and telling the truth regardless of their role in the matter or station in life.

[15] Constable Rosignol was the main prosecution witness, and an RCMP officer for two years. Overall, I found her evidence unreliable and at times unclear. She was unsure of herself, and not an accurate historian of events. She did not take any notes about the relevant interactions with Ms. Laidlaw that led to the decision to arrest, so she relied entirely on her memory of what happened on April 6, 2024, while testifying eleven months later on March 6, 2025. Specifically, she failed to memorialize the order of events, words spoken, grounds, when and how she received information from others, and what she observed prior to the arrest. Her evidence on

direct examination left out many important points that only came out during cross examination. She did not appear prepared to testify.

[16] Cst. Rosignol testified that at approximately 1 am she was *en route* to an unrelated highway accident when she paused to speak to Cst. Lynch who was standing at the roadside inspecting a red car “in the ditch”. He directed Cst. Rosignol to continue on to the accident while he completed his assessment.

[17] Cst. Mason, the officer who later photographed the red car, was a straightforward and direct witness. He described the red car, “off the roadway into the ditch” “half in the ditch”, described the “muddy start on the ground as the car drove off the road”. On cross examination he agreed the majority of the car was situated on the roadside shoulder, adding, “the shoulder tends to be no more than 2-3 feet [wide], the majority of the vehicle was past that, but the driver side was on the shoulder” of the road, adding there “is no defined shoulder on that roadway”. He could not confirm if there was a painted line in the middle of the roadway but added that he is aware there were problems with the painting of lines in that area. He noted no damage to the car and agreed it could have been driven away without aid of a tow truck.

[18] Of course, what matters is Cst. Rosignol's perception of what she saw at the roadside as it may relate to her grounds for arrest, and she testified that there was nothing about the position of the red car to support a conclusion whoever drove it was impaired. Her assessment that the car could not be driven away, was clearly speculative.

[19] I find, upon viewing the photographic evidence and hearing the testimony of Cst. Mason that the best description of the car is that it was parked off the roadway in a darkened area where there is very little shoulder. That the roadway was windy and the night dark and rainy, is beyond dispute and of course there would be tire marks in the soft wet mud.

[20] Cst. Lynch, a General Duty officer of eighteen years, testified that he took a call for a different matter but stopped when he saw a red car in the ditch, off the road. He stopped in the roadway to see if there was anyone in the car and Cst. Rosignol came up behind him while he was looking in it. He told her he did not see anyone, would check the licence plate, and she should continue on to the accident, he would be right behind her. She left.

[21] While still inspecting the car, Cst. Lynch received a radio dispatch from Cst. Rosignol telling him she came across a female walking in the roadway, and “she was going to be stopped further up the road”. He quickly sped off to join her.

[22] Cst. Rosignol testified about seeing the woman. She says while *en route* to the accident for “a minute of two”, proceeding at speed down the darkened roadway with emergency lights activated, her progress was halted when she radioed her colleague to say there was a woman walking on the opposite side of the road.

[23] Cst. Lynch testified that before he received the aforementioned radio call, he had “run the plate on the red car, determined it was a rental and knew he was not going to find a person connected to it - “it would need more work”.

[24] Both officers agreed on cross examination that there were houses along this stretch of secondary highway, but Cst. Rosignol testified that she did not believe anyone would “walk at that hour”.

[25] Cst. Rosignol testified that she stopped her cruiser in the lane because, in her assessment, there was insufficient roadside shoulder available to pull her car over.

[26] She was ultimately equivocal about whether she called the woman to the cruiser or whether the woman instead approached on her own initiative. In a questioning tone, she testified “the female approached my vehicle? So, she crossed

the road to come see me.” On cross examination she quite fairly would not rule out motioning the woman over to the cruiser. In any event, once the woman was in the middle of the road next to the cruiser, Cst. Rosignol says she rolled down the window and asked why she “was in the rain walking in the dark”.

[27] Cst. Rosignol testified that the woman, later identified as Ms. Laidlaw, conveyed that she was coming “from Lunenburg to her residence”, or said she walked from Lunenburg. The officer concluded the woman could not have done so given it was raining, and the woman was relatively dry.

[28] Cst. Rosignol testified that Cst. Lynch arrived within a minute or two and was present for her conversation with Ms. Laidlaw. While she testified that she remained in the cruiser until Cst. Lynch arrived, he testified that when he arrived both women were standing in the middle of the highway next to Rosignol’s cruiser and he “found that odd”- being in the middle of road with lights on.

[29] Cst. Rosignol testified that she exited her cruiser, but only after being asked the leading question- “did you get out of your cruiser?” and noted a smell of alcohol coming from Ms. Laidlaw. That answer was also delivered in a questioning tone. Asked on cross examination whether she told Ms. Laidlaw that she smelled alcohol,

Cst. Rosignol testified “If I did it was outside. Yes, I did tell her, but not in my notes.”

[30] Cst. Rosignol testified that she said “out loud to Cst. Lynch”, in response to Ms. Laidlaw’s explanation for being where she was, that “it did not make sense because she was dry and, did not make sense walking from Lunenburg”.

[31] Cst. Rosignol testified that Cst. Lynch confirmed the car was a rental, and she saw dirt on Ms. Laidlaw’s knees.

[32] Cst. Lynch testified about the interaction between Cst. Rosignol and the woman. He says he got out of his cruiser and joined the women who were having some conversation when he approached, “something around the weather, rainy night” ... “my recollection is at approach the conversation was about what she was doing there, how far she had walked, the state she was in- dry. She had some mud on her.” ... “I have some understanding of what was being discussed. Cst. Rosignol was trying to figure out what brought the woman here” ... “She had walked from Lunenburg... then it turned... she was arrested based on the determination she was the person related to the car back in the ditch.”

[33] Cst. Lynch says he was “not involved in the conversation”, instead he was “just shielding everybody and thinking about the scene up the road”. He testified

“we thought it made no sense, the walking. I recall discussing if she was in the car, really what she was doing here. In real time it was only a minute of time to try to figure this one out, and it was determined that she was the one in the vehicle behind. She let it be known. It was a cold, dark night.” According to this testimony, it sounded as though he was engaged in conversation with Cst. Rosignol, if not Ms. Laidlaw.

[34] Cst. Lynch confirmed he was near Ms. Laidlaw, found her articulate and not presenting a danger to herself, and agreed with defence counsel that the only indicator of impairment was a smell of alcohol and agreed it was “absolutely fair to say she could have had one beer”. He did not believe he had an ASD and added it was not my call to make. Unlike Cst. Rosignol, Cst. Lynch appreciated the difference between indicators of alcohol consumption and indicators of intoxication by alcohol and indicators of impairment.

[35] Cst. Lynch concluded, it is “never pleasant to have two police cars fly up on you like that”, there was nothing about the red car to suggest impaired driving, and he is unsure when Ms. Laidlaw’s identity was determined but he did not know who she was at the roadside.

[36] On cross examination Cst. Rosignol testified that she told the woman about the red car in the ditch, and the woman said it was not her vehicle. She agreed there was a two-minute conversation before Ms. Laidlaw admitted to being the driver. She agreed with defence counsel that she knew the car was a rental before she asked Ms. Laidlaw if she was driving it. (Presumably communicated by Cst. Lynch) Another officer would testify that he radioed to Cst. Rosignol that a licence plate found inside the car was registered to Ms. Laidlaw.

[37] I pause to note, there was no reliable evidence about the timing of the various aspects of the conversation between Cst. Rosignol and Ms. Laidlaw or when or where information came in about the licence plate. Neither officer took notes. It can be concluded that the majority of the conversation occurred after Cst. Lynch arrived with haste, also with his cruiser lights flashing. Ms. Laidlaw was hemmed in between two cruisers and two police officers, standing in the middle of the roadway while they spoke.

[38] I will not review Ms. Laidlaw's compelling evidence about the physical and psychological detention she believes she was subjected, because I conclude the trial issues can be addressed otherwise.

[39] Cst. Rosignol testified that she formed grounds to arrest Ms. Laidlaw upon hearing the admission she was the driver of the red car, based on the noted mud on her knees, and the strong smell of alcohol on her breath. That latter testimony was provided in the form of a question- “a strong smell of alcohol?” This was Cst. Rosignol’s frequent means of answering questions, thus leaving the Court concerned about the confidence of her answers regarding information not memorialized in her notebook. Also, the Crown’s unusual habit of asking questions and then positively reinforcing the witness’ answers by saying “yes”, “that’s right”, and various other positive signals, combined to result in less weight being accorded to some answers and creating concerns about the witness’s reliability. I say this reminding myself that no witness comes before the Court presumed to be telling the truth, all testimony is subject to scrutiny no matter who provides it- defence witnesses or witnesses called by the Crown.

[40] It is useful to set out an example from the direct examination of Cst. Rosignol, after she testified, “I said to her that she was dry and that did not make any sense that she would be walking from town”.

Q: What did she say to you?

A: “Well she admitted being the driver.”

Q: You challenged her on that assertion?

A: Yes.

Q: *Yes*. And after the challenge what did she say?

A: That she was driving?

Q: What did you observe about her?

A: “Strong smell of alcohol coming from her breath?”

Q: *Yes*. So, you notice a strong odour of alcohol. Did you make any other observations, physical?

A: “That she was dry?”

Q: “Yes, OK. What did you do after you determined that she was under the influence?”

[41] At this point there was an appropriate defence objection to this leading question on a material point.

Q: What did you do after you noticed the smell of alcohol?

A: I smell alcohol. She said she was driving, and I proceeded to arrest her.

[42] I pause to note, Cst. Rosignol’s testimony that she smelled alcohol simply did not support a conclusion she meant the woman was “under the influence”, as that expression implies someone was impaired or intoxicated. Of note, defence counsel would later elicit in cross examination that the officer recorded no such information in her notes, yet the officer also inexplicably testified that, based on the

aforementioned smell, she concluded Ms. Laidlaw was “over 80”. Never has the Court heard such a conclusion expressed by a police officer; one would not need a breathalyzer if that were possible.

[43] In testing her conclusion, defence counsel queried why Cst. Rosignol did not provide an ASD demand instead of a breathalyzer. She testified, “Her breath was enough strong and believed way over 80”.

Q: Is that standard practice?

A: If a member believes, and don’t believe had an ASD and possible did not provide [ASD demand] because did not have one in the vehicle.

[44] Cst. Rosignol testified that she arrested Ms. Laidlaw for impaired operation, searched her, and placed her in the cruiser before moving the cruiser to a safer location to read her *Charter* rights and caution, and the breathalyzer demand. That she was still focused on the accident she was originally headed toward was made clear when she said, “we were going to a collision and there was no place to put the car, so I took her down the road 25 meters to a safe area to do her rights.” The Crown said “Yes”.

[45] Cst. Rosignol also testified that her grounds for arrest were the strong smell of alcohol on Ms. Laidlaw’s breath, and not the position of the car, not the mud. She

agreed with defence counsel that Ms. Laidlaw was “having good speech and fairly stable on her feet”.

[46] Though the officer testified that she had reasonable grounds to arrest Ms. Laidlaw for impaired operation, her subjective belief was unsupportable because there were insufficient objectively reasonable grounds to believe Ms. Laidlaw operated a motor vehicle within two hours and was impaired by alcohol. At best there was a reasonable suspicion she had consumed alcohol. I reach this conclusion because the vehicle Cst. Rosignol saw briefly was clearly not “in the ditch”, as that expression is typically used. Instead, it was off on the shoulder of the same roadside where Cst. Rosignol stopped Ms. Laidlaw- out of the path of traffic. There was no evidence of Ms. Laidlaw’s driving. While she was detained a km away from the location of the parked red car, there was nothing inherently unusual about walking at night in a place with many houses. At best there were grounds for suspicion she had consumed alcohol, not reasonable grounds to believe she was impaired. I do not accept as reliable Cst. Rosignol’s unnoted testimony that the smell of alcohol was *strong*. This was not agreed to by the senior officer and in any event was not elaborated upon in her testimony, it was instead a conclusory assertion coupled with implausibility the officer could determine blood alcohol level based on the smell.

[47] I find the reliability problems with Cst. Rosignol's testimony manifold and she was not an accurate historian. Cst. Lynch was a much better witness and while he was present for all the relevant interactions, his testimony did not support the conclusions reached by Cst. Rosignol. He was certainly not critical of his colleague, but it was clear an ASD was the next necessary step in this investigation, and it was not undertaken in favour of getting on to the accident call, and both officers were distracted by that important consideration.

[48] The evidence does not satisfy me that Cst. Rosignol formed the subjective belief, on reasonable grounds, that Ms. Laidlaw had operated a conveyance while her ability to do so was impaired by alcohol as required in s. 320.28. As was the case in *Golebeski*, reasonable suspicion does not support reasonable grounds to arrest.

[49] As argued by the defence, the only evidence at the point of arrest that led to the breath demand, was evidence consistent with mere consumption possibly combined with a car parked on the side of the highway. In *R. v. Rhyason*, [2007 SCC 39](#), the Supreme Court of Canada found that such evidence combined with an unexplained accident may or may not be sufficient to establish reasonable

grounds. It concluded a trial judge must consider the circumstances of the particular case.

[50] When I consider the totality of the evidence, I find police hemmed Ms. Laidlaw between two police cars on a darkened highway where she admitted that she had been driving a car officers saw some distance back. That car that was not “in the ditch” but on the roadside shoulder. The charging officer’s conclusion the smell of alcohol emanating from Ms. Laidlaw established “she was over the 80” was unfounded and at best constituted suspicion she had consumed alcohol. I am not satisfied that mere consumption rises to the level of objectively reasonable grounds. Despite rising only to the level of suspicion, the officer did not make an ASD demand, she did not have one at the roadside, and instead arrested Ms. Laidlaw for impaired operation and provided the breathalyzer demand without grounds to do either.

[51] I find it unnecessary in the circumstances to consider whether Ms. Laidlaw’s statement was voluntary. My strong impression – it was not. But instead, I can decide the case on the unlawful arrest that was clearly arbitrary and a breach of the s. 9

Charter right, that led to the breathalyzer demand, and find those results were obtained in breach of Ms. Laidlaw's s. 8 *Charter* right.

[52] In such a blatantly obvious situation such as this there can be no question the application of the *Grant* factors requires exclusion of the breath results. By this point in time officers should have ASDs at the ready, be well and truly trained and aware of the standards/grounds to make either demand or to arrest citizens. This arresting officer's inexperience led to unwise decision making and haste being prioritized over the safeguarding of Ms. Laidlaw's *Charter* protected rights, and these actions were taken in the presence of a superior officer whose concessions regarding the import of the circumstances did not support her actions. The seriousness of the *Charter* breaches favour exclusion. The *Charter* violations also had a significant effect on Ms. Laidlaw's liberty – arrest at night in the middle of the highway would be frightening for anyone given the darkness and hour of night. This factor also favours exclusion of the breathalyzer readings. The third ground will rarely favour inclusion if the other grounds favour exclusion, but that said, the Court simply cannot condone these serious breaches that brought the administration of justice into disrepute; I order exclusion of the breathalyzer results.

[53] Judgment accordingly

van der Hoek ACJ PC