

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Bonsignore, 2011 NSSC 208

**Date:** 20110520

**Docket:** CR. Am. 342037

**Registry:** Amherst

**Between:**

Her Majesty The Queen

v.

Joseph L. Bonsignore, Tuc Nam Ho and  
Phuoc Hong Cuong Trang

Defendants

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**DECISION**

(Interim Application - Motion to Exclude Evidence)

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** May 2, 4 & 9, 2011, in Amherst, Nova Scotia

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**By the Court:**

[1] This is a voir dire application. The defendants make application pursuant to the **Canadian Charter of Rights**, Sections 8, 9 and 24, to exclude evidence obtained as a result of a search of a motor vehicle on June 14, 2010. During that search the RCMP located and seized what they assert is 30 pounds of cannabis marijuana and 65 grams of what is now alleged to be ecstasy. In this application the defendants question the validity of the search and ask the court to exclude the evidence obtained during the search.

**Summary of the Facts**

[2] On June 14, 2010, at approximately 2:05 p.m., Constable Charles Smith stopped an east bound motor vehicle with Ontario license plates east of exit six at Oxford, Nova Scotia. The vehicle was observed travelling at approximately 126 kilometres per hour and the speed was locked in on radar at 122 kilometres per hour. The reason for the stop was the fact the motor vehicle was travelling in excess of the posted speed limit.

[3] Constable Smith advised the driver of the motor vehicle, Phuoc Hong Cuong Trang (“Trang”) as to the reason for the stop and requested his driver’s license, registration and rental agreement for the motor vehicle. Mr. Trang presented an Ontario driver’s license. Constable Smith noted

that Mr. Trang was not a named driver on the rental agreement. The rental agreement stated the vehicle was rented on June 13, 2010 and had to be returned by June 20, 2010. There were two other occupants in the car, Joseph Bonsignore (“Bonsignore”), and Tuc Nam Ho (“Ho”). It was eventually determined that Mr. Ho was the person named on the rental agreement but Constable Smith was not immediately aware of the fact the named renter was a back seat passenger.

- [4] Constable Smith approached the motor vehicle from the passenger’s side. When speaking to the driver he was immediately adjacent to Mr. Bonsignore who was seated in the front passenger seat of the vehicle. Constable Smith noted that Mr. Bonsignore appeared very nervous. The officer described Mr. Bonsignore’s heart as beating so hard and fast that it was making his stomach move. Shortly after the stop Constable Smith contacted Corporal Galley, a fellow member of the RCMP and asked him to attend at the scene in a separate police cruiser. Corporal Galley was in the nearby community of Oxford and arrived at the scene shortly after he was asked to attend.
- [5] It is clear during the initial stages of the stop that both Constable Smith and Corporal Galley were of the opinion they did not have reasonable suspicions

as to the presence of contraband, or any other basis upon which they could conduct an investigative detention and search. Constable Smith, however, was concerned that the driver was not named on the rental agreement as a driver of the motor vehicle. He contacted the rental agency named on the rental agreement, using the telephone number from the rental agreement Mr. Trang had produced. The person with whom he spoke identified herself as Jennifer Roper.

- [6] I accept that Constable Smith had a bona fide belief in the fact that he was talking to appropriate representatives from the Avis Rental Agency. Constable Smith advised the person to whom he was speaking that Mr. Trang was driving the motor vehicle and he was not named on the rental agreement as the driver of the vehicle. During the conversation with the Avis representative, at no time did the representative ask if the named renter of the vehicle was in the motor vehicle. Initially, during that conversation with the Avis representative, Constable Smith was not aware as to whether or not the named renter, Mr. Ho, was in the vehicle. The person to whom Constable Smith spoke indicated that she wanted to speak to her manager and she placed Constable Smith on hold. When she returned to talk with Constable Smith she advised that Avis instructions were to have the motor

vehicle towed. Even at that point the Avis representative did not ask if the named renter was in the vehicle. Constable Smith said he could arrange a local tow truck service in Amherst to have the vehicle removed to their compound. The conversation was not quite over when Corporal Galley asked Constable Smith if the named renter was in the motor vehicle.

Constable Smith did not know. Corporal Galley then went to the vehicle and determined that Mr. Ho was in the vehicle. He had actually returned to Constable Smith's cruiser as Constable Smith continued to speak to the person whom he understood was the Avis representative. By the time Corporal Galley had returned to the cruiser Avis had already instructed that the vehicle be towed and did not ask if the renter was in the vehicle.

- [7] There was a video and audio recording system which was activated from the police cruiser as soon as the emergency equipment was turned on in Constable Smith's cruiser. For most of the relevant period, the video was not at all clear because the camera was not set on an auto focus once the police cruiser stopped. The audio was also less than perfect due to the road noise, various radio communications interruptions, a number of phone and verbal communications at the same time between various persons at the scene. In spite of some of those deficiencies the audio was somewhat

helpful in determining many of the facts and the sequence of events for at least part of the time the officers had the accused stopped. Constable Smith's battery for his microphone eventually was depleted and the audio portion also stopped recording before the search in question occurred.

[8] For the record, I note that during cross-examination and submissions, especially by Mr. Brien, there was a suggestion that during the time Constable Smith was talking to the Avis rental agency Mr. Ho approached Constable Smith's cruiser, identifying himself as Mr. Ho. I listened to the recording repeatedly, and the evidence of both Constable Smith and Corporal Galley. Constable Smith and Corporal Galley were adamant in saying that at no time during the conversation with the Avis representative did Mr. Ho approach the cruiser in which Constable Smith was talking to the Avis representative. When the audio portion was played Corporal Galley indicated unequivocally that it was his voice that was heard and that Mr. Ho was not approaching Constable Smith's cruiser. I am convinced that, in fact, it was Corporal Galley speaking, not Mr. Ho.

[9] In saying this, I note that there was a transcript of the audio recording prepared. I was referred to a number of portions by counsel and listened to the audio as well. It is clear there were many, many deficiencies in that

transcript. There were many words that were spoken and not transcribed, or they were transcribed inaccurately. That transcript would suggest that Mr. Ho could be heard speaking at the same time that Constable Smith was talking to the Avis representative. I am satisfied it is inaccurately transcribed where it refers to Mr. Ho as speaking.

[10] Defence counsel suggests the whole issue of Constable Smith contacting the Avis Rental Agency to advise them the driver was not the renter was a ruse to enable them to gain access to the motor vehicle. I do not accept that as being the case. I am satisfied that Constable Smith was concerned that the named renter was not the driver of the motor vehicle in question. He took appropriate steps in contacting the Avis Rental Agency to see what their instructions might be. Constable Smith informed the Court that he has on many occasions stopped rented motor vehicles when the driver is not named on the rental agreement. From a policing perspective his concern is that there may not be insurance in place should the motor vehicle be driven by a person not named on the rental agreement.

[11] Defence counsel, especially Mr. Brien, repeatedly referred to an investigative technique or protocol identified as “operation pipeline”. He suggested that Constable Smith and later Corporal Galley, used the

investigative processes as set out in “operation pipeline” to build a case which would allow them to gain sufficient information so as to allow for investigative detention. He suggested they were not really concerned about the driver not being named in the rental agreement. He suggested that instead they were gathering information to allow for an alternative investigation which eventually led to the search now being challenged.

[12] I am satisfied that whether one calls the investigative techniques “operation pipeline” or something else, the officers were simply using common sense and experience as RCMP Officers. They were simply making observations and inquiries that increased their suspicions. Eventually they reached the point where they felt they had enough information to decide they had a reasonable suspicion so as allow for an investigative detention and search.

[13] I am satisfied it was a valid stop in the first instance due to the fact the vehicle was travelling in excess of the posted speed limit. Constable Smith made a call to the Avis Rental Agency because of his concern about the driver not being named on the rental agreement. The officer had a concern that the vehicle may not be insured if operated by an unauthorized driver. An Avis representative asked that the vehicle in question be towed. I do not accept defence counsel’s assertions that because Constable Smith indicated



he could call a tow truck company that he was acting as a bailiff in a seizure based on a civil contract.

[14] I am satisfied the Officers did, what I would assume they would do in most cases. That is; while the vehicle continued to be held on the side of the road and while waiting for a tow truck, they continued their investigation as to other possible wrongdoing. This included obtaining identification from the driver and the other two occupants in the motor vehicle; including both Mr. Bonsignore and Mr. Ho.

[15] Corporal Galley observed, as well, that Mr. Bonsignore was very nervous. He could see his stomach moving rapidly to the beat of his heart. Mr. Bonsignore seemed agitated and was squirming in his seat. Constable Smith described Mr. Bonsignore as having a thousand mile stare. Constable Smith informed the occupants that the car was going to be towed at the request of Avis. This information was relayed to the occupants at or around 2:10 p.m.

[16] The Officers, through Constable Smith, informed the occupants that they could drive them back to Oxford in a police cruiser as soon as the tow truck had arrived. The occupants indicated they wished to stay in the vehicle until the tow truck arrived. There were a number of conversations as

between the Officers and the occupants, discussing what options were available for them in terms of arranging replacement transportation. During those conversations Mr. Trang stated that the individuals were visiting Nova Scotia for five days and they did not have much money. This was another fact that made the officers suspicious. Mr. Bonsignore stated he was not working at the present time, but had been employed as a crane operator. Mr. Bonsignore asked how far the impound yard was from the rental agency in Amherst saying he could afford a \$10.00 cab ride. Mr. Trang stated he had \$500.00 and that they planned on visiting Halifax for five days.

[17] They also discussed a number of things including alternate transportation by way of buses, bus schedules, locations of bus stations and rental car agencies. All options required a trip to Amherst. During this process, Corporal Galley had contacted a person who he understood to be Detective Eric Bell of the Niagra Regional Police Service. Corporal Galley was advised, and subsequently informed Constable Smith, that Mr. Bonsignore had recently been arrested and charged under the **Controlled Drugs and Substances Act**. It is not clear during this hearing as to whether Corporal Galley had been advised by Detective Bell, that this arrest was pursuant to Schedule 1 or Schedule III and whether it was a simple possession, or a

possession for the purpose of trafficking. It would appear that Constable Smith was advised that Mr. Bonsignore was facing charges of possession for the purpose, including ecstasy and cocaine. Corporal Galley also advised that Detective Bell informed him that he had confidential source information that Mr. Bonsignore was a player in the drug world and he believed that Mr. Bonsignore trafficked in drugs in pounds and kilos.

Again, Corporal Galley relayed this information to Constable Smith. There was a suggestion that Mr. Bonsignore travelled west and now east, often in a rented car. It was further suggested by Detective Bell that if Mr.

Bonsignore was now in the east he was transporting drugs.

[18] I accept the fact that Constable Smith was somewhat suspicious from the beginning when he first stopped the vehicle in which the defendants were driving. He said he “got a vibe off of the guy in the front seat”, Mr. Bonsignore. They, both Constable Smith and Corporal Galley, continued in their conversations and observations. All of the information from the occupants, their observation and the information from Detective Eric Bell added to their suspicions. Both Officers, however, said that up to the time the tow truck driver arrived they did not feel they had reasonable suspicions sufficient to justify an investigative detention and search.

- [19] There were a number of conversations as between Constable Smith and Corporal Galley which were clearly inappropriate race based remarks obviously referencing the two Asian occupants, Mr. Trang and Mr. Ho. There is no indication that had any impact on their actions related to the searches or detentions. This conversation was not relayed to, or in the presence of the occupants of the motor vehicle.
- [20] It is clear that by the time the tow truck arrived, Constable Smith and Corporal Galley were highly suspicious of the circumstances. They were aware of Mr. Bonsignore's charge under the **Controlled Drugs and Substances Act** and the fact that he was released on an undertaking with conditions. They noted how nervous he was in the motor vehicle in question. Constable Smith indicated that often people who are transporting drugs use rented motor vehicles. This was yet another indicator in their minds.
- [21] The Officers had noted the three individuals indicated they were travelling to Halifax for five days vacation but they had very little cash, Mr. Bonsignore saying he had \$10.00 and Mr. Trang saying he had \$500.00. There was no information as to whether they had any credit cards. Clearly, however, there was only reference to \$10.00 and \$500.00 cash.

- [22] Corporal Galley and Constable Smith discussed what was going to occur when the tow truck arrived. Constable Smith made it clear as between he and Corporal Galley, that he was not going to let the individuals go with the tow truck driver even though they had indicated it was their preference to go with the tow truck driver.
- [23] Once the tow truck arrived, Constable Smith discussed the situation with the tow truck driver, Mr. Sherman Lynds, describing the occupants as “three bandits”. Constable Smith suggested that he was not sure if it was safe for those individuals to travel with the tow truck operator. He said to the driver, in essence, that the Officer’s concern was the safety of the tow truck operator but the tow truck operator said he was all right about that.
- [24] Constable Smith advised the court that once he had requisitioned the tow truck he felt the issue of the safety of the tow truck driver was a valid concern for him. He said at that point he was not sure what he was dealing with, in terms of safety for the tow truck driver.
- [25] By this time both Constable Smith and Corporal Galley, indicated they still did not feel they had enough information to give them reasonable suspicion for an investigative detention and search. Constable Smith then discussed with Corporal Galley that the occupants in the motor vehicle no longer had

any standing in the vehicle as it was going to be towed at the request of Avis. He suggested they tell the occupants to clear their possessions out of the rented motor vehicle. This was also part of the conversation with Detective Bell. The comment was made that they still, at that point, were not exactly sure what they were dealing with. In this regard, I do note in the conversation that Corporal Galley had with Detective Bell, there was a discussion about somebody that Mr. Bonsignore knew who had a handgun.

[26] The conversation with Detective Bell was interesting as well in that there was a discussion as between Corporal Galley and Detective Bell wherein it was suggested that when the vehicle was emptied, warrant, or no warrant, Corporal Galley said “we are looking at those bags.” Corporal Bell also suggested that Mr. Bonsignore’s home was involved in a drug related home invasion and that Mr. Bonsignore was in the west, and now the east and in Toronto, often travelling in rented vehicles. There was also a discussion that if the occupants in the motor vehicle did not open the trunk that means they would not be claiming the contents. The thought was they could then seize anything that might have been left in the vehicle. Alternatively if the bags were not claimed, anything that was not claimed could be checked as

well. All of this occurred prior to the tow truck driver being told to move in front of the rented vehicle.

[27] After the tow truck arrived and was placed in front of the rented car the occupants were told to get out and remove their belongings. It is noted that at this time indications were that Mr. Ho, Mr. Trang and Mr. Bonsignore were still wanting to travel to Amherst with the tow truck driver. They were not told that this could not or would not occur.

[28] When the trunk was opened, the occupants each claimed some of the contents. Mr. Ho and Mr. Trang claimed one or two small backpacks each. That left three large suitcases remaining. Mr. Bonsignore indicated that he owned the remaining suitcases. At that time the Officers indicated they felt it was not consistent with three individuals going on a joint camping trip, even staying some or all of the time at bed and breakfasts. The story did not add up in terms of the amount of money they had versus the length of time they were staying. The amount of luggage claimed by Mr. Ho and Mr. Trang and then the three rather substantial suitcases that were left for Mr. Bonsignore.

[29] The officers even referred to the odd mix of individuals supposedly going on a camping trip as suspicious. Here were two foreign students from

Ottawa, travelling with an unemployed crane operator from Toronto. How did they get together for a camping trip? There did not seem to be a common thread.

[30] I have considered all of the other indicia or what has often been referred to in the cases as a 'constellation of indicia'. Once the officers observed the three bags for Mr. Bonsignore they felt it was one more suspicious indicator. The Officers felt they then had sufficient information to give rise to a reasonable suspicion upon which they could base an investigative detention. All three were, detained and chartered.

[31] Throughout the entire time from the initial stop until the bags were removed from the trunk the officers were witnessing a series of events unfold. Although they had their suspicions they did not embark on an investigative detention until they felt subjectively that they had reasonable suspicions that there was an offence being committed. Had the Officers known they were going to get to a sniff search, even in the absence of proper grounds, one would expect they could have requisitioned the dog unit much earlier.

[32] This all occurred near Oxford, more precisely, the River Phillip Bridge. The officers contacted a dog handler who is located in Valley, Nova Scotia. River Phillip is a rather remote location in rural Nova Scotia. The closest



populated area was what was described as the hamlet or village of Oxford. Actually I believe it is a town. The closest dog unit attached to the RCMP traffic unit was in Valley, Nova Scotia. The tow truck had arrived at approximately 2:45 p.m. It was shortly after the arrival of the tow truck that Constable Smith advised the occupants to vacate the rental vehicle and take their personal belongings. It is noted as well that is approximately the same time Constable Smith's audio recording device stopped recording. It was approximately 2:49 p.m. when Constable Smith advised Mr. Bonsignore that he was being detained until a Police Service dog could do a sniff of the luggage in the vehicle.

[33] At 3:50 p.m. Constable James MacEachern arrived on the scene with the Police service dog ("Moose"). Constable MacEachern deployed Moose on the luggage from the vehicle and Moose indicated a positive hit on a smaller orange bag located at the side of the road. The hit on the orange bag was confirmed when the Officer removed a small bag of what appeared to be a small package of marijuana from that bag. At 3:54 p.m., Mr. Bonsignore, Mr. Trang and Mr. Ho were informed they were under arrest under the **Controlled Drugs and Substances Act**. They were chartered, cautioned and their rights to speak with a lawyer were explained to them.

[34] A search was then conducted and approximately 30 pounds of what is believed to be cannabis marijuana and 65 grams of what is now believed to be ecstasy were seized from the other bags as claimed by Mr. Bonsignore.

### Analysis

[35] Section 8 of the **Charter** protects individuals against unreasonable search or seizure. Section 9 of the **Charter** protects individuals from arbitrary detention or imprisonment. A detention for investigative purposes, requires Police Officers have a reasonable suspicion that the individual is involved in criminal activity. In **R. v. Mann**, [2004] 3 S.C.R. 59, the Court noted:

The detention must be viewed as reasonably necessary on an **objective view of the totality of the circumstances**, informing the officer's suspicion that there is a clear nexus between the individual to the detained and a recent or on-going criminal offence.

The Courts have referred to what has been described as a constellation of objectively discernable facts giving the detaining Officer reasonable cause to suspect the detainee is criminally implicated in the activity under investigation.

[36] I have already noted the various indicia which the officers became aware of. They continually questioned whether they had sufficient information to give

rise to a reasonable suspicion to detain the accused persons for the purpose of an investigative detention and search. In **R. v. Schrenk**, 2010 MBCA 38, the Manitoba Court of Appeal discussed what constitutes a “reasonable suspicion”:

Upon review, a Court is entitled to look at all the circumstances to determine whether there was objectively reasonable suspicion, even if an officer did not articulate all those circumstances.

[37] In this case the officers articulated their reasons to the Court. It is also clear they discussed their suspicions as between themselves as their investigation continued. They discussed the importance of the various circumstances which they were becoming aware of as the accused were awaiting the arrival of the tow truck.

[38] Counsel for the defence now suggest, for example, the fact these individuals claim they were going on a camping trip might explain the presence of three suitcases for Mr. Bonsignore and little or no camping or fishing gear for three individuals. Implicit in their suggestions, especially that of Mr. O’Neil, was that the bags **may have contained the fishing gear and camping gear for the trip**. I am satisfied this is not consistent with the

officers subjective beliefs as to the bags in question. In fact, until it was suggested by defence counsel, the thought of packing camping gear into suitcases did not come to my mind either. In other words, at no time did it cross the officers minds that the three bags remaining in the trunk and as claimed by Mr. Bonsignore were packed with camping gear. They stated they were of the view that for Mr. Bonsignore to be going on a five day camping trip with three bags of luggage would be very unusual “for a man”. In addition the nonsensical explanation as to travelling on such a trip with so little cash available did not add up in the Officers minds.

[39] In **Schrenk**, the Court noted that rental cars are often used to transport illegal drugs. That Court also referred to the lack of eye contact and nervousness. The Officer’s past experience and training was another consideration, the Court noted that a Judge is entitled to consider a Police Officer’s training and experience in determining reasonable objectiveness. The Court pointed out that, what may appear to be innocent to the general public may have a very different meaning to an Officer experienced in drug operations.

[40] I am satisfied there is no finite list of indicators that would fit every given scenario. The Courts must assess the issue of reasonableness on an objective standard based on the specific facts in each case. In **Schrenk** the Court referred to the Saskatchewan Court of Appeal in **R. v. Bramley**, 2009 SKCA 49, 67 C.R. (6<sup>th</sup>) 293, para 60:

The reasonableness of a police officer's suspicions should be assessed through the lens of common sense and practical experience rather than by resort to pre-ordained lists of indicators deemed adequate to justify a search. Perhaps the key general point in this case is that the potential meaning of the factors relied on as the basis for a reasonable suspicion must be assessed for their collective, as opposed to individual, significance.

[41] When viewed objectively, I am satisfied the constellation of circumstances and facts in the present case were sufficient to form the basis of belief sufficient to allow the Officers to have a reasonable suspicion that the occupants in the motor vehicle were transporting drug. This was sufficient to allow them to conduct a search and to justify the incidental investigative detention.

[42] Although the Officers, especially Constable Smith, clearly expressed a desire, and even an intention, to conduct an investigative search, they did not conduct any investigative search, or detain the accused for that purpose

until they were reasonably satisfied, **at that time**, they had reasonable suspicion that the vehicle contained contraband. If the Officers had searched the vehicle at any stage prior to their belief as to the reasonable suspicions, then the results of the search would have been excluded. Their expressions of determination to get into the vehicle did not mean they entered upon an investigative search or detention prior to their belief that they had reasonable suspicion. In fact the evidence suggests just the opposite. For example as already mentioned the dog team was not summonsed until after the occupants of the car identified their luggage. In saying this I recognize the Officers did continue their observations and inquiries the entire time the vehicle was stopped at the side of the road.

[43] In arriving at the conclusion that there were sufficient grounds to support an investigative search and detention, I am cognizant of the fact the burden is on the Crown to satisfy the Court that, on an objective basis, the Officers had a reasonable suspicion as to the existence of contraband. I am satisfied the facts in this case amounted to a so-called constellation of objectively discernable facts which the Ontario Court of Appeal speaks to in **R. v. Simpson** (1993) 79 (C.C.C.) (3d) 482.

[44] It is important that investigative detentions should be brief in duration and should never become a *de facto arrest*. This was noted by Judge Arseneault in a New Brunswick Provincial Court case, **R. v. Jonas Hector Colter** (April 10, 2007), docket no. 181116, NB Prov. Ct. Mr. Brien on behalf of the defendant suggested that duration should never exceed 10 or 15 minutes. I am not satisfied that there is any prescriptive time limit on duration investigative detention. The duration must be viewed in the context of the circumstances the Officers were dealing with.

[45] In this situation the accused were travelling on a major highway, through a remote rural area in Nova Scotia, many miles from any major centre. Once the Officers felt they had sufficient grounds for a detention they acted reasonably in making immediate attempts to contact a dog unit to conduct a sniff search. It was approximately 2:49 p.m. when Constable Smith advised Mr. Bonsignore that he was being detained until a police dog searched the luggage in the vehicle. All three accused were informed of their rights under the **Charter**, advised to leave their bags and put into a sitting position along the roadside. One hour later, Constable James MacEachern arrived with a police dog. At 3:55, that is within four minutes of Constable MacEachern arriving on the scene with the dog, the accused were

individually informed they were under arrest under s.5 (2) of the **Controlled Drugs and Substances Act** . They were chartered, cautioned and advised of their right to speak to counsel. This was after the police service dog had a positive hit on the orange bag.

[46] Once the police service dog confirmed the presence of contraband, the Officers then had sufficient evidence upon which they had reasonable and probable grounds to conduct a more thorough search of the vehicle. Section 8 of the **Charter** protects individuals against unreasonable search and seizure. A warrant less search is presumptively unreasonable and the burden rests on the Crown to show its reasonableness. The threshold for reasonable grounds as described in **R. v. Storrey** [1990] 1 S.C.R. 242 at paragraph 17, is reached at the point when credibility-based probability replaces suspicion.

[47] **R. v. Kang-Brown**, 2008 SCC 18 and **R. v. A.M.** 2008 SCC 19 are the most recent Supreme Court of Canada authorities on the use of sniffer dogs. A majority of the Court concluded the Police Officers were entitled to use sniffer dogs on the basis of a standard of reasonable suspicion. **Kang v. Brown** referred to the minimal intrusion and pinpointed accuracy of a sniff executed by a trained and well-handled dog. A sniff that is appropriately



executed is a proper balance between an individual's section 8 rights and the reasonable demands of law enforcement that would be struck by permitting such sniff searches on a reasonable suspicion without requiring prior judicial authorization.

[48] As noted by Justice MacLellan in **R. v. Ryan**, 2011 NSSC 102, at paragraph 23, he concluded:

Once the dog indicated the presence of drugs, the officer in that case had *reasonable and probable* grounds to arrest the accused and, based on that arrest, to search the vehicle.

In saying that Justice MacLellan referred to the Alberta Court of Appeal in **R. v. Loewen**, [2010] A.J. No. 980.

[49] The most difficult aspect of this case arises from the comments made by the Officers prior to the detentions. Their comments suggested that they intended to search this vehicle one way or another and they were not letting the vehicle leave without first having a look in the vehicle. If, in fact, they had acted based on their stated intention instead of continuing their investigation, I would have been satisfied that there was a breach of the accused's **Charter of Rights**. I am, however, satisfied the Officers, in spite of their stated intention, continued their investigations until they had

sufficient grounds upon which to justify an investigative detention. In summary, they did not manufacture situations simply to obtain additional evidence in furtherance of their investigation. I am not at all surprised that an RCMP officer would contact a rental agency when a non-designated driver was driving a rented vehicle. I find nothing inordinate or offensive in them acting upon the instructions of the rental car agency and having the vehicle towed. I am satisfied that once they decided to have the vehicle towed that it was appropriate they ask that the occupants remove their personal belongings from the motor vehicle. I accept that the number of bags claimed by Mr. Bonsignore was the final star in the constellation. When they saw that, they were convinced they had reasonable suspicions that a criminal offense was being committed, considering the totality of their knowledge.

[50] In view of my findings in relation to whether or not there was a breach of section 8 or 9 of the **Charter**, I am satisfied it would not be necessary to conduct an analysis under section 24 of the **Charter**. If I am wrong, however, I want to point out that I am not convinced that the admission of the evidence would bring the administration of justice into disrepute. In saying that I consider a number of factors, including the seriousness of the

**Charter** infringement and the officers conduct. I also take into account the importance of the **Charter**, protected interests of the accused, and societies interest in the adjudication of the case on its merits. In this regard I refer to **R. v. Grant** [2009] SCJ 32.

- [51] As I have indicated on the issue of the police conduct, I accept that the Officers were not concocting a situation so as to allow them to continue an investigation or to get the accused out of the motor vehicle simply so they could conduct a search. Instead the Officers had detained the accused only once they had sufficient information to give rise to reasonable suspicion. After the sniff test was conducted, I am satisfied they had reasonable and probable grounds to arrest the accused and conduct a warrantless search. Once they were detained both at the investigative detention stage and at the arrest stage, they were chartered and advised as to their rights to counsel.
- [52] Even if I were to have found that the length of time required for the dog to arrive was inordinate in terms of an investigative detention, I am satisfied that to now refuse admission of the evidence obtained would in fact bring the administration of justice into disrepute. I would invoke the curative provisions of the **Charter** and permit the admission of the evidence. Given the seriousness of the offence as now alleged, the fact the accused were

detained for investigation for approximately 50 minutes is not sufficient to justify exclusion of the evidence. It is unreasonable to suggest that Police should have sniffer dogs in every village and hamlet in this vast country out of fear of having serious crimes go un-prosecuted.

[53] One further consideration is the fact the evidence obtained was non-conscriptive evidence. As was noted by Justice Cory in **R. v. Stillman** [1997] S.C.J. No. 34, the first step in determining whether a trial fairness would be affected by a **Charter** breach is whether the evidence in question is conscriptive or non-conscriptive. The presence of the drugs that were uncovered following the sniff test is non-conscriptive evidence. As regards societal interest, society has a vested interest in the prosecution of drug offences. This is especially so when dealing with individuals who are involved in drug trade dealing with larger amounts. Again, I refer to the fact that there was 30 pounds of what is alleged to have been marijuana and 65 grams of what is alleged to be ecstasy.

[54] If there was any breach of **Charter** rights, I am satisfied it was not the result of the Police Officers having acted in bad faith. I am satisfied the investigating Officers had a bona fide subjective belief that the grounds were sufficient, for both the investigative search and detention, and the

arrest on reasonable and probable grounds, once the sniffer dog had a positive hit.

[55] I am satisfied the exclusion of the evidence in this case would bring the administration of justice into disrepute.

[56] The motions of the accused under the **Charter** are dismissed.

J.

05/20/11