PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v. MacSween*, 2025 NSPC 50

Date: 20251219
Docket: 8817375 and 8817376
Registry: Sydney

Between:

His Majesty the King

v.

Dana MacSween

Judge:	The Honourable Judge A. Peter Ross
Heard:	October 28 and December 12, 2025, in Sydney, Nova Scotia
Decision:	December 19, 2025
Charge:	Charges: s.320.14(1)(a) and s.140 of the *Criminal Code*
Counsel:	Fayzan Khan, for the Crown
	Tony Mozvik, for the Defense

Introduction

[1] Dana MacSween is charged with drug-impaired driving under s.320.14(1)(a) and with public mischief under s.140 of the *Criminal Code*. The events in question date to March 11, 2024. Trial was held in Sydney on October 28th and December 12th , 2025. It ran concurrently with Ms. MacSween's *Charter* application, the evidence applying to both. These reasons address the alleged s.8 and s.9 *Charter* violations and proof of the offences themselves.

[2] Two people eye-witnessed the accused driving and called police, who attended the scene and made preliminary observations of Ms. MacSween's actions and condition. Evidence obtained subsequent to arrest includes the accused's performance on a drug evaluation, the evaluating officer's conclusion as to impairment and its cause, the presence of drugs in a urine sample demanded by the evaluation officer, and the evidence of a toxicologist about the effect of such drugs on a person's judgment and physical capabilities.

[3] Defence alleges there were insufficient grounds for her arrest. It contends that Ms. MacSween was subjected to an unreasonable search and was arbitrarily detained. It seeks exclusion of the evidence obtained during and after the drug evaluation and with that, an acquittal on the impaired driving charge.

[4] At roadside Ms. MacSween gave police a false name, giving rise to the "misleading police" charge. The parties contest the trial outcome on this offence as well.

The Legal Context

[5] The accused was arrested for impaired driving. For an arrest to be valid the arresting officer must honestly believe that person has committed the offence and there must exist objectively reasonable grounds for that belief. In formulating grounds police are entitled to take account of all available reliable information including statements of third party witnesses. The arresting officer may also rely on information provided by fellow officers involved in the investigation.

[6] In addition to the power to arrest for impaired driving, the *Criminal Code* gives the police power to conscript evidence from such person. It authorizes sequential measures which police may (not must) undertake in an impaired driving investigation. These invoke three distinct thresholds of belief. If a police officer *suspects* that someone is driving while drug-impaired they may require the person to submit to physical coordination tests, called standard field sobriety tests. The results of this test may inform a police officer's next step. If a police officer, with or without the benefit of the SFST results, forms a *reasonable belief* that a person is driving while impaired they may demand that the person undertake a more concerted evaluation by an evaluating officer. This is done in a controlled environment, according to a set procedure, by a police officer with special training. If an evaluating officer makes a *determination* that a person is impaired by a certain class of drug, they may require the person to provide a urine or blood sample for forensic analysis. The results of this analysis may then be interpreted by an expert toxicologist who may in turn render an opinion about the potential effects of such substances on the individual at the relevant time.

[7] Conceptually it is somewhat odd to view a person's physical performance on a test as being the result of a search, or as a thing being seized. Caselaw none the less examines such evidence under the lens of unreasonable search. Taking a bodily substance for analysis conforms more readily the idea of a search and seizure. In such cases the 'search' is warrantless, and so the onus is on the Crown to prove that it was reasonable. Here, Defence argues that because the arrest was unlawful (lacking sufficient grounds) the subsequent search was unreasonable, in violation of s.8 of the *Charter*.

[8] The issue of arbitrary detention involves the entire time that Ms. MacSween was under the control and direction of the police. The lawfulness of the arrest factors in. Even where an initial detention or arrest is lawful, detention may become arbitrary if an accused is held longer than reasonably necessary. I must consider whether the time taken by police to make the arrest, to bring the evaluating officer to the detachment, to perform the test, taken together with other factors noted herein, constitute a breach of Ms. MacSween's s.9 *Charter* right to be free from arbitrary detention.

The Testimony

[9] Ronald Ling, 52, works for Rogers Communications. His wife, Gail Ling, works for Parkland Assisted Living. They were driving on Alexandra Street, Sydney, late in the morning of March 11, 2024 when a vehicle pulled out "erratically" in front of them. They followed it along Alexandra Street. According to the Lings it was "all over the road", crossing over into the opposite lane a couple of times, causing oncoming traffic to "veer out of the way . . . to pull over to the curb to avoid being hit". The Lings called 911. Mr. Ling flashed his lights and blew his horn in an attempt to get the driver to stop. The vehicle eventually stopped in front of St. Anthony Daniel Church. Mrs. Ling went over and spoke to the driver, Ms. MacSween. Her husband called her back to their car, fearful that his wife might be hurt if the vehicle, which was still running, pulled away. Ms. MacSween then drove to the opposite side of the street and stopped by the curb, facing opposing traffic, in the "wrong direction". Mrs. Ling got out and again approached the driver. She describes Ms. MacSween as cooperative - handing the car keys over - but impaired. According to Mrs. Ling the accused could not speak coherently, and her eyes were glossy - "as with people who are under the influence . . . they just didn't look right." Ms. MacSween exited her vehicle and came over to the Lings'. Here Mr. Ling says he "could tell she was under the influence of something" by the way she walked and her slurred speech. The Lings interacted with Ms. MacSween for "a minute or two". The parties had no prior acquaintance. The Lings had no special training nor extensive experience with people impaired by drugs or alcohol. Neither detected any smell of alcohol. But Mr. Ling echoed the strong belief of both in Ms. MacSween's impairment when he testified, "I can tell when a person is inebriated."

[10] Police arrived a short time after and spoke with the Lings. In direct examination by the Crown Mrs. Ling said, "I told police what I told you".

[11] Cst. Ogley and others responded to the Lings' 911 call. Upon arrival, at 11:12 a.m., he spoke to Mr. Ling who identified the vehicle of concern. Ogley noticed that the subject vehicle was illegally parked. He spoke to Ms. MacSween, standing outside. She identified herself as "Natalie MacSween". She then got into the driver's seat, whereupon Ogley asked her to shut the vehicle off.

[12] Ogley says that he took the key from the accused. Mrs. Ling says that the accused handed the car key over to her. One or the other is mistaken. I do not think that either is lying. It is a contradiction which does not undermine the credibility of either on the important parts of their evidence.

[13] Ogley mentioned glossy eyes, slow speech and crackled lips when asked for his initial observations of the accused. He later acknowledged that cracked lips were not a sign of impairment. However I did not sense that Ogley was attempting to bolster or exaggerate his opinion that the accused was impaired. He described slow movements as Mrs. MacSween "went through the cards in her purse" before telling him that she didn't have any identification. Ogley noticed an ID card among those she had just handled, but the accused told him it was her sister's card.

[14] As this was occurring, another police officer had queried the vehicle's license plate and found it to be registered to "Dana MacSween". Ogley himself queried the police data base and obtained the same information. The accused told them that Dana MacSween was her sister, that she was "Natalie MacSween" and worked with Legal Aid. As she looked for identification she told Ogley that she took Clonazepam for anxiety.

[15] Ogley observed fresh damage to the front of the accused's vehicle and saw that the radiator was leaking fluid. He asked if she had been in an accident. Although there were no observable injuries, he called for an ambulance.

[16] Cst. Bourgeois, the arresting officer, arrived on scene at 11:20, a few minutes after Ogley. Ogley told Bourgeois that Ms. MacSween was looking for her identification, that she was slow-moving, that her eyes were glossy. Bourgeois too says that the accused gave her name as "Natalie MacSween" but at the same time Bourgeois testified "the vehicle was coming back as Dana MacSween". He says she seemed confused, not making sense.

[17] When the ambulance arrived, Bourgeois testified that Ms. MacSween was unsteady on her feet as she walked towards it. She was examined by the emergency responders on scene. He arrested her when she got out of the ambulance. He says that "once she was cleared by EHS the concern that her signs were caused by accident went away." He says the ambulance attendants "released her" whereupon,

at 11:52 a.m., he arrested Ms. MacSween for impaired driving. He says he believed she was impaired by drugs, not alcohol. He read her *Charter* rights and police caution, after which he "gave her a DRE demand." Bourgeois did not elaborate on the wording of this demand. She was transported to Central lockup, arriving at 12:07 p.m.. Some time later an evaluating officer, Cst. Aucoin, attended to conduct a formal drug impairment evaluation.

[18] Bourgeois had no training in conducting field (roadside) sobriety tests. Nor, it appears, did Ogley. This was Bourgeois' first "impaired by drug" investigation in his five years on the police force. Asked about the strength of his belief that the accused was impaired in her ability to drive, he said "100 percent".

[19] At the police station (termed the "lockup") Bourgeois noticed that the accused "stumbled on the way in". Ogley searched her purse and found a bottle of Clonazepam, a bottle of Gabapentin, and a pill bottle with the label scratched off.

[20] If Ogley or Bourgeois testified to the time they called for a drug impairment evaluation I did not note it. However, I infer there was no undue delay in making the request for this service.

[21] It appears Cst. Aucoin arrived at Central lockup at about 2:30 p.m. He observed the accused in the hallway at 2:33. Aucoin testified that he was a "drug recognition evaluator" (DRE) which I take to mean, on all the evidence before me, an "evaluating officer" (EO) under the *Criminal Code*[1]. He has been qualified as such since 2022. At the time of trial he had done four formal evaluations and made more than twenty arrests for impaired driving. This was his first time testifying as an EO. The test began at 2:51 and ended at 3:45. Cst.

[22] Aucoin said there were four other accredited evaluating officers within the regional police service in March of 2024. When contacted about this matter he was undergoing training of some sort in East Division. Each of the four EO's kept their own "kit". Aucoin's was in his locker at North Division, so he had to drive there

[1] "evaluating officer" is the term found in the relevant *Criminal Code* provisions. An evaluating officer must be a certified drug recognition expert. Sometimes the term drug recognition evaluator is used. Sometimes the prescribed test is referred to as drug recognition evaluation, although a more proper term for this may be drug impairment evaluation. See Regulation SOR/2008-196

before going to Central Division (the lockup) to perform the test. In other words, he had to drive from Glace Bay to Sydney Mines and then back to Sydney. Knowing the relative location of these communities I can infer that this accounted for much of the delay between the accused's arrival at lockup and Aucoin's arrival to conduct the test.

[23] Exhibit#4 is a report in narrative form authored by Aucoin within a day of the examination. He adopted this in court, swore that it was true and accurate, and was cross-examined upon it. He there states that he introduced himself to Ms. MacSween as a police officer and drug recognition evaluator. His testimony and report also show that the accused complied with his directions and appeared to understand what was required of her throughout the testing procedure. Aucoin received background information from the on-scene officers before beginning the evaluation.

[24] I need not describe the 12 step procedure followed by Aucoin, the accused's performance on each of the prescribed tests, or all the other observations and interactions in the course of the 55 minutes he spent with Ms. MacSween. He concluded that she was impaired in her ability to operate a motor vehicle by a central nervous system depressant.

[25] Genevieve Baroudy is a forensic toxicologist with the RCMP. She appeared by video and testified as an expert witness. She spoke to the report exhibited as #2. Defence stipulated that the laboratory exhibit P24000383, a container of urine, was the sample obtained by Aucoin from the accused. Ms. Baroudy reviewed the lab results – the drugs which were identified in the sample and the potential effects of such on an individual's metabolism, attention, response time, etc. – all of which were related to a person's ability to operate a motor vehicle. She spoke about typical dosages, effects, length of effect, individual tolerances, etc. Again I will not canvass her evidence at length. The lab testing returned 7 different CNS depressants, and cocaine.

[26] As with Aucoin, Ms. Baroudy was subject to a concerted cross-examination. She acknowledged certain limitations and caveats to her opinion. She noted that her lab does not quantify the amount of a drug in urine because the results are not

reliable. She said that people can function and drive cars when taking some of identified drugs. She could offer no opinion about whether Ms. MacSween was in fact impaired at the time the sample was taken, or before. Ms. Baroudy's evidence none the less confirms the presence of multiple drugs in the accused's system and her explanation of the potential effect of these, singly and in combination, is entirely consistent with the observations of the other witnesses about the accused's condition.

[27] The accused did not testify in support of her *Charter* application nor for trial purposes.

The Section 8 Issue

[28] The police dispatcher told Cst. Bourgeois they had received a complaint about a silver Hyundai swerving in traffic and nearly hitting another vehicle. Bourgeois found the described vehicle illegally parked. Cst. Ogley spoke with the Lings who identified the vehicle and driver. Both Bourgeois and Ogley spoke with the accused at her vehicle and observed that her eyes were glossy and bloodshot, her speech slow and slurred. She appeared confused as she identified herself – Bourgeois said she was "all over the place with her answers." Police noted fresh damage to the vehicle. While this is consistent with someone colliding with her, without any fault on her part, it is nevertheless odd that she would continue to operate it with fluid leaking from the radiator. Bourgeois noticed that when she walked to the ambulance she was unsteady on her feet.

[29] Some of the foregoing behaviors might be the result of head trauma from an accident. This is the very reason police requested EHS to attend the scene. The responders, after assessing her condition, considered there was nothing that required medical attention. It was reasonable for Bourgeois to conclude that what he observed of the accused resulted from impairment by drugs, there being no smell of any alcoholic beverage. I find that he had ample grounds to arrest Ms. MacSween for impaired driving.

[30] Below, I will consider the sufficiency of the demand and the "as soon as practicable" requirement. To the extent that these are relevant to the unreasonable search issue, my conclusions do not support the Defence argument.

[31] I find that the police did not breach the accused's s.8 *Charter* right.

The Form of Demand

[32] Bourgeois testified that he gave Ms. MacSween "a DRE demand", without more. Defence argues that this does not prove a lawful demand, i.e. a demand worded in such a way that she would understand what she was required to do, and why. Defence says that this vitiates Aucoin's drug evaluation, that it renders the resulting test results (the evaluation, the laboratory results from the urine sample) inadmissible. I do not accept this submission. If the accused were charged with refusing a demand then what was said by the police officer – the very thing upon which the offence of refusal is predicated - would acquire much greater significance.

[33] The foregoing issue is better placed in the s.9 *Charter* argument (which could hypothetically result in the exclusion of evidence). In that regard I will say that in the context of events Ms. MacSween would surely understand that the demand was related to the reason for her arrest. Even if the accused had no idea why she was being transported to Central lockup, the reason would become clear when Aucoin introduced himself as a drug recognition evaluator and then went through the detailed test which followed (which included dialogue with the accused as well as the performance of physical tests and examinations).

The "As Soon as Practicable" Requirement

[34] Defence also argues that the "as soon as practicable" requirements in s.320.28 were not met. Some of the cases cited in support predate amendments to the *Criminal Code*. The requirement is no longer that breath samples or drug evaluations be obtained as soon as practicable, but rather that the demand for such be made as soon as practicable and that the accused provide the breath samples or submit to the evaluation (as the case may be) as soon as practicable.

[35] On the whole of the evidence I find that a demand for a drug evaluation was made as soon as practicable by Bourgeois. His decision to await the arrival of an ambulance and the results of a medical assessment by EHS personnel was made to ensure the safety of Ms. MacSween and also to eliminate the possibility that her appearance and behavior was the result of trauma rather than the effects of an intoxicant. In would not have been practicable to make a demand before this. The rationale for waiting for EHS to 'clear' Ms. MacSween informed the grounds for arrest in exactly the same way.

The Section 9 Issue

[36] Because police called for EHS, the accused was detained for some 30 to 40 minutes longer than she would have been otherwise. However this was not an arbitrary measure – it was reasonable to request a medical assessment in the circumstances. Given the foregoing findings, the s.9 issue boils down to the time Ms. MacSween was detained after arrest.

[37] Ms. MacSween was at lockup at 12:07 p.m. and after some routine procedures would have been ready to undergo the drug evaluation shortly after. Except for giving a false name, she was cooperative at every step in the investigation. She was held at lockup until Aucoin arrived at 2:30, and thereafter until he completed his evaluation. Ideally an evaluator would have arrived sooner than this, but the continued detention of the accused awaiting his arrival was not capricious or careless. It resulted from practical exigencies. Police resources are limited. Aucoin responded as promptly as he could in the circumstances.

[38] Viewed in a broader context, it may be said that limitations on public resources and practical exigencies which arise in the provision of any public service often require people to wait, as many who have attended for treatment in a hospital's Emergency Department will attest. People who attend court under the compulsion of a subpoena may wait hours outside the courtroom before testifying. One should not exaggerate the impact of Ms. MacSween's two hour wait on her liberty. There was ample justification for police to hold Ms. MacSween as long as they did. They were investigating a serious offence. I do not find that the overall time from the point of first contact with police to her release from custody, nor any

of the delays along the way, give rise to an arbitrary detention. This is not similar to certain "overholding" cases where an accused is detained for a prolonged period after all investigative measures have been completed. In the result the allegation of a breach of her s.9 *Charter* right fails.

Statement to Police at Scene

[39] With the dismissal of the *Charter* applications most of the evidence heard at trial is available for consideration on whether the charges have been proven beyond a reasonable doubt. The one exception I make is for statements made by Ms. MacSween to police at the scene. They were given in answer to questions by police prior to arrest. For instance, the accused said that she "had run into a stop sign in Sydney River." The admissibility of these potentially incriminating utterances was not addressed at trial. They are available via s.320.31(9) to justify Bourgeois' and Aucoin's demands, but Crown did not ask that they be considered for their truth to prove impaired driving. This ought to have been addressed in some fashion at trial but was not, and so I decline to receive them as evidence against the accused.

[40] In *R. v. Pryde*, 2024 Q.J. No.1002 the court dealt with a similar issue by conducting a *voir dire*. In *R. v. Osman*, 2023 ONSC 7087 the Crown applied for a ruling on admissibility of "spontaneous" statements to police. Ms. MacSween's utterances seem potentially admissible but I would be ill-advised to consider them against her in the absence of a *voir dire*, however brief, directed to that issue.

Conclusions on Impaired Driving

[41] There were no contradictions in the evidence aside from a relatively unimportant difference between Mrs. Ling and Cst. Ogley about which of them took the Hyundai keys from Ms. MacSween. Otherwise, the testimony from the various Crown witnesses struck me as clear, unbiased, mutually reinforcing and reliable. The evidence of the Lings is very compelling. The dangerously erratic driving they observed and described is highly probative of impairment. The course of driving reveals more than momentary inattention or mere carelessness. The Lings' observations of Ms. MacSween's appearance and physical condition match

the observations of the police. All who encountered the accused thought she was intoxicated. The drug impairment evaluation and the opinion of the evaluator is entitled to considerable weight. The toxicologist's opinion about the drugs found in the accused's system and the potential effects of such on a person's judgment and motor skills rounds out an extremely compelling case for the Crown.

[42] On the whole of the evidence I have no doubt that Ms. MacSween was driving while impaired by drug and I find her guilty of the offence under s.320.14.

The Public Mischief charge

[43] The "misleading" offence received relatively little attention during argument. The primary focus of the hearing was the *Charter* application and other issues noted above. My decision on this charge is based primarily on a reading of the statute.

[44] Under s.140(1) the *mens rea* of public mischief is the intent to mislead police. The section sets out four ways a person may commit the *actus reus*, the first of which is making a false statement that accuses some other person of having committed an offence. The evidence at trial proves these elements (whether the accused in fact has a sister named Natalie, or the name was made up, likely does not matter). However, Crown must also prove that the actions of the accused "cause a peace officer to enter on or continue an investigation". Something that a person says or does will not be public mischief if it has no impact on the police, if it does not cause them to expend time and attention pursuing the fraudulent representation.

[45] In this case the police were not diverted from their investigation by Ms. MacSween giving a false name. According to Bourgeois, police checked the license plate of the Hyundai immediately. He said "it was coming back to a Dana MacSween – we had this information right at the outset." While he initially accepted the accused's assertion that she was "Natalie MacSween", police saw a photo on their database which matched the accused and confirmed in their minds that they were dealing with "Dana MacSween". The *Criminal Code* does not make it an offence simply to give a false name to police who are doing an investigation.

There must be more. The statement must be believed and acted upon. Here I see nothing that police did that they would not have done otherwise. The accused is found not guilty on the count of public mischief.

A. Peter Ross, PCJ